

Proposed Administrative Consent Agreement Background Summary

Subject: Jon Parker
Black Bear Lawn Care
1320 Stillwater Avenue
Orono, Maine 04401

Date of Incident(s): Numerous dates during the 2013 growing season

Background Narrative: The Board received a call that a Black Bear Lawn Care employee was seen making what appeared to be an unlicensed outdoor pesticide application at a Walgreens Store on Oak Street in Bangor.

That in response to the call in paragraph one, a Board inspector conducted a follow-up inspection with Jon Parker, the company owner on July 23, 2013. Parker acknowledged that company employees applied vinegar and Roundup herbicide to make spot treatments to mulch beds at Maine Walgreens stores but on a very limited basis. Parker asked that the inspector return at a later date to speak to his employee that made the application to get first-hand information on what was applied to the Oak Street Walgreens.

The inspector later met with company employee involved. The employee acknowledged applying a spot treatment of Roundup Weed and Grass Killer herbicide to the ornamental mulch beds of the Walgreens Store at 97 Oak Street in Bangor on July 18, 2013. The employee also acknowledged applying this pesticide at various locations in excess of fifty times during the 2013 growing season.

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.

No one at Black Bear Lawn Care was certified or licensed as a commercial pesticide applicator at the time the company made the pesticide applications.

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) and CMR 01-026 Chapter 31 Section 1(A) III.

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

Attachments: Proposed Consent Agreement

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

ck# 5130
12-2-15
\$ 200.00

Jon Parker)
Black Bear Lawn Care) ADMINISTRATIVE CONSENT AGREEMENT
1320 Stillwater Avenue) AND
Bangor, Maine 04401) FINDINGS OF FACT

This Agreement, by and between Black Bear Lawn Care (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 June 3, 1998.

The parties to this Agreement agree as follows:

1. That on July 18, 2013, the Board received a call that a Company employee was seen making what appeared to be an unlicensed outdoor pesticide application to a Walgreens Store on Oak Street in Bangor.
2. That in response to the call in paragraph one, a Board inspector conducted a follow-up inspection with Jon Parker, the Company owner on July 23, 2013. Parker acknowledged that Company employees applied vinegar and Roundup herbicide to make spot treatments to mulch beds at Maine Walgreens stores. Parker asked that the inspector return at a later date to speak to his employee that made the application to get first-hand information on what was applied to the Oak Street Walgreens.
3. That on July 25, 2013, the inspector met with Company employee Ethan Chase. Chase acknowledged applying a spot treatment of Roundup Weed and Grass Killer herbicide (EPA reg. no.71995-25) to the ornamental mulch beds of the Walgreens Store at 97 Oak Street in Bangor on July 18, 2013. Chase also acknowledged applying this pesticide at various locations in excess of fifty times during the 2013 growing season.
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 application made to Walgreens Store on Oak Street in Bangor and additional applications as outlined in paragraph three, constitute custom applications 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 multiple violations of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
9. That CMR 01-026 Chapter 28 Section 3 requires that when applications are made to outdoor ornamentals, the treated area must be posted prior to making the pesticide application.

10. That the pesticide application on the outdoor ornamental plant beds at the Walgreens Store at 97 Oak Street in Bangor on July 18, 2013, described in paragraph three was not posted.
11. That the circumstances described in paragraphs three, nine, and ten constitute a violation of CMR 01-026 Chapter 28 Section 3.
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.

15. 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 paragraphs eight and eleven, the Company agrees to pay to the State of Maine the sum of \$500. (Please make checks payable to Treasurer, State of Maine.) Two hundred dollars will be paid at the time the consent agreement is signed on or before August 21, 2015. Monthly payments of \$100 will be paid on or before the 21st of ~~September, October, and November~~ ^{Dec} of ~~2015-2016~~ ^{Jan, Feb, or March} 2016.

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

BLACK BEAR LAWN CARE

By: *[Signature]* Date: 12/3/14

Type or Print Name: Jordan Pate

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED

By: _____ Date: _____
Mark Randlett, Assistant Attorney General