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

HENRY JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL
September 7, 2012

Important—please note meeting location and time:

AMHI Complex, 90 Blossom Lane, Deering Building, Room 233, Augusta, Maine

AGENDA

8:30 AM

1. Introductions of Board and Staff
2. Public Hearing on the Proposed Repeal of Chapter 21 and Amendments to Chapters 10, 27, and 50

The Board will hear testimony on the following proposed chapter repeal and amendments to three rules:

- **Chapter 10—Definitions and Terms:** The amendments to Chapter 10 would incorporate interpretive policies into the definitions of Commercial Applicator, Custom Application, Distribute and Spray Contracting Firm. A definition of Government Employee would also be added to clarify the intent of Title 22, 1471-D(9).

Explanation: Over time, the Board has found it necessary to clarify the intent of some of its rules via policy. However, since policies are not enforceable, the Board has decided to incorporate a number of policy interpretations into rule by amending certain definitions in Chapter 10.

- **Chapter 21—Pesticide Container Disposal and Storage:** The Maine Legislature recently repealed the statutory mandate for the container deposit system by enacting Public Law 2011, Chapter 510. The Board proposes to implement the intent of that law by repealing the associated rule—Chapter 21.

Explanation: The Board believes that Chapter 21 is no longer necessary, as pesticide container management strategies have evolved since the rule first went into effect in 1983. The Legislature repealed the container deposit mandate with the expectation that the Board would repeal the requirement in rule.

- **Chapter 27—Standards for Pesticide Application and Public Notification in Schools:** The amendments to Chapter 27 will give additional authority to the designated school IPM Coordinator to ensure there is at least one person in each school knowledgeable about all pesticide use. In addition, it will require training for the IPM Coordinator and consolidate the record-keeping requirements.

Explanation: The amendments to Chapter 27 are to address weaknesses and incorporate improvements that were identified during an evaluation of the rule requested by the Legislature in Resolve 2011, Chapter 59.

- **Chapter 50—Record Keeping and Reporting Requirements:** The amendments to Chapter 50 will remove the reporting requirements associated with the restricted-use pesticide container deposit system which will no longer be necessary because of the repeal of Chapter 21 (above).

Explanation: Since the Board is repealing the pesticide container deposit rule (Chapter 21, above), it must also repeal the associated record-keeping requirements.

Additional details of the proposed amendments were described in the public hearing notice published in major newspapers on August 15, 2012. Copies of the notice and the proposed rule amendments are available upon request, and may be viewed at the Board's website, www.thinkfirstspraylast.org/laws/rulemaking.htm.

Sign-up sheets for each chapter will be available at the door for persons wishing to testify. Written comments may be e-mailed to henry.jennings@maine.gov, or mailed to the Board's address above, until 5:00 PM on September 28, 2012.

3. Minutes of the July 27, 2012, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

4. Reconsideration of a Consent Agreement with Purely Organic Lawn Care, Inc., of York Harbor

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. The Board tabled consideration of a proposed administrative consent agreement with Purely Organic Lawn Care, Inc., at the May 11, 2012 meeting and asked that Assistant Attorney General Randlett research the Board enforcement options and report back at a future meeting. The Board will now reconsider the proposed administrative consent agreement.

Presentation By: Raymond Connors
Manager of Compliance

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

5. Consideration of a Chapter 29 Variance Permit Request from Vegetation Control Services, Inc., to Control Woody Brush in Wetland Areas of the Transmission Line Connecting the Kibby Wind Power Project in Northwestern Maine

The Board can grant variances for the 25-foot setback required from surface water under Section 6 of Chapter 29. At the July 27, 2012, meeting, the Board tabled consideration of a request from Vegetation Control Services, Inc., to treat woody brush in wetland areas along the transmission line when no water

is present. The applicator proposes to use a motorized backpack mist blower which allows foliar treatments that minimize herbicide drip. The Board will now consider the tabled request.

Presentation By: Henry Jennings
Director

Action Needed: Approve/disapprove the variance request

6. Consideration of a Consent Agreement with Woodford Street Apartments, LLC, of Cape Elizabeth

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 applications by an unlicensed person, and at rates higher than allowed by the label.

Presentation By: Raymond Connors
Manager of Compliance

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

7. Consideration of a Consent Agreement with Paul's Lawn Care, Inc., of Biddeford

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 unlicensed, commercial herbicide application.

Presentation By: Raymond Connors
Manager of Compliance

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

8. Update on Arbovirus Monitoring Activities

Maine's arbovirus monitoring program recently identified West Nile Virus-positive mosquito pools in York and Cumberland counties. As of August 30, no humans have tested positive for the virus. Some communities are evaluating the wisdom of mosquito-control programs. The staff will update the Board on the latest surveillance.

Presentation By: Lebel Hicks
Toxicologist

Action Needed: None—informational only

9. Discussion of Potential Emergency Rulemaking to Facilitate Municipal Mosquito Control Programs

Chapter 20, Section 6, prohibits application of pesticides to any property without the authorization of the property owner or occupant, making community-wide control programs difficult and time-consuming. The Board will discuss whether an emergency amendment or other future rule changes are warranted.

Presentation By: Henry Jennings
Director

Action Needed: Determine whether any action is warranted

10. Variance Request from Chapter 29 to Control Common Reed (*Phragmites australis*) along Forested Roadsides in Northern Maine

The Board can grant variances for the 25-foot setback required from surface water under Section 6 of Chapter 29. This request is to use an aquatic formulation of glyphosate to control invasive common reed (*Phragmites australis*). A Maine Department of Environmental Protection Fact Sheet indicates that this type of invasive plant control is allowable without a Waste Discharge License if the wetland area is dry at the time of spraying. The applicator has indicated that forest certification programs are encouraging forest landowners to control invasive plants. The Board will now consider the request.

Presentation By: Henry Jennings
Director

Action Needed: Approve/disapprove the variance request

11. Other Old or New Business

- a. Revised *Interim Guidelines for Forest Pesticides Applications*—H. Jennings
- b. Request for pesticide notification registry for beekeepers—H. Jennings
- c. Other?

12. Schedule of Future Meetings

October 26 and December 7, 2012, and January 25 and March 1, 2013 are tentative Board meeting dates. Additionally, there will be a public forum scheduled for one hour during the Maine Agricultural Trades Show, preferably on Wednesday, January 9, 2013. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

13. 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 Paul Schlein, Public Education Specialist, at the Board's office. 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.