

Proposed Administrative Consent Agreement Background Summary

Subject: Alfred Fugazzi
Stone Wall Farms
78 Hoover Lane
Lincoln, Maine 04457

Date of Incident: 4/23/2016

Background Narrative: Fugazzi applied approximately one ounce of Lannate SP insecticide, a restricted use pesticide, to bread pieces from four slices of bread, and then put the bread out in three locations near his crop land in Lincoln in an effort to control crows damaging his planted vegetable seeds. A joint investigation by the Lincoln police department and an inspector from the Board of Pesticides Control confirmed the application was made on April 23, 2016. The application killed at least seven crows. Two pet dogs being walked by their owner also died when they ate some of the bread. Fugazzi was fully cooperative with the investigation and acknowledged his misuse of the pesticide. At its August 2016 meeting the Board heard the facts of this case along with input from Fugazzi and the dog owner. The Board approved a motion for the staff to negotiate a consent agreement.

Summary of Violation(s):

22 M.R.S. § 1471-D (8)(C) It is unlawful to use or supervise the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment.

- Applying Lannate SP to bread and then placing the laced bread in an open field as bait to kill crows.

7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D (8)(F). Use of a pesticide in a manner inconsistent with its label.

- Applying Lannate SP to bread and then placing the laced bread in an open field as bait to kill crows is not an approved label use.
- Lannate SP label's maximum application rate per acre for any crop or site is one pound per acre. The use of one ounce of Lannate SP to treat 4 slices of bread, which was then placed out in three piles, far exceeded the Lannate SP maximum application label rate.
- LANNATE® SP is a dry powder in a water soluble bag to be dissolved in water for application by mechanical ground, overhead sprinkler or aerial application equipment only. Hand-held equipment is prohibited for application to crops.
- Do not handle, open, rip, tear, cut or perforate the inner water soluble bag.
- Wear protective eyewear and respirator.

Rationale for Settlement: The staff considered:

- The importance of deterring the same person or others from future violations
- The cause and circumstances of the violation, including:
 - The foreseeability of the violation
 - The standard of care exercised by the violator
- The pesticide was applied in a careless, negligent or faulty manner or in a manner which was potentially harmful to the public health, safety or welfare or the environment.

Attachments: Proposed Consent Agreement

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

In the Matter of:)
Alfred Fugazzi) ADMINISTRATIVE CONSENT AGREEMENT
Stone Wall Farms) AND
78 Hoover Lane) FINDINGS OF FACT
Lincoln, Maine 04457)

This Agreement by and between Stone Wall Farms (hereinafter called "Fugazzi") 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 Fugazzi is a commercial vegetable and fruit grower in Lincoln.
2. That Fugazzi is a licensed private pesticide applicator holding license number PPA 10648 issued by the Board pursuant to 22 M.R.S. § 1471-D(2).
3. That on April 26, 2016, the Board received a call from Lincoln police officer John Walsh. Walsh reported that on April 23, 2016, his department received a call from Ronald Thornton reporting two dogs were thought to have been poisoned and died.
4. That the Lincoln police department responded to the complaint described in paragraph three the same day it was received. Walsh and Lincoln animal control officer Nicole Murchison initially met with dog owner Hawley (Tim) Thornton ("T. Thornton") at his residence at 356 Enfield Road in Lincoln. Thornton showed Walsh his dead English setter (Jasper).
5. That during the meeting described in paragraph four, Thornton explained the setter died in the fields behind their house when Thornton's wife Ann ("A. Thornton") had walked the setter and their other dog a dachshund (Moxie) earlier in the day. A. Thornton was in the process of taking the dachshund to the emergency vet because it too had ingested something while in the field and was suffering with seizures.
6. That T. Thornton took Walsh to the field where the setter died. T. Thornton directed Walsh to a tall grass area where T. Thornton said he found the setter convulsing and foaming at the mouth. Walsh's written report records that the grass was flattened and there was a large amount of foam on it.
7. That while still at the site, Walsh noted that the field was below agricultural fields belonging to Alfred Fugazzi (Stone Wall Farms).
8. That Walsh called Fugazzi and left him a voice message and Walsh and T. Thornton returned to the Thornton's residence.
9. That upon returning to the Thornton residence Walsh met with A. Thornton who stated that the dachshund had died enroute to the emergency vet. The dachshund died with identical symptoms the setter displayed before it died, convulsing and foaming at the mouth. Walsh saw the dead dachshund.

10. That A. Thornton informed Walsh that she saw the dogs “get in to something” on the back side of Fugazzi’s crops.
11. That Walsh asked A. Thornton if she could show him where the incident occurred. Walsh and A. Thornton drove to the main entrance of Fugazzi’s fields. Walsh’s written report notes that there was a rope across the entrance and signs on either side of the entrance that read “sprayed fields, keep out”.
12. That Walsh’s written report states that he and A. Thornton walked along the path she and the dogs traveled on their outing and that she entered from the back side of the fields and was walking back towards the Bedford Farm Road. The report further stated that she entered from the south side of the field from a woods trail where there were no signs indicating pesticide use or to stay out and was walking north along the edge of the field and was going to exit on an unposted trail leading to the Bedford Farm Road.
13. That Walsh’s report indicates A. Thornton told Walsh that along the edge of the tilled soil, almost directly between two tilled plots, she had seen the dogs eating something.
14. That Walsh checked this area and found a small spot that had what appeared to be bread crumbs on the ground and that in the dirt next to the bread crumbs were footprints belonging to a species of dog. Walsh collected the bread crumbs in a plastic bag and later took them to the Lincoln police department.
15. That while still at the site, Walsh’s coworker called to inform him Fugazzi had been calling the police department to speak with Walsh.
16. That Walsh called Fugazzi and informed him that two dogs had died suddenly after being in his field and it appeared they may have eaten a piece of bread. Fugazzi told Walsh he would meet him in the field shortly.
17. That Fugazzi arrived at the field soon after the call described in paragraph sixteen. Fugazzi admitted that he broke up some slices of bread and then used Lannate SP, a restricted use pesticide, to treat the bread crumbs before placing the laced bread crumbs out in three separate locations earlier that morning to control crows. Fugazzi acknowledged he knew this was an improper use of Lannate SP. Fugazzi said the crows had destroyed some vegetable seeds he had planted, requiring replanting.
18. That Walsh asked Fugazzi to show him the three locations where Fugazzi put the bread crumb piles. At the first location Walsh noted there were seven dead crows in the immediate area and what appeared to be other dead crows in the distance. The bread at the second location appeared to be untouched. The third location is where the dogs had eaten some of the laced bread.
19. That on April 26, 2016, a Board inspector first met with Walsh, interviewed him about the incident, collected a copy of Walsh’s written report, and collected the bread crumb sample that Walsh had taken as described in paragraph fourteen.
20. That in addition to the points discussed in Walsh’s written report described in paragraphs twelve through eighteen, Walsh told the Board inspector A. Thornton had walked the dogs off leash on April 23, 2016, in the fields leased by Fugazzi. The Board inspector asked Walsh how he determined the back path A. Thornton used to access Fugazzi’s field was not posted with a “sprayed keep out sign” on April 23, 2016. The inspector learned that in Walsh’s written report on this point, Walsh was recording what A. Thornton told him, not what Walsh observed himself.
21. That on April 26, 2016, the Board Inspector and Walsh then met with Fugazzi. The inspector completed an inspection with Fugazzi and documented the label for Lannate SP and how it was mixed. The inspector

asked Fugazzi to complete a written statement about the incident but Fugazzi was too upset to do so at that time.

22. That from the inspection described in paragraph twenty-one, it was determined that Fugazzi applied one ounce of Lannate SP to breadcrumbs from four slices of bread about noon on April 23, 2016.
23. That during the inspection described in paragraph twenty-one the Board inspector also took digital photos documenting field signs, field and farm sign.
24. That after meeting with Fugazzi as described in paragraph twenty-one, the Board inspector then met with A. Thornton later that day. She completed a written statement.
25. That A. Thornton's written statement described in paragraph twenty-four stated that on April 23, at approximately 3:30 PM, she was walking both dogs on the Bedford Farm Road. She used the back entrance to the field. The dogs were loose and about seventy-five feet ahead of her. She kept the dogs out of the new planting. She saw both dogs eat something on the field's edge.
26. That A. Thornton's written statement went on to say that within thirty seconds of ingesting something, her dachshund, while chasing after the setter, began stumbling and fell. The dachshund began coughing and foaming at the mouth and shaking and twitching. The dog died on the way to the vets within forty-five minutes of ingestion.
27. That A. Thornton's written statement further described her phoning her husband who came to Fugazzi's fields and located the setter using the setter's remote collar. The setter was in tall grass struggling to breathe, foaming at the mouth, and trembling. The dog's legs were drawn up and tense to his body. Her husband carried him towards home, but the setter died within thirty minutes of ingestion.
28. That A. Thornton's written statement concludes by stating that when the Thorntons and the Lincoln police officer and animal control officer returned to the field where the incident occurred, they found bread crumbs in the area she saw the dogs ingest something and these bread crumbs were collected by the Lincoln police officer. A. Thornton wrote that there were no signs posted to discourage entry to the field at the back entrance where she and the dogs entered.
29. That on April 27, 2016, the Board inspector sent A. Thornton a copy of an aerial photo from Google Earth requesting that she draw the approximate route she and the dogs took on April 23, 2016, to enter Fugazzi's farm land. The inspector received the marked photo back from Thornton on April 30, 2016.
30. That on April 29, 2016, the Board inspector returned to Stone Wall Farm and conducted another inspection with Fugazzi and asked Fugazzi to mark on a clean copy of an aerial photo from Google Earth where he placed the three piles of laced breadcrumbs bait, the location of the planted seeds, and the location of signage. Fugazzi agreed and marked all these areas on the aerial photo.
31. That during the inspection described in paragraph thirty, the inspector asked Fugazzi for a written statement about the baiting incident and offered two ways to accomplish this. Fugazzi could dictate the statement to the inspector who would write it down or Fugazzi could write it himself. Fugazzi chose to dictate his statement to the inspector. Fugazzi's statement read in part, that approximately one ounce of Lannate SP was mixed with crumbs from four slices of bread, and distributed to three locations on Saturday, April 23. The inspector then read the statement back to Fugazzi, and he agreed it documented the incident then signed and dated the statement form.

32. That a pesticide may not be applied in a manner inconsistent with its labeling as outlined in 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F).
33. That applying Lannate SP to breadcrumbs and then placing the laced breadcrumbs in an open field as bait to kill crows is not an approved label use.
34. That the circumstances described in paragraphs one through thirty-three constitute a violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F).
35. That the Lannate SP label's maximum application rate per acre for any crop or site is one pound per acre.
36. That the use of one ounce of Lannate SP to treat 4 slices of bread, which were then place out in three piles, far exceeded the Lannate SP maximum application label rate as described in paragraphs seventeen, eighteen, twenty-two and thirty.
37. That the circumstances described in paragraphs seventeen, eighteen, twenty-one, twenty-two, thirty, thirty-one, thirty- two, thirty-five, and thirty-six constitute a violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F).
38. That the Lannate SP Label states "Do not handle, open, rip, tear, cut, or perforate the inner soluble bags".
39. That Fugazzi opened the Lannate SP inner water soluble bag to remove one ounce of the insecticide to treat breadcrumbs as described in paragraph twenty-two and thirty-one.
40. That the circumstances described in paragraphs twenty-two, thirty-one, thirty-two, thirty-eight, and thirty-nine constitute a violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F).
41. That the Lannate SP label requires chemical resistant boots, chemical resistant gloves, protective eyewear, and a respirator when mixing, and a chemical resistant apron, chemical resistant gloves, and protective eyewear when it is being applied.
42. That during the inspection described in paragraph twenty-one the Board inspector documented that Fugazzi did not have the required personal protective equipment described in paragraph forty-one when he mixed and applied the Lannate SP as described in paragraphs seventeen, twenty-one, and twenty-two.
43. That the circumstances described in paragraphs thirty-two, forty-one and forty-two constitutes the use of a pesticide inconsistent with its product labeling, a violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471D(8)(F).
44. That, pursuant to M.R.S. § 1471D(8)(C), it is unlawful to use or supervise the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment.
45. That open baiting for crows, using Lannate SP laced breadcrumbs as described in paragraphs seventeen, eighteen, twenty-two, thirty, and thirty-one, and forty-four constitute a violation of M.R.S. § 1471D(8)(C).
46. That the Board has regulatory authority over the activities described herein.
47. That Fugazzi 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.

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

49. That in consideration for the release by the Board of the causes of action which the Board has against Fugazzi resulting from the violations referred to in paragraphs thirty-four, thirty-seven, forty, forty-three, and forty-five Fugazzi agrees to pay to the State of Maine the sum of \$1,500 at the same time he signs and submits this Consent Agreement to the Board. (Please make checks payable to Treasurer, State of Maine).

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

STONE WALL FARMS

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General