

Proposed Administrative Consent Agreement Background Summary

Subject: Benjamin Goodall
Goodall Enterprises DBA NaturaLawn of America
121A Target Industrial Circle
Bangor, Maine 04401

Date of Incident(s): June 8, 2016

Background Narrative: The Board received a call on June 9, 2016, alleging that Goodall Enterprises DBA NaturaLawn of America made an unauthorized pesticide application to a residential lawn in Rockport.

The homeowner contacted the company branch manager by phone and a meeting time was arranged for a consultation at her home about an insect problem on her lawn. However, a company applicator arrived at the homeowner's property before the agreed upon meeting time and made an insecticide application to her lawn when she was not there.

A Board inspector conducted a follow-up inspection with both the branch manager and the company applicator. The inspector learned that the branch manager instructed the applicator to make the application to the lawn. The branch manager said there was a miscommunication between him and the homeowner.

Board regulations require that an applicator obtain prior authorization from the property owner before making a pesticide application to their property.

Summary of Violation(s):

CMR 01-026 Chapter 20 Section 6(D)2 No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term "legal occupant" includes tenants of rented property.

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board.

Attachments: Proposed Consent Agreement

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL

In the Matter of:)
Goodall Enterprises DBA NaturaLawn of America) ADMINISTRATIVE CONSENT AGREEMENT
121A Target Industrial Circle) AND
Bangor, Maine 04401) FINDINGS OF FACT

This Agreement by and between Goodall Enterprises DBA NaturaLawn of America (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. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on December 13, 2013.

The parties to this Agreement agree as follows:

1. That the Company provides lawn care services and has the firm license number SCF 15261 issued by the Board pursuant to 22 M.R.S. § 1471-D(1)(B).
2. That on June 9, 2016, Joanne Cook called the Board to report that the Company made an unauthorized pesticide application to her lawn at 20 Ledgewood Drive in Rockport on June 8, 2016.
3. That Cook stated that she scheduled a consultation with the Company for two PM on June 8, 2016, to discuss options about an ant problem. The applicator arrived a one PM when Cook was not home and made an unauthorized pesticide application.
4. That in response to the call in paragraph two, a Board inspector conducted a follow-up inspection with Erin Smith, a licensed pesticide applicator with the Company, on June 10, 2016. Bill Moody the Company branch manager was also present.
5. That from the inspection described in paragraph four, it was determined that Moody phoned Smith and instructed her to apply DeltaGard G to Cook's lawn on June 8, 2016, and Smith made the application.
6. That during the inspection described in paragraph three, Moody told the inspector there was miscommunication between he and Cook and he thought she wanted the application done.
7. That during the phone call described in paragraph two, Cook said she had spoken to the Company branch manager but never authorized a pesticide application.
8. That during the inspection in paragraph four the Company could not document that they had authorization to make the June 8, 2016, pesticide application to Cook's lawn.
9. That CMR 01-026 Chapter 20 Section ~~6(B)~~6(D)2 requires prior ~~consent~~authorization from the property owner before a person can apply pesticides to ~~the property of another~~their property.
10. That the Company did not have Cook's ~~consent~~authorization for the June 8, 2016, application of pesticide to her property.

11. That the circumstances described in paragraphs one through ten constitute a violation of CMR 01-026 Chapter 20 Section ~~6(B)~~6(D)2.

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

13. 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.

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

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 paragraph eleven, the Company agrees to pay a penalty to the State of Maine in 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.

GOODALL ENTERPRISES DBA NATURALAWN OF AMERICA

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General