

**Proposed Administrative Consent Agreement
Background Summary**

Subject: Amelia and Arthur Bond
The Bond Revocable Trust 6/23/2017
100 Arundel PL
St. Louis, MO 63105

Date of Incident(s): Autumn 2021

Background Narrative: On November 7, 2022, the BPC was contacted by a representative for the homeowner (Lisa Gorman) at 3 Metcalf Rd. in Camden. Mrs. Gorman had observed the decline of oak trees on the property in July of 2022 and had her contracted arborist investigate. Vegetation samples that were collected by the arborist and analyzed were positive for the herbicide Tebuthiuron. On November 8, 2023, a Board representative conducted a site inspection at 3 Metcalf Road and collected 6 soil samples and 2 vegetation samples for analysis. All 8 physical samples were positive for Tebuthiuron. A representative for the Town of Camden was also present at the time of the site inspection and raised concern about the destruction of trees and vegetation within the shoreland zone and possible effects to human health and the environment as the site is adjacent to Camden Harbor and a public park/beach. In December of 2022 the Town of Camden issued a Notice of Violation to the homeowners at 1 Metcalf Rd. (Amelia and Arthur Bond). In a response letter to the Town of Camden, Mrs. Bond's recollection of events is that she purchased a product with the brand name Alligare, in a 4-pound manufacturer's packaging, transported the product from Missouri to Maine and applied it to the base of two oak trees at 3 Metcalf Road that she believed to be dying. Tebuthiuron is the active ingredient in Alligare Tebuthiuron 20P, EPA Reg. No. 81927-41, is available in 4 lb. quantities and is used to control woody vegetation in rangelands.

Summary of Violations: CMR 01-026 Chapter 20 Section 6(D)2: No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property.

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) prohibit the use of a pesticide inconsistent with its label.

Use of a pesticide in a careless, negligent or faulty manner, in violation of 22 M.R.S. § 1471-D (8)(C).

Rationale for Settlement: The Bond's did not have authorization to apply pesticides at 3 Metcalf Road in Camden. Alligare Tebuthiuron 20 P was applied in the vicinity of desirable plant species, in an area of bedrock, and that directly downslope and within thirty (30) feet of the application site there are areas of exposed bedrock, and that this application was in a residential area which are violations of the label. Use of Alligare Tebuthiuron 20 P was conducted in a careless, negligent or faulty manner.

Attachments: Proposed Consent Agreement

JUN 26 2023

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL

CK#: 3450
CK AMT: \$4500
Date: 6/14/23

In the Matter of:
Amelia and Arthur Bond
The Bond Revocable Trust 6/23/2017
100 Arundel PL
St. Louis, MO 63105

ADMINISTRATIVE CONSENT
AGREEMENT
AND
FINDINGS OF FACT

This Agreement by and between Amelia and Arthur Bond (hereinafter called the "Bonds") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on December 13, 2013.

The parties to this Agreement agree as follows:

- 1) That the Bonds, through the revocable trust of 2017, are the owners of a residential property in Maine with a physical address of 1 Metcalf Road in Camden Maine.
- 2) That 1 Metcalf Road is directly upslope from a property owned by Lisa Gorman at 3 Metcalf Road in Camden Maine.
- 3) That the ocean is directly downslope from 1 Metcalf Road.
- 4) That Gorman contracts with Bartlett Tree Experts, a full-service arborist company, to care for her trees and shrubs including two large oak trees on Gorman's property.
- 5) That, during July of 2022, Gorman observed symptoms of decline on the two large oak trees on her property and asked Bartlett Tree Experts to assess their condition.
- 6) That, according to Bartlett Tree Experts, a wide variety of trees and shrubs, including the two large oaks, were showing signs of decline in the area generally upslope from the Gorman residence.
- 7) That, based on their analysis, Bartlett Tree Experts arborists suspected herbicides may have been applied.
- 8) That Bartlett Tree Experts arborists collected four (4) foliage samples from four (4) different species of woody species, including oak, maple, blueberry and dogwood.
- 9) That the four (4) foliage samples described in Paragraph Eight were analyzed by the Pacific Agricultural Laboratory in Sherwood, Oregon.
- 10) That all four (4) samples, according to the tests conducted by Pacific Agricultural Laboratory, were positive of the herbicide, Tebuthiuron.
- 11) That on November 8, 2022, a Board representative conducted a site inspection at 3 Metcalf Road and collected six (6) soil samples and two (2) vegetation samples, which include two (2) samples from the base of the two oak trees.
- 12) That the six (6) soil samples were taken from the area on the Gorman property between 1 Metcalf and 3 Metcalf Road, the area of the northern edge of the Gorman property near Camden City Park, and the area adjacent to the high-water mark on the lower edge of the Gorman property.

- 13) That all eight (8) of the samples described in Paragraph Eleven were positive for Tebuthiuron.
- 14) That on December 21, 2022, the Board received a copy of a letter sent to the City of Camden from Attorney Aaron White, representing the Bonds, in which Amelia Bond acknowledges applying an herbicide to the area near the large oak trees on Gorman property during the fall of 2021. According to the letter, to the best of Amelia Bond's recollection, the herbicide applied was under the trade name Alligare.
- 15) That CMR 01-026 Chapter 20 § 6 (D)(2) requires prior authorization to apply pesticides to the property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property, including tenants of rented property.
- 16) That the Bonds did not have authorization to make an herbicide application on the Gorman property.
- 17) That the Board alleges the circumstances described in Paragraphs One (1) through Sixteen (16) constitute a violation of CMR 01-026, Chapter 20, Section 6 (D)(2).
- 18) That 1 and 3 Metcalf Road directly abut the ocean front Camden City Park.
- 19) That the Environmental Protection Agency's Tebuthiuron Registration Eligibility Document and other literature suggest Tebuthiuron is resistant to biological and chemical degradation and that its principal route of dissipation appears to be transport to ground and surface water.
- 20) That the Board alleges the sample results and visual evidence suggest the tebuthiuron contaminated surface and/or ground water and migrated from the application site to cause plant injury and mortality to a broad range of woody plants across the breadth of the Gorman property.
- 21) That the Board alleges the sample results and visual evidence suggest the tebuthiuron contaminated the soils in the area of the application site and downslope thereof, in manner that may prevent revegetation of the affected area without remediation.
- 22) That the Board alleges the sample results and visual evidence suggest the tebuthiuron contaminating any surface and/or ground water could result in migration to marine waters, and that tebuthiuron is toxic to marine plants and plankton.
- 23) That the Board alleges the Alligare 20 P label and open-source literature state that the chemical properties of tebuthiuron present a high risk of surface and ground water contamination. Factors that exacerbate the risk include slope of the topography, depth of soils and presence of exposed and shallow bedrock.
- 24) That Amelia Bond's alleged application of Tebuthiuron was in an area of shallow soils, exposed and shallow bedrock, and steep slopes.
- 25) That the Board alleges the circumstances described in Paragraphs One (1) through Twenty-Four (24) constitute use of a pesticide in a careless, negligent or faulty manner, in violation of 22 M.R.S. § 1471-D (8)(C).
- 26) That the product label for Alligare 20 P contains a series of requirements intended to prevent damage to non-target plants and migration of the product away from the application site, into the ground or surface water, or onto adjacent properties. Said requirements include, but are not limited to the following:
- a) Do not use Alligare Tebuthiuron 20 P herbicide in any area where desirable species are in the vicinity of the plants to be controlled. A small amount of Alligare Tebuthiuron 20 P in contact with the roots of desirable trees or other woody species may cause severe injury or death. The roots of such plants may extend far beyond their drip lines.

- b) Do not apply Alligare Tebuthiuron 20 P where bedrock is continuously exposed or in areas of bedrock overlain by soils that are shallow or discontinuous.
 - c) Not for residential use.
 - d) Treatment Setback: Do not apply Alligare Tebuthiuron 20 P in the vicinity of desirable plants. Exposure of even a small part of a plant root system to Alligare Tebuthiuron 20 P may cause severe plant injury or death. Plant roots usually occupy an area much larger than the aerial portion of the plant. Treatment setback distance should be 1 to 2 times the height or width of adjacent non-target vegetation, whichever is greater. For example, if adjacent non-target vegetation is 25 feet tall, the treatment setback should be 50 feet. An Arboriculturist (tree expert) should be consulted to help you to determine if there is a question about the appropriate setback distance or if the area of proposed application is free of all roots of desirable vegetation.
 - e) Once rainfall has moved Alligare Tebuthiuron 20 P into the plant root zone, the effect on woody plants is irreversible.
- 27) That Amelia Bond applied Alligaire in the vicinity of plant species, in an area of bedrock, and that directly downslope and within thirty (30) feet of the application site there are areas of exposed bedrock, and that this application was in a residential area.
- 28) That 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) prohibit the use of a pesticide inconsistent with its label.
- 29) That the Board alleges the circumstances described in Paragraphs Eighteen (18) through Twenty-Six (26) constitute use of a pesticide inconsistent with the product label, 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).
- 30) That, despite the above, the Bonds, by and through their counsel and consultants, have been actively cooperating with the owners of 3 Metcalf Road and the Town of Camden since December 2022 in developing a remediation plan (“the Plan”) that will protect and mitigate against further damage and/or risk at 1 and 3 Metcalf Road, as well as any property owned by the Town determined to be at risk of potential damage. Such cooperation has included but is not limited to the following:
- a) Communicating and providing available information to the owners of 3 Metcalf Road and the Town of Camden regarding the cause of the alleged damages and steps taken to mitigate those damages;
 - b) Retaining two (2) consultants, a licensed landscape architect and arborist, to analyze the currently available information, reports, test results, cost estimates and alleged violations and damages to ascertain the cause, extent and steps necessary to remediate the alleged damages;
 - c) Conducting an on-site inspection of the alleged damage at 1 and 3 Metcalf Road with their counsel and consultants, counsel for the owners of 3 Metcalf Road and their respective consultants in late December 2022; and
 - d) Analyzing and assessing the numerous remediation plans drafted by the consultants of the owners of 3 Metcalf Road, which the Parties intend on finalizing and submitting to the Town for ratification.
- 31) That the Parties intend for the Plan, once finalized and ratified by the Town of Camden, to go into immediate effect and for mitigation to commence thereafter.
- 32) That the Bonds expressly waive:
- 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.

33) That this Agreement shall not become effective unless and until the Board accepts it.

34) That in consideration for the release by the Board of the alleged causes of action which the Board may have against the Bonds resulting from the alleged violations referred to in Paragraphs Seventeen (17) and Twenty-Nine (29) and any additional provisions under the aforementioned statutes or any corollary regulations in the State of Maine relating in any way to the application of herbicides and pesticides, the Bonds agree to pay a penalty to the State of Maine in the sum of \$4,500, which checks payable to "Treasurer, State of Maine."

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

AMELIA AND ARTHUR BOND

By: *Amelia & Arthur* Date: 6-13-23
Arthur W. Bond III Date: 6/13/2023

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED:

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



JANET MILLS
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

MEGAN PATTERSON
DIRECTOR

Compliance Verification Statement

June 9, 2023

Individual Company or Store Name	Amelia and Arthur Bond The Bond Revocable Trust 6/23/2017	Inspection Numbers	<u>221108ARP01</u>
		Inspection Dates	<u>11-08-2022</u>
Address	100 Arundel Place		
Town	St. Louis	State	MO
		Zip	63105

I verify that I have taken steps to correct the alleged violations of:

- Unauthorized application of a pesticide.
- Use of a pesticide in a careless, negligent or faulty manner.
- Violations of pesticide labeling and label use restrictions.

Arthur D. Bond III

 Owner or Company Representative Signature

6.13.23
6/13/2023

 Date:

Amelia D.J. Bond
 ARTHUR D. BOND III

 Print Name

The above **Compliance Verification Statement** should be signed and returned with the **signed Consent Agreement** to verify that steps have been taken to prevent violations in the future.