

Proposed Administrative Consent Agreement Background Summary

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

Date of Incident(s): May 11, 2011

Background Narrative: Scotts Lawn Service applicator John Anthony, mistakenly applied *Halts 22-0-8 Plus .28% Halts Pro* and *Ortho Weed B Gon Pro* to Mary Becker's lawn at 218 East Elm Street in Yarmouth. The Halts was applied as a broadcast treatment with a spreader and the Weed B Gon was applied as a spot treatment using a hose and gun. The intended customer/property was Craig Hawkins at 17 Village Brook Yard, Yarmouth. The correct customer name, address, and electric meter number were on the work slip. Anthony, arrived at the Becker property thinking he was at the Hawkin's property. Anthony knocked on Becker's door. When no one answered he phoned Hawkins and was given permission to spray. Anthony did not check the electric meter number on the house. Anthony had passed all necessary exams to become licensed as a pesticide applicator, but had not submitted his application and associated fee for a license. For this reason, he was not licensed on the day of the misapplication.

Summary of Violation(s): CMR 01-026 Chapter 31 Section 1(A) III. Any commercial applicator must be supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator.

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

Rationale for Settlement: The Company entered into three previous consent agreements within the last four years.

Attachments: Proposed Consent Agreement

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

Ryan Lyford
Scotts Lawn Service
54 Olde Canal Way
Gorham, ME 04638

**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 amended by the Board on June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Company is licensed by the Board as a Commercial Spray Contracting Firm, with license number SCF 40561.
2. That on the morning of May 12, 2011, the Company self-reported that pesticides were applied to the wrong site in Yarmouth as of May 11, 2011.
3. That the Company promptly commenced mitigation by vacuuming product from the Becker property within one (1) hour of recognizing the product was misapplied.
4. That on May 12, 2011, Mary Becker, who resides at 218 East Elm Street in Yarmouth, called the Board to report that Scotts Lawn Service mistakenly applied Halts herbicide and Ortho Weed B-Gon herbicide to her lawn. She has organic gardens, fruit trees, raspberries, and blueberries.
5. That on May 16, 2011, in response to the call in paragraph four, a Board inspector conducted a follow-up inspection with John Anthony, the Company applicator that made the application. Joseph Mitchell (COA 43307), Anthony’s supervisor, was also present during the inspection at Scotts’ Gorham office.
6. That from the inspection in paragraph five it was determined that Anthony applied two pesticides to Becker’s property at 218 East Elm Street in Yarmouth on May 11, 2011.
7. That the pesticides referred to in paragraph six were Halts 22-0-8 Plus .28% Halts Pro (EPA Reg. #538-304) and Ortho Weed-B-Gon (EPA Reg. # 228-292). The Halts was applied as a broadcast treatment with a push spreader and the Weed-B-Gon was applied as a spot treatment with a hose and gun.
8. That Anthony wrote in a statement collected at the time of the inspection in paragraph five that the intended application site was 17 Village Brook Yard (Craig Hawkins residence) in Yarmouth. Anthony further wrote that he knocked on the door at the Becker residence and no one answered. From the cell phone in his vehicle he then called Hawkins while still at the Becker residence and was given permission to spray. Anthony, thinking he was at the correct site, treated the Becker property.
9. That a Board policy concerning positive identification of the proper treatment site by commercial applicators has been in effect since July 29, 2005.

10. 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.
11. That the correct customer name, correct address, and meter number were on the work slip, but applicator did not check the meter at the work site prior to the pesticide applications described in paragraphs six and seven.
12. That the circumstances described in paragraphs one through eleven constitute the use of pesticides in a careless, negligent or faulty manner in violation of 22 M.R.S.A. §1471-D (8)(C).
13. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) and includes applications 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.
14. That a commercial applicator as defined in 22 M.R.S. § 1471-C(5) includes a person making custom applications.
15. That CMR 01-026 Chapter 31 Section 1(A) HI, requires that any person making a pesticide application that is a custom application be supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator.
16. That Anthony was the only Company employee present during the applications in paragraph six.
17. That Anthony was not licensed as a commercial pesticide applicator at the time of the pesticide applications in paragraph six, although Anthony had passed both the core and turf exams as of March 30, 2011 and May 3, 2011, respectively, prior to the application of pesticides by John Anthony on May 11, 2011.
18. That the circumstances described in paragraphs one through seventeen constitute a violation of CMR 01- 026 Chapter 31 Section 1(A) III.
19. That the Company entered into Administrative Consent Agreements with the Board on:
 - January 13, 2011, for two violations of spraying in high winds (CMR 01-026 Chapter 22 Section 2 B) and a posting violation (CMR 01-026 Chapter 28 Section 3).
 - August 28, 2008, consent agreement - spraying turf at school when school was in session (CMR 01-026 Chapter 27 Section 5F) and a record keeping violation (CMR 01-026 Chapter 50 Section 1 A, II)
 - December 17, 2008, consent agreement- application rate violation (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) , treated wrong site (22 M.R.S.A § 1471 D(8)(C).

Consequently, the violations described in paragraphs twelve and eighteen are a subsequent violations pursuant to 7 M.R.S.A. § 616-A (2)(B).

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

21. 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.

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

23. 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 twelve and eighteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$900, given that the Company has proposed and shall implement a Property Verification Plan and an Applicator Training and Corrective Actions Policy and provided that the Company complies fully with the terms of this Consent Agreement. The Penalty shall be due and payable at the same time the Company signs and submits this Consent Agreement to the Board. (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