

Proposed Administrative Consent Agreement Background Summary

Subject: Donald and Christopher McCarthy
Olde English Village, LLC
503 Westbrook Street
South Portland, ME 04106

Date of Incident(s): Various dates in 2011, 2012 and 2013

Background Narrative: A Board inspector followed up on a call received on January 15, 2013. The caller said that employees at the Olde English Village apartment building complex were making unlicensed pesticide applications. The inspector interviewed employees, including the manager of the facility. Based on those interviews, on-site observations of pesticides in inventory, application equipment seen and documentation of a specific, representative pesticide application, it was confirmed that employees of Olde English Village were making unlicensed commercial pesticide applications. In addition, while on site the inspector saw two employees with an unmarked, partially filled pesticide container.

Summary of Violation(s):

- 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.
- 7 M.R.S. §606 2D, prohibits handling, transporting or otherwise distributing pesticides in a careless, faulty, or negligent manner.

Rationale for Settlement: The staff compared the violations to similar cases settled by the Board factoring in storing pesticides in an unmarked container.

Attachments: Proposed Consent Agreement

FEB 3 2014

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

CK# 5222
Date: 1-30-14
Amt \$ 500.00
PL

Olde English Village, LLC) ADMINISTRATIVE CONSENT AGREEMENT
503 Westbrook Street) AND
South Portland, ME 04106) FINDINGS OF FACT

This Agreement, by and between Olde English Village, LLC (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 owns and manages the Olde English Village apartment complex at 503 Westbrook Street in South Portland, Maine.
2. That on January 15, 2013, the Board received a call alleging employees of the Company had performed unlicensed pesticide applications at the apartment building described in paragraph one.
3. That in response to the call in paragraph two, a Board inspector met with Company employees Leah Hennigar (building mgr.), Ronald Garland (maintenance mgr.), and Chris Anderson (worker) on January 29, 2013, to conduct an inspection on pesticide use at this facility.
4. That during the inspection described in paragraph three, Garland acknowledged that Company employees applied Bed Bugs No More insecticide to rented Company apartments. The inspector documented one such application made by Company employees Chris Anderson and Jeremy Creamer to the interior of rented apartment number 307 in B building on January 8, 2013.
5. That during the inspection described in paragraphs three and four, Company employees Chris Anderson and Jeremy Creamer arrived on site with an unmarked partially filled one gallon container they told the inspector contained Bed Bugs No More insecticide. Garland stated that the container probably got wet and the label fell off.
6. That during the inspection described in paragraphs three and four, the inspector saw a pump-up type hand sprayer with a Roundup herbicide logo on it, and asked what it was used for. Anderson stated it was used by Company employees to apply Roundup to Company sidewalks in the summer.
7. That the inspector asked Garland if there were any other pesticides stored at the Company. Garland said no.
8. That the inspector asked to see the boiler rooms for units A and F. No pesticides were found stored in unit A's boiler room. In the boiler room for unit F, the following stored pesticides were found: three cans of Raid Fogger, EPA reg. no. 4822-452; five cans of Bed Bug and Flea Fogger, EPA reg. no. 1021-1674-8845; and approximately twenty- four containers of JT Eaton Kills Bed Bugs and Crawling Insects, EPA reg. no. 56-67.
9. That a box that held full JT Eaton Kills Bed Bugs and Crawling Insects containers had a shipping label with Garland's name on it and was addressed to the Company. The date on the label was 6-18-10.
10. That Anderson, Garland, and Creamer said the JT Eaton Kills Bed Bugs and Crawling Insects insecticide had not been used at the Company in more than two years, but the Raid Fogger had been used within six months, and the Bed Bug and Flea Fogger within three months.

11. That the inspector saw an empty can of Bed Bug and Flea Fogger in the trash can directly under the shelf where the pesticides described in paragraph eight were stored.
12. 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.
13. 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.
14. That neither the Company, nor anyone employed by the Company, had a commercial pesticide applicator's license at the time of the applications described in paragraph four, six, and ten were made.
15. That the circumstances described in paragraphs one through fourteen constitute violations of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A) III.
16. That 7 M.R.S. §606 2D, prohibits handling, transporting or otherwise distributing pesticides in a careless, faulty, or negligent manner.
17. That the circumstances in paragraphs three, four and five, constitutes a violation of 7 M.R.S. §606 2D. Company employees used a pesticide in an unmarked container.
18. That the Board has regulatory authority over the activities described herein.
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 fifteen and seventeen, 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 three pages.

OLDE ENGLISH VILLAGE LLC

By: 

Date: 1/30/14

Print name: CHRISTOPHER MCCARTHY

Its: GENERAL MANAGER

BOARD OF PESTICIDES CONTROL

By: _____
Henry Jennings, Director

Date: _____

APPROVED

By: _____
Mark Randlett, Assistant Attorney General

Date: _____

