

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** Witherly's Green House & Garden Center  
901 Cold Brook Road  
Hermon, Maine 04401

**Date of Incident(s):** May 31, 2016; June 27, 2017; and July 13, 2017

**Background Narrative:** Witherley's Green House is a licensed general use pesticide dealer. A Board inspector conducted a marketplace inspection at this facility in May of 2016. At that time the inspector documented thirteen unregistered pesticides the facility was offering for sale. The inspector issued a stop sale/use/removal order that explained the reason for the order and the conditions to resolve the problems. The reasons included expired registrations or products that were never registered. The directive to resolve these registration issues including: removal from shelves and dispose of properly.

**Summary of Violation(s):** 7 M.R.S § 606(1)(A) makes it unlawful for a person to distribute a pesticide in this state that has not been registered pursuant to the provisions of this subchapter.

7 M.R.S. § 606(2)(F) makes it unlawful for a person to refuse or otherwise fail to comply with any lawful order of the Board.

**Rationale for Settlement:** Witherly's Green House & Garden Center disregarded a Stop Sale User Removal Order by the Board.

**Attachments:** Proposed Consent Agreement



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

In the Matter of:	)	
Witherly's Green House & Garden Center	)	ADMINISTRATIVE CONSENT
c/o Galen Witherly	)	AGREEMENT
901 Cold Brook Road	)	AND
Hermon, Maine 04401	)	FINDINGS OF FACT

This Agreement by and between Witherly's Green House & Garden Center, (hereinafter called the "Seller") 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 December 13, 2013.

The parties to this Agreement agree as follows:

1. That the seller owns a greenhouse and garden center located at 901 Cold Brook Road in Hermon.
2. That the seller sells general use pesticides and under 22 M.R.S. Chapter 258-A has been issued general use pesticide dealer license number GPD-4882.
3. That a Board inspector conducted a marketplace inspection at the seller's business on May 31, 2016.
4. That during that inspection stop sale orders were placed on thirteen unregistered pesticide products. For ten unregistered products totaling 55 containers the stop sale orders instructed the seller to remove the products from the shelves and dispose of them properly. For three products totaling 23 containers the stop sale orders instructed the seller to remove the products from the shelves and hold them until further instructions were received from the Board. The seller signed both stop-sale-use-removal-orders acknowledging the basis for and conditions of the stop-sale-use-removal-orders.
5. That on June 27, 2017, a Board inspector conducted another marketplace inspection at the seller's business. The inspector limited the scope of her inspection once she documented that four pesticide products under the May 31, 2016 stop sale order were displayed for sale. These products were not registered for sale in Maine at the time of this inspection.
6. That on July 13, 2017, two Board inspectors conducted a thorough inspection of the pesticide products offered for sale in the self-service sales area. Twelve of the thirteen unregistered pesticide products (61 of 78 containers) that were placed under a stop-sale-use-removal-order at the time of the 2016 inspection remained unregistered and were displayed for sale at the time of this inspection.
7. That 7 M.R.S § 606(1)(A) makes it unlawful for a person to distribute a pesticide in this state that has not been registered pursuant to the provisions of this subchapter.
8. That the circumstances described in paragraphs one through seven constitute multiple violations of 7 M.R.S § 606(1)(A).

9. That 7 M.R.S. § 606(2)(F) makes it unlawful for a person to refuse or otherwise fail to comply with any lawful order of the Board.
10. That the circumstances described in paragraphs one through nine constitute violations of 7 M.R.S. § 606(2)(F).
11. That the Board has regulatory authority over the activities described herein.
12. That the seller 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.
13. That this Agreement shall not become effective unless and until the Board accepts it.
14. That in consideration for the release by the Board of the causes of action which the Board has against the seller resulting from the violations referred to in paragraphs eight and ten, the seller agrees to pay to the State of Maine the sum of \$500. (Please make checks payable to Treasurer, State of Maine).

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

WITHERLY'S GREEN HOUSE & GARDEN CENTER

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_

Director, Board of Pesticides Control

APPROVED:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Randlett, Assistant Attorney General