

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** Francis Pulsifer  
Pulsifer Orchard  
24 Pulsifer Orchard Drive  
Cornish, Maine 04020

**Date of Incident(s):** May 13, 2011 and June 8, 2011

**Background Narrative:** The Board received 2 complaint calls from a Cornish resident alleging that pesticide applications made to an abutting commercial apple orchard drifted onto his apple trees that he is trying to manage organically. Lab results from vegetation samples collected from both the target site and caller's orchard indicated that drift occurred.

**Summary of Violation(s):** CMR 01-026 Chapter 22 section 4(B)(I) establishes the general standard to minimize drift to the maximum extent practicable.

**Rationale for Settlement:** These were the first incidents on record for this orchard. Although drift occurred, the abutting orchard that was drifted on was not by definition, a sensitive area likely to be occupied.

**Attachments:** Proposed Consent Agreement

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

In the Matter of: )  
Francis Pulsifer ) ADMINISTRATIVE CONSENT AGREEMENT  
Pulsifer Orchard ) AND  
24 Pulsifer Orchard Drive ) FINDINGS OF FACT  
Cornish, Maine 04020 )

This Agreement by and between Francis Pulsifer (hereinafter called the "Owner") 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 Pulsifer Orchard abuts a property on the Stanton Orchard Road owned by David Lambert in Cornish, Maine.
2. That on May 16, 2011, the Board received a complaint call from Lambert alleging drift onto his organically managed property/orchard when the Owner's employee applied pesticides to the abutting commercial orchard on May 13, 2011.
3. That on the same day the Board received the call in paragraph two, a Board inspector met with Lambert to interview him about the incident. Based on that interview and site observations the inspector collected a one-liter vegetation sample (sample #110516EPM03A) on Lambert's property approximately ten feet in from the property line that abuts Pulsifer Orchard.
4. That during a follow-up inspection the inspector also met with the Owner and collected a one-liter foliage sample (sample # 110516EPM02A) from Pulsifer Orchard approximately thirty to forty feet into the orchard from the common property line with Lambert.
5. That from the inspection in paragraph four, the inspector determined that the Owner's employee (Richard Leonhartt) applied a tank mix of Polyram 60 DF(EPA reg.# 7969-105-34704) and Permethrin (EPA reg # 34704-873) on May 13, 2011, to Pulsifer Orchard using an air blast sprayer. The weather records in the application log indicted the wind was calm and the temperature was 70 degrees and sunny.
6. That based on lab capabilities and cost, both samples in paragraphs three and four were sent to a lab with the request to analyze for permethrin. Lab results for both samples were positive for permethrin, sample #110516EPM03A, from Lambert's property at 14.4 ppm and sample # 110516EPM02A from Pulsifer Orchard at 14.6 ppm.
7. That on June 8, 2011, Lambert called the Board again alleging pesticide drift onto his property from an application made to Pulsifer Orchard this same day.

8. That the following day a Board inspector met with Lambert and collected a one-liter vegetation sample (sample # 110609EPM01A) from ten feet inside his property line from where it abuts Pulsifer Orchard. Unlike the first incident, Pulsifer Orchard had no row of trees up to the property line in the area where this second incident took place.
9. That the inspector then met with the Owner and took a one-liter vegetation sample (sample # 110609EPM02D) from that section of Pulsifer Orchard that was sprayed.
10. That the inspector completed an inspection with the Owner and determined that Richard Leonhartt applied a tank mix of Captec 4L (EPA reg.# 66330-239), Imidan 70-W (EPA reg.# 10163-169), and Drexyl Carbaryl 4L (EPA reg. # 19713-49) on June 8, 2011, with an air blast sprayer.
11. That the samples collected in paragraphs eight and nine were sent to a lab with the request to analyze for phosmet, the active ingredient in Imidan.
12. That lab results for the samples collected in paragraphs eight and nine were both positive for phosmet. Lambert's sample (# 110609EPM01A), was 0.097ppm and the sample from the orchard (# 110609EPM02D) was 1.04 ppm.
13. That CMR 01-026 Chapter 10 (BBB)(7) includes cropland as a sensitive area.
14. That CMR 01-026 Chapter 22 section 4(B)I establishes the general standard to minimize drift to the maximum extent practicable.
15. That the circumstances in paragraphs one through twelve establish that sufficient precautions were not taken to minimize drift.
16. That the circumstances described in paragraphs one through fifteen constitute violations of CMR 01-026 Chapter 22 section 4(B)I.
17. That the Board has regulatory authority over the activities described herein.
18. That the Owner 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 causes of action which the Board has against the Owner resulting from the violations referred to in paragraph sixteen, the Owner 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 three pages.

PULSIFER ORCHARD

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

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

BOARD OF PESTICIDES CONTROL

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

Henry Jennings, Director

APPROVED:

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

Mark Randlett, Assistant Attorney General