

Proposed Administrative Consent Agreement Background Summary

Subject: Barry Webster
Jato Highlands Golf Course
175 Town Farm Road
Lincoln, ME 04457

Date of Incident(s): April 22, 2012 and May 15, 2012

Background Narrative: Jato Highlands Golf Course is a public golf course. Because the golf course is open to the public, pesticide applications at the course must be made or supervised by a licensed commercial pesticide applicator. In addition, each commercial pesticide application company, including golf courses that make their own pesticide applications, must employ at least one Master Applicator. The facility's golf course superintendent and master pesticide applicator terminated in September of 2011. A Board inspector documented that a Jato Highlands Golf Course employee made two unlicensed commercial pesticide applications in 2012.

Summary of Violation(s): CMR 01-026 Chapter 31, Section 1(A) Commercial pesticide applications can only be made or supervised by licensed commercial pesticide applicators.

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board in formulating a penalty proposal.

Attachments: Proposed Consent Agreement

JAN 31 2014

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

CK# 5543

Date: 1-28-14

\$250.00

Barry Webster) ADMINISTRATIVE CONSENT
Jato Highlands Golf Course) AGREEMENT
175 Town Farm Road) AND
Lincoln, ME 04457) FINDINGS OF FACT

This Agreement, by and between Jato Highlands Golf Course (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. §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 Lincoln, Maine.
2. That on June 18, 2012, a Board inspector conducted a pesticide inspection and determined that on April 22, 2012, and again on May 15, 2012, Company employee Barry Webster applied Andersons Systemic Fungicide to the turf at the golf course with a granular spreader.
3. That the golf course is considered open to use by the public in accordance with 22 M.R.S. § 1471-C(5-A).
4. 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. § 1471-C(5).
5. That commercial pesticide applications can only be made or supervised by licensed commercial applicators pursuant to CMR 01-026 Chapter 31, Section 1(A).
6. That neither Webster nor anyone employed by the Company was a licensed commercial applicator at the time of the pesticide applications described in paragraph two.
7. That the circumstances described in paragraphs one through six constitutes violations of CMR 01-026 Chapter 31, Section 1(A).
8. That the Board has regulatory authority over the activities described herein.
9. 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.
10. That this Agreement shall not become effective unless and until the Board accepts it.
11. That the Board has regulatory authority over the activities described herein.

12. That the Company expressly waives:
- d. Notice of or opportunity for hearing;
 - e. Any and all further procedural steps before the Board; and
 - f. The making of any further findings of fact before the Board.
13. That this Agreement shall not become effective unless and until the Board accepts it.
14. 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 paragraph seven, the Company agrees to pay to the State of Maine the sum of \$250. (Please make checks payable to Treasurer, State of Maine).

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

JATO HIGHLANDS GOLF COURSE

By:  Date: 01/28/14

Type or Print Name: THOMAS W. GARDNER, owner

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED

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