

Proposed Administrative Consent Agreement Background Summary

Subject: Dan Catlin

Commercial Properties Real Estate Management Company, Inc.
100 Silver Street
Portland, ME 04101

Date of Incident(s): July 31, 2009

Background Narrative: The Board received a call about the possible commercial application of an herbicide by an unlicensed applicator to the parking lot of the Mill Creek Mall in South Portland. A Board inspector later conducted a follow-up inspection about this application. The company owner acknowledged that at times, unlicensed company employees have made crack and crevice treatments of herbicides at commercial accounts to control unwanted vegetation in pavement.

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

Rationale for Settlement: The inspector concluded from interviewing the company owner that the owner hires commercial applicators for all major, routine commercial pesticide applications. Occasionally however, the company has applied general use pesticides to control cracks in the pavement at commercial sites. The assessed fine was comparable to similar violations by other companies.

Attachments: Proposed Consent Agreement

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

Dan Catlin)
Commercial Properties Real Estate) ADMINISTRATIVE CONSENT
Management Company, Inc.) AGREEMENT
100 Silver Street) AND
Portland, ME 04101) FINDINGS OF FACT

This Agreement by and between Commercial Properties Real Estate Management Company, 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 provides property maintenance services for hire, in the South Portland area.
2. That in response to a call the Board received about an observed pesticide application made by the Company at the Mill Creek Mall on July 31, 2009, Board staff conducted a pesticide follow-up use inspection with the Company on August 12, 2009.
3. That Company vice president, Dan Catlin acknowledged that unlicensed Company employees do at times apply over the counter weed killers to control grass in pavement cracks at commercial accounts.
4. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C (5-A), must be a certified commercial applicator in accordance with 22 M.R.S. § 1471-D (1) (A).
5. That a custom application is defined in 22 M.R.S. § 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.
6. That the application described in paragraph 2 constitutes a custom application as defined in 22 M.R.S. § 1471-C (5-A).
7. That no one from the Company had a commercial pesticide applicator's license at the time of the application described in paragraph two.
8. That the circumstances described in paragraphs one through seven constitute a violation of 22 M.R.S. § 1471-D (1)(A).
9. That the Board has regulatory authority over the activities described herein.

10. 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.

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

12. That, in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violation referred to in paragraph eight the Company 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.

COMMERCIAL PROPERTIES REAL ESTATE
MANAGEMENT COMPANY

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General