

CASE SUMMARY

Subject: Town of Ogunquit
PO Box 875
Ogunquit, Maine 03907

Date of Incident(s): Bait stations: parking lot 7-11-16/7-18-16/7-25-16; Rip rap approximately 7-18-16

Background Narrative: On August 8, 2016, the Board received a call from an employee of the Maine Department of Environmental Protection (MDEP). The MDEP employee relayed information that the Maine Department of Inland Fisheries and Wildlife (MDIFWL) was investigating the spreading of rat poison on the Ogunquit Beach and one dead bird was found.

On August 9, 2016, A Board of Pesticides Control (BPC) inspector conducted a follow up inspection with Ogunquit's administrative services director and the director said he applied Tomcat All Weather Bait Chux rodenticide on 3 separate occasions in July of 2016. The applications were made to the town beach parking lot. The bait was placed in bait stations.

On August 11th, a MDEP employee called the BPC inspector investigating this case to convey information that another complaint was received from a person who reported finding a piece of rat bait in the rip rap section at the Ogunquit town beach. The MDEP employee went to the site and several young town seasonal employees there told the MDEP employee that they were involved with placing the bait throughout the rip rap.

The MDEP employee and the BPC inspector then met with Ogunquit's administrative services director on March 12th. The Ogunquit administrative services director acknowledged that he instructed two town workers in mid-July to make a hand application of rodenticide bait blocks by placing them in openings in the rocks of the rip rap between the parking lot and the beach.

The BPC inspector also interviewed the town workers on March 12th who were involved with the rip rap application. Once that application was complete, the worker placing the bait had several blocks left over and he said he flipped them into the bushes on the opposite side parking lot from the rip rap.

No one employed by the town was a certified pesticide applicator. The Tomcat All Weather Bait Chux label states "Bait stations are mandatory for outdoor, above-ground use". The Tomcat All Weather Bait Chux label states "Do not expose children, pets, or non-target animals to rodenticides". No records were kept for any of the pesticide applications.

Summary of Violation(s):

- 22 M.R.S. § 1471-D(1)(A) Requires that any person making a pesticide application that is a custom application must be a certified commercial applicator.
- 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F) require that pesticides be used consistent with their labels.
- CMR 01-026 Chapter 50, Section I(A). Requires that commercial applicators making pesticide applications, must keep pesticide application records.

Rationale for Settlement: The pesticide was applied in a careless, negligent or faulty manner or in a manner which was potentially harmful to the public health, safety or welfare or the environment.

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

Don Gerrish Town of)	ADMINISTRATIVE CONSENT AGREEMENT
Ogunquit)	AND
P.O. Box 875)	FINDINGS OF FACT
Ogunquit, Maine 03907)	

This Agreement by and between the Town of Ogunquit (hereinafter “Ogunquit”) 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 on August 8, 2016, the Board received a call from a Maine Department of Environmental Protection (MDEP) employee. The MDEP employee relayed information she received from a game warden with the Maine Department of Inland Fisheries & Wildlife (MDIFW), that MDIFW was investigating the spreading of rat poison on Ogunquit Beach and that one dead bird was found. A United States Fish and Wildlife Service’s forensic pathology report later stated that this bird died of pneumonia.
2. That on August 9, 2016, Gene Meserve, a Board inspector conducted a follow up inspection with Ogunquit’s administrative services director (ASD). The ASD acknowledged he was the applicator who put the rodenticide bait out.
3. That, during the inspection described in paragraph two, Meserve documented that the ASD applied Tomcat All Weather Bait Chux rodenticide on three separate occasions. Four blocks of bait were placed in each enclosed bait station. Six bait stations were placed out one hundred feet apart in the Town beach parking lot. For each application, the bait was put out at 10 p.m. and picked up at 5:30 a.m. on July 11- 12, 18- 19, and 25 - 26. The area treated was approximately 400 feet x 600 feet. The ASD and the Board inspector went to the site and the ASD showed the inspector where he had placed the bait stations. The inspector later marked these locations on an aerial photo. The ASD said he lost several bait stations during his applications. The inspector took photos of the label for Tomcat All Weather Bait Chux rodenticide and the bait stations used in the application. The inspector determined no pesticide application records were kept for these applications. During this inspection The ASD did not disclose that another rodenticide application had been made.
4. That the same day the inspection described in paragraphs two and three was completed, Meserve emailed the Board’s main office, the MDEP, and the MDIFW to update them on his findings.
5. That on August 11, 2016, a MDEP employee called Meserve. The MDEP employee told Meserve that his office just received another complaint from a person who reported finding a piece of rat bait in the rip rap section at the Ogunquit town beach. A MDEP employee went to the site the same day to search the rip rap for bait and found none, but while there, several Ogunquit town workers approached him and asked what he was looking for.
6. That during the discussion described in paragraph five, the workers said they were aware of the situation and were actually involved in placing the bait throughout the rip rap.
7. That the MDEP employee called Meserve to update him on the information described in paragraph six, which had not been shared with Meserve when he had met with the ASD.

8. That in response to the information reported to MDEP in paragraphs five and six, the MDEP employee and Meserve returned to Ogunquit on August 12, 2016. The MDEP employee arrived first and searched the rip rap for rodent bait but found none. Later while they were waiting to meet with the ASD, an Ogunquit town selectman that was at the town office told them he knew where there was a bait block near the beach. The MDEP employee went with the selectman and retrieved one bait block and returned. While Meserve met with the ASD, the MDEP employee went back to the beach and found another block in the same general vicinity as the previous one which was directly in front of the canopied area. This is on the edge of the beach parking lot just above the rip rap.
9. That during the Board inspector's meeting with the ASD on August 12, 2016, the ASD told the inspector that he instructed two town workers in mid-July to make a hand application of bait blocks by placing them in openings in the rocks of the rip rap between the parking lot and the beach. This is the same parking lot where the ASD made the bait station applications described in paragraph three.
10. That during August 12, 2016, meeting, the ASD completed a written statement summarizing the rodent problem, his purchase of chunked rat bait, his use of bait stations, and his directive to town employees to place the rat bait into holes in the rocks of the beach rip rap.
11. That on August 12, 2016, the inspector collected a photo copy of a receipt from the Tractor Supply Company in Sanford dated July 18, 2016, that showed that Ogunquit made the following purchases: Tomcat 4lb. Pail Chunx, Tomcat 9lb. Pail Chunx, Tomcat 9lb. Pail Chunx, and 18lb. pail for a total of 40 lbs. of rodenticide purchased.
12. That on August 12, 2016, the Board inspector also met with one of the Ogunquit Public Services workers the ASD directed to make the rodenticide bait application to the rip rap as described in paragraph ten.
13. That the public service worker said the ASD told him and a coworker to place rat poison blocks along the Ogunquit Beach rocks. The investigation determined that the interviewed worker picked up trash in the area while his coworker applied approximately 40-50 Tomcat Bait Chunx blocks by hand to the rocks on July 18, 2016, (he thought) by placing them in deep holes a "few feet apart" as instructed. The interviewed worker further stated they were later instructed to remove the bait blocks. The worker completed a written statement about the rodenticide application.
14. That the interviewed worker also told the Board inspector that after the rip rap baiting was completed as instructed several bait blocks were left over that were put in the bushes on the opposite side of the parking lot from the rip rap. The Board inspector determined there was no pesticide application record kept for this application or the application described in paragraph thirteen.
15. That on August 19, 2016, a Board inspector placed a Stop Sale/Use/Removal order on the following Tom Cat All Weather Bait Chunx: one 18 lb. pail, one 9 lb. pail, and one 4 lb. pail with one lb. in it for a total of 28 lbs. of rodent bait. The signed order was issued to The ASD.
16. That in an email to Board staff dated August 23, 2016, an MDEP employee wrote that his office had collected 23 pieces of bait (1.4375 lbs.) and that pieces collected by Ogunquit town personnel on August 8, 2016, were turned in to the Ogunquit police department. According to the label, the Tomcat All Weather Bait Chunx was in one-ounce bait blocks.
17. That on August 30, 2016, Board Staff called the Ogunquit Police Department and asked Police Chief Patricia Arnaudin how much rodenticide bait had been collected and turned in. Arnaudin said they had 87 whole blocks (5.4375 lbs.) and 15 broken pieces (estimated at .9375 lbs.). Arnaudin stated the bait came from the rip rap area next to the awnings.

18. That based on the amount of rodenticide purchased as described in paragraph eleven, and rodenticide collected and accounted for as described in paragraphs fifteen, sixteen, and seventeen it is estimated that 12 lbs. of bait was applied by Town employees and just less than 7.8125 lbs. of applied rodenticide was recovered. The remaining unrecovered rodenticide bait (estimated to be 4.1875 lbs.) is unaccounted for.
19. 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 in accordance with 22 M.R.S. § 1471-D(1)(A).
20. That “commercial applicator” includes individuals who apply pesticides in connection with their duties as employees of local governments, according to 22 M.R.S. § 1471-C(5).
21. That a custom application is also 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 parking lot and the area where the rip-rap is located are areas that are open to use by the public.
22. That the applications described in paragraphs two, three, six, nine, ten, twelve, thirteen, and fourteen constitute custom applications as defined in 22 M.R.S.A. § 1471-C(5-A).
23. That no one from Ogunquit had a commercial pesticide applicator’s license at the time of the applications described in paragraphs two, three, six, nine, ten, twelve, thirteen, and fourteen.
24. That the circumstances described in paragraphs one through twenty- three constitute multiple violations of 22 M.R.S. § 1471-D(1)(A).
25. That the Tomcat All Weather Bait Chux label states “Bait stations are mandatory for outdoor, above-ground use”.
26. That the Tomcat All Weather Bait Chux label states “Do not expose children, pets, or non-target animals to rodenticides”.
27. That 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F) require that pesticides be used consistent with their labels.
28. That the circumstances described in paragraphs one, two, five through fourteen, sixteen through eighteen, and twenty-five through twenty-eight constitute uses of a pesticide inconsistent with the product labeling and multiple violations of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F).
29. That commercial applicators making pesticide applications, must keep pesticide application records as required by CMR 01-026 Chapter 50, Section I(A).
30. That no records were kept of the pesticide applications described in paragraphs three and fourteen.
31. That the circumstances described in paragraphs three, fourteen, twenty-nine, and thirty constitute violations of CMR 01-026 Chapter 50, Section I(A).
32. That the Town of Ogunquit has fully cooperated with the Board to mitigate and address the application of rodenticide as described in this Agreement. Further, the Town of Ogunquit is training and educating all public service employees regarding the Town’s Ordinance which prohibits the use of pesticides, including the rodenticide used in July 2016.
33. That the Board has regulatory authority over the activities described herein.

34. That the Town 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.
35. That this Agreement shall not become effective unless and until the Board accepts it.
36. That, in consideration for the release by the Board of the causes of action which the Board has against the Town resulting from the violations referred to in paragraphs twenty-four, twenty-eight, and thirty-one, the Town agrees to pay to the State of Maine the sum of \$3,500. (Please make checks payable to Treasurer, State of Maine.)

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

TOWN OF OGUNQUIT

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General