

# Proposed Administrative Consent Agreement Background Summary

6

**Subject:** Caribou Country Club  
723 Sweden Street  
Caribou, ME 04736

**Date of Incident(s):** various dates 2014-2019, unlicensed commercial pesticide applications and incomplete commercial pesticide application records.

**Background Narrative:** This golf course is open to use by the public. Pesticide applications to the course need to be made by a licensed commercial pesticide applicator or under the direct supervision of a licensed commercial applicator. The grounds supervisor for the course made twenty-two unlicensed and unsupervised pesticide applications at the golf course during the years 2014 through 2019. A Board inspector emailed the course president about these matters and summarized inspection attempts and investigations during late 2019 and spring of 2020 indicating personnel at the course may have been making unlicensed pesticide applications at the course.

## Summary of Violation(s):

CMR 01-026 Chapter 31, Section 1(A) and of 22 M.R.S. § 1471-D(1)(A)

### 1. Individual Certification and Company/Agency Licensing Requirements

#### A. Any commercial applicator must be either:

- I. licensed as a commercial applicator/master; or
- II. licensed as a commercial applicator/operator; or
- 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. This supervision must include visual and voice contact. Visual contact must be continuous except when topography obstructs visual observation for less than five minutes. Video contact does not constitute visual observation. The voice contact requirement may be satisfied by real time radio or telephone contact. In lawn care and other situations where both the licensed and unlicensed applicator are operating off the same application equipment, the licensed applicator may move to an adjoining property on the same side of the street and start another application so long as he or she is able to maintain continuous visual and voice contact with the unlicensed applicator.

CMR 01-026 Chapter 31, Section 1(D)

Individuals certified as commercial applicators are eligible to license with one or more companies/agencies upon submission of the application and fee as described in Section 6 of this regulation. The individual's certification remains in force for the duration of the certification period as described in Section 5 of this regulation.

CMR 01-026 Chapter 50, Section 1(A).

### Pesticide Application Records

- I. Commercial agricultural producers and commercial applicators shall maintain pesticide application records consistent with paragraph II. below for a period of two years from the date of application. Such records shall be kept current by recording all the required information on the same day the

application is performed. These records shall be maintained at the primary place of business and available for inspection by representatives of the Board at reasonable times, upon request.

- II. Pesticide application records shall include, at a minimum:
- a. Site information including town and location, crop or site treated, target organism, customer and customer address\_(where applicable); and
    - i. for broadcast applications, size of treated area (when completed);
    - ii. for volumetric applications as described on the label, the volume treated;
    - iii. for non-broadcast applications (such as spot treatments, crack and crevice or stump treatments) a practical description of the scope or extent of the application (such as number of trees, stumps or rooms treated).
  - b. **Application information.** For each distinct site, records must include date and time of application(s), brand name of pesticide(s) applied, EPA registration number(s), active ingredient(s), restricted entry interval(s) and/or ventilation period(s) (where applicable), method of application (type of equipment), dilution agent(s) (other than water), the licensed applicator's name and certification number, the name of any noncertified applicator that made the application (where applicable), and spray contracting firm (where applicable).
  - c. **Rate information.** For each distinct site, application rate information must be maintained as follows:
    - i. **Restricted Use Pesticides.** For restricted use pesticides, applicators shall record the total amount of pesticide applied (undiluted).
    - ii. **General Use Pesticides.** For general use pesticides, applicators shall record:
      - (1) rate information as described in (i.) above; or
      - (2) the mix ratio and the total mix applied; or
      - (3) the mix ratio and the mix per unit area applied.
  - d. For outdoor applications, except those listed below, weather conditions including wind speed and direction, air temperature and sky conditions recorded such as sunny, partly cloudy, overcast, foggy or rainy. No weather condition records need be kept for outdoor applications involving:
    - i. pesticides placed in bait stations;
    - ii. pesticide-impregnated devices placed on animals, such as ear tags; or
    - iii. pesticides injected into trees or utility poles

Rationale for Settlement: This grounds supervisor made unlicensed and unsupervised pesticide applications over an extended period of time. These applications were commercial pesticide applications. The applicator's commercial pesticide application records were incomplete.

Attachments: Proposed Consent Agreement

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

|                      |   |                                  |
|----------------------|---|----------------------------------|
| Caribou Country Club | ) | ADMINISTRATIVE CONSENT AGREEMENT |
| 723 Sweden Street    | ) | AND                              |
| Caribou, ME 04736    | ) | FINDINGS OF FACT                 |

This Agreement, by and between Caribou Country Club (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 operates a golf course in Caribou Maine.
2. That the golf course is open to use by the public in accordance with 22 M.R.S. § 1471-C(5-A).
3. That the use of any pesticide in an area open to use by the public constitutes a commercial pesticide application in accordance with 22 M.R.S. § 1471-C(5).
4. That commercial pesticide applications can only be made by licensed commercial applicators, or under the direct supervision of a licensed commercial applicator, pursuant to CMR 01-026 Chapter 31, Section 1(A) and (D) and 22 M.R.S. § 1471-D(1)(A).
5. That each company that employs commercial applicators must employ at least one commercial master applicator as required by CMR 01-026 Chapter 31, Section 1(D).
6. That on October 8, 2019 a Board inspector met with Michael Gagnon, Grounds Supervisor for the Caribou Country Club, with the intent to perform a routine records and operations check. Mr. Gagnon stated that the club does not apply pesticides, only fertilizers to greens, and that the club has a contract with Precision Lawn Services of Caribou to apply pesticides.
7. That on October 8, 2019 a Board inspector met with Benjamin Willey, owner of Precision Lawn Services. Willey said he never applied pesticides at the Caribou Country Club when his company was Precision Lawn Services, or under his new company name, RLW Property Management LLC.
8. That on April 8, 2020 a Board inspector sent an email to Jon Langley, President of the Caribou Country Club. The email summarized inspection attempts and investigations during late 2019 and spring 2020 that indicated the club may have been applying pesticides at the golf course without a licensed applicator.
9. That on July 6, 2020 a Board inspector conducted a records and operations check inspection with Michael Gagnon, the grounds supervisor at Caribou Country Club.
10. That during the inspection described in paragraph nine, the inspector documented that Gagnon made four unlicensed and unsupervised pesticide applications in 2019. Anderson's Fungicide X, Anderson's Prophecy Fungicide, and Amvac III Fungicide were applied to greens and Nutrite Professional Turf Fertilizer with Trimec Herbicide was applied to greens and fairways.
11. That during the inspection described in paragraphs nine and ten, the Board inspector also documented the following individual pesticides were applied on separate days during the years 2014-2018 by unlicensed and unsupervised Company applicators: 2014- Fungicide X (2 days), Trimec Broadleaf Herbicide, Anderson Clearys 3336 Fungicide, Andersons Fungicide VII, 2015-Fungicide X, Trimec Broadleaf Herbicide, Anderson Fungicide 3336, Golden Eagle Fungicide, 2016-FungicideX, Clearys 3336 Fungicide, Trimec Broadleaf Herbicide, 2017-Fungicide X, Trimec 24-0-5,

Anderson 3336 Fungicide, and 2018-Anderson Fungicide X, Trimec Broadleaf Herbicide, Anderson Golden Eagle Fungicide.

- 12. That the circumstances described in paragraphs one through eleven constitute twenty-two unlicensed and unsupervised commercial pesticide application violations of CMR 01-026 Chapter 31, Section 1(A) and (D) and of 22 M.R.S. § 1471-D(1)(A). These violations extend from 2014 through 2019.
- 13. That, as a commercial applicator, pesticide application records must be kept as required by CMR 01-026 Chapter 50, Section I(A).
- 14. That an inspection of the company's application records conducted during the inspections described in paragraphs ten, eleven, and twelve showed that the records were incomplete. One or more of the following record keeping requirements were not recorded for twenty-two applications: method of application, licensed applicator name, licensed applicator certification number, name of noncertified applicator that made the application, spray contracting firm, wind direction, pesticide EPA registration number, pesticide active ingredient, pesticide restricted entry interval, and pesticide application rate.
- 15. That the circumstances described in paragraphs one through fourteen, constitute twenty-two violations of CMR 01-026 Chapter 50, Section I(A).
- 16. That the Board has regulatory authority over the activities described herein.
- 17. 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;
- 18. That this Agreement shall not become effective unless and until the Board accepts it.
- 19. That, in consideration for the release by the Board of the causes of action which the Board has or may have against the Company resulting from the violations referenced in paragraphs twelve and fifteen, the Company agrees to pay to the State of Maine the sum of \$800.

(Please make checks payable to Treasurer, State of Maine).

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

CARIBOU COUNTRY CLUB

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_

Megan Patterson, Director

APPROVED

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Randlett, Assistant Attorney General