

STATE OF MAINE  
BOARD OF PESTICIDES CONTROL

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IN RE: Public Hearing on Proposed Amendments to  
Chapters 24, 28 and 41  
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Taken before Debra J. Fusco, a Notary Public in and  
for the State of Maine, at the Colby Thomas Room,  
Hampton Inn, 425 Kennedy Memorial Drive, Waterville,  
Maine, on January 23, 2009, beginning at 9:30 a.m.,  
pursuant to notice given.

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1 of the room so you don't get what I have. It's an  
2 occupational hazard from what I do.  
3 Please sign up if you haven't already if you  
4 wish to speak.  
5 MR. JENNINGS: The only other things that I  
6 would try to point out is that anyone who doesn't care  
7 to speak or has other information that they want to  
8 submit for the Board's consideration, you can do that by  
9 submitting comments in writing. The deadline is  
10 February 6th until the close of business at 5 p.m.  
11 And the other thing is that traditionally we  
12 have been rotating between the different for, against or  
13 neither for nor against lists and we try to lim it people  
14 to five minutes for oral testimony so --  
15 DR. ECKERT: I guess Wes is the runner.  
16 MR. SMITH: No one has signed up for Chapter  
17 24.  
18 DR. ECKERT: So Chapter 24, no one has  
19 signed up. This has to do with our adopting the federal  
20 pesticides management and disposal rule as our own. So  
21 I guess we have opened and closed that hearing. Okay,  
22 that was quick.  
23 Okay, Chapter 28. This, as you recall, has  
24 mostly to do with changing the notification section from  
25 requiring the farmer to do all of the initial outreach  
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3 DR. ECKERT: Why don't we introduce  
4 ourselves.  
5 MR. JENNINGS: Henry Jennings with the  
6 staff.  
7 MR. FISH: Gary Fish with the staff.  
8 MR. SIMONDS: Dan Simonds, Board member.  
9 DR. ECKERT: Carol Eckert, Board member.  
10 MR. RAVIS: Chuck Ravis, Board member.  
11 MR. STEVENSON: Richard Stevenson, Board  
12 member.  
13 MR. QUALEY: Tom Qualey, Board member.  
14 MR. CONNORS: Ray Connors, staff.  
15 MR. SCHLEIN: Paul Schlein, staff.  
16 MR. SMITH: Wesley Smith, staff.  
17 DR. ECKERT: We're going to have a public  
18 hearing first which will involve some changes in Chapter  
19 24 pesticide storage. Modifications that were brought  
20 up last time about the aerial spray notification rules,  
21 Chapter 28. And then a change in Chapter 41 about  
22 mostly dealing with buffers with respect to Bt corn.  
23 As can you hear, I don't have a lot of voice  
24 and I occasionally start hacking like crazy. So if I  
25 do, I will get up and look at John or Dan and walk out  
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1 to having a registry which the Board will maintain and  
2 then that information will be shared so that the farmer,  
3 manager can then do the outreach for both general and  
4 specific notification about aerial spray.  
5 Okay, so there is one for and one neither  
6 for nor against. I will take Peter first, he's the for,  
7 Peter Aldrich.  
8 MR. ALDRICH: Good morning. My name is  
9 Peter Aldrich from Jonesboro. Despite the accent, I'm a  
10 blueberry farmer for the organic persuasion.  
11 I want to speak in support of the registry  
12 system. It would be odd if I didn't since I was one of  
13 those who suggested it in previous comments.  
14 Really all I wanted to do is make some  
15 comment about the specific language and to suggest that  
16 the language is unnecessarily restrictive of where this  
17 should go and I would certainly like to see it go.  
18 I think the language is written around the  
19 basis of a registry in a filing cabinet. And what I  
20 have in my mind of a registry is a dynamic piece of  
21 database administered through a web interface.  
22 So, for example, I see no reason why the  
23 rule should say that registration has to occur by a  
24 particular date. In my concept of the world, people  
25 could be free to register at any time, and that  
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1 registration becomes effective immediately. And  
 2 whenever the user of the information draws that  
 3 information off, if it's there, it's there.  
 4 Equally, it says somewhere here that the  
 5 person putting their name on the registry shall provide  
 6 a telephone number to be used for notification purposes.  
 7 I would much rather have an e-mail, and I don't wish to  
 8 publish my telephone. I don't think the rule should  
 9 state that. I think the rule should be more flexible.  
 10 When an applicator accesses the information,  
 11 it's my belief that the information should only be  
 12 accessible to licensed applicators to provide some level  
 13 of privacy protection.  
 14 Again, what I would like to see from an  
 15 applicator's standpoint is that I can look on a web  
 16 interface, I can see who or what or which entries there  
 17 are that refer to the area that I'm going to spray. I  
 18 would like to be able to check those boxes, press a  
 19 button that says send notification, fill in the  
 20 information and lo and behold, it's done.  
 21 So all I'm saying really is don't write  
 22 rules that restrict where you might want to be able to  
 23 take this in the future. That's the comment.  
 24 MR. SIMONDS: Thank you. I'm just trying to  
 25 think. I appreciate your comment about mechanics, and I  
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1 would tend to agree it should be an open format to use  
 2 different mechanics. I'm puzzling over the -- there is  
 3 some tension between protecting the privacy of the  
 4 person wishing information and making it reasonable for  
 5 the burdened farmer to reach that person to give the  
 6 information. So, just to be clear, you're suggesting  
 7 that a telephone number is -- in cases over -- you're  
 8 suggesting a telephone number or other means of --  
 9 MR. ALDRICH: Yes. And if I was designing  
 10 the system anyway, I would say that somebody who wants  
 11 to consult it needs to be a registered applicator and  
 12 put in their license number which means it's not  
 13 generally available to casual public observation, that's  
 14 all.  
 15 MR. STEVENSON: Just to comment, I like a  
 16 couple of your comments. One would be I guess the  
 17 logistics of it, the system would have to -- I have seen  
 18 websites before where -- like the National Pest  
 19 Management Association, a member can log into certain  
 20 areas of the website that -- lots of it is public and  
 21 some of it is private information. So I suppose that's  
 22 probably a question for the webmaster, if it's able to  
 23 be done like that or not.  
 24 MR. SCHLEIN: There may be some issues with  
 25 the state access to do things like that, I'm not sure.  
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1 MR. STEVENSON: On the one hand it's a good  
 2 idea, but if the logistics don't pan out --  
 3 MR. ALDRICH: All I'm saying today is it  
 4 would be unfortunate to write a rule that would prevent  
 5 you from doing something like that.  
 6 DR. ECKERT: I guess when I was reading  
 7 through this, it seemed like we were patterning it on  
 8 the previous registry. The reason for the date was we  
 9 would gather up all of the information by a certain date  
 10 and publish it -- in this case -- on the website. But  
 11 is there any reason it needs to be like that for  
 12 enforcement reasons?  
 13 MR. JENNINGS: I think it's a legitimate  
 14 comment but the tension, as Dan would describe it, is  
 15 how often does the applicator have to check this? So  
 16 that's really what it's about.  
 17 MR. SIMONDS: It's a comment we can  
 18 certainly take into consideration. I think it's a valid  
 19 observation that we should be thinking about.  
 20 Thank you.  
 21 DR. ECKERT: Thank you.  
 22 MR. ALDRICH: Thank you.  
 23 DR. ECKERT: So the next person signed up is  
 24 Heather Spalding.  
 25 MS. SPALDING: Good morning, everybody, Dr.  
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1 Eckert and members of the Board. My name is Heather  
 2 Spalding, and I'm the associate director at MOFGA.  
 3 I have a couple of things I wanted to  
 4 present to you. One is our latest poster for the Common  
 5 Ground Country Fair. It's done by John Bunker who is  
 6 the chair of Fedco Trees, and it depicts an apple from  
 7 every county in Maine, an heirloom apple variety. We're  
 8 very excited about this, and we thought the Board might  
 9 like to have this displayed in the office.  
 10 MR. JENNINGS: Thank you.  
 11 MS. SPALDING: The other thing I would like  
 12 to mention, and Henry and I have spoken about this. We  
 13 have a quarterly publication, the Maine Organic Farmer  
 14 and Gardener, and this is the winter issue. The Board  
 15 office gets a copy, and I thought it might be nice for  
 16 each of the members of the Board to get a copy but I  
 17 don't want to overwhelm you with information if you're  
 18 not really interested. So I brought copies today. If  
 19 you would like one, that's great. If you would like to  
 20 receive them regularly, we're more than happy to put you  
 21 on our mailing list and there is a signup sheet for  
 22 that.  
 23 Now, my testimony, I wanted to go back to  
 24 the hearing in November. At that point, we were willing  
 25 to go along, and, in fact, we were enthusiastic about  
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1 the proposed language regarding notification. We felt  
2 that it really assigned an important and reasonable  
3 responsibility to persons contracting for pesticide  
4 applications.

5 While we felt that the proposed language was  
6 complex and somewhat confusing, we appreciated that the  
7 people who were setting the pesticide spraying in motion  
8 would be the first letting people know, letting the  
9 neighbors know about what they may be exposed to. And  
10 we really felt that, you know, many, many months of work  
11 went into the establishment of that language and we were  
12 dismayed to kind of witness the dismissal of that  
13 responsibility for the people who were doing the  
14 spraying.

15 So we feel that the latest proposed language  
16 is inadequate. And we really hope that we can get back  
17 to the original mission of addressing the conflict  
18 around pesticide drift. And we feel that a big step  
19 forward to doing that would be requiring the people's,  
20 as I said, setting the ball in motion to notify  
21 everybody within a certain distance who may be exposed  
22 to the drift.

23 We do have a recommendation, a couple. And  
24 we really feel that simplicity and comprehensiveness are  
25 the two important factors.

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1 substances that can cause cancer or that can harm  
2 reproduction or hormones. They would prohibit or  
3 severely restrict the use of pesticides near schools,  
4 parks or hospitals and they would ban aerial spraying  
5 entirely.

6 As I have mentioned in prior testimonies,  
7 California's commissioner of agriculture in Tolari  
8 (phonetic) County has ruled against spraying restricted  
9 use pesticides within a quarter mile of schools and  
10 other areas likely to be occupied.

11 Last year, Maine's legislature unanimously  
12 supported innovative and bold legislation to protect  
13 citizens from harmful chemicals found in everyday  
14 consumer products. And Maine is really seen as a leader  
15 in its ability to establish these policies that will  
16 protect public health and environmental health. And we  
17 feel Maine has another opportunity to be a leader in  
18 protecting public health. And that opportunity is the  
19 establishment of a mandatory notification system for all  
20 powered outdoor pesticide applications.

21 Your motto is think first, spray last; and  
22 we recommend amending that to think first, notify next,  
23 spray last.

24 Thank you for your time and consideration.

25 MR. SIMONDS: Heather, we -- thank you. I  
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1 The system that we would like to see should  
2 require land managers intending to conduct powered  
3 outdoor pesticide applications to provide initial  
4 notification to occupants, farmers and owners of  
5 properties that abut or lay within 1,320 or a quarter  
6 mile of the intended spray area. And we feel that the  
7 system should apply to all powered outdoor applications,  
8 not just be limited to aerial spraying.

9 I know that there was a discussion about  
10 trying to focus on aerial spraying because that was  
11 really where many of the concerns and the conflict were  
12 coming from, but we know that drift happens with other  
13 methods of powered pesticide application too so we feel  
14 it needs to be more comprehensive.

15 We do support the establishment of an opting  
16 registry for folks who wish to receive more detailed  
17 information about powered outdoor pesticide application,  
18 and we feel that that should apply to anybody within a  
19 quarter mile of the intended spray area whether it is  
20 using aerial spraying or ground spraying.

21 We do feel that these are reasonable and  
22 practical proposals and they're not without precedence.

23 You may know that the European Parliament  
24 recently voted for some very strict regulations on  
25 pesticide spraying just last week. The laws would ban  
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1 share some of your feelings about the initial language  
2 we had. We struggled with it and we're not satisfied  
3 with it and that's, in part, how we have gotten to where  
4 we are today.

5 Given that we might differ as to the ideal  
6 mechanics of how to get to where we want to go, I wonder  
7 if you would agree that if we developed a mechanics that  
8 worked in such a way that anyone who had interest in  
9 pesticide application in their vicinity had ready access  
10 to the information about that, would you agree that we  
11 would have gotten to where we want to be? Is that what  
12 we're trying to do here? I'm puzzling over the  
13 assignment of responsibility issue. How important is  
14 that to you? Or is it more important to you and MOFGA  
15 that whatever is responsible, that the act gets done?  
16 Meaning the information is past, that the transparency  
17 has been attended to. Do you understand my question?

18 MS. SPALDING: Yes, and I think that's at  
19 the crux of this discussion. We are happy, we do feel  
20 that even this language is a step forward from where we  
21 are now, but our concern is that we feel the  
22 responsibility for notifying people initially needs to  
23 be on the people who are spraying.

24 One of the concerns is that, you know,  
25 you're only -- you can only exercise your right to know  
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1 if you know you have that right. I also am concerned  
 2 that there are a number of people who may feel  
 3 intimidated or concerned about -- and not necessarily  
 4 understanding the steps that they need to take to inform  
 5 themselves, who they need to go and talk to, how much of  
 6 an effort is that going to be, how much digging are they  
 7 going to have to do. So we -- I guess the answer to  
 8 your question is I don't think that we would have  
 9 fulfilled our collective duty to try to establish an  
 10 effective notification system unless there is a  
 11 responsibility on the person who is going to do the  
 12 spraying to notify everybody within a certain area,  
 13 within a certain distance of their intended spray area  
 14 first.

15 I do feel that the opting registry is great.  
 16 MOFGA, I think in our testimony in November, we  
 17 recommended that and allowing that to make it available  
 18 to people who are concerned about agricultural spraying.  
 19 So I think that that's great, but I feel like the use  
 20 for that really makes sense building upon the initial  
 21 notification. So if people are notified in person, then  
 22 that's a big first step and that's the initial  
 23 requirement. If those people then want to go and get,  
 24 you know, additional specific information about the  
 25 kinds of chemicals being sprayed, the frequency and the  
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1 everybody within a certain distance --  
 2 MR. RAVIS: I don't know. Through a local  
 3 newspaper or something like that? I'm just thinking out  
 4 loud here. Would that kind of alleviate your concern  
 5 that people might not know they have the right to  
 6 receive this information?

7 MS. SPALDING: I think that's an important  
 8 part of it, I think that should happen regardless. But,  
 9 again, that doesn't ensure that each person in an area  
 10 has been notified. I think those are good faith efforts  
 11 and an important part of the process, but I think  
 12 ensuring that the message has been relayed to people who  
 13 are in an area where drift may occur is what we're  
 14 after.

15 MR. RAVIS: Okay.

16 DR. ECKERT: Other questions?

17 MS. SPALDING: Thank you.

18 DR. ECKERT: The other person on the list is  
 19 Dave Bell.

20 MR. BELL: Good morning, I'm Dave Bell with  
 21 the Wild Blueberry Commission.

22 I couldn't figure out whether I should  
 23 testify in favor, against or somewhere in between. I'm  
 24 testifying in neither for nor against as drafted. But  
 25 just to be clear, we've actively supported notification  
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1 method of application, then they can go and sign up for  
 2 the registry. I feel like that's a logical sequence of  
 3 events.

4 MR. SIMONDS: Thank you.

5 MR. RAVIS: Heather, I kind of have the same  
 6 question here. I wrote down a note while you were  
 7 talking that the present language, in my understanding,  
 8 assures those wanting to receive notification that they  
 9 will, and why do you perceive that that is inadequate?  
 10 And I guess you kind of answered that in your response  
 11 to Dan.

12 MS. SPALDING: Yeah.

13 MR. RAVIS: So kind of following up on that,  
 14 I'm just throwing things up in the air here, but would  
 15 some kind of public notification that people had this  
 16 right, would that work, short of the landowner or farmer  
 17 go through tax records and try to determine distances  
 18 and et cetera? Would some kind of a blanket  
 19 notification that people have the right to request this  
 20 information or sign up for a registry? And assuming  
 21 they meet the distance requirements, et cetera, would  
 22 that work or not?

23 MS. SPALDING: Well, I guess a little more  
 24 specificity about the blanket notification, how that  
 25 would actually happen and how would you ensure that  
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1 through the growers for over 25 years. And in our  
 2 written testimony in the last iteration, we did support  
 3 the concept of a registry and we still do. We just  
 4 don't support the registry as it's currently drafted or  
 5 written.

6 The -- how do we get to the place of the  
 7 registry idea? There has been a group of growers who  
 8 have been meeting over the course of the year, the past  
 9 year, reviewing and talking about the things that the  
 10 Board has been talking about. And, of course, one of  
 11 them was the whole notification piece. At one of those  
 12 meetings, I can't remember which one, but probably some  
 13 point in the fall, some of the growers mentioned that  
 14 they have been consulting your current registry even  
 15 though that is not required for agricultural  
 16 applications. And the idea came up, well, maybe you  
 17 should look towards the registry, but then I guess it  
 18 was felt maybe that was a little too of a radical idea  
 19 knowing what had been discussed at the Board. And then  
 20 when MOFGA mentioned the idea at the registry during the  
 21 oral part of the last hearing, we said, okay, maybe it's  
 22 not so radical after all and that's why we put it in our  
 23 written comments.

24 We do have some concerns about the way it's  
 25 currently constricted. First, as we put in our written  
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1 comments, we believe that if you go the registry route,  
 2 there should be one notification registry for all  
 3 outdoor applications. And one of our big concerns is,  
 4 one of our themes over the last year, of course, has  
 5 been simple notification. We need to work to make the  
 6 rules simple and not at multiple places where growers  
 7 have to go to figure out what they're supposed to do.  
 8 The simpler it is, the better compliance you will have.  
 9 There should only be, again, on the  
 10 simplification theme, only one method. Currently the  
 11 way you have constructed this rule, it's our  
 12 understanding that the registry idea is overlaid over  
 13 the current agricultural notification. So if you go the  
 14 registry route, we would like to see it to be the one  
 15 method.  
 16 Now that being said, we still, as we have  
 17 for many, many years, mentor our farmers to pursue other  
 18 forms of communication with their neighbors, especially  
 19 in the off season when they have more time to do it in a  
 20 more relaxed way versus the time pressure of the  
 21 application season.  
 22 We also have a few details that we feel are  
 23 important that we would like you to consider while  
 24 you're looking at the notification. Considering that  
 25 people move around and in some places the populations  
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1 are more transient, there needs to be some sort of  
 2 mechanism where people on the list, on a rolling basis  
 3 or whatever, just so the list doesn't get real big and  
 4 be a frustration for the people that are using the list  
 5 in that there are people on the list they're trying to  
 6 contact and they're no longer there. And whatever  
 7 mechanism you choose, we're sensitive to staff time and  
 8 that whole thing that, it should be a mechanism that's  
 9 not burdensome on the Board's staff.  
 10 We also suggest that any registry should  
 11 have a few notification categories such as aerial  
 12 application, agricultural ground, horticultural  
 13 landscape and all. There may be situations where people  
 14 are interested in only aerial, for example. Or maybe  
 15 they want to know about all applications. It could be,  
 16 you know, just three or four boxes that they check off.  
 17 Then there should also be some sort of  
 18 mechanism to prevent abuse of the registry. Around the  
 19 country there are certain advocacy organizations, and we  
 20 don't have concerns, frankly of -- we're not aware of  
 21 groups in Maine anyways that we are of concern. So we  
 22 would -- there should be some mechanism to prevent  
 23 abuse, obviously.  
 24 And the last, as has been recently  
 25 mentioned, we think e-mail addresses and e-mail form of  
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1 contact should also be an option.  
 2 We will also follow-up with written  
 3 comments.  
 4 Thank you.  
 5 DR. ECKERT: Thanks.  
 6 DR. JEMISON: It seems like on one hand you  
 7 want one method -- a simple thing -- and then within the  
 8 one simple thing, you want multiple levels. So I don't  
 9 quite follow that.  
 10 MR. BELL: Okay, sure.  
 11 DR. JEMISON: Would you like one within one  
 12 distance? So, you know, within whatever distance is  
 13 decided upon, whether it's 500 feet, 1,500 feet or  
 14 whatever, that it not be broken down to aerial and  
 15 powered? All powered equipment they could get  
 16 notification? That's one of my questions.  
 17 My second question is if -- I like the idea  
 18 of an e-mail approach, but if it's one day and that day  
 19 I can't get on the web or the system's down, we can't  
 20 get that information to somebody and then something gets  
 21 sprayed and they say, well, we tried but I couldn't get  
 22 on the internet. It's not 100 percent workable all the  
 23 time to me. I don't know, there are more than a few  
 24 days I try to get on at home and I can't. Maybe it's  
 25 Fairpoint, but I can't get on.  
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1 MR. BELL: As far as the simplicity goes,  
 2 not having two systems is our biggest thing. So if  
 3 you're going to go with the registry as the system,  
 4 let's make it that.  
 5 DR. ECKERT: I think what you're saying is  
 6 you don't want a generalized and a specific?  
 7 MR. BELL: Right now my understanding of the  
 8 rule is you're keeping the current system and you're  
 9 adding the registry do it.  
 10 DR. JEMISON: Okay.  
 11 MR. SIMONDS: So if someone approaches a  
 12 farmer and says I would like to know about the spraying  
 13 you're doing next door, in the model you're proposing,  
 14 the farmer's response would be, sure, you need to sign  
 15 up on the registration and then you will get the  
 16 information the law requires?  
 17 MR. BELL: The way we would approach it is  
 18 we would recommend -- and I think the vast majority of  
 19 the farmers if approached would say, sure, I will put  
 20 you on my list.  
 21 MR. SIMONDS: But the rule would not require  
 22 response unless the person is already on the registry,  
 23 is that what you're thinking?  
 24 MR. BELL: Correct. Now, one of the  
 25 concerns I think we've heard from staff over the last  
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1 year and a half is enforceability of the current  
 2 notification mechanism. So if a neighbor felt that  
 3 there was -- that grower was unreliable about making  
 4 notification, then, you know, they should definitely  
 5 sign up on the registry. And there may be situations  
 6 where there is a neighbor relationship -- and this  
 7 communication happens all the time -- where you don't  
 8 need a formal mechanism. But then that formal mechanism  
 9 is there. So we would still counsel our growers to  
 10 continue their notification, continue what you've been  
 11 doing, but the registry is the regulatory model, the  
 12 formal method of notification.

13 Related to simplicity, I think if there is  
 14 some sort of web base, whatever, sign-up system that,  
 15 again, if you had three or four categories as we  
 16 suggested, that it's pretty simple to either check them  
 17 all off -- check them all or one or two that you're  
 18 interested in. We hadn't really thought about the  
 19 distance piece but -- well, we had thought about it. We  
 20 don't have a specific recommendation to the Board, but  
 21 if you go that check-off route, if you feel, you know, a  
 22 thousand feet for -- you know, aerial -- is the right  
 23 number for notification and that 250 as you currently  
 24 have in your registry for urban, suburban,  
 25 horticultural, then you could easily have those  
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1 distances. Now, some of the simplicity is how you  
 2 construct the rule. If you have 250 over here, 500 over  
 3 here and a thousand over here, that's when it gets  
 4 difficult for the regulated community. But if you have  
 5 all of that in one place, aerial the distance is X,  
 6 powered ground the distance is Y and urban, suburban the  
 7 distance is Z, it's right there; three numbers right in  
 8 front of you.

9 Does that answer your question?

10 DR. JEMISON: Yes.

11 MR. STEVENSON: Just as a comment, I see  
 12 what you're saying. Because right now with ground  
 13 application and aerial application, people who want  
 14 information, the farmers have to keep two lists as it is  
 15 right now I take it. The people that are on the  
 16 registry, you will have to check that one, and then  
 17 another list that you check for folks who come to you  
 18 for the two different types of applications. So I guess  
 19 part of our conversation later could be -- it's getting  
 20 the same job done, it's just written differently. And  
 21 as one registry where folks could go -- would it work if  
 22 we put something in the rule to say if somebody does  
 23 seek you out, they don't know about the registry, that  
 24 even the farmer could have the papers right there?  
 25 There is no charge for this registry so the farmer could  
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1 actually sign the person up for the registry right then  
 2 over the phone. They come to you as the farmer, you can  
 3 say, yeah, can I get this information and here is how  
 4 the registry works, we'll send it in and then they'll be  
 5 part of that one database. Would that help? Is that  
 6 sort of what you're getting at?

7 MR. BELL: I guess we kind of envisioned  
 8 that the farmers, we would recommend that they keep  
 9 their current list and add to it, make their neighbors  
 10 aware if they have that discussion of the registry. But  
 11 then it would be the neighbor's choice on whether they  
 12 felt comfortable dealing with that grower without the  
 13 registry fees. If they felt better or if they want to,  
 14 you know, have, you know, more, you know -- other people  
 15 besides farmers that are close to them be aware that  
 16 they want to be notified, then the recommendation would  
 17 be they should be on the registry.

18 Dr. Jemison, your question on the e-mail, we  
 19 just viewed e-mail ought to be an option because some  
 20 people, as Peter mentioned earlier, some people do  
 21 prefer that form of notification.

22 DR. JEMISON: I clearly hear what Peter is  
 23 saying. I answer the phone a lot all day long and I  
 24 sure don't like to come home and answer it at night and  
 25 I generally don't to my wife's dismay. But I'm still  
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1 concerned if someone says, I sent you an e-mail last  
 2 night or yesterday afternoon at three and it's  
 3 four o'clock the next day and you're spraying and I just  
 4 wasn't able to check my e-mail and my laundry is out and  
 5 all of my stuff is out and you made a good faith effort  
 6 to contact that person --

7 MR. BELL: Well, there is responsibility on  
 8 both sides. If it's the summertime and you're on the  
 9 registry and if you signed up that you prefer e-mail,  
 10 well, then you have to check your e-mail. If you prefer  
 11 phone, well, that's fine. It drives me crazy. We go on  
 12 vacation, my wife, the first thing she does when she  
 13 comes home is checks the stupid e-mail. I could give a  
 14 hoot about the e-mail. I much rather get a phone call  
 15 so it's personal preference.

16 MR. STEVENSON: Is it written in such a way  
 17 that the agreement between the farmer and the person on  
 18 the registry --

19 DR. ECKERT: It is in every other section  
 20 except here so maybe we should adopt --

21 MR. QUALEY: Let's not throw that out.

22 MR. FISH: It's already there.

23 DR. ECKERT: We just need to see that it  
 24 applies to this section.

25 MR. BELL: If you have a registry, the  
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1 information that you have in there, you have to think  
2 about is it a phone number, is it an e-mail, phone  
3 number and e-mail address. If the mechanism for people  
4 -- if it's someone new or someone further away or a  
5 neighbor they haven't spoken to.

6 MR. STEVENSON: I guess because the  
7 liability aspect of it is -- because we do  
8 pre-notifications for our applications and a lot of  
9 people prefer just the e-mail. Some prefer postcards,  
10 some prefer an automated call; they have their own  
11 preferences. The liability would be if someone said,  
12 yes, I prefer e-mail, is that -- I guess if I were a  
13 farmer, I would say, okay, if I send them an e-mail,  
14 they prefer e-mails, does that let me off the hook if  
15 they don't get an e-mail? Otherwise as an applicator,  
16 you would have to call; even if they prefer e-mail, you  
17 still have to do the call. Otherwise, you would be  
18 liable for not notifying.

19 MR. BELL: Also, it has to be characterized  
20 as a preference. Not all farmers have computers. So  
21 there has to also be a phone option or a knock on the  
22 door or another option. But it's nice to know what  
23 people's preferences are.

24 MR. STEVENSON: If it's written that way,  
25 then they can make that agreements. And if they do the  
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1 e-mail, then they don't have to try all of the other  
2 routes. Otherwise, the person trying to do the  
3 notifying would have to try three or four different  
4 kinds of routes.

5 MR. QUALEY: I thought that's what we were  
6 trying to avoid here so I don't spend my whole day  
7 trying to chasing somebody.

8 DR. ECKERT: There are several issues that  
9 people brought up which are good issues. One is varying  
10 the type of communication. Even if we promote e-mail,  
11 we have to allow other methods just for good public  
12 outreach. Another is simplifying various things about  
13 this like the distances and the types of registries. I  
14 think we can certainly take that instead because I think  
15 those are good suggestions.

16 MR. SIMONDS: I would like to explore one  
17 concept that the folks from MOFGA raised which I think  
18 is we're going to have to talk some more about when we  
19 bring this back next meeting, and I want to hear from  
20 you on this: I think it is -- in my view, it is a  
21 legitimate point that there is an ethical responsibility  
22 of first outreach that belongs to the applicator/grower,  
23 and the concern that some folks have raised that we seem  
24 to be dropping that behind is one I share. My question  
25 to you is: Do you have a suggestion or a notion or a  
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1 concept that you feel comfortable offering as a way to  
2 meet that part way? That, you know, perhaps the rule  
3 might contain an obligation for the grower to make good  
4 faith efforts in some fairly simple format, but first  
5 some good faith efforts to notify their neighbors of the  
6 existence of the registry and its details. Essentially  
7 taking some of the burden off of the agency and placing  
8 it initially on the applicator community. Does that  
9 strike you as fair and reasonable conceptually, assuming  
10 we get the language in a way that's practical?

11 MR. BELL: I think the way we look at it is  
12 the whole communication piece is a shared responsibility  
13 through neighbors, and we primarily see it as a neighbor  
14 thing. If people choose to live in agricultural areas  
15 where agricultural practices are happening, whether it's  
16 manure spreading, tractors early in the morning or  
17 whether it's spraying, then, no, you choose to live  
18 there. I --

19 MR. SIMONDS: You're jumping to the  
20 responsibility of the neighbor. My question is first  
21 about a reasonable ethical responsibility for the  
22 growers. Acknowledging that there is a shared  
23 responsibility for the neighbor which we seem to be  
24 addressing fairly pointedly here. I'm groping at what  
25 is reasonable to have in a rule in terms of first  
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1 outreach for the applicator community?

2 MR. BELL: I guess we don't believe you can  
3 -- I think we have said this for the past year. We  
4 don't believe that rules, legislation, whatever,  
5 promotes effective communication. Now, we understand  
6 that there needs to be a bottom line for some folks that  
7 aren't good at communication. For 25 years, we have put  
8 notices in the paper with the commission's phone number  
9 with the purpose of, okay, if someone wants to be  
10 notified, talk to them about the neighbor. We have the  
11 Board of Pesticide Control number and the Poison Control  
12 number. We have developed brochures, we have mentored  
13 our growers to do the types of outreach that they do.  
14 And we feel that that should definitely continue and it  
15 will continue. But when it comes down to -- you know --  
16 you know, there is a whole lot of risk assessment that  
17 goes into this. There is a whole a lot of materials  
18 that frankly are low risk and we're going there. And,  
19 you know, our concern is, you know, are we treating --  
20 you know, are we treating these products and materials  
21 as something that's high risk and leaving that  
22 perception. And so we have to be careful, you know,  
23 about the mechanisms you choose. So, again, when it  
24 comes to communication, our view is that, you know, it  
25 is the responsibility of the neighbors and growers to  
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1 communicate whether you're having your wood lot cut and  
2 it's going to be harvested or whether it's proper  
3 protecting applications. But recognizing some of the  
4 other concerns and with some materials, the risk, then,  
5 you know, we don't have a registry for wood harvesting  
6 but we're talking about potentially a registry for  
7 pesticides and that makes sense.

8 DR. ECKERT: Well, we wrote the initial rule  
9 as general and specific notification and we repeated the  
10 language. I think -- I certainly thought that was  
11 almost redundant and made it long, but I was -- you  
12 know, it was suggested to me by other people that this  
13 at least kept it understandable and legal.

14 I think we have now heard another proposal  
15 by MOFGA saying general notification should -- instead  
16 of being the job of the Board, should be the job of the  
17 grower community. And then everything should dump into,  
18 at that point, the registry. And the registry should be  
19 the more specific notification if I'm understanding that  
20 right. So I'm going to ask you again, as Dan was trying  
21 to ask you, is that a reasonable way to propose this  
22 because it would certainly simplify a lot of things?

23 MR. BELL: Well, we have been doing the  
24 general notification and putting the ads out. And we're  
25 not saying we're going to stop doing that; we're going  
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1 It's her responsibility to get the notification to the  
2 landowners that are nearby to say I will be spraying in  
3 the future. This summer we're going to have broccoli  
4 here, it's likely it might be aerially sprayed or it's  
5 certainly going to get some ground application. If you  
6 would like to have notice, then this is the number you  
7 call. This is how you get on the notification list.  
8 And if she mails that letter to that person or somehow  
9 gets that notification effected, then she has met her  
10 responsibility and -- but putting an ad in a newspaper I  
11 don't think would affect that responsibility because not  
12 everybody reads the newspaper; I'm just sure of it. So  
13 if, indeed, my first statement is what is required of a  
14 grower to say I have made my general announcement that  
15 I'm going to be spraying these fields, these are likely  
16 the chemicals that I'll be spraying. If you want to  
17 know when we're going to be spraying, this is the  
18 registry, this is how you get on it. And if we do that,  
19 I'm feeling pretty comfortable about this. I'm not  
20 feeling comfortable if you say an advertisement has been  
21 made in the Machias newspaper that you have done your  
22 general notification.

23 MR. ALAN: David, may I?

24 MR. BELL: If it's okay with the Board.

25 MR. ALAN: My name is Jason Alan.  
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1 to keep doing that. And if there are other ways to  
2 partner with the Board and other groups that want to do  
3 that, we fully support that.

4 MR. STEVENSON: I guess it sounds to me like  
5 what you're saying is you're already doing the outreach,  
6 the content of the outreach, that will change a little  
7 bit mentioning the registry.

8 MR. BELL: Correct. We would put that in  
9 the -- as -- again, as an option. We still, again,  
10 suggest neighbors ought to talk about the registry, here  
11 is a mechanism for agricultural and other applications  
12 beyond.

13 DR. JEMISON: I think we're still kind of  
14 dancing around, and I'm not sure we're totally nailing  
15 this down. And I want to try to nail it down a little  
16 harder because I don't want to come back and say, well,  
17 we didn't say that or this is now not acceptable and we  
18 didn't say we could do one certain thing or another.

19 With this general notification, then what  
20 we're saying is it's farmer X. Let's use Emily Smith,  
21 for example, because she was one of the people that  
22 really drove home that having this be her responsibility  
23 to go find everybody when broccoli fields move every  
24 single year because of the club route. They have a one  
25 year in five rotation so they're all over the place.

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1 On the responsibility issue, you asked as a  
2 grower, we have a moral obligation to notify and I think  
3 we have as much of an obligation to notify as much as  
4 our neighbors have a desire to know.

5 Can I give you a quick analogy and then make  
6 a comment? I am a homeowner and I have three neighbors  
7 who abut me. I have a couple of acres out behind my  
8 house. And if I were a farmer and I was growing  
9 blueberries, it wouldn't be any burden for me to go and  
10 tell my neighbors this is what we're spraying, bla, bla  
11 bla. And this might address some of the comments I  
12 heard at the last Board meeting. The problem we have,  
13 we're trying to make a regulation that applies to  
14 everybody. We manage tens of thousands of acres of  
15 blueberries, and we have literally thousands of  
16 abutters. We can't determine who lives a quarter of a  
17 mile away, notify all of those -- find out who they are,  
18 what their addresses are, what their phone numbers are.  
19 We have to contact them. We might do a fungicide  
20 application in early May. We might do a herbicide  
21 application in early August. Of these thousands of  
22 people, several of them may not be the same people who  
23 are there a couple of months later. We have to do this  
24 year after year after year, application after  
25 application. We're happy to give any information to any  
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1 person -- I'm speaking for my company -- who wants to  
2 know what we're putting on, when and why. We have a  
3 good record of notification with our neighbors and we  
4 have good relations with them. To put the rule in that  
5 says we have to go and find all of these people,  
6 determine who they are -- it's okay for the small  
7 farmers but for a large farmer, it's very burdensome and  
8 it's very difficult.

9 MR. SIMONDS: Let me focus the question a  
10 little bit. I'm sensitive to your argument, and that's  
11 why we're here today. But I'm also sensitive to other  
12 arguments I have heard.

13 MR. ALAN: And I am too.

14 MR. SIMONDS: I think you are, I appreciate  
15 that.

16 You're better with respect at telling us  
17 what you can't do than telling us what you can do.

18 MR. ALAN: Sure.

19 MR. SIMONDS: I'm reaching for and asking  
20 for suggestions about how we can get partway in between  
21 those two positions. How can we, in rule, because  
22 that's what we're talking about. There is,  
23 unfortunately, a political need to put some of these  
24 things which we wish just happened because everybody  
25 wants to get along. There is a political need to put  
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1 some of these things in a rule. And we can argue about  
2 where this comes from but it's real.

3 I'm interested in your suggestions about  
4 what would be acceptable, comfortable, reasonable from  
5 your perspective that would at least partially satisfy  
6 the legitimate notion that the first responsibility for  
7 outreach belongs to the person initiating the activity  
8 that has hazard associated with it.

9 MR. ALAN: Sure.

10 MR. SIMONDS: So your suggestion that these  
11 large-scale operations have much too complexity for us  
12 to hold you accountable to each and every thing, so I'm  
13 trying to think about how can I structure a good faith  
14 outreach program that would pass a straight-face test,  
15 not be overly and unnecessarily burdensome to you folks  
16 that would point people in an effective way to this  
17 registry which would be a new tool and hopefully  
18 streamline the process. Do you follow me?

19 MR. ALAN: I do, I do. And we have dealt  
20 with people in organizations that are into say  
21 protecting ponds or whatever, and they have notify  
22 registries -- all of that. We want to work with people  
23 who want to be notified. I don't know the answer to  
24 that question. I don't know how we do that.

25 MR. SIMONDS: I'm thinking about somewhat  
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1 vague language that we might have to harden up through  
2 policy over time that would require some good faith  
3 demonstration of outreach and education around this  
4 registry and access to it that would essentially fall on  
5 your industry. Does that idea seem like a reasonable  
6 thing?

7 MR. ALAN: It does. And, again, I am only  
8 speaking for my company, but we want to talk to our  
9 neighbors and we want to let everybody know what's  
10 happening and what we're doing. It's just, again, to  
11 find everyone --

12 DR. ECKERT: I think you're almost saying if  
13 the Board or some other combination of groups could  
14 provide the mapping and the addresses in some sense as  
15 to where the information should go, you would give it --

16 MR. ALAN: When we talk about whose  
17 responsibility it is, I think we do have a  
18 responsibility but also I think your neighbor has a  
19 responsibility too. Many people have found us who live  
20 near us and have brought concerns to us and asked for  
21 notification of what we're doing and we're happy to  
22 provide that. I think if you could get a message out to  
23 people that if they have concerns or whatever, they can  
24 contact us, their neighbor who is a grower, whoever it  
25 is. I'm not sure what I'm trying to say. Maybe if  
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1 there was a mechanism in place to just make the public  
2 more aware that they can find the information. I don't  
3 know how to --

4 MR. SIMONDS: You have been helpful, really.

5 MR. ALAN: Okay, thank you.

6 MR. STEVENSON: Just a couple of comments  
7 too because I agree with a lot of his comments in that  
8 finding each individual is going to be incredibly  
9 difficult which is the reason why we came up with the  
10 registry to begin with. That's something that we wanted  
11 to get away from. Otherwise, the other wording would  
12 have worked.

13 And when we talk about initially just to get  
14 some of your ideas, are we talking initial outreach  
15 being annual or just at the beginning of the registry?  
16 The reason I bring that it up is because the structural  
17 registry -- how did the word get out on that? I think  
18 it was mostly through newspaper articles --

19 MR. JENNINGS: The reality is the word never  
20 really did get out. We put out press releases, but I  
21 can tell you the news editors look at that and say  
22 that's not the juiciest article that I have seen come  
23 across my desk. But the reality is people call our  
24 office and say so and so is spraying and it gives me a  
25 headache every time they do. So this conversation  
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1 begins, and then they make -- there may be some groups  
2 or something that are promoted or -- but it's never been  
3 a particularly effective mechanism. That's probably why  
4 we only have 20 people on it.

5 MR. QUALEY: You're talking about the  
6 registry?

7 MR. JENNINGS: The current one.

8 MR. STEVENSON: From my perspective, if  
9 someone is interested, they usually give us a call.

10 We were sitting around with a bunch of  
11 friends over Christmas and a couple of them mentioned,  
12 oh, there is a registry, isn't there? Folks I would  
13 never guess knew about it did --

14 MR. JENNINGS: Word spreads gradually, but  
15 only in tight circles.

16 MR. QUALEY: My comment is, again, and I  
17 will agree with the gentleman back there, it's hard to  
18 find someone that doesn't want to be found. I have been  
19 there. And they may, in turn, call you. But how much  
20 time do I spend finding someone that really doesn't want  
21 to talk to me, period, in a nutshell?

22 DR. ECKERT: Peter, do you want time?

23 MR. ALDRICH: Well, a couple of really brief  
24 things. On the e-mail point, if somebody opts to be  
25 notified by e-mail, they are saying they are satisfied  
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1 with how they get their e-mail. And if they miss  
2 something, then that's their problem.

3 The concept I have of the registry, the  
4 applicator goes into the registry computer via a web  
5 browser interface, he's able to select the people he  
6 wants to notify, he presses a button that says notify  
7 them, fills in his information and the e-mail is  
8 actually generated by your computer, by the state's  
9 server, whatever. So a record of the fact that that  
10 notification has been generated already exists under the  
11 guise of this Board. So in terms of guaranteeing that  
12 he's being let off the hook, he's let off the hook. If  
13 someone says the e-mail is good and it is sent through  
14 you or copied to you, I think that should be fine.

15 On the more recent subject, I think one sort  
16 of general principle that is easy to miss, it's very  
17 hard to pick out all of the individual people that live  
18 within a thousand and three feet of all my fields. If  
19 what I am doing is telling them there is a notification  
20 registry, it doesn't matter if I tell a lot more people  
21 than that. I can tell all of the people in that zip  
22 code and that zip code and that zip code. That might be  
23 easier. I might go to the town and say how do I tell  
24 all of the people in Jonesboro or something. So there  
25 may be other ways to provide overkill information that  
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1 avoids having to pick out individual people that go  
2 around the shape of a field.

3 MR. SIMONDS: Good point.

4 MS. HICKS: When Mr. Alan was talking, one  
5 of the things that struck me is you have contracts with  
6 the people that own that land, right?

7 MR. ALAN: Yes.

8 MS. HICKS: Because one of the ways that you  
9 as a company could achieve the notification of the  
10 registry would be to write into that contract that if  
11 I'm going to be managing your blueberry land, you will  
12 let your abutters know that there is a registry.

13 MR. ALAN: Then you would run into some of  
14 the same problems. Some of our owners live in Texas or  
15 --

16 MS. HICKS: Yeah, I'm quite familiar with  
17 the absentee owner thing, but it would be a step in the  
18 right direction, I think.

19 MR. RAVIS: For Peter, envisioning the idea  
20 of this e-mail process where the e-mail would be  
21 generated to those interested in receiving it from the  
22 board's staff, let's say, what happens to the people who  
23 opt not to receive it by e-mail because they don't do  
24 e-mail or they don't like it or whatever. Who is going  
25 to contact them?

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1 MR. ALDRICH: That would still be the  
2 applicator's responsibility. All I'm saying is the  
3 people that chose e-mail, the channel could be through  
4 your service and you could end up with a copy of it.

5 DR. ECKERT: This is a hearing and I think  
6 we need to, at this point, wrap this point up.

7 DR. JEMISON: My question is fairly simple,  
8 and I'm not a technical guy so I don't know if this  
9 could be done. But if you had a box that you could  
10 check, you were on this web interface and you're the  
11 grower and you're going to spray and this is your  
12 registry and you hit your boxes, could one of those  
13 boxes be if they want to have a telephone call to know  
14 you're going to spray -- I get recorded phone messages  
15 from somebody that says there is a new interest rate out  
16 and bla, bla what. Is there a way to automate that  
17 phone message to say there is going to be a spraying  
18 application on your property tomorrow or within two days  
19 --

20 MR. ALDRICH: I could make a phone call to  
21 record that recorded information and then -- it's just a  
22 question of how much investment the State of Maine wants  
23 to put into this system.

24 DR. JEMISON: It may not be that expensive,  
25 and then you could really get it done and I would be  
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1 feeling a lot better about it if we could make it  
 2 simple.  
 3           Could we look into that and see what the  
 4 possibilities are?  
 5           MR. SCHLEIN: Who would be initiating that?  
 6           DR. JEMISON: The farmer would initiate it.  
 7           MR. ALDRICH: Would you like me to write the  
 8 specs for it and send it to you?  
 9           DR. JEMISON: Basically there would be a web  
 10 interface that the farmer could go on, find the people  
 11 they wanted to notify and those that had just e-mail  
 12 boxes, it got sent out. If there was phone box, there  
 13 could be an automated message sent to them. And maybe  
 14 Peter's voice would be on that automated message, but it  
 15 would go out and say I'm spraying tomorrow, this is what  
 16 we're doing. And maybe then someone might have an  
 17 e-mail or phone both because they may not check their  
 18 e-mail everyday. My wife would never know it was going  
 19 to get sprayed tomorrow on time. So then maybe you  
 20 could have both, and then that would be a great system.  
 21           MR. SCHLEIN: I can't answer that one way or  
 22 another, but I would say it is going to be beyond our  
 23 capability.  
 24           MR. SIMONDS: We will be setting a basic  
 25 responsibility framework in the rule, and then the  
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1 mechanics will follow.  
 2           MR. ALDRICH: All I was saying in the  
 3 beginning was don't write a rule that is going to  
 4 restrict you from some of this stuff.  
 5           MR. SIMONDS: Yes, that point was well  
 6 taken. Thank you.  
 7           DR. ECKERT: Is anyone signed up to 41?  
 8           MR. MALAY: Can I just share a little  
 9 experience?  
 10           I'm Bill Malay, Cherryfield Foods.  
 11           Thank you. We manage a lot of land and deal  
 12 with a lot of growers, a lot of friends, families,  
 13 neighbors. And what we have done to try to overcome  
 14 this is that it's so hard to get ahold of everybody.  
 15 Obviously if one of our applicators goes to apply a  
 16 pesticide on a piece of property and there is a tricycle  
 17 in the neighbor's yard, there's an inclination there is  
 18 a child around me, we go and try to invite notification  
 19 with those individuals. We at least make an option.  
 20           More importantly at the beginning of the  
 21 entrance of every piece of land we manage, we now have a  
 22 big yellow sign that says Cherryfield Foods with a phone  
 23 number. And they can call that phone number if they  
 24 have any questions or concerns. We get the most calls  
 25 actually about mowing blueberries because when they mow  
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1 on a dry day, there is a lot of dust and people get  
 2 worked up because the dust is drifting. So I would say  
 3 that's our biggest complaint over pesticide application.  
 4           And to take burden off the Board as part of  
 5 due diligence as applicators within the state, the idea  
 6 of this broad registry seems challenging to say the  
 7 least. As it was mentioned earlier, every individual  
 8 neighbor that we deal with is very unique.  
 9           We have a registry as part of our due  
 10 diligence. Perhaps, not to skip ahead, but the drift  
 11 management plan was taken out of one of the chapters  
 12 you're going to discuss later. I think the drift  
 13 management plan is probably one of the most critical  
 14 aspects of that chapter in order to implement --  
 15           MR. JENNINGS: You're taking a comment on a  
 16 chapter you can't comment on.  
 17           DR. ECKERT: We had reasons to take it out  
 18 which we will not go into now.  
 19           MR. MALAY: That's fine. Our responsibility  
 20 is to do what's right, and that's all we're trying to  
 21 do. So if we have our own registry and share that with  
 22 the Board or if each applicator does, to me, that sort  
 23 of takes away some of the burden that you have to deal  
 24 with because it's hard to see the feasibility.  
 25           DR. ECKERT: I think Dan is right. We have  
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1 just set some general guidelines about how this is going  
 2 to work. And then every business and every farmer and  
 3 every neighbor may work out the details. But we're not  
 4 going to define them all.  
 5           MR. MALAY: But how hard would it be for  
 6 each applicator on the piece of land they manage to put  
 7 their name and a phone number? I mean, that solved 99  
 8 percent of our issues.  
 9           As far as notification, we have one person  
 10 on our registry -- just to share experience -- that I  
 11 have seen her in the window and gone and knocked on the  
 12 door to tell them and she won't answer the door. So you  
 13 have to understand, some people you just cannot  
 14 communicate with. So as far as structuring certain  
 15 guidelines, it's a challenge because everybody is  
 16 unique.  
 17           Anyways, that's all I have to say. Thanks.  
 18           DR. ECKERT: Other comments on this section?  
 19           MR. TITUS: I'm Laughlin Titus. I'm  
 20 speaking neither for nor against. I just want to tell  
 21 you my experience with my business with doing  
 22 notification. In the past year, we have worked with the  
 23 five largest dairy farmers in the state, assisting them  
 24 in complying with getting livestock operations permits.  
 25 This is related to manure applications. But the  
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1 pertinent piece is the requirement for these permits is  
2 to provide notification to land owners that are within  
3 one mile or about a manure storage facility. And then  
4 the other piece of that is you have to have a written  
5 agreement with every landowner that you work with that  
6 allows you to spread manure on their land. So many of  
7 these growers have -- well, it's probably 50 to 80  
8 landowners they work with as far as parcels of land that  
9 they use. So -- and most of them are in at least two  
10 towns and many of them three and four towns.

11 So my wife has done the bulk of this work,  
12 and it involves going to the town office, finding the  
13 parcel of land, getting the landowner's name and  
14 address, sending a mailing to that individual which they  
15 have to return signing that they approve the use of  
16 manure on their land.

17 Interestingly enough, of the five growers,  
18 probably a cumulative total of 20,000 acres of land, one  
19 grower had written agreements prior to this with  
20 landowners. So anyhow, all of these people had to be  
21 notified and they had to send something back. And we  
22 closed a stamped envelope to return to us. And with  
23 that, we probably get 60 percent return. Then you get  
24 on the phone and call the people. Then ultimately you  
25 go to the door to get that if they haven't responded.  
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1 And talk about people that don't want to be reached, my  
2 wife drove down one driveway, the beginning sign says  
3 keep out. The next sign says if I don't know you, I  
4 don't want to know you, turn around. She did. But  
5 that's how difficult some people are to reach.

6 Now that is only the people that -- the  
7 landowners. So that's a fraction of -- each of those  
8 parcels has abutters. So that cumulative total of  
9 abutters for some of these large farms is just immense.  
10 Each farm we probably have 40 to 80 hours of labor in  
11 getting that information, getting it out, documenting  
12 it, taking care of it. Then ultimately the landowners  
13 that are within a mile or -- it's not and -- or about  
14 their parcel of land that has a manure storage need to  
15 be notified with certified mail that they're applying  
16 for this permit and have a right of appeal. So you have  
17 to do that for certified mail which cost \$5.32 per  
18 envelope for certified mail. The one we did two weeks  
19 ago, there were 33 landowners. This farm has two sites  
20 with manure storage. And within that parameter, there  
21 were 33 people that we had to send notification via  
22 certified mail and you get the card back. Well,  
23 sometimes you don't get the card back. The law states  
24 that's due diligence, if you send it certified mail, you  
25 don't have to have the card back. So I offer that as  
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1 the complexity and the expense of reaching large numbers  
2 of growers.

3 I know most of your concerns have been about  
4 the multiple -- the farms that have multiple spraying,  
5 the blueberries, broccoli, potatoes and so forth. But  
6 you also need to realize that there are 30 to  
7 40,000 acres of corn grown in the state of Maine that  
8 gets one herbicide application and it's going to -- it's  
9 a burden. I said I'm speaking neither for nor against  
10 so I will leave it at that. Just recognize that burden  
11 for folks that are doing one application. That's all I  
12 have unless you have some questions.

13 DR. ECKERT: Thanks.

14 Do I see anyone else? No one else. I'm  
15 going to close this part and go on to Chapter 41 for  
16 which there is only one person signed up.

17 I guess Russ gets the floor.

18 ATTENDEE: I'm opposed to these changes  
19 because I think there is a major procedural flaw that  
20 you're dealing with which is having the hearing on the  
21 proposed changes before the medical advisory committee  
22 meets so I have a major objection in terms of timing and  
23 I would have to oppose the proposed changes on that  
24 basis alone which is that you are hearing the proposed  
25 rule before you have heard whether your medical advisory  
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1 committee even advises you to consider registering these  
2 materials.

3 Operating on the assumption that they are  
4 going to not have any objections because that's been the  
5 history of this Board, this advisory committee, I just  
6 wanted to get to the heart of our concerns.

7 So our concerns about Bt sweet corn are the  
8 same as our concerns about Bt field corn. Is the  
9 proposed solution to genetically engineered corn worse  
10 than the underlying problem, how to we keep these genes  
11 where they belong in the crops being raised by the  
12 neighboring properties. Who is going to monitor and  
13 enforce the EPA required strategies -- I'm talking  
14 quickly because I have basically given you the written  
15 testimony here -- that are meant to prevent insect  
16 resistance? I'm going to refer to this, to my notes on  
17 the Bt field corn last years where there are studies  
18 from the Midwest that document a failure to comply with  
19 EPA's refuge requirements for Bt field corn. I was  
20 unable to find anything that documented that anyone is  
21 paying any attention at all to the mow-down requirement  
22 for Bt sweet corn. So is there a staff responsibility?  
23 Is this honor system? Everybody is going to be good and  
24 do this? I don't see anything in this rule that tells  
25 us how this is going to actually come into play.  
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1 On the positive side, we support the  
2 language in E1C referring to the grower agreement refuge  
3 requirements because it is clear it is what's required  
4 under the federal label. I think having common  
5 consistent language is important.

6 We support the buffer requirement of 300  
7 feet suggested by the draft recognizing it only comes  
8 into effect when the neighboring grower requests the  
9 setback. So even though it says a 300 foot setback,  
10 it's only triggered by a request.

11 I will say it's obviously inadequate to  
12 impurity of seed corn if anybody is growing sweet corn  
13 for seed. I know at least three farmers in Maine who  
14 are doing that. They're in isolated situations so they  
15 should be okay but I don't necessarily know everybody  
16 either. Then finally your one acre requirement which is  
17 in the proposed rule. We support where it appears that  
18 EPA is intent on overruling that by allowing anybody at  
19 any scale to grow Bt sweet corn. And how you deal with  
20 that is going to be a major challenge.

21 This leads to MOFGA's overarching concern on  
22 all of these genetically engineered crops. Once they're  
23 in the production system, how do you maintain  
24 separation? So far all we have seen is failure after  
25 failure on Bt field corn. It's not likely to be any  
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1 different for sweet corn.

2 Baker Creek Heirloom Seeds just tested all  
3 of their sweet corn varieties and found that a number of  
4 them were contaminated already. Cleaning up a  
5 contaminated seed supply is pretty challenging.

6 If you, like me, prefer not to eat  
7 genetically engineered foods as part of a giant  
8 experiment without a control group, how are we going to  
9 know what we're eating without labeling?

10 The Board has made some good faith efforts  
11 in Chapter 41 to deal with the first of these questions.  
12 The second is still being studiously ignored.

13 We know it's possible to grow high quality  
14 food without the use of genetic engineering or toxic  
15 pesticides. When are we going to focus our efforts on  
16 doing so? That's why MOFGA opposed the registration of  
17 Bt sweet corn and other products. Good regulations for  
18 bad products are not the solution.

19 DR. ECKERT: Thank you.  
20 Does anyone else wish to speak on this  
21 issue?

22 ATTENDEE: I did include on the back side an  
23 excerpt from a recent study from Italy on medical issues  
24 around Bt in mice testing which may be of interest.

25 DR. ECKERT: We are going to review that.  
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1 Comments?

2 I made the same comment that we shouldn't  
3 put too much of this on the agenda until the medical  
4 advisory committee met, but I think we put it on because  
5 this issue will have to go to the legislature and we  
6 thought it might take some time.

7 Lebel sent me a couple of new  
8 registrations, and I think we might have some difficulty  
9 given that new things are being released with new  
10 licensing requirements and new sales limits. This  
11 revision of the rule may not be complete or finished,  
12 sorry.

13 On that note, would any member like to  
14 comment? John, do you know anything about that?

15 MR. JEMISON: I do. I think -- I guess the  
16 one thing to -- at least we had 100 compliance this year  
17 in Maine with growers using the refuge. That was good.  
18 We visited every single grower that bought the seed, and  
19 each was able to document sufficiently that they had  
20 used the refuge so I feel good about that. I do -- I  
21 have a lot of opinions, and I'm looking forward to the  
22 discussion on some of the new changes that EPA wants to  
23 allow. I completely agree with Russ, that if every  
24 homeowner has this little technology to use in their  
25 backyard to keep little critters out of their corn, we  
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1 will have no capacity to know that they're going to mow  
2 them down at the end of the time and, in fact, I'm quite  
3 confident they won't. We will not know and then all  
4 bets are really off that if you are a sweet corn seed  
5 producer in the State of Maine that all bets are off and  
6 you can never keep it free of what you don't want in  
7 there.

8 So I was going to propose that we simply  
9 stick with our one acre .4000 lot rule and stick with  
10 that for the -- based on the fact that we are concerned  
11 about resistance management, that we recognize it's one  
12 of the tools that organic growers have -- the topical Bt  
13 is one of the tools organic growers have to fight insect  
14 infestations. And we would like to maintain that tool  
15 for those growers. So I think if we go that way, I  
16 think we will be all right. If -- then we still have  
17 our records of who is buying the large seed lots, we can  
18 -- just like they came in, checked on every grower that  
19 bought the field corn, you can check the growers that  
20 are doing sweet corn and -- so while I think we can  
21 improve a little bit on the exact record keeping, we  
22 were a hundred percent on the records that needed to be  
23 kept, we were a hundred percent on the refuge. I think  
24 we did a good job getting that message out to people and  
25 I think that's important. That's going to be how I'm  
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1 going to deal with the apparent changing -- that's how I  
2 would propose we deal with the apparent changes in  
3 regulations coming out of the EPA.

4 MR. JENNINGS: I just think we should close  
5 the hearing because I think you can have this discussion  
6 later.

7 MS. HICKS: However, sticking with the one  
8 acre would be something relevant to the rule.

9 MR. JENNINGS: That's a discussion we're  
10 supposed to have at the next meeting.

11 MS. ECKERT: So seeing there are no other  
12 hands or people jumping up to testify, I would say we're  
13 going to close this part of the hearing and go on to the  
14 Board meeting in about 10 minutes.

15 Thank you.

16  
17 (Whereupon, the above-named hearing was concluded at  
18 10:55 a.m.)

19  
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1 C E R T I F I C A T E

2

3 I, Debra J. Fusco, a Notary Public in and for the  
4 State of Maine, hereby certify that on the 23rd day of  
5 January, 2009, personally appeared before me the  
6 within-named people who testified in the aforementioned  
7 cause of action and that the foregoing is a true and  
8 accurate record as taken by me by means of  
9 computer-aided machine shorthand.

10

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

14

15 IN WITNESS WHEREOF, I have hereunto set my hand this  
16 10th day of February, 2009.

17

18

19 \_\_\_\_\_  
20 Debra J. Fusco  
21 Court Reporter/Notary Public

22

23 My Commission expires: November 28, 2009

24

25

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