

**Proposed Administrative Consent Agreement
Background Summary**

Subject: William Cunningham
Cunningham Cultivation
280 Capen Rd.
Gardiner, ME 04345

Date of Incident(s): April 15, 2021

Background Narrative: In April 2021 Board staff were contacted about pesticides being applied to medical marijuana at a cultivation site in Gardiner and that excess unused pesticides were improperly disposed of by dumping them out the doors of the facility. On May 7, 2021, two Board inspectors conducted a joint inspection with OMP personnel at the Grower's cultivation site. The inspection revealed that Spectracide Immunox Multi-Purpose Fungicide Spray Concentrate (EPA registration # 9688-123-8845) and Flying Skull Plant Products, Nuke'Em, Insecticide & Fungicide (EPA Section 25(b) exempt product) had been applied to the Grower's marijuana plants on multiple occasions in 2021. These applications were conducted without proper pesticide applicator licensing. A composite soil sample was taken from the exterior of the cultivation site at 280 Capen Road in Gardener. The lab results for this sample revealed the presence of Myclobutanil at 1.6 ppm. Myclobutanil is the active ingredient in Spectracide Immunox Multi-Purpose Fungicide Spray Concentrate (EPA registration # 9688-123-8845).

Summary of Violations: 22 M.R.S.A. § 1471-D(2-D) requires Board certification of private applicators using general-use pesticides to produce plants or plant products intended for human consumption, where the person applying the pesticides or the employer of the person applying the pesticides derives \$1,000 or more in annual gross income from the sale of those commodities.

7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F) prohibit the use of a pesticide inconsistent with its label.

The use of pesticides in the production of medical marijuana, as described in this agreement, was potentially harmful to the public health, in violation of 22 M.R.S. § 1471-D (8)(C).

Rationale for Settlement: In 2021 Cunningham Cultivation was cultivating a consumable commodity and making pesticide applications without proper licensing. Multiple label violations including application to unlisted site and improper disposal occurred.

Attachments: Proposed Consent Agreement

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

William Cunningham	)	ADMINISTRATIVE CONSENT AGREEMENT
Cunningham Cultivation	)	
280 Capen Road	)	AND
Gardiner, Maine 04345	)	FINDINGS OF FACT

This Agreement, by and between William Cunningham, doing business as Cunningham Cultivation (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.A. §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 operates a medical marijuana cultivation site at 280 Capen Road in Gardiner, Maine.
2. That on April 15, 2021, the Board received a phone call from a concerned citizen who alleged that a pesticide was being applied to the medical marijuana being grown at the Cannabis Culture medical marijuana cultivation site in Gardiner and that excess pesticide was improperly disposed of at this location by dumping it out the door.
3. That in response to the call the Board received in paragraph two, Board staff contacted the Office of Marijuana Policy (OMP), within the Department of Administrative and Financial Services (DAFS), which is the agency responsible for the licensing of medical marijuana facilities in the State of Maine. Details of the complaint were transmitted to the OMP.
4. That on May 3, 2021, two Board inspectors conducted a joint inspection with OMP personnel at the Grower's cultivation site and interviewed the Grower.
5. That on May 7, 2021, two Board inspectors conducted a joint inspection with OMP personnel at the 280 Capen Road facility and interviewed Charles Crapps, owner of the building in which the Grower's growing area is located.
6. That on May 10, 2021, a Board inspector conducted a second inspection with the Grower in which pesticide application records, developed by the Grower subsequent to the May 3, 2021, inspection, were reviewed and the pesticide application practices were documented in detail by the inspector.
7. That during the inspections described in paragraphs four and five, Board staff confirmed that there were two separate grow rooms located at 280 Capen Road in Gardiner, Maine. Grow Room 1 was leased and operated by the Grower. Grow Room 2 was operated by the building owner, Charles Crapps.
8. That during the inspection described in paragraph five, Board staff documented five pesticides at the Capen Road cultivation site: Spectracide Immunox Multi-Purpose Fungicide Spray Concentrate (EPA registration # 9688-123-8845); Growth Technology, CloneX Rooting Gel (EPA registration # 79664-1); ZeroTol 2.0 Broad Spectrum Algaecide/Bactericide/Fungicide (EPA registration # 70299-12); SaniDate 5.0 Sanitizer/Disinfectant (EPA registration # 70299-19); and Flying Skull Plant Products, Nuke'Em, Insecticide & Fungicide (EPA registration 25(b) exempt).

9. That during the inspection described in paragraph five, a Board inspector took photographs of the areas directly outside of the two entry doors used to access Grow Rooms 1 and 2. Said photographs document discoloration directly outside of the doors.
10. That during the inspection described in paragraph five, a composite soil sample was taken from the exterior of the cultivation site at 280 Capen Road in Gardener. The lab results for this sample revealed the presence of Myclobutanil at 1.6 ppm. Myclobutanil is the active ingredient in Spectracide Immunox Multi-Purpose Fungicide Spray Concentrate (EPA registration # 9688-123-8845).
11. That during the inspection described in paragraph six, the Grower acknowledged that Spectracide Immunox Multi-Purpose Fungicide Spray Concentrate (EPA registration # 9688-123-8845) and Flying Skull Plant Products, Nuke'Em, Insecticide & Fungicide (EPA Section 25(b) exempt product) were applied to the Grower's marijuana plants on multiple occasions during 2021.
12. That the Spectracide Immunox Multi-Purpose Fungicide Spray Concentrate (EPA registration # 9688-123-8845) label is specific about the sites (plants) on which the product may be used. The product may be applied to variety of landscape plants and several fruits and vegetables. The product label does not contain any language that would allow its use on medical marijuana, such as a reference specific to use on marijuana plants, or language containing broad statements about use on any plant or foliage.
13. That Spectracide Immunox Multi-Purpose Fungicide Spray Concentrate (EPA registration # 9688-123-8845) is limited by the product labeling to outdoor, home use only.
14. That the 2021 applications of Spectracide Immunox Multi-Purpose Fungicide Spray Concentrate (EPA registration # 9688-123-8845) on the Grower's marijuana plants were inconsistent with the product label because the product was used indoors, it was applied for non-home purposes, and it was applied to plants for which its use was not authorized by the product label.
15. That 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F) prohibit the use of a pesticide inconsistent with its label.
16. That the circumstances described in paragraphs one through fifteen constitute multiple violations of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B), and 22 M.R.S.A. § 1471-D(8)(F).
17. That the circumstances described in paragraphs two, nine and ten constitute evidence that Spectracide Immunox Multi-Purpose Fungicide Spray Concentrate (EPA registration # 9688-123-8845) was disposed of outdoors, or otherwise allowed to contaminate the area directly in front of the grow room doors.
18. That allowing excess or residual spray mix to contaminate the area outside the grow room doors at 280 Capen Road in Gardiner, Maine is:
 - a. inconsistent with the labeling for Spectracide Immunox Multi-Purpose Fungicide Spray Concentrate (EPA registration # 9688-123-8845) in violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F), and;
 - b. use of a pesticide in a careless, negligent, or faulty manner in violation of 22 M.R.S.A. § 1471-D (8)(C).
19. That the circumstances described in paragraphs seventeen and eighteen—if factual—are inconsistent with the product labeling.

20. That the circumstances described in paragraphs seventeen, eighteen and nineteen—if factual—would be considered multiple violations of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B), and 22 M.R.S.A. § 1471-D(8)(F).
21. That 22 M.R.S.A. § 1471-D(2-D) requires Board certification of private applicators using general-use pesticides to produce plants or plant products intended for human consumption, where the person applying the pesticides or the employer of the person applying the pesticides derives \$1,000 or more in annual gross income from the sale of those commodities.
22. That no one employed by the Grower was certified in compliance with 22 M.R.S.A. § 1471-D(2-D) during 2021.
23. That the circumstances described in paragraphs twenty-one and twenty-two constitute a violation of 22 M.R.S.A. § 1471-D(2-D).
24. That CMR 01-026, Chapter 50 Section 1 A, requires commercial agricultural producers to maintain pesticide application records.
25. That the William Cunningham developed records incorporated into a Pesticide Applicator Logbook covering applications made to the Grower's cannabis plants in 2021 that were not completed at the time of applications, but produced after the May 3, 2021 inspection by the Board inspectors,
26. That failure to maintain pesticide applicator records in a timely fashion constitutes multiple violations of CMR 01-026, Chapter 50 Section 1 A.
27. The Board finds that the use of pesticides in the production of medical marijuana, as described in this agreement, was potentially harmful to the public health, in violation of 22 M.R.S. § 1471-D (8)(C).
28. That the Board has regulatory authority over the activities described herein.
29. 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.
30. That this Agreement shall not become effective unless and until the Board accepts it.
31. 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 sixteen, eighteen, twenty-two, twenty-five, twenty-eight, twenty-nine, the Grower agrees to pay to the State of Maine a penalty in the amount of \$4000.00. Payments will be made in monthly installments of \$500.00 per month. Payments are due on the first of the month starting on July 1, 2023, and the last payment will be due on February 1, 2024. All payments must be by check, made payable to the Treasurer, State of Maine.

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

CUNNINGHAM CULTIVATION

By:  Date: 5/30/2023

William Cunningham, Owner and Operator

BOARD OF PESTICIDES CONTROL

By:  Date: 5/30/2023

John Pietroski, Acting Director

APPROVED

By: _____ Date: _____
Mark Randlett, Assistant Attorney General