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REPORT ON FINDINGS AND RECOMMENDATIONS PURSUANT TO PL 2009, CHAPTER 584 JANUARY 2011

EXECUTIVE SUMMARY

In an effort to mitigate a continuing conflict over aerial spraying near occupied areas, the Maine Board of Pesticides Control (BPC) embarked on a major rewrite of pertinent rules beginning in 2006. Rules covering advance notice of spraying were identified as key to this effort, because advance warning removes the element of surprise and allows neighbors to take common sense steps to avoid any potential exposure. Ultimately, the Board's proposed revisions were not approved by the Legislature. Instead, the Legislature enacted legislation calling for a notification registry in the spring of 2009 (Public Law 2009, Chapter 378).

Recognizing that Chapter 378 created substantial burdens for some businesses, the Legislature amended the law in the spring of 2010 by enacting Public Law 2009, Chapter 584 (hereinafter referred to as Chapter 584). In fact, balancing the rights of neighbors to know about nearby spraying against the costs incurred with providing it is what makes the subject contentious and polarizing. Like the previous statute, Chapter 584 directs the BPC to establish and maintain an outdoor pesticide notification registry. The new registry had a narrow focus initially, but Chapter 584 further charges the BPC with working to develop a comprehensive notification registry. The BPC must also file a report with the Legislature no later than February 1 on its progress and report on four other specific subjects outlined in the statute. This report identifies key public policy questions for which the Board is seeking Legislative input and summarizes the BPC's efforts to date.

Key Policy Questions for the Legislature

During the course of deliberations during 2010, the Board made a number of policy determinations relative to development of a comprehensive registry. In particular, there are two key, controversial policy questions (below) that the BPC seeks Legislative input on prior to initiating rulemaking on a comprehensive registry:

Who Should Identify Properties That Trigger Notification?

With the advent of the Chapter 584, the BPC now administers two notification registries—one agricultural and the other non-agricultural. Different parties are assigned the duty of identifying properties that trigger a notification duty. Under the non-agricultural registry, the registry participants must identify properties within 250 feet of their boundary. Under the new agricultural registry, that burden falls on the land manager. Stakeholders are sharply divided over who should bear this burden under a comprehensive registry. Consequently, the BPC is seeking the Legislature's input on this question prior to initiating rulemaking on a comprehensive registry.

What Types of Pesticide Applicators Should Be Required to Notify Neighbors Under a Comprehensive Notification?

The other key policy question the BPC is seeking Legislative input on is what types of pesticide applicators should be required to notify registry participants. The Board is unanimous in agreeing that the registry should

pertain to pesticide applications made by commercial applicators and commercial farmers. This position is based on practical considerations of available resources, and the size of the applications and equipment used by these two groups of applicators. However, a number of stakeholders have argued that a comprehensive registry should apply to all pesticide applications, regardless of the resource constraints or consideration of scale.

Summary of Board Actions to Fulfill Mandates Under Chapter 584

Chapter 584, Section 6, Subsections 1–5, required the Board to report to the Legislature on five specific topic areas. A brief summary for each topic is listed below with a more detailed explanation in the full report that follows.

1. The Board held five public forums across the state and worked on the comprehensive registry at all eight of its meetings since enactment of Chapter 584. Consensus has been reached on most of the operational details and the Board will initiate rulemaking once input has been received from the Legislature.
2. The Board has reached consensus to move forward with three notification distances—250, 500 and 1,320 feet—based on the type of pesticide application equipment used. Details are contained in the full report.
3. The Board’s staff conducted an extensive public awareness campaign during May and June of 2010. The campaign focused on paid newspaper ads and free publicity using press releases and emails to municipalities, non-profit organizations and governmental agencies. A statewide survey indicated about 18% of adults were aware of the registry in August of 2010.
4. The Board does not favor a sign posting requirement because in many cases, the signs would not be in a publicly visible location.
5. The Board is moving forward with development of an Internet-based mapping tool that is expected to greatly reduce the effort required to determine which registry participants must be notified.

Summary of Key Concepts Recommended for a Comprehensive Registry

- With a few exceptions for low-risk applications, the BPC recommends that commercial pesticide applicators and commercial farmers be required to notify registry participants.
- For a variety of reasons, the Board recommends retaining the “by request” option for receiving notification and that a similar request system be used when registry participants want to be notified by neighbors who are not commercial applicators or commercial farmers.
- Other existing pesticide notification requirements should be merged and consolidated into Chapter 28.
- The BPC staff should take affirmative steps annually to ensure that the registry remains current.

Next Steps

Once the Board has met with the Joint Standing Committee on Agriculture, Conservation and Forestry, and received its feedback on key policy issues, the BPC will initiate rulemaking to establish a comprehensive notification registry. The Maine Legislature would then review the proposed rule again early in 2012, or it could choose to bypass the additional review by designating the notification rules as routine technical. The Board will then turn its attention to implementation.

The full report to the Legislature follows, and it contains additional details on the topics described above, as well as additional background and other information about the Board’s recommendations and activities relating to the pesticide notification issue.