

Proposed Administrative Consent Agreement

Background Summary

Subject: Caleb C. Bell Senior
9 Chipmunk Lane
New Limerick, Maine 04761

Date of Incident(s): Multiple times in summer of 2018

Background Narrative:

On August 20, 2018, the Maine Department of Environmental Protection (DEP) received a call and conveyed the call to the Board. The original caller reported Mr. Bell was seen on multiple occasions applying what appeared to be an herbicide near the shore of Drews Lake in New Limerick. A Board inspector interviewed Mr. Bell, checked the affected area near the lake, and also took a physical sample within 25 feet of the lake. The lab reported the sample was positive for glyphosate at 164 parts per billion and AMPA (a glyphosate metabolite) at 286 parts per billion.

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:

Compared the violation to similar past violations and penalties. Property owners have taken steps to prevent a recurrence.

Attachments: Proposed Consent Agreement

MAR 14 2022

CK# 7420
Amt \$300.⁰⁰
Date 3-2-22

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

ADMINISTRATIVE CONSENT

Caleb C. Bell Senior)
9 Chipmunk Lane)
New Limerick, Maine 04761)
AGREEMENT
AND
FINDINGS OF FACT

This Agreement, between Caleb C. Bell Senior (hereafter called the "applicator") 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 applicator was tasked with maintaining the grounds of a single-family dwelling on property located at 22 White Tail Deer Lane, on the North shore of Drews Lake in New Limerick, Maine (hereinafter called the "property").
2. That the property is periodically occupied by the owners for recreational purposes.
3. That the applicator is the father of the property owner.
4. That during the summer of 2018, the applicator was residing at his property located at 9 Chipmunk Lane in New Limerick.
5. That during the summer of 2018, the applicator, from time to time, conducted maintenance activity on the property described in paragraph one.
6. That the property has approximately 345 feet of water frontage on Drews Lake.
7. That of the 345 feet of water frontage, approximately 130 feet of frontage facing Southwest consists of a man-made soil embankment approximately 18 inches high and 6 feet wide. The remaining shoreline is on the same grade as the turf between the building and the shoreline.
8. That on August 20, 2018, an employee of the Maine Department of Environmental Protection was contacted by a concerned citizen stating that the applicator had been observed on four occasions applying what appeared to be an herbicide from a spray container along the shoreline of the property. The information included that the applicator was also observed filling the spray container in the lake, dipping it into the water.
9. That on August 20, 2018, the Maine Department of Environmental Protection employee contacted the BPC with the information described in paragraph eight.
10. That on August 30, 2018, a Board inspector traveled to the property and met with the applicator and his son to conduct a follow-up inspection at the site, the inspector noted that it appeared that an herbicide had been applied to a six-foot-wide strip of land along the shoreline, including both the embankment and adjacent flat area. The strip of land along the shoreline was barren of live vegetation except for a few new growth weeds. Dead vegetation in this area consisted of ground moss and grass. There was a well-defined margin between dead plants and healthy turf landward of the apparent application area. The inspector documented, with photos, the dead vegetation and the margin between living and dead turf.

11. That the location of dead vegetation was close enough to the water that it would not have been possible to direct applications away from the water without standing in the water with application equipment.
12. That the extent of dead vegetation indicated that the application was not directed at specific organisms or infestations in a manner that minimizes deposition to non-target species and areas.
13. That the application was not confined to no more than 20% of the area located within 25 feet of surface water. The affected area covered approximately 2,070 square feet or 24% of the 25-foot-wide buffer strip.
14. That the affected contiguous area was greater than 100 square feet.
15. That during an interview with the Board Inspector, both the applicator and his son verbally stated that no pesticides had been applied along the shoreline, that herbicide had been applied only to an area of the property behind the building, relative to the shoreline. The applicator's son completed a written statement to that effect.
16. That when asked for an explanation for why there was dead vegetation along the shoreline and vibrant live vegetation elsewhere on the property, neither the applicator nor his son responded.
17. That on September 24, 2018, a Board Inspector returned to the property and met with the applicator. During that inspection, the Board Inspector collected a composite soil sample from the area of dead vegetation along the shoreline.
18. That on September 25, 2018, the sample that was collected on September 24 was shipped overnight service via FedEx to Massachusetts Pesticide Analysis Laboratory for analysis for the presence of herbicide active ingredient glyphosate and related glyphosate metabolites.
19. That laboratory analysis results received by the Board on October 24, 2018, showed that the sample described in paragraph seventeen contained the herbicide active ingredient glyphosate at 164 parts per billion and AMPA (a glyphosate metabolite) at 286 parts per billion.
20. 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 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.
21. That the application made along the shoreline described in paragraphs eight, and ten through twelve was a broadcast pesticide application and did not meet any of the exemptions in paragraph twenty.
22. That the circumstances described in paragraphs one through twenty-one constitute a violation of CMR 01-026 Chapter 29 Section 6(A)(I).
23. That the Board has regulatory authority over the activities described herein.
24. That the applicator 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;

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

26. That, in consideration for the release by the Board of the causes of action which the Board has or may have against the applicator resulting from the violation referenced in paragraph twenty-two, the applicator agrees to pay to the State of Maine the sum of \$300 (Please make checks payable to Treasurer, State of Maine).

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

CALEB BELL SENIOR

By: Caleb Bell Senior Date: 3-2-2022

Type or Print Name: CALEB BELL SENIOR

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED

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