

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** Dale Miller  
The Bethel Inn & Country Club  
PO Box 49  
Bethel, Maine 04217

**Date of Incident(s):** 2005-2009

**Background Narrative:** This golf course's last master applicator terminated employment in 2004 or 2005. No other employees were licensed at any level when applications were made at the course from that time through 2009. In 2004 the course was fined for unlicensed pesticide applications in 2001, 2002 and 2003.

### **Summary of Violation(s):**

- 22 M.R.S.A. § 1471-D(1)(A). Commercial pesticide applications may only be conducted by certified commercial applicators, CMR 01-026 Chapter 28, Section 3.
- CMR 01-026 Chapter 50, Section 1, requires commercial applicators to maintain pesticide application records for a period of two years from the date of application.
- CMR 01-026 Chapter 50, Section 2(A) requires commercial applicators to submit annual pesticide application summary reports for each calendar year by January 31 of the following year.

### **Rationale for Settlement:**

**Attachments:** The settlement was based on the violation history of this golf course and the extended period of noncompliance. In addition, the personnel at this facility were unresponsive to repeated requests for their annual pesticide application reports for 2005, 2006, 2007, 2008 and 2009.

**STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL**

Dale Miller	)	ADMINISTRATIVE CONSENT AGREEMENT
The Bethel Inn & Country Club	)	AND
P.O. Box 49	)	FINDINGS OF FACT
Bethel, ME 04217	)	

This Agreement, by and between The Bethel Inn & Country Club (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board"), is entered into pursuant to 22 M.R.S.A. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Company operates a public golf course in Bethel, Maine.
2. That the golf course is considered open to use by the public in accordance with 22 M.R.S.A. § 1471-C(5-A).
3. That the use of any pesticide in an area open to use by the public constitutes a commercial pesticide application in accordance with 22 M.R.S.A. § 1471-C(5).
4. That commercial pesticide applications can only be made or supervised by licensed commercial applicators pursuant to CMR 01-026 Chapter 31, Section 1(A).
5. That each company that employs commercial applicators must employ at least one master applicator as required by CMR 01-026 Chapter 31, Section 1(D).
6. That all commercial applicator licenses are affiliated with a company/agency and, in accordance with CMR 01-026 Chapter 31, Section 1(B), terminate when the employee leaves the employment of that company or agency.
7. That on October 19, 2009, a Board inspector conducted a pesticide use inspection with Dale Miller at the Company's golf course. Miller is the Company golf course superintendent.
8. That from the inspection referenced in paragraph seven it was determined that Miller applied The Andersons Turf Products 0.72G Prophesy on DG Pro fungicide (EPA Reg. no. 9198-219) to Company golf course greens on October 9, 2009.
9. That the last master applicator employed by the Company was Evans Connors, whose license expired at the end of 2003. Evans terminated employment in 2004 or 2005. No other licensed applicators have been employed with the Company since 2003.
10. That the Company made commercial pesticide applications at The Bethel Inn & Country Club golf course from 2004 through 2009 without licensed commercial applicators or a licensed master applicator being employed by the Company.
11. That the circumstances described in paragraphs one through ten constitute multiple violations of CMR 01-026 Chapter 31, Section 1(D) and of 22 M.R.S.A. § 1471-D (1)(A), from 2004 through 2009.
12. That CMR 01-026 Chapter 50, Section 1, requires commercial applicators to maintain pesticide application records for a period of two years from the date of application, that these records be maintained at the primary place of business and that the records be made available for inspection by representatives of the Board at reasonable times, upon request.

13. That during the inspection referenced in paragraph seven the company could not provide the pesticide application records with respect to the ongoing commercial pesticide applications to the golf course as required by chapter 50, section 1 of the Board's rules.
14. That the circumstances described in paragraphs seven, twelve and thirteen constitute a multiple violations of CMR 01-026 Chapter 50, Section 1.
15. That CMR 01-026 Chapter 50, Section 2(A) requires commercial applicators to submit annual pesticide application summary reports for each calendar year by January 31 of the following year.
16. That a Board staff member requested these reports on multiple occasions and has not received any since at least 2004.
17. The circumstances described in paragraphs fifteen and sixteen constitute multiple violations of CMR 01-026 Chapter 50, Section 2(A) from 2004 through 2009.
18. That in 2004, the Company was fined \$400 by the Board for making unlicensed pesticide applications at the course in 2001, 2002 and 2003.
19. That the Board has regulatory authority over the activities described herein.
20. That the Company expressly waives:
  - a. Notice of or opportunity for hearing;
  - b. Any and all further procedural steps before the Board; and
  - c. The making of any further findings of fact before the Board.
21. That this Agreement shall not become effective unless and until the Board accepts it.
22. That, in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violations referred to in paragraphs eleven, fourteen and seventeen, the Company agrees to pay to the State of Maine the sum of \$3,000. (Please make checks payable to Treasurer, State of Maine).

IN WITNESS WHEREOF, the parties have executed this Agreement of two pages.

**THE BETHEL INN & COUNTRY CLUB**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

**BOARD OF PESTICIDES CONTROL**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Henry Jennings, Director

**APPROVED**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Randlett, Assistant Attorney General