

**Proposed Administrative Consent Agreement
Background Summary**

Subject: Ehrlich
23 Washington Ave. Unit 3
Scarborough, ME 04074

Date of Incident(s): July 7, 2021 & April 12, 2022

Background Narrative: On June 24, 2021, a licensed applicator for Ehrlich applied EcoVia EC Insecticide, EPA 25b exempt, to the residential properties located at 1 and 3 Oceanview Ave. in Kennebunkport, Maine for control of mosquitoes and ticks. The properties at 1 and 3 Oceanview Ave. are within 250 feet of a property listed on the Maine 2021 Pesticide Notification Registry. The 2021 Notification Registry participant informed Board staff that they had not been notified about the application. During the follow-up use inspection, a Company manager acknowledged not checking the 2021 Pesticide Notification Registry for participants and updating the company's notification routine accordingly.

On April 1, 2022, a licensed applicator for Ehrlich applied DeltaDust Insecticide, EPA Reg. No. 432-772, and Advion Insect Granules, EPA Reg. No. 100-1483, to the exterior of a residential home in Shapleigh, Maine for carpenter ant prevention. On April 11, 2022, the Board received a complaint from the homeowner in Shapleigh, reporting that they had not been in a contract with Ehrlich for several years and they currently contract with a different company for pesticide application services. During the course of the inspection, the Board inspector determined that the complainant had canceled the contract with Ehrlich in 2017. It was not possible to determine how a work order for a complainant's property was generated in 2022, but apparently not for the preceding years since the cancelation. Ehrlich representatives could not provide proof of authorization to apply pesticides at the property in Shapleigh in 2022.

Summary of Violations: CMR 01-026, ch. 28 § 2 (D) requires commercial applicators to provide advance notification of outdoor pesticide applications made within 250 feet of the property of any participant on the current year Notification Registry.

CMR 01-026 C.M.R. ch. 20 § 6(D) prohibits the application of pesticides to the property of another without prior authorization of resident and places the burden of confirmation and documentation for authorization of ongoing, periodic applications on the company making such applications.

Rationale for Settlement: Ehrlich has acknowledged their mistakes and are accepting responsibility for these violations by entering into this Proposed Consent Agreement with the BPC and the OAG.

Attachments: Proposed Consent Agreement

FEB - 7 2024

CK amount: \$2500

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

CK Date: 2-6-24

CK # 358194

In the Matter of:) ADMINISTRATIVE CONSENT
Ehrlich) AGREEMENT
23 Washington Avenue, Unit 3) AND
Scarborough, Maine 04074) FINDINGS OF FACT

This Agreement by and between Ehrlich (hereinafter referred to as the "Company") and the State of Maine Board of Pesticides Control (hereinafter referred to as the "Board"), as approved by the Office of the Attorney General ("OAG"), 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 Company provides a variety of pest control services, including commercial pesticide applications, across many states in the eastern United States, including Maine.
2. That on June 24, 2021, the Board received a complaint alleging that a 2021 Maine Notification Registry participant from Kennebunkport had not received prior notification about a pesticide application made by the Company to an adjacent residential property that was listed on the registry as a property that required advance notification to an adjacent residence.
3. That on July 7, 2021, a Board inspector conducted a follow-up inspection with Company branch office General Manager Brandon Hier and Service Manager Jim Connolly at the Ehrlich branch office at 12 Gray's Lane in Biddeford, Maine.
4. That during the of the inspection described in Paragraph 3, the Board inspector determined that Tyler Slack, a licensed commercial applicator for the Company, made an application of EcoVia EC, an EPA minimum risk pesticide exempt from federal registration requirements under 7 U.S.C. § 136w(b), to the lawn areas at 1 and 3 Oceanview Avenue in Kennebunkport.
5. That during the course of the inspection described in Paragraph 3, the Board inspector determined that both Company branch office General Manager Hier and Service Manager Connolly acknowledged that Ehrlich's notification routine had not been updated for 2021, and therefore no prior notification was provided to the registry participant described in Paragraph 2.
6. That 01-026 C.M.R. Ch. 28, § 2 requires commercial pesticide applicators to notify participants on the Maine Pesticide Notification registry when making non-agricultural applications to properties listed on the registry designated as being located within 250 feet of the participant's property.
7. That the Company failed to notify a registry participant when making the pesticide application described in Paragraph 4.
8. That the circumstances described in Paragraphs 1 through 7 constitute a violation of 01-026 C.M.R. ch. 28, § 2(D).
9. That on April 11, 2022, the Board received a complaint from a resident in Shapleigh, Maine, who reported that a Company employee had made an exterior pesticide application to the resident's property on April 1, 2022. The complainant further reported that the Company had not been under contract to apply pesticides to the

property for several years, and that a different company was currently servicing the property.

10. That in response to the complaint described in Paragraph 9, a Board inspector visited the complainant's home to review and document the details of the complaint.
11. That in response to the complaint described in Paragraph 9, the Board inspector also conducted a follow-up inspection with Company employees James Connolly, Operations Manager, and James Palmer, licensed commercial pesticide applicator on April 12, 2022.
12. That during the course of the inspection described Paragraph 11, the Board inspector determined that, on April 1, 2022, Palmer had applied DeltaDust Insecticide, EPA Reg. No. 432-772, and Advion Insect Granules, EPA Reg. No. 100-1483, along the perimeter of the home to prevent carpenter ants from entering the home.
13. That during the course of the inspection described Paragraph 11, the Board inspector also determined that Palmer had failed to post the pesticide application in accordance with 01-026 C.M.R. Ch. 28, § 3.
14. That during the course of the inspection described Paragraph 11, the Board inspector further determined that the complainant had canceled the contract with the Company in 2017. However, the cancellation was not properly completed through the Company's computer system. It was not possible to determine how a work order for a complainant's property was generated in 2022, but apparently not for the preceding years since the cancellation.
15. That 01-026 C.M.R. Ch. 20, § 6(D) prohibits the application of pesticides to the property of another without prior authorization of resident.
16. That 01-026 C.M.R. Ch. 20, § 6(D) also places the burden of confirmation and documentation for authorization of ongoing, periodic applications on the company making such applications.
17. That Company did not have authorization to conduct the pesticide application described in Paragraph 12.
18. That the circumstances described in Paragraphs 9 through 17 constitute a violation 01-026 C.M.R. Ch. 20, § 6(D).
19. 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.
20. That this Agreement shall not become effective unless and until the Board accepts it.
21. 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 8 and 18, the Company agrees to pay a penalty to the State of Maine in the sum of \$2,500.00, due by February 28, 2024. (Please make checks payable to Treasurer, State of Maine.)
22. The Board and OAG grant a release of their causes of actions against the Company for the specific violations cited in the immediately preceding paragraph (Paragraph 21) on the express condition that all actions listed in Paragraph 21 of this Agreement are completed in accordance with the express terms and conditions of this

Agreement and to the satisfaction of the Board and the OAG. The release shall not become effective until the Company has completed its obligations pursuant to Paragraph 21.

- 23. Any non-compliance with any term or condition of this Agreement, as determined by the Board and OAG in their sole discretion, voids the release set forth in Paragraph 21 of this Agreement and may lead to an enforcement, suspension/revocation, equitable, and/or civil violation action pursuant to Titles 7 and 22 of the Maine Revised Statutes.
- 24. Nothing in this Agreement shall be construed to be a relinquishment of the Board's or OAG's powers under Titles 7 and 22 of the Maine Revised Statutes against the Company for any other violations other than those expressly listed in this Agreement.
- 25. This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding; this contract may not be enlarged, modified, or altered except in writing signed by the parties and indorsed on this Agreement.
- 26. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

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

EHRlich

By: Brandon Hier Date: 2/1/2024

Type or Print Name: Brandon Hier

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
John Pietroski, Acting Director

APPROVED:

By: _____ Date: _____
Carey Gustanski, Assistant Attorney General