

Proposed Administrative Consent Agreement Background Summary

Subject: White's Weed Control
1178 Main Street
Palmyra, Maine 04965

Date of Incident(s): 7-15-16

Background Narrative: On August 3, 2016, a Board inspector conducted a follow up inspection with Patrick White, owner of White's Weed Control. This was in response to a complaint the Board received about dead vegetation along the embankments of the causeway that crosses the Sebasticook Lake on the Durham Bridge Road in Newport.

White acknowledged that he applied a tank mix of Rodeo and Aquasweep herbicides to control vegetation in the riprap of the causeway in this area. White thought that the Newport town manager had applied for a variance so that the vegetation in the 25-foot buffer along the water's edge could be sprayed. No one applied for a variance to spray in this area.

The Board inspector documented that White sprayed the vegetation from the water's edge to the roadway for a distance of over 1200 feet on the southeast side of the road and over 1200 feet on the northwest side targeting poison ivy, brush, grass, and weeds.

Summary of Violation(s): CMR 01-026 Chapter 29 Section 6(A)(I) provides that no person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of: Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State.

Rationale for Settlement: The application had the potential to impact the environment and the process to apply for a variance was not followed.

Attachments: Proposed Consent Agreement

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

ADMINISTRATIVE CONSENT

White's Weed Control)	AGREEMENT
1178 Main Street)	AND
Palmyra, ME 04965)	FINDINGS OF FACT

This Agreement, by and between White's Weed Control (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 provides commercial pesticide application services in Maine, including roadside right-of-way spraying to control vegetation.
2. That on July 29, 2016, the Board received a call of concern about browning vegetation along the causeway on the Durham Bridge Road in Newport.
3. That on July 29, 2016, a Board inspector traveled to the Durham Bridge Road which has a causeway and bridge that crosses Sebasticook Lake. The inspector's narrative report noted that it was apparent that an herbicide had been applied to both sides of the causeway from the waterline to the paved edge of the road. All vegetation, grass, brush, and weeds were dead or dying. The inspector documented the condition of the vegetation in this area by taking photos of both sides of the road right-of-way.
4. That on August 1, 2016, the Board inspector checked the town of Newport's website and found a notice of pesticide application for White's Weed Control, a company based in Palmyra. Weed control along various town and state road right-of-ways, including sidewalks, was scheduled to take place periodically from July 15 to October 1, 2016, until completed.
5. That the inspector checked to determine if the town of Newport had applied for a Board variance to apply pesticides within 25 feet of water. No variance was applied for.
6. That on August 1, the inspector also met with Jim Ricker, the Newport Town Manager. The inspector explained that the Board received a call with concerns about the herbicide application along the Durham Bridge Road causeway because anglers, swimmers, and other people use this area. Ricker confirmed the town had not applied for a variance to apply pesticides within 25 feet of water and told the inspector Pat White was hired to control poison ivy along the causeway.
7. That Ricker directed the inspector to contact the Town's public works foreman. The inspector contacted the foreman, provide him a copy of the Board's Chapter 29 regulation, and discussed the requirements when applying pesticides near water. Ricker provided the inspector with White's contact information.
8. That on August 3, 2016, the inspector met with Pat White. White confirmed Newport's public works Foreman initially contacted him regarding the application and the town manager contacted him shortly thereafter to also discuss the application. White stated he assumed the town had applied for a variance.

9. That the inspector conducted an inspection of how White made the herbicide application to the causeway. The inspector documented that White applied a tank mix of Rodeo herbicide and Aquasweep herbicide to both sides of the causeway on the Durham Bridge Road within 25 feet of the water.
10. That CMR 01-026 Chapter 29 Section 6(A)(I) provides that no person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of: Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State.
11. That the circumstances described in paragraphs one through ten constitute a violation of CMR 01-026 Chapter 29 Section 6(A)(I)
12. That the Board has regulatory authority over the activities described herein.
13. 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;
14. That this Agreement shall not become effective unless and until the Board accepts it.
15. 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 violation referenced in paragraph eleven, the Company 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 three pages.

WHITE'S WEED CONTROL

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Cam Lay, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General