

Proposed Administrative Consent Agreement Background Summary

Subject: Ray Newcomb
JBI Helicopters
720 Clough Mill Road
Exeter, NH 03275

Date of Incident(s): August 12, 2014

Background Narrative: Board staff responded to a drift complaint in Exeter alleging that drift occurred to a residential property when a pesticide application was made to a corn field across the road. The commercial applicator of JBI Helicopters, Chris Thresher, applied Quilt Xcel fungicide (azoxystrobin and propiconazole) to the field. Two separate foliage samples collected from turf on the residential lawn were positive for azoxystrobin and propiconazole.

Summary of Violation(s):

CMR 01-026 Chapter 22 section 2(D) which addresses precautions to use when applications are made in the presence of humans and animals states in part that “Pesticide applications shall be undertaken in a manner which minimizes exposure to humans, livestock and domestic animals”.

CMR 01-026 Chapter 22 section 3(C) requires aerial applicators to maintain a site-specific application checklist prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied for each distinct field.

CMR 01-026 Chapter 22 section 4(B)I Standards for Unconsented, Off-Target Drift of Pesticides 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 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.

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:)
Ray Newcomb) ADMINISTRATIVE CONSENT AGREEMENT
JBI Helicopters) AND
720 Clough Mill Road) FINDINGS OF FACT
Exeter, NH 03275)

This Agreement by and between JBI Helicopters (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 parties to this Agreement agree as follows:

1. That the Company is licensed as an aerial spray contracting firm and makes commercial pesticide applications.
2. That on August 12, 2014, the Board received a call from an Exeter resident. The caller said that earlier in the day, a helicopter sprayed a corn field across the road from her house. The wind was from the field towards her house. The caller was concerned about potential residues on her property where her three kids play. She was not aware spraying was going take to place and her kids were outside playing when the application started.
3. That on August 12, 2014, a Board inspector met with the resident described in paragraph two and took two foliage samples from her property. One foliage sample from the lawn close to the front of her house (140812MLP01A) and the other from the lawn near her mail box (140812MLP01B). This same day the Board inspector collected two foliage samples from the corn field across the road. One sample (140812MLP01C) was collected from the first 2 rows of the corn field. Approximately the first 150 feet of corn field in this area was left untreated as a buffer. The other sample was collected one hundred and seventy-five feet into the corn field in the treated area (140812MLP01D).
4. That the caller's property is a Sensitive Area Likely to be Occupied as that term is defined in CMR 01-026 Chapter 10 section 2(CCC)8.
5. That on August 13, 2014, a Board inspector conducted a follow up inspection with Chris Thresher, the Company applicator who made the application described in paragraph two. Thresher said he applied Quilt Xcel fungicide to the Fogler 2 corn block in Exeter on August 12, 2014. The active ingredients in Xcel Quilt are azoxystrobin and propiconazole. Company records indicate the application was made at 10:00 AM and the wind was 3-6 mph out of the south from the treated field towards the caller's property.
6. That all samples collected as described in paragraph three were sent to a lab for analyses. The lab results for the foliage sample collected close to the front of the caller's house was positive for azoxystrobin at 0.73 ppm (28% of target) and propiconazole at 0.73 ppm (28% of target). The foliage sample collected near the caller's mailbox was positive for azoxystrobin at 0.46 ppm (17.7% of target) and propiconazole at 0.40 ppm (15.4% of target). The foliage sample collected from the corn headlands was positive for azoxystrobin at 2.3 ppm (88% of target) propiconazole at 2.2 ppm (85% of target). The sample collected in the treated corn field was positive for azoxystrobin at 2.6 ppm and propiconazole at 2.6 ppm.

7. 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.
8. 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.
9. That the circumstances described in paragraphs one through eight establish that sufficient precautions were not taken to minimize drift to the maximum extent practicable.
10. That the circumstances described in paragraphs one through nine constitute a violation of CMR 01-026 Chapter 22 section 4(B)I.
11. CMR 01-026 Chapter 22 section 2(D), which addresses precautions to use when applications are made in the presence of humans and animals states in part that “Pesticide applications shall be undertaken in a manner which minimizes exposure to humans, livestock and domestic animals”.
12. That the Exeter resident described in paragraph two, stated both verbally and in a written statement that her children were outside playing on their own property when the helicopter started the application to the corn fields as described in paragraph five. Their mother called them inside when she saw what was happening.
13. That during the inspection in paragraph five, the inspector informed the applicator children were outdoors playing when he started making the pesticide application described in paragraphs two and five. The applicator was not aware of this fact until the inspector informed him about it at the time of the follow up inspection.
14. That the circumstances described in paragraphs one through six and eleven through thirteen, constitute a violation of CMR 01-026 Chapter 22 section 2(D).
15. That CMR 01-026 Chapter 22 section 3(C) requires aerial applicators to maintain a site-specific application checklist prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied for each distinct field.
16. That during the inspection in paragraph five, the inspector asked the applicator for the site-specific application checklist for the application to the field described in paragraph five.
17. That the applicator did not have and could not provide the site-specific application checklist requested in paragraph sixteen.
18. That the circumstances described in paragraphs one through five and fifteen through eighteen constitute a violation of CMR 01-026 Chapter 22 section 3(C).
19. That the Board has regulatory authority over the activities described herein.
20. That the Owner 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.

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

22. 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, fourteen, and eighteen, the Company agrees to pay to the State of Maine the sum of \$750. (Please make checks payable to Treasurer, State of Maine.)

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

JBI HELICOPTERS

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General