

Proposed Administrative Consent Agreement Background Summary

Subject: Patrick Devou
The Lawn Dawg
163 Washington Avenue
Portland, Maine 04101

Date of Incident(s): March 28, 2012, and July 13, 2012

Background Narrative: On March 29, 2012, The Board received a complaint call from a Scarborough resident alleging that The Lawn Dawg mistakenly applied a pesticide to his lawn the previous day. A follow-up Board inspection with The Lawn Dawg confirmed that their employee applied Nutrite Professional Turf Fertilizer 25-0-3 with 0.172% Dithiopyr Herbicide to the caller's lawn.

On July 13, 2012, a South Portland resident who is a registrant on the 2012 Maine Pesticide Notification Registry (non-ag) called the Board to report that she observed an employee of The Lawn Dawg making what appeared to be a pesticide application to a lawn within 100 feet of her house. The registry member said she received no prior notification for this application. A follow-up inspection confirmed that a pesticide application was made on July 13, 2012, using Fertilizer With Merit .02% Grub Preventer 23-0-7 and Triplet SF Herbicide without the required notification.

Summary of Violation(s):

- **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 which is potentially harmful to the public health, safety or welfare or the environment
- **CMR 01-026 Chapter 20 Section 6(B):** no person may apply a pesticide to a property of another unless prior consent 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.
- **CMR 01-026 Chapter 28, Section 2(D):** Commercial applicators shall notify individuals listed on the registry when performing an outdoor, non-agricultural pesticide application that is within 250 feet to the property boundary of the listed registry residence.

Rationale for Settlement: The staff compared the violations to similar cases settled by the Board in formulating a penalty proposal and the company's enforcement history.

Attachments: Proposed Consent Agreement

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

In the Matter of:)	ADMINISTRATIVE CONSENT
The Lawn Dawg)	AGREEMENT
163 Washington Ave)	AND
Portland, Maine 04101)	FINDINGS OF FACT

This Agreement by and between The Lawn Dawg (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 15214.
2. That on March 29, 2012, Louis Asali, who resides at 46 Kirkwood Road in Scarborough, called the Board to report that the Company mistakenly applied a pesticide to his lawn.
3. That on April 2, 2012, in response to the call in paragraph two, a Board inspector conducted a follow-up inspection with Patrick Devou, the Company manager.
4. That from the inspection in paragraph three it was determined that Company employee Derek Dubois (CMA 45798), applied Nutrite Professional Turf Fertilizer 25-0-3 with 0.172% Dithiopyr Herbicide (EPA reg.no.53883-209-87245) to Asali's property on March 28, 2012.
5. That the intended customer and treatment site was Robert Lynch at 49 Kirkwood Road in Scarborough.
6. That a Board policy concerning positive identification of the proper treatment site by commercial applicators has been in effect since July 29, 2005.
7. That the applicator in this case did not follow an appropriate positive identification method approved by the Board.
8. That the circumstances described in paragraphs one through seven constitute the use of pesticides in a careless, negligent or faulty manner in violation of 22 M.R.S.A. §1471-D (8)(C).
9. That CMR 01-026 Chapter 20 Section 6(B) requires prior consent from the property owner before a person can apply pesticides to the property of another.
10. That the Company did not have Asali's consent for the March 28, 2012, application of pesticide to his property.
11. That the circumstances described in paragraphs one through five, nine and ten constitute a violation of CMR 01-026 Chapter 20 Section 6(B).

12. That on July 13, 2012, Janice Ionta, who is on the 2012 Maine Pesticide Notification Registry called the Board to report that she observed a Company employee making what appeared to be a pesticide application within 100 feet of her house. She said she did not receive any prior notification.
13. That on July 17, 2012 in response to the call in paragraph twelve, a Board inspector conducted a follow-up inspection with the Company.
14. That from the inspection in paragraph thirteen, it was determined that on July 13, 2012, Casey Ginn, a Company employee and a licensed commercial applicator (COA 45826), applied Fertilizer with Merit 0.2% Grub Preventer 23-0-7 (EPA Reg. No. 432-1349-961) and Triplet SF Herbicide (EPA Reg. No. 228-312) to the lawn of Lorane J. Walsh's residential property at 97 School Street in South Portland.
15. That the outdoor treated area at 97 School Street is located within 250 feet from a property which is the residence of Janice Ionta at 88 School Street in South Portland. That Janice Ionta is listed on Maine's 2012 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2(D). Lorane J. Walsh's residential property at the 97 School Street address is also listed on the registry as a property within 250 feet of Janice Ionta's residence.
16. That the Registry is distributed annually to commercial applicators.
17. That during the inspection in paragraph thirteen, the Company acknowledged that they failed to provide the required notification to Ionta. This was explained as an oversight involving a new customer.
18. That the circumstances described in paragraphs twelve through seventeen constitute a violation of CMR 01-026 Chapter 28, Section 2(D).
19. That the Company entered into an Administrative Consent Agreement with the Board for failure to notify someone on the Maine Pesticide Notification Registry for an application made on August 4, 2010, a violation of CMR 01-026, Chapter 28, Section 2(D). Consequently, the violations described in paragraphs eight, eleven, and eighteen are 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 eight, eleven, and eighteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$1,700 at the same time the Company signs and submits this Consent Agreement to the Board. (Please make checks payable to Treasurer, State of Maine).

The Company also agrees to take steps to make certain their applicators adhere to the Company's written positive site identification procedures to ensure that all future applications will be made at the correct address. The Company further agrees to have a written document that outlines the procedures the Company has in place to ensure notification as required by the Maine Pesticide Notification Registry. A copy of both written documents and training schedules for these documents shall be submitted to the Board along with this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement of three pages.

THE LAWN DAWG

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General

From: Patrick Devou [mailto:pat@lawndawg.com]
Sent: Wednesday, November 14, 2012 8:03 AM
To: Connors, Raymond G
Subject: RE: Lawn Dawg

Hello Mr. Connors,

I've attached a revised version of our lawn specialist training piece. You can see we will record coordinates on the invoice the specialist can cross reference with his/her GPS. Our specialist will also use house description and directions to also help identify the right house. Again, every specialist signs off on this document and is held accountable for it. At my weekly meetings this is discussed through out the season.

We have made changes on how we identify new sales that are on the pesticide registry list. As always, when a new list is sent to us in March we go through our customer base and update any changes. When our new sales campaign begins we will assign someone to go through the new sales every morning and cross reference it with the registry list. We never treat a new sale the next day. I pull the routes 3 days in advance. For example, on Mondays I put together routes for Thursday. Those routes are then called ahead on Tuesday morning letting the customer know we will be there Thursday. This new system will make sure there are no registry calls missed. I hope the changes satisfy the Board. Sorry for the delay.

Regards,

Patrick Devou

Branch Manager, Lawn Dawg, Inc.
460 Riverside St., Unit 1 Portland, ME 04103
Ph: (888) 993-3294 (207) 756-9355
Email: pat@lawndawg.com
Website: <http://www.lawndawg.com>
[Facebook](#) | [Twitter](#) | [Customer Account Website](#)



Production Stop 101

1. Carefully and slowly pull your vehicle in front of the house to be serviced (the right side of the street) with ample room for off loading of equipment. Be sure not to block the driveway with your vehicle or ramps. **Never park in the driveway!**
2. Open the job on your mobile unit that corresponds with the house you are about to service by clicking the icon. If the geo-coding requires updating, now is the time to do so.
3. Verify you're at the correct house. Double check the street address and the house number. Check the directions box located at the top of the invoice to see if there are any specific notes about the house or its location. Using the GPS navigation in the mobile unit, identify the coordinates of the property and confirm you are at the proper location by checking those coordinates on the invoice. If you're 100% certain you're at the proper house, proceed to step #4. If not, do the following:
 - Ring the door bell and ask the home owner.
 - If the home owner is not at home, ask a neighbor.
 - Ask your manager to call the customer.
 - If still cannot confirm you're at the proper house, **do not do the lawn**. Try to come back later in the day to see if someone is home. If not, document the invoice, bring it back to the office, and hand it to your manager.
4. Read the service instructions located at the top right hand corner of the invoice. Sign your initials on the line under the instructions to signify that you've read, understood, and will properly execute those instructions.
5. Prepare the proper number of lawn posting flags for the property you're servicing. Check with your manager on your state's specific laws & regulations regarding the placement and quantity of flags. Enter the date and time on the flags if necessary.
6. Determine what service(s) you'll be providing and what product(s) you'll be using as well as the proper equipment to be used based on the size and uniqueness of the property. Multiply the usage rate of the product(s) you'll be using by the square footage of the lawn to figure out the total amount of product(s) you'll need to load into the hopper of your equipment. **Now its time to get out of your vehicle!**
7. Insert the pH meter into the lawn. If you're on a busy road place the 3 orange cones six feet apart from the back of the truck. Walk to the front door, take your posting flags and soil probe with you. Remove any obstacles on the front or sides of the lawn on your way up to the door. Ring the door bell and be sure to move back a bit from the front door to give the customer a comfortable amount of space. If the customer does not answer the door, proceed to step #8. If the customer answers the door, introduce yourself and let them know what service(s) you'll be performing for them; for example; *"Hi Mrs. Jones, I'm Joe from Lawn Dawg! I'm here to take care of your early summer fertilizer application and grub preventative. I'll also be treating any weeds I see as well and they should begin to curl within the next few days. Please don't mow or water the lawn until tomorrow and keep any foot traffic to a minimum for the remainder of the day, if possible. Do you have any questions or concerns that I can answer for you?"* Answer the customer's questions and concerns politely, correctly, and intelligently. Then tell the customer; *"Allow me to get to work for you Mrs. Jones, and I'll check back with you once I'm finished."*
8. Walk around the entire lawn to remove any obstacles while visibly checking for weeds, insects, disease, or areas that look out of the ordinary. Inspect brown areas or discolored areas on your hands and knees to search for insects and disease. Place posting flags in accordance with your state's laws & regulations. Pull soil cores with your probe to check thatch level, soil moisture, and compaction. Make note of the customer's mowing height and blade sharpness.

9. Prepare your equipment for the proper application that you've determined the customer to receive in step numbers 6, 7 and 8. Close and secure your vehicle. Begin your application by edging the property line of the side of the lawn that leads into the back yard or the gate leading to the back yard. Edge the perimeter of the back yard and then complete the application in the back yard. Exercise caution to not get any product in pools, on decks, patios, pavers, walkways, etc.
10. Return to complete the side lawn you entered the back yard from. Edge the driveway carefully and do not get excessive product where it does not belong.
11. Edge the perimeter of the front and other side of the lawn. Again, exercising caution that product is applied to lawn areas only. Complete the application to the front and side lawn. Be sure to spray all weeds and crabgrass, especially along the edges of property, driveways, walkways and shrub beds.
12. Load and secure all application equipment.
13. Enter all products applied, conditions noted, temperature, wind speed, recommendations, and type your personal note to the customer in your mobile unit. Close out the job and print the invoice. Hand sign the following: "Thank You for your business! Your Name." Place the office copy of the invoice securely and neatly on your clip board.
14. Place the customer copy of the invoice, #9 window envelope (unless they prepaid), optional leave behind card, referral card and any other leave behind material in a Lawn Dawg white poly bag.
15. Bring poly bag and leaf blower with you as you walk back up the driveway. Blow off all non targeted areas in the front, back, and side yards. **It is a violation of state and federal regulations to leave product on the street, driveway, sidewalk, walkways, or any other non-turf areas.**
16. Ring the door bell once again in the manner described in step # 7. Inform the customer the application is complete and mention conditions noted and recommendations for those conditions. For example; *"All set Mrs. Jones! I just want to remind you not to mow or water the lawn until tomorrow and to keep the foot traffic to a minimum until then as well. I noticed that the thatch layer in the lawn is beginning to get quite excessive, I'd like you to give some thought to having the lawn aerated this fall."* Describe the process, provide a price and attempt to close the sale! *"I'll be back for your next treatment in about 4 to 5 weeks Mrs. Jones. If you need to see me before that for any reason, service calls are free.....just call the office and let us know. Thank you for your business!"* If the customer is not home, secure the poly bag to the most common point of entrance to the house. **Please note that this may not be the front door and it is against U.S. Postal regulations to place anything in a mailbox!**
17. Load and secure the blower in the vehicle. Put away the cones, secure the ramps, close and lock the overhead door.
18. Determine where your next stop is and what route you will take to it. Safely pull away from the curb and proceed to your next stop.