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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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COMMISSIONER
HENRY S. JENNINGS
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BOARD OF PESTICIDES CONTROL

May 2, 2008

John E. Dority Safety & Performance Training Center (Conference Room, Lower Level)
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield
(Exit 133 from I-95)

MINUTES

9:30 AM

Present: Simonds, Eckert, Walton, Qualey and Stevenson

1. Introductions of Board and Staff

The Board, Staff and Assistant Attorney General Randlett all introduced themselves

2. Minutes of the March 28, 2008, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Schlein noted a few typos he had detected. David Bell from the Maine Wild Blueberry Commission stated his comments from the previous meeting were mischaracterized. Jennings asked Bell to email a more accurate account of comments so that the minutes could be properly amended.

Simonds/Qualey: Moved and seconded approval of minutes with typos corrected and Bell's concerns addressed.

In Favor: Unanimous

3. Consideration of a Variance Request from RWC, Inc. Pursuant to Chapter 29, Section 6

Chapter 29, Section 6, requires an untreated 25-foot buffer zone for outdoor terrestrial broadcast pesticide applications near surface waters, including lakes, ponds, rivers, streams, certain wetlands and estuarine/marine waters. This section also contains a mechanism under which the Board or its staff can grant variances. The Board has received a variance request from RWC, Inc. to make

broadcast applications within 10 feet of water crossings and will now provide guidance to the staff on how to respond to the variance request.

Presentation By: Henry Jennings
Director

Action Needed: Provide guidance to the staff on how to respond to the variance request

- Jennings alerted the Board that the new 25-foot buffer rule became effective on May 1. He introduced the RWC variance request by pointing out that RWC has done the bulk of the railroad spraying in Maine for the last 30 years. The BPC staff also worked with RWC over the winter to upgrade their notification procedures. Finally, Jennings informed the Board that RWC would be using a product called Nufilm, or the equivalent, to adhere the herbicides to surfaces.

Simonds reminded participants that the principle is to protect surface water. Eckert asked if the railroads could live with the 25-foot setback where the track crosses water. Walton pointed out that public water suppliers had concerns about runoff from railroad spraying.

Russell Libby, Executive Director for the Maine Organic Farmers and Gardeners Association (MOFGA) raised concerns about railroad spraying adjacent to MOFGA's headquarters. It was suggested that he contact Robert Moosmann or George Jackman at MDOT about a possible no spray agreement.

Simonds stated he was comfortable with the staff approving the permit requests as long as there is a dialog with the applicator about strategies designed to minimize runoff.

Stevenson/Qualey: Moved and seconded to authorize the staff approve or deny Chapter 29 variance requests unless special consideration by the Board is approved.

In Favor: Unanimous

4. Consideration of a Variance Request from the Maine Department of Transportation (MDOT), Environmental Office Pursuant to Chapter 29, Section 6

The MDOT Environmental Office oversees wetland mitigation, which includes control of invasive and non-native plant species. The Environmental Office is requesting a variance from the new 25-foot setback in order to conduct wetland mitigation activities and control invasive and non-native plants adjacent to wetlands. The Board will provide guidance to the staff on how to respond to this variance request.

Presentation By: Henry Jennings
Director

Action Needed: Provide guidance to the staff on how to respond to the variance request

- Jennings introduced the subject by explaining that the MDOT Environmental Office's use of herbicides is associated with wetland mitigation projects. Very little spraying is done in a given year. Mark Lickus was present, representing the Environmental Office. Lickus further explained

they work under permits from the Maine DEP and the US Army Corps of Engineers on man-made or restored wetlands. Herbicides are used to control invasive species and/or spot treatments prior to planting. They are concerned about non-target effects and runoff. Most of their work involves spot treatments (exempted from Chapter 29), but they may need to make an occasional small-scale broadcast application. The Environmental Office may spot treat between zero and ten acres a year.

Libby inquired why cattails were on the list of invasive plants. Lickus explained the Army Corps has cattails on their list of invasive plants. Lickus stated that they have not yet sprayed any cattails.

5. Consideration of a Variance Request from MDOT for Roadside Brush and Other Nuisance Weed Control Pursuant to Chapter 29, Section 6

The MDOT, Bureau of Maintenance and Operations, conducts a variety of vegetation control operations within the rights-of-way along state maintained roads. In certain situations, broadcast herbicide applications will be made within the Board's new 25-foot setback. MDOT is seeking a variance for this purpose. The Board will provide guidance to the staff on how to respond to this variance request.

Presentation By: Henry Jennings
Director

Action Needed: Provide guidance to the staff on how to respond to the variance request

- Jennings explained that the MDOT, Bureau of Maintenance and Operations, is planning to make several types of herbicide applications in 2008: the traditional roadside brush control program, a guardrail weed control program, a small program to control weeds in pavement cracks prior to resurfacing, and the occasional use of herbicides to control noxious or invasive weeds or for weed control in plant beds and/or adjacent to district maintenance garages. Many of the applications that the Bureau of Maintenance and Operations performs are really spot or directed applications, but the guardrail applications may fall somewhere in between broadcast and spot treatment. Consequently, MDOT and the Board's staff felt it would be best for MDOT to apply for a variance from Chapter 29.

Jennings stated that MDOT would be adding Nufilm to the spray mixtures in 2008. Nufilm is a product that helps adhere sprays to surfaces. There is substantial research supporting this claim.

Simonds noted that the addition of guardrail spraying signifies an expansion of the MDOT spray program, which conflicts with the Board mandate to minimize reliance on pesticides. Libby pointed out that guardrails hadn't been sprayed in at least 10 years, so why start now. What about using the articulating mower? Walton recalled that MDOT had a guardrail program in the 1980s that was phased out. He said the real issue with guardrails is vegetation growing under the guardrail, as opposed to behind it. Eckert reminded participants that the real goal is to protect the water. She suggested the Board would need to review the program again to see how much guardrail work was done. Qualey felt MDOT would do the work carefully. He suggested that the Board should let the staff handle the variance request consistent with a previous Board motion.

6. Continued Discussion About Approaches to Address Public Concerns About Aerial Spraying

The Board held a Public Information Gathering Meeting on aerial spraying and spray drift at its December, 2007, meeting, and has discussed issues and ideas at each of its meetings since then. Certain aspects of recent deliberations revolve around the development of a new concept: Sensitive Area Likely to Be Occupied (SALO). The staff has prepared a memo discussing the definition of SALO for Board consideration. The Board will now review the staff concepts and continue its discussion about aerial spraying and drift.

Presentation By: Lebelle Hicks
 Staff Toxicologist

Action Needed: Provide feedback to the staff about the concepts presented and determine the next steps

- Hicks introduced the topic stating the key question is to differentiate Sensitive Area Likely to Be Occupied (SALO) from other sensitive areas. Jennings added that the Board would need to decide whether to create a separate definition or modify the existing language. Randlett stated either approach is doable.

Stevenson noted the similarity between the existing regulatory language and the proposed definition of SALO. Simonds felt it would be simpler to modify existing language. He distinguished three types of sensitive areas in the current rules: 1) water and other environmental areas, 2) agricultural land and other general property and 3) people and where they are. He emphasized his main concern in this process is protecting people.

Jennings pointed that current definitions list various types of buildings likely to be occupied, together with 100 feet as long as it's part of the same property. The 100-foot concept has proven to be problematic, because people use their property differently without regard for an arbitrary 100-foot radius.

Consensus was reached to modify the existing list of sensitive areas, dropping reference to the 100-foot radius around occupied buildings and substituting the likelihood that an area may be occupied. Hicks questioned whether the sensitive areas should be divided into tiers to facilitate notification. Libby pointed out that other rules may be affected by a change in the definitions in Chapter 10. Bell wondered about areas that are likely to be occupied at certain times of the year, but not others. Eckert agreed, pointing out that some areas are always occupied, some are never occupied and some fall in between. Bell argued that one set of rules for all agricultural applications would be simpler and easier for growers to follow.

Simonds then used the dry erase board to classify sensitive areas into three categories: 1) water/environmental, 2) agricultural land and other property not usually occupied and 3) areas where people are likely to be, including houses, businesses, yards, gardens, livestock areas, roads, recreational areas and other areas where people are likely to be present.

Tim Hobbs of the Maine Potato Board suggested that any area that is not the target area is a sensitive area. Libby pointed out that roads are not currently listed as sensitive areas. He also suggested the Board needed to think about enforcement, since there is a perception that it isn't

happening. Simonds stated the current regulatory framework does not provide enforceable tools to the staff.

Simonds suggested refining the concepts discussed about SALOs and bringing them back for further review. Consensus was reached, directing the staff to develop concepts around buffer zones, standards of practice and standards of harm for discussion at the next meeting. Walton mentioned that BMPs are also important. Simonds also mentioned record keeping, and bringing back an updated recommendation on notification. Eckert pointed out there are only six months until the Legislature convenes.

7. Other Old or New Business

a. Continuing Discussion of Pesticide Use Data - H. Jennings

Item tabled

b. YardScaping Update - G. Fish

Jennings and Schlein described the recent interest in Yardscaping and work being done at the Back Cove demonstration site.

c. Meeting with Jeffrey Smith - H. Jennings

Jennings noted Hicks and several other staff from the Department of Agriculture were scheduled to meet with Jeffrey Smith, an author and opponent to genetically modified crops.

d. Other ?

8. Schedule and Location of Future Meetings

June 13 and July 25, 2008, are the tentative dates for the next Board Meetings. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

The July 25 meeting was switched to August 1. Additional dates of September 12 and October 17 were added.

9. Adjourn

Simonds/Qualey: Moved and seconded that the meeting adjourn at 12:54 p.m.

In Favor: Unanimous