

Proposed Administrative Consent Agreement

Background Summary

Subject: Jose Sanchez
Servicios Sanchez, Inc.
257 Chelsea Street
East Boston, MA 02128

Date of Incident(s): September 21, 2013

Background Narrative: On October 2, 2013, the BPC received a call from a tenant at 56 Emery Street, Apartment B, in Sanford. The tenant's apartment was the upstairs rental unit of a two unit apartment house. The building had a bed bug infestation. The tenant said the building owner, Dennis Murphy, hired Servicios Sanchez, Inc. to treat the two apartments. The tenant prepared her apartment as directed on a form letter from Servicios Sanchez, including putting her family's clothing, toiletries, toys etc. into plastic bags the company was to provide. There were further instructions on the form letter to not close the plastic bags.

The tenant prepared her apartment as directed and on September 21, 2013, she and her children left the apartment just prior to the application. When the tenant and her family returned later in the day, she found puddles on the bathroom and living room floors. The items she placed in plastic bags; cloths, toiletries and food had residues on them. The tenant called the Board because she did not think the application was done right and the applicators may not have been licensed.

On October 11, 2013, a Board inspector met with the tenant and collected the following samples:

- Liquid from the bathroom heat register the tenant placed in a jar on 9/23/13
- Wipe sample from lower kitchen cabinet
- Wipe sample from bathroom heat register
- Wipe sample from inside clothing bags

A Board inspector later phoned, Murphy. Murphy said he hired Jose Sanchez Sr. and Jose Sanchez Jr. to make the pesticide application. Jose Sanchez then provided information about the application to Board staff. Later, a lawyer involved in the process for Murphy/Sanchez, provided information about the pesticide applied that was inconsistent with Sanchez's earlier statements. Lab results for all samples collected were positive for several insecticides including malathion.

In early October of 2013, Murphy sold the two-unit apartment building to Paula Hamilton who also moved into Apartment A, on the first floor. At the time of the sale, Murphy did not disclose information about the infestation or treatments to Hamilton. Hamilton later learned about the infestation and pesticide applications from the tenant in Apartment B. Hamilton called the Board on December 16, 2013, and asked that her unit be tested for pesticide residues. A wipe sample was taken and lab results were positive for the same insecticides found in Apartment B, including malathion.

Summary of Violation(s):

- 22 M.R.S.A. § 1471- D(1)(A): That commercial pesticide applications may only be conducted by certified commercial applicators.
- CMR 01-026 Chapter 31 Section 1(A)III: Any commercial applicator must be either be licensed or supervised by a licensed commercial applicator.
- CMR 01-026 Chapter 20 Section 1(B): The use of registered pesticides for other than registered uses...
- 7 U.S.C. § 136j (a)(2)(G): To use any registered pesticide in a manner inconsistent with its labeling.
- 7 M.R.S.A. § 606 (2)(B): Use or cause to be used any pesticide in a manner inconsistent with its 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 labelling....
- 22 M.R.S. § 1471-D (8)(C): Used or supervised 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 individuals in this case made an unlicensed commercial pesticide application in a careless way, with the potential to impact the occupants of the two-unit building. Malathion is not registered for indoor use.

Attachments: Proposed Consent Agreement

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

Jose Sanchez) ADMINISTRATIVE CONSENT AGREEMENT
Servicios Sanchez, Inc.) AND
257 Chelsea Street) FINDINGS OF FACT
East Boston, MA 02108)

This Agreement, by and between Servicios Sanchez, 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 June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Company is in the business of applying pesticides including indoor applications to control bed bugs.
2. That on October 2, 2013, the Board received a call from a tenant at 56 Emery Street, Apartment B, in Sanford. The tenant said that the landlord, Dennis Murphy contracted with Jose Sanchez (Servicios Sanchez, Inc.) and a bed bug pesticide application was made to her apartment and the vacant Apartment A downstairs on September 21, 2013.
3. That the tenant said that she and her four children vacated the apartment so the application could be made. When they returned, there were puddles in the bathroom and kitchen. The tenant collected a sample from the puddle in the bathroom. She further stated their clothes, toiletries, and food which were in contractor bags, had pesticide residue on them when she reached into the bags to get them. She did not think the application was done correctly and that the applicators may not have been licensed.
4. That a third party reported to the tenant that they saw two trucks and two applicators at the apartment building carrying canisters on the date of the application.
5. That the tenant stated that she asked both the applicator and the landlord for information on the pesticides that were applied. The tenant stated that neither provided that information.
6. That on October 3, 2013, Board staff phoned Jose Sanchez Jr. Sanchez said he was on the road at the time of the call and that he applied Hot Shot in liquid form mixed with water and applied with backpack sprayers. He agreed to fax the paper work for the job within the next several days.
7. That on Friday, October 4, 2013, Attorney Cynthia Snow, counsel for Murphy, emailed Assistant Attorney General Mark Randlett an attachment of an MSDS for Cyonara 9.7, an insecticide applied by the Company as described in paragraph two. The body of the email message stated in part that this exterminator does all of Murphy's extermination work including work in Massachusetts.
8. That on October 8, 2013, Board staff called Attorney Snow about this case. Attorney Snow said she had all the applicator's paper work for the application described in paragraph two including notices and she agreed to email them to the Board within the next several days. She agreed to contact Sanchez and arrange for him to meet with a Board inspector at the 56 Emery Street apartment on Friday, October 11, 2013.
9. That during the phone call described in paragraph eight, Attorney Snow said that her client, Dennis Murphy, sold the apartment building at 56 Emery Street and the closing date of the sale was Friday, October 4, 2013. For this reason, according to Attorney Snow, Murphy no longer had any authority to be on that property.

10. That within minutes after the phone call to Attorney Snow described in paragraph eight, Murphy called Board staff and said that the 56 Emery Street case is closed, he provided all the information the Board needed through his lawyer and that neither he nor Sanchez were coming to Maine to discuss the case.
11. That Attorney Snow never sent the Board the pesticide application records and related documentation that she had in her possession for the pesticide application described in paragraph two.
12. That in response to the information the Board received in paragraphs two through four, a Board inspector conducted a follow up inspection with the Apartment B tenant on October 11, 2013.
13. That during the inspection described in paragraph twelve the Board inspector collected the following samples from Apartment B at 56 Emery Street in Sanford:
 - 131011BCB01A- Liquid sample taken from bathroom heater register
 - 131011BCB01B- Jar used to collect sample 131011BCB01A
 - 131011BCB01C- Wipe sample from lower kitchen cabinet
 - 131011BCB01D- Wipe sample from bathroom heat register
 - 131011BCB01E- Wipe sample taken from inside clothing bags
 - 131011BCB01F- Photographs of treated areas inside apartment
14. That on October 16, 2013, samples 131011BCB01A, 131011BCB01C, 131011BCB01D and 131011BCB01E were sent to a lab for analyses.
15. That laboratory analysis of the samples described in paragraph fourteen indicate residues were present of malathion with a detection range of 17-500 ug/sample, and Lambda cyhalothrin 2.1- 52 ug/wipe. Sample 131011BCB01D was also positive for cis- Permethrin at 0.34 ug/wipe and trans-Permethylrin at 0.79 ug/wipe.
16. That on December 16, 2013, Paula Hamilton, the new owner of the apartment building at 56 Emery Street called the Board. Hamilton said that she purchased the building in early October of 2013 and moved in to the downstairs apartment in late October of the same year. The prior owner did not disclose to her that there was a bed bug problem and an exterminator made a pesticide application. Based on what her tenant in the upstairs apartment told her (same tenant that previous owner had), she was concerned about pesticide residues in her apartment. The new owner said her cat had been vomiting.
17. That based on the call described in paragraph sixteen, a Board inspector completed an inspection with Paula Hamilton at 56 Emery Street, Apartment A on January 24, 2014.
18. That during the inspection described in paragraph seventeen, the inspector collected a wipe sample (# 140124EPM01A) in the living room of Apartment A from the baseboard heating unit and wall area and where the couch from the previous tenant had been located.
19. That the sample described in paragraph eighteen was sent to a lab for analysis. The results were positive for malathion 930 ug/wipe, Lambda cyhalothrin 6.5 ug/wipe, cis- Permethylrin 6.9 ug/wipe, trans-Permethylrin at 12 ug/wipe and Cyhalothrin, total 11 ug/wipe.
20. That any person making a pesticide application in Maine 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.
21. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) as 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.

22. That the pesticide applications made to 56 Emery Street, Apartments A and B described in paragraph two above constitute custom applications under 22 M.R.S. § 1471-C(5-A) and, therefore, a commercial applicator's license was required for the application.
23. That no one from the Company had a Maine commercial pesticide applicator's license at the time of the pesticide application described in paragraph two.
24. That the facts described in paragraphs one through twenty-three, show that the Company applied pesticides to Apartments A and B at 56 Emery Street in Sanford, Maine, without a Maine commercial applicator's license, in violation of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
25. That CMR 01-026 Chapter 20 Section 1(B) prohibits the use of registered pesticides for other than registered uses and 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F) prohibit the use of a pesticide inconsistent with its label.
26. That of the 26 pesticide products containing malathion registered in Maine as of 2013 on the National Pesticide Retrieval System (Purdue University, 2014), none have domestic dwellings (indoor), apartment buildings (indoor), and cabins (indoor) or homes (indoor) listed as treatment sites on their labels.
27. That the facts described in paragraphs one through twenty-six show that the Company applied a pesticide containing malathion inside a home in violation of CMR 01-026 Chapter 20 Section 1(B), 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F).
28. That the WARNING section of the Cyonara 9.7 insecticide label states in part, "Avoid contact with skin, eyes or clothing".
29. That 22 M.R.S. § 1471-D (8)(C) establishes that it is a violation for an individual to have used or supervised 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.
30. That instructions regarding the pending pesticide application described in paragraph two provided to the tenant in Apartment B by Murphy, stated in part, "Please do remove your clear [sic] clothes from closets and draws, toiletries and other personal items, like toys, and place them in plastic bags provided by the owner. Please do not close the plastic bags".
31. That a wipe sample taken from inside a clothes bags as described in paragraph thirteen tested positive for Lambda cyhalothrin , the active ingredient in Cyonara 9.7 as described in paragraph fifteen.
32. That the facts described in paragraphs twenty-eight through thirty-one show that Cyonara 9.7 was applied in a careless, negligent or faulty manner such as to result in contact by the pesticide with clothing belonging to the tenant of Apartment B in violation of 22 M.R.S. § 1471-D (8)(C).
33. That the Board has regulatory authority over the activities described herein.
34. 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.

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

36. 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 referred to in paragraphs twenty-four, twenty-seven and thirty-two the Company agrees to pay to the State of Maine the sum of \$3,000. (Please make checks payable to Treasurer, State of Maine.)

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

SERVICIOS SANCHEZ, INC.

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED

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

OCT 20 2014

Statement on Behalf of Servicios Sanchez, Inc.

TO: Maine Board of Pesticides Control

FR: Servicios Sanchez, Inc by Jose S. Sanchez, President

Dear Members of the Board ,

This statement is submitted in connection with the Administrative Consent Agreement of September 23, 2014, to provide assurances that Servicios Sanchez, Inc. is no longer engaged in the application of pesticides. In addition, Servicios Sanchez, Inc. does not operate in the state of Maine and has not intention to do so in the future.

Presently Servicios Sanchez is involved in general janitorial cleaning services of residences and commercial establishments, including vacuuming and shampooing rugs and carpets.

Sincerely,

Jose Sanchez 10/14/14
Jose S. Sanchez