

Proposed Administrative Consent Agreement Background Summary

Subject: James Reinertson
Purely Organic
PO BOX 211
York Harbor, Maine 03911

Date of Incident(s): May 14, 2007

Background Narrative: That on May 14, 2007, Kevin Hartford, an employee of Purely Organic, applied a registered herbicide and vinegar to James Olin's lawn in Wells, Maine. The company made pesticidal claims for the unregistered vinegar. Hartford was an unlicensed applicator. The treated site was not posted.

Summary of Violation(s): 22 M.R.S.A. § 1471- D (1) (A). That commercial pesticide applications may only be conducted by certified commercial applicators, CMR 01-026 Chapter 20, Section 1, A, the use of any pesticide not registered in Maine is prohibited, 7 M.R.S.A. Section 606(1)(A), it is unlawful to distribute a pesticide in Maine that has not been registered, CMR 01-026 Chapter 28, Section 3, Posting requirements for certain commercial licensing categories...

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

James Reinertson)	ADMINISTRATIVE CONSENT AGREEMENT
Purely Organic)	AND
PO BOX 211)	FINDINGS OF FACT
York Harbor, Maine 03911)	

This Agreement by and between Purely Organic (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 provides lawn care services for compensation.
2. That on May 14, 2007, the Company applied Cockadoodle DOO and vinegar, for pest control purposes, to James Olin's lawn in Wells, Maine, for compensation.
3. That application of any pesticide under contract or for which compensation is received is considered a custom application in accordance with 22 M.R.S.A. § 1471-C (5)(A).
4. That the application described in paragraph two was a custom application pursuant to 22 M.R.S.A. § 1471-C (5-A).
5. That commercial pesticide applications may only be conducted by certified commercial applicators pursuant to 22 M.R.S.A. § 1471- D (1) (A).
6. That no one employed by the Company was certified as a commercial pesticide applicator at the time of the application described in paragraph two.
7. That the actions described in paragraphs one through six constitute a violation of 22 M.R.S.A. § 1471-D (1)(A).
8. That regular food-grade vinegar was applied to the site in paragraph two and pesticidal claims were made to the customer for this product.
9. That the Company's commercial use of vinegar for the purpose of preventing, destroying, repelling or mitigating pests constitutes the distribution and use of a pesticide, as defined in CMR 01-026 Chapter 10, Section 2, LL of the Board's rules.
10. That vinegar is not registered as a pesticide in the State of Maine.
11. That, pursuant to CMR 01-026 Chapter 20, Section 1, A, the use of any pesticide not registered in Maine is prohibited.
12. That, pursuant to 7 MRSA section 606(1)(A), it is unlawful to distribute a pesticide in Maine that has not been registered.

13. That the circumstances in paragraphs two, eight, nine, ten and eleven constitute a violation of CMR 01-026 Chapter 20, Section 1, A.
14. That the circumstances in paragraphs two and eight, nine, ten and twelve constitute a violation of 7 MRSA section 606(1)(A).
15. That the Company did not post the treated area in paragraph two with a sign with the correct information and format.
16. That the circumstances in paragraphs two, and fifteen constitute a violation of CMR 01-026 Chapter 28, Section 3.
17. That the Board has regulatory authority over the activities described herein.
18. 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.
19. That this Agreement shall not become effective unless and until the Board accepts it.
20. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violations referred to in paragraphs seven, thirteen, fourteen and sixteen, the Company agrees to pay to the State of Maine \$500.00. (Please make checks payable to Treasurer, State of Maine.)

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

PURELY ORGANIC

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED:

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