

Proposed Administrative Consent Agreement

Background Summary

Subject: Hammon Buck
Plants Unlimited
629 Commercial Street
Rockport, Maine 04856

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Date of Incident(s): 2014-2015 growing season

Background Narrative: On August 19, 2015, a Board inspector completed a records and operations check at this nursery/greenhouse business. Through the inspection, it was determined that a pesticide labeled for outdoor residential use only was applied inside this commercial greenhouse on April 23rd, June 26th, and August 28th, of 2014.

No pesticide application records were kept for the 2015 growing season and records were insufficient for the 2014 growing season. Additionally the grower did not train his agricultural workers, and there was no information about pesticide applications posted at a central information display as required by the federal Worker Protection Standard.

Summary of Violation(s):

- CMR 01-026 Chapter 50 Section 1 A: No pesticide application records for 2015 growing season and records were insufficient for the 2014 season.
- Federal Worker Protection Standard, 40 CFR, Part 170.
 - Training agricultural workers is required.
 - Posting information about pesticide applications at a central location is required.
- 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F). Using a pesticide inconsistent with its label directions.

Rationale for Settlement: The staff compared the violations to similar cases settled by the Board and these were repeat violations within a four year period.

Attachments: Proposed Consent Agreement

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

In the Matter of:)	
Plants Unlimited, Inc.)	ADMINISTRATIVE CONSENT AGREEMENT
c/o Hammon Buck)	AND
PO Box 374)	FINDINGS OF FACT
Rockport, Maine 04856)	

This Agreement by and between Plants Unlimited, Inc., (hereinafter called the "Grower") 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 the Grower produces agricultural crops for commercial purposes at a greenhouse/nursery business that utilizes pesticides bearing language requiring conformance with the federal Worker Protection Standard, 40 CFR, Part 170 (WPS).
2. That the Grower employs one or more workers as defined under 40 CFR, Part 170.3 to assist in the production of the crops described in paragraph one.
3. That a Board inspector conducted a records and operations inspection at the Grower's facility on August 19, 2015.
4. That from the inspection done in paragraph three, it was determined that the Grower did not train its agricultural workers, and there was no WPS information at a central information display as required by the federal Worker Protection Standard, 40 CFR, Part 170.
5. That the circumstances in paragraphs one through four constitute multiple violations of the federal Worker Protection Standard, 40 CFR, Part 170.
6. That CMR 01-026 Chapter 10 Section 2(H), specifies that a commercial agricultural producer "means, for the purposes of Chapter 50, any person who produces an agricultural commodity for commercial purposes".
7. That CMR 01-026 Chapter 50 Section 1(A), requires that commercial agricultural producers shall maintain pesticide application records.
8. That from the inspection done in paragraph three, it was determined that the Grower did not maintain the pesticide application records as required by CMR 01-026 Chapter 50 Section 1(A) for 2015 applications and that the records maintained for the 2014 applications were insufficient.
9. That the circumstances described in paragraphs three and six through eight, constitute a violation of CMR 01-026 Chapter 50 Section 1(A).
10. That from the inspection in paragraph three it was determined that the Bayer Advanced All-In-One Rose & Flower Care was applied inside a greenhouse on April 23, 2014, June 26, 2014 and August 28, 2014.
11. That the Bayer Advanced All-In-One Rose & Flower Care label specifies that it is for outdoor residential use only.

12. That the circumstances described in paragraphs three, ten, and eleven constitute use of a pesticide inconsistent with the product labeling and in 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).
13. That the Grower entered into a Consent Agreement with the Board on March 20, 2014, for violations in connection with an inspection made on May 2, 2012. The Grower did not keep pesticide application records in 2012 and did not train its workers as required by the federal Worker Protection Standard. Consequently, the violations described in paragraphs five, nine, and twelve are all subsequent violations for the purposes of the enhanced penalty provisions in 7 M.R.S. § 616-A (2)(A).
14. That the Board has regulatory authority over the activities described herein.
15. That the Grower 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 Grower resulting from the violations referred to in paragraphs five, nine, and twelve the Grower 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.

PLANTS UNLIMITED

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General