

Proposed Administrative Consent Agreement

Background Summary

7

Subject: Daley Green Services DBA Green Home Solutions
PO Box 478
Belfast, Maine 04915

Date of Incident(s): Numerous dates in the years 2017, 2018, and 2019

Background Narrative: Based on an initial complaint lodged by a customer of the company in December of 2019, Board inspectors conducted multiple follow up inspections. These included contacting the customer, a cleaning lady hired by the customer, a company applicator, company staff, and the company owner. The company owner is a licensed commercial master applicator in Maine.

Based on interviews, written statements, and a review of the company's application records, evidence indicated that the company owner sent company employees out to make commercial pesticide applications. Oceanic Disinfectant Cleaner, a registered pesticide, was routinely applied by unlicensed and unsupervised company employees on mold remediation jobs.

This practice started with a "couple applications" in 2017. In 2018 and 2019 making unlicensed applications was a routine practice. During this time span, there were many and varied short term company employees making the applications.

The Oceanic Disinfectant Cleaner limits applications to hard, non-porous surfaces. Clothing, furniture fabric, window drapes, rugs, and the contents of totes were sprayed. Space sprays were made with powered application equipment. The label specified neither practices.

Summary of Violation(s):

- 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III Must be a certified commercial applicator or under the direct on-site supervision of a certified applicator.
- 22 M.R.S. §1471-D (8)(C) prohibits 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.
- 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.
- Commercial applicators must keep pesticide application records in accordance with the requirements of CMR 01-026 Chapter 50, Section I(A).

Rationale for Settlement: Staff considered that a significant number of unlicensed applications were made over a long period of time. The applicators did not follow label directions and applied pesticides in a manner which was potentially harmful to the public health, safety or welfare. The company's pesticide application records were minimal and did not meet the record keeping requirements of the Board.

Attachments: Proposed Consent Agreement

DEC 28 2020

12/18/20
CR# 1859
\$7000-

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

In the Matter of:)
Daley Green Services DBA Green Home Solutions) ADMINISTRATIVE CONSENT AGREEMENT
PO Box 478) AND
Belfast, Maine 04915) FINDINGS OF FACT

This Agreement by and between Green Home Solutions (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. §1471M (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. The Company provides commercial mold remediation services, including in the South Thomaston area.
2. On December 17, 2019, Liana Webb (L. Webb), a homeowner who resides at 59 Grierson Road in South Thomaston contacted the Board. Webb said she entered into a contract with the Company to treat a mold problem in her home and the Company sent unlicensed employees to do the job. Webb stated that as a result of the work performed by the unlicensed employees, the indoor air quality problem in the home was exacerbated, which made the home uninhabitable. Board staff asked L. Webb to email a summary of her concerns about the mold abatement job performed by Company employees.
3. On December 19, 2019, L. Webb emailed Board staff a typed statement as requested in paragraph two. The statement contained the following allegations regarding Webb's experience in hiring the Company to do a mold remediation job at their home:

On October 22, Amy and another gentleman from the Company came and sprayed "oceanic". L. Webb's husband Joseph Webb (J. Webb), her adult son, and brother-in-law were on site the day the Company made the application. A few days after the application, the Webbs returned home. There was a strong smell in the house that left a bad taste in their mouths. Drawers and cupboards had been opened and sprayed including the food and dishes in the cupboards. Residue could be seen running down everything. The Webbs stayed in the house one night but had to leave by the second morning due to sore throats, runny noses, headaches, and trouble breathing. Before leaving, L. Webb opened a food drawer to grab a bag of chips to take. The drawer was still soaked from the spray. L. Webb's written statement also noted that the Webb's friend later hired a cleaning lady who came to clean the spray residue on November 5th and November 6th. On November 6th L. Webb called the Company to inform it that they had not been able to live in house since the application. On Dec 16th the Company sent employees to clean the Webb's house. Walls and ceiling were washed with Dawn and Lysol was used on fixtures and counter tops. The rugs, upholstery, and basement were HEPA vacuumed.

A Board inspector met with the cleaning lady who stated that when she entered the house the floors were sticky, the walls had a yellow residue, the couch and drapes were wet to the touch and she experienced itchy eyes and nose and after leaving, coughing.

4. On January 13, 2020, two Board inspectors met with the Webbs. The inspectors collected and documented a photocopy of L. Webb's typed statement described in paragraph three and J. Webb's hand-written statement written while the inspectors were on site. Additionally, a copy of the Company's service invoice for the pesticide application the Company made at the Webb's home on October 22, 2019, was collected. The inspectors also collected photos taken by the Webbs that depicted what they stated was dried Oceanic pesticide residue found on their hardwood floor when the rug was removed.
5. During the January 13, 2020, meeting with the Webbs, J. Webb told Board inspectors they had not been able to stay in their home since October 2019. J. Webb also stated that, in addition to the Company spraying Oceanic to the interior of their home, pods located outside their home containing totes and furniture were sprayed with Oceanic and that outdoor items at the Webb's were also sprayed.
6. On January 14, 2020, Company owner Peter Daley and Company employee Amy Mehuren attended a meeting at the Board's office in Augusta. The meeting was scheduled by Board staff to get information about the Company's October 22, 2019, pesticide application at the Webb's home. Board staff collected the following documentation related to the application: a photo of the Company's job estimate #33638; invoice no. 17210845 issued on October 22, 2019; a copy of the Company's application records for jobs done from January 10, 2019, through November 1, 2019; a photo of the Company's routing schedule provided by Daley showing jobs scheduled for October 21, 2019 through October 24, 2019; photos of the Oceanic Disinfectant Cleaner label; a copy of an email from P. Daley dated December 20, 2019, to Board staff stating the Webb's home was sprayed on 10/22/2019 and that all rooms, the basement, and the contents of two storage pods that were outdoors were treated by Company employees Myles Rehlander under the direct supervision of Amy Mehuren; a photo of service notes indicating two bedrooms, a bathroom, the hallway, kitchen, and living room were sprayed in the house with 1 ½ jugs, and the basement and outdoor pods, were sprayed with 1 ¼ jugs for about 2 ¾ jugs applied on this job; and a copy of the results for the pre and post Oceanic application fungal spore samples the Company took at the Webb's home reported by EMSL Analytical, Inc.
7. The Board alleges that, from information obtained from the meeting described in paragraph six, Board staff confirmed that Company employee Myles Rehlander made a commercial application of Oceanic Disinfectant Cleaner, a registered EPA pesticide, to the property of Joseph and Liana Webb at 59 Grierson Road in South Thomaston on October 22, 2019. Rehlander was under the direct supervision of Company employee Amy Mehuren; that the application was made to the interior of the house, the inside of pods outdoors at the house, and some of the Webb's property under tarps outside the house; and that Mehuren confirmed that when she opened cabinets and draws in the kitchen and bathrooms, whatever items were inside cabinets were sprayed by Rehlander.
8. 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 on-site 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.
9. 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).
10. The Board alleges that the application described in paragraphs two through seven was done pursuant to a contract for which compensation was received and that, 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).

11. CMR 01-026 Chapter 10 Section 2(I) 4 lists applications that are exempt from having to be performed under the direct on-site supervision of a licensed commercial applicator master and/or operator. The Board alleges that the application described in paragraphs one through seven is not one of the exempted applications.
12. The Board alleges that the circumstances described in paragraphs one through eleven constitute violations of 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
13. Title 22 M.R.S.A. §1471-D (8)(C) prohibits 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.
14. The Board alleges that the circumstances described in paragraphs one through seven and thirteen, constitute the use of a pesticide in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health or safety in violation of 22 M.R.S.A. § 14 71-D (8)(C).
15. A review of the Company's pesticide application records and routing schedule collected during the inspection described in paragraph six was done to assess the scope of unlicensed commercial pesticide applications made by Company employees. This information was cross referenced by notes taken during the same inspection when both Daley and Mehuren answered questions asked about the Company's practice of sending unlicensed and unsupervised applicators out to make commercial pesticide applications.
16. The Board alleges that the information collected during the meeting described in paragraph six and the assessment of that information as described in paragraph fifteen, shows that an unlicensed Company employee made a "couple applications alone" in 2017; that in 2018, twenty-nine unlicensed and unsupervised commercial pesticide applications were made by four Company employees; and that in 2019 thirty-nine unlicensed and unsupervised commercial pesticide applications were made by three Company employees. The Company applicators for the alleged unlicensed applications conducted in 2019, were not the same Company applicators for the alleged unlicensed applications conducted in 2018.
17. The Board alleges that the circumstances described in paragraphs one through sixteen constitute sixty-eight known violations of 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
18. The Board alleges that during a January 17, 2020, inspection conducted with Myles Rehlander, the Company employee who made the pesticide application to the Webb's home on October 22, 2019, Rehlander confirmed that, in addition to treating non-porous surfaces, he sprayed area rugs, clothes and cloth furniture.
19. The Oceanic Disinfectant Cleaner label limits application to hard, non-porous surfaces.
20. 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.
21. The Board alleges that the circumstances described in paragraphs one through seven, and eighteen through twenty, constitute violations of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S § 1471D(8)(F).

22. Commercial applications must keep pesticide application records in accordance with the requirements of CMR 01-026 Chapter 50, Section I(A).
23. The Board alleges that the inspection of the Company's application records described in paragraph fifteen, revealed that the records were not complete.
24. The Board alleges that the circumstances described in paragraphs fifteen, twenty-two and twenty-three constitute a violation of CMR 01026 Chapter 50, Section I(A).
25. While the Company does not admit the violations, and while the Company believes there are factual disputes involving the violations alleged by the Board, the Company does agree to enter into this Consent Agreement for the purpose of resolving the alleged violations.
26. The parties agree that the Board has regulatory authority over the activities described herein.
27. 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. This Agreement shall not become effective unless and until the Board accepts it.
29. In consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violations alleged in paragraphs twelve, fourteen, seventeen, twenty-one, and twenty-four, the Company agrees to pay a penalty to the State of Maine in the sum of \$7,000 (Please make checks payable to Treasurer, State of Maine).

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

DALEY GREEN SERVICES
DBA GREEN HOME SOLUTIONS

By: Peter J. Daley Date: 12-18-2020

Type or Print Name: Peter J. Daley

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED:

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



STATE OF MAINE
 MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
 BOARD OF PESTICIDES CONTROL
 28 STATE HOUSE STATION
 AUGUSTA, MAINE 04333-0028

JANET MILLS
 GOVERNOR

MEGAN PATTERSON
 DIRECTOR

Compliance Verification Statement

11/10/20

Individual	Peter Daley	Inspection	200114LRS01
Company	Daley Green Services	Numbers	200117LRS01
or Store	DBA Green Home Solutions		200203LRS01
Name		Inspection	1-14-20
		Dates	1-17-20
			2-3-20
Address	PO Box 478		
Town	Belfast,	State	ME Zip 04915

I verify that I have taken steps to correct the violations of:

- Uncertified/unlicensed commercial pesticide applications.
- Applying pesticides in a careless, negligent or faulty manner or in a manner potentially harmful to the public health or safety.
- Failure to maintain up to date and complete commercial pesticide application records.
- Applying a pesticide inconsistent with the label directions.

Peter J. Daley
 Owner or Company Representative Signature

12-18-2020
 Date:

Peter J. Daley
 Print Name

The above **Compliance Verification Statement** should be signed and returned with the **signed Consent Agreement** to verify that steps have been taken to prevent violations in the future.

December 18, 2020

This narrative is being submitted to rebut some of the facts alleged in the Consent Agreement, particularly as they relate to the complaint by Mr. and Mrs. Webb. It is not intended to excuse our actions where we failed to operate according to Maine Law.

1. It is a fact that employees of Green Home Solutions sprayed our Oceanic disinfectant, a biocide, while unlicensed. I was under the mistaken impression that they were allowed to do this under my Masters license. I should have known better and I cannot explain why I remembered the law inaccurately. I now understand that I needed to be on the job site supervising or at least able to consult. I wish to add that these employees were trained people, not turned loose on the public without any regard for people's welfare. They would accompany me, then graduate to operating more independently. This crucial error in the operation of our business was entirely my fault. I regret it deeply.

Unfortunately, there was a situation that arose in late 2019 when the Webbs complained because of adverse reactions they attributed to Oceanic. This complaint uncovered our illegal activity for which I am actually grateful because I never intended to break the law. The claims have not been verified by doctors, or other scientists to my knowledge. The customer alleges several conditions existed in their house after our treatment. Some of those allegations seem plausible but greatly exaggerated. Others I think are entirely false, perhaps intended to bolster their belief that our application is to blame for their problems. There were other cleaners and cleaning solutions used in the house. One of the occupants was already complaining of feeling sick in the house before we were hired. That was their motivation for hiring us in the first place. The husband removed the ductwork and washed it. We do not know what cleansers were used except *Simple Green* which is actually not so simple. There are other possible explanations for their discomfort. The most likely in my mind is that our product may have interacted badly with something else that they or their housekeeper used. We probably will never know the truth. Of course, we have been sympathetic to their problem. We simply do not accept all of their claims as fact.

The amount of moisture alleged to have been left behind seems greatly exaggerated. Horizontal surfaces would not normally have puddles on them days later. Curtains are alleged to have been still wet a week later. This strains credulity. Spraying of dishes and foods is certainly to be avoided. Apparently, it was necessary to wash some dishes after the fact. It is alleged that yellow, sticky residue remained behind. I am not aware of Oceanic leaving *any* visible residues. I have been using this product for five years and it has been used all over the United States across our Franchise system. It was alleged that these residues were present after tearing up their carpets. I don't know what they think they saw. Flooring under carpets is always dusty and dirty. They have pets. All of their claims are anecdotal, not supported by any scientific evidence. The only absolute facts are a) I did not directly supervise the unlicensed applicators on that day and b) their post test for mold passed which indicates our intended purpose was accomplished.

2. It is a fact that when examined, our spray records were either incomplete or sloppy. Once this fact was uncovered, we took immediate steps to adjust our practices. We filled in old records. We cooperated with the BPC staff, opening our files freely for their examination.
3. EPA-registration requires us to follow the label, a legal document. My training from the Franchisor has been extensive. Our trainer was none other than the inventor of the product and

the person responsible for the label. He is actively engaged with the EPA to adjust the label to add language to cover a wider range of surface applications.

4. The last thing I would like to add is that we have treated many buildings in five years. Most applications occur in attics or basements. Complaints from customers have been quite rare. We emphasize customer service, respect for property, covering floors, using negative air machines and erecting containment- all standard practices in our industry. We have removed mold from wood, sheet rock, and all manner of surfaces employing HEPA filtration in vacuums and sir scrubbers. We provide all appropriate PPE for our employees and insist upon its use. We carry all necessary insurance. I like to think that we have helped a lot of people along the way. We have received many excellent reviews.

I appreciate the opportunity to submit this rebuttal statement. I thank the staff for allowing it to be included with the Consent Agreement.

Peter Daley

Green Home Solutions

Belfast Maine