



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER
HENRY JENNINGS
DIRECTOR

**MAINE BOARD OF PESTICIDES CONTROL
POLICY RELATING TO SPRAY CONTRACTING FIRM LICENSE
REQUIREMENTS**

ADOPTED MARCH 28, 2008

This issue first surfaced at the January 25, 2008 meeting during a discussion about who is responsible for verifiable authorization when a landscape contractor subcontracts lawn care application services. That discussion led to the definition of a spray contracting firm, which Mark Randlett interpreted -- based on the current definition in regulation and statute -- would require that both the landscape contractor and the lawn care company would need to be licensed as spray contracting firms.

Because we were concerned that a strict interpretation of the statute and rule was not practical, we met with Mark on February 7 to discuss potential options for clarifying the requirement through policy to make it more workable. Our conclusion was that the degree of control over the application process is a better standard for determining whether or not a person is a spray contracting firm.

At the February 29, 2008 meeting the Board discussed the issue and asked that the staff bring back a draft policy for Board discussion and adoption. That draft policy follows:

This policy clarifies the requirements set forth in 22 M.R.S.A. § 1471-C, 23-B and C.M.R 01-026 Chapter 10, Section 2 DDD.

In situations where a person contracting for a pesticide application does not maintain control over which pesticides must be used, or how or when they must be applied, the person contracting for the pesticide application shall not be considered a spray contracting firm.

Batteese, Robert

From: Randlett, Mark
Sent: Thursday, July 22, 2004 5:39 PM
To: Batteese, Robert
Cc: Jennings, Henry; Fish, Gary
Subject: RE: Spray Contracting Firm

Bob,

I understand your question to be whether a corporation owned by a sole shareholder is required to be licensed as a spray contracting firm, even though the person who owns those shares is licensed as a commercial applicator. I believe the answer is yes.

A properly formed and maintained corporation has status as a distinct legal entity, even where all of the shares of that corporation are owned by one person. A corporation is authorized by law to conduct business, including entering into contracts, in its own name. In contrast, the business of a sole proprietorship is conducted by the individual business owner. Thus, a corporation and its shareholders are, legally, different persons.

A spray contracting firm is defined as a person "employed or contracted to conduct a public or private pesticide application." It does not include individuals who are certified as commercial applicators. The term "person", as defined under the law, includes corporations. To the extent that an incorporated business is employed or contracts to provide pesticide application services it meets this definition and, because it is a separate entity, must be licensed regardless of whether its sole shareholder and employee holds a commercial applicator's license. A sole proprietorship is clearly distinguishable in this regard, as the business and the owner are one in the same and, thus, a commercial applicator's license is sufficient.

Hopefully this answers your question. Please let me know if you have any further questions or need additional detail.

From: Batteese, Robert
Sent: Tuesday, July 20, 2004 11:02 AM
To: Randlett, Mark
Cc: Jennings, Henry; Fish, Gary
Subject: Spray Contracting Firm

Mark,

Did you receive a folder of old memos from Pidot and Harnett when you became our counsel? We recall receiving a memo most likely from Jeff Pidot in 1985 providing clarification on the statutory definition of "spray contracting firm". Unfortunately we haven't seen it for quite some time and exhaustive searching by Gary, Henry and myself has failed to locate it. However, we feel certain that it concluded that sole proprietor companies did not need to obtain the firm license unless they were incorporated. We have always operated with this understandin but have been challenged about the cost and why an incorporated single person company also needs to obtain the firm license (see start of my letter attached). We believe the issue is the applicator would somehow be shielded from liability when incorporated and we definitely want to be able to remove the company license if serious violations occur. Can you help us with some new language if you don't have the original memo in a neat historical file?

<< File: MeserveBrad.doc >>

Bob Batteese
Maine Board of Pesticides Control
28 State House Station
Augusta ME 04333-0028
Tel. 207-287-2731
<http://www.thinkfirstspraylast.org>



JOHN ELIAS BALDACC
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28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

ROBERT W. SPEAR
COMMISSIONER
ROBERT I. BATTEESE, JR.
DIRECTOR

July 23, 2004

Bradley E. Meserve
Boiling Spring Landscape, Inc.
959 New County Road
Dayton, Maine 04005

Dear Brad:

You asked about the spray contracting firm license and I offer you the following information in bulleted form:

- The need for a firm license in addition to the applicator license was recognized by the old "Sunset Committee" that reviewed the Department of Conservation in 1983. I don't have their final report but clearly recall that they responded to our concern that we would remove the license of a spruce budworm spray pilot and the company would simply bring in a replacement who would keep on making violations. A copy of the portion of the resulting 1984 legislation is enclosed and the new designation of a spray contracting firm appears on page 36-1185 and the requirement to be certified appears on page 36-1186.
- This same legislation authorized the Board to initiate rule-making to adopt standards for the certification of spray contracting firms. At the top of page 38-1185 it directed the Board to establish a reasonable fee by regulation. By February 1985, the Board had adopted Chapter 35 (copy enclosed) to further define the requirements for certifying and licensing spray contracting firms. You will see from reading the basis statement that the Board initially proposed setting the license fee at \$5,000.00 to be used to help support monitoring of the budworm programs. However, five people spoke in opposition indicating the fee should only cover administrative costs and it was set at \$100.00. This fee has not been increased since but was doubled when we switched to biennial licenses.
- I looked on the State's web site for Boards and Commissions under the Maine Department of Professional and Financial Regulation. For comparison, the biennial charge for a Master Oil Burner license is \$250.00 while the biennial charges for Master Electricians and Master Plumbers are \$150.00. Apparently they only license individuals and not their companies.
- The original statutory definition of "spray contracting firm" has been expanded in our regulations and you will see in our current Chapter 10 regulations on page 8 (copy enclosed) that the term does not include individuals certified as commercial applicators

providing that individual does not have in his employment one or more others to undertake pesticide applications. The requirement for any incorporated entity to hold a firm license was explained to staff in a 1985 memorandum from the Office of the Attorney General. However, none of us could immediately locate a copy and we requested a new opinion from Mark Randlett, our current Assistant Attorney General. He reconfirms that corporations must hold a spray contracting firm license even if there is only shareholder (copy enclosed).

I hope these documents provide the answers to all your questions. If not, please feel free to contact me again at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Rob. Batteese".

Robert I. Batteese, Jr.
Director

Enclosures (4)



JOHN ELIAS BALDACCI
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SETH H. BRADSTREET
COMMISSIONER

HENRY S. JENNINGS
DIRECTOR

MAINE BOARD OF PESTICIDES CONTROL INTERIM ENFORCEMENT POLICY TO CLARIFY WHAT PESTICIDE PRODUCTS MAY BE DISTRIBUTED BY A LANDLORD TO A TENANT FOR USE IN THE TENANT'S OWN APARTMENT

Adopted August 28, 2009

BACKGROUND

Concerns were raised after Board staff received a call about a large property management company systematically distributing pesticides to low-income tenants, including some that did not speak English. Overuse of liquid sprays was of particular concern. The Board discussed these concerns and concluded that, while certain baits and traps present minimal risks, even for untrained applicators, higher risk products, i.e., liquid sprays, rodenticides and aerosols can present unreasonable risks when improperly applied. Consensus was reached to develop an interim enforcement policy.

POLICY

Landlord provision of pesticides to a tenant, with or without charge, is regulated as distribution under 22 M.R.S.A. § 1471-C (8) and 1471-W. However, circumstances may exist where the unlicensed distribution of certain pesticides by a landlord to a tenant provides a public benefit that outweighs the need for an enforcement response. The Board's staff can consider these circumstances and use enforcement discretion where "reduced risk" pesticides are distributed by a landlord to a tenant, without charge, to deal with an existing pest problem in their own apartment.

"Low risk" pesticides include baits, gels and pastes and do not include products that pose higher risks, because they produce fumes, very small spray droplets or other forms of inhalation hazards or those that are not ready-to-use (require mixing). Products that pose higher risks include, but are not limited to, aerosols of any kind, rodenticides, smokes, bombs, fumigants, liquid sprays and dusts or powders. Landlords shall not distribute higher risk pesticides to their tenants under this policy.



PAUL R LEPAGE
GOVERNOR

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WALTER E WHITCOMB
COMMISSIONER

HENRY S. JENNINGS
DIRECTOR

MAINE BOARD OF PESTICIDES CONTROL INTERIM ENFORCEMENT POLICY TO ALLOW UNLICENSED DISTRIBUTION AND INSTALLATION OF ANTIMICROBIAL COPPER HARDWARE

Adopted November 18, 2011

BACKGROUND

In February 2008, the US Environmental Protection Agency (EPA) registered five copper-containing alloy products that can be marketed with the claim that copper, when used in accordance with the label, "kills 99.9% of bacteria within two hours." The products are marketed in sheets that are then fabricated into various articles, such as door knobs, countertops, and handrails, for use in commercial, residential, educational, and healthcare settings.

After rigorous testing and consultation with independent organizations, the EPA concluded that use of these products could provide a benefit as a supplement to existing infection-control measures, but users must continue to follow all practices related to cleaning and disinfecting environmental surfaces. In addition, product labels prohibit use of antimicrobial copper for direct food contact or food-packaging uses. Key to their registration was that these copper products come under FIFRA's no "unreasonable adverse effects" standard, and pose no risks to public health.

Recently, Board staff received a request from a Portland business that would like to sell and install EPA-registered copper hardware in schools. The firm is asking whether it is necessary to have a pesticide dealer and/or applicator license in this instance. As these products are legally considered pesticides, schools are also concerned about complying with regulations.

The staff recommends the following interim policy:

POLICY

In view of the fact that EPA states there are no public health risks associated with copper hardware, and there is a potential for significant public health benefits, the Board has determined it is appropriate to exercise its enforcement discretion relative to the Board's licensing requirements for both the sale and application of EPA-registered copper-containing alloy products in Maine. This provision is contingent on the following conditions: the products may only be used as a supplement to existing infection-control measures, and they may not be used for direct food contact or food-packaging purposes.

STATE OF MAINE

Inter-Departmental Memorandum Date December 6, 1983

To Robert Batteese, Board of Pesticides Control

Dept. Agriculture, Food and Rural Resources

From Jeffrey Pidot, Assistant

Dept. Attorney General

Subject Lewiston Housing Authority

I have reviewed Eric Samp's letter, in which he asserts, as counsel to the Lewiston Housing Authority, that employees of that entity need not be licensed as commercial applicators of pesticides since the Housing Authority is not a local government. In his analysis, Mr. Samp focuses upon the second sentence in the statutory definition of commercial applicator, which specifically relates to "officials or employees of federal, state or local governments." 22 M.R.S.A. § 1471-C(5). While I believe that a public housing authority is in fact one of the types of entities which the Legislature intended to include within the scope of this sentence, I will not debate the opinion of the Housing Authority's counsel that that Authority does not, technically speaking, constitute a local government. Regardless, I believe the employees of the Authority who are involved in pesticide spray applications on rental properties should be licensed.

The question involved here cannot be answered solely by inquiring into the meaning of the particular sentence in the statute highlighted by the Authority's attorney. One must also ask whether an employee of the Housing Authority, who is engaged in applying general use pesticides in apartments leased by the Authority to private individuals, is a commercial applicator as that term is defined in the first sentence of § 1471-C(5). In pertinent part, that sentence defines "commercial applicator" as "any person, except a government pesticide supervisor, . . . who uses general use pesticides in custom application. . . ." "Custom application" is, in turn, defined as "any application of any pesticide for hire." Section 1472-C(5)(A). The term "for hire" is not defined, although it is an important one in determining the applicability of the statute in this case. I believe that a reasonable interpretation of this term would be that it includes any pesticide spray services which are performed by one person for the benefit of another under a contract or other arrangement by which compensation for these services is to be made. Accordingly, if I receive compensation for spraying your house, then I have been hired by you to perform this service. Similarly, if a person in the business of renting property

sprays that property after it is leased as part of the services performed under the lease contract, then I believe it reasonable to construe such services as being "for hire."

Under this analysis, an employee of a landlord (including a housing authority), who sprays leased properties, as part of the landlord's services performed for its tenants and for which the authority receives rent, must be seen as a "commercial applicator" under the statute. While this analysis (or at least this sentence) may at first appear complex, it is, I think, a fair reading of what the Legislature intended in cases where one party is performing spray services on the property or for the benefit of another. Moreover, I do not know of any significant burden that such an interpretation would place upon a public housing authority. It may seek licensing for its employee, or, alternatively, it may retain the services of a licensed private exterminator for purposes of spraying properties rented by it. In either case, the protection afforded the public by the licensing statute will be retained.

An entirely separate legal inquiry may be made into the question of whether one or more employees of a housing authority may be considered "government pesticide supervisors", also required to be licensed under the statute. This term is defined by § 1471-C(11)(A) to mean "any federal, state or local government agency, official or employee, . . . who, in the course of his duties, responsibilities or employment, supervises the use of any pesticides." This is a troublesome, open-ended definition. However, I believe one reasonable interpretation would be that the Lewiston Housing Authority constitutes a local government agency, even if it is not technically a local government. It is, in fact, a public instrumentality which has been created by a local government in order to perform certain governmental services. Under this interpretation, whoever supervises the application of pesticides on behalf of the Housing Authority must be licensed as a government pesticide supervisor. In addition, the statutes provide that in such a case the person who is directly involved in applying such pesticides must also be licensed. Thus, § 1471-D(2)(A) provides as follows:

"No government pesticide supervisor may supervise the use of any pesticide without prior certification from the Board, provided that the person who actually uses the pesticide must be certified."

In sum, it is not necessary to deal with the question of

whether the Lewiston Housing Authority is technically a local government. Regardless of that issue, I believe that the interpretation which should be given the statute is that employees of the Authority who are involved in applying pesticides to privately rented properties should be licensed. I also believe that such an interpretation is a fair reading of what the Legislature had in mind in creating your regulatory program.

/d

CLIFFORD, CLIFFORD, SAMP & STONE

ATTORNEYS AND COUNSELORS AT LAW

640 MAIN STREET
P.O. BOX 590
LEWISTON, MAINE 04240

(207) 784-7381

JERE R. CLIFFORD
WILLIAM H. CLIFFORD
FREDERICK S. SAMP
ALAN G. STONE

JOHN D. CLIFFORD (1887 - 1956)
W. H. CLIFFORD (1889 - 1972)

November 28, 1983

Mr. Robert I. Batteese, Jr.
Pesticides Control Board
State House Station No. 28
Augusta, ME 04333

Re: Lewiston Housing Authority

Dear Mr. Batteese:

I am writing to you on behalf of Lewiston Housing Authority in response to your letter of November 18, 1983 to Mr. John Ponte and pursuant to our telephone conversation. It is my understanding that under 22 M.R.S.A. § 1471-C(5), a person is a "commercial applicator" requiring a license from your board if he applies any pesticide, restricted or non-restricted, in connection with his duties as an official or employee of federal, state or local government. Your inquiry is apparently concerned with whether Mr. Ponte, as an employee of the Lewiston Housing Authority, fits within that definition when he uses non-restricted chemicals in the Authority's buildings.

The Lewiston Housing Authority is a public body corporate organized under the provisions of 30 M.R.S.A. Chapter 239, Subchapter II. As such, it is a corporate entity separate from the City of Lewiston or from any agency of State government. It has no power to levy or collect taxes or special assessments, nor does it have any authority to obligate the City of Lewiston in the issuance of any bonds. It is our position, therefore, that employees of the Lewiston Housing Authority are not employees of federal, state, or local government. Therefore, we do not believe that they need to be licensed in order to apply non-restricted chemicals.

Very truly yours,

CLIFFORD, CLIFFORD, SAMP & STONE

Eric Samp

Frederick S. Samp

FSS/jt

cc: Sandra Slemmer

NOV 29 1983



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SETH H. BRADSTREET
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HENRY S. JENNINGS
DIRECTOR

**MAINE BOARD OF PESTICIDES CONTROL INTERIM
INTERPRETATIVE POLICY ON THE APPLICABILITY OF
CMR 01-026 CHAPTER 26**

ADOPTED AUGUST 27, 2010

BACKGROUND

The Board first adopted Chapter 26 of its rules in 2006 and later amended it in 2008. At the time of adoption, the Board intended to regulate the use of pesticides inside occupied buildings because the air tight environment poses unique exposure risks to building occupants. However, when the Board crafted the definition of an "occupied building", it used the term "structures", which is a more general term than building. Consequently, Chapter 26 as currently written could be interpreted to regulate the roofed areas of retail stores that are otherwise open to the outdoors. Such areas have ample ventilation and do not pose the same exposure risks as an air tight building space would.

POLICY

The Board determined that its intent in promulgating Chapter 26 was to regulate the use of pesticides in enclosed buildings in which reduced airflow affects dissipation of airborne pesticides. Consequently, the Board adopted an interim interpretation of the term "occupied buildings" to mean fully enclosed indoor spaces inside buildings.



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**MAINE BOARD OF PESTICIDES CONTROL INTERIM
ENFORCEMENT POLICY TO EXEMPT HIGH SCHOOL
AGRICULTURAL AND HORTICULTURAL EDUCATION
PROGRAMS FROM CERTAIN REQUIREMENTS IN CMR 01-026,
CHAPTER 27**

Adopted August 28, 2009

BACKGROUND

Many school farm and greenhouse IPM programs need more flexibility to use pesticides when pest populations exceed economic thresholds. The five-day notification period required by Chapter 27 often constrains their ability to make timely applications. Since very few students, staff or parents visit the school agricultural facilities, the Board agreed at its July 10, 2009, meeting that the public interest is best served by adopting an interim enforcement policy which provides schools greater flexibility.

The major problems posed by Chapter 27 for these operations are the five-day notification requirement for non-exempt pesticide applications in Section 4(B) and the limitations on indoor applications under Section 5(D).

This policy still allows for notification of the staff and parents or guardians of students involved in the classes that use these areas prior to pesticide applications and removes the limits on pesticides that can be used inside greenhouses. It also requires that all students entering these areas be trained as Agricultural Workers as defined by the EPA Worker Protection Standard.

POLICY

The Board may exercise enforcement discretion for CMR 01-026 Chapter 27, Section 4(B) and Section 5(D) in areas of high schools or career and technical education centers utilized for agricultural or horticultural education, such as, but not limited to, greenhouses, nursery plots or agricultural fields. Greenhouses must not be attached to other school buildings and fields or nursery plots must not be contiguous with other school grounds.

In lieu of these requirements, school staff and parents or guardians of students who enter these areas must be specifically notified about the potential for pesticide applications to occur in the above-mentioned areas. Additionally, the posting requirements in Section 4(C)3 remain in force.

To further mitigate the potential pesticide exposure risks, all students that regularly enter these areas must be trained as Agricultural Workers according to the EPA Worker Protection Standard.



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**MAINE BOARD OF PESTICIDES CONTROL
POLICY ON DETERMINING ALLOWABLE PESTICIDE
APPLICATIONS PURSUANT TO CMR 01-026, CHAPTER 29,
SECTION 6**

Adopted March 5, 2010

BACKGROUND

The Board amended Chapter 29 in May of 2008, adding new Sections 5 and 6. Section 6 prohibits "broadcast" application of pesticides within 25 feet of certain defined surface waters, but does not prohibit pesticide applications that are not considered broadcast applications. The staff asked for clarification on what types of applications are allowed in the 25-foot-buffer area.

POLICY

The Board determined that the following characteristics indicate that an application is not a broadcast pesticide application, and therefore not prohibited by Chapter 29, Section 6. Pesticide applications must be:

1. Directed away from surface water;
2. Directed at specific pest organisms or infestations in a manner that minimizes deposition to non-target species and areas;
3. Conducted using non-powered application equipment capable of targeting pest organisms while avoiding non-target species;
4. During any calendar year, is confined to no more than 20% of the area located within 25 feet of surface water; and
5. During any calendar year, does not cover any one contiguous area greater than 100 square feet.

Notes: Use of herbicides within 25 feet of a surface water must not violate shore land zoning requirements or the Natural Resource Protection Act for removal of vegetation. In addition to limiting tree removal and trimming, minimum shore land zoning requirements also prohibit removal of vegetation under three feet in height, other ground cover, leaf litter and forest duff. Consult the local municipal ordinance or for applicable requirements for the shore land zone or the Land Division staff at the Department of Environmental Protection for locations outside the shore land zone. Consult the municipal code enforcement officer about treatment of invasive vegetation. For regulations covering Maine's unorganized territories, contact the Maine Land Use Regulation Commission.



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3-9
SETH H. BRADSTREET
COMMISSIONER

HENRY S. JENNINGS
DIRECTOR

MAINE BOARD OF PESTICIDES CONTROL INTERIM ENFORCEMENT POLICY TO EXEMPT EMPLOYEES AND VOLUNTEERS WHO SUPERVISE CHILDREN FROM CERTAIN REQUIREMENTS IN CMR 01-026 CHAPTER 31

ADOPTED OCTOBER 2, 2009

BACKGROUND

Due to the unprecedented number of confirmed cases of Eastern Equine Encephalitis (EEE) in horses this year, Maine health officials are recommending heightened precautions against mosquito bites. One of the recommendations is for people to apply repellents when outdoors. Some schools are sending home permission requests to allow school staff to apply repellents for outdoor activities. Since many types of employees and volunteers who supervise children could be covered by a technical reading of our licensing laws, the staff would like Board input on how the public interest is best served and whether an interim enforcement policy should be adopted for this practice.

Virtually all insect repellent labels state "Do not allow children to handle this product." Because of this label restriction and our licensing laws, counselors, teachers, coaches, caregivers, etc., are not allowed to apply repellents to children, requiring that either a parent or guardian apply the repellent just prior to any outdoor activity that may pose a risk. This proposed enforcement policy will solve an impractical and unworkable dilemma where children are involved in outdoor activities and parents or guardians are not available to apply repellents. The staff believes that the benefit of allowing these employees or volunteers to apply repellents in order to reduce the risk of contact by children with mosquitoes carrying the EEE virus and other arboviruses outweighs the risk of harm.

Therefore, we propose the interim enforcement policy below until such time as we can add an exemption to Chapter 10.

POLICY

The Board may exercise enforcement discretion for CMR 01-026, Chapter 31, Section 1, when employees or volunteers who supervise children apply insect repellents to those children. Employees and volunteers who supervise children shall not be considered commercial applicators as defined in CMR 01-026, Chapter 10, when the application of registered insect repellents to a child they supervise is authorized by a child's parent or guardian.



PAUL R. LEPAGE
GOVERNOR

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WALTER E. WHITCOMB
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

Interim Enforcement Policy Regarding Refuge-in-the-Bag for Genetically Modified Seed

Adopted February 24, 2012

At its February 24, 2012, meeting, the Board unanimously adopted an interim enforcement policy in which the Board—until it determines otherwise—takes the position that refuge-in-the-bag (blended refuge) products do not constitute a refuge for the purposes of the default buffer requirements contained in Chapter 41, Section 5, of the Board's rules.

Household Pesticides

September 24, 1991

Rep. Robert Tardy
P.O. Box 336
Newport, ME 04953

Dear Bob,

In response to your telephone inquiry of last Friday. I am happy to explain our view on the Schultz Company product. In addition I would like to take this opportunity to point out the many difficulties we have faced in trying to implement the 1988 legislation requiring licensing of general use pesticide dealers (GUPD).

I want to start by explaining our understanding of why the legislation was enacted in the first place. We believe the primary purpose was to establish a reporting mechanism for general use sales so volumes of material used by homeowners on their lawns and gardens could be compared with those used for agriculture and forestry. A secondary benefit of licensing general use pesticide dealers was a revenue source to provide grant funds to the Cooperative Extension so they could hire a full time person to upgrade the training manuals people study in preparation for their applicator licensing exams.

Hopefully you agree our assessment of legislative intent is correct. If so, you will not be pleased to hear that the law has failed to meet expectations on either count. The reasons are outlined as follows:

1. Problem in Defining and Identifying Household Pesticides.

The first problem we encountered was in identifying the household products which are exempt from the law. The statutory definition is unfortunately less than clear when it speaks to controlling pests "in and around the family dwelling and associated structures".

The word "around" could lead one to think it included outdoor uses on gardens and lawns which mean "weed and feed" products would be exempt. We felt this would clearly go against the intent of the legislation and we have made it our policy to say household use means use in or on the home. Therefore, all products with outdoor uses would require licensing, and depending on container size, they may require reporting.

2. Dealer Resistance to Reporting.

Our second problem arose when hardware store operators in Lincoln County and elsewhere protested about the extra work of reporting sales of each and every product they sold. Consequently the law was amended in 1989 so they only have to report the products sold in quantities of one quart or 5 pounds or more. While it seemed reasonable at the time, our inspectors estimate that 90% of what most general use dealers are now selling is not required to be reported. This is because they have been able to switch their stocks and only carry less than 32 ounce bottles and 1-4 pound bags or cans.

3. Dealer Resistance to Licensing.

We have had to spend an extraordinary amount of time trying to get the various types of outlets into compliance. Our office staff have spent untold hours on the phone trying to explain the requirements, and our field people have had to revisit outlets several times to either get them licensed or see that they removed the products from their shelves and kept them off. Our Board recently directed the staff to seek enforcement action against over 100 business that had been contacted at least two times previously and were still selling in violation of the law.

4. Revenue Failing to Meet Projections.

Based on the number of outlets holding seed licenses we estimated there would be 1100 dealers paying the \$20.00 fee and producing \$22,000 to go towards the grant to Cooperative Extension. In our first year we licensed 630 outlets but that number dropped to 440 in 1990. The decrease occurred because many stores elected to drop a few products from their inventory so they were only carrying household products. Both the LaVerdiere's and Brooks chain of discount drug stores took this route to avoid the licensing and reporting requirements. During the current year we have gradually pushed the number of licenses up to 489 as we have asked our inspectors to direct some of their attention to GUPD's. With 489 licenses we only generate \$9,960 gross, far below the projected figures.

Although it will be a matter for a future discussion, our costs for the grant to Cooperative Extension have risen to \$31,000 for the current year. Recently a study commission has found that their professional staff is vastly under paid and has recommended a \$5,000 increase for the person working on our manuals. We understand the University will provide the additional funds for the present time but since this is one of the Board of Pesticides' educational efforts we will likely want to pick up the additional expense in the future.

5. Dealer Reports Have Been Incomplete.

Most of the people who have had to become licensed under this law have very little knowledge of pesticides. As a result we have had to do a lot of educating to get them to report in an accurate manner. Hopefully the 1991 reports will be improved so we can tally them and have faith in the numbers. Once again, please bear in mind that these reports may only reflect 10% of the actual sales to homeowners. Therefore, we cannot draw any comparisons to agricultural or forestry use.

I hope this background information will be helpful to you as we now focus on "Schultz-Instant Houseplant and Garden Spray". You will see on the enclosed label that this product is not solely intended for household use. It is also designed for outdoor use in both floral and vegetable gardens. In addition it is also marketed for use in restaurants, greenhouses, offices and schools.

You raised the possibility of creating another exemption for the naturally occurring pesticides. This is your choice but I would point out that the product also contains Piperonyl butoxide which is clearly a synthetic chemical. In addition such a move would presumably include the Bt products which many people are concerned about, especially when used in aerial gypsy moth or hemlock looper spray projects.

I would also like you to be aware that when our inspectors visited the Shop 'n Save stores the Schultz product was not displayed with the aerosols, pet supplies and other household products. Instead it was being offered for sale in their floral section.

The only other product that comes to mind as causing similar problems is Raid Multi-Bug Killer produced by Johnson Wax. The enclosed label is old but it too is now sold with a pump dispenser. The product also contains Piperonyl butoxide, as well as a synthetic pyrethroid, and is marketed for garden pests as well as household uses. You should know that several stores including LaVerdiere's have promptly dropped both the Schultz and Raid products to avoid having to become licensed.

I suspect there are no easy answers to the problems we are facing. Elimination of the exemption for household use pesticides would be the clearest solution for us but we expect it would create a clamor from supermarkets and convenience stores. Such a move would, of course, enhance our revenue situation.

If you and your committee are serious about accurate tallies of products used outdoors by homeowners, you will also have to reconsider the less than a quart and 5 pound exemptions to reporting. We have thought about trying to get the information from the wholesalers but we doubt this would be a reliable way

to proceed since so many are located out of state and we don't have a good handle on them.

In closing, we would welcome an opportunity for our staff to meet with members of the joint Standing Committee on Agriculture in a workshop session to further explore these issues. If you would like to arrange such a meeting or have other questions, please feel free to contact me at your convenience.

Sincerely,

Robert I. Batteese, Jr.
Director
Board of Pesticides Control

RIB/lpc

Enclosures