

CASE INVESTIGATION SUMMARY

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Subject: Joseph Fazekas
21 South Dyers Cove Road
Harpwell, Maine 04079

Date of Incident(s): Damaged first noticed 6-13-15

Background Narrative: On July 2, 2015, the Board received a call from Jeff Gillis, an arborist and licensed commercial pesticide applicator. Gillis reported that he was hired by clients Debbie Thomas and Ned Douglas of Harpswell. Thomas/Douglas called Gillis because another arborist they employ recommended they do so when he noticed an area of dead and symptomatic vegetation approximately 20x20 feet on a slope on their property. The damaged vegetation included, but was not limited to oak, cherry, white pine, and brambles. The twisted and distorted foliage looked like herbicide damage to Gillis. Their neighbors Joseph and Caroline Fazekas have property that abuts this damaged area on the uphill side. According to Gillis, Fazekas asked Thomas/Douglas to lower the height a large Norway maple tree on their property near the shore so Fazekas would have an open view of the ocean and be more apt to sell when they put their house on the market. Thomas and Douglas did not consent to the tree being cut at the time of the request.

A Board inspector went to the site where she met Gillis, Thomas and Douglas. The inspector took photos and physical samples. Douglas completed a written statement while the inspector was at the site. At that same time Douglas also approached Joseph Fazekas to inform him that an inspector from the Board was investigating the damaged area on the slope. Douglas told the inspector Fazekas said he was not involved and he had a lawyer on retainer.

On July 10, 2015, the Board inspector sent digital photos taken of the damaged area and vegetation on the Thomas/Douglas property to Bill Ostrofsky, a plant pathologist with the Maine Forest Service. Three days later on July 13th, the inspector hand delivered two physical samples (150710MLP01D and 150710MLP01E) collected in the damage area to Ostrofsky at his office. Ostrofsky reported back on July 22, 2015, in an email. An excerpt from that email follows:

“I’ve re-examined the plant samples and the photos from the Harpswell client of WellTree, and in my opinion, it appears clear to me that some type of herbicide was used on the property. The indications of this include:

1. The relatively clear demarcation between the bare ground, and an area well-covered with herbaceous plant growth;
2. The multiple plant species (ferns in the photos; raspberry and oak live samples and photos) which appear damaged - (a single biotic agent that could affect all three is unknown and unlikely);
3. Leaf and stem damage of the affected plants is consistent with herbicide injury response- twisting and flattening of the young shoots and leaves; exaggerated elongation of growth; stimulation of the development of multiple bud clusters, particularly in oak, etc.; As we discussed, raspberry may be affected by some viruses that could produce similar symptoms, but not oak”.

On July 29, 2015, the Board inspector sent two separate foliage samples (150710MLP01C and 150710MLP01F) collected from the damaged area on the Thomas/Douglas property to a lab for chemical analysis. At the lab these sample were combined and analyzed as one sample. Lab results were positive for glyphosate at 8.9 ppm.

Based on the above findings Board staff sent the Fazekases a consent agreement.

In response to the consent agreement the Fazekases hired legal counsel. A lawyer representing the Fazekases sent a letter to Board staff refuting allegations and conclusions in the consent agreement. Board staff, in following up on the legal firm's contentions, looked further in to the deeds of both properties in this case.

Two separate view easements do exist. One allows the Fazekases to lower the height of a big maple tree on the Thomas/Douglas lawn. A second view easement allows the Fazekases to trim existing and future trees and to cut down any saplings less than four inches in diameter to the portion of the Thomas/Douglas property abutting the Fazekases' property. Neither easement allows the Fazekases to apply pesticides to any of the Thomas/Douglas 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.

Rationale for Settlement: The property boundaries are clearly marked between the two abutting properties. The Fazekases did not have authorization to apply any pesticide to the Thomas/Douglas property. Although there is no direct evidence that Fazekas applied pesticides to the Thomas/Douglas property the fact that their properties abut and that the damaged vegetation was in the line of Fazekas' view of the ocean indicate that a motive existed for Fazekas to have done so.

Staff Recommendation(s): Since the staff has been unable to reach a settlement, it recommends referring the case to the Office of the Attorney General.