

Proposed Administrative Consent Agreement

Background Summary

Subject: David Porter

Province Lake Golf Club
18 Mountain Road
Parsonsfield, ME 04047

Date of Incident(s): 2012 season through November 2, 2013

Background Narrative: Province Lake Golf Club is a public golf course. Because the golf course is open to the public, pesticide applications at the course must be made or supervised by a licensed commercial pesticide applicator. In addition, each commercial pesticide application company, including golf courses that make their own pesticide applications, must employ at least one Master Applicator. This facility's golf course superintendent and master pesticide applicator were terminated on December 31, 2011. A Board inspector documented that unlicensed commercial pesticide applications were made at the course from 2012 through November 2, 2013.

Summary of Violation(s):

- 22 M.R.S. § 1471-D (1)(A) No commercial applicator may use or supervise the use of any pesticide within the State without prior certification from the board, provided that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator.
- CMR 01-026 Chapter 31, Section 1(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)
Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. This Master must be licensed in all categories which the branch office of the company or agency performs applications and any Operators must also be licensed in the categories in which they perform or supervise pesticide applications. This master applicator must actively supervise persons applying pesticides within such employing entity and have the ability to be on site to assist such persons within six (6) hours driving time. Whenever an out-of-state employing entity is conducting a major application project they must have a master applicator within the state.

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board in formulating a penalty proposal.

Attachments: Proposed Consent Agreement

**STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL**

David Porter)	
Province Lake Golf Club)	ADMINISTRATIVE CONSENT AGREEMENT
18 Mountain Road)	AND
Parsonsfield, ME 04047)	FINDINGS OF FACT

This Agreement, by and between Province Lake Golf 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.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 Company operates an 18 hole public golf course. One full hole and two half holes are in New Hampshire, the balance of the course is in Parsonsfield, Maine.
2. That the golf course is considered open to use by the public in accordance with 22 M.R.S.A. § 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.A. § 1471-C(5).
4. That commercial pesticide applications can only be made or supervised by licensed commercial applicators pursuant to CMR 01-026 Chapter 31, Section 1(A).
5. That each company that employs commercial applicators must employ at least one master applicator as required by CMR 01-026 Chapter 31, Section 1(D).
6. That all commercial applicator licenses are affiliated with a company/agency and, in accordance with CMR 01-026 Chapter 31, Section 1(B), terminate when the employee leaves the employment of that company or agency.
7. That on December 31, 2011, Michael Foster's commercial master applicator license was terminated at the Company when he left employment there. Since that date, no one was employed by the Company as a commercial applicator.
8. That on November 11, 2013, an ex-employee of the Company called the Board and stated that unlicensed people were making pesticide applications at the course.
9. That on November 13, 2013, a Board inspector met with Kris Bouchard, the assistant superintendent at the Company to do a follow up inspection. Bouchard initially denied that he made any pesticide applications at the course. Eventually, the inspector learned from Bouchard that he did make an application of Malice 75 WSP insecticide to tees 1-13, on September 30, 2013.
10. That during the inspection described in paragraph nine, the inspector collected a copy of Company records with the heading "Fertilizer Applications 2013" from Bouchard. From a review of those records, it was determined that eleven pesticide applications were made in 2013 involving various combinations of sixteen pesticides. According to Bouchard, those applications were made by Donald Bye. Bye was a licensed pesticide applicator in New Hampshire; he was not licensed in Maine.
11. That from the inspection described in paragraph nine, the inspector also noted that Bouchard informed him that Tom Small, an employee of the course made pesticide applications in 2012 as did employee Bob Walch who made pesticide applications late in 2012. Neither Bouchard nor Walch were licensed pesticide applicators.

12. That the Company made unlicensed commercial pesticide applications at the course from 2012 through November 2, 2013.
13. That the circumstances described in paragraphs one through twelve would constitute multiple violations of CMR 01-026 Chapter 31, Section 1(A) and (D) and of 22 M.R.S.A. § 1471-D (1)(A). While the Company does not admit the violations, and believes there are or may be mitigating factors and/or factual disputes involving the alleged violations, the Company does agree to enter into this Consent Agreement for the purpose of resolving the alleged violations.
14. That the Board has regulatory authority over the activities described herein.
15. 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;
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 or may have against the Company resulting from the violations referenced in paragraph thirteen, and without acknowledging violations, the Company 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.

PROVINCE LAKE GOLF CLUB

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General