

Proposed Administrative Consent Agreement Background Summary

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

Date of Incident(s): May 27 and 28, 2008

Background Narrative: A Scotts Lawn Service applicator applied two separate lawn insecticides on consecutive days to a residence in Kennebunk. The applications were made to the wrong site, but to a Scotts' customer. Scotts self-reported the incident. The applicator misread the address on the work slip. There was no electric meter number on the work slip or any other means of positive identification other than the address. There were also violations of the label rates and posting of the treated area was done in lieu of the required identification of sensitive areas. This consent agreement was not ratified at two previous Board meetings because of issues with the company's Positive Site Identification Policy. The company has since revised their written policy.

Summary of Violation(s): 22 M.R.S.A. §1471-D (8)(C), use or supervise the use of a pesticide in a careless, negligent or faulty manner...; CMR 01-026 Chapter 22, Section 2 D (I), Prior to spraying the applicator must become familiar with the area to be sprayed and must identify any sensitive area located within 500 feet of the target area; 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. A. § 606 (2)(B) and 22 M.R.S.A. § 1471-D (8)(F), use or application inconsistent with the labeling.

Rationale for Settlement: The requirement to positively identify the correct site was not met in this case. As it turned out, the impact of this violation was negligible because the site treated turned out to be another Scotts' customer. The applicator posted the treated area (allowed in lawn/tree and outdoor structural) instead of identifying the sensitive areas, as required for the mosquito treatment he was making. The company misinterpreted the regulation in this case, but caused no detriment in the process. Applying at higher-than-labeled rates was an issue. The company self-reported the application to the wrong site.

Attachments: Proposed Consent Agreement and revised Positive Site Identification Policy.

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

Peter Lyford
Scotts Lawn Service
11 B Gorham Industrial Park
Gorham, Maine 04038

ADMINISTRATIVE CONSENT AGREEMENT
AND
FINDINGS OF FACT

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 on May 28, 2008, the Company self-reported that pesticides were applied to the wrong site in Kennebunk on two separate occasions, May 27 and 28, 2008.
2. That on May 29, 2008, in response to the call in paragraph one, a Board inspector conducted a follow-up inspection with the applicator.
3. That from the inspection, it was determined that a Company applicator made one pesticide application at the Thomas Hyland residence at 1 Governor's Way in Kennebunk on May 27, 2008, and two pesticide applications at this same site the following day. Hyland is a Company customer.
4. That the pesticide applied on the first day was Ortho Max Pro insecticide, EPA Reg. number 279-3206, and the pesticides applied on the second day were this same product and Cross X Check PL Granular Insecticide, EPA Reg. number 279-3168-10404.
5. That the applicator acknowledged the applications described in paragraphs three and four were actually scheduled for Bud Iverson's residence at 1 Mother's Way, also in Kennebunk. Iverson is a Company customer.
6. That a Board policy concerning positive identification of the proper treatment site by commercial applicators has been in effect since July 29, 2005.
7. 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.
8. The address on the work slip was correct, but the Company applicator misread it. No electric meter number was on Iverson's work slip. The applicator did not confirm the correct address through this system or any other Board-approved system.
9. That the circumstances described in paragraphs one 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 pesticide application made on May 27, 2008, was made to the general landscape area of the residential home to control mosquitoes. The treated area was posted in lieu of identifying sensitive areas.
11. That mosquito-control applications to residential yard areas are not exempt from the requirement to identify and document sensitive areas.
12. That the circumstance described in paragraphs ten and eleven is a violation of CMR 01-026 Chapter 22, Section 2 D (I).
13. That the maximum label rate of Ortho Max Pro insecticide, EPA Reg. number 279-3206, is one ounce per thousand square feet.
14. That the Company applicator applied Ortho Max Pro insecticide, EPA Reg. number 279-3206, at the rate of four and one half ounces per thousand square feet.
15. That the maximum label rate for Cross X Check PL Granular Insecticide, EPA Reg. number 279-3168-10404 is 4.6 lbs. per thousand square feet.
16. That the Company applicator applied Cross X Check PL Granular Insecticide, EPA Reg. number 279-3165-10404 at the rate of 11.36 lbs per thousand square feet.
17. The actions described in paragraphs thirteen through sixteen constitute use of two pesticides in a manner inconsistent with their labeling and, as such, are violations of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. A. § 606 (2)(B) and 22 M.R.S.A. § 1471-D (8)(F).
18. 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. 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) and 22 M.R.S.A § 1471 D (8)(F) related to inspections done in July of 2004. Consequently, the violations described in paragraphs nine, twelve and seventeen are a subsequent violation pursuant to 7 M.R.S.A. § 616-A (2)(B).
19. That the Board has regulatory authority over the activities described herein.
20. 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.
21. That this Agreement shall not become effective unless and until the Board accepts it.
22. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violations referred to in paragraphs nine, twelve and seventeen the Company agrees to take steps to assure their applicators adhere to the Company's written positive site identification procedures to ensure that all future applications will be made at the correct address. A

copy of the Company's written procedures and training schedule for this document shall be submitted to the Board along with this Agreement. The Company also agrees to pay a penalty to the State of Maine in the sum of \$1200, of which \$600 shall be suspended in light of the circumstances, including that fact that the Company self reported the violations, provided that the Company complies fully with all terms of this Agreement. The unsuspended portion of the penalty (\$600) is due and payable upon the signature of this agreement by the Company (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

In accordance with the State of Maine's Board of Pesticides policy regarding the positive identification of the proper treatment site by commercial applicators, Scotts Bangor and Gorham branches will verify the proper treatment site with the board approved method of using the identification number on the electric meter. The customers electric meter number is on all work orders and the applicator will physically confirm the electric meter is correct before any work is performed. If the applicator cannot verify the electric meter is correct with the customers address then the applicator must skip that work order until the address can be verified.

All applicators will read and sign off on Scotts company policy manual upon hiring and a re-training will occur annually and documented in their training file.