

**Proposed Administrative Consent Agreement
Background Summary**

Subject: Davey Tree Expert Company
298 New Portland Road
Gorham, ME 04038

Date of Incident(s): September 15, 2022

Background Narrative: On September 15, 2022, Christopher Everest, a licensed applicator for the Davey Tree Expert Company applied Safari 20 SG Insecticide, EPA Reg. No. 86203-11-59639, to three shrubs located on the property of 32 Rivers Edge Drive in Kennebunk. This application was to have been made at 34 Rivers Edge Drive in Kennebunk. Mr. Everest failed to confirm his location prior to making the application. The company did have a positive property identification system in place that consisted of a numbered tag located at the customer's property. The applicator failed to use the property identification system prior to commencing the application.

Summary of Violations: CMR 01-026 Chapter 20 Section 6(D)2: No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term "legal occupant" includes tenants of rented property.

Rationale for Settlement: The Davey Tree Expert Company did not have the property owners' authorization to apply a pesticide to their property. The applicator failed to positively identify the application location.

Attachments: Proposed Consent Agreement

APR 27 2023

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

CK# 192 3222
CK Amt: \$1000.00
Date: 4-21-23

Davey Tree Expert Company) ADMINISTRATIVE CONSENT
298 New Portland Road) AGREEMENT
Gorham, Maine 04038) AND
) FINDINGS OF FACT

This Agreement by and between Davey Tree Expert Company (hereinafter referred to as the "Company") and the State of Maine Board of Pesticides Control (hereinafter referred to as 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 December 13, 2013.

The parties to this Agreement agree as follows:

1. That the Company provides tree care and landscaping services with branch office across North America, including Gorham, Maine. Pest management and pesticide applications are part of the services the Company provides to Maine customers.
2. That on September 15, 2022, Christopher Everest, a licensed applicator and employee of the Company, applied Safari 20 SG, EPA Reg. No. 86203-11-59639, to three shrubs located on the property of 32 Rivers Edge Drive in Kennebunk, Maine.
3. That the legal occupant and owner of 32 Rivers Edge Drive is Thomas Frechette.
4. That Frechette neither requested nor authorized the pesticide application described in paragraph two.
5. That the applicator had incorrectly read the work order related to the application described in paragraph two and mistakenly treated the wrong property. The application was supposed to be made at 34 Rivers Edge Drive, Kennebunk.
6. That the applicator failed to verify that they were at the correct property prior to making the application described in paragraph two.
7. That CMR 01-026, Chapter 20, Section 6 (D) (2) prohibits the application of pesticides to the property of another unless prior authorization has been received from the owner, manager or legal occupant.
8. That prior authorization had not been received for the pesticide application described in paragraph two.
9. That the circumstances described in the agreement constitute a violation of CMR 01-026, Chapter 20, Section 6 (D) (2).
10. That the Company expressly waive:
 - 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.

11. That this Agreement shall not become effective unless and until the Board accepts it.

12. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violations referred to in paragraphs nine, the Company agree to pay a penalty to the State of Maine in the sum of \$1,000.00. (Please make checks payable to Treasurer, State of Maine).

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

DAVEY TREE EXPERTS COMPANY

By:  Date: 4-17-27

Type or Print Name: Michael A. Venev, Environmental Programs

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Megan Patterson, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General