

Proposed Administrative Consent Agreement Background Summary

Subject: Jason Douin
JD Landscapes Inc.
275 Mount Vernon Avenue
Augusta, Maine 04330

Date of Incident(s): On or about July 19, 2016, and multiple dates prior to this.

Background Narrative: A Board staff member observed a JD Landscapes crew working at a commercial business in Augusta. One of the crew members had a plastic hand pump pressurized spray container, approximately one gallon in size. The container was translucent and was about half full of liquid. The crew was just completing a job and walking back to their work truck.

A Board inspector later phoned Douin and arrangements were made to meet. Two Board staff members later met with Douin to interview him about his company's commercial use of pesticides. Douin said he usually subcontracts with a commercial applicator when the property of one of his customers needs a pesticide application but acknowledged that at times his company makes unlicensed commercial pesticide applications. When asked about what his employee applied on the date he was observed with the hand sprayer in Augusta, Douin said he would have to meet with his employee and ask what he was spraying. Douin later called Board staff and said his employee was going to apply roundup herbicide to a customer's gravel driveway but the nozzle was not working so he was not able to spray.

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 JD Landscapes Inc. was certified or licensed as a commercial pesticide applicator at the time of the pesticide applications made by the company.

Summary of Violation(s): 22 M.R.S. 1471-D (1) (A)- No commercial applicator may use or supervise the use of any pesticide within the State without prior certification from the board, provided that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator

CMR 01-026 Chapter 31 Section 1(A) III- Supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator....

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**

Jason Douin)	
JD Landscapes Inc.)	ADMINISTRATIVE CONSENT AGREEMENT
275 Mount Vernon Avenue)	AND
Augusta, Maine 04330)	FINDINGS OF FACT

This Agreement, by and between JD Landscapes Inc. (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 the Company, owned by Jason Douin, is a commercial landscaping company that offers services in the Augusta area.
2. That on or about July 19, 2016, Board staff observed a Company crew at Augusta Foot & Ankle at 26 Eastern Ave in Augusta.
3. That the crew had completed its work at the site and was loading equipment onto a Company truck. One of the crew members had a plastic hand pump pressurized spray container, approximately one gallon in size. The container was translucent and was about half full of liquid. The applicator with the spray container was telling the other crew members that the spray nozzle dripped.
4. That the observations described in paragraph three were conveyed by the Board staff to a Board inspector.
5. That a Board inspector called Jason Douin multiple times and left voice messages asking for a return call to arrange a follow up inspection about the incident described in paragraph three.
6. That on August 5, 2016, the inspector placed another call to Douin. Douin called back saying he was near the Board's office and would come there. Douin did come to the BPC's Augusta office and met with two BPC staff members.
7. That during the meeting described in paragraph six, Board staff informed Douin about the observations described in paragraph three. Douin said he would have to talk to his employees and ask them what work they did when at the Augusta Foot & Ankle as described in paragraph three. Douin stated that he hires the Turf Doctor to do most of his pesticide applications but at times his company does do some commercial pesticide applications and that no work was supposed to be done without his knowledge and approval. Douin acknowledged that at one time he held a commercial applicator license but let it lapse.
8. That on August 31, 2016, Douin called BPC staff back with an update of what he learned from his employee about the spray incident described in paragraph three. Douin said his employee with the hand sprayer, Shawn Morey, told Douin that he pulled the sprayer out of the truck and was going to spray roundup herbicide on the gravel driveway but the nozzle was not working so he was not able to spray.
9. 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.

10. 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.
11. That the circumstances described in paragraphs one through ten constitute custom applications of pesticides in accordance with 22 M.R.S. § 1471-C (5-A).
12. 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 applications described in paragraphs three and seven.
13. That the circumstances described in paragraphs one through twelve constitute violations of 22 M.R.S. 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
14. That the Board has regulatory authority over the activities described herein.
15. 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.
16. That this Agreement shall not become effective unless and until the Board accepts it.
17. 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 thirteen, the Company agrees to pay to the State of Maine the sum of \$500. (Please make checks payable to Treasurer, State of Maine).

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

JD LANDSCAPES INC.

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General