

Proposed Administrative Consent Agreement Background Summary

Subject: Town of Randolph
Box 121, Kinderhook Street
Randolph, Maine 04346

Date of Incident(s): September 1, 2009

Background Narrative: A caller reported to the Board that he thought a Town of Randolph employee was making unlicensed pesticide applications to town property. Through a follow-up inspection, it was determined that a town employee did make Roundup Herbicide applications to a town cemetery and around fire hydrants. Neither that employee nor any other town employee was licensed as a commercial applicator at the time of the applications.

Summary of Violation(s): 22 M.R.S.A. § 1471-D(1)(A). Commercial pesticide applications may only be conducted by certified commercial applicators.

Rationale for Settlement: The director of the town's public works department acknowledged to the Board inspector that a town employee did apply Roundup Herbicide to the above areas. The director said he was not aware of the commercial licensing requirement. The town employee held a current, private applicator's license at the time the applications were made.

Attachments: Proposed Consent Agreement

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

John Crocker)
Town of Randolph) ADMINISTRATIVE CONSENT AGREEMENT
Box 121, Kinderhook Street) AND
Randolph, Maine 04346) FINDINGS OF FACT

This Agreement, by and between the Town of Randolph (hereinafter called the “Town”) 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 in response to a call the Board received on September 17, 2009, about a Town employee applying an herbicide to Town property, a Board inspector conducted a pesticide follow-up use inspection with the Town on September 24, 2009.
2. That, during the follow- up inspection, Town public works director, John Crocker, acknowledged that Town employee Kenneth Curtis applied Roundup Herbicide (EPA Reg. no. 71995-33) on September 1, 2009, to areas of the Maple Grove Cemetery and fire hydrants, both of which are on Town property, to control grass and weeds.
3. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S.A. § 1471-C(5-A), must be a certified commercial applicator in accordance with 22 M.R.S.A. § 1471-D(1)(A).
4. That a custom application is defined in 22 M.R.S.A. § 1471-C(5-A) as any application of any pesticide under contract or for which compensation is received or any application of a pesticide to a property open to use by the public.
5. That “commercial applicator” also includes individuals who apply pesticides in connection with their duties as employees of local governments, according to 22 M.R.S.A. § 1471-C(5).
6. That the applications described in paragraph two, constitute custom applications, as defined in 22 M.R.S.A. § 1471-C.
7. That, although Curtis held a private pesticide applicator license at the time of the applications in paragraph two, no one employed by the Town had a commercial pesticide applicator’s license at the time of the custom application described in paragraph two.
8. That the circumstances described in paragraphs one through seven constitute a violation of 22 M.R.S.A. § 1471-D(1)(A).

9. That the Board has regulatory authority over the activities described herein.
10. That the Town 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 causes of action which the Board has against the Town resulting from the violation referred to in paragraph eight, the Town agrees to pay to the State of Maine the sum of \$400. (Please make checks payable to Treasurer, State of Maine.)

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

TOWN OF RANDOLPH

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General