

Proposed Administrative Consent Agreement Background Summary

Subject: Weyerhaeuser Company
PO Box 89
Fairfield, ME 04903

Date of Incident(s): During the company's 2014 and 2015 aerial forest spray project

Background Narrative: In early August of 2016 the company self-reported compliance concerns with their 2014 and 2015 aerial forest spray projects in their Moosehead district. Later in August, two Board staff members met with Weyerhaeuser personnel at Weyerhaeuser's Fairfield office. The company summarized their system for developing their annual forest spray projects including their protocols for protecting environmentally sensitive areas. The company listed the spray blocks where they thought their protocols were not followed.

On five different days, three in August and two in September, a Board inspector accompanied a Weyerhaeuser forester in the field to ground check representative spray blocks of concern.

Based on a review of 2014 and 2015 project information and field observations, evidence indicated that there were violations of pesticide regulations. Herbicide applications were made over three streams and five herbicide applications violated the 75-foot buffer required by the label of an herbicide applied next to aquatic sites.

Finally, there was insufficient notification to a camp owner within 500 feet a spray block.

Summary of Violation(s): 7 M.R.S. 606(2)(b), it is a violation to "[u]se or cause to be used any pesticide in a manner inconsistent with its labeling or with rules of the board, if those rules further restrict the uses provided on the labeling".

CMR 01-026 Chapter 51 Section IV(B)(2). In areas where there is no regular newspaper circulation, the person contracting for services may substitute individual notice to all landowners within 500 feet of the target site. This individual notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

Rationale for Settlement: The staff considered the company's role of laying out spray blocks, including establishing protections to aquatic sites, and the scope and seriousness of the violations. The reduced penalty took into account that the company self-reported the violations; the cooperation of the company in the Board staff's investigation of the violations; the fact that the company retained an independent expert to conduct a natural resource assessment of the areas involved, which reported no lasting environmental impact to those areas; and the fact that the company has taken affirmative steps to avoid future violations.

Attachments: Proposed Consent Agreement

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

ADMINISTRATIVE CONSENT

| | | |
|----------------------|---|------------------|
| Weyerhaeuser Company |) | AGREEMENT |
| PO Box 89 |) | AND |
| Fairfield, ME 04903 |) | FINDINGS OF FACT |

This Agreement, by and between Weyerhaeuser Company (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 owns and manages commercial timber lands in Maine, including planning annual forest spray projects and then contracting and coordinating with commercial aerial applicators to complete those projects.
2. That in early August of 2016, the company self-reported compliance concerns related to the Company's 2014 and 2015 forest spray projects that their foresters detected when checking the vegetation control efficacy of past projects.
3. That on August 18, 2016, two Board staff met with Company staff at the Company's Fairfield office.
4. That during the meeting described in paragraph three, Company staff summarized their system for developing their annual forest projects including their protocols for protecting environmentally sensitive areas in and near spray blocks. Additionally, Company staff listed the 2014 and 2015 spray blocks they thought could have compliance issues. All sites of concern were in the Company's Moosehead District and attributed to an employee not following the Company's established procedures.
5. That on August 23, 25, and 30, of 2016, and September 1 and 22, 2016, a Board inspector and Company staff ground checked representative spray blocks on the Company's self-reported sites list with potential compliance issues.
6. That based on information and findings from paragraphs one through five, Board staff informed a Company employee it was the Board's intention to present this information as an investigation summary at a monthly seven member public Board of Pesticides Control meeting to ask that Board for input on how to proceed.
7. That at the Company's request for additional input at another meeting prior to the step summarized in paragraph six, Board staff, Assistant Attorney General Mark Randlett, Company staff, and an employee of the MDEP's Bureau of Land and Water Quality met at the Attorney General's office on May 22, 2017.
8. That at the meeting described in paragraph seven, Company staff presented information from their internal investigation and from a third party, Stantec Consulting Services Inc., hired by the Company to conduct a natural resource assessment of the spray blocks of concern. Stantec reported no lasting environmental impact to the areas involved. The Company also provided information on their corrective action plan moving forward. Company counsel acknowledged some violations involving sensitive areas and one

violation related to insufficient notification to a camp owner near an aerial application. Company Counsel also proposed paying a penalty through a consent agreement to settle the violations.

9. That, pursuant to 7 M.R.S. 606(2)(b), it is a violation to “[u]se or cause to be used any pesticide in a manner inconsistent with its labeling or with rules of the board, if those rules further restrict the uses provided on the labeling”.
10. That based on the Board inspector’s field observation described in paragraph five it was determined that three streams in or near the following three spray blocks received herbicide applications: Spencer Bay Township 7 release (2014), Squaretown Township 7 release (2015), and Thorndike Township 6 release (2015).
11. That the tank mix of pesticides applied to the spray blocks described in paragraph ten, included Accord XRT, Arsenal Applicators Concentrate herbicide, and DuPont Oust XP.
12. That all three pesticide labels for the pesticides described in paragraph eleven, prohibit direct application of those pesticides to water as described in paragraph 10.
13. That the circumstances described in paragraphs one through twelve, constitute three violations of 7 M.R.S. 606(2)(b) and the pesticide labels for the pesticides applied.
14. That the tank mix of pesticides applied to the Company’s 2015 project included DuPont Oust XP.
15. That the Dupont Oust XP label requires a seventy-five foot buffer from streams and other aquatic environments.
16. That the following spray blocks received Dupont Oust XP herbicide applications closer than seventy-five feet from sensitive aquatic sites on the Company’s 2015 project. Squaretown 2 release, Squaretown 4 release, Chase Stream 4 release, Elliotsville 1 site prep, and Misery 3 release.
17. That the circumstances described in paragraphs one through nine, fourteen, fifteen, and sixteen constitute five violations of 7 M.R.S. 606(2)(b) and the Dupont Oust XP label.
18. That CMR 01-026 Chapter 51 Section IV (B)(2) requires that, “ [i]n areas where there is no regular newspaper circulation, the person contracting for services may substitute individual notice to all landowners within 500 feet of the target site. This individual notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications.”
19. That the Company acknowledged that for the spray block Squaretown 4 release pesticide application in 2015, it did not provide sufficient notification to meet the requirement described in paragraph eighteen.
20. That the circumstances described in paragraphs one through eight, eighteen, and nineteen constitute a violation of CMR 01-026 Chapter 51 Section IV(B)(2).
21. That the Board has regulatory authority over the activities described herein.
22. 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;

23. That this Agreement shall not become effective unless and until the Board accepts it.

24. 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 thirteen, seventeen, and twenty, the Company agrees to pay to the State of Maine the sum of \$8,000.00. This agreement reflects a reduced penalty after consideration of the number and seriousness of the pesticide violations involved; the fact that the Company self-reported the violations; the cooperation of the Company in the Board staff's investigation of the violations; the fact that the Company retained an independent expert to conduct a natural resource assessment of the areas involved, which reported no lasting environmental impact to those areas; and the fact that the Company has taken affirmative steps to avoid future violations.

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

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

WEYERHAEUSER COMPANY

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Cam Lay, Director

APPROVED

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