

Proposed Administrative Consent Agreement

Background Summary

Subject: Tick Talk
26 Kathy's Lane
Rockport, Maine 04856

Date of Incident(s): May 14, 2018

Background Narrative: On May 14, 2018, the Board received a call from Patricia Sarver, a Jefferson resident who resides at 401 Sarver Road. Sarver is a registry member on the 2018 Maine Pesticide Notification Registry. Sarver said when she returned home on the 14th, she got out of her car to check her mail box. At that time, Paul McFarland III was finishing a pesticide application to his lawn customer Nicole Mank's property across the road at 398 Hinks Road. Sarver reported the pesticide drifted across the road and on to her.

The residential property at the 398 Hinks Road address in Jefferson is listed on the registry as a property within 250 feet of Sarver's residence. The Registry is distributed to commercial applicators annually.

A Board inspector conducted a follow-up inspection with Sarver on May 15, 2018, and at that time collected wipe samples from both her car and her mail box.

The inspector conducted a follow-up inspection with McFarland on May 15, 2018, as well and confirmed that the above pesticide application of Cross Check Plus Insecticide (active ingredient bifenthrin) was made without the required notification to the registry member.

The wipe sample from the mail box had 0.022 grams of bifenthrin on it and the wipe sample from the car had 0.024 grams of bifenthrin on it.

Summary of Violation(s):

- CMR 01-026 Chapter 28, Section 2 (D) Commercial applicators shall notify an individual listed on the registry when performing an outdoor, non-agricultural pesticide application that is within 250 feet of the property boundary of the listed registry residence.
- 22 M.R.S. § 1471-D (8)(C) Used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment.
- CMR 01-026 Chapter 22 section 4(B)III(iii) An applicator may not apply a pesticide in a manner that results in off-target pesticide residue detected on any nearby persons or vehicles using public roads.

Rationale for Settlement: The staff compared the violations to similar cases settled by the Board, the standard of care the applicator used during the application and lab results.

Attachments: Proposed Consent Agreement

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

In the Matter of:)	ADMINISTRATIVE CONSENT
Tick Talk)	AGREEMENT
26 Kathy's Lane)	AND
Rockport, Maine 04856)	FINDINGS OF FACT

This Agreement, by and between Tick Talk (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 provides commercial tick control services and has the firm license number SCF 2489 issued by the Board pursuant to 22 M.R.S. § 1471-D (1)(B).
2. That on May 14, 2018, Paul McFarland III the Company owner and a licensed commercial master applicator (CMA 5341), applied Cross Check Plus Insecticide to the lawn of customer Nicole Mank's residential property at 398 Hinks Road in Jefferson.
3. That the outdoor treated area at 398 Hinks Road is located within 250 feet from a property which is the residence of Patricia Sarver at 401 Hinks Road.
4. That Patricia Sarver is listed on Maine's 2018 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2. The residential property at the 398 Hinks Road address in Jefferson is also listed on the Registry as a property within 250 feet of Patricia Sarver's residence. The Registry is distributed to commercial applicators annually.
5. That Saver returned home when the application described in paragraph two was in progress. Sarver alleged that when she got out of her car the pesticide from McFarland's application drifted across the road and on to her. Sarver reported the incident to the Board of Pesticides Control.
6. That on May 15, 2018, a Board inspector responded to Sarver's complaint. At that time the inspector took a wipe sample from Sarver's mail box which is by her driveway entry and a wipe sample from her car. Sarver's property is across the road from Mank's property that was treated with the Cross Check Plus Insecticide (active ingredient bifenthrin).
7. That the lab reported the wipe from Sarver's mail box had 0.022 microgram of bifenthrin on it and the wipe from the car had 0.024 microgram of bifenthrin on it.
8. That commercial applicators are required by CMR 01-026 Chapter 28, Section 2 (D) to notify individuals listed on the Maine Pesticide Notification Registry at least six hours in advance of any pesticide application made within 250 feet of a registry member's listed property.
9. That the Company failed to comply with the notification requirements of CMR 01-026 Chapter 28, Section 2(D). No notification was provided to Sarver prior to making the application described in paragraph two.

10. That the circumstances described in paragraphs one through six, eight, and nine, constitute a violation of CMR 01-026 Chapter 28, Section 2(D).
11. That 22 M.R.S. § 1471-D (8)(C) establishes that it is a violation for an individual to have used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment.
12. That the circumstances described in paragraphs one through seven, and eleven, constitute a violation of 22 M.R.S. § 1471-D (8)(C).
13. That CMR 01-026 Chapter 22 section 4(B)III(iii) requires that pesticides not be applied in a manner that results in off-target residue detected on any nearby persons or vehicles using public roads.
14. That the circumstances described in paragraphs two through seven, and thirteen, constitute a violation of CMR 01-026 Chapter 22 section 4(B)III(iii).
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 cause of action which the Board has against the Company resulting from the violations referred to in paragraphs ten and twelve, and fourteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$750. (Please make checks payable to Treasurer, State of Maine). In addition, the Company will include a copy of their written policy with the signed consent agreement that outlines procedures in place to notify those individuals on the Maine Pesticide Notification Registry.

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

TICK TALK

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Megan Patterson, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General