

Proposed Administrative Consent Agreement Background Summary

Subject: Joe Dunne
Sullivan Property Management
263 Pine Street
Lewiston, Maine 04240

Date of Incident(s): On or about August 6, 2011

Background Narrative: The BPC received a call that an unlicensed employee of Sullivan Property Management made an insecticide application to units in an apartment building at 111 Ash Street in Lewiston to control fleas and ticks. A follow-up inspection with the company owner and his employee confirmed that the unlicensed employee did make a pesticide application to at least two apartments, the hallways and cellar of the apartment building.

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.

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board in formulating a penalty proposal.

Attachments: Proposed Consent Agreement

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

Joe Dunne)
Sullivan Property Management) ADMINISTRATIVE CONSENT AGREEMENT
263 Pine Street) AND
Lewiston, Maine 04240) FINDINGS OF FACT

This Agreement, by and between Sullivan Property Management (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 amended by the Board on June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Company is in the property management/property rental business, including in the Lewiston area.
2. That on August 8, 2011, the Board received a call alleging a Company employee was performing unlicensed pest control work in an apartment building at 111 Ash Street in Lewiston.
3. That in response to the call in paragraph two, a Board inspector made multiple phone calls to the Company in an attempt to schedule a pesticide inspection. Eventually arrangements were made with the Company owner, Joe Dunne and employee Edward Crowell to conduct a follow-up pesticide inspection on August 17, 2011.
4. That during the inspection in paragraph three, the inspector documented that, on or about August 6, 2011, Crowell applied Hot Shot Bedbug & Flea Home Insect Killer (EPA Reg. # 9688-85-8845) to control fleas, in at least two occupied apartments, and the halls and cellar at the 111 Ash Street apartment building.
5. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
6. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) as any application of any pesticide under contract or for which compensation is received or any application of a pesticide to a property open to use by the public. Applications made to rented apartments are considered applications for which compensation is received, and applications made to the halls of the apartment building are considered as applications made to areas that are open to the public.
7. That no one from the Company had a commercial pesticide applicator's license at the time of the application described in paragraph four.
8. That the circumstances described in paragraphs one through seven constitute a violation of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A) III.
9. That the Board has regulatory authority over the activities described herein.
10. 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.

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 causes of action which the Board has against the Company resulting from the violation referred to in paragraph eight, the Company agrees to pay to the State of Maine the sum of \$500. (Please make checks payable to Treasurer, State of Maine).

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

SULLIVAN PROPERTY MANAGEMENT

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General