

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** Brian Cloutier  
Greenscapes of Maine  
28 Bow Street  
Kennebunk, Maine 04043

**Date of Incident(s):** May 9, 2016

**Background Narrative:** The Board received a call on May 25, 2016, alleging that Greenscapes of Maine from Kennebunk made an unlicensed pesticide application at River Bend Woods on Gateway Drive in Wells.

On the same day the complaint call was received, a Board inspector conducted a follow-up inspection with Brian Cloutier, the owner of Greenscapes of Maine. Cloutier acknowledged he made the unlicensed application of Dimension 0.10% to the turf of the common areas and right-of-way of the above property.

The regulations require 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 Greenscapes of Maine was certified or licensed as a commercial pesticide applicator at the time Cloutier made the pesticide application at River Bend Woods on Gateway Drive in Wells.

### **Summary of Violation(s):**

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.

**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**

Greenscapes of Maine	)	ADMINISTRATIVE CONSENT AGREEMENT
28 Bow Street	)	AND
Kennebunk, Maine 04043	)	FINDINGS OF FACT

This Agreement, by and between Greenscapes of Maine (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 is a commercial landscaping company which offers services in the Wells area.
2. That on May 25, 2016, Board staff received a phone call alleging that the Company made an unlicensed pesticide application in the River Bend Woods development on Gateway Drive in Wells.
3. That in response to the call described in paragraph two, a Board inspector conducted a follow up inspection with Brain Cloutier, the Company owner, on May 25, 2016.
4. That during the inspection described in paragraph three, Cloutier acknowledged that he applied Lesco Dimension 0.10% herbicide plus fertilizer to the right-of -way and common areas of the River Bend Woods development on Gateway Drive in Wells on May 9, 2016.
5. 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.
6. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) includes 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.
7. That the application described in paragraphs two through six constitutes a custom application of a pesticide in accordance with 22 M.R.S. § 1471-C (5-A).
8. That the Company did not employ a master applicator, and no one from the Company had a commercial pesticide applicator's license at the time of the application described in paragraph four.
9. That the circumstances described in paragraphs one through eight constitute a violation of 22 M.R.S. 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
10. That the Board has regulatory authority over the activities described herein.
11. 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.

12. That this Agreement shall not become effective unless and until the Board accepts it.

13. That, in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violation referred to in paragraph nine, the Company agrees to pay to the State of Maine the sum of \$400. (Please make checks payable to Treasurer, State of Maine).

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

GREENSCAPES OF MAINE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_

Henry Jennings, Director

APPROVED

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Randlett, Assistant Attorney General