

# Proposed Administrative Consent Agreement

## Background Summary

**Subject:** JBI Helicopter, Inc.  
720 Clough Mill Road  
Pembroke, New Hampshire 03275

**Date of Incident(s):** August 30, 2009

**Background Narrative:** The Board received a call from a Plum Creek paper company employee on July 16, 2010, who self-reported they detected evidence of spray drift damage to vegetation from their 2009 forest spray project. JBI was the aerial applicator contracted for the job and Ray Newcomb was the applicator for the spray block in Caratunk where the incident occurred. The damage was to hardwood species on an abutting forest property in an area approximately 25 feet wide by 1,400 feet in length. A Board inspector checked the damaged site with the Plum Creek employee to confirm the herbicide damage and later met with Newcomb. Newcomb acknowledged that his application of tank mixed Arsenal Herbicide and Accord Herbicide caused the damage to the property abutting the Plum Creek forest spray block.

**Summary of Violation:** CMR 01-026 Chapter 22, Section 4(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, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors”.

**Rationale for Settlement:** The penalty reflects a lower amount than that usually imposed for off-site aerial spray violations. The penalty was reduced taking into account the fact that the violation was self-reported, that the impacted landowner expressed little concern over the incident, and that negotiations were underway with the landowner concerning restitution for the damaged trees.

**Attachments:** Proposed Consent Agreement

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

In the Matter of:	)	
JBI Helicopters	)	ADMISTRATIVE CONSENT AGREEMENT
720 Clough Mill Road	)	AND
Pembroke NH 03275	)	FINDINGS OF FACT

This Agreement by and between JBI Helicopters (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 is a licensed spray contracting firm holding license number SCF 15193 issued by the Board pursuant to 22 M.R.S.A § 1471-D (1)(2).
2. That on July 16, 2010, a Plum Creek employee self-reported evidence of overspray from one of the Company's applications during Plum Creek's 2009 forest spray project in Caratunk.
3. That on July 21, 2010, a Board inspector met with the Plum Creek employee at the Caratunk overspray site and confirmed the overspray damage that was reported. The damage was to Clyde Bean's forest property, the adjacent landowner to the north of the spray block. Most of the hardwood species in a swath approximately 25 feet in width and 1,400 feet in length were killed or severely damaged.
4. That on July 26, 2010, a Board inspector conducted a follow-up inspection with Ray Newcomb, the Company president. The inspection confirmed that on August 30, 2009, Newcomb (CMA 40355) applied Accord Herbicide (EPA Reg. No. 62719-324) and Arsenal Herbicide (EPA Reg. No. 241-299), to Plum Creek's forest spray block CAR01, on land owned and managed by Plum Creek located in Caratunk, Maine.
5. That during the inspection in paragraph four Newcomb acknowledged his drift overspray from the pesticide application made on August 30, 2009, killed or damaged trees on Bean's property as outlined in paragraph three.
6. That the circumstances described in paragraphs one through five constitute evidence of off target drift, a violation of CMR 01-026 Chapter 22, Section 4(B)(I).
7. That the Board has regulatory authority over the activities described herein.
8. 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.

- 9. That this Agreement shall not become effective unless and until the Board accepts it.
- 10. 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 six, the Company agrees to pay a penalty to the State of Maine in the sum of \$300.00. (Please make checks payable to Treasurer, State of Maine).
- 11. The penalty reflects a lower amount than that usually imposed for off-site aerial spray violations. The penalty was reduced taking into account the fact that the violation was self-reported, that the impacted landowner expressed little concern over the incident, and that negotiations are currently underway with the landowner concerning restitution for the damaged trees.

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

**JBI HELICOPTERS**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

**BOARD OF PESTICIDES CONTROL**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Henry Jennings, Director

**APPROVED:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark Randlett, Assistant Attorney General