

Proposed Administrative Consent Agreement Background Summary

Subject: Mosquito Squad of Southern Maine
10 Snow Canning Road
Scarborough, Maine 04074

Date of Incident(s): July 31, 2018 wrong property/ 2018 various dates unlicensed/unsupervised commercial applicators/ 2018, 2019, 2020, various dates incomplete commercial pesticide application records/ June 17, 2020 insufficient notification to registry member.

Background Narrative: The Board received a call that Mosquito Squad of Southern Maine (MSSM) made a pesticide application to the wrong property at 10 Wilson Road in Gorham. A follow up with the homeowner and MSSM confirmed the application was made on July 31, 2018 to the wrong property. The intended customer address was 5 Wilson Road. No applicator name was on the application record. The MSSM applicator said both houses and their garages were similar to the description on his work order. The MSSM had no method in place to positively identify their customer's property. There was no applicator name on the work order.

On September 10, 2018 the Board received a complaint that the MSSM was sending out unlicensed and unsupervised pesticide applicators to make custom pesticide application. An inspector conducted follow up inspections with MSSM and reviewed application records for 2018 and confirmed that three MSSM pesticide applicators made a minimum of 170 unlicensed and unsupervised custom applications in 2018. Application records were incomplete, including applicator name.

On July 17, 2019 a Board inspector conducted a routine inspection with a MSSM applicator making a pesticide application in Gray. The pesticide application record for that job was missing the application method, size of area treated, site treated, application rate, and a record of sprayer calibration.

On June 23, 2020 a follow up inspection was done on an odor complaint. A review determined MSSM records were incomplete, including application method, applicator's license number, size of area treated, target pest, site or crop treated, and sky conditions.

On June 23, 2020 a Board inspector conducted a follow up inspection with the company in response to a complaint from a 2020 registry member who resides at 9 Ash Lane in York about lack of sufficient notification for an application made on June 17, 2020. MSSM's phone log documented that the Company called the registry member's telephone number at 11:39 AM. The company made the application to a property listed as an abutter to the registry member on the 2020 Maine Pesticide Notification Registry from 11:49 AM to 11:54 AM. At least six hours of advance notice to registry members is required.

Summary of Violation(s):

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.

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.

22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III: 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 50, Section 1(A). **Pesticide Application Records**

- I. Commercial agricultural producers and commercial applicators shall maintain pesticide application records consistent with paragraph II. below for a period of two years from the date of application. Such records shall be kept current by recording all the required information on the same day the application is performed. These records shall be maintained at the primary place of business and available for inspection by representatives of the Board at reasonable times, upon request.
- II. Pesticide application records shall include, at a minimum:
 - a. Site information including town and location, crop or site treated, target organism, customer and customer address_(where applicable); and
 - i. for broadcast applications, size of treated area (when completed);
 - ii. for volumetric applications as described on the label, the volume treated;
 - iii. for non-broadcast applications (such as spot treatments, crack and crevice or stump treatments) a practical description of the scope or extent of the application (such as number of trees, stumps or rooms treated).
 - b. **Application information.** For each distinct site, records must include date and time of application(s), brand name of pesticide(s) applied, EPA registration number(s), active ingredient(s), restricted entry interval(s)

and/or ventilation period(s) (where applicable), method of application (type of equipment), dilution agent(s) (other than water), the licensed applicator's name and certification number, the name of any noncertified applicator that made the application (where applicable), and spray contracting firm (where applicable).

- c. **Rate information.** For each distinct site, application rate information must be maintained as follows:
 - i. **Restricted Use Pesticides.** For restricted use pesticides, applicators shall record the total amount of pesticide applied (undiluted).
 - ii. **General Use Pesticides.** For general use pesticides, applicators shall record:
 - (1) rate information as described in (i.) above; or
 - (2) the mix ratio and the total mix applied; or
 - (3) the mix ratio and the mix per unit area applied.
- d. For outdoor applications, except those listed below, weather conditions including wind speed and direction, air temperature and sky conditions recorded such as sunny, partly cloudy, overcast, foggy or rainy. No weather condition records need be kept for outdoor applications involving:
 - i. pesticides placed in bait stations;
 - ii. pesticide-impregnated devices placed on animals, such as ear tags; or
 - iii. pesticides injected into trees or utility poles

CMR 01-026 Chapter 28, Section 2 (D) to notify individuals listed on the Maine Pesticide Notification Registry at least six hours in advance of any pesticide application made to abutting properties within 250 feet of a registrant's listed property.

Rationale for Settlement: The large number of unlicensed/unsupervised commercial pesticide applications, deterrent for this company and others to send out unlicensed/unsupervised commercial applicators, foreseeability of the violations, the scope of violations (unlicensed applicators, lack of a system to positively ID treatment site/applying to wrong property, insufficient notification to a registry member, insufficient record keeping)

Attachments: Proposed Consent Agreement

OCT 25 2021

CK#1894

Date 10/20/21

Amt \$18,000

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

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In the Matter of:)
Mosquito Squad of Southern Maine) ADMINISTRATIVE CONSENT AGREEMENT
10 Snow Canning Road) AND
Scarborough, Maine 04074) FINDINGS OF FACT

This Agreement by and between Mosquito Squad of Southern Maine (hereinafter called the "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 pest control services in Maine.
2. That on August 2, 2018, Mary Wassick, who resides at 10 Wilson Road in Gorham, called the Board to report that the Company had made an unauthorized pesticide application to her property on July 31, 2018.
3. That in response to the call, a Board inspector met with Wassick on August 3, 2018 to interview her and collect relevant information.
4. That, during the meeting, Wassick showed the inspector a Company work order dated July 31, 2018 that Wassick found under her door when she returned home on that date. The work order indicated that a mosquito and tick application had been made to Adam Johnson's property, located at 5 Wilson Road in Gorham. The work order had a place to record the name of the Company employee that provided the service, but the applicator information was left blank.
5. That during the meeting described in paragraphs three and four, the inspector documented the Company's work order and also collected vegetation samples from an area next to Wassick's vegetable garden.
6. That based on the information and evidence collected from the meeting with Wassick, the inspector called the Company and got the name of the pesticides applied to Wassick's property. The inspector then called both the Board toxicologist and Wassick to convey the information about the pesticides applied.
7. That on August 7, 2018 a Board inspector met with Company applicator William Sullivan and Company administrator Scott Conrad to conduct a follow up inspection for the pesticides applied to Wassick's property on July 31, 2018.
8. That during the August 7, 2018 meeting, the inspector documented that Sullivan applied Bifen I/T insecticide/termiticide, Fendona CS insecticide, and Martin's 10% Permethrin Multi-Purpose insecticide to Wassick's lawn and property perimeter on July 31, 2018.
9. That, during the August 7, 2018 meeting, Williams told the inspector that the description of both Wassick's and Johnson's houses/garages was similar on his paperwork. In Williams' written statement, Williams further attributed the misplaced application to the location of the mailboxes, to the fact that it was the last application of the day, and to his over-confidence in knowing which property to treat.

10. That, during the August 7, 2018 meeting, the inspector collected specimen labels for Bifen I/T insecticide/termiticide, Fendona CS insecticide, and Martin's 10% Permethrin Multi-Purpose insecticide. The inspector also collected Sullivan's handwritten statement about the misplaced pesticide application and the original work order for the intended Johnson property application.
11. That CMR 01-026 Chapter 20 Section 7 requires that Commercial applicators making outdoor treatments to residential properties to implement a system, based on Board approved methods, to positively identify the property of their customers.
12. That the Company's original work order, as described in paragraph ten, was reviewed to see if the Company used a Board approved method to positively identify Adam Johnson's property at 5 Wilson Road in Gorham on July 31, 2018 before making the pesticide application. The review showed that the Company had not.
13. That the circumstances described in paragraphs one through twelve constitute a violation of CMR 01-026 Chapter 20 Section 7.
14. That CMR 01-026 Chapter 20 Section 6(D)(2) provides that 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.
15. That the Company did not have Wassick's authorization to make a pesticide application to her property on July 31, 2018.
16. That the circumstances described in paragraphs two through ten, fourteen and fifteen constitute a violation of CMR 01-026 Chapter 20 Section 6(D)(2).
17. That on September 10, 2018, the Board staff received a complaint that the Company had sent out unlicensed and unsupervised employees to make commercial pesticide applications.
18. That in response to the complaint described in paragraph seventeen, a Board inspector conducted follow up inspections with the Company on September 13 and September 28, 2018. The inspector collected Company pesticide application records on September 28 for 2018.
19. That from a review of the Company's 2018 pesticide application records, it was determined that no fewer than 170 custom pesticide applications had been made by at least three unlicensed and unsupervised Company employees.
20. That any person making a custom pesticide application, as that term is defined under 22 M.R.S. § 1471-C(5-A), must either be a certified commercial applicator or be 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.
21. That a custom application, as defined in 22 M.R.S. § 1471-C(5-A), includes 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.
22. That the circumstances described in paragraphs seventeen through twenty-one constitute 170 violations of 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.

23. That commercial applicators must keep pesticide application records as required by CMR 01-026 Chapter 50, Section 1(A).
24. That a review of the Company's pesticide application records collected during the September 28, 2018 inspection showed that the Company's records were incomplete and did not include the name of the applicators who made the applications.
25. That the circumstances described in paragraphs eighteen, twenty-three and twenty-four, constitute violations of CMR 01-026 Chapter 50, Section 1(A).
26. That on July 17, 2019 a Board inspector conducted an inspection with Company applicators making a commercial pesticide application in Gray. The pesticide application record for that job was missing the application method, size of area treated, site treated, application rate, and a record of sprayer calibration.
27. That the circumstances described in paragraphs twenty-three and twenty-six, constitute a violation of CMR 01-026 Chapter 50, Section 1(A).
28. That on June 23, 2020 a Board inspector conducted a follow up inspection with the Company in response to a complaint about odors from an application made on May 14, 2020.
29. That a review of the Company's pesticide application records collected during the June 23, 2020 inspection showed that the Company's records were incomplete, including application method, applicator's license number, size of area treated, target pest, site or crop treated, and sky conditions.
30. That the circumstances described in paragraphs twenty-three, twenty- eight, and twenty-nine constitute a violation of CMR 01-026 Chapter 50, Section 1(A).
31. That on June 23, 2020 a Board inspector also conducted a follow up inspection with the Company in response to a complaint from a 2020 pesticide notification registry member who resides at 9 Ash Lane in York about lack of notification for an application made on June 17, 2020.
32. That from the June 23, 2020 inspection, it was determined that a Company applicator made an outdoor pesticide application to a customer's property at 3 Ash Lane on June 17, 2020. The application record for this job indicated the application was made from 11:49 AM to 11:54 AM. A phone log kept by the Company recorded that a phone call was made to the registry member's phone number at 11:39 AM on June 17, 2020.
33. That the Company's customer at 3 Ash Lane is listed as an abutter to the registry member at 9 Ash Lane on the 2020 Maine Pesticide Notification Registry.
34. That commercial applicators are required by CMR 01-026 Chapter 28, Section 2 (D) to notify individuals listed on the Maine Pesticide Notification Registry at least six hours in advance of any pesticide application made to abutting properties within 250 feet of a registrant's listed property.
35. That the Company provided the registry member with only 10 minutes of advance notification before the pesticide application was made to that registry member's abutting property.
36. That the circumstances in paragraphs thirty-one through thirty-five constitute a violation of CMR 01-026 Chapter 28, Section 2 (D).

37. That the application record that was reviewed during the June 23, 2020 inspection was missing the following information: application method, active ingredient, REI, applicator license number, size of treated area, target pest, site or crop and sky conditions.
38. That the circumstances described in paragraphs thirty-one, thirty-two, and thirty-seven, constitute a violation of CMR 01-026 Chapter 50, Section (A).
39. That the Board has regulatory authority over the activities described herein.
40. 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
41. That this Agreement shall not become effective unless and until the Board accepts it.
42. 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 described in paragraphs thirteen, sixteen, twenty-two, twenty-five, twenty-seven, thirty, thirty-six, and thirty-eight, the Company agrees to pay a penalty to the State of Maine in the sum of \$20,000. The Board will suspend \$2,000 of the \$20,000 penalty on the condition that the Company commits no further violations for a two-year period. The unsuspended portion (\$18,000) shall be due immediately. The start date for the two-year period would be the date the Board ratifies the consent agreement. (Please make checks payable to Treasurer, State of Maine).

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

MOSQUITO SQUAD OF SOUTHERN MAINE

By:  Date: 10-21-21

Type or Print Name: Erik Hansen

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED:

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