



PAUL R. LePAGE
GOVERNOR

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

WALTER E. WHITCOMB
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

February 18, 2011

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: Eckert, Jemison, Qualey, Bohlen and Ravis

9:30 AM

1. Introductions of Board and Staff

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

2. Minutes of the February 18, 2011, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Eckert/Ravis: Moved and seconded approval of the minutes

In Favor: Unanimous

3. FIFRA Section 18 Emergency Exemption Registration Request for the Use of Avipel to Reduce Bird Predation of Corn Seed

The University of Maine Cooperative Extension is requesting a FIFRA Section 18 Emergency Exemption registration for the use of Avipel[®] (anthraquinone) to reduce bird predation of corn seed after planting. Historically, insecticides used to treat corn seed have carried a side benefit of also deterring bird predation. Those insecticides have been phased out over the years, and currently there are no seed treatment options available to mitigate bird predation, which has become an increasing problem in recent years. This application is supported by the manufacturer, Arkion Life Sciences, and the University of Maine Cooperative Extension.

Presentation By: Mary Tomlinson
Pesticides Registrar/Water Quality Specialist

Action Needed: Approve/disapprove the Section 18 Emergency Registration request

- Tomlinson explained that Avipel qualifies for a FIFRA Section 18 exemption because there is no other federally registered product for that purpose. Even though it is considered a non-food use, Avipel does not yet qualify for a FIFRA Section 24(c) exemption because the product has not yet received a full FIFRA Section 3 label. Rick Kersbergen, University of Maine Extension Educator, described how widespread the bird predation problem is, and stated that there are no products currently available to deter the predation.

Joseph Fortin, a dairy farmer from Albion, discussed some of his experiences in dealing with bird predation of planted corn seed. He said that birds can cause extensive damage in a short period of time. He has tried a number of strategies to control birds, but found them all to be ineffective. Alvin Winslow from Crop Protection Services, relayed a series of anecdotal examples of farmers and methods they have tried to deter birds without success.

Board members discussed anthraquinone, its toxicity, its relationship to methyl anthranilate, and whether it is derived from grapes. They were satisfied that the risks were very low for the proposed usage. Jemison inquired about whether Avipel was approved for use on organic corn. Heather Spalding from Maine Organic Farmers and Gardeners Association stated she wasn't sure, but would look into it. Bohlen observed that crows are not specifically listed on the proposed label, and wondered if they needed to be. Jennings stated it wasn't a legal necessity.

Qualey/Eckert: Moved and seconded approval of the Section 18 Exemption request

In Favor: Unanimous

4. Revision of the Special Local Needs Label (FIFRA Section 24[c]) for the Use of Ethrel on Greenhouse Tomatoes

On October 2, 2009, the Board approved a Special Local Needs (SLN) registration request for the use of Ethrel brand plant growth regulator to accelerate crop ripening of greenhouse tomatoes as the plants are nearing the end of the production cycle. On December 30, 2010, the Board received a letter from Tony Kish, the EPA product manager for Ethrel. Mr. Kish directed Maine to revise the SLN label to correct a language omission which limits the maximum annual application rate per acre to five pints. The Board will now consider approval of the amended label.

Presentation By: Mary Tomlinson
Pesticides Registrar/Water Quality Specialist

Action Needed: Approve/disapprove the revised label

- Tomlinson explained that the Board received a letter from EPA requesting that a couple minor language changes be made to the Board's Ethrel FIFRA Section 24(c) label. Specifically, EPA is requesting the additional of the words "per year" to the end of the maximum per acre use rate limitation, and that an expiration date be added to the 24(c) label. Board members had little concern with the proposed

changes. Bohlen wondered why EPA hadn't requested to add "per year" to other locations on the label where the rate was discussed and it appeared appropriate.

Ravis/Bohlen: Moved and seconded approval of the EPA requested changes

In Favor: Unanimous

5. Review of Pending Legislation

According to the Office of the Revisor of Statutes, seven bill titles have been submitted that affect the Board of Pesticides Control. Four of those bills relate to pesticide notification. Aside from notification, one bill would change the qualifications of two Board members, one would require some level of competency testing for commercial farmers and the final bill would restrict certain pesticide uses. To date, the bill text has been printed for only three of these bills: LD 16, LD 228 and LD 321. Copies are enclosed in the Board packet. The Board will discuss the pending bills and determine if there is consensus on whether the Board wants to take a position and, if so, what points should be included in any testimony.

Presentation by: Henry Jennings
Director

Action Needed: Provide input to the staff about the Board's position

- Jennings reviewed the February 15, 2011, meeting with the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF). At the meeting, he presented the regulatory agenda and explained that the Board doesn't plan to do any rulemaking unless so directed by the ACF. Next, the Committee reviewed the Board's report required by Public Law 2009, Chapter 584. Simonds was present and gave a brief overview of the key points contained in the report. There were few questions and the review was relatively short. There is considerable uncertainty about the future of pesticide notification given that there are currently four bill titles covering the registry.

Jennings next discussed the two registry bills that have been printed to date: LD 16 and LD 228. The former reduces the notification distances to 50 and 100 feet, while the latter repeals the registry statute. Bohlen stated it wasn't the Board's place to determine what the correct public policy decision is, and that the Board should instead articulate the consequences. Eckert voiced frustration about the amount of time the Board had invested in reaching a compromise on the notification issue, since it now appears that work will all be thrown out. Heather Spalding from the Maine Organic Farmers and Gardeners Association stated that Representatives Cray and McCabe were working together on a unified bill. Jennings pointed out that all significant rulemaking the Board does is now classified as major-substantive, necessitating legislative review and approval. Eckert observed that—in matters like notification—eventually you just have to try something out, and see if it works. If it doesn't, you go back and fix it.

Jennings then asked Board members whether they wanted to take a position on LD 321 which would change the statutory qualifications for two of the Board members. He stated that historically the Board

has not taken a position on its own composition. Bohlen agreed it would be better not to take a position. He reiterated that Board members should instead attempt to describe the consequences of the bill.

Mike Legasse from Green Thumb Lawn Service requested a copy of the legislative report covering the registry. Schlein reported that it was available on the Board's website. Legasse wanted to know how much money had been spent on the development of a registry. Jennings stated a cost estimate is contained in the legislative report.

Board members reached consensus to take a "neither for nor against position" on the registry bills and to work together to describe the consequences of each bill. Bohlen lamented the collective time and effort that has been wasted discussing pesticide notification.

Jennings asked the Board about LD 591, which would ban aerial spraying and severely restrict different types of weed control work. He suggested opposing the bill since the Board has twice previously rejected a ban on aerial spraying. Board members discussed the bill briefly. A couple of the concepts in the bill that intended to discourage cosmetic use of pesticides and/or promote naturally ones intrigued some Board members, but there was consensus to oppose the bill as it is currently written.

Qauley/Ravis: Moved and seconded that the Board oppose the bill

In Favor: Unanimous

6. Consideration of the Staff Negotiated Consent Agreement with C & D Corporation of Deblois

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 application of pesticides by a company employee beyond the property line and onto a separate property without the authorization of the land owner.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that a C & D Corporation employee had inadvertently crossed a property line while spraying herbicides on blueberry fields. Coincidentally, the affected property owner had also sprayed the field in question on the same day. Prior to the incident, C & D Corporation had made an attempt at preventing such an occurrence by placing posts to mark the boundary. However, the landowner had removed the posts to have some field leveling done. Board members were concerned about possible plant injury in the area where the double application occurred.

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

In Favor: Unanimous

7. Consideration of the Staff Negotiated Consent Agreement with RMH Cleaning and Restoration, Inc., of Livermore

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 an unlicensed commercial company applying pesticides for mold remediation.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that the Board's office received a call about a mold remediation job in which the customer subsequently experienced some adverse health effects. A Board inspector followed up with the mold remediation company. He determined that, while the company had not used pesticides on the job in question, it did use pesticides in some of its other jobs. Connors explained that mold remediation was not a major component of RMH Cleaning's business, so the penalty was adjusted accordingly.

Board members asked about the products used in the mold remediation process and whether the company owner was actively pursuing licensure. Connors indicated there are a variety of disinfectants used in mold remediation and that the company owner was scheduled for exams already. Eckert asked about what type of outreach the staff conducts with companies in this line of business. Fish indicated there have been multiple attempts to include the pesticide licensing requirements in various certification programs and that the Board also works closely with the Maine Indoor Air Quality Council in developing their training programs.

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

In Favor: Unanimous

8. Consideration of the Staff Negotiated Consent Agreement with Lucas Tree Experts of Portland

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 application of a pesticide by a company employee for mosquito control with insufficient notification to a nearby neighbor listed on Maine's non-agricultural notification registry.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors reported that the company had provided insufficient notification to an individual listed on the Board's non-agricultural registry. Apparently the application had been rescheduled and the

administrative staff inadvertently failed to notify the registry participant the second time around. Ravis inquired about company procedures for ensuring that registry participants are notified. Chuck Cotton from the Lucas Tree Expert Company was present. He explained that a clerical error had occurred and that steps had been taken to prevent a reoccurrence.

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

In Favor: Unanimous

9. Consideration of the Staff Negotiated Consent Agreement with Scotts Lawn Service of Hermon

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 multiple violations of state pesticide law by company employees during 2010.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors reviewed the circumstances of the case for the Board. The consent agreement covered violations arising from three different complaint calls: two involving applications during high winds and one involving failure to pre-post a pesticide application. The compliance staff had obtained weather records from nearby airports as evidence of area wind conditions. The company also had entered into a previous consent agreement within a four-year period. Ravis inquired about the penalty calculation as compared to violations described in the agreement. Jennings observed that proving wind violations without having an inspector on site is tenuous at best.

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

In Favor: Unanimous

10. Review of the 2010 Complaints/Inquiries Summary

The report by the Stakeholders Committee on Aerial Spraying and Drift included a recommendation for the Board to produce and review an annual summary of complaints received by the Board's office. Summaries from 2008 and 2009 led to Board recommendations for improving the report. The Board will now review the 2010 summary.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: None—informational only

- Connors reported this would be the third year that a complaint/inquiry summary had been provided. He pointed out that there had been a few typographical errors in the version that was originally mailed to the Board and that an updated report was supplied in their meeting folder. Hicks provided some statistical

observations about the types of complaints and the ones involving sampling. Board members found the report useful.

11. Water Quality and Product Registration Update

Water Quality: The BPC water quality program continues to collaborate with the Friends of Casco Bay (FOCB) on sediment sampling for residential pesticides. During 2010, sediment samples were collected from urban watersheds in Portland and South Portland, Mussel Cove in Falmouth, and Broad Cove in Cumberland. Lab analyses are not yet complete. Results have been received for stormwater and sediment samples collected in 2009 which the Board will now review and discuss. The Quality Assurance Project Plan for Water Quality Monitoring has been updated and submitted to the EPA.

Registration: The transition from hardcopy labels and MSDSs to electronic storage is in process.

Presentation By: Mary Tomlinson
Pesticides Registrar/Water Quality Specialist

Action Needed: None—informational only

- Tomlinson provided an overview of water quality sampling efforts over the previous two years. In 2009, employees from FOCB collected three stormwater samples in the greater Portland area. No pesticides were detected. Tomlinson collected five sediment samples from the greater Portland area during 2009. Four were positive for bifenthrin, while three were positive for permethrin. Analysis for other synthetic pyrethroids was inconclusive.

During 2010, Tomlinson collected six sediment samples from the greater Portland area. Those samples have not been analyzed yet. Tomlinson noted that she also completed and submitted the aforementioned updated Quality Assurance Project Plan, as required by EPA.

12. 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

Action Needed: Nominations and election of officers

- Jennings reported that Simons is agreeable to continuing as chair. He stated that the statute does not require an annual election of officers. Board members quickly reached consensus that they were happy with the current slate of officers.

Qualey/Eckert: Moved and seconded to table the agenda item

In Favor: Unanimous

13. Other Old or New Business

- a. Central Maine Power Company's 2011 Transmission Line Vegetation Management Plan—
H. Jennings

- Jennings alerted Board members to the CMP Vegetation Management Plan. He commented that it was a well-thought-out plan that attempts to minimize the use of herbicides and their ecological impacts.
- b. BPC Policies/Information for Board Members Web Pages—H. Jennings
 - Jennings pointed out that a new web page has been added to the BPC website for Board members containing a wide array of links to relevant reference materials. Eckert asked about fact sheets for individual active ingredients. The staff agreed that would make a good addition.
- c. Other?
 - Jennings informed the Board that a hiring freeze waiver was necessary for the seasonal inspectors to return from seasonal layoff. To date, that waiver has not been approved. He promised to keep the Board apprised of developments.

Eckert inquired about various news accounts reporting initiatives to make changes to the BPC staff and using BPC funds. Jennings acknowledged that a proposal described in the Governor's Phase I initiatives for regulatory reform proposes to eliminate the Board's director position and reassigns the staff to various sections of the Department of Agriculture. That proposal does not yet appear in LD 1, although it may show up in other legislation. He also acknowledged that the appropriations committee has identified \$225,000 in BPC funds for a dairy support fund. Jennings believed it was more appropriate to support IPM initiatives with BPC funds.

Eckert inquired about recent ADHD articles and BPC plans to review the concerns. Hicks reported that she had been gathering literature and would discuss a review process with Eckert soon.

Jennings observed that the Board's staff has received criticism due to a perception that the articles included in the press coverage lean toward the negative side. He stated that the staff uses a simple Google Alert function to identify pesticide-related press. Eckert commented that she found the press articles useful. Bohlen said he read the articles, but didn't necessarily agree with them. There was general agreement that the Board still believed it was useful to know about pesticides in the news.

14. Schedule and Location of Future Meetings

April 1, April 29, and June 3, 2011, 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?

- Board members added July 15 and August 26 as tentative Board Meeting dates.

15. Adjourn

- Qualey/Eckert: Moved and seconded that the meeting adjourn at 12:28 PM.

In Favor: Unanimous