

# Proposed Administrative Consent Agreement Background Summary

5

**Subject:** Granite Bay Care, Inc.  
2338 Congress Street  
Portland, Maine 04102

**Date of Incident(s):** Approximately January 7, 2015, and other dates prior to this.

**Background Narrative:** A caller reported to the Board that staff at this company's Cape Road facility in Raymond was making pesticide applications indoors. A Board inspector went to the site and interviewed a facility worker and later met with the company's executive director in Portland. From these contacts, it was determined that an unlicensed in house maintenance employee purchased and applied Bed Bug Bully (unregistered in Maine) inside the Raymond facility. Unlicensed staff there also applied borax, Raid Roach Traps and Raid Spray to control insect problems.

## **Summary of Violation(s):**

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

CMR 01-026 Chapter 20, Section (I) A prohibits the use of any pesticide not registered by the Board in accordance with Title 7 M.R.S.A. §60 I.

**Rationale for Settlement:** The company was not soliciting commercial work but did make pesticide applications to their own facility. A licensed commercial applicator was then hired to address the pest problem.

**Attachments:** Proposed Consent Agreement

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

In the Matter of:	)	
Elizabeth Sullivan	)	ADMINISTRATIVE CONSENT AGREEMENT
Granite Bay Care, Inc.	)	AND
2338 Congress Street	)	FINDINGS OF FACT
Portland, Maine 04102	)	

This Agreement by and between Granite Bay Care, 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 operates multiple residential care facilities including Granite Bay Care, Inc. located at 23 Cape Road in Raymond.
2. That on January 26, 2015, the Board received a call from the parents of their autistic daughter who was a resident at the facility described in paragraph one. The parents alleged that Company staff made a pesticide application inside the facility on or about January 7, 2015, to control bed bugs and roaches.
3. That in response to the call in paragraph two, a Board inspector conducted a follow up inspection with Company employee Merriam Davis. Davis stated that bait stations and borax had been applied in the kitchen of the Raymond facility and that the inspector should contact the Company in Portland to get more information about this.
4. That on February 11, 2015 the inspector conducted a follow up inspection at the Company located at 2338 Congress Street in Portland. Granite Bay Care, Inc. in Raymond is an affiliate of the Company. The inspector met with Ken Olson, the executive director of the Company.
5. That during the inspection described in paragraph four, Olson acknowledge that an unlicensed in house maintenance employee purchased Bed Bug Bully from Amazon and applied it at their Raymond facility. Olson also stated that Raid Roach Traps and Raid Spray had been used by staff at their Raymond facility.
6. That the inspector later consulted with the Board registrar. The registrar determined that Bed Bug Bully was not registered in Maine and did not qualify for an EPA 25b exemption from registration.
7. That CMR 0 I -026 Chapter 20, Section (I) A prohibits the use of any pesticide not registered by the Board in accordance with Title 7 M.R.S.A. §60 I.
8. That the conditions in paragraphs one through seven constitute a violation of CMR 0 I -026 Chapter 20, Section (I) A.
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) 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. Compensation is defined in CMR 01-026 Chapter 10 Section 2(P) 1(b) For purposes of this definition, compensation is deemed to have been received for a pesticide application where any form of remuneration has been or will be exchanged, including payment of cash, rent, or other financial consideration, or by the exchange of goods and/or services. Residents pay rent at the Company facility in Raymond. In CMR 01-026 Chapter 10 Section 2(P)2(b) property open to use by the public includes common areas of apartment buildings and occupied apartments. A staff person for the Company treated both common areas and bed rooms at the Raymond facility.
11. That no one from the Company had a commercial pesticide applicator's license at the time of the application described in paragraphs three and five.
12. That the circumstances described in paragraphs one through six and nine through eleven constitute violations of 22 M.R.S. § 1471-D(1) (A) and CMR 01-026 Chapter 31 Section 1(A) III
13. That the Board has regulatory authority over the activities described herein.
14. 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.
15. That this Agreement shall not become effective unless and until the Board accepts it.
16. 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 eight and twelve, the Company agrees to pay to the State of Maine the sum of \$250. (Please make checks payable to Treasurer, State of Maine.)

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

\_\_\_\_\_ Date: \_\_\_\_\_  
 GRANITE BAY CARE, INC.

**BOARD OF PESTICIDES CONTROL**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Henry Jennings, Director

**APPROVED:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Mark Randlett, Assistant Attorney General