

September 18, 2016

Dear Board of Pesticides Control,

Please add this letter to the 9/23/16 Board meeting agenda under “Other Old or New Business.”

Upon review of the 9/23/16 meeting agenda, as I will not be able to attend the meeting, I offer the following feedback and comments:

- I see no mention, either as an agenda item or media coverage, of the passage of the September 7 enactment of the South Portland pesticide ordinance. Why doesn't the Board acknowledge or discuss the historic passage of the most comprehensive and carefully conceived municipal pesticide ordinance in the country? Here are two articles for your review and inclusion on the agenda and in the Board packet:
  - <http://www.pressherald.com/2016/09/07/south-portland-passes-cosmetic-pesticide-ban/>
  - <http://www.pressherald.com/2016/09/13/south-portland-rolls-out-plan-to-promote-pesticide-ordinance/>

If you are at all concerned about the passage of this ordinance, it is worth contemplating the possibility that you have contributed to the resurgence of local control efforts, as you are not doing nearly enough to address this critical matter, a serious and major concern of the public. You have significant resources, but they are being misdirected. The prime example, as I detailed at your December 2015 meeting ([http://www.maine.gov/dacf/php/pesticides/documents2/bd\\_mtgs/jan16/Dec15Min.pdf](http://www.maine.gov/dacf/php/pesticides/documents2/bd_mtgs/jan16/Dec15Min.pdf)), is the several hundred thousand dollars a year taken from the BPC account to pay for numerous outside positions and programs unrelated to the statutory mission of the Board. The bottom line is your refusal, in the face of ample research, to address the real issue, i.e., that there are substances whose risks to the public and the environment clearly outweigh any arguable benefit.

Your August meeting minutes mention in several places that the public is “passionate” about this subject. That doesn't really get to the heart of it: that passion is driven by the reasonable and scientifically grounded concern about the application of toxic substances all around us—and, in too many cases, done only for aesthetic reasons.

I find it difficult to believe that you have cancelled at least two meetings this year “for lack of business.” Protecting the public health and the environment is your statutory responsibility, and the public needs to hear from you and know that this is being done. There's much work to do.

Finally, on this topic, I invite you all to the Common Ground Country Fair Public Policy Teach-In: Local Pesticide Control—How You Can Protect Health and the Environment, to be held in Unity on Saturday, September 24, 1–2:30 PM:

<http://www.mofga.org/TheFair/ActivitiesEvents/PublicPolicyTeachIn/tabid/507/Default.aspx>.

- I see you will be discussing the collection of pesticide sales and use data at the meeting, as well as the graph you deleted from the BPC website showing a 700% increase of home-use pesticides distributed into Maine between 2005 and 2011. Here are my thoughts on this: If you feel that the 700% figure reflected in the graph is inaccurate, it is incumbent upon you to gather and publish the most accurate information possible, as soon as possible (as I have already heard your response to this in previous statements, I refer you to my comment above on the lack of resources). However, that being said, that graph was compiled by one of the most competent people I have ever worked with, Gary Fish, who produced it with the best information available at the time. As long as Gary compared the same products from one year to the next, which I am fairly sure was the case, the fact is that the 700% figure stands as an accurate representation of an increase in the distribution of pesticides in Maine over the time period shown. And the logical and reasonable assumption is that distribution eventually ends up as sales and usage. Or, did all those pesticides from 2011 get returned to their manufacturers, or could they still be stored in a warehouse somewhere? I think it's fair to say they were purchased and used all around the state.

Here are excerpts from what Gary said on this subject taken from the minutes of the December 2015 Board meeting (link above):

*“The 700% increase in pesticide sales originates from a graph on [www.yardscaping.org](http://www.yardscaping.org). ...The upward trend is reliable. The Board now receives a larger percentage of these reports than in the past. There are more lawn and landscape companies out there and more people hiring them.”*

Further, reference is being made to the fact that much of the pesticide product distributed was in the form of weed ‘n feed—heavy bags of products containing both pesticides and fertilizer—and that is probably the case, since that is one of the most widely used forms of pesticides. As far as the actual weight/volume of actual pesticides goes, it may not be that almost 6 million pounds of actual active pesticide ingredients were distributed in 2001, almost 5 million more than in 2005, but it’s still a 700% increase in products distributed and, yes, ultimately used, in Maine over that time period. This still means 700% more pesticides.

As an example, if one 10-pound bag of weed ‘n feed was distributed in 2005, the data would indicate that 7 10-pound bags were distributed in 2011. And whatever the actual quantity of pesticide active ingredient contained in that single 2005 bag, 7 times more of that same ingredient was distributed into Maine in 2011 (and eventually used). That’s all this was intended to show.

As a final point, this all highlights the refusal, for at least 20 years, of the BPC to gather accurate data on pesticide usage in Maine, in order to gauge the progress of its statutory mission to reduce reliance on pesticides and to protect public health and the environment (<http://www.mainelegislature.org/legis/statutes/22/title22sec1471-X.html>). Jo Ann Myer’s letter to the Board, sent in August, sums that up very well: the repealed section of the statute referred to should be reinstated and put into action. This letter was evidently given to the Board at the last meeting, was discussed at the meeting, as reflected in the minutes, but was not listed on the agenda, nor posted on the website for the public to see. I request that it be re-included on the agenda now and posted accordingly.

- In connection to the above discussion on collecting pesticide data, I make the following suggestion: that the functionality of your new, very sophisticated IT database system should be designed to require that all pesticide applicators, retailers, and wholesalers/distributors, enter their sales and usage data, which could then be analyzed, totaled, published, etc. On the question of equivalents between different pesticide products and formulations, and, as mentioned in the August minutes, “normalizing the raw data into meaningful figures,” any needed equations, calculations, etc., would be built into this system to provide the needed end-calculations on usage. Any good computer programmer out there would love to work on this.
- I see no mention in the August minutes of Jody Spear’s letter regarding Board Chair Deven Morrill’s potential conflict of interest between his Board position and his appointment to the Portland Pesticides Task Force ([http://www.maine.gov/dacf/php/pesticides/documents2/bd\\_mtg/Aug16/homeowner%20pesticide%20use-for%20consideration%20on%20Friday,%2019%20August.pdf](http://www.maine.gov/dacf/php/pesticides/documents2/bd_mtg/Aug16/homeowner%20pesticide%20use-for%20consideration%20on%20Friday,%2019%20August.pdf)). What does the Board intend to do to address this problem? If the Board has sought advice of the Maine Attorney General in this regard, the public should know what that advice was. If it has not sought advice, the Board should explain why it has not.

Sincerely,



Paul Schlein  
Arrowsic, Maine

# South Portland passes pesticide ban that puts education over enforcement

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 [www.pressherald.com/2016/09/07/south-portland-passes-cosmetic-pesticide-ban/](http://www.pressherald.com/2016/09/07/south-portland-passes-cosmetic-pesticide-ban/)

By Kelley Bouchard Staff Writer [email protected] | @KelleyBouchard | 207-791-6328

[Local & State](#)

Posted September 7

Updated September 8

increase font size

Fines could be added in the future for the prohibition against certain lawn-and-garden pesticides, which takes effect in 2018 for private property owners.



**SOUTH PORTLAND** — The City Council gave final approval Wednesday to a revised landscape pesticide ban that will be penalty-free when it takes effect but could result in fines in the future.

The council voted 6-1 for the ordinance, which will rely on education and outreach to encourage property owners not to use certain lawn-and-garden pesticides and herbicides.

Councilors and supporters touted the measure as a history-making effort because South Portland is the largest of more than 25 communities in Maine that have restricted pesticide use in some way.

“This is a huge step forward,” said Councilor Maxine Beecher, who voted for the ban along with Claude Morgan, Eben Rose, Brad Fox, Patti Smith and Mayor Tom Blake.

Councilor Linda Cohen provided the sole vote against the ordinance, saying that she supported its overall intent but “you don’t pass laws you don’t intend to enforce.”

Rose, Blake and others indicated that the council may revisit the ordinance and add enforcement measures after the city has gathered data on local pesticide use.

Under the revised ordinance, retailers in South Portland could still sell banned products, including glyphosate-based Roundup, neonicotinoids and certain weed-and-feed applications. And residents could still buy them.

However, only pesticides allowed by the U.S. Department of Agriculture and classified as “minimum risk” by the Environmental Protection Agency will be allowed to be used within city limits. The local ban also will exempt commercial agriculture and playing surfaces at golf courses, and it will allow waivers for public health, safety and environmental threats, such as mosquitoes, poison ivy and invasive tree insects.

But rather than implement the ordinance in a “punitive way,” city officials plan to develop an education and outreach campaign to promote non-toxic land care practices and help the community comply with the ordinance.

As a result, the revised ordinance eliminates penalties. As first proposed, the ordinance called for escalating fines of \$200, \$500 and \$1,000 per offense following an initial warning.

The revised ordinance also calls for the city’s sustainability coordinator, not police officers, to receive complaints, educate alleged violators to bring them into compliance and keep a public record of how complaints are resolved.

The ban will apply to city property starting May 1, 2017, and broaden to private property May 1, 2018. The ordinance would apply to the South Portland Municipal Golf Course and the privately owned Sable Oaks Golf Club starting May 1, 2019.

Activists on both sides of the issue say South Portland's effort could be copied by other communities across Maine and beyond. Portland residents and officials have been monitoring South Portland's progress over the last year.

Supporters promoted South Portland's ordinance as the most far-reaching and environmentally progressive proposal of its kind in the nation, though it's unclear how effective it will be without enforcement powers.

It follows a similar measure passed last year in Ogunquit and the Healthy Lawns Act that's being rolled out in Montgomery County, Maryland. The Maryland Legislature also passed a bill, which takes effect Oct. 1, specifically banning the retail sale and homeowners' use of neonicotinoid pesticides, which have been linked to the decline in bee populations. Commercial uses would still be permitted.

Supporters said South Portland's grassroots efforts is important because the EPA doesn't require conclusive independent safety testing of pesticides and has acknowledged that it doesn't know the full impact of many chemicals on humans or the environment.

"Passing this ordinance is an important first step," said Andy Jones, a local organizer for the Toxics Action Center. "Protect South Portland will continue working with the city and other organizations to educate homeowners in safer and more sustainable lawn care practices."

Opponents of the ban have said it will confuse many homeowners who won't know which chemicals to use and likely pit neighbors against one another. Several spoke in favor of integrated pest management, which promotes a controlled use of pesticides, whether organic or synthetic, that is most effective and least toxic to humans and the environment.

"This (ordinance) is a great experiment," said Jesse O'Brien, vice president of Down East Turf Farm in Kennebunk.

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# South Portland rolls out plan to promote pesticide ordinance

[www.pressherald.com/2016/09/13/south-portland-rolls-out-plan-to-promote-pesticide-ordinance/](http://www.pressherald.com/2016/09/13/south-portland-rolls-out-plan-to-promote-pesticide-ordinance/)

By Kelley Bouchard Staff Writer [email protected] | @KelleyBouchard | 207-791-6328



John Hychko of South Portland stands Tuesday in his front-yard garden on Barstow Street, where he and his wife, Shannon, grow a wide variety of vegetables, fruits and flowers without pesticides. Kelley Bouchard/Staff Writer

[Local & State](#)

Posted September 13

Updated September 14

increase font size

City officials believe an outreach and education campaign will encourage compliance, but they hope most residents won't need convincing.



SOUTH PORTLAND — City officials launched a pesticide education and outreach effort on Tuesday, hoping that it will encourage residents to comply with a newly adopted ban when it takes effect in 2018.

People like John Hychko won't need convincing. Hychko and his wife, Shannon, converted their front lawn into a pesticide-free garden when they bought their Barstow Street bungalow eight years ago. A puree of sweet English peas, grown in a raised bed laced with organic compost, was the first solid food that they fed their son Logan.

They like that Logan, who is now 6, can pluck a ripe cherry tomato from the vine and pop it into his mouth without washing it. And they're unfazed by a few insect holes in the curly kale and rainbow chard that grow among bright orange nasturtiums, feathery green fennel and vibrant pink cosmos.

"A small percentage is going to the critters," Hychko, 35, said Tuesday. "But that's OK. We just mix in some good compost and let the plants do their thing. I definitely never want to have chemicals in our yard."

Mayor Tom Blake and Sustainability Coordinator Julie Rosenbach announced plans to appoint a Pest Management Advisory Committee as soon as possible and begin developing an outreach and education plan for the [pesticide ordinance that the City Council adopted last week](#).

They acknowledge that it may be an uphill battle to win over some residents who refer to Rosenbach as the "sustainability czar" and question both the need for and the enforceability of an ordinance that carries no penalties.

"It does have an enforcement mechanism," Rosenbach countered on Tuesday. "It doesn't have fines, but we're going to work with people to bring them into compliance. Education will be a huge part of that. A complaint can be filed and in general, people don't want that. We're assuming most law-abiding citizens are going to want to comply."

Under the ordinance, only pesticides classified as organic or "minimum risk" by federal agencies will be allowed for use on city-owned and private property. Retailers in the city can still sell banned products, including glyphosate-based Roundup, neonicotinoids and certain weed-and-feed applications. And residents could still buy them.

The ban exempts commercial agriculture and playing surfaces at golf courses, and it will allow waivers for public health, safety and environmental threats, such as mosquitoes, poison ivy and invasive tree insects.

To help win public support, the city plans to send out informational fliers, hold public workshops and gardening demonstrations, and develop active partnerships with the Friends of Casco Bay, Cumberland County Soil & Water Conservation District and the Maine Organic Farmers and Growers Association. They also plan to work with local garden centers to make sure they can advise and meet the needs of customers using organic lawn and garden practices.

"Hopefully, we'll get 95 to 100 percent compliance and we won't need penalties," Blake said. But if residents don't readily comply, some councilors have suggested that fines could be added in the future. When first proposed, the ban called for escalating fines of \$200, \$500 and \$1,000 per offense following an initial warning.

As residents prepare to meet the ban over the next year or so, the city will take the lead in becoming an example to others. The ban will apply to city property starting May 1, 2017, and broaden to private property May 1, 2018. The ordinance will apply to the South Portland Municipal Golf Course and the privately owned Sable Oaks Golf Club starting May 1, 2019.

Outreach and enforcement of the ordinance will be overseen by the seven-member Pest Management Advisory Committee, which will consist of the city's stormwater program coordinator, a practicing expert in plant and soil

science, two licensed landscape professionals and three residents. Anyone interested in applying should call Rosenbach at 207-347-4148.

Ultimately, Rosenbach said, she's trying to promote a cultural shift that will be most successful if neighbors work together to learn about the ordinance and share information about organic lawn and garden practices. The overall goal is to minimize the use of pesticides and the detrimental impacts they have on public health and the environment.

That's already happening in John Hychko's yard. Hychko and his wife tend berry bushes grown from a neighbor's cuttings. They readily share seeds from plants that bees and butterflies love. And where there is lawn, they have sprinkled in clover to minimize mowing and eliminate fertilizing.

"We're behind the ordinance all the way," Hychko said. "It's better for all of us."

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**Subject:** minutes of August meeting  
**Date:** Monday, September 19, 2016 12:35:38 PM

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RE: Curtis Bohlen's comments on pesticide sales data

What I heard Bohlen say is that sales data are public information, and the board should not claim to have the best way to analyze them.

Perhaps Bohlen should be asked if this represents what he actually expressed, as opposed to the rather confusing "sales data need to be democratized; the board should not tell the public when they can see the data." The minutes also record his having said that people are really interested in this information, and the board should provide it [but only if data is verifiably accurate].

I ask for the clarification because what I heard from Bohlen is consonant with the general sentiment of board members and staff at the last meeting as reflected in my own notes: that analysis of sales data would be too labor intensive and in fact would require another staff member (Jennings); that comprehensive sales records -- from internet as well as retail stores -- cannot be collected (Bohlen); that they are not reliably accurate (Tomlinson); that BPC has a large audience of people with no specific interest in pesticides (Eckert); that it's not worth the time and money to undertake such analysis (Granger).

Notwithstanding the legislature's having repealed the sentence requiring BPC to publish reports tracking pesticide use, as Jennings states in response to JoAnn Myers's letter, there are increasing pressures for the board to disclose what information it is able to amass, especially on lawn and golf-course applications. Paul Schlein makes a compelling case that resources are available to the board to provide the statistics backing up the 700% increase, and I support that argument.

Jody Spear

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**From:** jody spear [mailto:]  
**Sent:** Monday, September 19, 2016 11:39 AM  
**To:** Jennings, Henry  
**Subject:** agenda item #3: illegal use of Lannate (methomyl) in Lincoln

Please include this letter, sent to you back in June, in this Friday's packet.

----- Forwarded message -----

**From:** **jody spear** **Date:** Mon, Jun 13, 2016 at 3:43 PM  
**Subject:** illegal use of Lannate (methomyl) in Lincoln  
**To:** [raymond.g.connors@maine.gov](mailto:raymond.g.connors@maine.gov)  
**Cc:** Henry Jennings <[henry.jennings@maine.gov](mailto:henry.jennings@maine.gov)>

Dear Sirs:

As I understand it, the criminal charge against the Lincoln farmer (Fugazzi) was dropped because the pesticide control board will rule on the illegal crow poisoning and possibly assess a fine. "Collateral damage" -- killing two dogs -- is considered to be just an unfortunate accident. Should we simply forget about the other birds and pollinators that have undoubtedly picked up traces of this acutely toxic pesticide and suffered an agonizing death?

Methomyl -- a full-spectrum carbamate insecticide, neurotoxic by design -- is commonly seen as fly bait but it is in widespread use to get rid of "nuisance" wildlife (raccoons, birds, whatever) and to kill caterpillars in sod.

That Fugazzi was licensed to use pesticides and yet violated the law against killing crows with a dangerous restricted-use chemical, applied counter to label directions, makes a strong case for punitive action. Lannate (methomyl) is, by law, to be diluted and sprayed, not spread full strength on bread and left out for any creature, wild or domestic, to consume it.

I urge you to send a message with this infraction: Revoke Fugazzi's license.

Yours sincerely,  
Jody Spear, Brooksville

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# Stone Wall Farms Case Investigation

# STONE WALL



F A R M S

*Lincoln, Me.*



Thortons

Walking route of Ann and dogs

Private Property Stripes

Stone Wall Farm

sign 2

sign 3

field

bait

bait

bait

sign

Google earth

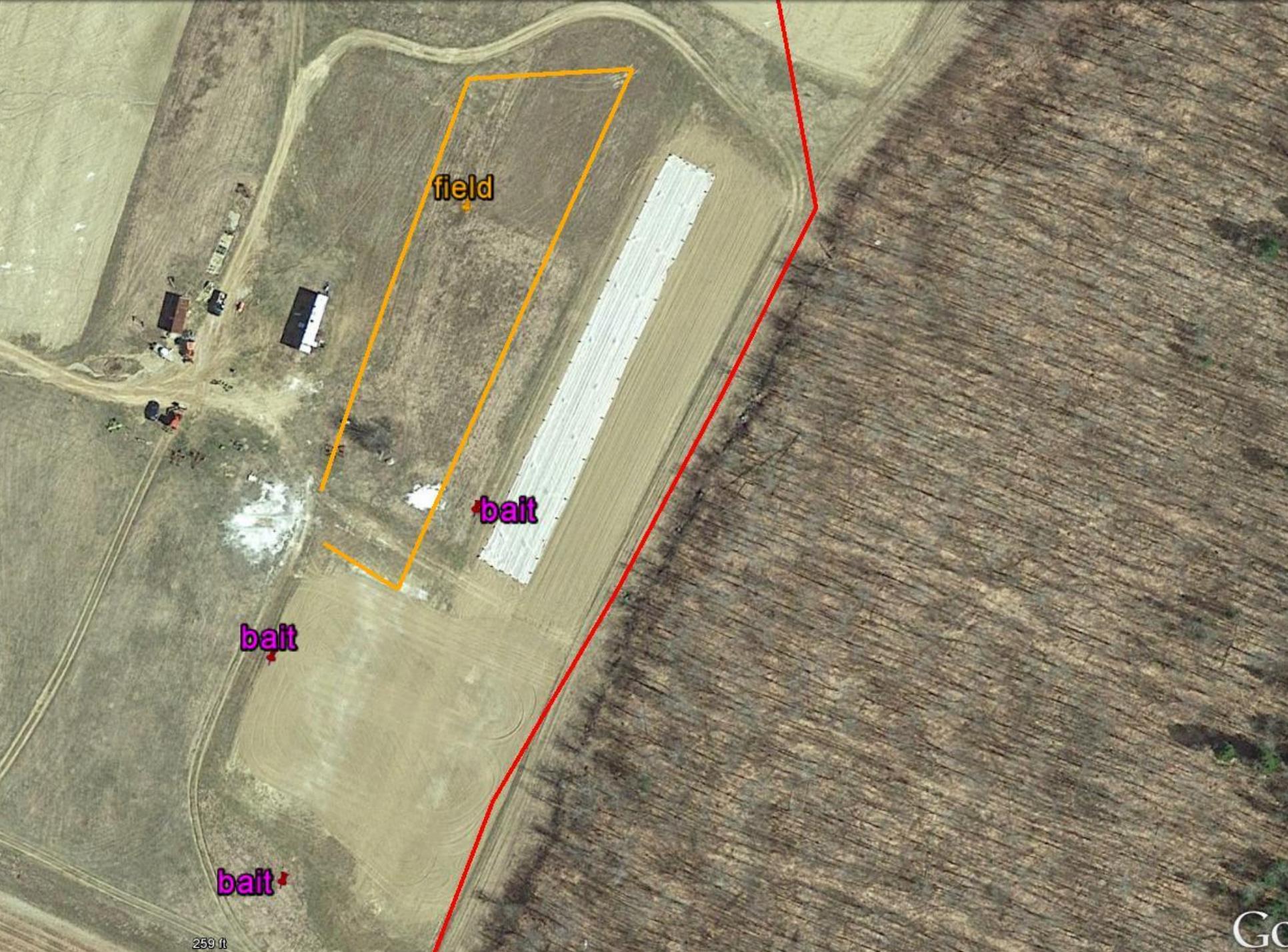
© 2016 Google

Imagery Date: 4/28/2016 45°20'15.53" N 68°31'11.80" W elev 451 ft eye alt 8380 ft

1997

1685 ft

155



field

bait

bait

bait

259 ft

Go

# Main Entrance Road to Farm Fields off Route 155

Sprayed  
Keep Out Sign



# Sign Main Entrance to Fields



Side Road off Main  
Entrance Road

Sign Posted

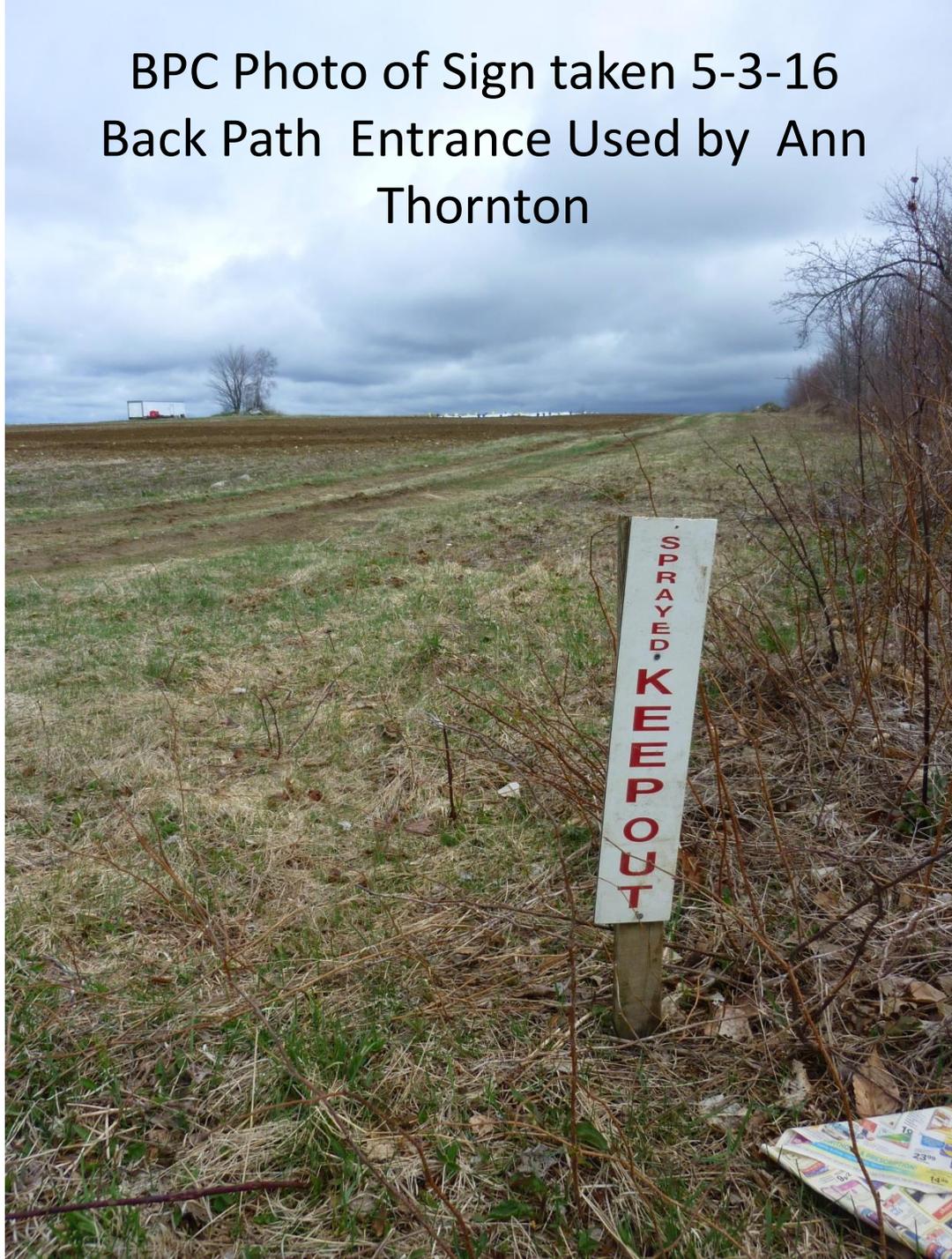




**Sign Discussed Next Slides**

**Back Path Entrance Used by Ann Thornton  
to Enter Field  
Photo take May 3, 2016**

BPC Photo of Sign taken 5-3-16  
Back Path Entrance Used by Ann  
Thornton



Back entrance  
BPC photo taken 4-26-16,  
posting appears to be in place



# Back Field Entrance Posting Summary

- 4-23-16 Responding officer's police report  
“ There was no sign indicating pesticide use or to stay out”  
BPC inspector said the officer told her he did not check himself but took word of A. Thornton
- 4-26-16 Ann Thornton's written statement to BPC inspector about posting on 4-23 “There were no signs posted to discourage entry into the field (from the back where we entered)”
- 4-26-16 BPC Distant photo- appears to be posting in place
- 5-3-16 BPC Photos, back entrance posted

Exit Used by A. Thornton

2 Painted Lines  
on Rock



Close up of 2 Parallel Lines on  
Rock





STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333

PAUL R. LEPAGE  
GOVERNOR

WALTER E. WHITCOMB  
COMMISSIONER

**Inspectors Summary of Incident (Complaint 6278)**  
**Stone Wall Farm**

**April 26, 2016**

At approximately 11:15 AM, Ray Connors, Manager of Compliance for the Maine Board of Pesticide Control (BPC), phoned me regarding a complaint he received concerning 2 deceased dogs owned by Hawley "Tim" and Ann Thornton residing at 356 Enfield Road, Lincoln, Maine. Connors explained that on Saturday, April 23, 2016, Ann Thornton walked their two dogs in agricultural fields leased by Al Fugazzi of Stone Wall Farms, Enfield Road, Lincoln, Maine. The Thorntons believe the dogs were poisoned while in the fields. Connors relayed the contact information to me.

At approximately 1:15 PM I met Lincoln Police Officer, John Walsh, introducing myself and showing my credentials. Officer Walsh received the initial complaint from the Thorntons on Saturday, April 23, 2016 at approximately 4:41 PM. Officer Walsh relayed to me the Thorntons stated they believed their dogs had been poisoned. Officer Walsh further explained that he responded to the call, meeting the Thorntons and observing two deceased dogs (an English Setter named Jasper and a Dachshund named Moxie). He stated that Ann Thornton had walked with her dogs off leash in the fields leased by Al Fugazzi of Stone Wall Farms. Ann noticed the dogs eating something, after which they had died. Officer Walsh told me he called Fugazzi and asked if he had sprayed anything in the fields, explaining the situation. Fugazzi met Officer Walsh in the fields and admitted he had placed bread laced with Lannate SP in an attempt to kill the crows that were eating his newly planted seeds. Officer Walsh said he and Fugazzi walked to the three locations where Fugazzi placed the bread. One location consisted of bread crumbs, another location was untouched and the final location contained 7 dead crows. Officer Walsh signed a Notification of Pesticide Use Related Inspection & Receipt for Samples form (160426MKT03) and I documented the receipt of a copy of Officer Walsh's report (160426MKT03-A) and the receipt of the evidence sample collected by Officer Walsh of bread from the field and a Chain of custody form (160426MKT03-B). Officer Walsh and I traveled to Stone Wall Farm to meet with Fugazzi.

At approximately 2:15 PM Officer Walsh and I met with Fugazzi at Stone Wall Farms. I introduced myself and showed my credentials. Fugazzi was visibly very upset. He explained that he had placed the poisoned bait because the crows had decimated his planted seed before he was able to place row covers on the crop to protect them. I filled out a Notification of Pesticide Use Related Inspection & Receipt for Samples form (160426MKT04), signed by Fugazzi, and a Pesticide Use Inspection Form. I asked to see the pesticide he used and took digital photos of the label and labeling of Restricted Use Pesticide Lannate SP, EPA reg.352-342, (160426MKT04-A). Fugazzi has a Private Pesticide Applicators license (PPA 10648) allowing him to purchase and apply RUP as instructions direct. Fugazzi stated he had purchased the Lannate SP this year to use on his corn crop. I asked Fugazzi to explain the actions he had performed that allegedly caused the dogs to die. He

explained, and pointed to, where he had planted squash and cucumber seeds in predrilled black plastic, 6 rows each 350 feet long, on Wednesday, April 20. He said it was very windy so they couldn't place the row covers. He returned on Thursday, April 21 to place the row cover. He checked the seeds prior to placing the row cover and found the seeds all gone. He replanted the seed, and placed the row cover, weighing it down with 5 gallon buckets (Attachment 2). He plants seeds every 7 days in order to have a continuous crop for sale at his farm stand in town. He lifted the edge of the row cover to show me the drilled black plastic. On Saturday morning, Fugazzi plowed more land to prepare for planting. After going to town and upon returning to plant, he noted "over 100 crows" in the field. He had 4 pieces of bread in a bread bag in his truck, which he crumbled, and added approximately 1 oz. of Lannate SP to the bread crumbs, mixing it well. At approximately 11:00 AM he placed the crumbs in three piles in the field hoping to kill some of the crows. He explained that in the past he has met with Robin Dyer from the USDA to see if she could assist him with the crows, he has spoken to the local wardens, has 2 noise cannons (one of which a neighbor disabled due to the noise) and purchased row covers to discourage the crows. After placing the bait, he closed the gate and placed orange cones at the entrance, which is also signed. When he returned to the field with Officer Walsh, Fugazzi found 7 dead crows. He initially disposed of them in the woods, however at my suggestion he collected the dead crows and burned them to prevent possible secondary poisoning. Fugazzi said the field is posted in three locations. Fugazzi was unable to give a written statement at this interview as he was too upset. I explained I would return to take a written statement. I took digital photographs of the field and signs located at the front gate which stated "Sprayed, Keep Out" (160426MKT04-B) (attachment 2). Officer Walsh and I drove to the location where the Thorntons exited the fields. I noted one of the boulders in the road had two parallel silver lines and explained to Walsh that it means 'access by permission only'. I took digital photos of this location (photos attached).

At approximately 3:45 PM I met Ann Thornton at her home, introducing myself and showing her my credentials. She stated she was glad someone was doing something about this incident. I asked her if she would be willing to give me a written statement. I initially asked her to sign a Notification of Pesticide Use Related Inspection & Receipt for Samples form (160426MKT05) and gave her a Statement Form for her to complete (160426MKT05-A). She questioned what pesticide was used. I explained it was an ongoing investigation and would not be able to give her the information. I then explained the BPC process for complaints and violations. Ann stated on Saturday, April 23, at approximately 3:30 PM, she had taken the dogs for a walk up the Bradford Farm Road then across a side road and entered the back of the field by a path. The dogs were running off leash. She did not see any signs posted to stay out of the fields. She noticed her dogs eating something but didn't think much about it as they always ate left over squash in the field. Moxie (a Dachshund) was the first one to show a reaction. Ann thought Moxie was choking so she picked up the dog and started going toward home, crossing the fields while phoning her husband to meet her at an entrance to the fields located near their house. Ann met her husband and took the car to their home, telling him to find Jasper (an English Setter). Ann said she tried to force Moxie to throw up but it didn't work. The dog died on the way to a vet. Ann said her husband located Jasper in the field, where the dog died. She said they returned to the field with Officer Walsh and found what they believed to be bread crumbs, which were in the general location of where she witnessed the dogs eating.

#### **April 27, 2016**

I made a copy of an aerial photo from Google Earth and placed it in the mail to Ann, requesting Ann draw the approximate route where she walked the dogs. (I received the marked photo on April 30). (Attachment 1)

At approximately 8:00 AM I spoke with BPC Manager of Compliance, Ray Connors, to update him on the investigation. I also spoke with BPC Pesticide Toxicologist, Lebel Hicks. It was strongly suggested that the Lannate SP used in this case either be held by Fugazzi and turned in as an obsolete pesticide at the collection this fall or to ask him to turn it over to me and for me to call Maine Department of Environmental Protection Hazardous Waste program (DEP) and request them to hold the Lannate SP in their hazardous waste location in Bangor until the obsolete pesticide collection.

At approximately 11:15 AM I met Fugazzi at Stone Wall Farm and discussed the disposal of Lannate SP. He willingly turned it over to me. The Lannate SP was already double bagged and I placed it in a third bag. I requested Fugazzi sign a Notification of Pesticide Use Related Inspection & Receipt for Samples form (160427MKT01) and an obsolete pesticide form (160427MKT01-A) and a chain of custody form (160427MKT01-B).

At approximately 2:15 PM I met Darian Higgins, DEP Oil and Hazardous Material Responder, at their Bangor facility. Higgins placed the bagged Lannate SP in a plastic container along with the Obsolete Pesticide form and a copy of the Chain of Custody form.

### **April 29, 2016**

I returned to Stone Wall Farm and met Fugazzi at approximately 9:00 AM. I asked if he would be willing to mark a clean copy of an aerial photo from Google Earth noting where he placed the bait, the location of the planted seeds and the locations of signs. Fugazzi agreed and marked all areas on the aerial photo (Attachment 1) I also asked if he would give a written statement. I explained that either he could write it or I could write what he dictated to me. He chose to have me write it. Fugazzi signed a Notification of Pesticide Use Related Inspection & Receipt for Samples form (160429MKT01) prior to beginning the statement. Fugazzi relayed the incident as it occurred on April 23, 2016 (160429MKT01-A). I reread the statement to him. He agreed it documented the incident and signed the form.

### **May 3, 2016**

After receiving the maps from both Thornton and Fugazzi, I decided to see if there was a sign at the back entrance where Ann entered the field and where Fugazzi marked a sign on the aerial photo. At approximately 9:00 AM I walked to the field via the side road (the road Ann used to access the field) and noted a sign at the entrance of the field. I photographed the sign, which stated, "Sprayed, Keep Out", as it appeared from the path and as the sign appeared from the field (attachment 2). Upon returning home I compared the photograph taken on May 3 to a photo I had taken on April 26 from a distance while standing in the field. The sign was visible at tree line in the April 26 photo (attachment 2), however this inspector has no on site knowledge regarding signage prior to April 26, 2016. I returned home and marked an aerial photo with information provided by both parties (attachment 1).

Marilyn Tourtelotte  
BPC Pesticide Inspector



# Lincoln Police Department

## Officer Report for Incident 16L-01098

**Nature:** Animal Problem  
**Location:** LNL2

**Address:** 356 Enfield Rd  
Lincoln ME 04457

<b>Offense Codes:</b> ANPR		
<b>Received By:</b> Lovejoy W	<b>How Received:</b> 9	<b>Agency:</b> LNPD
<b>Responding Officers:</b> Walsh J, Murchison N		
<b>Responsible Officer:</b> Walsh J	<b>Disposition:</b> INA 04/25/16	
<b>When Reported:</b> 16:41:18 04/23/16	<b>Occurred Between:</b> 16:41:06 04/23/16 and 16:41:18 04/23/16	

<b>Assigned To:</b>	<b>Detail:</b>	<b>Date Assigned:</b> **/**/**
<b>Status:</b>	<b>Status Date:</b> **/**/**	<b>Due Date:</b> **/**/**

<b>Complainant:</b> 390063		
<b>Last:</b> Thornton	<b>First:</b> Ronald	<b>Mid:</b> D
<b>DOB:</b> 12/14/31	<b>Dr Lic:</b> 3661050	<b>Address:</b> 95 Center Pond Dr
<b>Race:</b> W <b>Sex:</b> M	<b>Phone:</b> (207)794-6936	<b>City:</b> Lincoln, ME 04457

**Alert Codes:**  
CCWP Concealed Weapon Permit

### Offense Codes

<b>Reported:</b> ANPR Animal Problem	<b>Observed:</b> ANPR Animal Problem
<b>Additional Offense:</b> ANPR Animal Problem	

### Circumstances

<b>Responding Officers:</b>	<b>Unit :</b>
Walsh J	LN202
Murchison N	LN220

<b>Responsible Officer:</b> Walsh J	<b>Agency:</b> LNPD
<b>Received By:</b> Lovejoy W	<b>Last Radio Log:</b> 18:31:43 04/23/16 CMPLT
<b>How Received:</b> 9 911 call	<b>Clearance:</b> CRO Cleared by Responsible Officer
<b>When Reported:</b> 16:41:18 04/23/16	<b>Disposition:</b> INA Date: 04/25/16
<b>Judicial Status:</b>	<b>Occurred between:</b> 16:41:06 04/23/16
<b>Misc Entry:</b>	<b>and:</b> 16:41:18 04/23/16

<b>Modus Operandi:</b>	<b>Description :</b>	<b>Method :</b>
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**Involvements**

<b>Date</b>	<b>Type</b>	<b>Description</b>	<b>Relationship</b>
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## Narrative

### Free Form Narrative

On 04/23/16 at approximately 1641 Hours, I received a report of 2 dogs that were believed to have been poisoned. The complainant stated that both dogs died within minutes.

I arrived on scene at 356 Enfield Road and met with Hawley "TIM" Thornton, Lincoln ACO, Nicole Murchison had also arrived on scene. Tim brought me around the back of the residence and showed me a deceased dog. "Jasper", a male English Setter, had died while in the fields behind their house according to Tim. He stated that his wife Ann, had taken "Jasper" and "Moxie", a female Dachshund, for a walk in the fields behind their house. He stated that they do this on a very regular basis. While she was there, Tim stated that he received a call from Ann, stating that something was wrong with "Moxie" and that "Jasper" was still in the field somewhere. He stated that he went to look for "Jasper" while his wife came down and left for the emergency vet with "Moxie". Tim stated that he went back into the field looking for "Jasper" and found him lying in the tall grass. "Jasper" died while he was carrying him out of the field.

Tim brought me into the fields, which are accessed through the Bedford Farm Road, just down the road from their house. He walked me to the area that he found Jasper lying. According to Tim, Jasper was convulsing and foaming at the mouth when he found him. On the ground in the tall grass area, was a patch of grass that was flattened and had a large amount of foam on it. I asked Tim if the animals had encountered anything there and he stated that he wasn't sure.

I informed Tim that I believed it to be something chemical as I didn't believe anything else would cause just a rapid and violent reaction in the animals. I noted that the field was in fact below an agricultural field, belonging to Alfred "AL" Fugazzi. Tim confirmed this and stated that Al does have his crops further up the hill. Tim wasn't sure if Al had sprayed any pesticides on his crop. I attempted to contact Al but received no answer. I left a message, asking him to call back. Tim and I then went back to his residence as Ann should have been back at this point.

Once back at the residence, I met with Ann. She stated that "Moxie" had died while en-route to the emergency vet's office. She died in identical circumstances as "Jasper", convulsing and foaming at the mouth. In speaking with Ann, she informed me that she had taken the dogs into the field to walk as she has done many times before. She stated that she did in fact see the animals "get into" something on the back side of Al's crops. She stated that she didn't know exactly what it was but figured it was rotten gourds from last years crop as the dogs often do. Within 30 seconds of eating whatever it was, she stated that "Moxie" dropped and couldn't stand. She stated that she picked "Moxie" up and began to run back towards the house. According to Ann, "Jasper" kept running and she figured that he had taken off as he usually does this in the field, looking for birds. She stated that she called her husband as she was leaving the fields and immediately left for the vet's office. I asked Ann if she could take me to the area in question where the dogs "got into" something. She stated that she could.

We drove up the road to the main entrance of Al's fields. As we approached the gate, there was a rope across the road with signs on either side stating "sprayed fields, keep out". We removed the rope and entered. Ann directed us to the back side of the fields, along the wood line. From here, I could clearly see a portion of field that was covered in plastic, with 5 gallon

buckets holding the plastic down. Ann exited the vehicle and walked us along her path. Ann stated that she came in from the back side of the fields and was walking back towards Bedford Farm Road. It should be noted that the path she took, enters the south side of the field from a woods trail, where there are no signs indicating pesticide use or to stay out. From there, she was walking North along the edge of the field and was going to exit on another, un-posted trail leading to Bedford Farm Road. Along the edge of the tilled soil, almost directly between two tilled plots, she stated that the dogs were eating something. I checked the area and found a small spot that had what appeared to be bread crumbs on the ground. Ann confirmed that this was the area that the dogs were eating something on the ground. In the dirt, next to the bread crumbs, were footprints belonging to some species of K-9. These crumbs were collected in a plastic bag and later taken back to the PD.

While I was searching the area for anything else, Det. Fucile arrived on scene and stated that Al had been calling the PD looking for me. I called Al again and stated that I was in his field and that I needed to know if he had recently sprayed any pesticides and if so, what. Al asked what was going on and I informed him that 2 dogs had suddenly died after being in his field. I informed him that it looks as though they may have eaten a piece of bread. Al's only response was "I'll be there in 10 minutes".

Al showed up about 10 minutes later. I walked over to greet him and thanked him for coming out. I began to explain what had happened and Al replied "It was me". I asked Al to explain and he stated that over the course of 2 days, he's lost over \$1,000.00 in planted seeds to crows, pointing to the area that was covered in plastic. He stated that this morning, he put out 3 pieces of bread that he had laced with a powerful pesticide known as "Lannate". Al stated that it was a "RESTRICTED USE" pesticide. He informed me that he does have a license for it however, he is not licensed to use it on crows. I asked Al what that meant and he stated that he is allowed to spray it in a diluted solution on his crops. However, he is not authorized to use it in concentrate as he did. Al stated that a violation of this would mean that the BOARD OF PESTICIDES would revoke his license, effectively putting him out of business. I asked Al to show me where the other locations were that he placed the bread. As we walked, Al explained to me what he did. He stated that he placed a teaspoon of "Lannate" on 3 pieces of bread that he had crumbled up. As he left this morning, he drove around the field and in 3 different locations, he dropped a handful of crumbles out of the window of his truck. As we approached the first location, I could see several dead crows, littered across the ground. I counted 7 in the immediate area, with what appeared to be more in the distance. Al stated that this was one spot and directed me to a point on the ground where there were very small crumbs left. We then walked to another location to find that this point had been untouched. Al buried the crumbs and stated that the nature of the pesticide itself would neutralize it in the ground. The third point was where the dogs had eaten it. Not knowing anything about "Lannate", I asked Al to explain this stuff to me and how fast it worked. He informed me that when used properly, he dilutes 2 ounces of the powered pesticide in 1,000 gallons of water. This effectively dilutes it enough to spray over 1 acre of crops, only killing the bugs that feed on his crops. In the super concentrated form he used, it would kill anything that ate it. I asked him how fast it worked and he replied "if you stick your finger in it, then lick your finger, you'd be dead before you hit the ground". I spoke with Al further about the product and incident. I told Al that I wasn't sure what was going to happen as I don't know anything about pesticides. Al stated that he knew what was going to happen and that was that his license would be revoked and he would have to close. I informed Al that at this point, nothing was going to happen as I needed to do a

lot of research and find out more information. I advised him that I would be in touch if I needed anything else and thanked him for his cooperation.

After Al left, I went and met with Tim and Ann again. I informed them that it was in fact something that was put down for pests and that was all that I could tell them at this point. I advised them that I would be in touch as the investigation goes on and that I would keep them abreast as I could.

After reviewing the facts surrounding the case, I contacted the District Attorney's Office. It is in their belief that no violation of law occurred in regards to the dogs. They stated that the complainants may have a civil case in regards to negligence, in the manner that he used the pesticide. They added that Al was operating well within his rights to deal with a nuisance animal problem that were damaging his crops. However, they did request that I check with the Maine Warden Service in the event that there was something that we may be overlooking in terms of the crows.

After speaking with the Maine Warden Service, they advised me that they believe it could be a violation of trapping law. However, in reading the statute, I do not personally feel as though it is. In further research, I did locate and do however feel that, under Title 12, section 12404-3, there is a clear violation in term of the crows. Title 12, section 12402-1, gives a landowner the right to take or kill wild ANIMALS (mammals) or wild TURKEYS, that create substantial damage to crops. However, section 12404-3, specifically states that a person may NOT take or kill wild BIRDS, with the exception of rock doves or wild turkeys. After speaking with Assistant District Attorney Tracy Collins about this matter, she is in agreement but recommended that the report be forwarded for review.

At the recommendation of Chief Summers, I will also be placing a call into the Board of Pesticides, in regards to any administrative action they may wish to take against Al.

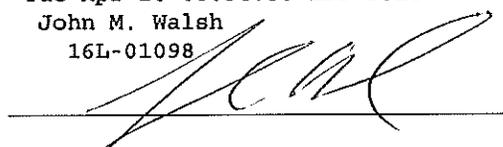
This report is to be forwarded to the District Attorney's Office for review.

Cleared.202

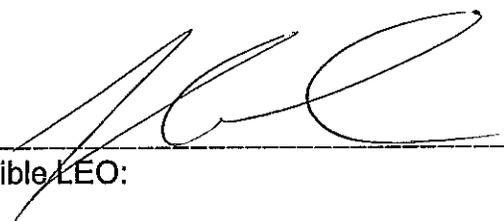
Date, Time: Tue Apr 26 08:54:53 EDT 2016

Reporting Officer: John M. Walsh

Law Incident # 16L-01098

Officer Signature: 

Supervisor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

  
Responsible LEO: \_\_\_\_\_

Approved by:

---

Date



MAINE DEPARTMENT OF AGRICULTURE,  
FOOD & RURAL RESOURCES

STATEMENT  
FORM

Address: BOARD OF PESTICIDES CONTROL  
Deering Bldg, AMHI  
28 State House Station  
Augusta ME 04333 Tel: 207/287-2731

Code No.

Saturday, April 23rd @ approx 3:30 pm, Jasper, Moxie, and I were walking - from Bedford Farm Road with back entrance to field. I kept the dogs out of the field due to new planting (plastic down) and nesting birds. The dogs stayed loose with me and walked along the field edge. They were ~75' ahead of me and I saw Jasper eat (something), then Moxie followed, at the field edge. They frequently would sniff and eat a few old veggies along the edge, so I never thought anything about it. Within 30 seconds, while Moxie was chasing after Jasper, she began stumbling and fell. She began coughing and foaming at the mouth, shaking and twitching. I picked her up and couldn't see any foreign objects in her mouth. I called my husband and ran with her to meet him. He took Jasper's remote to locate him. I attempted to induce vomiting w/ Moxie (salt & home) with no results. I got in the car with her to go to Emergency Vet. She passed ~45 min after ingestion. Continued coughing, shaking, struggling to breathe until she passed.

Signature

Ann Johnston

Date

4/26/16

Inspector's Signature

Marilyn K Tomblak

Date

4-26-16


**MAINE DEPARTMENT OF AGRICULTURE,  
FOOD & RURAL RESOURCES**
**STATEMENT  
FORM**

 Address: BOARD OF PESTICIDES CONTROL  
 Deering Bldg, AMHI  
 28 State House Station  
 Augusta ME 04333 Tel: 207/287-2731

Code No.

My husband (Jeri) found Jasper by using his collar/remote. He found Jasper in the tall grass, struggling to breathe, foaming at the mouth, trembling. His legs were drawn up and tense to his body. Jeri carried him toward home, but he passed within  $\approx$  30 min of ingestion.

When we returned to the field with the Lincoln PD officer and animal control and we found bread crumbs in the soil near where Moxie + Jasper ingested substance in question. 'Crumbs' were collected by P.D.

There were no signs posted to discourage entry to the field (from the back where we entered). We have walked our dogs along this same route approx 3 years.

Signature

Ann Johnston

Date

4/26/16

Inspector's Signature

Marilyn K Towndale

Date

4-26-16



MAINE DEPARTMENT OF AGRICULTURE,  
FOOD & RURAL RESOURCES

STATEMENT  
FORM

Address: BOARD OF PESTICIDES CONTROL  
Deering Bldg, AMHI  
28 State House Station  
Augusta ME 04333 Tel: 207/287-2731

Code No.

On Wednesday April 20, 2016 planted Autumn cup squash, Early Pro squash, Market more cukes, Carolina cukes and Seneca Zucchini seeds  
2 rows Carolina, 1 row Market more, 2 row Autumn cup, 1/2 row of early pro and zucchini (6 rows about 350 feet long). Planted in black plastic with pre drilled holes, It was too windy when the planting was completed (about noon) to put row covers on.

On Thursday morning everything had to be replanted because the crows had eaten all of the seeds. Extra help was called in to assist in planting. Installed row cover on Thursday. No damage occurred after the covers were installed.

On Saturday (April 23) ~~the~~ another area was prepared for planting by plowing/harrowing. Al went to town and ~~when~~ upon return noted over 100 crows in the newly turned field/section. He could not plant beet, chard, cukes and squash because of the crows. About 11AM Al decided to put hannate out to kill some crows. 4 pieces of bread were crumbled while in a plastic bag and approximately 1oz of hannate was added and mixed with the bread. The mixture was distributed in 3 locations (shown on

Signature

Inspector's Signature

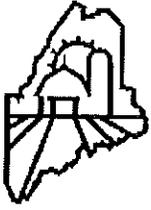
Date

Date

*Alfred J. Auger*  
Marilyn Is Tountalott

4/29/16

4/29/16



MAINE DEPARTMENT OF AGRICULTURE,  
FOOD & RURAL RESOURCES

STATEMENT  
FORM

Address: BOARD OF PESTICIDES CONTROL  
Deering Bldg, AMHI  
28 State House Station  
Augusta ME 04333 Tel: 207/287-2731

Code No.

map) by hand and on foot. This occurred at approximately 11 AM.  
On Saturday (April 23) Lincoln Police officer John Walsh phoned Al.  
Al went to the field and met with Officer Walsh and Lincoln animal  
control officer. Al was asked if he put anything that would kill  
an animal. Al admitted ~~that~~ <sup>he</sup> did. Officer Walsh recommended Al leave  
as the individuals who lost their dogs were in the field and very upset.  
Al left the scene.

In past years Al has tried various methods to deter the crows,  
including:

- : contacting local wardens
- : contacting and meeting with Federal officials who control crows for  
dairy farms
- : purchase 2 noise cannons, one which was disabled by neighbors  
due to noise
- : place row covers on crops to discourage crows

this statement is stated as accepted

Signature

Alfred J. Jurgens

Date

4/29/16

Inspector's Signature

Marilyn Tountalok

Date

4/29/16



MAINE DEPARTMENT OF AGRICULTURE,  
FOOD & RURAL RESOURCES

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Deering Bldg, AMHI  
28 State House Station  
Augusta ME 04333 Tel: 207/287-2731

Code No.

Additionally:

- Lannate was purchased in 2016 to use on sweet corn in the 2016 season (photos taken of seed for planting)

- Signs were posted, orange cones placed at entrance to field and gate closed after placing the bait.

Signature

*Alfred J. Luger Jr.*

Date

*4/29/16*

Inspector's Signature

*Marilyn S. Tondak*

Date

*4/29/16*

# Joseph Fazekas Case Harpswell

## Case timeline

- Damage first noticed June 13, 2015
- Reported to the Board July 2, 2015
- BPC Patterson to site July 10, 2015
- Consent agreement sent June 28, 2016
- Letter received from legal counsel contest consent agreement July 20, 2016
- BPC Connors to site August 15, 2016



FAZEKAS

Thomas/Douglas  
maple tree

THOMAS/DOUGLAS

Killed trees & vegetation  
8.9 ppm glyphosate  
on Douglas/Thomas  
property



1996

Imagery Date: 9/5/2015 43°49'08.97" N 69°55'07.70" W elev 25 ft eye alt 588 ft



**Thomas/Douglas maple tree**

/Douglas wellhead













Sample results 8.9 ppm Glyphosate

















Left: 7-10-15/Right 8-15-16











www.thinkfirstspraylast.org

## Pesticide Inspector Narrative

150701MLP01

CC# 5921

Harpswell

Megan Patterson  
Pesticides Inspector  
Maine Department of Agriculture,  
Conservation and Forestry  
Board of Pesticides Control  
28 State House Station  
Augusta, Maine 04333  
Phone: 207.287.7593  
Fax: 207.287.7548  
megan.l.patterson@maine.gov

I (Megan Patterson) followed up on a complaint received July 2, 2015 from Jeff Gillis of Well Tree Inc in Brunswick. The complaint was made on behalf of Gillis's customer Debbie Thomas of 31 South Dyers Cove Rd, Harpswell. I contacted Gillis via phone on 7/7/15 and asked to schedule an appointment to view the complaint site. Gillis said he would be available on Friday, July 10, 2015 at 9:30 AM. Gillis also reiterated that a large variety of plant species were affected including hardwoods, softwoods and brambles. Of the trees most affected plants were saplings, but one affected tree was a twelve inch diameter pine. Gillis said the plants had twisted foliage and white venation. After digging down below the soil line near the pine, Gillis found a 3/4" bored hole in the trunk/root. Gillis said the bulk of the damage occurred uphill, closer to the neighbor's property, but raspberries planted along the road about 15'-20' away were also affected. Gillis said he contacted Bill Ostrofsky with the Maine Forest Service and was encouraged to contact the Board of Pesticides Control. The damage was first noticed this spring. Thomas employs another arborist, Tim Vale, and when Vale saw the damage, he recommended that Thomas contact Gillis.

On 7/10/15 I met with Gillis at 31 South Dyers Cove Rd, Harpswell (see Attachment 1). Also present were Thomas, and Ned Douglas, Thomas's husband. I presented my credentials and then reviewed the area of concern with Gillis and Douglas. Douglas agreed to provide a statement (see Douglas Statement). Douglas went on to say that his concerns are worsened erosion on an already eroding and steep embankment and potential contamination of his well. Douglas said that he believes his neighbor, Joseph Fazekas may continue to attempt to kill trees in an effort to improve the ocean view of the house he is trying to sell.

Douglas stated that he and Thomas first noticed the 20' by 20' brown area on their property when they arrived at 31 South Dyers Cove Rd on 6/13/15. Douglas apparently addressed the issue of the dead vegetation with Fazekas at that time. While I was on site on 7/10/15, Douglas informed Fazekas that he had contacted, via his arborist, the Maine Board of Pesticides Control. Douglas stated that he told Fazekas I was presently conducting an inspection. Douglas stated that Fazekas told him that Fazekas had a lawyer on retainer.

I proceeded with my inspection and took numerous photos of the hillside vegetation, the Thomas/Douglas well and the bore hole in the pine (150710MLP01B). Immediately apparent were the defoliated saplings, pine tree, and understory vegetation at the northwestern corner of

10f3

the Thomas/Douglas property. Less apparent, but also noticeable were the saplings in the vicinity that retained vegetation, but had stunted, chlorotic, deformed foliage. Some of the more mature foliage was also deformed, but had a wrinkly texture and elongated form. Plants affected appeared to be oak, cherry, white pine, Virginia creeper, and brambles. Other plants may have also been affected.

I collected five physical samples while on site. For each sample I donned a new pair of disposable gloves prior to collection. Each sample was placed either in a tamper evident bag with a dedicated seal number or in an inverted plastic bag that was then tied in a mushroom knot and encircled with a sticker seal. For those samples placed in tamper evident bags, the rip off seals at the tops of the bags were included in the case file (see file).

A soil sample was taken from the top one inch of soil, near the  $\frac{3}{4}$ " bore hole, at the base of the white pine tree that was almost entirely defoliated. Approximately  $\frac{1}{4}$  L of soil was collected in a 1 L amber glass jar with jar and lid labeled (1507010MLP01A). The jar was placed in a tamper evident bag (Seal# 292070).

A 1 L composite foliage sample taken primarily from an oak sapling that was at the northeastern corner of the area with defoliated vegetation (150710MLP01C). The foliage sample was placed in a 1 L amber glass jar with jar and lid labeled. The jar was placed in a tamper evident bag (Seal # 292067).

A plastic bag was filled with approximately 4 stems from raspberry canes that appeared to have damaged foliage (150710MLP01D). More mature foliage was wrinkled and elongated while less mature foliage was stunted, chlorotic, and twisted. Seal # 00791 was placed on the bag.

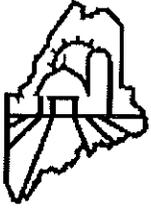
A plastic bag was filled with a composite sample from both oak and cherry saplings that were growing in the northeast corner of the affected area (150710MLP01E). Both the oak and cherry appeared to have damaged foliage. The oak leaves had some minor elongation and wrinkling. The cherry foliage appeared stunted and elongated. The oak also had a proliferation of buds and a thickening of new growth. Seal # 00820 was placed on the bag.

A 1 L composite sample of pine needles was collected from the lower branches of the almost entirely defoliated white pine with the bore hole. The needles were placed in an amber glass jar with both lid and jar labeled (150710MLP01F). The jar was placed in a tamper evident bag, seal # 292117.

All samples were immediately placed in coolers with ice packs. Upon return to the Board of Pesticides Control Office, all jars were placed in the sample freezer and all plastic bags were placed in the refrigerator.

I contacted Bill Ostrofsky at the Maine Forest Service at asked if he could look at sample 150710MLP01D and 150710MLP01E. He agreed and I delivered the samples to him on 7/13/15. Ostrofsky immediately indicated that the injury to the cherry and oak foliage appeared to be the result of herbicide damage. Ostrofsky indicated that the symptomatic raspberry foliage could be the result of viral infection (Attachment 2).

On 7/15/15 I sent a follow up email to Ned Douglas and Debbie Thomas with requested contact information for the Montana State University Analytical Laboratory.



MAINE DEPARTMENT OF AGRICULTURE,  
FOOD & RURAL RESOURCES

STATEMENT  
FORM

Address: BOARD OF PESTICIDES CONTROL  
Deering Bldg, AMHI  
28 State House Station  
Augusta ME 04333 Tel: 207/287-2731

Code No. 150710MLP01

On June 13<sup>th</sup> 2015 when we arrived at 31 South Dyers Cove Road we noticed a 20' by 20' brown area and several dead trees on the northwestern corner of our property.

Our neighbors were surprised by the dead trees and wondered why we would think that we would even entertain the idea of them doing anything. Jeff of Well Tree came to the wife and collected samples and sent them to the state plant pathologist. On July 10<sup>th</sup> Meghan<sup>Megan</sup> arrived and collected further samples which would be fresh.

Jeff suspected a heavy use of pesticide caused the damage.

We are concerned because the wife is near our well.

The neighbors are attempting to sell their house and want better views

Signature 	Date July 10 2015
Inspector's Signature 	Date July 10, 2015

JUL 20 2016

Eaton  
Peabody  
Attorneys at Law

Ryan P. Dumais  
Direct Dial 207-430-8863  
rdumais@eatonpeabody.com

167 Park Row, P.O. Box 9  
Brunswick, Maine 04011-0009  
Phone 207-729-1144 Fax 207-729-1140  
www.eatonpeabody.com

July 19, 2016

Mr. Raymond Connors  
Manager of Compliance  
Maine Board of Pesticides Control  
Maine Department of Agriculture, Conservation, and Forestry  
28 State House Station  
Augusta, ME 04333-0028

Re: Inspection Number: 150710MLP01; Inspection Date: 7/10/15

Dear Mr. Connors:

Please be advised that I have been retained to represent Joseph and Caroline Fazekas in connection with the events discussed in your June 27, 2016 letter involving damage to vegetation located on property owned by the Fazekas's neighbors Debbie Thomas and Ned Douglas at 31 South Dyers Cove Road in Harpswell. All further communication concerning this matter should be directed to my attention at the address given above.

At the outset, my clients deny your unfounded allegation that they made an unauthorized herbicide application to the Thomas and Douglas property. Accordingly, they decline your request that they enter into the consent agreement you have proposed.

Frankly, I am surprised that your office would conclude that my clients engaged in an unauthorized herbicide application based upon the content of the "investigation" described in your letter and accompanying consent agreement. First, it is remarkable that this conclusion was reached without your investigator so much as speaking with my clients concerning the allegation raised. As a result of this oversight, some of the facts set forth in your "Administrative Consent Agreement and Findings of Fact" are in error.

Two summers ago the Fazekases sought permission from Thomas and Douglas to trim a tree on the Thomas/Douglas property which partially obstructed their view of the ocean. That request was turned down by Thomas and Douglas who reported that their arborist felt it was too soon to trim the tree again following its previous trimming without risking the tree's health. The Fazekases made a follow up request last summer to trim the same tree. This request was also turned down by Thomas and Douglas who explained that the tree was their only source of shade. My clients left the matter there.

Now, vegetation in an entirely different area of the Thomas/Douglas property has been damaged. Your investigator seems to be of the erroneous view that the tree my clients had previously sought permission to cut is located in the same area as the vegetation which has now been damaged. This is not so. To illustrate this point, I attach a photo marked as **Exhibit A**

Mr. Raymond Connors  
July 19, 2016  
Page 2

which depicts the tree my clients sought permission to trim and a second photo as Exhibit B which depicts the now damaged vegetation. It is readily apparent that the two are located in different areas of the Thomas/Douglas property.

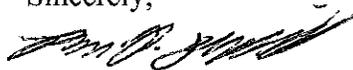
Accordingly, even if your conclusion that the damaged vegetation resulted from an application of glyphosate, a finding we do not concede, you have presented neither any motive which would have led my clients to make that application much less any evidence that they actually did so. The supposition you are left with falls far short of proof by a preponderance of the evidence. Any court will agree.

Had your investigator elected to speak with my clients prior to arriving at his other unwarranted findings, this action and the inconvenience to my clients generated thereby could have been avoided.

I note that my clients have identified other factual misstatements in the materials forwarded to them on June 27, 2016. We do not address each of those misstatements here. In our judgment it is sufficient that we have both: (1) cleared up the confusion which you felt generated a motive; and (2) have pointed out your lack of evidence that my clients applied glyphosate, an allegation they strenuously deny. It is our sincere hope that this communication brings an end to this matter as it is apparent that your office has labored under a misapprehension of fact from which false conclusions were drawn.

Please know that should you choose to pursue this matter further, my clients are fully prepared to defend themselves from these allegations which they categorically deny.

Sincerely,



Ryan P. Dumais

RPD/  
Enclosures

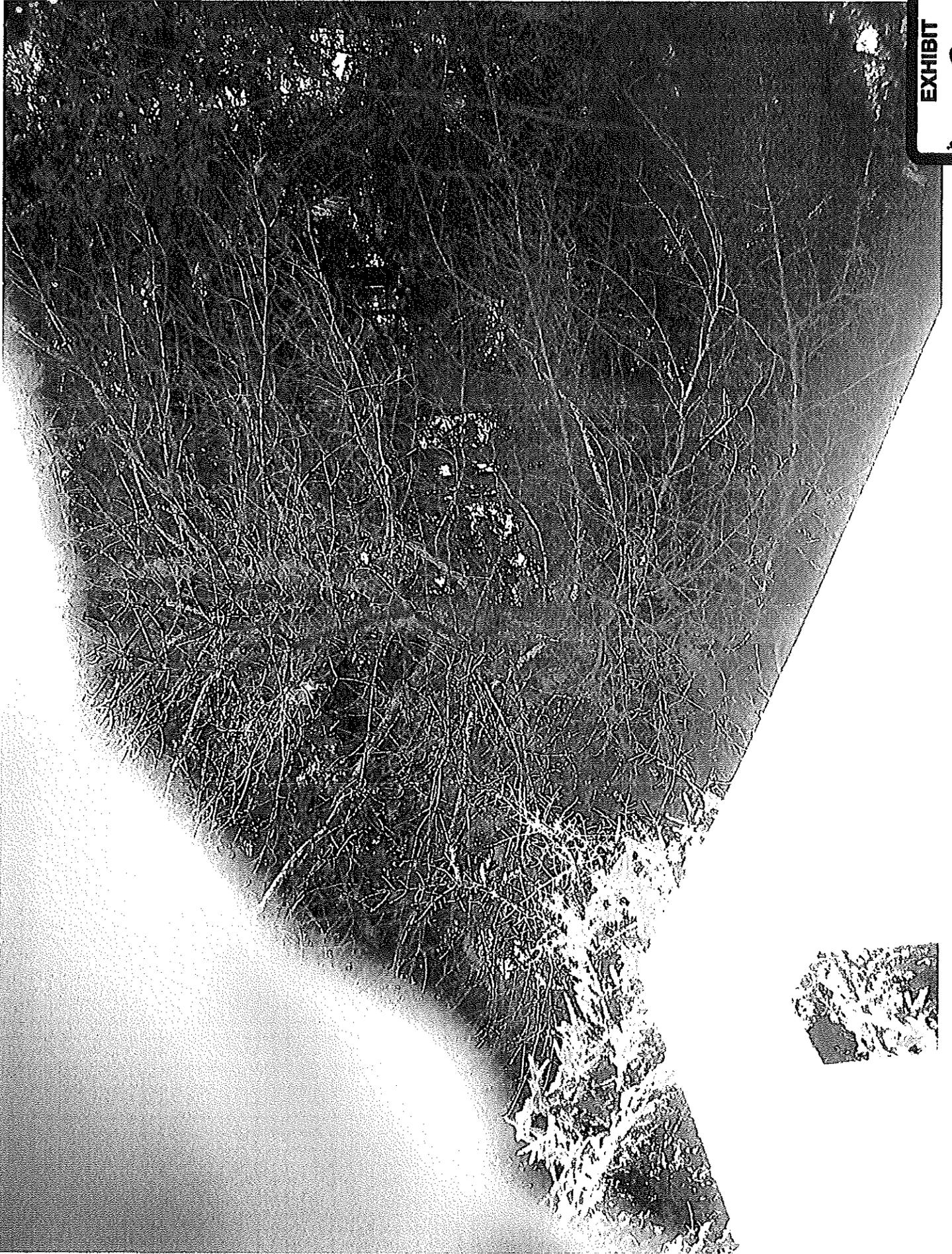
cc: Caroline and Joseph Fazekas



EXHIBIT

A

lobbies



EXHIBIT

B

bbblet

Eaton  
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September 15, 2016

**Via Email Only**

Maine Department of Agriculture, Conservation, and Forestry  
Maine Board of Pesticides Control  
Attn: Raymond Connors, Manager of Compliance  
28 State House Station  
Augusta, ME 04333-0028  
[Raymond.g.connors@maine.gov](mailto:Raymond.g.connors@maine.gov)

Re: Inspection Number: 150710MLP01; Inspection Date: 7/10/15

Dear Mr. Connors:

Thank you for forwarding the packet of information concerning the upcoming September 23 Maine Board of Pesticides Control meeting so promptly.

In preparation for the meeting, I want to assure that a recording is made in a form susceptible to transcription in the event that there is a need for subsequent court action. My review of the Board's regulations seems to indicate that all such proceedings are recorded. Would you please confirm that a recording will be made? If it is not currently the Board's intention to record the proceeding I would like to request that the portion of the meeting concerning my clients Joseph and Caroline Fazekas be recorded. Please let me know if this is something that cannot be arranged so that I can plan accordingly.

Finally, I enclose for your review two photos which my clients may wish to rely upon at the hearing. The photos depict the same subjects shown in the photos appended to my letter of July 14, 2016. These new images are simply clearer.

Thank you in advance for your assistance.

Sincerely,



Ryan P. Dumais

RPD/ajh

cc: Joseph and Caroline Fazekas



