

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

**Subject:** C & D Corporation  
601 Route 163  
Deblois, Maine 04622

**Date of Incident(s):** April 28, 2009

**Background Narrative:** An employee of C&D Corporation, licensed as a commercial applicator, was applying Velpar L herbicide to a company blueberry field. The applicator did not stop at the property line and continued to spray an adjacent blueberry field C&D did not own.

**Summary of Violation(s):** CMR 01-026 Chapter 20 Section 6 (B)... no person may apply a pesticide to a property of another unless prior consent for the pesticide application has been obtained from the owner, manager or legal occupant of that property....

**Rationale for Settlement:** The staff compared the violation to similar cases settled by the Board in formulating a penalty proposal.

**Attachments:** Proposed Consent Agreement

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

In the Matter of:	)	
C & D Corporation	)	ADMINISTRATIVE CONSENT AGREEMENT
601 Route 163	)	AND
Deblois, Maine 04622	)	FINDINGS OF FACT

This Agreement by and between C & D Corporation (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 adopted by the Board on September 19, 1984.

The parties to this Agreement agree as follows:

1. That the Company is licensed as a spray contracting firm holding license number SCF 15074.
2. That on April 28, 2009, Mark Smith, a Company employee, used a tractor drawn boom sprayer to apply Velpar L herbicide (EPA # 352-392) to a 19 acre blueberry field the Company leases know as the John Matzilevich field.
3. That Smith has commercial operator license number COA 44783, issued by the Board on April 13, 2009.
4. That the John Matzilevich blueberry field is located in Columbia Falls off the Tibbettstown Road.
5. That Mike Bailey, a small blueberry grower owns a 10 acre blueberry field (Lill's piece) that abuts the John Matzilevich field.
6. That on May 16, 2009, Bailey went to Lill's blueberry field to make a pesticide application. After making several passes, Bailey noticed tire tracks in the field that were not his. After he completed his spraying Bailey looked at the tracks closer and realized someone had already sprayed his field with herbicide and that grass in his blueberry field was dieing.
7. That on May 19, 2009, Bailey called the Board of Pesticides Control to report this incident and state that he had not authorized any pesticide applications to his land. He estimated that whoever made the tracks treated about 80% of this field. Some of the lot was wet and could not be treated.
8. That on May 20, 2009, a representative of the Board met with both Bailey and Company spray foreman Scott Read at Lill's field. Read saw that the tracks on the Company's

blueberry field made at the time of their herbicide application were continuous onto Bailey's blueberry field.

9. That Read was in charge of overseeing the herbicide application to the Company's piece in paragraph number three.
10. That Read himself was involved with herbicide applications the day of the incident and was operating his own spray equipment. This equipment was too wide to allow Read to drive through the narrow entry to the above fields to show Smith the Company's field boundaries while at the site.
11. That in lieu of going to the site and showing Smith the Company's field boundaries, Read verbally instructed Smith to "spray to the rock wall separating the fields".
12. That the Board inspector determined that the rock wall separating the common boundary of the two fields does not extend across their entire boundary line.
13. That Read stated that the Company's section of their blueberry field in the area next to Bailey's, was only three and one half acres in size and Smith only had enough tank mixed pesticides to treat five and one tenth acres. Therefore Read concluded Smith could not have treated more that about one and six tenths acres of Bailey's blueberry field.
14. That after the Board inspector documented the above information and discussed the same with Darin Hammond, the general manager for the Company; Hammond went to the fields in paragraphs two and three above and confirmed the inspector's findings.
15. That the Company did not have Bailey's consent to apply pesticides to Lill's blueberry field.
16. That the circumstances described in paragraphs one through fifteen constitute a violation of CMR 01-026 Chapter 20 Section 6 (B).
17. That the Board has regulatory authority over the activities described herein.
18. That the Grower 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.
19. That this Agreement shall not become effective unless and until the Board accepts it.
20. That in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violation referred to in paragraph sixteen, the

Company agrees to pay to the State of Maine the sum of \$1,000. (Please make checks payable to Treasurer, State of Maine).

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

C & D CORPORATION

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

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

BOARD OF PESTICIDES CONTROL

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

Henry Jennings, Director

APPROVED:

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

Mark Randlett, Assistant Attorney General