

Proposed Administrative Consent Agreement

Background Summary

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Subject: Orkin Exterminating Company Inc.
960 Riverside Street
Portland, Maine 04103

Date of Incident(s): March 2021, and November 15, 2019.

Background Narrative: Orkin is a commercial spray contracting firm offering pest control services. Their Maine headquarters is in Portland. Company employees make commercial pesticide application throughout the state. Through following up on complaints and one self-reported incident, it was determined that the company was in violation of both Board regulations and state pesticide statutes.

Based on a review of Orkin's pesticide application records that an inspector collected on April 23, 2021 it was determined an unlicensed and unsupervised Orkin applicator made two commercial pesticide applications in March of 2021. The inspector returned to Orkin's Portland office on May 11, 2021 and collected additional pesticide application records for December 1, 2020 through March 31, 2021. A review of these records determined the same unlicensed and unsupervised Orkin applicator made three additional unlicensed and unsupervised commercial pesticide applications in March of 2021. The rate of application record for two rodenticide applications in March of 2021 was insufficient.

An Orkin service manager self-reported an incident involving a company applicator. The applicator was tasked with servicing an existing commercial account that consisted of checking and maintaining four exterior rodent bait stations around a building. The customer's dog consumed rodenticide from an unlocked, open bait station and had to have emergency veterinary care. A review of the application records for this November 15, 2019 application determined that the applicator falsified his application records for this account. Additionally, the bait stations were not checked and maintained. This application was inconsistent with the label directions and made in careless, negligent, and faulty manner.

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- Supervised on-site by either a licensed commercial applicator/master or a 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
- CMR 01-026 Chapter 50, Section I(A).

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.
- e. For TBT applications to marine vessels, applicators must also record the vessel identification and size, and the disposition of TBT wastes including chips/dust removed prior to application and empty containers.

- 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 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 labelling or other restrictions imposed by the Board (rate of application and site of application).
- U.S.C. § j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F) require that pesticide applications be made in a manner consistent with product labels.
- M.R.S. § 1471-D (8)(C), that it is unlawful to use or supervise the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment.

Rationale for Settlement: The major violations in this case, poisoning of the dog and sending out an uncertified/unlicensed/unsupervised applicator were foreseeable and preventable violations.

Attachments: Proposed Consent Agreement

JUN 21 2021

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

Ck# 12050415

Orkin Exterminating Company Inc.)
960 Riverside Street)
Portland, Maine 04103)

ADMINISTRATIVE CONSENT AGREEMENT
AND
FINDINGS OF FACT

Amt \$2500 -

Date: 6-17-21

This Agreement, by and between Orkin Exterminating Company Inc.(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 pest control company offering services in Maine with their Maine headquarters in Portland.
2. That on March 23, 2021, Board staff received a phone call alleging that the Company sent out unlicensed and unsupervised employees to make commercial pesticide applications in Maine during 2020 and 2021.
3. That in response to the call described in paragraph two, a Board inspector conducted a follow up inspection with Orkin's Regional Manager, John Tessier at the Company's Portland office on April 23, 2021.
4. That during the inspection described in paragraph three, the inspector collected some Company applicators' records for pesticide applications made in March of 2021.
5. That in reviewing the applicator records described in paragraph four, the Board inspector identified two residential pesticide applications made by the same unlicensed and unsupervised Company employee. One application was of Resolv Soft Bait rodenticide, and the other application was of Delta Dust Insecticide. Both applications were in the Town of Woolwich.
6. 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.
7. 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.
8. That the two pesticide applications described in paragraph five constitute custom applications of pesticides in accordance with 22 M.R.S. § 1471-C (5-A).
9. That the circumstances described in paragraphs one through eight constitute two violations of 22 M.R.S. 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
10. That on May 11, 2021 a Board inspector returned to Orkin's Portland office and met with Beth Falkner, the branch manager in training to conduct a follow up inspection to collect additional applicator records from December 1, 2020 through March 31, 2021 to determine if additional unlicensed applications were made. The focus was on three Company employees who had recently tested and in some cases failed their exams to become certified during this time.

11. That from a review of the applicator records collected in paragraph ten, it was determined three additional unlicensed and unsupervised pesticide applications were made by the same Company employee who made the unlicensed applications described in paragraph five. Resolv Soft Bait rodenticide was applied at one location, and Delta Dust Insecticide at the other three locations.
12. That the circumstances described in paragraphs six, seven, ten and eleven constitute three additional violations of 22 M.R.S. 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
13. That commercial applicators making pesticide applications, must keep pesticide application records as required by CMR 01-026 Chapter 50, Section I(A).
14. That the Company's pesticide application records kept for two rodenticide applications described in paragraphs four, five, ten, and eleven were incomplete. The rate of application was not recorded sufficiently.
15. That the circumstances described in paragraphs four, five, ten, eleven, thirteen, and fourteen, constitute violations of CMR 01-026 Chapter 50, Section I(A).
16. That on November 18, 2019 the Company service manager self-reported an incident that involved one of their licensed commercial pesticide applicators. The service manager reported that applicator Kevin McCarron serviced four exterior rodent bait stations at a commercial account located at 8 Spiller Drive in Westbrook on November 15, 2019 and the family dog of the customer at this site consumed rodenticide from a bait station.
17. That in response to Orkin's incident report to the Board described in paragraph sixteen, a Board inspector conducted a follow up inspection with Orkin's service manager Kyle Kent on November 20, 2019.
18. That from the inspection described in paragraph seventeen, the inspector determined the service described in paragraph sixteen was supposed to include opening the locked bait stations and replenishing the bait stations with new Contrac with Lumitrack Bait Blox, making service notes inside the bait station, cleaning and removing deteriorated bait and locking the rebaited stations.
19. That based on evidence at the customer's treatment site documented by Orkin's service manager, and a review of the applicator's application log, the applicator falsified his application records. The applicator's application record indicated that he applied eight bait blocks to four bait stations on November 15, 2019, when in fact he did not apply any new bait to the bait stations, and old unconsumed bait was not removed and disposed of.
20. That commercial applicators making pesticide applications, must keep pesticide application records as required by CMR 01-026 Chapter 50, Section I(A).
21. That the circumstances described in paragraphs sixteen through nineteen, constitute a violation of CMR 01-026 Chapter 50, Section I(A).
22. That 7 U.S.C. § j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F) require that pesticide applications be made in a manner consistent with product labels.
23. That 22 M.R.S. § 1471-D (8)(C) states that it is unlawful to use or supervise the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment
24. That the Contrac with Lumitrack Bait Blox (EPA Reg. No 12455-133) label contains the following statements: "Do not expose children, pets, or nontarget animals to rodenticides". "These stations must be resistant to destruction by dogs and by children under six years of age, and must be used in a manner that prevents such children from

reaching into the bait compartments and reaching the bait". "It is a violation of Federal law to use this product in a manner inconsistent with its labeling".

25. That from the inspection described in paragraph seventeen, the inspector determined that the customer's pet dachshund was seen eating rodenticide from an open bait station. The dog was rushed to an emergency animal hospital and survived.
26. That the circumstances described in paragraphs twenty-two, twenty-four, and twenty-five constitute a violation of 7 U.S.C. § j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F) require that pesticide applications be made in a manner consistent with product labels.
27. That the circumstance described in paragraphs twenty-three through twenty-five constitute a violation of 22 M.R.S. § 1471-D (8)(C), that it is unlawful to use or supervise the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment
28. That the Board has regulatory authority over the activities described herein.
29. 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.
30. That this Agreement shall not become effective unless and until the Board accepts it.
31. 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 -six referred to in paragraphs nine, twelve, fifteen, twenty-one, twenty -six and twenty-seven, the Company agrees to pay to the State of Maine the sum of \$2,500 (Please make checks payable to Treasurer, State of Maine).

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

ORKIN EXTERMINATING COMPANY INC.

By:  _____ Date: _____

Type or Print Name: John Tessier

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED

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