

# **Proposed Administrative Consent Agreement Background Summary**

**Subject:** James Howard  
Priority Real Estate Group  
2 Main Street  
Topsham, Maine 04086

**Date of Incident(s):** August 28, 2014

**Background Narrative:** An employee of the company made an unlicensed Roundup Weed and Grass Killer herbicide application to curbs and sidewalks of a school in Brunswick. The school was in session at the time of the application. The school was not aware the application was going to be made and the applicator did not obtain written authorization for the application from the school IPM Coordinator prior to making the application.

### **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) and CMR 01-026 Chapter 31 Section 1(A) III.

CMR 01-026 Chapter 31 Section 1(D) requires that any company required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. The master applicator must actively supervise persons applying pesticides.

CMR 01-026 Chapter 27 Section 5(D) requires that, when a pesticide application is deemed necessary at a school, the applicator must comply with all the requirements of CMR 01-026 Chapter 31–Certification and Licensing Provisions/Commercial Applicator.

CMR 01-026 Chapter 27 Section 6(A) requires that prior to conducting a non-exempted pesticide application in a school building, or on school grounds, commercial pesticide applicators must obtain written authorization from the IPM Coordinator. Authorization must be specific to each application and given no more than 10 days prior to the planned application.

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

**Attachments:** Proposed Consent Agreement

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

Priority Real Estate Group, LLC            )     ADMINISTRATIVE CONSENT AGREEMENT  
2 Main Street                                )   AND  
Topsham, Maine 04086                    )   FINDINGS OF FACT

This Agreement, by and between Priority Real Estate Group, LLC (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 is a commercial real estate investment and development company which offers commercial property for rent in the Topsham area.
2. That on August 28, 2014, the Board received an email from a staff member at the Providence Merrymeeting and Achieve Program School in Brunswick. The email alleged that a person identified as Jay Lemont applied Roundup Weed and Grass Killer to curbs and sidewalks in front of the school to kill weeds and grass.
3. That in response to the call in paragraph two, a Board inspector conducted a follow up inspection with Lemont on September 2, 2014.
4. That from the inspection described in paragraph three, it was determined that Lemont was employed by the Company as their Facilities and Maintenance Supervisor at the time of the application described in paragraph two. In that capacity, Lemont acknowledged that he applied Roundup Weed and Grass Killer on the Company's behalf to curbs and sidewalks at the Providence Merrymeeting and Achieve Program School in Brunswick on August 28, 2014. The school was leasing the building and site from the Company at that time.
5. That the facility is a school as defined in CMR 01-026 Chapter 27 Section 1(B), and was in session at the time of the application described in paragraph two.
6. That CMR 01-026 Chapter 27 Section 5(D) requires that, when a pesticide application is deemed necessary at a school, the applicator must comply with all the requirements of CMR 01-026 Chapter 31-Certification and Licensing Provisions/Commercial Applicator.
7. 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.
8. 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. Applications made to rented properties are considered applications for which compensation is received, and applications made to sidewalks and curbs around buildings are considered as applications made to areas that are open to the public.
9. That the application described in paragraphs two and four constitutes a custom application of pesticides in accordance with 22 M.R.S. § 1471-C (5-A).
10. That CMR 01-026 Chapter 31 Section 1(D) requires that any company required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. The master applicator must actively supervise persons applying pesticides.

11. 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 paragraphs two and four.
12. That the circumstances described in paragraphs one through eleven constitute violations of 22 M.R.S. § 1471-D(1)(A), CMR 01-026 Chapter 31 Section 1(A) III, CMR 01-026 Chapter 31 Section 1(D), and CMR 01-026 Chapter 27 Section 5(D).
13. That CMR 01-026 Chapter 27 Section 6(A) requires that prior to conducting a non-exempted pesticide application in a school building, or on school grounds, commercial pesticide applicators must obtain written authorization from the IPM Coordinator. Authorization must be specific to each application and given no more than 10 days prior to the planned application.
14. That the company did not obtain written authorization from the IPM Coordinator at the school prior to making the non-exempted pesticide application described in paragraphs two and four.
15. That the circumstances described in paragraphs two, four, thirteen and fourteen constitute a violation of CMR 01-026 Chapter 27 Section 6(A)
16. That the Board has regulatory authority over the activities described herein.
17. 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.
18. That this Agreement shall not become effective unless and until the Board accepts it.
19. 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 twelve and fifteen, 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.

PRIORITY REAL ESTATE GROUP, LLC

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

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

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Henry Jennings, Director

APPROVED

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark Randlett, Assistant Attorney General