

Proposed Administrative Consent Agreement Background Summary

Company: Shane Theriault
Theriault Lawn Care Inc.
212 Van Buren Road
Caribou, ME 04736

Licenses: Firm and applicator licenses not renewed prior to making commercial applications

Origin of Case: Board office staff noticed licenses for company and its employees had expired

Dates of Incidents: 2012, 2013 through July when licenses renewed, and 2014 through August when licenses renewed

Pesticide(s) Involved: Numerous lawn care, tree, mulch bed and curb/parking lot pesticides

Summary of Allegation(s): Commercial pesticide applications with an expired firm license and expired applicator licenses.

Staff Action: A Board inspector conducted an inspection with a company applicator on July 16, 2013. At that time, the applicator was applying a tank mix of two herbicides to the city of Presque Isle’s curbs, guard rails and pavement crack and crevices. The inspector noted that one of the herbicides in the tank mix was labeled for agricultural crops, not for the site it was being applied to. At that time, the inspector also reviewed the applicator’s pesticide log book.

On August 8, 2014, a Board inspector conducted a records/operations inspection with the company.

Staff Findings:

- Theriault Lawn Care company’s firm license expired on 12-31-11.
- The company did not submit renewal paper work for the master applicator or firm licenses for 2012
- All licenses affiliated with the company were invalid as of 12-31-11
- The company made unlicensed pesticide applications in 2012
- All applications made in 2013 prior to license renewals in July of 2013 were unlicensed applications
- The company did not submit renewal paper work for the master applicator or firm licenses at the beginning of 2014
- Board received company firm and master applicator 2014 renewal paper work in August of 2014, Board renewed company licenses at that time
- All applications made in 2014 prior to license renewals in August were unlicensed applications
- Princep Caliber 90 herbicide labeling does not list curbs, guardrails and crack and crevices areas or any other non-crop areas as treatment sites.
- The company's application records were not complete. Size of the treated area and wind direction were not recorded.

Applicable Citations of Law:

- **22 M.R.S. § 1471-D**
1. Certification required; commercial applicators and spray contracting firms. Certification is required for commercial applicators and spray contracting firms as follows.
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; and [1983, c. 819, Pt. A, §42 (NEW).]

B. No spray contracting firm may use or supervise the use of any pesticide within the State without prior certification from the board.

- **7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F)**
Specifies that a pesticide may not be applied in a manner inconsistent with its labeling.
- **CMR 01-026 Chapter 50, Section 1(A)**
Specifies requirements for commercial application records, including size of area treated and wind direction.

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

Shane Theriault)	ADMINISTRATIVE CONSENT
Theriault Lawn Care Inc.)	AGREEMENT
212 Van Buren Road)	AND
Caribou, ME 04736)	FINDINGS OF FACT

This Agreement, by and between Theriault Lawn Care 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 operates a lawn care service in Caribou, Maine.
2. That the Company has had a spray contracting firm license as well as commercially licensed pesticide applicators dating back to 1987.
3. That Company was issued a firm license in 2009 that expired on December 31, 2011.
4. That the Company never submitted their license renewals for their 2012/2013 firm license or master applicator license. In addition, the Company never submitted their annual summary report for 2011, a requirement for license renewal.
5. That Board office staff called the Company at least two times as a reminder that they needed to renew their licenses and submit the necessary paperwork to do so. Staff also sent at least two sets of renewal paperwork. The Company did not respond.
6. That on July 16, 2013, a Board inspector conducted a pesticide inspection with Company employee/applicator John Belanger. Belanger was applying a tank mix of Lesco Prosecutor and Princep Caliber 90 herbicides to curbs, guardrails and crack and crevices to municipal property of the City of Presque Isle. The areas where these applications were occurring were areas open to the public.
7. That from the inspection described in paragraph six, the inspector determined that the Company was operating with no firm license, master applicator license or commercial operator licenses from 2012 through the date of the inspection. The company later renewed their firm license and applicator licenses on July 18, 2013.
8. That the use of any pesticide in an area open to use by the public constitutes a commercial pesticide application in accordance with 22 M.R.S. § 1471-C(5)B.
9. That 22 M.R.S. § 1471-D(1) establishes the certification required for commercial applicators and spray contracting firms. Certification is required for commercial applicators and spray contracting firms as follows: 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, and no spray contracting firm may use or supervise the use of any pesticide within the State without prior certification from the board

10. That the conditions in paragraphs one through nine constitute multiple violations of 22 M.R.S. § 1471-D(1).
11. That a pesticide may not be applied in a manner inconsistent with its labeling as outlined in 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F).
12. That the Princep Caliber 90 herbicide labeling does not list curbs, guardrails and crack and crevices areas or any other non-crop areas as treatment sites.
13. That the circumstances described in paragraphs six, eleven, and twelve constitute a violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F).
14. That, as a commercial applicator, pesticide application records must be kept as required by CMR 01-026 Chapter 50, Section 1(A).
15. That an inspection of the company's application records conducted during the inspection described in paragraph six, showed that the records were not complete. Size of the treated area and wind direction were not recorded.
16. That the circumstances described in paragraphs six, fourteen and fifteen constitute a violation of CMR 01-026 Chapter 50, Section 1(A).
17. That Board office staff sent the company a renewal packet for their 2014/2015 licenses. There was no response from the Company. On May 20, 2014, Board office staff sent the same license renewal packet to the Company as certified mail. The Company did not respond
18. On August 5, 2014, Board office staff sent the Company a letter stating that their commercial master applicator's license was not renewed, the Company's 2013 summary report was needed to renew their firm license and that because of this all commercial applicator licenses affiliated with the Company were terminated.
19. That on August 8, 2014, a Board inspector conducted a records/operations check with the Company.
20. That from the inspection in paragraph nineteen, it was determined that the Company made commercial pesticide applications and operated without a firm license, master applicator's license or commercial operator applicator licenses from the beginning of 2014 to the date of the inspection in paragraph nineteen.
21. That on August 29, 2014, the Board received the license renewal paperwork for the Company's firm license and master applicator's license. At that time those licenses were renewed and the suspended commercial operator applicator licenses affiliated with the Company were reinstated.
22. That the circumstances described in paragraphs eight, nine and nineteen through twenty-one, constitute violations of 22 M.R.S. § 1471-D(1) from the beginning of the 2014 season through August 29, 2014.
23. That a review of the Company's pesticide applicator records during the inspection in paragraph nineteen, determined that the records were incomplete. The size of the area treated and wind direction were not kept.
24. That the circumstances described in paragraphs fourteen, nineteen and twenty-three constitute a violation of CMR 01-026 Chapter 50, Section 1(A).
25. That the Board has regulatory authority over the activities described herein.

26. 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.
27. That this Agreement shall not become effective unless and until the Board accepts it.
28. That the Board has regulatory authority over the activities described herein.
29. That the Company expressly waives:
 - d. Notice of or opportunity for hearing;
 - e. Any and all further procedural steps before the Board; and
 - f. The making of any further findings of fact before the Board.
30. That this Agreement shall not become effective unless and until the Board accepts it.
31. 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 ten, thirteen, sixteen, twenty-two and twenty-four, 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 three pages.

THERIAULT LAWN CARE INC.

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General