

Proposed Administrative Consent Agreement Background Summary

Subject: Michael Mills
Michael Mills Landscaping
948 Prospect Avenue
Rumford, Maine 04276

Date of Incident(s): August 18, 2010

Background Narrative: The Board received a call alleging that the owner of Michael Mills Landscaping was sending employees out with no on site supervision to apply pesticides commercially knowing they were not licensed pesticide applicators.

Summary of Violation(s): 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.; 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F) require that applications be made in a manner consistent with the label, and CMR 01-026 Chapter 50, Section 1(A), commercial agricultural producers and commercial applicators shall maintain pesticide application records.

Rationale for Settlement: The company owner, a master applicator, was informed as part of the licensing and certification process of the requirements of having his employees apply pesticides. Those standards were not met in this case. In addition, the applicator was not wearing the required eye protection and long sleeved shirt required by the pesticide label. Finally, the company kept no pesticide application record for this application.

Attachments: Proposed Consent Agreement

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

Michael Mills)
Michael Mills Landscaping) ADMINISTRATIVE CONSENT AGREEMENT
948 Prospect Avenue) AND
Rumford, Maine 04276) FINDINGS OF FACT

This Agreement, by and between Michael Mills Landscaping. (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 provides property maintenance services for hire, including in the Oxford area.
2. That on August 10, 2010, the Board received a call from an individual reporting that unlicensed Company employees were applying pesticides commercially without the required on site supervision of a licensed applicator.
3. That in response to the call in paragraph two, a Board inspector did a use inspection with Company employee David Richards (unlicensed applicator) on August 18, 2010. Richards was applying QuickPro Herbicide (EPA Reg. # 524-535) to parking lot curbs at the Hannaford Supermarket and Pharmacy on Route 26 in Oxford. There was no licensed Company employee on site providing Richards the required supervision.
4. That on September 1, 2010, a Board inspector did a follow-up inspection with Company owner Michael Mills. In Mills' written statement collected at that time, Mills acknowledged that he mixed Roundup herbicide and knowingly directed Richards to spray certain curbs on his own without an applicator's license or the required on site supervision of a certified applicator.
5. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
6. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) as any application of any pesticide under contract or for which compensation is received or any application of a pesticide to a property open to use by the public.
7. That no one on site from the Company had a commercial pesticide applicator's license at the time of the application described in paragraph three.
8. That the circumstances described in paragraphs one through seven constitute a violation of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A) III.
9. That 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F) require that applications be made in a manner consistent with the label.

10. That the label for QuickPro Herbicide requires that a long sleeved shirt and protective eyewear be worn when applying the pesticide.
11. That David Richards was not wearing a long sleeved shirt and protective eyewear, as required by the label, when applying QuickPro Herbicide as described in paragraph 3.
12. That the circumstances described in paragraphs three, nine, ten, and eleven constitute violations of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F).
13. That, as a commercial applicator, pesticide application records must be kept as required by CMR 01-026 Chapter 50, Section 1(A).
14. That the Company did not keep a record of the application made in paragraph three.
15. That the circumstances described in paragraphs three, thirteen, and fourteen constitute a violation of CMR 01-026 Chapter 50, Section 1(A).
16. That the Board has regulatory authority over the activities described herein.
17. 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.
18. That this Agreement shall not become effective unless and until the Board accepts it.
19. 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 eight, twelve, and fifteen, the Company agrees to pay to the State of Maine the sum of \$500. (Please make checks payable to Treasurer, State of Maine.)

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

MICHAEL MILLS LANDSCAPING

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General