

Proposed Administrative Consent Agreement Background Summary

Subject: Donald Wing
DSS Lawn Care & Maintenance
47 McClellan Street
Skowhegan, Maine 04967

Date of Incident(s): August 15, 2008

Background Narrative: The Board received a phone call from someone who observed two women who appeared to be spraying some kind of herbicide in the parking lot of the Kennebec Shopping Center in Skowhegan. The applicators appeared to be treating grass and weeds in the cracks of the parking lot and along the curbs. The application took place on August 15, 2008. The truck had no company name on it. The caller thought the application was possibly made by unlicensed applicators working for an unlicensed company. A follow-up inspection was conducted on August 18 with Donald Wing, the owner of DSS Lawn Care & Maintenance, the company involved. Wing stated that he and an employee applied Shure Fine Brand Vinegar to the grass and weeds in cracks around the curbs and denied that any other herbicide was applied. The mall owner had earlier informed the inspector that he told Wing to purchase Roundup Herbicide to treat the problem along the curbs. The inspector's observations while at the site along with the information he obtained led him to sample the dead vegetation. Lab results were positive for Glyphosate, the active ingredient in Roundup. DSS Lawn Care & Maintenance did not have a firm license to apply pesticides and did not employ any licensed applicators.

Summary of Violation(s): 22 M.R.S.A. § 1471-D (1)(A): No commercial applicator may use or supervise the use of any pesticide within the State without prior certification from the Board.....

Rationale for Settlement: Evidence indicated that Glyphosate Herbicide was the probable material applied to the Kennebec Shopping Center parking lot in Skowhegan. The mall owner informed Board staff that it was his own idea to have the grass and weeds treated with an herbicide. Wing did not solicit this work but was asked to do it. There was no evidence that DSS Lawn Care & Maintenance did any other pesticide work as part of their business. DSS Lawn Care & Maintenance is a small operation. Both the mall owner and Wing stated they were not aware of the licensing requirements for pesticide use in this situation.

Attachments: Proposed Consent Agreement

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

Donald Wing) ADMINISTRATIVE CONSENT
DSS Lawn Care & Maintenance) AGREEMENT
47 McClellan Street) AND
Skowhegan, ME 04967) FINDINGS OF FACT

This Agreement by and between DSS Lawn Care & Maintenance (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 property maintenance services for hire, in the Skowhegan area.
2. That in response to a call the Board received about pesticide application in that area, Board staff conducted a pesticide follow-up use inspection with the Company on August 18, 2008 at the alleged application site.
3. That Company owner, Donald Wing, stated he applied Shure Fine Brand Vinegar 5% to control weeds and grass in pavement cracks at the Kennebec Shopping Center at 381 Madison Avenue in Skowhegan and this accounted for the dead grass and weeds in those cracks.
4. That a Board inspector collected foliage sample number 080818BCB01A from the dead foliage in the pavement cracks at the time of the inspection.
5. That sample number 080818BCB01A was sent to a lab for analysis. Lab results indicated the presence of Glyphosate at 583. PPM
6. That the evidence in paragraphs four and five indicates that Glyphosate was the probable herbicide applied at the site in paragraph three.
7. That any pesticide application made that is a custom application pursuant to 22 M.R.S.A. § 1471-C (5-A), requiring the applicator to be a certified commercial applicator.
8. That no one from the Company had a commercial pesticide applicator's license at the time of the 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 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 \$450. (Please make checks payable to Treasurer, State of Maine.)

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

DSS LAWN CARE & MAINTENANCE

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General