

Proposed Administrative Consent Agreement Background Summary

Subject: Dennis Welsh
Charles A. Dean Memorial Hospital
364 Pridham Avenue
Greenville, Maine 04441

Date of Incident(s): Various dates the summer of 2012

Background Narrative: During a routine inspection at this facility in January 2013, a Board inspector noticed a Buckeye Equity Spray Restorer buffing and burnishing container with the words “Kills Ants” and “Ant Spray” hand written on the container. Initially, the maintenance supervisor denied any knowledge of what this indicated, but later recanted and said that Orange Guard insecticide was in the container. Maintenance staff further stated that the pesticide was purchased at a local hardware store and applied by a hospital maintenance staff person in the summer of 2012 as needed, to control an ant problem in patient rooms. Neither the staff person making the application nor anyone else employed by the hospital was a licensed pesticide applicator. The pesticide was incorrectly stored in the Buckeye Equity Spray Restorer buffing and burnishing container.

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.
- 7 M.R.S. §606 2D, prohibits handling, transporting or otherwise distributing pesticides in a careless, faulty, or negligent manner.

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**

Dennis Welsh	)	ADMINISTRATIVE CONSENT AGREEMENT
Charles A. Dean Memorial Hospital	)	AND
364 Pridham Avenue	)	FINDINGS OF FACT
Greenville, Maine 04441	)	

This Agreement, by and between Charles A. Dean Memorial Hospital (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 is a 25-bed critical access hospital located in Greenville, Maine.
2. That on January 16, 2013, a Board inspector conducted a routine pesticide use inspection at the Company.
3. That during the course of that inspection, the inspector observed that a plastic hand trigger spray container of Buckeye Equity Spray Restorer for buffing and burnishing had the words "Kills ants" and "Ant Spray" written by hand on it with a marker.
4. That the inspector asked Stephen Douglass, the maintenance supervisor he was meeting with what was in the container. Douglass suggested the buffing solution might kill ants.
5. That Brian Merrill a maintenance worker with the Company interjected that the bottle contained a pesticide named Orange Guard. Merrill further stated that Douglass purchased the product from a local hardware store and that it was used to control an ant problem in patient rooms the previous summer.
6. That the inspector, while on site documented the label on the original container of Orange Guard Insecticide.
7. That from the inspection described in paragraph two it was determined that Merrill, under the direction of Douglass, applied the Orange Guard to patient rooms as needed to control ants.
8. 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.
9. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) as any application of any pesticide under contract or for which compensation is received or any application of a pesticide to a property open to use by the public. Applications described in paragraphs four and five are considered applications made to areas that are open to use by the public.
10. That the pesticide applications made by the Company as described in paragraphs one through nine constitute custom applications under 22 M.R.S. § 1471-C(5-A) and, therefore, a commercial applicator's license was required for those applications.
11. That no one from the Company had a commercial pesticide applicator's license at the time of the pesticide applications described in paragraphs five and seven.

12. That the facts described in paragraphs one through eleven constitute multiple violations of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
13. That 7 M.R.S.A. §606 2D, prohibits handling, transporting or otherwise distributing pesticides in a careless, faulty, or negligent manner. In addition, the label itself states "Store only in original container"
14. That the circumstances in paragraphs three through six and thirteen, constitute a violation of 7 M.R.S.A. §606 2D and the pesticide label itself.
15. That the Board has regulatory authority over the activities described herein.
16. 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.
17. That this Agreement shall not become effective unless and until the Board accepts it.
18. 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 twelve and fourteen, the Company agrees to pay to the State of Maine the sum of \$350. (Please make checks payable to Treasurer, State of Maine.)

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

CHARLES A. DEAN MEMORIAL HOSPITAL

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General