

Proposed Administrative Consent Agreement Background Summary

Subject: Paul Sevigny
Mainely Grass, Inc.
P.O. Box 231
York, Maine 03909

Date of Incident(s): June 7, 2007

Background Narrative: That on June 7, 2007, Chad Desmarais, an employee of Mainely Grass, Inc., applied a selective herbicide to Tom Money's lawn at 12 Beach Road in South Berwick, Maine. Money had not granted authorization for the application. Desmarais was supposed to make the application to the lawn area at 12 Quarry Road in South Berwick. While Mainely Grass, Inc., had a company policy in place for verifying electrical meter numbers, Desmarais did not follow either company or Board policy by verifying the meter number prior to the start of the pesticide application. Paul Sevigney, president of Mainely Grass, Inc., self-reported the incident to the Board.

Summary of Violation(s): 22 M.R.S.A. § 1471-(D) (8) (C), Used or supervised the use of pesticides in careless, negligent or faulty manner ...

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board in formulating a penalty proposal.

Attachments: Proposed Consent Agreement

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

Mainely Grass, Inc.
P.O. Box 231
York, Maine 03909

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**ADMINISTRATIVE CONSENT
AGREEMENT
AND
FINDINGS OF FACT**

This Agreement by and between Mainely Grass Inc. (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 is a licensed spray contracting firm holding license number SCF 15230 issued by the Board pursuant to 22 M.R.S.A. § 1471-D (1)(B).
2. That on June 7, 2007, Chad Desmarais, a Company employee, applied Lesco Three-Way Selective Herbicide, EPA Reg. No. 10404-43, to the lawn area at the residence of Tom Money at 12 Beach Road in South Berwick, Maine.
3. That Tom Money had not granted prior authorization for the application described in paragraph two.
4. That Desmarais had intended to make the application described in paragraph two to the lawn area at 12 Quarry Road in South Berwick, Maine.
5. That a policy concerning positive identification of the proper treatment site by commercial applicators has been in effect since July 29, 2005.
6. That obtaining a customer's electrical meter number in advance of the treatment to verify the correct application site is an appropriate positive identification method approved by the Board.
7. That the Company had in place a policy for verifying electrical meter numbers as outlined in paragraph six.
8. That Desmarais did not follow Board or Company policy by verifying electrical meter numbers prior to the start of the pesticide application.
9. That the circumstances described in paragraphs two through eight constitute the use of pesticides in a careless, negligent or faulty manner in violation of 22 M.R.S.A. §1471-D (8)(C).

10. That the Board has regulatory authority over the activities described herein.
11. 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.
12. That this Agreement shall not become effective unless and until the Board accepts it.
13. 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 nine, the Company agrees to pay to the State of Maine the sum of \$750. (Please make checks payable to Treasurer, State of Maine).

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

MAINELY GRASS INC.

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General