

Proposed Administrative Consent Agreement Background Summary

Subject: Scott Reed
Maine Organic Therapy
9 Carriage Road
Ellsworth, Maine 04605

Date of Incident(s): Multiple occasions in 2012 and 2013

Background Narrative: On March 5, 2013, a Board inspector completed a marketplace inspection at a pesticide retailer in southwestern Maine. Through the inspection, and purchase records supplied by the retailer at a later date, it was determined that Maine Organic Therapy, a licensed medical marijuana growing facility, purchased five different pesticides during the above time frame, four of them on multiple occasions. These were:

- Pyganic Crop Protection EC 1.4 insecticide (EPA reg. # 1021-1771) one quart in October of 2012 and one quart in February of 2013.
- Pyrethrum TR insecticide (EPA reg. # 499-479) twelve 2 oz. cans in April of 2012, twelve 2 oz. cans in May of 2012 and twelve 2 oz. cans in October of 2012.
- Eagle 20EW fungicide (EPA reg. # 62719-463), one pint in February of 2012.
- KleenGrow algicide, fungicide, bactericide, disinfectant and virucide (EPA reg. # 81820-2), one gallon on May 8, 2013, and five gallons on May 23, 2013.
- BotaniGard ES (EPA reg. # 82074-1) one quart in October of 2012 and 2 quarts in February of 2013

On April 3, 2013, a Board inspector conducted a joint inspection with Dept. of Health and Human Resources personnel at the company's Biddeford cultivation site.

During the April 3rd inspection, the Board inspector found a partially full aerosol can of Pyrethrum TR insecticide, one of the pesticides known to have been purchased. The inspector also documented that the company had elemental sulfur on site that was used by the company for sanitation purposes in empty grow rooms.

When interviewed, company personnel denied using any of the pesticides purchased on the medical marijuana and said it was taken home by employees for use on their home gardens. The Board staff found this explanation implausible.

The Board staff and Mark Randlett negotiated a consent agreement with the company.

Summary of Alleged Violation(s):

CMR 01-026 Chapter 20 Section 1(B), 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). The use of a pesticide inconsistent with its label and prohibits the use of registered pesticides for other than registered uses.

CMR 01-026 Chapter 20, Section (1) Prohibits the use of any pesticide not registered by the Board in accordance with Title 7 M.R.S.A. §601.

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) Wearing the label-required personal protective equipment is necessary.

Federal Worker Protection Standard, 40 CFR, Part 170 (WPS) Workers at this facility did not receive WPS training and there was no central information display informing employees which areas were treated.

22 M.R.S. § 1471-D (8)(C) The use of pesticides in the production of medical marijuana was potentially harmful to the public health.

Rationale for Settlement: The staff considered the number and duration of pesticide applications. None of the pesticides were registered for use on medical marijuana and one of the pesticides was not registered in Maine. The pesticide applications were potentially harmful to patients using the medical marijuana.

Attachments: Proposed Consent Agreement

AUG 12 2014

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

Scott Reed)
Maine Organic Therapy) ADMINISTRATIVE CONSENT AGREEMENT
9 Carriage Road) AND
Ellsworth, Maine 04605) FINDINGS OF FACT

This Agreement, by and between Maine Organic Therapy (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:

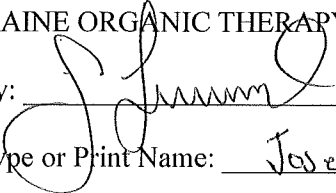
1. That the Company operates a medical marijuana cultivation site in Biddeford, Maine.
2. That on June 5, 2013, a Board inspector contacted a pesticide retailer in southwestern Maine to check pesticide sales made.
3. That from the inspection described in paragraph two, it was determined that on multiple occasions, the company purchased five different pesticides in 2012 and 2013.
 - Pyganic Crop Protection EC 1.4 insecticide (EPA reg. # 1021-1771) one quart in October of 2012 and one quart in February of 2013.
 - Pyrethrum TR insecticide (EPA reg. # 499-479) twelve 2 oz. cans in April of 2012, twelve 2 oz. cans in May of 2012 and twelve 2 oz. cans in October of 2012.
 - Eagle 20EW fungicide (EPA reg. # 62719-463), one pint in February of 2012.
 - KleenGrow algicide, fungicide, bactericide, disinfectant and virucide (EPA reg. # 81820-2), one gallon on May 8, 2013, and five gallons on May 23, 2013.
 - BotaniGard ES (EPA reg. # 82074-1) one quart in October of 2012 and 2 quarts in February of 2013
4. That on April 3, 2013, a Board inspector conducted an inspection in conjunction with DHHS personnel at the Company's Biddeford cultivation site. During this inspection, the inspector asked Company personnel about the pesticides the Company purchased in 2012 and 2013 as described in paragraph three.
5. That in response to a question asked by the Board inspector on April 3, 2013, Company personnel denied using the pesticides at the Company's cultivation site and stated that the pesticides were taken home by employees for use on their home gardens.
6. That during the inspection described in paragraph four, the inspector noticed a half empty aerosol can of Pyrethrum TR insecticide that had fallen down and rolled under a set of shelves. When the inspector asked about its use at the facility he was told by the head grower and applicator, Derek Brock and the assistant grower, Hughes Pope that the insecticide was applied to a 300 square foot opened and screened area of an exterior wall to kill insects during the installation of a ventilation louver. The inspector documented that 1 oz. of Pyrethrum TR insecticide (EPA reg. # 499-479), was applied in June of 2012, on that job.
7. That CMR 01-026 Chapter 20 Section 1(B) prohibits the use of registered pesticides for other than registered uses and 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) prohibit the use of a pesticide inconsistent with its label.
8. That Pyrethrum TR insecticide (EPA reg. # 499-479) is not registered for use as a spot treatment of insects on the buildings as summarized in paragraph seven.
9. That the circumstances in paragraphs one through eight constitute violations of CMR 01-026 Chapter 20 Section 1(B), 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).

10. That during the inspection described in paragraph four, the inspector found an Elemental Sulfur Prill product on site and took photos of the label to document that product (sample # 130403EPM02A). The inspector also documented that a Nivola Sulfur Evaporator was used to apply the sulfur as a smoke application to empty grow rooms at the Company including 10 grams applied on March 29, 2013, to sanitize an 18 ft. x 24 ft. (432 square feet) room.
11. That CMR 01-026 Chapter 20, Section (1) A prohibits the use of any pesticide not registered by the Board in accordance with Title 7 M.R.S.A. §601.
12. That the Elemental Sulfur Prill used for sanitation purposes as described in paragraph ten was not registered in Maine at the time of its use.
13. That the circumstances described in paragraphs four, ten, eleven, and twelve constitute a violation of CMR 01-026 Chapter 20, Section (1)
14. That CMR 01-026 Chapter 20 Section 1(B) prohibits the use of registered pesticides for other than registered uses and 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) prohibit the use of a pesticide inconsistent with its label.
15. That none of the pesticides summarized in paragraphs three were registered for use on marijuana.
16. That the Board finds, based on the evidence obtained from the sales records summarized in paragraphs two and three, and the inspector's interviews in paragraph four, that Company employee explanations given in paragraph five for how the pesticides were used to be implausible. The pesticides described in paragraph three all have greenhouses listed on their labels and have utility for controlling insect, disease and sanitation problems encountered when plants are grown in a greenhouse environment. In addition, the Pyrethrum TR insecticide label specifies it is for commercial use only and the KleenGrow label prohibits its use outdoors, both precluding their use in Company employee's home gardens. From this evidence it is the Board's position that the five pesticides summarized in paragraph three, were applied to the medical marijuana at the Company's Biddeford cultivation site. Two unrelated medical marijuana growing facilities acknowledged using similar products to grow medical marijuana when previous inspections were done.
17. That the circumstances in paragraphs one through four, eight, fourteen, fifteen and sixteen, constitute multiple violations of CMR 01-026 Chapter 20 Section 1(B), 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).
18. That wearing the label-required personal protective equipment is specified in 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).
19. That Pyrethrum TR insecticide requires chemical resistant gloves when applying it.
20. Chemical resistant gloves were not worn when applying the Pyrethrum TR.
21. That the circumstances described in paragraphs six, and eighteen through twenty constitute a violation of CMR 01-026 Chapter 20 Section 1(A) and (B) and 22 M.R.S.A § 1471-D(8)(F).
22. That the Company raises a commercial agricultural crop at a greenhouse business that utilized pesticides bearing language requiring conformance with the federal Worker Protection Standard, 40 CFR, Part 170 (WPS).
23. That the Company employs one or more workers and handlers as defined under 40 CFR, Part 170.3 to assist in the production of the crops described in paragraph one.
24. That from the inspection done in paragraph four, it was determined that the workers did not receive WPS training, there was no central information display informing employees which areas were treated.
25. That the circumstances described in paragraphs twenty-two, twenty-three and twenty-four, constitute multiple violations of the federal Worker Protection Standard, 40 CFR, Part 170 (WPS).

26. The Board finds that the probable use of pesticides in the production of medical marijuana was potentially harmful to the public health, in violation of 22 M.R.S. § 1471-D (8)(C).
27. While the Company does not admit the violations, and while the Company believes there are factual disputes involving the violations alleged by the Board, the Company does agree to enter into this Consent Agreement for the purpose of resolving the alleged violations.
28. That the Board has regulatory authority over the activities described herein.
29. 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.
30. That this Agreement shall not become effective unless and until the Board accepts it.
31. That in assessing a penalty in this circumstance, the Board recognized that the Company was producing a medicinal product intended for use by patients with serious and/or chronic illnesses.
32. 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 nine, thirteen, seventeen, twenty-one, twenty-five, and twenty-six, the Company agrees to pay to the State of Maine the sum of \$5,500 (Please make checks payable to Treasurer, State of Maine.)

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

MAINE ORGANIC THERAPY

By:  Date: 8/5/14
 Type or Print Name: Joseph Lescage

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
 Henry Jennings, Director

APPROVED

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