

Proposed Administrative Consent Agreement Background Summary

Subject: Jacob Boyington
Appleton Ridge Construction
1108 Appleton Ridge Road
Appleton, Maine 04862

Date of Incident(s): August 18, 2015

Background Narrative: Board staff responded to a drift complaint in Palermo alleging that drift occurred to a residential property when a pesticide application was made to an abutting blueberry field. The owner / commercial applicator of Appleton Ridge Construction, Jacob Boyington applied malathion insecticide to the blueberry field. Two separate foliage samples collected from turf near the house on the abutting property tested positive for malathion.

Summary of Violation(s):

CMR 01-026 Chapter 22 section 4(B)I

Standards for Unconsented, Off-Target Drift of Pesticides

- I. General Standard. Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.

CMR 01-026 Chapter 22 section 4(B)II

- II. Prima Facie Evidence. Pesticide residues in or on any off-target Sensitive Area Likely to Be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable.

Rationale for Settlement: The staff took into consideration the levels of residue detected, the precautions the applicator took, and the conditions on site at the time of the application.

Attachments: Proposed Consent Agreement

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

In the Matter of:)	
Jacob Boyington)	ADMINISTRATIVE CONSENT AGREEMENT
Appleton Ridge Construction)	AND
1108 Appleton Ridge Road)	FINDINGS OF FACT
Appleton, Maine 04862)	

This Agreement by and between Jacob Boyington (hereinafter called the "Applicator") 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 applicator operates Appleton Ridge Construction and provides commercial pesticide application services including applying pesticides to commercial blueberry fields.
2. That on August 20, 2015, the Board received a call alleging pesticide drift to a residential property when a blueberry field across the Level Hill Road in Palermo managed by RT Allen & Sons Inc., blueberry company was sprayed on August 18th.
3. That in response to the call in paragraph two, a Board inspector conducted a follow up inspection with the caller the same day the call was received. The inspector also called RT Allen & Sons Inc. and was granted permission to sample the field. The inspector was informed by the blueberry company that Jacob Boyington from the Appleton Ridge Construction company was contracted to make the pesticide application to the field. Three foliage samples were collected from the residential property described in paragraph two. One foliage sample was collected from the treated blueberry field and one foliage sample was collected from the untreated buffer left by the applicator. The applicator was called at this time but was not available to meet the inspector until August 27th.
4. That on August 27, 2015, the inspector conducted a follow up inspection with the applicator for the application described in paragraphs two and three.
5. That from the inspection described in paragraph four, it was determined that the applicator applied malathion insecticide to the blueberry field on the Level Hill Road in Palermo on August 18, 2015. The applicator stated he left an approximately fifty- foot unsprayed buffer between where he was spraying and the Level Hill Road.
6. That two foliage samples collected from the caller's property and the foliage samples from the treated blueberry field and untreated buffer were sent to a lab for analyses.
7. That the lab results for both foliage samples collected from the lawn of the residential property were positive for malathion. The sample near the house had 0.19 ppm. The sample twenty-eight feet from the house towards the Level Hill Road had 0.10 ppm. The lab result from the treated field was positive for malathion at 2.0 ppm . The sample forty feet in from the Level Hill Road in the untreated buffer was positive for malathion at 0.081 ppm.
8. That the caller's property described in paragraph two is a Sensitive Area Likely to be Occupied as that term is defined in CMR 01-026 Chapter 10 section 2(CCC)8.
9. That CMR 01-026 Chapter 22 section 4(B)I requires applicators to undertake applications in a manner that minimizes pesticide drift to the maximum extent practicable.

10. That CMR 01-026 Chapter 22 section 4(B)II provides that pesticide residues in or on any off-target Sensitive Area Likely to be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable.
11. That during the inspection described in paragraph four, the applicator stated the wind was 7-10 mph and blowing from the blueberry field towards the residential property at the time of the application and an airblast sprayer was used to make the application.
12. That the circumstances described in paragraphs one through eleven establish that sufficient precautions were not taken to minimize drift to the maximum extent practicable.
13. That the circumstances described in paragraphs one through twelve constitute violations of CMR 01-026 Chapter 22 section 4(B)I and CMR 01-026 Chapter 22 section 4(B)II.
14. That the Board has regulatory authority over the activities described herein.
15. That the Applicator 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.
16. That this Agreement shall not become effective unless and until the Board accepts it.
17. That, in consideration for the release by the Board of the causes of action which the Board has against the Applicator resulting from the violations referred to in paragraph thirteen, the Applicator agrees to pay to the State of Maine 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.

_____ Date: _____
 JACOB BOYINGTON

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
 Henry Jennings, Director

APPROVED:

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