

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL

* * * * *
IN RE: CHAPTER 28: NOTIFICATION PROVISIONS
FOR OUTDOOR PESTICIDE APPLICATIONS
* * * * *

PRESIDING OFFICER: CAROL ECKERT, M.D.

This hearing was held pursuant to Notice at the
Hampton Inn, Colby Thomas Room, 425 Kennedy
Memorial Drive, Waterville, Maine, on October 2,
2009, beginning at 9:30 a.m.

1 (This hearing was held before the Board
2 of Pesticides Control, Hampton Inn, Colby Thomas
3 Room, 425 Kennedy Memorial Drive, Waterville,
4 Maine, on October 2, 2009, beginning at 9:30 a.m.)

5 * * * * *

6 HEARING OFFICER ECKERT: The first part of
7 this will be the introductions.

8 MR. JENNINGS: Henry Jennings with the
9 staff.

10 MR. FISH: Gary Fish with the staff.

11 MR. RANDLETT: Mark Randlett, assistant
12 attorney general.

13 MR. BOHLEN: Curtis Bohlen, on the Board.

14 MR. JEMISON: John Jemison, Board member.

15 HEARING OFFICER ECKERT: Carol Eckert,
16 Board member.

17 MR. RAVIS: Chuck Ravis, Board member.

18 MR. CONNORS: Ray Connors, staff.

19 MR. SCHLEIN: Paul Schlein, staff.

20 HEARING OFFICER ECKERT: So this is the
21 October 2nd Board of Pesticides meeting. The
22 first part of this is a public hearing on proposed
23 amendments to Chapter 28, Notification for Outdoor
24 Pesticide Applications. As some of you know,
25 we've heard this twice before and since our final

1 rule was adopted by us, the Legislature reviewed
2 it and changed it and, therefore, we're dealing
3 with trying to come up with a way to kind of
4 incorporate their changes and our changes and see
5 if we can come up with something that works. So
6 I'm going to let Henry introduce it further. I
7 apologize, I've got a cold, I'm really hoarse and
8 I cough sometimes. If I run out, it's not anyone
9 in the room, it's me.

10 MR. JENNINGS: I'm going to face this way
11 so they can hear me. Good morning. My name is
12 Henry Jennings, and I'm the staff director for the
13 Maine Board of Pesticides Control. Today we're
14 holding a public hearing on proposed amendments to
15 Chapter 28, Notification Provisions for Outdoor
16 Pesticide Applications. Am I going too fast?

17 THE REPORTER: No.

18 MR. JENNINGS: Amendments to Chapter 28 are
19 necessitated by the enactment of LD-1293 by the
20 Maine Legislature during the last session, and I
21 just want to clarify Carol's point. We had
22 provisionally adopted a rule that had to go before
23 the Legislature for review. They didn't authorize
24 final adoption of that so our rule was essentially
25 discarded and instead LD-1293 was enacted.

1 The bill established the requirement for
2 mandatory disclosure to abutters about aerial or
3 air blast spraying and for the creation of a
4 notification registry. I want to point out that
5 already we've received a number of comments
6 suggesting that the mandatory disclosure piece is
7 unwarranted or that the 1,320 feet provided for
8 the notification registry, the distance in which
9 you would have to notify people if they were on
10 the registry, those two things are set in the
11 statute and so they are not things that we have
12 latitude to change. So we don't mind people
13 talking about that, but we just want to make it
14 clear that we're not going to be able to change
15 that through a rulemaking process.

16 Anyone wishing to address the Board today
17 should sign up on one of the sign-up sheets in the
18 back of the room and then we will call the names
19 in the order in which they're recorded on the
20 sign-up sheet. We'll probably alternate between
21 the lists, as we usually do, depending on how many
22 we have on each list. Each speaker will be
23 allowed five minutes basically to speak in order
24 to ensure that everyone has time to speak today,
25 and then if you have additional information that

1 you want to provide beyond the five minutes or
2 maybe you don't really want to speak today but you
3 want to provide input, you can always provide
4 written comment to the Board by either mailing a
5 letter to our main office by emailing me at
6 henry.jennings@maine.gov or you can even fax it to
7 a fax number which is 624-5035. All of that
8 information is contained on the notice that was
9 mailed out and there are some extra copies of the
10 notice in the back.

11 So that's all I have, and I guess what we'll
12 need to do -- have you already got the sign-up
13 sheets?

14 HEARING OFFICER ECKERT: I have the list.

15 MR. JENNINGS: So I guess we're ready to
16 go. Thank you.

17 HEARING OFFICER ECKERT: So I'll tell you
18 at this point that there are a lot more opponents
19 than proponents so I'm going to alternate. I'm
20 going to let one of the opponents go first, back
21 and forth, and then pretty soon it will be mostly
22 opponents unless other people come in. All right,
23 so John Olson, you'll be first.

24 MR. OLSON: Chairman Eckert, members of the
25 Maine Board of Pesticides Control, my name is John

1 Olson. I am the executive secretary of the Maine
2 Farm Bureau Association, the state's largest
3 general farm organization representing all
4 agriculture commodities. Maine Farm Bureau is a
5 voluntary, nonprofit organization formed in 1951
6 for the purpose of analyzing economic and public
7 problems of agriculture and formulating actions to
8 achieve agricultural viability. Currently we have
9 264 dairy, 238 equine, 260 potato, 205 small
10 fruit, 227 vegetable, 267 forestry, 76 apple, 121
11 poultry, 250 beef, 166 sheep, goat, llama, 98
12 horticulture and 759 hay and grain members. Our
13 policy is determined by the grass roots process
14 starting with individual farmers meeting together
15 throughout the state.

16 We understand that this proposal will amend
17 the current Chapter 28 to implement the
18 requirements of LD-1293, an act to require citizen
19 notification of pesticide applications using
20 aerial or air carrier application equipment. As
21 you know, there are serious flaws with this
22 legislation. Henry Jennings, your staff director,
23 has discussed this in a letter to the Chairman of
24 Agriculture, Conservation and Forestry Committee.
25 Here are some of our concerns. How far does one

1 have to notify an abutter? Some abutters live
2 miles from the area to be sprayed. What is the
3 notification requirement if the abutting structure
4 is an apartment building, nursing home, weekly,
5 seasonal vacation rental, time share, et cetera?
6 Does the the owner have to notify -- does the
7 farmer only have to notify the neighbor -- the
8 owner, I'm sorry, or notify everybody living there
9 at the time of spraying? The law requires a
10 90-day notification before the initial application
11 of pesticides by either aerial or air blast
12 equipment. What will happen to a potato farmer,
13 for example, who does not use either application
14 but in an emergency needs to use aerial
15 application because the fields are too wet? This
16 has happened this summer. Can the farmers spray
17 if the abutters have not been notified? What
18 happens if you can't find out who owns the
19 abutting property nor can you find out what the
20 address of the owner is? Farmers will need to
21 maintain records of those they notify. Will these
22 become public records for anyone to see and, if
23 so, what happens to the abutters that do not want
24 to be part of any public record?

25 It is our understanding there will be

1 legislation introduced to fix these problems. We
2 have other concerns with the law as well and will
3 address this at the public hearing with the
4 Agriculture, Conservation and Forestry Committee.
5 These concerns have been addressed to us both by
6 our conventional and organic grower members. The
7 mandatory provision of LD-1293 needs to be
8 eliminated. Farmers already talked with their
9 neighbors about pesticide applications. We are
10 not aware of problems nor has it been documented
11 by the Pesticides Control Board that there is a
12 problem. Farmers should not have to recruit for
13 the pesticide notification registry. This needs
14 to be the function of the Board's staff through
15 press releases, informational meetings, media
16 interviews and with the help of agricultural
17 organizations such as MOFGA, AGCom and the Maine
18 Farm Bureau in their press releases. Any
19 notification distance should be from the treated
20 area.

21 LD-1293 requires a mandatory notification of
22 anyone using aerial or air blast equipment to
23 notify all abutters of the spray area. In some
24 cases this could be miles away.

25 MR. SCHLEIN: Twenty seconds left.

1 MR. OLSON: I just want to finish up one
2 more point. The notification requirements for
3 agriculture should not be greater than other
4 applicators and users. The proposed Chapter 28
5 creates a notification of people on its new
6 registry of 1,200 feet for aerial and air blast
7 application. It also exempts all mandatory
8 notification of aerial applications that are
9 subject to Chapter 51. Chapter 51 has the
10 following notification requirements: 500 feet for
11 aerial for forestry, 500 feet for aerial for
12 ornamental plants and 500 feet for biting fly and
13 public health applications.

14 In the current Chapter 28 rule, commercial
15 applicators need to only notify an individual
16 listed on the pesticide notification registry
17 while performing outdoor nonagricultural pesticide
18 application that is within 200 feet of the
19 property boundary. The Board's patchwork approach
20 of notification is very complicated. Now, if I
21 understand this correctly, an organic apple grower
22 living in the country using air blast pesticide
23 equipment would need to notify everyone on the
24 pesticide notification registry within a quarter
25 mile, meanwhile a commercial applicator using

1 conventional chemicals with the same equipment
2 spraying a tree in a residential neighborhood
3 would only need to notify those on the registry
4 within 250 feet of the property. We suggest that
5 the Pesticides Control Board not go forward with
6 this proposed rule until the Legislature clearly
7 gives you a directive.

8 Thank you very much, and I apologize for
9 going over.

10 HEARING OFFICER ECKERT: Questions?

11 MR. OLSON: Thank you.

12 HEARING OFFICER ECKERT: I have a question
13 and then John. In your last comment, I thought
14 that persons would have to be a quarter mile and
15 abutters. Did I read that wrong? It has to be
16 abutters not --

17 MR. JENNINGS: Well, it depends on which
18 piece you're talking about. The mandatory
19 pesticide 90 days in advance has to be both.

20 HEARING OFFICER ECKERT: Both, okay.

21 MR. JENNINGS: But if you're on the
22 registry, it doesn't matter whether you abut or
23 not.

24 MR. OLSON: That's correct. Thank you,
25 Henry, that's my understanding also.

1 MR. JEMISON: And would commercial
2 applicators spraying a tree in a residential
3 neighborhood necessarily use an air blast sprayer
4 to do it?

5 MR. JENNINGS: They might.

6 MR. FISH: They might.

7 MR. JEMISON: All right.

8 MR. OLSON: And also, if that tree was
9 sprayed aerially, the distance would be 500 feet,
10 and you're asking an organic grower in the country
11 to give a quarter mile notification. Thank you.

12 HEARING OFFICER ECKERT: Okay, thank you,
13 John. So Heather Spalding from MOFGA.

14 MS. SPALDING: Good morning, Dr. Eckert and
15 Members of the Board of Pesticides Control. My
16 name is Heather Spalding and I'm the associate
17 director of the Maine Organic Farmers and
18 Gardeners Association, MOFGA, which has members in
19 almost 7,000 homes and businesses in Maine and
20 beyond. Thank you for the opportunity to share
21 MOFGA's position on the proposed amendments to
22 Chapter 28 of the pesticide rules. We recognize
23 the challenges before you and appreciate your
24 efforts to incorporate into rule an act to require
25 citizen notification of pesticide applications

1 using aerial spray or air carrier application
2 equipment. We also recognize that there are some
3 practical considerations in the new statute that
4 neither the legislators nor stakeholders had time
5 to address adequately during the last legislation,
6 and we continue to work with legislators in
7 various sectors of Maine's agricultural community
8 to streamline that notification law and make it
9 logical for everyone to follow and easier for the
10 BPC to enforce.

11 As we work through the Maine pesticides
12 statutes and rules we should strive for clarity,
13 consistency and accessibility. One of the main
14 concerns that we have heard from some farming
15 organizations is that the rules are complicated
16 and in some cases contradictory. We want to work
17 with the BPC and with the diverse agricultural
18 organizations in Maine to develop clear and
19 concise guidelines. We feel that the notification
20 statute passed last spring is moving us toward
21 better clarity and accessibility and we are
22 hopeful that the proposed amendments to that
23 statute will make the law even better, and you
24 probably know that there are going to be bills
25 submitted in this emergency session intending to

1 clarify some of the things that we didn't have
2 time to address last spring, but today we're
3 talking about your proposed amendments to Chapter
4 28, so here are MOFGA's thoughts.

5 I've grouped them into different categories.
6 MOFGA supports the following proposed amendments
7 -- BPC amendments to Chapter 28. In Sections
8 1-A-1 and 1-B-1 it is important for people living
9 within 1,320 feet of an intended aerial or air
10 carrier spray area to have access to information
11 about specific sprays. Thank you for recognizing
12 the need for consistency among rules and
13 statutes.

14 Section 1-C in the intro, thank you for
15 including the 1,320 foot proximity requirement for
16 abutting property. This is an important
17 clarification that will significantly reduce the
18 numbers of neighbors that land managers will need
19 to notify in certain circumstances.

20 Section 1-C-1, MOFGA supports the proposed
21 simplified requirements for mandatory notification
22 itemized in A through E.

23 Section 1-C-4, record keeping will be
24 extremely important for land managers in case a
25 dispute arises.

1 Section 1-D-1, MOFGA supports the practical
2 registration deadline of March 15th.

3 Section 1-D-2, MOFGA supports the BPC's
4 intention of making the registry available to land
5 managers by April 1st of each year.

6 Okay, MOFGA sees the following proposed BPC
7 rule amendments to Chapter 28 as inconsistent with
8 the notification statute. Section 1-C intro, the
9 requirement should be to inform managers of
10 maintained recreational areas as described in
11 CMR01-026, Chapter 10, Section 2. This is more
12 detail than you really need, but it will be in my
13 written testimony. Basically there should be no
14 exception for notification in such areas. We feel
15 that the managers of those areas should be
16 notified.

17 Section 1-C-3 allowing land managers to come
18 up with their own alternative disclosure plans
19 will make both implementation and enforcement more
20 complicated. If your proposed Section 1-C-2 on
21 unforeseen circumstances requiring an application
22 stands, there would be absolutely no reason to
23 include Section 1-C-3. I'll share MOFGA's opinion
24 on Section 1-C-2 in a minute.

25 Section 1-C-5, this section directly

1 contradicts the letter and essence of the
2 statute. The purpose of the aerial and air
3 carrier pesticide application law is to promote
4 awareness and access to information about
5 pesticides that may drift onto neighbors. Whether
6 the application is for agricultural purposes,
7 public utilities maintenance, landscaping or
8 prevention of insect bites, neighbors should know
9 when pesticides have the potential to drift onto
10 their properties. This section flies in the face
11 of the statute.

12 The only section that should be considered
13 is the following: in the event that severe pest
14 or weather conditions threaten to cause a public
15 health emergency as determined by the commissioner
16 of the Maine Department of Health and Human
17 Services or a threat of significant natural
18 resource and/or economic loss as determined by
19 either the commissioner of the Maine Department of
20 Conservation or the commissioner of Maine
21 Department of Agriculture, Food and Rural
22 resources, the specified requirements of Section 1
23 of this rule shall be waived subject to the
24 following condition: the severe pest and/or
25 weather conditions must necessitate immediate

1 wide-scale aerial application of pesticides.

2 MOFGA recommends the following changes to the
3 BPC's proposed amendments to Chapter 28. I have a
4 little bit more here. How much leeway do I --

5 HEARING OFFICER ECKERT: Thirty seconds.

6 MS. SPALDING: There's no way I can do it
7 in 30 seconds. So let me see. I think I'm the
8 only proponent here so --

9 HEARING OFFICER ECKERT: It's just that we
10 need the whole group to move along, too.

11 MS. SPALDING: I know. All right, well, I
12 guess basically what I've done is I've tried to
13 address specific amendments, and there are a lot
14 in here and I wanted you to have an understanding
15 of where MOFGA comes down on all the specifics.
16 So I will skip that stuff. It's going to be in my
17 written comments. I would like to mention one
18 thing here. We recognize that there may be
19 situations when applications might not be foreseen
20 by a March 1st deadline. We feel that the --
21 given the very basic and general level of
22 information that land managers need to provide to
23 neighbors, it's prudent for the land managers to
24 notify neighbors if they would even consider using
25 aerial or air carrier technologies. Because we

1 believe the principle of notification is so
2 important, MOFGA staff members will contact
3 neighbors of our Common Ground Education Center in
4 Unity and Thorndike regarding our farming
5 practices and the types of approved organic
6 pesticides that we use or might use on our
7 property, and we intend to do this even though we
8 do not foresee circumstances to which the
9 notification statute or the proposed amendments to
10 Chapter 28 would apply.

11 I guess I just wanted to point out a couple
12 of things that have happened in the past week.
13 You may have heard that Washington, DC
14 Environmental Protection Agency Administrator Lisa
15 Jackson this past week announced sweeping plans to
16 overhaul the Federal Toxics Chemical Control
17 Laws. She stated "as analyses of umbilical cord
18 blood show, American infants are being born with
19 hundreds of industrial chemicals, pesticides and
20 other pollutants already in their bodies. These
21 children are living proof that the current law, a
22 relic of the Ford Administration's waning days, is
23 worse than useless." Now, clearly she was talking
24 about TOSCO which does not regulate pesticides
25 specifically, but it's clear that there's a

1 growing awareness of the need for chemical reform
2 at the highest offices all the way down to the
3 smallest rural farms in Maine. We feel this is an
4 important time to be addressing these issues and
5 we strongly urge you to propose amendments to
6 Chapter 22 that will dovetail with the specific
7 clarifying amendments that are going to be
8 introduced to the Legislature this session.

9 Thank you again very much. We really want
10 to work with you and enjoy it, and we want to work
11 with all of you, too. So thank you. I will
12 submit these in writing in a few days and I have
13 copies of some recent articles on the adverse
14 health effects of industrial chemicals and
15 pesticides in particular on human health.

16 MR. JEMISON: I think we might have even
17 gotten those in our packet, but thank you.

18 MS. SPALDING: Yeah, I'm not sure I sent
19 all of them.

20 MR. JEMISON: Okay, thank you.

21 MS. SPALDING: I'll be happy to answer
22 questions.

23 MR. JEMISON: I was a little bit interested
24 in your question about 1-C-5, the land managers
25 conducting aerial applications subject to

1 provisions that are exempt from the requirements.
2 Could you just go into that just a little bit more
3 so that I better understand why you see that as
4 directly contradictory to the alternative
5 disclosure plans?

6 MS. SPALDING: Well, the Section 1-C-5
7 makes exemptions for applications that are subject
8 to Chapter 51, correct?

9 MR. JEMISON: Right.

10 MS. SPALDING: And the notification
11 requirements in Chapter 51 are not as strict as
12 the mandatory notification requirements. So it's
13 nonagricultural applications.

14 MR. JEMISON: And we chose to put this here
15 because we already had some rules in place for
16 those people, right, in those circumstances and we
17 included this to just specify or clarify that that
18 would be for that type of an application and we
19 have rules for these types of applications. Is
20 that essentially what our thought was?

21 MR. JENNINGS: All we are exempting there
22 is from the mandatory written disclosure and right
23 now 90 days in advancement. You would still -- if
24 somebody is on the registry, they would still need
25 to be notified for these types of applications.

1 So, yeah, I mean, the problem was we had already
2 had a set of rules saying what the requirements
3 were, and the other thing that we were thinking at
4 the time we did this was we may get into mosquito
5 spraying, which as many of you know, this is kind
6 of an unprecedented year for Triple E, so we're
7 already talking with municipalities and the Bureau
8 of -- or the Maine CDC about how that might
9 happen. So that chapter has an exemption for
10 public health emergencies. So we thought, well,
11 if we just defer to that, we've already got that
12 set up. So if you decide down the road that this
13 is inappropriate, then we're really going to have
14 to come back to deal with public health
15 emergencies somehow because right now we just
16 wouldn't be able to spray for Triple E under
17 LD-1293.

18 MR. JEMISON: Right.

19 MS. SPALDING: And I hear what you're
20 saying, Henry, and that's why we tried to propose
21 a solution and an alternative and I think putting
22 that clause in there about public health
23 emergencies and significant threats to agriculture
24 -- economic threats to agriculture could supplant
25 that, but that it's not sort of a wholesale, you

1 know -- well, it's not just a large variance for
2 any kind of aerial or air carrier application
3 that's not specific to agriculture. I feel like
4 that is -- you know, a lot of the chemicals that
5 are being used for those other applications are
6 just as much of a concern as the agricultural uses
7 and people want to know what they're being exposed
8 to regardless of what it's being sprayed on, but I
9 do think that there should be some kind of clause
10 in there to address public health issues and
11 significant economic loss in extenuating
12 circumstances.

13 HEARING OFFICER ECKERT: Thank you.

14 MR. JEMISON: Very good. Thank you for
15 that.

16 MS. SPALDING: Thanks.

17 HEARING OFFICER ECKERT: Okay, continuing
18 on, Ed LeBlanc.

19 MR. LEBLANC: I would have dressed up a
20 little nicer but I'm flipping burgers at the 4-H
21 booth at the Cumberland Fair later on. If I have
22 to leave early, that's why. I'm just a very small
23 family farm in southern Maine. We provide
24 wholesale vegetables for Hannaford Brothers
25 Supermarkets, Shaw's Supermarket chains. We have

1 a couple of retail stands of our own. In my part
2 of the state, I'm spread out roughly about 35
3 miles to get the acreage I need to meet the
4 demand. Notification -- mandatory notification of
5 all the individuals that I -- would be costly. I
6 think it would excite some concern, put some
7 pressure on the landowners. I lease about 50
8 percent of my land. I want everybody to know that
9 we work very closely with the IPM program, follow
10 those -- you know, the restrictions and their
11 ideas for us very forthcomingly, and we also --
12 because we're in the southern part of the state,
13 we have to work real close with the landowners,
14 the abutters. We're the same farm that puts a
15 pumpkin on everybody's step that we're close to.
16 If they want to know anything, they're very
17 forthcoming about coming to us, and basically
18 that's it. You know, I hope this goes back to
19 legislation. I know you folks' hands are tied
20 somewhat, and that's all I have to say. I'm
21 pretty quick, too.

22 PERSON IN AUDIENCE: Tell us about the
23 houses around your field.

24 MR. LEBLANC: Yeah, I probably have -- I
25 have one small field -- again, my average field

1 size is less than 15 acres. I have one field that
2 has a subdivision across the road from it which
3 has over 150 houses. Again, we have a great
4 relationship with all our abutters. My farm
5 stands -- our several little retail farm stands
6 are right in those towns. We do a really good job
7 at working with the schools, working with local
8 different charitable organizations to keep
9 everybody, you know, knowing where the products
10 are coming from, what we're doing. It's just
11 going to -- our bottom line seems to get smaller
12 and smaller every year, and this is just another
13 step for me, especially on a year like this year,
14 that starts, you know, just weighing on us a
15 little more heavy. Do you folks have any
16 questions? Yes, ma'am.

17 HEARING OFFICER ECKERT: I do. What do you
18 -- what type of applications will be affected by
19 this, routine or emergency?

20 MR. LEBLANC: Basically emergency is
21 significant. We grow a lot of sweet corn, but
22 even the mandatory notification I think is going
23 to be something that might excite some people a
24 little more than it should. A lot of people seem
25 to be somewhat naive in what we do. Our air blast

1 sprayer, literally I can use two-thirds the normal
2 rate. It's about the most efficient spray
3 mechanism that I have on the farm. We've come a
4 long way. I mean, you spray with no wind, you
5 spray exact times, you spray when the threat is
6 the greatest. I mean, we don't want to spray any
7 more than we have to. I mean, this stuff is
8 extremely expensive. We're just doing it to
9 basically save the crops. Sir?

10 MR. RAVIS: Do you do any aerial spraying?

11 MR. LEBLANC: No, everything with me is air
12 blast.

13 MR. RAVIS: Air blast, and would that be
14 kind of similar for other growers spread out in
15 southern Maine?

16 MR. LEBLANC: Southern Maine I know of
17 about four or five guys that are using air blast,
18 yup.

19 MR. RAVIS: But not aerial?

20 MR. LEBLANC: Not aerial.

21 MR. RAVIS: Not from an aircraft?

22 MR. LEBLANC: We're not large enough or our
23 field is not large enough to use aerial. Any
24 other questions?

25 HEARING OFFICER ECKERT: Thank you.

1 MR. LEBLANC: Thank you. If I run out,
2 again, it's just burgers.

3 HEARING OFFICER ECKERT: Jody Spear.

4 MS. SPEAR: Good morning, Chairman Eckert
5 and Members of the Board. I came essentially to
6 say that I -- I'm aware that the provisions of
7 this -- well, actually I'm not going to stay very
8 long.

9 MR. SCHLEIN: You have plenty of time.

10 MS. SPEAR: The provisions of the new
11 legislation are hard won and they're very much
12 needed because too often, although some of these
13 speakers will say that notification gets people
14 excited, implying that they needn't be excited and
15 that this spraying is not really harmful, there
16 are some serious public health issues involved,
17 and I want most of all to register an objection to
18 the part of the amendment that has to do with
19 Chapter 51. When I submit written testimony, I
20 will include some material about mosquito
21 spraying, most of which is done unnecessarily and
22 at the wrong time. The same applies for gypsy
23 moth, brown-tail and other types of wide area
24 spraying. There are other ways to accomplish
25 controls, and I haven't gone into the kind of

1 specifics that MOFGA has, and if I can yield the
2 rest of my time to Heather to comment on any other
3 things that you didn't give her time for, I'll
4 leave that up to her. Thanks.

5 HEARING OFFICER ECKERT: I'm going to go
6 back to the regular list and if there's time at
7 the end --

8 MS. SPALDING: Thanks. Thanks, Jody.

9 HEARING OFFICER ECKERT: Harry Ricker.

10 MR. RICKER: Chairwoman and Members of the
11 Board, my name is Harry Ricker. I'm part of a
12 family farm, Ricker Hill Orchards. We have --
13 we've been farming for nine generations. I farm
14 with my brothers, my sister, a nephew, one of my
15 sons and my dad. We farm in eight towns,
16 Bridgton, Harrison, Standish, Buckfield, Auburn,
17 Monmouth, Minot, Hebron and Turner. In these
18 towns we farm on 20 noncontiguous parcels,
19 primarily apples but we do other mixed fruits and
20 some vegetables. It looks to us like North
21 Bridgton is probably the worst-case scenario for
22 us in this rule, and we checked through the town
23 Web site, and it's in North Bridgton Village. It
24 really has no real close neighbors because we have
25 a wood forest buffer between us and any of the

1 buildings, but if it's adopted, we have 400
2 neighbors and half of that -- half of that number
3 being residents at Bridgton Academy, and if we are
4 conservative, that rule would put us at over 1,000
5 people we would have to deal with if this goes
6 through the way you have it, and where do we get
7 the money and where do we get the time to do
8 this? I mean, I had my brother and my nephew
9 testifying over at the Legislature and I think
10 they think we make it up but we don't.

11 We've been through notification before.
12 Back in the eighties we had people interested in
13 it. We had three neighbors who wanted to be
14 notified. Within the first season, they all --
15 they all rescinded the need to have it done
16 because once they learned what we were doing and
17 realized what we use for chemicals, they were
18 comfortable. They said don't bother to call us,
19 it's fine, and given that we've got 1,500
20 neighbors within a quarter of a mile and we had
21 three that were interested and they were all happy
22 not to be notified after that, I question what the
23 ground swell is to cause this serious impairment
24 by trying to commercially farm in southwestern
25 Maine.

1 Who are we protecting? We just heard
2 somebody say that it's a serious concern to public
3 health. The microscopic drift which can occur off
4 target and the dose, you know, the amount of times
5 that they're going to be exposed to any of this,
6 if it actually occurs, what is the public health
7 risk compared to, you know, the serious impairment
8 to being able to farm and keep our families in
9 farming and not send us off to be factory workers
10 I guess. We've got great relationships with our
11 neighbors, and I need somebody to explain to me
12 how that's possible. If we've got 1,500 neighbors
13 and we're 50 percent organic and 50 percent IPM,
14 our neighbors don't know which ones we're
15 spraying. This year, much to my chagrin, we
16 sprayed 35 times on our organic farms because the
17 chemicals are not very efficacious and we had a
18 lot of conditions that caused us to spray this
19 year. If ever we should have drift problems with
20 our neighbors, it should be this year, and, you
21 know, like most farmers, we're good people, we're
22 hard working, we care about the environment. I
23 don't understand where the Legislature is coming
24 from. They don't listen to our testimony, and
25 they think we're bad guys or bad girls and we're

1 not.

2 Like I say, we're one of the largest organic
3 producers in the eastern part of the United States
4 of America. We have been for more than a decade.
5 We're inspected more than any organic farm that I
6 know. I think it's because there's a rumor that
7 we're capitalists and we don't fit the mold very
8 good, but given all those inspections, we've got
9 11 sites where we have the minimum 100-foot buffer
10 between our IPM crops and our organic crops and we
11 have not had any contamination in 100 feet and,
12 like I say, where's the risk to the public
13 health? I would really like -- be pleased if you
14 could send this back to the Legislature and
15 request that they correct the balance between the
16 burden on the farmers and the safety of our
17 residents here in Maine. We are as concerned as
18 everyone else, we feel, about their health, and if
19 there's something that we can do to help with
20 that, we're fine. If I tell my wife you've got to
21 call 1,500 people, it's going to be hard on my
22 relationship. Thank you for letting me present to
23 you. Are there any questions? Thank you.

24 HEARING OFFICER ECKERT: Thank you. We're
25 continuing down this list. Randy Drouin or Drown?

1 MR. DROWN: I won't be speaking today.

2 HEARING OFFICER ECKERT: Okay. The next
3 one has doctor's handwriting, Smith's Red Apple.
4 Mr. Smith? You write like my partner.

5 MR. SMITH: I'll take my hat off, wife's
6 orders. We're from Acton, Maine, and we've been
7 growing apples for 35 years, and we have good --
8 we've never had a complaint from a neighbor.
9 We're very careful. I've raised my children right
10 there on the farm, and we were always very careful
11 that we used good chemicals and everybody was
12 protected, and I don't know how you're going to
13 get out a thousand feet to find out around -- what
14 do you do, tie a rope on a dog's tail and send him
15 out through the woods to try and find out where a
16 thousand feet ends? You know what I mean? We
17 also have a campground down in the valley. Now,
18 we have 150 seasonal people down there. Now, do
19 we -- they only come up maybe on the weekends. We
20 don't know where they are. Do we have to -- my
21 question, a big one, do we have to notify all of
22 these people every time we spray and you know
23 apples, we start to spray and my boy does the
24 spraying and if the wind starts to come up, we
25 stop spraying. We don't want those chemicals

1 blowing all over the place and up on the
2 foothills. Maybe the next day or so when the wind
3 dies down we can spray again. It's problems, you
4 know, and I just believe that all the ones that do
5 spray, from what I can say, everybody is very
6 careful and I don't know why we need this
7 legislation to keep making it worse. Everything
8 we do we've got to be licensed for anymore. We
9 can't even put chemicals in a -- after 25 years in
10 a swimming pool at the campground we've got to be
11 licensed now to put chemicals in the swimming
12 pool. I mean, it's getting to the point where
13 we're just getting strangled with all this
14 legislation. That's all I've got to say. Thank
15 you.

16 HEARING OFFICER ECKERT: Did you get his
17 name, Stan Smith? Okay, great. So then Ken Smith
18 also.

19 MR. SMITH: Yeah, everybody pretty much is
20 saying what I have to say. You can give my time
21 to Heather if you want.

22 HEARING OFFICER ECKERT: Vincent Ahlholm.

23 MR. AHLHOLM: Ahlholm, yup.

24 HEARING OFFICER ECKERT: Got it.

25 MR. AHLHOLM: My family farm is in coastal

1 Maine. I farm several hundred acres. We operate
2 a fairly large farm market, and we're probably one
3 of the larger ones in the state, and we wholesale
4 as far away as New York State, mostly
5 Massachusetts.

6 This is sort of going to take a little side
7 trip. Harry's money and my money when we get
8 certified in the State of Maine, most of it goes
9 to MOFGA. So then we come here, this isn't the
10 first time, MOFGA has got funding from
11 conventional guys that want to have a little bit
12 of organic, but we kick in money to them so they
13 can have a lobbyist or a lawyer, and we're just
14 farmers trying to farm a few acres of organic. So
15 we're funding our opposition and as you guys know,
16 if you want to be certified in Maine, the easiest
17 route is through MOFGA, and they're fine people to
18 work with, but they take our money to fight us on
19 the conventional end of things. Now, if you go
20 back to this rule, if this took effect, I'm going
21 to have to notify 300 to 350 approximate families
22 or homes when we use our air blast sprayer. Like
23 Ed LeBlanc said, when we use our air blast
24 sprayer, we use about 50 percent of the quantity
25 of chemical that we would use if we were using a

1 conventional sprayer. There is risk. Anybody
2 who's been air blast spraying knows that you've
3 got to take and balance those risks because every
4 time you go out there, if you're going to get
5 drift across the road, somebody is going to get it
6 on their car or their kids, you're going to get
7 sued, you're going to lose your farm. So
8 everybody that farms with an air blaster knows
9 that risk. Maybe there's some education needed
10 for those people to control some of that drift,
11 but if these proposals go in, I will quit. If you
12 take this proposal, and I've notified all these
13 350 people in town, I call them up and say --
14 well, most people are not going to have a land
15 line, they're going to have a cell phone, are you
16 going to do it on the internet, are you going to
17 do it in the newspaper, so I put an ad in the
18 newspaper that says Vincent is going to be
19 spraying, I list out the chemicals, what if I've
20 -- you know, I've got to do this 90 days ahead
21 and 24-hour notice and there was a bunch of
22 different things that you guys have proposed, and
23 so it amounts to creating -- it's not really a
24 panic or anything, but it amounts to a knowledge
25 that all these people have gained that, look at

1 these chemicals that this farmer may or may not
2 use on this crop, so I'm just going to buy my
3 apple juice down to Hannaford's, they don't have
4 any chemical labels on that. Well, 20 years ago
5 MOFGA tried to get a rule in effect -- some of you
6 guys probably weren't on the Board -- and they
7 tried to get a rule in effect that any
8 conventional chemical that was used on a crop in
9 Maine at the store level would say -- it would say
10 apples from Maine and it was going to say Captan,
11 Roundup or whatever you put under the tree. All
12 from bloom right through until harvest there was
13 going to be a sticker they wanted right on the
14 Maine product in the grocery store. So I
15 testified at a similar hearing to this and said
16 I'll go along with it, I think that's great as
17 long as the Cheerios with oats from Ohio and the
18 wheat in the Wonder Bread from Montana and the
19 Twinkies with soybeans from somewhere and the
20 ketchup which all comes from Mexico has that same
21 chemical label on it, that that producer in Mexico
22 when he was using his air blast sprayer, he put
23 down -- which he can use any goddamn chemical he
24 wants, but that local person didn't read in the
25 paper that that ketchup when those tomatoes were

1 grown had every chemical that could be thrown at
2 it, thrown on it, but he's not going to come buy
3 my tomatoes and make his homemade tomato sauce
4 because I had to put in the paper or call him up
5 last night and say, geez, I had to put some
6 fungicide on because we had late blight this year
7 so I'm not going to buy his tomatos, I'm going to
8 go down and buy the ones down at Wal*Mart that
9 come from Mexico or the apple juice that came from
10 China. The only thing that this will benefit, it
11 will only benefit the Chinese and American foreign
12 farmer because this is just going to be another
13 nail in the Maine farmer's coffin. It's a real
14 pain in the ass. Thank you.

15 HEARING OFFICER ECKERT: Do people have
16 questions? Okay, Paul Sweetland.

17 MR. SWEETLAND: I'm Paul Sweetland. I
18 manage Coastal Blueberry Service. You've already
19 heard me a couple times already on this, and so I
20 don't have a whole lot additional to say that I
21 haven't said in the past, but one of the things
22 that I was reading the other day that kind of
23 caught my eye, cropland or gardening is a middle
24 ground between nature and culture, a place that is
25 of nature and set up against nature. We use the

1 pesticides. It's a myth that we all have lots of
2 money and want to go out and spray all the time,
3 and with myself being with blueberries, when we're
4 using our tractors we have to drive on our vines,
5 we're not row crops. We don't want to be driving
6 on our plants and we don't want to be spraying
7 anything that we don't have to spray. There is --
8 I was looking for information where there was
9 science proving that we should have a certain
10 distance from where we're spraying, and so far I
11 haven't found any scientific evidence that says
12 nobody should be within a quarter of a mile or
13 anything, but I did run across one thing from
14 Oregon. They did a survey in 1992 and it said
15 that 76 percent of the households in Oregon use
16 insecticides, and 85 percent of the households had
17 at least one pesticide in storage. So I didn't --
18 when we kind of look at the groundswell of are we
19 -- are we really causing -- spraying toxic
20 material and stuff, we have EPA, a lot of
21 scientists that know a lot more than I do and I
22 rely on them to protect me when I'm using the
23 products that I use, and I think with the number
24 of households that are using pesticides that the
25 majority of the people feel similar to the way

1 that I do.

2 I think we should congratulate the writers
3 on the original notification. It's something that
4 has worked very well over many years. If we look
5 at the record of complaints that people have had
6 and stuff, I think the original documents that we
7 had for notification have served us very well and
8 proven to be very adequate for the needs of our
9 abutting neighbors, and I guess one of the other
10 things I have a real problem with is this 90 days
11 notice before I do any spraying. For me, I'd
12 probably have to notify people in January and I'm
13 not sure many people are going to remember if I
14 notify them in January when it comes time to start
15 spraying in April. I think that's -- you know, I
16 have a hard time remembering what I ate for supper
17 last night. So I think some of these requirements
18 -- the 24-hour notice before spraying should be
19 more notification the day before. That has worked
20 very well in the past with myself and other people
21 that are doing notification, and people aren't
22 going to sit up and watch their watch or clock to
23 make sure they had the full 24 hours. I think
24 that part is unnecessary. Sometimes I'm out in
25 the field, and by the time I see a problem that I

1 need to treat tomorrow, by the time I get back to
2 my office and notify people, early in the morning
3 I may make a safe application but by the time 24
4 hours is up, it may not be a safe time to do an
5 application and then I'd have to wait even more
6 time. Thank you for your time. Any questions?

7 HEARING OFFICER ECKERT: Devan Morrill.

8 MR. MORRILL: My name is Devan Morrill.

9 I'm a licensed pesticide applicator with Lucas
10 Tree Experts. Chuck Cotton, our manager at Lucas
11 Tree was unable to be here today so I'm going to
12 read a statement he prepared this week.

13 Dear Pesticide Board Members, the Lucas Tree
14 Expert Company appreciates the opportunity to
15 comment on the proposed changes to Chapter 28,
16 Notification Provisions for Outdoor Pesticide
17 Applications. The portions of the Chapter 28
18 changes where we have concerns are regarding the
19 Air Carrier Disclosure and Notification
20 requirements precipitated by the passing of
21 LD-1293. We feel that the proposed changes as
22 outlined represent an unrealistic financial and
23 administrative burden to our company and the
24 entire industry. To better understand how these
25 proposed changes impact Lucas Tree, a brief

1 description of the affected operations follows.

2 Currently Lucas Tree uses ground application
3 air carrier equipment to perform mosquito, tick
4 control and plant health care applications. Plant
5 health care applications employing ground air
6 carrier equipment generally relate to the control
7 of pests such as browntail moth and gypsy moth.
8 Lucas Tree application equipment consists of
9 truck-mounted and backpack mist blowers. These
10 applications are presently performed in
11 approximately 25 different towns and our current
12 client list is approaching 1,000. Each client may
13 receive one to four applications annually
14 depending on their particular circumstances. The
15 vast majority of our clients are residential
16 property owners with small areas around their
17 properties to be treated. The number of locations
18 treated in any one day may range from ten to
19 fifty. Based on the brief operational description
20 outlined above, the following are some major
21 issues Lucas Tree has with the proposed disclosure
22 and notification regulations and options we are
23 offering for consideration that we feel still meet
24 the intent of the law but also allow us the
25 flexibility needed to meet our clients' needs.

1 Issue #1, Lucas Tree feels that the mandatory
2 disclosure requirement is extremely excessive,
3 particularly with the type of operation and
4 service we are offering to our clients. To comply
5 with the mandatory disclosure section of the
6 proposed regulation, Lucas Tree would have to
7 research the names and addresses of abutters and
8 occupants of sensitive areas within 1,320 feet of
9 each of the approximately 1,000 spray sites
10 currently under contract and notify them in an
11 appropriate manner as outlined. Any new clients
12 would require the same level of research to add
13 their application locations and subsequent
14 abutters and sensitive area occupants into the
15 disclosure database as well as give 48-hour
16 notification. Additionally the data would have
17 to be continually monitored for accuracy due to
18 new construction within a disclosure zone and the
19 movement of individuals in and out of existing
20 homes. The task of developing this database from
21 an administrative standpoint is an enormous
22 undertaking. The cost involved with the property
23 owner search and subsequent notification by mail,
24 personal delivery or other method and then the
25 maintenance of the data will be financially

1 restrictive. Further, the oversight of even one
2 individual in this entire process would subject us
3 to enforcement action by the Board.

4 The alternative suggested, due to the
5 complexity of administrating the number of
6 locations that Lucas Tree serves, we offer as an
7 alternative to Category 7E, biting fly, and
8 Category 3A, which is outdoor ornamental,
9 applications using ground air carrier equipment to
10 be exempted from the mandatory disclosure portion,
11 Section C, of the proposed regulation. To satisfy
12 the intent of the disclosure requirement, ground
13 aerial applications would annually publish notices
14 approved by the Pesticide Board, in the newspaper
15 with circulation covering the area, in which
16 applications will occur, 90 days prior to the
17 first application of the season. We would also
18 suggest posting a sign approved by the Pesticide
19 Board on the application property just prior to
20 the application and in a location most visible to
21 the public as a more local and immediate means of
22 notification.

23 Issue #2, the mandatory disclosure section
24 of the proposed regulations does not appear to
25 address the change of home ownership after the

1 mandatory disclosure notice has been given 90 days
2 prior to the start of any application.

3 Alternative suggestion, to address the
4 change in home ownership or new construction, we
5 would suggest that wording be included in the
6 regulation stating that once the annual disclosure
7 has been given, no further disclosure be required
8 until the following year.

9 Issue #3, compliance with the notification
10 portion of the proposed regulation presents the
11 same issues as the mandatory disclosure section
12 only on a potentially smaller scale but with its
13 own unique set of issues. Creating and
14 maintaining an ever-changing database is difficult
15 and cost restrictive with the addition of a
16 required date and time of application as required
17 in the notification -- I'm almost done -- the
18 complexity level rises substantially. During the
19 months of June, July and August this year, Lucas
20 Tree experienced 30 to 40 lost production days due
21 to adverse weather conditions. Trying to manage a
22 registry database that requires notification one
23 to seven days in advance of all applications using
24 air carrier equipment will again be a daunting
25 administrative task. Notification registry

1 participants will likely be subjected to numerous
2 notification calls before the application can be
3 completed successfully.

4 Alternative suggested regarding the Air
5 Carrier and Aerial Pesticide Notification
6 Registry, we suggest that the distance required
7 for notification be reduced from 1,320 feet to 500
8 feet. The reduction in distance would represent a
9 more realistic distance in which individuals would
10 likely be affected by any applications.
11 Additionally, we suggest that the Air Carrier and
12 Aerial Pesticide Notification Registry be modeled
13 after the current Maine Pesticide Notification
14 Registry for nonagricultural pesticide
15 applications with the exception of the
16 registration fee and the distance from the
17 property. There would be no registration fee and
18 the notification distance would be 500 feet.
19 Currently individuals requesting to be on the Air
20 Carrier and Aerial Pesticide Notification Registry
21 have no stake in the registry process. At least a
22 portion of the burden for the implementation of
23 these regulations should fall with individuals
24 requesting to be notified. Requiring that a
25 consistent registry format be followed and

1 registrants help supply the information to aid in
2 their notification as outlined in the Maine
3 Pesticide Notification Registry for
4 nonagricultural pesticide applications is not an
5 unrealistic expectation.

6 Lastly, we suggest that the time frame for
7 notification be applied to be expanded from one to
8 seven days to one to fourteen days. This adds a
9 bit more flexibility to the regulation to deal
10 with our ever-changing weather and production
11 issues. Again, we thank you for the opportunity
12 to comment and offer suggestions of the Chapter 28
13 proposed regulations. We hope that we have been
14 able to effectively communicate some of the issues
15 we have found with the regulation and offer
16 constructive alternatives for consideration. If
17 there are any questions regarding the information
18 offered above or you require further information,
19 please don't hesitate to contact me. Sorry I went
20 over.

21 HEARING OFFICER ECKERT: Questions? Okay,
22 thank you. Ellen McAdam.

23 MS. McADAM: Hi. I submitted comments by
24 e-mail yesterday, but I can refer to those and
25 just go through those real quickly. I'm the

1 president of the Maine State Pomological Society
2 representing most of the apple growers in the
3 State of Maine, those who wish to be involved with
4 us. The Maine State Pomological Society
5 representing the apple growers in the State of
6 Maine since 1873 strongly oppose the passage of
7 LD-1293 and with this communication wishes to be
8 registered in equal opposition to the lengthy set
9 of rules being proposed for its implementation.

10 First, I'd like to thank the BPC for taking
11 into consideration the views expressed by members
12 of the society at our summer meeting in July of
13 this year. Henry was there and he did incorporate
14 a lot of our comments into what you have written
15 in the new rules. It's a tough step.

16 LD-1293 caught us by surprise and advanced
17 the no spray lobby's agenda one more step towards
18 the impossibility of making local food available
19 and affordable for all Maine families. Apple
20 growers and other farmers who use air assist spray
21 technologies have no wish to harm their neighbors
22 through the inappropriate application of spray
23 materials. Please consider our intent to supply
24 locally-grown food to our neighbors when you
25 attempt to interpret the intent of LD-1293 during

1 the rulemaking process.

2 Our specific objections are as follows:
3 record keeping requirements involving the
4 application of pesticides already keep a file
5 cabinet or two full on every farm over a few
6 acres. Right-to-know laws overlap worker
7 protection standards laws which overlap the rules
8 applying to this law. Every one of them requires
9 separate paperwork. They essentially ask for the
10 same thing, keep non-targeted areas and people
11 safe from toxic materials. We believe these new
12 rules are redundant and burdensome to small
13 farmers.

14 Growers in heavily populated southern and
15 central Maine are fully cognizant of the effect
16 orchard spraying has on occupants of surrounding
17 properties. People living near our orchards can
18 be very vocal in their opposition to the noise at
19 4 a.m. or earlier. For the most part they
20 understand what we are doing and why. When making
21 the rules to implement LD-1293, please take into
22 consideration the number or lack thereof of
23 complaints the BPC has acted on over the years
24 involving the air assist spraying of apple
25 orchards. If changes to the existing regulations

1 do not right a wrong or correct an ongoing
2 problem, there's no reason for them. It's a waste
3 of the taxpayers' money and the time we're all
4 spending here during our very short, very busy
5 harvest season. Federal and state laws are in
6 place regulating the spraying of commercial
7 crops. We comply with existing laws applying to
8 all applicators equally using anything from hand
9 pumps to air blast sprayers and controlling any
10 pest threatening economic damage to a commercial
11 crop. Narrowing the scope of a pesticide
12 application regulation to target a particular
13 technology, in this case air assist spraying,
14 unfairly targets some industries including the
15 apple growers in the State of Maine and not
16 others. There's a \$20 fee levied on those who
17 wish to be included on the nonagricultural spray
18 application registry but none for the agricultural
19 spray registry. Are the costs associated with
20 this to be absorbed by state taxes? Why are two
21 separate registries required?

22 Most of our objections are to the law itself
23 and I think most of the comments here have been
24 objections to the law itself, and, again, we thank
25 you for including our earlier comments in your

1 consideration of this rulemaking. We do not,
2 however, thank you for the timing of this hearing
3 and the comment period associated with it which
4 coincides with our busiest season.

5 The other thing I just wanted to bring up is
6 everyone seems to be so much against pesticides
7 and we think of them as medicines for plants. You
8 give medicine to your children when they're sick.
9 When our plants are sick, we give them medicine so
10 that we can eat them later on, so there will be
11 crops. One way of keeping them healthy is through
12 conventional methods, another is through organic
13 methods. It's a philosophical difference. It
14 shouldn't be legislated and, again, that's an
15 opposition to 1293 in general. Thank you.
16 Questions?

17 HEARING OFFICER ECKERT: Questions? Good,
18 thank you. George Thomas.

19 MR. THOMAS: I'm good, thank you.

20 HEARING OFFICER ECKERT: Tom --

21 MR. GEIGER: Geiger.

22 HEARING OFFICER ECKERT: G-O, okay.

23 MR. GEIGER: Good morning. As you now
24 know, my name is Tom Geiger. The number --
25 location is Town of Bridgton, third generation,

1 apples, about 60 acres on a 200-acre parcel. On
2 my way up I ruminated on what I could share with
3 you in the time allowed that would leave you with
4 something to think about other than the fact that
5 I have problems with this, and I recalled coming
6 across some notes from my late father who
7 addressed a group of fruit growers almost 50 years
8 ago when he was asked to defend the decision to
9 take on the added expense in applying chemicals by
10 hiring a gentleman with a World War II Stanley
11 biplane to apply chemicals to his orchards. We
12 had three locations at that time in three
13 different towns, and I can remember reading his
14 notes. It wasn't too hard to remember what they
15 might contain because it was a lesson -- one of
16 the first lessons he gave me when I took over for
17 him 30 years ago. I don't use the airplane
18 anymore because it's not available. There's
19 simply not enough apple orchards left in New
20 England to justify a pilot devoting his time to
21 caring for apple orchards in the early part of our
22 spray season in the spring, but I'll confine my
23 remarks to two aspects of it and why it made sense
24 for my father to do this; one, was he felt it
25 would save him money; two, he felt it saved him at

1 least two spray applications a year. It takes me
2 nine hours of seat time, actual driving up and
3 down the rows of trees to apply chemicals to my
4 remaining orchard, about 60 acres. It takes the
5 airplane -- it would take the airplane about 45
6 minutes to do that. There is in the spring one
7 particular problem that we have with apple trees
8 and it's fungus. It's called scab. It's the
9 black dots on every apple that you see. Macintosh
10 does that if it goes unsprayed. About 60 years
11 ago a fellow name Mills at Cornell spent
12 practically his entire career studying this one
13 fungus disease, and it was determined that there
14 was a very, very precise and reliable interaction
15 between time, temperature and leaf wetness, and he
16 made a chart, so many hours at a certain
17 temperature with the leaves wet, you're in
18 trouble. Less than that, you're off scot-free, at
19 least for that wetness period. Thirty years ago
20 my father handed me his spray book and he said
21 that Mills chart, Tom, you can trust it. He says
22 I've built the last 20 years of my spray program
23 around absolutely trusting that Mills chart. That
24 means if you want to call up Mike Lavoie, call him
25 up when you know you've got no alternative to

1 spraying. He can cover you up in an hour and a
2 half. With the use of that plane it takes you --
3 well, in those days it took us 18 hours to spray
4 because we were twice as big as we are now. So we
5 had to have two men out there for nine hours or
6 Mike Lavoie for an hour and a half, and I can
7 remember Mike calling me on several occasions. He
8 says, you going to spray, Tom; he says, everybody
9 else has sprayed and you haven't; I said, Mike,
10 I've got an hour, if the leaves dry off in an
11 hour, I don't have to call you, so I'm going to
12 call you in an hour. Now, I won't use the
13 commonly-used words when guys are talking across a
14 pickup truck hood as to what that takes, but it
15 was factually correct, and usually the savings of
16 those two spray applications, because I could hang
17 it right out to the end, paid for the use of the
18 airplane, plus the fact of the use of the
19 equipment. I didn't put on five sprays every year
20 with my tractors and the diesel fuel and all that,
21 no ruts in the orchard, the neighbors -- the
22 neighbors were well educated. They used to call
23 me up. I had an 80-year-old woman who called me
24 up -- and you can go back years ago at some other
25 hearing and I used the same example that Mrs. Snow

1 used to call me up and say, Tom, you did a good
2 job, I looked right down into his cockpit from my
3 bathroom window. All of this is serious
4 business. It's serious business to us all.
5 There's a -- I'll close with one point.
6 Differentiation is made between emergency and
7 routine spraying. Under an RPM program, no spray
8 is routine. It's all done by a decision-making
9 process that involves formulas, insect counts, all
10 of that. We get out to the point where every
11 spray we put on is an emergency. We've allowed it
12 to get right up to that point because, gosh darn
13 it, oftentimes you don't have to do it and you can
14 back off.

15 Now, the airplane is gone, it takes us
16 longer to make that decision, longer to make that
17 application, and if we're burdened with yet
18 another layer that causes us to say I can't risk
19 it, I can't wait that long, we end up losing on
20 both sides. If people want to know what we're
21 doing, they come to us and they talk to us.

22 I thank you very much for the time you've
23 allowed me to speak. Any questions? Thank you
24 very much.

25 HEARING OFFICER ECKERT: Judith Dimock.

1 MS. DIMOCK: My name is Judy Dimock. With
2 my family, I own and operate North Star Orchards,
3 a 30-acre orchard in the tomato capital of New
4 England, Madison.

5 I'm going to digress just a minute because
6 Tom's story reminds me of the years when we used
7 the plane occasionally when it was too wet to get
8 on the land in the spring, and the only problem we
9 had with our neighbors was where they could park
10 so they could watch it. They were fascinated with
11 it, and it was -- it was a fascinating thing to
12 watch, but we do, however, use air blast sprayers
13 to spray the orchard. I will read my testimony.

14 I'm very troubled by the requirements of
15 LD-1293, and perhaps more significantly by the
16 process through which it was developed and
17 enacted. The problems that are presented by the
18 proposed rule reflect a complete lack of
19 opportunity for input from the regulated
20 community, in this case the apple industry as a
21 primary user of air carrier application
22 equipment. While I respect the efforts that the
23 staff and Board have made to try and address our
24 concerns about the rulemaking process -- through
25 the rulemaking process, I believe that the

1 resulting rule is unnecessarily complex, unfairly
2 targets agricultural applicators and is both
3 ambiguous and contradictory. I question the
4 justification for imposing the same standards for
5 aerial and air carrier applications when evidence
6 indicates that drift from air carrier applications
7 on orchards is the same as or less than the drift
8 resulting from boom applications. I believe that
9 the proposed notification requirements will
10 negatively impact our ability to implement the
11 integrated best management practices adopted over
12 the past 25 years which have resulted in a
13 significant reduction in pesticide applications.
14 It's my strong suggestion that the rulemaking for
15 LD-1293 be suspended until this issue can be
16 revisited by the Maine State Legislature.

17 I would also like to take this opportunity
18 to voice my dismay over what I perceive to be the
19 attitude towards the Maine agricultural community
20 which is implied by this process. Apparently
21 while we've been busy attending educational
22 seminars, including seminars about drift,
23 calibrating our sprayers, conducting worker
24 protection training, filling out our pesticide
25 applicator log, posting re-entry information, it's

1 appeared to some that we've neglected our
2 neighbors. Promotion for the notification
3 registry which has already begun fails to even
4 mention that the most logical first step of --
5 fails to mention that the most logical first step
6 of going directly to the farmer and asking him. I
7 find this insulting. Maine farmers are engaged
8 with their community and are, with few exceptions,
9 open to dialogue with anyone who seeks
10 information. The imposition of such burdensome
11 and far-reaching rules will restrict our ability
12 to run our businesses appropriately. I think
13 everyone would agree that the preservation and
14 expansion of local food production is of utmost
15 importance to our society. As farmers, we learn
16 how to deal with many and varied challenges but
17 this type of regulatory excess is becoming
18 intolerable, and as the gentleman said earlier in
19 this presentation, we are being strangled by
20 excess regulation. It must be controlled, and
21 this is a good place to start.

22 I urge those responsible for the enactment
23 of this law to rethink the need and to re-examine
24 their attitude about the agricultural use of
25 pesticides. Thank you very much.

1 HEARING OFFICER ECKERT: Thank you.

2 MS. DIMOCK: I'm glad to answer any
3 questions.

4 HEARING OFFICER ECKERT: Okay. John has
5 said this to me twice. He thinks perhaps that
6 Henry could be our spokesperson and explain how we
7 got into this particular time frame.

8 MR. JEMISON: Because it wasn't our choice
9 to pick this time frame.

10 HEARING OFFICER ECKERT: We didn't choose
11 or promote LD-1293. We wrote a different rule and
12 most of you know that, but the Legislature did not
13 see fit to approve it, and so we are in this time
14 frame because of that. Maybe you could add to
15 that.

16 MR. JENNINGS: The Ag Committee in enacting
17 this rule has expressed to this Board that they
18 want rules implementing this back to them by
19 January. So it sets up a time clock in which
20 really to be done by December, meaning that if you
21 work it all backwards, this is basically our only
22 opportunity to conduct a hearing. So we're
23 mindful of the fact that the timing is poor but it
24 wasn't time that we chose either. It was timing
25 imposed upon us.

1 MR. JEMISON: Right, some of us have a
2 harvest, too. So I do appreciate your concerns.

3 HEARING OFFICER ECKERT: I've been thinking
4 here that I wanted to ask several of you questions
5 so perhaps small farmers or orchardists maybe can
6 answer this, so I'm going to pose it. The way
7 this is written now, there's like several choices
8 about how you do this. The Legislature has said
9 you have to send a mandatory notice and then
10 there's some other things from the way we wrote it
11 so that you had other ways around that a little
12 bit but you still have to send a letter, and then
13 there's the registry because that's in the
14 legislation. So it strikes me that the first
15 thing that everybody is going to need to do is
16 kind of get out a map with somebody and figure out
17 who your abutters are and send a letter, maybe at
18 the wrong time of year but send it, and I'm
19 wondering if that's how you see it as well, and
20 then the second thing that's going to have to
21 happen is that people who get the letter, some of
22 them are going to get on the registry and then you
23 have more things to do. In the meantime, you can
24 use our old rule or your abutters can use our old
25 rule to request things, that's kind of how it

1 runs, and we tried to put in some variances so
2 that in difficult situations there would be a way
3 out, you wouldn't have to follow those two things
4 that the Legislature said. Is that how you guys
5 see that or is there something that we're not
6 catching that makes it really difficult?

7 MR. AHLHOLM: Well, I apologize for getting
8 emotionally involved in this. Electronics, some
9 of the people in here with their laptops, all my
10 kids have gone through high school and college,
11 they've all had laptops, people have got personal
12 data assistance and Blackberries. This could be
13 so easy, just electronically post it, somebody
14 could -- my secretary could just type it up, post
15 it, can go all over the world in one-tenth of a
16 second, everybody in here could know and a huge
17 majority of people, and it's getting bigger every
18 day, have that electronic access, carry it in
19 their pocket, there's going to be cell phones that
20 are going to get email. So just do it all at the
21 same time. Send one email out to the people on
22 the registry or who want to be notified and it's
23 done. If they want further detail, as we worked
24 with them before, I had one organic -- strict
25 organic producer who I was spraying a field and

1 she ran out right into my spray stream, ran right
2 out into it and it was a field that I was rotating
3 with another neighbor, ran right out into the
4 airstream, and I stopped the tractor and I said,
5 ma'am, what are you doing, and she goes, oh, I'm
6 organic over here and I said, ma'am, you just got
7 covered with what was in the sprayer, and so we
8 had 20 minutes, maybe half an hour talk in my
9 field and I talked to her and we talked about the
10 organics and what I was spraying and what the
11 person used here before and we talked, and she
12 said, geez, you know, and she's not a bad woman,
13 she's a little bit rigid in her beliefs but she
14 said, geez, could you call me before your next --
15 any time when you're going to spray and I said
16 fine. I put her number right in my cell phone and
17 I've got it in my pocket now and I haven't called
18 her for two years because the field is out of
19 rotation and every time I was going to spray, I
20 called her on my way there, and I said you don't
21 mind if it's 1:00 in the morning and she said no.
22 Well, sometimes I called her at 3:30 in the
23 morning, I'm going to spray that field, and she
24 said great. That was how easily it's handled.
25 She wanted further notification and I put her in

1 my cell phone. We can do it electronically and if
2 somebody wants it further, they can go see the
3 farmer in person and perhaps he can give them a
4 buzz, but this mandatory thing, because of where I
5 am, every day there's a new house coming up and I
6 don't know my neighbors anymore but they all shop
7 at our farm market and if somebody comes in and
8 says what's on your product, I'll take them right
9 out back and after about 40 minutes with me
10 telling them how things work with commercial
11 fertilizer and stuff, they think that's the
12 greatest thing in the world even though they may
13 not have wanted to buy conventional raised
14 products, because we have some organic and some
15 conventional. So once I explain them that,
16 they're fine, but I don't have that ability or the
17 time to take 350 people and explain that process
18 of why I would have Roundup on a list of stuff
19 that I might use on my apples. Well, Roundup,
20 they wouldn't know that you use it underneath the
21 tree. They don't understand that, but if those
22 people come to me directly and I have a moment to
23 spare with them, I'll explain it, but if you could
24 do that electronically, you could put links on
25 there, say if I put up there, well, geez, I'm

1 going to use Roundup and there would be a link and
2 they could just type on the link, well, why would
3 apple trees need Roundup; well, to kill the stuff
4 under the tree in the spring so they don't compete
5 with the tree so we don't use as much spray and
6 you don't have to use as much fertilizer because
7 you killed the weeds underneath. So that would be
8 something that could be easily done. I mean, it's
9 simple, and also maybe if it was going to be
10 accessed by somebody on the pesticide registry
11 that they could pay a small fee to be on there to
12 help incur that cost that's going to be put back
13 to the Maine taxpayer for somebody that wants
14 special treatment, but it would just make it so
15 much simpler, just go the electronic route and I'm
16 pretty sure every farmer in here could comply with
17 it.

18 HEARING OFFICER ECKERT: A question, a
19 response?

20 MR. GIEGER: Yeah, Tom Gieger. One of the
21 only times I had to interface with a neighbor was
22 a situation where a piece of property that was
23 vacant in January when I ran around and checked my
24 abutters and back the last time Northern
25 Cumberland County had a big bubble in real estate

1 I was checking my abutters annually. The property
2 was vacant in January, had a small barn on it, no
3 residents. I notified the landowner and between
4 that time and the first application, he had rented
5 the property to some woman who put a horse in the
6 barn and a little travel trailer on the property
7 and was living in it, and I did get a call from
8 the police wanting to know if I owned the yellow
9 airplane, seriously. Is there anything in this
10 legislation that requires a landlord to notify a
11 tenant of a piece of property that there is
12 application going on within 1,320 feet of them?
13 That's a question because I don't know, but it can
14 cause problems.

15 HEARING OFFICER ECKERT: I would say no.
16 Once you sent the letter three months ahead --

17 MR. GIEGER: I sent the letter to the
18 landlord because he is the tax --

19 HEARING OFFICER ECKERT: If you sent it to
20 the landlord, then he's responsible.

21 MR. GIEGER: The tax rolls say he owns the
22 property.

23 HEARING OFFICER ECKERT: I think that's how
24 it reads, yup. Okay, well, thanks. There's two
25 more people that want to talk and then I'm going

1 to let Heather respond. So David Bell.

2 MR. BELL: Good morning. I am David Bell.
3 I'm the executive director of the Wild Blueberry
4 Commission of Maine. I appreciate the opportunity
5 to comment on Chapter 28. Based on everything
6 that's been said so far this morning, I'm going to
7 divert from my prepared comments, although I will
8 say up front we've been engaged in this discussion
9 upwards of a couple years so probably a lot of
10 what I say won't be new news to you folks but
11 obviously we have a new open record here.

12 One thing I just wrote down a couple minutes
13 ago based on everything we've heard from many
14 different producers this morning, you know, what
15 problem are we trying to solve? I think everyone
16 supports notification. We have some systems that
17 have worked fairly well, yes, maybe they need to
18 be tweaked, but it seems like we kind of got into
19 this wholesale change which is frankly causing
20 problems. In our situation, we have 575 growers
21 across the state and we have a huge range of size
22 from the smallest farmers to the largest dairy
23 farms in North America but frankly this issue, as
24 you've heard from other producers, is a small
25 producer issue, the folks that are in more

1 populated areas. We fully support communication,
2 have over the last couple decades and I think our
3 growers have done a great job, not to say that
4 occasionally there isn't a problem. Over the past
5 30 years we've adopted IPM. We were early
6 adopters of IPM. One of the problems of this
7 interface, and we fully understand that some of
8 the things in the rule are driven by LD-1293 but
9 they fly in the face of IPM. The 24-hour
10 notification that has been mentioned, you know, if
11 you figure out at 10:00 in the morning you've got
12 to treat and the weather is going bad for the next
13 three days, you know, you miss your window and
14 then you back that up and that takes us to where
15 we were 25, 30 years ago, we were spraying by the
16 calendar. So it makes absolutely no sense. I
17 guess there were some comments made this morning
18 about the interaction with 1293, you know, while
19 we understand the Board is responding to that
20 bill, we also understand or think we understand by
21 comments made by Board members and staff that the
22 Legislature has given you a little professional
23 license to craft a rule that you think makes sense
24 within your best professional judgment and that
25 the Legislature will contemplate that obviously

1 through major substantive rules and may alter what
2 they wrote in 1293 to support that. Obviously at
3 the end of the day they have the last decision,
4 but I don't think you folks need to feel
5 constrained and hopefully you won't and that
6 you'll make your best professional judgment based
7 on the information that is submitted.

8 We want the rules -- we've been stressing,
9 we've been talking about simplification. We want
10 a real simple system, whether it's the current
11 system enhanced a little bit or whether it's one
12 simple spray registry for all outdoor powered
13 applications. You've heard us say that before.
14 We want the farmers to focus on communication. If
15 you have a complicated system that has
16 documentation, you've heard it today from the
17 farmers, that takes time and effort. Well,
18 there's only so many hours in a day and a week and
19 you're cramming during the growing season. So if
20 they're spending time complying with a complex
21 rule, that's less time there is for communication
22 which is our ultimate objective here. So let's
23 keep it real simple.

24 You know, again, it's been mentioned by
25 others this morning on both sides frankly that the

1 system ought to be the same for all application
2 types. It doesn't matter whether you use the
3 material in an agricultural situation,
4 horticulture, you know, biting insect or the
5 like. You know, frankly we don't understand, and
6 this is again some of the LD-1293 interaction,
7 why, you know, the distances and the numbers in a
8 rural setting where there's less risk, lower
9 density are sometimes three or four times greater
10 than are currently in rule. So if you look at
11 your non-ag registry, notification of 250 feet for
12 air blast, well, it ought to be 250 feet on the
13 farm too. So, you know, we see, again, lots of
14 opportunity just to come up with one simple
15 system, but it does need to be flexible in order
16 for growers to maximize IPM. Based on our over
17 two decades of experience, the majority of the
18 time our neighbors want to know, as you've heard
19 this morning, when that application is going to
20 occur. It's not so much what's being applied but
21 when it's going to occur, and as you know,
22 currently in rule if they do want to know that,
23 that is an expectation that's -- it's an
24 expectation that we support, but, again, we think
25 the focus needs to be on when the applications

1 occur.

2 So in sum, we, you know, feel there's a lot
3 of opportunity in the interplay back and forth
4 with the Legislature to come up with one simple
5 system. We believe and we would support at the
6 Legislature a simple system supported by this
7 Board. So hopefully all working together we can
8 get to that point. Thank you.

9 HEARING OFFICER ECKERT: Thank you.

10 MR. BELL: Any questions?

11 HEARING OFFICER ECKERT: Okay, thank you.

12 MR. BELL: Appreciate it.

13 HEARING OFFICER ECKERT: Lauchlin Titus.

14 MR. TITUS: Good morning, Chairman Eckert
15 and Board members. This morning -- I'm Lauchlin
16 Titus from Vassalboro. This morning -- I'm the
17 president of the Maine Vegetable and Small Fruit
18 Growers Association. I'll probably be something
19 different this afternoon.

20 Respectfully, the Maine Vegetable and Small
21 Fruit Growers Association is asking you to suspend
22 action on this rule at the close of the public
23 notifi --

24 MR. JENNINGS: Hearing?

25 MR. TITUS: Hearing and written testimony

1 time period until resolution of corrections to
2 1293. So I've heard lots of reasons about 1293
3 being in need of a tweak, and anecdotally my
4 reasons are more than a tweak. Now, in the spring
5 my senator said to me at a meeting in town, we
6 disposed on public notice in the Senate today. So
7 I was elated. So I passed that on to some other
8 folks and subsequently -- so this is what I
9 understand and this is what I sought clarification
10 from my senator last week on, I asked her, did
11 that mean that in the Senate they removed the
12 language about abutters with the intention that
13 they were disposing of the notification
14 requirement, and her response was yes, and what I
15 understood subsequently happened was when that
16 language was removed, the default language of the
17 1,320 feet was what got put into there. So to me
18 this is -- this isn't just a tweak. This could be
19 as much as notification goes away, which frankly
20 most of our members would love to see happen with
21 regard to air blast sprayers. So I think it's
22 just too much of a -- there's too much of a
23 disparity of what could happen and what may
24 happen. My senator is Libby Mitchell, the
25 president of the Senate, so I've got a sense that

1 she knows --

2 HEARING OFFICER ECKERT: We didn't follow
3 what you say did happen or is likely to happen, so
4 try it again.

5 MR. TITUS: All right. In the Senate when
6 they were hearing this 1293 piece of legislation,
7 somebody made a motion to strike the language
8 about abutters, and it was voted on as such and it
9 was Mrs. Mitchell's sense that they were disposing
10 of a farmer's requirement to notify abutters in
11 that piece of the legislation, but because that
12 was already an amendment to the original language,
13 when that piece was struck, it reverted to the
14 original language. I don't -- this is one of --

15 HEARING OFFICER ECKERT: The notification
16 registry part of it?

17 MR. TITUS: Yeah, clearly this is one of
18 those things I do not understand what I think I
19 know. So it's so ambiguous that I don't know how
20 you can proceed with rulemaking on something that
21 is so up in the air and so subject to potential
22 change in the legislative session. I'm done.

23 HEARING OFFICER ECKERT: Okay, all right.

24 MR. TITUS: Unless I can clarify anything
25 more.

1 HEARING OFFICER ECKERT: So you're saying
2 the Legislature may change again. So is this a
3 good time for you to speak? There's one other
4 speaker.

5 MS. SPALDING: Yeah, I guess I -- I don't
6 want to really respond to a lot of the things that
7 have been said here because that would take all
8 day. I'd like to just maybe share a couple of the
9 things that are specific to the reason we're here
10 today which is to address your proposed amendments
11 which I hope are going to be in line with the
12 proposed amendments to 1293 which I think -- I
13 know they are going to happen. So I think there
14 is going to be more discussion. I'm not really
15 feeling like total suspension of this end of the
16 discussions is in order because it's important to
17 have these discussions and I think a lot of
18 information comes out each time.

19 So there were a couple things that I --
20 specific pieces to your proposals that I wanted to
21 comment on. I didn't have time. Let's see, on
22 Section 1-D-3-A, the proposed language for
23 advanced notification is at least 24 hours, and
24 MOFGA supports changing the time line for specific
25 notification to one calendar day, and that's

1 something that I think has come up in discussions
2 before to make it more -- you know, I guess easier
3 to contact people during -- you know, not at 3 in
4 the morning as one person had suggested would
5 happen, and then on Section 1-D-3-E, if a land
6 manager and neighbor were to agree to modify the
7 terms of the notification procedures in any way,
8 the land manager should be required to maintain
9 records using BPC approved forms, and, let's see,
10 I think there were a couple of other things.
11 Okay, there were some things that we felt would be
12 prudent changes, tightening up on Section 1-C. I
13 think that the Board had taken an approach of
14 distinguishing the mandatory notification from the
15 existing notification requirements by
16 incorporating the term disclosure, and I have a
17 sense that the term disclosure kind of implies
18 that somebody is trying to hide something and I
19 don't think that's really what we're trying to do,
20 and I just had a suggestion that a better term
21 might be early notification. A lot of people have
22 brought up the concern about the 90-day advanced
23 notification requirement, and while that was part
24 of the LD-1293, we feel that mandatory
25 notification could and should take place by March

1 1st of any year in which notification was given,
2 and really feel that that would serve the broader
3 interest of informing neighbors about their right
4 to enroll in the notification registry by a
5 certain deadline, and anybody missing that
6 registration deadline could certainly fall back on
7 Section 1-A or 1-B which is the existing -- you
8 know, approach your neighboring farmer about your
9 interest in what he or she is spraying.

10 In Section 1-D-1, I thought it would be
11 helpful if the registrants could identify a
12 preferred means of communication. This is
13 something that came up in the Presque Isle hearing
14 or meeting, and this would allow land managers --
15 they wouldn't necessarily feel compelled to
16 contact somebody in a whole range of means of
17 notification, but that really the registrant could
18 provide their preferred means of notification.

19 So I guess those were the main things and
20 then just one other thing that happened this past
21 week that I wanted to mention, there was a meeting
22 in Milwaukee, Wisconsin this week of 150
23 scientists and doctors who were -- they had a day
24 long symposium on children's environmental health
25 and the opening message at this symposium was

1 chronic childhood diseases linked to exposure to
2 toxic chemicals in the environment have been
3 surging upward costing the U.S. almost 55 billion
4 dollars a year. That's actually in that little
5 packet of articles I submitted, but, you know, if
6 people are concerned about tax dollars, that
7 should be taken into the equation as well.

8 So my written comments will be coming in a
9 couple of days and I appreciate the opportunity to
10 add that, those specific pieces.

11 MR. JEMISON: I'm just curious about the --
12 I'm struck -- I've had a lot of background in IPM
13 and I understand economic thresholds and I
14 understand big issues, and I am -- I'm wondering
15 if there's a way that we could come up with a way
16 to either come up with some sort of an exemption
17 or a way to document that something was something
18 and, therefore, it had to be done that day because
19 weather was changing and, you know, as the
20 gentleman was saying, that he would wait until --
21 it had nine hours of wet leaves and he got to
22 eight and a half and he said I got to go, but if
23 you can't go in that time frame, then he's going
24 to have scab and the production is going to be
25 down. I'm struck by a need to balance that

1 necessity of population levels or disease levels
2 or threats or whatever with a desire to give
3 people adequate notice. I mean, I would always
4 like to see people have adequate notice, but maybe
5 if there was something that went out in the
6 original 90-day thing saying we will make every
7 effort to give 24 hours notice before a spray
8 application is made, it would only be changed in
9 the event of this, this and this, and then that
10 person could say, well, this, this and this -- the
11 abutter could say, well, this, this and this
12 didn't happen and it got sprayed and there was no
13 notification. Well, then that would be a reason
14 for maybe an oversight by the Board and staff or
15 something, but if, indeed, they were able to
16 document, hey, it was now, rain was forecast the
17 next day and we wouldn't have gotten it sprayed,
18 we would not have gotten the pest control. Do you
19 think there's some way we could negotiate
20 something like that?

21 MS. SPALDING: There may be, and I think
22 that that's -- part of it is in the initial
23 up-front -- like you just suggested, the up-front
24 mandatory notification where there are situations
25 where it might not be foreseen by a March 1st

1 deadline, there could be just an explanation of
2 what -- you know, the kind of situations that
3 might arise where that might have to take place.
4 I don't -- you know, that's something that we have
5 a little time to work on I think and certainly
6 we'd be open to hearing suggestions. I don't
7 think that anything in these specific proposed
8 amendments today are quite ready to go as they
9 are. That's the concern. I feel like that needs
10 to be given more consideration about how that's
11 going to work.

12 HEARING OFFICER ECKERT: I'd like to ask
13 you one thing about something you said before, and
14 I think it almost dovetails with this which is we
15 put in a variance or permit section to allow for
16 the situations that are difficult to meet the
17 current description of notification and you I
18 think were saying -- I think you were saying that
19 the only things that should be outside would be
20 public health, so no requirement for 90 days, in
21 other words, public health and agricultural
22 emergency. Are there other things that -- do you
23 object to us trying to come up with something that
24 allows other exceptions such as IPM or --

25 MS. SPALDING: Well, I think that's similar

1 to what John --

2 HEARING OFFICER ECKERT: -- difficult
3 situations where the person has 500 neighbors, you
4 know, could come up with some alternative method
5 if you have so many neighbors that it gets kind of
6 ridiculous.

7 MS. SPALDING: So many registered neighbors
8 you're saying?

9 HEARING OFFICER ECKERT: Well, yeah, I
10 don't think they have to be registered but so
11 many --

12 MS. SPALDING: Well, because I think
13 they're different. I mean, if there's an
14 emergency, you're at the registration phase
15 because in the advanced notification you're not in
16 the emergency phase, but I think that's similar to
17 what you were saying, John.

18 HEARING OFFICER ECKERT: I'm still hearing
19 from people who are small vegetable or fruit
20 farmers that having to send a letter to 500 or
21 1,000 people is a real burden.

22 MR. JEMISON: It's a real cost.

23 HEARING OFFICER ECKERT: And a cost, and I
24 could see that maybe there would be another way to
25 do that that would be less burdensome and less

1 costly.

2 MS. SPALDING: Well, I think that written
3 notification really was the -- the -- the concern
4 was that there needed to be consistency in the
5 kind of information being presented, and there may
6 be -- you know, certainly electronic communication
7 is part of the registry notification, yup.

8 HEARING OFFICER ECKERT: Yup.

9 MS. SPALDING: And it is getting to be more
10 and more effective.

11 HEARING OFFICER ECKERT: Yeah, I think
12 we're going to find out in five years that nobody
13 does written notification and everybody --

14 MS. SPALDING: Yeah, paper free.

15 HEARING OFFICER ECKERT: -- virtually
16 everybody except for a few people who can't or
17 won't, you know, be on the computer network will
18 be -- will do it electronically and we'll have an
19 out for people who don't have computers. I just
20 had to renew my license as a doc. I mean, they'll
21 send it to you if you want but they don't really
22 want to send it to you anymore. They want you to
23 get online and do it. The world is going that way
24 because it's cheaper.

25 MS. SPALDING: Yeah, I understand that, and

1 I appreciate that and, again, I think the written
2 notification is -- you know, there are two things,
3 you want to ensure that the message -- a
4 consistent message is getting to the neighbors in
5 a certain format, and that may be just as
6 effectively delivered electronically as through
7 the U.S. mail or a hand delivered note.

8 HEARING OFFICER ECKERT: Okay, thanks.

9 MR. BOHLEN: I'm struck by the very
10 eloquent testimony about the difficulty of having
11 to communicate with many, many neighbors, and one
12 of the comments that I'm really struggling with is
13 this I don't know my neighbors anymore, which
14 strikes me as being exactly why we're here is that
15 there is this change that is very, very hard to
16 mediate with large numbers of neighbors, and to me
17 this is the nut that we need to figure out a
18 solution for. This is precisely the situation
19 where it is difficult to know the neighbors,
20 difficult to talk one on one. There are a lot of
21 messages I heard about here today about IPM, and
22 that is information these neighbors should be
23 hearing. They should be knowing that. They
24 should be learning something about what it means
25 to produce food. There's a communication note

1 here that should be positive if we could find a
2 way to do it in a way that isn't overly
3 burdensome, and so I'm really struck by both the
4 difficulty of this and also the flip side of that
5 difficulty is it makes clearer to me at any rate
6 some of the need for finding a solution here
7 because getting more and more neighbors in
8 Cumberland County farms is not going to go away
9 any time soon I'm afraid and figuring out how that
10 is going to be mediated for a long-term productive
11 relationship with neighbors is really the central
12 nut here and I'm curious -- we've got this formal
13 90-day thing which is largely about identifying
14 who you need to talk to, and I'm curious if there
15 are other ideas for how to identify those people.
16 It's not just about notification but it's about --
17 I mean, those of you with farm stands, it strikes
18 me that's a great way to identify people with an
19 interest in what you're doing. There's a variety
20 of different mechanisms and I think there's a lot
21 of -- that strikes me as the central piece and I
22 don't know if there's a nut to -- a way to get
23 that to get some of the benefits of these written
24 notifications and make sure we're finding the
25 people who ought to be notified. I mean, that's

1 sort of the challenge I think we're seeing.

2 MS. SPALDING: Yeah, well, I agree. I'm
3 not sure if that was partly directed at --

4 MR. BOHLEN: It's partly directed at
5 everybody. I know, I've heard a lot of very
6 useful pieces, and I'm not sure what it opens up
7 for solutions I guess.

8 HEARING OFFICER ECKERT: We'll have to put
9 them together in a way that's acceptable to four
10 or five groups, including the Legislature. Okay,
11 so Brian Thomas is still on here and I think
12 Lauchlin wants to respond.

13 MR. THOMAS: Madam Chair, Members of the
14 Board, thank you for the opportunity to come here
15 and speak today. Being last on the list has its
16 advantages and disadvantages. The advantage is
17 most of it has already been said and the
18 disadvantage is you have nothing earth shattering
19 to speak about and get an applause. If you look
20 at the group of individuals that have spoken today
21 both for and against, to me it's quite clear the
22 individuals that have spoken for have been paid to
23 be here, and the individuals that have spoken
24 against it's costing us money to be here. We
25 represent the small people in the trenches. I

1 hear that, you know, part of this is to educate
2 the public, to educate our neighbors. I'm not so
3 sure if the person riding on the back of the
4 tractor is the individual to be educating the
5 public. That should be a governmental function
6 and something that the Board of Pesticides should
7 take an active control on. Pardon?

8 HEARING OFFICER ECKERT: Giving us another
9 job?

10 MR. THOMAS: Well, you know, we each play a
11 role in it. The biggest thing with notification
12 if you follow IPM, it's difficult to project 90
13 days from now what I'm going to be doing, what I'm
14 going to be spraying. Most office positions are 9
15 to 5, 7 to 5, but when you're in the trenches like
16 Mr. Ricker and Mr. Gieger and myself, it's a
17 7-day-a-week-24-hour-a-day job. We're making
18 decisions at 2:00 in the morning what we're going
19 to spray. I work for the Maine Apple Company,
20 very similar to Ricker's. We have orchards all
21 over the State of Maine so one area we may decide
22 to spray tonight, we have unfavorable weather
23 conditions but another area that's 70, 80 miles
24 away has favorable conditions, so we move the
25 equipment. Those are decisions that are made on

1 the fly for the best intent of following the
2 current pesticide laws with watching wind
3 conditions and drift and so forth. So what you're
4 providing or asking us to do is something that in
5 practicality is almost infeasible. It's going to
6 be extremely difficult, and I think everybody that
7 tries to follow the intent of the law is going to
8 find themselves on the wrong side of the law even
9 with the best intentions. Thank you.

10 HEARING OFFICER ECKERT: Okay. All right,
11 Lauchlin, do you want 30 more seconds?

12 MR. TITUS: Yeah, it occurred to me
13 something that hasn't come up based on what Curtis
14 said. I'm Lauchlin Titus, and now I'm speaking as
15 a consultant who works with several of the farmers
16 who have talked to us. Ninety days is unrealistic
17 for many of the vegetable producers, certainly an
18 apple orchard, it's there, it's always there, but
19 Mr. Ahlholm won't mind me using him as an example.
20 The field that he discussed that he went out and
21 sprayed and the woman came out and he had the long
22 discussion with her, the decision to use that
23 field in a land swap with another farmer was made
24 ten days to two weeks prior to the planting of
25 that cabbage crop on that field. That was two or

1 three years ago. This year Mr. Ahlholm planted a
2 cabbage crop, his farm is in Warren, he planted a
3 crop of cabbage on a field in Lewiston. They are
4 not close. Because of the weather conditions, he
5 could not get on his piece of ground. The farmer
6 who had this piece of ten or twelve acres in
7 Lewiston, that decision was made one morning and
8 the next day he had a crew planting cabbage on
9 that field. So those decisions in the vegetable
10 business, the potato business, happen all the
11 time. Mr. LeBlanc told you about how far he's
12 spread, same issue, you have great intentions of
13 planting a field and then the weather turns
14 against you and you can't get that crop on in a
15 timely manner so you adapt and you may pick up
16 another field or so on and so forth. I'm well
17 past 30 seconds. Thank you.

18 MR. JEMISON: Thank you, Laughlin.

19 HEARING OFFICER ECKERT: We have another
20 meeting and we have to get to it.

21 MR. BELL: Thank you, David Bell, I'd like
22 to add two things based on a couple things that
23 were said, first by Dr. Jemison. I kind of had
24 the same thought on the way down this morning that
25 related to IPM and the 24-hour piece that, you

1 know, maybe it's a 24-hour expectation, but if
2 you're in an IPM program, you know, it's 2 to 24
3 hours, obviously the goal is 24 hours. That also
4 puts an incentive obviously to be more aggressive
5 in an IPM program which is exactly where we want
6 to be; and then to Board Member Dr. Curtis Bohlen,
7 we agree the whole point is, you know,
8 notification and seeking out the neighbors before
9 the season. The trouble with the whole mandatory
10 piece is it takes the good work of people that
11 have done this for two decades backwards because
12 you have Paul Sweetland and Jason Allen and people
13 like that that have gotten people off their list
14 over the years and you've heard other growers say
15 the same thing, and now we're starting all over
16 again and we have to notify everyone. So, again,
17 we want the focus to be on they should be seeking
18 out the new neighbors and the people that really
19 want the notification and not having them going
20 backwards and notify all neighbors. So that's
21 kind of a perspective I guess.

22 HEARING OFFICER ECKERT: Well, I'm going to
23 make maybe a summary just for me, hopefully it's a
24 summary, but it strikes me when I heard the
25 Legislature created this that the 90-day letter is

1 kind of what I think of as a form letter to bring
2 up the issue, but it's hard to have specifics in
3 that kind of 90-day letter even if you want to
4 hang on to it. It's kind of like in medicine -- I
5 can use these examples because nobody is going to
6 get upset with me here -- we have to give
7 everybody a letter saying that HIPAA is in effect
8 and you have privacy rights and practically nobody
9 wants to get that letter or loves signing it, you
10 know, but we've done it and we've done our job,
11 but we have to go back and have a discussion with
12 people on what does that really mean when the
13 issue is important to them. If it's not important
14 to them the day they sign that letter, it may be
15 important two years from now, but the Legislature
16 crafted this and if they keep it, this is kind of
17 like a form letter to bring up the issue and then
18 we still need to work on what the real
19 notification will be later, the real discussions
20 with others.

21 Other comments from the Board or staff?

22 Okay, I think we're going to close the hearing and
23 thank you all.

24 MR. JEMISON: I guess I would just say
25 thank you for coming, thank you for your

1 comments. We really do appreciate it, and we have
2 heard you and just thanks a lot for coming.

3 (Whereupon, the above-named hearing was concluded
4 at 11:25 a.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, Joanne P. Alley, a Notary Public in and for the State of Maine, hereby certify that on the 2nd day of October, 2009, personally appeared before me the within-named witnesses to testify in the aforementioned cause of action and that the foregoing is a true and accurate record as taken by me by means of computer-aided machine shorthand.

I further certify that I am a disinterested person in the event or outcome of the aforementioned cause of action.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of October, 2009.

Joanne P. Alley
Court Reporter/Notary Public

My commission expires: July 17, 2015