

Proposed Administrative Consent Agreement Background Summary

Subject: Cherryfield Foods, Inc.
PO Box 128
Cherryfield, Maine 04622

Date of Incident(s): July 18, 2006

Background Narrative: On July 18, 2006, a company employee of Cherryfield Foods, Inc., applied Imidan 2.5 EC with a mist blower to a blueberry field on the Ridge Road in Cherryfield. A resident on the opposite side of the road called the BPC the day of the application to allege that pesticide drifted onto his property. A sample collected the day of the incident on the caller's side of the road, in close proximity to his house and garden, were positive for Phosmet, the active ingredient in Imidan.

Summary of Violation(s): 01-026 CMR Chapter 22, Section 3 (B) (I), General Standard. Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions...

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:)	ADMINISTRATIVE CONSENT
Cherryfield Foods, Inc.)	AGREEMENT
P.O. Box 128)	AND
Cherryfield, Maine 04622)	FINDINGS OF FACT

This Agreement by and between Cherryfield Foods, 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 in the business of producing agricultural crops in Washington County, Maine.
2. That on July 18, 2006 Company employee Mark Hennessey applied the pesticide Imidan 2.5-EC, EPA Registration number 10163-215 with a mist blower to the Harold Sprague blueberry lot on the Ridge Road in the Washington County town of Cherryfield.
3. That on July 18, 2006 the Board received a complaint from Michael Brown, who lives on the opposite side of the road from the Harold Sprague blueberry lot, alleging that pesticide from Hennessey's pesticide application described in paragraph two drifted onto his property.
4. That Board inspector Arthur Shaw conducted an investigation on July 18, 2006 that included the collection of foliage samples from both the Brown's and the Company's property as well as interviews and documentation of the spray incident with Brown and Company manager Bill Malay.
5. That Shaw collected a foliage sample on Brown's side of Ridge Road in close proximity to Brown's house and garden.
6. That the sample described in paragraph five was analyzed at the Food Chemical Safety Laboratory at the University of Maine at Orono, and was found positive for phosmet, the active ingredient in Imidan, at 4.18 parts per million.
7. That the circumstances described in paragraphs one through six demonstrate that the applicator failed to take reasonable precautions to minimize pesticide drift to the maximum extent practicable.
8. That failure to undertake pesticide applications in a manner which minimizes pesticide drift to the maximum extent practicable constitutes a violation of 01-026 CMR Chapter 22,

Section 3 (B) (I).

9. That the Board has regulatory authority over the activities described herein.
10. 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.
11. That this Agreement shall not become effective unless and until the Board accepts it.
12. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violation referred to in paragraph seven, the Company agrees to pay a penalty to the State of Maine in the sum of \$500.00. (Please make checks payable to Treasurer, State of Maine).

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

CHERRYFIELD FOODS, INC.

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Acting Director

APPROVED:

By: _____ Date: _____
Mark Randlett, Assistant Attorney General