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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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BOARD OF PESTICIDES CONTROL

October 1, 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: Eckert, Simonds, Jemison, Stevenson and Ravis

1. Introductions of Board and Staff

The Board and staff introduced themselves

2. Minutes of the August 27, 2010, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Ravis/Jemison: Moved and seconded approval of the minutes

In Favor: Unanimous

3. Interpretation of Requirements Set Forth in Chapter 41, Section 2, Trichlorfon (Dylox)

In 2008, the Board transferred trichlorfon from its Limited Use Pesticide List to its Restricted Use Pesticide list in Chapter 40. At the same time, the Board revised the special restrictions on trichlorfon contained in Chapter 41 to reflect the current use pattern which is limited to turf. Applicators who apply trichlorfon must first identify the pest, and then limit the application to infested areas. In addition, applicators must ensure that the trichlorfon is watered in with at least ½ inch of water, and its use is consistent with the label directions prior to reentry by unprotected persons. Michael Legasse of Green Thumb Lawn Service has asked for clarification on the Board's expectations of applicators using trichlorfon.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed: Provide Guidance on Board Expectations

- ☑ Fish reviewed three trichlorfon product labels focusing on language addressing re-entry and watering restrictions. All the labels require watering in for grub control, but they're not explicit about who is responsible for watering. The labels were not completely consistent on the re-entry requirements, but two of the three limited re-entry until the product had been watered in and allowed to dry.

Fish next reviewed subsections 2(C) and 2(D) of Chapter 41 dictating the use of trichlorfon. Subsection 2(C) limits application of trichlorfon to "infested areas" of turf. Subsection 2(D) requires that the applicator ensure that the product is watered in prior to re-entry. Both of these sections are somewhat vague about the precise expectations of the applicator.

Michael Legasse of Green Thumb Lawn Service addressed the Board. He stated that the grub pressure has been extremely high through the latter part of the summer and early fall. Legasse is reluctant to use trichlorfon for grub control due to restrictions in Chapter 41, and the uncertainty about the Board's expectations around those restrictions.

Board members discussed the reasons for the special restrictions on trichlorfon which are intended to minimize the potential for bystander exposure. They discussed grub monitoring strategies and a couple of potential revisions to the rule, but eventually reached consensus that applicators are expected to exercise their best professional judgment in interpreting the Chapter 41 restrictions and adhere to the spirit of the law. Simonds recommended that Legasse work with the Board's compliance staff to identify practices that demonstrate compliance with the requirements.

4. Continuation of Board Discussions on the Development of a Comprehensive 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 Board hosted five Public Information Gathering Sessions at different locations around the state and discussed the fundamental registry concepts at each of these meeting. At the August 24, 2010, meeting, the Board reviewed the latest working paper and provided additional input to the staff. The Board will now continue deliberations about development of a comprehensive registry, with emphasis on the following areas:

- a. Review of the non-agricultural registry, including the exemptions
- b. Review of the initial draft of the report to the Legislature
- c. Discussion of whether individuals accessing the registry should be required to register first

Presentations By: Henry Jennings
Director

Action Needed: Provide Input to the Staff on Development of the Registry

- ☑ Jennings led the Board through a comparison of the non-agricultural registry versus the new registry required under recent legislation. He pointed out that the non-agricultural registry operates entirely

through a paper process that is burdensome for the Board's staff and the registry participants. The Internet-based model by which the new registry operates is favored by the staff since it reduces the data entry obligations for the staff. Eckert pointed out that an Internet-based system discriminates against poor and technology-challenged populations. Simonds suggested an electronic approach should be emphasized, but should not be mandatory.

The most significant difference between the two registry models is the obligation to identify properties that—when treated—create a duty for applicators to notify a registry participant. This obligation is assigned to registry participants under the non-agricultural registry, while the new registry assigns the obligation to the land manager. Simonds asked whether it would be possible to develop a registry that uses both models. Eckert suggested that self-identified sensitive individuals might opt to provide a list of relevant properties in order to obtain notification at greater distances. Jennings stated that the Internet mapping tool being developed in collaboration with the Maine Office of GIS should help ease the burden for identifying properties that would create a notification obligation when treated. David Bell of the Wild Blueberry Commission of Maine requested that the Board include the regulated community in the development of the mapping tool. Meeting participants agreed it is desirable to provide detailed information on the development of the mapping tool as soon as possible, so all stakeholders can have input and assess its utility.

Jennings continued the comparison of the two registries, reviewing details relating to the information provided and the timeframes for providing notice. The general sentiment was to align requirements with the new statute since it reflected current legislative thinking.

Next, the Board reviewed the list of applications that are currently exempt from the non-agricultural registry. Board sentiment favored maintaining exemptions for applications with minimal risk of affecting neighbors, but to discontinue exemptions that were included due to the challenges a notification registry poses. Chuck Cotton of Lucas Tree Company advocated for maintaining the right-of-way exemption and Stevenson advocated for maintaining the exemption for structural applications made within five feet of a structure.

The Board then turned their attention to the draft of the legislative report. Members observed that legislators get inundated with information, so that if you want them to read it, it needs to be short. They suggested emphasizing all the key policy considerations at the front of a concise executive summary.

Simonds advised focusing on the difficult issues in the executive summary. Areas of broad consensus don't need the Legislature's attention and should be included in the body of the full report. Jennings asked if the key policy questions should include: (1) the model for identifying properties that will result in a notification duty if treated, (2) the scope of the regulated community, and (3) the notification distances. Simonds responded that the Board had agreement around notification distances and it should be presented as such. Jon Olson of the Maine Farm Bureau observed that the bullet about signs in the executive summary was inconsistent with the legislative mandate and should be revised. Stevenson suggested the section of the statute that specifies that participants remain on registry until information surfaces demonstrating the contact information is invalid should be revised to call for an annual renewal. Legasse and Bell recommended that the Board keep track of and present all of the costs associated with the registry. Simonds suggested that the security issues relating to having the registry on the Internet

should be included in the report. Consensus was reached to update the draft legislative report with the input from the Board meeting for review at the next meeting.

5. Consideration of the Staff Negotiated Consent Agreement with Mainely Grass of Kennebunkport

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 the wrong address.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that an applicator for Mainely Grass made a pesticide application at the wrong site. He used a GPS device and it directed him to the wrong address. The incident was eventually reported by the company owner. Mainely Grass has a policy that requires applicators to verify the application site by checking the electric meter, however, the employee failed to follow the company policy. Simonds and Ravis pointed out that it's a good thing to have a company policy, but it's also important to know the extent to which the company emphasizes the policy and whether employees follow it.

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

In Favor: Unanimous

6. Consideration of the Staff Negotiated Consent Agreement with Tailor Done Lawn Care, Inc., of Old Orchard Beach

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 lawn care company making a commercial pesticide application.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors reported that this case involved an unlicensed applicator making a commercial pesticide application reported to the Board by a licensed applicator. The unlicensed applicator initially claimed he was applying Miracle-Gro[®], but lab results of a Board foliage sample revealed a residue of glyphosate at 1,789 ppm.

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

In Favor: Unanimous

7. Preliminary Discussion of Automated Pesticide Dispensing Equipment

At the August 24, 2010, meeting, the Board approved an interpretative policy clarifying the applicability of Chapter 26. The policy was developed in response to an inquiry about regulatory requirements to operate automated bird-repellent dispensers located in the outdoor garden sections of some large retailers. At the August 27 meeting, Board members expressed concern about public and employee exposure to the airborne bird repellent. Staff observed there are other automated pesticide dispensers that raise concerns. Consequently, Board members asked to revisit the broader issue of automated dispensers at a later meeting.

Presentations By: Henry Jennings
Director

Action Needed: Determine Whether Additional Review Is Warranted

- Jennings stated the Board had expressed concerns about automated pesticide application devices at the previous Board meeting and asked the staff to revisit the issue at a later date. He said the staff was now interested in determining what aspects of the issue the Board wanted to explore further. The staff is aware of three different types of commonly used automated dispensers: (1) automated mosquito misting systems designed to protect outdoor areas near homes or businesses, (2) aerosol fly spray dispensers with a timed actuator, and (3) the devices used to dispense bird repellents.

Board members briefly discussed the different automated dispensers and their prevalence in Maine. The automated bird-repellent devices are apparently used at some of the big box building supply stores, but none of the other systems are believed to be in use to any extent in Maine. Board members agreed they would like more information about the toxicity of the red grape extract, methyl anthranilate, used in the bird-repellent devices.

8. Review and Demonstration of the Upgraded *Got Pests?* Website

Public Law 1997, Chapter 389, directs the Board to promote IPM and educate the public about science-based technologies for controlling pests and minimizing pesticide use. As part of this effort, the staff has been developing an IPM website tailored to the lay person and focusing on the most common homeowner pest problems. A key tenet of the website is to simplify the pest identification process using images, and then provide a clearinghouse of pest management information with a focus on IPM. The staff will provide a brief overview of recent efforts to enhance the site.

Public Presentation by: Paul Schlein
Education Specialist

Action Needed: Provide Feedback to the Staff

- Eckert/Jemison: Moved and seconded that the item be tabled

In Favor: Unanimous

9. Other Old or New Business

a. Other?

- Eckert requested that concern about ADHD related to organophosphate exposure be placed on a future agenda.

10. Schedule and Location of Future Meetings

November 5, 2010, December 10, 2010, and January 7, 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?

- No new dates were added

11. Adjourn

- Ravis/Jemison: Moved and seconded that the meeting adjourn at 12:50 PM.

In Favor: Unanimous