

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

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

**Date of Incident(s):** April 24, 2010

**Background Narrative:** An employee of C&D Corporation, unlicensed as a commercial applicator but trained as a pesticide handler for the purposes of the EPA Worker Protection Standard, was applying a tank mix of Velpar L Herbicide and Sinbar Agricultural 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...., CMR 01-026 Chapter 50 Section 2 (C) I ... Commercial agricultural producers, commercial applicators, spray contracting firms and licensed pesticide dealers shall be responsible for telephoning a spray incident report to the Board..., 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

**Rationale for Settlement:** This consent agreement involved multiple violations and this company has a previous violation of making an unauthorized herbicide application within a four year period.

**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 193 ) 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 amended by the Board on June 3,1998.

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 24, 2010, George Holland, a Company employee, used a tractor drawn boom sprayer to apply Velpar L Herbicide (EPA # 352-392) and Sinbar Agricultural Herbicide (EPA # 61842-13) to a 77 acre blueberry field (Mike Farren field) the Company was spraying for Mike Farren on the Highland Road in Centerville.
3. That Holland is not a licensed applicator but is trained by the Company as a pesticide handler, a requirement of the Federal Worker Protection Standard.
4. That Garnet Alderman, a Company employee who is a Board licensed commercial applicator (COA 19877) was the foreman present on site at the time of the application in paragraph two.
5. That Mike Bailey, is the owner/operator of Fathers Farm, a blueberry growing operation that has, as part of its holdings, a 27.5 acre blueberry field (Highlands Farm) that abuts the Mike Farren treated blueberry field described in paragraph two.
6. That on April 24, 2010, Bailey applied 8 pints of Velpar L Herbicide (EPA Reg. # 352-392) and three ounces of Callisto Herbicide (EPA Reg. # 100-1131) per acre to his Highlands Farm blueberry field.
7. That on April 26, Bailey's wife received a call from Mike Farren who told her the C & D Corporation sprayed some of Bailey's land thinking it was part of the Mike Farren field.
8. That on April 26, 2010, Mike Bailey called the Board to report that C & D Corporation sprayed about seven acres of his Highlands Farm blueberry field with Velpar L Herbicide and Sinbar Herbicide and that Bailey called C & D Corporation employee Darin Hammond and Hammond confirmed this fact.
9. That a Board staff inspector conducted a follow-up inspection with Bailey on May 7, 2010, in response to his call to the Board. This inspection confirmed Bailey's application information in paragraph six. The inspector collected four soil samples on Bailey's

Highlands Farm blueberry field and two soil samples on Farren's abutting blueberry field. Hammond was present on the day the samples were taken. Prior to sampling, Company personnel flagged the area on Bailey's field that they mistakenly sprayed.

10. That on May 10, 2010, a Board inspector conducted a follow-up inspection covering the pesticide application described in paragraph two with Hammond and Alderman. This inspection confirmed that on April 24, 2010, George Holland applied Velpar L herbicide (EPA # 352-392) at the rate of 6.37 pints per acre and Sinbar Agricultural Herbicide (61842-13) at 32 ounces per acre to Mike Farren's blueberry field on the Highland Road in Centerville.
11. That Hammond stated at the time of the follow-up inspection in paragraph ten, that the incident happened because Farren removed stakes that company personnel placed along the property line to mark that boarder of their spray block (Mike Farren's field).
12. That during the follow-up inspection in paragraph ten, a written statement was collected from Alderman and he wrote that while he was mixing one tractor, another tractor that was in the process of spraying crossed lines where a white stake had been removed.
13. That the Company should have realized when at the Mike Farren field that the stakes between property lines had been removed.
14. That George Holland, the Company applicator, had to cross a road to spray Bailey's Highlands Farm blueberry field.
15. That the Company did not have Bailey's consent to apply pesticides to the Highlands Farm 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 Board regulations require that any significant misapplication of a pesticide be reported to the Board.
18. That the Company did not report the misapplication of the pesticide to the Board.
19. That the circumstances described in paragraphs one through eighteen constitute a violation of CMR 01-026 Chapter 50 Section 2 (C) I.
20. That the maximum labeled rate for Velpar L herbicide (EPA # 352-392) on low bush blueberries, is 8 pints per acre when hexazinone has been applied within the past eight years. Hexazinone applications have been made to the Highlands Farm blueberry field within the past eight years.
21. That the Company's pesticide application documented in paragraphs two and ten (6.37 pints of velpar/acre), when combined with Bailey's application in paragraph six (8 pints of velpar/acre), caused a situation where the Velpar L herbicide (EPA # 352-392) applications exceeded the maximum labeled rate of eight pints per acre on Bailey's land.

22. That the circumstances described in paragraphs two, six, and ten resulted in a situation that constituted the use of a pesticide inconsistent with the product labeling in violation 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).
23. That the Company entered into an Administrative Consent Agreement with the Board on July 6, 2008, for violations of CMR 01-026 Chapter 20 Section 6 (B). Consequently, the violations described in paragraphs sixteen, nineteen, and twenty two are a subsequent violations pursuant to 7 M.R.S.A. § 616-A (2)(B).
24. That the Board has regulatory authority over the activities described herein.
25. 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.
26. That this Agreement shall not become effective unless and until the Board accepts it.
27. 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 sixteen, nineteen and twenty two, the Company agrees to pay to the State of Maine the sum of \$1,500 (Please make checks payable to Treasurer, State of Maine). In addition the Company will submit a written plan or policy to the Board specifying how they will avoid future pesticide applications to properties without the owner's consent. The written plan or policy must be submitted at the same time the Company signs and submits this Consent Agreement to the Board.

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