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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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SETH H. BRADSTREET III
COMMISSIONER
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BOARD OF PESTICIDES CONTROL

December 18, 2009

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

- Present: Simonds, Bohlen, Jemison, Eckert, Ravis, Stevenson, and Qualey

9:30 AM

1. Introductions of Board and Staff

- The Board, staff and Assistant Attorney General Randlett introduced themselves

2. Minutes of the November 6, 2009, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

- Jennings alerted Board members to an omission. The staff forgot to list the attending Board members at the beginning of the minutes, but will add that information.

Jemison/Simonds: Moved and seconded approval of the minutes

In favor: Unanimous

3. Consideration of Proposed Amendments to Chapter 28 for Provisional Adoption

On September 9, 2009, a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on proposed amendments to Chapter 28 of the Board's rules—Notification Provisions for Outdoor Pesticide Applications. A public hearing was held on October 2, 2009, at the Hampton Inn in Waterville, and the written comment period closed at 5:00 PM on October 16, 2009. Fifteen people spoke at the public hearing and twenty-seven written comments were accepted by the close of the comment period. At its November 6, 2009, meeting, the Board reviewed the comments and followed with discussion. Changes were made and the Board directed the staff to bring the revised rule back for adoption at the next meeting on December 18, 2009. The Board will now review the revised rule and consider its adoption.

Presentation By: Henry Jennings
Director

Action Needed: Provisional Adoption of the Rule, Basis Statement, Rulemaking Statement of Impact on Small Business, and Response to Comments for Chapter 28

- Jennings described the changes that had been made to the rule, based on instructions provided at the last meeting. These changes included combining the registry and the informal request provisions into one section, combining the lists of information that must be provided when requested into one section, deleting the exemption for applications covered under Chapter 51, and adding an emergency exemption section.

Bohlen asked for clarification on the intent of the sections that require mandatory disclosure when occupied buildings are both on abutting property and within 1,320 feet of the pesticide application site. Jennings explained that both criteria must be met before the disclosure is required. Stevenson expressed the opinion that the statute is too broad as currently written to include airblast equipment, and shouldn't apply to applications currently covered under Chapter 51. Stevenson also stated that mosquito spraying in non-emergency situations will be difficult under the current statute. Qualey expressed frustration with the statute, stating that it is unworkable.

Several Board members articulated strong concern about the burden the statute imposes in many circumstances, which made them reluctant to adopt the proposed rule amendments. However, members also stated that failing to adopt the proposed amendments leaves only the statute in effect, which only increases that burden. Simonds suggested that the Board's failure to adopt a more complete notification rule is at least part of the reason the Legislature rejected the Board's first proposal and enacted LD 1293 in its place.

Ravis observed that the "acceptable means of notification" clause is what limits the Board's ability to allow for more workable approaches to the mandatory disclosure requirement. He suggested broadening the "acceptable means" in the rule amendments. Simonds suggested being silent on acceptable means of notification. Randlett commented that the statute is quite specific about requiring personal notification as opposed to general notification. Consequently, he advised against changing that portion of the rule.

Jennings suggested that if the main concerns involve the burdens created by the statute, the Board could consider a separate motion to convey the Board's concerns at the same time that the provisional rule is transmitted to the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF). Ravis preferred to consider such a motion prior to voting on adoption of the provisional rule, suggesting it might affect the way some people vote.

Ravis/Simonds: Moved and seconded a directive for the staff to draft a memo to the ACF outlining Board concerns with the statute

In Favor: Unanimous

The Board discussed several points that should be included in the memo, including the burdensome nature of the personal mandatory disclosure, lack of flexibility for the means of notification section, whether the statute should have applied to airblast or not, and issues associated with incorporating so many details in the statute.

Simonds/Bohlen: Moved and seconded adoption of Chapter 28, as amended, with Simonds' suggestions, the basis statement, the response to comments, and the statement of impact on small businesses

In Favor: Simonds, Jemison, Eckert, and Bohlen

Opposed: Ravis, Stevenson, and Qualey

4. Consideration of the Medical Advisory Committee Final Report on *Bt*-Corn Proteins

The Board's Medical Advisory Committee (MAC) concluded its review of the dietary safety of *Bt*-corn proteins in July 2009. This fall, the final report was sent to the *Bt*-corn registrants—Dow AgroSciences, Monsanto, Pioneer, and Syngenta—for review and comments. The Board will now discuss the final report and decide if further review is necessary.

Presentation By: Lebelle Hicks
 Staff Toxicologist

Action Needed: Accept or reject the MAC report

- Eckert explained that EPA did not require a comprehensive toxicology review prior to registering *Bt* corn. The main purpose of the MAC review was to look at research that occurred in the 12 years since *Bt* corn was first registered.

Jemison suggested upgrading the executive summary, making it longer and summarizing the key findings in clear language understandable by the lay person. Bohlen suggested ideas to make the format easier to follow, such as adding explanatory paragraphs and summaries for each study cited, and indicating the sample size. Simonds believed that the MAC should provide better guidance to the Board.

Eckert indicated that the MAC was not willing to draw a conclusion based on the available information. Qualey inquired about whether Hicks was comfortable with the dietary safety of the products. Hicks stated there is no evidence of acute toxicity, and chronic effects should not be observed because the protein is broken down so quickly. There is no data currently to indicate a health hazard. Eckert conveyed that allergenicity is still a concern. Consequently, there is a need to continue monitoring emerging studies.

Consensus was reached to do additional editing of the report by upgrading the executive summary, summarizing the results of each study, and integrating the tables into the text for easier reading. The staff will bring the report back to a future meeting for final approval.

5. Consideration of Syngenta's Applications to Register Its Vegetative Insecticidal Protein-Containing *Bt* Cultivars

Syngenta has submitted applications to register three Vegetative Insecticidal Protein (VIP)-containing *Bt* cultivars: MIR 162 Maize (EPA# 67979-14), Agrisure 2100 (EPA# 67979-12), and Agrisure 3100 (EPA# 67979-13). The Board will now consider these applications.

Presentation By: Lebelle Hicks
Staff Toxicologist

Action Needed: Decide whether to register the *Bt*-corn products

- Hicks explained she saw no red flags with the Syngenta VIP products. They are field corn products with effectiveness against a broader spectrum of insect pests. Since the VIP products require a twenty-percent refuge, the Technical Committee views them as essentially the same as the products already approved by the Board.

Simonds/Qualey: Moved and seconded approval of the Syngenta VIP *Bt* field corn products

Board members then addressed each of the considerations set forth in M.R.S.A. § 607 (8-A) and reached consensus that the pending registration requests satisfied considerations 2, 3, 4, and 5, as required by the statute.

In Favor: Simonds, Jemison, Eckert, Stevenson, and Qualey

Opposed: Ravis and Bohlen

Hicks asked whether there was a need for the Board to review future *Bt* corn applications that are substantially similar to those already approved.

6. Consideration of the Staff Negotiated Consent Agreement with Ralph Boynton of Lincoln, Maine

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved the application of an herbicide to a neighbor's field without the neighbor's permission.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Connors explained the circumstances leading up to this unauthorized application of Roundup. The applicator had discussed his plans to reclaim a field on his property with his neighbor and sought

permission to treat the neighbor's property also. He believed the neighbor was agreeable to this idea and went ahead with the treatment, only to find out later that no such permission was extended. Simonds inquired how the staff determines who is being truthful in such matters. Connors explained there were a number of subtle indicators suggesting that the applicator was not confident about the nature of their understanding.

Ravis/Jemison: Moved and seconded approval of the consent agreement

In Favor: Unanimous

7. Update on Changes in the Pesticides Registration Process

The BPC pesticides registrar undertook a comprehensive review and overhaul of the pesticides registration process, resulting in a number of changes for the 2010 registration year. One significant change is the BPC has converted to an electronic document storage approach for pesticide labels and MSDSs. As part of this conversion, the staff is now participating in the Accepted Labels State Tracking and Repository (ALSTAR) pilot project and has expanded its access to the State Pesticide Information Retrieval System. Both of these systems are administered through Purdue University. The pesticides registrar will now update the Board on the details of these developments.

Presentation By: Mary Tomlinson
Pesticides Registrar/Water Quality Specialist

Action Needed: None required—informational only

- Tomlinson reviewed her memo with Board members, explaining how the entire registration process had been updated to improve efficiency and that a conversion of labels and MSDSs to electronic documents had begun. She added that the policies relating to alternate brand names had been inconsistently administered in the past. Consequently, the staff adopted the policies favored by most states that do not allow exemptions for alternate brand names.

8. Water Quality Monitoring Update

The BPC water quality program continues to collaborate with the Friends of Casco Bay (FOCB) on stormwater sampling for residential pesticides. In 2008, surface water samples were taken from golf course watershed areas and sediment samples were taken from two urban watersheds in Cumberland County. FOCB took three stormwater samples during 2009, but the lab analyses are not yet complete. The Board will now review and discuss the results of the 2008 sampling.

Presentation By: Mary Tomlinson
Pesticides Registrar/Water Quality Specialist

Gary Fish
Manager of Pesticide Programs

Action Needed: None required—informational only

- Fish reviewed the surface water and sediment sampling results from 2008. Chlorothalonil was detected in stormwater sampling results from streams draining golf courses and residential areas. Chlorothalonil is commonly used on golf courses and, to a lesser extent, on residential property. Fish pointed out that chlorothalonil has also been detected in surface water samples draining blueberries and potatoes. Ravis expressed concern and urged continuation of the monitoring efforts.

Fish discussed the sediment sampling next. Samples were collected from three Greater Portland areas where streams empty into the ocean. All the samples were analyzed for a group of synthetic pyrethroids most commonly used in residential areas. Bifenthrin was detected at all three sites, but none of the other products were found. Fish discussed the test results with Larry LeBlanc, the researcher who is running the tests at the UMO Chemical Safety Laboratory, and he concluded that levels detected in Maine may exceed aquatic life benchmarks if converted to the analysis protocols used by California.

Board members inquired if additional sampling was planned. Fish indicated that the staff supports continuation of the surface water monitoring efforts, but funding is always a concern. In addition, the Board's ground water monitoring surveys are slated to be repeated in the near future at substantial costs. Bohlen commented that the Casco Bay Estuary Partnership may be able to collaborate.

9. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: Henry Jennings
Director

- Jennings indicated that it was time to elect a chair and vice-chair for the upcoming year. Simonds indicated a willingness to serve as the chair. Board members expressed enthusiasm. Simonds noted that a vice-chair is necessary also, since he may not be able to attend every meeting.

Eckert/Stevenson: Moved and seconded the nomination of Simonds as chair and Jemison as the vice-chair

In Favor: Eckert, Ravis, Bohlen, and Qualey

Abstaining: Simonds and Jemison

10. Other Old or New Business

a. Outstanding *Bt*-Corn Issues—L. Hicks

- Hicks informed the Board there were still *Bt* registrations pending that have reduced refuge requirements that will be considered at the January meeting of the Technical Committee.

b. Other?

- Jennings reminded members that the annual planning session is slated for January 29 at the Fairfield location. The staff will look into buying sandwiches, etc. Simonds asked Board members to send discussion topics to Jennings. Randlett suggested repeating his talk about proper ways to receive input from the public and Jennings mentioned water monitoring, as two possible topics. Simonds would appreciate an overview of current pesticide law.

11. Schedule and Location of Future Meetings

January 22, March 5, and April 16, 2010, are the tentative dates for the next Board Meetings. January 29, 2010, has also been tentatively set as the date for a Board planning session. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- No changes were made to the current list of tentative meeting dates.

12. Adjourn

- Eckert/Qualey: Moved and seconded that the meeting adjourn at 1:34 PM.

In Favor: Unanimous