

Proposed Administrative Consent Agreement Background Summary

Subject: Barry Churchill
291 Russell Road
Fort Fairfield, Maine 04742

Date of Incident(s): June 8, 2012

Background Narrative: The Board received a call alleging that an unlicensed applicator was applying weed & feed to the turf of the IGA in Fort Fairfield. A follow up inspection confirmed that Barry Churchill, the owner/operator of a lawn care company applied Sta-Green Weed & Feed to the lawn area of the IGA on June 8, 2012. Neither Churchill nor anyone he employed was certified or licensed as a commercial applicator at the time of the commercial pesticide application to this public area.

Summary of Violation(s): 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).

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board.

Attachments: Proposed Consent Agreement

Rec 10/22/13

NOV 04 2013

CR#1022

Date 10/17/13

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

Barry Churchill) ADMINISTRATIVE CONSENT AGREEMENT
291 Russell Road) AND
Fort Fairfield, Maine 04742) FINDINGS OF FACT

This Agreement, by and between Barry Churchill (hereinafter called the Applicant) and the State of Maine Board of Pesticides Control (hereinafter called the "Board"), is entered into pursuant to 22 M.R.S.A. §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 Applicant operates a lawn care business based in Fort Fairfield.
2. That the Board received a phone call in June of 2012, alleging that unlicensed weed & feed applications were being made, including to the lawn of the IGA store in Fort Fairfield. This site is open to use by the public.
3. That in response to the information the Board received in paragraph two, a Board inspector conducted a follow up inspection with both the Applicant and the owner of Hillside IGA in Fort Fairfield on August 3, 2012.
4. That from the inspection described in paragraph three, it was determined that the Applicant applied Sta-GreenWeed & Feed to the lawn at the Hillside IGA in Fort Fairfield on June 8, 2012.
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) as 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 pesticide application made to the IGA property as outlined in paragraph four, was a custom application under 22 M.R.S. § 1471-C(5-A) and, therefore, a commercial applicator's license was required for the application.
8. That neither the Applicant nor any one in his employ had a commercial pesticide applicator's license at the time of the pesticide 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 Applicator 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 Applicator resulting from the violation referred to in paragraph nine, the Applicator agrees to pay to the State of Maine the sum of \$250. (Please make checks payable to Treasurer, State of Maine.)

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

BARRY CHURCHILL

By:  Date: 10-30-13
Type or Print Name: Barry Churchill

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED

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