

Proposed Administrative Consent Agreement Background Summary

Subject: Hammon Buck
Plants Unlimited
629 Commercial Street
Rockport, Maine 04856

Date of Incident(s): June 26, 2011 and 2012 growing season

Background Narrative: On May 2, 2012, a Board inspector completed an inspection at this nursery/greenhouse business. Through the inspection, it was determined that a pesticide application of an outdoor labeled insecticide was made inside a greenhouse.

In addition, no pesticide application records were kept for the 2012 growing season and workers were not trained as required by the Federal Worker Protection Standard.

Summary of Violation(s):

- CMR 01-026 Chapter 50 Section 1 A: No pesticide application records for 2012 season.
- Federal Worker Protection Standard, 40 CFR, Part 170.
- 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). Using a pesticide inconsistent with its label directions

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

Attachments: Proposed Consent Agreement

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

In the Matter of:)
Hammon Buck) ADMINISTRATIVE CONSENT AGREEMENT
Plants Unlimited) AND
629 Commercial Street) FINDINGS OF FACT
Rockport, Maine 04856)

This Agreement by and between Plants Unlimited (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 June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Grower produces agricultural crops for commercial purposes at a greenhouse/nursery business that utilizes pesticides bearing language requiring conformance with the federal Worker Protection Standard, 40 CFR, Part 170 (WPS).
2. That the Grower employs one or more workers as defined under 40 CFR, Part 170.3 to assist in the production of the crops described in paragraph one.
3. That a Board inspector conducted an inspection at the Grower's on May 2, 2012, for the Grower's application of Bayer Advanced All-In-One Rose & Flower Care (EPA Reg. No. 72155-21).
4. That from the inspection done in paragraph three, it was determined that the Grower did not train his agricultural workers, and there was no information at a central information display as required by the federal Worker Protection Standard, 40 CFR, Part 170.
5. That the circumstances in paragraphs one through four constitute multiple violations of the federal Worker Protection Standard, 40 CFR, Part 170.
6. That CMR 01-026 Chapter 10 Section 2 H, specifies that a commercial agricultural producer "means, for the purposes of Chapter 50, any person who produces an agricultural commodity for commercial purposes".
7. That CMR 01-026 Chapter 50 Section 1 A, requires that commercial agricultural producers shall maintain pesticide application records.
8. That from the inspection done in paragraph three, it was determined that the Grower did not maintain pesticide application records as required by CMR 01-026 Chapter 50 Section 1 A for 2012 applications.
9. That the circumstances described in paragraphs three and six through eight, constitute a violation of CMR 01-026 Chapter 50 Section 1 A.
10. That the Bayer Advanced All-In-One Rose & Flower Care label specifies that it is for outdoor residential use only.
11. That from the inspection in paragraph three it was determined that the Bayer Advanced All-In-One Rose & Flower Care was applied inside greenhouse numbers two and six.

12. That the circumstances described in paragraphs three, ten, and eleven constitute use of a pesticide inconsistent with the product labeling and 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).
13. That the Board has regulatory authority over the activities described herein.
14. 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.
15. That this Agreement shall not become effective unless and until the Board accepts it.
16. 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 five, nine, and twelve the Grower agrees to pay to the State of Maine the sum of \$250. (Please make checks payable to Treasurer, State of Maine).

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

PLANTS UNLIMITED

By:  Date: 3/20/14

Type or Print Name: HAMMA J. BJUV

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED:

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