

Hemingway Orchard Case Documents

6-2-08 Complaint background information

1. Inspection File Contents Sheet
2. Complaint call intake sheet for complaint # 1883
3. Gene Meserve (pesticide inspector) letter dated June 4, 2008, to Bradley Cadmen about notification
4. Gene Meserve (pesticide inspector) letter dated June 4, 2008, to Dennis Barker about notification

4-25-2010 (application date that led to first drift complaint with positive residues on abutting properties)

1. Inspection File Content Sheet
2. Field map not to scale
3. Letter dated June 4, 2010, to Barkers from Meserve (100426EPM03)
4. Photos marked 100426EPM01E page 1 and page 2 showing property line and sample areas Cadman/Barkers
5. Photos marked 100426EPM02B Photos of Pelletier sample area and property lines
6. Lab results sheet dated June 4, 2010
7. Note from Jan Barker citing letter section about Cadman being OK with previous orchard owner's night applications (date stamped Jun 09 2010)
8. Maine Association of Realtors sheet indicating working orchard
9. Order no. 1224189 (06-1525) that discusses deeds
10. 4 pages of notes from Jan Barker to Meserve dated 6-7-10
11. 2 page hand written letter from Dennis/Jan Barker to Meserve marked attachment 4 to 100426EPM03
12. Typed case summary: Complaint ref. # 2969

6-4-2011 (application date that led to second drift complaint with positive residues on abutting property)

1. Inspection file contents sheet marked # 3709 on top right hand corner
2. Pesticide Use Inspection Report (inspection #110609EPM03)
3. Photos showing sample sites for sample #s on Cadman's property 110609EPM04A,-04B,-04C and sample in orchard no. 110609EPM03C
4. Lab results for APT ID- 173.0-01-11 and 173.0-02-11
5. Consent Agreement cover letter dated July 7, 2010, to Dennis Barker and related Consent Agreement
6. Consent Agreement cover letter dated August 4, 2011, to Dennis Barker and related Consent Agreement

6-2-08 Complaint Documents

Inspection File Contents

Data Entered

Business Name Hemingway Orchards **Business Town** Hebron

Business Address 323 Merrial Hill Rd. **Application Town** Hebron

080604	EPM	01	AFU	AO		Pesticide 1 _____
YYMMDD	III	NN	Type	Site/Crop	App Method	

Applicator Dennis Barker Pesticide 2 _____

Issues/Notes Help with neighbor request for Notification Pesticide 3 _____

Summary of inspection and inspector's comments: Neighbor Bradley Cadmen wanted help with his request for notification. I made a visit but Dennis Barker, Hemingway Orchards, works days for Irving. I left message and copy of the notification regulation with Dennis' wife and wrote follow up letter to both Dennis and Bradley

Worker Safety
 Occupational Exposure Alleged Y N, Confirmed Y N, # People Affected: Ag _____ Non-Ag _____
 WPS Label Violation Y N Nature/# _____
 Non WPS Label Violation Y N Nature/# _____

Were violations suspected or observed during the inspection? Y (List below) N

WPS Violations Observed None NA Safety Training Central Posting Entry Restrictions
 Notice of Applications Decontamination Retaliation PPE Information Exchange
 Emergency Assistance Mixing/Loading, Application Equipment & Applications

Inspection Addressed: Federal Facilities, WPS Tier I Use Cause, WPS Tier II Use Cause, Family

Inspection Result From a Complaint? Y N Ref# 1883 **Complainant:** Bradley Cadmen

Were Physical Samples Collected? Y N # collected _____ # to lab _____ Lab: _____

Number of documentary samples 0 Documentary samples are any printed or graphic material collected as part of a pesticide inspection, including, but not limited to, labels/labeling, records, invoices, statements, maps, drawings, diagrams, photos, brochures, bill of lading or other shipping records and field notes. Several pages derived from one source constitutes one record. In other words, 5 pages of applicator records amount to one sample. Similarly, the label and labeling for a product is one sample, but if 3 products are involved, there might be 3 samples.

Items Included in File
 Notice of Inspection/Receipt Records & Operations Check Pesticide Label WPS - Worker
 Use/Misuse Report Compliance Checklist Pesticide Labeling WPS - Handler
 Inspector's Narrative If Above WPS - General WPS - Family

Describe and Number Additional File Inclusions	Attachment or sample number
Letter to Dennis Barker dated 6/4/08	Attachment 1
Letter to Bradley Cadmen dated 6/4/08	Attachment 2
Copy of Bradley Cadmen complaint, complaint ref. # 1883	# 1883

Case Reviewed By: _____ **Date:** _____

Disposition PA Civil CI Criminal CR Admin HC License/Cert S
 WPS Y N Warning I SSURO TO EPA OEA Fined

Enforcement Action Taken Compliance Verified Repeat Violator Within 3 Years

Meserve, Eugene P

From: BPC@maine.gov
Sent: Monday, June 02, 2008 8:09 AM
To: Meserve, Eugene P
Cc: Jennings, Henry; Connors, Raymond G
Subject: Citizen Complaint Reference # 1883

Complaint # 262

Anonymous: No
Name: Bradley Cadmen
Address: 347 Merrill Hill Road
City State Zip: Hebron ME
Phone: 966-1124
Reporter Email:
Details: Is having trouble with neighbor who sprays orchard. Wants to be notified and is not getting notified.

Worker Illness Alleged: No

Inspector: Eugene Meserve
Date/Time Reported: 6/2/2008 7:53:17 AM
Report Taken By: HENRY.JENNINGS



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

SETH BRADSTREET
COMMISSIONER
HENRY JENNINGS
DIRECTOR

June 4, 2008

Letter posted 6/5/08

Bradley Cadmen
347 Merrill Hill Road
Hebron, Maine 04238

RE: REQUEST FOR HELP WITH PESTICIDE APPLICATION NOTIFICATION

Dear Bradley,

I made a visit to Dennis Barker's home. Dennis works away from home during the day, and I did not get to speak directly with him. I left a message with a person at the house, his wife I believe, and I have written a letter to Dennis outlining the notification request. I do not expect any problems with your receiving notification, but if you continue not to receive notification, do not hesitate to call the Board of Pesticide office. I mailed Dennis' letter at the same time I posted this letter. If you have any further questions or comments, please call the Board office, 287-2731, and I will contact you as soon as possible.

Sincerely,

Eugene(Gene) P. Meserve
Pesticide Inspector

*attachment 2
to 080604EPM01*





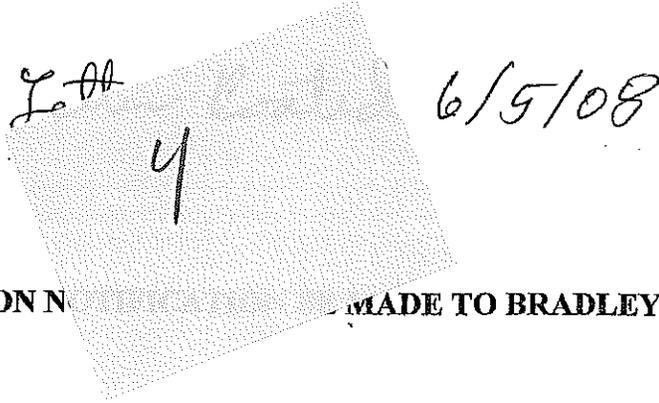
JOHN ELIAS BALDACCI
GOVERNOR

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

SETH BRADSTREET III
COMMISSIONER
HENRY JENNINGS,
DIRECTOR

June 4, 2008

Dennis Barker
Hemingway Orchards
323 Merrill Hill Rd.
Hebron, Maine 04238



RE: REQUEST THAT PESTICIDE APPLICATION N... MADE TO BRADLEY
CADMEN, 347 MERRILL HILL ROAD

Dear Dennis,

As I am sure you are aware, I stopped by your home on June 4th to speak to you about Bradley Cadmen's request that he be notified the day before pesticide applications are made within 600 feet of his home. (A home and the area 100 feet distant from it are defined as a sensitive area. Any pesticide application within 500 feet of a home sensitive area requires notification when a request has been made.) I spoke to, I believe, your wife outlining the reason for my visit. This letter is a follow-up to that visit as I was unable to speak to you in person. It is my understanding that in the past you have notified Bradley Cadmen of pesticide applications, and it is my hope that it will not be a problem to do so in the future. This type of request is not uncommon and is becoming even more common statewide as people become more concerned about pesticide use and as homes are increasingly built in agricultural areas.

I left a copy of the notification regulation during my visit. A careful reading of the regulation will show that it is focused on providing the information requested and does not list a set criterion of information that needs to be given each time. In Bradley Cadmen's case, he seemed to only want to have a days notice before spraying so that he can cover his pool and close his windows. If in the future a request is made for knowledge of the products used, the regulation does allow for this type of request to be met as well.

It is my expectation that this notification request will not be a problem. If for any reason you should like to speak to me about this or any other issue, please call the Board of Pesticide office, 287-2731, and I will contact you as soon as possible. I have a lifetime of farm/ownership experience and several years of pesticide regulation experience, and I am willing to help with any pesticide issues you may have.

Sincerely,

*attachment 1
to 080604EPMD1*

Eugene(Gene) P. Meserve
Pesticide Inspector



4-26-2010 Complaint Documents

Inspection File Contents

Data Entered

Business Name Hemmingway Orchards Business Town Hebron
 Business Address 323 Merrill Hill Rd. Application Town Hebron

100426	EPM	03	AFU	AO	BOM	Pesticide 1	<u>Drexel Damoil</u>
YYMMDD	III	NN	Type	Site/Crop	App Method	Pesticide 2	<u>Imidan 70-W</u>
Applicator <u>Dennis Barker</u>						Pesticide 3	<u>BASF Sovran Fungicide</u>
Issues/Notes <u>Drift & Notification Complaint</u>							

Summary of inspection and inspector's comments: This is part of a complaint with drift and notification issues. This summary is limited to the USE report and does not address the complaint issues. See separate case summary for total case summary. The "Items Included in File" below does list all items contained in this complaint file. There were five products used in the tank mix. Therefore, there are two USE forms for this one application inspection. Violations are listed below.

Worker Safety
 Occupational Exposure Alleged Y N, Confirmed Y N, # People Affected: Ag _____ Non-Ag _____
 WPS Label Violation Y N Nature/# _____
 Non WPS Label Violation Y N Nature/# Exceeded label rate of Drexel Damoil

Were violations suspected or observed during the inspection? Y (List below) N
 Missing records: No sensitive areas had been identified and documented. However, Dennis was fully aware of homes and other sensitive areas surrounding his operation.
 No wind speed and direction, temperature, or sky conditions recorded.
 Exceeded labeled rate for Drexel Damoil by 1.2 gal per acre. Application was within New England Fruit Tree Guide recommended rate. Renae Moran, Highland Farms orchard expert, acknowledged N.E. Guide discrepancy with label but thought higher rate was OK. See General summary for more detail.
WPS Violations Observed None NA Safety Training Central Posting Entry Restrictions
 Notice of Applications Decontamination Retaliation PPE Information Exchange
 Emergency Assistance Mixing/Loading, Application Equipment & Applications

Inspection Addressed: Federal Facilities, WPS Tier I Use Cause, WPS Tier II Use Cause, Family

Inspection Result From a Complaint? Y N Ref# 2969 Complainant: Bradley Cadman

Were Physical Samples Collected? Y N # collected 5 # to lab 5 Lab: APT

Number of documentary samples	8	<small>Documentary samples are any printed or graphic material collected as part of a pesticide inspection, including, but not limited to, labels/labeling, records, invoices, statements, maps, drawings, diagrams, photos, brochures, bill of lading or other shipping records and field notes. Several pages derived from one source constitutes one record. In other words, 5 pages of applicator records amount to one sample. Similarly, the label and labeling for a product is one sample, but if 3 products are involved, there might be 3 samples.</small>
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Items Included in File

<input checked="" type="checkbox"/> Notice of Inspection/Receipt	<input type="checkbox"/> Records & Operations Check	<input checked="" type="checkbox"/> Pesticide Label	<input type="checkbox"/> WPS - Worker
<input checked="" type="checkbox"/> Use/Misuse Report	<input type="checkbox"/> Compliance Checklist	<input checked="" type="checkbox"/> Pesticide Labeling	<input type="checkbox"/> WPS - Handler
	<input checked="" type="checkbox"/> Inspector's Narrative <input type="checkbox"/> If Above	<input type="checkbox"/> WPS - General	<input checked="" type="checkbox"/> WPS - Family

Describe and Number Additional File Inclusions	Attachment or sample number
Bradley Cadman complaint inspection and related documents	100426EPM01
Kim Pelletier complaint inspection and related documents	100426EPM02
Copy of Chain of Custody for Barker sample (1) sent to APT lab	Attachment 1
Copy of Chain of Custody for Bradley Cadman samples (3) sent to APT Lab	Attachment 2
Copy of Chain of Custody For Kim Pelletier sample (1) sent to APT Lab	Attachment 3
<i>Letter from Dennis + Jan Barker (History of complaint)</i>	<i>Attachment 4</i>

Case Reviewed By: RBC Date: 10-12-10

Disposition	<input type="checkbox"/> PA	<input checked="" type="checkbox"/> Civil CI	<input type="checkbox"/> Criminal CR	<input type="checkbox"/> Admin HC	<input type="checkbox"/> License/Cert S
WPS <input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> Warning I	<input type="checkbox"/> SSURO	<input type="checkbox"/> TO EPA	<input type="checkbox"/> OEA	<input type="checkbox"/> Fined

Enforcement Action Taken Compliance Verified Repeat Violator Within 3 Years

W



323 MERTILL HILL RD

Hebron, ME 04238-3514

mapquest

To Ray CONNORS, BPC

N

Marshall Pond Rd

Pelletier Home
Pool

Hemmingway Orchard

Cadman Home
Swimming Pool

Pelletier site

Barber Sample site

Cadman Sample site

Mertill Hill Rd

S



E

not to scale - 2PM



John Elias Baldacci
GOVERNOR

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

SETH H. BRADSTREET III
COMMISSIONER
HENRY JENNINGS
DIRECTOR

June 4, 2010

Dennis and Jan Barker
Hemingway Orchards
323 Merrill Hill Rd.
Hebron, Maine

*Please add to
inspection file 100426 EPM03*

Dear Dennis and Jan,

This letter is slightly unusual in that I have asked permission to write to you in hopes my years both as a farmer and as a pesticide inspector may be of some use to you as you decide how to approach the issues your neighbors have complained about. As I mentioned during my inspection, I am an information gatherer and usually play little, if any, role in decision making or penalty enforcement. I continue, in this case, to remain out of the decision and enforcement part. This letter is meant only to give a broader understanding of the issues involved so as to bring about some type of reconciliation without the need for some type of enforced compromise.

By enforced compromise, I do not mean that the Board is likely to really enforce any compromise. The Board is more likely to levy fines for any drift violations or other regulation failures over and over until the situation resolves itself. What has already happened can not be changed, but the future can be. I am writing to give an alternative to possible future problems and an ever possible spiraling amount of fines.

During the inspection, you mentioned that you had called the office and asked what specific notification information you were to put in your letters to your neighbors. You said that the Board of Pesticide office personnel were not able to say, do this, this and that and all would be well. You said that both the regulation and the office staff had been vague. I agree that the rules surrounding notification are somewhat vague. The reason for that vagueness is that there is no one formula that fits all needs. There is no magic language for these situations. One neighbor may simply be satisfied with an occasional talk with the applicator so as to have a general understanding of what is being done. Another person may want a detailed list of products used along with labels and MSDS information because of medical issues with which they are dealing. The regulation is designed, not to dictate, but to expedite the natural communication between the parties. The assumption is that both parties are willing and able to see each others needs. One person may just need to be made aware of the necessity of the pesticides while another person may need the medical information, and another may be concerned with the application timing. Both parties are expected to see and care about there neighbor's need.

Having said the above, I have seen the notification regulation misused by both parties. At times the notification is used, not to gain information, but to try an control an applicator and applications. At other times the notification is used by an applicator to absolve themselves of any need to be conscious of the neighbor's true need. When the regulation is misused, it is like any tool that becomes misused; it causes more harm than good. Instead of creating good relations between neighbors it causes only increased bad feelings. Again, the goal of the of the notification

those letters as my supervisor usually writes these types of letters. As I stated earlier, I asked to write this letter because I believed my background gives me a better understanding of your situation. It is my hope that something acceptable for both parties can be worked out rather than an fine imposed compromise that likely is resented and only partially effective in meeting both parties needs.

I encourage you to speak to others in the orchard business, farmers, and any others who you think may have insight into these issues. Most of the farmers who are still in business have had to deal with these types of issues in one form or another.

Some possible ideas for resolution are:

- Cut several of the tress that are virtually on the property line near the Cadman home and plant evergreen trees along the boundary. These trees can occasionally have the top trimmed so as to create a dense barrier against drift.
- Negotiate acceptable times when you will not spray so the neighbors can have assurance of the use and enjoyment of their own yard.
- The above two accommodations might be made for acceptance of applications to trees close to the line and the possible drift that may result to those areas over the property line (not directly next to the Cadman house).

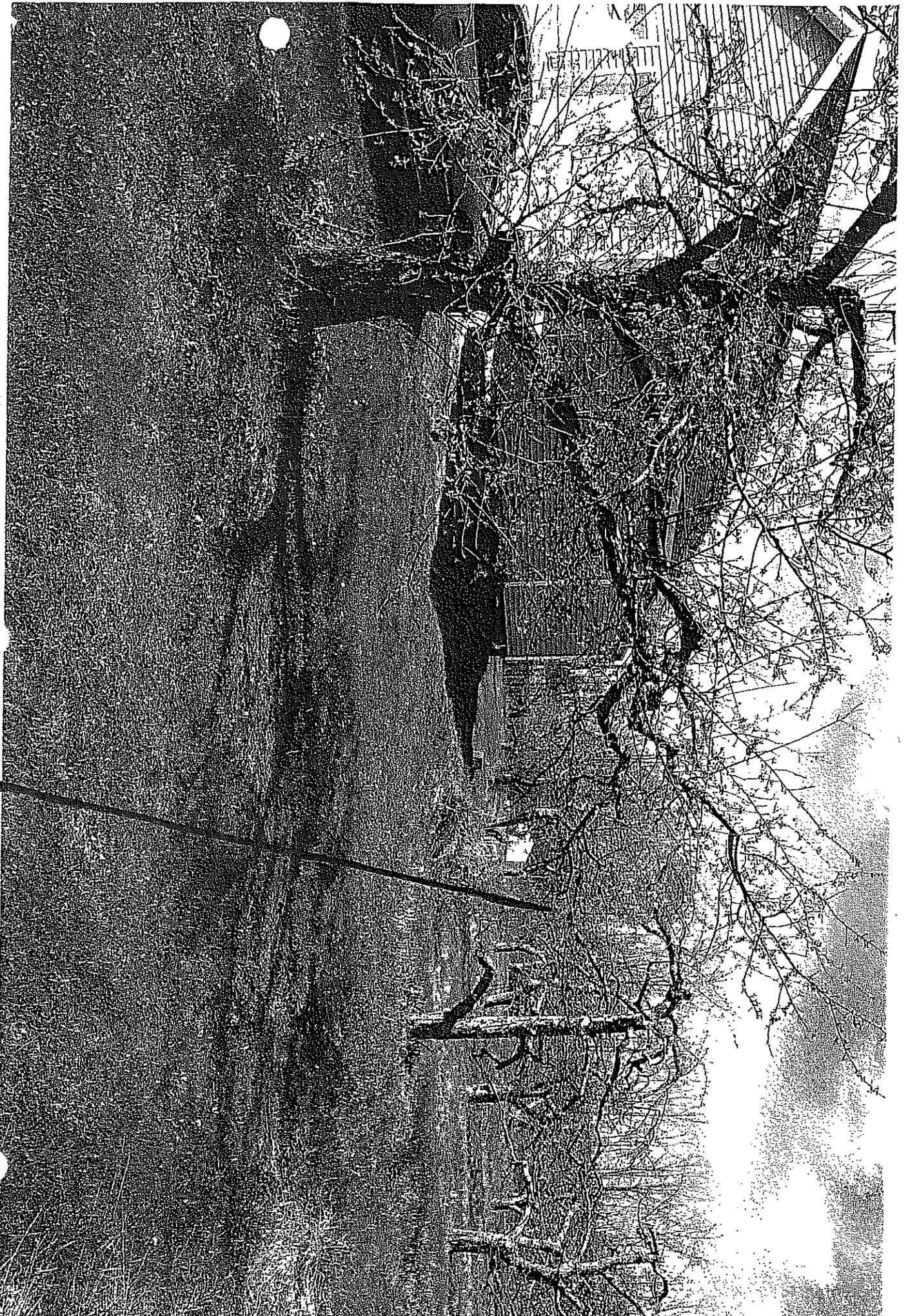
The above suggestions are meant only to be ideas for thought. Any agreement between the parties is far more likely to be satisfactory than one imposed from outside. As I stated in the beginning, my goal is only to encourage you to think your way through this and to find an acceptable compromise with your neighbors. My experience teaches that the outcome will be much more acceptable and satisfying than any imposed enforcement.

I hope this letter and the attached information will be useful to you.

Sincerely,

Eugene P. Meserve
Pesticide Inspector

100926EPM 01E



Approximate

Location

Barber Property Line 292



2 wire sampler
top of Box
windshield

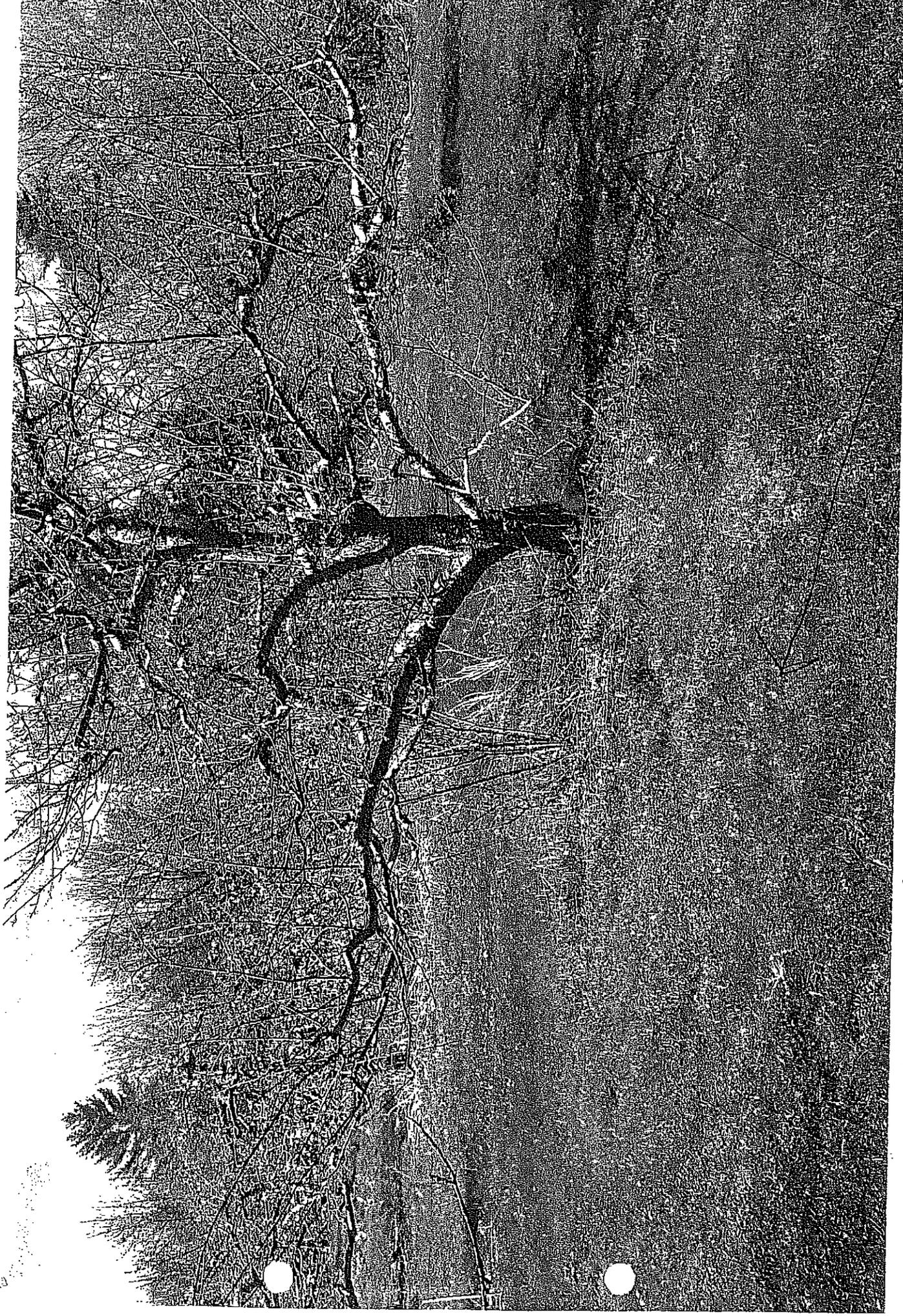
town Veg. Sample

sample of field Veg.
taken in spray area

100426 EPMOIE

1972
1977-

Pelletier



100426ERM02B

Sample area for 100426ERM02A
1083

Pelletier



100920EPM02B

285-

Sampler areas for 100426EPI.02-A

Pelletier



100426 EMMO2B

3 of 3

Sample area for 100426 EPM02A

Analytical Pesticide Technology Laboratories, Inc.



(610) 374-3668 Phone
www.aptlabsinc.com

A.P.T. Labs, Inc.
1050 Spring Street
Reading Pa. 19610



(610) 372-4635 Fax
aptlabs@aol.com

June 4, 2010

Maine Board of Pesticides
Attn: Henry Jennings
28 State House Station
Augusta, ME 04333

ANALYSES OF SAMPLES RECEIVED: 5/5/10

Summary of Wipes/Vegetation Samples

APT ID	CLIENT ID	APPARENT μg or PPM FOUND*	
		CLHORPYRIFOS	PHOSMET
05-0510-01	100426EPM01A	3.43 μg	0.475 μg
" " -02	" " B	2.33 μg	0.0972 μg
" " -03	" " C	0.656 ppm	0.035 ppm
" " -04	Blank Wipes	<0.050 μg	<0.040 μg
" " -05	100426EPM02A	0.249 ppm	0.0098 ppm
" " -06	100426EPM03F	6.77 ppm	0.177 ppm

*Note: uncorrected for % Recovery

Reviewed by,

Stephen P. Stupp
Laboratory Director

FAKED
6.4.10

regulation is to give an outline so as to help neighbors see and meet each others needs, not to dictate arbitrary rules of conduct. It is only when neighbor relations fail that an arbitrary enforced compromise is imposed. A good pesticide notification is not one dictated to meet some regulation, but is one that simply meets the needs of the one receiving it.

I am sure you have heard the phrase, "good fences make good neighbors." As one who has was born on a dairy farm and who has had flocks of sheep and cattle herds that have numbered in the hundreds, I know personally what this means. My neighbors understand that occasionally animals will get out. But, even my own brother showed little if any understanding when my then small flock of sheep often hard for farm their neighbors land land, but I don't have sometimes even am in a row and their to years quickly disapp accepted and an eve is seen as a trespass

*Mr. Eugene Meserve,
I went through our records and here is our proof the orchard was not in use while Brad Cadman purchased his land from Brett Damm. He lies, this is why I'm upset.
Thank You - Jan*

planted Christmas trees. What is through or over the fence onto t to have sheep or cattle on my People are usually tolerant and , but let it happen a couple times : farming good will built up for one's own land, pesticide use is e crosses onto another's land, it

In both of Mr. Cadm concerns were that tl he had cookouts plar something that the B person to place pesti occurs more in lawn

the one a month ago, his main ok place during weekend when To be honest, pesticide drift is : a history of not allowing one misplaced application condition

not be able to find an answer to making applications on the wrong property. The Board's answer was to increase fines and to make new property identification regulations until now misplaced applications are rare. As far as the Cadman notification issue, it is my belief that this issue is mainly centered on the need for the Cadman's to know that they can use their property on the weekends and holidays without fear of being driven indoors by pesticide smell and possible drift. Mr. Cadman mentioned that he had been happy with the previous land manager/applicator because they made applications during the night.

No one likes to be told what to do, but sometimes what seems like someone trying to dictate our actions is no more than someone pointing out that they have needs equal to our own. Just as you and I have needs, so does everyone else. If we are to expect other people to understand and respond to our needs, we must be willing to understand and respond to theirs.

Because I understand that there has been a history between all parties that may prevent fruitful discussion between the parties, I have enclosed a printout that describes an arbitration service for farm type conflicts. I have no personal knowledge of the group, but it does seem a very real option for the situation in which you and your neighbors find themselves. I believe this printout is being sent in letters that the Cadman's and Pelletier's will receive.

I do not want you to think that you have been singled out to receive this letter. It is my understanding that a letter is also been sent to Mr. Cadman and Ms Pelletier. I am not writing

F. OTHER HAZARDOUS MATERIALS - Current or previously existing:

- TOXIC MATERIAL: Yes No Unknown
- LAND FILL: Yes No Unknown
- RADIOACTIVE MATERIAL: Yes No Unknown

OTHER: Property (was) working orchard before 2003.

Buyers are encouraged to seek information from professionals regarding any specific issue or concern.

SECTION V. GENERAL INFORMATION

Is the property subject to or have the benefit of any encroachments, easements, rights-of-way, leases, rights of first refusal, life estates, private road/homeowner associations or restrictive covenants? Yes No Unknown

IF YES: Explain: _____

What is your source of information: _____

Are there any tax exemption or reduction for this property for any reason including but not limited to: Tree Growth, Open Space and Farmland, Veteran's, Homestead Exemption, Blind, Working Waterfront? Yes No Unknown

IF YES: Explain: Homestead Exemption (\$10,400)

Leased Equipment (e.g., propane tank, hot water heater, satellite dish): Type: None

Age: Age of House: 1991

How long has Seller owned it: 1991

Roof: Age - Structure: 1991

Age - Shingles: 1991

Moisture or leakage: Sheathing repaired around chimney in 2003 - yes

Comments: _____

Foundation/Basement: Sump Pump: Yes No Unknown Comments: _____

Moisture or leakage since you owned the property: Yes No Unknown Comments: _____

Knowledge of prior moisture or leakage: Yes No Unknown Comments: _____

Mold: Has the property ever been tested for mold? Yes No Unknown

If YES, are test results available? Yes No

Electrical: Fuses Circuit Breaker Other: _____ Unknown

Has the property been surveyed? Yes No Unknown If YES, is the survey available? Yes No

Seller shall be responsible and liable for any failure to provide known information regarding known material defects to the Buyer.

KNOWN MATERIAL DEFECTS about Physical Condition of Property: _____

ATTACHMENTS EXPLAINING CURRENT PROBLEMS, PAST REPAIRS OR ADDITIONAL INFORMATION IN ANY SECTION IN DISCLOSURE: Yes No

SECTION VI. ADDITIONAL INFORMATION

8 Acres of Orchard; 2 acres tillable land; Farm pond, in addition to house and yard. Wrap around porch

As Sellers, we have provided the above information and represent that all information is correct. To the best of our knowledge, all systems and equipment, unless otherwise noted on this form, are in operational condition.

Brett Damm

SELLER

5/8/06

DATE

Ann E. Damm

SELLER

5/8/06

DATE

We have read and received a copy of this disclosure and understand that I/we should seek information from qualified professionals if I/we have questions or concerns.

Brett Damm

BUYER

6/9/06

DATE

Jan L. Basker

BUYER

6/9/06

DATE



Chris Cooper ho. 2
674-3303
Cooper Farms
674-2200

Sunrise
orchards

Order No: 1224189 (06-1525)

EXHIBIT 'A'

A CERTAIN LOT OR PARCEL OF LAND LOCATED IN THE TOWN OF HEBRON, COUNTY OF OXFORD AND STATE OF MAINE WITH THE BUILDINGS THEREON, COMMENCING AT A POINT ON THE WESTERLY SIDE OF THE MERRILL HILL ROAD IN THE TOWN OF HEBRON, WHICH POINT IS FOUR HUNDRED SIXTY-FIVE (465') FEET SOUTH OF THE INTERSECTION OF LAND OF THOMAS PORTER, WITH THE SAID MERRILL HILL ROAD; THENCE WESTERLY THREE HUNDRED TEN (310') FEET TO A CORNER; THENCE GENERALLY SOUTHERLY SIX HUNDRED TWENTY (620') FEET TO A CORNER; THENCE WESTERLY THIRTY-SIX (36') FEET TO A CORNER; THENCE SOUTHERLY FIFTY-FIVE (55') FEET TO A CORNER; THENCE WESTERLY THREE HUNDRED EIGHTY-FIVE (385') FEET ALONG A STONE WALL TO A CORNER AND LAND NOW OR FORMERLY OF JESSIE HALL; THENCE SOUTHERLY ONE THOUSAND SEVENTY-TWO (1,072') FEET ALONG SAID HALL'S LAND TO THE AFOREMENTIONED MERRILL HILL ROAD; THENCE ~~EASTERLY AND NORTHERLY ALONG THE SAID MERRILL HILL ROAD EIGHTEEN HUNDRED AND FIFTEEN~~ (1,815') FEET TO THE POINT FIRST MENTIONED AND BOUND BEGUN AT.

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL OF LAND ARE THOSE PORTIONS THEREOF DESCRIBED IN THE FOLLOWING DEEDS:

1) WARRANTY DEED FROM BRETT R. DAMM TO VERNON GLENN HUNTLEY AND SHARON L. HUNTLEY DATED OCTOBER 1, 2001 AND RECORDED IN THE OXFORD COUNTY REGISTRY OF DEEDS IN BOOK 3005, PAGE 148;

2) WARRANTY DEED FROM BRETT R. DAMM TO ~~STEWART B. PELLETIER AND~~ KIMBERLY A. PELLETIER DATED ~~OCTOBER 2, 2001~~ AND RECORDED IN SAID REGISTRY IN BOOK 3006, PAGE 145; AND

3) WARRANTY DEED FROM BRETT R. DAMM TO ~~BRADLEY CADMAN~~ AND LORI CADMAN DATED ~~FEBRUARY 13, 2004~~ AND RECORDED IN SAID REGISTRY IN BOOK 3465, PAGE 275.

FOR SOURCE OF TITLE OF BRETT R. DAMM, SEE WARRANTY DEED FROM COOPER FARMS, INC. DATED NOVEMBER 29, 1984, RECORDED IN THE OXFORD COUNTY REGISTRY OF DEEDS IN BOOK 1200, PAGE 157.

THIS CONVEYANCE IS MADE TOGETHER WITH THE BENEFIT OF AN EASEMENT DESCRIBED IN A DEED FROM V. GLENN HUNTLEY AND SHARON A. HUNTLEY TO BRETT DAMM ACKNOWLEDGED ON JULY 23, 1986 AND RECORDED IN SAID REGISTRY IN BOOK 1408, PAGE 140.

Cadman says
he was here when
Brett Damm was
spraying
after Feb 2004

We purchased
Aug. 25th 2006

- 2 -

Jan Barker

notice. They are just looking for trouble in any way possible. When it spread the nutrients around the trees and Mrs. Cadman blames me for leaving "dog leavings" in a bag on her stairs. She is impossible to talk to - I told her I have no time to be doing such a thing never mind the nerve. I swear they purposely park their car down over the side off the drive way just to try to get residue on something. We ~~also~~ always use LI700 and turn our nozzels to stop any



- 1 - 6/7/17

Jan Barker

Hi Mr. Meserve,

Thank you for the letter. We thank you for your suggestions, believe me, if we could talk with them we would. They are so tough people to get along with, the lie as I have sent the proof. In that first spray I told them we had to spray during the day due to cold temps at night. Cadman saw us stuck down back for 3 hours and knew we were going to spray - he had plenty of



- 4 -

Jan Barker

The board of pesticides
because these people
just look for trouble
any way they can get it.

Thanks again
and I hope you
see my side
of the story.

Jan Barker



- 3 -

Jan Barker

type of spray. That one time
we couldn't and he just
wasn't looking for a reason
to get the ball rolling again.
I try to be a positive
understanding person, I
have never been treated so
horrible in my life as I
have from day one with
these people. I just want
you to know how they
lie as I have proof when
they moved in and Brett
Damm stopped
the orchard due
to his job in
Rangley. I hope
this gets
forwarded to



Dennis + Jan Barker
Hem. igway orchards

Attention: Gene Meserve,

I apologize for not getting this letter out sooner. This letter is in regards to the inspection done at Hemingway orchards April 26th. The complaint was put in by Brad Cadman and Kim Pelletier for our spraying April 25th. We could not use the LI 700 due to using oil for the first time in 12 years or more on these apple trees. It will be 4 years in November that we've been at this property. Brett Damm sold this orchard/land and home to us.

I don't want to look like I'm bringing up old problems but I want the Department of Agriculture to see what we've had to deal with from the day we moved to this property.

#1 From day one Brad Cadman wanted to buy 2.75 acres from Brett Damm, we bought it with all the land as how it was listed in the newspaper and reaktor. His land is, or should I say house and garage is very very close to the line. How this was approved I don't know. So now the problem is they hated us from day one because they couldn't have more land.

#2 Brad Cadman came over with his tract shortly after we moved in and wanted to know if we got into taking care of our orchard would we do his as well, spraying, pruning. Dennis said we had enough to care for would be able plus a full time job. So after that the put in an inground pool. He also mentioned us, oh yes it's a great tax sigh write off as they do nothing with their tree!

attachment 4 to 100426EPMO3

#3 Our first year opening the "pick your own" we had Brad Cadman and friends riding 3 & 4 wheelers through our lower orchard while children and several people were picking apples! My hands were tied because I was waiting on customers up ~~over~~ in the orchard. So we had to spend over 500.00 to get a gate up in the lower part of the orchard.

#4 Kim Pelletier who is located on the other side of our property is good friends with the Cadmans. We had a young couple pick apples on the same side of the orchard as Pelletier's house, we had ladders and showed this couple where there was real nice apples. 2 days later getting towards the end of the day we saw the same couple picking a lot of apples with their car parked at Pelletier's. They snuck in because Pelletier said she owned 10 acres so go ahead and pick! It was also Pelletier's boss! The customer knew where the lines were and they all wanted to see what they could get away with!

All in all, it's been trouble from day one with these neighbors on both sides of our property. We give proper notices, we tell them we spray after 8pm in most cases. Unfortunately apples are early this year and I nicely sent them a letter stating that and we would spray in the day due to cold temps at night.

I don't mean to go on but you should hear what we've had to go through since day one. Our pesticide director, Randy Brown is the best he helps us so much and we've followed all the laws.

Thank you again for listening. Jan Barke

Case Summary: Complaint Ref. # 2969**100426EPM01, Bradley Cadman****100426EPM02, Kim Pelletier****100426EPM03, Dennis Barker, Hemmingway Orchards****Complaint:**

Complaint was that spray drift from an application by Dennis Barker, Hemmingway Orchard, had covered the Cadman car, driven family out of home and interfered with a planned weekend cookout. Notice from Barker was considered inadequate due to not given specific enough time for application to be useful.

Findings and Summary:

Application was made on 4/25/10. The application started at 7AM and ended at 1PM. The application was suspended half way through for approximately 2 hours due to the tractor becoming stuck. There was some disagreement as to whether this timeline was accurate, but figuring about one hour to mix and spray each of the four loads and adding 2 hours for being stuck, I could find no reason to doubt the time line.

The application USE inspection showed omission of some record elements. There was also a discrepancy with the amount of one product used (Drexal, Damoil) and the labeled rate of application. Dennis Barker applied the rate suggested by Randy Drown, Crop Production Services. When I contacted Randy, he said he was following the New England Fruit Growers Guide. A further check on this rate discrepancy revealed that the label and the New England Fruit Tree Guide (page 112?) are at odds as to the rate to be applied. I called Renae Moran, Highland Farms orchard expert, for clarification. Renae acknowledged the discrepancy between the label and the Guide, but she thought the higher Guide rate was appropriate for the application made on 4/25/10. She suggested I call Glenn Koehler at 581-3882 for further follow-up. Renae's phone number is 933-2100. I have decided to leave this issue for the compliance manager because a judgment as to the validity of the Guide's rate recommendation will have to be made. The USE inspection is summarized in detail on the USE Inspection Report and Inspection File Contents page.

When I first stopped at the Cadman residence, I was met by Brad Cadman and was soon joined by Kim Pelletier. Kim has a home at the opposite end of the Barker orchard and wanted to join the complaint. During my visit to the Cadman residence, I observed what looked like possible spray residue on the car windshield of the Cadman car parked approximately 25 feet from the Barker property. I immediately took a wipe sample from both the Cadman windshield and from a large plastic bin beside the garage as the sun was quickly drying the dew from these objects and I wanted to get a sample before the surfaces dried and any residue became even more difficult to sample. I then drove to the Barker residence and told him of the inspection and asked if I could take samples from his orchard. He had no objection. I then returned and finished my work at the Cadman home and also took a sample from the Barker Orchard. I then drove to the Pelletier home and conducted my inspection and sample gathering there. I then returned to the Barker residence and completed the USE inspection there. All samples have been sent to APT Lab.

It seems there has been some long standing unrelated dispute history between the Cadman's and Dennis Barker (see Jan Barker letter/statement). There was also a complaint made to the Board of

Pesticide approximately a year and a half ago. The problem seems to be that the original orchard had been started to be sold as house lots. Both ends of the orchard had been sold and houses built. Finally, the center, remaining orchard was bought by Barker. Barker has been running it as an orchard ever since. Trees that were once well within the orchard have now become extremely close, if not on, the new boundary lines. Barker feels it is his right to spray all trees within his boundaries. I could see tire marks from his airblast spray tractor that went up to the property line but did not go over the line. Barker stated that he sprayed all trees even the ones that are close or partially on the line. It would seem impossible to use a mist blower that close to the property without some drift over the property line unless there was a strong and steady wind blowing towards the Barker property. (see file photos)

The application notice is somewhat vague, but as the notice states, weather is not always cooperative with schedules. It is my understanding that the notice in question did not follow the usual procedure for notices sent out by the Barkers. This incident had one earlier notice sent out, but because of uncooperative weather conditions that did not allow the planned application to take place, another notice was immediately sent out at the expiration of the first notice's spray dates. It is my belief that the notice is not the underlying problem however. What the Cadman's have expressed in both this complaint and the previous one is that they want to be allowed to use their yard in the evening and on weekends without fear of being driven off by orchard spray applications. As I have seen in other situations, the notification regulation is not working because it is not the right tool for what is being tried to be accomplished. Notification is simply not the tool for controlling the timing of or for the prevention of applications.

Possible Resolution:

During my inspection and in talking to all parties involved, I have condensed their thoughts and added my own ideas as to what might be done to make this situation work for all parties. I am starting from the assumption that the homes are not going to be moved and the people who live there have a right to enjoy their property. The orchard also has a right to exist but its operation does not have the right to slop over onto another's property. I, therefore, recommend that a number of the trees along the property lines either be cut down or be left untreated. Because of disease concerns, it seems that cutting them down would be the best choice. I would suggest that both parties walk the line and mutually decide which trees are best removed from spray applications. Since this is unlikely, I suggest a person knowledgeable of orchards and pesticide applications and respected by both parties be chosen and this person would talk with both parties and make the decision as to which trees need to be removed. Once the trees are decided upon, areas of high concern should have fir trees or other dense evergreens planted along the property lines to become a future drift barrier. Certain weekend and evening hours should become off limits to orchard applications unless agreed to by both parties. Applications that are to use pesticides with a strong objectionable smells such as Lorsban may need even more restrictive times.

The alternative to the above is for high fine to be applied as provable drift occurs and a notification requirement be required that is as strict as regulation allows. These last ideas will require continued Board of Pesticide involvement and continued dissatisfaction by all parties but may be all that is possible failing real resolution.

6-4-2011 Complaint Documents

Inspection File Contents

Data Entered

Business Name Hemingway Orchard **Business Town** Hebron

Business Address 323 Merrill Hill Rd **Application Town** Hebron

110609	EPM	03	AFU	AO	Air	Pesticide 1	Captac 4 L
YYMMDD	III	NN	Type	Site/Crop	App Method	Pesticide 2	Imidan 70-W
Applicator <u>Dennis Barker</u>						Pesticide 3	
Issues/Notes <u>NVO</u>							

Summary of inspection and inspector's comments: This complaint is the third in a string of drift complaints concerning the Cadmans and Barkers. The two previous complaint samplings have come back nondetect. I observed no reason to believe that this case should be any different.

Dennis Barker uses 40-50 foot setback from Cadman line, Lower pressure application in the Cadman end of orchard and LI 700 drift control agent to prevent drift onto the Cadman property. The wind was reported at zero.

Worker Safety

Occupational Exposure Alleged Y N, Confirmed Y N, # People Affected: Ag _____ Non-Ag _____

WPS Label Violation Y N Nature/# _____

Non WPS Label Violation Y N Nature/# _____

Were violations suspected or observed during the inspection? Y (List below) N

No Violations Observed.

WPS Violations Observed None NA Safety Training Central Posting Entry Restrictions
 Notice of Applications Decontamination Retaliation PPE Information Exchange
 Emergency Assistance Mixing/Loading, Application Equipment & Applications

Inspection Addressed: Federal Facilities, WPS Tier I Use Cause, WPS Tier II Use Cause, Family

Inspection Result From a Complaint? Y N Ref# 3709 **Complainant:** Brad Cadman

Were Physical Samples Collected? Y N # collected 4 # to lab 4 Lab: APT

Number of documentary samples 3 Documentary samples are any printed or graphic material collected as part of a pesticide inspection, including, but not limited to, labels/labeling, records, invoices, statements, maps, drawings, diagrams, photos, brochures, bill of lading or other shipping records and field notes. Several pages derived from one source constitutes one record. In other words, 5 pages of applicator records amount to one sample. Similarly, the label and labeling for a product is one sample, but if 3 products are involved, there might be 3 samples.

Items Included in File
 Notice of Inspection/Receipt Records & Operations Check Pesticide Label WPS - Worker
 Use/Misuse Report Compliance Checklist Pesticide Labeling WPS - Handler
 Inspector's Narrative If Above WPS - General WPS - Family

Describe and Number Additional File Inclusions	Attachment or sample number
<i>Copies of Citizen Complaint Ref # 3709</i>	<i>Ref No. 3709</i>
<i>Chain of custody forms for samples listed on notice of inspection</i>	

Case Reviewed By: _____ **Date:** _____

Disposition PA Civil CI Criminal CR Admin HC License/Cert S
 WPS Y N Warning I SSURO TO EPA OEA Fined

Enforcement Action Taken Compliance Verified Repeat Violator Within 3 Years

Brad Cadman @ Yahoo.com

*17011
L2364*

*# 3709
6/27/2011*

PESTICIDE USE INSPECTION REPORT

Inspection # 110609EPM03

Company or Farm Name: Hemingway Orchard

Person Interviewed: Jan Barker

Date: 6/9/11

Type and size of operation:

Do you have obsolete pesticides? Y N NA

APPLICATOR, SUPERVISOR, LICENSING Licensing is: Correct Violation Not Required

Applicator Name: Dennis Barker License (if any): PPA 44366 Firm License (if any): SCF

Supervisor (When required) Name: License: Supervisor's Location:

APPLICATION SITE N Deg Min Sec W Deg Min Sec

Field Name, Address or Description of Application Site (If different than on Notice of Inspection) Owner Name & Address (If different than on Notice of Inspection)

Type of establishment treated (Farm, home, etc): Apple Orchard Site treated (Crop, structure, vegetation, etc.): Apple trees Size of area treated: 1.5A Target pest(s): Scab/insects Cropping stage (If applicable):

Application Date: 6/4/11 Time: 11-12PM Wind Speed: 0 N/A Direction: N/A Temperature: 53 N/A Sky Conditions: 2% clouds N/A

PESTICIDES APPLIED

a. Brand Name	EPA Reg #	Site as specified on label	Violation?	Formulation	
Captec 4 L	66330-239	Apples	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>	Flowable	RUP <input type="checkbox"/>
b. Brand Name	EPA Reg #	Site as specified on label	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>	Formulation	RUP <input type="checkbox"/>
Imidan 70-W	10163-169	Apples	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>	WP	RUP <input type="checkbox"/>
c. Brand Name	EPA Reg #	Site as specified on label	Y <input type="checkbox"/> N <input type="checkbox"/>	Formulation	RUP <input type="checkbox"/>

APPLICATION RATE

Application Method (Equipment)	Pressure	Nozzle(s)	Calibration Adequate	Calibration Documented	
Air Blast	85-150psi N/A <input type="checkbox"/>	Cone N/A <input type="checkbox"/>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>	Y <input checked="" type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>	
Quantity of Pesticide Formulation In Tank	Total Mix in Tank	Area Covered per Tank/Use	Formulation Applied Per Unit Area Or Volume	Maximum Labeled Rate Per Unit Area or Per Volume	
a. 1/2 gal	120	1.5A *Amount used if Part Tank Used	a. 1.3qt/A b. 2lbs/A	a. 4qt/A b. 5.33lbs/A	
b. 3lbs					Violation? Y <input type="checkbox"/> N <input checked="" type="checkbox"/>
c.					Y <input type="checkbox"/> N <input type="checkbox"/>

PERSONAL PROTECTIVE EQUIPMENT R = Required W = Worn Circle if violation

Long sleeve shirt	Apply <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> Mix <input checked="" type="checkbox"/> R <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/>	Gloves, regular	Apply <input type="checkbox"/> W <input type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input type="checkbox"/>	Protective eyewear	Apply <input type="checkbox"/> W <input checked="" type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input checked="" type="checkbox"/>
Long pants	Apply <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> Mix <input checked="" type="checkbox"/> R <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/>	Gloves, waterproof	Apply <input type="checkbox"/> W <input type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input type="checkbox"/>	Respirator	Apply <input type="checkbox"/> W <input checked="" type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input checked="" type="checkbox"/>
Shoes/socks	Apply <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> Mix <input checked="" type="checkbox"/> R <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/>	Gloves, chemical resistant	Apply <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> Mix <input checked="" type="checkbox"/> R <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/>	Enclosed cab	Apply <input type="checkbox"/> W <input type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input type="checkbox"/>
Chemical resistant boots	Apply <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> Mix <input checked="" type="checkbox"/> R <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/>	Chemical resistant hat	Apply <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> Mix <input checked="" type="checkbox"/> R <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/>	PPE in cab	Apply <input type="checkbox"/> W <input type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input type="checkbox"/>
Coveralls	Apply <input checked="" type="checkbox"/> W <input type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input type="checkbox"/>	Chemical resistant apron	Apply <input checked="" type="checkbox"/> W <input type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input type="checkbox"/>		Apply <input type="checkbox"/> W <input type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input type="checkbox"/>
Chemical resistant suit	Apply <input type="checkbox"/> W <input checked="" type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input checked="" type="checkbox"/>		Apply <input type="checkbox"/> W <input type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input type="checkbox"/>		Apply <input type="checkbox"/> W <input type="checkbox"/> Mix <input type="checkbox"/> R <input type="checkbox"/> W <input type="checkbox"/>

OTHER COMPLIANCE ITEMS NVO = No Violation Observed V = Violation

Storage Area	NVO <input checked="" type="checkbox"/> V <input type="checkbox"/>	Application Method	NVO <input checked="" type="checkbox"/> V <input type="checkbox"/>	Spray Interval	NVO <input checked="" type="checkbox"/> V <input type="checkbox"/>	Preharvest Interval	NVO <input checked="" type="checkbox"/> V <input type="checkbox"/>
Posting	NVO <input checked="" type="checkbox"/> V <input type="checkbox"/>	Mixing/Loading Area	NVO <input checked="" type="checkbox"/> V <input type="checkbox"/>	Rinsing/disposal	NVO <input checked="" type="checkbox"/> V <input type="checkbox"/>	Off target drift	NVO <input checked="" type="checkbox"/> V <input type="checkbox"/>
RUP stickers	NVO <input checked="" type="checkbox"/> V <input type="checkbox"/>	Other	NVO <input checked="" type="checkbox"/> V <input type="checkbox"/>				

RECORDS DETAILS Are records maintained for two years? Y N Reviewed by Inspector? Y N If no, explain in comments:

Application method	Y <input type="checkbox"/> N <input type="checkbox"/>	Date of application	Y <input type="checkbox"/> N <input type="checkbox"/>	Sensitive areas noted	Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>
Brand name of pesticide	Y <input type="checkbox"/> N <input type="checkbox"/>	Time of application	Y <input type="checkbox"/> N <input type="checkbox"/>	Wind speed & direction	Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>
Active ingredient(s)	Y <input type="checkbox"/> N <input type="checkbox"/>	Town of application	Y <input type="checkbox"/> N <input type="checkbox"/>	Temperature	Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>
EPA registration #	Y <input type="checkbox"/> N <input type="checkbox"/>	Site name or description	Y <input type="checkbox"/> N <input type="checkbox"/>	Sky conditions	Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>
REI or Ventilation	Y <input type="checkbox"/> N <input type="checkbox"/>	Size of treated area	Y <input type="checkbox"/> N <input type="checkbox"/>	Total amount of RUP	Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>
Applicator name	Y <input type="checkbox"/> N <input type="checkbox"/>	Target pest	Y <input type="checkbox"/> N <input type="checkbox"/>	Total or rate of GUP	Y <input type="checkbox"/> N <input type="checkbox"/>
Applicator license #	NA <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/>	Site or crop treated	Y <input type="checkbox"/> N <input type="checkbox"/>	Sprayer calibration	Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>

COMMENTS Did inspector take copy of records Y N

Violations Observed: mis uses 40-50 foot setback from Cadman line, Lower pressure application in the Cadman end of orchard and LI 700 drift control agent to prevent drift onto the Cadman property.

Hazard Communicati on Standard Y N (If no, leave brochure)

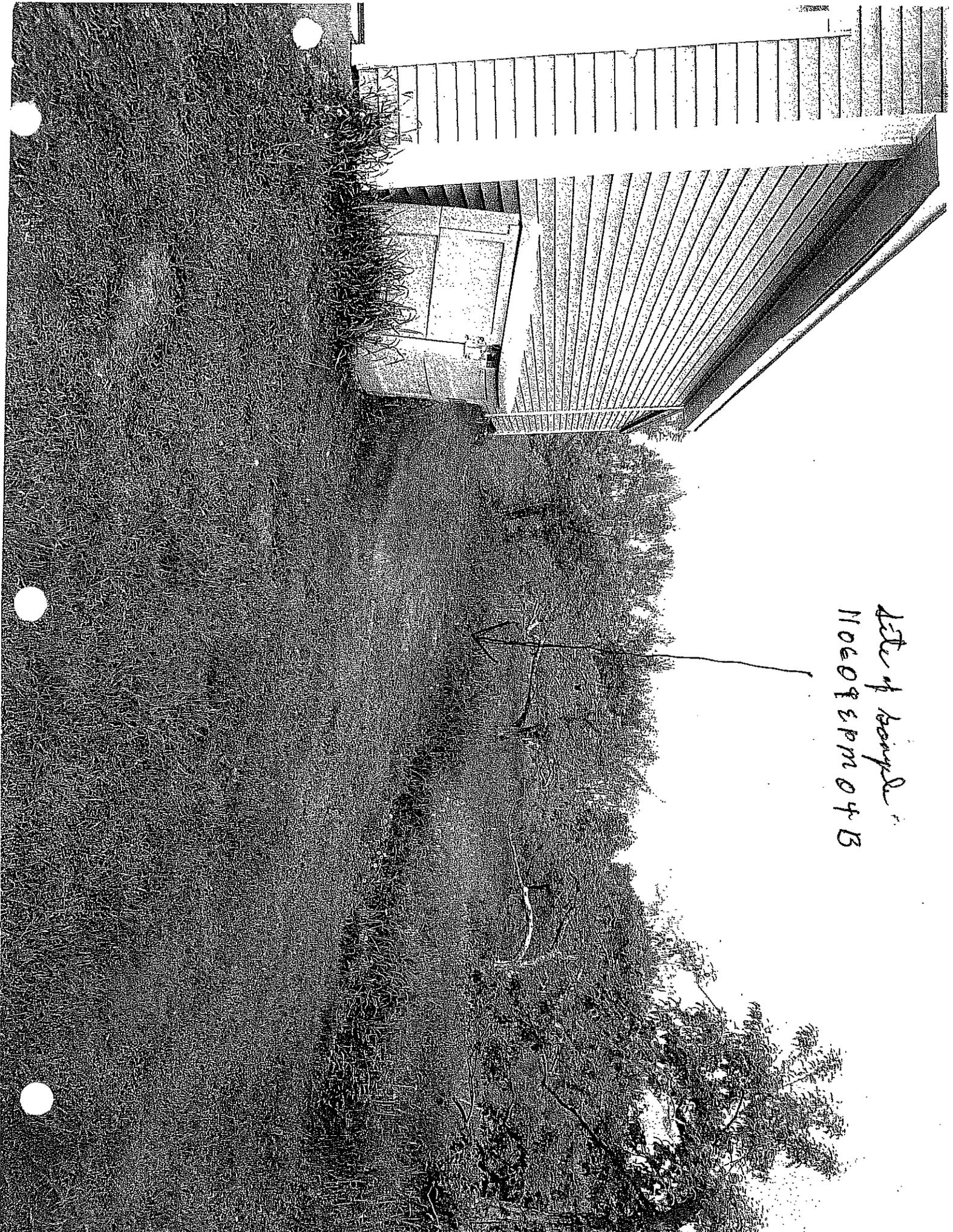
Pesticide Inspector's Signature Eugene P. Moore

Date 6/9/11

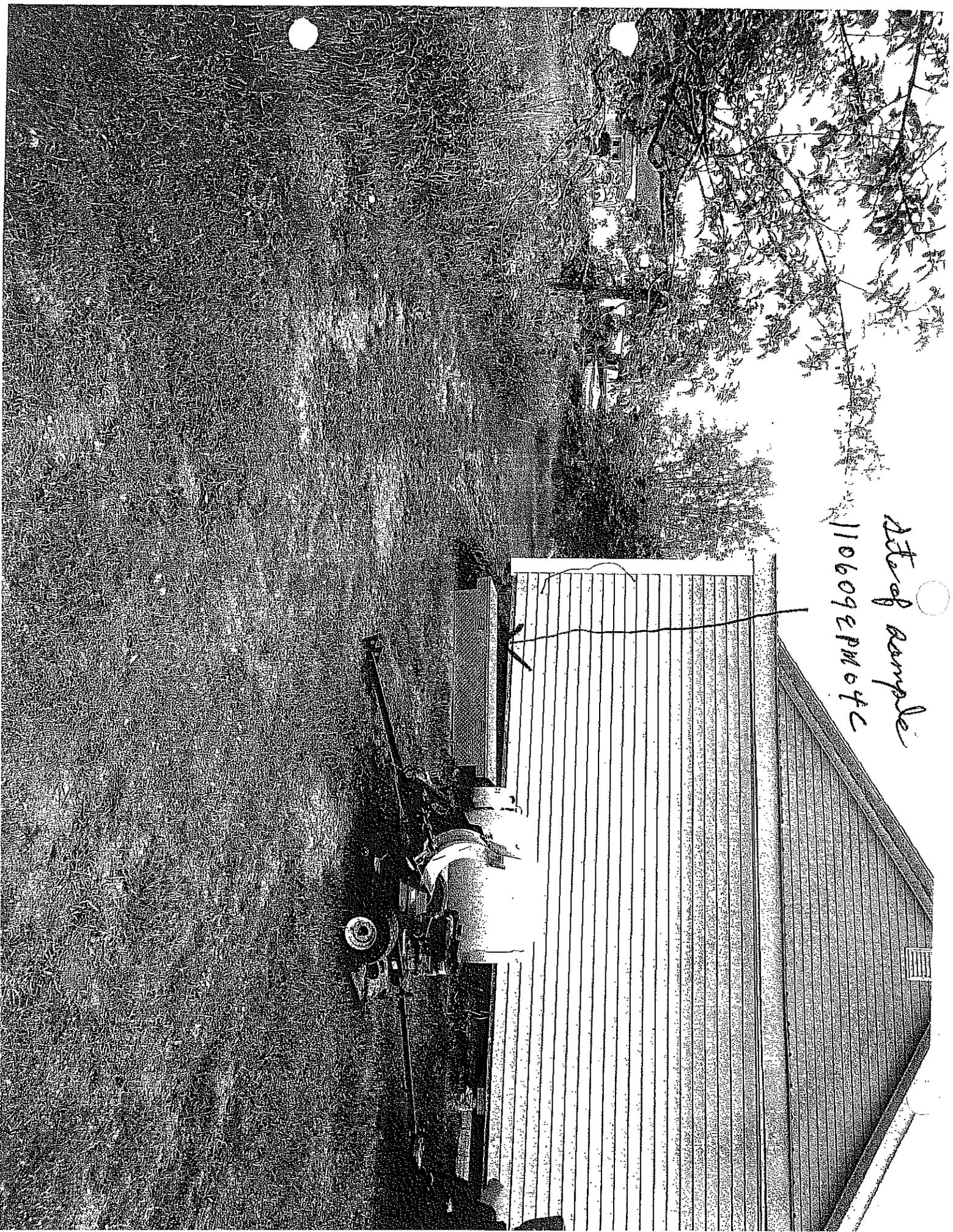
Site of Sample
116609 EPM04A



Site of bridge
110609 EPM 04 B

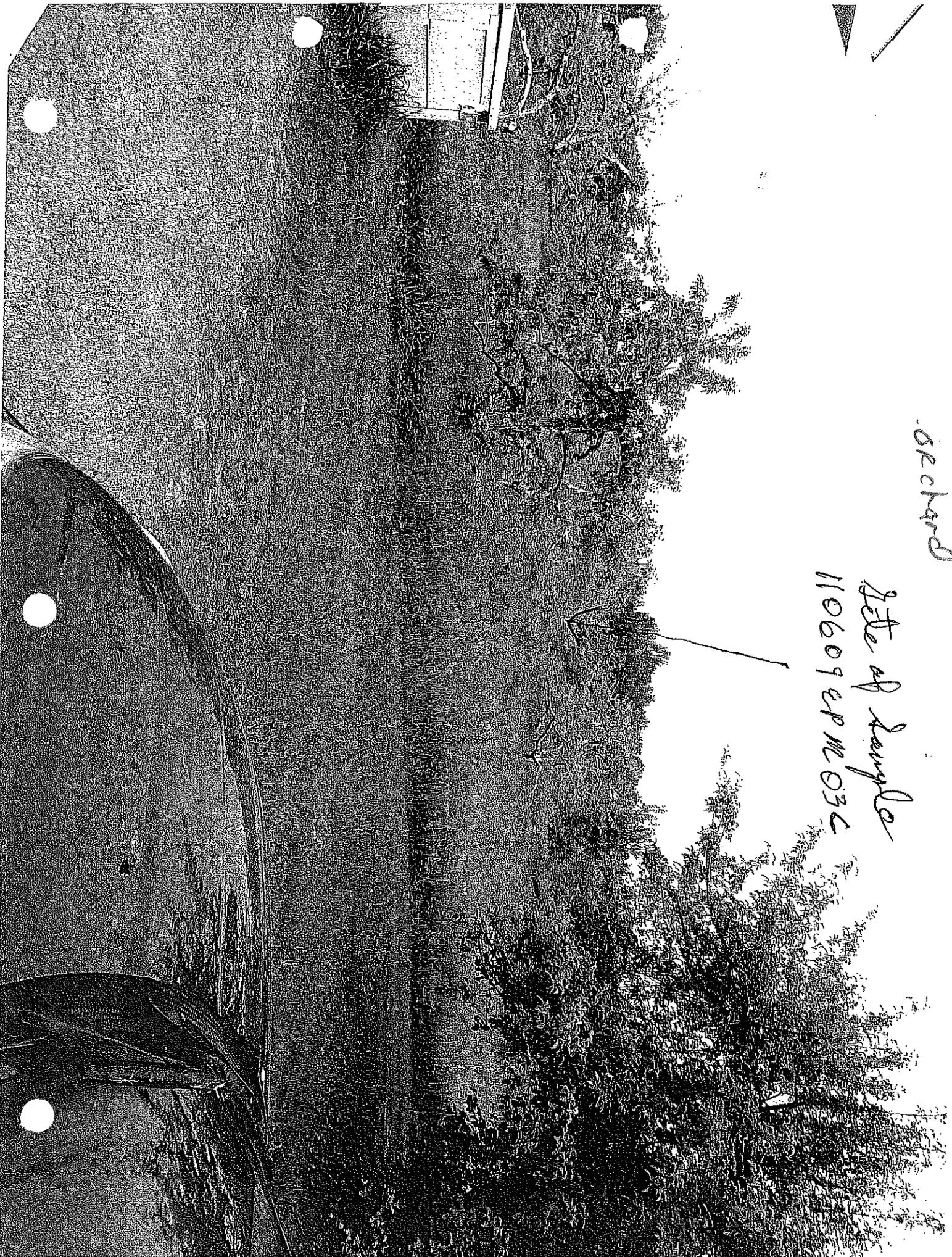


Site of sample
1106092PM04c



Beckard

Site of Sample
110609 EPM 03C



Sponsor ID – 110609EPM04
APT ID- 173.0-01-11

Table I

Summary of Phosmet Recovery

APT ID	PPM ADDED	PPM FOUND	% RECOVERY
11-110 Rec.	1.00	0.995	99.5

Table II

Summary of Phosmet Samples

APT ID	CLIENT ID	PPM FOUND PHOSMET
11-109	110609EPM04A	0.275
11-110	110609EPM04B	0.662
11-111	110609EPM04C	0.482 ug *
Ext. Blank	QC	<0.010

*Note: Wipes are calculated using ug/Area Wiped.

Sponsor ID - 110609EPM03
APT ID- 173.0-02-11

Table I

Summary of Phosmet Recovery

APT ID	PPM ADDED	PPM FOUND*	% RECOVERY*
11-112 Rec.	1.00	3.00	300.

*Note: It is very difficult to recover 1.0 ppm that was spiked in a sample already having 13.9 ppm

Table II

Summary of Phosmet Samples

APT ID	CLIENT ID	PPM FOUND** PHOSMET
11-112	110609EPM03C	13.9
Ext. Blank	QC	<0.010

**Note: Uncorrected for % Recovery



John Elias Boudreau
GOVERNOR

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

SETH H. BRADSTREET
COMMISSIONER

HENRY S. JENNINGS
DIRECTOR

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

July 7, 2010

Dennis Barker
Hemmingway Orchards
323 Merrill Hill Road
Hebron, Maine 04238

Dear Mr. Barker:

On April 25, 2010, you made a pesticide application to your orchard. Our office had two complaints from neighbors about that application. An inspector from our office collected samples from both complainants' property. Pesticide residues were detected on all samples collected.

The Board has a number of enforcement options available to it, including seeking, where applicable, license suspension or revocation, fines through the court system or fines through consent agreements. The latter choice is the preferred method when both parties agree that a violation has occurred, because it avoids the time and expense associated with Board or court hearings, and because the cooperation shown by the violator generally results in a lesser fine.

We are therefore willing to offer you an opportunity to enter into the enclosed administrative consent agreement, subject to Board ratification, whereby you admit to the violation, and pay a civil penalty of \$350. This figure is consistent with comparable violations settled administratively by the Board. Please review the proposal and contact me no later than July 30, 2010, if you believe there is a basis for revisions to the terms, facts or specific language. I would be glad to meet with you in person to discuss this matter.

If you wish to accept this offer as written, please sign and return to this office the enclosed Administrative Consent Agreement, together with the fine and the signed Compliance Verification Statement, no later than August 6, 2010. We would then ask the Board to ratify this agreement at the following meeting.

If you have any questions or comments, please do not hesitate to contact me at 287-2731.

Sincerely,

Raymond Connors
Manager of Compliance
Maine Board of Pesticides Control

Enclosures: 2

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

In the Matter of:)
Dennis Barker) ADMINISTRATIVE CONSENT AGREEMENT
Hemmingway Orchards) AND
323 Merrill Hill Road) FINDINGS OF FACT
Hebron, Maine 04238)

This Agreement by and between Dennis Barker (hereinafter called the "Applicator") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S.A. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Applicator owns Hemmingway Orchards which abuts two separate properties on the Merrill Road, Bradley Cadman's property and Kim Pelletier's property in Hebron, Maine.
2. That on April 25, 2010, the Board received a complaint call from Cadman alleging drift onto his property when the Applicator applied pesticides to the orchard on this same day. Cadman stated his vehicle was covered with spray and the fumes from the application were bad.
3. That on the following day, April 26, 2010, a Board inspector conducted a follow-up investigation with Cadman about this incident. Based on that interview and on site observations, the inspector took one wipe sample of Cadman's car windshield (100426EPM01A) which was parked by Cadman's garage approximately fifteen feet from their property line, one wipe sample of Cadman's outdoor storage bin next to his garage (100426EPM01B) approximately fifteen feet from their property line, and a vegetation sample from Cadman's lawn near their garage (100426EPM01C)
4. That during the follow-up investigation in paragraph three at Cadman's, Kim Pelletier was also present and lodged her own complaint based on application in paragraph two.
5. That based on Pelletier's complaint in paragraph four, the Board inspector collected a grass sample (100426EPM02C) on Pelletier's property about 20 feet from her property line.
6. That after meeting with Cadman and Pelletier, the Board inspector met with the Applicator to do an inspection for the application he made on April 25, 2010.
7. That from the inspection in paragraph six, it was determined that the Applicator used an airblast sprayer to apply a tank mix of Drexel Damoil (EPA Reg. # 19713-123), Imidan 70-W (EPA Reg. # 10163-169), Sovaran Fungicide (EPA Reg. # 7969-154), Lorsban (EPA Reg. # 62719-301-10163), and Polyram 80 DF (EPA Reg. # 7969-195-34704) on April 25, 2010.
8. That the Board inspector collected one grass/vegetation sample (100426EPM03F) from between orchard trees in the spray block of Hemmingway's Orchard.

9. That the Applicator did not identify or record sensitive areas prior to making the pesticide application.
10. That the Applicator did not record the wind speed, wind direction, temperature, and sky conditions for the application.
11. That the Board sent all physical samples that were collected and described in paragraphs three, five and eight to a lab for analyses and requested tests for Lorsban and Imidan based on the lab's capabilities and costs.
12. That the lab results were positive for all samples collected on Cadman's property at the following levels: Cadman's car windshield- Lorsban 3.43 ug, Imidan, 0.475 ug, Cadman's storage bin- Lorsban 2.33 ug, Imidan, 0.0972 ug, and Cadman's grass- Lorsban 0.656 ppm, Imidan. 0.035 ppm.
13. That the lab result was positive for the sample collected on Pelletier's property at the following levels: Pelletier's lawn- Lorsban 0.249 ppm, Imidan, 0.0098 ppm.
14. That the lab result was positive for the sample collected from Hemingway's Orchard at the following level: orchard grass sample- Lorsban 6.77 ppm, Imidan, 0.177 ppm.
15. That based on the lab results in paragraphs twelve and thirteen, spray from the application described in paragraphs six and seven was deposited on Cadman's and Pelletier's property.
16. That the circumstances described in paragraphs six, seven, and nine constitute a violation of CMR 01-026 Chapter 22 section 2(C).
17. That the circumstances described in paragraphs six, seven, and ten constitute a violation of CMR 01-026 Chapter 22 section 2(B).
18. That the circumstances described in paragraphs one through fifteen constitute two violations of CMR 01-026 Chapter 22 section 4 (A) and 4 (B) I and II .
19. That the Board has regulatory authority over the activities described herein.
20. That the Grower expressly waives:
 - a. Notice of or opportunity for hearing;
 - b. Any and all further procedural steps before the Board; and
 - c. The making of any further findings of fact before the Board.
21. That this Agreement shall not become effective unless and until the Board accepts it.
22. That in consideration for the release by the Board of the causes of action which the Board has against the Applicator resulting from the violations referred to in paragraphs sixteen, seventeen and eighteen, the Applicator agrees to pay to the State of Maine the sum of \$700, \$350 of which is suspended contingent on the Applicator's submission of a written corrective action plan to prevent future drift to neighboring properties. The corrective action plan must be submitted at the same

time the Applicator signs and submits this Consent Agreement to the Board. (Please make checks payable to Treasurer, State of Maine).

IN WITNESS WHEREOF, the parties have executed this Agreement of three pages.

HEMINGWAY ORCHARDS

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED:

By: _____ Date: _____
Mark Randlett, Assistant Attorney General



PAUL R. LEPAGE
GOVERNOR

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

WALTER WHITCOMB
COMMISSIONER

HENRY S. JENNINGS
DIRECTOR

August 4, 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dennis Barker
Hemingway Orchards
323 Merrill Hill Road
Hebron, Maine 04238

Dear Mr. Barker:

Our office attempted to settle an Administrative Consent Agreement with you involving drift and other violations related to your pesticide applications on April 25, 2010. You did not sign or settle that Administrative Consent Agreement. Through a pesticide follow-up inspection on June 9, 2011, involving a pesticide application you made on June 4, 2011, it was determined that you were again in violation of the state pesticide regulation related to drift. The violations are outlined in the enclosed Administrative Consent Agreement.

The Board has a number of enforcement options available to it, including seeking, where applicable, license suspension or revocation, fines through the court system or fines through consent agreements. The latter choice is the preferred method when both parties agree that a violation has occurred, because it avoids the time and expense associated with Board or court hearings, and because the cooperation shown by the violator generally results in a lower fine.

We are, therefore, willing to offer you an opportunity to enter into the enclosed Administrative Consent Agreement, subject to Board ratification, whereby you admit to the violations and pay a civil penalty of \$1,000. Please review the proposal and contact me no later than August 26, 2011, if you believe there is a basis for revisions to the terms, facts or specific language. I would be glad to meet with you in person to discuss this matter.

If you wish to accept this offer as written, please sign and return to this office the enclosed Administrative Consent Agreement and compliance verification form, together with the fine, no later than September 9, 2011. We would then ask the Board to ratify this agreement at the following meeting.

If you have any questions or comments, please do not hesitate to contact me at 287-2731.

Sincerely,

Raymond Connors
Manager of Compliance
Maine Board of Pesticides Control

Enclosures: 2

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

In the Matter of:)
Dennis Barker) ADMINISTRATIVE CONSENT AGREEMENT
Hemingway Orchards) AND
323 Merrill Hill Road) FINDINGS OF FACT
Hebron, Maine 04238)

This Agreement by and between Dennis Barker (hereinafter called the "Applicator") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S.A. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Applicator owns Hemingway Orchards which abuts two separate properties on the Merrill Road, Bradley Cadman's property and Kim Pelletier's property in Hebron, Maine.
2. That on April 25, 2010, the Board received a complaint call from Cadman alleging drift onto his property when the Applicator applied pesticides to the orchard on this same day. Cadman stated his vehicle was covered with spray and the fumes from the application were bad.
3. That on the following day, April 26, 2010, a Board inspector conducted a follow-up investigation with Cadman about this incident. Based on that interview and on site observations, the inspector took one wipe sample of Cadman's car windshield (100426EPM01A) which was parked by Cadman's garage approximately fifteen feet from their property line, one wipe sample of Cadman's outdoor storage bin next to his garage (100426EPM01B) approximately fifteen feet from their property line, and a vegetation sample from Cadman's lawn near their garage (100426EPM01C)
4. That during the follow-up investigation in paragraph three at Cadman's, Kim Pelletier was also present and lodged her own complaint based on the application in paragraph two.
5. That based on Pelletier's complaint in paragraph four, the Board inspector collected a grass sample (100426EPM02C) on Pelletier's property about 20 feet from her property line.
6. That after meeting with Cadman and Pelletier, the Board inspector met with the Applicator to do an inspection for the application he made on April 25, 2010.
7. That from the inspection in paragraph six, it was determined that the Applicator used an airblast sprayer to apply a tank mix of Drexel Damoil (EPA Reg. # 19713-123), Imidan 70-W (EPA Reg. # 10163-169), Sovaran Fungicide (EPA Reg. # 7969-154), Lorsban (EPA Reg. # 62719-301-10163), and Polyram 80 DF (EPA Reg. # 7969-195-34704) on April 25, 2010.
8. That the Board inspector collected one grass/vegetation sample (100426EPM03F) from between orchard trees in the spray block of Hemingway's Orchard.

9. That the Applicator did not identify or record sensitive areas prior to making the pesticide application.
10. That the Applicator did not record the wind speed, wind direction, temperature, and sky conditions for the application.
11. That the Board sent all physical samples that were collected and described in paragraphs three, five and eight to a lab for analyses and requested tests for Lorsban and Imidan based on the lab's capabilities and costs.
12. That the lab results were positive for all samples collected on Cadman's property at the following levels: Cadman's car windshield- Lorsban 3.43 ug, Imidan, 0.475 ug, Cadman's storage bin- Lorsban 2.33 ug, Imidan, 0.0972 ug, and Cadman's grass- Lorsban 0.656 ppm, Imidan. 0.035 ppm.
13. That the lab result was positive for the sample collected on Pelletier's property at the following levels: Pelletier's lawn- Lorsban 0.249 ppm, Imidan, 0.0098 ppm.
14. That the lab result was positive for the sample collected from Hemingway's Orchard at the following level: orchard grass sample- Lorsban 6.77 ppm, Imidan, 0.177 ppm.
15. That based on the lab results in paragraphs twelve and thirteen, spray from the application described in paragraphs six and seven was deposited on Cadman's and Pelletier's property.
16. That the circumstances described in paragraphs six, seven, and nine constitute a violation of CMR 01-026 Chapter 22 section 2(C).
17. That the circumstances described in paragraphs six, seven, and ten constitute a violation of CMR 01-026 Chapter 22 section 2(B).
18. That the circumstances described in paragraphs one through fifteen constitute prima facie evidence of two violations of CMR 01-026 Chapter 22 section 4(B)II.
19. That on Monday, June 4, 2011, the Board received a complaint call from Cadman when he reported to Board staff that spraying was done over the weekend at Hemingway Orchard. Cadman and his wife could smell the chemical. Cadman's wife was later admitted to the hospital with pancreatitis. Cadman was not sure if the spraying was related to his wife's health, but wanted samples taken to check for pesticide drift from the orchard application.
20. On June 9, 2011, a Board inspector conducted a follow-up inspection with Hemingway Orchard co-owner Jan Barker. The inspector also took two foliage samples (110609EPM04A and 110609EPM04B) and one wipe sample (110609EPM04C) on the Cadmans' property and one foliage sample from the orchard (110609EPM03C). The sample locations were as follows:
 - 110609EPM04A- grass by back porch area by air intake for home ventilation
 - 110609EPM04B- grass area between Cadman garage and Cadman/Barker property line
 - 110609EPM04C- wipe of truck tool box on lawn on back side of Cadman's garage facing the Cadman/Barker property line.
 - 110609EPM03C- Apple foliage from Barker/Hemingway orchard from Cadman end.

21. That from the inspection in paragraph twenty it was determined that the Applicator applied a tank mix of Captec 4L Fungicide (EPA Rreg. # 66330-239) and Imidan 70-W Insecticide (EPA Reg. # 10163-169) on June 4, 2011, from 11:00-12:00 PM. The wind speed was recorded as 0.
22. That all four samples in paragraph twenty were sent to a lab for analyses for phosmet, the active ingredient in Imidan 70-W.
23. That lab results were positive for phosmet for all four samples described in paragraph twenty-one at the following levels:
 - 110609EPM04A- 0.275 ppm (Cadman property)
 - 110609EPM04B- 0.662 ppm (Cadman property)
 - 110609EPM04C- 0.482 ug (Cadman property)
 - 110609EPM04A- 13.9 ppm (Hemingway Orchard)
24. That the circumstances described in paragraphs nineteen through twenty three constitute prima facie evidence of a violation of CMR 01-026 Chapter 22 section 4(B)II.
25. That the Board has regulatory authority over the activities described herein.
26. That the Grower expressly waives:
 - a. Notice of or opportunity for hearing;
 - b. Any and all further procedural steps before the Board; and
 - c. The making of any further findings of fact before the Board.
27. That this Agreement shall not become effective unless and until the Board accepts it.
28. That in consideration for the release by the Board of the causes of action which the Board has against the Applicator resulting from the violations referred to in paragraphs sixteen, seventeen, eighteen, and twenty four the Applicator agrees to:
 - a. Pay to the State of Maine the sum of \$1000, and adhere to the pesticide management strategies outlined herein (Please make checks payable to Treasurer, State of Maine).
 - b. Provide timely advance notice of proposed pesticide applications to the Cadman family, whose property abuts the orchard, in a manner agreeable to the Cadmans. Said notice must be specific enough on timing (list the specific date) to allow the Cadmans an opportunity to take remedial steps to avoid any pesticide exposure, such as closing windows or doors.
 - c. Avoid making any pesticide applications during daylight hours, especially in areas close to neighboring residences, unless weather and pest conditions clearly necessitate daylight spraying. Special attention should be focused on avoiding spraying during daylight hours on the weekend, since area residents are likely to be outdoors then.
 - d. Use all available drift reduction measures when spraying adjacent to abutting residential properties. Given the close proximity, buffers may be needed under certain circumstances.

IN WITNESS WHEREOF, the parties have executed this Agreement of four pages.

HEMINGWAY ORCHARDS

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED:

By: _____ Date: _____
Mark Randlett, Assistant Attorney General