

Proposed Administrative Consent Agreement

Background Summary

Subject: Justin Choiniere
Northeast Agricultural Sales, Inc.
PO Box 190
Detroit, Maine 04929-0190

Date of Incident(s): The 2012 growing season.

Background Narrative: The Board received information that Northeast Agricultural Sales, Inc. was operating a non-compliant major pesticide storage facility in Connor Township that is located in Aroostook County. An investigation confirmed this allegation. Board staff documented that this company used a section of a building at 1189 Madawaska Road to operate a non-compliant major pesticide storage facility and distribute pesticides from this facility to end users.

Summary of Violation(s):

- CMR 01-026 Chapter 24, Section 4(K)I(b) requires a design certification.
- CMR 01-026 Chapter 24, Section 3(C)III(a) requires that doors to a major pesticide storage facility have a fire rating of one hour.
- CMR 01-026 Chapter 24, Section 3(C)III(b) requires a major pesticide storage facility to have at least one standard door on which panic hardware is installed. The standard door must latch shut when closed and open outward from where products are stored when a person depresses the horizontal bar on the panic hardware.
- CMR 01-026 Chapter 24, Section 4(D)III requires that floor drains in a major pesticide storage facility must be sealed or be connected to a waste storage tank of sufficient size to hold 25% of the liquid volume stored.
- CMR 01-026 Chapter 24, Section 4(E)II requires a major pesticide storage facility to have a battery powered emergency lighting system that automatically activates during power outages and illuminates all exits.
- CMR 01-026 Chapter 24, Section 4(I)I requires that all major pesticide storage facilities be equipped with an automatic heat and smoke detector alarm system connected to a supervised central station. The system must have both audible and visible devices and have a backup power system so it will operate during power outages.
- CMR 01-026 Chapter 24, Section 4(J) requires that all major pesticide storage facilities have emergency showers available. These emergency showers must be located either in the facility or in an adjacent building on the premises within 200 feet of the major pesticide storage facility. There must also be a plan for collecting any water used in emergency showers
- CMR 01-026 Chapter 24, Section 6(B) requires that each entrance to a pesticide storage facility be prominently posted with the words, "Danger - Pesticide Storage - Keep Out."
- CMR 01-026 Chapter 24, Section 6(C) requires that all entrances to a pesticide storage facility be posted with signs indicating smoking is not allowed.
- CMR 01-026 Chapter 24, Section 6(E)I requires that all pesticide storage facilities be equipped with at least one eye wash station capable of flushing eyes for a minimum of fifteen minutes.
- CMR 01-026 Chapter 24, Section 6(E)III requires that all pesticide storage facilities be equipped with spill response and clean-up equipment, including, but not limited to absorbents, empty containers, brooms and shovels and personal protective equipment for employees.
- CMR 01-026 Chapter 24, Section 3(B)III(a) prohibits the siting of a new major pesticide storage area closer than 250 feet of a residential building.

- M.R.S. 22 § 1471-D(3)(B), states that no pesticide dealer shall distribute limited or restricted use pesticides to any person who is not licensed or certified by the Board.

Rationale for Settlement: The company realized a competitive advantage over other pesticide dealers by their non-compliance. Additionally, the staff took into account the violation history of this company, which included violations of many of these same regulations.

Attachments: Proposed Consent Agreement

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

Justin Choiniere)	
Northeast Agricultural Sales, Inc.)	ADMINISTRATIVE CONSENT AGREEMENT
PO Box 190)	AND
Detroit, Maine 04929-0190)	FINDINGS OF FACT

This Agreement by and between Northeast Agricultural Sales, Inc. (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 as a pesticide dealer and distributor with existing major pesticide storage facilities in both Detroit and Wales, Maine.
- 2) That the Board received information indicating the Company was operating a non-compliant major pesticide storage facility in Connor Township in Aroostook County.
- 3) That in response to the information received in paragraph two, Board staff conducted a follow up investigation of the Company's pesticide storage and sales practices at 1189 Madawaska Road in Connor Township. During surveillance on multiple days in August of 2012, Board inspectors observed a Company double axle box truck arrive at this facility, Company personnel operating a fork lift, and smaller Company trucks leaving the premises. Inspectors tracked one of these loads as outlined in paragraphs four through six.
- 4) That on August 13, 2012, a Board inspector observed Marvin Hedstrom, a licensed restricted use pesticide dealer (RPD 5059) employed by the Company arrive at the warehouse described in paragraph three with an empty pickup truck, back the truck inside the warehouse and exit with a white mini-bulk container in the back of the truck.
- 5) That a second Board inspector observed Hedstrom deliver the same white mini bulk container described in paragraph four, to Wayne and Wade Levitt (W&W Farms) in Connor Township on August 13, 2012.
- 6) That on August 29, 2012, Board inspectors approached Hedstrom at the Company Warehouse described in paragraph two to conduct an inspection of the warehouse to check compliance with the Board's pesticide storage regulations and document pesticide sale and distribution practices at this site. During this inspection a Board inspector collected Company sales order number 000584 (documentary sample number 120829JRH01H), which confirms the Company's delivery of a 120 gallon mini-bulk container of Bravo ZN Fungicide to W&W Farms on August 13, 2012.
- 7) That from the inspection described in paragraph six, Board inspectors collected a Company inventory sheet (sample #120829JRH01F) that listed the pesticides being stored at the warehouse on June 5, 2012. The total volume of pesticides in inventory on that date was 4,775 pounds of dry pesticides and 667 gallons of non-exempted liquid pesticides. This volume included two, 270 gallon mini-bulk containers of Manzate Flowable Fungicide.

- 8) That during the inspection described in paragraph six, Board inspectors also inventoried the pesticides in storage on August 29, 2012, and determined that the Company had 2,736 gallons of non-exempted liquid pesticides. This volume included three 330 gallon Bravo ZN mini-bulk containers, two 120 gallon mini-bulk containers of this same product, and two 250 gallon MH 30 Xtra mini-bulk containers. In addition there were 374.4 pounds of non-exempt dry pesticides (itemized inventory list documentary sample # 120829JRH01F).
- 9) That the definition of a major pesticide storage facility found in CMR 01-026 Chapter 10 Section (2) AA, includes a facility operated by a pesticide distributor that:
- contains at any one time an amount greater than or equal to 600 gallons of liquid pesticide product, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 - contains liquid pesticides in containers that are thirty (30) gallons or greater in size, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products."
- 10) That from the inspection described in paragraph six the following sales orders (sample # 120829JRH01I) were collected documenting additional sales of mini-bulk containers from the Company's Connor Township pesticide storage facility in 2012:

Sales order #	Pesticide	Volume	Sales Date	Farm Town
000570	Bravo Zn	120 gal	July 30, 2012	New Sweden
000520	Bravo Zn	120 gal	June 18, 2012	Limestone
000519	Manzate Flowable	270 gal	June 18, 2012	Limestone
000517	Bravo Zn	120 gal	June 15, 2012	Caribou

- 11) That in a written statement signed by Hedstrom at the time of the inspection described in paragraph six (sample # 120829JRH01E), Hedstrom acknowledged the Company stored and distributed pesticides during the 2012 growing season from the Connor Township warehouse as described in paragraphs two through ten.
- 12) That all sales orders summarized in paragraph ten were on Company letterhead listing 1189 Madawaska Road in Connor Township, ME 04736, as the address of the Company.
- 13) That the facts described in paragraphs one through twelve demonstrate that the Company was operating a major pesticide storage facility at 1189 Madawaska Road in Connor Township during the 2012 growing season.
- 14) That to ensure that siting, construction, and operational activities of major pesticide storage facilities are compliant with Board pesticide storage regulations, CMR 01-026 Chapter 24, Section 4(K)I(b) requires a design certification when an existing building or portion of an existing building is converted to a major pesticide storage facility. The Company's Connor Township major pesticide storage facility is an existing building that was converted to a major pesticide storage facility.
- 15) That the Company had no design certification for its Connor Township major pesticide storage facility when the facility was inspected on August 29, 2012.
- 16) That the circumstances in paragraphs one through fifteen, constitute a violation of CMR 01-026 Chapter 24, Section 4(K)I(b).

- 17) That CMR 01-026 Chapter 24, Section 3(C)III(a) requires that doors to a major pesticide storage facility have a fire rating of one hour.
- 18) That based on the inspection in paragraph six, it was determined that the doors of the Company's Connor Township major pesticide storage facility did not have a fire rating of one hour.
- 19) That the circumstances in paragraphs six through eighteen, constitute a violation of CMR 01-026 Chapter 24, Section 3(C)III(a).
- 20) That CMR 01-026 Chapter 24, Section 3(C)III(b) requires a major pesticide storage facility to have at least one standard door on which panic hardware is installed. The standard door must latch shut when closed and open outward from where products are stored when a person depresses the horizontal bar on the panic hardware.
- 21) That based on the inspection in paragraph six, it was determined that the Company's Connor Township major pesticide storage facility did not have a standard door that latched shut when closed and opened outward from where products are stored when a person depresses the horizontal bar on the panic hardware.
- 22) That the circumstances in paragraphs six through sixteen and paragraphs twenty and twenty-one, constitute a violation of CMR 01-026 Chapter 24, Section 3(C)III(b).
- 23) That CMR 01-026 Chapter 24 section 4(D)III requires that floor drains in a major pesticide storage facility must be sealed or be connected to a waste storage tank of sufficient size to hold 25% of the liquid volume stored.
- 24) That based on the inspection in paragraph six, it was determined that the floor drains in the Company's Connor Township major pesticide storage facility were not sealed or connected to a waste storage tank of sufficient size to hold 25% of the liquid volume being stored.
- 25) That the circumstances in paragraphs six through sixteen, twenty-three and twenty-four, constitute a violation of CMR 01-026 Chapter 24 section 4(D)III.
- 26) That CMR 01-026 Chapter 24 section 4(E)II requires a major pesticide storage facility to have a battery powered emergency lighting system that automatically activates during power outages and illuminates all exits.
- 27) That based on the inspection in paragraph six, it was determined that the Company's Connor Township major pesticide storage facility did not have an emergency lighting system as required in paragraph twenty-six.
- 28) That the circumstances in paragraphs six through sixteen, twenty-six and twenty-seven, constitute a violation of CMR 01-026 Chapter 24 section 4(E)II.
- 29) That CMR 01-026 Chapter 24 section 4(H)II requires that a major pesticide storage facility have an automatic alarm system that is connected to a supervised central station. This system must have a backup power system so it will operate during power outages.
- 30) That based on the inspection in paragraph six, it was determined that the Company's Connor Township major pesticide storage facility did not have an automatic alarm system as required in paragraph twenty-nine.

- 31) That the circumstances in paragraphs six through sixteen, and twenty-nine, and thirty, constitute a violation of CMR 01-026 Chapter 24 section 4(H)II.
- 32) That CMR 01-026 Chapter 24 section 4(I)I requires that all major pesticide storage facilities be equipped with an automatic heat and smoke detector alarm system connected to a supervised central station. The system must have both audible and visible devices and have a backup power system so it will operate during power outages.
- 33) That based on the inspection in paragraph six, it was determined that the Company's Connor Township major pesticide storage facility did not have an automatic heat and smoke detector alarm system as required in paragraph thirty-two.
- 34) That the circumstances in paragraphs six through sixteen, thirty-two and thirty-three, constitute a violation of CMR 01-026 Chapter 24 section 4(I)I.
- 35) That CMR 01-026 Chapter 24 section 4(J) requires that all major pesticide storage facilities have emergency showers available. These emergency showers must be located either in the facility or in an adjacent building on the premises within 200 feet of the major pesticide storage facility. There must also be a plan for collecting any water used in emergency showers.
- 36) That based on the inspection in paragraph six, it was determined that the Company's Connor Township major pesticide storage facility did not have an emergency shower available as required in paragraph thirty-five.
- 37) That the circumstances in paragraphs six through sixteen, thirty-five and thirty-six constitute a violation of CMR 01-026 Chapter 24 section 4(J).
- 38) That CMR 01-026 Chapter 24 section 6(B) requires that each entrance to a pesticide storage facility be prominently posted with the words, "Danger - Pesticide Storage - Keep Out."
- 39) That based on the inspection in paragraph six, it was determined that the Company's Connor Township major pesticide storage facility did not have the words, "Danger - Pesticide Storage - Keep Out" posted at any entrances as required in paragraph thirty-eight.
- 40) That the circumstances in paragraphs six through sixteen, thirty-eight and thirty-nine, constitute a violation of CMR 01-026 Chapter 24 section 6(B).
- 41) That CMR 01-026 Chapter 24 section 6(C) requires that all entrances to a pesticide storage facility be posted with signs indicating smoking is not allowed.
- 42) That based on the inspection in paragraph six, it was determined that the entrances to the Company's Connor Township major pesticide storage facility were not posted as required in paragraph forty-one.
- 43) That the circumstances in paragraphs six through sixteen, forty-one and forty two, constitute a violation of CMR 01-026 Chapter 24 section 6(C).
- 44) That CMR 01-026 Chapter 24 section 6(E)I requires that all pesticide storage facilities be equipped with at least one eye wash station capable of flushing eyes for a minimum of fifteen minutes.

- 45) That based on the inspection in paragraph six, it was determined that the Company's Connor Township major pesticide storage facility was not equipped with at least one eye wash station capable of flushing eyes for a minimum of fifteen minutes as required in paragraph forty-four.
- 46) That the circumstances in paragraphs six through sixteen, forty-four and forty-five, constitute a violation of CMR 01-026 Chapter 24 section 6(E)I.
- 47) That CMR 01-026 Chapter 24 section 6(E)III requires that all pesticide storage facilities be equipped with spill response and clean-up equipment, including, but not limited to absorbents, empty containers, brooms and shovels and personal protective equipment for employees.
- 48) That based on the inspection in paragraph six, it was determined that the Company's Connor Township major pesticide storage facility was not equipped with spill response and clean-up equipment as required in paragraph forty-seven.
- 49) That the circumstances in paragraphs six through sixteen, forty-seven and forty-eight, constitute a violation of CMR 01-026 Chapter 24 section 6(E)III.
- 50) That on February 14, 2013, Board inspectors returned to the Company's Connor Township major pesticide storage facility and took measurements from the pesticide storage area to nearby properties.
- 51) That, from the measurements taken in paragraph fifty, it was determined that the Company's Connor Township major pesticide storage facility's storage area was within 250 feet of both Gaylin Hallett's residence and Harry Pelletier's residence.
- 52) That CMR 01-026 Chapter 24 section 3(B)III(a) prohibits the siting of a new major pesticide storage area closer than 250 feet of a residential building.
- 53) That the circumstances in paragraphs six through sixteen, and fifty through fifty-two, constitute a violation of CMR 01-026 Chapter 24 section 3(B)III(a).
- 54) That on April 27, 2012, a Board inspector conducted a routine restricted use pesticide dealer inspection at the Company's Detroit facility.
- 55) That from the inspection in paragraph fifty-four it was determined that the Company sold two 2 ½ gallons containers of the restricted use herbicide Gramoxone Inteon, to Daniel E. Brown (transaction # 1221), the owner of Gravelwood Farm in Blue Hill on April 13, 2010.
- 56) That from the inspection in paragraph fifty-four it was determined that on June 11, 2010, the Company sold two 2 ½ gallons of the restricted use herbicide Charger Max ATZ (EPA reg. # 100-817-1381, invoice # 48449) to Dan Davis who resides at 340 Bowden Road in Corrina.
- 57) That M.R.S. 22 § 1471-D(3)(B), states that no pesticide dealer shall distribute limited or restricted use pesticides to any person who is not licensed or certified by the Board.
- 58) That Daniel E. Brown and Dan Davis were not licensed pesticide applicators at the time the Company made the restricted use pesticides sales to them as outlined in paragraphs fifty-five and fifty-six.
- 59) That the circumstances in paragraphs fifty-four through fifty-eight, constitute two separate violations of M.R.S. 22 § 1471-D(3)(B)

- 60) That on April 22, 2004, the Company contacted the Board to inquire about storage requirements prior to opening their facility on the Leeds Junction Road in Wales and at that time was provided a copy of the Board's Chapter 24: Pesticide Storage Facility Standards/Pesticide Distributors.
- 61) That the Company opened and operated a non-compliant major pesticide storage facility on the Leeds Junction Road in Wales from approximately July 21, 2004 through February 1, 2007, in disregard of the Board's Chapter 24: Pesticide Storage Facility Standards/Pesticide Distributors requirement information they received as described in paragraph sixty.
- 62) That at its June 2007 meeting, the Board ratified a consent agreement with the Company to resolve the violations involving the non-compliant major pesticide storage facility in Wales.
- 63) That the violations cited in the consent agreement described in paragraph sixty-two included the following:
- CMR 01-026 Chapter 24, Section 3 (B) III (f), No new major pesticide storage facility may be located closer than 250 feet from any area used for livestock.
 - CMR 01-026 Chapter 24, Section 4 (K) I (b), Anyone converting an existing building or portion of an existing building ...shall obtain a certification...
 - CMR 01-026 Chapter 24, Section 4 (D) II, Floors, the outside edges of floors shall have at least a four inch, sealed concrete berm.
 - CMR 01-026 Chapter 24, Section 4 (E) II, Lighting, a battery powered emergency lighting system...
 - CMR 01-026 Chapter 24, Section 4 (H) II, Security, an automatic alarm system that is connected to a supervised central location....
 - CMR 01-026 Chapter 24, Section 4 (I) (I), Fire protection, all major pesticide storage facilities shall be equipped with an automatic heat and smoke detector....
- 64) That the Board determined that a fine of \$10,000 would have been appropriate for the violations described in paragraph sixty-three, but agreed to reduce that penalty to \$2,000 for the purpose of resolving the violations by Consent Agreement.
- 65) That the Company also entered into a Consent Agreement with the Board on April 20, 2011, for a drift violation in connection with an application made on May 17, 2010. Consequently, the violations described in paragraphs sixteen, nineteen, twenty-two, twenty-five, twenty-eight, thirty-one, thirty-four, thirty-seven, forty, forty-three, forty-six, forty-nine, fifty-three and fifty-nine are all subsequent violations for the purposes of the enhanced penalty provisions in 7 M.R.S. § 616-A (2)(A).
- 66) That the Board has regulatory authority over the activities described herein.
- 67) 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.
- 68) That this Agreement shall not become effective unless and until the Board accepts it.

69) That in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violations referred to in paragraphs sixteen, nineteen, twenty-two, twenty-five, twenty-eight, thirty-one, thirty-four, thirty-seven, forty, forty-three, forty-six, forty-nine, fifty-three and fifty-nine, the Company agrees to pay to the State of Maine the sum of a \$15,000 . (Please make checks payable to Treasurer, State of Maine). Payments of \$1,000 a month will be made commencing in June of 2013 and will continue for consecutive months until the full penalty amount has been paid.

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

NORTHEAST AGRICULTURAL SALES, INC.

By: Justin Choiniere Date: 6/14/13
Type or Print Name: JUSTIN CHOINIERE

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED:

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