

Proposed Administrative Consent Agreement

Background Summary

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Subject: Triest Ag Group
PO Box 448
Greenville, NC 27883

Date of Incident(s): September 19, 20, 21 of 2015/ September 18, 2017/ September of 2018 to June 3, 2019

Background Narrative: On September 19-21, 2015, two Triest employees made three restricted use fumigation applications in Aroostook County. They were not licensed applicators at the time of the applications.

On September 18, 2017, three Triest employees made a fumigation application to a field on the Caribou Lake Road in Washburn. At the time of that application, two of the three employees had not completed the required fumigation training cited on the label. That application resulted in off-target movement of the fumigant that entered the open windows of a family home across the street. All family members, parents and two children were affected by the fumigant.

In the fall of 2018, Triest Ag Group placed a total forty-six, 1,265 lb. fumigant cylinders in three separate locations in Aroostook County. Eighteen cylinders were in one Washburn location, eight in a separate Washburn location and twenty in Easton. At each of these sites, the cylinders were out in the open, unlocked, and unprotected from the elements. On June 4, 2019, a Board inspector confirmed the last of the cylinders were loaded and shipped to North Carolina

Summary of Violation(s):

- 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III. Any commercial applicator must be a certified commercial applicator or under the direct supervision of a certified applicator.
- 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F). Using a pesticide inconsistent with its label directions.
 - Did not have label required fumigation training
 - Insufficient preparation of field before making fumigant application
 - Did not meet pesticide storage requirements specified on the pesticide label
- CMR 01-026 Chapter 31 Section 1(E). Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator.
- CMR 01-026 Chapter 20 Section 3(A). Unused pesticides, whether in sealed or open containers, must be kept in a secure enclosure and otherwise maintained so as to prevent unauthorized use, mishandling or loss; and so as to prevent contamination of the environment and risk to public health.
- 22 M.R.S. § 1471-D (3) Requires that pesticide dealers be licensed by the Board to distribute any restricted use pesticides.

Rationale for Settlement: The scope of the violations in this case was extensive involving licensing, storage, training, and applications. Because of the violations there was both potential and actual damage in this case. The consent agreement is intended to match the gravity of the violations.

Attachments: Proposed Consent Agreement

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

CK Amt \$ 16500.00
Date: 12-30-19
CK# 10858

Triest Ag Group) ADMINISTRATIVE CONSENT AGREEMENT
1101 Industrial Blvd.) AND
Greenville, NC 27834) FINDINGS OF FACT

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This Agreement, by and between Triest Ag Group (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 December 13, 2013.

The parties to this Agreement agree as follows:

1. That the Company, located in Greenville, NC is a commercial spray contracting firm.
2. That on September 19-21, 2015, Company employees Aaron Perreault and Phillip Crumpacker supervised three fumigant applications in the following Aroostook County towns: Presque Isle (Paul Langerstrom's farm, Strike 85CP and Strike 100), Crouseville (Matt Porter's farm, Strike 85CP and Strike 100), and Limestone (Brent Edgecomb's farm, Strike 85CP).
3. That pursuant to 22 M.R.S. § 1471-D(1), no commercial applicator may use or supervise the use of any pesticide within the State without prior certification from the board.
4. That pursuant to 22 M.R.S. § 1471-C(5) "commercial applicator" includes any person, who uses or supervises the use of any limited or restricted-use pesticides. 22 M.R.S. § 1471-C(5) contains a limited exception for private applicators using a restricted use pesticide on their own land to grow agricultural commodities. This exception does not, however, apply to persons supervising the use of those pesticides on someone else's land.
5. That Strike 85CP and Strike 100 fumigants are classified as restricted use pesticides by the U.S Environmental Protection Agency and CMR 01-026 Chapter 40 Section 1(A) of Board rules.
6. That the circumstances described in paragraphs one through five constitute commercial pesticide applications by the Company in accordance with 22 M.R.S. § 1471-D(1)A.
7. That no one from the Company had a commercial pesticide applicator's license at the time of the applications described in paragraph two.
8. That the circumstances described in paragraphs one through seven constitute violations of 22 M.R.S. § 1471-D (1) (A).
9. That CMR 01-026 Chapter 31 Section 1(E) states that each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator.
10. That at the time of the applications described in paragraph two, the Company did not employ a master applicator.
11. That the circumstances described in paragraphs one through ten constitute violations of CMR 01-026 Chapter 31 Section 1(E).

12. That on Monday, September 18, 2017, at 9:38 PM Board staff received an email from a Washburn resident on the Caribou Lake Road. The resident reported that a company fumigated a field across the street from the residents' home earlier in the evening with the fumigant Strike 85CP.
13. The resident reported that his family experienced coughing that would not stop, watery eyes, runny nose, and burning skin along the neck line and folds of the skin. The caller likened it to a gas chamber experience he went through in basic training. These symptoms lasted for 1-2 hours.
14. On September 19, 2017, and again on April 5, 2018, a Board inspector met with the resident and on September 19, 2017, and again on April 23, 2018, a Board inspector conducted follow up inspections with Perreault.
15. That from the inspections described in paragraph fourteen, it was determined that on September 18, 2017, from 6:30 AM to 2 PM Company supervisor Perreault, and company employees Phillip Upchurch, and Crumpacker made an application of Strike 85CP fumigant. The application was made to 20.8 acres of a potato field at the Will-Turn farm located at 206 Caribou Lake Road in Washburn.
16. That the Strike 85CP fumigant label requires that "Any certified applicator supervising a soil fumigant application must have successfully completed one of the soil fumigant training programs listed on the following EPA website www.epa.gov/fumiganttraining for the active ingredient(s) in this product. The training must be completed in the time frames listed on the website. The FMP must document the date and location where the soil fumigant training program was completed".
17. That Company supervisor Perreault and handler Crumpacker had not completed the required soil fumigant training programs listed on the EPA website at the time of the application described in paragraph fifteen.
18. That the circumstances described in paragraphs two and twelve through seventeen constitute use of a pesticide inconsistent with the product labeling and in violation on U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).
19. That the mandatory good agricultural practices section of the Strike 85CP fumigant label requires in part, that the soil surface be properly prepared and that the surface is generally free of large clods and that little or no crop residue be present on the soil surface. "Removing the crop residue prior to the start of the application is important to limit the natural chimneys that occur in the soil when crop residue is present. These "chimneys" allow the soil fumigants to move through the soil quickly and escape into the atmosphere. This may create potentially harmful conditions for workers and bystanders and limit the efficacy of the fumigant".
20. That photos taken by the Board inspector on September 19, 2017, show both large clods and crop residue in the field of the soil fumigant application the company made on September 18, 2017, as described in paragraph fifteen.
21. That the circumstances described in paragraphs fifteen, nineteen, and twenty constitute use of a pesticide inconsistent with the product labeling and in violation on U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).
22. That on Saturday May 18, 2019, a Maine Department of Environmental Protection (DEP) agency employee became aware that there were eighteen 1,265 lb. tanks of chloropicrin, stored outdoors at a farm on Hines Street in Washburn. The same day a different DEP employee from the response division and a Board inspector went to the site to investigate.
23. That based on the investigation described in paragraph twenty-two, it was determined that the eighteen chloropicrin tanks at this site contained Strike 85CP fumigant. All tanks were outdoors in a turf area between a storage building

owned by the farmer and two private residences. The pesticide label on the tanks included the following language “Store in a cool, dry, well ventilated area under lock and key. Post as a pesticide storage area”.

24. That on May 22, 2019, Sam Delano, an agronomic sales representative with McCain Fertilizer called a Board staff member to discuss the eighteen chloropicrin cylinders that were stored as described in paragraphs twenty-two and twenty-three. Delano explained that the cylinders were delivered by the Company and stored at that location in September of 2018 for a fall application of that year. Due to unfavorable weather in the fall, the applications did not take place. The cylinders owned by the Company are not expected to be applied until August or September of 2019. It was also learned that a total of 46 of these cylinders were stored in Aroostook County.
25. That based on what was learned from the discussion described in paragraphs twenty-two through twenty-four, a Board inspector conducted a follow up inspection on May 22, 2019, with Aaron Perreault, the Northeast Account Manager for Triest Ag Group.
26. That from the inspection described in paragraph twenty-five, the Board inspector determined there were two additional sites where the Company’s Strike 85CP fumigant in 1,265 lb. tanks were stored outdoors and unprotected since the fall of 2018. Eight 1,265 lb. cylinders were stored at Will-Turn Farms in Washburn, and twenty cylinders were stored at Porter Farm in Easton. The Board inspector went to these sites to document how the cylinders were stored.
27. That Board staff contacted Hope Johnson, a product manager for EPA on May 31, 2019, and described how the Strike 85CP fumigant in 1,265 lb. tanks were stored, provided a label for the product, and a picture of the observed in field storage.
28. That Johnson responded the storage practices of chloropicrin detailed in the photo provided were not in line with the storage directions for use on the product label under the heading of Storage and Disposal. She went on to say a lock and key is required, some covered area to protect from outside conditions (heat, rain/etc.) is also needed.
29. That pesticides must be stored according to label directions.
30. That the circumstances described in paragraphs twenty-two through twenty-nine constitute use of a pesticide inconsistent with the product labeling and in violation on U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).
31. That CMR 01-026 Chapter 20 Section 3(A) requires that unused pesticides, whether in sealed or open containers, must be kept in a secure enclosure and otherwise maintained so as to prevent unauthorized use, mishandling or loss; and so as to prevent contamination of the environment and risk to public health.
32. That paragraphs twenty-two through twenty-nine indicate the fumigant cylinders were not kept in a secure enclosure.
33. That the circumstances described in paragraphs twenty-two through twenty-eight constitute multiple violations of CMR 01-026 Chapter 20 Section 3(A).

34. The Company distributed the restricted use fumigants described in paragraph two to a licensed Maine pesticide dealer.
35. That CMR 01-026 Chapter 10 Section 2(NN) defines "Pesticide dealer" to mean: any person who distributes limited or restricted use pesticides, including but not limited to sales personnel in an outlet, field salesmen, and manufacturers' representatives selling pesticides directly to the consumer or who accept orders for pesticides.
36. That CMR 01-026 Chapter 10 Section 2(Q) defines "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and, having so received, deliver or offer to deliver pesticides in this state.
37. That 22 M.R.S. § 1471-D (3) requires that pesticide dealers be licensed by the Board to distribute any restricted use pesticides.
38. That no one from the Company was licensed as a pesticide dealer when the Company distributed the restricted use pesticides described in paragraph two into Maine.
39. The circumstances described in paragraphs thirty-four through thirty-eight constitute a violation of 22 M.R.S. § 1471-D (3)
40. 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.
41. That this Agreement shall not become effective unless and until the Board accepts it.
42. That, in consideration for the release by the Board of the causes of action which the Board has against Triest Ag Group resulting from the violations referred to in paragraphs eight, eleven, eighteen, twenty-one, thirty, and thirty-three and thirty-nine. Triest Ag Group agrees to pay to the State of Maine the sum of \$16,500 (Please make checks payable to Treasurer, State of Maine).

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

TRIEST AG GROUP

By: Charles Smith Date: 12-30-2019

Type or Print Name: Charles Smith

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED

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

