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TESTIMONY SUBMITTED TO THE JOINT STANDING COMMITTEE ON THE
JUDICIARY

IN OPPOSITION TO LD 2202

Resolve, to Allow Ireland Farms, Inc. to Sue the State

February 20, 2024

Senator Carney, Representative Mooney, and distinguished members of the Joint Standing Committee on Judiciary, this testimony is submitted on behalf of the Department of Agriculture, Conservation and Forestry in opposition to LD 2202, *Resolve, to Allow Ireland Farms, Inc. to Sue the State*.

2023 was a challenging year for Maine potato farmers. Heavy rain delayed and complicated field operations and created product quality issues for some growers. The Department of Agriculture, Conservation, and Forestry is sympathetic to the plight faced by Ireland Farms, owner Larry Ireland, and all of Maine's potato growers who were impacted by the challenges presented by weather events last year.

The subject of a potential lawsuit from Ireland Farms has not been shared with us. However, we were in regular communication with Ireland Farms throughout the Fall of 2023. During this time, the Department received several requests from Mr. Ireland directly and through his attorney that we invoke an alleged authority to reject his seed crop from the Certified Seed Program. Mr. Ireland requested this rejection because, according to him, his harvested potatoes were experiencing pervasive blackleg rot, likely caused by *Dickeya* and/or *pectobacterium*.

The Department's rules governing the Certified Seed Program (01-001 CMR c. 252, 253, and 255), cover to some extent the symptom of blackleg rot and the pathogens *Dickeya* and *pectobacterium*. Per the rules of the Program, the Department regulates seed potatoes at three junctures in the lifecycle of the seed: upon importation, during field grow-out, and post-harvest. As we interpret our rules, the Department did not have a basis for rejecting Ireland Farms seed under these particular circumstances

at either juncture (field inspection and post-harvest testing), at which rejection is an option. We conveyed our interpretation of the rules to our counsel within the Office of the Attorney General, who had no concerns with that interpretation and felt this was a reasonable reading.

Under Chapter 252, seed crops seeking to be certified are subject to field inspection (visual inspections for disease conditions) and post-harvest testing (laboratory tests for specific potato pathogens). The rule identifies those conditions and pathogens—and at what thresholds—for which seeds can be rejected from the Program.

The Department performed field inspections on Ireland Farms' crop on July 8 and August 1, 2023. At the August 1 inspection, the Department recorded blackleg in 0.4% of the crop. This is below the 2% threshold that triggers rejection from the Program.

The Department also received post-harvest test results from Ireland Farms. They included no results that would have subjected the seeds to rejection from certification. *Dickeya* and *pectobacterium* are not among the pathogens with post-harvest tolerances established in the rules. That exclusion was affirmed most recently in the Department's 2016 rulemaking, during which the Department received extensive input.

Mr. Ireland also requested that the Department invoke a more general authority to reject seed crops under § 2.G.2 of Chapter 252, which states that “[a]ny disease or pest not covered by these rules that might adversely affect the Maine potato industry or Maine agriculture in the judgment of the Commissioner will be cause for potatoes to be rejected or withdrawn from certification.” As the Department interprets this provision, it is available when confronting diseases or pests “not covered by these rules.” Because the rules at various points cover blackleg, *Dickeya*, and *pectobacterium* (*see, e.g.,* 01-001 CMR c. 252 § 2.C.3.a.), the Department concluded this more general authority was not an option based on facts presented by Ireland Farms. Again, we conveyed our interpretation of the rules to our counsel within the Office of the Attorney General, who had no concerns with that interpretation and felt this was a reasonable reading.

Thus, we communicated to Ireland Farms last fall based on the Department's interpretation of its rules in this context, the Department did not have the authority to reject Ireland Farms' seed. On several occasions, most recently on November 27, 2023, we offered to explore other ways of supporting Ireland Farms within the Department's capacity and legal authority. We did not receive a response to these offers. We remain open to identifying ways in which the Department can be supportive of Ireland Farms.

Attachment: Chapter 252: RULES GOVERNING CERTIFICATION OF SEED POTATOES IN THE STATE OF MAINE