

Proposed Administrative Consent Agreement

Background Summary

Subject: Justin Choiniere
Northeast Agricultural Sales, Inc.
PO Box 190
Detroit, Maine 04929

Date of Incident(s): May 17, 2010

Background Narrative: The Board received a complaint call from a Skowhegan resident who alleged pesticide drift on to her property when an abutting corn field was sprayed. The caller was home at the time of the application and described “a cloud of white dust” that engulfed her land. An inspector contacted the caller to interview her and took two samples on her property and also sampled the target area. The lab result from the wipe sample from the caller’s garage was negative and the grass sample from her property was positive for Atrazine at 0.027 ppm (2.26% of target area). The lab result for the soil sample collected from the target area was positive for Atrazine at 1.19 ppm. The inspector determined that although the applicator had a record of sensitive areas near the spray block, the applicator did not record the sensitive areas until after the application was made.

Summary of Violation(s): CMR 01-026 Chapter 22 section 2(C) - **Prior to spraying** a pesticide, the applicator must become familiar with the area to be sprayed and **must identify and record** the existence, type and location of any Sensitive Area located within 500 feet of the target area.

CMR 01-026 Chapter 22 section 4 (B) I and II -

Standards for Unconsented, Off-Target Drift of Pesticides

- 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, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.
- II. Prima Facie Evidence. Pesticide residues in or on any off-target Sensitive Area Likely to Be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable. The Board shall review the site-specific application checklist completed by the applicator and other relevant information to determine if a violation has occurred. For purposes of this standard, the residue in the target area, and the residue in the Sensitive Area Likely to Be Occupied, may be adequately determined by evaluation of one or more soil, foliage or other samples, or by extrapolation or other appropriate techniques.

Rationale for Settlement: The staff took into consideration the levels of residue detected, the precautions the applicator took, the conditions on site at the time of the application, compliance with the record keeping requirements, and the phasing in of a new drift standard.

Attachments: Proposed Consent Agreement

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

| | | |
|------------------------------------|---|----------------------------------|
| In the Matter of: |) | |
| Northeast Agricultural Sales, Inc. |) | ADMINISTRATIVE CONSENT AGREEMENT |
| PO Box 190 |) | AND |
| Detroit, Maine 04929 |) | FINDINGS OF FACT |

This Agreement by and between Northeast Agricultural Sales, 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 amended by the Board on June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Company provides commercial pesticide application services for compensation.
2. That the Company is a licensed spray contracting firm holding license number SCF 44865 issued by the Board pursuant to 22 M.R.S.A § 1471-D (1)(2).
3. That Ernest Rollins (COA 44903) is a licensed commercial pesticide applicator employed by the Company.
4. That on May 19, 2010, the Board received a complaint call from a Skowhegan resident alleging drift onto her property when Rollins applied herbicides to a corn field that abuts her property.
5. That on May 21, 2010, a Board inspector conducted a follow-up investigation with the caller about this incident. Based on that interview and on site observations, the inspector took one wipe sample from the side of the caller's garage (100521BCB01E), one grass sample from the caller's backyard (100521BCB01D), and a soil sample from the target site (100521BCB02A).
6. That on May 21, 2010, a Board inspector also met with the Company owner to conduct a follow-up inspection for the pesticide application Rollins made on May 17, 2010. The application was made to the Orris Hewitt field on Route 2 in Skowhegan and this site abuts the caller's property described in paragraph four.
7. That from the inspection described in paragraph six, it was determined that the applicator used a boom sprayer to apply a tank mix of Lumax Selective Herbicide (EPA Reg. # 100-1152) and Atrazine 90 DF (EPA Reg. # 9779-253) .
8. That on January 5, 2011, a Board inspector met with the Company owner and Rollins to conduct an inspection specifically about drift prevention measures taken when the application described in paragraphs four, six, and seven was made as well as checking compliance with the additional requirements in Chapter 22 of the Board's regulations.

9. That in CMR 01-026 Chapter 10 (2) the definition of a sensitive area includes a “Sensitive Area Likely to Be Occupied”. Chapter 10 (2) BBB defines a Sensitive Area Likely to Be Occupied as an area where humans are likely to be present and includes - residential buildings, together with any associated maintained areas likely to be occupied by humans, such as lawns, gardens, recreational areas and livestock management and housing areas.
10. That CMR 01-026 Chapter 22 section 2 (C) requires that prior to spraying a pesticide, the applicator must become familiar with the area to be sprayed and must identify and record the existence, type and location of any Sensitive Area located within 500 feet of the target area.
11. That from the inspection described in paragraph five, the inspector determined that both the caller’s house and the maintained areas of her property were within 500 feet of the target area (sprayed corn field).
12. That, based on the information determined in paragraph 11, the caller’s property was a Sensitive Area Likely to Be Occupied.
13. That from the inspection described in paragraph eight, it was determined that although the applicator met with Tim Orris Hewitt (cornfield manager) and Hewitt pointed out the field to be sprayed, the caller’s house, and approximate location of the caller’s well, Rollins did not record sensitive areas prior to making the pesticide application.
14. That the circumstances described in paragraphs one through thirteen constitute a violation of CMR 01-026 Chapter 22 section 2(C). Rollins failed to record sensitive areas prior to making the pesticide application described in paragraphs six and seven.
15. That the Board sent all physical samples that were collected and described in paragraph five to a lab for analyses and requested tests for atrazine.
16. That the lab results were negative for atrazine for the wipe sample collected from the caller’s garage (100521BCB01E), positive for atrazine at 0.027 ppm for the sample collected on the grass from the caller’s backyard (100521BCB01D), and positive for atrazine at 1.19 for the sample collected in the target area (100521BCB02A).
17. That CMR 01-026 Chapter 22 section 4 (B) I and II, establish the general standards for minimizing drift and provides that evidence of pesticide residues in or on any off-target Sensitive Area Likely to Be Occupied resulting from off-target drift of pesticides from a nearby application in an amount 1% or greater of the residue in the target area is prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable.
18. That based on the lab results in paragraph sixteen, drift from the application described in paragraphs six and seven resulted in a residue on a Sensitive Area Likely to Be Occupied (2.26% of the target area) at a rate greater than 1% of the residue found in the target area.
19. That from the inspection described in paragraph eight, it was determined that Rollins used his cell phone with internet connection to check the wind conditions for the application described in paragraphs four, six, seven, and eight. He did not use a wind measuring device on site.

20. That the circumstances described in paragraphs one through thirteen and fifteen through nineteen constitute a violation of CMR 01-026 Chapter 22 section 4 (B) I and II.
21. That the Board has regulatory authority over the activities described herein.
22. That the Grower 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.
23. That this Agreement shall not become effective unless and until the Board accepts it.
24. 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 fourteen and twenty, the Company agrees to pay to the State of Maine the sum of \$250 at the same time the Company signs and submits this Consent Agreement to the Board. (Please make checks payable to Treasurer, State of Maine).

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

NORTHEAST AGRICULTURAL SALES, INC.

By: _____ Date: _____

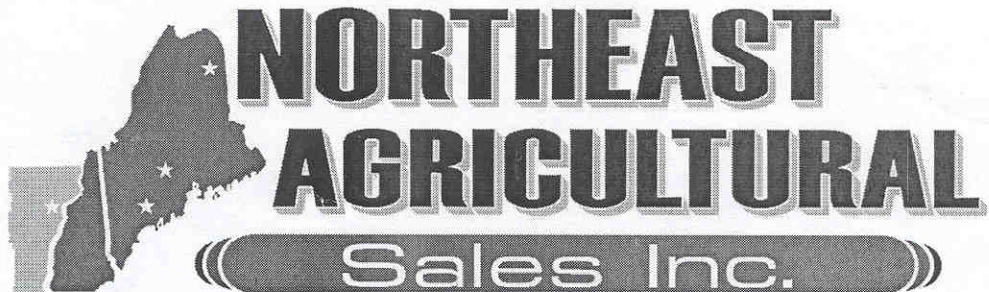
Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED:

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



WWW.NEAGSALES.COM

April 11, 2011

Mr. Raymond Connors
Manager of Compliance
Maine Board of Pesticide Control
28 State House Station
Augusta, ME 04330

Re: Inspection Number 100521BCBO2

Dear Mr. Connors:

I am writing in regards to Inspection Number 100521BCBO2 on the 21st of May 2010. While I have signed the compliance statement, I need to bring to your attention the compliance of our failure to identify and record sensitive areas on our spray paperwork. Included you will find a copy of the spray paperwork that clearly shows the location of the houses in relation to the field.

While we have accepted we are at fault for drift, we would like to make it clear we were not at fault for the second violation.

Enclosed are all of the signed forms along with payment. Should you have any questions, please call, and we can discuss.

Regards,

Justin Choiniere

Northeast Agricultural Sales, Inc.

Enclosures(5)



PESTICIDE/HERBICIDE APPLICATION RECORD

NORTHEAST AGRICULTURAL SALES
 205 East Street • P.O. Box 5
 Lyndonville, VT 05851
 802-626-3351
 800-639-7094
 Fax: 802-626-3450
 neag@charterinternet.com

Location SKOVHOGAN, MO Truck # 12D Date 5-17-10 Invoice # _____
 Customer Name TIMMY ORRIS HEWITT Date Billed _____
 Address EAST RILEY RD, SKOVHOGAN
 Acres to Treat: 2.00 Intended Crop: CORN Actual Acres Treated: 84.5
 Application Site: _____

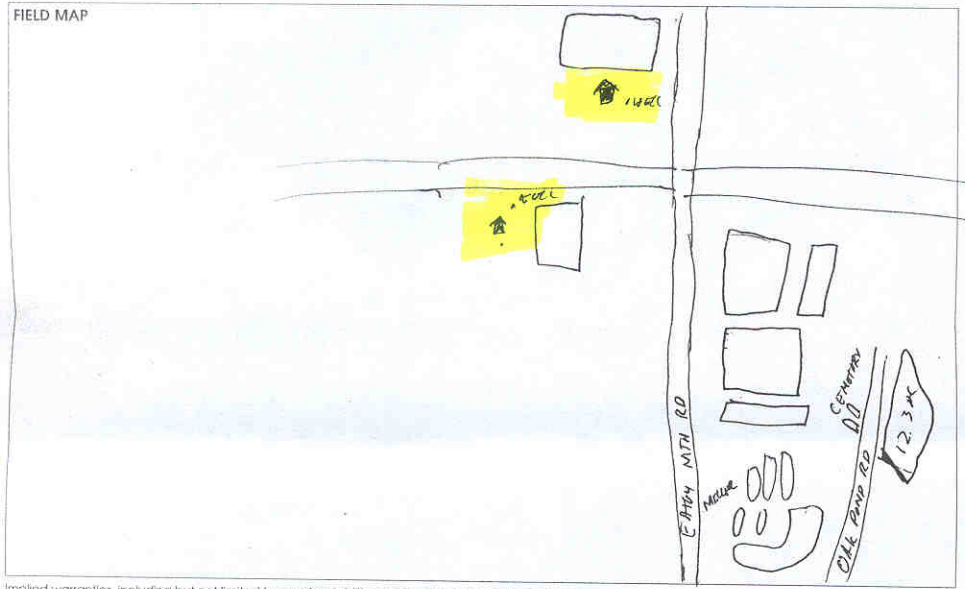
PESTICIDES/HERBICIDES APPLIED (INCLUDING ADJUVANTS) PER CUSTOMER ORDER

| Product Name | Restricted | EPA # | REI | Rate Per Acre | Products Used Per Load Load #1 | Load #2 | Load #3 | Total Used |
|---------------------------|------------|-------|-----|-----------------|--------------------------------|---------|---------|-----------------|
| <u>L4MPA</u> | | | | <u>2 1/2 QT</u> | | | | <u>52.8 GAC</u> |
| <u>ATRAZINE 90 DF</u> | | | | <u>1 LB</u> | | | | <u>84.5 LB</u> |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| Anti-Foam | | | | | | | | |
| Diff Agent <u>EMULCEL</u> | | | | <u>3.02</u> | | | | <u>7.92 QT</u> |

Carrier _____ Nitro _____ Water Other _____ Rate 10 GPM
 Stage of Weed/Insect Growth Tight Temp _____ Wind Speed _____ /Direction _____ Start Time _____ Finish Time _____ Nozzle Pressure _____

| | | | | | | | |
|---|-------------|------------|-------------|----------------|----------------|-----------|-----------|
| <u>PRE EMERGE BROADLEAF WEEDS + GRASSES</u> | <u>70 F</u> | <u>5-7</u> | <u>NW-W</u> | <u>2:15 PM</u> | <u>6:15 PM</u> | <u>30</u> | <u>50</u> |
| | | <u>3-5</u> | <u>NW</u> | | | | |

Tillage _____ No Till _____ Min. Till Conv. Till _____ Ridge Till _____
 Weather _____ Cloudy Sunny _____ Rain _____
 Soil Moisture Dry _____ Moist _____ Wet _____
 Weeds Present NO Grasses NO Broadleaves _____
 Stage of Crop Growth _____ Preplant Pre-emerge _____ Post-emerge 0" Plant Height _____



Implied warranties, including but not limited to merchantability and fitness for a particular purpose, disclaimed and excluded. Any damages shall be limited to direct damages not to exceed the purchase price of the product plus application charge, and shall not include incidental or consequential damages.

Customer Signature _____
 Commercial Applicator Name ERNEST ROUSSE License # CO# 44903/113