

Proposed Administrative Consent Agreement

Background Summary

Subject: Roof Cleaning Solutions
141 Mayflower Heights Drive
Oakland, Maine 04963

Date of Incident(s): April of 2016; October 31, 2016

Background Narrative: The Board received a call that Roof Cleaning Solutions was advertising an ecofriendly product for power washing house roofs. The caller from Cumberland County hired the company only to realize that ZeroTol 2.0 was going to be applied. A board inspector later met with the company owner at an agreed upon site where the owner was spraying a customer's roof. The owner was applying ZeroTol 2.0 to the roof of a home in Raymond to control mold. No one from the Roof Cleaning Solutions company was a licensed applicator and ZeroTol 2.0 is not labeled for roofs.

Summary of Violation(s): 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. An unlicensed commercial applicator must be supervised on-site by either a licensed commercial applicator/master or a licensed 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.

7 U.S.C. § 136j (a)(2)(G), UNLAWFUL ACTS: to use any registered pesticide in a manner inconsistent with its labeling.

7 M.R.S. § 606 (2)(B): A person may not: Use or cause to be used any pesticide in a manner inconsistent with its labeling or with rules of the board, if those rules further restrict the uses provided on the labeling

22 M.R.S. § 1471-D(8)(F) Has made a pesticide recommendation, use or application, or has supervised such use or application, inconsistent with the labeling or other restrictions imposed by the board.

Rationale for Settlement: Compared the settlement to similar case settlements in the past.

Attachments: Proposed Consent Agreement

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

Roof Cleaning Solutions)	
141 Mayflower Heights Drive)	ADMINISTRATIVE CONSENT AGREEMENT
Oakland, Maine 04963)	AND
		FINDINGS OF FACT

This Agreement, by and between Roof Cleaning Solutions (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 is a commercial roof cleaning company offering services in Maine.
2. That on October 3, 2016, Board staff received a phone call from a customer in Cumberland County alleging that the Company advertised their use of environmentally friendly products but arrived with the intention of using ZeroTol 2.0 instead.
3. That in response to the call described in paragraph two, on October 31, 2016, a Board inspector conducted a follow up inspection with the Company owner who was applying ZeroTol 2.0 Fungicide, Bactericide, and Algicide to the shingled roof at 10 Cape View Drive in Raymond.
4. That during the inspection described in paragraph three, the inspector asked the dilution rate of ZeroTol 2.0 used on this job. The owner/applicator did not know the exact amount but stated he poured about five seconds from the ZeroTol 2.0 container into the mix tank of water.
5. That the ZeroTol 2.0 lists labeled sites as horticultural and turf use. Residential roofs are not a labeled site
6. 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.
7. That the circumstances described in paragraphs one through six constitute a violation 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)
8. That during the inspection described in paragraph three, the owner/applicator for the Company told the inspector that in addition to his use of ZeroTol 2.0, he regularly uses Clorox bleach to clean roofs on commercial jobs. Clorox bleach is registered as a pesticide.
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 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.

11. That the Company did not employ a master applicator, and no one from the Company had a commercial pesticide applicator's license at the time the applications described in paragraphs three, four, five, and eight were made.
12. That the circumstances described in paragraphs one 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 seven and twelve, 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.

ROOF CLEANING SOLUTIONS

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General