



Florida Department of Agriculture & Consumer Services
CHARLES H. BRONSON, Commissioner

Please Respond to:
Division of Plant Industry
P.O. Box 147100/1911 Southwest 34th Street
Gainesville, Florida 32614-7100
Telephone: (352) 372-3505/Facsimile: (352) 955-2300

November 21, 2001

Andrew Meyers, Esq.
County Attorney for Broward County
Governmental Center, Ste. 423
115 S. Andrews Ave.
Ft. Lauderdale, Florida 33301

Donald Lunny, Jr., Esq.
Brinkley, McNerney, Morgan, Solomon
& Tatum
P.O. Box 522
Fort Lauderdale, Florida 33302-0522

William Bosch, Esq., Assistant City Attorney
City of Pompano Beach
P.O. Box 2083
Pompano Beach, Florida 33061

Jack Haire
2121 S.W. 27th Terrace
Ft. Lauderdale, Florida 33312

Mr. David Lord
6451 SW 73rd Street
South Miami, Florida 33143

Laz & Ellen Schneider
2525 N.W. 26th Terrace
Ft. Lauderdale, Florida 33305

Dr. Chester Himel
2005 East View Drive
Sun City Center, FL 33573

Re: *Response to Proposed Regulatory Alternatives to the Proposed Amendments to Rule 5B-58.001, Florida Administrative Code (Published in the October 19, 2001, Florida Administrative Weekly)*

Ladies and Gentlemen:

As you are aware, the Florida Department of Agriculture and Consumer Services (the "Department") prepared a statement of estimated regulatory costs pursuant to Section 120.541, Florida Statutes, with respect to the proposed amendments to Rule 5B-58.001, Florida Administrative Code, which were published in the October 19, 2001, Florida Administrative Weekly (the "Proposed Amendments"). Each of you has submitted proposals which you contend constitute lower cost regulatory alternatives to the Proposed Amendments.

The proposals submitted by Broward County were adopted in their entirety by Mr. Schneider, the City of Plantation ("Plantation") and the City of Pompano Beach ("Pompano Beach"). Mr. Schneider simply incorporated Broward County's proposals by reference and did not offer any separate proposals. The Department must reject all of those proposals for reasons which include those explained more fully below.

1. **Broward County's "First Proposal"** was that the Department not require destruction of uninfected citrus trees and instead allocate resources to the Department's allegedly deficient surveying regimen. Adoption of this proposal would not accomplish the statutory objectives which are the subject of the Proposed Amendments, and would ultimately result in higher costs to the Department and residential and commercial citrus tree owners.

Incomplete Proposal

This proposal is incomplete for reasons which include: (a) although the Department's current surveying efforts are characterized as "inadequate," the proposers did not identify any deficiencies in the Department's surveying efforts, nor did they provide any parameters for an "adequate" level of surveying; (b) the proposers did not identify the level of savings purportedly achieved by redirecting cutting efforts to surveying; (c) the proposers provided no scientific support for the assertion that the proposal would accomplish the legitimate statutory objectives which the Department has been directed by the Legislature to accomplish.

Flawed Assumption

Moreover, the assumption underlying the proposers' proposal is scientifically flawed. The assumption made by the proposers is that surveying can be accomplished in a sufficiently comprehensive and economical fashion to enable the Department to remove visibly infected citrus trees prior to the spread of the disease from such visibly infected trees. Research has demonstrated that citrus trees which are sub-clinically infected with citrus canker (trees which are infected with citrus canker which is not practically detectable) can serve as a source for the spread of the disease. Therefore, removing only visibly infected citrus trees will never stop the spread of the disease. If the disease is permitted to spread under this, it is reasonable to expect that, over time, a much larger number of trees will have to be removed than if the eradication program is allowed to proceed under the Proposed Amendments.

Notably, the Department abandoned its previous efforts to remove citrus trees within 125 feet of an infected citrus tree because that effort was found to be ineffective to stem the spread of the disease. Removal of even fewer trees cannot reasonably be expected to accomplish the statutory objectives. The Department's experience removing only infected trees in Broward County since November 2000 confirms this conclusion.

Chipping

Ironically, the proposers have tacitly acknowledged that citrus trees which are not visibly infected with citrus canker may nevertheless harbor bacteria which could be spread. However, scientific evidence contradicts the proposers' assumption that this activity poses any significant risk to the spread of the disease.

Costs Under Section 120.541

Contrary to assertions by the proposers, the Department's statement of estimated regulatory costs includes consideration of all costs required to be considered under Section 120.541, Florida Statutes. In any event, it should be noted that pursuit of the eradication program pursuant to the Proposed Amendments will actually reduce any lost benefits experienced by tree owners (such as fruit yield and shade value) since the program will ultimately result in the removal of fewer trees than would the removal of only visibly infected trees. Similarly, although the Department disagrees with the assertion that implementation of the Proposed Amendments will result in "loss of business, and tax revenue from local businesses," the Department notes that any such losses would be even greater if the Department is unable to implement the Proposed Amendments.

2. **Broward County's "Second Proposal"** is that the Department "establish sufficiently wide host-free buffer areas." Once again, the proposal is inadequate due to the lack of specificity and the failure by the proposers to provide any scientific basis for the assumption that such buffer areas would accomplish the statutory objectives that the Department has been directed by the Legislature to accomplish. Even assuming the Department were able to implement sufficiently large buffer areas to substantially reduce the likelihood of spread of citrus canker by normal weather events, under this proposal citrus canker bacteria would continue to build up in known citrus canker infected areas outside the host-free buffer areas, thereby substantially enhancing the likelihood of ultimately spreading across the buffer areas through human activities and unusually severe weather events.

3. **Broward County's "Third Proposal"** is that the Department employ a tree removal radius less than 1,900 feet and use savings associated with the cutting of fewer trees to improve the Department's surveying efforts. Once again, the proposal is inadequate due to its lack of specificity and the failure to provide any scientific support for the assertion that the proposal would accomplish the statutory objectives that the Department has been directed by the Legislature to accomplish. In fact, scientific research demonstrates that the proposed 1,900 foot removal radius is necessary to accomplish those statutory objectives.

4. **Broward County's "Fourth Proposal"** is a combination of its Second and Third Proposals. The combination of those proposals does not eliminate the inadequacies of the individual proposals, as identified above. Use of a smaller cutting radius can reasonably be expected to result in further spread and build up of the citrus canker bacteria which will increase the likelihood of ultimate spread across buffer areas by human activity and unusually severe weather, even if not by normal weather activity.

5. **Broward County's "Fifth Proposal"** is that the Department should abandon the use of immediate final orders to cut "uninfected trees." Significantly, the proposers concede that the use of such orders "may be justified with regard to infected trees." The proposers' concession is apparently based upon their recognition that expeditious removal of trees which may serve as a source of spread of the bacteria is necessary. The Department's use of immediate final orders to accomplish the removal of trees within 1,900 feet of a visibly infected citrus tree is supported by evidence demonstrating that sub-clinically infected trees may also serve as a source of spread of the disease. Additional delays associated with the provision of an administrative hearing to all tree owners whose trees may be

removed under the proposed amendments would result in delays which could reasonably be expected to undermine the Department's efforts to accomplish the statutory objectives.

6. **Broward County's "Sixth Proposal"** is that commercial groves undertake various efforts to "deal with citrus canker." Similar to previous proposals, this proposal is inadequate due to its lack of specificity and the lack of scientific support for any assertion that the proposal would accomplish the statutory objectives that the Department has been directed by the Legislature to accomplish. Additionally, the proposal fails to provide any relief to non-commercial citrus tree owners who will be substantially negatively impacted if citrus canker is allowed to spread and infect their trees.

Use of sprays and windbreaks have been scientifically demonstrated to be ineffective to accomplish the statutory objectives. Even where sprays and windbreaks have been used, citrus canker bacteria have continued to spread and result in citrus trees becoming visibly infected with the disease.

Moreover, neither Broward County, nor any other person or entity has provided the Department with any economic cost study identifying the cost of implementing the number of sprays and windbreaks which Broward County or any other person or entity contend would be needed to protect the citrus groves from becoming infected or to mitigate any damage to the fruit on an infected tree. Not only does the scientific literature demonstrate that such measures will not prevent the disease from spreading to and infecting the trees in those groves, but the economic cost studies received by the Department demonstrate that the cost of such sprays and windbreaks would substantially exceed the costs which would be incurred under the Proposed Amendments.

7. **Dr. Chester Himel's Two Proposed Alternatives** involve implementation of spray technologies to more efficiently apply chemicals such as bactericides to citrus trees to create canker free zones. Dr. Himel's proposals are gravely lacking in specificity and he provided no estimate of the costs associated with his proposals. More importantly, however, Dr. Himel's proposals are based upon the flawed assumption that there currently exist chemicals which, if efficiently applied, would prevent the spread of citrus canker. To the contrary, scientific research has not identified any such substance, and Dr. Himel does not identify any such treatment. Moreover, scientific research reflects that Dr. Himel's proposed spraying methods would not effectively cover the underside area of the citrus leaf which would be needed to prevent spread of the citrus canker bacterium if an effective chemical treatment could be identified.

8. **David Lord's "Proposed Amendment"** was that the Department establish a risk assessment process to determine whether trees which are not visibly infected with citrus canker must be removed. Although Mr. Lord's proposal appeared to acknowledge that proximity to a visibly infected citrus tree should be considered in determining whether a non-visibly infected citrus tree should be removed, and that removal of citrus trees up to a 1,900 foot radius of a visibly infected tree may in some cases be appropriate, he did not specify all factors which should be considered in the proposed risk assessment process. Mr. Lord also failed to identify any scientific basis for his apparently arbitrary ten percent initial removal standard. Mr. Lord's proposal suffered from a lack of specificity and did nothing

to address the criticisms of the Department's prior risk assessment process which were lodged by Administrative Law Judge John Van Laningham.

Mr. Lord also proposed that the Department's rules include a provision requiring compensation for any citrus tree removed, at a rate of \$100 per ten feet of height. Mr. Lord also suggested that it be assumed that, when height information is unavailable, \$300 per tree is adequate. Mr. Lord provided no estimation of the cost of his proposal. In any event, the Department does not possess the legislatively delegated authority to adopt Mr. Lord's proposal.

9. **Jack Haire Proposed** that eradication efforts be stopped in residential areas and that the "citrus industry go to treatments and control methods." Mr. Haire did not specify the "treatment and control methods" to which he referred. Mr. Haire also did not identify the level of savings purportedly achieved by his proposal, nor did he provide any scientific support for the implicit assumption that his proposal would accomplish the legitimate statutory objectives which the Department has been directed by the Legislature to accomplish.

10. **Plantation's "First Proposal"** was simply that the Department cut only those citrus trees which are visibly infected with citrus canker and redirect its efforts toward finding and removing visibly infected citrus trees. This proposal is essentially the same as Broward County's "First Proposal" and suffers from the same deficiencies.

11. **Plantation's "Second Proposal"** was merely an adoption of the proposals made by Broward County. Those proposals are addressed above.

12. **Plantation's "Third Proposal"** was that the Department "treat" rather than cut citrus trees located within 1,900 feet of a visibly infected citrus tree. Plantation then proposed that trees which express no visible symptoms of citrus canker within 90 days after treatment would not be removed. This proposal is lacking in specificity (e.g., Plantation has even failed to identify any allegedly effective treatment), and Plantation provides no scientific support for the implicit assertion that the proposal would accomplish the legitimate statutory objectives which the Department has been directed by the Legislature to accomplish.

13. **Pompano Beach's "First Proposal"** repeats Broward County's second proposal, which has been addressed above.

14. **Pompano Beach's "Second Proposal"** is essentially the same as Jack Haire's proposal, which has been addressed above.

15. **Pompano Beach's "Third Proposal"** repeats Plantation's First Proposal, which in turn is essentially the same as Broward County's First Proposal, which have both been addressed above.

Andrew Meyers, Donald Lunny, Jr., William Bosch,
Jack Haire, David Lord, Laz & Ellen Schneider, Dr. Chester Himel
November 27, 2001
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Pursuant to Section 120.541(1)(b), Florida Statutes, the foregoing constitutes a statement of reasons for rejecting your proposed alternatives in favor of the Proposed Amendments.

Very truly yours,

Richard Gaskalla
Director