

Proposed Administrative Consent Agreement Background Summary

Subject: Mosquito Squad of Southern Maine
28 Adams Way
Scarborough, ME 04074

Date of Incident(s): May through September 2024

Background Narrative: On May 16, 2024, a Board inspector observed two company applicators applying Talak 7.9% F, EPA Reg. No. 91234-145, and Devito, EPA Reg. No. 91234-250. These insecticides were being applied to the lawn at a residential property in Old Orchard Beach, Maine for the control of ticks and mosquitos. The applicators observed by the inspector were not wearing chemical resistant gloves as required by the Talak label. Furthermore, the Devito label states “**DO NOT** apply to residential lawns and turf in residential settings”, indicating that the application of this product to the residential lawn was in violation of the label.

Also on May 16, 2024, a Board-licensed commercial applicator with the company called the Board’s office to report that a company employee had sprayed a residential property, located at 28 Eagles Nest Road in Gray Maine, without authorization. This application involved the same two products listed above, and body camera footage provided by the company confirmed that chemical resistant gloves were not worn by the applicator when making this application.

Between May 20, 2024 and September 6, 2024 a Scarborough resident contacted the Board office on multiple occasions to express concerns about drift onto her property and alleging subsequent symptoms of exposure. On May, 24, 2024 a Board inspector collected residue samples which tested positive for bifenthrin, but at a level below quantification limits. On July, 26, 2024 the resident contacted the Board office with the same concerns. On July, 29, 2024 a Board inspector collected samples from both the target and non-target properties. Analysis results demonstrated off-target deposition of bifenthrin at 0.7% concentration. Inspection efforts revealed that a company employee had applied Talak and Avesta on July 26, three days prior to sampling. On September 6, 2024 the resident contacted the Board office again with similar allegations. A Board inspector collected residue samples from the target and non-target properties on the same day as the call. Off-target residues were at 0.4% of the target concentration, indicating that the company failed to minimize drift to the maximum extent practicable.

Furthermore, body camera footage of several of the instances described here demonstrated applications being made directly to blooming weeds during daylight hours when bees would likely be foraging. The Talak 7.9%F label states “This product is highly toxic to bees exposed to direct treatment or residues on blooming crops or weeds. Do not apply this product or allow to drift to blooming crops if bees are visiting the treatment area,”, constituting application in violation of the label.

Summary of Violations: 01-026 C.M.R. ch. 20, § 6(D)(2) (2024) prohibits the application of a pesticide to the property of another without prior authorization from the owner, manager or legal resident of the property. The application at 28 Eagles Nest Road in Gray Maine was made without authorization in violation of this chapter.

C.M.R.-01-026, ch. 22, Section 4(B)(I) states that, “Pesticide applications shall be undertaken in a manner applications shall be undertaken in a manner which minimize pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.” Given that off target residue was detected on multiple occasions, there is evidence that a violation of the general standard CMR-01-026, Chapter 22, Section 4 (B)(I) occurred.

7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606 (2)(B) prohibit the use or supervision of such use of a pesticide inconsistent with its label. The site violation of the Devito label, the PPE and pollinator protection violations of the Talak 7.9% F label outlined above demonstrate multiple occurrences of use inconsistent with the pesticide label as prohibited.

The violations of 01-026 C.M.R ch. 20§ 6(D)(2) (2024) and C.M.R. -01-026, ch. 22 § 4(B)(I) are considered subsequent violations within a four-year period pursuant to 7 M.R.S. § 616-A(2)A(2), as are the violations of 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606 (2)(B) pertinent to use inconsistent with the label for Talak 7.9%F. Violations for use inconsistent with the label for Devito were treated as initial violations rather than subsequent due to inconsistencies with EPA labeling of sites for that active ingredient.

Rationale for Settlement: Per direction given by the Board at the October 2024 Board Meeting, this case has been selected for resolution by Consent Agreement with the Company. This agreement is to be comprehensive in nature to include all violations occurring in the 2024 application season.

Attachments: Proposed Consent Agreement