

Proposed Administrative Consent Agreement Background Summary

Subject: Alexander Passafiume
Mosquito Deleto
26 Twitchells Way
Sandown, NH 03873

Date of Incident(s): June 5, 2020 & January 30, 2020

Background Narrative: In early June 2019 Board staff were contacted about a possible unlicensed company advertising mosquito control services under the name Mosquito Deleto. The following investigation identified a number of properties where Mosquito Deleto had made pesticide applications for mosquito control in the Windham area. During an inspection with Mr. Passafiume on June 19, 2019, it was determined that Mosquito Deleto did not have any licensed applicators. A Stop, Sale, Use, Removal Order (SSURO) was issued on the remaining inventory of EcoVia EC Insecticide (25b exempt) until proper licensing requirements were met. An inspection with a pesticide dealer in Portland, ME revealed that Mr. Passafiume had purchased additional EcoVia EC two days after the issuance of the SSURO. An applicator record check conducted with Mr. Passafiume on January 30, 2020 demonstrated that Mosquito Deleto continued to make commercial pesticide applications in Maine following the inspection and issuance of the SSURO on June 19, 2019.

Summary of Violations: Any person making a pesticide application that is a custom application, including any application for which compensation is received (for-hire applications), as defined under 22 M.R.S. § 1471-C(5-A), must either be a certified commercial applicator or be working 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.

Commercial applicators making pesticide applications, must keep complete and up to date pesticide application records as required by CMR 01-026 Chapter 50, Section I(A).

CMR 01-026 Chapter 28 Section 3(B) requires that when outdoor mosquito applications are made, the treated area must be posted prior to making the pesticide application.

Rationale for Settlement: Mosquito Deleto was an unlicensed commercial pesticide application company in 2019 and failed to maintain pesticide application records and properly post application sites. Mosquito Deleto is no longer an operating entity in Maine and Mr. Passafiume no longer works in pesticide application and does not reside in Maine. A portion of the penalty been suspended so long as compliance is maintained for ten years.

Attachments: Proposed Consent Agreement

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

Alexander Passafiume
Mosquito Deleto
26 Twitchells Way
Sandown, NH 03873

)
) ADMINISTRATIVE CONSENT AGREEMENT
) AND
FINDINGS OF FACT

This Agreement, by and between Alexander Passafiume, doing business as Mosquito Deleto (hereinafter called the "Applicator") 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 during 2019, the Applicator operated as a commercial pesticide applicator offering services in Maine.
2. That on June 5, 2019, Board staff was contacted about the Applicator's roadside signs on Route 114 in Gorham, Maine, advertising the business name and phone number. The caller said the Applicator was also advertising pest control services on Facebook and was thought to be an unlicensed business.
3. That on June 18, 2019, by talking to the property owner at 37 Woldbrook Drive in Windham and collecting the door hanger left by the Applicator, a Board inspector discovered that the Applicator made a pesticide application to at that owner's residence on June 7, 2019.
4. That a Board inspector conducted a follow up inspection with the business owner Alexander Passafiume on June 19, 2019.
5. That during the inspection described in paragraph four, the inspector documented that the Applicator was not licensed as a commercial pesticide applicator in the State of Maine. The inspector also documented that the Applicator applied EcoVia EC insecticide to the lawn and property perimeter of the residential property at 520 Gray Road in Windham on June 17, 2019, to control mosquitoes.
6. That during the inspection described in paragraph four, the Board inspector asked Passafiume if he had made any other pesticide applications. Passafiume stated he had not.
7. That during the inspection described in paragraph four, the Board inspector discussed the licensing requirements for making for-hire commercial pesticide applications in the State of Maine, and that any subsequent applications made by the Applicator prior to attaining the required licensure would violate Maine pesticide laws.
8. That during the inspection described in paragraph four, the Board inspector placed a Stop Sale, Use and Removal Order on the container of EcoVia EC insecticide in the Applicator's possession at the time.
9. That on June 24, 2019, a Board inspector conducted an inspection at SiteOne Landscape Supply in Portland, Maine. During the course of the inspection, documentation was obtained demonstrating that the Applicator purchased fifteen, 64-ounce containers of EcoVia EC insecticide, two days after the initial Board inspection.
10. That on January 30, 2020, a Board inspector conducted a follow up inspection with the Applicator in response to evidence that the Applicator continued making mosquito applications during the 2019 season without becoming fully certified to do so in the State of Maine. During the course of this inspection, documentation was obtained

demonstrating that the Applicator had 43 customers during the 2019 mosquito season, and that commercial pesticide applications continued following the June 19, 2019, inspection and the Issuance of a Stop Sale, Use and Removal Order.

11. That Facebook advertising reviewed and documented by a Board inspector indicated that the services offered by the Applicator would include five applications over the course of the mosquito season.
12. That any person making a pesticide application that is a custom application, including any application for which compensation is received (for-hire applications), as defined under 22 M.R.S. § 1471-C(5-A), must either be a certified commercial applicator or be working 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.
13. That the applications documented in paragraphs three, five and ten above were applications for which compensation were received and, therefore, they were custom applications under 22 M.R.S. § 1471-C(5 & 5-A).
14. That the Applicator did not employ a master applicator, and no one from the business had a commercial pesticide applicator's license at the time the applications described in paragraphs three, five, and ten were made.
15. That the circumstances described in paragraphs one through fourteen constitute multiple violations of 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A).
16. That commercial applicators making pesticide applications, must keep complete and up to date pesticide application records as required by CMR 01-026 Chapter 50, Section I(A).
17. That from a review of the Applicator's records collected on June 19, 2019, and January 30, 2020, it was concluded that the application records were incomplete.
18. That the circumstances described in paragraph seventeen constitute multiple violations of CMR 01-026 Chapter 50, Section I(A).
19. That CMR 01-026 Chapter 28 Section 3(B) requires that when outdoor mosquito applications are made, the treated area must be posted prior to making the pesticide application.
20. That the applications described in paragraphs three, five and ten were not posted in compliance with CMR 01-026 Chapter 28 Section 3(B), and as such, constitute multiple violations of that requirement.
21. That the Board has regulatory authority over the activities described herein.
22. That the Applicator 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.
23. That this Agreement shall not become effective unless and until the Board accepts it.
24. That, in consideration for the release by the Board of the causes of action which the Board has against the Applicator resulting from the violations referred to in paragraphs fifteen, eighteen and twenty, the Applicator agrees to pay to the State of Maine a penalty of \$10,000, with \$8,500 of the penalty suspended, provided that the

Applicator does not commit any violations of Maine pesticide law over a ten-year period beginning on the effective date of this agreement. The unsuspended portion of the penalty shall be paid in three, \$500 installments, due March 1, April 1 and May 1, 2023. (Please make checks payable to Treasurer, State of Maine).

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

ALEXANDER PASSAFIUME, APPLICATOR

By:  Date: 2/27/2023

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED

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