Proposed Administrative Consent Agreement
Background Summary

Subject: Bath Housing Authority
90 Congress Street
Bath, Maine 04530

Date of Incident(s): July 24, 2019

Background Narrative: The Board received a call about a Bath Housing Authority employee applying what appeared to be an herbicide along the walkways of a housing complex. The caller said no notification was provided and the treated area was not posted. The caller was concerned because of her asthma and her kids' exposure when using the sidewalk. Caller also concerned about lack of response when she requested a SDS from the applicator. A Board inspector followed up and determined the Bath Housing Authority employee did apply Enforcer Formula 777 EC Weed Killer to cracks in the sidewalk, along a masonry plant bed, and at ends of two buildings at the housing complex at 19 – 29 Shaw Street in Bath. The applicator was not a licensed pesticide applicator and advance notification was not provided. The herbicide label included the following statements: " Not to be used in recreational areas or around homes," "Do not use on lawns, walks, driveway, tennis courts, or similar areas." Additionally, the label required that "Applicators and other handlers must wear: goggles or face shield."

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.

CMR 01-026 Chapter 28 Section 3(A). Requires that public notice be given for the outdoor commercial application of pesticides to control vegetation on sidewalks and trails in a manner consistent with Board policy.

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: Not for hire company, multiple violations.

Attachments: Proposed Consent Agreement

MAY 15 2020

CK Date: 5/11/20
Amt: $1000.00
12487

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

In the Matter of: Bath Housing Authority 90 Congress Street Bath, Maine 04530	)	ADMINISTRATIVE CONSENT AGREEMENT AND FINDINGS OF FACT

This Agreement by and between Bath Housing Authority (hereinafter called the "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 develops and manages rental housing, including in the Bath area.

2. That on July 24, 2019, a caller reported that a Company employee was making what appeared to be an herbicide application. The applicator was using a backpack sprayer to spray along the walkway and at the ends of both buildings at the housing complex at 19 – 29 Shaw Street in Bath. The caller said the applicator was asked what was being applied but the applicator did not reply. There was no notification about the spraying and the treated areas were not posted. The caller reported that an SDS was requested by phone by leaving a voice message, but after 2 hours had elapsed, no SDS was received. The caller has asthma and was concerned about potential exposure of her children to the herbicide since they were on the walkway.

3. That on July 26, 2019, a Board inspector initially met with the caller. By this time, Kevin Boyle, the Company's property manager had provided the caller with the SDS for Enforcer Formula 777 EC Weed Killer the herbicide described in paragraph one. The inspector documented the SDS and took digital photos of the treated areas and sampled the treated areas. He also collected photocopies of pictures the caller had taken of her children to show the children's physical symptoms.

4. That on July 26, 2019, the Board inspector then met with the Company's property manager, Kevin Boyle to conduct an inspection on the herbicide application made by a Company employee on July 24, 2019.

5. That from the inspection described in paragraph four, the inspector documented that on July 24, 2019, Company employee Jonathan Lucas applied Enforcer Formula 777 EC Weed Killer to cracks in the sidewalk, along a masonry plant bed, and at ends of two building at the housing complex at 19 – 29 Shaw Street in Bath. The application was made with a non-powered backpack.

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 the definition of a custom application in 22 M.R.S. § 1471-C(5-A), includes, an application made under contract or for which compensation is received and 22 M.R.S. § 1471-C(5-B) includes an application to a property open to use by the public.

8. That the application described in paragraphs two through five was done pursuant to a contract for which compensation was received and was done to a property open to the public. Accordingly, the application

constitutes a custom application of a pesticide under both 22 M.R.S. § 1471-C (5-A) and 22 M.R.S. § 1471-C (5-B).

9. That no one from the Company held a commercial pesticide applicator's license at the time of the application described in paragraphs two through five.

10. That the circumstances described in paragraphs two through nine constitute violations of 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.

11. That CMR 01-026 Chapter 28 Section 3(A) requires that public notice be given for the outdoor commercial application of pesticides to control vegetation on sidewalks and trails in a manner consistent with Board policy.

12. That the Board's policy for the outdoor commercial application of pesticides to control vegetation on sidewalks and trails requires that public notice be given by posting of signs or by publication on a website, list serve or print publication of local or regional relevance.

13. That no notice was provided for the commercial application of pesticide described in paragraphs two through five.

14. That the circumstances described in paragraphs two through five, and eleven through thirteen, , constitute a violation of CMR 01-026 Chapter 28 Section 3(A).

15. 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.

16. That under the Precautions and Restrictions section of the Enforcer Formula 777 EC Weed Killer label documented in paragraph five, are the following statements: " Not to be used in recreational areas or around homes", "Do not use on lawns, walks, driveway, tennis courts, or similar areas".

17. That under the Personal Protective Equipment section of the Enforcer Formula 777 EC Weed Killer label the following statement is included "Applicators and other handlers must wear: goggles or face shield"

18. That during the inspection described in paragraphs four and five the inspector documented that the Company applicator applied the Enforcer Formula 777 EC Weed Killer around homes and sidewalks and did not wear goggles or a face shield when applying the Enforcer Formula 777 EC Weed Killer.

19. That based on the facts outlined in paragraphs two through five and fourteen through eighteen, the Company did not follow the precautions and restrictions section or the Personal Protective Equipment sections of the Enforcer Formula 777 EC Weed Killer label.

20. That the circumstances described in paragraphs two through five and fifteen through nineteen, constitute use of a pesticide inconsistent with the product labeling and in violation on U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).

21. That the Board has regulatory authority over the activities described herein.

22. 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

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 cause of action which the Board has against the Company resulting from the violations referred to in paragraphs ten, fourteen, and twenty, the Company agrees to pay a penalty to the State of Maine in the sum of $1,000 (Please make checks payable to Treasurer, State of Maine).

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

BATH HOUSING AUTHORITY

By: _____ Date: 5.11.2020

Type or Print Name: Jessica Insh, Dir. of Housing

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED:

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