

# Proposed Administrative Consent Agreement

## Background Summary

**Subject:** Wise Acres Farm  
424 Town House Road  
Kenduskeag, Maine 04450

**Date of Incident(s):** June 7, 2017

**Background Narrative:** On June 15, 2017, a Board inspector completed an inspection with the owner of Wise Acres Farm in Kenduskeag.

The owner/applicator exceeded the maximum labeled application rate when applying Actinovate AG Biological Fungicide on June 7, 2017. The applicator did not wear the required respirator when mixing, loading, and applying the pesticide. Additionally, the owner did not have OSHA safety data sheets at a central information display as required by the federal Worker Protection Standard and the pesticide application records were incomplete.

### Summary of Violation(s):

- Federal Worker Protection Standard, 40 CFR, Part 170. OSHA safety data sheets not provided at a central information display for workers.
- 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 (exceeded maximum labeled application rate, lack of respirator).
- 01- 026 C.M.R. Ch. 50, § 1(A), The applicator's pesticide application records were insufficient. Information that was missing included: application method, applicator name, applicator license number, town of application, target pest, documentation of sensitive areas, and weather data.

**Rationale for Settlement:** Lack of personal protective equipment, did not post the required safety data sheets for workers, insufficient pesticide applicator records, and exceeded the maximum labeled application rate.

**Attachments:** Proposed Consent Agreement



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

In the Matter of: )  
Wise Acres Farm ) ADMINISTRATIVE CONSENT AGREEMENT  
424 Town House Road ) AND  
Kenduskeag, Maine 04450 ) FINDINGS OF FACT

This Agreement by and between Wise Acres Farm, (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 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 an inspection at the Grower's facility on June 15, 2017.
4. That from the inspection described in paragraph three, it was determined that on June 7, 2017, the Grower applied 2 ounces of Actinovate AG Biological Fungicide ("Actinovate AG") to 3,600 square feet of strawberries. The label maximum is 1 ounce of Actinovate AG to 3,600 square feet of strawberries.
5. That the circumstances described in paragraphs one through four 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).
6. That, as a result of the inspection described in paragraph three, it was also determined that the Grower did not have OSHA safety data sheets at a central information display as required by the federal Worker Protection Standard, 40 CFR, Part 170.
7. That the circumstances in paragraphs one through four, and six, constitute a violation of the federal Worker Protection Standard, 40 CFR, Part 170.
8. That during the inspection described in paragraph three, the inspector reviewed the pesticide label for Actinovate AG and documented that the use of this product requires that mixers, loaders, applicators, and other handlers wear a respirator meeting NIOSH standards of at least N-95, R-95, or P-95.
9. That the inspection showed that no respirator was worn when the Actinovate AG was mixed, loaded or applied on June 7, 2017, as described in paragraph four.
10. That circumstances described in paragraphs one through four, eight, and nine, 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).

11. That 01- 026 C.M.R. ch. 50, § 1(A), requires that commercial agricultural producers shall maintain pesticide application records.
12. That from the inspection described in paragraph three, it was determined that the Grower's records were insufficient under 01- 026 C.M.R. ch. 50, § 1(A). Information that was missing included: application method, applicator name, applicator license number, town of application, target pest, documentation of sensitive areas, and weather data.
13. That the circumstances described in paragraphs one, three, four, eleven, and twelve, constitute a violation of 01- 026 C.M.R. ch. 50, § 1(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, seven, ten, and thirteen, the Grower agrees to pay to the State of Maine the sum of \$175. (Please make checks payable to Treasurer, State of Maine).

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

WISE ACRES FARM

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

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

BOARD OF PESTICIDES CONTROL

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

Megan Patterson, Director

APPROVED:

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

Mark Randlett, Assistant Attorney General