

Proposed Administrative Consent Agreement Background Summary

Subject: Robert Collins
J & S Oil
P.O. Box 8
Manchester, Maine 04351

Date of Incident(s): April 25, 2012

Background Narrative: The Board received a call alleging that J & S Oil employees made an unlicensed, commercial herbicide application to turf at their Farmingdale convenience store/gas station. A follow-up inspection was done confirming that unlicensed company employees manually applied a granular Scotts Turf Builder With Weed Control with a mechanical spreader.

Summary of Violation(s): 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 or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1)(A).

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

Robert Collins)	
J & S Oil)	ADMINISTRATIVE CONSENT AGREEMENT
P.O. Box 8)	AND
Manchester, Maine 04351)	FINDINGS OF FACT

This Agreement, by and between J & S Oil (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 operates a string of gas stations/convenience stores in Maine and its corporate office is located at 867 Western Avenue, Manchester.
2. That the Board received a phone call on April 25, 2012, alleging that a Company grass cutting crew/maintenance crew made a Scotts Turf Builder with weed control granular application to turf at the Company's Farmingdale store. This site is open to use by the Public.
3. That in response to the information the Board received in paragraph two, a Board inspector conducted a follow up inspection that same day with Robert Collins, the Director of Maintenance for the Company. Collins stated to the inspector that Company employees John Campagna and Brian James applied Scotts Turf Builder Plus 2 Weed Control (EPA Reg. # 528-270) to turf areas at the Company's Farmingdale gas station/store earlier in the day.
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 or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
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 pesticide applications made to Company property as outlined in paragraph three, constitutes a custom application under 22 M.R.S. § 1471-C(5-A) and, therefore, a commercial applicator's license was required for those applications.
7. That no one from the Company had a commercial pesticide applicator's license at the time of the pesticide applications described in paragraph three.
8. That the circumstances described in paragraphs one through seven constitute a violation of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
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 violations referred to in paragraph eight, the Company agrees to pay to the State of Maine the sum of \$300. (Please make checks payable to Treasurer, State of Maine.)

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

J & S OIL

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General