

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** Moark  
272 Plains Road  
Turner, Maine 04282

**Date of Incident(s):** August 8, 2014

**Background Narrative:** Board staff received a complaint that this egg producing facility was applying fly bait outdoors where it could drain into a nearby stream and birds had been seen dying after eating the bait. An inspector followed up and completed an inspection. Through that inspection it was determined that the Moark employee's application rate exceeded the maximum label rate. The company's position is that label does not specify that the Golden Malrin fly bait must be evenly distributed across the fly feeding area, and that the fly feeding area was of sufficient area so as to allow for the amount of product applied.

The inspector also determined that the applicator wore leather gloves and the personal protective equipment required by the label specified chemical resistant gloves made of any waterproof material.

The inspector could not substantiate the dead birds allegation or determine that the bait was entering streams.

### **Summary of Violation(s):**

- 7 U.S.C. § 136j (a)(2)(G): Unlawful acts-to use any registered pesticide in a manner inconsistent with its labeling.
- 7 M.R.S. § 606 (2)(B): Use or cause to be used any pesticide in a manner inconsistent with its labeling or with rules of the board, if those rules further restrict the uses provided on the labeling.
- 22 M.R.S. § 1471-D(8)(F): Has made a pesticide recommendation, use or application, or has supervised such use or application, inconsistent with the labelling or other restrictions imposed by the board.

**Rationale for Settlement:** The application rate exceeded the maximum label rate and the applicator did not have the correct personal protective equipment required by the pesticide label.

**Attachments:** Proposed Consent Agreement

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

Moark	)	ADMINISTRATIVE CONSENT AGREEMENT
272 Plains Road	)	AND
Turner, Maine 04282	)	FINDINGS OF FACT

This Agreement, by and between Moark (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 on August 4, 2014, the Board received information from a complaint that the company was applying excessive amounts of fly bait along the roads on their property in Turner and that the pesticides were draining into a local stream.
2. That on August 8, 2014, in response to the call in paragraph one, a Board inspector conducted a follow-up inspection with the Company applicator.
3. That from the inspection described in paragraph two, it was determined that a Company applicator applied Golden Malrin fly bait, EPA registration number 2724-274, to roadway and feed storage sites on August 8, 2014, at their 272 Plains Road Turner location.
4. That from the inspection described in paragraph two, the inspector could not substantiate that the fly bait was draining into the local stream. but it was determined that the applicator applied the Golden Malrin granular fly bait at an application rate of 42.7 ounces of bait per 500 square feet.
5. That the Golden Malrin label specifies that the rate of application of granular fly bait is approximately 4 ounces per 500 square feet of fly feeding area.
6. That the Board's position is that the Goldin Marlin was applied in a manner in which it was concentrated around the road areas at a rate that exceeded the label application rates.
7. That it is the Company's position that label does not specify that the Golden Malrin must be evenly distributed across the fly feeding area, and that the fly feeding area was of sufficient area so as to allow for the amount of product applied.
8. That it is the Board's position that the circumstances described in paragraphs one through six constituted the use of a pesticide inconsistent with the product labeling and is a violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F).
9. That it is the Company's position that its use of Golden Malrin was consistent with the intent of the label and that no violations relative the application rate occurred.
10. That from the inspection described in paragraph two, the inspector determined that the company applicator used leather gloves when loading the fly bait to make the application described in paragraph three.

11. That the Golden Marlin label requires applicators to wear chemical resistant gloves made of any water proof material when handling the fly bait.
12. That 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F) require that pesticides be applied consistent with their labeling.
13. That the Board and the Company agree that the actions described in paragraphs two, three, ten, eleven and twelve constitute use of a pesticide in a manner inconsistent with its labeling and, as such, is a violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).
14. That the Board has regulatory authority over the activities described herein.
15. That while the Company does not agree with the Board's position concerning the Golden Marlin application rate, it enters into this agreement for the purposes of resolving the matter.
16. 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.
17. That this Agreement shall not become effective unless and until the Board accepts it.
18. 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 alleged by the Board in paragraphs eight and thirteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$650 (Please make checks payable to Treasurer, State of Maine).

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

MOARK

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

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

BOARD OF PESTICIDES CONTROL

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

APPROVED:

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