

Proposed Administrative Consent Agreement Background Summary

Subject: Baldemar Ramon
Ramon Forestry Service LLC
765 Hill Road
Clinton, Maine 04927

Date of Incident(s): April 28, 2013

Background Narrative: Board staff responded to a drift complaint in Palermo alleging that drift occurred to a residential property when a pesticide application was made to an abutting blueberry field. The owner / commercial applicator of Ramon Forestry Service LLC, Baldemar Ramon applied Fitness Fungicide (propiconazole) to the blueberry field. Two separate foliage samples collected from turf near the house on the abutting property tested positive for propiconazole.

Summary of Violation(s):

CMR 01-026 Chapter 22 section 4 (B) I

Standards for Unconsented, Off-Target Drift of Pesticides

- I. General Standard. Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.

Rationale for Settlement: The staff took into consideration the levels of residue detected, the precautions the applicator took, and the conditions on site at the time of the application.

Attachments: Proposed Consent Agreement

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

In the Matter of:)
Baldemar Ramon) ADMINISTRATIVE CONSENT AGREEMENT
Ramon Forestry Service LLC) AND
765 Hill Road) FINDINGS OF FACT
Clinton, Maine 04927)

This Agreement by and between Baldemar Ramon (hereinafter called the "Owner") 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 June 3, 1998.

The parties to this Agreement agree as follows:

1. That the owner works both as an employee of RT Allen & Sons Inc. and an independent pesticide applicator contractor (Ramon Forestry Service LLC.) hired by RT Allen & Sons Inc.
2. That on April 28, 2013, the owner, working in the capacity of a hired licensed commercial pesticide applicator, made a pesticide application to RT Allen & Sons Inc.'s 47 acre blueberry field (Sanborn Lot) on the Level Hill Road in Palermo.
3. That the following day the Board received a call from an abutting property owner who thought that based on prevailing winds during the application described in paragraph two, it was possible that drift came onto their property. They have two young children and had concerns about their family's potential exposure to the pesticide applied.
4. That on April 29, 2013, a Board inspector met with the abutting property owner and took two foliage samples and one wipe sample on their property. The foliage samples were taken at a distance of 10 feet from the southeast corner of the abutting property owner's house and 15 feet from the northeast corner of the house, respectively.
5. That the abutting property is a Sensitive Area Likely to be Occupied as that term is defined in CMR 01-026 Chapter 10 section 2(CCC).8.
6. That on the same day the Board inspector collected a foliage sample from the Sanborn Lot.
7. That on April 30, 2013, a Board inspector did an inspection with the Owner who stated he applied Fitness Fungicide to the Sanborn Lot using a mist blower on April 28, 2013.
8. That all samples collected as described in paragraphs four and six were sent to a lab for analyses.
9. That the lab results for the foliage sample collected ten feet from the southeast corner of the house was positive for propiconazole at 0.036 ppm (16% of target) and the foliage sample collected 15 feet from the northeast corner of the house was positive for propiconazole at 0.155 ppm (67% of target). The foliage sample collected from the Sanborn lot was positive for propiconazole at 0.252 ppm. Propiconazole is the active ingredient in Fitness Fungicide.
10. That CMR 01-026 Chapter 22 section 4(B).I requires applicators to undertake applications in a manner that minimizes pesticide drift to the maximum extent practicable.

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- 11. That CMR 01-026 Chapter 22 section 4(B).II provides that pesticide residues in or on any off-target Sensitive Area Likely to be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable.
- 12. That the circumstances described in paragraphs one through eleven establish that sufficient precautions were not taken to minimize drift to the maximum extent practicable.
- 13. That the circumstances described in paragraphs one through twelve constitute a violation of CMR 01-026 Chapter 22 section 4(B).I.
- 14. That the Board has regulatory authority over the activities described herein.
- 15. That the Owner 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.
- 16. That this Agreement shall not become effective unless and until the Board accepts it.
- 17. That, in consideration for the release by the Board of the causes of action which the Board has against the Owner resulting from the violations referred to in paragraph thirteen, the Owner agrees to pay to the State of Maine the sum of \$400. (Please make checks payable to Treasurer, State of Maine.)

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

RAMON FORESTRY SERVICE LLC

By: Baldemar Ramon Date: 1-16-2014

Type or Print Name: Baldemar Ramon

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED:

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

check number 1738
check amount 400

check date 1/16/14