

# Proposed Administrative Consent Agreement

## Background Summary

**Subject:** Prospect Hill Golf Course  
694 South Maine Street  
Auburn, Maine 04210

**Date of Incident(s):** August 2009 to October 14, 2011

**Background Narrative:** Prospect Hill Golf Course is a public golf course. Because the golf course is open to the public, pesticide applications at the course must be made by a licensed commercial 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 himself in August of 2009. All commercial licenses are affiliated with a company and terminate when the employee leaves the employment of the company. Another employee at the course tested and passed his Master Applicator exam in October 2009, but never licensed as a Master Applicator until October 14, 2011. Prospect Hill Golf Course made unlicensed commercial pesticide applications from August 2009 to October 14, 2011. The unlicensed applicator could not provide the pesticide application records for the ongoing commercial pesticide application made at the course when inspected on September 29, 2011.

### Summary of Violation(s):

- **CMR 01-026 Chapter 31, Section 1(D):** 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 50, Section 1:** Commercial agricultural producers and commercial applicators shall maintain pesticide application records consistent with paragraph II. below for a period of two years from the date of application. Such records shall be kept current by recording all the required information on the same day the application is performed. These records shall be maintained at the primary place of business and available for inspection by representatives of the Board at reasonable times, upon request

**Rationale for Settlement:** After the original Master Applicator at the course terminated his employment, the course took timely steps to have another employee test and pass his Master Applicator Exam. However, the course/employee did not follow through with applying for and getting the Master Applicator License which was required before making pesticide applications at the public golf course and the required pesticide application records were not kept.

**Attachments:** Proposed Consent Agreement

**STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL**

Matthew Ouellette	)	ADMINISTRATIVE CONSENT AGREEMENT
Prospect Hill Golf Course	)	AND
694 South Main Street	)	FINDINGS OF FACT
Auburn, ME 04210	)	

This Agreement, by and between Prospect Hill 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.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 public golf course in Auburn, Maine.
2. That the golf course is considered open to use by the public in accordance with 22 M.R.S.A. § 1471-C(5-A).
3. 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.A. § 1471-C(5).
4. That commercial pesticide applications can only be made or supervised by licensed commercial applicators pursuant to CMR 01-026 Chapter 31, Section 1(A).
5. That each company that employs commercial applicators must employ at least one master applicator as required by CMR 01-026 Chapter 31, Section 1(D).
6. That all commercial applicator licenses are affiliated with a company/agency and, in accordance with CMR 01-026 Chapter 31, Section 1(B), terminate when the employee leaves the employment of that company or agency.
7. That in August of 2009, Richard Fahey terminated himself as the Company golf course superintendent and master applicator. Neither Fahey nor anyone else from the Company notified the Board of his termination.
8. That on December 3, 2010, an office staff person from the Board called Fahey and was notified then that he was no longer employed by the Company.
9. In October of 2009 Matthew Ouellette, Fahey's successor, tested and passed his commercial master exam but did not obtain his license as a commercial applicator until October 14, 2011.
10. That on September 29, 2011, a Board inspector conducted an inspection with Ouellette at the Company.
11. That from the inspection referenced in paragraph ten it was determined that Ouellette made multiple applications to the Company's golf course turf throughout 2010 and 2011, including the application of Ensign 720 Flowable Fungicide (EPA reg. no. 34704-966) and Procon-Z fungicide (EPA reg. no. 34704-879).
12. That the last master applicator employed by the Company was Richard Fahey until Ouellette licensed on October 14, 2011.
13. That the Company made commercial pesticide applications at the Prospect Hill Golf Course from August 2009 through October 14, 2011, without a licensed commercial applicator or a licensed master applicator being employed by the Company.

14. That the circumstances described in paragraphs one through thirteen constitute multiple violations of CMR 01-026 Chapter 31, Section 1(D) and of 22 M.R.S.A. § 1471-D (1)(A), from August 2009 through October 14, 2011.
15. That CMR 01-026 Chapter 50, Section 1, requires commercial applicators to maintain pesticide application records for a period of two years from the date of application, that these records be maintained at the primary place of business and that the records be made available for inspection by representatives of the Board at reasonable times, upon request.
16. That during the inspection referenced in paragraph ten, the company could not provide the pesticide application records with respect to the ongoing commercial pesticide applications to the golf course as required by Chapter 50, Section 1 of the Board's rules.
17. That the circumstances described in paragraphs one through thirteen, and fifteen and sixteen constitute a violation of CMR 01-026 Chapter 50, Section 1.
18. That the Board has regulatory authority over the activities described herein.
19. 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.
20. That this Agreement shall not become effective unless and until the Board accepts it.
21. 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 fourteen and seventeen, the Company agrees to pay to the State of Maine the sum of \$350. (Please make checks payable to Treasurer, State of Maine).

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

PROSPECT HILL GOLF COURSE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_

Henry Jennings, Director

APPROVED

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Randlett, Assistant Attorney General