

**Proposed Administrative Consent Agreement
Background Summary**

Subject: Mosquito Squad of Southern Maine
28 Adams Way
Scarborough, ME 04074

Date of Incident(s): May 25, 2023 & June 28, 2023

Background Narrative: On May 25, 2023, Joseph Eno, an employee of the Company, made an application of Bifen I/T, EPA Reg. No. 53883-118, and Fendona CS, EPA Reg. No. 499-570, to a residential property located at 189 Clifford Road in Phippsburg, Maine, using a motorized backpack for control of mosquitoes.

On May 25, 2023, the abutting landowner at 183 Clifford Rd. contacted the Board and stated that the wind was blowing from the application site toward the abutter's property. The abutting landowner further stated that the mist appeared to be moving toward the chicken coop.

On May 26, 2023, a Board inspector visited the site and collected residue samples from both the target site and the abutting property. The laboratory analysis report for a vegetative sample collected from the abutting property showed a concentration of bifenthrin at 0.026 parts per million. The laboratory analysis report for a vegetative sample collected from the target property showed a concentration of bifenthrin at 2.5 parts per million. The off-target residue is equal to approximately 1% of the target site residue.

On June 28, 2023, Justin Weeks, a licensed applicator employed by the Company, applied Bifen I/T, EPA Reg. No. 53883-118, Fendona CS, EPA Reg. No. 499-570 and Martins Permethrin 10%, EPA Reg. No. 53883-72 to a residential property located at 11 Monarch Drive, Kennebunk, Maine. An employee of the Board observed the application and noted that it was raining at the time of the application. The Board employee collected video evidence of the application and notified the Board inspector assigned to the geographical location.

Summary of Violations: CMR 01-026, Chapter 22, Section 4 (B) (I) states that, "Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors." The *prima facie* evidence, together with the standard of care exercised by the applicator and Company in allowing an uncertified applicator to apply pesticides using a motorized mist blower and directing the spray toward the property boundary when the wind direction favored movement toward the abutting property, is evidence that a violation of the general standard contained CMR 01-026, Chapter 22, Section 4 (B) (I).

7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) prohibit the use or supervision of such use of a pesticide inconsistent with its label. The Fendona CS label, EPA Reg. No. 499-570, states, in part, “DO NOT make outdoor applications during rain.”

The violations described are considered subsequent violations within a four-year period pursuant to 7 M.R.S. § 616-A(2)(A)(2).

Rationale for Settlement: The Company entered into an Administrative Consent Agreement and Findings of Fact with the Board on November 19, 2021, to resolve multiple violations of State pesticide law. The Company agreed to pay a fine to the State as part of the agreement and a portion of the fine—two thousand dollars—paid by the Company was suspended by the Board on the condition that the Company had no further violations of State pesticide law for a two-year period beginning on the date the agreement was fully executed. The Company committed at least two violations of State pesticide law during the two-year period. That in accordance with the agreement the Company entered into on November 19, 2021, the suspended portion of the fine is due immediately.

Mosquito Squad of Southern Maine is willing to enter into this proposed consent agreement to resolve the noted violations.

Attachments: Proposed Consent Agreement

NOV 29 2023

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

In the Matter of:) ADMINISTRATIVE CONSENT
Mosquito Squad of Southern Maine) AGREEMENT
28 Adams Way) AND
Scarborough, Maine 04074) FINDINGS OF FACT

CK#1195
Amt \$10000 -
CK Date 11-21-23

This Agreement by and between Mosquito Squad of Southern Maine (hereinafter referred to as the "Company") and the State of Maine Board of Pesticides Control (hereinafter referred to as the "Board"), as approved by the Office of the Attorney General ("OAG"), 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 operates a Mosquito Squad franchise covering the southwestern areas of Maine. The Company provides a variety of pest management and commercial pesticide application services.
2. That on May 25, 2023, Joseph Eno, an employee of the Company, made an application of Bifen I/T, EPA Reg. No. 53883-118, and Fendona CS, EPA Reg. No. 499-570, to a residential property located at 189 Clifford Road in Phippsburg, Maine, using a motorized backpack for control of mosquitoes.
3. That at the time of the application described in Paragraph 2, Joseph Eno was neither certified nor licensed by the Board as a commercial applicator. A licensed commercial applicator was on site at the time of the application, but not within visual or voice contact when Mr. Eno was on the back side of the house.
4. That an abutting landowner located at 183 Clifford Road observed the application described in Paragraph 2 and became concerned when the applicator directed spray toward the wooded area separating the properties. The abutting landowner inquired with Mr. Eno about what was being applied. According to the landowner, Mr. Eno replied that he did not know.
5. That on May 25, 2023, the abutting landowner contacted the Board and stated that the wind was blowing from the application site toward the abutter's property. The abutting landowner further stated that the mist appeared to be moving toward the chicken coop. The landowner stated that he/she experienced symptoms including burning lips and tongue and a severe headache.
6. That on May 26, 2023, a Board inspector visited the site and collected residue samples from both the target site and the abutting property.
7. That on June 1, 2023, a Board inspector conducted a follow-up inspection with Company employees Scott Conrad, who has supervisory responsibilities, and applicators Michael and Joseph Eno.
8. That the laboratory analysis report for a vegetative sample collected from the abutting property showed a concentration of bifenthrin at 0.026 parts per million.
9. That the laboratory analysis report for a vegetative sample collected from the target property showed a concentration of bifenthrin at 2.5 parts per million.
10. That the off-target residue described in Paragraph 8 is equal to approximately 1% of the target site residue described in Paragraph 9.

11. That the circumstances described in Paragraphs 8 and 9 are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable pursuant to CMR 01-026, Chapter 22, Section 4 (B) (II).
12. That CMR 01-026, Chapter 22, Section 4 (B) (I) that, "Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors."
13. That the prima facie evidence described in Paragraph 11 together with the standard of care exercised by the applicator and Company in allowing an uncertified applicator to apply pesticides using a motorized mist blower and directing the spray toward the property boundary when the wind direction favored movement toward the abutting property, is evidence that a violation of the general standard contained CMR 01-026, Chapter 22, Section 4 (B) (I).
14. That the circumstances described in Paragraphs 1 through 13 constitute a violation of CMR 01-026, Chapter 22, Section 4 (B) (I).
15. That on June 28, 2023, Justin Weeks, a licensed applicator employed by the Company, applied Bifen I/T, EPA Reg. No. 53883-118, Fendona CS, EPA Reg. No. 499-570 and Martins Permethrin 10%, EPA Reg. No. 53883-72 to a residential property located at 11 Monarch Drive, Kennebunk, Maine.
16. That an employee of the Board observed the application described in Paragraph 15 and noted that it was raining at the time of the application. The Board employee collected video evidence of the application and notified the Board inspector assigned to the geographical location.
17. That on June 28, 2023, the Board inspector conducted an on-site inspection with Justin Weeks upon being notified of the application described in Paragraph 15. The inspector documented pertinent details related to the application, the weather conditions and the soil saturation. The inspector also collected National Oceanic and Atmospheric Administration (NOAA) weather data arising from the Sanford Airport June 27 and 28, 2023. The NOAA weather data provided additional evidence/confirmation of the rainy conditions on the June 27 and 28.
18. That the Bifen I/T label, EPA Reg. No. 53883-118, states, in part, "This pesticide is extremely toxic to fish and aquatic invertebrates." The Bifen I/T label also states, "Applying this product in calm weather when rain is not predicted for the next 24 hours will help ensure that wind or rain does not blow or wash pesticide off the treatment area.
19. That the Fendona CS label, EPA Reg. No. 499-570, states, in part, "DO NOT make outdoor applications during rain."
20. That 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) prohibit the use or supervision of such use of a pesticide inconsistent with its label, and 22 M.R.S. § 1471-D(8)(F) provides for court action to seek suspension or revocation of an applicator's license and/or certification for use or supervision of such use of a pesticide inconsistent with its label.
21. That the circumstances described in Paragraphs 15, 16, 17, 19 and 20 constitute a violation of 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) and would permit court action to seek suspension or revocation of an applicator's license and/or certification pursuant to 22 M.R.S. § 1471-D(8)(F).
22. That the Company entered into an Administrative Consent Agreement and Findings of Fact with the Board on November 19, 2021, to resolve multiple violations of State pesticide law.

23. That the Company agreed to pay a fine to the State as part of the agreement described in Paragraph 22. A portion of the fine—two thousand dollars—paid by the Company was suspended by the Board on the condition that the Company had no further violations of State pesticide law for a two-year period beginning on the date the agreement was fully executed.
24. That the Company committed at least two violations of State pesticide law during the two-year period.
25. That in accordance with the agreement the Company entered into on November 19, 2021, the suspended portion of the fine is due immediately.
26. That the violations described in Paragraphs 14 and 21 are considered subsequent violations within a four-year period pursuant to 7 M.R.S. § 616-A(2)(A)(2).
27. 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.
28. That this Agreement shall not become effective unless and until the Board accepts it.
29. That the Company is obligated to immediately pay the suspended portion of the fine agreed upon in the Administrative Consent Agreement and Findings of Fact which the Company entered into on November 19, 2021. The suspended portion is \$2,000.00, due by November 21, 2023. (Please make checks payable to Treasurer, State of Maine).
30. 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 14 and 21, the Company agrees to pay a penalty to the State of Maine in the sum of \$8,000.00, due by November 21, 2023. (Please make checks payable to Treasurer, State of Maine).
31. The Board and OAG grant a release of their causes of actions against the Company for the specific violations cited in the immediately preceding Paragraph (Paragraphs 29 and 30) on the express condition that all actions listed in Paragraph 30 of this Agreement are completed in accordance with the express terms and conditions of this Agreement and to the satisfaction of the Board and the OAG. The release shall not become effective until the Company has completed its obligations pursuant to Paragraphs 29 and 30.
32. Any non-compliance with any term or condition of this Agreement, as determined by the Board and OAG in their sole discretion, voids the release set forth in Paragraph 31 of this Agreement and may lead to an enforcement, suspension/revocation, equitable, and/or civil violation action pursuant to Titles 7 and 22 of the Maine Revised Statutes and/or M.R. Civ. P. 80H.
33. Nothing in this Agreement shall be construed to be a relinquishment of the Board's or OAG's powers under Titles 7 and 22 of the Maine Revised Statutes against the Company for any other violations other than those expressly listed in this Agreement.
34. This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding; this contract may not be enlarged, modified, or altered except in writing signed by the parties and indorsed on this Agreement.

35. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

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

MOSQUITO SQUAD OF SOUTHERN MAINE

By: Erik Hansen - mgr Date: 11-29-23

Type or Print Name: Erik Hansen

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
John Pietroski, Acting Director

APPROVED:

By: _____ Date: _____
Carey Gustanski, Assistant Attorney General