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AMEND THE GOLDEN NEMATODE ACT  
AND  
RELIEF OF BATAVIA TURF FARMS, INC.

GOVERNMENT

DOCUMENTS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON DEPARTMENT  
INVESTIGATIONS, OVERSIGHT, AND RESEARCH

OF THE

COMMITTEE ON AGRICULTURE  
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

ON

H.R. 7956 and H.R. 12556

NOVEMBER 29, 1977, AND JULY 18, 1978

Serial No. 95-XX

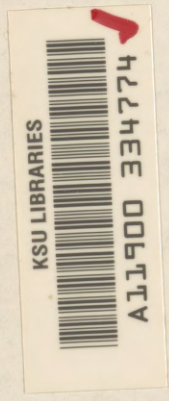


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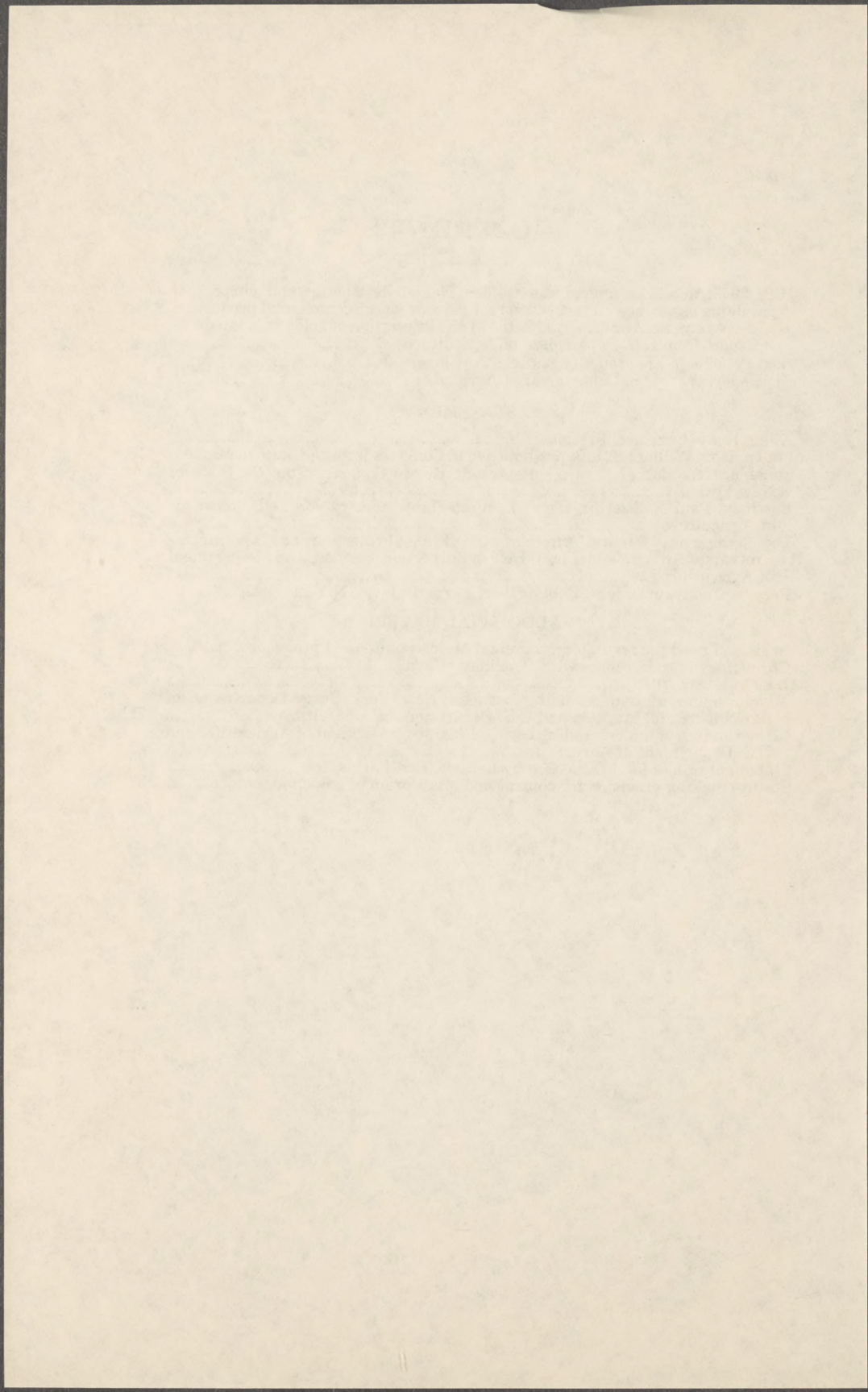
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# AMEND THE GOLDEN NEMATODE ACT

TUESDAY, NOVEMBER 29, 1977

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON DEPARTMENT INVESTIGATIONS,  
OVERSIGHT, AND RESEARCH OF THE  
COMMITTEE ON AGRICULTURE,  
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1301, Longworth House Office Building, Hon. E de la Garza (chairman of the subcommittee) presiding.

Present: Representatives Skelton and Grassley.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsels; William A. Imhof, associate counsel; Glenda L. Temple, clerk; Humberto R. Pena and Gerald R. Jorgensen.

Mr. DE LA GARZA. The subcommittee will be in order.

We meet this morning for the consideration of H.R. 7956 by our colleague, Mr. Conable, and other Members, to amend the Golden Nematode Act.

[H.R. 7956 and the report from the U.S. Department of Agriculture follow:]

[H.R. 7956 95th Cong., 2d sess.]

A BILL To amend the Golden Nematode Act for the purpose of providing assistance under such Act for persons whose commercial production of crops have been adversely affected by the infestation of golden nematode.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 3 of the Golden Nematode Act (7 U.S.C. 150b) is amended as follows: "The activities contemplated by this Act include cooperation with States and other agencies in making inspections, applying suppressive measures, enforcing quarantines, enforcing restrictions on the planting of commercial crops, including turf and nursery stock, destroying such crops growing in soil found infested or exposed to infestation of the golden nematode and compensating persons engaged in commercial production of crops, including turf and nursery stock, for financial losses resulting from any or all of the following: not planting such crops in compliance with regulations promulgated under this Act, in areas quarantined as a result of, infested by, or exposed to infestation of the golden nematode; destroying, in accordance with the provisions of this Act or regulations issued thereunder, such as a crop which is so infested, quarantined, or exposed; and incurring increased costs, loss of sales, and a decrease in land value, with respect to such crop farming activity, as a result of such infestation, quarantine, or exposure."

(b) Section 5 of such Act (7 U.S.C. 150d) is amended by inserting "other commercial crops including turf and nursery stock" after "potatoes" each time it appears therein.

SEC. 2. The amendments made by this Act shall be applied for the benefit of any person who experiences financial losses in the commercial production of crops, including turf and nursery stock, after January 1, 1977, as a result of the infestation, or the exposure to infestation, of the golden nematode or as a result of the quarantine imposed because of the golden nematode.



DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SECRETARY,  
Washington, D.C, November 28, 1977.

Hon. THOMAS S. FOLEY,  
*Chairman, Committee on Agriculture,  
House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for a report on H.R. 7956, a bill "To amend the Golden Nematode Act for the purpose of providing assistance under such Act for persons whose commercial production of crops have been adversely affected by the infestation of golden nematode."

The Department opposes enactment of the bill.

Under the Golden Nematode Act (62 Stat. 443, 7 U.S.C. 150b), we are authorized to compensate " \* \* \* growers in areas infected, or exposed to infestation, with the golden nematode for not planting potatoes or tomatoes or for losses resulting from destruction for the purposes of this chapter of potatoes or tomatoes." The bill would amend this provision of the Act so as to extend the coverage of the Act to the planting of commercial crops, including turf and nursery stock, rather than just potatoes and tomatoes. Also, the bill extends the financial compensation provisions of the law to include " \* \* \* compensating persons engaged in commercial production of crops, including turf and nursery stock, for financial losses resulting from any or all of the following: not planting such crops in compliance with regulations promulgated under this Act, in areas quarantined as a result of, infested by or exposed to infestation of the golden nematode; destroying, in accordance with the provisions of this Act or regulations issued thereunder, such as a crop which is so infested, quarantined, or exposed; and incurring increased costs, loss of sales, and a decrease in land value, with respect to such crop farming activity, as a result of such infestation, quarantine, or exposure." The proposed amendment would be effective retroactively to January 1, 1977.

The golden nematode program is a cooperative undertaking which is jointly planned and financed with the affected States. The interstate movement of commodities which may be infested with the pest is regulated by Federal quarantine. The intrastate movement of such commodities is regulated under parallel State quarantines. The cooperative program is planned and reviewed annually by State and Federal pest regulatory officials. We believe there is no justification for a basic change in the existing cooperative program. The arrangement has continued since the inception of the program in 1946 and has proven to be effective in dealing with infestations of the golden nematode.

Under section 5 of the Act (62 Stat. 443, 7 U.S.C. 150d), we are not authorized to undertake any program involving mandatory restrictions on the planting or destruction of potatoes or tomatoes " \* \* \* unless the State concerned shall have enacted legislation authorizing such restrictions or destruction." The bill will amend this section to include other commercial crops including turf and nursery stock. This amendment may or may not require further legislative action by each concerned State.

The amendments proposed under H.R. 7956 represent, in effect, private relief legislation. They apply, in fact, to two particular situations which have arisen rather uniquely as a result of both State and Federal quarantines involving the movement of commodities. The circumstances involved in these two situations are diverse. One involves a dealer in turf and nursery stock in New York and the other involves the prohibition of selling seed potatoes by a producer in Maine.

If a legislative remedy to these particular and diverse situations is to be pursued, it is our opinion that a private bill should be introduced for each. In this way, the merits of each case can be decided on the basis of any loss sustained by the persons involved. This would include, for example, whether any loss was the result of a State or Federal quarantine.

The Office of Management and Budget advises that there is no objection to the presentation of this report and that enactment of this legislation would not be consistent with the Administration's objectives.

Sincerely,

BOB BERGLAND, *Secretary.*

Mr. DE LA GARZA. We have Mr. Conable present here today. He is also involved in the welfare reform legislation, which is very important. We understand they have a meeting as well.



Therefore, without further introduction, we shall call our colleague, Mr. Conable, for whatever statement he might wish to make.

Also, if you would like to have your statement appear in the record in full, that is if you have a prepared statement and would like only to summarize it, that would be agreeable.

**STATEMENT OF HON. BARBER B. CONABLE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. CONABLE. I am very grateful to you for holding these hearings, Mr. Chairman.

We are caught in one of the classic "Catch-22" situations with respect to the Golden Nematode Act. We know of at least two people who are subject to considerable injustice on account of the way in which the act is drawn.

As you may recall, Congressman Cohen and I secured, after extensive debate on the floor of the House, enactment of a provision of the omnibus agriculture bill this year to provide relief our constituents are earnestly seeking.

The provision unfortunately was dropped out in conference at least partly because of the opposition of the Department of Agriculture.

The Department of Agriculture acknowledges that there is a real problem for the few people who have procured the preparation and filing of this bill. They say they should have a private bill for their relief rather than a bill of general impact.

The bill is drawn in such a way that we do not think it will have a general impact. However, anyone situated, as our constituents are situated, should be entitled to the protection of the law, and as it stands now they have little protection.

I am now going to present a constituent of mine, a friend of long standing, a man with whom I have been associated in many things in community life in Batavia, N.Y. He is not only an old friend but he is a man admired in the community as a self-made man who is being destroyed by the problems the Golden Nematode Act have inflicted on his business. This is a turf farm which has had interstate business in the past and which, because of the embargo provided by the act, has greatly fallen off in business this past year.

He has an extensive prepared statement so you will understand the complexity of his situation and how the act has affected him and his business.

I believe all of you have a copy of that statement. I believe he would prefer to summarize it here today, and I have urged him to do so.

He has been living with this very, very serious problem during the past year and can respond in detail to any questions you might have about the injustice being vested on him.

I would like to present Mr. Anthony Peca, Batavia, N.Y.

Mr. DE LA GARZA. Thank you, Mr. Conable.

Mr. Peca, we will be happy to hear from you.

[The prepared statement of Mr. Peca follows.]



Statement of Anthony L. Peca, Batavia Turf Farms, Batavia, N.Y.

Batavia Turf Farms is a turf growing company located at Batavia, New York. It was formed in 1960 with approximately 50 acres of land. Batavia Turf Farms dedication to quality and service enabled it to increase its sales area to include Cleveland, Pittsburgh, Wilkes-Barre, Scranton, Albany, Watertown and all points within. In order to keep pace with the expanding markets, Batavia Turf Farms purchased and developed additional land and equipment. By 1973 Batavia Turf Farms turf producing land totalled over 500 acres. Many years of work and expense were required in developing Dealers and Distributors for our turf.

In December, 1965, I sold an excavating, hauling and paving company I had operated since 1946. Since I was then only in the turf business as I am to this day, all of my time and assets were used to improve and enlarge Batavia Turf Farms until the arrival of the Golden Nematode.

WHAT IS THE GOLDEN NEMATODE?

The Golden Nematode is an eel-like parasite which lives off the roots of potatoes, tomatoes and eggplant. Its presence in a potato field can reduce yield by 50% or more. The Golden Nematode does not in any way injure turf.

#### QUARANTINE:

In the fall of 1976, the U.S.D.A. discovered the Golden Nematode in 47 acres of a potato farmers land in Orleans County. As a result of this discovery, the U.S.D.A. quarantined 102,000 acres of surrounding land in the spring of 1977. The quarantine meant that all equipment leaving the quarantined area should be steam cleaned underneath, a service supplied by the U.S.D.A. This quarantine meant more than that to the potato grower and turf grower.

#### U.S.D.A. SUSPECTED GOLDEN NEMATODE AS EARLY AS 1968:

The U.S.D.A. suspected in 1968 that the Golden Nematode might have been located in the Elba, New York muckland since some seed potatoes were purchased from a Central New York farm where the Golden Nematode was also discovered. Tests were taken every 1-2 years on the Elba property until 1976 when a positive result was returned.



If the U.S.D.A. had notified the area farmers of their suspicions and outlined the regulations that a quarantine would impose, we would have had an option on our future plans. Since there was no advance notice, the quarantine took effect at a time when most of our mature turf was in the quarantined area. The present and future losses to Batavia Turf Farms has been so severe that we were almost forced out of business in 1977. This could have been avoided if the U.S.D.A. had notified us of their suspicions.

REGULATIONS FOR POTATO GROWER:

1. All potatoes packed shall be in new unused bags.
2. Potatoes must be thoroughly washed and all waste water shall be disposed of in an approved location.
3. A resistant variety potato to the Golden Nematode must be planted in the future.

As soon as the potato growers infested land had been tested negative after it was sterilized, the only regulation that the potato grower faced was to continue using a resistant variety of potato only in the previously infested land.

In no way does the quarantine change or eliminate any of the sales outlets or customers for the potato grower.

REGULATIONS FOR TURF GROWER:

1. No turf could be removed until all fields in the quarantine area were tested by the U.S.D.A. and found to be negative.
2. Crews of the U.S.D.A. completed all tests in approximately three weeks and all tests were negative.
3. Even though all fields tested negative, prior approval on all site locations was necessary anywhere in the United States before we could harvest sod.
4. We could not sell to any Distributors or Garden Center outlet since there was no way they could know in advance who was coming in to buy sod.

Prior approval was required to determine if any of the host crops to the Golden Nematode (potato, tomato or eggplant) were growing in the proposed sod area. The U.S.D.A. determined this was necessary since the possibility existed that our turf which removes a small amount of soil might have the parasite in it.



STEPS REQUIRED TO CONFIRM A SOD ORDER:

Let's assume we received an order from Erie, Pennsylvania.

1. Upon receipt of the order, the exact destination of the sod delivery such as 123 Smith St., Erie, Pa. along with the size of the order and the name of the customer was phoned in to the U.S.D.A. office in Bath, N.Y.

2. The Bath, N.Y. office contacted the Pennsylvania Dept. of Agriculture supervisor for the Erie, Pa. area.

3. A member of the Pennsylvania Dept. of Agriculture was sent to 123 Smith St., Erie, to inspect the site.

4. The results were given to his superior who called it in to Bath, New York.

5. The U.S.D.A. office in Bath, N.Y. informed us if the site was approved.

6. Batavia Turf Farms must then notify customer of approval and try to schedule delivery if the customer still wanted the sod.

7. A Limited Permit to accompany the delivery was then issued by the U.S.D.A. for each load.

DELAY TIME IN RECEIVING SITE APPROVAL:

The delay for approval of each order usually required 8 hours to 3 days.

Acceptance of an order upon its receipt was impossible.

The problems encountered by Batavia Turf Farms and the customer in attempting to schedule work were expensive, time consuming and frustrating.

CONSENT AGREEMENT WITH THE N.Y.S.D.A.

A few weeks after the 1977 season began, we were permitted to deliver to garden centers in New York State by signing a consent agreement. The consent agreement signed by Batavia Turf Farms and the N.Y.S.D.A. permitted us to accept orders from any location in New York State including garden centers without prior approval. We had to ask questions concerning the installation area and when we were assured there were no host crops in the immediate area the order was accepted. We assumed all responsibility for orders accepted. Each week we sent the N.Y.S.D.A. a list of orders for that week giving the customers name, address, square yards delivered, the destination and date of delivery.



HAVE THE REGULATIONS CHANGED FOR OUT OF STATE DELIVERIES?

To this day we cannot deliver to any garden center or distribution point outside of New York State. Also, to this day all other orders outside of New York State must still have prior approval.

SALES LOSSES FOR 1977:

It is difficult to determine exactly how many sq. yds. of sod sales we lost in 1977 due to the quarantine.

The chart below shows some of the cities where a great reduction took place compared to the previous 3 year average.

Two contracts we obtained in Rochester this year totalling 35,000 sq. yds. helped to keep our losses in the Rochester Area to under 30,000 sq. yds.

| <u>CITY</u>       | <u>AVG. 1974-1976</u> | <u>1977</u> | <u>LOSSES</u> |
|-------------------|-----------------------|-------------|---------------|
| Buffalo           | 55,858 sq.yds.        | 27,856      | 27,995        |
| Rochester         | 166,163 sq.yds.       | 136,322     | 29,841        |
| Syracuse          | 50,165 sq.yds.        | 22,750      | 27,415        |
| Cleveland, Ohio   | 29,062 sq.yds.        | 8,500       | 20,562        |
| Wilkes-Barre, Pa. | 23,500 sq.yds.        | 0           | 23,500        |
| F.O.B. Farm       | 36,453 sq.yds.        | 25,499      | <u>10,954</u> |
|                   |                       |             | 140,267       |

In spite of an increase in construction our sales to the areas shown above show a decrease of 140,267 sq. yds. in 1977.

The number of sq.yds. of sales lost as shown in the above chart does not take into consideration sales lost from other communities and distribution points as shown on the enclosed letters which we received from some of our customers. We estimate that approximately 50,000 additional sq. yds. of sod sales were also lost.

Average delivered price of Turf in 1977 = .645 sq. yd.

Average trucking rate of Turf in 1977 = .127 sq. yd.

Average net price .518 sq. yd.

Estimated total of sq. yds. of sales lost = 140,267

Other Cities and Towns = 50,000

190,267 sq.yds.

The total amount of money lost, less the hauling charge during 1977 was \$98,558.31.



We are faced with at least a five year program in obtaining new customers and reducing land and equipment until the balance of sales, land and equipment is corrected.

It would not be in our best interests to immediately dispose of all excess land and equipment at this time. The systematic reduction while attempting to increase sales would eliminate what would be looked upon as a forced sale of land and equipment, which would produce a low market value.

#### OPERATIONAL LOSSES:

During the 1977 season just completed we experienced other losses directly related to the quarantine.

1. The constant changing of schedules was very costly in lost equipment and labor time.
2. Moving of equipment and labor to the Batavia Farm which was not in the quarantine area in order to send a load to a Garden Center or Distributor. Even though the 20 mile round trip in moving harvesters, forklift, pallets, tractor trailer and labor was expensive we were able to hold onto our customers a little longer.
3. Hundreds of hours and hundreds of dollars were spent in corresponding with Bath, N.Y., Albany and Washington.
4. Hundreds of phone calls were made between our office, the Bath office, our customers, Albany and Washington resulting not only in much lost time but also tremendous phone bills.

#### LAND DEVALUATION:

When we first started to purchase additional land in the Elba muck area in 1965, the only land available was shallow muckland not suited for onions or potatoes but satisfactory for turf. Since most of the land had been abandoned by their owners, weeds and brush grew wild.

From 1965 thru 1972 we purchased approximately 325 acres of land of which 275 acres would be made tillable. Since the land was of little apparent value to the onion and potato growers, I was able to purchase it for \$150.00 to \$400.00 per acre. Realizing that it would take 20 years of production to get our investment back, we proceeded to clear brush, apply herbicides for wild grass control, install drains, excavate ditches and build roadways all as recent as 1976.

Since the land had little value when we purchased it, the value now is considerably lower since area farmers know of the problems we face in growing sod in the quarantined area.

I would be unable to determine at this time what the losses in land value would be.

#### REPUTATION:

The most difficult thing to determine is the extent of damage to our reputation.

Since we started in 1960 and as attested to by some of the letters enclosed, we have always attempted to supply a superior turf with superior service.

Lack of information about the Golden Nematode plus rumors about our ability to sell our sod under the quarantine produced some of the following reasons why we lost sales and customers.

1. Belief that Batavia Turf Farms would be out of business since they thought we couldn't sell our turf.
2. If the fields actually tested negative, why was prior approval still necessary.
3. Something must be wrong with our turf since we were in the quarantined area.
4. The most damaging was that we would never again be able to confirm an order when received and as a result the customer turned to new sod suppliers who could supply sod to the customers schedule as we had done for many years.

No one knows how damaging these were or how long it will take to remove doubts about our turf and once again be able to confirm an order as soon as it was received.

We may never get back some of those customers.

#### GOLDEN NEMATODE ACT:

This Act was passed in 1948 and gave the U.S.D.A. authority to impose a quarantine anywhere in the United States in order to stop the spread of the Golden Nematode.

The spread of the Golden Nematode would have seriously reduced production of potatoes and tomatoes and would have been costly to the grower and the consumer. Provisions are in the Act to provide compensation to Potato and Tomato growers.



COMPENSATION:

## FOR POTATO GROWERS

1. The Potato Grower with the Golden Nematode on his land would have all of his infested land sterilized at Government expense which is approximately \$1,000.00 per acre.
2. All of his equipment, tools and buildings would also be sterilized at the United States Government's expense.
3. The potato grower would be compensated for all losses due to the Golden Nematode.
4. The potato grower is compensated for not growing potatoes on the infested land.

## FOR TURF GROWERS

Absolutely no compensation for any losses whatsoever due to the Golden Nematode quarantine even though the Turf Growers losses are not only many times greater than the potato grower but will last for years.

## WHAT CAN THE TURF GROWER DO?

1. The Turf Grower can file a tort claim which can be very expensive and time consuming.
2. Attempt to have an amendment to the Golden Nematode Act passed which would compensate Turf Growers for losses due to the Golden Nematode quarantine.

The work of Congressman Conable this year in my behalf plus the loyalty of many of my customers were very important in giving me the strength to continue.

Everyone in agriculture recognizes the need for quarantines and the Golden Nematode quarantine in particular. I am in full agreement with them. I am also certain they had no idea of the consequences to a turf farm.

We have been forced to operate under severe regulations and at considerable expense as I have outlined to you.

The United States Government can now do the right thing and correct an injustice that exists in the present law.

I am asking that the United States Government take the necessary steps to provide compensation for the turf grower under the Golden Nematode Act.

Thirty-one years of honest business and the future of Batavia Turf Farms is dependent on this amendment.



Mr. DE LA GARZA. Thank you very much for a very comprehensive explanation of the problem.

To your knowledge does the State of New York have any legislation or any law which in any way inhibits your operation in addition to the Federal law?

Mr. PECA. Not that I know of. The only problem we had was under the quarantine. That was all lifted as a result of the consent agreement.

Mr. DE LA GARZA. There are no State laws which in any way are detrimental to your operation?

Mr. PECA. Imposed by the State of New York?

Mr. DE LA GARZA. Yes.

Mr. PECA. I cannot think of one right now.

Mr. DE LA GARZA. What kind of grass do you grow?

Mr. PECA. Blue grass.

Mr. DE LA GARZA. You mentioned in your statement the fact that way back in 1968 the USDA suspected the golden nematode might be in Elba, N.Y., and tests were taken every 1 or 2 years on the Elba property. What is the Elba property? Is it one specific plot of land?

Mr. PECA. The Elba property is the Elba muck land located within the quarantine area. The Elba muck land is referred to because the town of Elba is located adjacent to the muck area. All of the muck land is located within Genesee and Orleans Counties.

Mr. CONABLE. If I may interpose, Mr. Chairman, this is a very large muck area. It includes some extremely valuable land.

The land Mr. Peca acquired was shallow muck which required very careful preparation in order not to drown out the grass. Muck is a vegetable deposit as a result of many years of swamp being there. It is extremely rich land and extremely good for the growth of something like turf.

Mr. Peca made a major investment in shallow muck land which was not suitable for potatoes or onions, which were the main products of the Elba muck land area. His investment was made after they suspected the golden nematode was in the area, but without his knowledge of their suspicions.

Mr. DE LA GARZA. Pardon me for interrupting. That is what I would like to develop here. You state they have been testing every 2 years since 1968.

Mr. PECA. That is my understanding from the man who had the golden nematode located there.

Mr. DE LA GARZA. When did you first discover tests were being taken? When did you first find out they had these suspicions?

Mr. PECA. I think since June or July of this year.

Mr. DE LA GARZA. And you had no knowledge whatsoever from any other source?

Mr. PECA. None whatsoever. As a matter of fact, the grower on whose land the golden nematode was located is a very good friend of mine. If anyone feels worse about my situation than he does, I don't know who it would be. He told me that if the USDA even had told him of what might take place that he would have used a resistant variety of potatoes himself. It would have been no problem. However, he said he didn't even know they might find it, but he knew the testing was going on.



Mr. DE LA GARZA. Where is this in relation to your main business?

Mr. PECA. About 10 miles from the main farm.

Mr. CONABLE. This is your largest acreage?

Mr. PECA. About half.

Mr. DE LA GARZA. There was no mention within the farmers' organization, in the coffee shop, or whatever, that the USDA is looking around for the golden nematode?

Mr. PECA. Not to my knowledge, never.

Mr. DE LA GARZA. I know this would be hearsay and this is not a judicial proceeding, but the man told you that the USDA never informed him that his property was suspect of having golden nematode?

Mr. PECA. I am not sure. They might have told him. They might have but I cannot say for sure that they did. The only thing I know is that he told me they did take tests every 1 to 2 years since that date, and that is all I know about it. I didn't find that out until this summer.

I assure you, Mr. Chairman, everything I have in that letter and everything I am telling you is the truth.

Mr. DE LA GARZA. No one is questioning that. We are merely trying to develop a record here. Like the song says, somebody has done somebody wrong and we are trying to find out who it was.

Mr. PECA. I tried to figure out why they didn't tell anybody. The only thing I can figure out is that maybe they didn't want to rattle the dog house before there was a need for it. If they didn't find anything wrong and the golden nematode never showed up, then they would have caused some unnecessary concern among the farmers there. That is the only thing I can rationalize as to why they didn't tell anybody.

This perhaps has happened in other places in other quarantines. I have no idea. It is just possible that this is the way they operate.

Mr. DE LA GARZA. We will have somebody from the Department later. Your information to us is that the golden nematode in no way affects the turf or the sod that you prepare?

Mr. PECA. That is right.

Mr. DE LA GARZA. It doesn't hinder its growth?

Mr. PECA. No; the golden nematode can subsist only on the roots of tomato, potato, and eggplant. It will lay dormant in any other field for as much as 20 years and sometimes more. However, if it is going to multiply again the only way it can do that is by living off the roots of those three host plants.

Mr. DE LA GARZA. Your grass is not a host plant?

Mr. PECA. No.

Mr. DE LA GARZA. It could conceivably be a carrier?

Mr. PECA. Yes; it could. This is the reason the regulations were imposed.

Mr. CONABLE. If I may interpose again, it is not the grass that is the carrier. It is impossible to sell turf without some soil adhering. That is where the carrying would be.

Mr. DE LA GARZA. I understand.

Mr. Grassley?

Mr. GRASSLEY. I have no questions. Thank you.



Mr. DE LA GARZA. Thank you very much, Mr. Peca. We very much appreciate your statement.

I know you have a terrible problem. Your Congressman has been very diligent and there is no need for me to tell you that. We have been acquainted with his efforts in your behalf and others affected here. We appreciate your being here.

If there is anything we feel in justice can be done you may rest assured we will do everything we can at least to bring some semblance of justice to this situation.

Mr. PECA. Thank you.

Mr. DE LA GARZA. Ordinarily we have all the witnesses appear, but if you care to we would invite you to remain for the balance of the hearing. I know the Congressman has another appointment he must keep.

We have another colleague before us who is cosponsor of this legislation.

Mr. Cohen, would you introduce those accompanying you?

**STATEMENT OF HON. WILLIAM S. COHEN, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MAINE; ACCOMPANIED  
BY RUSSELL ALLEN, FARMER, PRESQUE ISLE, MAINE**

Mr. COHEN. Mr. Chairman and members of the subcommittee, I am grateful for the time and attention that the subcommittee is giving today to the problem which H.R. 7956 seeks to mitigate. This legislation is designed to correct a fundamental inequity in the Golden Nematode Act which threatens the livelihood of my constituent, Mr. Russell Allen, of Presque Isle, Maine.

I also have Mr. Paul J. Eastman with me. Mr. Eastman is the director of the Division of Plant Industry, Maine Department of Agriculture.

As Mr. Allen will relate in his testimony, he has fallen prey to the same "Catch-22" situation that Mr. Peca faces. Golden nematodes are very destructive to potato and tomato crops, and can persist in the soil for years. The Federal Government has a long-standing policy of attempting to prevent the spread of this parasite. Produce from contaminated fields can be barred from interstate commerce, and the Department of Agriculture can prohibit planting in "suspected" fields until tests demonstrate that the pest is no longer present.

Obviously, a stringent program of this type can result in enormous financial hardship for farmers whose fields are contaminated with the pest. To relieve this burden, the Congress many years ago included in the Golden Nematode Act a provision under which farmers may receive Federal assistance to defray losses incurred as a result of the control program.

Unfortunately, Mr. Allen fails to qualify for assistance, since no nematodes have actually been found in his fields after 7 years of intensive testing. Yet he has been ordered by USDA officials not to ship in interstate commerce any seed potatoes grown on the suspected acreage. The USDA order has cost Mr. Allen thousands of dollars in income, in addition to severely harming his reputation as a seed grower.

Two fundamental points have to be made: One, no nematodes have ever been found in Mr. Allen's field. Second, my constituent



has been afflicted with severe financial losses—as much as \$35,000—and his reputation has been injured. Frankly, Mr. Allen would be better off if his fields were infested because then he could be compensated under the law.

I need not proceed with any further details of this situation. Mr. Allen is his own best witness and will be heard shortly.

Let me simply say that as Members of Congress, we all know that despite our best efforts, many well-intentioned Federal laws have unanticipated side effects which all too frequently penalize innocent parties. Such is the situation facing Mr. Allen.

For Russell Allen, the Congress is the court of last resort. There appears to be no administrative remedy for his problem. Quite clearly, we have an obligation to rectify the present inequity in the Golden Nematode Act which is imposing a hardship on Mr. Allen, and I am hopeful that this morning's hearing will be the first step in that direction.

I was simply going to give a brief background of this situation and then introduce Mr. Allen. But after reading the statement that will be given by the Department of Agriculture, I feel compelled to offer one more observation.

It is fundamental to our law that if one person by his conduct or actions injures another, he must make the person whole.

It is also now recognized as fundamental that if the Government, by its action, injures a person, it should make him whole, because the precept of the king can do no wrong is a precept that should be buried with its medieval origin.

The Government has clearly injured Mr. Allen. It has inflicted severe economic hardship, and injured his reputation as a seed grower. Yet the U.S. Department of Agriculture steadfastly maintains that there is no need to change the law which has so severely penalized Mr. Allen and Mr. Peca.

In my judgment, there is no rationale for this position.

On page 3 of the Department's statement, the only defense offered in opposition to this measure is that further legislative action might be required by each State. My response is so what?

I will cease and desist and introduce Mr. Allen, who will present to the subcommittee testimony which will clearly demonstrate the need for action by the subcommittee.

Thank you.

Mr. DE LA GARZA. Thank you.

Mr. Allen?

#### STATEMENT OF RUSSELL ALLEN, FARMER, PRESQUE ISLE, MAINE

Mr. ALLEN. I thank you for letting me appear before this committee to present my problem.

In mid-February 1977 I received a call from Mr. Paul Eastman, director, Division of Plant Industry, Maine Department of Agriculture, informing me that in 1967 Dana Thompson had purchased and planted seed potatoes from a farm of Mr. Schuler in Steuben County, N.Y.

Subsequent tests had disclosed the presence of golden nematodes on that farm in Steuben, N.Y. The seed acquired by Mr. Thompson had been planted on 8 acres of the so-called Rutland Farm, which



contains a total of 100 acres, in Presque Isle, Maine. Upon detection of the golden nematode on the Steuben, N.Y., farm, testing of Mr. Thompson's farm, Rutland Farm, in Presque Isle, was undertaken by the U.S. Department of Agriculture. Except for 1971, these tests were continued annually from 1968 through 1976. Each year the test results were negative.

Our involvement began in 1972 when my father, Edgar W. Allen, leased the Rutland Farm and began growing seed potatoes on it. He planted this farm each year from 1972 until his death in April 1977. Until Mr. Eastman's telephone call we were totally unaware of any possible problem with golden nematodes.

Mr. Eastman informed me that the U.S. Department of Agriculture was under pressure from the Canadian Government to take measures to ensure that golden nematodes were not introduced into Canada via imported Maine seed potatoes. If such action were not forthcoming, an embargo on all Maine seed would be issued.

Later my father was contacted by Mr. George Ledbetter from the U.S. Department of Agriculture, who discussed the golden nematode problem and explained its dangers. Mr. Ledbetter tried unsuccessfully to persuade my father to sign a statement agreeing not to ship as seed any portion of the potato crop grown on the suspect Rutland Farm.

During the 1976 crop year we had planted approximately 90 acres of Katahdin seed potatoes on the Rutland Farm, which yielded 12,500 barrels, which converts to 20,625 cwt. The price differential between seed and table stock sales prices is generally agreed to be at least \$1 per cwt. for U.S. No. 1 certified blue tag seed but could well be two to three times as great.

As a minimum, this USDA refusal to permit us to market these potatoes as seed resulted in a \$20,625 loss of income for the 1976 crop year. It is not unrealistic to project that the actual loss would be closer to \$35,000.

In view of the fact that 7 years of testing had failed to disclose the presence of a single golden nematode, it is easy to understand our reluctance to sign Mr. Ledbetter's agreement.

Several days later we were again confronted by Mr. Ledbetter, this time accompanied by two members of the local Federal-State inspection office. Mr. Ledbetter reviewed the problem and informed us that the U.S. Department of Agriculture had decided that under no circumstances could we ship as seed any potatoes grown on the Rutland Farm. To ensure our compliance, this local office of the Federal-State inspection service had been instructed not to issue us any Katahdin seed tags.

Prior to planting the 1977 crop, the U.S. Department of Agriculture intensified its effort to detect the presence of golden nematodes on the Rutland Farm. This was accomplished by using a machine, which took soil samples every 24 inches over the entire 76-acre portion.

For some reason, 24 acres had been excluded from the test area during the 7-year test period. The results of this intensified sample were again negative.

Despite this Mr. Ledbetter informed me that any potatoes grown on the 76-acre block during 1977 would again have to be marketed as table stock. I was able to secure a release for the remaining 24



acres and subsequently planted the same to Katahdin seed potatoes. Forty acres of the 76-acre restricted area was planted to be shipped as table stock. The remaining 36 acres were just seeded down. Thus, I will experience additional income loss for ground not planted as a direct result of this interference. My cost for growing the 40 acres of table stock was the same per acre as if it had been intended for the seed market.

Our entire farming operation is geared to the production of seed potatoes only. Seed production is more costly because of the planting of high quality tubers, increased spray requirements, special handling, lower yields per acres, et cetera. We could not risk compromising the remaining 240 acres of our crop even though we knew that this 40 acres must be marketed as table stock.

Mr. Eastman advised that the Golden Nematode Act had made provision for compensating farmers whose land and/or crops had been quarantined. We discussed this with Mr. Ledbetter.

After checking with the U.S. Department of Agriculture, he informed us that because no golden nematodes had been found, we were not eligible for any compensation. It seemed illogical and grossly unjust to us that the Department of Agriculture could force us to market one-third of our crop as table stock, resulting in a tremendous loss, by invoking a law designed to avert the spread of golden nematodes when in fact no such parasite had been detected after 7 years of testing.

Even more incredible and irrational was the decision that because no infestation was present, no compensation was available. The financial loss was certainly available, not to mention the embarrassment and inconvenience.

At this point, I decided to seek the help of Congressman William Cohen and stopped by his district office in Presque Isle to explain my problem. As a result, Congressman Cohen and Congressman Conable, one of whose constituents had a similar problem, proposed an amendment to the House version of the 1977 agriculture bill, which would clarify and amplify the Golden Nematode Act and make provision for compensating farmers victimized by this problem.

The financial aspects of this situation are serious, but the long-range ramifications are staggering. As a seed potato grower, I take great pride in marketing a superior quality seed to many growers along the eastern seaboard, as well as into Canada. My reputation as a seed grower, as well as my ability to market my crop, is on the line.

There has been a lot of adverse publicity via newspaper and television, and somehow the correct information seldom surfaces. Once a rumor has started it is difficult to stop and impossible to repair its damage.

After the 1977 harvest, the U.S. Department of Agriculture once again intensively sampled the 76-acre suspect field on the Rutland Farm. Results of these tests are unavailable at this time. It has been suggested that the land will be given a clean bill of health if no golden nematodes are found. Can the Department of Agriculture do the same for me as a seed grower?

I would like to thank the members of this committee for the privilege of explaining my problem. Hopefully, something I have



mentioned will be helpful as you consider this amendment to the Golden Nematode Act.

Mr. DE LA GARZA. Thank you very much, Mr. Allen.

Mr. Eastman, do you wish to make a statement?

**STATEMENT OF PAUL J. EASTMAN, DIRECTOR, DEPARTMENT OF PLANT INDUSTRY, MAINE DEPARTMENT OF AGRICULTURE**

Mr. EASTMAN. Yes, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I would like to thank you for this opportunity to offer my thoughts on this situation. I wish to appear in support of this amendment. I believe Mr. Allen fully deserves retribution for his losses. He has acted in good faith and had no way of knowing that his crop was in jeopardy.

Mr. DE LA GARZA. Excuse me for interrupting. You are identifying yourself as director of the Plant Industry, Maine Department of Agriculture?

Mr. EASTMAN. Yes, sir.

Having historically been a seed grower he had outlets for seed which were much more advantageous to him than the ordinary table potato outlets. Not only were there monetary losses but also the mere fact that as a seed grower he was not allowed to sell his seed casts a shadow on his reputation in the minds of his traditional customers. He is now being forced to give up the use of this land entirely in order to stay in the seed business.

The planting of suspect seed potatoes in Maine took place in 1967. Samplings from the fields involved took place practically every year with all results negative.

It is a bit difficult to explain why, after this period of time with no nematodes being found, this action was called for. If it was justified, I do not think the farmer should be expected to bear the losses involved. I feel this should apply as well to others who get caught in similar circumstances. It is difficult enough for a potato farmer to keep his head above water without having the Government helping pull him under.

In my position in Maine State government I have been intimately involved and familiar with the golden nematode problem for 25 years. The State of Maine has always cooperated with the nematode program to the fullest, supplying help, laboratory space, and all kinds of cooperation. It was a shock to me, with this in mind, to find that there was not a legal way to reimburse a Maine farmer for losses incurred in this way. I certainly hope that this amendment can receive favorable action.

Mr. DE LA GARZA. Thank you very much, Mr. Eastman.

Mr. Eastman, have any golden nematodes been found in Maine?

Mr. EASTMAN. Not one, sir.

Mr. DE LA GARZA. Does Maine have any State law dealing with quarantine or anything which has to do with the golden nematode?

Mr. EASTMAN. We have no State law. We followed the Federal program completely.

Mr. DE LA GARZA. When was the first that you heard from the USDA about this suspected seed being sent in from New York?

Mr. EASTMAN. We were aware of it shortly after the golden nematode find was made in New York back in 1967. We were



aware that one load of seed potatoes came from this area to Maine and was planted in 1967 in four different fields. We were also aware that every year, I think with the exception of one, that these fields had been sampled with negative results. There had been no restrictions placed on these fields. We had not been asked to put restrictions on them. After this period of time it was rather a surprise to me to find this kind of action being taken.

Mr. DE LA GARZA. When the Department of Agriculture discussed this matter with you did they discuss the Canadian situation to which Mr. Allen referred?

Mr. EASTMAN. Yes; they did.

Mr. DE LA GARZA. Thank you very much.

Mr. Allen, you mentioned in your testimony the testing of the land, that for some reason 24 acres were excluded from the test area. What is that all about?

Mr. ALLEN. When the seed was originally planted on the Rutland farm back in 1967 there was an 8-acre portion of this total 100-acre area which was planted with the suspect seed; 76 acres of the 100 acres on the farm are located in a contiguous area. The remaining 24 acres are separated by a roadway. Apparently, then, this was the reason for excluding the 24-acre portion of the total 100 acres from the testing.

Mr. DE LA GARZA. You tell us they have never found any golden nematodes.

Mr. ALLEN. This is the information given to me by the Department of Agriculture.

Mr. DE LA GARZA. You also mentioned that the Department informed you that since they found no nematodes, you are therefore not eligible for compensation?

Mr. ALLEN. Yes; sir.

Mr. DE LA GARZA. Yet you were asked to sign a voluntary agreement?

Mr. ALLEN. That is correct, yes.

Mr. DE LA GARZA. Also with the cooperation or collusion of the State government they refused to give you tags for your seeds?

Mr. ALLEN. That is my understanding, yes, sir.

Mr. DE LA GARZA. Which in effect imposed a quarantine on you in a roundabout way?

Mr. ALLEN. Yes; sir. It was not really a quarantine, sir. It was more a restriction on the movement of my crop. I was still able to market my potatoes.

Mr. DE LA GARZA. I know, but if you did not get the seed tag you could not sell seed.

Mr. ALLEN. That is right, sir.

Mr. DE LA GARZA. You were quarantined.

Mr. ALLEN. That is right.

Mr. DE LA GARZA. Thank you very much, Mr. Allen. We appreciate your being here as well as your testimony.

Mr. COHEN. There was a reference to Schuler County in the statement indicating that perhaps Steuben County was in mind of the witness. He meant Schuler land in Steuben County.

Mr. ALLEN. That was an error on my part. As I understand it at this point, the Schuler farm was the farm from which the suspect seed originated.



Mr. DE LA GARZA. Thank you very much.

The next witness we have is Mr. Jim Lee, Deputy Administrator, Plant Protection Agriculture.

You do not have Mr. Ledbetter with you?

Mr. LEE. No; sir.

Mr. DE LA GARZA. I suspect we might have to continue this hearing and talk to Mr. Ledbetter because I have some questions to which you might not have answers.

**STATEMENT OF JAMES O. LEE, DEPUTY ADMINISTRATOR, PLANT PROTECTION AND QUARANTINE PROGRAMS, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY JOSEPH F. SPEARS, ASSISTANT DIRECTOR, NATIONAL PROGRAM PLANNING STAFF, AND DONALD GUNTHER, DISTRICT DIRECTOR, PLANT PROTECTION AND QUARANTINE PROGRAMS**

Mr. LEE. Thank you, Mr. Chairman.

I am James O. Lee, the Deputy Administrator for Plant Protection and Quarantine Programs of the Animal and Plant Health Inspection Service. I am accompanied by Mr. Joseph F. Spears, Assistant Director of our National Program Planning Staff.

I appreciate the opportunity to appear before your committee to express the views of the Department concerning H.R. 7956. The bill would amend the Golden Nematode Act so as to provide assistance to persons whose commercial production of crops has been adversely affected by an infestation of the golden nematode.

The Department opposes enactment of this bill.

From the beginning, the golden nematode program has been a cooperative effort with affected States. Program activities are planned and financed jointly, including an annual plan of work approved by Federal and State regulatory officials.

In order to prevent spread of golden nematode, the interstate movement of commodities which may be infested is regulated by Federal quarantine.

Concurrently, the intrastate commodities are regulated under equivalent State quarantine. These are the basic features of the cooperative State-Federal golden nematode program. Since the inception of the program, these arrangements have proven effective in dealing with infestations in potatoes, which is the primary host crop, as well as tomatoes.

An essential provision of H.R. 7956 would be to extend the coverage of the present law to "commercial crops, including turf and nursery stock", in addition to potatoes and tomatoes. Another basic provision of the bill would provide authority for compensating persons for increased costs, loss of sales, and decreased land value with respect to a farming activity as a result of golden nematode infestation, quarantine, or exposure.

Currently, compensation is authorized to growers in areas infested or exposed to infestation with the golden nematode only for not planting tomatoes and potatoes or for losses resulting from destruction of such commodities for the purposes of the act. We believe there is no justification for a basic change in the existing cooperative program.



It should be noted that section 5 of the Golden Nematode Act prohibits our undertaking any program activities involving mandatory restrictions on the planting or destruction of potatoes or tomatoes, "unless the States concerned shall have enacted legislation authorizing such restrictions or destruction." By extending this section of the act to other commercial crops, including turf and nursery stock, further legislative action by each concerned State probably would be necessary.

The amendments proposed under H.R. 7956 apply principally to two situations resulting from both State and Federal quarantines. The circumstances in these two cases are diverse. One involves restrictions imposed on a dealer in turf and nursery stock in New York. The other involves losses caused by prohibitions imposed on the selling of seed potatoes by a producer in Maine.

In the case of the turf and nursery stock dealer in New York, it should be noted that he has not been denied the opportunity to ship his commodities in interstate commerce under Federal quarantine requirements.

If a legislative remedy to these particular situations is to be pursued, we think that the more appropriate method is through a private bill in each instance rather than basic amendments to the Golden Nematode Act. This would allow each case, if adversely impacted as a result of a State or Federal quarantine, to be decided on its own merit.

Mr. Chairman, this concludes my remarks. I will be happy to respond to any questions.

Mr. DE LA GARZA. Thank you very much, Mr. Lee. Either you or Mr. Spears, do you have a cooperative plan in writing with the State of New York and the State of Maine?

Mr. SPEARS. Yes sir, we have a cooperative agreement with the State of New York.

Mr. DE LA GARZA. Would you make that available for the record? Also for the State of Maine?

Mr. SPEARS. Yes, Mr. Chairman.

[The material referred to above follows:]



MEMORANDUM OF UNDERSTANDING  
between  
THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS  
and  
THE UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL RESEARCH SERVICE  
PLANT PROTECTION DIVISION

Relative to

Cooperative efforts to protect crops from  
insect damage and plant disease in New York

The object of this cooperative control and regulatory work is to protect agricultural and horticultural crops and timber resources from losses caused by insect pests and plant diseases.

The cooperation is conducted by the Plant Protection Division by virtue of authority included in the act establishing the United States Department of Agriculture and related acts, and the annual appropriation acts providing funds for the activities of the Plant Protection Division.

The New York State Department of Agriculture and Markets, Division of Plant Industry, will fulfill its obligations under this agreement in accordance with applicable laws of the State.

A. The New York State Department of Agriculture and Markets, Division of Plant Industry, agrees:

1. To furnish the services of the Director of the Division of Plant Industry whose duties shall include the direction of the cooperative personnel in all matters related to the enforcement of state laws, and the practical utilization of personnel and facilities of its organizations for conducting the cooperative work. This official will participate in the joint planning, direction, and execution of the cooperative work program.
2. To undertake directly, or in cooperation with the state agencies having jurisdiction, such enforcement of state laws as may be necessary for the effective prosecution of pest control and regulatory work, including regulation of the intrastate movement of regulated articles.
3. To authorize appropriate Plant Protection Division personnel to exercise state pest-control authority to carry out any part of this cooperative effort to control insect pests and plant diseases.
4. To expend funds and furnish facilities and services in accord with the amounts permitted by legislative appropriation or by private contributions.



B. The Plant Protection Division of the USDA agrees:

1. To provide regional, state and local leadership and direction of cooperative plant pest survey, control and regulatory programs in New York, in accordance with working plans mutually agreed upon by authorized representatives of the agencies concerned.
2. To provide employees of the agencies cooperating in plant pest control and regulatory work in New York with pertinent subject matter as it becomes available.
3. To provide personnel and facilities of the Division in accordance with authority granted by Congress and the Secretary of Agriculture and work plans mutually agreed upon.
4. To enforce Federal regulations pertaining to the interstate movement of regulated articles in accordance with program requirements.
5. To continue efforts to develop new and improved techniques and procedures for cooperative use in pest survey, control and regulatory work.
6. To authorize appropriate New York State Department of Agriculture and Markets personnel to exercise Federal authority within the state in the enforcement of Federal regulations pertaining to the interstate movement of regulated articles in accordance with program requirements.

C. It is mutually understood and agreed that:

1. Details of the cooperative work shall be planned and executed jointly by the parties of this agreement. Outlines covering working plans and methods of procedure shall be prepared jointly subject to revision by joint action as progress of <sup>the</sup> work justifies. Copies of these plans, as required, will be filed with each of the cooperating parties.
2. Periodic reports, as may be required and mutually agreed upon, shall be furnished by each of the cooperating agencies. One copy of such report to be delivered to each of the other agencies.
3. The patent provisions applicable to this agreement shall be in accordance with Exhibit A attached hereto and made a part hereof.
4. Either party to this agreement shall be free to use in official correspondence, any of the results obtained in the undertaking, giving due credit to the other party. It is understood that neither party will publish any results without consulting the other party. Publication may be joint or independent as may be agreed upon, always giving due credit to the cooperation and



recognizing within proper limits the rights of the individuals doing the work. In case of failure to agree as to manner of publication or interpretation of results, either party may publish data after due notice and submission of the proposed manuscripts to the other. In such instances the party publishing data will give due credit to the cooperation but will assume full responsibility for any statements on which there is a difference of opinion.

5. The responsibilities assumed by each of the cooperating parties are contingent upon funds being available from which the expenditures legally may be met.
6. This Memorandum of Understanding is to define in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation or serve as a basis for expenditures. Each party will handle and expend its own funds. Any and all expenditures from Federal funds in the Department of Agriculture made in conformity with the plans outlined in this Memorandum of Understanding must be in accord with Department Rules and Regulations and in each instance based upon appropriate finance papers. Expenditures made by the cooperating party will be in accord with its rules and regulations.
7. Funds of a cooperating party shall not be expended by a Federal employee, even though the cooperating party has no representatives stationed in the locality. In such instances the Federal employee may handle the accounts but shall forward the vouchers to the disbursing agent of the cooperating party for payment. The cooperating party should not send checks payable to Federal employees or send them checks payable to "Cash" or "Bearer" for payment of local expenses.

Either party shall be free to furnish such equipment as may be needed and otherwise unavailable. Equipment furnished from Federal funds shall remain the property of the United States Department of Agriculture, subject to removal or other disposition at any time. Equipment purchased by the New York Department of Agriculture and Markets shall remain the property of the New York Department of Agriculture and Markets, subject to its disposition.

8. Plant Protection Division personnel are under the administrative direction of the Division and will work cooperatively with the personnel of the State agencies. Personnel of the State agencies will remain administratively responsible to the agencies by which they are employed.



9. All persons employed within the State on control and regulatory programs by the cooperating agencies shall be satisfactory to the cooperating parties, subject to the requirements of such Civil Service regulations as may be applicable.
10. This supersedes Memorandum of Understanding that was effective December 1, 1957.

No member of or delegate to Congress or resident commissioner, and no officer, agent or employee of the Government shall be admitted to any share or part of this agreement or to any benefit to arise therefrom, unless it be made with a corporation for its general benefit.

This Memorandum of Understanding shall become effective December 1, 1970, and shall continue indefinitely, but may be modified by mutual agreement between the parties in writing, and may be discontinued at the request of either party. Requests for termination or any major change shall be submitted to the other party for consideration not less than 90 days in advance of the effective date desired.

NEW YORK STATE DEPARTMENT  
OF AGRICULTURE AND MARKETS  
ALBANY, NEW YORK 12226

*Don Nickham*  
Commissioner

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL RESEARCH SERVICE

Acting Associate Administrator



## Exhibit A

Any invention resulting from this cooperative work and made jointly by an employee or employees of the United States Department of Agriculture and the cooperator or an employee or employees of the cooperator shall be fully disclosed, either by publication or by patenting in the United States, and any such United States patent shall either be dedicated to the free use of the people in the territory of the United States or be assigned to the United States of America or be assigned to the cooperator, as may be mutually agreed upon by the parties hereto, provided, that in the event of assignment to the cooperator, the Government shall receive an irrevocable, nonexclusive, royalty-free license under the patent, throughout the world, to practice the invention for all governmental purposes, and, provided further, that non-exclusive, royalty-free licenses shall be issued by the cooperator to any and all applicants technically competent to make use of the patent, provided that where the assignment is to the Government, it shall be of the domestic patent rights. Where the domestic patent rights are so assigned, the United States Department of Agriculture shall have an option to acquire the foreign patent rights in the invention on which an application for a United States patent is filed, for any particular foreign country, said option to expire in the event that the Government fails to cause an application to be filed in any such country on behalf of the Government or determines not to seek a patent in such country within six months after the filing of the application for a United States patent on the invention. Where the domestic patent rights are assigned to the Government, but the foreign patent rights are retained by an employee, the employee shall grant to the Government a nonexclusive, irrevocable, royalty-free license in any patent which may issue thereon in any foreign country, including the power to issue sublicenses for use in behalf of the Government and/or in furtherance of the foreign policies of the Government, and said license shall also include the power to sublicense American licensees under Government-owned United States patents to practice the invention without payment of royalty or other restriction in any foreign country wherein a corresponding patent may issue to the employee or his foreign assignee. Any invention made independently by an employee or employees of the United States Department of Agriculture or by the cooperator or an employee or employees of the cooperator shall be disposed of in accordance with the policy of the United States Department of Agriculture or the cooperator, respectively, provided, that in the event the invention is made solely by an employee or employees of the cooperator, the cooperator shall grant or shall obtain from the assignee of any patent issued on said invention an irrevocable, nonexclusive, world-wide, royalty-free license for the Government, for all governmental purposes, and provided further, in the event the invention is made solely by an employee or employees of the cooperator, that unless the cooperator or his assignee has taken effective steps within three years after a patent issues on the invention to bring the invention to the point of practical application or has made the invention available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why he should retain the principal or exclusive rights for a further period of time, the Government shall have the right to require the granting of a license to an applicant on a nonexclusive, royalty-free basis.



Mr. SPEARS. We have a cooperative agreement with most States. It is a broad cooperative agreement for PPQ programs, and not dealing with specifics. It deals with our arrangements for such matters as survey, control with regard to nematodes, fruit flies, or whatever. These cooperative agreements are very broad in nature.

Whether we have one specifically with reference to the golden nematode in Maine I just don't know at this time.

Mr. DE LA GARZA. Mr. Lee states:

Programs are planned and financed jointly, including an annual plan of work approved by Federal and State regulatory officials.

Mr. SPEARS. Since we have an official in the State of Maine I am sure we have one. It is, however, a broad agreement. I know we have one with the State of New York.

Mr. DE LA GARZA. Mr. Lee, why did you make that statement?

Mr. LEE. Mr. Chairman, I also have with me Mr. Gunther, District Director for Plant Protection and Quarantine (PPQ) in New York. With your permission, Mr. Gunther could come forward and answer the question with regard to Maine.

Mr. DE LA GARZA. Anyone who can shed light is welcome.

Mr. GUNTHER. Mr. Chairman, I am Don Gunther, District Director for Plant Protection and Quarantine Program (PPQ) stationed in Albany, N.Y.

Mr. DE LA GARZA. We will limit our discussion to New York, then.

Mr. GUNTHER. The only established infestation of golden nematode in the United States is in New York. So almost all the regulatory control activities, are conducted in New York.

What Mr. Lee referred to was the close cooperative relationship between our office in Albany and that of Mr. Lane, director of Plant Industry, New York State Department of Agriculture Markets.

Mr. DE LA GARZA. He didn't say close cooperation. He said an annual plan, which I assume should be in writing.

Mr. GUNTHER. A meeting is held every year with all participating agencies, including extension and research people from Cornell University. The activities of the previous year are reviewed in a written plan of goals and objectives reviewed for the coming year.

Mr. DE LA GARZA. This is overall?

Mr. GUNTHER. Yes; sir.

Mr. DE LA GARZA. Would it have a section on the golden nematode?

Mr. GUNTHER. Mr. Chairman, I am speaking specifically about golden nematode.

Mr. DE LA GARZA. Could we have a copy of that? Is there a copy available?

Mr. GUNTHER. Yes; sir.

[The material referred to above follows:]



## WORK ACHIEVEMENT REPORT

FY-1977DP No. GN-2-NYProgram GOLDEN NEMATODEState New YorkStarting Date 6/16/77Closing Date 9/12/77

Location: Two potato fields in Prattsburg, Steuben County; one potato field in Savannah, Wayne County; and, two potato fields in Barre, Orleans County. All owned and/or operated by a farmer who is engaged in potato production.

## I. Area Treated and Ownership:

| <u>Ownership</u> | <u>Treated Acres</u> | <u>Other</u> |
|------------------|----------------------|--------------|
| Private          | 38.30                | -            |
| Private          | 40.00 *              | -            |
| Private          | 28.36                | -            |
| Private          | 16.00                | -            |
|                  | <u>122.66</u>        |              |

\* Total acreage for treatment = 155.

## II. Method of Application:

A. Pesticides

1. Name - chlorinated C<sub>3</sub> hydrocarbons (1,2-dichloropropane and 1,3-dichloropropene).  
Methyl isothiocyanate.
2. Formulation - full strength
3. Rate of Application - 15 gallons per acre
4. Number of Applications - 2 @ 15 gallons per acre each on the entire field followed by a third @ 15 gallons per acre on the infested portion of the field.



## II. Method of Application: (cont'd.)

A. Pesticides (cont'd.)

1. Name - 1,3-dichloropropene
  2. Formulation - full strength
  3. Rate of Application - 45 gallons per acre.
  4. Number of Applications - 2 @ 45 gallons per acre on the entire field followed by a third @ 45 gallons per acre on the infested portion of the field.
- 
1. Name - Vapam (32.7% sodium methyl dithiocarbamate)
  2. Formulation - 50 gallons vapam per 2,950 gallons water
  3. Rate of Application - 3,000 gallons solution per acre
  4. Number of Applications - one

NOTE: Section I, Area Treated and Ownership.

Due to environmental conditions and inadequate land preparation, two fields were not completely treated. Forty acres of a 155 acre field was completed. Another 39.5 acre field did not receive any soil fumigant.

FPQ personnel and equipment were used on both fields to perform discing and rotovating tasks. However, excessive rainfall in August and September made this effort futile. In addition, Round-Up herbicide was used on the 39.5 acre field to provide permanent knock-down of excessive quack-grass growth.

Government owned trucks, tanks and pumps were used to dispense Vapam drench solution to headlands and roadways.

B. Application Equipment:1. Ground Equipment:

a. 3 tractor-drawn shank applicators with plank floater on muck soils, and tine harrow on mineral soils for sealing. Vorlex applicators were equipped with 11 chisels spaced 8" apart. The Telone II applicator had 16 chisels spaced 6" apart.



## II. Method of Application: (cont'd.)

### B. Application Equipment: (cont'd.)

#### 1. Ground Equipment: (cont'd.)

b. 2 3/4 ton pickup trucks with 200 gallon poly tanks, high volume pumps and hoses. One 4x4 jeep and trailer with 200 gallon poly tank.

#### 2. Other Equipment:

- a. 1/2 ton pickup truck with electric hoist.
- b. 1½ ton van truck with lift gate - on loan from Westhampton.
- c. 1½ ton stake body truck with lift gate - on loan from Westhampton.
- d. 3/4 ton van used as service vehicle for tractors.
- e. 1 Agrator rotovator to aid in field preparation.
- f. 1 steam jenny.
- g. 1 Hotsy high pressure water cleaner.
- h. 2 Scott-Air-Paks.
- i. 100 pounds - methyl bromide.
- j. tarpaulins, clamps, fans, etc. for fumigating USDA application equipment before moving from one regulated area to another. Also, for fumigation of equipment used to prepare infested fields.

#### 3. Pesticide Storage

- a. Closed storage at Barre and Savannah; open storage at Prattsburg.



## III. Financial Statement

|                                           | <u>Federal</u> | <u>State</u>    | <u>Other</u> | <u>Total</u>  |
|-------------------------------------------|----------------|-----------------|--------------|---------------|
| <u>Pesticide</u>                          |                |                 |              |               |
| Vorlex @ \$7.75/gal.                      |                |                 |              |               |
| Quantity used--3,018 gals.                | \$10,435.      | \$12,955.       | -            | \$23,390.     |
| Telone II @ \$3.80/gal.                   |                |                 |              |               |
| Quantity used--4,565 gals.                | -              | 17,347.         | -            | 17,347.       |
| Vapam @ \$3.60/gal.                       |                |                 |              |               |
| Quantity used--700 gals.                  | 2,520.         | -               | -            | 2,520.        |
| <u>Personnel</u>                          |                |                 |              |               |
| Federal - 11                              | 7,238.         | -               | -            | 7,238.        |
| State - 2                                 | -              | 500.            | -            | 500.          |
| Other - 3                                 | -              | -               | 4,293*       | 4,293.        |
| <u>Associated Cost</u>                    |                |                 |              |               |
| Travel, vehicles,<br>communications, etc. | <u>2,000.</u>  | <u>6,133.**</u> | <u>-</u>     | <u>8,133.</u> |
| TOTAL                                     | \$22,193.      | \$36,935.       | 4,293.       | 63,421.       |

\* Represents farmer contribution for plowing and discing @ \$35. per acre.

\*\* Represents expenditures for compensation payment to farmer for land out of production @ \$50. per acre.

Per Acre Cost = \$517.



Submitted by:Date

*W. J. Smith* 1-5-78  
District Director

Approved by:Date

*Edmund G. Darn* 1-9-78  
Area Director

Approved by:Date

*J. J. Laski* 1/12/78  
Regional Director

Reviewed by:Date

*Paul F. Sand*  
Staff Officer



UNITED STATES DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
PLANT PROTECTION AND QUARANTINE PROGRAMS  
#4 Stewart Ave, Westhampton Beach, NY 11978

WORK ACHIEVEMENT REPORT  
DP-1-GN-77-NY

JAN 6 1978

Program Golden Nematode State New York  
Starting Date 5/23/77 Closing Date 9/29/77

Location: Nineteen properties located in the Bridgehampton area of Suffolk County, New York.

One property in the Northville area of Suffolk County.

I. Area treated and ownership:

| <u>Ownership</u> | <u>Acres</u> |
|------------------|--------------|
| Private          | 465.21       |

II. Method of Accomplishment:

A. Fumigants

1. Name - Telone II
  2. Formulation - full strength
  3. Rate of application - 45 gals./acre
  4. Number of applications - 2 @22.5 each on the entire field followed by a 3rd application at the rate of 22.5 gals./acre to infestation foci.
- 
1. Name - Vorlex
  2. Formulation - full strength
  3. Rate of application - 30 gals./acre
  4. Number of applications - 2 @15 gals. each on entire field followed by a 3rd application at 15 gals./acre to infestation foci.
- 
1. Name - Vapam
  2. Formulation - 50 gals. Vapam to 3000 gals. H<sub>2</sub>O.
  3. Rate of application - 3000 gals./acre
  4. Number of applications - 1



GN FUMIGATION  
LONG ISLAND 1977

| <u>Field Number</u> | <u>Acres</u> | <u>Owner/Operator</u> |
|---------------------|--------------|-----------------------|
| 38-A-19             | 14.45        | J. Babinski           |
| 38-A-36             | 8.72         | A. Babinski           |
| 38-B-88             | 27.76        | Remi Weanofske        |
| 39-A-13             | 69.64        | A. Babinski           |
| 42-B-11             | 16.69        | J. Babinski           |
| 42-C-42             | 6.83         | J. McNamara           |
| 42-C-45,47          | 10.86        | J. McNamara           |
| 42-C-51             | 45.58        | J. Babinski           |
| 42-C-54             | 33.94        | A. Babinski           |
| 43-B-1              | 4.18         | J. Babinski           |
| 43-B-3              | 31.28        | J. Babinski           |
| 43-B-6              | 3.97         | J. Babinski           |
| 43-B-21             | 11.72        | A. Hand, Jr.          |
| 43-B-22             | 18.86        | G. Szczepankowski     |
| 43-B-28             | 1.91         | J. Babinski           |
| 43-C-15             | 51.63        | Sayre Baldwin         |
| 43-C-47             | 16.12        | C. Osborne            |
| 43-D-29             | 27.53        | Brennan Bros.         |
| 43-E-22             | 28.48        | Ed Zebrowski          |
| 35-G-19             | 35.15        | A. Schmitt            |



## B. Application equipment:

## 1. Ground

(a) 2 tractor-drawn chisel applicators

(b) Sundry pumping and facilitating equipment

## 2. Other Equipment

(a) 2 Vapam applicator units

2 Steam cleaning units

## C. Pesticide Storage:

Fumigant stored in fenced in area and transported to site as needed. Empty drums are returned to enclosure.

## III. Financial Statement:

|                                                                | <u>Federal</u> | <u>State</u> | <u>Other</u> | <u>Total</u> |
|----------------------------------------------------------------|----------------|--------------|--------------|--------------|
| Pesticide Cost                                                 |                |              |              |              |
| Telone II 19,703 gal. @3.80/gal.                               | \$37,437       | \$37,434     |              | \$74,871     |
| Vorlex 2950 gal. @7.75/gal.                                    | 11,431         | 11,431       |              | 22,862       |
| Vapam 1,722 gal. @2.25/gal.                                    | 1,937          | 1,937        |              | 3,874        |
| Personnel Cost                                                 |                |              |              |              |
| Federal - 4 (Permanent)                                        | 9,398          |              |              | 9,398        |
| - 4 (L/A)                                                      | 5,696          |              |              | 5,696        |
| Associated Cost                                                |                |              |              |              |
| Vehicles, travel, communications,<br>fuel, In-kind cost, misc. | 3,100          |              | *32,565      | 35,665       |
| Compensation                                                   |                | **27,913     |              | 27,913       |
| Total                                                          | \$68,999       | \$78,715     | \$32,565     | \$180,279    |

\* Land preparation @\$70/acre

\*\* Compensation @\$60/acre

11/15/77

Westhampton, N.Y.

Date

Edmund P. Carson 12/27/77  
Area Director

Area Director

Date

11678

Regional Director

Date \_\_\_\_\_

1-11-78

Staff Officer



Mr. DE LA GARZA. Would you go into the financing? What financing are we talking about?

Mr. GUNTHER. The entire program in the State of New York is conducted on a cooperative relationship between New York State and the USDA—PPQ program.

The cooperative agreement extends to the disbursement of money. Adjustments are made where the State is responsible for certain program costs and the Federal Government is responsible for other costs. We make it as cooperative as possible so the costs are shared within the legal responsibilities of each party to the agreement.

For example, some costs, such as field survey are borne almost entirely by USDA.

Costs for regulatory activities within the State of New York are borne entirely by the cooperator.

In 1976, the Federal golden nematode budget was \$852,000. Total amount of State expenditures was \$516,000. This would be almost all on the part of the State of New York.

Mr. DE LA GARZA. I think Mr. Allen mentioned this; does New York have any legislation dealing with the golden nematode?

Mr. GUNTHER. Yes, sir. New York State has a golden nematode quarantine which is part 127 of its rules and regulations for the nematode.

Mr. DE LA GARZA. That provides for quarantine inspection?

Mr. GUNTHER. For the intrastate quarantine of the golden nematode, yes, sir.

Mr. DE LA GARZA. Counsel, we want a copy of that statute for the record as well.

[The material referred to above follows:]

AN ACT making provision for the control and eradication of the golden nematode disease of potatoes, prescribing the powers and duties of the commissioner of agriculture and markets in connection therewith, authorizing the payment of compensation to owners and operators of affected lands, and making an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§1. The legislature hereby finds and declares that the golden nematode disease of potatoes has heretofore become established in a limited area within this state; that such disease is a serious threat to the potato crop and to other related crops in this state, as has been demonstrated by the ravages of such disease in lands and countries where it has occasioned widespread destruction and damage; and that the effects of such disease, if not properly controlled, arrested and eradicated, in this state and in case of further spread in this nation would be disastrous to both producers and consumers and to the public generally. Therefore, provision for a program of compensation which will assist growers operating infested lands to adjust their operations to the eventual complete prohibition of potato, tomato and eggplant growing on infested land until such land is declared safe by the commissioner of agriculture and markets for potato production and for otherwise controlling, arresting and eradicating such disease in this state, and the enactment of this act for such purpose, are in the public interest.

§2. The commissioner of agriculture and markets is hereby authorized and directed to take such action as he may deem necessary to control or eradicate within this state the golden nematode disease of potatoes (*Heterodera rostochiensis*). All plant material infected or infested with such disease, or which has been exposed to such disease, or which is host to such disease, is hereby declared a public nuisance and may be destroyed or ordered destroyed by such commissioner.

§3. The commissioner of agriculture and markets may order the owner or person in charge of any plant material, or soil, infected or infested with or host to such disease, or the owner or person in charge of the farm or premises upon which such plant material has been grown or on which it exists or in which

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C.130

947  
C.663

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C.663



it has been stored, or of the vehicles or cars in which such plant material, or soil, has been conveyed, to take such measures to eradicate or control such infestation or infection as the commissioner may deem necessary or proper. Such orders may be communicated by personal service, service through the mails, or by newspaper publication, as the commissioner deems expedient. Such owner or person in charge shall promptly carry out the order of the commissioner within the period of time designated in the order. If such owner or person in charge shall refuse or neglect to carry out any such order, the commissioner may apply such eradication or control measures at the expense of the owner. Upon the completion of such eradication or control measures the owner shall, upon demand of the commissioner, forthwith pay the cost thereof into the state treasury, and upon his neglect or refusal so to do, the amount thereof shall be recovered in a civil action to be brought and prosecuted by the attorney-general in the name of the people of the state.

1947  
C.663

§4. 1. The commissioner of agriculture and markets or his representatives shall have full access to all premises, places, farms, buildings, vehicles, vessels and cars for the purpose of enforcing the provisions of this act. The commissioner or his representatives may examine all potato, tomato or other fields, plants and vines, or host plants or any other material which are infested or infected or susceptible to infestation or infection by the nematode. He or they may open any package or other container, the contents of which may have been so infested or infected or exposed to such infestation or infection. It shall be unlawful to hinder or defeat such access or examination by misrepresentation, concealment of facts or conditions, or otherwise.

2. The commissioner is hereby authorized to make, issue, promulgate and enforce such orders, by way of quarantines or otherwise, as he may deem necessary or fitting, to carry out the purposes of this act.

3. The commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this act as he may deem necessary.

1971  
C.1071

§5. No compensation or damages shall be awarded to any owner or operator affected by this program by the state of New York except as provided in section six of this act. Notwithstanding the provisions of section one hundred sixty-five of the agriculture and markets law, no compensation or damages shall be awarded to any owner or operator for the destruction of plants, plant material or crops affected by this program.

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C.130

§6. The commissioner may enter into agreements with owners or operators of farms or other premises upon which plant material infected or infested with or host to such golden nematode disease of potatoes has been grown on or which it exists or in which it has been stored, or of farms or other premises exposed to such infection or infestation, for the growing on the lands of such farms or premises only such crops as may be approved by the commissioner. The commissioner may also enter into agreements with owners or operators of farms or other premises upon which plant material, infected or infested with or host to such golden nematode disease of potatoes has been grown or on which it exists or in which it has been stored, or of farms or other premises exposed to such infection or infestation for removing such lands from production for the purposes of fumigation or for reimbursing the owners or operators of such farms or other premises the cost incurred by them in joining and assisting in a fumigation program. Any such agreement as a part of the fumigation program may provide for the subsequent growing of only such crops, at such intervals, with such frequency and with such cultural and technical practices as may be approved by the commissioner and as are proper and necessary to control the golden nematode disease of potatoes, and such agreement may provide for the payment of compensation by the state to the owners or operators of such farms or premises on account of such restricted usage or costs incurred in a



fumigation program. No such agreement shall provide for the payment of, nor shall there be paid under any such agreement, an amount in excess of sixty dollars an acre in any fiscal year provided, however, that if the government of the United States through its department of agriculture or through or by any other agency shall provide and allocate funds for payment of compensation to such owners or operators on such farms or premises on account of such restricted usage or costs incurred in a fumigation program, the amount of such federal allowance shall be deducted from the allowance per acre made by the State as herein set forth.

Any such agreement providing for the payment of compensation as determined by the commissioner to be fair, after full consideration of all the facts surrounding the former use, ownership and occupation of such lands and the relationship of such use to the effective control of the golden nematode disease shall be made only with respect to the lands on farms or other premises customarily used by the owner or operator for growing potatoes or determined by the commissioner to be infected or infested or to be dangerously exposed to infection or infestation by such nematode disease.

§6-a. The commissioner may also enter into agreements on behalf of the department of agriculture and markets with the United States department of agriculture or any agency, bureau or branch thereof or any other corporation, agency or institution, which he deems necessary, for the purpose of engaging in a joint, cooperative, scientific and operating program for the benefit of the people of the state of New York, to control, eradicate and prevent the spread of the golden nematode disease.

Any such agreement may provide for the payment by the state of any fair proportion of the cost and expense of such program, as determined by the commissioner.

Any such contract or contracts heretofore entered into by the commissioner with the United States department of agriculture or any agency thereof or otherwise, relating to the control,

eradication and prevention of the golden nematode disease, are hereby ratified, confirmed and validated with the same force and effect as if made and executed under the provisions of this section.

§7. Every person, association or corporation and all agents, officers and employees thereof, shall obey every order of the commissioner as provided herein so long as such order shall be in force. Any such person, association or corporation and any such agent, officer and employee thereof who shall fail to obey any order of the commissioner, or who shall violate any such order shall be subject to a civil penalty not exceeding the sum of two hundred dollars for each and every offense. Every violation of such order of the commissioner shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance thereof shall be a separate and distinct offense.

The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with the provisions of law herein or with any rule or order duly promulgated by him hereunder, and may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Such application may be made to the supreme court in any district or county as provided in the civil practice act and the rules of practice of the court, or to the supreme court in the third judicial district.

In addition to the civil penalties and remedies provided above, a violation of any duly promulgated order of the commissioner shall constitute a misdemeanor and, except as otherwise provided by the penal law, any person who is guilty of such violation shall, upon conviction, be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment of not less than one month nor more than six months, or by both such fine and imprisonment for the first offense; and by not more than one year's imprisonment for the second offense.



§8. The sum of one hundred seventy-five thousand dollars (\$175,000), or so much thereof as may be necessary, is hereby appropriated from any moneys in the state treasury in the general fund to the credit of the state purposes fund, not otherwise appropriated, for expenses in carrying out the provisions of this act during the fiscal year commencing April first, nineteen hundred forty-seven, including payments of compensation to owners and operators of lands in accordance with agreements entered into as provided in section six, and for personal service, maintenance and operation and other necessary expenses, payable on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner of agriculture and markets in the manner prescribed by law.

§9. If any clause, sentence, paragraph or part of this statute shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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## PART 127

GOLDEN NEMATODE (*HETERODERA ROSTOCHIENSIS*) QUARANTINE

## Sec.

- 127.1 Definitions
- 127.2 Quarantined area
- 127.3 Regulated area
- 127.4 Prohibitions
- 127.5 Restrictions
- 127.6 Exceptions

127.1 Definitions. As used in this Part unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

(a) "Agreement" means an executed document between a person engaged in growing, dealing in, handling, grading or moving regulated articles and the Commissioner wherein such person agrees to comply with conditions specified in the agreement to prevent dissemination of golden nematode.

(b) "Commissioner" means the Commissioner of Agriculture and Markets of the State of New York and any officer or employee of the New York State Department of Agriculture and Markets or of the United States Department of Agriculture duly delegated pursuant to Section 17 of the Agriculture and Markets Law.

(c) "Construction equipment" means equipment used to move or transport soil e.g., bulldozers, draglines, road scrapers, dumptrucks, etc.

(d) "Farm equipment" means machinery, vehicles, implements, bags, containers and articles necessary, desirable or used in the production and marketing of crops and the movement of soil.

(e) "Golden Nematode" means the nematode known as the golden nematode of potatoes (*Heterodera rostochiensis*).

(f) "Host crops" means Irish potatoes and plants of Irish potatoes, tomatoes and eggplants.

(g) "Infestation" means the presence of golden nematode.

(h) "Moved" and "Movement" means shipped, offered for shipment, received for transportation, transported, carried, moved or allowed to be moved by any person, including a common carrier, within or from the quarantined or regulated area.

(i) "Permit" means a written authorization of the Commissioner for the handling and the movement of regulated articles, including a Federal certificate or limited permit.

(j) "Potato grading station" means any operation where potatoes are graded, sorted, washed or otherwise prepared for market.

(k) "Quarantined area" means the area designated as quarantined by this Part.

(l) "Regulated area" means those parts of the quarantined area which have been so designated by the Commissioner pursuant to this Part.



"Articles" means potatoes; tomato and eggplant transplants; root crops; soil or sod; plants with roots; true bulbs, corms, rhizomes and tubers of ornamental plants; hay straw; plant litter; used farm equipment; used construction equipment, and any other article or means of conveyance as determined by the Commissioner.

(n) "Non-host crops" means crops other than those defined as host crops pursuant to subdivision (f) of this section.

#### 127.2 Quarantined Area.

- (a) Nassau County.
- (b) Suffolk County.
- (c) Towns of Prattsburg and Wheeler in Steuben County.
- (d) Town of Italy in Yates County.
- (e) Town of Savannah in Wayne County.
- (f) Town of Montezuma in Cayuga County.
- (g) Town of Tyre in Seneca County.
- (h) Town of Barre and Clarendon in Orleans County.
- (i) Town of Elba and Byron in Genesee County.

#### 127.3 Regulated Area.

(a) Areas within a quarantined area which are infested or which have been exposed to infestation due to location or equipment usage may be designated as regulated areas.

(b) The Commissioner will by personal service or by certified mail serve or cause to be served on the owners, operators or occupants thereof written notice designating and clearly defining the boundaries of a regulated area.

127.4 Prohibitions. In the quarantined or regulated areas the following acts and activities are prohibited:

(a) The movement of living golden nematodes in any stage of development whether moved independently of, in connection with, on or as a part of any article, except as authorized in this Part.

(b) The production of and marketing as seed potatoes in a quarantined area except that in an area not designated as a regulated area seed potatoes may be produced and marketed under procedures approved by the Commissioner.

(c) The planting of host crops on land in a regulated area, except as authorized by the Commissioner.

(d) The movement of tomato and eggplant plants grown on lands which become a part of a regulated area after planting.

## 127.5 Restrictions.

## (a) In the quarantined areas.

- (1) Except for foreign shipments (not including Canada and Mexico) all potatoes moved from a quarantined area outside a regulated area shall be packaged in paper bags or in other approved containers, or in a manner approved by the Commissioner.
- (2) No potato grading station shall operated or maintained except in accordance with an agreement and under a permit.
- (3) There shall be no movement of used farm equipment to points outside a quarantined area unless such equipment has been disinfested by a procedure prescribed by the Commissioner and a permit issued.
- (4) There shall be no movement of used construction equipment to points outside a quarantined area except under a permit.
- (5) No soil or sod shall move from a quarantined area except in accordance with an agreement and under a permit.

## (b) In the regulated areas.

- (1) No host crops or non-host crops shall be grown, except on lands that have received treatment as prescribed by the Commissioner to control or eradicate the golden nematode and have been declared safe for the growing of host crops or non-host crops.
- (2) No potatoes or root crops shall be moved from a regulated area except in accordance with the regulations herein set forth and such other conditions as may be prescribed by the Commissioner.
- (3) Potatoes grown on lands or parts of land which became a part of a regulated area after planting.
  - (i) Shall be packaged in paper bags or in other approved containers, shall be restricted in movement to approved locations, and shall move only under permit; or
  - (ii) Shall be washed in an approved washing plant under supervision of the Commissioner, packaged in paper bags or in other approved containers, and shall move only under permit; or
  - (iii) Shall be subjected to such procedure and safeguards as may be prescribed by the Commissioner, and shall move only under permit.
- (4) Vegetable root crops shall be thoroughly washed by an approved method before movement.
- (5) There shall be no movement of ornamental or vegetable plants, including nursery and greenhouse-grown plants, bulbs, corms and tubers, from a regulated area except in accordance with an agreement and under a permit.
- (6) There shall be no movement of hay, straw or plant litter from a regulated area except in accordance with an agreement and under a permit.



- There shall be no movement from a regulated area of used farm or construction equipment unless such equipment has been disinfested by a procedure prescribed by the Commissioner and a permit issued.
- (3) No soil or sod shall move from a regulated area except in accordance with an agreement and under a permit.
  - (c) Owners of land in a regulated area who have been duly notified that land owned by them has been designated as all or part of a regulated area, pursuant to Section 127.3 of this Part, shall not sell, lease or permit the temporary use of such land without giving notice to the Commissioner of such sale, lease or permit, together with the name and mail address of such purchaser, lessee or temporary user. Nothing in this paragraph shall be construed to relieve such owner of the responsibility of advising a purchaser, lessee or temporary user of the designation of such land as land in a regulated area, pursuant to the aforementioned Section 127.3 or of any other responsibility imposed pursuant to this part.

127.6 Exemptions. Living golden nematode in any stage of development, whether moved independently of, in connection with, or on or as a part of any article, and any article, commodity or substance regulated by this Part may move under a permit from the quarantined and regulated area for experimental, scientific or regulatory purposes under such conditions and safeguards as may be prescribed by the Commissioner.

Mr. DE LA GARZA. Does that law include compensation by the State jointly with the Federal Government or in addition to the Federal?

Mr. GUNTHER. Only Federal compensation is specified in the Golden Nematode Act.

In fact, the only compensation paid to potato farmers is paid by the State of New York, and not by USDA. The compensation is paid by the State of New York to a potato grower to compensate him for taking the land out of production for 1 year so it may be fumigated. It includes the cost of his plowing and fitting that land twice during the fumigation. That is the only compensation being paid to potato farmers.

Mr. DE LA GARZA. Leaving New York now, Mr. Lee or Mr. Spears, do you know whether there is State compensation available in Maine?

Mr. SPEARS. To my knowledge, no sir.

Mr. DE LA GARZA. Your joint annual plan of work, I assume, would have that. Did we agree you have one for Maine?

Mr. SPEARS. We have one for Maine. For example, we do field surveys in Maine. The State of Maine gives us certain services and we provide services in kind as part of the single State-Federal cooperative program.

Mr. DE LA GARZA. Would you make that available?

Mr. SPEARS. Yes, sir.

[The material referred to above follows:]



MEMORANDUM OF UNDERSTANDING  
between  
MAINE DEPARTMENT OF AGRICULTURE  
and  
THE UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL RESEARCH SERVICE  
PLANT PROTECTION DIVISION

Relative to  
Cooperative efforts to protect crops  
from insect damage and plant disease  
in Maine.

The object of this cooperative control and regulatory work is to protect agricultural and horticultural crops and timber resources from losses caused by insect pests and plant diseases.

The cooperation is conducted by the Plant Protection Division by virtue of authority included in the act establishing the United States Department of Agriculture and related acts, and the annual appropriation acts providing funds for the activities of the Plant Protection Division.

The Maine Department of Agriculture, Division of Plant Pest Control, will fulfill its obligations under this agreement in accordance with applicable laws of the State.

A. The Maine Department of Agriculture, Division of Plant Pest Control agrees:

1. To furnish the services of the Director of the Division of Plant Pest Control, whose duties shall include the direction of the cooperative personnel in all matters related to the enforcement of state laws, and the practical utilization of personnel and facilities of its organizations for conducting the cooperative work. This official will participate in the joint planning, direction, and execution of the cooperative work program.
2. To undertake directly, or in cooperation with the state agencies having jurisdiction, such enforcement of state laws as may be necessary for the effective prosecution of pest control and regulatory work, including regulation of the intrastate movement of regulated articles.
3. To authorize appropriate Plant Protection Division personnel to exercise state pest-control authority, including the right of entry upon private property when necessary to carry out any part of this cooperative effort to control insect pests and plant diseases.
4. To furnish funds, facilities, and services in accord with the amounts permitted by legislative appropriation, Governor's office, or by private contributions.

5. To solicit the assistance of the Maine Agricultural Extension Service through its Director in the educational phases of the various programs mutually agreed upon by the parties of this agreement.

**B. The Plant Protection Division of the USDA agrees:**

1. To provide regional, state, and local leadership and direction of cooperative plant pest survey, control and regulatory programs in Maine, in accordance with working plans mutually agreed upon by authorized representatives of the agencies concerned.
2. To provide employees of the agencies cooperating in plant pest control and regulatory work in Maine with pertinent subject matter as it becomes available.
3. To provide personnel and facilities of the Division in accordance with authority granted by Congress and the Secretary of Agriculture and work plans mutually agreed upon.
4. To enforce Federal regulations pertaining to the interstate movement of regulated articles in accordance with program requirements.
5. To continue efforts to develop new and improved techniques and procedures for cooperative use in pest survey, control and regulatory work.

**C. It is mutually understood and agreed that:**

1. Details of the cooperative work shall be planned and executed jointly by the parties of this agreement. Outlines covering working plans and methods of procedure shall be prepared jointly, subject to revision by joint action as progress of the work justifies. Copies of these plans, as required, will be filed with each of the cooperating parties.
2. Periodic reports, as may be required and mutually agreed upon, shall be furnished by each of the cooperating agencies. One copy of such report to be delivered to each of the other agencies.
3. The patent provisions applicable to this agreement shall be in accordance with Exhibit A attached hereto and made a part hereof.



4. Either party of this agreement shall be free to use in official correspondence, any of the results obtained in the undertaking, giving due credit to the other party. It is understood that neither party will publish any results without consulting the other parties. Publication may be joint or independent as may be agreed upon always giving due credit to the cooperation and recognising within proper limits the rights of the individuals doing the work. In cases of failure to agree as to manner of publication or interpretation of results, either party may publish data after due notice and submission of the proposed manuscripts to the others. In such instances the party publishing data will give due credit to the cooperation but will assume full responsibility for any statements on which there is a difference of opinion.
5. The responsibilities assumed by each of the cooperating parties are contingent upon funds being available from which the expenditures legally may be met.
6. This Memorandum of Understanding is to define in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation to serve as a basis for expenditures. Each party will handle and expend its own funds. Any and all expenditures from Federal funds in the Department of Agriculture made in conformity with the plans outlined in this Memorandum of Understanding must be in accord with Department Rules and Regulations and in each instance based upon appropriate finance papers. Expenditures made by the cooperating parties will be in accord with their rules and regulations.
7. Funds of a cooperating party shall not be expended by a Federal employee, even though the cooperating party has no representatives stationed in the locality. In such instances the Federal employee may handle the accounts but shall forward the vouchers to the disbursing agent of the cooperating party for payment. The cooperating party should not send checks payable to Federal employees or send them checks payable to "Cash" or "Bearer" for payment of local expenses.

Either party shall be free to furnish such equipment as may be needed and otherwise unavailable. Equipment furnished from Federal funds shall remain the property of the United States Department of Agriculture, subject to removal or other disposition at any time. Equipment purchased by the Maine Department of Agriculture shall remain the property of the Maine Department of Agriculture, subject to its disposition.

8. Plant Protection Division personnel are under the administrative direction of the Division and will work cooperatively with the personnel of the State agencies. Personnel of the State agencies will remain administratively responsible to the agencies by which they are employed.

9. All persons employed within the State on control and regulatory programs by the cooperating agencies shall be satisfactory to the cooperating parties, subject to the requirements of such Civil Service Regulations as may be applicable.
10. This supersedes Memorandum of Understanding that was effective August 15, 1958.

No member of or delegate to Congress or resident commissioner, and no officer agent or employee of the Government shall be admitted to any share or part of this agreement or to any benefit to arise therefrom.

This Memorandum of Understanding shall become effective July 1, 1970 and shall continue indefinitely, but may be modified by mutual agreement between the parties in writing, and may be discontinued at the request of either party. Requests for termination or any major changes shall be submitted to the other parties for consideration not less than 90 days in advance of the effective date desired.

MAINE DEPARTMENT OF AGRICULTURE

July 16 1970  
Date

W. M. Sullivan  
Commissioner, Department of Agriculture

UNITED STATES DEPARTMENT OF AGRICULTURE

1  
Date

J. M. Mulhern  
Associate Administrator  
Agricultural Research Service



PATENT PROVISIONS  
(PUBLIC)

Exhibit A

Any invention resulting from this cooperative work and made jointly by an employee or employees of the United States Department of Agriculture and the cooperator or an employee or employees of the cooperator shall be fully disclosed, either by publication or by patenting in the United States, and any such United States patent shall either be dedicated to the free use of the people in the territory of the United States or be assigned to the United States of America or be assigned to the cooperator, as may be mutually agreed upon by the parties hereto, provided, that in the event of assignment to the cooperator, the Government shall receive an irrevocable, nonexclusive, royalty-free license under the patent, throughout the world, to practice the invention for all governmental purposes, and, provided further, that non-exclusive, royalty-free licenses shall be issued by the cooperator to any and all applicants technically competent to make use of the patent, provided, that, where the assignment is to the Government, it shall be of the domestic patent rights. Where the domestic patent rights are so assigned, the United States Department of Agriculture shall have an option to acquire the foreign patent rights in the invention on which an application for a United States patent is filed, for any particular foreign country, said option to expire in the event that the Government fails to cause an application to be filed in any such country on behalf of the Government or determines not to seek a patent in such country within six months after the filing of the application for a United States patent on the invention. Where the domestic patent rights are assigned to the Government, but the foreign patent rights are retained by an employee, the employee shall grant to the Government a nonexclusive, irrevocable, royalty-free license in any patent which may issue thereon in any foreign country, including the power to issue sub-licenses for use in behalf of the Government and/or in furtherance of the foreign policies of the Government, and said license shall also include the power to sublicense American licensees under Government-owned United States patents to practice the invention without payment of royalty or other restriction in any foreign country wherein a corresponding patent may issue to the employee or his foreign assignee. Any invention made independently by an employee or employees of the United States Department of Agriculture or by the cooperator or an employee or employees of the cooperator shall be disposed of in accordance with the policy of the United States Department of Agriculture or the cooperator, respectively, provided, that in the event the invention is made solely by an employee or employees of the cooperator, the cooperator shall grant or shall obtain from the assignee of any patent issued on said invention an irrevocable, nonexclusive, world-wide, royalty-free license for the Government, for all governmental purposes, and provided further, in the event the invention is made solely by an employee or employees of the cooperator, that unless the cooperator or his assignee has taken effective steps within three years after a patent issues on the invention to bring the invention to the point of practical application or has made the invention available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why he should retain the principal or exclusive rights for a further period of time, the Government shall have the right to require the granting of a license to an applicant on a non-exclusive, royalty-free basis.



Mr. DE LA GARZA. The problem in New York, as far as we can determine here, is not with the tomatoes or potatoes but with the turf. The law does not specify that. We are agreed on that.

Mr. SPEARS. The host crops are potatoes and tomatoes. When the original law was enacted, it concerned potatoes and tomatoes. As we have pointed out, a quarantine imposed on the area affects all root crops in the area as well as machinery and other items that move soil. Not only is turf involved but used farm machinery as at an auction.

If you were to move equipment from the quarantined area, the machinery would have to be fumigated or steam-cleaned to prevent spread.

Mr. DE LA GARZA. We understand all that.

Mr. Allen also mentioned eggplant.

Mr. SPEARS. That is a minor host.

Mr. DE LA GARZA. There is no golden nematode in any other place in the United States except New York?

Mr. SPEARS. The only known place is on Long Island and three counties in upstate New York. It was found on Long Island in 1941. Following World War II, a program was begun in order to prevent its spread throughout the rest of the United States.

Mr. DE LA GARZA. Where did it come from?

Mr. SPEARS. It was widespread in Europe. Most countries of Europe have the golden nematode including England and all of central Europe.

It is believed to have originated in the Andes, where the potatoes originated. It was transferred to Europe. The first infestation on the North American Continent was in Long Island.

There are two areas in Canada and several South American countries infested now.

Mr. DE LA GARZA. Mr. Lee says in his testimony that your interest is only in interstate movement, which means you are the people who regulate Mr. Peca from moving his turf to Pennsylvania or elsewhere out of State.

Mr. SPEARS. That is right, as far as sod moved by Mr. Peca.

Mr. DE LA GARZA. How long have you been in New York, Mr. Gunther?

Mr. GUNTHER. I have been stationed in New York since 1966. I have been the senior PPQ official in that State since 1973.

Mr. DE LA GARZA. There is a serious accusation here that nobody knew anything about this. USDA did not tell the people that their farms were suspect.

Mr. GUNTHER. The discovery of the golden nematode outside of Long Island occurred in field surveys conducted in the fall or 1967 in Steuben County. Soil samples were processed and the golden nematode discovered in December 1967 on just a few fields taken with a random survey.

In the spring of 1968, an intensive survey of all of the potato-producing areas in that portion of Steuben County was done.

Among the fields found infested were two operated by the largest seed producer in central New York.

Before he planted in 1968, he was told these two fields were infested. The area was quarantined, and potatoes were not planted after that.



The potato seed producer was quite cooperative. He provided us with a listing of all the recipients of his seed for 1968 and for the 5 preceding years.

Mr. Schuler, the grower, had grown seed in these two infested fields for only 2 years in one case, and 1 year in another.

We pursued, and we are still pursuing, a survey on all fields which were ever known to receive seed potatoes from the Schuler fields for 5 years. We have been surveying these fields ever since on an annual and semiannual basis depending on whether they had potatoes that year in New York State or any other State.

For instance, we have done this in Maine, New Jersey, Virginia, West Virginia, and the Carolinas. This is a survey conducted in Elba which Mr. Peca referred to.

The potato growers in New York knew of this survey and the reasons for it. They were informed through the Extension Service at Cornell University. It was understood among potato growers that if the golden nematode were found they would be informed.

The amount of potato seed infested was quite small. This suspect seed survey has resulted in the discovery of the infestation in Wayne County in one field and an area known as the Savannah Muck in Orleans County.

Mr. DE LA GARZA. Do we have a potato marketing order? Is there a potato marketing order?

Mr. LEE. Mr. Chairman, I don't know.

Mr. DE LA GARZA. Is there a potato growers' organization in New York and in Maine?

Mr. SPEARS. Most large potato-producing States have grower organizations. There is an American Potato Growers Association. I believe they put out a monthly magazine.

Mr. DE LA GARZA. Did you communicate with them, with the associations?

Mr. LEE. The associations have carried articles frequently and the membership is aware of the critical situation we face in New York with the golden nematode.

Mr. DE LA GARZA. What was the extent of the involvement of the New York Department of Agriculture in relation with you and the dissemination of information, if you have any knowledge on that?

Mr. GUNTHER. When it comes to a field survey, which is our part of the cooperative arrangement they support us. Sometimes inspectors of the State of New York help us relate to the Extension agents in the county we survey as a means of public relations. They don't take an active part in the field survey.

Mr. DE LA GARZA. I don't want to single this out to one place or one witness. However, Mr. Lee, you state that you narrowed it down to two propositions. You state more appropriate methods to cure this would be through a private bill. You seem there to agree there is some need for compensation.

Mr. LEE. Mr. Chairman, as far as the Department's position is concerned we indicate that the Office of Management and Budget advises there is no objection to the presentation of the report and enactment of this legislation would not be consistent with the administration's objectives. Consequently, I think all I can do is speak for the executive branch of the Government.



Mr. DE LA GARZA. I know, but did Secretary Bergland's letter also imply that a private bill should be introduced for each? I assume that you feel there is some legitimate right to compensation.

Mr. LEE. We qualify that in the first sentence of the last paragraph on page 3 of the legislative report when we state: "If a legislative remedy to these particular situations is to be pursued."

Mr. DE LA GARZA. Let me ask you for a flat commonsense answer. You know that turf can carry the nematode if it is in the soil. You prohibit its sale in interstate commerce under the law.

Mr. SPEARS. Under the law, we handle the interstate movement and issue permits for approved shipments.

Mr. DE LA GARZA. The initial legislation, I was not here then, I assume the legislative intent, however, was that here is a pest which can be very detrimental to the agricultural sectors and the law is needed. Part of this is to compensate for losses. Is that right?

Mr. SPEARS. Yes, sir.

Mr. DE LA GARZA. If you follow that logic, we now know that turf could carry the golden nematode. Under the law you say, "No, you cannot send anything to Pennsylvania." As a consequence, losses are incurred.

Mr. SPEARS. Mr. Chairman, when Mr. Peca——

Mr. DE LA GARZA. Leave Mr. Peca out of it. This is just general legislation now.

Mr. GUNTHER. The Golden Nematode Act enables the Secretary to impose a quarantine. The regulations on the golden nematode are contained under the domestic quarantine No. 85. This regulation identifies grass sod as a regulated article. Because of the possibility of carrying viable golden nematode cysts. There is no exemption for sod. There is a published list of exemptions. There is no approved treatment for sod and it is in effect noncertifiable.

Under the present law, there is a provision to allow movement of a regulated article that is not certifiable under a limited permit. When a shipper of a noncertifiable article indicates a desire to ship it in interstate commerce, we review it and decide whether or not we can recommend to the recipient State that it is safe to receive.

Mr. Peca told us he had markets in Ohio and in Pennsylvania. We contacted the State regulatory officials of those two States and explained the situation.

Both said they would permit movement into their State only under a limited permit.

Both indicated that the only movement they would allow was movement of the sod to specific sites for use at that site. Regulatory officials in Pennsylvania and Ohio stated that they would not accept shipments for resale into their State whether they be retail or wholesale. The procedure Mr. Peca described was the one followed in those two States.

Mr. DE LA GARZA. This can cause some losses to an individual farmer, monetary losses.

Mr. GUNTHER. It might. I don't know.

Mr. DE LA GARZA. Mr. Lee, who made the policy decision on this—OMB, the Secretary, Under Secretary, Deputy?

Mr. LEE. As far as the Department's position is concerned?

Mr. DE LA GARZA. Yes.



Mr. LEE. Mr. Chairman, it was a mutual decision, between the Department and OMB.

Mr. DE LA GARZA. To what extent were you involved? I don't want to get upset at the wrong people.

Mr. LEE. Thank you, Mr. Chairman.

Mr. DE LA GARZA. To what extent were you involved in this?

Mr. LEE. We furnished the technical information.

Mr. DE LA GARZA. You did not handle policy?

Mr. LEE. Final policy determinations are made at different levels in the executive branch.

Mr. DE LA GARZA. It does not make sense—your regulations saying you can control turf and now you say you should not pay those people and let them fend for themselves. If it is potatoes you will pay him. However, you put it in the regulations, that it is not an exempt item to move.

Have any of you spoken to Mr. Ledbetter?

Mr. SPEARS. Yes, sir. Mr. Ledbetter is one of our PPQ employees stationed in the State of Maine.

Mr. DE LA GARZA. Apparently he is the one who made the local contact.

Mr. SPEARS. He is the local man. He would be the man dealing with the local situation according to instructions from PPQ headquarters.

Mr. DE LA GARZA. We might have to see whether we can get some information from him as to the local handling in Maine.

Mr. LEE, the act states that if you suffer a loss farmers will be compensated.

Mr. Allen says either you, the State, or in cooperation with the State you kept him from selling seed. Are we agreed on that?

Mr. LEE. I think that statement was made.

Mr. DE LA GARZA. Then why don't you pay the man for his losses?

Mr. LEE. Can Mr. Spears answer that?

Mr. SPEARS. It is a matter referred to earlier. The State must have a companion piece of legislation. The compensation feature is for not growing—or for destruction of—potatoes or tomatoes. The compensation would not have been paid for losses sustained by not selling seed.

The 1948 Golden Nematode Act provided that the Federal Government could cooperate with the State of New York or any other infested State to pay growers of potatoes or tomatoes for not planting until we could take some remedial measures, such as fumigating the land. This is in those fields where infestations are known to occur.

Mr. DE LA GARZA. "After checking with the USDA Mr. Ledbetter was informed that because no golden nematodes had been found we were not eligible for any compensation." That is what he says he was told.

You say it is a technicality? Either the legislation or the regulations provides that you compensate him for not planting a field.

Mr. SPEARS. There is no provision in the Golden Nematode Act for paying in a situation which exists with respect to Mr. Allen in Maine.



Mr. DE LA GARZA. Why are you so adamant about not changing the law to take care of an inequity, Mr. Lee, or you, Mr. Spears, who is the father of this code?

Mr. SPEARS. Mr. Lee has made known the Department's position which is that a private bill should be introduced to remedy these particular situations.

Mr. DE LA GARZA. The testimony of Mr. Allen states:

Mr. Ledbetter reviewed the problem and informed us that the U.S. Department of Agriculture had decided that under no circumstances could we ship as seed any potatoes grown on the Rutland farm.

Without Mr. Ledbetter being here, could that be a correct statement?

Mr. SPEARS. That is essentially correct, Mr. Chairman.

Mr. DE LA GARZA. This is from your regulations, Mr. Gunther.

Mr. GUNTHER. I didn't understand the question.

Mr. DE LA GARZA. That you tell a man he cannot ship any seed potatoes?

Mr. GUNTHER. The regulations are specific for both the Federal and the State. In a regulated area, seed production is prohibited. I am not familiar with the situation in Maine.

Mr. DE LA GARZA. Mr. Lee, are you familiar with it?

Mr. SPEARS. Mr. Chairman, let me see whether I can shed some light on the Maine situation.

It was pointed out earlier in the testimony by Mr. Gunther that we had a seed potato grower shipping seed potatoes found infested in Steuben County in about 1968.

Mr. DE LA GARZA. All right.

Mr. SPEARS. In tracing back these seed potatoes, we found that they have moved to several States, including Maine. It also included Wayne and Orleans Counties in New York, and included the area affecting Mr. Peca today.

It takes 6 to 10 years, and sometimes longer, for the golden nematode to build up in population where it can be discovered. It is an almost microscopic organism. The only way you can find it is by soil sampling.

In all of the years we have always had the fear of spreading the golden nematode in the United States by finding it on the seed potatoes because this is a direct transfer back to the soil. We have been surveying these fields ever since.

The principal reason the action was taken in the case of Mr. Allen was that five fields in Wayne and Orleans Counties in New York, which had been involved with the original Schuler seed, are now showing up infested.

Since Mr. Allen was growing seed, we wanted to be certain that we did not have another infestation in the State of Maine, because it is a big seed-producing State. Therefore, we took these measures for protection of the State of Maine and the rest of the country.

We took soil samples last spring. We took soil samples again this fall. We will review the situation in Maine as soon as these soil samples are processed, hopefully within the next month or two. By sometime in January, we should know the results and we will reevaluate Maine's situation.

Mr. DE LA GARZA. Mr. Allen, did anybody tell you not to plant and they would compensate you?



Mr. ALLEN. No, sir. Prior to planting the 1977 crop I contemplated taking this suspect farm out of use, but I was informed that if I did not plant the ground there would be no stimulation for any possible cyst infestation, it would not increase and they could not detect it. Therefore, I would not buy anything by not utilizing the ground.

Consequently, I planted a portion of this ground and left the rest of it. I would like to get this problem cleared up. I tried to cooperate with the Department as much as possible, but I could not justify in my own mind planting the entire 76 acres just to see whether any cysts were present.

However, I was informed that anything I did plant on that suspect ground would be restricted for shipment as table stock.

Mr. DE LA GARZA. Mr. Spears, this shipping of the potatoes, I think the only limitation you have is that it be in clean bags. Those can be sterilized to the extent there is no problem?

Mr. SPEARS. In the case of table stock, we consider Mr. Allen's field as exposed. We have not demonstrated the presence of golden nematode, but it has a history which could lead to an infestation. This is what we are trying to determine. Therefore, if he moves his potatoes as table stock, there is no pest risk involved. The concern we have is seed potatoes, and if the field is infested many more fields could be contaminated.

Mr. DE LA GARZA. It is commendable you are interested in protecting the industry throughout the United States, but how would you feel if we introduced a bill to have sod and turf not included in the Golden Nematode Act? Would that retard your program? Would it endanger crops throughout the United States?

Mr. LEE. We would have to see the language of such a bill and evaluate it.

Mr. DE LA GARZA. I would have taken your answer to be no. You say whatever ground is attached to it could carry the golden nematode.

Mr. LEE. That is correct, Mr. Chairman.

Mr. DE LA GARZA. What I was trying to get from you is this—you tell a fellow that he cannot move it or plant it. He did not because the golden nematode, though we know it was the suspect seed that was sent out.

Mr. Imhof?

Mr. IMHOF. Mr. Allen testified that the Canadian Government had been pressuring USDA to put restrictions on potatoes in Maine or Canada that would embargo all seed potatoes. Is that correct?

Mr. LEE. We have close cooperative relations with the Canadian Department of Agriculture and communicate with each other on matters of mutual interest.

As far as an embargo regarding U.S. potatoes, that option was perhaps discussed. How far it might have gone I have no idea. It was one of the options the Canadians considered.

Mr. IMHOF. Was this discussion prior to the time the restrictions were placed on Mr. Allen's potatoes?

Mr. LEE. I cannot give an exact time right now.

Mr. IMHOF. It was prior or not?

Mr. LEE. We have discussions with Canada on a continuing basis. I cannot submit a date.



Mr. IMHOF. Would you submit that for the record?

Mr. LEE. Yes.

[The material referred to above follows:]

*Chronology of conferences with Canadian officials regarding golden nematode infestations in the State of New York*

1. April 21, 1977, meeting with Dr. Bruce E. Hopper, nematologist, Canada Department of Agriculture, and officials of the Animal and Plant Health Inspection Service (APHIS) in Washington, D.C., for the purpose of reviewing maps of golden nematode infestation in New York and discussing shipment of potato seed from infested farms in New York to Maine and other East Coast States.

2. August 3-4, 1977, Dr. Bruce E. Hopper met at Bath, New York, with Mr. D. G. Gunther and Mr. R. B. Gaines of APHIS and reviewed in detail safeguards to prohibit inadvertent movement of golden nematode into Canada from the United States.

3. August 17, 1977, at the Annual Meeting of the Society of Nematologists in Lansing, Michigan, Dr. Bruce E. Hopper chaired a special meeting on golden nematode. Federal, State, and university personnel participated.

4. September 13-15, 1977, North American Plant Protection Organization, Quebec, Canada. Discussed the distribution of golden nematode in North America, survey methods, control, eradication, and resistant potato varieties.

Mr. IMHOF. There was no quarantine placed on Mr. Allen's farm, is that correct?

Mr. SPEARS. That is correct.

Mr. IMHOF. What is the authority for refusing to issue seed tags to Mr. Allen? Is it the Golden Nematode Act?

Mr. SPEARS. We asked the State of Maine to cooperate in this case. I cannot answer for the State of Maine.

Mr. IMHOF. I am asking what was the authority for USDA restrictions, not those of the State of Maine.

Mr. SPEARS. We put a limitation on the movement of the potatoes.

Mr. IMHOF. What was the authority for that?

Mr. SPEARS. Therefore tags were not issued.

Mr. IMHOF. What was the authority for putting limitations for the movement of potatoes?

Mr. SPEARS. There was reasonable cause to feel infestation existed.

Mr. IMHOF. That was under the Golden Nematode Act?

Mr. SPEARS. Under the Federal Plant Pest Act.

Mr. IMHOF. Not the Golden Nematode Act?

Mr. SPEARS. That is right.

Mr. IMHOF. Was the Golden Nematode Act involved at all with the situation on Mr. Allen's farm?

Mr. SPEARS. We operate under three different pieces of legislation. This was under the broad piece of legislation with regard to insects, nematodes, and plant diseases.

Mr. IMHOF. Not the Golden Nematode Act?

Mr. SPEARS. I think that is correct. I cannot make a positive statement on that.

Mr. IMHOF. As far as you know the Golden Nematode Act is not involved with Mr. Allen's situation?

Mr. SPEARS. I cannot be sure of an answer on that. I don't think so, however.

Mr. IMHOF. It is disappointing that you take an action which has so much impact on an individual and not know the authority for it.



Mr. SPEARS. Action was taken under the reasonable cause provision of the Federal Plant Pest Act. You ask if the Golden Nematode Act was involved. I don't think so.

Mr. IMHOF. You say there was reasonable cause and that was the basis for the action. I assume you had similar basis for the action taken on Mr. Peca's farm?

Mr. SPEARS. That case was different. We had infestations in the area. He came within the regulated area established by the quarantine. This is an entirely different situation. The golden nematode quarantine definitely was involved in his case.

Mr. IMHOF. Was there reasonable cause to confine the infestation to the golden nematode in Mr. Peca's case?

Mr. GUNTHER. Since Mr. Peca was producing nursery sod and not potatoes, we realized that perhaps it would not be a detectable infestation. We also knew a lot of the land involved was used formerly for potatoes.

Before we made a recommendation to other States, then, that limited movement of this product, we surveyed the entire acreage of sod in the regulated area with an expensive pattern, 4 by 4, close sampling, one used to confirm a suspect infestation, and all the survey was negative.

It was on the strength of this negative survey we recommended to Pennsylvania and Ohio that they could accept Mr. Peca's product.

Mr. IMHOF. It seems improbable that, what amounted to a quarantine on Mr. Allen's farm, 76 acres, with reasonable cause to apprehend infestation of golden nematode, and in Mr. Peca's case there were 47 acres involved, and you quarantined 102,000 acres around the area, it seems a bit inconsistent on the part of the Department.

Mr. GUNTHER. The quarantined area in the Elba market consists of four towns in two counties, Orleans and Genesee. The area where the potatoes and onions are grown is known as the Elba market.

The farming operation down there on potatoes is a small number of growers who intimately operate within the area, sometimes utilizing one and another's equipment and moving between township lines.

It was on the basis of their type of agriculture, concerning potatoes, that it was determined that the entire Elba muck had been exposed and should be quarantined.

Quarantines usually are brought to bear on political subdivisions. In this case it was the 14 towns.

Mr. IMHOF. Are the farming factors different in Maine?

Mr. GUNTHER. Considerably different.

Mr. IMHOF. No use of each other's equipment?

Mr. GUNTHER. I would not expect to see that.

Mr. IMHOF. My questions were primarily directed to the Golden Nematode Act and how it might profitably be amended to accommodate the situations of the constituents of Mr. Conable and Mr. Cohen.

If Mr. Spears is not aware of the authorities used in the Maine case might I suggest we hold the record open and I be permitted to submit questions to the Department which he then can take back



and consult with counsel so that he can advise us as to what the precise authority for his actions was, and we can in turn recommend to the subcommittee the drafting of whatever amendments to the bill might be appropriate to accommodate the situation?

Mr. DE LA GARZA. It is the intention of the Chair to hold the record open and recess for further hearings. We might need to amend the Golden Nematode Act to help these people. He might have to look for another statute to enforce the act.

I hope you start thinking there might be divisions in that respect as well so that we might wind up with an omnibus Golden Nematode Act.

Mr. LEE. Thank you.

[The additional material submitted follows:]

#### BASIS AND NEED FOR REGULATORY ACTION ON MAINE POTATO SEED PRODUCER

States found infested with golden nematode are quarantined under the Federal Plant Pest Act. Under this Act, the U.S. Department of Agriculture (USDA) is responsible for regulating the interstate movement of articles that may artificially spread the golden nematode from an infested State. The Department is responsible for protecting uninfested potato-production areas in the United States and preventing the possibility of the golden nematode from harming potatoes.

Maine is not currently quarantined for golden nematode. However, section 150dd of the Federal Plant Pest Act (7 U.S.C. 150dd) provides emergency authority to prevent the interstate dissemination of any plant pest, including the golden nematode, new to or not known to be widely prevalent or distributed within and throughout the United States. Pursuant to this authority the Plant Protection and Quarantine Programs (PPQ) issued an order prohibiting the movement of Mr. Allen's potatoes for the purpose of planting as seed to prevent the dissemination of the golden nematode into uninfested States.

This emergency action order was based on the premise that the Secretary of Agriculture had reason to believe that Mr. Allen's potatoes were infested because seed originally grown on the infested Schuler farm in New York had been planted on the Allen farm. The remedial measure to prevent pest spread, as authorized by the FPPA, consisted of an emergency action order specifying that the potatoes could be moved for processing or table stock, but not for planting. In nonquarantined States, it is through protective actions such as these authorized by the FPPA, that plant pests, including the golden nematode, are prevented from artificial spread to uninfested parts of the United States.

#### BASIS FOR REGULATORY ACTION INVOLVING INTERSTATE SALES BY BATAVIA TURF FARMS, INC.

USDA authority for restricting interstate sales of sod from the quarantined state of New York is found in the Plant Pest Act (7 U.S.C. 150aa et seq.) and regulations promulgated thereunder (7 CFR 301.85-1 (b)(3) and 301.85-4) and the Golden Nematode Act (7 U.S.C. 150 et seq.).

Mr. MURRAY. I want to compliment you, Mr. Chairman, for your attempt to help cure a problem, and I want to compliment the Department not only for their good faith in trying to cure their problem but for many years of diligent work in keeping our animal and plant industry healthy and protected from these various bugs, insects and other forms of life that harm us.

I say that in a 20-year perspective of being with the committee. In the longrun, if the Department has erred it has been on the side of safety. Their concern is protection.

At the same time I think we have seen through the years times when the result of the good intentions of the Department to protect the public, and to protect American agriculture, has created an injustice in individual instances. That certainly seems to be the case here.



The Golden Nematode Act was designed to cure a problem, the problem being infestation of the golden nematodes throughout the country. The law armed the Department with certain medicine to cure it, that is, the legal authority for a quarantine and legal authority for indemnity payments.

Then through the years, by and large, you have done a good job to keep this pest at bay. However, these two gentlemen appear to us today not as victims of the golden nematode but more as victims of the cure. They have been affected not by the pest itself but by the Government's attempt to protect the public from those who do have this pest. The gentleman who grows sod has no tomatoes or potatoes, so he has no problem except the cure applied.

It seems to me, then, that the way out of this thicket, from the standpoint of the Department, from the standpoint of the committee, and you have already hinted at that in your report, is through the vehicle of a private bill for the relief of these victims of the cure.

Is there some way that the Department would be prepared to give us a cost estimate or a time limit on the nature of legislation which could be beneficial to persons like this who are in good faith victims more of the cure than of the disease?

Mr. LEE. If the chairman desires we will be glad to furnish the information.

Mr. MURRAY. Can we have that for the record, the Department's perception of damages and their perception of time it would take? [The material referred to above follows:]

STATEMENT OF LOSS FOR THE 1977 SEASON BY BATAVIA TURF FARMS, INC.,  
BATAVIA, N.Y., DUE TO THE GOLDEN NEMATODE QUARANTINE

On March 15, 1977, Eric Birkland, Horticultural Inspector, New York Department of Agriculture and Markets, and Roland E. LeMaire, Plant Protection and Quarantine Programs Officer, met with Mr. Anthony Peca, President of Batavia Turf Farms, Inc., to discuss the golden nematode quarantine and how his operation in the regulated area would be affected. At that time, Mr. Peca stated that 150 acres of harvestable sod was located on 250 acres of Batavia Turf Farm holdings within the regulated area. Twenty-five to thirty acres is prime sod which Mr. Peca desires to cut and move this spring. The State of Pennsylvania is a major outlet for Batavia Turf Farms sod. Between 30,000 and 50,000 yards of sod could be shipped to Pennsylvania this year.

Records maintained by the Animal and Plant Health Inspection Service (APHIS) and State cooperators indicate that compliance agreements have provided for the movement of the following quantities of turf: Intrastate—197,515 square yards and interstate—49,654 square yards. This represents the production from approximately 51 acres within the regulated area. To the best of our knowledge, there were no delays associated with interstate movements nor were any sites submitted for approval by Batavia Turf Farms turned down.

Since Mr. Peca indicated that he desired to harvest 25 to 30 acres of sod within the regulated area in 1977 and he actually harvested approximately 51 acres within this area, we are not able to determine reasonably whether or not Mr. Peca has had any financial loss directly resulting from the Federal quarantine.

A. There follows a listing of the minimum factors for which information would be necessary in order to assess the financial losses sustained by Batavia Turf Farm, Inc. because of prohibitions or restrictions on interstate sales due to the Federal quarantine on golden nematode:

1. How many out of state customers did he lose as result on restrictions of sales?
2. What were his gross receipts in the two years prior to restrictions?
3. When restrictions are lifted would Batavia Turf Farms be able to regain lost customers?
4. What was percentage of lost business?
5. What is turf farm capable of producing?



## 6. How much time was taken to do extra paperwork required by USDA?

## LOSS SUSTAINED BY MR. EDGAR ALLEN AS A RESULT OF NOT BEING ABLE TO SELL HIS CERTIFIED SEED POTATOES IN INTERSTATE COMMERCE

Mr. Edgar Allen had 12,225 barrels of certified Katahdin potatoes that he was not able to sell for seed due to restrictions of the golden nematode quarantine. Mr. Lawrence Thibodeau, owner of the Allen Farm, Presque Isle, Maine, indicated that the loss on 76 acres due to not being able to grow certified seed would be \$42,381. In a statement before the House Committee on November 29, 1977, Mr. Allen stated that he had 20,625 hundred weight of potatoes that he sustained a loss on. He also stated that the difference between table stock and seed is usually considered to be \$1 per hundred weight, but it could be two to three times this much. He said that it would not be unrealistic for his actual loss to be as much as \$35,000. The Department has no better estimate to give on price than was given by Mr. Allen.

The Department feels that Mr. Allen has sustained a loss between the difference of seed and table stock and would recognize as acceptable an assessment of the loss by Mr. Paul J. Eastman, Deputy Commissioner, Maine Department of Agriculture.

Mr. MURRAY. Obviously in the case of Mr. Peca, he has no alternative to use his land. He has the kind of land that is used either for sod, swamp, or some other similar purpose. It cannot be readily used for the production of other crops. There is some measurable damage he has suffered in this instance.

It is not an unprecedented notion. We went off in World War II as a country and pounded many European countries to smithereens to remove enemy soldiers from homes.

When the war was over we had reparations for the victims of the cure, the cure being the U.S. Army, the problem being the enemy, and the victim being the local inhabitants. We had many reparation type activities during war time. It struck me, Mr. Chairman, that, that type of approach could be worked out.

As far as a private or public bill, it makes no difference. We can work out private bills as expeditiously and easily as public bills. They are both signed by the President but just handled on a different calendar.

Mr. DE LA GARZA. Thank you.

There was mention about the USDA being able to sterilize soil, a figure of \$1,000 an acre being mentioned. Was that correct?

Mr. GUNTHER. When a field is found infested and taken out of production, it is fumigated. The figure we have now is that the cost is about \$150 an acre.

Mr. DE LA GARZA. Have you any record as to the number of acres you have serviced in the New York program?

Mr. GUNTHER. We have such a record but I don't have it with me. This year we fumigated 456 acres in Long Island and about 150 in upstate New York.

Mr. DE LA GARZA. Would the act authorize you to fumigate Mr. Peca's land which is not in potatoes or tomatoes?

Mr. GUNTHER. Actually the act does not concern itself with fumigation. The act deals with regulatory aspects.

Mr. DE LA GARZA. Do regulations prohibit you from doing that?

Mr. IMHOF. The act does not prohibit that.

Mr. GUNTHER. That is correct, Mr. Chairman. The act does not prohibit it. However, the time the land could be fumigated would be after harvest and before seeding. Once it was seeded or in the grass, the material used is toxic to grass. It kills the nematodes but also the sod.



Mr. DE LA GARZA. Assume he rotates the field. Do you rotate your field, Mr. Peca?

Mr. PECA. Yes.

Mr. DE LA GARZA. My knowledge from my area is that they rotate the squares. Once the sod is taken off there is a period before you resod. Is that correct?

Mr. PECA. Yes. If we run a business and use your land to the fullest extent, the land is inactive normally no more than one season. It has been in only the last 3 or 4 years we started the rotation method there to help us clean up some of the land. However, we are rotating crop lands now. That is the reason this quarantine hit us so strongly in 1977. Most of the rotation was taking place in the Batavia Farm and almost all of the mature stock we had was located within the quarantine area.

If it had been reversed, most of the sod in the potato farm, we would not have been as severely affected and we could have shipped it anywhere.

Mr. DE LA GARZA. Was there any offer to work with you to sterilize your land or ask you to cooperate not to resod this area or anything like that?

Mr. PECA. No offer was made to sterilize the land. I asked about that. They said the sterilization is a method USDA puts in sod at its own expense only if the nematode is present. In other words, since my land was found negative I was not eligible for sterilization or any other compensation.

Mr. DE LA GARZA. We get back to the same problem. Were you on the ground there, Mr. Gunther?

Mr. GUNTHER. Was I there?

Mr. DE LA GARZA. Regarding the statement Mr. Peca made.

Mr. GUNTHER. That is basically right. It is not our policy to fumigate unless an infestation has been discovered.

Mr. DE LA GARZA. You tell a man he cannot ship his sod?

Mr. GUNTHER. There was no way we could fumigate that particular field without killing his sod, sir.

Mr. DE LA GARZA. Working with him to rotate. Was there any effort to rotate so you could start fumigating in areas where he was not planted?

Mr. GUNTHER. We did not have discussions with regard to the possibility of fumigating.

Mr. DE LA GARZA. There seems to be some lack of communication and some deficiency in the original act. At least something is wrong somewhere.

Mr. Lee, you mentioned only two people are involved. However, one person in this country is king. Laws are made to protect the one. From there you go to the whole of the country. If we start not enforcing the law because it is only one or two and if we do not help because it is only one or two, or whole system is in trouble and we cannot do that.

Mr. LEE. If I can clarify the point, if I made the statement there are only one or two persons I did not mean to. I would like the record to show that.

Mr. DE LA GARZA. I know you did not mean that and I think we agree. One man is king in this country.

Mr. LEE. I agree.

Mr. DE LA GARZA. Every child can be President. That is our system.

We will recess this hearing. We may need to talk to Mr. Ledbetter for more on the ground information.

I would hope that you and your counsel would discuss this further because we may need to amend this act in order to give you more authority so that you will not have to be relying on other legislation for your actions with regard to the golden nematode. We may have to go separate ways in private legislation to help these two people.

Certainly, there is need for oversight legislation and we shall contact you with regard to that.

We shall stand in recess subject to the call of the Chair.

[Whereupon, at 12 noon the subcommittee recessed, subject to the call of the Chair.]





**AMEND THE GOLDEN NEMATODE ACT  
AND  
RELIEF OF BATAVIA TURF FARMS, INC.**

**TUESDAY, JULY 18, 1978**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON DEPARTMENT INVESTIGATIONS,  
OVERSIGHT, AND RESEARCH OF THE  
COMMITTEE ON AGRICULTURE,  
Washington, D.C.**

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 1301, Longworth House Office Building, Hon. E de la Garza (chairman of the subcommittee) presiding.

Present: Representatives Brown, Breckinridge, Thornton, Thone, and Grassley.

Staff present: Fowler C. West, staff director; Hyde H. Murray, counsel; William A. Imhof, associate counsel; Eleanor Walsh, clerk; Humberto Ruben Pena, Gerald R. Jorgensen, and Anita R. Brown.

Mr. DE LA GARZA. The subcommittee will be in order.

This morning, we are meeting to consider several bills.

[The subcommittee considered several bills before proceeding to H.R. 12556.]

Mr. DE LA GARZA. This legislation is H.R. 12556 by Mr. Conable, a private bill for the relief of Batavia Turf Farms, Inc.

Without objection, a copy of the bill will appear in the record at this point.

[H.R. 12556 and the report from U.S. Department of Agriculture follow:]

[H.R. 12556, 95th Cong., 2d sess.]

**A BILL**

**For relief of Batavia Turf Farms, Incorporated.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Batavia Turf Farms, Incorporated (hereinafter referred to as the farms), doing business in Genesee County, New York, an amount to be determined by the Secretary of Agriculture (hereinafter referred to as the Secretary) to have been lost by the farms during any calendar year commencing with the calendar year 1977, through no fault of its own, as a result of restrictions on the movement of grass sod from the farms under the Federal golden nematode quarantine and supporting regulations in part 301, sections 301.85 and 301.85-1 through 301.85-10 of title 7, Code of Federal Regulations, which deal with measures designed to prevent the spread of the golden nematode. In the event of a dispute between the Secretary and the farms as to the amount due to the farms, the final determination shall be subject to binding arbitration by a person or persons agreed to by the Secretary and the farms. Prior to the payment of any amount of money, the farms shall submit to the Secretary such information as determined by the Secretary to be necessary to determine any losses incurred by the farms. The amounts paid to the farms shall be in full settlement of any and all claims of the farms in a calendar year, resulting



from restrictions on the movement of articles under the Federal golden nematode quarantine and regulations during calendar year 1977 and in subsequent calendar years.

Sec. 2. No more than 10 per centum of the amount appropriated in this Act shall be paid to or received by any agency or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$2,000.

Sec. 3. The provisions of this Act shall expire on December 31, 1982.

DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SECRETARY,  
Washington, D.C., July 18, 1978.

Hon. THOMAS S. FOLEY,  
*Chairman, Committee on Agriculture, House of Representatives, Washington, D.C. 20515.*

DEAR MR. CHAIRMAN: This is in reply to your request for a report on H.R. 12556, a bill "For relief of Batavia Turf Farms, Incorporated."

This Department does not oppose enactment of the bill provided it is amended as suggested in the enclosed statement.

We do not oppose H.R. 12556 because it allows the Secretary the flexibility to determine if a basis exists for awarding compensation to Batavia Turf Farms, Incorporated. This is consistent with the position we took regarding H.R. 7956. The purpose of that bill was to amend the Golden Nematode Act in order to provide financial assistance to persons whose commercial production of crops had been adversely affected by Federal quarantine restrictions and prohibitions imposed in order to prevent spread of the golden nematode. This Department testified in opposition to enactment of the bill. For ready reference, a copy of our legislative report pertaining to H.R. 7956 is enclosed.

The legislative report indicated that if financial compensation for the particular and diverse situations stipulated in H.R. 7956 was warranted, it was our opinion, that a private bill should be introduced for each situation. In that way, the merits of each case would be decided on the basis of the cause for any loss sustained. This would include, for example, whether that loss was the result of State or Federal quarantine restrictions designed to prevent the spread of the golden nematode to other states.

In its present form, H.R. 12556 authorizes payment to Batavia Turf Farms for financial losses occurring, through no fault of its own and as a result of Federal golden nematode quarantine restrictions and prohibitions, in the calendar year of 1977 and in each succeeding calendar year through 1982. The Department strongly opposes the provision allowing for future years (1979-1982) compensation since Batavia Turf Farms has the option of using other avenues for distribution.

In addition, we oppose as unnecessary the provisions providing for binding arbitration. The Batavia Turf Farms, Incorporated has the right to appeal any adverse decision by the Secretary to an appropriate court.

There is enclosed a statement explaining the circumstances of the Batavia Turf Farms in complying with the Federal golden nematode quarantine.

We do not have any information to serve as a basis for estimating the cost of enacting the bill.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

BOB BERGLAND,  
*Secretary.*

Enclosures.

UNITED STATES DEPARTMENT OF AGRICULTURE

Suggested Amendments to H.R. 12556,  
95th Congress, 2d Session

1. On page 2, lines 1 and 2, delete the words "any calendar year commencing with the".
2. On page 2, line 2, after "1977" add "and calendar year 1978".



3. On page 2, beginning on line 8, delete the sentence "In the event of a dispute between the Secretary and the farms as to the amount due to the farms, the final determination shall be subject to binding arbitration by a person or persons agreed to by the Secretary and the farms."

4. On page 2, line 17, delete the words "in a calendar year,".

5. On page 2, delete all of line 20, and insert in lieu thereof the words "calendar years 1977 and 1978."

6. On page 3, delete lines 5 and 6.

#### GOLDEN NEMATODE PROGRAM AND BATAVIA TURF FARMS, INC.

An infestation of golden nematode was found for the first time in Orleans County, New York, as a result of the 1976 fall survey program. Batavia Turf Farms, Inc., owned and operated by Mr. A. L. Peca, is located in this county. Mr. Peca is a wholesaler of grass sod and has done business in New York, Ohio, and Pennsylvania. Much of the sod produced by Batavia Turf Farms, Inc. is grown on land previously used by potato producers and is therefore considered exposed to the golden nematode infestation. This exposed status is the result of the pattern of production practices used in potato production in this area. The movement of soil is one of the primary means by which the pest is spread.

The Federal golden nematode quarantine regulations are contained in 7 CFR part 301. The purpose of the quarantine restrictions and prohibitions is to prevent the spread of the golden nematode through the movement in interstate commerce of commodities exposed to infestations. The action taken under the Golden Nematode Federal Quarantine No. 85 in March 1977, stipulates that sod from Batavia Turf Farms, Inc. must move interstate accompanied by a Federal certificate. This action has the following impacts: (1) Mr. Peca may no longer act as a wholesaler and move sod to retail outlets where it loses its identity. (2) Before being issued a certificate for movement, a destination and buyer for the sod must be determined. (3) Mr. Peca states this action has caused him damage by restricting the amount of grass he can sell.

Mr. DE LA GARZA. Mr. Conable, we will be happy to hear from you at this time.

#### STATEMENT OF HON. BARBER B. CONABLE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. CONABLE. Thank you very much, Mr. Chairman and members of the subcommittee.

I do not intend to testify at any length this morning. We have had a good deal of testimony on the problems of the Batavia Turf Farms with the Golden Nematode Act. It is my understanding that your subcommittee is marking up at this point.

This bill is a private bill for the benefit of the Turf Farms. We had an inclusion in the agriculture act of last year of a provision that would have taken care of them. It was dropped out in conference because of the opposition of OMB and the Agriculture Department.

They said at the time that, while they acknowledged that there was no remedy for the Turf Farms except legislation, they were afraid of the precedent if a change were made. Therefore, they felt it would be better to handle it through a private bill. The difficulty with that is that most private bills go to the Judiciary Committee.

I asked unanimous consent that this bill be referred to your subcommittee, Mr. Chairman, because you have peculiar knowledge of the problems involving the Golden Nematode Act.

If this gentleman were a producer of potatoes, he could be indemnified for the problems resulting from quarantine. Instead, he produces sod. There is no way in which sod can be transferred without also transferring some soil. Although the golden nematode does not



affect grass, for that reason, his product—namely turf—is subject to the strictures of the quarantine.

This gentleman had a business going in several States—Pennsylvania and Ohio, as well as New York. Better than half of the land from which he produces sod is located in the quarantine area, although he has never been identified as having any nematode in his land.

He has worked out all kinds of problems that he has had with the bureaucracy on this in different ways, but, of course, the word has got around that if you buy sod from Batavia Turf Farms you get involved in all kinds of complications as a result of the safeguards that have to be followed. The result is that his business has fallen off very sharply. Opportunities for expanding his business have had to be dropped.

For instance, at one point, he was going to be selling some of his muck land. This is land right near my own home. It involves woods dirt of some thickness. It is valuable land, generally speaking. He was going to sell some of this as potting soil. It would be valuable as such. But, because of the nematode problem, he cannot do that.

He has a very severe loss in his business because he is not dealing in something that is covered by the Nematode Act. It is not covered by the Nematode Act because grass cannot get nematode. He is not covered by the provisions of the act, and, therefore, while no one will deny that he has a very serious business loss, he is not covered by the indemnity provisions of the law as it presently exists.

Mr. Chairman, you have received a great deal of correspondence from the owner of the property, a man by the name of Anthony Peca, of Batavia, N.Y. That is my hometown, incidentally. I used to be, years ago, an attorney for Mr. Peca. I know him very well. He is a close personal friend.

He is having very severe business problems, very severe losses. His business volume is roughly half what it was before. He sees no relief at the present time unless he can get some protection under a special bill of this sort.

I believe you will find a full file on the matter. I had no intention of testifying at any great length before the subcommittee, but it occurred to me that if you are considering the markup of this measure, you might have questions, and I wanted to make myself available for that.

Mr. DE LA GARZA. Thank you very much, Mr. Conable. Mr. Thone?

Mr. THONE. Thank you, Mr. Chairman.

Very briefly, I have three quick questions.

I understand, Mr. Conable, that this bill is not opposed by USDA. Is this correct?

Mr. CONABLE. It is my impression that they are not opposed to the idea of having a private bill. They do not want an indefinite indemnity for him.

Mr. THONE. That is my next question, Mr. Conable.

What is your position? As I understand it, there is some controversy as to whether or not the indemnity provisions should follow for the years 1979 through 1982, as enunciated in the bill.



Mr. CONABLE. He is trying to phase out the land that is in the quarantine area. It is an absolutely impossible situation for him. It is difficult for him to sell it under the circumstances because of the complications involved as a result of its being in the quarantine area.

For that reason, it would seem to me that he is going to have losses beyond this year. It will take him 2 to 5 years to phase out his operation in the quarantine area. In the meantime, of course, he loses the business that is inherent in that acreage of turf production.

Therefore, it seems to me that as long as he is likely to suffer a loss, he should be covered. However, I think some limitation is appropriate so that it is not an indefinite thing. He is clearly under notice that he has to prove any losses that he actually incurs. In other words, it is not an automatic indemnity by virtue of the passage of this bill. He has to show the losses actually have occurred.

Clearly, part of the obligation on him would be to minimize those losses by phasing out his operation as he can do it, or phasing it into another area. Frankly, there is a limited amount of this type of soil around my neck of the woods. It is going to be difficult for him to acquire other land that would give him comparable supply. Permit me to submit a memorandum for the record on the nature of the losses occurring.

[The information submitted follows:]

Sales of sod by Batavia Turf Farms have fallen to 50 percent of the average for the last 10 years since the imposition of the golden nematode quarantine in February 1977. The value of the muck land in the quarantine area has also dropped sharply because of the limited use permitted. Increased costs are resulting also from special operating conditions which government agencies have imposed upon the turf farm to accommodate the quarantine. Additional costs are also being incurred in transferring sod growing from the quarantined area to locations outside the quarantine area so that normal operations might be resumed.

Mr. THONE. I understand that any award here is discretionary on the part of the Secretary of Agriculture.

Mr. CONABLE. I believe that is so. It is discretionary, and also he has to prove his loss. There is nothing automatic involved.

Mr. THONE. It is your point that if we just cut it off here, that would cost the Government more than if we allowed him to phase out?

Mr. CONABLE. I think he is likely to have losses beyond 1978—beyond the past 2 years.

Mr. THONE. Why do we not tell him to phase out of this thing and prove his loss?

Mr. CONABLE. Yes; and put some sort of a time limit at the upper end. He has to be out of the area in 4 or 5 years, or something of that sort. It seems to me that would be entirely appropriate.

Mr. THONE. Lastly, Mr. Conable, I understand there is some concern about a binding arbitration section that you have in there. How strongly do you feel about that?

Mr. CONABLE. He does not like it, but that is one of the provisions that we have agreed to. There should be some kind of binding arbitration.

He, of course, would like to have whatever legal remedy he can have because his losses involve not only direct losses but conse-



quential damage, as well. So, he would like not to be limited beyond the requirements of the law. Binding arbitration reduces his options somewhat, and for that reason he is not very happy about that provision.

Mr. THONE. I did not state myself clearly. The Department objects to the inclusion. If your constituent objects to it also, why do we not just take it out of there?

Mr. CONABLE. Then, how does he prove his losses? In regular court proceedings?

Mr. THONE. Regular court proceedings. Administrative first—I am coached by Mr. Murray here—but ultimately he has recourse to the courts, of course.

Mr. CONABLE. Well, I think that would be appreciated if an arrangement of that sort could be made.

Agriculture, I did not understand, objected to the binding arbitration.

Quite frankly, I do not want him to have a right without a remedy, however. So, I hope that whatever mode the subcommittee deems appropriate for proving his losses is one that will be of easy access to him and not a very expensive mode. This man is not a man of much property. He had a good business going when the nematode shadow was cast across his land.

Mr. THONE. I am curious now. What are we talking about here, in round figures, Mr. Conable?

Mr. CONABLE. We are probably talking about a couple of hundred thousand dollars.

Mr. THONE. Thank you, sir.

Mr. DE LA GARZA. Mr. Brown?

Mr. BROWN. Mr. Chairman, I merely want to comment that this bill illustrates a situation which is not generally perceived outside of a very narrow community. The nematode threat is not one of the bywords of the American public.

Mr. CONABLE. It is a very serious threat though, Mr. Brown.

Mr. BROWN. I happen to have a major nematode research program in my district. I think this illustrates the importance of carrying on that research and the Department's continuing to fund it with adequate resources in order that we may be able to solve problems of this sort without the more expensive recourse of indemnifying those who are damaged by such acts.

Of course, we do, in a number of pieces of legislation that this committee has jurisdiction over, provide indemnification programs for persons connected with agriculture who are damaged by events beyond their control. We have this for poultry, bees, cattle, and a number of other types of agricultural products.

There is nothing in the principle of what this bill represents which is foreign to what the committee has enacted in other situations. I have no questions.

Mr. CONABLE. Thank you. May I comment, Mr. Chairman?

Mr. DE LA GARZA. Certainly.

Mr. CONABLE. I do not think anyone contemplated that the Nematode Act would affect people who grew grass because the nematode does not affect the growing of grass. It is a kind of Catch-22 situation where the law has been designed to provide indemnification only for those crops that are subject to nematode.



I do not think there is any way our particular constituent here can avoid very serious damage as a result of the product he sells coming from a nematode area and always including some vestigial soil as part of the product he sells. It is a very unforeseen, unhappy, and complicated result which has brought us to this unhappy pass of having to ask for the special consideration of the subcommittee. Normally, it would just be lumped under the law, under the indemnification procedures that are involved.

However, there is no question about it. Nematode is a very serious blight. It does need a lot of research.

The problem is that this man has never had nematode found in his fields. But his fields are in a general area of quarantine, and the result has been to tie him up in the most deadly bureaucratic knots that are terribly destructive to his business and badly affecting the reputation of his product right now.

Mr. DE LA GARZA. Thank you very much, Mr. Conable. We appreciate your testimony.

Mr. CONABLE. Thank you, Mr. Chairman, for allowing me to appear before the subcommittee.

Mr. DE LA GARZA. The subcommittee will now stand in recess subject to the call of the Chair.

[Whereupon, at 10:55 a.m., the hearing was recessed, subject to the call of the Chair.]





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