



JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

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COMMISSIONER  
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DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**April 16, 2010**

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: Jemison, Ravis, Stevenson, Eckert and Qualey

1. Introductions of Board and Staff

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

2. Minutes of the March 5, 2010, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or approve

Jemison suggested a couple of minor revisions to the discussion of item four relating to the request for registration of Monsanto's *Bt*-corn cross.

Ravis/Qualey: Moved and seconded approval of the minutes as amended

In Favor: Unanimous

3. Syngenta Crop Protection, Inc., Request for a FIFRA Section 24(c) Registration to Increase the Total Allowable Active Ingredient Per Season

At the request of University of Maine Potato Extension Specialist Dr. Steven Johnson, Syngenta Crop Protection, Inc., is supporting a Special Local Need [24(c)] Application for Bravo ZN (EPA# 50534-204) on potatoes. This 24(c) label would increase total allowable chlorothalonil per acre from 12.0 pounds to 16.0 pounds per year. The request is necessitated by a combination of unusual late blight pressure and a shortage of the other principle late blight protectant fungicide, the EDBC's.

Presentations By: Henry Jennings  
Director

Action Needed: Approve/Disapprove 24(c) Registration Request

- Steve Johnson, from the University of Maine Cooperative Extension, explained that there has been an ongoing shortage of EBDC fungicides due to a manufacturing plant closure in France. EBDCs are the primary protectant fungicide alternative to chlorothalonil, and both compounds have annual use limits. Consequently, when growers approach the limit for one, they switch to the other. The EBDC shortage, coupled with high late blight pressure, creates the possibility that applicators will reach the annual maximum for chlorothalonil before the end of the growing season and not have an alternative protectant available. Consequently, Cooperative Extension is seeking approval to increase the maximum annual rate for chlorothalonil. Identical 24(c) labels already exist in five other potato growing states.

Qualey inquired if there would be carryover blight pressure from the home garden outbreak last year. Johnson explained that late blight is an obligate parasite, and would only survive on living tissue. Jemison asked if resistance to chlorothalonil was a concern. Johnson stated that, because of the mode of action, resistance against chlorothalonil or the EBDCs has never been observed. Ravis asked if growers rotated between the EBDCs and chlorothalonil. Johnson stated it was more a matter of grower preference since resistance is not a concern.

Eckert inquired about worker exposure concerns. Hicks stated that the label requirements should adequately address worker risks. Heather Spalding asked whether there were disease-resistant cultivars that could be planted. Johnson stated that there are some cultivars that are disease resistant, but there is no market for those varieties, so it's not a realistic option. Spalding also asked if chlorothalonil had been implicated in Colony Collapse Disorder. Hicks stated that it was a different class of fungicides. Ravis pointed out that chlorothalonil had been detected in recent surface water sampling.

Eckert/Qualey: Moved and seconded approval of the 24(c) application request

In Favor: Unanimous

Board members also requested a report back on the use of the product and any water quality sampling results.

4. Public Information Gathering Session about Development of a Comprehensive Pesticide Notification Registry

On April 1, 2010, Governor Baldacci signed Public Law 2009, Chapter 584, LD 1547, An Act To Revise Notification Requirements for Pesticide Applications Using Aircraft or Air-carrier Equipment. Among other things, the new law directs the Maine Board of Pesticides Control to establish a comprehensive pesticide notification registry which encompasses both existing registries and is expanded to include other types of pesticide application equipment. The new law

further directs the Board to report its progress to the Legislature by next February. At this meeting, the Board will begin the process of soliciting public input about the scope and operation of a comprehensive registry. Written comments may be sent to the Board's main office at Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028, or e-mailed to [henry.jennings@maine.gov](mailto:henry.jennings@maine.gov).

- ☑ Jennings explained that Public Law 2009, Chapter 584, LD 1547, requires the BPC to develop a comprehensive registry, and that the process would start by inviting public comment through a series of Public Information Gathering Meetings. Interested parties were asked to provide comment on the scope and operation of a comprehensive registry for the first such meeting.

Nick Bennett, Staff Scientist, from the Natural Resources Council of Maine, was the first to comment. Bennett expressed disappointment over the results of the last legislative session and how the registry was altered to include exemptions for varying notification distances. Bennett supported the idea of a unified registry. He felt it was unfair to change the terms of the registry after hundreds of people had already signed up.

Heather Spalding, from the Maine Organic Farmers and Gardeners Association (MOFGA), provided some handouts for the Board and recognized their hard work on the subject. Spalding agreed that distances were going to be the key sticking point for developing the registry. MOFGA supports the one-quarter-mile notification distance which was based on precedents relating to buffer zones from other states. MOFGA is concerned about the exemptions for non-agricultural spraying, stating it was never meant to be just an agricultural bill. MOFGA is willing to help research technological opportunities to make the registry efficient for everyone. Spalding commented that the \$25,000 allocation to publicize the registry isn't much, and she hoped the BPC would maximize the use of low-cost approaches. MOFGA supports the use of signage. They suggest contacting a random sample of the public for evaluating the effectiveness of the BPC publicity campaign. Spalding commented that the registry is a public health issue, and she regretted seeing the debate pit organic growers against conventional ones.

Jon Olsen spoke on behalf of the Maine Farm Bureau. Olsen stated that Maine farmers compete with other farmers across the globe, and they want to be treated fairly in a manner that allows them to compete. He said no other farmers in the country deal with as much regulation as Maine farmers, and Maine farmers are angry about this. This excessive regulation may give the perception that Maine farmers are not good stewards of the land, which is opposite of the reality.

Lauchlin Titus spoke on behalf of the Maine Small Fruit and Vegetables Growers Association (MSFVGA). He acknowledged that LD 1293 caught them off guard. He stated that one-quarter mile is a huge distance. MSFVGA is opposed to the use of signs—they think it will evoke a negative connotation. MSFVGA wants to work with the Board on distances and hopes there is broad agreement before the issue returns to the Legislature.

Eric Seaman, a vegetable grower, said growers were surprised by LD 1293, so he decided to get involved. He followed the entire legislative process and stated that the Board had done a nice job of working with the ACF Committee on this issue. Exemptions were included to address conflicts with existing law. Seaman supports the unified registry. Distances are going to be the key point

of debate, and should be based on science. He supported the Board's effort to keep the Legislature focused on the broader policy issues, while allowing the Board to work on the details.

Deven Morrill, of Lucas Tree Expert Company, stated his company treats 1,200–1,500 lawn and ornamental customers annually and about 800–1,000 mosquito customers. Each account is treated between one and four times per year. Maine businesses require the treatments to attract customers. Lucas had concerns about every part of both LD 1293 and LD 1547, so they had to prioritize their battles. Morrill advocates using the current non-agricultural registry approach, since it's more user-friendly from the applicator perspective. It's a hardship to have to determine whether your customers are within the notification distance. He did not support the registry approach detailed in LD 1547 because participant names remain on the registry until it is determined they are no longer valid. Morrill supported an annual renewal requirement. He also suggested a system in which the approximate date would be provided, since Maine's weather makes it difficult to specify an exact date. Notification distances should be based on science. One-quarter mile is a huge distance in urban areas. An automated, electronic notification system would be beneficial for commercial applicators.

Steven Maheu, of Maine Pomological Society and Ricker Hill Orchards, expressed concern about the cost of an automated notification system during these economic times.

Steven Johnson, of the University of Maine Cooperative Extension, expressed concern about science being used out of context. He cited one case, where a Washington State study was used, and pointed out that the weather there is completely different from Maine's. Johnson urged the Board to evaluate any data to be sure it is relevant to Maine.

Tim Hobbs, from the Maine Potato Board, agreed that data should be appropriate to Maine. Hobbs explained that the Potato Board had largely stayed out of the debate around LD 1293 and LD 1547, because it didn't really affect their constituency. But things have changed now that LD 1547 requires development of a comprehensive registry. Hobbs stated that a 500-foot notification distance has worked well since 1986. He agreed that the distances will be the focal point of the debate. Hobbs wondered if the distances could be linked to the drift law.

David Bell, from the Maine Blueberry Commission, recalled three years of discussion about communication between neighbors. Blueberry growers support good communication, but they prefer to talk directly to their neighbors and aren't that supportive of an automated system. Neighbor communication needs to cast Maine agriculture in a positive light. Excessive regulations could be interpreted as Maine having a big problem. Bell advocated for as simple a system as possible, while avoiding duplication. Laws won't make people communicate well if neighbors just don't get along. Blueberry growers don't yet have a position about the use of signs. They'd need to know more about what is being proposed.

Steve Maheu, of Maine Pomological Society and Ricker Hill Orchards (ninth-generation orchardists), next addressed the Board. Apple growers thought that LD 1293 was an aerial bill, so they didn't pay too much attention at the time. However, since January, Steve has devoted most of his time to LD 1547. Maheu stated that most of the studies discussed in front of the Legislature were from other states. He advocated for use of Maine studies. Apple growers are not opposed to

talking with their neighbors, but they prefer direct contact as opposed to an automated system, which might create fear. Referring to the number of budget cuts that have already been made, and the lack of funding, Maheu was also concerned about the cost of an automated system. He said signs are already used at orchards. The question of how many signs will be the key. Right-to-know is a good idea.

Gordon Colby of Allen's Union Farm explained that he manages about 5,000 acres of blueberries involving about 100 growers. Colby said that Maine farmers are angry about the new laws. He urged the Board to use science and facts, and not to get caught up in emotions. Colby thought the Board was not proceeding as directed by its statutory purpose and, as a result, this was not supportive of the farmers.

5. Board Discussion About the Process for Fulfilling Additional Mandates Under Public Law 2009, Chapter 584, LD 1547

In addition to directing the Board to develop a comprehensive registry, Public Law 2009, Chapter 584, LD 1547, also directs the Board, with input from the Department of Health and Human Services and other public health professionals, to report back to the Legislature in February of 2011, on five specific topics: (1) progress made in working towards a comprehensive notification registry; (2) recommendations regarding notification distances and types of applications; (3) the effectiveness of the public awareness campaign; (4) the feasibility and advisability of requiring land managers to post signs; and (5) the feasibility of an automated, Internet-based system for notifying registry participants. The Board will discuss ideas for developing the required reports.

Presentation by: Henry Jennings  
Director

Action Needed: Determine next steps for developing the required reports

- Jennings inquired about how the Board wanted to proceed with additional Public Information Gathering Meetings. He also indicated that the staff could host such meetings without Board members in some locations. Board members supported the idea of holding Public Information Gathering Meetings at different locations throughout the state. Consensus was reached to schedule the May meeting in Bangor, the late June meeting in Machias, and the July meeting in Portland.

Board members discussed ideas about receiving input from the Department of Health and Human Services (DHHS) and other public health professionals. Jennings stated the staff supported requesting input from Dr. Stephen Sears from DHHS, because pest management issues will be familiar to him, since he is an epidemiologist and coordinates the vector-borne disease working group. Jennings also suggested that the Maine Lung Association might be a logical participant, since breathing concerns often underlie pesticide conflicts. Tim Hobbs voiced concern about choosing public health professionals with a bias on the subject. Eckert responded that biases are unavoidable, and input from all perspectives is needed. Board members agreed that appropriate notification distances will be both difficult and contentious, and should be a focal point of the Board's efforts. Members briefly discussed the concept of requiring posting of signs around

pesticide-use sites. It was clear there would be a lot of details to be explored before an assessment of the feasibility could be made. They also discussed how the staff might assess the effectiveness of their public awareness campaign. Schlein suggested coordinating with DEP about participating in its public survey, run through a marketing consultant. Finally, Jennings mentioned the assessment of the automated Internet-based notification system. The Maine Office of GIS is interested in the project and the staff will set up a meeting to initiate the assessment. Jemison mentioned that the University also has some expertise in geographical information systems, and suggested that it may be worthwhile to hold discussions with them as well..

6. Consideration of the Staff Negotiated Consent Agreement with the Bethel Inn & Country Club

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 pesticides at a golf course by unlicensed applicators over a period of years.

Presentation By: Raymond Connors  
Manager of Compliance

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

- Connors explained that the Bethel Inn has a history of unlicensed pesticide applications at the golf course. They paid a fine previously for unlicensed applications. Connors explained that the history of non-compliance was the primary factor in formulating a settlement proposal.

Ravis inquired about whether the staff had a system for detecting when a golf course or other commercial pesticide application company was without a licensed applicator. He suggested it would be desirable to intervene before a company went multiple years without a licensed applicator. The response from staff was that they do not have a formal system currently to help them identify companies that do not renew their license, but they will look into available options.

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

In Favor: Unanimous

7. Discussion of Process for Approving Registration of Plant Incorporated Protectants

The Maine Board of Pesticides Control registers over 8,500 pesticide products annually without Board review of individual products. Approval of registration is delegated to the staff and based on the federal EPA's parallel registration approval process. In 1994, the Board adopted a verbal policy requiring review of Plant Incorporated Protectant applications prior to approving state registration requests. After first approving applications for *Bt*-corn products in July of 2007, the Board has reviewed and approved additional *Bt*-corn applications at subsequent meetings. Given

that recent requests present substantively identical risks and concerns as those already approved, Board members have questioned whether the 1994 verbal policy warrants updating.

Presentations By: Henry Jennings  
Director

Action Needed: Determine whether changes are warranted to 1994 verbal policy

- Jennings briefly reviewed the memo relating to Board review of Plant Incorporated Protectant (PIP) registrations. He also argued that logic suggests that the statute is being misinterpreted with respect to the “need” for a pesticide. It should be interpreted as “whether there is a need to control a pest,” as opposed to “whether there is already a product registered for the same purpose.”

Ravis commented that while he is philosophically opposed to genetically modified organisms, he did not see any reason to keep reviewing products that were virtually identical to ones previously approved. Consensus was reached to amend the 1994 verbal policy with a written one, so that the Board would only review PIP registration requests that pose substantively different risks than those already approved. In addition, Hicks will update the Board annually on emerging research on PIPs.

#### 8. Discussion of Board Water Quality Monitoring Priorities

Since the early 1990s, the Board’s staff has sampled ground and surface waters in both large- and small-scale efforts, trying to assess the risks of pesticide contamination. Early efforts focused on ground water surveys and more recent efforts have emphasized surface water sampling. Since the Board’s full-time Water Quality Specialist took a new job with the state in January of 2007, the BPC sampling efforts have been limited to small-scale surface water projects. The staff is now seeking Board input on water monitoring priorities before determining what projects to allocate resources to.

Presentation by: Gary Fish  
Manager of Pesticide Programs

Action Needed: Provide Input to Board Staff

- Jennings described the types of surveys the staff has been involved in dating back to the 1980s. The major projects have been the state-wide groundwater survey and the hexazinone survey, which have each been completed three times. A wide array of small-scale surface water sampling projects have also been conducted over the years, adjacent to both agricultural and non-agricultural sites. Surface water sampling is inherently more difficult, because residues tend to be transported primarily with intense rain events, so sample timing is critical.

Eckert inquired about the use of automatic samplers. The BPC has two of these, but they are difficult and time-consuming to use. Jennings alerted Board members that a separate meeting has been scheduled for May 13 at the BPC main office to discuss water monitoring priorities, and Board members are welcome to attend.

9. Other Old or New Business

a. E-mail from Nancy Oden—H. Jennings

Jennings directed Board members to another article about bees received from Nancy Oden. They did not see that the article referenced any new scientific information.

b. Variance Permit for Spring Meadows Golf Course—H. Jennings

Jennings alerted Board members to the renewal of this variance request.

c. Variance Permit for The Woodlands Club—H. Jennings

Board members were apprised of this variance as well.

d. Other?

10. Schedule and Location of Future Meetings

May 14, June 18, and July 23 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 June 18 date was shifted to June 25. The May meeting will be held in Bangor, June in Machias, and July in Portland.

11. Adjourn

Eckert/Qualey: Moved and seconded that the meeting adjourn at 1:52 PM.

In Favor: Unanimous