

Proposed Administrative Consent Agreement Background Summary

Subject: Insight Pest Solutions Maine, LLC
60 Gray Road, Building 3, Unit 13
Falmouth, ME 04105

Date of Incident(s): April 2022 – December 2022

Background Narrative: On June 17, 2022, the Board received an anonymous complaint alleging that the Company employed nine different unlicensed applicators who routinely performed commercial pesticide applications in Maine during 2022.

On June 22, 2022, following two pesticide use inspections conducted with Company, a Board Representative called Brian Brown, an employee of the Company with supervisory responsibilities, to ensure that Company management was aware that violations of Maine’s pesticide licensing laws were occurring.

On August 22, 2022, the Board mailed a Notice of Warning to the Company, including the owner and Chief Executive Officer, Thomas Flaherty, stating that Board had information demonstrating that the Company was employing unlicensed applicators to make commercial pesticide applications in the State of Maine. The Notice of Warning further stated that Maine law requires all commercial applicators to be properly licensed before making commercial applications.

On August 30, 2022, a Board representative conducted an on-site pesticide use inspection with a Company applicator who was not properly licensed in conformance with Maine pesticide law.

On September 16, 2022, a Board representative emailed and mailed an “Urgent Notice of Ongoing Violations of Maine Pesticide Law.” The letter reaffirmed that multiple Company applicators continued to make unlicensed pesticide applications in violation of Maine pesticide law. It went to list the potential penalties for a first and any subsequent violations.

On May 15, 2023, pursuant to the Board’s statutory and regulatory authority, a Board representative emailed and mailed a letter to Brian Brown and Thomas Flaherty requesting copies of all pesticide application records for applications conducted in the State of Maine during 2022 and 2023. The Company subsequently provided copies of said records to the Board electronically.

A review of the records that the Company provided demonstrated that—during 2022—there were 95 commercial pesticide applications conducted in Maine by Company applicators who were neither certified nor licensed and 905 commercial pesticide applications conducted in Maine by Company applicators who were certified but not licensed with the Company.

Summary of Violations: CMR 01-026, Chapter 31, Section 1 (A) prohibits commercial application of pesticides by applicators who are not properly licensed.

The Company committed 1,000 violations of CMR 01-026, Chapter 31, Section 1 (A), of which 999 are considered subsequent violations pursuant to 7 M.R.S. § 616-A(2)(A)(2). That of the 1,000 violations, at least 700 occurred after a Board representative spoke on phone with the Company on June 22, 2022, to inform the Company about the unlawful applications.

Rationale for Settlement: Insight Pest Solutions Maine LLC is currently operating in compliance with Maine pesticide laws, rules and regulations concerning certification and licensure. The Company has installed a certified/licensed commercial master applicator at the Falmouth branch to oversee the day-to-day operations of the Company. Agreeing to the terms of this proposed consent agreement will keep Insight Pest Solutions Maine LLC liable for these committed violations for the next five years.

Attachments: Proposed Consent Agreement

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

NOV 29 2023

CK Amt: \$ 3412.00
CK # 4313005860
Date: 11-27-23

In the Matter of:)	ADMINISTRATIVE CONSENT
Insight Pest Solutions Maine LLC)	AGREEMENT
60 Gray Road, Building 3, Unit 13)	AND
Falmouth, Maine 04105)	FINDINGS OF FACT

This Agreement by and between Insight Pest Solutions Maine LLC (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 the Company provides structural pest control and pesticide application services across many parts of the United States including Maine.
- 2) That on June 17, 2022, the Board received an anonymous complaint alleging that the Company employed nine different unlicensed applicators who routinely performed commercial pesticide applications in Maine during 2022. The caller provided a complete list of names for the nine applicators and numerous details about the pesticide applications and the operation of the Company during the spring of 2022. The caller alleged that over 300 applications had been made by unlicensed applicators by the date of complaint.
- 3) That, in response to the allegations, Board representatives conducted two separate on-site pesticide application inspections (pesticide use inspections) with two different Company applicators on June 22, 2022. At the time of the inspections, one of applicators was neither certified nor licensed, while the other applicator was certified but not licensed with the Company.
- 4) That during the course of the inspections described in paragraph three, the Board representatives informed the Company applicators that they were not properly licensed in conformance with Maine pesticide law to conduct commercial structural pesticide applications in the State of Maine.
- 5) That on June 22, 2022, following the two pesticide use inspections described in paragraph three, a Board Representative called Brian Brown, an employee of the Company with supervisory responsibilities, to ensure that Company management was aware that violations of Maine’s pesticide licensing laws were occurring.
- 6) That on July 14, 2022, two Board representatives agreed to meet with one former employee of the Company and one current employee of the Company. These two individuals stated that there were a number of unlicensed Company applicators routinely conducting commercial pesticide applications in the State of Maine. They further stated that the Company was fully aware that unlicensed commercial applications were occurring in violation of Maine pesticide law. Both individuals provided written statements to the Board.
- 7) That on August 22, 2022, the Board mailed a Notice of Warning to the Company, including the owner and Chief Executive Officer, Thomas Flaherty, stating that Board had information demonstrating that the Company was employing unlicensed applicators to make commercial pesticide applications in the State of Maine. The Notice of Warning further stated that Maine law requires all commercial applicators to be properly licensed before making commercial applications.


- 8) That on August 30, 2022, a Board representative conducted an on-site pesticide use inspection with a Company applicator who was not properly licensed in conformance with Maine pesticide law. The Company applicator was informed about the Maine pesticide applicator licensing requirements and about the ongoing violations of Maine pesticide law.
- 9) That on September 16, 2022, a Board representative emailed and mailed an “Urgent Notice of Ongoing Violations of Maine Pesticide Law.” The letter was emailed and mailed to Brian Brown and Thomas Flaherty. Brian Brown is a Company employee with supervisory responsibilities and Thomas Flaherty is the owner and Chief Executive Officer. The letter reaffirmed that multiple Company applicators continued to make unlicensed pesticide applications in violation of Maine pesticide law. It went to list the potential penalties for a first and any subsequent violations.
- 10) That the Company never contacted the Board as a result of the Board’s repeated efforts to ensure that the Company was fully apprised about the repeated and ongoing violations on Maine’s pesticide applicator licensing requirements.
- 11) That on December 13, 2022, two Board representatives visited the Company’s Maine base of operations in Falmouth, Maine, in an effort to obtain copies of Company pesticide application records for the 2022 season. The two Company employees present at the time of inspection stated they were unable to access past records and suggested that the Board representatives return the following week when Brian Brown would be present.
- 12) That on January 17, 2023, a Board representative returned to Company’s Maine base of operations in a second attempt to obtain copies of the Company’s 2022 Maine pesticide application records. The Board representative met with Kenneth Hidenfelter, who was licensed as a Master Commercial Applicator in the State of Maine, and Thomas Flaherty, Company owner and CEO. Hidenfelter and Flaherty stated they were unable to produce any pesticide application records at that time.
- 13) That on May 15, 2023, pursuant to the Board’s statutory and regulatory authority, a Board representative emailed and mailed a letter to Brian Brown and Thomas Flaherty requesting copies of all pesticide application records for applications conducted in the State of Maine during 2022 and 2023.
- 14) That the Company subsequently provided copies of said records to the Board electronically.
- 15) That a review of the records that the Company provided demonstrated that—during 2022—there were 95 commercial pesticide applications conducted in Maine by Company applicators who were neither certified nor licensed.
- 16) That a review of the records that the Company provided demonstrated that—during 2022—there were 905 commercial pesticide applications conducted in Maine by Company applicators who were certified but not licensed with the Company.
- 17) That CMR 01-026, Chapter 31, Section 1 (A) prohibits commercial application of pesticides by applicators who are not properly licensed.
- 18) That the actions described in paragraphs fifteen and sixteen constitute 1,000 violations of CMR 01-026, Chapter 31, Section 1 (A), of which 999 are considered subsequent violations pursuant to 7 M.R.S. § 616-A(2)(A)(2).
- 19) That of the 1,000 violations described in paragraphs fifteen and sixteen, at least 700 occurred after a Board representative spoke on phone with the Company on June 22, 2022, to inform the Company about the unlawful applications.

- 20) That the actions described in paragraph eighteen constitute at least 700 knowing and willful violations.
- 21) 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.
- 22) That this Agreement shall not become effective unless and until the Board accepts it.
- 23) That in consideration for the release by the Board and the OAG of the causes of action which the Board and the OAG have against the Company resulting from the violations referred to in paragraphs fifteen and sixteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$81,880.00, with \$40,940.00 of the penalty suspended provided that the Company does not commit any violations of Federal or State of Maine pesticide law over a five-year period beginning on the effective date of this Agreement. The unsuspended portion of the penalty, \$40,940.00, shall be paid in monthly installments of \$3,412.00. Payments are due on the first of the month starting December 1, 2023, through October 1, 2024. The final payment of \$3,408.00 will be due on November 1, 2024. (Please make checks payable to Treasurer, State of Maine.)
- 24) That in the event the Company fails to make a payment as described in Paragraph 23 of this Agreement, the remaining unsuspended portions and suspended portions of the penalty as described in Paragraph 23 of this Agreement become immediately due and payable.
- 25) That in the event the Company commits any violations of Federal or State of Maine pesticide law—as determined by Board staff in the normal course of compliance investigations—over the five-year period beginning on the effective date of this Agreement, the suspended portion of the penalty becomes immediately due and payable.
- 26) The Board and OAG grant a release of their causes of actions against the Company for the specific violations cited in Paragraph 23 on the express condition that all actions listed in Paragraph 23 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 payment of the unsuspended portion of the penalty pursuant to Paragraph 23 and this Agreement is accepted by the Board.
- 27) 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 23 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 and/or M.R. Civ. P. 80H.
- 28) 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.
- 29) 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.

30) 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 four pages.

INSIGHT PEST SOLUTIONS, LLC

By:  Date: 11/29/23

Type or Print Name: THOMAS J FLAHERTY IV

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
John Pietroski, Acting Director

APPROVED:

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