

Proposed Administrative Consent Agreement Background Summary

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

Date of Incident(s): May 14, 2008

Background Narrative: Scotts Lawn Service contracted with Waterville Schools to apply herbicides to their athletic fields at both the Jr. and Senior High Schools on the above date. This was a regular school day and school was in session. Students were released for recess while the applicator was still on site making the applications. There was minimal communication between the applicator and school personnel to assure the application would be made to allow maximum time for sprays to dry. The applications did not allow time for the school to comply with their notification requirements.

Summary of Violation(s): CMR 01-026 Chapter 27 Section 5 F, Outdoor applications should be scheduled so as to allow the maximum time for sprays to dry and vapors to dissipate and shall not occur when unprotected persons are in the target area or in such proximity as to likely result in unconsenting exposure to pesticides. The Ortho Weed B Gon label, "For turf use, do not allow people (other than applicator) or pets on treatment area during application. Do not enter treatment areas until sprays have dried". CMR 01-026 Chapter 50 Section 1 A, II, pesticide application records shall include...size of area treated, time of application and sky conditions.

Rationale for Settlement: The applicator did not comply with the requirement to schedule the applications to school grounds to minimize the exposure of students to pesticides. One of the pesticides used also prohibits people in the treated areas until sprays have dried. The circumstances under which the pesticides were applied made it unlikely that the applicator could have complied with this label requirement. Finally, some elements of the record keeping were not kept for this job.

Attachments: Proposed Consent Agreement

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

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

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 14, 2008, the Board received a complaint call from a student's parent. The student was using the softball field at Waterville Jr. High for a scheduled game. A posted sign indicated the field was treated with pesticides earlier that same day.
2. That on May 16, 2008, in response to the call in paragraph one, a Board inspector conducted follow-up inspections with school personnel at Waterville Jr. High and the Waterville Schools Superintendent's office on Messalonskee Avenue in Waterville.
3. That from the inspections it was determined that the Company made a pesticide application at the Waterville Jr. High softball field at 12:15 pm on May 14, 2008.
4. That on May 16, 2008, Board staff conducted a pesticide use follow-up inspection with Casey Brooks, the Company applicator that made the pesticide application, and determined that two herbicides were applied as separate applications to the Waterville Jr. High softball field as well as other ball fields at the Jr. High and High School, on May 14, 2008.
5. That the two herbicides applied were Scotts SLS Fertilizer 22-0-8 Plus .28 Barricade (EPA Reg. # 8378-39-538) and Weed B Gon Pro (EPA Reg. # 228-292).
6. That on May 19, 2008, Board Staff again contacted school staff for another follow-up inspection and collected Company invoice # 94280 for the applications made to the Waterville Jr. High softball field on May 14, 2008.
7. That after the Board's May 16, 2008 inspection follow-up, Company personnel mailed the Board copies of all application records for pesticide applications made to the Waterville Jr. High and High Schools on May 14, 2008.
8. That from the records referenced in paragraph seven it was determined that the Company made pesticide applications to the ball fields at the High School from 8:45 am to 10:45 am and to the Jr. High ball fields from 12:15 pm to at least 1:15 pm on May 14, 2008.

9. That May 14, 2008, was a regular school day at the Jr. High and High schools. Students used the treated fields during the day, and were present during the applications as witnessed by school staff and acknowledged by the applicator.
10. The Company did not schedule pesticide applications to allow the maximum time for sprays to dry.
11. The Company did not record the size of area treated, time of application and sky conditions on all application records.
12. That the circumstances described in paragraphs one through ten constitute a violation of CMR 01-026 Chapter 27 Section 5 (F) and the Ortho Weed B Gon Label.
13. That the circumstances described in paragraphs one through nine and eleven constitute a violation of CMR 01-026 Chapter 50 Section 1 A, II.
14. That the Board has regulatory authority over the activities described herein.
15. 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.
16. That this Agreement shall not become effective unless and until the Board accepts it.
17. 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 thirteen the Company agrees to pay a penalty to the State of Maine in the amount of \$500.00. (Please make checks payable to Treasurer, State of Maine.)

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