Proposed Administrative Consent Agreement Background Summary

Subject: Joseph Lemar

20 Calls Hill Road Dresden, Maine 04342

Date of Incident(s): One application sometime between 4-12-12 and 2013 growing season.

Background Narrative: On October, 2, 2014, the Board received an email from a landowner in Dresden. The landowner raised concerns over an itemized invoice she received from Lemar for work done on her blueberry land that included a line item for "poison". Lemar later confirmed to a Board inspector that he made an application of Roundup Herbicide to the landowner's blueberry land in Dresden. Lemar was not licensed as a commercial applicator to apply pesticides.

Summary of Violation(s):

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.

Rationale for Settlement: The staff compared the violations to similar cases settled by the Board.

Attachments: Proposed Consent Agreement

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

Joseph Lemar	ADMINISTRATIVE CONSENT AGREEMENT
20 Calls Hill Road	ADMINISTRATIVE CONSENT AGREEMENT
Dresden, Maine 04342)
Diesden, Maine 04342	FINDINGS OF FACT

This Agreement, by and between Joseph Lemar 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 on October 2, 2014, the Board received an email from Mary Fabus who owns land in Dresden. Fabus stated she asked the original landowner she bought her land from, Joseph Lemar, to manage the blueberries on her land while he was managing his own blueberry land. She later received an invoice from Lemar listing work done on her land from 4-12-12 through 2013. The invoice included a line item listing "poison". Fabus included the invoice as an attachment to her email.
- 2. That on December 2, 2014, a Board Inspector spoke with Lemar by telephone. In that phone conversation Lemar acknowledged that the "poison" referenced on his invoice to Fabus was for a Roundup Herbicide application he made to Fabus's property in Dresden.
- 3. 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.
- 4. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) and includes any application of any pesticide under contract or for which compensation is received.
- 5. That the pesticide application to Fabus's property as described in paragraphs one and two constitute a custom application under 22 M.R.S. § 1471-C(5-A) and, therefore, a commercial applicator's license was required for the application.
- 6. That Lemar did not have a commercial pesticide applicator's license at the time of the pesticide application described in paragraph two.
- 7. That the circumstances described in paragraphs one through six constitute violations of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
- 8. That the Board has regulatory authority over the activities described herein.
- 9. 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.

- 10. That this Agreement shall not become effective unless and until the Board accepts it.
- 11. 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 paragraph seven, the Company agrees to pay to the State of Maine the sum of \$300. (Please make checks payable to Treasurer, State of Maine.)

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

JOSEPH LEMAR	
By:	Date:
Type or Print Name:	
BOARD OF PESTICIDES CONTROL	
BOARD OF FESTICIDES CONTROL	
By:	Date:
Henry Jennings, Director	
APPROVED	
TH TRO VED	
By:	Date:
Mark Randlett, Assistant Attorney General	