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MEMORANDUM

Date: August 28, 2013
To: Board Members
From: Henry Jennings
Subject: Policy on Exclusion Areas Relative to Chapter 20, Section 6 Rulemaking Amendments

Background

The Board recently completed provisional adoption of a series of rulemaking amendments covering public-health-related, mosquito-control efforts that may be conducted by governmental agencies. During the course of that effort, the Board determined that it was preferable to identify “exclusion areas”—as they relate to potential aerial applications to control adult mosquitoes—via Board policy, as opposed to codifying them in rule. Using a Board policy allows the Board more flexibility to adjust to concerns as they arise. Adjusting requirements in rule takes several months to accomplish and costs more than a thousand dollars (not including staff time).

The staff reviewed the 2012 emergency rule, Massachusetts’s policy on exclusion areas, and comments received during the rulemaking process as a basis for proposing a Board policy. During the 2012 emergency rulemaking effort for Chapter 20, the Board identified certified organic farms and livestock operations as areas which should be excluded from aerial pesticide applications conducted for public health purposes. The 2012 Operational Response Plan to Reduce the Risk of Mosquito-borne Disease in Massachusetts specifies four types of “no-spray zones”:

1. Certified organic farms
2. Priority habitats for spray-sensitive, state-listed rare species
3. Surface-water-supply resource areas
4. Commercial fish hatcheries/aquaculture

In Maine, we have also heard concerns voiced about conventional agriculture, beehives, and lobsters. In addition, direct and intentional applications over surface water are prohibited under state law and applications which may result in aquatic residues must be covered by a waste discharge license. Information from Massachusetts indicates that state-sponsored, public-health-related, mosquito-control programs do not present significant threats to beehives or agricultural sites. Moreover, since excluding even a point from an aerial spray project results in a minimum of a 23-acre exclusion (due to the commonly used 500-foot buffers), buffering beehives would present practical challenges and result in a significant reduction in mosquito-control efficacy. Marine waters would also be appropriately buffered. This factor, combined with the extremely low application rates and short persistence of the products commonly used in state-sponsored programs, suggests that any potential risks to lobsters would be extremely low.

Board Policy

Based on the considerations described above, the Board adopts the following policy. Government entities conducting aerial, public-health-related, vector-control programs should exclude the following areas from such control programs as long as usable information has been provided to the government entity with sufficient lead time (a minimum of two weeks recommended) to allow for digital mapping of such areas:

1. Certified organic farms, and organic farms for which an application for certification is pending.
Digital maps of the crop or livestock areas must be provided to the Department in advance of the control program, in a file type that is compatible with Department software. When such farms are located within priority vector-control areas, as determined by the Maine CDC and/or the Department, the governmental entity reserves the right to determine whether exclusion of the farmland would unreasonably reduce the efficacy of the control program, creating a risk to human life.
2. Other farmland for which the farm operator demonstrates that the potential for pesticide residues presents significant economic risks.
Digital maps of the crop or livestock areas must be provided to the Department in advance of the control program, in a file type that is compatible with Department software. When such farms are located within priority vector-control areas, as determined by the Maine CDC and/or the Department, the governmental entity reserves the right to determine whether exclusion of the farmland would unreasonably reduce the efficacy of the control program, creating a risk to human life.
3. Great ponds, rivers, marine waters, and public water supplies derived from surface waters, as determined by the Department.
4. Documented fish hatcheries and aquaculture sites.
5. Endangered species habitat, as described by county bulletins published by the US Environmental Protection Agency and for which the proposed application presents significant threats.