

Proposed Administrative Consent Agreement Background Summary

Subject: Warren Mathisen
Advantage Landscaping
PMB 144, PO Box 9715
Portland, Maine 04104

Date of Incident(s): May 27, 2010

Background Narrative: The Board received a complaint call from Portland resident who is a registrant on the 2010 Maine Pesticide Notification Registry (non-ag). The caller stated he observed an applicator on a neighbor's property applying an herbicide to the lawn edges and sidewalk edges using a hand can. The property being treated is listed as an abutter on the notification registry. No notification was provided. A Board inspector determined through a follow-up inspection on June 8, 2010, with the applicator that he was not a licensed commercial applicator and he was not aware of the notification requirements.

Summary of Violation(s): 22 M.R.S.A. § 1471-D(1)(A). Commercial pesticide applications may only be conducted by certified commercial applicators, CMR 01-026 Chapter 28, Section 3.

CMR 01-026 Chapter 28, Section 2 (D). Commercial applicators shall notify individuals listed on the registry when performing an outdoor, non-agricultural pesticide application that is within 250 feet to the property boundary of the listed registry residence.

Rationale for Settlement: Mathisen acknowledged that he made the above application. He was not aware of the licensing requirement or the notification requirement. The fine is the standard amount for a small company, first time violator of the commercial licensing requirement.

Attachments: Proposed Consent Agreement

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

Warren Mathisen)
Advantage Landscaping) ADMINISTRATIVE CONSENT AGREEMENT
PMB 144, PO Box 9715) AND
Portland, Maine 04104) FINDINGS OF FACT

This Agreement, by and between Advantage Landscaping. (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 provides property maintenance services for hire, including in the Portland area.
2. That the Board received a complaint call from Robert Greenberg about a pesticide application he observed the Company make on May 27, 2010, to Leigh and Elizabeth Spector's residence at 46 Brookside Road in Portland.
3. That Greenberg, at 56 Brookside Road in Portland, is on the 2010 Maine Pesticide Notification Registry.
4. That Greenberg stated he received no notification about the pesticide application in paragraph two.
5. That in response to the Greenberg's complaint in paragraph two; a Board inspector conducted a follow-up inspection with the Company on June 8, 2010.
6. That during the inspection in paragraph five, Warren Mathisen, the Company co-owner, acknowledged that he applied Roundup Herbicide (EPA Reg. # 71995-29) to the lawn edges of the sidewalk and driveway of Leigh and Elizabeth Spector's residence as reported in paragraph two, and that he was not aware of any notification or licensing requirement for this type of application.
7. That the Spector's property described in paragraphs two and six is located within 250 feet of Robert Greenberg's property and is listed as an abutter to Greenberg on the 2010 Maine Pesticide Notification Registry. The Company's pesticide application in paragraph six to Spector's property required prior notification to Greenberg pursuant to CMR 01-026 Chapter 28, Section 2(A).
8. That based on Greenberg's statement in paragraph four and the inspection in paragraph six, the Company did not provide prior notification to Greenberg.
9. That the circumstances described in paragraphs one through eight constitute a violation of CMR 01-026, Chapter 28, Section 2(D).
10. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S.A § 1471-C(5-A), must be a certified commercial applicator in accordance with 22 M.R.S.A § 1471-D(1) (A).

11. That a custom application is defined in 22 M.R.S.A § 1471-C(5-A) as any application of any pesticide under contract or for which compensation is received or any application of a pesticide to a property open to use by the public.
12. That the application described in paragraphs two and six constitutes a custom application, as defined in 22 M.R.S.A § 1471-C(5-A).
13. That no one from the Company had a commercial pesticide applicator's license at the time of the application described in paragraphs two and six.
14. That the circumstances described in paragraphs one, two, five, six and ten through thirteen constitute a violation of 22 M.R.S.A. § 1471-D(1)(A).
15. That the Board has regulatory authority over the activities described herein.
16. 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.
17. That this Agreement shall not become effective unless and until the Board accepts it.
18. 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 and fourteen, the Company 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.

ADVANTAGE LANDSCAPING

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General