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

May 24, 2013

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

MINUTES

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

1. Introductions of Board and Staff

- The Board, Assistant Attorney General Randlett and staff introduced themselves.
- Staff present: Schlein, Jennings, Tomlinson, Hicks, Fish, Connors, Bills

2. Minutes of the March 1 and April 12, 2013, Board Meetings

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

- Jemison suggested that in Item 2, page 3, the word “toleration” should be replaced with “tolerances.”
 - **Flewelling/Morrill: Moved and seconded that the March minutes be accepted as amended, and the April minutes accepted as written**
 - **In favor: Unanimous**

3. Gowan Company, Inc., Request for FIFRA Section 24(c) Registration for Malathion 8 Flowable on Cane Berries

Gowan Company, Inc., is requesting a Special Local Need [24(c)] Application to increase the number of allowable applications of Malathion 8 Flowable agricultural insecticide to control spotted wing drosophila (SWD) on cane berries. This request is supported by University of Maine Blueberry Extension Specialist David Handley. Research indicates that Gowan Malathion 8 Flowable is highly effective against the SWD and the extra application will be critical to controlling this invasive pest. In addition, Gowan Malathion 8 Flowable offers growers the advantage of very short preharvest and reentry intervals. Available data indicate that residues are expected to be below the established tolerance.

Presentation By: Mary Tomlinson
Pesticides Registrar/Water Quality Specialist

Action Needed: Approve or disapprove the request

- Tomlinson explained that the EPA has not given approval nor worked out the details for cane berries in time to include with the blueberry request. The difference is an increase in the number of applications rather than the rate.
- Eckert asked why the tolerance was decreased; Hicks said that she did not know.
- Granger questioned whether elderberries are covered; Fish said they are not considered cane berries, and Tomlinson agreed they would not be covered by this registration.
 - **Granger/Eckert: Moved and seconded to approve the request**
 - **In favor: Unanimous**

4. Adoption of the Proposed Amendments to Chapters 20, 22, and 51

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

On February 13, 2013, 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, and 51. A public hearing was held on March 1, 2013, at the AMHI Complex, Deering Building, in Augusta, and the written comment period closed at 5:00 PM on March 15, 2013. Four people spoke at the public hearing and 88 written comments were received by the close of the comment period. The Board reviewed the comments at its April 12, 2013, meeting and directed the staff to make some minor revisions. It will now determine whether to adopt the proposed amendments.

Presentation by: Henry Jennings
Director

Action Needed: Decision on whether to adopt the proposed amendments and their respective response to comments, basis statement, and statement of impact on small business

- Jennings said that the staff had gone through the rules as requested by the Board to determine which parts of the rules should/should not be exempted in a public health emergency. The only part of Chapter 51 that made sense to keep, since multiple forms of notice are already required, is the notice to the Board and Poison Control Center. If aerial spraying is done, it will be a very carefully conducted program; there are lots of reasons to be careful and a lot of standards built in, especially with the use of onboard GPS navigation, real-time weather, etc. Some of the sections of Chapter 22 are important in order for the public to be confident that standards are met. However, much of Chapter 22 was designed to prevent movement of the spray to residential areas, but in this circumstance, the goal is to focus the application on residential areas. Consequently, it doesn't make sense in this context to shut down the operation if people are in the spray area, so those standards were left as exemptions. The equipment and weather-related standards were removed from the list of exemptions.
- Hicks said she had reviewed the labels of products that might be used for aduaticiding. They all have language about agricultural areas and tolerances. If there is a situation requiring aerial spraying we will be looking at the labels carefully to determine which product is best used where.
- Jennings pointed out that the summary of comments and responses is the same for all three chapters; most comments were general in nature. Randlett reviewed them and did not see a problem with that.

- Jennings said that because there are notification elements in all the rules they are major substantive, which means they wouldn't go into effect until after legislative review is complete, probably in 2014; therefore we need to do both provisional adoption and emergency rulemaking at the same time.
- Randlett said that he had reviewed the documents and they looked fine; the basis statements are good.
- Jemison remarked that the basis statements did a good job of pointing out that the Board is not promoting spraying. Jennings pointed out that it was Eckert who requested that specific language making clear the Board's position be in the basis statements. Eckert said she'd like to reiterate that the Board hopes there never has to be any spraying.
- Jennings said the weather this spring is in our favor; not 80 degrees in March. Last year the virus was present in pools early in the year; they were spraying in July in Massachusetts. Hopefully we won't get into a situation where we need to spray this year. Information from the Maine Vector-borne Disease Working Group indicates that Maine has a higher percentage of vector mosquitoes than other areas of the country.
- Morrill questioned the wording of Chapter 20 Section C(3). Jennings explained that it was changed from "sensitive sites" to "exclusion areas" because people were confusing "sensitive sites" with "sensitive areas," a term used in other rules. Here we're talking about areas that are going to be mapped and not sprayed; this is different than a sensitive area that is mapped out to avoid drift. Morrill said it sounds like we're creating another policy for the exclusion areas. Jennings replied that the Board has to adopt a policy at some point of what should be excluded. In Massachusetts there are four types of exclusion areas: certified organic farms, surface water supplies, fish hatcheries/aquaculture, and potentially affected endangered species.
- Hicks said that all the products have aquatic warnings: do not apply over bodies of water, etc., except to target where adult mosquitoes are present in a public health emergency. They are also highly toxic to bees and say "Do not apply to blooming plants", etc., except to control adult mosquitoes in a public health emergency. All the labels have prohibition, except in the case of a public health emergency. EPA recognized that that needed to be on the label.
- Eckert asked whether the exclusion areas should be set now or later. Jennings replied that it needed to be done as soon as possible because people want a chance to review it, but that it shouldn't be put in rule because it takes too long to make changes to rules. He suggested that the staff come back with some ideas to discuss at the next meeting. Randlett noted that if there was a discussion about policy (as opposed to rule), there would be an opportunity for public comment about what should be excluded.
- Hicks said she would also have a label review summary ready for review/discussion at the next meeting.
 - **Eckert/Stevenson: Moved and seconded to adopt the rule amendment, the basis statement, the impact on small business, and the summary of comments and responses for Chapter 20 as written**
 - **In favor: Unanimous**
 - **Eckert/Stevenson: Moved and seconded to adopt the rule amendment, the basis statement, the impact on small business, and the summary of comments and responses for Chapter 22 as written**
 - **In favor: Unanimous**
 - **Eckert/Stevenson: Moved and seconded to adopt the rule amendment, the basis statement, the impact on small business, and the summary of comments and responses for Chapter 51 as written**
 - **In favor: Unanimous**

5. Consideration of a Consent Agreement with TruGreen Lawncare of Westbrook

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved an unauthorized pesticide application.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors summarized the case, explaining that the company acknowledged the allegations in the consent agreement. They had an explanation of how it came about, but they did not have authorization nor documentation that they should have had and they did not have a system in place to catch it. Part of the consent agreement was requiring documentation that the gap had been closed. The document they ended up with, after discussion with staff, is taken right out of the Board policy.
- Jemison said it was a little unclear whether someone from the company would be required to talk to someone or if they would just be using a “robo-call.” After some discussion, it was determined that the plan calls for the company to actually talk to someone and get authorization and that the robo-call is only to let the customer know exactly what day they will be there.
- Bohlen remarked that when these kinds of issues come before the Board, it is because someone had authorized services earlier; he appreciated that the consent agreement required the company to come up with a plan to deal with that.
- Flewelling noted that there seems to be a lot of confusion around lawn care and asked if some of it is because of subcontracting. Connors said this was a case of the customer having a contract with a company that subcontracted with The Turf Doctor; this customer was never a direct customer of The Turf Doctor. When The Turf Doctor was purchased by TruGreen they thought this person was a customer. Morrill pointed out that it is the responsibility of the applicator to verify that services were contracted for. He said the policy covers all bases and tells applicators what they need to do.
- Bohlen said the policy doesn’t have anything about the frequency of conversations. Stevenson and Morrill said contracts have to be renewed annually. Jennings said it has to be annual unless it there is a written contract with a specified end date.
- Stevenson noted that, in this case, it was not a hole in the policy, but a case of the policy not being followed at all. Jennings said that the old model in lawn care was that once a customer was signed up, they’re signed up for life, but customers weren’t always aware of that; and this policy was an attempt to clarify the terms of those agreements.
- Stevenson said that while fines are gratifying, requiring a plan is great; if they follow it, it will really make a positive difference. Bohlen agreed that the best outcome of an enforcement action is to see a policy change to reduce a recurrence.
 - **Eckert/Flewelling: Moved and seconded to accept the consent agreement**
 - **In favor: Unanimous**

6. Other Old or New Business

a. Legislative Update—H. Jennings

- Jennings gave a brief overview of legislation of interest:
 - LD 292 was voted out of committee as a Resolve directing the Department to prepare a plan for protecting the public from mosquito-borne diseases.
 - LD 718, the GMO bill, came out of committee ought-to-pass. The Board and staff spent some time discussing this bill.
 - LD 903 originally called for a \$15 increase in product registration fees, but that was reduced in committee to \$10. There was concern that some companies might stop registering some products because of the relatively small market in Maine. The bill guarantees \$135,000 to the Cooperative Extension, but it keeps it as a BPC fund and gives the Board latitude to assess whether the fee is providing enough for staff, department, and grants, and requires an annual assessment of the health of the fund.
 - LD 920—prohibiting spraying on abandoned railroad lines. The committee voted it out as ought-not-to-pass.
 - LD 961—split report out of committee, majority ought-not-to-pass.
 - Two bills were never submitted. The first, regarding certification of applicators who are also licensed as dealers applied to only 14 people; the staff made a determination to align the certification periods for these 14 and send them all letters. The second bill was about giving oral exams to commercial applicators whose native tongue was not English. Staff worked out a plan to work with English-as-a-second-language applicants who were having trouble passing exams.
 - LD 1430 was unopposed. It should pave the way for a general permit for pesticide applications.
 - LD 1531—trying to make it possible to use 25(b) products on medical marijuana, because they are exempt from federal registration. There was a long discussion about this. Dave Bell made the comment that he was very surprised at some of the comments made at the ACF Committee, and that there is a lot of education to be done.

b. GMO Memo—L. Hicks

- Hicks explained that she had written this memo for the ACF Committee to answer some questions they had asked her.

c. Dubois Contracting Variance—H. Jennings

- This was just a routine notice to the Board that this variance had again been processed by the staff.

d. Department of Transportation Variance—H. Jennings

- This was just a routine notice to the Board that this variance had again been processed by the staff.

e. Funding for Mosquito Monitoring—H. Jennings

- Jennings explained that in past years the Maine CDC had \$40,000 of federal grants for mosquito monitoring; this year they have \$20,000. The Commissioner is supportive of providing BPC funds to at least make up the \$20,000 they lost and possibly more in the future.

- Bohlen asked whether this would be an annual expense, stating that it is a public health responsibility to pay for monitoring, not a BPC responsibility. While he's okay with granting the money for next year, he said a long-term solution needs to be found. He would like to see a comprehensive plan, of which monitoring is a part. There was some discussion about mosquito monitoring and funding. Jennings stated that monitoring is also the first step to any credible IPM program, and the BPC is all about IPM.

f. Other?

- Jennings mentioned that a new inspector had been hired for the Downeast region; her name is Heidi Nelson and she lives in East Machias; she worked for the USDA for many years.

7. Schedule of Future Meetings

June 21, July 26, September 6, October 18, and December 6, 2013, are tentative Board meeting dates. The September 6 meeting is tentatively slated to include a planning session. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- No additional dates were added.

8. Adjourn

- **Eckert/Bohlen: Moved and seconded to adjourn at 11:39 AM**
- **In favor: unanimous**