

## Proposed Administrative Consent Agreement Background Summary

**Subject:** Paul Finden and Emily Rogals  
387 High Street  
Belfast, Maine 04971

**Date of Incident(s):** Late summer/early fall 2017

**Background Narrative:** Christopher Harley-White, a resident of Belfast, called the Board on October 5, 2017. He alleged that his abutting neighbors Paul Finden and Emily Rogals applied an herbicide that killed some of his grass and damaged some landscape trees and a shrub that were professionally planted. The complaint was investigated by a Board inspector. Initially Finden and Rogals denied ever purchasing or using herbicides or any involvement with the damage to Harley-White's property. The inspector later documented that Roundup herbicide was purchased on multiple occasions at a local hardware store by collecting and reviewing the store's customer item history report on Finden. A plant pathologist from the Maine Forest Service visited Harley-White's property and after seeing the symptoms on multiple tree species concluded the damage did not appear to be from natural causes. A Board inspector collected a soil sample from dead grass next to a damaged tree, and a composite foliage sample from affected trees. Both were positive for glyphosate and AMPA (a breakdown metabolite of glyphosate). Based on the evidence in this case, a consent agreement was mailed to Finden/Rogals. Finden later met with Board staff and admitted that his wife applied the herbicide to Harley-White's landscape trees. Rogals did this because the trees were shading her flower gardens and causing ice buildup on their driveway.

**Summary of Violation(s):** CMR 01-026 Chapter 20 Section 6(D)2 No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property.

**Rationale for Settlement:** Finden and Rogals did not have the property owners' authorization to apply a pesticide to their property and did not take the necessary steps to get that authorization.

**Attachments:** Proposed Consent Agreement

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

In the Matter of: )  
Paul Finden and Emily Rogals ) ADMINISTRATIVE CONSENT AGREEMENT  
387 High Street ) AND  
Belfast, Maine 04915 ) FINDINGS OF FACT

This Agreement by and between Paul Finden and Emily Rogals (hereinafter called "Finden & Rogals") 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 October 5, 2017, the Board received a phone call from Christopher Harley-White who resides at 383 High Street in Belfast with his wife Kristin Robinson-White. C. Harley-White alleged that Finden & Rogals, his abutting neighbors at 387 High Street, applied herbicide that killed some of his grass and damaged some of his trees.
2. That on October 6, 2017, a board inspector called C. Harley-White to get additional information and to schedule an on-site inspection. C. Harley-White reported that two to three weeks prior, his wife noticed the tops of some of their trees were dying and turf grass near these trees was also dead and dying. The inspector scheduled an on-site inspection for October 10, 2017.
3. That on October 10, 2017, the board inspector met with C. Harley-White at his residence. In the spring of 2014, he and his wife had a six-foot-tall stockade fence installed on the northwest side of their property. About a month later they hired Farley & Son Landscape Company to plant conifer trees that were six to eight feet tall, and some ornamental hardwood trees and shrubs that included a hydrangea and two hawthorns along the fence. Both the fence and landscape plants were on the White's property.
4. That during the meeting in paragraph three the inspector noted that fourteen of the planted conifer trees and the hydrangea planted along the fence on C. Harley-White's property had dead tops or tops with die-back. The grass near these same trees appeared dead. The affected trees and grass were parallel to Finden & Rogals' driveway. Other conifer and deciduous trees planted at the same time were healthy and green as was the grass near them.
5. That on October 11, 2017, the inspector collected a soil sample from under the dead grass aligned with trees with dead and dying tops and a foliage sample from these same damage trees described in paragraphs three and four. Digital photos were taken of the sampled sites.
6. That on October 11<sup>th</sup>, the inspector also met with Finden & Rogals. Both stated they were opposed to the White's planting of the trees described in paragraphs three and four because the trees blocked sunlight to their gardens and would cause ice buildup on their driveway.
7. That lab results for the soil sample collected as described in paragraph five was positive for glyphosate at 5164 ppb and 1512 ppb AMPA (a breakdown metabolite of glyphosate). The vegetation sample described in paragraph five was positive for glyphosate at 7221 ppb and 98 ppb AMPA.

8. That on October 19, 2017, the board inspector phone Matt Tripp, the foreman at Farley & Son Landscape company who oversaw the landscape planting of trees and shrubs described in paragraph three. Tripp told the inspector that the neighbors (Finden & Rogals) did not want the trees planted there and that Emily Rogals stated that the trees will not be allowed to grow and shade her property. Tripp also told the inspector that Finden & Rogals did not like Christopher and his wife and that some very bad comments were made to that affect.
9. That at the Board's request, a plant pathologist with the Maine Forest Service examined the trees and site on November 20, 2017.
10. That in a letter to Board staff, the plant pathologist stated that the symptoms of the declining trees near the fence were not consistent with biotic (natural) causes. The trees were growing well, indicating the site was suitable for the trees, and that they had been taken care of since the time of planting. The timing and appearance of symptoms was not consistent with environmental stressors. The pathologist encouraged testing for herbicide exposure since certain herbicides can cause symptomology similar to that seen on the trees on C. Harley-White's property.
11. That on November 8, 2017, two Board inspectors interviewed Rogals outside her Belfast home. During that interview, Rogals was asked if either she or her husband ever purchased Roundup or a similar product containing glyphosate to kill weeds or brush. Rogals responded that neither she nor her husband have ever bought or used it since they are organic.
12. That during the interview described in paragraph eleven, Rogals completed a written statement stating that to her knowledge, neither she nor Finden ever used Roundup.
13. That part way through Rogal's written statement described in paragraph twelve, Rogals told the inspectors she wanted to put examples of how mean her neighbors (C. Harley-White family) had been to her family but it was too much to write. Rogals told the inspectors some examples, including the planting of trees without asking Finden & Rogals about it or even talking to them about it. "The trees are already causing our driveway to ice up more and blocking sun from our gardens."
14. That on October 10, 2017, a board inspector contacted Aubuchon store # 171 in Belfast. During that contact, the inspector inquired about and received pesticide purchase information for Paul Finden in the form of a customer item history report dated 10/10/17.
15. That a review of the customer item history report, indicated that Finden made multiple purchases of Roundup herbicide including the following: 7/18/16- Roundup 30 oz TRIG; 8/11/16 - Roundup 1.33 gallons PU; 11/6/16- Roundup Pump N Go 1; and 8/23/17-Roundup Concentrate PT.
16. That in addition to the Roundup purchased as described in paragraph fifteen, the customer item history report further indicates Finden purchased two hand held pressure sprayers on 5/15/16.
17. That the facts, including Finden & Rogals' objections to the trees being planted by the Whites adjacent to their driveway, the damage to those trees consistent with the application of an herbicide, the damage to the grass beside those trees consistent with the application of an herbicide, the existence of soil and foliage samples which tested positive for the presence of glyphosate and AMPA (active ingredient and metabolite of the active ingredient in Roundup), Rogals' statement that neither she nor her husband ever purchased or used Roundup because they were organic, and the store invoices showing that Finden purchased Roundup

and pressure sprayers, all show that Finden and/or Rogal applied Roundup to the trees on the White's property on at least one occasion and that they may have, in fact, made multiple applications.

- 18. That CMR 01-026 Chapter 20 Section 6(D)2 requires prior authorization from the property owner before a person can apply pesticides to their property.
- 19. That Finden & Rogals did not have the White's authorization for the application of pesticide to their property.
- 20. That the circumstances described in paragraphs one through nineteen constitute a violation of CMR 01-026 Chapter 20 Section 6(D)2.
- 21. That the Board has regulatory authority over the activities described herein.
- 22. That Finden & Rogals expressly waive:
  - 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.
- 23. That this Agreement shall not become effective unless and until the Board accepts it.

That in consideration for the release by the Board of the cause of action which the Board has against Finden & Rogals resulting from the violation referred to in paragraph twenty, Finden & Rogals agree to pay a penalty to the State of Maine in the sum of \$1500. (Please make checks payable to Treasurer, State of Maine).

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

FINDEN & ROGALS

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

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

BOARD OF PESTICIDES CONTROL

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

Megan Patterson, Director

APPROVED:

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

Mark Randlett, Assistant Attorney General