

Proposed Administrative Consent Agreement Background Summary

Subject: David Charlesworth
5 Kittanset Road
Bedford, New Hampshire 03110

Date of Incident(s): July 2008 and August 17, 2008

Background Narrative: The Board received a call from the Kittery Code Enforcement Office about a citizen complaint of possible herbicide use along the bank of Spruce Creek, a tidal surface water. A follow-up investigation was done which included interviewing an eyewitness to the applications. A physical sample collected in the affected area was positive for Glyphosate. The alleged applicator's wife, a lot owner whose land abuts Spruce Creek, denied they applied any herbicides. Test results from a sample collected from the dead vegetation in the affected area were positive for Glyphosate.

Summary of Violation(s): CMR 01-026 Chapter 29 Section 6 (A) IV, That applying broadcast applications of pesticides within twenty-five feet from the mean high water mark of marine waters is prohibited.

Rationale for Settlement: The staff met with the Assistant Attorney General and based on the investigation, lab results, lack of candor and environmental impact the sanction amount was set.

Attachments: Proposed Consent Agreement

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

David Charlesworth) ADMINISTRATIVE CONSENT
5 Kittanset Road,) AGREEMENT
Bedford, New Hampshire 03110) AND
FINDINGS OF FACT

This Agreement by and between David Charlesworth (hereinafter called the "Applicator") 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 Applicator owns property identified as lot number 4 on Tudor Drive in Kittery, Maine.
2. That lot number 4 abuts Spruce Creek, a tidal surface water.
3. That in response to a call the Board received about pesticide applications in that area, Board staff conducted follow-up inspections in the months of September and October of 2008.
4. That from those inspections, a Board inspector determined that the dead vegetation's appearance along the shoreline in front of lot number 4 was consistent with a broadcast herbicide application having been made.
5. An eyewitness stated verbally and later in writing that she saw persons that the witness identified as David Charlesworth and his wife, Jane Charlesworth, spraying the vegetation along the shoreline of Spruce Creek in front of their lot with hand held equipment.
6. That the spraying described in paragraph five took place in July of 2008 and again on August 17, 2008.
7. That as part of the follow up inspection process, an inspector called Jane Charlesworth to discuss this issue.
8. That during that call, Jane Charlesworth stated that neither she nor her husband sprayed any pesticides along the shoreline of Spruce Creek in front of their lot.
9. That during that call, when asked, Jane Charlesworth granted permission to collect a sample along the shoreline in front of their lot.

10. That the lab result from that sample was positive for Glyphosate herbicide at 56.9 parts per million (PPM), confirming that an application of that herbicide was made along shoreline of Spruce Creek in front of lot number 4.
11. That applying broadcast applications of pesticides within twenty-five feet from the mean high water mark of marine waters is prohibited in CMR 01-026 Chapter 29 Section 6 (A) IV.
12. That the evidence in this case establishes that a violation CMR 01-026 Chapter 29 Section 6 (A) IV occurred.
13. That the Board has regulatory authority over the activities described herein.
14. That the Applicator 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.
15. That this Agreement shall not become effective unless and until the Board accepts it.
16. That, in consideration for the release by the Board of the causes of action which the Board has against the Applicator resulting from the violation referred to in paragraph twelve, the Applicator 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.

David Charlesworth

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General