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

August 8, 2014

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

AGENDA

8:30 AM

1. Introductions of Board and Staff
2. Public Hearing on Proposed Rule Amendments to Chapters 20, 22, 28, 31, 32, 33, and 41

The Board will hear testimony on the proposed amendments to the following seven rules:

- **Chapter 20 Special Provisions**—Add a requirement for applicators making outdoor treatments to residential properties to implement a system to positively identify application sites in a manner approved by the Board. This requirement is currently in policy.
- **Chapter 22 Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition**—Improve the effectiveness of the rule by eliminating the requirement of identifying sensitive areas for commercial applications conducted under categories 6A (rights-of-way vegetation management), 6B (industrial/commercial/municipal vegetation management) and 7E (biting fly & other arthropod vectors [ticks]). Applications conducted under category 6A and to sidewalks and trails under category 6B will require the applicator to implement a drift management plan.
- **Chapter 28 Notification Provisions for Outdoor Pesticide Applications**—Add to the list of categories that require posting: 6B (industrial/commercial/municipal vegetation management) except when making applications to sidewalks and trails, and 7E (biting fly & other arthropod vectors [ticks]). Require advance notice be published in a newspaper for applications conducted under 6A (rights-of-way vegetation management), and to sidewalks and trails under 6B (industrial/commercial/municipal vegetation management). This aligns with the proposed amendments to Chapter 22, eliminating the requirement for mapping sensitive areas, in lieu of posting or public notice.
- **Chapter 31 Certification and Licensing Provisions/Commercial Applicators**—Three amendments are proposed:
 1. Clarify that certain applications are exempt from commercial licensing requirements. These are currently in policy:
 - Adults applying repellents to children with the written consent of parents/guardians;
 - Persons installing antimicrobial metal hardware.

2. Exempt aerial applicators certified in other states from passing a written regulation exam and allow for issuance of reciprocal licensing when the staff determines that an urgent pest issue exists and when staff verbally reviews pertinent Maine laws with the applicator.
3. Shorten the time period a person must wait before re-taking an exam they have failed to 6 days.

- **Chapter 32 Certification and Licensing Provisions/Private Applicator**—Shorten the time period a person must wait before re-taking an exam they have failed to 6 days.
- **Chapter 33 Certification & Licensing Provisions/Private Applicators of General Use Pesticides (Agricultural Basic License)**—Shorten the time period a person must wait before re-taking an exam they have failed to 6 days.
- **Chapter 41 Special Restrictions on Pesticide Use**—Amend Section 3 to eliminate the restrictions on hexazinone relative to pesticide distributors and air-assisted application equipment.

3. Minutes of the June 27, 2014, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

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

The Board held a public hearing on proposed amendments to Chapters 20, 22, and 51 on March 1, 2013. The proposed amendments were intended to allow governmental entities to conduct public-health-related, mosquito-control programs in the event of an elevated mosquito-borne disease threat. The Board reviewed the comments on April 12, 2013, and provisionally adopted revised proposals on May 24, 2013. The Joint Standing Committee on Agriculture, Conservation and Forestry held public hearings and work sessions on the provisionally adopted rules on June 26, 2013 and January 14, 2014 and a work session on January 23, 2014. The Committee voted to recommend authorizing final adoption in a divided report on January 28, 2014, and three resolves became law on February 26, 2014. Since the resolves were not passed as emergency legislation, they did not become effective until August 1, 2014. The Board has 60 days from the effective dates of the resolves to finally adopt the rules.

Presentation By: Henry Jennings
Director

Action Needed: Final Adoption of the Rule, Basis Statement, Rulemaking Statement of Impact on Small Business, and Response to Comments for Chapters 20, 22, and 51

5. Consideration of a Board Policy Interpreting “Food Production” for the Purposes of Determining Applicability of Public Law 2011, Chapter 169

Public Law 2011, Chapter 169, “An Act To Require Certification of Private Applicators of General Use Pesticides,” requires anyone who grows and sells more than \$1,000 worth of edible plants annually to become certified if they use general-use pesticides in “food production.” A number of questions have arisen about what constitutes “food production” for the purposes of the

licensing requirement. At the June 27, 2014, meeting, the Board reviewed questions and discussed what it thought the legislative intent was. After reaching consensus, the Board directed the staff to draft an interim enforcement policy for review at a future meeting. The staff has prepared a draft policy for the Board's consideration.

Presentation By: Henry Jennings
Director

Action Needed: Approve/Revise Draft Policy

6. Interpretation of CMR 01-01A, Chapter 24, Section 7(D)

Chapter 24, Section 7(D) requires that, "Any outdoor pesticide display area must be securely fenced and must have a roof to protect the material from the elements." When the original rule was adopted, the Board wanted to make sure that pesticides stored at distributors were protected from vandalism and the weather. Some questions have arisen about how this requirement should be applied in certain circumstances.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Provide Guidance to the Compliance Staff

7. Interpretation of CMR 01-026, Chapter 31, Section 1(E)(IV)

Section 1(E) of Chapter 31 currently lists four "exemptions," presumably to the requirements for a commercial applicator's license. The fourth exemption reads, "Certified or licensed Wastewater or Drinking Water Operators." A question has arisen about the intended scope of this exemption.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed: Provide Guidance to the Staff

8. Other Old or New Business

- a. ERAC sampling update—Mary Tomlinson
- b. Variance permit to Urban Tree Service for control of poison ivy in York, Maine—H. Jennings
- c. Variance permit to The Lawn Dawg for control of invasive plants in South Portland, Maine—H. Jennings

9. Schedule of Future Meetings

September 12, October 24, and December 5, 2014, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Action Needed: Adjustments and/or Additional Dates?

10. 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 Bills, at the Board's office or anne.bills@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.