

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

**Subject:** Peter Lyford  
Scotts Lawn Service  
53 Dave's Way  
Hermon, Me 04401

**Date of Incident(s):** May 7, 2010/July 22, 2010/August 18, 2010

**Background Narrative:** Scotts Lawn Service applied Ortho Weed B Gon to customer lawns at three separate sites on three different dates. The Board received complaint calls for all three applications and conducted follow-up inspection for each. The callers in the first two incidents alleged spraying in high winds. National Oceanic & Atmospheric Administration weather data was checked for wind conditions at nearby weather stations for the dates and times of the applications. These records indicated that wind speeds at the time of the applications exceeded 15 mph. The third incident involved a complaint about an application on a college campus that was not posted. A construction contractor working on the campus got wet boots from walking on treated turf between two buildings. He saw no signs posted notifying him that an application took place. An inspector conducted a follow-up inspection while the application was still in progress on the campus and concluded that posting was not sufficient. The spray contracting firm disagreed with some of the facts this consent agreement was based on, but agreed to settle the consent agreement to resolve the alleged violations.

**Summary of Violation(s):** CMR 01-026 Chapter 22 Section 2 B, Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.

CMR 01-026 Chapter 28 Section 3. ...Where outdoor commercial pesticide applications in certification and licensing categories III(a) - Outdoor Ornamentals, III(b) - Turf, and VII(a) - Structural General will take place, the area shall be posted in a manner and at locations designed to reasonably assure that persons entering such area will see the notice. Such notice shall be posted before application activities commence and shall remain in place at least two days following the completion of the application.

**Rationale for Settlement:** Two of the three violations in this consent agreement were based on weather document near, but not at the application sites. Within the last four years the company entered into two separate consent agreements with the Board.

**Attachments:** Proposed Consent Agreement

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

Peter Lyford	)	ADMINISTRATIVE CONSENT AGREEMENT
Scotts Lawn Service	)	AND
53 Dave's Lane	)	FINDINGS OF FACT
Hermon, Maine 04401	)	

This Agreement by and between Scotts Lawn Service (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 adopted by the Board on September 19, 1984.

The parties to this Agreement agree as follows:

1. That the Company provides commercial pesticide application services including in the South Portland and Bangor areas.
2. That on May 10, 2010, the Board received a call from a Veazie resident in the Silver Ridge Road neighborhood with concerns about a pesticide application the Company made at 2:26 PM on Friday, May 7, 2010. The caller said wind speeds were in the 20-30 mph range that day.
3. That in response to the call in paragraph two, a Board Inspector conducted a follow-up inspection with Company employee Liana Windle on May 11, 2010.
4. That from the inspection in paragraph three the inspector documented that Company applicator Daniel Sciacca (COA 45402 ), applied Ortho Weed-B-Gon (EPA # 228-292) to the turf at 36 Silver Ridge Road in Veazie at 2:20 PM on May 7, 2010 using a boom sprayer.
5. The inspector reviewed National Weather Service weather data recorded at the Bangor Airport for May 7, 2010. Wind speeds at 1:53 pm were 13 mph with gust to 24 mph. Wind speeds at 2:53 PM were 16 mph with gusts to 29 mph. These two times bracket the application time in paragraph four.
6. That CMR 01-026 Chapter 22 Section 2 B, III prohibits spraying pesticides outdoors with powered equipment when wind speeds in the area exceed 15 mph. Evidence indicates the wind speeds at the time of the application in paragraph four, exceeded 15 mph.
7. That the circumstances described in paragraphs one through six constitute a violation of CMR 01-026 Chapter 22 Section 2 B.
8. That on July 22, 2010, the Board received a call from a citizen with concerns about a pesticide application the Company was making in the Colonial Avenue neighborhood of South Portland. The caller said wind speeds were high and gusty and the pesticide was blowing onto neighbors' property.
9. That in response to the call in paragraph eight, a Board Inspector conducted a follow-up inspection with Company applicator Ian Yates (license # COA 44302) on July 26, 2010.

10. That from the inspection in paragraph nine the inspector documented that Yates applied Ortho Weed-B-Gon Pro (EPA # 228-292) to the turf at a residential customer at 16 Colonial Ave in South Portland on July 22, 2010 at 1:30 PM using a boom sprayer.
11. That a review of National Oceanic & Atmospheric Administration data for hourly weather records for Portland Jetport indicated that the documented wind speeds at 12:51 were 15 mph with gusts to 23 mph and the wind speeds at 1:51 were 20 mph with gusts to 29 mph. These two times bracket the application time in paragraph ten.
12. That CMR 01-026 Chapter 22 Section 2 B, III prohibits spraying pesticides outdoors with powered equipment when wind speeds in the area exceed 15 mph. Evidence indicates the wind speeds at the time of the application in paragraph 10, exceeded 15 mph.
13. That the circumstances described in paragraphs eight through twelve constitute a violation of CMR 01-026 Chapter 22 Section 2 B.
14. That on August 18, 2010, the Board received a call from a construction worker who was working on the Husson College Campus in Bangor. While walking from Hart Hall to Carlisle Hall at approximately 11:30 his boots got wet. He later saw a van with a Scotts Lawn Service logo on it and an applicator on a rider applying a granular material from the back of the machine and a liquid from the front. No signs were posted.
15. That in response to the call in paragraph fourteen, a Board Inspector conducted a follow-up inspection with Company applicator Kevin DeWildt (lic # CMA 12748) at the Husson College site the same day of the application. The turf application to the campus was still in progress at the time of the inspection
16. That from the inspection in paragraph fifteen, the inspector documented that Dewildt applied Ortho Weed-B-Gon Pro (EPA # 228-292) to the turf at the Husson College campus on August 17, 2010.
17. That CMR 01-026 Chapter 28 Section 3 requires that when applications are made to turf which fall under certification and licensing category 3B, the treated area must be posted prior to making the application.
18. That during the inspection in paragraph fifteen, the inspector observed that treated areas were not posted until after the applications took place.
19. That the circumstances described in paragraphs fourteen through eighteen constitute a violation of CMR 01-026 Chapter 28 Section 3.
20. The Board believes the circumstances described in paragraphs one through nineteen constitute multiple violations of CMR 01-026 Chapter 22 Section 2 B, and a violation of CMR 01-026 Chapter 28 Section 3. 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.
21. That the Company entered into an Administrative Consent Agreement with the Board on August 28, 2008 for violations of CMR 01-026 Chapter 27 Section 5 (F) and CMR 01-026 Chapter 50 Section 1 A, II for an application made May 14, 2008. The company received another separate notice of violation for violations of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) , 22 M.R.S.A § 1471 D (8)(C) and 22

M.R.S.A § 1471 D (8)(F),and related to inspections made on May 27 and May 28, 2008. Consequently, the violations described in paragraphs seven, thirteen and nineteen are a subsequent violation pursuant to 7 M.R.S.A. § 616-A (2)(B).

22. That the Board has regulatory authority over the activities described herein.

23. 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.

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

25. 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 paragraph seven, thirteen and nineteen the Company agrees to pay to the State of Maine the sum of \$400. (Please make checks payable to Treasurer, State of Maine).

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

SCOTTS LAWN SERVICE

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

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

BOARD OF PESTICIDES CONTROL

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

Henry Jennings, Director

APPROVED:

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

Mark Randlett, Assistant Attorney General