

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** Ronald Winslow  
Orkin Exterminating Company Inc.  
960 Riverside Street  
Portland, Maine 04103

**Date of Incident(s):** October 26, 2015

**Background Narrative:** On November 20, 2015, the Board received a complaint call from a Sweden resident. The caller stated that when she arrived home from work there was an Orkin sign posted on her property indicating the company applied a pesticide. The Sweden resident was not an Orkin customer. A Board inspector met with both the Sweden resident and personnel from Orkin and confirmed that an Orkin applicator did apply two insecticides to the exterior of the resident's home. Although Orkin had a policy in place to positively identify the proper treatment site by checking the customer's electric meter number, the Orkin applicator told the inspector he did not check the last two digits of the electric meter number on the caller's house. Orkin acknowledged the wrong property was treated.

**Summary of Violation(s):**

- CMR 01-026 Chapter 20 Section 6(D)2 No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term "legal occupant" includes tenants of rented property.
  
- CMR 01-026 Chapter 20 Section 7 Commercial applicators making outdoor treatments to residential properties must implement a system, based on Board approved methods, to positively identify the property of their customers. The Board shall adopt a policy listing approved methods of positive identification of the proper treatment site.

**Rationale for Settlement:** The staff compared the violation to similar cases settled by the Board and the Company's violation history in formulating a penalty proposal.

**Attachments:** Proposed Consent Agreement

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

In the Matter of:	)	ADMINISTRATIVE CONSENT
Orkin Exterminating Company Inc.	)	AGREEMENT
960 Riverside Street	)	AND
Portland, Maine 04103	)	FINDINGS OF FACT

This Agreement by and between Orkin Exterminating Company Inc. (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 December 13, 2013.

The parties to this Agreement agree as follows:

1. That the Company provides commercial pest control services and has the firm license number SCF 15034 issued by the Board pursuant to 22 M.R.S. § 1471-D (1)(B).
2. That on November 20, 2015, a homeowner from Sweden called the Board to report that the Company made a pesticide application to the exterior of her home. The caller was not a customer of the Company.
3. That in response to the call in paragraph two, a Board inspector called the homeowner and left her a voice message. The homeowner called the inspector back and a meeting was arranged for December 4, 2015.
4. That on December 4, 2015, the inspector met with the caller at her home on 817 Knights Hill Road in Sweden to investigate the alleged unauthorized pesticide application. The inspector interviewed the homeowner.
5. That from the investigation described in paragraph four, the inspector documented a service order sent by the Company to the homeowner that listed pesticide applications made to her property on October 26, 2015. Additionally, the inspector took digital photos of the sign the Company posted on the caller's property the day of the application.
6. That on December 11, 2015, the inspector conducted a follow up investigation with the Company and met with the manager of the Company's Portland branch. The Company's service manager and the Company applicator that made the application described in paragraphs two and five were also present.
7. That from the investigation described in paragraph six, the inspector documented through interviews and a copy of the original Company work order, that the Company applicator intended to treat their customer at 4 Harmon Lane in Sweden. He incorrectly made the application several driveways down at 817 Knights Hill Road in Sweden. Two insecticides were applied. Ever Green Dust was applied as a crack and crevice treatment to the exterior of the house and Talstar Professional insecticide was applied as an exterior foundation perimeter treatment.
8. That CMR 01-026 Chapter 20 Section 6(B) requires prior consent from the property owner before a person can apply pesticides to the property of another.
9. That the Company did not have the homeowner's authorization to make pesticide applications at 817 Knights Hill Road in Sweden

10. That the circumstances described in paragraphs one through nine constitute a violation of CMR 01-026 Chapter 20 Section 6(B).
11. That CMR 01-026 Chapter 20 Section 7 requires the positive identification of the proper treatment site when commercial applicators are making outdoor treatments to residential properties. Companies must implement a system, based on Board approved methods, to positively identify the property of their customers. The Board adopted a policy listing approved methods of positive identification of the proper treatment site.
12. That during the investigation described in paragraph six, the Company applicator told the inspector that although he looked at the electric meter number when he was at the wrong property at 817 Knights Hill Road, he did not read the last two digits of that electric meter number. The first six digits of the two residences were the same, the last two digits were not. For this reason, at the field level, the Company applicator did not comply with the requirement to positively identify the proper treatment site.
13. That the circumstances in paragraphs one through seven, eleven, and twelve constitute a violation of CMR 01-026 Chapter 20 Section 7.
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.

That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violations referred to in paragraphs ten and thirteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$1,000.00. (Please make checks payable to Treasurer, State of Maine).

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

ORKIN EXTERMINATING COMPANY INC.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_

Henry Jennings, Director

APPROVED:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Randlett, Assistant Attorney General