

Proposed Administrative Consent Agreement

Background Summary

Subject: Black Kettle Farm
1391 S. Waterboro Road
Lyman, Maine 04002

Date of Incident(s): July 11, 2017

Background Narrative: On July 13, 2017, a Board inspector completed an inspection with the owner of Black Kettle Farm in Lyman.

The owner/applicator exceeded the maximum labeled application rate when applying Pyganic Crop Protection EC 5.0 II. The applicator did not wear the required chemical resistant gloves 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.

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 chemical resistant gloves).

Rationale for Settlement: Lack of personal protective equipment, did not have the required safety sheets available to workers, 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:)
Black Kettle Farm) ADMINISTRATIVE CONSENT AGREEMENT
c/o Laura Neale) AND
1391 S. Waterboro Road) FINDINGS OF FACT
Lyman, Maine 04002)

This Agreement by and between Black Kettle 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 July 13, 2017.
4. That from the inspection in paragraph three, it was determined that on July 11, 2017, the grower applied Pyganic Crop Protection EC 5.0 II to 4,000 square feet of winter squash.
5. That from the inspection described in paragraphs three and four, it was 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.
6. That the circumstances in paragraphs one through five constitute a violation of the federal Worker Protection Standard, 40 CFR, Part 170.
7. That from the application described in paragraph four, the inspector documented the pesticide label for Pyganic Crop Protection EC 5.0 II. The label for this product requires that mixers, loaders, applicators, and other handlers wear chemical resistant gloves.
8. That the grower did not have on chemical resistant gloves when mixing loading and applying the Pyganic Crop Protection EC 5.0 II.
9. That circumstances in paragraphs one through four, seven, and eight, 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).
10. That the maximum label rate of application for growing crops outdoors for Pyganic Crop Protection EC 5.0 II is 0.4 ounces per 1,000 square feet (17 ounces/acre).
11. That from the inspection described in paragraphs three and four, it was determined that the Grower applied .05 ounces of Pyganic Crop Protection EC 5.0 II per 1,000 square feet.

12. That the circumstances described in paragraphs three, four, 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 Board has regulatory authority over the activities described herein.

14. 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.

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

16. 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 six, nine, and twelve the Grower agrees to pay to the State of Maine the sum of \$150. (Please make checks payable to Treasurer, State of Maine).

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

BLACK KETTLE FARM

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General