

Proposed Administrative Consent Agreement Background Summary

Subject: GM Allen & Son, Inc.
PO Box 454
Blue Hill, ME 04614

Date of Incident(s): June 16, 2006

Background Narrative: On June 16, 2006, Ray Merrill, an employee of GM Allen & Son Inc., applied Velpar DF herbicide and Sinbar herbicide to blueberry land at the Corey Grindle Farm. Merrill was not wearing chemical-resistant gloves, as required by the Sinbar label, and his pesticide application record was incomplete for this job. In addition, the company did not post the Restricted Entry Intervals for either pesticide at their Central Information Display, which is required under the Worker Protection Standard.

Summary of Violation(s):

1. CMR 01-026 Chapter 50, Section 1(A), Commercial agricultural producers and commercial applicators shall maintain records...
2. 40 CFR Part 170.122, When workers are on an agricultural establishment and, within the last 30 days a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been effect, the agricultural employer shall display...
3. 40 CFR Part170.240(a), Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment...
4. 7 U.S.C. § 136j (a)(2)(G), to use any registered pesticide in a manner inconsistent with its labeling.
5. 7 M.R.S.A. § 606 (2)(B), For any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or to regulations of the board....
6. 22 M.R.S.A § 1471 D (8)(F), Has made a pesticide recommendation, use or application, or has supervised such use or application inconsistent with the labeling....

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**

GM Allen & Son, Inc.)	ADMINISTRATIVE CONSENT
PO Box 454)	AGREEMENT
Blue Hill, ME 04614)	AND
		FINDINGS OF FACT

This Agreement by and between GM Allen & Son, Inc., (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 a licensed spray contracting firm with license number SCF15103 issued by the Board pursuant to 22 M.R.S.A. § 1471-D(1)(B).
2. That on July 12, 2006, Inspector Arthur Shaw of the Board conducted a routine pesticide use inspection with Company employee Ray Merrill, the holder of commercial applicator license COA 18734 issued pursuant to 22 M.R.S.A. § 1471-D(1)(A).
3. That the inspection covered the application by Merrill of Velpar DF herbicide, EPA Reg. No. 352-581 and Sinbar herbicide, EPA Reg. No. 352-317 to blueberry land at the Corey Grindle Farm on June 16, 2006.
4. That the Company grows commercial agricultural crops and utilizes pesticides bearing label language requiring conformance with the federal Worker Protection Standard (WPS), 40 CFR, Part 170
5. That the Company employs one or more workers and handlers as defined under the 40 CFR, Part 170.3 .
6. That, as a commercial agricultural producer, pesticide application records must be kept as required by CMR 01-026 Chapter 50, Section 1(A).
7. That an inspection of Merrill's pesticide application records conducted on July 12, 2006 showed that the records were not complete.
8. That the Sinbar labeling requires applicators to wear chemical resistant gloves.
9. That Merrill did not wear chemical resistant gloves when making the application of Sinbar described in paragraph three above.

10. That 40 CFR Part 170.240(a) requires that employees handling pesticides must wear personal protective equipment (PPE) in accordance with the pesticides' labeling requirements.
11. That 40 CFR Part 170.122 requires that employers post specific information, including Restricted Entry Intervals (REI'S) for pesticide applications at a Central Information Display (CID).
12. That 7 U.S.C. § j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F) require that pesticide applications be made in a manner consistent with product labels.
13. That the Velpar DF and Sinbar labels list Restricted Entry Intervals (REI's) of 24 hours and 12 hours respectively.
14. That the Company did not post the REI's for Velpar DF and Sinbar at a central information display (CID) accessible to employees prior to the application of these pesticides as described in paragraph 3 above, and did not keep such information displayed until 30 days after the REI'S had expired as required by 40 CFR Part 170.122
15. That the circumstances described in paragraphs two through seven constitute a violation of CMR 01-026 Chapter 50, Section 1(A).
16. That the circumstances described in paragraphs two, three, four, five, eleven, thirteen and fourteen constitute a violation of, 40 CFR Part 170.122.
17. That the circumstances described in paragraphs two, three, four, five, eight, nine and ten constitute a violation of 40 CFR Part 170.240(a), 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).
18. That the Board has regulatory authority over the activities described herein.
19. 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.
20. That this Agreement shall not become effective unless and until the Board accepts it.
21. 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 fifteen, sixteen and seventeen the Company agrees to pay to the State of Maine the sum of \$200. (Please make checks payable to Treasurer, State of Maine).

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

GM ALLEN AND SON, INC.

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Robert I. Batteese, Jr., Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General