

Proposed Administrative Consent Agreement Background Summary

Subject: Ellen McLaughlin
Gateway Inn
1963 Medway Road
Medway, Maine 04460

Date of Incident(s): Throughout 2012

Background Narrative: Through inspection work by a Board inspector, it was determined that the owner of the Gateway Inn made unlicensed indoor applications of pesticides to the facility. Pesticide applications were made to common areas as well as to rented rooms. In addition, the owner did not post the application information so that employees were informed about the pesticide applications.

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.
- CMR 01-026 Chapter 26 Section 3(B) requires that at least 24 hours before a non-exempt pesticide application is made, a business must post or cause to be posted a Board approved written notice to employees about the applications.

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board, the extent of the unlicensed applications and the applicator's lack of candor in formulating the penalty proposal.

Attachments: Proposed Consent Agreement

FEB 3 2014

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

CK#16953
Date: 1-29-14
Amt: \$500.00
PL

Ellen McLaughlin)
Gateway Inn) ADMINISTRATIVE CONSENT AGREEMENT
1963 Medway Road) AND
Medway, Maine 04460) FINDINGS OF FACT

This Agreement, by and between Gateway Inn (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 is located in Medway, Maine and rents rooms to the public for overnight accommodations. The Company is owned and managed by Ellen McLaughlin.
2. That from a market place inspection on January 17, 2013, and sales records collected by a Board inspector during a follow up marketplace inspection at Maine Paper and Janitorial Products in Hermon on February 19, 2013, it was determined that the Company received a case (12 x 16 oz.) of Bed Bug, Lice and Dust Mite Spray (EPA reg. no. 706-110) on the following dates: June 10, 2011; August 19, 2011; August 31, 2011; September 18, 2011; September 30, 2011; October 15, 2011; October 31, 2011; March 3, 2012; March 17, 2012; April 16, 2012; August 18, 2012; September 3, 2012; and September 15, 2012. On July 19, 2011, the Company received two cases of this same product.
3. That Maine Paper and Janitorial Products invoice # 079751 indicates on January 23, 2013, the Company returned and was credited for one case (12 x 16 oz.) and four cans of Bed Bug, Lice and Dust Mite Spray.
4. That on January 17, 2013, a Board inspector contacted McLaughlin at the Company to ask about her use of the Bed Bug, Lice and Dust Mite Spray in 2012. McLaughlin stated she used it throughout the building throughout 2012 and that she would treat rooms for fleas and ticks when the renters had dogs with them while those guests were out on errands and activities. She said that a Dept. of Health and Human Services employee later told her she could not use the product. When the Board inspector asked McLaughlin for specific information on where and when she used the pesticide she asked him to leave the premises.
5. That on January 22, 2013, the Board inspector again met with McLaughlin at the Company's Medway site to do an inspection on her use of pesticides. McLaughlin stated that she applied Bed Bug, Lice and Dust Mite Spray at the facility sometime in August of 2012 when Modern Pest Control was there to treat a bed bug problem in room 104. McLaughlin said she sprayed the two mattresses, box springs and bed frames in the room. She also sprayed the hallway as a precaution because the articles she treated were carried out from the room and put on her truck for later disposal.
6. That during the inspection described in paragraph five, McLaughlin told the inspector she did not post notification information about the August 2012 application anywhere in the building for her employees.
7. That from the inspection described in paragraph five the inspector collected McLaughlin's typed statement about her use of Bed Bug, Lice and Dust Mite Spray as outlined in that same paragraph. McLaughlin wrote in part that she purchased the spray from Maine Paper.

8. That during the inspection described in paragraph five, the inspector collected signed written statements that in part stated McLaughlin did not know the disposition of 63 cans of the Bed Bug, Lice and Dust Mite Spray, that she started ordering sprays in 2012, that in the fall of 2012, around October, a DHS inspector told her to stop using sprays, and that she applied the spray as a flea treatment to unoccupied rooms.
9. That during the inspection described in paragraph five, McLaughlin showed the inspector 16 (13 oz.) cans of Bed Bug, Lice and Dust Mite Spray that were on her desk. McLaughlin stated these were the only cans of this product she could find on the premises. The inspector placed a stop sale, use, removal order on these products.
10. That CMR 01-026 Chapter 26 Section 3(B) requires that at least 24 hours before a non-exempt pesticide application is made, a business must post or cause to be posted a Board approved written notice to employees about the applications.
11. That the circumstances in paragraphs one, two, four, five, six, and ten constitute a violation of CMR 01-026 Chapter 26 Section 3(B).
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. The applications described in paragraphs four and five were applications made to areas that are open to use by the public.
14. That the pesticide applications made to the Company as described in that paragraphs four and five above constitute custom applications under 22 M.R.S. § 1471-C(5-A) and, therefore, a commercial applicator's license was required for those applications.
15. That no one from the Company had a commercial pesticide applicator's license at the time of the pesticide applications described in paragraphs four and five were made.
16. That the circumstances described in paragraphs one, two, four, five, twelve, thirteen, fourteen, and fifteen constitute multiple violations of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
17. That the Board has regulatory authority over the activities described herein.
18. 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.
19. That this Agreement shall not become effective unless and until the Board accepts it.
20. 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 eleven and sixteen, 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.

GATEWAY INN

By: Ellen McLaughlin Date: 12-9-14

Type or Print Name: Ellen McLaughlin

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED

By: _____ Date: _____
Mark Randlett, Assistant Attorney General