



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

To: Municipal Employees and Contractors
From: Gary Fish, Maine Board of Pesticides Control
Re: Pesticide Applicator License Required for Municipal Vegetation Management
Date: April 1, 2010

Just as plumbers and electricians are expected by consumers to be qualified in their respective trades, so are individuals who apply pesticides (including herbicides) in public places or as government employees. For this reason, the State of Maine requires plumbers, electricians and pesticide applicators who serve the public to be properly trained and then licensed.

Since 1983 Maine law has called for a pesticide applicator license whenever pesticides are used by government employees or in public places. *Government employees* include state, municipal, housing authority, school, water department and any other public employee. Yet, every year the Board hears about government officials using pesticides without licensing...sometimes *after* a complaint has been filed with the Maine Board of Pesticides Control (BPC).



Although this law does not excuse ignorance, it is understandable why violations occur. Among the commonly used pesticides in these circumstances are weed killers, insecticides and rodent poisons—all products that are widely available over the counter from retail hardware stores or garden centers. No license is required if any of these products are applied by consumers in their own residences or on their own property. However, only a licensed commercial pesticide applicator may use these same products as a government employee or on property open to use by the public.



What is the difference between an individual treating his own property and a government official making applications?

For one, there are fewer liabilities attached to an individual who, through misapplication, poisons only himself, than if this same person poisons others. Also, once a government official is involved, there comes an expectation that the greatest care will be used to protect the public while providing the intended pest management service. Protecting the public is vital because all pesticides—including ones sold over retail counters—are toxic; they must be in order to control pests.

We cannot assume the public is safeguarded if the applicator has not received the required training, and often this lack of training cascades into other problems—not only legal problems with us, but ones involving public health and property losses.

OVER



Cases of improper municipal pesticide use are not unusual. Recently two towns were penalized for unlicensed application of Roundup herbicide to curbs, sidewalks, cemetery areas and around fire hydrants (*see story below*). Other past infractions have included: improper application of roadside herbicides to an active pasture and use of weed controls on recreational fields.

Yet, even if an unlicensed applicator is careful in his or her use of pesticides, there is little legal recourse should an accident occur or if a citizen suffers a health problem.

For example, children, the elderly, the pregnant and some individuals are sensitive to chemical exposure of any sort. Certified applicators are trained to keep sensitive individuals away from treated areas until sufficient time has passed. That training is a public trust that can protect the certified applicator from many liabilities. The unlicensed applicator enjoys no such protection, however, and is subject to the fullest extent of laws and liabilities should a child suffer from an asthma attack or if a miscarriage occurs...even if these health problems are not clearly associated with the use of pesticides.

Government officials who wish to apply pesticides themselves should contact the BPC in Augusta at 287-2731, by e-mail at gary.fish@maine.gov or go to <http://www.thinkfirstspraylast.org>, and click on the “CERTIFICATION & LICENSING” link.

Those that do not wish to become licensed can request a list of licensed “for hire” companies from the BPC by using the same contact information as above.



KENNEBEC JOURNAL

March 10, 2010

Randolph fined \$400 in unlicensed pesticide spray

BY MECHELE COOPER


Staff Writer

The town of Randolph on Friday agreed to pay the state \$400 and adhere to a consent agreement that prohibits unlicensed pesticide applications on town property.

The state Board of Pesticides Control voted unanimously to fine the town in response to a complaint received Sept. 17, 2009.

Also Friday, the board fined South Berwick \$500 for applying Roundup herbicide to sidewalks without proper licensing.

Link to complete article: http://www.kjonline.com/news/randolph-fined-400-in-unlicensed-pesticide-spray_2010-03-09.html

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March 10

[Randolph fined \\$400 in unlicensed pesticide spray](#)

By [Mechele Cooper](mailto:Mechele.Cooper@centralmaine.com)

Staff Writer

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Also Friday, the board fined South Berwick \$500 for applying Roundup herbicide to sidewalks without proper licensing.

Ray Connors, manager of compliance for the board, said there were 14 enforcement actions taken in 2008. In 2009, he said there were 30 actions. Actions can include consent agreements, financial penalties, a warning letter or an advisory letter.

"I think there's more going on than just these two incidences, as far as towns," Connors said. "There are towns using pesticides under conditions that would require those employees to be licensed. The same thing happens with private companies."

Randolph's public works director acknowledged that an employee applied Roundup Sept. 1, 2009, to areas of the Maple Grove Cemetery and fire hydrants to control grass and weeds.

State law says any person applying pesticides in an official capacity or for a public agency must be a certified commercial applicator.

In Maine, pesticide licenses fall under two major categories: private, for pesticide use in agriculture or the production of other commodities; and commercial, for anyone who uses pesticides in public places, such as golf courses, campgrounds, apartment houses, hospitals and nursing homes on a "for-hire" basis or as a government employee.

The Randolph consent agreement said the employee held a private pesticide applicator license at the time, but the town did not have anyone on staff with a commercial pesticide applicator's license.

Randolph Selectmen Peter Hanley said the Board of Selectmen has no official policy about applying

pesticides, but will make certain in the future that any employee applying chemicals is properly trained and certified.

"We're not going to do that anymore," Hanley said. "If they do apply it, then they're going to get the training they need beforehand."

In the past two years, the Board of Pesticides Control has entered into a number of consent agreements, including one with Waterville schools in which the school system failed to follow notification regulations and record-keeping requirements when herbicides were applied to athletic fields at two schools on a school day.

Students used the athletic fields shortly after the herbicide was applied.

"Licensing is not just about paying a fee and getting a license," said Paul Schlein, spokesman for the board. "You have to go through all kinds of training and take exams to make sure applications are done properly according to the labels. You have to post signs and things like that so people know and don't go back on the lawn. Every label has very specific instructions on how and when it can be applied.

"With something like Roundup, if they spray a sidewalk and someone comes along with a dog or child, those are things you have to be very careful about."


The board's Web site is www.thinkfirstspraylast.org.

Mechele Cooper -- 623-3811, ext. 408

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Find this article at:

http://www.kjonline.com/news/ramdolph-fined-_400-in-unlicensed-pesticide-spray_2010-03-09.html?searchterm=Randolph

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AUGUSTA

Posted: 12:00 AM

[Monsanto seeks state approval for new modified corn](#)

Monsanto has applied to register its new *Bacillus thuringiensis* corn product -- also known as Bt corn.

By [Mechele Coopermcooper@centralmaine.com](mailto:Mechele.Coopermcooper@centralmaine.com)

Staff Writer

AUGUSTA -- The state Board of Pesticides Control is considering an application from multinational biotech company Monsanto to register a new genetically engineered corn with a built-in pesticide for use in Maine.

Monsanto has applied to register its new *Bacillus thuringiensis* corn product -- also known as Bt corn.

In July 2007, the board first approved product registration requests for several Bt field corns. Since then, 18 modified seeds have been allowed to be planted in Maine.

The total acreage of Bt corn planted in Maine last year was 4,005. In Kennebec County, 1,837 acres of it were planted -- more than any other county.

The board's toxicologist, Lebel Hicks, said the new Monsanto product has field corn and sweet corn uses on the label -- which is nothing new in Maine -- but has other attributes that have not been registered here.

She said staff held up the registration process until the Board of Pesticides Control's Medical Advisory Committee could report on the dietary safety of the product.

"The label's got both field and sweet corn on it, and we've been registering products for both of those uses since 2008, so having product with both corn is not a new thing," Hicks said Thursday.

"The only new thing is that the protein has attributes of three different proteins that came out of the Bt, and that's something the Medical Advisory Committee looked at," Hicks said. "I'm still trying to get the final edits on that, but it's just not happening yet."

She said members of the board have copies of the draft report from the Medical Advisory Committee they can use in today's discussion. The meeting starts at 9:30 a.m. at the John E. Dority Safety & Performance Training Center at 10 Mountain Ave., Fairfield.

Hicks said protein toxins produced by *Bacillus thuringiensis*, a spore-forming bacterium, kills insects by destroying their innards. When an insect eats a plant containing the spores, it remains alive for several days, but then its gut becomes paralyzed and it cannot eat.

Board of Pesticides Control member John Jemison, of the University of Maine Cooperative Extension, said the different corn hybrids produce different toxin proteins.

"The one we're asked to approve (today), it's a little bit different," Jemison said. "What they got basically is one genetic hybrid that expresses two proteins already registered (with the state) and crossed it with a different corn that has a slightly different protein (toxin) to kill a different insect."

He said Bt produces toxins that are active against lepidopteran insects, such as moths. Different protein toxins are effective on different pests.

"This is still effective on the corn borer and root worms like the other Bt corns we already have, but also is a little bit more effective on a range of other insects like the fall army worm and some we don't even have in our state like some southern insects," Jemison said.

Maine Organic Farmers and Gardeners Association Executive Director Russell Libby said current data on Bt corn is inadequate to perform a human health risk assessment.

He also said there is a relative absence of nonindustry-controlled safety data on Bt foods, he said.

"MOFGA opposes the registration of the new Monsanto field corns and sweet corns," Libby said. "So far, the (state Board of Pesticides Control's) Medical Advisory Committee hasn't seen studies with conclusive scientific evidence that these plants pass safety standards. We agree with the Medical Advisory Committee."

So does Spencer Aitel, who grows feed corn for Jersey cows on his dairy farm in China.

"We're also an organic farm trying to maintain our crops free of transgenic pollution," Aitel said. "With the increasing popularity with transgenic products, you can't grow corn very easily in the U.S. that isn't cross-pollinated with something genetically engineered, on purpose or by accident."

He alleged most genetically engineered products are designed to increase herbicide sales. He said many of the more advanced genetics are coming "stacked" together with the herbicide tolerant traits that one company or another wants to sell.

"They're stacking all these traits that farmers might or might not want on top of the herbicide-tolerance traits," he said. "Monsanto has Roundup, another herbicide is LibertyLink. If you walk out onto your lawn and spray it with Roundup it will die. It kills almost all plants. When you walk into a cornfield that has been genetically engineered and spray it with a herbicide, it doesn't die. It kills everything but the corn."

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March 6, 2010

Panel clears modified corn

BY MECHELE COOPER, Staff Writer

FAIRFIELD -- The state Board of Pesticides Control agreed Friday to add a new Bt corn product to the list of genetically engineered seeds grown in Maine.

Maine now allows 19 Bt products to be planted in fields now that Monsanto, a multinational biotech company, won its bid to register its new *Bacillus thuringiensis* corn here.

Chuck Ravis, professor of environmental science and ecology at Thomas College, was the sole member of the board who voted against the genetically engineered seed.

Ravis said he has "issues" with Monsanto's business practices and expressed concern about risks to human health and the environment.

"I do believe there's disagreement in the potential outcome of using these products," Ravis said at the meeting. "If we don't know that, I think we shouldn't be approving this."

Daniel Simonds, a board member who is a forestry consultant, said early in the meeting he hoped to focus on the issue at hand -- whether to register the new Bt product -- not questions about procedure.

"I have concerns about the process in which we approve these things, but we should have that discussion at a future planning session," Simonds said. "We shouldn't delay this."

John Jemison Jr., water quality and soil specialist with the University of Maine Cooperative Extension, said it was his understanding that the new Bt corn will broaden insect control for insects not found in Maine.

"As long as we're not approving this for bugs we don't have here, that was my concern," Jemison said. "I can tell you for the fall army worm, Bt 11 did not work very well. If this works better than that, it would meet the need, if it's indeed better."

Jemison said the board needs to find a way to follow up on genetically engineered crops and keep a handle on new products that companies such as Monsanto want to register with the state.

The board's toxicologist, Lebel Hicks, said two companies recently withdrew their requests to register other Bt corn products in Maine: Dow AgroSciences pulled its request to register SmartStax; and Monsanto pulled two requests, she said.

As a condition of registration of Bt crops, the U.S. Environmental Protection Agency requires all farmers who use Bt crops to plant at least 20 percent of their corn acreage as a "refuge."

A refuge is meant to reduce the possibility of insects developing resistance to Bt, so the EPA requires a certain percentage of planted acreage be set aside in which non-Bt protected corn will be grown. Refuges thus support populations of insects not exposed to Bt corn, and the insect populations in the refuges will help prevent resistance development when they cross-breed with insects in the Bt protected fields, according to the EPA.

The non-Bt refuge will decrease the odds that a resistant insect can emerge from a Bt field and choose another resistant insect as a mate, Jemison said. By preventing the pairing of resistant genes, these refuges help ensure that susceptibility is passed on to offspring.

Paul Schlein, spokesperson for the board, said Maine requires a farmer to plant at least 20 percent of their Bt corn acreage as a refuge, and that states can require more refuge acreage than the EPA mandates.

"The whole thing is about resistance," Schlein said. "If you don't have a certain amount of acreage that doesn't have this Bt, there's a good chance insects will become resistant. Bt is also used as a foliage spraying tool for organic growers. If insects become resistant, then they're not going to be able to use that."

He said refuge acres are requirements for Bt field corn. Refuge requirements for Bt sweet corn are different.

"They're required in that they have to plow down the stocks and leave those in the field," he said. "There is a concern if people are really going to do that or not."

Hicks said 4,000 acres of Bt seeds were planted in Maine last year.

Spencer Aitel, a dairy farmer in China, said he anticipated the board would approve the new Bt corn.

He said there will be no recourse for him if pollen from Bt corn drifts to his land, and said his organic corn crop yield is the same as from genetically engineered seeds whose farmers pay twice as much.

He pays \$90 a bag for seed compared to Bt products that he said cost \$250 to \$270 a bag.

"It's been a slow, steady progression towards these traits over the years," Aitel said. "It's not helping us that much. But I guess we're going to have to learn this one the hard way."

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Find this article at:

http://www.kjonline.com/news/panel-clears-modified-corn_2010-03-05.html

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Maine passes pesticide-spraying registry

The logo for Associated Press, consisting of the letters "AP" in a bold, red, sans-serif font, followed by the words "Associated Press" in a smaller, black, sans-serif font.

April 2, 2010

AUGUSTA, Maine --Mainers who live in agricultural areas may be getting a new pesticide-spraying notification system.

The House and Senate have given final approval to a bill that will replace Maine's current preseason notification system with a comprehensive, single notification registry for all outdoor pesticide applications.

The bill, which awaited Gov. John Baldacci's signature, also keeps a registry for aerial and air carrier agriculture pesticides intact.


The bill was passed after a year of intense negotiations with farmers and members of the public.

The sponsor, Democratic Rep. Andy O'Brien of Lincolnville, says he's confident the bill strikes an adequate balance on pesticide notification law for the time being.

On the Net:

Online registry form: <http://www.thinkfirstspraylast.com> ■

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Posted: 12:00 AM

Updated: 12:38 AM

[Organic farmers push for pesticide notification](#)

A proposal would water down a law about notifying residents before spraying.

By [Beth Quimby@mainetoday.com](mailto:Beth.Quimby@mainetoday.com)

Staff Writer

Maine farmers are divided over a legislative proposal to change a new system for notifying residents of pesticide spraying near their homes.

The pesticide notification law, passed unanimously last year in the Senate and the House, created a statewide registry so residents who live within a quarter-mile of any farm or other spraying site can sign up to be notified before spraying is done.

More than 550 people have signed up since the registry went online in September. At the same time, opposition to the measure has mounted among commercial growers and sprayers.

"It appeared to fly under the radar somewhat" in the Legislature last year, said Henry Jennings, director of the Maine Board of Pesticides Control, which is responsible for overseeing the new registry.

A pending floor vote on a bill to water down the law has triggered a last-minute campaign by the Maine Organic Farmers and Gardeners Association and other groups to save the new notification system. Commercial growers are supporting revisions to the law, which they say is unnecessary and burdensome.

"We are frustrated that this has been about conventional growers versus organic farmers when it is a public health issue," said Heather Spalding, associate director of the organic farming association, which came up with the initial legislation.

Part of the controversy surrounds a provision in the law that requires farmers and commercial sprayers, such as mosquito control companies, to notify neighbors 90 days in advance of plans to apply pesticides by aircraft or equipment on the ground.

Farmers say they often don't know three months in advance which of their fields they will plant. Mosquito control companies said they don't know who their customers are 90 days in advance, so they can't notify people in the registry.

Even supporters of the registry agreed that the law would be cumbersome and worked to come up with changes, through a bill sponsored by Rep. Andrew O'Brien, D-Lincolntonville.

During a six-hour hearing and four work sessions on the issue, the Legislature's Agriculture, Conservation and Forestry Committee came up with a proposal that went beyond O'Brien's.

The panel's changes would reduce the notification distance for residents from a quarter-mile to 500 feet for orchards and Christmas tree growers. Spraying for non-agricultural purposes -- such as forestry, rights of way and mosquito control -- would be exempt from notification until 2012.

Some apple growers say they welcome the proposed changes because the law would have created unfounded alarm about pesticide drift.

Ellen McAdam, whose family operates McDougal Orchards in Sanford, said no one in town has signed on to the registry, and there were already laws to protect people from aerial pesticide drift.

"It would be hard to produce a commercial crop without some sort of pest control," she said.

McAdam, past president of the Maine Pomological Society, said many people who have signed up for notification -- Kittery and Gorham residents are heavily represented on the registry -- don't live near significant agricultural areas.

But opponents to the changes say they hope the Legislature will back away from major revisions. The American Lung Association is lobbying against weakening the measure, calling pesticide spraying a serious health threat for the 10 percent of Mainers who have asthma.

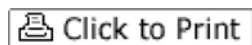
"This is an issue that has been debated in the agriculture community as opposed to the public health community, and that is one of the things we are concerned about," said Ed Miller, vice president of public policy for the lung association.

The Legislature is expected to vote on the matter by the end of this week.

Staff Writer Beth Quimby can be contacted at 791-6363 or at: bquimby@pressherald.com

Find this article at:

http://www.pressherald.com/news/organic-farmers-push-for-pesticide-notification_2010-03-24.html



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eLab - Medical

Pesticide linked to developmental delays

Exposure to the pesticide chlorpyrifos—which is banned for use in U.S. households but is still widely used throughout the agricultural industry—is associated with early childhood developmental delays, according to a study by researchers at Columbia University's Mailman School of Public Health.

Findings of the study, "Chlorpyrifos Exposure and Urban Residential Environment Characteristics as Determinants of Early Childhood Neurodevelopment," are online in the American Journal of Public Health.

The study examined the association between exposure to the pesticide and mental and physical impairments in children in low-income areas of New York City neighborhoods in the South Bronx and Northern Manhattan. Chlorpyrifos was commonly used in these neighborhoods until it was banned for household use by the U.S. Environmental Protection Agency (EPA) in 2001. It is still used as an agricultural pesticide on fruits and vegetables. The EPA registration of chlorpyrifos for agricultural use is currently under review, with a public comment period scheduled for the coming months.

"This study helps to fill in the gaps about what is known about the effect of the pesticide chlorpyrifos on the development of young children by showing that there is a clear-cut association between this chemical and delayed mental and motor skill development in children even when there are other potentially harmful environmental factors present," said Gina Lovasi, PhD, lead author and Mailman School of Public Health assistant professor of epidemiology. Dr. Lovasi conducted the research as a Robert Wood Johnson Foundation Health & Society Scholar at the Mailman School.

As in previous research in the same study population, published in *Pediatrics* in 2006, this study controlled for gender, gestational age at birth, ethnicity, maternal education, maternal intelligence quotient, and exposure to secondhand smoke during pregnancy. What this study adds is that building dilapidation and community-level factors such as percentage of residents living in poverty do not explain the association. After controlling for these factors, the research indicates that high chlorpyrifos exposure (greater than 6.17 pg/g in umbilical cord blood at the time of birth) was associated with a 6.5-point decrease in the Psychomotor Development Index score and a 3.3-point decrease in the Mental Development Index score in 3-year-olds. "These associations remained statistically significant and similar in magnitude after accounting for dilapidated housing and neighborhood characteristics," noted Dr. Lovasi.

Of the 266 children included as study participants, 47 percent were male, 59 percent were Hispanic or Dominican

descent and 41 percent were Black. In addition, children living in neighbourhoods with the highest levels of poverty also had lower test scores-a finding that was not affected by pesticide exposure.

Young children have greater exposure to pesticides than adults, since they tend to play on the floor or in the grass-areas where pesticides are commonly applied-and to place their hands and objects in their mouths. Pregnant women exposed to pesticides can also expose their unborn children to the chemicals.

Those who advocate for further restrictions on the use of pesticides, including chlorpyrifos, contend that such chemicals drift from treated agricultural fields to nearby yards, homes and schools, placing pregnant women and children at risk.

"Although this pesticide has been banned for residential use in the United States, chlorpyrifos and other organophosphorus insecticides are still commonly used for a variety of agricultural purposes," said study co-author Virginia Rauh, ScD, professor of clinical population and family health, and co-deputy director for the Columbia Center for Children's Environmental Health at the Mailman School of Public Health. "We hope that the results of this study, further demonstrating the neurotoxicity of chlorpyrifos under a range of community conditions, may inform public health professionals and policy-makers about the potential hazards of exposure to this chemical for pregnant women and young children."

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EPA: Flea, tick products may injure, kill pets

By **MATTHEW DALY** • Associated Press • March 21, 2010

WASHINGTON — Products intended to treat cats and dogs for fleas and ticks kill hundreds of pets each year and injure tens of thousands, the Environmental Protection Agency said Wednesday as it outlined plans to make the products safer.

The EPA said it will develop stricter testing and evaluation requirements for flea and tick treatments that are applied to a pet's skin. The agency also will begin reviewing labels to determine which ones need to say more clearly how to use the products.

The EPA's effort follows increasing complaints from pet owners that the "spot-on" products have triggered reactions in dogs and cats, ranging from skin irritation to neurological problems to deaths. Cats and small dogs appear particularly vulnerable, the EPA said, especially when given products intended for larger animals.

Steve Owens, assistant administrator of EPA's Office of Prevention, Pesticides and Toxic Substances, said new restrictions will be placed on flea and tick products. "These are poisons," Owens said. "These are products designed to kill fleas and ticks -- and they do their jobs."

The EPA is committed to better protecting the health and safety of pets and families, Owens said, but added that pet owners "need to carefully read and follow all labeling before exposing your pet to a pesticide."

The agency announced last April it was increasing

scrutiny of topical flea and tick products because of the growing number of bad reactions reported.

The EPA said it received 44,263 reports of harmful reactions associated with topical flea and tick products in 2008, up from 28,895 in 2007. Reactions ranged from skin irritations to vomiting to seizures to, in about 600 cases, death of an animal.

World News

Argentina Court Blocks Glyphosate Spraying Near Rural Town

By Shane Romig

Dow Jones Newswires

Sunday, Mar 21, 2010

BUENOS AIRES -(Dow Jones)- In a ruling bearing potentially far-reaching implications, an appellate court in Argentina's Santa Fe province this week upheld a decision blocking farmers from spraying agrochemicals near populated areas.

The ruling blocks the use of chemicals such as the widely used herbicide glyphosate within 800 meters of the town of San Jorge, and aerial spraying within 1,500 meters of the town.

While the decision is limited to the area around San Jorge, other courts in the farming province are likely to follow suit if residents seek similar court action.

The court found that farmers "have been indiscriminately using agrochemicals such as glyphosate, applied in open violation of existing laws [causing] severe damage to the environment and to the health and quality of life of the residents."

A backlash is building in the country against the increasing reliance on transgenic soybeans and the herbicide widely used in their cultivation. Soybeans dominate the country's farm output, but growing concern over the environmental impact of soybean-cultivation practices has spurred a legal and legislative assault.

Last year, the Argentine Association of Environmental Lawyers filed a case at the Supreme Court to halt the use of glyphosate, which virtually all of the soybeans grown in Argentina have been genetically modified to resist. Up to 200 million liters of the herbicide are sprayed across the farm belt each season. The court has yet to decide on whether to hear the case.

Genetically modified soybeans resistant to glyphosate were introduced to Argentina in 1996 by St. Louis-based biotech giant Monsanto Co. Now, with over half of all cultivated land going to soy in the last season, virtually all of the soybeans grown in Argentina uses Monsanto's technology. Monsanto didn't return a call seeking comment.

The spread of the transgenic beans has led to an unprecedented boom in farm wealth but also brought a host of ills, including soil deterioration and wide- scale deforestation to open up new fields.

While environmentalists have long decried the shift to soy monoculture, opposition heated up last year when an unpublished study conducted by the University of Buenos Aires Institute of Cellular Biology and Neuroscience Molecular Embryology Lab found that very low doses of glyphosate caused mutations in amphibian embryos.

While glyphosate has been used for 30 years and is approved in more than 100 countries, the defense minister prohibited growing transgenic soybeans on army farms with residential compounds, in the wake of the report. In addition, a number of local districts have banned or limited the use of glyphosate around populated areas, and some provinces also are debating legislation to prohibit or limit its use.

Argentina is the world's leading exporter of soymeal and oil and the third- largest exporter of soybeans. The legume is the country's largest export product and a key source of export-tax revenue.

Despite criticism of the excessive reliance on soybeans from President Cristina Fernandez, the government has encouraged the continued shift toward soy by imposing export limits and price controls on other goods such as wheat, corn and beef to keep local food prices down. With virtually no domestic demand for soybeans, their pricing and exports have been left untouched, prompting farmers to plant more beans.

[Dow Jones Newswire](#)

Documentary aims to reduce use of pesticides in Maine

Cindy Williams, Anchor/Reporter ■ Date last updated: 3/26/2010 8:15:40 PM

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PORTLAND, Maine (NEWS CENTER) -- Four communities in Maine have restricted the use of lawn pesticides on town-owned property. A documentary called "A Chemical Reaction" encourages other communities to do the same.

For Castine and Brunswick, the concern was protecting the water supply. In Camden and Rockport, citizens concerned about children rolling on treated grass, brought the issue to town leaders. Parks Director Jeff Kuller says the playing fields, parks and schools have a few more dandelions, and spend a little more on organic lawn products, but he feels good about what the town is doing.

Paul Tukey of safelawns.org and Brett Plymale have produced a documentary on the first town in North America to ban pesticides. Hudson, Quebec banned them outright, and fought their right to do so all the way

to Canada's Supreme Court. The documentary follows that fight and question why the U.S. is not doing more.

"A Chemical Reaction" will be shown at:

South Portland, SMCC, Jewett Auditorium, March 31
Yarmouth High School, Performing Arts Center, April 1

All showtimes are 7 p.m. and will include a Q&A session after the film.

Click the video and attached links for more information, including the state's website that encourages homeowners to reduce pesticide use and offers environmentally-friendly alternatives.



U.S. Department of Agriculture

Office of Inspector General



Oversight of the National Organic Program

**Audit Report 01601-03-Hy
March 2010**

Oversight of the National Organic Program

Executive Summary

Results in Brief

We conducted this audit to assess the effectiveness of the Agricultural Marketing Service's (AMS) corrective actions implemented in response to our prior audit¹ of the National Organic Program (NOP). We also conducted this audit because of the size and growth of the organic industry as well as the public's increased interest in purchasing organic products. In 2008, the organic industry had sales of \$24.6 billion and had grown between 14 and 21 percent annually over the past decade. The NOP, created in October 2002, has the responsibility to assure consumers that organic products meet uniform standards and that they are appropriately labeled. NOP regulations require that agricultural products labeled as organic originate from farms or handling operations certified by a State or private entity that has been accredited by the U.S. Department of Agriculture (USDA).

In our prior audit, we reported that AMS had not (1) established protocols for working with the National Organic Standards Board² (Board) or resolving conflicts with them, or (2) fully developed internal operating procedures, particularly for resolving complaints and investigations and for providing guidance to certifying agents and their organic operators to ensure consistency in implementing program requirements. We found that AMS officials made improvements to the program since our prior audit, and implemented corrective actions for 8 of the 10 recommendations issued in our prior audit report (see Exhibit A). Members of the Board stated that AMS' implementation of the protocol for resolving conflicts with the Board had improved the relationship between the Board and AMS. In addition, during our audit, NOP officials completed restructuring their complaint handling process and established procedures for receiving, tracking, and processing complaints. These officials stated they secured additional funding which, in part, enabled them to implement the structural and operational changes to improve the program.

However, we believe that NOP officials need to further improve program administration and strengthen their management controls to ensure more effective enforcement of program requirements when serious violations, including operations that market product as organic while under suspension, are found. In addition, they need to strengthen their oversight of certifying agents and organic operations to ensure that organic products are consistently and uniformly meeting NOP standards.

We found that NOP officials need to improve their enforcement of program regulations and their resolution of complaints, as noted in our prior report. NOP officials did not have adequate procedures or a system for tracking the receipt, review, and disposition of complaints and any subsequent enforcement actions. We identified the following:

¹ Report 01001-02-Hy, *Agricultural Marketing Service's National Organic Program*, dated July 2005.

² The Board assists in developing standards for substances to be used in organic production, and advises the Secretary on any other aspects of the implementation of the NOP laws and regulations.

- Between January 2006 and February 2008, AMS' Compliance and Analysis Program provided the results of its investigations of five certified organic operations to NOP. Although AMS recommended that NOP officials take enforcement actions against these operations, we found that NOP did not respond to these in a timely or effective manner. In addition, in those cases where enforcement actions were issued, NOP did not monitor the organic operations to ensure compliance with those actions. As a result, NOP never issued the recommended enforcement action against one of the five organic operations, one that improperly marketed nonorganic mint under USDA's organic label for 2 years; in the other four cases, the enforcement actions took between 7 and 32 months to issue. During this time the operations continued to improperly market their products as certified organic. One of these four, even after signing a compliance agreement³ that it would not apply for and receive organic certification for a period of 5 years, continued to market its product as organic without AMS' knowledge.
- NOP officials did not resolve 19 of 41 program complaints⁴ within a reasonable timeframe for cases opened since 2004. These 19 complaints went unresolved for an average of about 3 years. In January 2009 we brought this condition to the attention of management officials. They stated they were unaware of the status of the unresolved complaints. At this time they began to take action on the unresolved complaints. As of June 2009, we found that NOP had resolved 13 of the 19 complaints.

We also noted that NOP officials need to address ongoing issues with California's State Organic Program (SOP). The Act allows any State to apply to the Secretary to implement a program for regulating organic products produced and handled within that State. The State must have compliance, mediation, and appeal procedures that meet NOP regulations to become an SOP. When officials of the California Department of Food and Agriculture applied to have an approved SOP, they did not have the required compliance and enforcement procedures in place. NOP officials approved California's program because they wanted to allow California the opportunity to operate and develop procedures as they progressed. California has the most organic acreage in the country, with over 2,000 certified organic operations and organic product sales of over \$1.8 billion in 2007. Although NOP officials believed that the State would address these issues following its initial approval, they discovered in a 2005 review that the California SOP continued to lack these required procedures. NOP officials have continued to work with California officials to comply with program requirements; however, as of November 2009, the procedures have yet to be finalized. As a result, the California SOP is not equipped to properly enforce the requirements of the NOP.

Although the Organic Foods Production Act⁵ of 1990 requires certifying agents to conduct periodic residue testing⁶ of organic products, we found that NOP officials did not incorporate these provisions into NOP regulations. None of the four certifying agents we visited conducted periodic residue testing of the approximately 5,000 certified operations for which they were responsible, and there is no assurance that certifying agents performed regular periodic testing at any of the approximately 28,000 certified organic operations worldwide. Without such testing,

³ A compliance agreement is an enforcement action accepted by all parties that brings an operation into compliance with NOP regulations.

⁴ NOP-related complaints can result in enforcement actions against certifying agents and/or organic operations.

⁵ Section 2107(a) (6).

⁶ This testing determines whether agricultural products contain any residues of pesticides, or of nonorganic or natural toxicants.

the potential exists that an operation's products may contain substances that are prohibited for use in organic products.

The former NOP director⁷ stated that the decision not to require regular residue testing was based on officials' concerns about the cost of testing, and their position that the NOP regulations are process-based rather than a zero tolerance standard. The former director also stated that certifying agents did not want to pay for the cost of residue testing and that residue testing raises complex issues that must be addressed on an operation-by-operation basis. The former director also stated that the Office of the General Counsel (OGC) cleared the regulations before issuance. We discussed this issue with an OGC official who agreed that a legal review was performed before the regulations were issued. However, OGC could not provide a written opinion. We believe that AMS officials should seek a written legal opinion from OGC on whether the agency needs to require its certifying agents to perform periodic residue testing of all certified organic operations.

We found that NOP officials did not assemble a peer review panel to annually evaluate their accreditation procedures. NOP regulations require the AMS Administrator to establish a peer review panel pursuant to the Federal Advisory Committee Act⁸ (FACA) to complete this evaluation. NOP officials attributed this inaction to budget constraints and the difficulties in forming a panel each year. NOP officials did not request a waiver from the Administrator or additional funding to form a panel.

Our review of 4 certifying agents and 20 organic operations found that NOP officials need to more effectively improve their oversight of program operations. We found that NOP reviewers did not make required onsite assessments and did not identify inconsistencies in the implementation of the NOP regulations, reducing assurance that products labeled as organic are meeting a uniform standard. We noted that:

- NOP officials did not ensure consistent oversight of organic operations by certifying agents. For example, the four certifying agents we visited had different criteria for determining whether noncompliances were major or minor and not all had them clearly defined. One of the certifying agents we visited developed outdoor access dimension requirements for poultry based on organic industry standards while the other three did not. We also found that three certifying agents did not ensure that six split operations⁹ adequately described procedures to prevent the commingling of organic products with nonorganic substances. These inconsistencies occurred because the review guide that AMS used to evaluate certifying agents' compliance with the NOP regulations was not sufficiently focused to identify the types of problems we noted. In addition, NOP staff did not summarize the problems that they did find to identify trends or notify upper management of actions needed to correct the problems. Finally, NOP did not always provide adequate guidance to certifying agents, and at times the certifying agents were not aware of guidance that was issued. All of these factors reduce NOP's assurance that products labeled as organic meet a uniform standard.

⁷ On October 1, 2009, AMS appointed a new Deputy Administrator to lead NOP.

⁸ FACA requires that a panel be established through a formal process, including filing a charter prior to convening.

⁹ Split operations produce or handle both organic and nonorganic products.

- We found that NOP did not timely complete onsite reviews¹⁰ involving 5 of the 44 foreign certifying agents. This occurred because NOP did not establish specific timeframes for performing onsite reviews. In addition, they did not have a policy describing how to handle agents located in countries where travel may be hazardous. As a result, NOP cannot assure that the nearly 1,500 operations certified by these 5 agents are in compliance with NOP regulations.

Recommendation Summary

We are issuing 14 recommendations to NOP officials to improve program administration and internal controls. We recommend that NOP strengthen its enforcement procedures to determine what actions should be imposed on program violators, including civil penalties, and to timely issue the appropriate actions. We also recommend that officials timely resolve and track complaints from receipt through disposition. In addition, we recommend that NOP implement a plan for achieving compliance from California's SOP, obtain an OGC opinion on residue testing, and establish a mechanism for conducting annual evaluations of its accreditation process as required. Finally, we recommend that oversight of certifying agents and operations be strengthened to ensure that all onsite reviews of foreign certifying agents are performed, internal reviews are conducted more effectively, and guidance is provided as necessary to improve overall program operations.

Agency Response

AMS agreed with the report's 14 recommendations. We have incorporated AMS' response in the Findings and Recommendations section of the report, along with OIG's position. AMS' response to the report is incorporated as Exhibit B.

OIG Position

Based on AMS' responses, we have reached management decisions on each of the report's 14 recommendations.

¹⁰ NOP relies upon AMS' Audit, Review, and Compliance (ARC) division to conduct the onsite reviews of accredited certifying agents. Following completion of its review, ARC submits a report to NOP, which then issues the AMS Administrator's accreditation decisions.

Finding 4: AMS Needs to Determine Whether NOP Regulations Should Require Periodic Residue Testing

Although the Organic Foods Production Act of 1990 (Act) requires certifying agents to conduct periodic residue testing of organic products,²⁸ we found that NOP did not incorporate these provisions into its regulations. The former NOP director stated that the decision not to require regular residue testing was based on officials' concerns about the cost of testing, and on their position that the NOP regulations are process-based rather than a zero tolerance standard. The former director also stated that certifying agents did not want to pay for the cost of residue testing and that residue testing raises complex issues that must be addressed on an operation-by-operation basis. None of the four certifying agents we visited conducted periodic residue testing of the approximately 5,000 certified operations for which they were responsible, and there was no assurance that certifying agents performed regular periodic testing at any of the approximately 28,000 certified organic operations worldwide. Without such testing, the potential exists that an operation's products may contain substances that are prohibited for use in organic products.

The Act contains several requirements for residue testing of agricultural products to be performed by NOP officials and certifying agents. For example, section 2107 requires that each certifying agent perform periodic residue testing for pesticides or other nonorganic toxic substances in products produced or handled by their certified operations. In addition, these agents are required to report residue testing violations related to food safety to the appropriate health officials. Section 2112 sets forth residue testing provisions to assist certifying agents, as well as NOP, in the enforcement of the Act. If any of these officials suspect that an operation is harboring contaminants in the soil or crops, this section provides them with the authority to perform residue testing, conduct investigations to determine if the operation has any liability and prohibit the use of the organic label.

Although NOP regulations²⁹ do implement the provisions of section 2112, which require residue testing when the certifying agent has reason to suspect a problem, they do not fully implement the requirement of section 2107 requiring certifying agents to perform periodic residue testing of products from organic operations. Instead, the regulations state only that the AMS Administrator or certifying agents may require residue testing of agricultural materials³⁰ or products for

²⁸ Section 2107(a)(6).

²⁹ Title 7 C.F.R. §205.670, January 1, 2009.

³⁰ For purposes in this report, "materials" refers to anything used in the production or handling of organic agricultural products, including substances appearing on the National List.

prohibited substances. We question whether the regulatory text is consistent with the wording of the Act.

According to the former NOP director, it was the consensus of all participants in the process -including NOP officials, certifying agents, representatives of the organic industry, and OGC -not to incorporate periodic residue testing in the regulations. The former director stated that one concern raised by the certifying agents involved the costs of testing that they would incur. The former director also stated that the NOP is not a “zero tolerance program,” and stated that since trace residues may be present in the ground due to past agricultural practices, residue testing raises complex issues that must be addressed on an operation-by-operation basis. However, the Act is clear in its requirement for periodic residue testing. In addition, the preamble³¹ to the NOP regulations explains that residue testing is part of the cost of doing business and that certifying agents should make provisions in their certification fees for this cost.

OIG’s Office of Counsel reviewed both the Act and the NOP regulations, and expressed the opinion that the current regulations are not in compliance with the requirements of the Act. The former NOP director stated that OGC had cleared the regulations before they were finalized in 2002 and determined that they fully implemented section 2107 of the Act. NOP was unable to provide any written evidence that OGC had specifically reviewed this particular provision and concurred with its interpretation of the Act’s wording. In a meeting on October 22, 2009, an OGC official stated that, at the time the regulations were finalized, OGC did in fact state that the wording of the regulations complied with the Act. However, neither OGC nor NOP officials could provide a written legal opinion explaining the legal justification for this conclusion.

In our visits to four certifying agents as part of our audit, we confirmed that none of them were conducting regular periodic residue testing of the more than 5,000 certified organic operations for which they were responsible. Each of the certifying agents stated that this was not required by agency regulations. These agents explained that their residue testing was based on other factors, such as complaints. We have no information on residue testing that may be performed by other certifying agents worldwide on approximately 28,000 organic operations for which they are responsible. However, without a clear regulatory requirement or agency policy to require this, there is no assurance that any of the certified organic products being marketed worldwide are being tested on a periodic basis as called for in the Act.

Currently, residue testing of organic products is generally limited to instances where certifying agents have specific cause to suspect product contamination. Without the periodic testing that OIG believes is required by the Act, the potential exists that prohibited substances could appear in organic products.

OIG concurs that OGC has the final authority to make legal interpretations in matters involving USDA programs. However, given the apparent discrepancies between the Act and the NOP regulations, we believe that AMS officials should seek a written legal opinion from OGC on whether the agency needs to require its certifying agents to perform periodic residue testing of all certified organic operations.

³¹ Residue Testing Preamble.

Recommendation 8

Obtain a written legal opinion from OGC on whether NOP regulations, as currently written, comply with the requirement of the Act for periodic residue testing of organic operations by certifying agents. If OGC determines that the regulations are not in compliance, develop a time-phased plan to amend the regulations and implement the required testing provisions.

Agency Response

AMS officials concurred with this recommendation. Residue testing is an important tool to monitor compliance with the NOP regulations. NOP is planning to implement periodic residue testing of agricultural products by accredited certifying agents by September 2010. NOP has requested a written legal opinion from OGC on whether the current NOP regulations comply with the pesticide residue testing requirements within the Act. If OGC determines that the regulations are not consistent with the Act, NOP will develop a plan to amend the regulations. NOP plans to receive a written legal opinion by March 2010 and, if necessary, initiate rule making in December 2010.

OIG Position

We accept AMS' management decision.