

CASE INVESTIGATION SUMMARY

Company: The Bug Guys **License:** None

Origin of Case: Complaint call to Board, May of 2013

Dates of Incident: 2012 to present

Pesticide(s) Involved: Mosquito Barrier

Summary of Allegation(s): The allegation against this company is that they are making unlicensed commercial pesticide applications to control mosquitoes and ticks.

Staff Action: A Board inspector followed up on information that the company placed their advertising brochures at various stores in south western Maine. The inspector confirmed and documented that he found brochures at stores in Hiram, Naples, and Waterboro. The inspector then went to the residential address he believed to be the company's base of operation. No one answered the door, but the inspector noted that there was a truck with a poly tank in the bed, parked at the address. Eventually, on May 23, 2014, the inspector was able to meet with Brian Howland, the company owner/applicator, to conduct a use inspection on the pesticide the company uses to make applications. A consent agreement was sent to the company by certified mail. It was returned as unclaimed. Numerous phone calls were made to the company in an effort to discuss the consent agreement, voice messages were left on the phone system. They were unsuccessful. The consent agreement was then sent as regular mail. The owner/applicator of the company called and left a voice message that he was not doing anything wrong. Again numerous follow up calls were made to the owner/applicator of the company each leaving phone messages on his voice mail in an effort to resolve the consent agreement. No phone calls were returned by the company owner/applicator.

Staff Findings: The company made unlicensed commercial pesticide applications.

Attachment(s):

- Consent agreement
- Company advertising brochure

Applicable Citations of Law:

- 22 M.R.S. § 1471-D(1)A– No commercial applicator may use or supervise the use of any pesticide within the State without prior certification from the board, provided that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator.
- CMR 01-026 Chapter 31 Section 1(A)III– supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator...

Staff Recommendation(s): Since the staff has been unable to reach a settlement, it recommends referring the case to the Office of the Attorney General.

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

Brian Howland)
The Bug Guys) ADMINISTRATIVE CONSENT AGREEMENT
212 King Street) AND
Hiram, Maine 04041) FINDINGS OF FACT

This Agreement, by and between The Bug Guys (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 on May 16, 2013, the Board received a phone call and the caller said that he saw the Company's brochures in several convenience stores in the Raymond /Casco area advertising that they provide mosquito, black fly, and tick control services using an organic type program.
2. That the caller in paragraph one also said he had seen the Company's pickup truck with a large tank on the back and a hose and reel set up and suspected that the Company was making unlicensed pesticide applications. The caller provided the telephone number listed in the brochure.
3. That the inspector contacted the stores that the caller described in paragraph one and confirmed that Company brochures were in circulation. The inspector collected one of the brochures at a store which was later placed in the case file and identified as attachment 1 to case number 130523EPM05.
4. That the inspector went to Company's Hiram address, no one was home. The inspector took a digital photo of a pickup truck in the driveway. The truck had a poly-type spray tank in the bed and a hose and reel set up. This photo was identified as attachment 2 to case number 130523EPM05.
5. That on May 23, 2013, a Board inspector met with the Company owner, Brian Howland to do an inspection. Howland said he only put out Company brochures advertising pesticide application services as a feeler, but did not do any applications. After the inspector pointed out that the truck and equipment looked used, Howland said he made applications to his own yard and a friend's yard.
6. That the inspector asked about the customer testimonials listed in the Company advertising brochures described in paragraphs one, two, and three. Howland at that point acknowledged that those testimonials were from customers for commercial pesticide applications he made in 2012.
7. That the inspector completed a pesticide use inspection with Howland for his custom application of Mosquito Barrier, an insect repellent, in June of 2012 to a one half acre residential customer's property in Scarborough. The inspector documented the pesticide label and identified it as sample number 130523EPM05A.
8. That on May 30, 2012, Howland took both the Board's core exam and biting fly category exam and did not pass either exam.
9. 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.

10. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) includes any application of any pesticide under contract or for which compensation is received.
11. That the pesticide applications described in paragraphs six and seven, constitute custom applications under 22 M.R.S. § 1471-C(5-A) and, therefore, a commercial applicator's license was required for those applications.
12. That no one from the Company had a commercial pesticide applicator's license at the time of the pesticide applications described in paragraphs six and seven.
13. That the circumstances described in paragraphs one through twelve constitute violations of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
14. That the Board has regulatory authority over the activities described herein.
15. 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.
16. That this Agreement shall not become effective unless and until the Board accepts it.
17. 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 paragraph thirteen, 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.

THE BUG GUYS

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General