

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** Phillip Webster  
P.R. Webster Professional Groundskeeping Inc.  
P.O. Box 1867  
Windham, ME 04062

**Date of Incident(s):** June 11, 2008

**Background Narrative:** A follow-up inspection was conducted in response to a complaint received. The caller had concerns about insufficient supervision of an applicator applying a turf pesticide to a commercial site in New Gloucester and the lack of posting. The inspector determined the treated site was posted but the applicators were not licensed. In addition, the wrong type of glove was worn to make the application, and some record-keeping items were missing (wind direction and size of area treated).

**Summary of Violation(s):** 22 M.R.S.A. § 1471- D (1) (A). That commercial pesticide applications may only be conducted by certified commercial applicators. 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). That wearing label-specified personal protective equipment is required, and CMR 01-026 Chapter 50, Section 1(A), requires that specific application records be kept.

**Rationale for Settlement:** The staff compared the violation to similar cases settled by the Board in formulating a penalty proposal. This company had at least one licensed applicator licensed from 1995 through 12-31-2007. In 2008, licenses were not renewed until June. It was during this short interim period of being unlicensed that the follow-up inspection detected the licensing violation.

**Attachments:** Proposed Consent Agreement

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

Phillip Webster ) ADMINISTRATIVE CONSENT  
P.R. Webster Professional Groundskeeping Inc. ) AGREEMENT  
P.O. Box 1867 ) AND  
Windham, ME 04062 ) FINDINGS OF FACT

This Agreement by and between P.R. Webster Professional Groundskeeping 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.A. §1471-M (2)(D) and in accordance with the Enforcement Protocol adopted by the Board on September 19, 1984.

The parties to this Agreement agree as follows:

1. That the Company provides property maintenance services in the New Gloucester area.
2. That, in response to a call the Board received about pesticide applications in that area, Board staff conducted a pesticide follow-up use inspection with the Company on June 16, 2008.
3. That, Company employee, Peter Norris acknowledged he and an employee, Milder Ramirez, each applied Lesco Three-Way Selective Herbicide, EPA Reg. No. 10404-43, for compensation to the property of the Pineland Center on June 11, 2008.
4. That application of any pesticide for compensation constitutes a commercial pesticide application pursuant to 22 M.R.S.A. § 1471-C (5) and (5-A).
5. That commercial pesticide applications must be made or directly supervised by a licensed commercial applicator as required by CMR 01-026, Chapter 31, Section 1 (A).
6. That no one from the Company had a commercial pesticide applicator's license at the time of the application described in paragraph three.
7. That the actions described in paragraphs one through six constitute violations of 22 M.R.S.A. § 1471-D (1)(A).
8. That rubber gloves are required when applying Lesco Three-Way Selective Herbicide.
9. That rubber gloves were not use when applying the Lesco Three-Way Selective Herbicide.
10. That wearing the label-required personal protective equipment is specified 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).
11. That the circumstances described in paragraphs three, eight, nine, and ten constitute violations 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).
12. That, as a commercial applicator, pesticide application records must be kept as required by CMR 01-026 Chapter 50, Section 1(A).
13. That an inspection of the company's application records conducted on June 16, 2008, showed that the records were not complete. Size of the treated area and wind direction were not recorded.

14. That paragraphs three, twelve and thirteen constitute a violation of CMR 01-026 Chapter 50, Section 1(A).
15. That the Board has regulatory authority over the activities described herein.
16. 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.
17. That this Agreement shall not become effective unless and until the Board accepts it.
18. 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 seven, eleven and fourteen, the Company 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.

P.R. WEBSTER PROFESSIONAL GROUNDSKEEPING INC.

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

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

BOARD OF PESTICIDES CONTROL

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

Henry Jennings, Director

APPROVED:

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

Mark Randlett, Assistant Attorney General