

Proposed Administrative Consent Agreement Background Summary

Subject: Jasper Wyman & Son
7 Wyman Road
Milbridge, Maine 04658

Date of Incident(s): May 21, 2014

Background Narrative: On February 4, 2016, the Board received a call from Greg Bridges, owner of Cole G. Bridges Wild Blueberries LLC. Bridges alleged that Jasper Wyman & Son leased blueberry land from a resident in Charlotte. Jasper Wyman & Son then subleased this same land to Bridges. On May 21, 2014, Terry Bell, the owner of Tide Mill Enterprises, applied Sinbar and Calisto herbicides to Bridge's subleased land as directed by Jasper Wyman & Son's V.P. of operations. Jasper Wyman & Son did not have Bridges permission to do this.

Summary of Violation(s): CMR 01-026 Chapter 20 Section 6D1 *No person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or legal occupant of the property to which the pesticide is to be applied, or that person has the authorization of the owner, manager or legal occupant to enter into an agreement for pesticide applications to be made to that property. The term "legal occupant" includes tenants of rented property.*

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

Attachments: Proposed Consent Agreement

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

In the Matter of:)	ADMINISTRATIVE CONSENT
Jasper Wyman & Son)	AGREEMENT
7 Wyman Road)	AND
Milbridge, Maine 04658)	FINDINGS OF FACT

This Agreement by and between Jasper Wyman and Son (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 Board alleges as follows:

1. That the Company provides blueberry land management services and has the firm license number SCF 45195 issued by the Board pursuant to 22 M.R.S. § 1471-D (1)(B).
2. That on February 4, 2016, Greg Bridges, owner of Cole G. Bridges Wild Blueberries LLC, lodged a complaint with the Board that the Company made an unauthorized herbicide application to blueberry land in Charlotte owned by the Damon family that Bridges subleased from the Company.
3. That in response to the call described in paragraph two, a Board inspector conducted a follow-up inspection with Bridges, on February 29, 2016.
4. That during the inspection described in paragraph three, Bridges completed a written statement indicating that the Company directed Terry Bell, the owner of Tide Mill Enterprises, to mow the Damon fields that Bridges had a sublease on and that "someone has chemical trespassed on my leased land".
5. That during the inspection described in paragraph three the inspector also collected a copy of the Wild Blueberry Fact Sheet from Bridges. This sheet listed the field management practices completed on the Damon fields in Charlotte and was signed by Terry Bell. The record shows Bell mowed about 10 acres on May15, 2014, and applied Sinbar and Calisto herbicides to about 10 acres on May 21, 2014.
6. That on February 5, 2016, Bridges emailed Board staff copies of both the Company's lease with Merna and Lawrence Damon Sr. and the Company's sublease of this same land to Bridges.
7. That the sublease to Bridges described in paragraph two and six stated that the lease commenced on February, 2012 and expired on December, 2018.
8. That on March 1, 2016, a Board inspector met with Homer Woodward, the Company's V.P. of Operations about Bridges' allegation of the Company's unauthorized pesticide application to Bridges' subleased land. Woodward later emailed the inspector on April 1, 2016, and attached a written statement about Bridges' allegation.
9. That in Woodward's written statement described in paragraph eight, Woodward acknowledged that in the spring of 2014 he arranged a meeting with Terry Bell, the owner of Tide Mill Enterprises to establish a field management plan that included pruning and applying herbicide to the Damon blueberry fields Bridges' subleased from the Company and that Bell later completed the pruning and herbicide application as directed by Woodward.
10. That CMR 01-026 Chapter 20 Section 6(D)(1) specifies that "[n]o person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or

legal occupant of the property to which the pesticide is to be applied, or that person has the authorization of the owner, manager or legal occupant to enter into an agreement for pesticide applications to be made to that property. The term "legal occupant" includes tenants of rented property."

- 11. Because the Company had sublet the property containing the Damon fields to Bridges, the Company was not the owner, manager or legal occupant of the property for the purposes of CMR 01-026 Chapter 20 Section 6(D)(1).
- 12. That the Company did not have Bridges' consent to direct Bell to apply pesticides to Bridges' subleased land which Bell later did as described in paragraphs five and nine.

The Board believes the circumstances described in paragraphs one through twelve constitute a violation of CMR 01-026 Chapter 20 Section 6(D)(1). While the Company does not admit the allegations or the violation, and believes there are or may be mitigating factors and/or factual disputes involving the alleged violations, the Company does agree to enter into this Consent Agreement for the purpose of resolving the alleged violations.

WHEREFORE the parties agree as follows:

- 1. That the Board has regulatory authority over the activities described herein.
- 2. 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.
- 3. That this Agreement shall not become effective unless and until the Board accepts it.
- 4. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violation referred to in paragraph twelve, the Company agrees to pay a penalty to the State of Maine in the sum of \$500. (Please make checks payable to Treasurer, State of Maine).

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

JASPER WYMAN & SON

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General