

ROUGH DRAFT

SENATE COMMITTEE on FOOD and AGRICULTURE

Hearing on: *Assuring the Integrity of Organic Food and the Use of Organic Fertilizers*

**February 3, 2009
Sacramento, California**

Senator Dean Florez, Chair

SENATOR DEAN FLOREZ: Good morning. I would like to call the Food and Agriculture Committee to order.

I know members will be coming in as we progress.

But I would like to say that this is an informational hearing. And so, we're going to begin.

And as members come in, I expect them to join us with questions and other items they may have in terms of the topic of this hearing.

Obviously, the title of this hearing is *Assuring the Integrity of Organic Food and the Use of Organic Fertilizers*.

I'd like to begin, again, by thanking everyone for being here. This is the first hearing of the reorganized Senate Committee on Food and Ag. I think this hearing is particularly revealing in terms of the new charge for the committee.

We are very interested this morning in examining an incident where it appears that a California fertilizer company perpetrated fraud and was selling a product that while it was certified organic, it wasn't organic at all. The end result is that consumers across the nation were paying a premium (to purchase an organic product) in a product that they weren't receiving at all either.

It's important to remember that this appears to be a fraud committed on California growers as well. Organic growers invest a great deal of time and a great deal of money in the quality of their soil to ensure that they comply with the rules of our National Organic Plan. But we would be remiss to not talk about this particular aspect as well. In the end, this is a situation that both hurts consumers and growers, because when consumers lose faith in what they are buying is organic then the entire system loses value for everyone.

Today we are going to spend a little bit of time, a great deal of time, talking about the current Organic Program. It's set up both nationally and in California. And where we can find, in the process in this organic chain, we can prevent fraud and where we can make sure that this doesn't happen again.

I can tell you that the committee, again, will have a lot of critical questions for CDFA, which is the state agency responsible for investigating these incidents related to fertilizer. And it seems from my view of it, only that the investigation moved at a pace that didn't protect anyone. In fact, it didn't protect growers; it didn't protect consumers. So we would very much like to hear from CDFA in terms of what they knew; when they knew it; and, of course, whether they have sufficient authority to carry out its charge; and why it took so long to pull this particular product from the market?

We'll also be hearing testimony from the CEO of Converted Organics. That's the company (a reformulated company) that purchased the fertilizer in terms of what we were talking about today. I hope the committee receives testimony that will provide some level of assurance that the problems of the facility are a thing of the past.

And the committee is also very interested in receiving testimony from third party certifiers, which also play a prominent role under our nation's Organic Program. The committee would also like to know what role they played in this incident, and whether the certifiers should have a more diligent role in rooting out apparent fraud.

It's important to remember that that incident does not only impact organic growers, but, also, we're interested in getting their perspective in terms of the outcome of these types of issues as they move forward.

So I do appreciate everyone being here. We do have quite a lengthy agenda.

I'd like to thank the senators for being here for this informational hearing.

Why don't we start on the agenda by asking if there's any opening comments from members?

Why don't we go ahead and bring, if we could, the Section two...

SENATOR DENNIS HOLLINGSWORTH: _____(no mic)

SENATOR FLOREZ: Senator Hollingsworth, thank you for joining us.

SENATOR HOLLINGSWORTH: _____ (no mic)

SENATOR FLOREZ: Yes, I think we will probably move the room as the hearings become much more interesting as we move forward in the year. So we'll take Senator Hollingsworth's comments and we'll make sure we'll get a bigger room.

Why don't we go ahead and begin, if we could, with the state regulators of the organic food and fertilizers? We have Rayne Pegg, Deputy Secretary, Legislation and Policy; we have the senior environmental research scientist from the Cal Department of Food and Ag; and we also have the special investigator from the California Department of Food and Ag. Thank you for joining us. We very much appreciate you being here.

And normally we allow for opening statements, but I do have some questions for you, so I don't know how you'd like to proceed. Questions will be okay?

RAYNE PEGG: Yes.

SENATOR FLOREZ: Great. Let's just start big picture, if we could, for the hearing. Why don't we talk about the overview of the organic systems (period) in terms of how it operates and how the context, if you will, for today's

hearing? What are the overarching laws that govern the program? These are federal laws, so maybe you can explain a bit about that.

MS. PEGG: My name is Rayne Pegg. I'll just introduce the panel _____. We have Amrith Gunasekara, who is the senior scientist of the Fertilizer Program. And then, _____ Pierre Labossiere, who did the investigation on California Liquid Fertilizers. And you'll hear from Pierre in regards to the investigation.

In regards to our two programs: we have the Fertilizer Program that investigated the situation with California Liquid Fertilizers and has oversight and jurisdiction and were governed by the Food and Ag code for the fertilizer code. We also have the Organic Program, which has enforcement activities on the National Organic Program handled by USDA. So they're two separate programs; they have two separate authorities. They do share information. And I think it's important that we make that distinction on the two.

You know, it is critical that we have a system that reassures growers that they're actually getting an organic product, as well as consumers—that they're getting an organic product.

Organic fertilizers are a new entity for the Fertilizer Program. We regulate, review, and register products that are less than 110 pounds. Primarily, organic fertilizers sold in California are over 110 pounds. There isn't one test that shows us you have a synthetic product being added. We have to look at the ingredients of wild sea fish, and feathers, mined sulfate and determine what could be occurring under the test? And I think that's what you see with Pierre's investigation.

What is interesting about this is that it did challenge our existing authority and regulatory system. And because it challenged it, we've recognized, and we have been in the process since 2006, of doing a strategic plan of the program and making changes to the program.

With Assemblywoman Caballero we're introducing legislation that will add felony and increase our fines to those that are found spiking organically claimed product with non-organic ingredients.

We're going to require registration of bulk materials, organic bulk materials (which is currently not required in this state), so we can have better oversight.

We're going to require registration. With the registration we are going to increase the registration fees on organic fertilizers so we can increase inspections and reviews of products.

We're going to require full disclosure of ingredients.

And in the case when we do reach a conclusion such as we did with California Liquid Fertilizers, we will be notifying OMRI, WSDA, manufacturers, distributors, organic certifiers, organic growers, and the public of any violations that may have occurred.

So that just kind of summarizes those two programs.

If you have specific questions on the Organic Program (which deals with produce that you see on your grocery store shelves) we have someone from that program that can step up.

SENATOR FLOREZ: Okay. So it looks like you were given everything that CDFA is doing in terms of this particular issue. This all came about when? When did all of this new activity, these new initiatives begin?

MS. PEGG: For the program or when did the investigation begin?

SENATOR FLOREZ: Right now, everything you've just mentioned, when did all that start?

MS. PEGG: We started a strategic plan in 2006. We've already increased the staff of the program investigators, recognizing that we needed more people out in the fields. So, we've done that. And then we've also been in the process of giving more regulatory authority....doing regulations regarding full disclosure.

SENATOR FLOREZ: Let me ask you a couple of questions regarding the actual language that you've just mentioned. Now, is this language that's been submitted....Is the member from the Assembly in the council? And this is a big push forward as we speak?

MS. PEGG: Yes, Assemblywoman Caballero has agreed to take the bill.

SENATOR FLOREZ: Okay, she agreed to take the bill, but is there language written to do everything that you just mentioned to this committee in order to...

MS. PEGG: Yes, we do have language.

SENATOR FLOREZ: Why didn't you share it with the committee so we could cut to the chase and actually see, ultimately, what you actually are doing?

MS. PEGG: We can share it with the committee. I'm happy to do that. I don't have it on me. But we can share it with the committee.

SENATOR FLOREZ: Okay. So, we have language that's going to be introduced that you don't have with you, and yet, we're talking about how to change the program. So it would be helpful to have language to us, as a committee, prior to a hearing. It just, kind of, saves us some time in terms of talking about how things can be fixed, if you could actually share that with us, because all we have is a laundry list of things you're going to do, correct?

MS. PEGG: Um hmm.

SENATOR FLOREZ: And we're not quite sure you're actually....no bill has been introduced, is that correct?

MS. PEGG: Right. But there has been Leg Counsel language that was submitted early on.

SENATOR FLOREZ: Okay. Is there anything in your language—you didn't mention third parties. What's the role of third parties in this process?

MS. PEGG: So CCOF—third party certifiers?

SENATOR FLOREZ: Yes, certifiers.

MS. PEGG: And that's under the Organic Program. They certify. And they can speak to that probably better. They certify growers to be producing in an organically approved way.

SENATOR FLOREZ: Right. But everything that you've mentioned in your laundry list of, if you will, changes, I mean, how does that ultimately watch the watchdog? So in other words, the certifiers are the folks at the very beginning of this process (either through the national program or the state

program) that give us some indication that things are not amiss. Why isn't that included in your particular laundry list of legislation?

MS. PEGG: We're happy to take recommendations from you on how you want to improve the Organic Program. We recognized that there needed to be changes to the Fertilizer Program and we've added more notification to the program as a policy.

SENATOR FLOREZ: Is this an indication, from your point of view, that these changes that you've mentioned, this laundry list of changes in the organic field, are a point to some sort of massive failure in our program as it exists today? Because it's pretty....right out of the box you're, kind of, giving us, you know, "We're going to make some major changes," so is that, kind of, pointing to the fact that the Organic Program isn't working at all?

MS. PEGG: The Organic Program is different than the Fertilizer Program. This investigation was...

SENATOR FLOREZ: Okay. Why the Fertilizer Program?

MS. PEGG: This investigation was the first of its kind, so organic fertilizer investigation was the first of its kind. And, you know, I think maybe it would be best if you hear from Mr. Labossiere in terms of what he had to go through to piece together a puzzle. It's not an easy indication.

SENATOR FLOREZ: Okay, if you see a big railcar full of synthetic fertilizers outside of a plant that's not supposed to use synthetic fertilizer, how is that a big puzzle? I'm just trying to figure that out.

MS. PEGG: Well, several fertilizers are also distributors of conventional fertilizers, or, they just are resale facilities, so we had to make that determination. Two, when Mr. Labossiere goes into the facility, he sees feathers there. He talks to the manager. The manager claims "I'm using feathers and wild sea fish."

SENATOR FLOREZ: Right. But in his investigation he points to the fact there aren't enough feathers to produce the requisite amount of what's coming out of the plant, and yet, outside of the plant is a railcar out of Chicago, right?

MS. PEGG: Right. And I think you highlight exactly what he had to determine.

SENATOR FLOREZ: I guess my question is how is that very difficult in terms of investigating those types of....I mean, here you have a whistleblower who points out, in 2006, in great detail, even to the point of saying, "Look in this particular bin, you'll find fraud." And then you have our investigator go out and do a couple of tests (three or four or five different tests), which a good many of them proved conclusive. Then he goes out and sees a railcar outside of the plant that clearly is from Chicago and clearly has synthetic fertilizer in it. And I'm trying to understand; this is a new process, therefore, this is going to be a much better way to protect consumers, or farmers for that matter, who think they are buying a product to put on....they're not worried about....this is your job not theirs, right? I mean, at the end of the day they're buying a product and they're expecting to put it on their particular fields and that it's not going to throw their program in disarray; it's not going to ruin the soil that they've been working so hard to get certified in the first place. So I'm kind of wondering how, from a CDFA point of view, this is giving us any assurance that things are going to change? Because from the enforcement point of view, you've upped penalties and fines, correct?

MS. PEGG: Right.

SENATOR FLOREZ: But, then, why did this particular company get such a light penalty and fine when you already had the ability to do just about everything you've said already in statute? I'm just wondering; what's the difference other than today's hearing?

MS. PEGG: If you don't mind, let me answer a couple of comments that you've made.

SENATOR FLOREZ: Please.

UNIDENTIFIED: _____ (no mic)

MS. PEGG: No, we've already discussed it. And it was a recommendation of the advisory committee to the Fertilizer Program that they increase the fees. We have a \$500 misdemeanor penalty provision. That

doesn't deter these guys. I mean, they're making millions of dollars. How would it deter them, right?

SENATOR MALDONADO: But setting this hearing didn't trigger those?

MS. PEGG: No. We already had this language.

SENATOR FLOREZ: That's why I love these hearings, though, because we get to hear all the good things you're going to do in terms of where we're going. And I think it would have been helpful, though, to have those types of initiatives, given that this hearing has been noticed for two weeks in the file. If we knew that was going to be the recommendations it would have been nice to have the language. This is the oversight committee over CDFA.

MS. PEGG: Right. Why don't I answer a couple of your questions that you raised?

SENATOR MALDONADO: First of all, if I may just briefly.

MS. PEGG: Uh huh.

SENATOR MALDONADO: Mr. Chair, I think with all due respect, we might want to send a letter to members of the Legislature, like Ms. Caballero, and say, "If you've got a bill that's coming up give us a heads up," I think that might help you.

SENATOR FLOREZ: Right. But you knew this hearing was forthcoming, right?

MS. PEGG: Right.

SENATOR FLOREZ: I think Senator Maldonado mentions a good point: If there's members who are introducing legislation that helps transform this program, those are good to hear from, so we'll absolutely do that.

MS. PEGG: Right. Let me just touch on a couple of things—what our authority is.

The Fertilizer Program does not certify something organic—a fertilizer organic—that's left up to OMRI and Washington State Department of Agriculture. That's what we rely on.

SENATOR FLOREZ: Why don't you tell us what OMRI is, the acronym, for those listening out in California.

MS. PEGG: It is the Organic Materials Review Institute.

SENATOR FLOREZ: And it is a third party? Give us what this particular entity does so we can understand it.

AMRITH GUNASEKARA: OMRI review process, as Rayne mentioned, is we don't have the authority to register and review....mainly register bulk organic fertilizers, which is what is being distributed for the production of food and crops. What we do register is mainly for home and garden specialty fertilizers. Now, if we have a label that comes _____ CDFA for the review and registration process, say, a specialty fertilizer (this is under 110 pounds bagged), what we require....and if it's making claims that this can be used for the production of organic food and crops, what we require them to do, then, is to seek third party verification.

In this case, OMRI, the Washington State Department of Agriculture, or any other third party recognized organization by the USDA NOP; once that certification is obtained, that's basically a seal on their label, and also, listing on this third party organization's website list. Then, we move forward and register their product.

One of the gaps we identified as part of our strategy planning was that since the bulk fertilizers are not going through our shop, per se, we don't have this oversight, which we have moved since strategic planning started in April 2006, and per recommendation by the Fertilizer Inspection Advisory Board to try to fill by the legislation that Rayne just talked about.

MS. PEGG: And so, what occurs when it comes to organic bulk fertilizer is we usually end up finding out either from one of our investigators in the field who takes a sample and recognizes there's something going on here, or a complaint, which is what occurred in 2004. And for the first year in the investigation, we took samples. The product was not found so we took similar samples and there was no indication of a synthetic ingredient being added for the first year. It was only in the second year, through sampling, through getting the paperwork, through seeing the railcar, that we were able to build a case against this gentleman.

SENATOR FLOREZ: And the second year was what year?

MS. PEGG: 2005 to 2006. So the first year, 2004, July 2004 to June 2005, there was no indication.

SENATOR FLOREZ: So 2006 was the indication (at least in terms of the report that I read) that there were some major problems in here. Is that correct?

MS. PEGG: Um hmm. And do you want to give some examples?

SENATOR FLOREZ: Sure.

PIERRE LABOSSIÈRE: If I may.

The investigation was initiated back in 2004, as mentioned, and at that time we had somebody else covering two areas. The area wasn't being covered fully.

I'm a 50 percent fertilizer, 50 percent feed inspector. So in 2005, that's when I took over the area. And I went and took a sample. It wasn't easy to get a sample of the product because usually that's a product that's moved and applied right away.

So just to give you an idea; many times I would go to the grower's location or to the plant and I wouldn't be able to get any product. Now, sometimes I'm at the location I can see the product in a container but then there is nothing that tells me that the integrity of the product hasn't been compromised. For example; it may have been put in a different container—something may have happened and unless I can verify that, the sample would be meaningless, because we have to be fair to both the Board of Consumer and to the investigation itself.

So 2005, I get the sample of that product and we checked for the sulfate sulfur and our lab finds it. Then when I checked with my chemist, he tells me the sulfate sulfur that's in there could be coming from the processes, from different sources so we don't know. There is nothing here that is conclusive. But, it is an indication that something is going on.

SENATOR FLOREZ: Let me ask a question. Even though at that very beginning point when you were trying to figure out from a test perspective

whether it's conclusive or not, our California Ag codes provide violations for labeling issues. So in other words, the reason you don't know is because our labels aren't necessarily reflective of what you're looking at, is that correct? In your report you mentioned, as you're going through this, lots of violations of this particular code due to being not labeled at all, so why isn't that the first indicator, the first beginning of a problem right there from the very beginning?

MR. GUNASEKARA: Senator, if I may? You're absolutely right; we do have violation language in there for label violations. That is what separates this investigation from a simple violation.

Here we were looking to see if synthetics were added. And like Rayne said, there is no single test. There were violations and they were issued based on not having a label, based on your guarantees falling below what they were supposed to do. So what we did for the sake of the hearing, just to make it easier, we separated out the violations from the synthetic issue, because this is really _____ based on a synthetic issue.

Just if I could, briefly explain why is it so hard to see synthetics have been added from a laboratory test? Usually when we have the label, as you all know, you have a guarantee list, and when we sample it and send it to the lab we'll tell the lab to run it for the guarantee list. However, in this case, what we did was we had to actually ask for additional _____ or additional tests that weren't part of the guarantees, to link it up with the purchase of the synthetic product, which is why we had to, kind of, build a case over time, because it is outside a typical violation that historically the program has been designed to do.

SENATOR FLOREZ: Okay. Let me ask a question just on that process. So even though your first indicator is the non-label as some sort of problem, that's already a violation, correct?

MR. GUNASEKARA: That's correct.

SENATOR FLOREZ: Okay. And then, you could not ask for, if you will, shipping documents that would give us some indication, from ADM in this

case, that would allow you to then, even before the testing, say, “ADM just sent a lot of material to this particular organic fertilizer producer...”

MR. GUNASEKARA: That’s a great point, Senator. We did ask for that documentation, and we did eventually receive it.

Let me add one more...

SENATOR FLOREZ: You got it. But let me ask a question. Did ADM ever register as someone who would be able to do this in California—provide this type of amendment?

MR. GUNASEKARA: They weren’t licensed. They had to be licensed to ship it into California. They weren’t licensed and we issued them a license violation for that.

SENATOR FLOREZ: Okay. Go ahead.

MR. GUNASEKARA: Just one thing I’d like to point out is even though we had those documents (which was a key point of the investigation which happened in February 2007), I think one of the things that we constantly had to find was we had to link up what was being purchased as being added and sold to the farmer. And that’s where the complexity comes into play, because we had never done this before. And it required sampling and ...

SENATOR FLOREZ: I got you. So that’s where you have the tough issues—to try to figure out those inputs, correct?

MR. GUNASEKARA: That’s correct.

SENATOR FLOREZ: And why is that a problem? Tell me what the Center for Analytical Chemistry of the California Department of Food and Ag does.

MR. GUNASEKARA: Sure. They are a division of our testing facility. Basically, they have all the analytical testing located in this facility. Whenever we take a sample we send it there for analysis. For example; if nitrogen guarantee was four percent, when the inspector takes a sample...so all the analytical equipment, the chemists, they’re all located in this one location.

SENATOR FLOREZ: I got it. So this is my problem. I’m trying to figure out, for CDFA, as they load this bill up, things that we needed to fix. And if

you look at the Center of Analytical Chemistry within the CDFA department, this is the place where you would send that particular test that you're having problems with deciphering but it doesn't go there does it? It goes to somewhere else.

MR. GUNASEKARA: Actually, Senator, the lab is designed to give you an unbiased opinion of the results. It is not up to them to make the decision if it's a violation or not. But, they do the results and send back to _____ and _____ determines if it's a violation or not. For example; myself and other people on the fertilizer staff.

SENATOR FLOREZ: And so, when the report came back from the Center of Analytical Chemistry back to you, in this particular case what did you do?

MR. GUNASEKARA: At that time we couldn't....like Pierre mentioned, it's simply seeing that the synthetics have been added. There's no one test to determine that. So we had to continuously take additional tests and request data. And I think the major breakthrough in this case was seeing that those railcars were being delivered and purchased by CLF, who was selling and using an organic fertilizer.

SENATOR FLOREZ: I guess what I'm confused about is you have a Center for Analytical Chemistry within your department that you sent something to, to analyze. And they sent it to you. And then you couldn't make a determination. So what good is the Center for Analytical Chemistry, then? I mean, we're trying to cut the budget right now. I'm trying to figure out what is this providing if it isn't giving you conclusive evidence that something is wrong? What is the point of this particular department?

MR. GUNASEKARA: The center is mainly a testing....an experimental facility. It just basically gets in samples and then it analyzes those samples and gives you the results. Then it is our job to determine if it's, in this case, synthetic or not. The lab is built to take away that unbiased opinion where they interpret the results. That's not us. So they are basically an experimental facility that has equipment there. It's a through-put facility that runs your

tests and then gives you a result on the test. And they do it not just for us, I think they do it on pesticides and feed products as well.

SENATOR HOLLINGSWORTH: Mr. Chairman?

SENATOR FLOREZ: Yes, Mr. Hollingsworth.

SENATOR HOLLINGSWORTH: I'm interested in questioning the panel if I might?

SENATOR FLOREZ: Sure. Jump in anytime.

SENATOR HOLLINGSWORTH: And any one of you may answer if you have an answer to my question.

I'm trying to understand exactly the regulatory authority that the department has in what, really, we're dealing with are two different areas. Currently the Department of Food and Agriculture has the authority, through its lab to test, to verify that a label is actually....that the manufacturer is actually delivering a product that meets the label—the total nitrogen and phosphate and so forth. But over here, the Department of Food and Ag has developed the regulations that have been put down from the early nineties when the State got involved in organics. Basically, the Legislature has told the Department of Food and Ag that certification of something being organic is going to be through third parties, is that correct?

MS. PEGG: Right. The two....one is produce, you know, the Organic Program (and CDFA does have enforcement of as well). But, one is produce and one is inputs.

SENATOR HOLLINGSWORTH: But CDFA does not certify a farmer as organic, correct?

MS. PEGG: Right.

SENATOR HOLLINGSWORTH: A third party, a private organization, certifies a farmer as organic and there is a protocol they have to go through and a number of years of not using non-organics on the farm, things like that, correct?

MS. PEGG: Correct.

SENATOR HOLLINGSWORTH: So when this came about, the State currently has the ability to enforce, essentially, fraud provisions on the contents of a fertilizer being sold in terms of its nutrients and what it supplies not on what it was made from whether or not it's organic, correct?

MS. PEGG: Correct.

SENATOR HOLLINGSWORTH: So was there anything that was harmful to the public health? Was there anything in these products that was a non-registered ingredient; should not be applied in California; off label use?

MS. PEGG: Not in this case at all. And we do have cases....the Organic Program does have spot inspections and takes samples from grocery stores and out in the field and we'll check it for any residue or any chemicals being applied that are not organically approved. And if there is a health impact, then we do notify...

SENATOR HOLLINGSWORTH: But none of that was found in this case?

MS. PEGG: Right. Correct. There was no...

SENATOR HOLLINGSWORTH: So over here, the State has the regulatory authority on what's in it in terms of what it delivers to the soil?

MS. PEGG: Right.

SENATOR HOLLINGSWORTH: But over here on the organic or not side, that's a third party's purview outside of CDFA's current authority?

MS. PEGG: Um hmm.

SENATOR HOLLINGSWORTH: So would it not make sense that this is a fight between that organization and the person who is seeking to continue as an organic fertilizer supplier, that their beef is with them, correct? You have no regulatory authority to say whether or not they're organic at this point in time (now if the Caballero bill goes through maybe we're going to change that, but I'll get to that in a second)..So wouldn't it be in the farmer's interest in that organization's interest....The farmer is going to lose a lot of money because they're going to have to go back through their protocols to be certified organic again because they've had fertilizer applied that was not, correct?

MS. PEGG: In some scenarios. It really varies in terms of what the case occurred, like_____ you lose the product technically.

SENATOR HOLLINGSWORTH: Okay. But there are damages?

MS. PEGG: There are damages.

SENATOR HOLLINGSWORTH: So they could sue this person in civil court?

MS. PEGG: Right. And a certifying agent can also take away their certification.

SENATOR HOLLINGSWORTH: And the certifying agent can pull the certification of the supplier and the farmer and maybe for certain products of the farmer depending on the use?

MS. PEGG: Right.

SENATOR HOLLINGSWORTH: Okay. Now, if this person over here was saying they were delivering something that was organic and it was not, doesn't the case of legal fraud come into play there—not just the Department of Food and Ag, but criminal charges possibly?

MS. PEGG: Yes, someone could have taken up charges.

SENATOR HOLLINGSWORTH: They could have taken up.

MS. PEGG: Independently of the department.

SENATOR HOLLINGSWORTH: So if we're talking about taking a major step since the beginning of the State's involvement in organic farming in the early nineties, to where we are now going to be certifying (we're not going to rely on third party certifiers), how much is that going to cost?

MS. PEGG: To be clear, we're not proposing any changes to the Organic Program in becoming certifiers.

SENATOR HOLLINGSWORTH: Okay, but you've got two different ways of so-called regulating people—one is enforcement; one is third party compliance. Are you talking about, now, adding fines and enforcement over here on third party compliance?

MS. PEGG: No. We're talking about the Fertilizer Program. So if you're found...

SENATOR HOLLINGSWORTH: That's what I'm saying. So if the Fertilizer Program over here is talking about fines and enforcement, how is that going to fix the problem of somebody who is certified as organic not using organic ingredients in their fertilizer?

MS. PEGG: Well, if you're talking about a certified grower....typically a grower does not know that they're receiving....If they did have knowledge, that would be a different scenario.

SENATOR HOLLINGSWORTH: I think we're talking past each other.

MS. PEGG: Yeah.

SENATOR HOLLINGSWORTH: Right now the State, through the Department of Food and Ag, has regulatory and enforcement authority on whether or not a label is meeting its ingredients list in terms of the application of soil—what it's going to be amending the soil—but it does not have regulatory authority to say you're not using organic inputs in your fertilizer. Are you looking at changing that and regulating whether or not it's certified organic with fines and enforcement, or are you looking at upping fines and enforcement over here, which we don't really have a violation of at this point?

MR. GUNASEKARA: Okay, I'll answer that. So, Senator, we're talking simply on fertilizers here, right?

SENATOR HOLLINGSWORTH: Correct.

MR. GUNASEKARA: So on the fertilizer: yes, there are third party organizations overseeing if this fertilizer product can be used in the production of organic food and crops.

What we have already looked at as part of the strategic planning is if we can....we have the facilities and the staff and the expertise that already do this review. We would need additional staff and training to go ahead to look at these organic labels if the bulk now falls under registration program, right? So the bulk fertilizers for organic never went through a review process and registration process through the program, right? So if you're looking at changing that and then making that, yes, we would need additional staff and expertise.

SENATOR HOLLINGSWORTH: So you're saying now you're going to start looking at the nutrient content of organic fertilizers?

MS. PEGG: Bulk.

SENATOR HOLLINGSWORTH: Bulk organic fertilizers.

MR. GUNASEKARA: Yes. One thing when we read the label, Senator, what we always do is we make sure that the nutrients can be derived from the derivation statement on the label. Every label has to have a derivation statement telling us where those initial ingredients came from. So we often compare the nutrient guarantees with those derivation statements. For example; if there was a certain nitrogen content guaranteed, for example, from ammonium nitrate, we want to make sure that you can actually derive that content from the ammonium nitrate.

SENATOR HOLLINGSWORTH: So you really are saying that we're going to get into certifying organic fertilizers as organic?

MR. GUNASEKARA: If that's what it leads to...

SENATOR HOLLINGSWORTH: Well, if there are enforcement and penalties associated with "we don't think you can get this amount of nitrogen from the organics that you're listing on your label," then we're getting into enforcement of organics.

MR. GUNASEKARA: Yes.

SENATOR HOLLINGSWORTH: Thank you.

SENATOR FLOREZ: Senator Hancock.

SENATOR LONI HANCOCK: I can see that with the increased interest which we have in organic produce the public does need to be protected and businesses that are conducting themselves according to the rules need to be protected in this process. My question is why didn't the department turn this over simply to the attorney general's office as fraud or unfair business practice?

MS. PEGG: Our objective at the time was getting the product out of the marketplace, and so, that's the settlement that we reached with CLF. Another party could have taken it forward. In the future we are going to be referring all cases to the district attorney or the Department of Justice.

SENATOR HANCOCK: So what did happen to CLF; they just removed the product?

MS. PEGG: They were required to remove the product, notify all their customers, remove it from OMRI listing (which certified them organic), and then, certifiers also notified growers to stop the use of the product.

SENATOR HANCOCK: But did the fines kick in at all?

MS. PEGG: We only have a \$500 and misdemeanor.

SENATOR HANCOCK: It wouldn't have made a difference.

MS. PEGG: A fine wouldn't have made any difference. And I think that's why we're proposing it to be changed, because it really doesn't deter this activity.

SENATOR HANCOCK: Could you just tell me what OMRI stands for again?

MS. PEGG: Organic...

MR. GUNASEKARA: It's the Organic Materials Review Institute.

SENATOR HANCOCK: And it's in Washington, the State of Washington?

MR. GUNASEKARA: Actually, I think they're located in Eugene, Oregon. And the other third party organization for fertilizers is called Washington State Department of Agriculture.

SENATOR HANCOCK: So other states have this capacity?

MR. GUNASEKARA: OMRI isn't a state organization. It's a third party organization. But the Washington State Department of Agriculture, it is a state organization.

SENATOR HANCOCK: And you could probably tell us how much we pay these third party certifiers? I mean, again, I'm wondering if it would be more efficient and effective to have it in-house as a protection mechanism rather than give it to other states. But it may be that setting up the laboratory and the protocols makes it more efficient to contract out.

MS. PEGG: And CCOF may want to speak to, if we were to specifically certify something organic and some issues that may arise from that from

having just a state certification, which has been some of the arguments against having a state certification.

We do feel it important that we do have more enforcement authority if we do detect that something is going on, because we do have so many people in the field throughout the state to pick up on these incidences that may occur. But I know their registration fees vary.

MR. GUNASEKARA: Yeah, as for the fees, I can't give you exact numbers, Senator. What I can say is we charge currently a \$100 registration fee for conventional fertilizers if it comes through our shop as a registration fee. What I do know is that their charges are considerably higher. I can't tell you an exact number at this point.

SENATOR HANCOCK: Thank you.

SENATOR FLOREZ: Let me follow Senator Hollingsworth's very important policy question in terms of these separate arms, and yet, from a grower perspective, some transparency in figuring out treatment. The third parties who are certifying these fertilizers, is that ultimately working—this third party system for California for consumers? Is this a workable system?

MS. PEGG: For fertilizers?

SENATOR FLOREZ: Yes.

MS. PEGG: I don't think we really have an opinion on that. I think it's important that we have a program that can offer investigators an enforcement should we find a fertilizer manufacturer in this state not adhering to their claims on the label.

SENATOR FLOREZ: So is that enough, though? I guess you had a label claim here. Do the labels mean anything? You're saying that there's a label on it but, yet, we still have to go through this entire convoluted three-year process or two-year process in order to get some sort of thought that the label actually meant something, and so, therefore, we come to these long drawn out...

MR. GUNASEKARA: That's a good question. What I would like to point out is that there's really two types of labels in terms bulk; there's the

conventional labels, and then there's the authentic labels. And with the conventional labels, historically, we never had an issue.

If you look at your packets, what I have included in there is an organic fertilizer label, an example of it, followed by an example of a conventional label. Now if you look at the conventional label you'll see that it's very straightforward; there's a nutrient guarantee, where the product comes from, and some directions. However, if you look at the organic labels, you can see there's a lot more information in there which requires much greater review if a registration program on this were to be created. So what we have noted was the label does offer a lot of information. It's actually our starting point. Before we even take a sample, the inspectors in the field are trained to look at the label and see if there are issues with it.

This whole investigation was born from the fact that we saw the label and we thought some of the guarantees were a little higher than what could be derived from organic sources, so, therefore, it was a very starting point for us. And there's an immense importance to the label.

SENATOR FLOREZ: Yes, Senator Maldonado.

SENATOR MALDONADO: How long does it take to register a conventional label?

MR. GUNASEKARA: Right now I can't tell you that because conventional labels don't come through our shop. What comes through our shop is the packaged products. And the packaged products have a lot more information than the conventional label I have shown you here. Sometimes a company, simply to make sure they're within the laws and regulations, they would voluntarily send us a commercial bulk conventional label. And, you know, from my strategic planning analysis, it doesn't take very long to review those because they're very straightforward.

MS. PEGG: We have 90 days to get back to any person submitting a label for approval.

SENATOR FLOREZ: Okay. Let me ask a question. You just mentioned that, in fact, this investigation started because you looked at the label and

decided that somehow it was promising more than it might be able to deliver, is that right? I mean, I thought it was started by the whistleblower. I'm confused. I thought a whistleblower wrote a letter in 2004, June 18th. So which one is it? Is it the whistleblower or is it the fact that you're looking at labels and coming up with your conclusions?

MS. PEGG: Well, it's both. We get a whistleblower. And then we also pull a label and see if there's anything there. And then we did sampling as well.

SENATOR FLOREZ: And how long did it take for you to initiate an investigation after looking at this letter, June 18, 2004?

MS. PEGG: We did sampling in June.

SENATOR FLOREZ: Based on the letter or based on your normal everyday procedures?

MS. PEGG: We did it based on the letter. We got a tip that there may be some adulteration occurring. And correct me if I'm wrong, but that product that they claim in the letter was no longer in the marketplace.

MR. LABOSSIÈRE: Well, that product. The person at the time who was checking into that couldn't find the product. And so, as I got the story myself later on, a year later from her when I took over the area, she said it was one of those pending issues. It was very difficult to find that product in being that she was covering some other area as well. She wouldn't be able to spend the time and she passed that onto me to follow-up on this. Now, I experienced the same difficulty that she had in finding the product. Because it's one thing when you go someplace and you are working with the manager and he tells you, "This product is being produced. We have a load going out at such and such a time," but it's another when this information is not forthcoming and you have to be playing around and trying to find it everywhere you could. So that's what was driving this investigation.

And so, by 2006....actually the railcar wasn't sitting in front of the place. The railcar was at the _____ in Salinas. It's through a tip that I was able to find where it was at.

SENATOR FLOREZ: CNN Railways, right, in Salinas?

MR. LABOSSIERE: Right. It was through a tip that I was able to find that on President's Day, and I just went over and took that sample. But even then there was great difficulty in finding the paperwork. There was no label on the railcar. The manager came on the line. The actual employee who was dealing with it was not communicative towards me. I managed to get a little tiny bit of information out of him and then the manager took over and told me he had no paperwork on it—no MSDS or anything. So the following day he gave me some that said simply "liquid fertilizer." So I was able to backtrack on all of this. And I don't want to go through the whole story with you but basically, it was a very difficult case. Now, once you find that, I had to link it, as Amrith said earlier, to a particular product, and there was the difficulty of linking that to the particular product.

SENATOR FLOREZ: Let's go through that real slow so we can understand. As Ms. Caballero is putting legislation together; let's see if we can enhance your powers a little bit. Because it shouldn't be that difficult if you're out there looking and you're our government representative making sure that our farmers aren't being defrauded and consumers are getting the product.

Are there limits on when you can perform an inspection? Let's go through your duties. I mean, are there limits on you in terms of inspections? Can you do it any time? Tell us what...I mean, you're the person in the field, so why don't we go through that so we can understand it.

MR. LABOSSIERE: As an inspector I can request that I can do a tour, an inspection; request to find what are the ingredients; where they are, and that's what I did.

SENATOR FLOREZ: So that's physical inspections? So you can actually show up at the door, the field, the railcar, the trucking company and you can ask; you can look?

MR. LABOSSIERE: Right, I can ask. But then it's one other thing when we are dealing here with a very different industry. Because in a normal conventional place you have the bins—the urea is labeled, sulfate, potassium

sulfate, everything is there and you can actually see it and the blend is made right in front of you. You can take a sample and you send it to the lab, or you can, by visual inspection, tell. But now, when you are dealing with _____ enclosed reactors where there are no real bins of any material being there and they tell you that all of the ingredients are in the reactors and they're going to decomposition or what have you, and they are inaccessible for sampling over and over again that makes it very difficult.

SENATOR FLOREZ: Okay.

MR. LABOSSIERE: And in addition to that also, when I did request....I raised the issue of the high sulfate content in the product and the manager's response was that, well, he was adamant that the ingredients of feather mill and hydrolyzed fish....and this was a patent in process that he couldn't share with me....and only the consultant knows about it and that he could share it with my boss. And I kept pushing the issue and pressing the issue.

And to revert to another trick....in part of my training, which was to demand to see....as I was taking the samples I wanted to see some comparison. How do they compare based on _____ tip of that and how do they compare to the material that I had sampled?

You see, it's not illegal for someone to be dealing with both conventional and organic—many of the licenses do. They sell conventional fertilizers. They also sell organic fertilizers. So the difficulty was pinning it down to that one particular product where I could make the link. And so, what I ended up doing is take a number of samples so that at least I could have some data and to compare to what I had actually sampled from the railcar. And in addition to that, also, I wanted to see what the products, what the ingredients were. And so, what I had to revert on, because I have no jurisdiction over the organic itself, the organic component, the certification component, I had to revert to the fact that the products that I had sampled were low in nitrogen. Then I said, "This is a violation right there." And I said, "My boss is breathing down my neck. He wants an answer. I have to sample these ingredients no matter what." And that led me to conclude, to observe that these ingredients were not

there. I had never seen them in bins. When finally I was told to....he pointed out to me that there is this bag of feather meal that had just been received and I made a mental note that that bag had been laying there for about three months, but I did not let onto that. So I took that sample and traced it back to the suppliers, the various suppliers, and got statements from them. So that's how I was able to confidently, now, get back to my boss and say, "Look, there is something. We have, pretty much, this thing sealed because I don't believe even though....it was a number of things piecing together that told us specifically that we had more than enough proof to say, "Hey, something is going on." And the same thing for the seafood byproducts as well; the seafood byproducts throughout, they were being claimed they were in there. I couldn't have access. There was production going on. It was in the reactors and what have you.

So finally, through my being present many times with their staff, people that, you know, communication improved a lot. And in the absence of the manager, you have directed a staff person to talk to, to take me to take a sample. And I used my previous observations as to where I had seen the original product being....meaning from the railcar being transferred. And also some of my little bit of Spanish to get some information that I was able to put the whole picture together and present something to my boss, which, after review he told me, "Well, let's prepare something for the legal department."

SENATOR FLOREZ: That was very enlightening. Let me ask just a couple of more questions on that process. So, in other words, you have physical access—you have physical inspections but your access is still blocked in many cases?

MR. LABOSSIERE: It was very much blocked because there was a locked gate. And a couple of times I had to....the plant is way in the back. You cannot go through the gate. A couple of times I've had to, because our thing is to do unannounced inspections, so I had to really find a hole in the fence to go through in order to enter the plant, so later on they improved that.

SENATOR FLOREZ: But should that be the case? I mean, you are our frontline person to protect farmers in terms of the product they apply to their field. In my mind they're knowingly buying a product they believe is certified on one end but then somehow enforced inspected on the other. And if it's so difficult for you to gain access, I'm wondering how in the world we could ever convince consumers that their government is really doing its job? Of course, you don't want to interfere. I mean, this is a business entity but at the same point, these are highly regulated materials, is that right?

MR. LABOSSIERE: Yes. Let me say that this doesn't represent the majority of the businesses where I conduct inspections. This was a case that was pretty much...

SENATOR FLOREZ: You were working on trying to get this...

MR. LABOSSIERE: Yes. And this was a case that was pretty much an exception. And I actually pushed and finally there was some way of getting access _____.

SENATOR FLOREZ: So this was a different case. But this particular company had what percentage of the market?

MR. GUNASEKARA: Senator, we don't, at this time, track that. What we do track is how much of the nutrients were distributed in this state.

SENATOR FLOREZ: Is it fair to say it's a large amount? This company is not a small company in terms of...

MR. GUNASEKARA: We can say that it was popular but I can't put any number with that because we don't have that tracking system, Senator.

SENATOR FLOREZ: Okay. Senator Maldonado.

SENATOR MALDONADO: I think you answered my question. People didn't lock the doors because they didn't want you in, they have just security for their facilities, correct?

MR. LABOSSIERE: I guess so.

SENATOR MALDONADO: Right. I mean, I would venture to say that most fertilizer companies would have to have some security in place to not allow just anybody to walk in.

MR. LABOSSIERE: That's true. But most others, I can pretty much drive there on the plant and there is a sign that says, "Check in at the office," which I usually do. But that one, particularly, there was no way of getting even to the front office. Now, it was changed a little bit later after I voiced that to the manager.

SENATOR FLOREZ: Got you. How about your access to documents? You've mentioned physical inspection but do you have access to documents, access to....you mentioned the front office. I mean, do you have the ability to go in and look at shipments, trucking orders, railcar types of...

MR. LABOSSIERE: Yes. And I have frequently exercised that authority. I do that all the time. Whenever I'm present and a shipment is being brought in, I can do that.

In the case of a railcar, since there is no driver you really have to rely on the company who has that document. And then when they tell you, "I don't have it; it's not there, not even on the MSDS or anything; they haven't sent it to me," by this time I have a very strong, strong feeling that somebody was playing a game and I was determined to get to the bottom of this.

SENATOR FLOREZ: Okay. Let me get a big picture of your authority or CDFA's authority. Can we shut down a fertilizer company if they're not compliant? Do we have the ability?

MS. PEGG: We can quarantine a product. I don't believe we can shut it down.

SENATOR FLOREZ: What's our powers, here, when something goes really amiss?

MR. GUNASEKARA: We have also....to add to the quarantines: Quarantine is of a major action. And the goal is we quarantine a product and then we work with the company to fix the issue, giving it maybe a label violation—something wasn't labeled right. The other thing we can do is we can also take away a license, but that's after a hearing and a process. So quarantine, at this time, is the most powerful action. It has worked amazingly

effectively in the marketplace. When something gets quarantined we get a fast response from the company.

SENATOR FLOREZ: Did we issue a quarantine in this particular case?

MS. PEGG: In this scenario you don't have a packaged product that we were able to quarantine. It's more difficult when you get into bulk materials that are going in and out.

MR. GUNASEKARA: That's true. As Rayne said, the product is produced right away and then put in the fields, like, the next day. It's not sitting on shelves where we can regularly exercise a quarantine.

SENATOR FLOREZ: So we're just, if somebody wants to run rampant in terms of this particular product, in terms of fraud, what you're telling me is we have no real way to stop this. It's pretty scary.

MR. GUNASEKARA: Well, what we will do, Senator, is if we find out there is a problem, we will work to make sure the future batches are in order with the California laws and regulations.

SENATOR FLOREZ: What does a farmer do with his land that's just been....you know, in another process....Senator Hollingsworth just mentioned a three-year process to get just where you need to get, what good does that do someone that's applied this?

MS. PEGG: Well, and I think that is clearly a concern for us and that's why we are adding more teeth to the program, because the Fertilizer Program would have first knowledge of something occurring, as well has the knowledge to identify a potential issue.

SENATOR FLOREZ: But why didn't you guys go to the DA? I mean, if you're real serious about this, why wait for an investigation to be completed? Why not send the strongest signal possible by asking the DA to take all full powers? As Senator Hancock mentioned, this is the strongest....I mean, a \$500 fine is nothing and it's per violation. Then your largest power seems to be, beyond quarantine and license issues, your DA. So why didn't we, if we really took this seriously, move in that direction?

MS. PEGG: Well, I think the settlement was actually a very good settlement that we made which got it out of the marketplace immediately and notified all customers and OMRI of it. So, yes, we could have referred it to the DA and that's what we will be doing in the future, but I think we actually did have, you know, a very good settlement with CLF of getting it out of the marketplace. We had a final report. The case was concluded and we had a final report at the beginning of December to the legal office, and by the end of December we had a settlement with CLF.

SENATOR FLOREZ: Your settlement seems to center on the phrase "improper labeling," is that the right way to characterize this entire incident? I mean, some sort of offhand discussion about improper labeling. It seems to be much more egregious than that.

MS. PEGG: Well, and I think that is the thing that we did identify. You know, we've had a program that was basically created on conventional fertilizers. And this case really highlighted that we need to quickly identify when there's adulterations occurring. And we primarily do deal with labeling violations.

SENATOR FLOREZ: I got you. But just answer me. Is improper labeling the correct way to characterize which is one of the fundamental flaws in this organic issue? I mean, it seems to me that there were other terms one might use, like, fraud, and a whole host of other types of issues. But improper labeling sounds kind of like it deserves a \$500 fine and no call to the DA and it seems much more egregious than that. And I think you would agree, given you've just mentioned a ton of ways to fix the system in this upcoming legislative session. So I'm just wondering why you believe that the settlement was a good thing (those were your words) given that it looks as though, if you were just listening to the settlement, sounded like some sort of mishandling or mislabeling (improper labeling is the term), why is that?

MS. PEGG: I was not the attorney that wrote the settlement language for it. We primarily deal with labeling violations. I think that the rest of the language in the settlement did get it out of the marketplace; notified his

consumers, his customers, and notified OMRI, which we do think was very proactive in protecting future growers using this product.

SENATOR FLOREZ: Well, I'm just reading the settlement for the members very quickly. In the settlement you mentioned being aware of the inputs used in the formulation of this particular product has changed—no longer meets original specifications. To the best of your knowledge it appears that the quantity of sulfuric acid has been added from the supplier. And that it adversely affected....I guess I'm just trying to understand why this particular settlement is a good settlement from your....I think it says the world about your oversight ability and seriousness about this. I mean, why would you term this settlement a good deterrent? I mean, I'm not understanding....this was one of the largest, most widely covered, I believe, organic debacles that we've seen in quite a while, so why would CDFA somehow characterize this as some sort of good settlement that, in essence, talks about improper labeling? I'm not sure why that makes us feel good about it.

MS. PEGG: Well, Senator, this was the first case of its kind. It's a new arena for us. We did get the product out of the marketplace. Recognizing, though, that is...

SENATOR FLOREZ: How did you take it out of the marketplace? You mentioned that a couple of times now. You said, "This was taken out of the marketplace."

MS. PEGG: We required CLF to take it out of the marketplace. And then we did further testing and sampling and investigations in the marketplace and could not find the product and we saw no indications of a synthetic product being added once we had the settlement. So we continued sampling and making sure we had compliance all the way through April of 2007.

We recognize that we need more teeth to this law. We recognize that we need to go after these people more stringently and that's why we're including penalty provisions and increasing our fines. So we're in total agreement with you, Senator, that there needs to be more teeth to this.

SENATOR FLOREZ: Okay. Who's Ray Green and Rick Jensen? They work for your department?

MS. PEGG: Ray Green is no longer with the department. Rick Jensen is our branch chief for the organic....is the branch chief for Inspections Program. He's here and he's also...

SENATOR FLOREZ: Here's what worries me in this discussion email that was sent to the committee. I'll just read one sentence from it. It says....it's in dialogue in terms of how we are going to stop the sale. It just mentioned a discontinuation of the product as somehow making us feel good. And I'll quote: "*Does the Organic Program issue a letter to the certification agents instructing them to notify their farmers to cease from using this product? Or, do we continue to allow them to use up any inventory which they may have on the farm?*" I mean, if it's a bad product, if it's ruining the farm, then why in the world would we be saying "in terms of your remaining inventory, that we allow farmers to continue to speed it up; get it out; spread it on the field?" I mean, why would we be writing that from the enforcement agency itself? I mean, this is the proper signal in terms of your sequestering of this. Any additional material seems proper. But then I have an email that says, "*Or do we continue to allow them to use up any inventory which they may still have on the farm.*" I mean, why in the world would we have bad stuff on the farm and then say, "Well, you know even though we've stopped it, go ahead and apply it?" What's the inconsistency there? Why would we do that.

MS. PEGG: Can you give me the date of that email?

SENATOR FLOREZ: Yes, I'll hand it to you.

MS. PEGG: I have it here.

SENATOR FLOREZ: It's page 48 in your investigation.

MS. PEGG: I don't have a page 48; I have a date. Is that dated 12/21?

SENATOR FLOREZ: In the investigation there are page numbers and it's item 48.

MS. PEGG: Oh, okay. I have the actual email.

SENATOR FLOREZ: Let me give you the context. It says, “*We need to draft an example letter to the growers and distributors for legal review. The letter probably cannot go out until the DA takes action.*” And, of course, there was no DA action on this. Then it goes on. It says, “*The thought of another question that needs to be answered and maybe AJ can shed some light on this as well*”...and here’s the sentences, “*Does the Organic Program issue a letter to the certification agents instructing them to notify their farmers to cease from using this product or do we continue to allow them to use up any inventory which they may have on the farm?*” And I’m just wondering why in the world we would want to do that?

MS. PEGG: Depending on the date of that, Organic Certifiers notified their growers to prohibit the use of the product.

I do have another email where we do talk about writing a letter.

And I think that what we have identified is we’ve identified a clear policy within the department that at the conclusion of any case we will be notifying OMRI, growers, manufacturers, distributors...

SENATOR FLOREZ: What did you tell the growers to do with their inventory that they had on the farm when this was finally discovered to be not the product to apply to organic fields?

MS. PEGG: We did not make a public statement at the time. The investigation was still ongoing at that time. Even though we had a settlement, we still wanted to ensure compliance.

SENATOR FLOREZ: Got it. What did you issue to farmers who had adulterated inventory on the farm after the investigation was completed—this bulk product?

MS. PEGG: We did not have knowledge of what product the fertilizer was applied to, so we weren’t able to issue a recall of product. Some others may have had knowledge because they certify farms. We did not have that knowledge. And that is one of the issues that we have identified—that we don’t have lists of who you’re selling to.

SENATOR FLOREZ: Right. So the legislation will be corrective of that, as well, that you're going to be producing so that we'll have lists and an understanding of where product is moving and traceability and all of these issues that we've talked so much about in terms of food safety? I mean, is this going to be applied in your bill so that we can ask you at any moment in time where this stuff is?

MS. PEGG: Well, you just gave me a great idea, so we can talk about it and see about adding it.

SENATOR FLOREZ: Okay. And tell me about monitoring provisions in your settlement agreement. I didn't read anything in your settlement agreement that talked about ongoing monitoring of these types of issues. Is this going to just simply be corrected by the legislation that you've mentioned to be introduced?

MS. PEGG: No. I mean, there is in the PRA that you have and in the investigation that Labossiere did, we continued to sample and look for the product in the marketplace all the way through April of 2007. But we continue to do that, and that's why we've increased the number of investigators to be able to identify should we have any violators out there.

SENATOR FLOREZ: And does your agreement provide for any sort of protections for consumers and growers going forward? I mean, are there items in this settlement that this is, as you said, the first case, the landmark settlement that kind of sets the tone. Is there anything here that allows consumers and growers the ability to, in essence, when these things occur to have some recourse?

MS. PEGG: Growers can have recourse. We did not prohibit that in any way, shape or form, so they are able to have recourse. And I don't know enough about the law to know what consumers could claim.

SENATOR FLOREZ: Well, that's the point of the new committee. We want to make sure that consumers are included in this, so we'll want to work with you on that.

Did CDFA have the legal authority to red tag this? Generally, didn't you have the ability at the very beginning of this to red tag this as some sort of fraudulent fertilizer right at the beginning, right when you're kind of....and did we do that?

MR. LABOSSIERE: To red tag a product, basically, you have to have proof that the product is in violation. In this case we didn't; the proof was lacking. And so, that's why it wasn't red tagged.

Secondly, I personally didn't want to tip off the fellow as to what we were trying to determine; what we were trying to find out.

One of my tipsters....actually one of the guys who gave me the tip, he didn't want things to somehow get back to him, and so that was....generally depending on when a complaint is filed, if it's an open complaint where someone is willing and saying, "I said it," then there's a lot more we can share—we can be a lot more forceful. But, then, when you have an anonymous person and they are very afraid and begging you to proceed with a lot of caution for their own security, then that adds a little bit more burden to how you proceed with things. So, I just wanted to bring that out, to give you the full picture of what I, as the field investigator, was dealing with in this particular situation.

SENATOR FLOREZ: Well, we very much appreciate you taking us through, because you're the frontline of protection for, I think, farmers, their land, and consumers. And we very much appreciate you taking us through what your everyday day is like. And, more importantly, what kinds of powers that we need to balance here in the Legislature from a policy perspective to make sure that you can do your job effectively. And I think it's been very helpful for you to do that.

Let me ask the big, big policy question and that is from your perspective should CDFA have known about this product even before the whistleblower incident? I mean, are we fully geared towards proactively finding these without the small clues and innuendos and staff discussions and going through gates and all of the things we have to do in some of these cases? I mean, is there any

way, is this what the legislation is going to be corrective of so that we actually have some assurances that this is going....that we catch these before non-complaint driven types of issues? It's just a big policy question. Is this what we're heading towards? Is this what we're trying to solve?

MR. LABOSSIÈRE: Yes. I think that this is one of the things that would really improve our lives as investigators in the field—so any ideas, any thoughts. There are some ideas being considered based on this, and other investigations, and that will be greatly helpful.

SENATOR FLOREZ: Great. Just a few more questions. In terms of the FBI raid just last week, I believe, in Bakersfield, in my district, the fertilizer company down there, is CDFA working with the federal government on this particular issue? It's been brought to the attention of CDFA? Are you aware of it? Can you give us any update on this FBI raid and how it fits into this big picture that you've mentioned?

MS. PEGG: We do have an investigation on Port Organics at this time. Because the case is not closed we cannot really comment on it. But we are cooperating with the FBI and other agencies on the investigation and sharing what information that we do have.

SENATOR FLOREZ: Okay. Are we acting any differently in this case than we did in the prior case in terms of the information and things that we're working on from a CDFA perspective?

MS. PEGG: Well, I think once the case is concluded then we'll be doing a public announcement and taking action.

SENATOR FLOREZ: But is the case going to take three years like this did?

MS. PEGG: No, I doubt that it will take three years. I think CLF gave us an idea of what really to look for and what hurdles that we had to experience. And I think by requiring the registration of bulk materials we'll get firsthand knowledge if there's a potential violator there or not. And then we'll have investigators, which we already have, but we'll have investigators be able to go

out into the field and follow-up as well. So, you know, those are the measures that we're doing to ensure that we can catch these before we get a complaint.

Don't forget, bulk organic fertilizers, the only way we really ended up investigating them is through complaint driven or random sampling, is previously how the program has been run. So, in the future we'll be able to be more proactive.

SENATOR FLOREZ: And in the FBI raided company that you've mentioned, is there any attempt to red tag, suspend a license, notify the DA early, if possible? I mean, what are we doing to send the signal that these types of things aren't....or are we just going to wait until this investigation is absolutely complete and then....how does it work?

MS. PEGG: Well, we already have....we've taken samples from that location and, you know, we are part of the investigation. But I can't tell you at this time, what we're going to do next week or in the future.

SENATOR FLOREZ: And one last question. You mentioned the problems with the conventional organic fertilizers when you go to a company, I mean, shouldn't there be a bright line, in many cases, in terms of separating these within the plant? Are we just asking for fraudulent behavior when we're allowing certain chemicals in the plant to be somehow intermixed with organics? I mean, should there be a much brighter line in terms of these particular companies?

MR. LABOSSIERE: What I've noticed among....and this is a very new thing that has really exploded in the past few years....what I've noticed is that a number of the distributors, they have separate tanks that they establish and they are clearly labeled, which shows an awareness that they are pretty much trying to separate the tank forms, so there is the organic side and there is the conventional side. But definitely, there needs to be this type of....my own opinion is that there needs to be some clear demarcation between the two so as to avoid any kind of mixing or contamination of the products.

SENATOR FLOREZ: Okay.

MS. PEGG: And just to add to that, we did have the discussion with some of the certifiers that no one certifies these facilities organic, to produce organic and conventional. And what are those rules and guidelines? So we have had some discussions on what the role of the department could be in certifying some of those facilities, as well as third parties—OMRI and WASDA, certifying those facilities, because we don't have a role in that right now.

SENATOR FLOREZ: Okay.

SENATOR MALDONADO: Just along the line of questioning: In your opinion you say there should be a division. Obviously, there is no division when you have the crop, because you go to a processing plant and you have organic product there and you have conventional product there, so are you saying, in your opinion, it should be separated completely?

MR. LABOSSIERE: I was referring to fertilizer—fertilizer distribution. And what I see some of the companies are doing, in a forward thinking way they have set different areas for the organic products as opposed to....which I feel is a very good. Observing what they do, I think it's a very good step and it needs to be looked at and improved. But definitely,

many of them are doing the right thing.

SENATOR MALDONADO: Okay. One more question, Senator Florez.

SENATOR FLOREZ: Sure. Of course.

SENATOR MALDONADO: While you're here....and maybe this has nothing to do with fertilizer, but since you're here, an organic question on labeling: We're talking about a clear division of fertilizer; we're talking about a clear division on labeling; we're talking about the differences between organic and conventional; now, my question to you is how are we allowing organic, since it's such a different way of farming, why are we allowing organic produce to go into a conventional box once the crop has come out of the ground because they don't have an outlet to market it?

MS. PEGG: I'm looking to my organic guy who runs the program.

SENATOR MALDONADO: May I have that question answered, Senator Florez?

MS. PEGG: It is a very good question and it has been asked several times. Is that, if you don't have a market to sell your organic product it gets put into a conventional box? So you don't have a buyer, so you have more supply...

SENATOR MALDONADO: But yet, you can't put conventional into an organic box.

MS. PEGG: Right. I mean, I think it's a demand issue. I don't know if it's a labeling violation.

SENATOR MALDONADO: So when you say it's a demand issue, you're saying that I can farm 20 acres of organic product but since the market is really not there I'll just dump it into the conventional side and be okay and keep the market up on the organic side? So it's a marketing tool; it's really not organic is better than conventional?

MS. PEGG: Well, organic is a marketing standard.

SENATOR MALDONADO: But yet, it can go into a conventional box?

MS. PEGG: Yes, it can.

SENATOR FLOREZ: We're going to have just a special hearing on this.
(laughter)

SENATOR HANCOCK: Senator Florez.

SENATOR FLOREZ: Yes.

SENATOR HANCOCK: My understanding of organic produce is that it is an extra level of protection for the consumer that the consumer may choose.

SENATOR MALDONADO: Obviously, it's not.

SENATOR HANCOCK: What is the problem with them putting it in a conventional bin to sell since it is a protected product? The problem I as a consumer have, is if I'm buying something that I believe is a protected product and it is not, in fact, that. So I think we're talking about protecting consumers here and having that extra level of protection that many people believe that organic produce does give them.

MS. PEGG: Well, I think that our objective for the program, whether you want to buy conventional or organic, is to ensure that what you are buying...

SENATOR MALDONADO: You don't know what you're buying. I don't know if I'm buying conventional. You're telling me I'm buying organic.

MS. PEGG: Yes, we do certify....well, certifiers certify if you're buying organic.

SENATOR MALDONADO: You see the difference here is that Senator Hancock is saying that she believes that organic is better. That's great. Obviously, pesticides, or whatever they're using for organic, don't have a 10-year registration label like it does on conventional. We obviously weren't using organic fertilizer on that crop, but yet, this notion that it's much better and it's allowed to go in the conventional side is where I'm trying to figure out....Senator Hancock is talking about a level of higher confidence. I'm talking; it's being used as a marketing tool.

MS. PEGG: And the department does not get into which is better or which isn't better. We feel that the regulations that we have in place, as well as several other agencies, DPR and so forth, do ensure that both products provide...

SENATOR FLOREZ: We're going to let Senator Hollingsworth decide which is better.

MS. PEGG: You should have a separate hearing just on this.

SENATOR HOLLINGSWORTH: I'm ready to weigh in on this. As somebody who tries to avoid organics I want to make sure I'm not feeding my kid organics because next he'll be wanting to go to Cal and be wearing Birkenstocks. I'm sorry.

SENATOR MALDONADO: That's my point.

SENATOR FLOREZ: Okay. I don't know how this hearing got hijacked into that but I knew that somehow....Thank you, Senator Maldonado. I think that is an ongoing question.

And I do want to tell CDFA, particularly, as you're starting the Assembly side with a bill and a concept, I will guarantee you that we will be well educated, given this hearing, by the time this bill gets to the committee for a vote. So I would encourage you to meet with the members on this legislation

as it starts to transpire so we can have some opportunity to really have some discourse. I'm trying to give you the requisite powers. And I think as Senator Hollingsworth's bigger question is how do we merge these very two separate arms in a way, or not merge? Or how do we make them work in a way that actually makes some sense for growers and consumers?

SENATOR HOLLINGSWORTH: And if we're going to jump in, we can't just put our toe in.

SENATOR FLOREZ: Right. Yes. Exactly.

SENATOR HOLLINGSWORTH: Because you can't just say, well, we're going to allow third party certification, but we're going to, then, enforce that. You're either in or you're out. You're either all in or out.

SENATOR FLOREZ: You need to figure that in prior to coming here. And we need to get our national folks involved, given we have a national standard, and try to figure out how all of that works from an enforcement point of view. So I would ask you to do that.

Before I dismiss you, obviously, I think the members know Jack O'Connell just had a State of the Education piece at 11:00. I guess he's, kind of, telling us where we're at. This is your turn. I mean, how would you grade yourself in how we've done on this particular case? An A, a B, a C? I mean, what would you give yourself?

SENATOR MALDONADO: Need to improve.

MS. PEGG: Well, I mean, I do publicly want to recognize Mr. Labossiere. I think he did an amazing job for an entity that is somewhat new to us. I think it was outstanding what he did and it was really his determination that brought this case to where it is.

And we always agree, there is room for improvement. We look forward to working with the committee. We look forward to working with you, Mr. Senator, to find out what else we can add to our existing authority.

So the discussion is not over with. I think we'll uncover, maybe, more things that need to be resolved and addressed. So, we look forward to that.

SENATOR FLOREZ: I got you. I guess the answer is at UC Santa Cruz, no grades type of answer. It's a pass or not pass. So you're saying that pass, but we still have in progress, some work to do, and we look forward to working with you as this moves forward?

MS. PEGG: Of course.

SENATOR FLOREZ: Thank you very much for coming today.

MS. PEGG: Thank you.

SENATOR FLOREZ: Let's move on, if we could, to the fertilizer producer. We have Converted Organics, Incorporated. And the president is here. We very much appreciate the opportunity for you to come here.

I'm going to let you give us your title and your name because I want to make sure I say it right. I appreciate you coming today.

EDWARD GILDEA: My name is Edward Gildea. I prepared some testimony but in light of where you've been going so far today it may be a little bit boring.

SENATOR FLOREZ: That's okay. It would be better if you could, since you handed it out to us to be put in the record, maybe your thought processes on what you've heard so far? And, maybe you can give us an update in terms of the company?

Members, this company in terms of this investigation is now defunct, part of your company, revitalized, restructured? I mean, how would one term where we're at in terms of the...

MR. GILDEA: Maybe if we start with a little bit about what Converted Organics is and then we can talk about our relationship with a company that I knew as United Organic Products.

SENATOR FLOREZ: Okay. Go ahead.

MR. GILDEA: As a start; Converted Organics is a publicly held company. We're listed on NASDAQ. We were first public in March of 2007. We raised funds to build a plant in Woodbridge, New Jersey. We recently completed that plant. And in January of 2008, we acquired a plant here in California from United Organics Products. And we acquired some technology

from a related company called Waste Recovery Industries. We closed on that transaction on January 24, 2008, and commenced operating the plant here in California at that time.

Converted Organics sells an assortment of fertilizer products. We sell some that have been certified as organic by OMRI and some that have been certified as organic by the State of Washington. And we sell some products that are natural but not certified as organic because they may contain an ingredient that either OMRI or the State of Washington has not identified as suitable for use in farming to create organic products.

The acquisition that we undertook here in California was to acquire assets of a business. We acquired a factory. We acquired some devices called digesters or reactors. We acquired some tanks; some buildings. We acquired some intellectual property primarily in the form of know-how as it was not patented information.

We employ nine citizens of the State of California in our business; two sales people that travel around the state, and seven production people that work primarily in Gonzales, California. We employ another 20-odd people in our plant in Woodbridge, New Jersey. And we have another six employees that are in our head office in Boston, Massachusetts.

SENATOR FLOREZ: Any of the intellectual property you've acquired include the past management of the prior company?

MR. GILDEA: No. We acquired....past management, yes. We employed a gentleman named Peter Townsley as the executive vice president of the company from the time of the acquisition until, I don't remember the date, but several weeks or a month ago, when Peter resigned.

SENATOR FLOREZ: Okay.

SENATOR MALDONADO: I have a quick question.

SENATOR FLOREZ: Okay.

SENATOR MALDONADO: So Converted Organics, Incorporated bought the plant in Gonzales that the gentleman was doing the testing at?

MR. GILDEA: Yes, we did.

SENATOR MALDONADO: And who owned that company at the time?

MR. GILDEA: The plant was owned by United Organics Products.

SENATOR MALDONADO: And who owned United Organics Products?

MR. GILDEA: Peter Townsley.

SENATOR MALDONADO: Peter Townsley who is....who is Peter Townsley? Is he...

MR. GILDEA: Peter Townsley was the owner of United Organics Products.

SENATOR MALDONADO: There in Gonzales?

MR. GILDEA: In Gonzales, yes.

SENATOR MALDONADO: In Gonzales. Were any of the farmers that were using this product, did they own the fertilizer company?

MR. GILDEA: To my knowledge, Senator, no.

SENATOR MALDONADO: But you're not sure, though?

MR. GILDEA: It was my understanding that Peter owned 100 percent of the company.

SENATOR MALDONADO: Why didn't the farmers sue the company?

MR. GILDEA: Senator, I don't know. I have no answer for you. I have never spoken to one of the farmers about the issue and I have no idea why they didn't sue.

SENATOR MALDONADO: I mean, I'm a farmer and I'm farming organic, and somebody punches me in the eye, I'm not buying the right product. And the whole life of a farmer is the marketing and the safety—safety of the food, safety of farm workers. And they purchase a product that gives their product a black eye but they don't sue the fertilizer company?

MR. GILDEA: I have no idea....I have no reason to believe that the product that they bought was a safety issue. I don't believe there was anything unsafe...

SENATOR MALDONADO: I understand that, but it created this article which is horrible for a farming company.

MR. GILDEA: It's not good for me either.

SENATOR MALDONADO: Believe me, I understand that. I agree with you. But you have no idea why these farmers didn't sue the fertilizer company?

MR. GILDEA: No. My understanding, and from the settlement procedure, the farmers all received either refunds or replacement product. Fundamentally, and the reason I think we were able to acquire the business, was because of the impact of the settlement on the operations of United Organic Products. It was a company that had been generating sales and as a result of this incident, frankly, their sales fell way down and their inability to recover from that was...

SENATOR MALDONADO: So the sales went down because they weren't putting out the product that they told people they were putting out; and the sales went down because the farmers that were using the product....and if you're a fertilizer company you've got a lot of growers buying fertilizer from you. But you've probably got one or two or three that are very big that are keeping your business going, and all of a sudden these businesses just close an eye and they say, "You know what, we're just not going to buy from you anymore until you probably sell it to somebody else." Is that how it happened?

MR. GILDEA: I'm not sure it was that, Senator, as much as the manufacturer was required to take back the product that he had sold and to replace it with other product and that the expense of that transaction was what caused the sales to go down.

SENATOR FLOREZ: And maybe to answer that, I'm not sure if there's a...

SENATOR MALDONADO: Mr. Chair?

SENATOR FLOREZ: Yes.

SENATOR MALDONADO: If we could find out, I'd like to know the connections of where this fertilizer company that is no longer in operation, this 100 percent sole owner, number one, who they were and why they weren't....why wasn't there a lawsuit? I'd like to know that.

SENATOR FLOREZ: I had the same question in terms of preparing for the hearing. Let me give a rendition. I'm not sure if this is correct, but I believe they're not suing because they have not been decertified as organic growers, which I think is somewhat scary for the market itself. If you think about it, if you have some bad actors who somehow cause farmers, in essence, to use product that one might say is no longer organic but yet CDFA allows them to continue to sell this as organic, there lies either side of the problem. One is, then what good is the whole organic market if you can't give people confidence that some growers in this particular endeavor are currently growing product that they would call organic which is really not organic because of this huge mishap? And they ought to be able to sue. But it's hard for them to sue, I believe, if they're not decertified. So I think, my theory, Senator Maldonado, is that if they were decertified they'd be, in essence, out of business and therefore a lawsuit.

SENATOR MALDONADO: And I guess that's the question of the next person; why didn't they decertify them?

SENATOR FLOREZ: Right. And I think that's the real issue here. And then from a public policy point of view, I would say that they should be decertified.

SENATOR MALDONADO: What's that?

SENATOR FLOREZ: I assume they should be decertified so we can say that the rest of the actors who didn't use this produce are really selling truly organic product. So on one hand, I think we're under this abyss of sort of discussion about...

SENATOR MALDONADO: I hardly agree with you, but on this one I think I'm kind of agreeing with you.

SENATOR FLOREZ: And I'm not making a case either or; I'm just saying it's an interesting quagmire we're in because on one hand if you're not decertified and you've been using this product and you're allowed to continue to grow as an organic grower, I think most of the folks in the organic who didn't use this product are saying, why are they still in the market ruining our name

brand recognition as being truly organic? On the other hand, if CDFA steps in or someone steps in and says you are now decertified due to our mishandling of this, then they have a suit. I would probably believe that....that brings us to your company.

So the question is when you bought this particular entity, was this an issue as you began to look at it, this particular case, or was this after the fact? I mean, how does one weigh the purchase of these assets and the intellectual property from a Boston based company? I mean, obviously you're building something in New Jersey. I was reading some of your stuff earlier, some proprietary types of things that you're doing there. How is this going to be good for California farmers in terms of your product? What's different? What's different about your company that's going to make this a better process?

MR. GILDEA: Those were a lot of questions, Senator. To go back to the first one, how did we find out about it?

In the process of undertaking an analysis of an acquisition target you go through something called due diligence. And during our due diligence process we noticed that the revenues of the company had dropped precipitously between 2006 and 2007. We asked why that happened, and we were advised that the company had been selling a product that they had believed to be organic. It turned out that it was not organic and they were required to recall it or to stop selling it and to provide substitute to the people who had purchased it. And that that was the reason their sales had fallen off. We had not seen and did not see until after the acquisition, a copy of the investigative report. But, we took the sellers at their word that they had made a mistake and we believed them. And just so you all know, I still do believe him.

SENATOR FLOREZ: Okay.

UNIDENTIFIED: _____(no mic) Do you have padlocks all over the place now?

MR. GILDEA: They always had padlocks. You can't operate a facility in the middle of a field that's not surrounded with padlocks. They also have virtually no staff, so I too have gone to the plant and can't get in and I own it.

But you know, you drive to the gate and the people that are to push the button to let you in are working. So they're not there to push a button. We don't have a lot of staff so it wouldn't surprise me that an investigator would show up and push a button and not be able to get in. But, if you hang around and wait...sometimes you have to get out of the car; you have to wave; you have to yell, but eventually somebody comes around and opens the door.

SENATOR FLOREZ: Getting back to the liability question, is this something that could be an ongoing liability for your newly acquired company or not?

MR. GILDEA: I don't believe that we have any liability, Senator.

SENATOR FLOREZ: Okay. And in terms of growers suing, then, if indeed...we didn't ask CDFA this question, but we're glad you're back in the room because we were going to ask it at some point. And that is, are the current growers who were using this product going to be decertified as organic growers? And that's the question, as we switch panels, maybe you can think about what that answer is. Because it will be very interesting for us to, kind of, know what happens for those who are using it.

Let me ask you a question about what you've heard today—more from your perspective. Where do you think things go wrong in these types of endeavors? I mean, is this government failure? Is this the way the system is set up? I mean, you're other places other than California, so I mean, what is it that California isn't doing right that you may see in other locations that might give us some learning in terms of improving the process here?

MR. GILDEA: Well, you'll see in my prepared remarks that I am not sure that you need new or more regulation. What I suggested is that maybe you need to support the existing regulators more.

From an owner's perspective there are a lot of issues involving the organics program that make the regulation of the industry less efficient than we would hope it would be, particularly in connection with the introduction of new products. It takes a long time to get a product certified by OMRI or by the State of Washington. And part of that is, and I don't work for OMRI so they

might like me to say this or not—they need more money; they need more staff; they need more to be part of that organization to make it more responsive to what's going on in industry.

Another part of the problem is that organic fertilizers are old in the sense that they are the oldest form of fertilizer, but new in the sense that the innovation and the abilities that we have to create different products to address different needs requires that the manufacturing of those processes be refined.

And my recommendation was to look at the model of how the Food and Drug Administration administers the manufacture and production of foods. There's a process called Good Manufacturing Practices, and if you can develop GMPs, as they're called in the industry, for organic fertilizers, then you have a way of having the industry have guidelines about how they can produce product that should provide an assurance to the user (that is the farmer and the farmer's customer) that things are going as they should be.

We, at Converted Organics, have developed GMPs for our operation in California (and I provided you with a copy of what they are) and they're all built around safety. They're built around making sure that there are no pathogens in the product. They're built around making sure that the product is safe for our customers to use. Programs, like the GMPs, I think are something that the industry would welcome.

Additional regulation for registering products I think tends to defeat the purpose of regulation. If you think about why we have regulations in the organic farming industry, you have regulations to define what it is. Until the regulations were created, organic farming was just a Tower of Babel. Everybody had a different idea about what organic farming was. And the USDA came up with the National Organics Program and that provided a definition. It's not that there's anything wrong with the definition but it's a construct of regulation and law. It isn't necessarily the only definition of what is organic farming. And even within the organic farming community you have certain farmers who would tell you that you need to be more pure than the regulations permit you to be. So I think when you look at the overall construct

of organic farming, you have to understand that it's sort of an artificial creation.

The regulators exist to make sure that the definition of what is organic farming is maintained. But it's the people who are in the industry, it's the people who grow organic foods and prepare and create organic fertilizers that are more interested than anybody else in maintaining the integrity of the organic food market, because that's where we make our living.

SENATOR FLOREZ: Members, any questions? Let me just ask; what is the value added that your new company has over the old California Liquid Fertilizers? I mean, is there going to be a better product? Obviously, not using some of the stuff the old company did, but I mean, what's the sell here in terms of making this...

MR. GILDEA: Better? Ostensibly, we have more resources to make the company bigger and better. We've already put substantial money into the plant in Gonzales to enable it to process food waste.

Our business is built around the _____, converting food waste into fertilizer, so we've put money into the plant to make it better able to convert food waste. We've hired more people. We've entered into an arrangement with Pacific Choy Seafood where we take the fish waste from Eureka and we bring it down to our plant in Gonzales. We've improved the facility considerably. We've added equipment in buildings and permits. We've spent a lot of money on the plant.

SENATOR FLOREZ: And you would probably tell us, then, that this is a completely different entity. And relationships with some of the Chicago companies....in terms of chemicals coming, do you see yourselves endeavoring to....are you a split facility where you have traditional and conventional and also organic that I mentioned earlier?

MR. GILDEA: We're split in many ways, Senator. We're split in the sense that we create many organic products which are used by conventional farmers. So while it may be certified for use in organic farming, it's used by conventional farmers because of what it helps the soil do. We help improve

soils. All organic fertilizers are intended to help improve soils. And many conventional farmers see that as something that is of benefit to them. So they're our customers.

We also have products that we sell into different markets. For example, golf courses, where they need an organic or natural form of nitrogen but we use ingredients that are not certified for use on organic farms. So we create both types of products.

UNIDENTIFIED: _____(no mic)

MR. GILDEA: Yes, Ma'am.

SENATOR FLOREZ: Any other questions, members? Yes, _____.

SENATOR MALDONADO: So a person that used that fertilizer that wasn't really organic, that wants recourse for its company, is pretty much out of luck, right?

MR. GILDEA: Well, I don't know, Senator. By way of background, I was a lawyer. I still am a lawyer. I have been for a long time.

SENATOR MALDONADO: You're always going to be a lawyer.

MR. GILDEA: I'm always going to be a lawyer. You know, there's many, many ways for people to bring lawsuits and causes of action, and I'm not able to tell you that the farmers don't have an ability to seek recourse.

SENATOR MALDONADO: Thank you.

SENATOR FLOREZ: So does this all wash away now that the company was sold? I guess this is really Senator Maldonado's question; if there is some sort of action taken by folks who may lose certification, I mean, does this somehow wash away given that the company is...

MR. GILDEA: I don't think it washes it away, Senator. It may not be a stain on my operations, but it may have been a stain on others. And just because I bought the factory doesn't mean that either the operations or the stain have disappeared.

SENATOR FLOREZ: Got you.

SENATOR MALDONADO: _____(off mic)

MR. GILDEA: There are methods of dealing with that phenomenon, but yes.

SENATOR MALDONADO: I understand.

SENATOR FLOREZ: All right, any other questions, members? Thank you. Thank you for coming all the way out here. Good luck getting into the gates at Gonzales, by the way, also.

Okay, let's have the organic certifiers come up, if we could. We have Organic Materials Review Institute and the California Certified Organic Farmers.

Let's start with (we've been hearing a lot about it today) OMRI. What's your role in the National Organic Program; what is it you certify; and are there any other organizations that do what you do (those three questions)?

DAVE DECOU: Where we fit in the whole organic industry program? We are an input review program. I've heard people talk about organic fertilizer; our business is larger than that. We deal with pesticides. We deal with sanitizers for processing plants, packaging—all sorts of different things. We review to see if they're compliant with the organic regulation—the federal regulation.

Where we fit in is; we provide information to farmers and to certifiers about whether a product fits in; its use is probably acceptable within an appropriate structure in the system. And what I mean by that is we'll review a product as a fertility product (which is obviously a big issue today) and we are not saying that's okay to be used in the processing plant. We actually segment our information (that you can find on the web) by whether it's a fertility product, a crop management tool, or a crop pesticide, or a livestock feed ingredient, or so on and so forth. We segment it so that the certifiers, the accredited certifiers, have information to know when the farmer says, "Look, I want to use this in this situation." And they'll say, "Oh, OMRI has looked at that product for that type of situation and said it's acceptable or not." But if it's a different situation, we have no opinion, because we only know what we know.

SENATOR FLOREZ: And who decides what situation is correct in terms of the application?

MR. DECOU: The final decisions on any of these things are always done by accredited certifiers, of which there's 96 in the world; roughly 50 in the United States.

SENATOR FLOREZ: Okay. And what's the relationship between your organization and CDFA? How does that work? How does this mesh?

MR. DECOU: It's a casual friendship. We call each other every now and then. We don't have very much formal relationship. This particular case, I mean, we've had conversations back and forth individually; questions about technical issues, so on and so forth.

In this particular case with the California Liquid Fertilizer, we were contacted. Well, we had a complaint come to us. Our system is not all that different than CDFA's in the sense that we get a complaint. It has to be a written complaint....you would be, I don't know about amazed, but at least disappointed, in how many people in the California fertilizer world like to point fingers at all the other manufacturers and say, "They're cheating and I'm not" and the other guy is doing the same thing. And it just goes around and around and around. So we have to have a written complaint and then we review it and check on it.

We had started an investigation on the California Liquid Fertilizer situation back prior to getting a phone call from Ray Green, who happened to be the....I don't know if he was the only or what. I don't really know the full structure of CDFA's Organic Program. But he's the person that I've always known of as being the main representative of the Organic Program until he retired recently. I got a call from him saying, "We're investigating California Liquid Fertilizer. Give us all your information." And we said, "We can only give you all of our public information." We review products. We gather a huge amount of confidential information, as you can well imagine. All these companies have proprietary information they don't want made public because they have their niche, and we keep it confidential. But we said, "We would give

you everything, but to do that we have to notify the company.” That’s part of our obligation, our contractual relationship in the reviews that we do. And at which point they said, “Don’t talk to the company, just give us the publicly available information.”

SENATOR FLOREZ: I see. Where do you derive your authority to be a certifier, then? Is this from....who pays you guys, the industry or the government?

MR. DECOU: Our authority comes probably from being pretty good at it. But technically we are a private nonprofit, board of directors from the industry. Our funding comes from, primarily, fee for service for doing reviews, very similar to all the accredited certifiers. Somebody has to pay them and government has not been willing to step into that void. And grants and donations are very unstable. We also have a subscription program, because a lot of information we gather in general we provide back to any interested parties who want to use a product, make a product, consider whether their product is valid or not. And we have a direct subscription program with the accredited certifiers where we provide a little more detailed information to them and we get consulted on particular issues as they run into them.

I think you need to understand the certification system.

SENATOR FLOREZ: Well, let’s go through that in a minute. I just want to understand, so you’re industry funded?

MR. DECOU: Right.

SENATOR FLOREZ: Okay. That helps me right off the bat, kind of, understand how this....take me through the process of how to certify a fertilizer. Do you file an application? Is there a fee?

MR. DECOU: We have a two-part fee. We have what is known as a supplier fee, which is a stepped fee. Those really small companies pay a modest fee of \$5- or \$600 per company and the largest companies may pay up to \$3,000, and those numbers aren’t actually precisely that, but it’s very close to the range. And then they pay a per product fee which, again, varies between a simple product, either a single ingredient product or a product that is a

repack of an existing already OMRI listed product—simply the same product/different label. If it's more than that simple product, it will be about \$5- or \$600. And they send in the money and then they get an application. They get a preliminary application which identifies that breakdown that I talked about earlier; whether it's a crop fertility product, a pesticide, livestock feed, processing sanitizer, etc. I think there's nine to ten different sections on that.

We send them a questionnaire and we require sort of a checklist. We require a complete listing of all the ingredients in the product. We want to know where they're sourcing those ingredients. We want to know what the manufacturing process that they want to use to make that product is with those ingredients.

Of crucial importance in the National Organic Program standards is whether something is synthetic or non-synthetic, so you can take two non-synthetic ingredients and chemically change them and they become synthetic at which point they're not allowed in the system. So we have to understand....see what they're doing. We will go back to the suppliers of those ingredients if they have an ingredient that is a technically, a formulated ingredient and see what they're making with it. And we have an arrangement where we have third party confidentiality arrangements so that the manufacturer of the main product may never know all the details of the third party, because the third party has to tell us before we'll move ahead with it.

So we review all that information to see if it makes any kind of logical sense. Almost always, 95 percent of the time, we have to go back and say, "You provided us this information. We have these additional questions because you didn't provide us enough." And we go back to them. More often than not, it's two or three times before they give us what we feel is pretty complete information. That's put together in what we call "a findings of fact;" provided to our review panel, which is a group of people who have been in the industry for us making those decisions for, well, for OMRI for 12 years, but they've been in the industry for much longer than that in general.

SENATOR FLOREZ: Is this a checklist in terms of what...

MR. DECOU: We need a total ingredient list—everything that you put into it.

SENATOR FLOREZ: Just in case Senator Maldonado wants to move to the organic side, I just want to make sure he has a checklist.

MR. DECOU: I'll send you a copy if you want.

SENATOR FLOREZ: So this is a process...

MR. DECOU: It's a different checklist for different types of products because there's questions. When you get into the fertility products we have to worry about pathogens, so we have to ask questions about any kind of animal product whether there's pathogens in it and ask for tests.

SENATOR FLOREZ: Do you go on site? We were talking to CDFA, I'm just trying to understand Senator Hollingsworth dichotomy in terms of what they do and what the third party certifiers do.

MR. DECOU: We will go on site when we have deeper questions that don't make any sense if that seems like it. We will also take samples from the stream of commerce if we're having a concern about something.

SENATOR FLOREZ: How often do you go on site?

MR. DECOU: We don't go on site very often. We're going to go on site a whole lot more. There's been some kind of media event recently and it's made this much more, obviously, clearly necessary. It's also part of our system, that a year ago we got ISO 65 accredited, and under that system, which is a quality system, and so, that we can be certifiers in a sense.

But I'd like to make a distinction that many of you probably have missed; we do not certify anything as organic. We certify things as acceptable for use in an organic system, because you don't have to put organic things and grow them things. You bring....the basic rule is, if it's natural, which is the word, (the technical word is "non-synthetic") you're allowed to use it. If it's synthetic, then you're not allowed to use it unless it's on the national list. And the national list is 7CFR Part 205 601-606.

SENATOR FLOREZ: So I understand this; you do not do organic...

MR. DECOU: We are not an organic certifier. We are not an accredited organic certifier. We are accredited under ISO 65. But when I say an accredited organic certifier, that's managed by the USDA National Organic Program, they accredit certifiers.

SENATOR MALDONADO: Mr. Chair?

SENATOR FLOREZ: Senator Maldonado.

SENATOR MALDONADO: So what you do is you review product's ingredients and you post them on your website?

MR. DECOU: We review products. We check and see that the products can be made and we put them on our website as acceptable. We also publish the same list but that...

SENATOR MALDONADO: And when you got the call from the whistleblower, or you got a letter....was it a call or a letter?

MR. DECOU: In that particular case, I couldn't tell you. It was four years ago and I'm not sure I was even on staff at the time.

SENATOR MALDONADO: After you got the call or the letter, how long before you posted it on your website that that product was not what it was?

MR. DECOU: Okay. We have due process that we have to follow just sort of like that, and until we had confirmation that it was an unacceptable product, it was probably within 24 hours after we had confirmation that we put it up on our website.

SENATOR MALDONADO: When did you have confirmation that it wasn't the product?

MR. DECOU: We had confirmation when CDFA and California Liquid Fertilizer sent us a letter, which was either early December of '06 or beginning of January of '07.

SENATOR MALDONADO: So this is two years later?

MR. DECOU: Yeah. Because what we did (and I felt we had a request from CDFA to not interfere in their investigation) we backed off.

SENATOR MALDONADO: But see, your organization, according to what you just stated, you are not an organic certifier, but yet, it is your duty, by your

mission statement, whatever you do in your company, to post it on the web if it's what it is. And yet, because there was an ongoing (quote) "investigation that you thought...for two years you just didn't put it on your website, so what's the credibility of your website?

MR. DECOU: What's the credibility of putting something up on the website when you don't have proof? You have to have proof before you're going to make a final decision.

SENATOR MALDONADO: Well, they stopped buying the fertilizer didn't they?

MR. DECOU: I'm not sure who you're asking.

SENATOR MALDONADO: The people that were using the fertilizer stopped using it when they found out about it or they kept using it.

MR. DECOU: Right. But we did not have proof at that point, at the two years prior to that point, to be able to...

SENATOR MALDONADO: So you hadn't tested that product then?

MR. DECOU: We stayed out of the investigation at the request of CDFA's Organic Program.

SENATOR FLOREZ: And why do you think they asked you to stay out of the investigation?

MR. DECOU: Because they didn't want the company to feel like they were being investigated. They wanted to have as reasonable access as they could.

SENATOR FLOREZ: Because if the company...

MR. DECOU: Because they might change their practices or whatever and not really....they wouldn't find out what they were looking for.

SENATOR FLOREZ: And so they would trust....implicit in that is if they told you, you would tell them (the company)?

MR. DECOU: And I already told you that when CDFA asked for all of our information....we would have to have told them at that point...

SENATOR FLOREZ: I get it. I'm just trying to figure out, as we unwrap this thing this year....so CDFA's....it is a disincentive to really call you for any information beyond what's posted in terms of ingredients?

MR. DECOU: There's a little more information that we don't post. I mean we post stuff that's adequate for people to understand. There's a little more in general that we could make public.

SENATOR FLOREZ: And government, we can't pierce that veil of confidentiality between you and the company even if it was some sort of public health...

MR. DECOU: You certainly could. There's no blocking that situation other than that we have an obligation to inform the company so that they have an ability to protect their intellectual property.

SENATOR FLOREZ: Got you. Okay.

MR. DECOU: And that's all that is. We're not trying to hide behind it as much as...

SENATOR FLOREZ: No, no, no. I'm just trying to understand. It's simply a notification piece on your part.

MR. DECOU: And they have to do it in a fashion, and timely enough, so that they can deal with the legal system in whatever way they choose.

SENATOR FLOREZ: Okay. But you're the certifier that tells us....you're our third party certifier that CDFA is relying on, though. As you heard earlier, we don't have the lab. I mean, we don't have the kinds of things necessary. We're not the State of Washington, so...

MR. DECOU: Well, the State of Washington's Organic Program also has an input and review program which is....you've heard that referred to, and we are fairly comparable to what we do. Well, actually, one of their staff is on our board of directors and we talk to each other rather regularly. But we don't....people have the option of coming to us or coming to WSDA or not doing either of them and selling their product to organic growers and growers have to, then, have it approved by the accredited certifiers because they make the final decisions.

SENATOR FLOREZ: Got it. Let me just ask one last question; the State of Washington program as compared to your particular program, is the State of Washington's program funded by industry at all?

MR. DECOU: Yes.

SENATOR FLOREZ: It is. So it's comparable to what you do.

MR. DECOU: Yeah.

SENATOR MALDONADO: _____(off mic)

SENATOR FLOREZ: Yes, go ahead.

SENATOR MALDONADO: So did you certify this fertilizer?

MR. DECOU: We reviewed it and we certified it effectively. We used to never use the word "certified" because it always confused everybody.

SENATOR MALDONADO: So did you test it?

MR. DECOU: No, we did not test it.

SENATOR MALDONADO: But yet, you put it on your website that it was okay to use?

MR. DECOU: We reviewed it and it was possible to use. And the information we had would still indicate that it was possible to make it. Whether they made it that way or not is a different question.

SENATOR MALDONADO: It was not tested but it was on your website that it was okay to use?

MR. DECOU: Yes.

SENATOR MALDONADO: Okay.

SENATOR FLOREZ: And the question would be? You never tested it. Did you ever inspect the product? How do we understand your role as compared to CDFA's role in this? Whose job is it to do just what Senator Maldonado mentioned?

MR. DECOU: Whose job is it to do that?

SENATOR FLOREZ: Yes.

MR. DECOU: It's our job to follow-up on this stuff in more detail when we don't have adequate information. And our system has been changed and

setup so we can meet these kind of problems much more strongly. On the other hand, I will never guarantee that we are a hundred percent perfect.

SENATOR FLOREZ: But you have more information than CDFA ever would have because you're the folks...

MR. DECOU: We have complete understanding of how they're supposed to be making the product. And then we will go on site, now, and we're doing that. There's inspections going on, I think it was this week or last week at some of these fertilizer sites, and we're going to do more—where we go on site. We check their books and their inventory records to be sure that they actually bought enough ingredients to make what they're actually selling...and those kinds of questions that we have redeveloped our system to be able to do that.

SENATOR FLOREZ: Senator Hollingsworth.

SENATOR HOLLINGSWORTH: Thank you, Mr. Chairman. I just have a few questions I'd like to ask.

First, if I could touch on the subject of when you were made aware of the situation and contacted CDFA, you said that it appeared to you that they did not want you to tip off the subject so that they would be able to complete their investigation, but doesn't it seem odd to you that CDFA is asking you to not to tip off a subject of their investigation when that investigation probably would lead them to conclude that they have no limited or, at least, unclear regulatory powers to enforce anything?

MR. DECOU: Well, I can't speak for CDFA on that. I think your timing of what you said is a little different. We started our own investigation. CDFA started their investigation. CDFA called us; we didn't call them, because we've never really, until recently, not had that interconnection with them. And it was not CDFA's fertilizer division that contacted us, it was the Organic Program.

SENATOR HOLLINGSWORTH: Okay. But you're the third party certifier of these products as "okay for use on certified organic farms". So, you mentioned that you now have changed procedures, where your board of directors got together—you changed the policy. Now you have much more of an active role in being able to inspect facilities that desire to be listed as OMRI

listed. If they want to be OMRI listed, they have to comply with your program. You've changed your program now that we won't have the months and months of trying to get access to somebody's inventory records, somebody's ingredients, to test them that CDFA has had over the last several years in this problem. If you go in and they deny you access, you can pull it immediately off the OMRI list.

MR. DECOU: If they deny us access, they're out.

SENATOR HOLLINGSWORTH: So immediately you can kick them out of that certification—that listing?

MR. DECOU: If they deny us access.

SENATOR HOLLINGSWORTH: And OMRI can then notify its farmer members?

MR. DECOU: We have no members _____ subscribers. And we're pretty connected to the whole organic industry.

SENATOR HOLLINGSWORTH: So you can notify others in the organic industry that certified organic farmers should be cautious at the very least, if not stop using this product from this manufacturer, because it's no longer OMRI listed?

MR. DECOU: We could. Our main tool is that we publish our own website and we update it several times a month with new products and old products coming off depending on people. So we basically...

SENATOR HOLLINGSWORTH: I guess I'm missing something. If you can do that....and I don't fault you for not having that in place before—mostly we operate in society that people are honest brokers before we get confirmation that they're not. But, now we're talking about, immediately, those farmers who want to keep their organic certification are no longer going to buy this product and they're probably going to return the product that they have on site. Immediately the problem is taken care of because the supplier would go out of business because their entire customer base is a known universe. So we wouldn't have months and months of investigation that we're maybe going to

fix through legislation in this building through CDFA, you as the third party certifiers can take care of the problem.

MR. DECOU: Yeah, but you're still going to have time and we do....if someone denies us access, that's black and white, door shut. But if they allow us access and we do all the investigation and it makes sense, we still have to go and put that picture to our review panel. They have to make that decision. The company, then, has a period to appeal, which could take 60 or 90 days, and if it were to go into appeal and we ended up in court, who knows how long it could take? Because that's always the possibility, we operate under contractual situations. And when it's under that appeal process we basically don't have a lot of discretion to reveal what's going on. We have several investigations going on right now but I can't tell you what.

SENATOR HOLLINGSWORTH: Now, if you take fees from industry for these certifications, is it in your best interest to make sure that you're being diligent in that or can industry basically tell you, "You know, we're a pretty big membership organization within....pretty big supplier of your budget. Maybe you should look the other way?"

MR. DECOU: They could try. They haven't

SENATOR HOLLINGSWORTH: What would happen?

MR. DECOU: They'd get told, no. The rules are the rules. Here's the part in Section 205, 7CFR.205 about this and that and so on. We go through a very open public process on writing our standards—they're public documents.

SENATOR HOLLINGSWORTH: So you would go out of business as a third party supplier if you're questioned?

MR. DECOU: No. We would shrink if some big entity, and there aren't very many really big entities in the supplier world, we would shrink a little bit. But there's plenty of other companies who want to do a good job and want to support something that helps the integrity of the system, and that's what we're about.

SENATOR HOLLINGSWORTH: All right. Thank you very much. How else do we fund?

UNIDENTIFIED: _____ (no mic)

UNIDENTIFIED: What does testing have to do with it, do you know?

UNIDENTIFIED: _____ (no mic)

SENATOR FLOREZ: I think the State relies on your test, don't they?

Doesn't the State rely on your test?

MR. DECOU: Well, we have tests that we do when it doesn't make sense. And we will do testing. But will everything need to be tested? That's not necessarily necessary. We will test more and more because we're running into more and more situations of people being...the low level of ethics. And for one thing, it makes all the products more expensive the more work we have to do. Any kind of inspection work we do other than random inspections, which we do some of, has a pass through cost to the manufacturer.

SENATOR FLOREZ: Right.

UNIDENTIFIED: _____(no mic)

SENATOR FLOREZ: Right. So the testing that you're doing; what would be some of the bell weather types of indicators for you that you might want to look at some of these products? I mean, are there certain....a new product comes on and is it a higher nutrient value that you've never seen before?

MR. DECOU: Well, if you're looking at a liquid fertilizer, generally it's very difficult with known ingredients to come up over six percent nitrogen. You might be able to do it on a consistent basis. The consistent basis is the other side of the thing. You listen to....CDFR mentioned that they have a nutrient guarantee; if you say it's six percent, you're okay if it's seven, but you're not okay if it's five. So you want to be able to hit those numbers as a manufacturer on a regular basis.

SENATOR FLOREZ: So you're saying that would be some sort of indication that...

MR. DECOU: Six percent would be something that's party hard, not impossible but fairly difficult to hit on a consistent basis. And I know we're all concerned in the....connected as certifiers we're trying to worry about anything above three percent in a liquid product.

SENATOR FLOREZ: Sure. Was the California Liquid Fertilizer over six percent?

MR. DECOU: You know, I don't honestly know what it was because I really didn't deal with the product directly other than the elimination of it from our system.

SENATOR FLOREZ: I mean, as all the products come on the market, if something then pops up above that particular threshold...

MR. DECOU: We would look at very, very diligently.

SENATOR FLOREZ: Okay.

MR. DECOU: There was a product on the market that was at 14 percent that was trying to be marketed here in California and they never wanted to come to us because we took one look at what they were talking about and said, "We can't imagine it's possible." It was allowed for a little while by WSDA. They got it out of their system. It's not out here. It's not allowed for organic growers. The organic growers would love to have a 14 percent nitrogen because nitrogen is the limiting factor in growing most crops.

SENATOR FLOREZ: And I guess the question is going back to Senator Hollingsworth issue; will you be proactive in flagging that prior to a whistleblower, an investigation by the *Sac Bee*, information, you know, of records request, railcars and all that type of...are you catching that in your spreadsheet when it hits a certain threshold above six percent so we can...

MR. DECOU: We basically are targeting most anything over three percent. We look at it more carefully. Inspect it.

SENATOR FLOREZ: Is there a proactive communication, then, to CDFA and some of the regulators that, "Hey, in our given spreadsheet in this given month these are the 17 products well above the threshold you ought to take a look at, CDFA, before you run into, if you will..."

MR. DECOU: We will welcome that relationship with CDFA. We haven't had it. I think you need to understand that we are an input review program for the world.

SENATOR FLOREZ: We can mandate what CDFA does. I mean, this is the great thing about our process...

MR. DECOU: Your position as...

SENATOR FLOREZ: We're just trying to figure out how to get...if it's a casual relationship, if CDFA is mandated to, in essence, check in with you in some level of thresholds that are exceeding, then it is a mandate that one says they're constantly checking in with you and trying to figure out what that means or not. I think that's our issue.

MR. DECOU: We have a quality system which has policies and structures which are a bit contractual. We may have to adjust how we write some of that stuff to be able to communicate more information to CDFA, in some cases, because that's not quite put into that system yet.

SENATOR FLOREZ: Right. Before we move to CCOF, let me just ask you your opinion. You've sat through a good portion of this hearing. How was a certified product that wasn't tested; it never claimed to be what it was; fraudulently sold to growers; growers applied it; over a significant amount of time there were reports that this fraud had lasted as long as seven years until we got to some closure on this; how did this happen under the current system from your perspective?

MR. DECOU: I think it's growing pains. Seven years ago....actually, six-and-a-half years ago, the organic rules were implemented—and it just got started six-and-a-half years ago.

We're all learning how people might be more ethical or less ethical and what we have to do to prevent that.

All of us have tried to run these programs without being overly expensive. We're going to have to be more expensive.

I think it's a lot of a learning process for all of us and we're all improving our systems.

I think there's another piece of the puzzle that I imagine CCOF will bring up in that we aren't a testing program, per se, we're a process certification program and that's a subtlety that's pretty important at times. You can't test

whether something is organic or not. You can test whether something is contaminated or not, but you can't test whether something is organic or not.

SENATOR FLOREZ: Thank you very much for your testimony.

MR. DECOU: Certainly.

SENATOR FLOREZ: Let's turn to CCOF. And I'd like to get your under...you're a certifier and how are you distinct from OMRI?

CLAUDIA REID: Senator Florez, I'm Claudia Reid with CCOF and I brought Jake Lewin. He's our chief certification officer. I'm going to speak to the trade association side of our business and Jake's going to speak to the certification side of our business. We do have prepared comments which we were asked to provide, but we'll be willing to set those aside and just simply respond to your questions.

SENATOR FLOREZ: Yes, we'll put them in as part of the record. That will be great. But let me just ask, where do you get your authority? And is this federal law, state law, contract? I mean, the same question I asked earlier.

JAKE LEWIN: Our authority is vested in us by the National Organic Program who accredits us as an agent of the USDA to perform organic certification.

SENATOR FLOREZ: Okay. So you are, then, the federal...

MR. LEWIN: The federal program.

SENATOR FLOREZ: NOR is your...

MR. LEWIN: NOP, the National Organic Program accredits us to act as their agent issuing organic certification to crops and processed products.

SENATOR FLOREZ: Okay. And then the State relies on the federal government's....are we actually asking you to do a similar function for the state?

MS. REID: The State of California is the only state in the United States that currently has a state organic program. It enforces the National Organic Program. In every other state the enforcement is done through the Department of Agriculture. We certify in 35 states, by the way, so we interact with a lot of

different state departments of agriculture on different ways depending on which state the crop is in.

SENATOR FLOREZ: And given that we have our own set of, or matching....is this a matching, the SOR here, match the federal?

MS. REID: If you look in your package there's the California Organics Product Act in your packet. We enforced the National Organic Program. And if you read the opening paragraph of the California Organic Products Act it states how the authority flows down.

SENATOR FLOREZ: Why don't you tell me since I don't have the time to read it right now? Since you're the expert, give me a synopsis of it. I'm just trying to understand the interaction between the state program and the federal program.

MR. LEWKIN: Absolutely. I can answer this for you.

Essentially the State Organic Program in California acts as the enforcement arm of the National Organic Program. They are the ones who can issue a stop sale, take action, issue fines against violations of the standards. So they represent the National Organic Program in the State of California through the COPA (California Organics Product Act of 2003).

SENATOR FLOREZ: So what we have in California isn't necessarily a replication of what the federal standard is, but rather an enforcement mechanism for CDFA in order to capture this. What do the other states that don't have this particular distinction do? I mean, how do they run their programs?

MR. LEWKIN: Enforcement is performed by the National Organic Program utilizing the USDA network of agricultural marketing service compliance agents and other USDA departments.

SENATOR FLOREZ: So the federal government runs it in the other states?

MR. LEWKIN: Generally, yes. And the federal government will participate in issues in the State of California.

SENATOR FLOREZ: So if we were to blow up some boxes here in California and if we asked the feds to do this, would we be better off or not?

MR. LEWKIN: It's hard to say until you ask.

SENATOR FLOREZ: Well, you're the only person that has the experience in the other states; give us your best rendition.

MR. LEWKIN: There are some significant advantages and disadvantages to the State Organic Program. The State Organic Program does have....CDFA does have a lab and we are sometimes provided with extremely valuable residue analysis and other evidence that is very helpful. It also poses an additional hardship on organic growers who must register and fill out paperwork and pay fees.

SENATOR FLOREZ: I was waiting for Senator Hollingsworth to jump on in there on this one. Let me ask; from a testing point of view (it goes back to Senator Maldonado's point of view) what is the advantages by, in essence, turning to the USDA model? I mean, does that give us any sort of better types of reports or testing? Just your opinion only. Believe me, we all have differing opinions but you've experienced these other states.

MR. LEWKIN: What is really needed in the State of California is enforcement. Quality enforcement is really important because organic agriculture in California is incredibly important and incredibly vital.

SENATOR FLOREZ: And you're saying that the reason we have our separate program, we need it because we're such a large producer of organic products.

MR. LEWKIN: We were the first state to have an Organic Products Act. I think the first one was in 1979, and then 1990, and the current act grew out of those when the National Organic Program came into effect. But the State of California had enforcement of organic issues and essentially standards of a sort in California long before the National, and it's because organic has largely grown here and has been a really important part of California agriculture.

SENATOR FLOREZ: Got it. Would the world fall apart if we dismantled our current program and turned it over to what the other states are doing?

MR. LEWKIN: The world would not fall apart.

SENATOR FLOREZ: Okay. I just want to know. Let me ask a question about the relationship between your organization and other certifiers. So how does that work?

MR. LEWKIN: Like Dave said, there are 50 certifiers, domestic certifiers in the United States. About 20 of them operate in California. They range between county agents and for- and nonprofit businesses. Largely they are competitors with varying degrees of expertise or focus to their organization.

SENATOR FLOREZ: And getting to Senator Hollingsworth's earlier question; are you a for-profit? Are there conflicts of interest? Does a grower pick you? How do you interact in this world?

MR. LEWKIN: We are nonprofit. We operate on fee for service. Growers are free to choose the certifier that can provide them the service that they would like.

In terms of the issue of almost all third party certification, whether it be allergen, kosher, food safety, all operate typically on a fee for service basis. It's the quality of the certifier that defines whether or not they're willing to decertify somebody, no matter their size or dollar representation. And that's a matter of, a) accreditation; b) ethics.

SENATOR FLOREZ: Okay. Any legal relationship between yourselves and OMRI in terms of...

MR. LEWKIN: Yes.

SENATOR FLOREZ: What is that legal relationship?

MR. LEWKIN: Firstly, as a point of history, CCOF and another certifier were instrumental in forming OMRI in the early days—I believe, the eighties. And then currently, OMRI is a contractor to CCOF, providing us technical expertise on materials issues in addition to WSDA. And we utilize them because they are essentially the gold standard in material information. They have the Ph.D.s on staff.

SENATOR FLOREZ: Okay. So we understand the relationships, who is required to be certified? (just maybe a threshold question)

MR. LEWKIN: Any person who markets anything in the United States with a front label claim as organic. More than \$5,000 a year of organic product is required to be certified.

SENATOR FLOREZ: And how does that certification process work for that category—what’s the process?

MR. LEWKIN: For the above \$5,000? The mandatory certification?

SENATOR FLOREZ: How does it begin; cost?

MR. LEWKIN: Cost, of course, is variable. You’re talking about 50 different competing businesses. We routinely certify a very small farm for \$6-, \$700. Much larger farms with many, many sites could run into the many thousands—tens of thousands, certainly.

And essentially it’s a third party audient process. They tell us what they do. They give us a lot of information about what they do and how they farm and what inputs they use. And we go out and inspect them to get an idea of whether what they say is what they do. Then we get back to them with any issues that they need to address. And then we repeat it the next year.

SENATOR FLOREZ: So you actually go out to the field and the growers and you kind of make a determination.

What’s your thought process on the growers that currently use this product? I mean, should they be decertified or should they remain in the certification category? I mean, how would you, if you were called by a grower to kind of figure this out for them at this point in time, what would be your best...

MR. LEWKIN: I have been called by a grower.

SENATOR FLOREZ: Okay.

MR. LEWKIN: I’ve been called by many growers.

Firstly, there’s something that we really need to take note of here, which is that we have received, before today, essentially, or the AP article, almost no confirmation of, positive confirmation of, contaminated products. The California Liquid Fertilizer material was pulled off the marketplace for a supplier issue—sulfuric acid issue. It was not disclosed to us that it contained

ammonium sulfate. So there is effectively no situation where we've been told the issue with Port Organic Products. That that is simply....there is no confirmation there. However, in every single case where we've had doubts about a material that where any doubts at all that we could really take note of, we have swiftly prohibited that material for use. We did that with Port, we did it with Biolizer XN, and we did it with West Bridge Biolink 1400.

SENATOR FLOREZ: So what are you telling the grower that called you?

MR. LEWKIN: We're telling the grower simply that we do not have confidence in this material. It depends, each situation is unique. Every single situation is unique. Essentially what we're telling them is cease and desist because we don't know whether this material is allowed—immediately cease and desist.

If I may, I think what you're getting at is the....you've got a situation a material might be, a fertilizer might contain an adulterating ingredient and if you'll allow me to go through some of our testimony here, I think it addresses this.

SENATOR FLOREZ: Please.

MR. LEWKIN: So we've elected to proactively prohibit some materials we have doubts about. So we won't let them be used by CCOF growers. Where and if it's occurred—the crops grown with a spiked material—when the farmers have used them, they've used them in good faith and they are the victims of unscrupulous manufacturers.

Organic certification is a process based system, not an analytical testing based product certification. This is about process, not product. Organic production is a culmination of a myriad of production techniques and decisions that result in organic products. Organic farmers make decisions everyday that contribute to organic production and which are entirely different and unique from other agricultural methodologies. The ingredients of any one fertilizer used as a component of a large and varied organic system, does not fully define the farmer or the quality or integrity of their products. Rather, organic is a holistic system that constantly improves, adapts and implements new

measures to produce better organic products. When situations like this occur, the organic community cannot punish the victim and cannot throw away the efforts of the farmer that go far beyond fertilizer. Instead, we aggressively approve the system on the farm _____ certification.

What I'm basically saying is that you're talking about fertilizer. Fertilizer does not define the farm. It doesn't define the product. We have allowed them to use it in good faith. If they have been victimized, we're not going to further victimize them by destroying their livelihood.

SENATOR FLOREZ: Okay.

SENATOR MALDONADO: _____(no mic)

SENATOR FLOREZ: Senator Maldonado, go ahead.

SENATOR MALDONADO: _____ and you found out about this product ...

MR. LEWKIN: Which one? The Biolizer XN?

SENATOR MALDONADO: Yes.

MR. LEWKIN: We were told that that product is no longer compatible because the supplier had included...

SENATOR MALDONADO: When did you find that out?

MR. LEWKIN: In approximately December 20, 2006. Prior to that time we had concerns and we had issued complaints regarding a variety of materials. Approximately December 20, 2006, I received an unofficial phone call from personnel at CDFA telling me that they thought that this product was going to get into trouble and that there was going to be legal action. Subsequently, there was a legal settlement under which the company publicly withdrew their product but admitted no wrongdoing. So while I didn't believe, functionally didn't believe the settlement, I had no way to do anything about it. I can't run on a rumor.

SENATOR MALDONADO: So you felt it was a rumor. You felt that it wasn't...

MR. LEWKIN: Well, I felt that the product should be prohibited immediately, and that's precisely what we did. However, we did not have any

confirmation from CDFA or anybody else that the product contained anything but....what were we told? We were told, sulfuric acid in the supplier to California Liquid Fertilizer, is what we were told.

SENATOR MALDONADO: Did you get a letter from the whistleblower?

MR. LEWKIN: I met with....firstly, we get complaints.

SENATOR MALDONADO: I understand.

MR. MR. LEWKIN: Complaints come in.

No, I did not receive a letter from the whistleblower. However, I have met with both farmers who were concerned, who had their own reasons to be concerned about materials, and other industry people who came to my office and discussed their concerns with these fertilizers in July of 2006.

SENATOR MALDONADO: So from the time that the whistleblower called the CDFA and called other departments, you don't know if you got a call or you got a letter from him or her—the whistleblower? You get a lot of complaints; you don't know if it was the person...

MR. LEWKIN: If they were the same CDFA person? No, I don't.

SENATOR MALDONADO: Can you guys decertify somebody?

MR. LEWKIN: Absolutely, we do.

SENATOR MALDONADO: Have you decertified anybody?

MR. LEWKIN: Absolutely.

SENATOR MALDONADO: But in this case?

MR. LEWKIN: Not over this issue, but in other issues we frequently issue either notices of proposed suspension or proposed revocation for cause.

SENATOR MALDONADO: So explain to me why on this one you did not, because you needed more proof or it was just a rumor? Can you explain that to me please?

MR. LEWKIN: CDFA entered into a legal settlement with California Liquid Fertilizer wherein they did not admit wrongdoing. How were we to know that the material is spiked if we are not told? However, we prohibited the material unequivocally...

SENATOR MALDONADO: But you let them keep selling it.

MR. LEWKIN: We didn't let....first of all; I don't have any contractual or regulatory oversight over fertilizer companies. We have contractual relationships and regulatory oversight over our clients. We immediately told our clients to immediately cease and desist using this material.

SENATOR HOLLINGSWORTH: Your clients and your contractual relationship were with the growers; OMRI's is with the suppliers?

MR. LEWKIN: That's correct.

SENATOR MALDONADO: And you let them know to cease and desist on this product?

MR. LEWKIN: Absolutely.

SENATOR MALDONADO: And did they?

MR. LEWKIN: Yeah.

SENATOR MALDONADO: But they had been selling it for quite some time and that was okay?

MR. LEWKIN: Our clients...

SENATOR MALDONADO: It was sold as organic and it really...

MR. LEWKIN: It was sold....this material was sold as an approved input.

SENATOR MALDONADO: I'm talking about the produce not the material.

MR. LEWKIN: The produce?

SENATOR MALDONADO: Yes.

MR. LEWKIN: That produce....there's a lot more in that produce than any one fertilizer, for one ingredient of one fertilizer.

SENATOR MALDONADO: I think the point that I'm trying to make is that when there was a whistleblower and everybody, kind of winking a nod, knew that they were using a synthetic fertilizer, your organization, CCOF, because of CDFA, didn't stop them from selling this product. They kept using it.

MR. LEWKIN: I think winking a nod wouldn't be an accurate description of the seriousness that we take this.

SENATOR FLOREZ: Okay. Well, let me ask you about the seriousness. The thing that kicked this particular issue off was a whistleblower letter to the Organics Program at CDFA and right at the very sentence it says, “I was given your name by Brian Leahy of CCOF,” that’s your organization. It’s the very first sentence in the very first whistleblower letter. Who’s Brian Leahy?

MR. LEWKIN: Brian Leahy is our former executive director from....I’m sorry, I don’t recall his term. It ended in 2006.

SENATOR FLOREZ: Okay. You guys take this beyond seriously given that this whistleblower letter started with the very first sentence with a person from your organization who is the executive director. I mean, why are you coming in on the back end of this when this is the front end?

MR. LEWKIN: What’s the date of that?

SENATOR FLOREZ: The date is June 18th.

MR. LEWKIN: Of which year?

SENATOR FLOREZ: Of 2004. And actually, he was actually cc’d on the letter, so it isn’t as though it’s just a whistleblower saying, “I talked to Brian Leahy from CCOF,” and Brian Leahy had no clue about this. I mean, he was actually cc’d on this particular letter. So I’m just wondering, when you get a letter like that and it’s 2004 and you’re taking this very seriously, how does one reconcile your actions? What do you guys do in a case like this?

MR. LEWKIN: I think that’s an excellent question, and it’s the first I’ve heard of that. What I can tell you is that Brian Leahy was the executive director of the trade association side of our organization, not certification. Typically when we get something like that today, that’s logged into a complaint file and a complaint is....we keep an ongoing file and track these things as they go in binders (like this) with all the information. My guess is that somebody called Brian Leahy and said, “Hey, I’m concerned about fertilizers. Who should I talk to? What should I do?” And he said, “Hey, the State. Go the State Organic Program.” That’s my guess is what he would have said.

SENATOR FLOREZ: I get that part. But Brian Leahy actually got this letter. It wasn’t as though he said, “Hey, give this guy a call. Lay out your

entire case of this whistleblower letter that led us to today,” but Brian Leahy was actually cc’d on it, and so, I imagine he’d have, like, some real file of really explicit types of things that were occurring at this particular facility. And I’m just wondering is that how you guys assure Senator Maldonado that you take it very seriously? So I’m just not quite sure how that reconciles.

MR. LEWKIN: I can tell you that that was previous management.

UNIDENTIFIED: _____(no mic)

MR. LEWKIN: What’s that?

SENATOR MALDONADO: _____(no mic)_____ Senator Florez is getting to is that you knew about this before the settlement, and you’re saying that you couldn’t stop the product because of the settlement. Am I wrong?

MR. LEWKIN: I didn’t....firstly let me say that this is....we take these things quite seriously. And I can’t really speak to that because that was before my time. I can tell you that every single date of everything that’s occurred since I’ve been aware of this is right here.

SENATOR FLOREZ: Okay. Did you read CDFA’s investigative file on this entire matter?

MR. LEWKIN: No, we weren’t provided that.

SENATOR FLOREZ: Okay.

MR. DECOU: I think there’s a point that you might keep in timing is that in December of ’06 is when CDFA negotiated that settlement with California Liquid Fertilizer. They then had an ongoing investigation after that. We inquired for a copy of that investigative report, OMRI, and they were not willing to give it to us because they had an ongoing investigation. To my knowledge, that investigative report was only released this past spring, almost a year-and-a-half later, at which point that’s when those of us in the industry had some concrete information and the product had been off the market for almost a year-and-a-half.

MR. LEWKIN: I should clarify that Brian Leahy was terminated in June of 2004.

SENATOR FLOREZ: Okay. Let's switch subjects for a minute. What is your new liquid fertilizer policy for onsite inspection?

MR. LEWKIN: Excellent. I'm glad you asked. So this has been a problem and we are attempting to address it as aggressively as we can while being somewhat concerned about the fact that we don't have direct regulatory oversight over the manufacturers. So what we're doing is largely using our leverage as the State's largest certifier to force the manufacturers to undergo a series of inspections or face prohibition by CCOF for their materials.

SENATOR FLOREZ: Awesome. Okay.

MR. LEWKIN: And essentially what's required is a set of three very hard deadlines wherein they must submit to inspections, undergo inspections, and give us a clean bill of health.

SENATOR FLOREZ: Okay. And so, is that on selectively picked manufacturers or is this all manufacturers?

MR. LEWKIN: There are myriad inputs whether they be fertilizers or pesticides or anything else. This is a select section of materials that we have concerns about, notably, flowable high nitrogen liquid fertilizers.

SENATOR FLOREZ: Okay. Can you tell me, just from what you've heard today, whether or not we should have known that this was a fraudulent product well ahead of this entire investigative process, or is this just the process—just the way it works and this is what we go through in order to come up to some conclusion? (Just your observations only)

MR. LEWKIN: I think it's important that enforcement agencies have a taste for blood. And that when there's the opportunity to take enforcement action, that it be as rigorous as possible.

SENATOR FLOREZ: And what you've seen in other states, if this type of incident occurred in any of the states that you currently operate in, what would you say about this particular incident as compared to other incidents in other areas of the nation?

MR. LEWKIN: I think that there is a lot of potential for California to do this better than anybody else but we have to work hard to realize that potential.

SENATOR FLOREZ: Okay. So how would you compare this particular incident as compared to any other incidents you've seen like this in any other state?

MR. LEWKIN: You know what? I mean, honestly, there never has been anything like this. This is a class by itself.

SENATOR FLOREZ: Got it. So this gives us the opportunity to fix something in a growing market—growing pains that won't get better unless we try to fix it now, at least in some area.

MR. LEWKIN: Yes, precisely.

SENATOR FLOREZ: And you would say the enforcement side of it is the area we ought to look at?

MR. LEWKIN: We are very much of the opinion that enforcement is vital. It's really important. It has a deterrent effect. It's really necessary. What we would really caution against would be a state-based certification or listing service that was limited to just California, or in this case, just fertilizers. The world of materials and inputs is much, much more broad and it would create a tremendous problem and confusion for growers. So we really, really would discourage a listing of an official list. However, enforcement, the ability to do inspections, the ability to levy fines, the ability to assure integrity of material manufacturers is critical.

SENATOR FLOREZ: And your leverage with the manufacturers at this point in time, in terms of inspection, is going to be helpful, I assume, in this as well—the new policy?

MR. LEWKIN: We have notified the manufacturers that are subject to this and thus far we have not....they have received notification within the last few weeks and I think it is going to be helpful. I think, frankly, some of them are going to decline the inspections and subsequently will be prohibited. We are very aggressively seeking support from other certifiers and support at the

national level so that we're not the only certifier requiring this level of rigor in the input review process.

SENATOR FLOREZ: Could the State of California do something if there are certifiers....what can the State of California do in this void, I guess is my question? What can we say in order to support you in this new endeavor as a standard? I mean, there must be some leverage from our vantage point.

MR. LEWKIN: Absolutely. What the State of California can do is make sure that they can pick up these inspections later next year. The State of California, from our judgment, does not have....it would be too complicated to....you've got to go through a legislative process. They're not going to be ready. We want every manufacturer subject to this inspected by August 15th. The State of California is not going to be ready. But August 15th should not be the last inspection; it should be the first of many. The State of California could do those inspections in subsequent years.

SENATOR FLOREZ: Okay. That's helpful. I just want to clear, one more time, the certification status of the farms that have been using the spiked product, what would you....are they going to be certified again? Your answer wasn't that clear.

MR. LEWKIN: Essentially, what we're saying is that this is a process based system. There's two issues. One, up until now we have not received....up until very, very recently we have not received confirmation that it was a spiked product. Secondly, we're talking now crops that are two-years-old. Biolizer XN was December of 2006. We're talking considerable time in the past. Thirdly, really, the bottom line is that this is a process issue. These farmers are using a material in good faith. And it is not our intention to decertify farmers who use the material in good faith when that material is part of a much larger system and a much larger process.

A farmer who uses a material they didn't tell us about can be decertified. A farmer who uses a material that they tell us about and we allow them to use it and subsequently we find out that we've all been the victim of fraud, we're not going to punish that farmer—we're not going to further victimize them.

SENATOR FLOREZ: So who gets punished, then, at the end of the day? Nobody gets punished? You get a new director? A new company comes in, they are turning it around. Everybody is, like, absolved. And CDFA comes in and tells us we've got 14 things now we're doing and we're on top of it and we're moving quickly. And so, at the end of the day I'm glad there's movement and I think that's good.

The reason I like having these hearings is there always seems to be more movement than not when you have these kinds of hearings, which is great, too, because you don't have to legislate most of this stuff. It just kind of magically happens.

But I'm wondering, are you giving us some assurance that there isn't a farm out there that's going to be decertified—that's basically what you're telling us, right? Because it only takes one farm to say, "I just got a call and I'm decertified and I'm looking for the next person to sue." What would you tell us?

MR. LEWKIN: I can tell you that as a USDA accredited certifying agent we do not believe that it's appropriate to decertify farms over this issue. Ultimately, the final authority over that decision and whether or not we are making the right decision lies with the USDA.

SENATOR FLOREZ: Okay. So at the end of the day nobody lost except the consumer who bought a product, consumed the product that they thought was organic, paid a premium for it at the marketplace, and our only answer to them is, "All's good because we're going to fix it. But sorry for what you may have consumed. It's our big mistake." And I'm not pointing to you, I'm just saying generally in this whole issue it seems as though the only person that's going to lose in this, or has lost in this is the consumer. Because the farmer is not going to be decertified, the companies have been reengineered, your organizations are now on different types of tracks, CDFA has a completely different process, but yet no one will be to blame in this. It will just be a function of a growing industry that had a hiccup and now all is going to be well. But I guess, you know, from a consumer point of view, I think there is a, as Senator Maldonado said, a marketing brand equity perception that organic

is organic and that ultimately there are people in the process that certify that it is organic and they pay premium for that, so what do we tell the consumer?

MR. LEWKIN: I think we tell the consumer that that product was organic and it was grown organically and there's a lot more to growing organically than simply a liquid fertilizer.

SENATOR FLOREZ: But that isn't the truth, right?

MR. LEWKIN: It is the truth.

SENATOR FLOREZ: It is the truth? At this point in time it's the truth? Than why are we fining any companies? Why did we have this investigation? And why are we saying that this was a synthetic fertilizer that shouldn't have been applied...

MR. LEWKIN: It's not to trivialize the issue. It's not to trivialize the issue that this material shouldn't be used and these materials are not okay; it's that a lot more goes into farming than just that material. That doesn't mean that we don't want to root out every single problem there is. This is a serious problem. This is a real issue and it absolutely should be rooted out as efficiently and swiftly as we can. But there's a lot more to that product than just that one fertilizer. And that product was organic. And there's just a lot more there than just that one material. And further, I would say that the material suppliers, wherever possible, they have largely lost their markets and we have done everything we can to make sure that that happens by prohibiting the materials.

SENATOR FLOREZ: Senator Maldonado.

SENATOR MALDONADO: _____ as long as there is an intent to farm organically, it's organic.

MR. LEWKIN: As long as they submit an organic system plan to us and farm according to it. It takes more than intent, it takes actually doing it.

SENATOR FLOREZ: Right. But if you're using a synthetic fertilizer, that isn't doing it.

SENATOR MALDONADO: If you cheat it?

SENATOR FLOREZ: If you cut corners, right?

MR. LEWKIN: No. If you are cheated. Growers are not cutting corners. The manufacturers are victimizing the growers.

SENATOR FLOREZ: But the growers grew something with a synthetic fertilizer that, in my mind, couldn't be termed "organic."

SENATOR MALDONADO: Mr. Chair.

SENATOR FLOREZ: Yes, and then Senator Hancock.

SENATOR MALDONADO: You might not know this, sir, but I farm. And when you're farming and you're applying an organic fertilizer or all of a sudden you apply this stuff called urea, the stuff seems to grow a little quicker and a little faster. So I think what you're saying....you don't think the growers knew what they were using? They just didn't know?

MR. LEWKIN: The growers received a product that was labeled as being a certain type of product. And those products....well, you know. You farm. It could easily be engineered that somebody would give you a six, zero, zero material. They're not getting urea at 40, zero, zero or 30, zero, zero, they're getting six. The materials are cheaper and easier to produce with synthetics. It's not that they're twice as strong.

SENATOR MALDONADO: Okay.

SENATOR FLOREZ: Senator Hancock.

SENATOR HANCOCK: Thank you. As a person who is new to the Agriculture Committee I've been listening and learning a great deal from the hearing this morning, and if we try to push the causation back, it does appear that the farmers were defrauded, essentially. They bought a product that was labeled incorrectly so that it was no longer an organic product. And that ideally the attorney general or the farmers or someone would sue the former owners of the company since the company has changed hands, which is always also a problem in brown field reconstruction and everything in trying to ascertain who owns it now and who has the liability.

The parallels, frankly, to the banking industry meltdown in this country become quite striking as I listen to this. That how do the people that perpetuated the situation actually pay once they've gone bankrupt? And

perhaps this committee would need to look at not only finding ways to improve enforcement, but to work with Business and Professions or the Banking Committee to actually say, “How do we nail the assets of the people who perpetuate fraud,” because I think that’s the situation as it has kind of appeared as we peel this onion, so to speak, today. It’s requiring action.

But I do also appreciate the suggestion that we enforce more stringently as a state because you guys do not actually do enforcement. See, who’s going to look at the tests that you’re going to require to be done? That part of it I’m still very uncertain about.

MR. LEWKIN: We’re requiring an inspection protocol. And, in fact, we are doing some of our own analytical testing to supplement....to give us a fuller picture. Our power, our authorities will basically boil down to whether or not we allow the materials to be used, which shouldn’t be underestimated but, however, it certainly is not the ability to fine, much less put anybody in jail.

SENATOR HANCOCK: Right. So we need to have a look at some of the legislation that might be coming to see if that happens. Thank you.

SENATOR FLOREZ: So, would you agree, I know you watched a little bit of this dialogue, so is there no harm in this, then, other than fixing the system? I mean, everything that we’ve talked about, is this an organic product the consumers are consuming?

MR. LEWKIN: I would say the products are organic. But I think “no harm” is not quite the term. I think that there’s a little bit of harm and there’s a lot of harm. And I think you also have to look at whether the remedy that you might instill also does more harm than less harm. I have a suspicion, without being intimately knowledgeable to know that CDFA, they negotiated a settlement which got the product off right away. I always wondered why they didn’t indict. Except I always, kind of, had this sense that, “Gee, this was four months after that Spinach E-coli problem and did California agriculture want to have another not very positive media event?” And that’s what I suspect happened. But we’re not CDFA to know what their thought was.

SENATOR FLOREZ: Right. Well, we knew a little bit about that Spinach thing that happened. So I guess, suffice it to say that we're very appreciative of the testimony. You are the third party folks. It's important that we have your perspective. And we'd like to continue to engage in this process as this legislation comes through this committee from the Assembly, because, obviously, we're very interested in making sure that we don't do harm as well. So we want to make sure it's, if you will, consumer friendly and ultimately adds value to the process. So I want to thank you for your testimony. Appreciate it.

MR. LEWKIN: Thank you.

SENATOR FLOREZ: Let's, if we could, have the fertilizer associations: The Organic Fertilizer Association of America and the Western Plant Health Association. Thank you for joining us. We appreciate it. Let's go ahead and get your perspectives.

Obviously, the simple question is what's going on in the organic fertilizer industry that allowed us to get here today. What's your role in the broader scheme of organics? And, ultimately, what's the fix? What do you think?

STEVEN BECKLEY: Okay, I'll start. I'm Steven Beckley. I'm the executive director of Organic Fertilizer Association of California. To give you a little timeline, we call ourselves OFAC and we were actually founded in October of 2007.

There were a lot of rumblings out here, as you said, about what was going on.

I'm really happy to be here because I think we have the same goal of ensuring that users of fertilizer material is acceptable for certified organic production comply with the USDA organic standards.

And our organization represents the interests of the people producing these products, also the distributors and retailers that give to agriculture and horticulture.

So there is also a home and garden market that buys these products also that wants to be assured that when they receive OMRI labeling or Washington State labeling that that is certainly what they're getting.

And we're also very interested in dedicating increasing public knowledge of just the biological and cultural systems.

And this organic integrity and safety is the primary interest of our organization and we've worked and will continue to work with certifiers, USDA, food processors, such as Earthbound Farms and others, to really ensure that we get to that goal.

In fact, we're hoping to meet Jake. And his group at CCOF will be at our next meeting.

Because one thing we're concerned about is six different sets of auditors coming on these facilities. We've got to get this under one set of auditors.

And we're going to continue....it was mentioned, we're starting as a new association, really, to put together guidelines. We call for audit and verification systems or best management practices. We haven't gotten there yet.

We certainly think that there is an important role for the CDFA Fertilizer Inspection Program, that they should be the lead person in California to really ensure that products meet NOP standards.

Whether we get another list or not, I certainly understand CCOF's concern there.

But the Fertilizer Materials Law right now gives them quite a bit of latitude because they have authority under label, labeling, misbranding and all the ration requirements of the Fertilizer Law on materials.

Also, we're very, you know, after much comment and other things, they have put together regulations that would require all manufacturers disclose all ingredients in fertilizers. And also requires them, if they ask for it, to give them a description of the manufacturing process.

I was very pleased to hear this morning that legislation will be introduced to register all products making the claim that they're acceptable for certified organic production; that they would have to be registered at CDFA and go through a process.

But I think CDFA needs to have their registration staff specially trained in that, and then also, they need to have their training. You know, Pierre did a

great job out there. But you just probably weren't on the job training and we certainly need to have training, and we're there.

Also, there's an adoption for an organic....there's actually a proposed regulation under the American Association of Plant Food Control Officials for organic input. And I think once we get legislation in place we would certainly hope that CDFA would adopt that.

I think an important thing that you mentioned this morning that's been unsaid, there has to be cooperation between all agencies involved in this; be it the certifiers, Washington State, and OMRI. And, actually Washington State and both OMRI are associate members of the association. We're trying to work with them.

Maybe it's a formal memorandum of understanding between CDFA and these groups, but I think one thing we need to do is reduce costs. As we talk about costs, the CDFA Program will have additional costs.

And also, we need to leverage their abilities to ensure organic integrity. Without integrity, we can have these hearings.

There's always rumors and everything, but we haven't got a fertilizer market. It's a very specialized fertilizer market. Many of our people sell both in the organic products and they sell the conventional products.

And I think the audit process; we would hope that we could lead into it. We understand where CCOF needs to go at this time. I may not always agree with them, but we want to work with them. But I think in the long run, CDFA has the people in the field, that if we can work together and develop them to do the audits. It isn't going to be that many audits that we're talking about high end liquid fertilizers. But we also have to have, if so and so comes in, if OMRI came in and does an audit, and somebody else wants to do an audit, and a food processor wants to do the audit, it gets very timely, time consuming to let each one of those go through your plant.

And I think appropriate penalties. I think we can argue all day but there has to be penalties in this thing—\$4- to \$500 certainly isn't a deterrent if you can make a lot of money up front. We can argue all day whether the attorney

should have been brought in earlier on this or other things. We certainly think that needs to be there.

And I think, also, I'm not willing to sit here on behalf of the organic industry and say we'll write a blank check for this. But we're going to certainly work with CDFA and other things to address the financial needs and make sure there is funding to implement this program. We're already paying mill assessments on these products. Do we need additional fees and other things? But a combination of what we're paying CDFA now and OMRI for the listing, and Washington State for the registration for a single product, you're getting over a thousand bucks a year to sell that, so maybe we can use that money better to ensure the products are there.

SENATOR FLOREZ: Great. Who are your clients?

MR. BECKLEY: Our members are companies that market organic fertilizer. I haven't got a membership list but it's on our website right now.

SENATOR FLOREZ: Okay. So, they are the folks who market?

MR. BECKLEY: Manufacture. I always, kind of, think that's a funny term on organic fertilizer because before I got in _____ I thought that was a cow or a chicken.

SENATOR FLOREZ: Are you manufacturers or are you market?

MR. BECKLEY: They manufacture. Some of them strictly market and some of them distribute.

SENATOR FLOREZ: Okay. So you represent the fertilizer manufacturers?

MR. BECKLEY: I represent the fertilizer manufacturers and distributors—materials that are acceptable for organic production.

SENATOR FLOREZ: Okay. So your clients are the folks that are the subject of today's hearing?

MR. BECKLEY: Exactly. Our clients are the farmers and then ultimately, our clients are the consumers who eat these products.

SENATOR FLOREZ: Well, you said the farmers. I mean, the farmers make their own fertilizer? I'm trying to understand, you're the...

MR. BECKLEY: Oh, no. Our members are the people, not the specific people, but the people manufacturing the fertilizer.

SENATOR FLOREZ: Yes. And you're a new organization started in 2007. And for what purpose were you organized?

MR. BECKLEY: Well, I think we were organized for various purposes. But one of the principal purposes was to bring integrity to the organic fertilizer industry and work with CDFA and other interested parties to, kind of, get some of these issues that were going around under the same tent and hopefully be able to help solve the problems.

SENATOR FLOREZ: So you came together after the end of the investigation?

MR. BECKLEY: Yes.

SENATOR FLOREZ: Okay. Which said there was trouble brewing, and so you formed a group of manufacturers. And your principal goal in the Legislature at this point in time is to make sure that things aren't as onerous as they could be, or are you here to work cooperatively with some of the things you've heard today? I know you've mentioned a laundry list of things.

MR. BECKLEY: We're very much here to work cooperatively. We think there needs to be additional steps in there to ensure the integrity of the product. To repeat back; we're very interested in supporting the legislation, once we see it, that would require registration of these products.

SENATOR FLOREZ: Okay. And you're working with CDFA as we speak?

MR. BECKLEY: Yes.

SENATOR FLOREZ: So are you for full disclosure ingredients or not?

MR. BECKLEY: Yes. As an association, yes.

SENATOR FLOREZ: Okay. And how about if you don't disclose all of this full disclosure that we disqualify the use of your products in California, are you for that?

MR. BECKLEY: I think if there's products in there that aren't acceptable to the NOP program, they certainly should not be used for the...

SENATOR FLOREZ: And how about CDFA enforcing that as a standard threshold?

MR. BECKLEY: We really think they play an important role in that and need to get educated.

SENATOR FLOREZ: You mentioned audits; how about giving the certifiers, if you will, access? And they do now but it's limited because they have to notify you, how about allowing the State to pierce that notification issue with you?

MR. BECKLEY: We're in favor of an audit process. We'd just like to see a single audit process maybe coordinated by CDFA.

SENATOR FLOREZ: CDFA?

MR. BECKLEY: Yes.

SENATOR FLOREZ: And how about civil penalties? Do you have civil penalties in this process at the state level?

MR. BECKLEY: We only have the penalties that are in the Fertilizer Law, which I think was mentioned, the \$500 or so as a maximum.

SENATOR FLOREZ: Yes. And you're in support of upping it?

MR. BECKLEY: Yes. We're only as good as our weakest link.

SENATOR FLOREZ: Okay. And in terms of the listing of your products that have not been inspected, would you be in favor of those products that have not yet been inspected being listed on this database so that, I think as Senator Hollingsworth has said, members who want to check in to make sure they don't run into this problem, associations that want to check in, ag organizations that want to check in via the internet, can see whether your products actually were or were not inspected? I think Senator Maldonado made a good point—you know we have the third party certifiers here to tell us they didn't inspect and they didn't certify. So if you were a farmer or an association and you want to check in before you start to make those buys, what drives the process is, I think, a farmer or an association saying, "Hey, we'd really like to help you but you haven't been tested; and you're not certified

and we see it right here on the web, so you're kind of out of luck; so I would hurry and try to get that process completed," are you for that kind of process?

MR. BECKLEY: We're in favor of getting a process in CDFA that those products have to be registered; that they're acceptable for organic production. Now, if we get in an argument of whether that's a listing or not, I think that's just kind of a semantics question. We already have two lists. I can see the concerns from the certifier to have to put another set of lists on there. But if that product was registered by CDFA as acceptable for organic production, that, in a way, would be a de facto listing. Because if you said you were certified for production and selling in California on a label, you would be in violation of law if you hadn't been.

SENATOR FLOREZ: Okay. The last thing I want to ask you, and I know we talked about penalties and the \$500 fine. And Senator Hancock mentioned the DA and the AG. But what if you were a bad actor in this and you were really found, as this investigation has shown....what about not being able to sell for five years in California at all, period. Just, you're off the list; you're on the bench? I mean, is that something...

MR. BECKLEY: That's certainly would have to be discussed. That's an awful heavy Draconian...

SENATOR FLOREZ: You were agreeing so much. I was trying to make sure that you were with me there.

MR. BECKLEY: The reason we're in agreement with you so much is that you're going in the proper direction....we're going in the proper direction in principle; we've still got a lot of details to work out, because somewhere along the line this process has to work for the farmer, has to work for the certifier, and has to work for the fertilizer companies. That gets into a lot of details and a lot of back room meetings.

SENATOR FLOREZ: Okay. Great. Thank you. Senator Hollingsworth.

SENATOR HOLLINGSWORTH: Thank you, Mr. Chairman. You just went through an agreement with the Chairman on a list of things you'd like to

see the State do, including audits, enforcement investigation. Would you still like to have the third party certification?

MR. BECKLEY: Well, I think third party certification for the growers is an integral part of the program. I think third party certification for a fertilizer manufacturer; we'd rather see that within the CDFA.

SENATOR HOLLINGSWORTH: Well, I'm trying to understand here; you have gone down that road (and I'm sorry I wasn't in the room), the previous panel went down that road, and I'm trying to understand, you want to keep the good side of it, the easy side of it, if you will, and have these third party certifiers stay in business and stay alive as organizations but not get into the sticky business of investigation and enforcement. You want the State to enforce what someone else is certifying. How is that going to work?

And when we're really talking about not a health and safety risk to the public where the State might have an interest in this, what we're talking about is enforcing, as Senator Maldonado said, a marketing label.

MR. BECKLEY: I think the State needs to get a memorandum agreement and if they have confidence in the OMRI listing, that may be an automatic acceptability of the product.

SENATOR HOLLINGSWORTH: Then why not leave the enforcement, audit and investigation to OMRI, to other certifiers?

MR. BECKLEY: I think, again, they need a memorandum with the State of California Fertilizer Division. Because somewhere along the line we still have to produce a label on that fertilizer product and we're going to state that it's acceptable for certified organic production. That's when the State of California gets in the game.

SENATOR HOLLINGSWORTH: Well, maybe. You want us to get into the game with the sticky part, the expensive part, the part that actually takes people to court or fines them or puts them in jail but, essentially, there are two parts to this label. There's this part here where there's the third party certifier and OMRI and then here's where the State has an interest in its guaranteed analysis. But you still want to have OMRI and the third party certifiers do the

certification and then have the State enforce this whether this is accurate or not. That's sort of having your cake and eating it too.

MR. BECKLEY: I think what we want is if there's acceptability....somewhere along the line somebody has to say that product is acceptable for organic production.

SENATOR HOLLINGSWORTH: Isn't that the third party certifiers' responsibility right now?

MR. BECKLEY: Right now it is. It's either the third party certifier with reputable agencies, such as OMRI, or the actual certifying organization.

SENATOR HOLLINGSWORTH: So why shouldn't they have the auditing investigation and enforcement within their own organization to pull that off the label and tell their members in the organics community not to buy that product because the farmer is not going to be certified anymore?

MR. BECKLEY: I think one of the situations is that there's several certifying agencies. We'd like to get that consolidated to who is going to do the audit.

SENATOR HOLLINGSWORTH: Pick the best one.

MR. BECKLEY: And then they're going to have to agree among themselves, and sometimes they don't agree among themselves.

SENATOR HOLLINGSWORTH: Well, pick the best one. It's not up to the State to decide which one is the best one. They're meeting the minimum standards set by the NOP and the USDA. If they're not meeting the needs of the organic industry they'll wither and die.

Thank you.

SENATOR FLOREZ: You don't have an amendment for that wither and die comment do you, on this organic thing?

SENATOR HOLLINGSWORTH: What's that?

SENATOR FLOREZ: I was joking. Let's turn, if we could, to our next witness. And thank you for joining us.

RENEE PINEL: Thank you. Renee Pinel, on behalf of the Western Plant Health Association. We represent the fertilizer manufacturers, conventional

fertilizer manufacturers, as well as agricultural retailers in California, Arizona and Hawaii. A number of our manufacturers also feature organic lines. We don't represent 100 percent organic manufacturers, but with the growing acreage of organic farms it has become imperative for members to offer both lines.

I think one of the things that is perhaps....we have not seen from the manufacturing side, the issues that have arisen, perhaps, in the 100 percent organic side is because our members began in the conventional fertilizer market. They have, for years, understood CDFA regulations and have operated under very clear manufacturing processes because we also work with the water boards, with OSHA, with a number of other agencies that you label all your tanks. That these sorts of business practices are required by today's governmental agencies, and so, we have not had that problem.

I think when CDFA was talking about problems they had with inspection that they don't see in a lot of sites, that's because a lot of sites they go onto when they were talking about conventional tanks are labeled and the organic tanks are labeled in these dual systems, it's because they understand that they have to keep these systems separate from a business practice standpoint and from an agency standpoint as far as the products that they represent.

Just to mention: Western Plant Health Association has been around for 90 years. So this isn't something that evolved out of the latest set of issues.

One of the things I did want to mention is there has been, I think, a bit of a perception that CDFA has been sort of an agency that has sort of sat back and really hasn't been a proactive agency as far as the regulation of fertilizers. And certainly from the conventional standpoint, and that's where most of the regulations has been because, that's where most of the fertilizer manufacturer has been in California up until very recently, that's really not an accurate portrayal of what CDFA has done.

I'm not going to take up a lot of time of the committee going through every single issue that we have been involved with. But just in the past ten years, CDFA promulgated regulations for phosphate fertilizers. These are

mined fertilizers so they have naturally occurring non-nutritive elements. CDFA promulgated regulations that are the most conservative in the world. We drive the rest of the world as far as what phosphates are on the market, both organic and conventional, as a result of those regulations. We did that with working with CDFA and with Senator Sher. Immediately following that, we've worked with, actually when Senator Pavley was in the Assembly, on a consumer right to know issue as far as phosphates to make sure the consumers would have access to that information. And they promulgated regulations that require that information to be provided by manufacturers either on a website, by phone, or on the label. And in addition, to make sure that manufacturers didn't take advantage of the situation. Those regulations are promulgated. So that information had to be achievable without going to a home site and, thereby, exposing the consumers to having to go through marketing material before they got to that information.

More recently, working with, at that time, Assemblymember Canciamilla, CDFA and the fertilizer industry worked following 9/11, and through statute developed a registration of ammonium nitrate. So they have been proactive. And again, to this point, we're one of only three states that have that kind of registration system.

We became concerned and involved in this organic issue because of our retail members. A couple of years ago we started hearing some feedback from them. There was concern as far as the products that were out on the market. Again, as the acreage has increased farmers are turning more and more to agricultural retailers to make recommendations as to what products they should use and to apply those products. And our members were becoming growingly increased; concerns about whether those products that they were being sold, they were being able to accurately represent to their customers as being legitimate organic products. So we, sort of, reached out to CDFA probably 18 months ago, and at that point found out that CDFA was already having an internal discussion and was getting ready to have a series of meetings to find out exactly what needed to be done.

And just to make sure that we understood what was moving forward, I attended all of those meetings. And I thought that I might be able to provide some objective view as far as the process CDFA has taken in moving forward towards what we hope will be either regulation, or a regulation augmented by legislation to take care of the issue moving forward.

I think what we saw, and we were surprised by, because these meetings were made up of fertilizer manufacturers in California, or manufacturers who were marketing products in California, as well as organic farmers, was the scope of the issues that there were concerns about.

And I think what CDFA, from our observation, did not want to do, is they didn't want to just strike out in one direction and then find that they had missed something somewhere else in the system. And so, they were trying to develop comprehensive regulations. I think that they have done that to a great extent that they're finalizing.

I think that the disclosure, the authority of CDFA to require a complete disclosure of ingredients is a very good step; as far as making sure that what people are providing in their registrations can actually be done to develop the nutrient levels they're requiring.

I think the civil penalties will be very beneficial to help dissuade people who might otherwise have thought that they could get away with marketing adulterated products in California.

I think there's been discussion as far as CDFA needs to augment their staff in this area. We have worked with CDFA over the last year in reorganizing staff. If they need more staff, if they need more training, we support that.

We think that it's important that the organic manufacturers accept that responsibility. If it is particular to that section of the industry, they need to take that responsibility.

We believe that cost would be minimal. All of the regulations that I mentioned before, have been regulations that have been promulgated at the cost of the manufacturers, not at the cost of the farmers. And I think if you

talk to any farm group or growers, they wouldn't even know that these regulations are in place because they've never felt the cost of them.

SENATOR FLOREZ: They wouldn't know it because there's no regulations at this point in time. That's why CDFA just came _____.

MS. PINEL: No, but I mean for other regulations; for the phosphate regulations that have resulted in very conservative levels as far as what kind of phosphates come in. The ammonium nitrate regulations, as far as registering; growers aren't aware of that because the manufacturers have accepted those costs.

SENATOR FLOREZ: Growers weren't aware that they bought products that they believed was certified, tested and ready to go and applied to their fields and now are at some sort of place between worried and what does it all mean, so I wouldn't join the CDFA bandwagon in saying that this process has been that good.

MS. PINEL: I'm not saying that this process was perfect, certainly. I think looking back, hindsight; all of us wish we had been more aggressive. WSDA wishes that we had been more aggressive when we started hearing that there might be problems out there. But I think that once it was clear that there was widespread concern and this wasn't an anecdotal situation of one manufacturer, I think they did really do a good job of trying to come up with a comprehensive solution as far as recommendations.

SENATOR FLOREZ: They read *The Sacramento Bee* article. I get it. But this was not a proactive policy pushed by CDFA early on. This was the Freedom of Information Act. This was a whistleblower. This was an inspector who was ignored three or four times until such time tests that went to their lab proved inconclusive. Third party folks that didn't certify or test. I mean, this was not in any way, shape or form...

MS. PINEL: And I am not arguing with you about the specific incident.

SENATOR FLOREZ: Well, I am. That's what we're talking about today. We're talking about how...

MS. PINEL: Because, again, we weren't involved in the specific investigation of this one product of this manufacturer.

SENATOR FLOREZ: I know. But the world all starts from today going forward—I get it. But I think our issue is simply big picture, good learnings from this hearing. Senator Hollingsworth trying to figure out who's responsible and how those things merge or don't merge and who's going to pay for it. And I think we're all trying to figure out, when this bill comes through, that it's going to be, obviously, a very good hearing in this committee and it better be right and it better be balanced and it ought to answer all of our questions, including the questions we've had today. Because if it isn't, then I think we're just going to be back where we were in a market that's growing 20 percent and with consumers buying products that they want to ensure are ultimately organic based.

Thank you both for your testimony. We appreciate it.

Okay, let's have the organic growers. Finally. Belless Nursery and Community Alliance with Family Farmers. And then we'll take public comment.

PETE PRICE: Well, I'll start, I guess. I'm Pete Price with Community Alliance with Family Farmers. I will be brief knowing the hour is late. CAFF is a statewide organization of both farmers and other community members in California who support the long term sustainability of California agriculture and organic farming as only one of the ways in which farmers can improve their economic and environmental sustainability. Many, but not all, of our farmers are organic.

A lot has been said, Mr. Chairman. In the interest of time I'll cut right to several points that we wanted to make.

There's been a lot of discussion about both the Fertilizer Law and the Organic Products Act. And while one gives authority for inspections that's got very little fines, the other has higher fines and penalties. But the Fertilizer Law, for example, it seems to us, was written a long time ago. It's built up over time. But it clearly didn't have organic fertilizers in mind when it was written.

And I think to a large degree, its implementation has, until this episode, hasn't had organic fertilizers in mind.

The first point we want to make, and I think this has been, maybe, danced around a little bit today, but the law fails to recognize that the fact is, there's a pretty strong profit motive in being able to sell an organic fertilizer and using synthetic nitrogen instead. It's a lot cheaper. I mean, there's just an incentive for folks who are unscrupulous and who think they can get away with it, to use a synthetic nitrogen product that costs much less than what you'd have to use to actually produce...

SENATOR HOLLINGSWORTH: Isn't there a law against fraud?

MR. PRICE: Well, there is. We wish the attorney general would have heard about this law earlier than it did.

SENATOR HOLLINGSWORTH: Wouldn't you say the law already recognizes that, even though there is that profitability there?

MR. PRICE: Generally the law does. The Fertilizer Law doesn't. Had someone referred it to someone who had the authority to enforce that general law, Senator...

SENATOR HOLLINGSWORTH: Well, you can make a lot of money selling cubic zirconium as diamonds too, but it's fraud.

MR. PRICE: Unless you say it's cubic zirconium. But I agree with you, yeah. We wish someone would have...

SENATOR HOLLINGSWORTH: So should we get in the business of regulating that down to the nth degree?

MR. PRICE: No. But if there's a bright line distinction, it seems to us, between organic fertilizers and conventional fertilizers....conventional fertilizer has been regulated, historically, with one thing in mind (it's my understanding)—their efficacy. Do they work? This is a different standard for organic fertilizers. The farmer, who is buying it, as well as the consumer, has a right to expect that not only does it work, but that it complies with a product list that's specified in federal law. And so, it's more than just a kind of caveat emptor with the farmer. The farmer has got a right to expect that that list is

being complied with. And so, we just want to recognize, I think, a lot of the distinction here goes back to the historic purpose of the Fertilizer Law and you've got some different motivation with the unscrupulous folks, producers, with organic fertilizer.

Our second point would be (and Senator Hollingsworth has been pursuing this); the idea that there definitely is an inspection and enforcement gap of sorts here between the third party reviewers of material and CDFA.

We think the committee ought to consider the need for a more direct and explicit link between the organic fertilizer manufacturers, the third party reviewers, and then the question is, what's the state's obligation to enforce? For example (there's three questions): Shouldn't manufacturers be legally accountable for information that they provide the third party reviewers?

And by the way: we're not sure of the answers to these questions. But it seems to us that if a manufacturer is giving information to OMRI, for example, they ought to be legally accountable for the information they give to OMRI.

Shouldn't those third party reviewers be obligated to notify CDFA if they discover that a manufacturer is using a prohibitive material? I'm not clear on whether there's any obligation on their part. And I understand they have contractual relationships with the folks whose product they're inspecting, but it doesn't seem to us, that should trump their requirement to share that information.

And by the way: the issue has also been raised about trade secrets in products. We have plenty of laws in this state, just in the agricultural sector of this state, where manufacturers of products are required to share the trade secret portion of their information with state regulators. Those state regulators can be obligated not to release it. But there are plenty of laws requiring that those trade secrets also be shared with state regulators and I don't know why that should be standing in the way here.

And finally, shouldn't CDFA have an independent obligation to inspect the facilities as well the records and to ensure compliance and to take

enforcement actions quickly? That's been the main subject of this hearing. We certainly think they should.

Our third point is on the Organics Product Act: The Organics Products Act contains one passing sentence in one paragraph about their inspection, not obligation. It says, "They may perform spot inspections"—one sentence. The Organics Products Act on the other hand, has several pages with detailed reporting requirements for organic farmers and retailers to register with the state. Much more detail, by the way, than for fertilizer manufacturers.

Farmers have to submit to the CDFA the precise location of every plot of land where they farm organically—the dimensions of that land, the rate of application of every substance they put on the land, all of the sorts of things that they also have to give to the CCOF or the other certifiers.

And by the way: our farmers tell us that the CCOF certification process is quite rigorous and there's lots of visits to the farm.

Frankly, what we see is, the Organics Product Act is written to collect lots of data in great detail about where organic crops are produced and not much else. I mean, we don't have a great need for that information. I'm not sure who does. What we need is more rigorous inspection and enforcement to make sure that folks are complying with the law. We don't want anyone to be out there cheating.

So those would be our comments.

I will say this: the very change in this committee's makeup, Senator Florez, and your focus is a reflection that the old laws, the way they were written, may be reflective of what was going on at the time but there are new important parts in the industry as of right now, and I hope that this committee will help us pursue that.

SENATOR FLOREZ: Thank you. And the reformulated committee, your referring to Senator Hollingsworth joining the committee, then, is that correct?

MR. PRICE: Absolutely.

SENATOR FLOREZ: Senator Hollingsworth.

SENATOR HOLLINGSWORTH: Thank you, Mr. Chairman. If I might ask you, Mr. Price, your members are organic farmers and are most of them...

MR. PRICE: Not all of them.

SENATOR HOLLINGSWORTH: Okay. But those that are organic farmers, they're CCOF certified, most of them, or another third party certifier?

MR. PRICE: Well, they certainly have to be certified by....I assume most of them are CCOF, but they certainly are certified.

SENATOR HOLLINGSWORTH: And aren't they reliant, then, upon OMRI to purchase products like fertilizer for their farms so that they remain certified and in compliance with their registration as an organic farmer?

MR. PRICE: Well, it passes down. OMRI identifies the products that comply with the list of allowable materials in the federal law. CCOF depends, as is my understanding, on the OMRI list and CCOF certifies farmers.

SENATOR HOLLINGSWORTH: So isn't, then, your members' beef with CCOF and OMRI because they didn't adequately enforce the agreements to be certified and to be listed as a natural application?

MR. PRICE: Frankly, our beef is with the laws—they're too weak.

SENATOR HOLLINGSWORTH: Well, no.

MR. PRICE: That's my answer. Senator, I don't know what all we did...

SENATOR HOLLINGSWORTH: I understand that that's what you're testifying to. But really, if your organic farmers are paying money to be certified and that organization is saying, "We're going to make sure that not only are you in compliance with the registration, but that you remain a certified grower by....we're going to have a relationship with this other organization, OMRI, so that the things that you apply to your farm will keep you from applying non-organic material." Is that not correct? They're paying money for that so shouldn't they, then, want to say, "I can rely on that"?

MR. PRICE: They should. And that's why I think.... Senator, you and I agree that there does not exist the linkage that there should be—legal linkage between what OMRI does and what the State does.

SENATOR HOLLINGSWORTH: Well, but when you're talking about moving into the area of legal....we're talking about protecting the public's health and safety. You're talking about a different product that is just as safe for the public...

MR. PRICE: What different product are you referring to?

SENATOR HOLLINGSWORTH: An organic food product is just as safe for the public as a conventional food product. They're both at the same safety level.

MR. PRICE: We could have that debate on both sides but let's...

SENATOR HOLLINGSWORTH: Let's make the assumption that somewhere between Senator Hancock and Senator Maldonado, that they're both the same. Let's make that assumption.

MR. PRICE: All right.

SENATOR HOLLINGSWORTH: So what you're really relying on is this certification for your marketing purposes as a product that is produced differently.

MR. PRICE: That is correct.

SENATOR HOLLINGSWORTH: Well, if they're not representing you in that, is there anything that's stops your farmer members from getting out of those organizations and moving to another one or forming their own?

MR. PRICE: Well, let me make it clear; the farmers and CAFF and the Farm Bureau don't belong to CCOF; they don't belong to OMRI. They contract for services by those organizations.

SENATOR HOLLINGSWORTH: They're certified but they can....there's nothing stopping them from forming a third party certifier and submitting themselves to the same or similar types of requirements.

MR. PRICE: You know, Senator, there are several certifiers out there for organic farms right now. No matter which one you go with, you've still got the legal problems here.

You know, if you want to know who's to blame here, who wrote these weak laws? Who wrote these laws that don't protect organic farmers?

SENATOR HOLLINGSWORTH: The person to blame is the person committing the fraud.

MR. PRICE: Well, I agree with that. Why didn't we prosecute that person quickly and forcefully? As a matter of fact, I'd like to....it reminds me of one thing....the question has been asked...

SENATOR HOLLINGSWORTH: There's such a thing as civil prosecution for fraud as well. Your farmer members had a lot on the line that was at risk. If they were decertified they wouldn't be able to market their products according to their business model, right?

MR. PRICE: Well, the fact is, that under the Organic Law...

SENATOR HOLLINGSWORTH: So they'd have a pretty hefty bill when it comes to damages on the fertilizer manufacturers.

MR. PRICE: The fact is, the only thing they ran the risk of losing was their market. Just as with pesticides, if an organic product is found to contain pesticides because of drift or something that that farmer didn't control or couldn't control, that product is not deemed to be not organic anymore.

SENATOR HOLLINGSWORTH: And they would have damages—civil damages.

MR. PRICE: We pursued legislation in the past to help farmers recover...

SENATOR HOLLINGSWORTH: Well, you don't have to pursue legislation, you just hire a lawyer. You've got lots of farmers there that were at risk with lots of money; they hire a lawyer and take the guy to court.

MR. PRICE: Well, if the solution here is, let's have everyone litigate privately, I suppose we could leave it up to the farmers and...

SENATOR FLOREZ: Well, the world's upside down. Senator Hollingsworth is asking you to call the consumer attorneys and you're arguing that there shouldn't be lawsuits.

CROSSTALK

SENATOR HOLLINGSWORTH: Nice try. What we're talking about here is enforcing common law civil damages.

MR. PRICE: Senator. Senator, should we really have to depend on individuals, whether they're farmers or otherwise, having to go to court and sue civilly for laws that should protect them?

SENATOR HOLLINGSWORTH: No. You should depend on the organizations that you pay good money to, to make sure that they are protecting your members.

MR. PRICE: Well, we wish the laws were stronger so that CDFA could have stepped in and enforced it or would have decided to.

SENATOR HOLLINGSWORTH: Well, if CDFA is there, then why do you need to have the third party certifiers?

MR. PRICE: Well, someone has got to certify, whether it's a third party or CDFA. And that's a policy question.

SENATOR FLOREZ: That's really the big question, I think, that's Senator Hollingsworth inserted early in this, as this legislation moves through even with CDFA, whether or not they're equipped to do that beyond enforcement. And, I think, ultimately, that will be the big policy question as the legislation moves from the Assembly (that we're all so excited to see) whether or not it solves that. Because if not, we're still going to have a two-handed problem regardless of asking third party certifiers to, in essence, do this. And I think it's a fair question.

And I think your argument is that we ought to have very tough laws on the books that we can actually enforce. And Senator Hollingsworth is correct also, in terms of trying to figure out where that line is drawn.

So now that I've ended you guys' argument, let's go on to the next witness. Thank you for joining us.

SOLOMON TEKLU: My name is Solomon Teklu. And I own Belless Nursery in Davis, California. It's an organic nursery. I've also served with the Organic Advisory Board for the State.

And my take on this present issue would be in the Organic Systems Plan, page number two. I think that's a law that was broken. It requires the producer or handler must make a list or lists and characterize each substance

used as a production or handling. So that would require the farmer to produce a list to the certifier. The certifier, they should have seen that. So which in my opinion, then, the certifier should have known that there was an illegal substance used in the fertilizer approved for organic that the farmers used.

So I wouldn't blame CDFA on that.

I think I'm very encouraged by the two scientists that were here and that were trying to solve problems for organic production.

I'd like to go back a little bit in the history and the way I knew how OMRI was formed. This was back in 1995. CCOF certified farmer from Mendocino, brought a substance to DPR which CCOF had told _____ certify you but the farmer, like myself, which I do often, was suspicious and sent the thing to DPR. But like the CDFA scientist, the DPR scientist also, it wasn't their mandate to look at organic but they thought they would do a service to this upcoming industry that's coming....also being accepted in the Legislature and then we already had an act. So at that point, the substance called AQ-10, sure enough the DPR scientist, since it wasn't in his mandate, he actually asked his staff to come over the weekend and he spent his time....he bought them meals. They tore that thing apart and they found an illegal substance that was containing the bio-pesticide. Rather than admire this person, he was flogged. He was called by legislators, which were lobbied by CCOF. For two months he was trying to defend his action and he kept saying, "You know, it's none of my business. I'm leaving." So as a result, then, CCOF came to the California Organic Advisory Board, to the CDFA program here. The State is interfering in commerce activity. We're going to have our own material review process. And so, they footed the bill. In this case, to me, it's a special interest case. So for me to see, then, those three people sitting about two seats before, it's a highly burden in the making.

At the same time, the National Organics Standards clearly has a section that prohibits conflict of interest. And that's why, then, for example, at accreditation time in 2002, when the National Organic Program went into effect and where all certifiers, then, needed to be employees of USDA, actually, they

need to be accredited so ____ accredited them. So whatever money they collected became theirs, otherwise they're responsible to USDA.

At that time all of the certifiers, for example, that were mentioned here—Oregon, CCOF and also the State of Washington certification, they didn't pass. They didn't pass the conflict of interest regulation which means they needed to reorganize in such a way that there is no conflict of interest, which means farmers are not running a certifying agency.

So for example; if a certifier goes to OMRI and says which substance are you going to approve and here I have farmers that I'm certifying that are going to use that substance, I mean, I think you can make a picture out of that. So that's not good for us. That's not good for our nation. That's not good for the state. So CCOF needed to reorganize so it became three.

So what I'm asking you, what I'm asking anybody else, is that which CCOF was representing the certification agency which is an employee of USDA, which CCOF part was the trade part that, in reality, if you went to their website you'll find CCOF Certification Services LLC, its own company. CCOF Trade Organization, its own company, and CCOF Foundation, the farmers.

So what happens for farmers like me, then, when certification came, one of the reasons myself fought for and others, was so that this kind of layered fees were not going to be levied.

So for example, before the National Organic Program went into effect, certifiers would charge a certification fee and also a membership fee and also one half of one percent of your income for lobbying purposes. Now that we have laws, why do they need to collect all of this?

So the other alternative certification programs, which I pushed for and which I think should be, were, like, for example the _____. And then also the State if it wanted to. But even the _____ programs, I find that the way they are being administered, because they are employees of the county, a farmer interest could go influence that and then their activity also curtailed. But they also are trying to, if they ask money for certification, they are going to also ask for membership fees. So it's a burden on the grower or on the

producer. So I think you need to consider that. And it's a conflict of interest, I think.

So the way I'm looking at it, then, is if this fertilizer, fertilizer approved for organic, was used four years ago and then, say, as Jake Lewin said, he may have known in 2006, did he tell the accreditor, the USDA last July that there was this kind of problem? Did he? We need to know, because if he had, then they would lose their certification accreditation. So this kind of information you need to find out.

But I think because of 2002, October 23, when the National Organic Program came into effect, the California Organic Program actually became non-effective.

But the state's could apply to administer USDA programs. So the California involvement with USDA is that it now can administer organic functions of USDA.

So it seems to me, the certifier should have reported this thing to USDA and the USDA should have taken action. That's the way I look at it.

That's all I have to say.

SENATOR FLOREZ: Thank you. Any questions by members? Let me just ask one and that is, in terms of your rendition of who ultimately is participating in these third party certifiers, do you favor a system where....you heard earlier that we were one state...

MR. TEKLU: Well, it doesn't matter. I think it's how the process works. But if, like, for example CDFA is recruiting the USDA and then they should not accuse it of having a weak law, because the law that the California Organics Products Act is ineffective after October 2002. And then the other one is the act itself—the Products Act.

I don't know what became of the Legislature. We didn't see a lot because what you did was you raised the fees of farmers like me—you know, the poor farmers who make under \$10,000. Our fees went up 50 percent. But you capped the fee, the highest fee to \$2 million. So a farm that makes \$2 billion is going to only pay a fee for the first \$2 million and that's it.

But on the other hand, all these organic laws are coming into effect so that family farmers, small farmers who care about the environment, who put public health first, the environment first, and then come up with all this creative ideas....for example; my nursery produces plants that look like the ones that are spiked, but I don't—it's not because I don't believe in it.

The little pepper pictures you saw on that little map, yeah, that was all grown by using only the requirements....the land requirements that _____ production one, two, three. Imagine, then, if you go a little further it has a provision for allowed materials. Those are for exception only.

And then towards the last page, there is a temporary variance clearly defined. Which means if a farmer, for example, uses illegal substances then they need to show how they get phases out of that before they get recertified again. Are certifiers following that, I doubt it. But that's subjective and I think it's up to this committee to find out if that's working.

So as a grower, what I really need is that if we have a national standard, then we should abide by it.

And then the label, for example, that should appear on a certified organic product _____ USDA Organic. So putting a certifier's label and then highlighting it to mean that it's a better label, that's going back to pre 1990 because that's when both acts were passed, and then, after 2002 there's no need for a private label certification logos. So that is causing a problem. So farmers like me, then, are actually going beyond that. It's better to call it "local green", better than "certified." But that will cause a lot of problems in stores, as well, because there's a lot of organic product that's in the market. I don't think it's in anybody's interest for consumers to lose confidence in that.

So I hope I made myself a little clear.

SENATOR FLOREZ: No. You have. Thank you. Any questions by members? Okay. Both of you thank you very much.

MR. TEKLU: Thank you.

SENATOR FLOREZ: We're now at the public comments point of the hearing. And we have Sam Welsch from OneCert. Come on up. And then

anybody else who would like to speak, we'll let you do that. Just state your name for the record and then we'll close the hearing.

SAM WELSCH: My name is Sam Welsch. I own a certification agency called OneCert. I'm from Lincoln, Nebraska. I flew in last night so that I could be here today. I'm also accredited under the National Organic Program and for international standards. We do have operations that we certify here in California.

I wanted to thank Senator Florez for letting me speak today. I think there's some opportunities.

California is known for developing regulations ahead of the rest of the country so I'm hoping in this area, if there's things to be developed, that it can be something that takes a lead for the rest of the country.

Obviously, it's recognized here the problem that this fraud creates not just for consumers and farmers, I mean, this is a major blow to the entire organic industry and to the organic brand in general.

Most people look at organics and they say, the definition you always hear, "It was used without the use of synthetics," and that's fertilizers, other pesticides, herbicides. So it's arguably the most important part of certification, is to make sure that those providing inputs are well regulated and that there's an effective method of approving those products. They're not, strictly speaking, "certified," although OMRI does do a certification process to put things on the list. The obligation of accredited certifiers is to list those products.

I also wanted to commend *The Sacramento Bee* for pulling this out because it's only when these things are brought to light, are we able to take appropriate action and solve these problems.

You do have the copy of the written comments, I think. Were those distributed to the group?

SENATOR FLOREZ: Yes, we do.

MR. WELSCH: Okay. So I won't read the whole thing. I'll just highlight the recommendations I have. And, then, hopefully, you'll have some questions.

All certifiers don't operate the same and we do have different approaches to input approval, as well as our certification process. Although we all follow the National Organic Program regulations, it's not an identical process among all the certifiers.

My recommendations are about several points. I think it was talked about today, and I'm glad to hear the Organic Fertilizer Manufacturers of California supports full disclosure. That's been something that I've been asking for, for many years.

I've been involved in certification for about eight years. And disclosure is one of the real problems. And when you start to have disclosure, you know, it's always only kept in secret. And proprietary ingredients, those are the ones that are most often going to be found to be non-compliant. You know, it's really unfortunate when the proprietary secret is it contains a prohibitive substance. And in my view, failure to provide full disclosure would disqualify use of any manufacturer's product.

And I think disclosure should be required to be provided to any certifier upon request, because, ultimately, it's our responsibility to make sure operators comply. And without full disclosure of what's in the products they want to apply, we have to trust other third parties. And as we've seen, their methods are not always successful in identifying potential fraud.

Require manufacturers to provide access to records; that would be both for their conventional and organic production.

I would like to expand the scope of the NOP and the California Organic Program to include verification of inputs so that it would bring input manufacturers....make them subject to the same penalties that growers are. If a grower had done this same type of mix—he brought some allowed materials, mixed it with prohibitive materials, used it on his farm—with an intentional act like that, you get revoked. And not only would his entire farm have been revoked, but he, and any responsibly connected parties to that organization, would have been prohibited from being certified for five years. I don't think we should have any less penalties for input manufacturers that are also doing

deliberate fraud or intentional fraud. Because they don't just hurt one farm when they provide materials to the industry, they hurt every farmer that buys from them.

Obviously, certifiers who are going to review materials need to have expertise and that's been a problem among certifiers. Not everybody has the same level of expertise or will even understand when you see a nitrogen product that contains 14 percent liquid nitrogen that it can't possibly be made with compliant materials. And even last year there were still certifiers willing to approve products of that type. Even though it's been in the news for years that that's not acceptable, not all certifiers have caught up with that.

I would prohibit OMRI and any other certifier from listing or approving products from manufacturers that have not been inspected or fully reviewed at least annually. Right now, these reviews, in some cases there are things listed on OMRI or WSDA that, at least as of last year, had not been reviewed since before the NOP was implemented. Now, that's just too big of an interval to go by without knowing that these products have gone through a thorough review.

The other things that are in the NOP: If a farmer loses its certification or has any non-compliance identified and they go to another certifier, they're required to notify that certifier—inform that certifier—of what the issues they had and how they corrected those issues.

Currently, we have input manufacturers going from certifier to certifier until they find one who allows their product to be used. And then they have an approval and they use that one approval to pressure and leverage others to get a similar approval, because it all seems to be a rush to the bottom. Once one allows it, there's a commercial pressure for others to allow it as well. So that kind of full disclosure, I think, is an important part of the regulatory process—you know what their history is.

This is, I think, an important issue. It's great that you're bringing this to the attention.

I appreciated Senator Hollingsworth comments about who's responsible for this and who's going to pay? And as you pointed out, Senator Florez, it's

the consumer who's paying right now. If it were actually the rule being implemented the way it says, that if you cannot harvest an organic crop from land that has had a prohibited substance applied to it for three years prior to harvest, that's very harsh on the growers. But then if that were applied strictly, the growers, then, would have the incentive to actually be seeking redress of damages from the people responsible, which could be the manufacturer or the people who approve products that perhaps should have known better than to approve those products.

I won't go on. You've had a long day.

SENATOR FLOREZ: We were just starting. Senator Hollingsworth, you have a question?

SENATOR HOLLINGSWORTH: I agree wholeheartedly with all of your recommendations. I think all of the certifiers ought to do that.

SENATOR FLOREZ: Why don't they?

SENATOR HOLLINGSWORTH: I don't think it's the state's prerogative, though, once we've set the standard through the NOS and California's following up on that, to go through that. I mean, and you talk about a race to the bottom, it's sort of similar of should we require every product to go to Underwriter's Laboratories? No. Underwriters Laboratories is the gold seal and consumers look for it on an appliance or another product because they know that they have a very good reputation before they put that on a product.

The problem here is, is that nobody seems to be willing to stand on their own and build that type of reputation. They want the State of California to come in and take their liability and do some of the dirty work that goes with building that reputation. Either it's going to be third party private certification and build up that reputation or it's going to be government inspection regulation and enforcement. It can't be both.

MR. WELSCH: And since it is both right now, because it's a federally regulated program, we're accredited certifiers. We're accredited by the USDA to do certification. We're doing it to federal standards, we're not able...

SENATOR HOLLINGSWORTH: But at some point in time we won't need you. We won't need the third party certifiers. We'll just send out CDFA inspectors to make the certification.

MR. WELSCH: I've seen that working in other states, or, not working. And, in fact, we get a lot of our clients from states whose programs closed because they lacked the political support to keep them running. And it's a costly program for a state to run. And it's often run by people who had no prior interest in organic, or even understand, organic principles.

I think the private public partnership that we have under the NOP is actually a very strong program because it gives the enforcement power of the federal government and it's also got the private sector that competes both on quality and you're attracting people who understand organics—have a history in organics.

I was an organic consumer for 30 years before I got involved in certification. And I think most people who are involved in organic certification have that kind of background in the private sector. It's not always the case in the state programs. And there are differences of compliance between not only private certifiers but among state programs—some are very good and some not so good.

SENATOR FLOREZ: Great. Any other questions from members? Let me say, I also very much agree with the direction of reform in your written testimony. I had an opportunity to read it. And I like your five-year penalty. It's the reason I mentioned it earlier.

And I will tell you, if you could stay with the committee as this bill proceeds through the Assembly, I would value...

SENATOR HOLLINGSWORTH: Well, Mr. Chairman, there's nothing for us to do. They can implement all those things as third party certifiers. They don't need the bill. They don't need us.

SENATOR FLOREZ: Right. Well, that would be even better. So maybe we can figure out, when this bill does come here, whether or not it's actually worthwhile.

MR. WELSCH: Your state program does have some enforcement authority, including reporting when certifiers are not performing evenly, and I think that's one of the problems. And part of this needs to be addressed at the federal level in terms of making sure there's consistency among certifiers and we're all following this.

SENATOR FLOREZ: Okay.

MR. WELSCH: Unfortunately, like, last year they allowed us to accept....You know, before March of last year, every certifier had to make it's own decision and assessment in approving these products. And because there was a lot of inconsistency, the NOP decided, "Well, we can accept each other's decisions," like OMRI could be accepted or others. The problem with that approach is when people started certifier shopping. There are no penalties for this certification of the input materials—the approval of input materials. So I think there's probably a balance in there.

I'd be glad to assist in any way possible.

SENATOR FLOREZ: I appreciate that very much. Thank you, Sam, for coming. Appreciate it.

Okay.

STEPHEN MEYER: My name is Stephen Meyer. I'm with the Downey Brand Law Firm here in Sacramento. In any event, I'm one of the litigators that has been mentioned at times in cases like this. I represent True Organics Products, who has retained me a few months ago to look into the organic manufacturing business. And I was asked to look into that principally because in addition to farmers and consumers who are being cheated, legitimate manufacturers are being cheated. And I have a few observations based on that investigation.

One is; I think a lot of the principle problems we're facing, is that this is a maturing business.

About 15 years ago, I was outside counsel with the Department of Conservation enforcing the recycling laws in the early days. And in the early days of the recycling laws there was extensive fraud with cans being brought in

from Mexico, Arizona and other places. The result of that work was that the principals of three companies went to prison and the State recovered several million dollars in redemption fees.

That's sort of, I think, the point at which you're at here in this particular area of organic agriculture. And I don't think it's just fertilizers, it is all the basic inputs that go into it. And I'll explain why fraud is so easy to commit in this area and particularly so in an area where there is, sort of, the lack of oversight.

I think everybody is, sort of, seeing the reality here, which is the certification of inputs has now fallen between the stools. I mean, there's nobody up here who has come up here who really sees that they have the responsibility to determine that an organic fertilizer is an organic fertilizer. You start with CCOF, which is a very fine organization in certifying farmers. CCOF has its authority.

Let me step back.

In many ways part of the problem with this area is not your state statute, it has a lot to do with the national statute. The national statute delegates certification to semi-private agencies and sometimes the state. In California, we're fortunate to have CCOF, which does a very fine job. But it's not done by agencies.

So CCOF gets a plan from a farmer and the farmer has to say exactly what he's going to use. And the farmer says, "Well, I've got to use Biolizer XN." And they look up, "Is it listed with OMRI or is registered with the WSDA?" And if it is, it's accepted and that farmer can use that product. And the farmer relies on that certification.

So then you shift to OMRI or WSDA, and they're really no different in the way they approach this. If you're a fertilizer manufacturer, you file an application and you say, "This is how I'm going to make it." You don't send them a sample of what you're going to make, you just say, "This is how I'm going to make it." And what they do is they do a desktop review and they determine that it complies with the National Organic Products rule. It's a

desktop review. And the reason they do a desktop review is because they're paid \$300 for this—approximately. So OMRI is an entity that currently doesn't really have the funding to do, sort of, the extensive investigation they might do. And they certainly don't test the product. They don't field test the product. And you can say anything you want, and if it sounds like it's going to fit under the National Organic Products rule, you're going to get listed or registered and then certifying agencies rely upon it.

Your third leg of the stool is CDFA. Now, you heard, CDFA does fertilizer inspections. But their mindset is not that it's an organic....they're not trying to determine, is it an organic fertilizer or not, they're basically trying to determine does it meet the nitrogen potassium levels that are being represented. That's all they really do. They've never had to determine are there synthetic forms of nitrogen in here?

Now, so that CDFA is not totally blamed for screwing up the California Liquid matter; the testing protocols that were available in 2004/2005 weren't very sophisticated. It's only been in the last couple of years that you've been able to do nitrogen ratio testing, carbon/nitrogen ratio testing and other kinds of testing that will give you a fairly good idea as to whether you're dealing with an adulterated form. However, that will just simply give you an indicator. It's many times a very strong indicator that you've got a product that is adulterated. But you can't rely on that entirely.

And the second thing, if you're going to conduct oversight, is you have go and get their records. If a guy said, "I make a fish based fertilizer and I've sold 500,000 gallons of fish based fertilizer," then he should have bought a heck of a lot of fish and he should be able to look in his records and determine that. You should also be able to look at his records and determine whether he's bought urea, aqua ammonia or any other products. And if they're an organic fertilizer manufacturer there's no reason, none at all, that they should own that. And that was one of the things, I think, that tipped them off in California Liquid, was there was a tanker of synthetic nitrogen there. Well, you know, that's how this thing is operating. But you have to do both.

And you have to have, and I think CDFA might be developing it, but you have to have more of a prosecutor's mentality here. What happened in California Liquid Fertilizer is a major crime. There's no way about it. There were millions and millions of dollars that were made. You should understand that there's a lot of money to be made in liquid fertilizers. And I would estimate, based on what I've seen on California Liquid, that the owners of California Liquid made more than ten million bucks.

Now, what happened with the California Liquid Fertilizer investigation? They did a two-year investigation (which I understand the problems) but that was an awfully long time to do. And then, they entered into a confidential settlement agreement. It wasn't in 2006 that CDFA issued a press release and said, "You know what? This is adulterated fertilizer." There was nothing made public about it. And, in fact, when California Liquid Fertilizer went out to the market and pulled products back they simply said, "We're reformulating things." They didn't say, "Oh, by the way, we've been doctoring stuff." They didn't tell the world that. And if you ask why farmers didn't sue then, it's because they weren't told.

So then, just to sort of heap irony on irony; the fellow who owns this company, who's now been apparently terminated....and converted as a different group _____ California Liquid, although it's interesting they hired as their executive vice president, the guy who ran California Liquid. So what does he do? He sells a product that's called Biolizer. You can look it up. The trade name "Biolizer" is still used. So that even, sort of, makes it even stranger. It's not Biolizer XN, it's Biolizer something else. But what is the market thinking? I mean, what are they led to think about that?

And then, this gentleman sold this company to this poor man who bought the company not knowing, apparently, its history, for \$2.3 million which he then kept.

But if you want to know why cheating occurs in the organic fertilizer business, it's because there has been no apparent deterrents. If all you're told

is “don’t do it anymore,” after you’ve made millions of dollars, well, what’s the harm?

Now, to understand why this occurs you need to understand that (I’m just pulling numbers out of the air) you sell this stuff for \$2.50 a gallon. If you make it with organic inputs, it costs you about a buck-eighty. If you make it with aqua ammonia, it costs you about 40 cents. You net, if you make it out of aqua ammonia, \$10- to \$15,000 a tanker load that goes out. That’s a lot of money. There’s a lot of incentive.

You and I could go set up one of these plants for \$60,000. The barriers to entry are not that high. You need six big plastic tanks. You need to rent some property. And you need somewhere to mix it.

So, in a lightly regulated industry where there are tremendous profits to be made, you’re going to see fraud.

Now, you may have noticed recently that the FBI raided Port Organic Products. I don’t think it’s insignificant that they found a tank of...an underground storage tank of aqua ammonia there. You have to ask yourself, “What’s that doing there?” And that leads me to believe there’s many more shoes to drop in this scenario.

And the conduct that is occurring, and that has occurred, is criminal if you have people who are making millions and millions of dollars.

Farmers have been victimized. You know, at the moment, farmers may not have decided to file lawsuits, but they have been victimized and I think they’re only beginning to realize it. Just based on my, sort of, review on this, I would suspect farmers may have been ripped off to the tune of \$40 million over the last several years. And you arrive at that figure because you ask yourself, if you paid \$2.50 a gallon for it, what would you pay for it if it were synthetic? Well, you wouldn’t pay \$2.50 a gallon; you’d pay about a buck. And so, there is harm. There’s harm to the consumer and there is harm to the farmers.

I just think at CDFA’s level they haven’t....I think CDFA could be your enforcement mechanism. But you’ve got to have people involved in it who have, kind of, an investigators mentality.

One of the things that occurred at the Department of Conservation is that their investigators actually started carrying guns because they started realizing they're dealing with organized crime. I'm not suggesting that's what you have here, but a whole new crew came in and started thinking about this.

Now any time....I have to point out; in organic agriculture any time you have an input that's a liquid, you're going to have a potential....you have a potential for problems if there's a synthetic substitute that is so much cheaper than the organic stuff uses.

And so, I think it would be important for the committee, in looking at these issues, to look at herbicides and pesticides and other, sort of, liquid products that are used on farms. I'm not saying there's a rampant problem there, but there hasn't been a lot of regulation or control here. And there is a good deal of opportunity if you hit that price difference, it's worth it—it really is worth it.

So, we applaud, on behalf of my client....you know, my client has lost millions and millions of dollars in market share. And one of the reasons I was brought in, was to come look at this. And even though I'm a litigator, I'm not proposing a litigation solution. But I would say it would be important for CDFA to increase its testing capability significantly.

The nitrogen ratio test, which is not the be-all-and-end-all but it's something you need to be able to do, requires a fairly expensive piece of equipment.

It was interesting, and I'll just digress, what this machine does is it weighs nitrogen 15 molecules and nitrogen 14 molecules (can you imagine that you can do that) and then it comes up with a ratio. And if you get a number like two or one or zero it is very likely that it has synthetic forms of nitrogen.

But I would think you would want to, in looking into this issue, perhaps involve people from the attorney general's office and look more strongly at enforcement issues. You don't necessarily need to change the penalties, because what occurred in California Liquid Fertilizer is criminal fraud. I mean, you don't need to make up a new crime for that one—that is a major crime.

I would think another thing you're going to want to do is you're going to want to come up with some kind of no doc rules so that if you've got fertilizer manufacturers who you want to investigate, you should be able to show up and look at the files. This happens, by the way, in the dairy business. If you're a dairy farmer, they could just show up. I would think that you could probably do the same thing here with manufacturers.

I think one of the difficulties that CDFA had, was that you had to call them up and say you were coming. Well, you know, if they're coming there's a lot of things you can do. If you don't know they're coming, it makes quite a difference.

So, those are my comments.

SENATOR FLOREZ: Thank you for your testimony. Appreciate that.

Anyone else in terms of public comment? Okay. Seeing and hearing none, members any comments before we close the informational hearing on this particular issue? Okay.

Let me just say a couple of things, if I could. I want to thank the members.

SENATOR MALDONADO: _____(no mic)

SENATOR FLOREZ: Senator Maldonado mentioned that the length of the hearing in terms of the "Big 5" meeting is probably not as long.

But I will say, members, we needed to have this hearing prior to some very significant changes that are going to occur in the synthetic fertilizer/organic world. This will be one of the few times that we are going to have a long hearing like this, particularly when we don't have a bill in front of us. And I'm just a firm believer that when we have bills in front of us we are very limited. We have people who speak—three on one side and three on the other and we really never have the time to flush out the issues in terms of what we really need to be looking at.

I appreciate the time from the members. I know we'll have just as lengthy hearing when we talk about the Milk Pool soon—just to give you forewarning—in about a couple of weeks—four weeks or so.

But I do want to say thank you to the members.

And particularly I'd like to say that there's no doubt that some very good questions were asked here.

Senator Maldonado, and, particularly, Senator Hollingsworth talking about a restructuring or re-look at this entire process.

I can tell you that there was just absolute fraud that occurred here, period. There's no doubt about it. And there's no way to sugar coat this—straight out fraud occurred. Farmers applied products on their fields thinking that they were applying this under organics. And yet, we are saying, today, that no harm was done—everybody is restructured. Everybody is saying, in many cases even saying, that these organic products are organic even though there was synthetic product put on it.

It's really quite a shame, members, that we will have to really look hard at CDFA and ask them for some major significant changes. And there's just so many options here presented to the committee. I think we'll have to get the transcript; have staff go through it and try to come out with, after a very lengthy hearing, what were the best portions of this hearing that came out and then try to synthesize that. For the members, themselves, it would be great if you took the time to go through the transcript...all these great consultants we have here....and then give us a document that we could actually look at prior to a bill being presented and then moving through this committee.

So I do want to thank everyone. I want to thank everyone who traveled here, particularly.

And we will adjourn the hearing of the Senate Food and Ag Committee.

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