

Proposed Administrative Consent Agreement Background Summary

Subject: Frederick's Property Preservation and Inspections
741 Western Avenue
Dixmont, Maine 04932

Date of Incident(s): On June 21, 2017, and June 23, 2017.

Background Narrative: Frederick's Property Preservation and Inspections company was hired to clean up a foreclosed property at 112 Rockland Road (Route 17) in Whitefield. An enclosed cargo trailer parked on an abutting property but owned by the foreclosed property owner, was part of the cleanup project.

The contents of the enclosed trailer included approximately thirty 20 pound bags of Sam's Choice Weed and Feed 24-6-12. Frederick's Property Preservation and Inspections company employees said that when they dismantled the sides of the metal trailer on June 21, 2017, the bags fell off the trailer and ended up in a marsh/wetland area on the abutting property. The employees said all but six bags broke, those unbroken bags were removed from the site by the company employees. The balance of the weed and feed was left in the wetland.

The Maine Department of Environmental Protection (DEP) received a complaint call about the incident on June 23, 2017, and a DEP inspector went to the site the same day. The DEP inspector observed dead vegetation in the marsh/wetland area and talked to Frederick's Property Preservation and Inspections employees who had just spread what they could of the original weed and feed pile that was in the marsh/wetland on drier ground. The DEP reported the spill to the BPC later in the day on June 23, 2017, and emailed DEP's initial reporting form for the incident.

On June 26, 2017, an inspector from the DEP and an inspector from the BPC returned to the site to conduct a joint follow-up inspection. Granular weed and feed could still be seen in the marsh/wetland area. There was dead vegetation in this same area approximately fifteen feet in diameter. Other granules could be seen spread out on both the foreclosed property and the abutting property and there was a strong smell associated with pesticides. The granules were not spread out uniformly and clumps and piles covered about 16 476 square feet on the foreclosed property and 281 square feet on the abutting property.

On June 27, 2017, a BPC inspector met with the owner of Frederick's Property Preservation and Inspections company. The owner acknowledged that the weed and feed was initially in the marsh/wetland area but later his crew collected some of the weed and feed in the marsh/wetland in pails and totes and removed it from the site. When the employees ran out of pails and totes they spread the remainder of the material out on the foreclosed property and the abutting property. The company owner estimates about ten 20 pound bags were spread on the 2 properties.

No one from Frederick's Property Preservation and Inspections company was a licensed applicator at the time of the applications.

Summary of Violation(s):

- 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 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 (rate of application and site of application).
- 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. The term “legal occupant” includes tenants of rented property.
- 22 M.R.S. 1471-D (1) (A)- No commercial applicator may use or supervise the use of any pesticide within the State without prior certification from the board, provided that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator. CMR 01-026 Chapter 31 Section 1(A) III- Supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator....

Rationale for Settlement: Number of violations and environmental impact.

Attachments: Proposed Consent Agreement

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

Ryan Frederick)	
Frederick's Property Preservation and Inspections)	ADMINISTRATIVE CONSENT AGREEMENT
741 Western Avenue)	AND
Dixmont, Maine 04932)	FINDINGS OF FACT

This Agreement, by and between Frederick's Property Preservation and Inspections (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, owned by Ryan Frederick, is a commercial company that offers property inspection and cleanup services including in the Whitefield area.
2. That on June 21, 2017, the Maine Department of Environmental Protection (MDEP) received a complaint about material that was dumped on a wetland area located at 112 Rockland Road (Route 17) in Whitefield. This site is across from Elmer's Barn.
3. MDEP's initial spill report indicated that 8-10 bags of fertilizer were believed to have been disposed of in the wetland and surrounding area.
4. The Company was hired to clean up a foreclosed residential property at 112 Rockland Road.
5. That on June 23, 2017, in response to the complaint described in paragraph two, a MDEP inspector went to 112 Rockland Road to investigate. The Company happened to be at the site at that time. Company employees told the inspector they had just picked up piles of granular material that they previously spilled on site, including in the wetland area. When the employees ran out of totes and five gallon buckets to put the granular material that was picked up on June 23 into, the employees spread the remainder of granular material on the property. The MDEP inspector asked if the employees had any bags so he could determine what the granular material was. The employees said they did not have any bags and that the contents of up to ten bags had been disposed of on the property.
6. That during the inspection described paragraph five, the MDEP inspector observed an area of dead vegetation in a wetland area, approximately fifteen feet in diameter. Granular material had also been spread on portions of the foreclosed property and the property at 20 Otter Lane.
7. That on June 23, a MDEP staff person called Board staff to let them know about their investigation described in paragraphs one through six. The MDEP caller also sent the Board a copy of the MDEP's initial spill report on the incident.
8. That a Board inspector and the MDEP inspector met at 112 Rockland Road on June 26, 2017, to further investigate the incident.
9. That during the investigation described in paragraph eight the Board inspector observed a high concentration of granular material visible in the wetland as well as on portions of the foreclosed property and portions of the abutting property at 20 Otter Lane. There was also a chemical smell in these areas.

10. That the Board inspector interviewed the owner of the property at 20 Otter Lane. From that interview the inspector determined that the wetland area where the granular material had been disposed of as described in paragraphs five, six, and nine was on the 20 Otter Lane property, not the foreclosed property.
11. That on June 27, 2017, a Board inspector met with Ryan Frederick and his brother Michael. Michael worked on the cleanup crew at the foreclosed property described in paragraphs four and five, including work done on July 21, 2017, and July 23, 2017. Ryan told the inspector that when an enclosed cargo trailer was being dismantled on the property all the Sam's Choice Weed and Feed bags fell off the trailer. Both Fredericks estimated there were about thirty bags on the trailer, and all but six broke open when they fell. Ryan said these six unbroken bags were taken to his home. The inspector took photos of an empty bag of Sam's Choice Weed and Feed 24-6-12 that Ryan provided. The net weight printed on the bag was 20 lbs.
12. That on August 2, 2017, a Board inspector returned to the property at 112 Rockland Road and the abutting property at 20 Otter Lane. The inspector measured the area where the Weed and Feed was spread as described in paragraphs five and six. From the measurements taken by the Board inspector, the Weed and Feed was applied to 16,476 square feet (0.38 acre) of the property at 112 Rockland Road, and to 281 square feet (0.01 acre) of the property at 20 Otter Lane, including in the wetland area.
13. That the maximum application rate stated on the label for Sam's Choice Weed and Feed 24-6-12 is twenty pounds per 5,000 square feet or two-hundred pounds per 50,000 square feet (1.15 acres).
14. 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 used consistent with their labels.
15. That based on the facts outlined in paragraphs one through thirteen, the Company exceeded the maximum label application rate of Sam's Choice Weed and Feed 24-6-12.
16. That the circumstances described in paragraphs one through fourteen constitute 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)
17. That the wetland area described in paragraphs two, three, five, six, nine, ten, and twelve, in which the Sam's Choice Weed and Feed 24-6-12 was applied, is not a labeled treatment site on the Sam's Choice Weed and Feed 24-6-12 pesticide label.
18. That the circumstances described in paragraphs one through fourteen and seventeen constitute 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)
19. 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.
20. That the Company did not have the 20 Otter Lane property owner's authorization for the June 21, 2017, and June 23, 2017, applications of pesticides to his property.
21. That the circumstances described in paragraphs one through twelve, nineteen, and twenty constitute violations of CMR 01-026 Chapter 20 Section 6(D)2.
22. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A) III.

23. That a custom application as defined in 22 M.R.S. § 1471-C(5-A) includes any application of any pesticide under a contract or for which compensation is received, or any application of a pesticide to a property open to use by the public.
24. That the pesticide applications described in paragraphs four and five constitute custom applications of pesticides in accordance with 22 M.R.S. § 1471-C (5-A) because the Company was operating under a contract for which it received compensation and because the Weed and Feed was applied in the performance of that contract.
25. That the Company did not employ a master applicator, and no one from the Company had a commercial pesticide applicator's license at the time the applications described in paragraphs four and five were made.
26. That the circumstances described in paragraphs one, two, four, five, and twenty-two through twenty-five constitute violations of 22 M.R.S. 1471-D (1)(A) and CMR 01-026 Chapter 31 Section 1(A) III.
27. That the Board has regulatory authority over the activities described herein.
28. 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.
29. That this Agreement shall not become effective unless and until the Board accepts it.
30. 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 sixteen, eighteen, twenty-one, and twenty-six, the Company agrees to pay to the State of Maine the sum of \$900. (Please make checks payable to Treasurer, State of Maine).

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

FREDERICK'S PROPERTY PRESERVATION AND INSPECTIONS

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Cam Lay, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General