

Proposed Administrative Consent Agreement Background Summary

Subject: Patrick Bucklin
Atlantic Turf Care
23 Lunt Road
Falmouth, Me 04105

Date of Incident(s): June 3, 2011

Background Narrative: Patrick Bucklin, the owner/applicator for Atlantic Turf Care mistakenly applied Dimension 0.21% Plus Fertilizer and Riverdale Cool Power Selective Herbicide to Jessica Joyce's lawn at 4 Holly Drive in Cumberland. The intended customer/property was Lorrie Holmes at 3 Holly Drive in Cumberland. Bucklin went to the wrong house (Joyce's property) when he responded to the Holmes' initial request for a lawn care estimate. This discussion took place over the phone. When Bucklin returned to make the pesticide applications on June 3, he again returned to the wrong property. When Holmes realized that an error was made she called Joyce who in turn contacted the Board to report the unauthorized pesticide applications. Joyce also reported that she thought the winds were in excess of 15 mph at the time of the application. The applicator, when interviewed by the inspector, said that the wind was 20 mph at the time of the application.

Summary of Violation(s):

CMR 01-026 Chapter 22 Section 2B(III). Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour

22 M.R.S.A. §1471-D (8)(C). Used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner ...

Rationale for Settlement: A Board policy concerning positive identification of the proper treatment site by commercial applicators has been in effect since July 29, 2005. Obtaining a customer's electrical meter number or other Board approved method in advance of the treatment to verify the correct application site is required by the Board Policy. Bucklin used no approved method to positively identify the customer's property before making the pesticide applications. In addition, an application involving powered equipment was made when wind speed exceeded the legal limit.

Attachments: Proposed Consent Agreement

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL

Patrick Bucklin)	ADMINISTRATIVE CONSENT AGREEMENT
Atlantic Turf Care)	AND
190 US Route 1, Box 351)	FINDINGS OF FACT
Falmouth, Me 04105)	

This Agreement by and between Atlantic Turf Care (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.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 Company is licensed by the Board as a Commercial Spray Contracting Firm, with license number SCF 41114.
2. That on June 9, 2011, Jessica Joyce called the Board to report that her neighbor, Lorrie Holmes at 3 Holly Drive in Cumberland informed her that Atlantic Turf Care (Holmes' lawn care company) mistakenly applied fertilizer and pesticides to Joyce's property. Joyce resides at 4 Holly Drive in Cumberland. Joyce also voiced concerns that the wind conditions at the time of the application were likely in excess of fifteen mph.
3. That on June 15, 2011, in response to the call in paragraph two, a Board inspector conducted a follow-up inspection with the Company owner/applicator, Patrick Bucklin. Bucklin held a commercial master license (CMA 41110) issued pursuant to 22 M.R.S.A. §1471-D (1) that was valid at the time of the application.
4. That from the inspection in paragraph three it was determined that Bucklin applied Dimension 0.21% Plus Fertilizer (EPA Reg. # 10404-87) and Riverdale Cool Power Selective Herbicide (EPA Reg. # 228-371) to turf at Jessica Joyce's property at 4 Holly Drive in Cumberland on June 3, 2011.
5. That in a letter to the Board dated 6-14-2011, Bucklin summarized his communication with Holmes in estimating/selling the job. In that letter, Bucklin describes inadvertently evaluating the turf at the wrong site (Joyce residence). The last sentence in that letter reads, "I learned from this experience we need more than the 1st house on the left /right need a house number at least".
6. That a Board policy concerning positive identification of the proper treatment site by commercial applicators has been in effect since July 29, 2005.
7. That obtaining a customer's electrical meter number or other Board approve method in advance of the treatment to verify the correct application site is required by the Board Policy referenced in paragraph six.
8. That Bucklin did not use any of the appropriate means required by Board policy to properly identify the target site prior to making the pesticide applications in paragraph four.

9. That the circumstances described in paragraphs one through eight constitute the use of pesticides in a careless, negligent or faulty manner in violation of 22 M.R.S.A. §1471-D (8)(C).
10. That CMR 01-026 Chapter 22 Section 2 B, III prohibits spraying pesticides outdoors with powered equipment when wind speeds in the area exceed 15 mph.
11. That from the inspection in paragraph three the applicator informed the inspector that the wind speed at the time of the application was 20 mph and that powered equipment was used on the job.
12. That the circumstances described in paragraphs two through four and ten and eleven, constitute a violation of CMR 01-026 Chapter 22 Section 2 B,III.
13. That the Board has regulatory authority over the activities described herein.
14. 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.
15. That this Agreement shall not become effective unless and until the Board accepts it.
16. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violation referred to in paragraphs nine and twelve, the Company agrees to pay a penalty to the State of Maine in the sum of \$800. This penalty is due and payable upon the signature of this agreement by the Company (Please make checks payable to Treasurer, State of Maine).

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

ATLANTIC TURF CARE

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General