

MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the McCormick BLDG, 1 Ashburton Place, on Friday, June 7, 2013

The meeting was called to order at approximately 9:40 A.M.

BOARD MEMBERS ATTENDANCE

Lee Corte-Real, MDAR Designee for Commissioner Watson,	Present
Michael Moore, DPH, Food Protection Program	Present
Martha Steele, DPH, Designee for Commissioner Bartlett	Absent
William Clark (Conservation/Environmental Protection Member)	Present
Jack Buckley, DFG, Designee for Commissioner Griffin	Absent
Kathy Romero, DEP, Designee for Commissioner Kimmell	Absent
Ken Gooch, DCR, Designee for Commissioner Lambert	Present
Richard Berman	Present
John Looney	Absent
Brian Magee	Present
Richard Bonanno	Absent
Laurell Farinon	Present

The Board did meet or exceed the minimum number (7) of members present to form a quorum and conduct business.

OTHER INDIVIDUALS IN PRESENT:

Bill Siegel, NEPMA; James T. Morris, Esq., Quinn and Morris; Steve Oles, NPMA; Ted St. Amand, NPMA; Kathy Bell, SFBC; Carol Szocik, MDAR; Taryn Lascola, MDAR; Hotze Wijjnja, Ph.D., MDAR; and Steven Antunes-Kenyon, MDAR

DOCUMENTS PRESENTED

- Minutes from the Wednesday, September 5, 2012 Meeting
- List of Exhibits: MDAR Hearing Officer Recommendation Regarding Appeal of Pesticide Enforcement \$250 Administrative Penalty

A. Minutes

Discussion

The minutes from the Wednesday, September 5, 2012 Meeting were presented for consideration. Brian Magee pointed out a needed correction relative to describing when the Meeting adjourned.

Voted: To accept the minutes of the Wednesday, September 5, 2012 Meeting with requested minor corrections.

Moved: Laurel Farinon
Second: Michael Moore

Approved: 8 – 0

B. Review of MDAR Hearing Officer Recommendation Regarding Appeal of Pesticide Enforcement \$250 Administrative Penalty

Discussion

Taryn Lascola described how the MDAR received calls with respect to an unlicensed applicator. She conducted an inspection and applicator admitted to the illegal activities. She sent the unlicensed applicator a letter stating that he had 90-days in which to obtain a pesticide applicator license or furnish a notarized letter indicating that he would not further engage in such illegal applications. This unlicensed applicator did not comply with the letter and after 90-days, the administrative penalty was levied.

The Board asked for clarification with respect to the Department's authority to impose such administrative penalties and whether such documented authority was available to the public.

Lee and Taryn responded that:

- the authority was in the Massachusetts Pesticide Control Act;
- that the administrative penalty was further part of the Department's Pesticide Enforcement strategy; and
- that related documentation to the Pesticide Enforcement strategy would be considered a public document.

Carol Szocik, Hearing Officer described how the unlicensed applicator claimed to have sent the notarized letter and appealed the administrative penalty. Upon presentation at his appeal, the unlicensed applicator was not able to furnish any proof the requested letter was ever drafted or submitted to the MDAR. She reiterated the points of the case and stated that, given these facts, she found it appropriate to uphold the administrative penalty imposed by the MDAR.

Voted: To maintain the decision of the Department's to impose the \$250 Administrative Penalty on the unlicensed applicator and support the Hearing Officer's Report and Recommendations.

Moved: Magee
Second: Jack Buckley

Approved: 8 – 0

C. The Children and Families Protection Act Requirements and Use of Pesticide Products Containing Etofenprox on School Property for Mosquito Control.

Lee introduced the discussion by describing how the Massachusetts Pesticide Control Act prohibits the use of pesticides on the outdoor grounds of schools when such pesticides are classified as known, likely, or probable human carcinogens by U.S. EPA.

The U.S. EPA uses a descriptive approach to classifying the carcinogenic potential of Etofenprox. Taking a very conservative approach to the descriptive classification issued, the Department did not approve use of etofenprox on the outdoor grounds of school property.

Although Massachusetts mosquito control districts have repeatedly expressed a desire to add the product Zenivex (a.i. etofenprox) as part of their truck mounted ULV adulticide operations, given the Department's restrictions on its use, it is not practical for them to rotate the product into such use.

Hotze Wijnja, Ph.D. explained that as a result of the Department's policy on etofenprox, the registrant provided the Department with several U.S. EPA risk assessment documents and asked the Department to review its policy with respect to this chemical and its use on the outdoor grounds of schools.

Hotze explained the Department's approach to the review of EPA's Carcinogenicity Classification of etofenprox. With respect to etofenprox, he outlined the following:

- that etofenprox is currently classified by U.S. EPA as "Not likely to be carcinogenic to humans at doses that do not alter rat thyroid homeostasis";
- that etofenprox is a non-ester pyrethroid;
- that other uses of etofenprox include:
 - spot treatment for cats;
 - indoor and outdoor residential settings; and
 - non-food handling areas of commercial food-handling establishments.

Hotze reiterated the Department's conservative approach in such cases, when the classification descriptor is ambiguous and/or includes qualifiers that cannot be easily addressed. He added that data used in determining the U.S. EPA Carcinogenicity Classification of etofenprox included the following:

- that treatment-related thyroid follicular cell tumors were seen in both male and female rats at 4900 ppm which was considered an adequate dose to assess carcinogenicity;
- that no treatment-related tumors were seen in male or female mice;
- that there is no mutagenicity concern for etofenprox from in vivo or in vitro assays;

- that etofenprox induces thyroid follicular tumors through an anti-thyroid mode of action; and that rats are substantially more sensitive to humans with respect to the development of thyroid follicular cell tumors; and
- that the Agency has determined that quantification of human cancer risk is not required and the cRfD (0.037 mg/kg/day) is protective of potential cancer effects¹.

The Pesticide Board inquired as to how much more sensitive rats are as compared to humans with respect to the development of these tumors and requested further explanation of this non-mutagenic anti-thyroid mode of action in rats caused by excessive exposure to etofenprox .

These questions were addressed by toxicologist Brian Magee, Ph.D., who stated that based on the literature, rats are considerably more sensitive than humans to this anti-thyroid mode of action which leads to thyroid follicular cell tumors. He stated that rats are considerably more sensitive than humans in causing thyroid tumors and further explained that under this mechanism, there is an increased production of thyroid peroxidase (thyroid enzyme) in order to increase the production of thyroid hormones. The increased hormonal signals cause an increased rate of cell turnover (production) and required DNA replication. It's the increased rate of DNA replication, where errors are created, that leads to cell mutations, thyroid structural changes, such as hypertrophy and hyperplasia, and ultimately thyroid follicular cell tumors.

Magee explained that based on his experience reviewing many such EPA Risk Assessments and based on their (U.S. EPA) historical record, the Agency is quite conservative with respect to cancer risk assessment and classification. Their use of this carcinogenicity classification and qualifier is only used when they are very confident with such assessment of the related data.

Magee further explained that in the past scientists had little understanding of carcinogenic modes of action. Based on this limited understanding, for carcinogenic risk assessment purposes, it was assumed appropriate to draw a straight linear dose response curve--down to the lowest exposure possible. After decades of research, this model has changed and today scientists have a much better understanding of carcinogenic modes of action.

Based on the current understanding of such effects, most scientists generally believe that when a substance is also NOT mutagenic, that there is a threshold (exposure level) below which there is no adverse affect observed. That is to say that there is a dose (exposure level), as observed in such studies, below which one does NOT observe carcinogenic effects.

By employing this narrative/descriptive approach to the carcinogenic classification of etofenprox [and other chemicals], the U.S. EPA is NOT going so far as to say that etofenprox is not NOT carcinogenic [period], but rather, the Agency is describing toxicology data and stating that etofenprox is NOT likely to be carcinogenic below high dose levels [e.g. 4900 ppm] used in the chronic toxicity/carcinogenicity rat studies. In this case, it's also important to note that such [relatively high] dose levels have little relevance to typical human exposures that might occur from its use as a pesticide.

Richard Berman asked for clarification on the significance of this issue or why it is important to the Department.

Mark Buffone, Executive Director SRMCB, responded by stating that is was indeed an important matter and that having an additional mosquito adulticide was highly desirable and helps to address the following issues:

- Development of resistance by adult mosquitoes to insecticides used for their control;
- Competitive pricing of available products; and
- Effective control of mosquitoes that may cause WNV and EEEv.

Voted: That the Pesticide Board has considered the both the requirements of the pesticide laws and regulations, MA Pesticide Control Act, MGL c. 132B Section 6G and Pesticide Regulations 333 CMR 14.04 (5)(b), and the U.S. EPA Carcinogenicity classification of etofenprox. The Board finds that the Carcinogenicity classification language used by U.S. EPA is NOT equivalent to the classification as “known, likely or probable human carcinogens by the United States Environmental Protection Agency, or equivalently categorized by the department.” As such, etofenprox with its classification of “Not Likely Below a Defined Dose Range” may be used on the outdoor grounds of school property.

Moved: Richard Berman

Second: Brian Magee

Approved: 8-0

D. Brief Update on the Direct Supervision Regulations

Lee Corte-Real provided a brief summary indicating the following:

- The draft regulations are currently with the EEA Secretary awaiting approval; such that, the Department may take the draft out to public hearing.
- Based on a request from members of the pest control industry, the Department delayed the proposed date for public hearings until after the busy season.
- The Department hopes to have the approval to bring the draft regulations to public hearing in September 2013.

Richard Berman inquired as to why the draft regulations have yet to make it through the EEA Secretary Approval process.

Lee reported that it was a multi-step process and that as part of the approval process the EEA had requested the Department complete and submit several related forms. Upon approval by the Secretary, the draft regulations will then be submitted for review by the Governor’s Office. Upon final approval by the Governor, the draft regulations will then go out to public hearing.

A brief over of the process was outlined as provided below:

- EEA and Governor approve ability to go out to Public Hearing.
- Notice of Public Hearing is published by the Secretary of State.
- Public Hearings are conducted and Hearing Officer public comment is recorded.

- Public comment period closes and Hearing Officer has opportunity to make changes based on comments and testimony collected.
- A revised draft of regulations is presented before the Pesticide Board for approval.
- Depending upon the significance of the changes made, it is possible that the draft regulations could then go back out for a second round of Public Hearings.

Richard Berman stated that there is language in the draft regulations that industry could support if the Subcommittee's Subsurface Termiticide Policy was changed. He indicated that a big part of the issue is the reclassification of subsurface termiticides from general use (not classified) to State Restricted Use Products (SRUP). These reclassification motions are routinely made by the Subcommittee as per its policy on the registration of subsurface liquid termite control products. He also asked if the Board could place this issue on its Agenda.

The Board discussed how such a Subcommittee Policy change was indeed appropriate to bring before the full Pesticide Board.

Michael Moore asked if the Department could present this discussion and any related proposals at the next Board Meeting in September.

No motions were made or votes taken.

E. Next Meeting Date and Adjournment

The Pesticide Board discussed scheduling the next meeting in September.

Voted: To adjourn the Pesticide Board Meeting.

Moved: Bill

Second: Laurell Farinon

Approved: 8-0

The Meeting was adjourned at approximately 10:45 A.M.

ⁱ USEPA, 2008. Etofenprox: Human Health Risk Assessment for Proposed Section 3 Uses on Rice and as ULV Mosquito Adulticide. Arthur, J. et al., Health Effects Division. Memorandum to Larocca, G., Insecticide Branch Registration Division. Accessed on March 6, 2013 at: <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2008-0567-0006>