

MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the McCormick BLDG, 1 Ashburton Place, on Wednesday, September 4, 2013

The meeting was called to order at approximately 9:30 A.M.

BOARD MEMBERS IN ATTENDANCE

Lee Corte-Real, MDAR Designee for Commissioner Watson,	Present
Michael Moore, DPH, Food Protection Program	Absent
Martha Steele, DPH, Designee for Commissioner Bartlett	Present
William Clark (Conservation/Environmental Protection Member)	Absent
Jack Buckley, DFG, Designee for Commissioner Griffin	Present
Kathy Romero, DEP, Designee for Commissioner Kimmell	Present
Ken Gooch, DCR, Designee for Commissioner Lambert ¹	Absent
Richard Berman	Present
John Looney	Absent
Brian Magee	Present
Richard Bonanno	Present
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 PRESENT:

Julie Coop, DCR, ALB Program; Mark S. Buffone, MDAR; Bill Siegel, NEPMA; James T. Morris, Esq., Quinn and Morris; Steve Oles, NPMA; Kathy Bell, SFBC; Sean Greenhow, Greenhow/NPMA; Ted Brayton, Griggs & Brown/NPMA; Marillian Missiti, Buono Pest Control; Taryn Lascola, MDAR; Hotze Wijnja, Ph.D., MDAR; and Steven Antunes-Kenyon, MDAR

DOCUMENTS PRESENTED

- Minutes from the Friday, June 7, 2013 Meeting;
- Discussion Guide for Consideration of Pesticide Board Subcommittee Policy for Reclassification of Subsurface Termiticides to State-Restricted Use Pesticides; and
- List of Subsurface Termiticide Products Currently Classified as State Restricted Use Products (SRUP) in Massachusetts.

¹ Julie Coop, Coordinator for the Asian Long Horn Beetle Program with DCR was present for purposes of sharing her knowledge with the Board and communicating news of the Board's business to her Department.

A. Minutes

Discussion

The minutes from the Friday, June 7, 2013 Meeting were presented for consideration. Brian Magee pointed out a needed correction relative to describing the sensitivity of rats vs. humans to chemicals that induces thyroid follicular tumors through an anti-thyroid mode of action. Rats are considerably more sensitive, but the reference to 100x more sensitive should be removed.

Voted: To accept the minutes of the Friday, June 7, 2013 Meeting with requested changes and minor spelling corrections.

Moved: Brian Magee
Second: Laurel Farinon

Approved: 7 – 0 – 1
Abstentions: Jack Buckley

B. Discussion of Current Subcommittee Policy to Reclassify Termiticide Products Labeled for Subsurface Applications as State Restricted Use Pesticides (SRUP).

Discussion

Lee Corte-Real opened the discussion with a brief summary of the history of the concerns involving subsurface termiticide use and the events leading up to the Subcommittee Termiticide Policy currently in place. He explained that the motion dated back to 1985 and was the result of potential toxicity concerns associated with exposure to certain older insecticide chemistry (cyclodienes/organochlorines). At the time there were a number of insecticides with chemicals; such as, aldrin, dieldrin, endrin, heptachlor, and chlordane as their active ingredients and some of these were used as subsurface termiticides.

These cyclodiene or organochlorine insecticides were applied at relatively high application rates and had other properties; such as, relatively high vapor pressures and long half-lives in soil. These properties combined with the toxicity of the chemicals led to concerns for health effects in humans; especially, for chronic exposure including, cancer (tumors in liver), leukemia, multiple myeloma, et. al.

Richard Berman added that difficulty in decontamination or remediation of contaminated private wells, sub slab air ducts, etc. was another important issue associated with the use of these compounds as subsurface termiticides. He also shared that after the cyclodienes came the organophosphates, and following these came the synthetic pyrethroids. The subsequent to the popularity of the pyrethroids came the currently used neonicotinoid class of insecticides and others that are now most commonly used.

Martha Steele noted that during this era there were a number of misapplications and in some cases these misapplications were done by homeowners. She added that toxicity, persistence, remediation and exposure were all serious concerns at the time when the Subcommittee adopted its current motion to reclassify all subsurface termiticides as State Restricted Use Pesticides (SRUP).

Lee commented that all of these concerns along with the inadequate labeling, at the time, helped to shape both the Subcommittee Termiticide Policy and the termiticide regulations that were in effect from the mid 1980's to the year 2007, when the regulations² were revised.

Jack Buckley asked for clarification on the authority of the Board over the Subcommittee. Both Lee and Martha indicated that it was their understanding that the final registration decision rested with the Subcommittee. While acknowledging that the Subcommittee has, in the past, created policy, Lee stated that in-general-terms, the Subcommittee does act at the direction of the Pesticide Board. Martha asked that clarification on the matter be obtained from MDAR legal counsel.

Based on his interpretation of the State pesticide law, Richard Bonanno stated that although the Subcommittee does make pesticide registration decisions, it does not create policy nor does it have the authority to develop regulations. The authority to create such policies and regulations rests with the Pesticide Board.

Within the context of this discussion, Richard Bonanno also made the point that policies are legal interpretations that MDAR frequently makes to help the Agency conduct its business under the regulations; however, these policies can never come in conflict with the regulations.

Hotze Wijnja, Ph.D. briefly presented a report that he wrote to assist the Pesticide Board in its discussion of the Termiticide Policy. To help the Board in its discussion, the report presents the Pesticide Board with questions on the current policy in-light of the current technology/chemistry employed for this use. The report also asks the Board to consider the current reasons to maintain such a State Restricted Use classification. A table within the report presents the vapor pressures and persistence of chlordane and other active ingredients, including those that are found in currently registered termiticide products. Hotze described how the table clearly shows the contrast between the vapor pressure for chlordane as compared to the other active ingredients. Based on the differences in physical and chemical properties, Hotze summarized that non-occupational (building occupant) inhalation exposure to currently used materials is negligible and that total non-occupational exposure from modern day termiticide use was negligible unless such individuals (building occupants) had actual contact with the treated soil.

Dr. Magee asked Hotze and members of the Pesticide Board to describe some of the specific changes in termiticide use patterns seen today as compared to the era in which chlordane was used and consequently became the driving force behind the currently Termiticide Policy and former regulations.

² Last revisions to 333 CMR 13.00 Standards for Application were implemented as published by the Secretary of State on 02/09/2007.

Richard Berman pointed out that there are specific changes in product technology/chemistry; such as, seen in Termidor HD (a.i. fipronil) which requires far less water for application. He emphasized that more significantly it is the labeling of the currently registered termiticides products that has changed. He described how the current labeling is far more comprehensive and provides specific directions to address site conditions; such as, building substrate, crawl spaces, areas of high water tables, etc. Richard indicated that given the comprehensive and lengthy product labeling found with current termiticide products, applicators do NOT need additional training as compared to the era of chlordane use.

At this point, Lee pointed out that maintaining the classification as State Restricted Use prevented homeowners from purchasing these products and attempting to do their own termite control work. He reiterated his belief that there are legitimate concerns for the use of these subsurface termiticide products and that it was not advisable to have people who are not well trained address termite problems on their own.

Richard Berman and Richard Bonanno both described how the labeling of many pesticide products includes a variety of use patterns (uses)—both classified and non-classified. They described how the labeling of subsurface termiticide products, reclassified as State Restricted Use Pesticides (SRUP), have many other uses for control of crawling insects on above ground sites.

Under the currently Termiticide Policy, after the Subcommittee reclassifies such products, they may only be purchased by those individuals who maintain:

- either the Termite and Structural Pest Control Certification Category, State Code 43; or
- another Commercial Certification Category that covers one of the other uses found on the product labeling³.

Such products may only be used, not purchased, by individuals with an Applicator License (core) under “the Direct Supervision” of an individual with the appropriate Commercial Certification Category. One of the perceived problems is that “Direct Supervision” is required, even for those uses that are NOT part of the Subcommittee Termiticide Motion. Although this problem might be alleviated if there were separate product labeling, breaking out those uses which were not-classified as SRUP; since, the product labeling is written for sale and distribution across the nation, registrants are reluctant to amend their product labeling at the request of only one state.

In light of the extensive labeling and training needed to use many of the modern day subsurface termiticides, Martha Steele asked Richard Berman why the pest control industry would want to remove the State Restricted Use Pesticide (SRUP) classification; thus, making the products available for purchase and sale to Licensed Applicators (core) and potentially homeowners; whom, may not have the proper training.

Richard Berman replied that he was not necessarily advocating for the removal of the SRUP classification, but that he was seeking changes; such that, licensed applicators (core) might be

³ For example General Pest, State Code 41 for crawling insects in or around buildings and structures.

able to purchase and use such products for those uses not covered by the Subcommittee Termiticide Policy⁴.

In response, Lee described that it would quite difficult for the Department to monitor or control the use of such products once they were sold to non-certified applicators or the general public. It is for this reason that the Department maintains a clear distinction of classified versus non-classified (general use vs. restricted use) products. Products re-classified by the Subcommittee as State Restricted Use Pesticides under the Subcommittee Termiticide Policy can only be purchased by those with an appropriate certification category.

A lengthy discussion of the current Subcommittee Termiticide Policy ensued and the following points summarize the comments and arguments made by members of the Board and/or Department staff:

- That current State Pesticide Regulations, 333 CMR 13.05(1), require that all applicators who make subsurface applications must be certified by the Department in Category 43-- Structural Pest Control Category or shall work “under the Direct Supervision” of an individual who is certified by the Department in that category (T. Lascola);
- That given the inability of license applicators (core) to purchase and use such Termiticide SRUP’s on for the other (non-termite) uses, without “Direct Supervision”, this issue has direct implications on what is being considered in the draft “Direct Supervision” regulations (R. Berman);
- That there are concerns for potential misuse and risks to the public and the environment from the sale and use of products labeled for subsurface termite control to both those licensed applicators without “Direct Supervision” and to those without any pesticide credential (i.e. general public) (L. Corte-Real);
- That although today’s products labeled for subsurface termite control may present less risk of inhalation exposure from vapors, as compared to products like chlordane, there are still risks that should considered (M. Steele);
- That the Board does not currently have the information needed to make a change in policy based solely on an argument of reduced risks (toxicity and exposure) from currently used termiticides (M. Steele);
- That this Board has yet to present evidence that the U.S. EPA’s product registration and product classification process, for subsurface termiticide products, is not adequate for purposes of the registration and regulation in Massachusetts and that the Board should present a reason why such products pose an unreasonable risk when it decides NOT to allow these newer chemistries to be registered as EPA intended them (R. Bonanno);

⁴ The popular product Talstar was used as an example of a product, with labeling for both subsurface termiticide uses and above ground insect control, which would be desirable for licensed applicators to purchase and use without “Direct Supervision”.

- That the reason for the current Subsurface Termiticide Policy dates back nearly 30-years to the time of chlordane use (R. Berman);
- That the Subcommittee on its own does not have any authority but is given its authority through the direction provided to it by the Pesticide Board (R. Bonanno);
- That the Board ultimately decides what the Subcommittee does and does not do as an arm of the Pesticide Board (R. Bonanno);
- That a general reading and interpretation of the law⁵ and its placement of the Subcommittee within the Board does lead one to conclude that the Subcommittee is an arm of the Board and that interpretation otherwise would have the potential to set-up a conflict between the Subcommittee and the Board (J. Buckley);
- That although the statute may not be clear, support for the Subcommittee being an arm of the Board is further supported by the fact that any person aggrieved by a decision of the Subcommittee may appeal to the Board (L. Corte-Real);
- That there is no requirement in the statute nor regulations that subsurface termiticide products be registered as State Restricted Use Pesticides and that this policy could be changed by the Board without going to public hearing or seeking changes in regulation (R. Berman);
- That the combination of large container sizes (1 gal. to 5 gal.), product labeling requirements, and equipment necessary to use current subsurface termiticides would indicate that the general public or typical homeowner is generally speaking not well suited or equipped to properly use such products (R. Berman);
- That New York is the only other state that further restricts subsurface termiticides beyond EPA's classification due to their laws; which, make all advisory language enforceable (L. Corte-Real and R. Berman);
- That having termiticide products available to the public; which, they are not authorized to use under state pesticide laws is not much different than having aquatic herbicides available to the public--that are likewise illegal for them to apply without first seeking licensure from both the Department and the DEP (S. Antunes-Kenyon);
- That changing the Subcommittee Termiticide Policy registration classification of these products does not change the requirement [333 CMR 13.05(1)] that commercial applicators making subsurface termiticide applications must be certified by the Department in Category 43--Structural Pest Control Category or shall work "under the Direct Supervision" of an individual who is certified by the Department in that category (R. Bonanno); and

⁵ The Massachusetts Pesticide Control Act, MGL c. 132B Section 3A (Establishment of Subcommittee).

- That prior to this issue being taken-up by the Subcommittee and subsequent to any decision made by the Board, Lee will obtain from the Department’s Legal Council a written interpretation as to the authority of the Board to direct the Subcommittee in its business and to create or amend policies used by the Subcommittee in the conduct of its business (M. Steele, J. Buckley, R. Bonanno, R. Berman, et. al.).

Voted: Whereas State Pesticide Regulations, 333 CMR 13.05(1), requires that all applicators who make subsurface applications must be certified by the Department in Category 43-- Structural Pest Control Category or shall work “under the Direct Supervision” of an individual who is certified by the Department in that category, the Pesticide Board advises the Subcommittee to register all non-classified products labeled for subsurface termiticide uses as general use and reclassify for general use all subsurface termiticides previously reclassified by the Subcommittee as State Restricted Use Pesticides (SRUP).

Moved: Richard Berman
Second: Jack Buckley
Opposed: Lee Corte-Real
Abstentions: Kathy Romero and Martha Steele

Approved: 5 – 1 – 2

C. Brief Updates

Direct Supervision Regulations

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

- That the draft regulations are currently with the EEA Secretary awaiting approval to move forward; such that, the Department may take them out for public hearing;
- That the delays are in-part due to EEA requests to file additional paperwork, make language changes, and waiting for Secretary approval.

No motions were made or votes taken.

Sale and Use of the Newly Revised Northeast Core Pesticide Safety Education Manual, 3rd Edition from Cornell

Richard Berman inquired as to how the Department was working with the University of Massachusetts Pesticide Education Program with respect to the coming release of the latest edition of the Northeast Core Manual and needed Core Exam changes.

Steven Antunes-Kenyon explained that MDAR is working to assure that all exam questions related to the Core Manual are reviewed and/or modified to be sure they are covered by the new manual.

Richard Bonanno commented that the Department should place notice of these changes on its pesticide examination and licensure web pages.

E. Meeting Adjournment

The Pesticide Board discussed scheduling the next meeting in September.

Voted: To adjourn the Pesticide Board Meeting.

Moved: Richard Berman

Second: Lee Corte-Real

Approved: 8 - 0

The Meeting was adjourned at approximately 11:14 A.M.