

**Proposed Administrative Consent Agreement
Background Summary**

Subject: Osmose Utilities Services, Inc.
635 Highway 74 South
Peachtree, Georgia 30269

Date of Incident(s): July 30, 2021/ October 6, 2021

Background Narrative: On July 30, 2021 an employee of Osmose Utilities Services, Inc. was traveling on I-95 when they were involved in an accident near mile marker 129, Waterville/Fairfield. The vehicle rolled over jettisoning 541 cannisters of MITC-FUME, EPA Reg. No. 69850-1, along the side of the highway. MITC-FUME is a restricted use pesticide due to high acute toxicity that is used to treat utility poles for wood decay. On October 6, 2021 a contractor for the Maine DOT was conducting mechanical vegetation management with an articulating mower near the accident site and pierced several of the pressurized MITC-FUME cannisters. The equipment operator was exposed to the pesticide and had symptoms of burning eyes and headache and received medical attention.

Summary of Violations:

1. That pursuant to 7 MRS section 606(2)(D), it is unlawful to handle or transport pesticides in a manner as to endanger human beings or the environment.
2. That pursuant to CMR 01-026, Chapter 20, Section 3(A) of the Board's rules, unused pesticides must be maintained so as to prevent unauthorized use, mishandling or loss; and so as to prevent contamination of the environment and risk to public health.
3. That pursuant to CMR 01-026, Chapter 50, Section 2 (C), any pesticide handling activity which causes a pesticide release which may result in a threat to human health is a reportable spray incident.

Rationale for Settlement: Osmose Utilities Services, Inc. failed to respond to the original incident and account for missing fumigant cannisters. This resulted in an exposure to a pesticide with high acute toxicity. Osmose Utilities Services, Inc. did not report the incident and exposure to the BPC.

Attachments: Proposed Consent Agreement

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

MAY 19 2023

Osiose Utilities Services, Inc.)
635 Highway 74 South)
Peachtree, Georgia 30269)
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ADMINISTRATIVE CONSENT
AGREEMENT
AND
FINDINGS OF FACT

CK# 401786
Date: 5-11-23
Amt \$500.00

This Agreement by and between Osiose Utilities Services, Inc. (hereinafter referred to as the "Company") and the State of Maine Board of Pesticides Control (hereinafter referred to as 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 Board alleges as follows:

1. That the Company provides services related to the maintenance of the electrical transmission grid.
2. That the Company is licensed by the Board as a Spray Contracting Firm to provide remedial treatments to wooden utility poles when the initial preservation treatment is no longer effective.
3. That on July 30, 2021, Justin Bulley, a Company employee, was traveling north in a Company vehicle on Interstate 95 in Maine when he was involved in an accident near Mile 129. The vehicle rolled over and the contents of the vehicle were jettisoned, including an unknown number of pressurized cannisters of MITC-FUME, EPA Reg. No. 69850-1. MITC-FUME contains 97% Methylisothiocyanate and is classified as a Restricted Use Pesticide due to its high acute toxicity.
4. That the cannisters described in paragraph three were distributed along the side of the Interstate in an area of tall grass, making location of all the cannisters difficult.
5. That first responders on the scene of accident recovered as many cannisters as they could reasonably locate.
6. That on October 6, 2021, a contractor for the Maine Department of Transportation (MDOT) was conducting mechanical vegetation management with an articulating mower attached to an excavator on Interstate 95 in the general area of the July 30, 2021, accident.
7. That during the mowing operation, the mower pierced multiple pressurized cannisters of MITC-FUME, releasing the contents of the cannisters.
8. That the operator of the excavator was exposed to Methylisothiocyanate and experienced symptoms including burning eyes and a headache. MDOT personnel instructed the excavator operator to cease work for the day and to be evaluated by medical professionals.
9. That the MITC-FUME label contains precautionary statements including, "Fatal if inhaled or absorbed through the skin. Corrosive. Causes irreversible eye damage and skin burns."
10. That MDOT personnel responding to the October 6, 2021, incident contacted the Company to inform it that additional pressurized cannisters of MITC-FUME were present in the tall grass adjacent to Interstate 95, and that the Company would need to recover all additional cannisters present, or a Hazardous Waste Contractor would be engaged for cleanup and recovery purposes.

11. That a Company employee arrived at the scene and attempted to clear the site of any remaining cannisters and/or debris from punctured cannisters.
12. That MDOT personnel arrived at the site of incident early the following morning---on October 7, 2021---to ensure that all cannisters and debris had been removed prior to resuming mowing operations at the site.
13. That on the morning of October 7, 2021, MDOT personnel immediately discovered additional cannisters of MITC-FUME in the vicinity of the previous day's incident.
14. That MDOT personnel again contacted the Company to inform it that additional cannisters were still present at the accident site. Company employee Daniel Lacey responded to the scene and determined that it would be necessary to purchase a metal detector in order to adequately ensure that the site was cleared of additional pressurized cannisters.
15. That during recovery efforts on October 6 and 7, 2021, Company employees recovered fifteen cases containing eighteen cannisters each, and 271 individual cannisters of MITC-FUME from the accident site, for a total of 541 cannisters.
16. That the Company utilizes an inventory tracking system that maintains specific data per vehicle and employee.
17. That following the July 30, 2021, accident, the Company could have determined that a substantial number of pressurized cannisters were still unaccounted for.
18. That the Company's actions allowed 541 cannisters of MITC-FUME to remain unattended on the side of the Interstate for 68 days.
19. That the Company's actions resulted in the October 6, 2021, incident in which the excavator operator was exposed to MITC-FUME.
20. That the Company failed to exercise reasonable and adequate care to recover the MITC-FUME cannisters following the July 30, 2021, accident.
21. That the high acute toxicity of MITC-FUME cannisters left unattended on the side of Interstate 95 for nine weeks presented unacceptable risks to humans and the environment.
22. That pursuant to 7 MRS § 606 (2)(D), it is unlawful to handle or transport pesticides in a manner as to endanger human beings or the environment.
23. That Justin Bulley's statements to the State Police indicated he was very fatigued from many hours of driving from out-of-state, and that he became distracted by trying to adjust the radio, leading to the crash.
24. That the circumstances described in this agreement, including the standard of care exercised by the driver of Company vehicle that crashed, constitute handling and transporting pesticides in a manner as to endanger human beings or their environment in violation of 7 MRS § 606 (2)(D).
25. That pursuant to CMR 01-026, Chapter 20, Section 3(A) of the Board's rules, unused pesticides must be maintained so as to prevent unauthorized use, mishandling or loss; and so as to prevent contamination of the environment and risk to public health.
26. That the circumstances described in this agreement constitutes failure to maintain unused pesticides so as to prevent unauthorized use, mishandling or loss; and so as to prevent contamination of the environment and risk to public health, in violation of CMR 01-026, Chapter 20, Section 3 (A).

27. That the Company did not notify the Board to report the pesticide exposure suffered by the MDOT contractor that was a result of the accidental discharge caused by the piercing of MITC-FUME canisters during mowing operations along the side of the Interstate.
28. That pursuant to CMR 01-026, Chapter 50, Section 2 (C), any pesticide handling activity which causes a pesticide release which may result in a threat to human health is a reportable spray incident.
29. That the pesticide exposure suffered by the MDOT contractor was the result of mishandling by the Company of the MITC-FUME canisters that were distributed along the side of the Interstate due to the accident described in paragraph 3 above.
30. That the circumstances described in paragraphs 27 to 29 constitute a failure to report an incident of human exposure to pesticide in violation of CMR 01-026, Chapter 50, Section 2 (C).

The Board believes that the facts alleged in paragraphs one through thirty constitute violations of 7 MRS § 606 (2)(D), CMR 01-026, Chapter 20, Section 3 (A) and CMR 01-026, Chapter 50, Section 2 (C).

While the Company does not admit the alleged violations, and while they dispute the facts alleged by the Board in paragraphs one through thirty above, they agree to enter into this Consent Agreement for the purpose of resolving the alleged violation.

By entering into this Consent Agreement, the Company expressly waives:

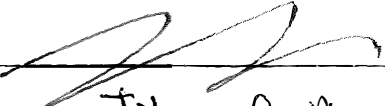
- A. Notice of or opportunity for hearing;
- B. Any and all further procedural steps before the Board; and
- C. The making of any further findings of fact before the Board.

That this Agreement shall not become effective unless and until the Board accepts it.

Wherefore, in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the alleged violations referred to in paragraphs twenty-four, twenty-six and thirty the Company agrees to pay a penalty to the State of Maine in the sum of \$4,500.00. (Please make checks payable to Treasurer, State of Maine).

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

●SMOSE UTILITIES SERVICES, INC.

By:  Date: 5/9/23
 Type or Print Name: John B. Rigney

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
 Megan Patterson, Director

APPROVED:

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