

Proposed Administrative Consent Agreement Background Summary

Subject: Michael Legasse
Green Thumb Lawn Service
64 Stevens Road
Brewer, Maine 04412

Date of Incident(s): July 18, 2017

Background Narrative: On July 26, 2017, a homeowner from Brewer called the Board to ask for remediation ideas to minimize the effects of a pesticide application that Green Thumb Lawn Service made to her lawn. The caller was not a customer of Green Thumb Lawn Service.

A Board inspector later met with the Green Thumb Lawn Service applicator who made the application. The inspector documented that the applicator applied Escalade 2 herbicide to turf at 25 Sunset Strip in Brewer on July 18, 2017, when the application was intended for a customer at 25 Starlight Drive in Brewer.

Although Green Thumb Lawn Service had a policy in place to positively identify the proper treatment site by checking the customer's electric meter number, the Green Thumb Lawn Service applicator told the inspector he did not check the electric meter number on the caller's house. The applicator grew up in this area and still lives in the area and thought he knew where the customer lived. The Green Thumb Lawn Service owner acknowledged the wrong property was treated.

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.
- CMR 01-026 Chapter 20 Section 7 Commercial applicators making outdoor treatments to residential properties must implement a system, based on Board approved methods, to positively identify the property of their customers. The Board shall adopt a policy listing approved methods of positive identification of the proper treatment site.

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board and considered the remedial steps the company offered to the impacted property owner.

Attachments: Proposed Consent Agreement

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

In the Matter of:) ADMINISTRATIVE CONSENT
Green Thumb Lawn Service) AGREEMENT
64 Stevens Road) AND
Brewer, Maine 04412) FINDINGS OF FACT

This Agreement by and between Green Thumb Lawn Service (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 commercial lawn services and has the firm license number SCF 956 issued by the Board pursuant to 22 M.R.S. § 1471-D (1)(B).
2. That on July 26, 2017, a homeowner from Brewer called the Board to ask for remediation ideas to minimize the effects of a pesticide application that the Company made to her lawn. The caller was not a customer of the Company.
3. That in response to the call in paragraph two, a Board inspector phoned the homeowner and left her a voice message. The homeowner called the inspector back but declined a meeting with the inspector.
4. That on August 2, 2017, the inspector met with the Company applicator at the Company's Brewer office to conduct an inspection of the application described in paragraph two.
5. That from the inspection described in paragraph four, the inspector documented that an Escalade 2 herbicide application was made to turf at 25 Sunset Strip in Brewer on July 18, 2017, by a Company applicator. This resident was not a Company customer. The intended application site was 25 Starlight Drive in Brewer.
6. That CMR 01-026 Chapter 20 Section 6(D)2 requires prior consent from the property owner before a person can apply pesticides to the property of another.
7. That the Company did not have the homeowner's authorization to make a pesticide application at 25 Sunset Strip in Brewer
8. That the circumstances described in paragraphs one through seven constitute a violation of CMR 01-026 Chapter 20 Section 6(D)2.
9. That CMR 01-026 Chapter 20 Section 7 requires the positive identification of the proper treatment site when commercial applicators are making outdoor treatments to residential properties. Companies must implement a system, based on Board approved methods, to positively identify the property of their customers. The Board adopted a policy listing approved methods of positive identification of the proper treatment site.
10. That the inspector asked the Company technician who made the application at 25 Sunset Strip how the mistake was made. The technician said he was very familiar with the area and relied on his knowledge rather than GPS equipment or another means of positively identifying the treatment site.

11. That the circumstances in paragraphs one through five, nine, and ten constitute a violation of CMR 01-026 Chapter 20 Section 7.
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 violations referred to in paragraphs eight and eleven, the Company agrees to pay a penalty to the State of Maine in the sum of \$1,000.00. (Please make checks payable to Treasurer, State of Maine).

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

GREEN THUMB LAWN SERVICE

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Cam Lay, Director

APPROVED:

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