00-037-2
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December 18, 2000

USDA-APHIS
Regulatory Analysis and Development, PPD/APHIS
Suite 3C03
4700 River Road, Unit 118
Riverdale, MD 20737-1238

Re: Docket No. 00-037-2
Citrus Canker; Payments for Recovery of Lost Production

To Whom It May Concern:

The proposed Citrus Canker Compensation Rule, Docket No. 00-037-2, is a good start towards compensating lime growers for losses and should be implemented immediately. However, we believe some of the information on which the model is based is either incorrect or incomplete. Accordingly, the model should be revised and recalculated using the information we previously provided and/or provide herein.

Our firm has the following three recommendations regarding the proposed rule. These recommendations are based upon our company's long experience and expertise. Additionally, I have completed hundreds of millions of dollars of capital budgeting analyses for a Fortune 500 corporation. I have also been qualified as an expert witness on financial matters on numerous utility rate cases for which I developed capital cost equations, and I have been personally involved in the lime industry for over thirty years.

Recommendation I. Rate of Return

The proposed rule discounts a lime grove with no eradication program at 14.5%, and a destroyed lime grove, which was replanted due to the eradication program and the failure of USDA's interdiction program, at 13.5%. THIS ONE PERCENT DIFFERENTIATION HAS NO BASIS IN FACT. We would argue the exact opposite. That is, without the program, APHIS should use 13.5%, and with the program, APHIS should use a much higher discount rate. However, it would be acceptable to us if APHIS applied the 13.5% discount throughout the Lime Compensation Model.

There is no statistical or mathematical basis stated (and we are aware of no basis or justification) for a one percent increase in risk adjustment. The number used by APHIS (14.5%) is speculative and should not be used in the model. The 13.5% Weighted Average Cost of Capital should be tied to real borrowing costs and equity returns. Introducing a guesstimate as to how a South Florida lime grower would risk adjust a local investment is wrong as a matter of fact and as a matter of policy.

As a business person and a long-time lime grower, the entire canker eradication program strikes me as adding risk to the business of lime farming in Florida. The eradication program with its existing and ongoing charge to destroy healthy lime trees jeopardizes the industry's very existence. This risk premium should be added to the discount rate of the grove with the program, not the other way around, as is done in the proposed rule.

If we are going down the road to risk adjustment with the eradication program, specific added risks that need to be considered regarding the lime cash flows are:

Legal Problems: The current canker program is facing significant and successful legal challenges. For example, the eradication program is currently enjoined from cutting down healthy citrus trees in Broward County because:

1) The 1900-foot policy of cutting healthy trees was not done in accordance with Florida's Administrative Procedure Act;

2) The State of Florida exceeded its delegated authority in defining "exposed" in a manner inconsistent with Florida Statute 581.184; and,

3) The State's Immediate Final Order sent by Commissioner Crawfords's Office violated due process and is unconstitutional.

This case is on appeal and may be overruled with regard to the Administrative Procedure Act due to venue problems. If this happens, it is clear a case would be brought in the correct venue and the State will likely be required to conform to proper rulemaking and thereby create additional uncertainty. In addition, law suits are being discussed publicly involving the Taking Clause of the Constitution. Such suits and discussions thereof may halt or delay implementation of the eradication program. In any event, the lime industry is faced with greater risk, not less.

As a business person and lime grower judging investment risk, having a Florida judge state that, "You just don't walk on individual rights, not in this country," does not give one a warm, fuzzy feeling about the eradication program's viability. (See Judge Fleet's decision attached.) And, if the eradication program stops, our risk increases.

Price Tag Risk: The total allocated government cost of this eradication program, including urban compensation, commercial compensation, tree removal, and research is edging over $300 million dollars. How long are urban taxpayers in Florida or taxpayers in the U.S. going to support this high-priced program which destroys healthy trees? Will the program be allowed to continue? More risk.

Public Relations Risk: I have attended a number of government/citizens meetings on the eradication program over the last two years. The initial meetings were hostile. At the latest meetings, citizen comments focused on Nazi metaphors such as: "taking the trees to the ovens," "Herr Crawford," and "brown shirts in white shirts." Apparently, urban citizens have not been convinced that they should support a program which was described in a judicial decision as, "grievously intruding upon the basic right of the Commissioner's constituents to know why their government was taking their property without compensation, to know why their constitutional right to privacy was being invaded without court order and to know why they were being effectively deprived of their right to petition their government for relief." (See Judge Fleet's enclosed decision.)

Additionally, the eradication program has engendered almost 23,000 citizen complaints over the last thirteen months. According to the *Miami Herald*, which studied the complaints, "Over and over again, dogs are being left to dart through carelessly unlocked gates. Mango and cherry trees, gardenias and orchids are being cut, damaged, or stolen. Cable lines are being snipped, porch screens torn, gutters felled."[1]

"Eradication crews have damaged an average of 130 fences and gates every month." "Heavy equipment has mangled 1,453 sprinkler heads." "Forty-three callers spoke of guns or shooting at canker crews when they called the complaint hot line."[2]

Will the eradication program continue if the urban public opposes it? As a business person, I believe there is additional risk due to these public relations debacles.

Local Government Risk: As reported by the *Miami Herald*, "local officials across South Florida – under pressure from angry residents to act – attempted to slow the march of the tree-fellers by going to court, sending out police or setting bureaucratic booby-traps in their path."

According to the *Herald*, the City of South Miami dispatched police to eject eradication program crews from the City. Meanwhile, the canker project employees were using Metro-Dade police to force entry into backyards.

In Coral Gables, The *Miami Herald* reports: "Mayor Raúl Valdés-Fauli railed against the state's handling of the program . . . telling a startled agriculture department spokesman that he

belonged in jail and characterizing the canker crews as "arrogant thugs." "We should eradicate [Agriculture] Commissioner [Bob] Crawford," he said.[3] The Cities of Pinecrest, Miami Beach, various Broward Communities, and County Governments have lined up in opposition to the eradication program.

These actions by recalcitrant local governments give me and the rest of the lime industry a sense of real risk about the future of the eradication program.

1900-Foot Policy Risk: At last count, our firm has lost over 130,000 healthy trees we own or manage due to their proximity to about 450 diseased trees.

Until forced by a court order, our firm could not get a full copy of the scientific study upon which this program was based despite repeated requests made to its author, Dr. Tim Gottwald. According to the Circuit Court's decision, this study was presented at an agency meeting, which was neither advertised, nor open, to the public. (We operate in many countries. This type of meeting indicates more risk to me, and is not something I generally expect in the U.S., nor for that matter, did Judge Fleet.)

The "now-famous" Gottwald study was the sole scientific basis for the 1900-foot rule. It has numerous deficiencies, including the fact that proper scientific methods for controlling other factors in disease spread were never employed, and it was done in an urban, non-grove environment. [See attached Letter to President Clinton, July 18, 2000, pages 4-7.]

As I mentioned above, our firm has operated in more than fifteen countries, and has never had assets destroyed in such a secret, unsupported, and arbitrary manner. How can I calculate all this risk of the eradication program in our cash flow when one infected backyard tree can kill an entire grove at 1900 feet based on an undisclosed study, implemented without public comment as required by Florida law.

Communication of Disease Risk or Lack of Response Risk: Our firm has continuously notified program officials that infected trees were being left in place in South Dade County. These notices were copied to numerous government officials, however, the problem continued. Not responding to our notices and leaving infected trees in place in the heart of the Florida lime growing region for months at a time obviously increases risk to our industry. (See attached letters to Congressman Deutsch.)

Program Failure Risk: In the 1980's, the State of Florida destroyed 20 million citrus trees because they misdiagnosed citrus bacterial spot as citrus canker. The June 1986 Manatee outbreak is **still** with us in the new millennium.

This is the sixth year of the Miami eradication program that has let the disease spread throughout South Florida, from Lake Okeechobee south. Confirmed finds continue. A 500-

acre commercial orange grove was just discovered south of Clewiston, Florida. This grove is well over 100 miles by road from the initial Miami Airport find.

Is there a real and substantial risk that the eradication program may destroy the entire U.S. lime industry, and then be unsuccessful? You bet. How is this real risk quantified by APHIS?

Further Infestation Risk: At every scientific canker meeting our employees attend, some scientist talks about when we will have another canker outbreak due to increased trade, not if.

If a new outbreak of canker does not destroy the farmer, how about the Sri Lanka beetle just discovered in Broward? A State entomologist described this bug as "It looks like it likes everything." It eats everything from akee to litchee to palms to orchids and maybe to the few remaining lime trees.

Florida has become the dumping ground for hitchhiking pests, killer bees, bromeliad weevils, etc. Yet, we still do not have basic funding and structures in place for dealing with those pests. (The $50 million, "no year fund" mentioned in the Safeguarding America's Plant Resources, for instance.)

Why should USDA increase the discount rate and penalize the lime industry, which operates in close proximity to the world's fourth busiest commercial airport, by addressing risk in a discount rate for only one invasive pest, when harmful pests keep coming into Florida?

Commercial Lime Risk: There is a body of scientific thought that limes are highly resistant to canker, and we could have a successful industry without any eradication program. One such scientist was the State's own chief plant pathologist (see affidavits of Craig Wheeling and Neal Brooks, Sr. attached hereto). With an eradication program, the risk is much greater that we will have no industry.

Risk! Risk! Risk! All tied to the eradication program. Again, APHIS is going in the wrong direction with its risk adjustment, which is just a guesstimate anyway. This is not sound public policy and is not supported by fact, experience with the program to date, or competent research.

Vis-a-vis the lime industry, and not big Citrus, (especially grapefruit, which will be helped by the program), no business person would reasonably argue that there is not a tremendous amount of risk connected with this program, and, APHIS's risk adjustment is arbitrary, unsupported and should be changed as we have recommended.

Recommendation II. Prices

Prices used in the USDA Lime Compensation Model are factually incorrect because these prices did not include Brooks prices which were (and are) readily available.

Brooks Tropicals sold 74% of all Florida fresh limes in 1998, and 81% in 1999, as per USDA's Florida Lime Administrative Committee Report (see Exhibit A). Not including the prices of the largest shipper of limes in Florida clearly and significantly distorts the model.

Lime price data from Brooks was not included in prices gathered by the Florida Ag Statistical Services in 1998 and 1999, nor in the subsequent Lime Compensation Model. Brooks did not provide this data because of confidentiality concerns due to its large market share, and because the Brooks prices in the 1997 season were far above competitors in the industry.

Brooks's accounting statements are audited by a big Five Accounting firm (an unusual step for a farming operation). Therefore, Brooks's price data is easily verified and is more accurate than normal farm surveys where farmers, to save time, frequently guess at data without referring to their tax records (as I have done myself for my own farms).

Since this summer, I have repeatedly offered the Brooks price data to USDA and the University of Florida. On August 28, 2000, I did so in writing to both parties (letter attached). There was plenty of time to verify Brooks' data and include the correct data in the model. However, it was omitted. As such, the price data used in the model does not accurately reflect actual prices in the Florida lime industry.

Secondly, the Lime Compensation model does not include prices for the 1999/2000 season which ended March 2000. As is normal, 95% of the 1999/2000 season's limes were harvested from April to December 1999. Most of the lime groves were destroyed due to canker after the season's March 2000 end. (Canker was not found in a lime grove until January 2000.) The model should include this last season's data as it is the most recent data available and therefore, the most accurate portrayal of grower prices. (It is also by far the largest volume in your mathematical series, so deleting it unfairly harms the grower.)

We have recalculated the lime price data of $9.68 in Exhibits B and C based on the more complete price information for the Florida lime industry and including the 1999/2000 season.

Recommendation III. Packing House Losses

Based on the FY 2001 Ag Appropriations Bill, commercial lime growers who own (or are affiliated) with packinghouses who have suffered losses due to canker should be additionally

compensated for losses directly associated with lost production due to lime trees destroyed due to canker.

Because of the near total destruction of the lime industry in South Florida as a result of the ongoing State and Federal efforts to eradicate citrus canker in Florida, commercial lime growers who packed their limes in their own packinghouses (or in affiliated packinghouses) lost production income in their groves and in their packinghouses. This packinghouse income is not included in the model and should be because such income is within the clear meaning of the law to compensate growers for "lost production." These payments are to "recover income from production that was lost as a result of the removal of commercial citrus trees to control citrus canker." Further, there is no alternative use for lime packinghouse equipment which makes the situation even worse.

The Citrus Canker Eradication Program is in the process of eliminating substantially all of the 3,000-acre U.S. lime industry. Four lime packers and their families owned about 800 acres of these lime groves. Like other farm communities throughout the U.S., lime growers build packinghouses to get a complete chain of profits.

The destruction of vertically integrated lime groves hit these growers especially hard. It destroyed the economic usefulness of these grower's packinghouse assets such as fixed electrical systems, special stainless steel lime wash stations (installed this year just to prevent canker spread), lime sizing and grading equipment, etc.

There is an extremely limited market for used packinghouse equipment. Specialty, low volume, small citrus equipment is hard to move and is usually custom built to fit an exact packinghouse space.

The canker program has devastated the small, local lime businesses. Unlike the grapefruit and orange industries, where fruit can be hauled long distances to a packinghouse and where only a small percentage of the industry has been destroyed, the lime industry faces total annihilation.

To compensate South Dade lime growers for canker losses, including those associated with packing, Brooks Tropicals has calculated the per box cash flow for limes at our packinghouse in 1999. As previously mentioned, this packing operation ran about 80% of the Florida fresh limes last year. We have been conservative in our assumptions and have used data from financial statements audited by Deloitte and Touche. Exhibit D shows the $4.00 per box incremental lime packing cash flow. Running this cash flow through the USDA model at a 13.5% discount rate yields a $6,054 additional per acre compensation for lime groves affiliated

with a packinghouse. We believe this amount should be included in compensation for the approximately 800 acres of lime groves owned or affiliated with packinghouse operations, which groves were destroyed as a result of citrus canker.

SOURCE LIST

[1] Canker Hot Line Shows Breadth of Residents' Ire, Gail Epstein Nieves and Tim Henderson, *The Miami Herald*, November 5, 2000.
[2] *Ibid.*
[3] State Suspends Citrus-tree Cutting in Dade, Andres Viglucci, *The Miami Herald*, November 1, 2000.