

Proposed Administrative Consent Agreement Background Summary

Subject: Paul Sevigny
Mainely Grass
1132 US Route 1
Kennebunkport, Maine 03909

Date of Incident(s): June 28, 2010

Background Narrative: A Mainely Grass applicator applied an insecticide and an herbicide to turf at the wrong site in Kennebunkport. The applicator relied on his GPS unit to locate the intended site, Fort Hill Inn. He was actually at the Arlington Arms Condominiums when he made the applications. The inspector reported that it is the company's policy to check electric meter numbers as a means of positively identifying the correct site. The applicator did not check the electric meter number in this case. In addition, the applicator did not wear the label required chemical resistant apron when mixing the herbicide.

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...

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 of a pesticide inconsistent with the product labeling.

Rationale for Settlement: The requirement to positively identify the correct site was not met in this case. The applicator did not follow company policy to confirm the correct address by checking the electric meter number. The company entered into a consent agreement for a similar violation on June 7, 2007. The company self-reported the application to the wrong site.

Attachments: Proposed Consent Agreement

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

Paul Sevigny
Mainely Grass Inc.
1132 US Route 1
Kennebunkport, Me 03909

**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 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 15230.
2. That on June 30, 2010, the Company self-reported that on June 28, 2010, pesticides were applied to the wrong site in Kennebunkport.
3. That on July 7, 2010, in response to the call in paragraph two, a Board inspector conducted a follow-up inspection with company applicator, Johnathan Hibbard. Hibbard held a commercial operator license issued pursuant to 22 M.R.S.A. §1471-D (1) that was valid at the time of the application.
4. That from the inspection in paragraph three it was determined that Hibbard made a pesticide application at the Arlington Arms Condominiums at 8 Arlington Avenue in Kennebunkport on June 28, 2010.
5. That the pesticides applied in paragraph four were Allectus 0.225 Insecticide Plus Fertilizer, EPA Reg. number 432-1417-10404 and Lesco Three- Way Selective Herbicide, EPA Reg. number 10404-43. Both applications were to turf.
6. That Company owner Paul Sevigny, at the time of self-reporting the incident in paragraph two, stated the intended customer was the Fort Hill Inn in Kennebunkport.
7. That Hibbard wrote in a statement collected at the time of the inspection in paragraph three that the intended site was the Old Fort Inn. He programmed his GPS with the listed address and drove to the site indicated by the GPS. He found a yellow building with the address 8 Old Fort Avenue. He made the pesticide applications to this site and later realized it was not the Old Fort Inn.
8. That a Board policy concerning positive identification of the proper treatment site by commercial applicators has been in effect since July 29, 2005.
9. 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.

10. That the correct customer name, correct address, and meter number were on the work slip and applicator did not check the meter at the work site prior to the pesticide applications described in paragraphs four and five.
11. That the circumstances described in paragraphs one through ten constitute the use of pesticides in a careless, negligent or faulty manner in violation of 22 M.R.S.A. §1471-D (8)(C).
12. That the label for Lesco Three-Way Selective Herbicide, requires a chemical resistant apron when mixing and loading the concentrate.
13. That Hibbard did not wear a chemical resistant apron when mixing and loading the Lesco Three-Way Selective Herbicide concentrate for the pesticide application as required by the pesticide label.
14. That the actions described in paragraphs three, four, five, twelve and thirteen constitute the use of a pesticide inconsistent with the product labeling and in violation 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).
15. That the Company entered into an Administrative Consent Agreement with the Board on January 4, 2008 for the same violation of the use of pesticides in a careless, negligent or faulty manner in violation of 22 M.R.S.A. §1471-D (8)(C) when an herbicide was applied to the wrong property on June 7, 2007, in South Berwick. Consequently, the violations described in paragraphs eleven and fourteen are a subsequent violations pursuant to 7 M.R.S.A. § 616-A (2)(B).
16. That the Board has regulatory authority over the activities described herein.
17. 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.
18. That this Agreement shall not become effective unless and until the Board accepts it.
19. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violation referred to in paragraphs eleven and fourteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$1200. The penalty imposed is substantially reduced from the maximum penalty available for these two violations based on the Company's self-reporting of the violations and its cooperation with the Board in the investigation and the resolution of this matter. This penalty 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.

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