

Proposed Administrative Consent Agreement Background Summary

Subject: Todd Nichols
Old Marsh Country Club
445 Clubhouse Road
Wells, ME 04090

Date of Incident(s): October 2, 2008

Background Narrative: A routine pesticide inspection at this golf course was done for a fungicide application made to the greens. From this inspection it was determined that there were three areas of noncompliance. These were incomplete commercial applicator records, lack of personal protective equipment and not posting treated turf.

Summary of Violation(s):

- CMR 01-026 Chapter 50, Section 1, requires commercial applicators to maintain specific pesticide application records for a period of two years from the date of application.
- 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). It is unlawful to use a pesticide inconsistent with the product labeling, in this case lack of the label required personal protective equipment.
- CMR 01-026 Chapter 28, Section 3. The area shall be posted in a manner and at locations designed to reasonably assure that persons entering such area will see the notice.

Rationale for Settlement: Taken individually, these violations would likely have resulted in a warning letter. In aggregate, a fine was warranted. The middle one involved safety of the applicator and the last one, safety of the golfing public.

Attachments: Proposed Consent Agreement

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

Todd Nichols)	
Old Marsh Country Club)	ADMINISTRATIVE CONSENT AGREEMENT
445 Clubhouse Road)	AND
Wells, ME 04090)	FINDINGS OF FACT

This Agreement, by and between Old Marsh Country Club (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 operates a public golf course in Wells, Maine.
2. That the golf course is considered open to use by the public in accordance with 22 M.R.S.A. § 1471-C(5-A).
3. That the use of any pesticide in an area open to use by the public constitutes a commercial pesticide application, in accordance with 22 M.R.S.A. § 1471-C(5).
4. That on October 2, 2008, a Board inspector conducted a pesticide use inspection with Dave Kearns at the Company's golf course. Kearns is the Company's assistant golf course superintendant.
5. That from the inspection referenced in paragraph four, it was determined that Kearns applied ZeroTol Broad Spectrum Algaecide/Fungicide (EPA Reg. no. 70299-1) to Company golf course greens on October 2, 2008.
6. That CMR 01-026 Chapter 50, Section 1, requires commercial applicators to maintain pesticide application records for a period of two years from the date of application, that these records be maintained at the primary place of business, and that the records be made available for inspection by representatives of the Board at reasonable times, upon request.
7. That from the inspection referenced in paragraph four, it was determined that the company's pesticide application records relating to the October 2, 2008, application were missing time of application and weather condition information as required by chapter 50, section 1.
8. That the circumstances described in paragraphs one through seven constitute a violation of CMR 01-026 Chapter 50, Section 1.
9. That during the inspection referenced in paragraph four, Kearns acknowledged he was not wearing long-pants, chemical-resistant boots, coveralls and protective eyewear during the application, as required by the pesticide label.
10. That the circumstances described in paragraphs one through five and nine, constitute 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).
11. That CMR 01-026 Chapter 28, Section 3 requires that a notice be posted before application activities commence and that the notice remain in place at least two days following the completion of the application.
12. That from the inspection referenced in paragraph four, it was determined that notice of the pesticide application made to the turf at the course on October 2, 2008, was not posted, as required by CMR 01-026 Chapter 28, Section 3.

13. That the circumstances in paragraphs one through five, eleven and twelve are a violation of CMR 01-026 Chapter 28, Section 3.
14. That the Board has regulatory authority over the activities described herein.
15. 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.
16. That this Agreement shall not become effective unless and until the Board accepts it.
17. 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 eight, ten and thirteen, the Company agrees to pay to the State of Maine the sum of \$300. (Please make checks payable to Treasurer, State of Maine.)

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

OLD MARSH COUNTRY CLUB

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General