

# Proposed Administrative Consent Agreement Background Summary

**Subject:** Timothy Smale  
Remedy Compassions  
730 Center Street  
Auburn, Maine 04210

**Date of Incident(s):** 2012 through April 3, 2013

**Background Narrative:** On March 5, 2013, a Board inspector completed a marketplace inspection at a pesticide retailer in southwestern Maine. Through the inspection, it was determined that Remedy Compassions, a licensed medical marijuana growing facility purchased four different pesticides during the above time frame, some on multiple occasions. On April 3, 2013, a Board inspector conducted a joint inspection with Dept. of Health and Human Resources personnel at the company's Auburn cultivation site.

From that inspection, Board staff documented that three of the pesticides known to have been purchased were found on site. These were: Milstop Broad Spectrum Foliar Fungicide, Greenshield Disinfectant & Algicide and Oxidate Broad Spectrum Bactericide/Fungicide. PyGanic Crop Protection EC 1.4 was not found on site. Although company owners denied purchase and use of these pesticides at this site, based on the evidence the Board concluded that pesticide applications were made to the medical marijuana.

Neem Oil for the Garden was also applied once every two weeks to control aphids, thrips and mites.

## Summary of Violation(s):

CMR 01-026 Chapter 20 Section 1(B), 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) Prohibits the use of registered pesticides for other than registered uses

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

22 M.R.S.A. §1471-D (8)(D) Prohibits storing, transporting or otherwise distributing pesticides in a careless, faulty or negligent manner or in a manner which is potentially harmful to the environment or to the public health, safety or welfare.

CMR 01-026 Chapter 20 Section 1(A). Prohibits the use of any pesticide not registered by the Maine Board of Pesticides Control.

CMR 01-026 Chapter 20 Section 1(A) and (B) and 22 M.R.S.A § 1471-D(8)(F). Not wearing all the personal protective equipment required by the pesticide label

22 M.R.S. § 1471-D (8)(C).Used or supervised the use of pesticides applied in a manner which is potentially harmful to the public health

Worker Protection Standard, 40 CFR, Part 170 (WPS).Non-compliance with the Federal Worker Protection Standard

**Rationale for Settlement:** The staff considered the number and duration of pesticide applications. None of the pesticides were registered for use on medical marijuana and one of the pesticides was not registered in Maine. The pesticide applications were potentially harmful to patients using the medical marijuana.

**Attachments:** Proposed Consent Agreement

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

MAR 20 2014  
CK# 1272  
CK Date: 2-26-14  
Amt 5500.00

Timothy Smale )  
Remedy Compassions ) ADMINISTRATIVE CONSENT AGREEMENT  
730 Center Street ) AND  
Auburn, Maine 04210 ) FINDINGS OF FACT

This Agreement, by and between Remedy Compassions (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 operates a medical marijuana cultivation site and dispensary in Maine and its office is located in Auburn, Maine.
2. That on March 5, 2013, a Board inspector conducted a marketplace inspection at a pesticide dealer in Southwestern Maine.
3. That from the inspection described in paragraph two, it was determined that the company purchased four different pesticides in 2012 and 2013.
  - Milstop Broad Spectrum Foliar Fungicide (EPA reg. # 70870-1-68539) on two occasions in 2012, ten pounds in February, and five pounds in December.
  - PyGanic Crop Production EC 1.4 (EPA reg. # 1021-1771) on two occasions, once in 2012 and once in 2013. The first Pyganic purchase was for one quart, the second was for two quarts.
  - Greenshield Disinfectant & Algicide (EPA reg. # 499-368), one gallon in 2012, four gallons in 2013
  - Oxidate Broad Spectrum Bactericide/Fungicide (EPA reg. # 70299-2), two and a half gallons, one occasion in 2012.
4. That on April 3, 2013, a Board inspector conducted a joint inspection with DHHS personnel at the Company's Auburn cultivation site.
5. That from the inspection described in paragraph four, the inspector documented that three of the pesticides described in paragraph three were found on site. Pyganic, the fourth pesticide listed in paragraph three was not found on site.
6. That the Company's owners denied purchasing or using Pyganic on medical marijuana plants at this facility. An employee also denied ever applying this pesticide to medical marijuana plants at the facility
7. That from the sales records that were obtained that were related to the market place inspection described in paragraph two, the Board concludes that the evidence indicates that the Company did purchase and use PyGanic Crop Production EC 1.4 (EPA reg. # 1021-1771) on medical marijuana at the Company's Auburn facility.

8. That CMR 01-026 Chapter 20 Section 1(B) prohibits the use of registered pesticides for other than registered uses and 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.
9. That PyGanic Crop Production EC 1.4 (EPA reg. # 1021-1771) is not registered for use on medical marijuana.
10. That the circumstances in paragraphs one through nine constitute violations of CMR 01-026 Chapter 20 Section 1(B), 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).
11. That from the inspection described in paragraph four, when a Company employee was asked about his use of Milstop Broad Spectrum Foliar Fungicide, he only acknowledged mixing one tablespoon of Milstop Broad Spectrum Foliar Fungicide in two gallons of water and applying some of the mixture to one medical marijuana plant leaf on one occasion approximately three months prior to the date of the inspection. The employee said the remaining mixture (almost 2 gallons), was poured down the sink at the facility. The inspector observed that three quarters of the contents of the original container of Milstop Broad Spectrum Foliar Fungicide container was gone when he documented the original container. The container did not have a label affixed to it that met the minimal container label requirement.
12. That the Board finds, based on the evidence obtained from the sales records summarized in paragraph three, the inspectors observation in paragraph eleven, and the fact that there is no other use in a greenhouse setting specified on the Milstop Broad Spectrum Foliar Fungicide label other than its use as a foliar plant fungicide, that Milstop Broad Spectrum Foliar Fungicide was routinely applied to medical marijuana at the Company's Auburn facility. Milstop Broad Spectrum Foliar Fungicide is not registered for use on medical marijuana.
13. That the circumstances in paragraphs one through four, eight, eleven, and twelve, constitute a violation of CMR 01-026 Chapter 20 Section 1(B), 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).
14. That pouring excess tank mixed pesticides down the drain of a structure's plumbing system is not a legal method of disposing of pesticides and is using a pesticide in a careless, negligent, or faulty manner.
15. That 22 M.R.S.A. §1471-D (8)(C) prohibits the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment
16. That the circumstances described in paragraphs eleven, fourteen, and fifteen constitute using a pesticide in a careless, negligent or faulty manner in violation of 22 M.R.S.A. §1471-D (8)(C).
17. That 22 M.R.S.A. §1471-D (8)(D) prohibits storing, transporting or otherwise distributing pesticides in a careless, faulty or negligent manner or in a manner which is potentially harmful to the environment or to the public health, safety or welfare.
18. That storing pesticides in a container that lacks the minimum container label requirements is careless, faulty or negligent and could be potentially harmful to the environment or to the public health, safety or welfare.
19. That the circumstances described in paragraphs four, eleven, seventeen and eighteen constitute a violation of 22 M.R.S.A. §1471-D (8)(D)
20. That from the inspection described in paragraph four, the inspector also found and documented an additional pesticide on site. Neem Oil for the Garden (No EPA #). This product makes a pesticidal claim on the label and according to Timothy Smale it was used to control aphids, thrips, and mites on the medical marijuana plants. A Company employee told the inspector that the neem oil was applied once every two weeks.

21. That CMR 01-026 Chapter 20 Section 1(A) prohibits the use of any pesticide not registered by the Maine Board of Pesticides Control.
22. That the Board's pesticide registrar reviewed the registration status of Neem Oil for the Garden and determined that it is not registered in the state of Maine.
23. That the circumstances in paragraphs one, four, eight, twenty, and twenty-one, constitute a violation of CMR 01-026 Chapter 20 Section 1(A).
24. That Neem Oil for the Garden is not registered for use on medical marijuana.
25. That the circumstances in paragraphs one, four, eight, twenty, and twenty-four constitute violations of CMR 01-026 Chapter 20 Section 1(B), 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).
26. That wearing the label-required personal protective equipment is specified in 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).
27. That from the inspection in paragraph four, it was determined that on March 3, 2013, Greenshield Disinfectant & Algicide was mixed, loaded and applied to plastic containers by a Company employee.
28. That Greenshield Disinfectant & Algicide requires a chemical resistant apron and chemical resistant footwear when mixing and chemical resistant footwear when applying it.
29. That a chemical resistant apron and chemical resistant footwear when mixing and chemical resistant footwear were not worn when mixing and applying the Greenshield Disinfectant & Algicide.
30. That the circumstances described in paragraphs four, and twenty-six through twenty-nine constitute violations of CMR 01-026 Chapter 20 Section 1(A) and (B) and 22 M.R.S.A § 1471-D(8)(F).
31. That the Company raises a commercial agricultural crop at a greenhouse business that utilized pesticides bearing language requiring conformance with the federal Worker Protection Standard, 40 CFR, Part 170 (WPS).
32. That the Company employs one or more workers and handlers as defined under 40 CFR, Part 170.3 to assist in the production of the crops described in paragraph one.
33. That from the inspection done in paragraph four, it was determined that the workers and handlers did not receive WPS training, there was no central information display informing employees which areas were treated, treated areas were not posted, and workers and handlers were not stopped from entering treated areas during restricted entry intervals.
34. That the circumstances described in paragraphs one, four, and thirty-one through thirty-three constitute multiple violations of the federal Worker Protection Standard, 40 CFR, Part 170 (WPS).
35. The Board finds that the use of pesticides in the production of medical marijuana was potentially harmful to the public health, in violation of 22 M.R.S. § 1471-D (8)(C).
36. That the Board has regulatory authority over the activities described herein.
37. 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.

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

39. That in assessing a penalty in this circumstance, the Board recognized that the Company was producing a medicinal product intended for use by patients with serious and/or chronic illnesses. The Board further finds the number of violations alleged against the Company and the frequency of the applications as documented by the Board inspections showed a pattern of consistent pesticide applications on the medical marijuana in violation of the pesticide laws.

40. 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 paragraphs ten, thirteen, sixteen, nineteen, twenty-three, twenty-five, thirty, thirty-four, and thirty-five, the Company agrees to pay to the State of Maine the sum of \$5,500 (Please make checks payable to Treasurer, State of Maine.)

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

REMEDY COMPASSIONS

By: Timothy m. Smale Date: 3/15/14

Type or Print Name: Timothy m. Smale

BOARD OF PESTICIDES CONTROL

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

APPROVED

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



March 15, 2014

Raymond Connors  
Manager of Compliance  
Maine Board of Pesticides Control  
State of Maine  
Maine Department of Agriculture, Conservation, and Forestry  
Augusta, ME 04333-0028

Dear Mr. Connors:

Thank you for your follow up in the matter relating to Remedy Compassion Center. Please contact me if I can be of any further assistance.

Warmest regards,

A handwritten signature in black ink, appearing to read "Timothy Smale", is written over a faint, larger version of the signature.

Timothy Smale  
Executive Director

