



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

December 5, 2014

AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine

AGENDA

8:30 AM

1. Introductions of Board and Staff

2. Minutes of the October 24, 2014 Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

3. Consideration of a Board Policy Covering Acceptable Notification Methods for Commercial Pesticide Applications under Category 6B to Trails and Sidewalks

At the October 24, 2014 meeting, the Board provisionally adopted amendments to Chapter 28, Notification Provisions for Outdoor Pesticide Applications. These amendments will require commercial applicators controlling vegetation on sidewalks or trails under commercial licensing category 6B to provide notice consistent with Board policy. Since these amendments require legislative approval, it may be prudent for the Board to adopt the policy prior to the legislative review process in case there are questions about the Board's intentions. The Board will review the staff's draft and brainstorm ideas about appropriate notification procedures for trails and sidewalks.

Presentation By: Henry Jennings
Director

Action Needed: Review/Approve Draft Policy

4. Consideration of a Board Policy Covering Acceptable Methods for Commercial Applicators to Positively Identify the Proper Treatment Site

At the October 24, 2014 meeting, the Board adopted an amendment to Chapter 20 which codifies a longstanding policy and will require commercial applicators to positively identify the proper treatment site using methods approved by Board policy. The existing policy needs to be slightly updated to reflect the fact that the basic requirement is now contained in rule.

Presentation By: Henry Jennings
Director

Action Needed: Review/Approve Draft Policy

5. Consideration of a Request for Granting Continuing Education Credits for an Online Training Program

The Board received a request to grant continuing education credits for an online training course detailing the uses of Turfcide fungicide. Historically, the staff has only approved continuing education credits for presentations made by pesticide manufacturers and distributors if it includes a comprehensive review of the precautionary components of the label, such as PPE and reentry requirements, and environmental hazards. The presentation in question is focused primarily on the efficacy and uses of the product. Consequently, the staff is seeking Board input on how to best handle this and similar requests.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed: Provide Guidance to Staff on Whether to Grant Credits for Training

6. Consideration of a Consent Agreement with Servicios Sanchez, Inc., of East Boston, Massachusetts

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 on 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 to resolve the matter. This case involved application of pesticides inconsistent with the label by a person without a valid certification or applicator's license.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

7. Consideration of a Consent Agreement with Mosquito Squad of Southern Maine of Rye, New Hampshire

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 on 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 to resolve the matter. This case involved commercial application to property without consent of the owner.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

8. Consideration of a Consent Agreement with Petro's Ace Hardware of Auburn, 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 on 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 to resolve the matter. This case involved the distribution of general-use pesticides without a General Use Pesticide Dealer License.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

9. Presentation on State Specific Managed Pollinator Protection Plans

The federal Environmental Protection Agency (EPA), in collaboration with other federal agencies, is developing a series of measures designed to improve protection of pollinators from pesticide-related risks. One of the proposed measures involves development of state-specific plans for protecting managed pollinators. The advantage of state plans is that it allows states to tailor protections to match specific local needs and conditions, while avoiding the potential pitfalls of a one-size-fits-all standard. The staff will provide an overview of the state-specific protection plans.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed: None—Informational Only

10. Interpretation of CMR 01-026, Chapter 10, Section 2 (P) (2), Definition of Property Open to Use by the Public

State statutes define pesticide applications made to property open to use by the public as commercial applications requiring a licensed applicator. Section 2 (P) (2) of Chapter 10 defines property open to use by public while exempting property “where the public has not been permitted upon the property at any time within seven days of when the property received a pesticide application.” This exemption has been used for different outdoor purposes but the most common use is by land trusts to treat for invasive plants when they post the treated area and indicate the area (but not the entire “property”) is temporarily closed to the public. The staff has received a question from a hotel owner who interprets that exemption as applying to hotel rooms provided that the room is not occupied for seven days following the pesticide application. Because indoor pesticide applications present unique risks to persons using the indoor space, the staff would like guidance on how to interpret the Chapter 10 definition.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed: Provide Guidance on Interpretation of the Chapter 10 Definition

11. Formation of an Advisory Committee to Develop Guidelines Related to the Issuance of Variance Permits for Spraying Railroads Adjacent to Surface Waters

At the May 16, 2014 meeting, the Board granted a one-year variance from Section 6 of Chapter 29 to Asplundh Tree Expert Company—Railroad Division to make broadcast herbicide applications less than 25 feet from surface water. At that time, the Board also directed the staff to develop guidelines/criteria for issuance of railroad variances prior to next season. The staff will present some ideas about forming a small committee to develop draft guidelines for Board consideration.

Presentation By: Henry Jennings
Director

Action Needed: Provide Guidance to Staff

12. Other Old or New Business

a. Other?

13. Schedule of Future Meetings

January 14 (Maine Agricultural Trades Show), March 13, April 24, and June 5, 2015 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Action Needed: Adjustments and/or Additional Dates?

14. Adjourn

NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at www.thinkfirstspraylast.org.
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
 - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the attention of Anne Chamberlain, at the Board's office or anne.chamberlain@maine.gov. In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.



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October 24, 2014

AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine

MINUTES

8:30 AM

Present: Bohlen, Eckert, Flewelling, Granger, Jemison, Morrill, Stevenson

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Randlett introduced themselves.
- Staff Present: Chamberlain, Connors, Hicks, Jennings, Patterson, Tomlinson

2. Minutes of the September 12, 2014, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

- **Granger/Stevenson: Moved and seconded to approve the August minutes as written.**
- **In favor: Unanimous**

3. Consideration of Enforcement Action against Daniel Brown of Blue Hill, Maine

In matters involving substantial threats to the environment or the public health, or in which there is dispute over material facts or law, the Board's enforcement protocol specifies that the matter be brought to the attention of the Board. This case involves the purchase and application of a Restricted Use Pesticide (Gramoxone) by an unlicensed applicator. The staff has been unable to resolve the violation. The Board's Enforcement Protocol specifies that such matters should be placed on the Board's agenda. Since all similar cases have resulted in a small penalty, the staff is recommending that the matter be referred to the Office of the Attorney General for enforcement.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Determine appropriate enforcement response

- Connors requested that the Board refer the case to the Attorney General's office because the staff had been unable to resolve the case with a consent agreement (CA). He explained that the US Environmental Protection Agency (EPA) provides a grant to the Board, part of which is

used to conduct inspections. Restricted Use Pesticide Distributor Inspections involve going to facilities and verifying that restricted-use pesticides are sold to only licensed applicators. A review of records during one of these inspections showed a restricted-use pesticide was purchased by Dan Brown who was not a licensed applicator; there is no record that he has ever been a licensed applicator. Similar to past cases, a \$100 fine was proposed. Brown said he felt he shouldn't be held accountable because he did not realize Gramoxone was restricted. In bold print, on the front panel of the label, it specifies that it is restricted to use by certified applicators only. Brown wouldn't agree with the CA, so staff, consistent with the Enforcement Protocol, is asking the Board to refer the matter to the Attorney General.

- Flewelling asked what the Gramoxone was used for. Connors said Brown had acknowledged purchasing and using it, but didn't specify what he used it on.
- Brown said that it was a one-time use. He said he runs a commercial farm and had not used Gramoxone before nor since. The pesticide was recommended to him by a friend and he went to Northeast Ag and bought it. He said he opposes the CA because he didn't understand what the words on the bottle meant, having never had a pesticide license. He went into a retail establishment and purchased it over the counter. He would not have bought if he'd known there were restrictions.
- Jemison asked Brown to describe the use. He said it was used to control a weed in a 100-foot-by-100-foot garden. He said he is an organic farmer and doesn't usually use this type of product.
- Flewelling asked Connors if there were any repercussions to Northeast Ag. Connors replied that there had been a CA negotiated around major pesticide storage and this was rolled into that. It is part of the dealer's responsibility to make sure they are only selling restricted use pesticides to licensed applicators.
- Jemison asked if any other products were purchased. Brown said he had purchased two products. When asked if he was given any instruction, Brown said he followed the instructions on the bottle. He used a pump sprayer. He asked whether the Board thought it was the proper course to fine the farmer, who used a pesticide according to label instructions.
- A Board member questioned why the farmer's tax exemption form was included in the packet, Connors explained that was what Northeast Ag provided to the inspector as proof of pesticide certification.
- In response to questions about whether this was common, Jennings said that in the 1980s there wasn't good compliance with the certification requirement. When FIFRA was rewritten in 1972, designating products as restricted to certified applicators was the cornerstone of the regulatory strategy. In the late 1980s the Board decided that both parties should be held accountable for compliance with this standard. Historically the staff has been conservative about fining agricultural producers, being sensitive to the idea that farming is not as lucrative as it should be; the staff doesn't want to be the difference between solvency and insolvency. This is a matter of adhering to a fundamental regulatory principle. The Board has fined both parties in every instance since the 1980s. There were a couple of cases where the person who was named on the account did not have a license, but the material was applied by a licensed applicator. The staff sent a warning letter instead of a CA in those cases. Jennings noted that the compliance team (Jennings, Randlett, Connors) relies in large part on precedent, fairness, consistency, and statutory considerations when determining how to respond to violations. Consequently, consistency is important. If one person is fined, and another is not, it goes in the minutes, on the website, and the next person can use that as an example. It is critically important to be fair and consistent.
- Randlett remarked that the label is clear that the product is for use only by certified and licensed applicators; the label violation is clear.
- Morrill said that the law is pretty specific; while he sympathizes with Brown's plight, we all know we have to read the label. The language is right on the front in bold type, hard to miss.

These pesticides are restricted for a reason. Going back to comments made at the last meeting, a lot of applicators, especially small farmers and applicators, rely on the dealer. In this case, as well as other cases we've heard, the label is the law. Perhaps more education can prevent this from happening again.

- Brown noted that Connors had handled the case and said the fine was fair. What brought him to the meeting was Jennings saying that this has been the Board's policy. Would like to see the policy changed, maybe just give a warning.
- Randlett said the Board's options were to send it back to staff for further negotiation, or refer to the Attorney General, in which case they would definitely be looking at penalties, as they don't do warning letters.
- Granger said that homeowners would have no knowledge of what a restricted-use pesticide is; this gentleman was not licensed and did not have that understanding. It's hard to blame people who aren't aware; a warning might be a good idea. Going forward, those that use pesticides on food will have to be licensed, and therefore growers will have an understanding of the certification requirements. Hopefully this change will reduce the number of similar incidences. Granger said he likes the idea of a warning; sometimes we hold people to a higher standard than they are trained for. Jennings noted that staff sends a lot of warning letters, but they are not brought before the Board.
- Flewelling said that this was a big problem in the past, especially people buying under other people's names; we've come a long way. Making mistakes costs money, part of the education.
- Bohlen commented that he appreciated Dan Brown coming to the meeting. It cost him more than \$100 to be here. The Board recognizes his time and effort in coming to the meeting.
- Tim Hobbs (Maine Potato Board) asked what the fine is for a distributor selling to an unlicensed person. Connors said that six sales have been made in the last several years. The minimum penalty was \$200, the highest was \$1,400; the range is based on the scope of sales.
- Hobbs noted that if someone sells alcohol to minors, they risk losing their license; that is a deterrent. This is a serious issue, dangerous materials getting into the hands of untrained individuals. He suggests the Board should look at the big picture, independent of this case.
 - **Morrill/Granger: Moved and seconded to refer back to staff for further negotiation.**
 - **In Favor: Unanimous**

4. Review and Potential Adoption of Proposed Amendments to Chapters 20, 22, 28, 31, 32, 33 and 41

(Note: No additional public comments may be accepted at this time.)

On July 16, 2014, a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20, 22, 28, 31, 32, 33 and 41. A public hearing was held on August 8, 2014, at the Deering Building. The Board reviewed the rulemaking record on September 12, 2014, addressed the comments and provided direction to the staff on appropriate revisions to the proposals. The Board will now review the changes to the proposed amendments, the Response to Comments, Basis Statements and the Statement of Impact on Small Businesses and determine whether it is prepared to adopt the proposed amendments or whether further refining is warranted.

Presentation by: Henry Jennings
Director

Action Needed: Provide direction to the staff on further refinements or adopt the amendments

- Chapter 20: Jennings pointed out that essentially we are putting a policy that has existed since 2005 into rule. The policy will need to be updated.
 - **Eckert/Flewelling: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 20 as written.**
 - **In Favor: Unanimous**

- Chapter 22: Jennings noted that this exempts certain categories from the requirement to identify sensitive areas. The original proposal specified that 6A and 6B applications would need to be conducted consistent with a drift management plan, but at the last meeting the Board decided that was adequately covered by the totality of Chapter 22 and that paragraph was eliminated.
- Morrill noted that the change was to exempt 6A, 6B, and 7E applications from mapping sensitive areas; those applications would now be directed toward posting in Chapter 28. The majority of companies doing 7E applications are posting anyway.
 - **Eckert/Jemison: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 22 as written.**
 - **In Favor: Unanimous**

- Chapter 31: Jennings said that the amendments were to put two policies that exempt certain applications from the licensing requirements into rule; to allow for a reciprocal license for aerial applications in emergency situations; and to shorten the waiting period after failing exams.
- Morrill suggested removing “written” from Section 1(E)(V)—Adults applying repellents to children. Randlett said that he did not think that would constitute a substantial change from what was proposed. The basis statement would not need to be changed.
 - **Flewelling/Stevenson: Moved and seconded to remove “written” from Section 1(E)(V)**
 - **In Favor: Unanimous**

 - **Eckert/Jemison: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 31 as written.**
 - **In Favor: Unanimous**

- Chapter 32: Jennings reminded the Board that the only amendment to Chapter 32 is to shorten the waiting period after a person fails an exam.
 - **Eckert/Jemison: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 32 as written.**
 - **In Favor: Unanimous**

- Chapter 33: Jennings reminded the Board that the only amendment to Chapter 33 is to shorten the waiting period after a person fails an exam.
 - **Eckert/Jemison: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 33 as written.**
 - **In Favor: Unanimous**

- Chapter 41: Jennings noted that the amendments make any type of applicator’s license acceptable (previously limited to a private or commercial), removes the requirement for the distributor to check for a license prior to sale, and removes the prohibition on air-assisted sprayers.
 - **Eckert/Jemison: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 41 as written.**
 - **In Favor: Unanimous**

- Chapter 28: Morrill asked what constitutes “open to the public.” Jennings said that there is a robust definition in Chapter 10, which lists shopping malls, retail buildings, etc., but won’t be helpful in describing a sidewalk or a trail. In general, if the public is invited to use it, it’s considered open to the public; it doesn’t matter if a fee is charged, such as at a golf course, the public is still invited.
- Morrill said he is hung up on Section 3(A); he is concerned that the rule will be capturing things we don’t want to capture. Chapter 10 says:

Property open to use by the public includes but is not limited to: shopping centers, office and store space routinely open to the public (i.e. rest rooms, self-service areas and display aisles), common areas of apartment buildings, occupied apartments, public pools and water parks, schools and other institutional buildings, public roads, organized recreational facilities, golf courses, campgrounds, parks, parking lots, ornamental and turf areas around condominiums, apartment buildings, stores malls and retail areas of greenhouses and nurseries if the public is allowed access before the pesticide restricted-entry or re-entry interval elapses.

- Morrill said he is concerned about owners who provide access to the public, like a land trust, that they would have to provide notice. Stevenson said he thought that was what they were trying to capture.
- Randlett noted that for the purposes of the rule it’s not necessary to define every circumstance; that’s the kind of thing that can be determined down the road, or in policy.
- Morrill suggested changing it to trails owned by the public.
- Jemison noted that the people in Gorham, near the rail trail, wanted to have some notification when that trail was sprayed. They felt pretty strongly about it. Morrill pointed out that that situation wouldn’t be covered here anyway as they were spraying the ballast, not the trails. He is afraid that if we push it too far owners will close the trails.
- Jemison said that if the trail in Orono were sprayed for poison ivy, people would want to know. That’s the intent of why people in Gorham were upset; it should have been posted because it was a pesticide application on a public trail. It’s not altogether different than a lawn. It allows the public to make an informed decision about whether to stay out of the treated area based on the information provided by the sign.

- Eckert pointed out that there are trails formally and routinely open to use by the public and then there is informal use of the land, often associated with seasonal use of a trail.
- Jennings asked whether the Board wanted to limit the notification requirement to hiking trails. DOT sprayed the rail trail in Augusta for invasive plants and they posted the spots they had sprayed. That's the kind of thing where there doesn't seem to be any objection and there's a public benefit.
- Flewelling asked about ATV trails. Jennings asked whether it's primarily hiking or walking trails that the Board is trying to capture. Is there a way to narrow it down to where we see a public benefit and where we don't?
- Bohlen agreed that we don't want to create a significant disincentive to have hiking trails; posting signs doesn't seem like a major disincentive, but if people are unclear they might just close it off. He's not sure what the solution is. He's thinking about trails on land trusts, or owned by the state but managed by land trusts. These are clearly maintained trails of gravel, etc., but ATV and snowmobile clubs are doing the same kind of thing if they're doing it right.
- Morrill said that if it's important to the land trust and their members, they will post anyway. They know there's a benefit to posting, like DOT, let the public know what they're doing.
- Jennings asked whether the Board wanted to change to public properties. Bohlen pointed out that most land trusts are corporations, so they are not public property.
- Randlett said that would be a significant change from what was originally proposed and would require restarting the rulemaking process. The rule will have gone from a situation where applicators are required to provide notice on trails, which would capture those on private land, to only those on public lands. There are people out there who use trails that might have been okay with the rule as proposed, but would not be okay with the change, and they might have commented in a different way. He said he views this as substantial; it changes significantly what the original amendment was. People with an interest might complain.
- Jennings said a new notice would have to be published, and another public hearing scheduled; we would miss this legislative session, but it's more important to get it right. Essentially 6A, 6B, and 7E would not have to do anything for a while.
- Jemison suggested leaving it as it was proposed. If we run into issues, we can go back and re-open the rule and talk about it. Eckert said she would rather do that and reference the trails which would be included.
- Morrill noted that the original proposal included a newspaper notice requirement. Randlett said it was okay to get rid of the newspaper requirement because of comments received about it. Now the amendment states there must be notice in some form; he is okay with that change. It still requires some kind of notice.
- Bohlen suggested dealing with the nuances in policy. Methods could be pretty minimal if we're trying to avoid costs on private property.
 - **Eckert/Jemison: Moved and seconded to delete "methods approved in" from Section 3(A) and to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 28 as written.**
 - **In Favor: Unanimous**

5. Consideration of a Consent Agreement with Province Lake Golf Club of Parsonsfield, 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 on 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 to resolve the matter. This case involved application of pesticides at the club without a valid certified and licensed applicator.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors summarized the case. It is an 18-hole golf course, partly in New Hampshire. Matt Winchell, a former employee, called the BPC office, concerned about pesticide use and storage. An inspection was done. The inspector met with an employee, who acknowledged that he had applied an insecticide and was not a licensed applicator. The inspector also met with Winchell, who conveyed concerns about practices at the course. A CA was drafted. The course did have a licensed applicator at one time, but he left the course in December 2011. Through 2012 and most of 2013, applications were made without proper licensing. They did have an employee licensed in New Hampshire, but there is some question about the level of oversight he provided. The inspector was given a list of applications; each had a fee beside it, which implies that the applicator was acting as a contractor, not an employee.
- A representative from Province Lake Golf Club said that management thought the applicator was licensed in both Maine and New Hampshire. Connors responded that he had checked the records and that the person was licensed as a private applicator in Maine, never as a commercial applicator, so he was not licensed for golf courses.
- Morrill noted that Winchell was present and suggested he have five minutes.
- Winchell said that they had hired several people who had been golf course superintendents in Maine, but they weren't licensed applicators. People doing applications weren't using PPE. The storage area was two walls away from where employees eat. There were pesticides from 14 years ago, labels falling off, some leaking. Below the storage area was a storage area for maintenance parts. He was disappointed in the \$400 fine; he thought there would be a big investigation, people arrested, not a slap on the wrist. Winchell noted that Province Lake Association closed the lake to swimming; he was not sure why. People could lose their jobs, the campground could be forced to close. Winchell said it took a lot of work to check all this information out. Golf course personnel are not being forthcoming with the Association about what they're doing. The University of New Hampshire has been doing work at the lake trying to solve the problem; has the BPC been informed?
- Morrill said he appreciated Winchell coming to the meeting. The Board is cognizant of the environmental concerns.
- The representative from the golf course said they are open with the Lake Association. They don't want to damage the lake, that's their livelihood.
- Morrill thanked him for coming and hopes the golf course will move in the right direction as far as licensing and fixing up the storage area.

- **Morrill/Granger: Moved and seconded to accept the consent agreement as written**
- **In Favor: Unanimous**

6. Consideration of a Consent Agreement with Penobscot Cleaning Services Inc. of Brewer, 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 on 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 to resolve the matter. This case involved commercial application of mold control products with lapsed applicator and firm licenses.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors summarized the case. He noted that the summary had been revised because the owner was very candid and upfront, and knows that it is his responsibility as owner of the company to ensure that applicators have licenses. They mostly do fire and water damage and mold remediation. They did have a master applicator for many years, but that person left and no one else got licensed in that capacity. They do now have employees properly licensed and have a firm license.
 - **Flewelling/Eckert: Moved and seconded to accept the consent agreement as written**
 - **In Favor: Unanimous**

7. Review of Board Policy Limiting Continuing Education Video Credits

Current Board Policy limits the number of continuing education credits a certified applicator may receive from watching videos. Private applicators and commercial operators are limited to two credits per certification period while three credits are currently permitted for master certification. However, applicators may receive all of their credits through online courses. Consequently, the staff determined it was appropriate to review the Board policy.

Presentation By: Henry Jennings
Director

Action Needed: Provide guidance to the staff

- Jennings explained that the Penobscot Soil and Water Conservation District had produced a series of videos many years ago which applicators borrowed, viewed, and took a quiz, and then got credits for it. Originally the Board had said they don't want applicators to get all their credits that way and limited it to one-third. The question has been asked why there is a limit on the number of credits from videos, when online credits are essentially the same.
 - **Morrill/Eckert: Moved and seconded to allow all credits to be in digital form**
- Bohlen asked if it should be all but one credit. Eckert replied that the world has changed; she used to have to get all her credits live, now it's 100% online, and although she has a lingering desire to meet with colleagues, younger people do not.
- Bohlen noted that when he does things online he doesn't necessarily pay attention; oftentimes he's doing webinars just because it's required. Morrill noted that the Board doesn't require attendance at any specific training event. There are lots of good training opportunities on the internet. If people aren't interested in learning, they're not going to pay attention regardless.
 - **In favor: Unanimous**

8. Interpretation of Chapter 27, Section 2(B)(2) Requirements that IPM Coordinators Receive Comprehensive Training within One Year of Appointment

Chapter 27 of the Board's rules requires School IPM Coordinators to receive three types of IPM training: (1) overview, (2) comprehensive and (3) at least one hour of annual continuing education. The staff has received an inquiry about what the Board intended by way of the "comprehensive training." Consequently, the staff is seeking Board input on its interpretation of the requirement.

Presentation By: Kathy Murray
IPM Specialist

Action Needed: Provide guidance to the staff

- Kathy Murray reminded the Board that, when Chapter 27 was reviewed, one of the recommendations was required training for IPM Coordinators. The rule also now requires schools to notify the Board annually of the identity and contact information for the Coordinator. The initial training has to be taken within one month of first being named IPM Coordinator; it currently consists of a PowerPoint presentation with embedded questions and a quiz at the end. The comprehensive training needs to be taken within one year of appointment. The staff developed a three-hour training and offered it seven times across the state. The third requirement is one hour of continuing education annually. The staff still needs to decide how best to provide that. She noted that her records indicate that approximately 25% of schools have an IPM Coordinator with the comprehensive training; about 15% of schools have reported the name of the Coordinator. She observed that schools are in constant flux; consolidating, splitting; the staff is never sure what unit they're part of.
- Morrill noted that the comments received on the training were remarkable; some people wished it was longer.
- Murray said that the Maine School Management Association, which provides an insurance pool, has about half the schools in the state as members. They do on-site training to help schools meet compliance and they have offered to do the IPM training, but they feel that three hours is way too long, it shouldn't be over an hour. We do cover a lot, go through a label, some pest identification, walk through how to fill out our forms, whether they need approval, and do a walk-through at the school. The question for the Board is, what were your expectations for training, especially comprehensive training? Should we consider shortening it?
- Jennings said that it was difficult to justify making comprehensive training one hour if the initial training was one hour. Also, some schools have found it very valuable in terms of better sanitation, exclusion, etc.
- Morrill said that it wouldn't make sense to have to drive somewhere for a one-hour course, attendees would spend more time driving. Comments indicate that the training is good; he would not shorten it.
- Tim Hobbs noted that when pesticide issues come up, especially around children, it's serious. He feels the Board should try to improve the compliance rate. This was a very serious discussion when it was in front of the Legislature.
- Morrill agreed that there was a lot of passion around this issue. We have to try to improve the buy-in of the schools.
- Jennings said that there is a certain reluctance to levy fines against schools because the money would come out of the classrooms.
- Bohlen noted that sending in the name of the Coordinator is pretty simple, takes five minutes. The fact that it's not happening is a sign that they're not paying attention.

- Eckert suggested sending a letter to superintendents: if you're not in compliance with the training requirements we're going to start levying fines.
- Katy Green (MOFGA) asked what kind of resources are available to help IPM Coordinators. She suggested that, instead of fines, the Board should explain what is required and what is available to help.
- Jennings reminded the Board that the staff is requesting a definition of comprehensive training. Morrill said the proposed outline looks great.

9. Other Old or New Business

- Variance Permit to Boyle Associates for control of phragmites
 - Variance Permit to The Lawn Dawg for control of invasive plants
 - Other?
- Morrill suggested the Board revisit what is being done with compliance around restricted-use pesticide dealers; it's not okay that pesticide dealers are selling restricted-use pesticides to customers without a license.
 - Flewelling said the bulk of the burden should fall on the dealers; they're in the business, they're the ones who should know the rules.
 - Stevenson suggested sending a letter to dealers. The letter doesn't need to be threatening, just to bring the issue to the forefront. Granger suggested the inspectors make it known that the Board is concerned and that they should expect increased fines in the future.
 - **Consensus reached to send a bulletin to dealers saying that there have been violations, the Board is prepared to increase penalties, and they should make sure their employees are appropriately trained.**
 - Jennings noted that the Pollinator Protection Conference is scheduled for November 20 and that there has been a lot of interest.

10. Schedule of Future Meetings

December 5, 2014, and January 14 (Maine Agricultural Trades Show) and March 13, 2015, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Action Needed: Adjustments and/or additional dates?

- **The Board added April 24 and June 5, 2015, as tentative Board meeting dates.**

11. Adjourn

- **Morrill/Bohlen: Moved and seconded to adjourn at 11:53 AM**
- **In favor: Unanimous**

NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at www.thinkfirstspraylast.org.
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
 - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the attention of Anne Chamberlain, at the Board's office or anne.chamberlain@maine.gov. In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.

MAINE BOARD OF PESTICIDES CONTROL
POLICY CONCERNING APPROPRIATE METHODS FOR NOTIFYING
THE PUBLIC ABOUT COMMERCIAL APPLICATIONS TO SIDEWALKS AND TRAILS
AS REQUIRED BY CHAPTER 20

DRAFT, December 5, 2014

At its October 24, 2014 meeting, the Board adopted amendments to Chapter 28, Notification Provisions for Outdoor Pesticide Applications. The amendments will require commercial applicators to provide public notice of pesticide applications to trails and sidewalks within category 6B consistent with Board policy. The Board recognizes that many trails cross private property and use of the trail is based on the permission of the landowner. The Board does not favor public policies that may discourage landowners from granting permission to use their property. The Board further recognizes that providing effective notice of such applications can be challenging and it believes that establishing a flexible approach allows applicators and landowners to tailor their notification methods to utilize the most practical and cost effective approach. This policy defines sidewalks and trails in the context of Chapter 28 and this policy, and lists a series of approved methods that applicators and/or landowners may choose from in order to provide public notice of pesticide applications to those sites.

Definitions:

1. Sidewalks – for the purposes of CMR 01-026, Chapter 28 and this policy, the term “sidewalk” means any paved or otherwise intentionally constructed pedestrian walkway adjacent to public or private roads.
2. Trails – for the purposes of CMR 01-026, Chapter 28 and this policy, the term “trails” means any marked or established passage, path or route, used by the public for passage by foot, bicycle, recreational vehicle or other similar means, generally for recreational purposes. A trail does not include public rights-of-way maintained by governmental entities primarily for passage by automobiles and other vehicles registered for use on public ways.

Appropriate Methods of Notification:

Commercial applicators must provide public notice or cause public notice to be given about pesticide applications to sidewalks and trails within category 6B by using one or more of the following methods. Notification should be provided at least 24 hours prior to the pesticide application and should include a statement indicating that a pesticide application will be made, the product(s) to be applied, the date of the application, and contact information for further questions.

1. Posting of signs at relevant kiosks and/or prominent points of egress and ingress. Signs should be conspicuously positioned with print of sufficient size so as to be readily observed by the public. Signs shall not be removed by the applicator or landowner for at least 48 hours following the application.
2. Public notification using websites, list serves or print publications of local or regional relevance.
3. Posting of signs, similar to those described in item 1 above, at areas frequented by the public and in the vicinity of the application site such as commercial, retail and institutional buildings and other public gathering places.

The Board encourages the development and implementation of other effective methods not described above.

MAINE BOARD OF PESTICIDES CONTROL

**POLICY CONCERNING POSITIVE IDENTIFICATION OF
PROPER TREATMENT SITE BY COMMERCIAL APPLICATORS**

Adopted July 29, 2005

At its June 17, 2005 meeting, the Board listened to many concerns from two neighbors at 34 and 38 Bay Road in Bowdoinham who had come home recently to find that they had received unwanted pesticide applications that should have been made to residential lawns at 34 and 38 Middlesex Road in Topsham. They requested that the Board take action to prevent similar incidents from happening to other Maine citizens. The members observed that the recent number of cases where the wrong property had been treated by commercial applicators demonstrated the need for action. A motion was approved to direct the staff to draft a positive identification policy regarding outdoor applications to residential properties. At its next meeting on July 29, 2005, the Board adopted the following statement as an interim compliance policy until such time as Chapter 20 may be amended to create a new Section 6 dealing with this issue.

To ensure that their employees only treat the property of persons who have requested service, commercial applicators making outdoor treatments to residential properties must develop and implement a system to positively identify the property of their customers. This system must be used prior to making any applications. Applicators that contract for multiple applications must update their information at least annually to confirm the customer still resides in the same location, the identification is still valid, and the customer still desires service. Applicators are encouraged to use multiple identification checks. Examples of appropriate positive identification methods include the following:

1. Obtain the customer's electric meter number in advance of the treatment, list it on the work order or invoice and require the applicator to check for that number before initiating the treatment.
2. Visit the customer in advance of the treatment, and using a global positioning system (GPS), identify the coordinates of each property to be treated. Include the coordinates on the work order or invoice, equip the applicator with a GPS unit and require that employee to check for those coordinates before initiating any treatment.
3. Visit the customer in advance of the treatment and take a digital time/date stamped photo of the home and any distinctive features of the property. Include the photo on the work order or invoice and require the applicator to carefully check the photo before initiating any treatment.
4. Visit the customer in advance of the treatment and attach a company logo or other unique identifying tag on the property. Include the location of the logo/tag on the work order or invoice and require the applicator to carefully check for its presence before initiating any treatment.

The Board encourages the development and implementation of other effective systems not included above.

Applicators are advised that the Board will seek maximum penalties up to and including license suspension for incidents where the wrong property is treated and the applicator cannot show that a positive identification system has been followed.

MAINE BOARD OF PESTICIDES CONTROL

POLICY CONCERNING POSITIVE IDENTIFICATION OF

PROPER TREATMENT SITE BY COMMERCIAL APPLICATORS

AS REQUIRED BY CHAPTER 20

DRAFT, December 5, 2014

At its October 24, 2014 meeting, the Board adopted amendments to Chapter 20 requiring that “commercial applicators making outdoor treatments to residential properties must implement a system, based on Board-approved methods, to positively identify the property of their customers.” This policy lists approved methods of positive identification of the proper treatment site.

To ensure that their employees only treat the property of persons who have requested service, commercial applicators making outdoor treatments to residential properties must develop and implement a system to positively identify the property of their customers. This system must be used prior to making any applications. Applicators that contract for multiple applications must update their information at least annually to confirm the customer still resides in the same location, the identification is still valid, and the customer still desires service. Applicators are encouraged to use multiple identification checks. Examples of appropriate positive identification methods include the following:

1. Obtain the customer’s electric meter number in advance of the treatment, list it on the work order or invoice, and require the applicator to check for that number before initiating the treatment.
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3. Visit the customer in advance of the treatment and take a digital time/date stamped photo of the home and any distinctive features of the property. Include the photo on the work order or invoice and require the applicator to carefully check the photo before initiating any treatment.
4. Visit the customer in advance of the treatment and attach a company logo or other unique identifying tag on the property. Include the location of the logo/tag on the work order or invoice and require the applicator to carefully check for its presence before initiating any treatment.

The Board encourages the development and implementation of other effective systems not included above.

Applicators are advised that the Board will seek maximum penalties, up to and including license suspension, for incidents where the wrong property is treated and the applicator cannot show that a positive identification system has been followed.

Gary Fish
DIRECTOR PESTICIDE APPLICATOR PROGRAM

Dear Gary,

I would like to submit an application for one (1) hour of Continuing Education Units for the Turfcide Online Training Program to use towards recertification and renewal of pesticide applicator licenses.

As you will see in the attached script and outline, this program is a comprehensive stewardship based adult education program developed to help dealers, applicators and others who handle and sell Turfcide become more knowledgeable about the product they use.

The program content is designed to:

- 1) Increase participants' industry knowledge of Turfcide and its effectiveness.
- 2) Cover topics pertinent to the benefits of Turfcide. For example, stewardship and safety in handling and use.
- 3) Provide participants with up-to-date information on Turfcide's efficacy, proper usage and environmental facts.

The program is written and will be presented in a professional manner following adult learning standards and recommendations. Completion of the program is estimated to take approximately 60 minutes. The program concludes with a quiz on the topics covered. This quiz is used to test participants' aptitude and comprehension of this important information. A score of 70% or higher is required to pass. The quiz scores and other related comprehension measurement information for each participant from your state applying Turfcide products can be provided to you for your use and reference.

We appreciate your cooperation and your assistance with this application. Please let me know if you have any questions.

Rhonda

Rhonda K. Johnson
Director of Educational Services
Achieva, Inc.
317.818.1868 Phone
rhondaj@achievainc.com

TURFCIDE FUNGICIDE TUTORIAL AND QUIZ TRAINING OUTLINE

Course Name: Turfcide Fungicide Training
Instructor: AMVAC Chemical Corporation
Presentation time: 60 minutes

- I. Registration 5 minutes
- II. Introduction 5 minutes
 - A. Science behind Turfcide and its effectiveness
 - B. Benefits of Turfcide: excellent control of snow mold, cost-effective, resistance management
 - C. How to utilize Turfcide formulations in overall turf management programs
- III. Tutorial Presentation 35 minutes
 - A. Turfcide Products Descriptions
 - 1. Two formulations of PCNB
 - 2. Labeled for control of pink snow mold, gray snow molds, brown patch, dollar spot and leaf spots
 - B. EPA Approved
 - 1. PCNB sale and use approved by the US EPA
 - C. Golf Course Applications
 - 1. Approved application sites
 - D. Prohibited Use Areas
 - E. Turfcide Benefits
 - 1. Excellent control of snow molds
 - 2. Versatile – used alone or tankmixed
 - 3. Multi-site mode of action, less prone to resistance development
 - F. Snow Mold Control
 - 1. Pink snow mold
 - 2. Gray snow molds
 - a. Speckled snow mold
 - 3. Brown patch
 - 4. Dollar spot
 - 5. Leaf spots
 - G. Pink Snow Mold
 - 1. Causes
 - 2. Symptoms
 - H. Gray and Speckled Snow Mold
 - 1. Conditions necessary to development
 - 2. Symptoms
 - I. Pop-up Quiz Question on Snow Mold
 - J. Turfcide Application Timing
 - 1. Preventative use recommendations
 - 2. Supplemental use recommendations
 - K. Turfcide 400
 - 1. Product description
 - 2. Application rates
 - 3. Proper application
 - 4. Post-application procedures
 - 5. Tank mix compatibility
 - L. Turfcide 10G
 - 1. Product description
 - 2. Application rates
 - 3. Proper application
 - 4. Post-application procedures
 - M. Pop-up Quiz Question on Snow Mold
 - N. PCNB Proven Performance
 - 1. University of Wisconsin field trial
 - 2. Rutgers University field trial

- 3. 2013 field trials in Michigan, Montana, New Jersey, Pennsylvania, Utah and Wisconsin
- O. Turf Quality
- 1. 2013 field trials in Michigan, Montana, New Jersey, Pennsylvania, Utah and Wisconsin
- P. Turfcide Combinations
 - 1. Effective snow mold control combinations
 - a. PCNB program recommendations
 - b. BASF program recommendation
- Q. Pop-up Quiz Question on PCNB
- R. Review

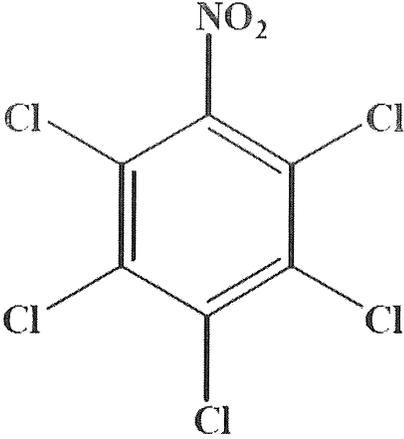
IV. Exam 10 minutes

V. Summary and closing 5 minutes

Total 60 minutes

2014 AMVAC Turfcide® Fungicide

Slide 1: Welcome	Voiceover
<p>Note to designer: Design welcome slide with Turfcide® 400 and Turfcide® 10G logos and a photo of the person voicing the welcome along with bullets noting the main points from the welcome.</p> <p>Turfcide®</p> <ul style="list-style-type: none"> • Excellent control of snow mold • Cost effective • Valuable resistance management tool <p>Three Parts</p> <ul style="list-style-type: none"> • First reviews Turfcide® 400 and Turfcide® 10G, latest trial information and tank mix recommendations • Second is short quiz qualifying you for continuing education credit. <p>Thank you</p>	<p>Hello. I'm Ron Johnson, Senior Corporate Account Manager for AMVAC. Welcome to this online training program featuring Turfcide® turf fungicide products from AMVAC.</p> <p>Turfcide®, with the active ingredient PCNB, delivers excellent control of snow mold, is cost-effective, and a very valuable resistance management tool for golf course superintendents.</p> <p>This tutorial is divided into two parts. The first reviews overall turf management information including how both formulations of Turfcide® – Turfcide® 400 and Turfcide® 10G – can be utilized in an overall turf management program. The information will include up-to-date trial performance results and tank mix recommendations.</p> <p>The second part is a short quiz that qualifies you for continuing education credits.</p> <p>Thanks for participation and involvement in this educational program.</p>
Slide 2: Turfcide® Products	Voiceover
<p>Note to designer: Show jug and bag of the two Turfcide products.</p> <p>Turfcide® brand:</p> <ul style="list-style-type: none"> • Turfcide® 400 flowable turf fungicide • Turfcide® 10G granular turf fungicide. 	<p>PCNB is well recognized as the most versatile, effective and economical fungicide for controlling snow molds on golf courses.</p> <p>AMVAC sells two formulations of PCNB for turf under the Turfcide® brand. They are Turfcide® 400 flowable turf fungicide – and Turfcide® 10G, a 10 percent granular turf fungicide.</p> <p>Turfcide® products are labeled for control of pink snow mold and gray snow molds – which include gray snow mold and speckled snow mold – and also brown patch, dollar spot and leaf spots.</p> <p><u>This tutorial will focus on control of pink and gray snow molds on golf courses.</u></p>

Slide 3: EPA Approved	Voiceover
<p>Note to designer: Might include depiction of PCNB chemical from slide 3 of the AMVAC Turfcide® presentation.</p>  <p>Pentachloronitrobenzene (PCNB)</p> <p>PCNB sale and use approved by the US EPA</p> <p>AMVAC has worked with EPA to ensure PCNB product registrations continue to meet EPA requirements.</p>	<p>As noted in a previous slide, the active ingredient in Turfcide® fungicide is PCNB, which is short for pentachloronitrobenzene.</p> <p>The sale and use of PCNB is approved by the US Environmental Protection Agency. You may have heard, or read, that the EPA ordered a stop sale of PCNB. That was in 2010 and that stop-sale was short-lived as PCNB was reinstated in August 2011.</p> <p>AMVAC has worked with the EPA to amend PCNB product registrations to ensure they continue to meet EPA requirements.</p>
Slide 4: Golf Course Applications	Voiceover
<p>Designer: Following lists from slides 12 and 24.</p> <p><u>Approved Application Sites</u></p> <p>Turfcide® 400</p> <ul style="list-style-type: none"> • Golf course tees, greens and fairways • Sod farms • Industrial parks • Professional and college athletic fields <p>Turfcide® 10G</p> <ul style="list-style-type: none"> • Golf course tees, greens and fairways • Sod farms • Industrial parks • Professional and college athletic fields • Non-residential ornamentals 	<p>Among the application sites EPA has approved for continued use of PCNB are <u>golf course tees, greens and fairways</u> – as you can see in this listing.</p>

Slide 5: Prohibited Use Areas	Voiceover
<p>Designer: Following list from slides 13 and 25.</p> <p>Sites Where use of Turfcide® 400 and Turfcide® 10G are prohibited</p> <ul style="list-style-type: none"> • Golf course roughs • Residential sites including lawns, yards, and ornamental plants and gardens • Grounds around day care facilities • School yards • Parks (except industrial parks) • Playgrounds • Athletic fields (except professional and college athletic fields as described on label) 	<p>Turfcide® 400 and Turfcide® 10G may not be used in other areas, <u>such as on golf course roughs.</u></p> <p>This visual lists areas where application is prohibited.</p>
Slide 6: Turfcide® Benefits	Voiceover
<p>Designer: Bullets</p> <p>Turfcide®:</p> <ul style="list-style-type: none"> • Excellent control of snow molds • Versatile <ul style="list-style-type: none"> • Used alone or Turfcide® 400 may be tankmixed • Multi-site mode of action– less prone to resistance development 	<p>Turfcide® fungicide delivers excellent control of snow molds, and is cost-effective and versatile. It may be applied alone – or Turfcide® 400 may be tank-mixed with other fungicides.</p> <p>A contact fungicide, Turfcide® is a Group 14 fungicide with multi-site mode of action – making it less prone to resistance development.</p> <p>In the 50 years that PCNB has been used on golf courses, there has been no evidence of resistance development by pink and gray snow molds or any other turf pathogen.</p>
Slide 7: Snow Mold Control	Voiceover
<p>Designer: Refer to slide 33 in Turfcide® presentation. Show logos plus bullets.</p> <p>Turfcide® products control:</p> <ul style="list-style-type: none"> • Pink snow mold (<i>Microdochium nivale</i>) • Gray snow molds <ul style="list-style-type: none"> • Gray snow mold (<i>Typhula incarnata</i>) • Speckled snow mold (<i>Typhula ishikariensis</i>) 	<p>As stated previously, Turfcide® fungicide products are labeled for control of pink snow mold and gray snow molds, which include gray snow mold and speckled snow mold – and also brown patch, dollar spot and leaf spots.</p> <p>This tutorial will focus on control of pink snow mold and gray snow molds on golf courses.</p>

<ul style="list-style-type: none"> • Brown patch • Dollar spot • Leaf spots 	
<p>Slide 8: Pink Snow Mold</p>	<p>Voiceover</p>
<p>Designer: Photo of pink snow mold infected turf in slide 36 in Turfcide® presentation.</p> <p>Have arrows point to the white mycelium when that is mentioned in the voiceover, and the pinkish hue when that is mentioned.</p>	<p>Pink snow mold does not require snow cover to cause disease. Rather, it's caused by prolonged periods of cool and wet conditions – and can be observed as far south as Texas and Mississippi.</p> <p>When the disease develops without snow cover, it is referred to as Microdochium patch. Microdochium patch is now becoming an important disease of ultra-dwarf bermudagrass greens in the southeastern U.S.</p> <p>What does pink snow mold look like on a green or fairway?</p> <p>Symptoms initially appear as small, water-soaked spots less than 2 inches in diameter. They can quickly develop into larger, darker or reddish-brown patches. White mycelium may be observed when the disease initially develops or after snow cover recedes.</p> <p>Eventually, the perimeter of the patches may have a pinkish hue.</p> <p>The photo on the left shows symptoms of pink snow mold on an annual bluegrass putting green.</p> <p>The center photo shows matted foliage typical of pink snow mold affected turf.</p> <p>Damage can cover large areas as can be seen in the right photo.</p>

Slide 9: Gray and Speckled Snow Mold	Voiceover
<p>Designer: Maybe show map of US and point to areas as mentioned with areas shaded by gray and speckled gray</p> <p>Gray snow mold:</p> <ul style="list-style-type: none"> • Requires 60 days continuous snow cover • Common throughout Great Lakes region, Ohio Valley and northern New England. <p>Speckled snow mold:</p> <ul style="list-style-type: none"> • Requires 90 days of continual snow cover • Most severe of snow molds – can infect crown of turf • Common throughout upper Midwest and in the Rocky Mountain west 	<p>Gray and speckled snow mold are prevalent in areas with persistent snow cover.</p> <p>Gray snow mold requires approximately 60 days of continuous snow cover to cause disease, and is commonly seen throughout much of the Great Lakes region, Ohio Valley and northern New England.</p> <p>Speckled snow mold requires 90 days of continual snow cover and is the most severe of the snow molds because of its ability to infect the crown of the turf. It's commonly observed in the upper Midwest and in the Rocky Mountain west.</p> <p>The importance of snow cover is not related to the snow itself, rather to the ability of the snow to insulate the soil surface to a temperature slightly above freezing to allow for the fungi to grow and infect.</p> <p>If covering greens, snow mold applications are a must as covers provide a favorable environment for snow mold development. In fact, some turf pathologists actually use turf covers on their snow mold research sites to promote disease development.</p>
Slide 10: Gray and Speckled Snow Mold	Voiceover
<p>Designer: Photo of gray and speckled snow mold shown in slide 39 of the Turfcide® presentation. Maybe have arrow point to the photo or area in photo as it is discussed?</p>	<p>Gray and speckled snow mold symptoms are apparent when the snow melts in the spring. You'll see circular areas of gray or straw-colored patches. Those patches can range in size from 2 inches to 3-feet in diameter.</p> <p>The photo on the left shows gray snow mold on creeping bentgrass. The middle photo shows the ash-gray appearance of older gray snow mold patches.</p> <p>The photo at right shows mature sclerotia in infected bluegrass leaves. The sclerotia is reddish brown or dark – and is wrinkled. Speckled snow mold has much smaller sclerotia. Its sclerotia never appear red – and the mycelium appears speckled.</p>

Slide 11: Take a Swing	Voiceover
<p>Designer: Use golf course game here. The question is:</p> <p>Q: Which snow mold is most severe as it infects the crown of the turf?</p> <ul style="list-style-type: none"> a. Pink b. Speckled c. Gray 	<p>We've just given you lots of facts about snow molds. Let's take a breather and give you a chance to swing a club. Just answer the following question. It doesn't count as far as your quiz – it's just for fun.</p>
Slide 12: Turfcide® Application Timing	Voice Over
<p>Turfcide® Application Timing</p> <ul style="list-style-type: none"> • Use as preventative before diseases appear • Apply immediately prior to first snowfall • In absence of snow cover, when disease pressure is severe, make supplemental applications at 4 – 6 week intervals. 	<p>For best results, use Turfcide® 400 or Turfcide® 10G as a preventive application before diseases appear.</p> <p>Apply immediately prior to first snowfall or when temperatures remain below 60 degrees Fahrenheit, and extended wet conditions are expected.</p> <p>In the absence of snow cover, supplemental applications can be made at 4 to 6 week intervals to maintain control when disease pressure is severe.</p>
Slide 13: Turfcide® 400	Voiceover
<p>Designer: Consider using Turfcide® 400 logo here – or label (see slide 9). And bullets.</p> <p><u>Turfcide® 400</u></p> <ul style="list-style-type: none"> • Flowable • a.i. PCNB • 4 lbs. of a.i./gal. 	<p>Turfcide® 400 is the flowable formulation of Turfcide® brand fungicides, with four pounds of active ingredient PCNB per gallon.</p>

Slide 14: Turfcide® 400 Application Rates	Voiceover
<p>Designer: Show table on Slide 17 here.</p>	<p>As this table shows, the application rate for Turfcide® 400 varies depending on the disease and turf type.</p> <p>For snow mold control, the labeled application rate is 12 to 16 fluid ounces of product per 1,000 square feet.</p> <p>The application rate for supplemental applications in the absence of snow cover – when disease pressure is severe – is 3 to 6 fluid ounces per 1,000 square feet.</p> <p>Recent university research has shown excellent snow mold control by tank-mixing companion snow mold fungicides with Turfcide 400 at 8 fluid ounces per 1,000 square feet. This reduced rate of Turfcide 400 is allowed under Section 2(ee) of FIFRA. Check state and local regulations before using this rate.</p> <p>Always read and follow the label.</p>
Slide 15: Turfcide® 400 Application	Voiceover
<p>Designer: Show application of Turfcide® on green or fairway using boom sprayer. Plus bullets. Be sure to use a photo taken in late fall.</p> <p><u>Turfcide® 400 Application:</u></p> <ul style="list-style-type: none"> • Mix and apply Turfcide® 400 in a minimum of 1 gallon of water per 1,000 sq. ft. • Application must be by ground boom • Application using hand-held equipment is prohibited • Daily handling limit <p>Note Following info in table on page 14 of AMVAC ppt. You may use this table and point to amounts as read.</p> <p>Using 8 fl.oz. per 1,000 square feet – 55 acres can be treated</p> <p>Using 12 fl.oz. per 1,000 square feet – 36.75 acres can be treated</p> <p>Using 16 fl.oz. per 1,000 square feet – 27.5 acres can be treated</p>	<p>After determining the desired application rate, mix the appropriate amount of Turfcide® 400 and apply in a minimum of 1 gallon of water per 1,000 square feet.</p> <p>Applications must be made using a ground boom. Use of hand-held application equipment is prohibited.</p> <p>Mixers and loaders are not allowed to handle more than 150 gallons of product per day.</p> <p>That means if one worker is mixing and/or loading Turfcide® 400 that is being applied at the 8 fluid ounces per 1,000 square feet rate, he would be able to mix and/or load enough material to treat 55 acres per day. At the 12 fluid ounces per 1,000 square feet rate, he could mix and/or load enough material to treat 36.75 acres per day – and at the 16 fluid ounces per 1,000 square feet rate, he could mix and/or load enough material to treat 27.5 acres per day.</p>

Slide 16: Post-Application Procedure	Voice Over
<p>Designer: Suggestion: show sprinklers watering green or fairway. Plus bullets.</p> <p>After applying Turfcide® 400:</p> <ul style="list-style-type: none"> • Water treated areas or allow rainfall to move material down to soil/thatch layer • Treat again if: <ul style="list-style-type: none"> • Treated area floods or has unusually heavy rainfall, or • Disease pressure is severe or reappears • If you have to mow after application and significant clippings are removed <p>Application may cause temporary discoloration of grass.</p>	<p>Each application of Turfcide® 400 must be followed by one-quarter (¼) inch of irrigation water or rainfall on the day of application. That's to move the material down to the soil/thatch layer.</p> <p>If the treated area is subjected to flooding or unusually heavy rainfall, or if disease pressure is severe or reappears, treat the area again.</p> <p>If, after applying Turfcide® to putting greens, you are forced to mow because of unseasonably warm weather causing turf growth, you may need to reapply Turfcide®. Look closely at the clipping yields when making this decision. If significant clippings aren't being removed when mowing, you are not removing Turfcide®.</p> <p>Under certain growing conditions, application can cause a temporary discoloration of the grass. This causes no harm and will disappear in a short time when growth resumes. Turf colorant products have become very popular in recent years and they are useful at preventing discoloration.</p>
Slide 17: Turfcide® 400 Tank mix Compatibility	Voiceover
<p>Designer: The graph Use Slide "TS142107 SLIDE 01..." for this slide</p>	<p>Turfcide® 400 may be tank mixed with other snow mold fungicide products for enhanced snow mold control.</p> <p>Tank mixes of Turfcide® 400 applied at 8 fluid ounces per 1,000 square feet, <u>plus</u> a demethylation-inhibiting – or DMI – fungicide, have been proven to provide excellent control as you can see in this graph.</p> <p>These results are from 2013 and 2014 trials in Pennsylvania, Michigan and Montana.</p> <p>Prices shown are on a per acre basis and are derived from manufacturer's published prices for 2013 – 2014.</p> <p>When tank mixing, always follow the more restrictive labeling or precautions on the label of any tank mix product. Do not exceed label rates for any product.</p>

<p>Slide 18: Turfcide® 10G</p> <p>Designer: Consider using Turfcide® 10G logo here – or label (see slide 21). And bullets.</p> <p>Turfcide® 10G</p> <ul style="list-style-type: none"> • Granular • a.i. PCNB • 10% a.i. 	<p>Voiceover</p> <p>Turfcide® 10G is the granular formulation of Turfcide® brand fungicides with 10 percent active ingredient PCNB by weight.</p>
<p>Slide 19: Turfcide® 10G Application Rates</p> <p>Designer: Show table on Slide 29 here. Have arrow point to rates in table as they are read.</p>	<p>Voiceover</p> <p>The application rate for Turfcide® 10G varies depending on the disease and turf type.</p> <p>As you can see in this table, for snow mold control in cool season golf course turf, the application rate is 5 to 10 pounds per 1,000 square feet for gray snow mold – and 5 to 7 ½ pounds per 1,000 square feet for pink snow mold.</p> <p>For pink snow mold control when the turf is not snow covered, apply 5 to 7 ½ pounds per 1,000 square feet at four-to-six week intervals to maintain control when disease pressure is severe.</p> <p>The Turfcide® 10G label provides spreader settings.</p> <p>Always read and follow the label.</p>
<p>Slide 20: Turfcide® 400 Application</p> <p>Designer: Show application of Turfcide® 10G on green or fairway using a tractor-drawn granular product applicator. Plus bullets.</p> <p><u>Turfcide® 10G Application:</u></p> <ul style="list-style-type: none"> • Applications must be made using tractor-drawn equipment • Hand-held application equipment is prohibited. 	<p>Voiceover</p> <p>Turfcide® 10G must be applied using tractor-drawn equipment.</p> <p>Use of hand-held-application equipment is prohibited.</p>

Slide 21: Post-Application Procedure	Voice Over
<p>Designer: Suggestion: show sprinklers watering green or fairway. Plus bullets.</p> <p>After applying Turfcide® 10G:</p> <ul style="list-style-type: none"> • Water treated areas or allow rainfall to move material down to soil/thatch layer. • Treat again if: <ul style="list-style-type: none"> • Treated area floods or has unusually heavy rainfall, or • disease pressure is severe or reappears <p>Application may cause temporary discoloration of grass.</p>	<p>Each application of Turfcide® 10G must be followed by one-quarter (¼) inch of irrigation water or rainfall on the day of application. That's to move the material down to the soil/thatch layer.</p> <p>If the treated area is subjected to flooding or unusually heavy rainfall, or if disease pressure is severe or reappears, treat the area again.</p> <p>Under certain growing conditions, application can cause a temporary discoloration of the grass. This causes no harm and will disappear in a short time when growth resumes.</p>
Slide 22: Take a Swing	Voiceover
<p>Designer: Use golf course game here. The question is:</p> <p>Q: Which snow mold doesn't require snow cover to cause disease?</p> <ol style="list-style-type: none"> a. Pink (Microdochium patch) b. Speckled c. Gray 	<p>Let's take a breather and give you a chance to swing the club again.</p>

Slide 23: Proven Performance	Voice Over
<p>Designer: The graph for this slide is Slide "TS142107 SLIDE 02..."</p> <p>Please have arrows point to the results as the narrator mentions them.</p>	<p>Golf course superintendents have more than 50 years of experience using PCNB. Its effectiveness is well documented. And so is the fact that after 50 years there is no evidence of resistance development by pink and gray snow molds.</p> <p>Recent trials continue to show Turfcide® delivering excellent control. The trial was carried out by Washington State University researchers in Columbia Falls, Montana from November 2, 2012 to March 28, 2013.</p> <p>It evaluated Turfcide® at 8 fluid ounces alone, and as a substitute product in snow mold control programs featuring Interface® or Concert® II.</p> <p>The untreated plots in this trial were 91.3 percent infected with pink and gray snow mold.</p> <p>Turfcide® 400 at 8 fluid ounces tank-mixed with either Interface® at 3 fluid ounces, or Concert® II at 8.5 fluid ounces, provided exceptional control under intense snow mold pressure.</p>
Slide 24: Proven Performance	Voiceover
<p>Designer: The graph for this slide is slide 44 of the Turfcide® presentation. Title is:</p> <p>Turfcide® Snow Mold Control Michigan-Fall 2012/Spring 2013</p>	<p>In this University of Wisconsin trial conducted in Champion, Michigan, Turfcide® 400, Banner Maxx® II, Daconil Ultrex® and Interface® fungicides were applied alone and in separate tank mixes with Turfcide®.</p> <p>You can see the excellent snow mold control delivered by Turfcide® 400 alone and in tank mixes with the other fungicides.</p>

Slide 25: Proven Performance	Voice Over
<p>Designer: The graph for this slide is slide "TS142107 SLIDE 04..."</p>	<p>This trial was carried out by Rutgers University researchers in Denville, New Jersey, from November 16, 2013 to April 1, 2014.</p> <p>It evaluated Turfcide® at 8 fluid ounces alone and as a substitute product in snow mold control programs featuring Interface®, Concert® II or Insignia®.</p> <p>The untreated plots in this trial were 91.3 percent infected with pink snow mold.</p> <p>Turfcide® 400 at 8 fluid ounces tank-mixed with either Interface® at 3 fluid ounces, Concert® II at 8.5 fluid ounces or Insignia® at 0.7 fluid ounces provided enhanced control under intense snow mold pressure.</p>
Slide 26: Proven Performance	Voice Over
<p>Designer: The graph for this slide is slide TS142107 Slide 06.</p> <p>Titled "Snow Mold Control on Golf Course Fairways"(Average of six trials initiated in 2013)</p>	<p>Consistency across field trial locations is an important consideration when selecting a snow mold control program.</p> <p>Six field trials were initiated in the fall of 2013 to evaluate the tank-mix of Concert® II at 8.5 fluid ounces plus Turfcide® at 8 fluid ounces verses competitive programs for snow mold control.</p> <p>The trials were conducted in Michigan, Montana, New Jersey, Pennsylvania, Utah and Wisconsin. Untreated plots averaged 62.8 percent snow mold – with a range of 27.6 to 95 percent. All three major snow mold pathogens are included in this subset of data.</p> <p>The combination of Concert® II at 8.5 fluid ounces plus Turfcide® at 8 fluid ounces <u>averaged</u> 98.1 percent control in these six trials.</p>

<p>Slide 26-B: Turf Quality</p> <p>Designer: Use Slide TS142107 SLIDE 07...” Title: Turf Quality Ratings on Gold Course Fairways</p>	<p>Voice Over</p> <p>Turf quality is a concern of every superintendent. This is especially true in early spring when golfers are anxious to get on the course after a long winter of inactivity.</p> <p>This slide shows the average turf quality ratings taken in early spring for the same six field trials. Quality was rated by the researchers using the standard 1-9 rating scale where 1 signifies poor turf quality and 9 signifies excellent turf quality. A rating of 6 or greater indicates acceptable turf quality.</p> <p>The combination of Concert® II at 8.5 fluid ounces plus Turfcide® at 8 fluid ounces was the only treatment that had an average turf quality rating greater than 6 in early spring.</p> <p>As soon as the snow melted, the courses were ready for play!</p>
<p>Slide 27: Turfcide® Combinations</p> <p>Designer Fairways: Combinations with Bayer and Syngenta from slides 54 & 56. Only pickup AMVAC Snow Mold Program</p>	<p>Voice Over</p> <p>So, what are some effective snow mold control combinations?</p> <p>Shown here are two fairway combinations – with Turfcide® used in combination with Interface® or Concert® II (read Concert two).</p>
<p>Slide 28: Turfcide® Combinations</p> <p>Designer: Greens: Combinations with Bayer and Syngenta from slides 55 & 57. Only pickup AMVAC Snow Mold Program</p>	<p>Voice Over</p> <p>And this visual shows two “greens” snow mold combinations – with Turfcide® used in combination with Interface® or Instrata®.</p>
<p>Slide 29: Turfcide® Combinations</p> <p>Turfcide® Combinations - Selected Treatments BASF Snow Mold Program</p> <p>Designer: Pick up slide 53 showing BASF program – showing both BASF program and the AMVAC program.</p>	<p>Voice Over</p> <p>For golf courses on a BASF program, Turfcide® can be substituted for Trinity™ to add PCNB for enhanced control and resistance management.</p>

Slide 30: Take a Swing	Voiceover
<p>Designer: Use golf course game here. The question is:</p> <p>Q: A prominent turf pathologist recently wrote that there is “no single fungicide as effective as PCNB for snow mold management.” That’s a compliment for a fungicide that has been on the market many years. In what year did PCNB enter the turf market?</p> <p>a. 1964 b. 1978 c. 1987</p>	<p>Let’s take a breather and give you another chance to swing the club.</p>
Slides 31: Key Points to Remember	Voice Over
<p>Key Points to Remember</p> <ul style="list-style-type: none"> • AMVAC sells two formulations of PCNB under Turfcide® brand <ul style="list-style-type: none"> • Turfcide® 400 flowable turf fungicide • Turfcide® 10G, a 10 percent granular turf fungicide • Turfcide® products are labeled for control of: <ul style="list-style-type: none"> • Pink snow mold • Gray snow molds, which include gray snow mold and speckled snow mold • Brown patch • Dollar spot • Leaf spots • PCNB approved for use on golf course: <ul style="list-style-type: none"> • Tees • Greens • Fairways • PCNB use on golf course roughs is prohibited 	<ul style="list-style-type: none"> • AMVAC sells two formulations of PCNB for turf under the Turfcide® brand. They are Turfcide® 400 flowable turf fungicide – and Turfcide® 10G, a 10 percent granular turf fungicide. • Turfcide® products are labeled for control of pink snow mold and gray snow molds, which include gray snow mold and speckled snow mold – and also brown patch, dollar spot and leaf spots. • Among the application sites EPA approved for continued use of PCNB are golf course tees, greens and fairways. Use on roughs is prohibited. • Turfcide® delivers excellent control of snow molds, is cost-effective and versatile. It may be applied alone – or Turfcide® 400 may be tank-mixed with compatible products for enhanced snow mold control. • Turfcide® is a Group 14 contact fungicide with multi-site mode of action – making it less prone to resistance development. • In the 50 years that PCNB has been used on golf courses, there has been no evidence of resistance development by pink and gray snow molds. • For best results, use Turfcide® 400 or Turfcide® 10G as a

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| <ul style="list-style-type: none"> • Turfcide® delivers excellent control of snow molds, is cost-effective and versatile. • Turfcide® may be applied alone – or Turfcide® 400 may be tank-mixed with compatible products • Turfcide® is <ul style="list-style-type: none"> • Group 14 contact fungicide • Multi-site mode of action – less prone to resistance development • Since PCNB approval 50 years ago – no evidence of resistance development by pink and gray snow molds • Use Turfcide® 400 or Turfcide® 10G as a preventive application before diseases appear • Make an application: <ul style="list-style-type: none"> • Immediately prior to first snowfall, or • when temperatures remain below 60 degrees F, and extended wet conditions are expected • In absence of snow cover, supplemental applications can be applied at 4 to 6 week intervals to maintain control when disease pressure is severe • Application rate for Turfcide® 400 and Turfcide® 10G varies depending on the disease and turf type | <p>preventive application before diseases appear.</p> <ul style="list-style-type: none"> • Apply immediately prior to first snowfall or when temperatures remain below 60 degrees Fahrenheit, and extended wet conditions are expected. • In the absence of snow cover, supplemental applications can be applied at 4 to 6 week intervals to maintain control when disease pressure is severe. • The application rate for Turfcide® 400 and Turfcide® 10G varies depending on the disease and turf type. • Each application of Turfcide® 400 or Turfcide® 10G must be followed by one-quarter (¼) inch of irrigation water or rainfall on the day of application to move the material down to the soil/thatch layer. • Including Turfcide®, with active ingredient PCNB, in snow mold control programs is a valuable resistance management tool for golf course superintendents. |
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<ul style="list-style-type: none"> • Each application of Turfcide® 400 or Turfcide® 10G must be followed by one-quarter (¼) inch of irrigation water or rainfall on the day of application to move the material down to the soil/thatch layer • Use of Turfcide® in snow mold control programs is a valuable resistance management tool 	
Slide 32: Quiz	Voice Over
Quiz	We hope you have found the information on Turfcide® 400 and Turfcide® 10G turf fungicides useful and beneficial. It's now time to test your knowledge.
Slide 33: Quiz Questions	
<p>Q1: AMVAC sells two formulations of the active ingredient _____ for turf under the Turfcide® brand.</p> <ol style="list-style-type: none"> Propiconazole PCNB Chlorothalonil Triticonazole <p>Q2: Turfcide® products are labeled for control of _____. (Mark all that apply)</p> <ol style="list-style-type: none"> Pink snow mold Gray snow mold Speckled snow mold Nematodes Brown patch Dollar spot Leaf spots <p>Q3: Which of the following Turfcide® turf fungicides can be tank mixed with compatible products for broad-spectrum disease control?</p> <ol style="list-style-type: none"> Turfcide 10G Turfcide 400 Both of the above <p>Q4: Turfcide® is a Group 14 contact fungicide with a _____ mode of action – making it less prone to resistance development.</p> <ol style="list-style-type: none"> Single site Multi-site <p>Q5: Each application of Turfcide® 10G or Turfcide® 400 must be followed by _____.</p> <ol style="list-style-type: none"> A one-eighth inch of irrigation water or rainfall on day of application One-quarter inch of irrigation water or rainfall on day of application 	



c. Nothing – not need to water after application

Q6: The application rate for Turfcide® 400 and Turfcide® 10G depend on _____ (Mark all that apply).

- a. Disease
- b. Turf type
- c. Temperature

Q7: Turfcide® fungicides are labeled for use on the following golf course areas (Mark all that apply).

- a. Tees
- b. Greens
- d. Fairways
- c. Roughs

Q8: (True or False) The Turfcide® 10G and Turfcide® 400 labels do not allow application of these products using hand-held equipment.

- a. True
- b. False

Q9: True or false) In the 50 years that PCNB has been used on golf courses, there has been no evidence of resistance development by pink and gray snow molds.

- a. True
- b. False

Q10: The optimum time for making an application of Turfcide® turf fungicides for snow mold control is (Mark all that apply).

- a. Immediately prior to first snowfall or when temperatures remain below 60 degrees F and extended wet conditions are expected
- b. As a rescue after diseases have appeared

Slide 34: Thank You

Voice Over (Voiced by Ron Johnson)

Thank You

Thanks for taking the time to learn about Turfcide® 400 and Turfcide® 10G turf fungicides from AMVAC. Always read and follow label directions. Always read and follow label directions.

Slide 35: Legal Disclaimers

No Voiceover

®Turfcide is a registered trademark of AMVAC Chemical Corporation.

Turfcide is not registered for sale or use in all states. Contact your state pesticide regulatory agency to determine if a product is registered for sale or use in your state.

Banner MAXX, Daconil Ultrex, Instrata and Concert are registered trademarks of a Syngenta Group Company.

Interface is a registered trademark of Bayer GmbH.

Triton is a registered trademark of Bayer.

Trinity is a trademark, and Insignia is a registered trademark, of BASF.

Proposed Administrative Consent Agreement Background Summary

Subject: Jose Sanchez
Servicios Sanchez, Inc.
257 Chelsea Street
East Boston, MA 02128

Date of Incident(s): September 21, 2013

Background Narrative: On October 2, 2013, the BPC received a call from a tenant at 56 Emery Street, Apartment B, in Sanford. The tenant's apartment was the upstairs rental unit of a two unit apartment house. The building had a bed bug infestation. The tenant said the building owner, Dennis Murphy, hired Servicios Sanchez, Inc. to treat the two apartments. The tenant prepared her apartment as directed on a form letter from Servicios Sanchez, including putting her family's clothing, toiletries, toys etc. into plastic bags the company was to provide. There were further instructions on the form letter to not close the plastic bags.

The tenant prepared her apartment as directed and on September 21, 2013, she and her children left the apartment just prior to the application. When the tenant and her family returned later in the day, she found puddles on the bathroom and living room floors. The items she placed in plastic bags; cloths, toiletries and food had residues on them. The tenant called the Board because she did not think the application was done right and the applicators may not have been licensed.

On October 11, 2013, a Board inspector met with the tenant and collected the following samples:

- Liquid from the bathroom heat register the tenant placed in a jar on 9/23/13
- Wipe sample from lower kitchen cabinet
- Wipe sample from bathroom heat register
- Wipe sample from inside clothing bags

A Board inspector later phoned, Murphy. Murphy said he hired Jose Sanchez Sr. and Jose Sanchez Jr. to make the pesticide application. Jose Sanchez then provided information about the application to Board staff. Later, a lawyer involved in the process for Murphy/Sanchez, provided information about the pesticide applied that was inconsistent with Sanchez's earlier statements. Lab results for all samples collected were positive for several insecticides including malathion.

In early October of 2013, Murphy sold the two-unit apartment building to Paula Hamilton who also moved into Apartment A, on the first floor. At the time of the sale, Murphy did not disclose information about the infestation or treatments to Hamilton. Hamilton later learned about the infestation and pesticide applications from the tenant in Apartment B. Hamilton called the Board on December 16, 2013, and asked that her unit be tested for pesticide residues. A wipe sample was taken and lab results were positive for the same insecticides found in Apartment B, including malathion.

Summary of Violation(s):

- 22 M.R.S.A. § 1471- D(1)(A): That commercial pesticide applications may only be conducted by certified commercial applicators.
- CMR 01-026 Chapter 31 Section 1(A)III: Any commercial applicator must be either be licensed or supervised by a licensed commercial applicator.
- CMR 01-026 Chapter 20 Section 1(B): The use of registered pesticides for other than registered uses...
- 7 U.S.C. § 136j (a)(2)(G): To use any registered pesticide in a manner inconsistent with its labeling.
- 7 M.R.S.A. § 606 (2)(B): Use or cause to be used any pesticide in a manner inconsistent with its labeling....
- 22 M.R.S. § 1471-D(8)(F): Has made a pesticide recommendation, use or application, or has supervised such use or application, inconsistent with the labelling....
- 22 M.R.S. § 1471-D (8)(C): Used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment.

Rationale for Settlement: The individuals in this case made an unlicensed commercial pesticide application in a careless way, with the potential to impact the occupants of the two-unit building. Malathion is not registered for indoor use.

Attachments: Proposed Consent Agreement

**STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL**

Jose Sanchez)	ADMINISTRATIVE CONSENT AGREEMENT
Servicios Sanchez, Inc.)	AND
257 Chelsea Street)	FINDINGS OF FACT
East Boston, MA 02108)	

This Agreement, by and between Servicios Sanchez, Inc. (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board"), is entered into pursuant to 22 M.R.S. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Company is in the business of applying pesticides including indoor applications to control bed bugs.
2. That on October 2, 2013, the Board received a call from a tenant at 56 Emery Street, Apartment B, in Sanford. The tenant said that the landlord, Dennis Murphy contracted with Jose Sanchez (Servicios Sanchez, Inc.) and a bed bug pesticide application was made to her apartment and the vacant Apartment A downstairs on September 21, 2013.
3. That the tenant said that she and her four children vacated the apartment so the application could be made. When they returned, there were puddles in the bathroom and kitchen. The tenant collected a sample from the puddle in the bathroom. She further stated their clothes, toiletries, and food which were in contractor bags, had pesticide residue on them when she reached into the bags to get them. She did not think the application was done correctly and that the applicators may not have been licensed.
4. That a third party reported to the tenant that they saw two trucks and two applicators at the apartment building carrying canisters on the date of the application.
5. That the tenant stated that she asked both the applicator and the landlord for information on the pesticides that were applied. The tenant stated that neither provided that information.
6. That on October 3, 2013, Board staff phoned Jose Sanchez Jr. Sanchez said he was on the road at the time of the call and that he applied Hot Shot in liquid form mixed with water and applied with backpack sprayers. He agreed to fax the paper work for the job within the next several days.
7. That on Friday, October 4, 2013, Attorney Cynthia Snow, counsel for Murphy, emailed Assistant Attorney General Mark Randlett an attachment of an MSDS for Cyonara 9.7, an insecticide applied by the Company as described in paragraph two. The body of the email message stated in part that this exterminator does all of Murphy's extermination work including work in Massachusetts.
8. That on October 8, 2013, Board staff called Attorney Snow about this case. Attorney Snow said she had all the applicator's paper work for the application described in paragraph two including notices and she agreed to email them to the Board within the next several days. She agreed to contact Sanchez and arrange for him to meet with a Board inspector at the 56 Emery Street apartment on Friday, October 11, 2013.
9. That during the phone call described in paragraph eight, Attorney Snow said that her client, Dennis Murphy, sold the apartment building at 56 Emery Street and the closing date of the sale was Friday, October 4, 2013. For this reason, according to Attorney Snow, Murphy no longer had any authority to be on that property.

10. That within minutes after the phone call to Attorney Snow described in paragraph eight, Murphy called Board staff and said that the 56 Emery Street case is closed, he provided all the information the Board needed through his lawyer and that neither he nor Sanchez were coming to Maine to discuss the case.
11. That Attorney Snow never sent the Board the pesticide application records and related documentation that she had in her possession for the pesticide application described in paragraph two.
12. That in response to the information the Board received in paragraphs two through four, a Board inspector conducted a follow up inspection with the Apartment B tenant on October 11, 2013.
13. That during the inspection described in paragraph twelve the Board inspector collected the following samples from Apartment B at 56 Emery Street in Sanford:
 - 131011BCB01A- Liquid sample taken from bathroom heater register
 - 131011BCB01B- Jar used to collect sample 131011BCB01A
 - 131011BCB01C- Wipe sample from lower kitchen cabinet
 - 131011BCB01D- Wipe sample from bathroom heat register
 - 131011BCB01E- Wipe sample taken from inside clothing bags
 - 131011BCB01F- Photographs of treated areas inside apartment
14. That on October 16, 2013, samples 131011BCB01A, 131011BCB01C, 131011BCB01D and 131011BCB01E were sent to a lab for analyses.
15. That laboratory analysis of the samples described in paragraph fourteen indicate residues were present of malathion with a detection range of 17-500 ug/sample, and Lambda cyhalothrin 2.1- 52 ug/wipe. Sample 131011BCB01D was also positive for cis- Permethrin at 0.34 ug/wipe and trans-Permethrin at 0.79 ug/wipe.
16. That on December 16, 2013, Paula Hamilton, the new owner of the apartment building at 56 Emery Street called the Board. Hamilton said that she purchased the building in early October of 2013 and moved in to the downstairs apartment in late October of the same year. The prior owner did not disclose to her that there was a bed bug problem and an exterminator made a pesticide application. Based on what her tenant in the upstairs apartment told her (same tenant that previous owner had), she was concerned about pesticide residues in her apartment. The new owner said her cat had been vomiting.
17. That based on the call described in paragraph sixteen, a Board inspector completed an inspection with Paula Hamilton at 56 Emery Street, Apartment A on January 24, 2014.
18. That during the inspection described in paragraph seventeen, the inspector collected a wipe sample (# 140124EPM01A) in the living room of Apartment A from the baseboard heating unit and wall area and where the couch from the previous tenant had been located.
19. That the sample described in paragraph eighteen was sent to a lab for analysis. The results were positive for malathion 930 ug/wipe, Lambda cyhalothrin 6.5 ug/wipe, cis- Permethrin 6.9 ug/wipe, trans-Permethrin at 12 ug/wipe and Cyhalothrin, total 11 ug/wipe.
20. That any person making a pesticide application in Maine that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
21. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) as any application of any pesticide under contract or for which compensation is received or any application of a pesticide to a property open to use by the public.

22. That the pesticide applications made to 56 Emery Street, Apartments A and B described in paragraph two above constitute custom applications under 22 M.R.S. § 1471-C(5-A) and, therefore, a commercial applicator's license was required for the application.
23. That no one from the Company had a Maine commercial pesticide applicator's license at the time of the pesticide application described in paragraph two.
24. That the facts described in paragraphs one through twenty-three, show that the Company applied pesticides to Apartments A and B at 56 Emery Street in Sanford, Maine, without a Maine commercial applicator's license, in violation of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
25. That CMR 01-026 Chapter 20 Section 1(B) prohibits the use of registered pesticides for other than registered uses and 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F) prohibit the use of a pesticide inconsistent with its label.
26. That of the 26 pesticide products containing malathion registered in Maine as of 2013 on the National Pesticide Retrieval System (Purdue University, 2014), none have domestic dwellings (indoor), apartment buildings (indoor), and cabins (indoor) or homes (indoor) listed as treatment sites on their labels.
27. That the facts described in paragraphs one through twenty-six show that the Company applied a pesticide containing malathion inside a home in violation of CMR 01-026 Chapter 20 Section 1(B), 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F).
28. That the WARNING section of the Cyonara 9.7 insecticide label states in part, "Avoid contact with skin, eyes or clothing".
29. That 22 M.R.S. § 1471-D (8)(C) establishes that it is a violation for an individual to have used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment.
30. That instructions regarding the pending pesticide application described in paragraph two provided to the tenant in Apartment B by Murphy, stated in part, "Please do remove your clear [sic] clothes from closets and draws, toiletries and other personal items, like toys, and place them in plastic bags provided by the owner. Please do not close the plastic bags".
31. That a wipe sample taken from inside a clothes bags as described in paragraph thirteen tested positive for Lambda cyhalothrin , the active ingredient in Cyonara 9.7 as described in paragraph fifteen.
32. That the facts described in paragraphs twenty-eight through thirty-one show that Cyonara 9.7 was applied in a careless, negligent or faulty manner such as to result in contact by the pesticide with clothing belonging to the tenant of Apartment B in violation of 22 M.R.S. § 1471-D (8)(C).
33. That the Board has regulatory authority over the activities described herein.
34. That the Company expressly waives:
 - a. Notice of or opportunity for hearing;
 - b. Any and all further procedural steps before the Board; and
 - c. The making of any further findings of fact before the Board.

35. That this Agreement shall not become effective unless and until the Board accepts it.

36. That, in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violations referred to in paragraphs twenty-four, twenty-seven and thirty-two the Company agrees to pay to the State of Maine the sum of \$3,000. (Please make checks payable to Treasurer, State of Maine.)

IN WITNESS WHEREOF, the parties have executed this Agreement of four pages.

SERVICIOS SANCHEZ, INC.

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General

OCT 20 2014

Statement on Behalf of Servicios Sanchez, Inc.

TO: Maine Board of Pesticides Control

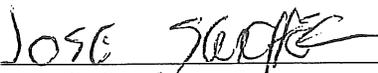
FR: Servicios Sanchez, Inc by Jose S. Sanchez, President

Dear Members of the Board ,

This statement is submitted in connection with the Administrative Consent Agreement of September 23, 2014, to provide assurances that Servicios Sanchez, Inc. is no longer engaged in the application of pesticides. In addition, Servicios Sanchez, Inc. does not operate in the state of Maine and has not intention to do so in the future.

Presently Servicios Sanchez is involved in general janitorial cleaning services of residences and commercial establishments, including vacuuming and shampooing rugs and carpets.

Sincerely,



Jose S. Sanchez

10/14/14

Proposed Administrative Consent Agreement Background Summary

Subject: Erik Hanson
Mosquito Squad of Southern Maine
535 Central Road
Rye, NH 06032

Date of Incident(s): July 21, 2014

Background Narrative: On July 21, 2014, the Board received a call from Falmouth resident. The resident alleged that a Mosquito Squad of Maine applicator came over the property line of their customer and made a pesticide application to some of her property. The caller was home at the time of the application and observed this. A Board inspector collected a composite foliage sample from 5 to 20 feet on to the caller's property the same day she called the Board. The inspector met with the applicator on July 23, 2014, and collected labels for the three insecticides he applied as a tank mix with a powered-backpack sprayer. Lab results were positive for the three active ingredients in the pesticide tank mix applied.

Summary of Violation(s):

- CMR 01-026 Chapter 20 Section 6(D)2 specifies that no person may apply a pesticide to a property of another unless prior consent for the pesticide application has been obtained from the owner, manager or legal occupant of that property.

Rationale for Settlement: The staff compared similar cases settled by the Board in the past.

Attachments: Proposed Consent Agreement

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

In the Matter of:)	
Erik Hanson)	
Mosquito Squad of Southern Maine)	ADMINISTRATIVE CONSENT AGREEMENT
535 Central Road)	AND
Rye, NH 06032)	FINDINGS OF FACT

This Agreement by and between Mosquito Squad of Southern Maine (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3,1998.

The parties to this Agreement agree as follows:

1. That the Company provides commercial pesticide application services for compensation.
2. That the Company is a licensed spray contracting firm holding license number SCF 46730 issued by the Board pursuant to 22 M.R.S. § 1471-D (1)(2).
3. That Benjamin Gerrard (COA 47704) is a licensed commercial applicator with the Company.
4. That on July 21, 2014, the Board received a call from a Falmouth resident who resides at 305 Prime Farm Road. The caller said that she saw an applicator from the Company apply pesticides approximately twenty feet beyond the property line of their customer, Scott Bragdon at 404 Prime Farm Road, and spray part of her property. There is a corner pipe making the property line.
5. That on the same day the call was received, an inspector met with the caller and interviewed her. Based on the interview and on-site observations, the inspector collected a composite foliage sample five to twenty feet onto her property (sample number 140721EPM03A).
6. That on July 23, 2014, a Board inspector conducted a follow up inspection with Gerrard. Gerrard acknowledged he was in the area the caller said she saw him in on her property, but said he did not make an application there. Gerrard said on July 21, 2014, he did make a mosquito application to Bragdon's property using a powered backpack sprayer to apply a tank mix of Cy-Kick, Bifenthrin I/T and Astro insecticides.
7. That during the inspection described in paragraph six, the inspector collected the labeling of the three pesticides in the tank mix. The labeling listed the following as active ingredients in those pesticides: cyfluthrin, bifenthrin, and permethrin.
8. That the sample collected on the caller's property described in paragraph five was sent to a lab for analysis. The lab result for that sample was positive for bifenthrin at 0.39 ppm, cyfluthrin at 0.51 ppm, cis-permethrin at 0.55ppm, and trans-permenthrin at 0.68 ppm.

9. That CMR 01-026 Chapter 20 Section 6(B) specifies that no person may apply a pesticide to a property of another unless prior consent for the pesticide application has been obtained from the owner, manager or legal occupant of that property.
10. That the Company did not have the consent of the residents at 305 Prime Farm Road in Falmouth to make an insecticide application to their property.
11. That the circumstances described in paragraphs one through ten constitute a violation of CMR 01-026 Chapter 20 Section 6(B).
12. That the Board has regulatory authority over the activities described herein.
13. That the Company expressly waives:
 - a. Notice of or opportunity for hearing;
 - b. Any and all further procedural steps before the Board; and
 - c. The making of any further findings of fact before the Board.
14. That this Agreement shall not become effective unless and until the Board accepts it.
15. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violation referred to in paragraph eleven, the Company agrees to pay a penalty to the State of Maine in the sum of \$400. (Please make checks payable to Treasurer, State of Maine).

IN WITNESS WHEREOF, the parties have executed this Agreement of two pages.

MOSQUITO SQUAD OF SOUTHERN MAINE

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General

Proposed Administrative Consent Agreement Background Summary

Subject: Petro's Ace Hardware
965 Minot Avenue
Auburn, Maine 04210

Date of Incident(s): 2011, 2012, 2013 and 2014

Background Narrative: Maine statutes require any company that distributes general use pesticides in Maine to be licensed as a General Use Pesticide Dealer. Petro's Ace Hardware distributes general use pesticides at their Auburn store. Through a marketplace inspection it was determined the store was selling pesticides without a license.

Summary of Violation(s): 22 M.R.S.A. § 1471-W (1) License required. Unless exempted under Section 5, no person may distribute general use pesticides without a license.

Rationale for Settlement: A principle tenet of state enforcement philosophy is to ensure there is no economic benefit to non-compliance. Current staff policy to resolve General Use Pesticide Dealer license violations is to establish a base penalty of \$100 plus \$20 for each year the company operated without a license. These are also a subsequent violation within a four year period.

Attachments: Proposed Administrative Consent Agreement

**STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION, AND FORESTRY
BOARD OF PESTICIDES CONTROL**

In the Matter of:)	
John Petrocelli)	ADMISTRATIVE CONSENT AGREEMENT
Petro's Ace Hardware)	AND
965 Minot Ave)	FINDINGS OF FACT
Auburn, Maine 04210)	

This Agreement, by and between Petro's Ace Hardware (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board"), is entered into pursuant to 22 M.R.S. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Company distributes general use pesticides in Maine.
2. That the distribution of general use pesticides in Maine requires a general use pesticide dealer's license pursuant 22 M.R.S. § 1471-W.
3. That the Company held a Maine general use pesticide dealer's license (GPD 43827) from May 16, 2007, through December 31, 2007 when it expired.
4. That on April 21, 2010, a Board inspector conducted a routine marketplace inspection at the Company.
5. That from the inspection in paragraph four, it was determined that the Company did not possess a valid Maine general use pesticide dealer's license during calendar years 2008, 2009, and part of 2010, and that the Company distributed pesticides in Maine during this period.
6. That the circumstances described in paragraphs one through five constitute three violations of 22 M.R.S. § 1471-W.
7. That the Company entered into a consent agreement on December 10, 2010, and paid a \$160 dollar penalty for the violations summarized in paragraph six.
8. That on May 23, 2013, a Board inspector conducted another routine marketplace inspection at the Company.
9. That from the inspection in paragraph eight, it was determined that the Company did not possess a valid Maine general use pesticide dealer's license during calendar years 2011, 2012, and 2013 and that the Company distributed pesticides in Maine during this period.
10. That by reviewing the Board's licensing database, it was also determined that the Company is not licensed to distribute general use pesticides in 2014.
11. That the circumstances described in paragraphs one, two, and eight through ten constitute multiple violations of 22 M.R.S. § 1471-W.

12. That the Company entered into an Administrative Consent Agreement with the Board as summarized in paragraph seven. Consequently, the violations described in paragraph eleven are subsequent violations pursuant to 7 M.R.S.A. § 616-A (2)(B).

13. That the Board has regulatory authority over the activities described herein.

14. That the Company expressly waives:

- A. Notice of or opportunity for hearing;
- B. Any and all further procedural steps before the Board; and
- C. The making of any further findings of fact before the Board.

15. That this Agreement shall not become effective unless and until the Board accepts it.

That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violations referred to in paragraph eleven, the Company agrees to pay a penalty to the State of Maine in the sum of \$200.00. (Please make checks payable to Treasurer, State of Maine).

IN WITNESS WHEREOF, the parties have executed this Agreement of two pages.

PETRO'S ACE HARDWARE

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB
COMMISSIONER

HENRY JENNINGS
DIRECTOR

Memorandum

Date: November 26, 2014
To: Board
From: Henry Jennings
Subject: Overview of Federal Discussions on State Pollinator Protection Plans

Pollinator decline has emerged as a growing concern in recent years throughout the country and around the globe. As a result, federal agencies have focused significant resources toward researching the causes of pollinator decline and to developing policies designed to improve pollinator health and sustainability. On June 20, 2014, the President issued a memorandum directing numerous federal agencies to coordinate and focus additional resources on improving the health of pollinators and their habitat. As one component of the developing federal strategy, the Environmental Protection Agency (EPA) has been promoting the concept of state-specific “Managed Pollinator Protection Plans.” A draft guidance document will be discussed by the EPA and the State FIFRA Issues Research and Evaluation Group (SFIREG) on December 8 and 9, 2014. The draft guidance document will be released to the public following that meeting.

Even though the guidance is not yet available for public consumption, a number of the principle components have been discussed at public meetings—including last week’s Pollinator Health and Safety Conference in South Portland—which allows states to publicly discuss those components in general terms. The following bullets represent my understanding of the proposed state-specific pollinator protection plan components:

- A robust public participation process that includes all stakeholders, especially beekeepers and pesticide applicators.
- A mechanism for beekeepers and pesticide applicators to effectively communicate about the location of bee hives and the timing and location of pesticide applications.
- A recognition that effective communication and protection of pollinators is shared a responsibility between pesticide applicators and beekeepers.
- A recognition on the part of EPA that many of the most important considerations around pollinator protection are regional in nature and that allowing states ample flexibility to address pollinator health will likely be more effective and best serve the public interest.

A handful of states have already developed pollinator protection plans so there are existing models we can use for guidance. EPA may eventually limit certain pesticide uses to states with pollinator protection plans via label statements, and it is suggesting that plans ideally be in place by 2015. Consequently, the staff sees potential benefits to all stakeholders in considering the concept sooner rather than later.

Excerpt from CMR 01-026, Chapter 10, Section 2 (P):

P. "Custom application" means an application of a pesticide:

1. Under contract or for which compensation is received;
 - a. For the purposes of this definition, "under contract" includes: verbal or written agreements to provide services which include the use of any pesticide; i.e., private or commercial rental agreements, pest control service agreements, landscape maintenance agreements, etc.
 - b. For purposes of this definition, compensation is deemed to have been received for a pesticide application where any form of remuneration has been or will be exchanged, including payment of cash, rent, or other financial consideration, or by the exchange of goods and/or services. This also includes any agreements where crops grown on rented land will be sold to the landowner or are otherwise grown for the benefit of the land owner.
2. To a property open to use by the public;
 - a. For purposes of this definition, property is deemed to be open to use by the public where its owner, lessee or other lawful occupant operates, maintains or holds the property open or allows access for routine use by members of the public. Persons are considered to be members of the public even though they may pay a fee or other compensation in order to make use of the property or may visit the property for a commercial purpose.
 - b. Property open to use by the public includes but is not limited to: shopping centers, office and store space routinely open to the public (i.e. rest rooms, self-service areas and display aisles), common areas of apartment buildings, occupied apartments, public pools and water parks, schools and other institutional buildings, public roads, organized recreational facilities, golf courses, campgrounds, parks, parking lots, ornamental and turf areas around condominiums, apartment buildings, stores malls and retail areas of greenhouses and nurseries if the public is allowed access before the pesticide restricted-entry or re-entry interval elapses.
 - c. Examples of property not open to use by the public include without limitation: farms, forest lands, and private residential or commercial property which is not routinely operated or maintained for use by the public or otherwise held open to public use.
 - d. Notwithstanding this definition, property shall not be deemed to be open for use by the public in the following cases:
 - i. where the property is devoted primarily to agricultural, forest, ornamental tree or plant production, but this exception shall not apply to campgrounds, leased inholdings or roads within such property which are open for use by the public;
 - ii. where the public has not been permitted upon the property at any time within seven days of when the property received a pesticide application;
 - iii. forestry rights of way where the property has been closed during the time of spraying or during the label restricted entry interval or re-entry period, whichever is greater.