

Proposed Administrative Consent Agreement Background Summary

Subject: Terry Oliver
Town of South Berwick
180 Main Street
South Berwick, ME 03908

Date of Incident(s): July 27, 2009

Background Narrative: Shane Mills, an employee of the town, applied an herbicide to control broadleaf weeds and grasses in the cracks and edges of sidewalks and curbs. At the time of the application, neither Mills, nor anyone else employed by the town, was licensed as a commercial pesticide applicator.

Summary of Violation(s): 22 M.R.S.A. § 1471-D(1)(A). Commercial pesticide applications may only be conducted by certified commercial applicators.

Rationale for Settlement: The director of the town's public works department acknowledged to the Board inspector that unlicensed town employees have done this type of unlicensed work for years. The inspector concluded that although the dead vegetation resulting from the application made the job look unprofessional, the application was not made outside the town's right-of-way. The fine was comparable to penalties for similar violations settled by the Board in the past.

Attachments: Proposed Consent Agreement

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

Terry Oliver)
Town of South Berwick) ADMINISTRATIVE CONSENT AGREEMENT
180 Main Street) AND
South Berwick, Maine 03908) FINDINGS OF FACT

This Agreement by and between the Town of South Berwick (hereinafter called the “Town”) 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 in response to a call the Board received from a town resident on August 24, 2009, about dead grass along a curb one foot into lawns, a Board inspector conducted a pesticide follow-up use inspection with the Town on August 31, 2009.
2. That, during the follow- up inspection, Town public works director, Terry Oliver, acknowledged that unlicensed Town employees have, at times in past years, been directed to apply herbicides to control grass and weeds in pavement cracks and along sidewalk curbs.
3. That during the follow-up inspection, Oliver admitted that on July 27, 2009, Town employee Shane Mills, applied Roundup Ready to Use Herbicide to Town sidewalks and curbs.
4. 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).
5. That “commercial applicator” also includes individuals who apply pesticides in connection with their duties as employees of local governments, according to 22 M.R.S.A. § 1471-C(5).
6. 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.
7. That the application described in paragraph three constitutes a custom application as defined in 22 M.R.S.A. § 1471-C(5-A).
8. That no one from the Town had a commercial pesticide applicator’s license at the time of the custom application described in paragraph three.

9. That the circumstances described in paragraphs one through eight constitute a violation of 22 M.R.S.A. § 1471-D(1)(A).
10. That the Board has regulatory authority over the activities described herein.
11. That the Town 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 Town resulting from the violation referred to in paragraph nine, the Town 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.

TOWN OF SOUTH BERWICK

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General