

**Proposed Administrative Consent Agreement
Background Summary**

Subject: Orkin, LLC
DBA Mainely Ticks
P.O. Box 70
Wells, ME 04090

Date of Incident(s): July 2021 – April 2022

Background Narrative: On April 27, 2022, the Board received an anonymous complaint alleging that two Company applicators were spraying residential properties in the area of Payeur Circle in Sanford, Maine, in rainy conditions. On April 27, 2022, a Board representative visited the Payeur Circle area in Sanford and located seven pesticide application postings with Company markings dated April 27, 2022. The Board representative noted it had rained the previous night, light rain had continued throughout the day, and the ground was wet. National Oceanic and Atmospheric Administration (NOAA) records from the Sanford Regional Airport, which is situated just over three miles from Payeur Circle indicate light rain fell throughout the morning of April 27, and trace amounts of rain fell throughout the afternoon.

On May 3, 2022, the Board representative conducted a follow up inspection with the Company employees responsible for the pesticide applications made in Sanford on April 27. The Board representative ascertained that David Scotton and James Nassif applied Cross Check Plus Multi-Insecticide, EPA Reg. No 279-3206-10404 to at least seven residential properties in Sanford, Maine, on April 27, 2022.

During the investigation described above, the Board representative discovered that two Company applicators had been certified but not licensed with the Company dating back to the previous calendar year. A review of the applicator records revealed that a total of 461 pesticide applications were made by Company employees Brian Rice and David Scotton in 2021 and 2022 while neither applicator held a valid Company applicator's license. Rice made 281 of the unlicensed applications and Scotton made 180 unlicensed applications.

Summary of Violations: CMR 01-026, Chapter 31, Section 1 (A) prohibits commercial application of pesticides by applicators who are not properly licensed. The Company committed 461 violations of CMR 01-026, Chapter 31, Section 1 (A), of which 460 are considered subsequent violations pursuant to 7 M.R.S. § 616-A(2)(A)(2).

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 circumstances described above constitute seven violations of 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B).

Rationale for Settlement: The employees responsible for the violations noted have been removed from the company. The new branch manager at Mainely Ticks has worked with BPC staff to ensure compliance with licensure and enhance training to avoid future violations. To avoid expensive and prolonged court proceedings, BPC staff with the guidance of the Office of the Attorney General negotiated this settlement with Orkin, LLC DBA Mainely Ticks and the Rollins Corporation management.

Attachments: Proposed Consent Agreement

MAR 29 2024

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

CHK 12360345
CK Date 3-6-24
CK Amt \$22860.00

In the Matter of:) ADMINISTRATIVE CONSENT
Orkin LLC) AGREEMENT
DBA Mainely Ticks) AND
PO Box 70) FINDINGS OF FACT
Wells, ME 04090)

This Agreement by and between Orkin LLC doing business as Mainely Ticks (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 Officer 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 provides a variety of pest control and pesticide application services across the United States, including in Maine.
2. That on April 27, 2022, the Board received an anonymous complaint alleging that two Company applicators were spraying residential properties in the area of Payeur Circle in Sanford, Maine, in rainy conditions.
3. That on April 27, 2022, a Board representative visited the Payeur Circle area in Sanford and located seven pesticide application postings with Company markings and dated April 27, 2022. The Board representative noted it had rained the previous night, light rain had continued throughout the day, and the ground was wet.
4. That during the course of the investigation described in paragraph three, the Board representative interviewed a Company client whose property abuts Little Pond in Sanford, Maine, in such a way that any runoff from the property would enter the pond. The homeowner stated he was surprised to see the application taking place in the rain.
5. That on May 3, 2022, the Board representative conducted a follow up inspection with the Company employees responsible for the pesticide applications made in Sanford on April 27. The Board representative ascertained that David Scotton and James Nassif applied Cross Check Plus Multi-Insecticide, EPA Reg. No 279-3206-10404 to at least seven residential properties in Sanford, Maine, on April 27, 2022.
6. That the Board representative obtained National Oceanic and Atmospheric Administration records from the Sanford Regional Airport, which is situated just over three miles from Payeur Circle. Said records indicate light rain fell throughout the morning of April 27, and trace amounts of rain fell throughout the afternoon.
7. That the Cross Check Plus Multi-Insecticide label contains the following statements:
 - a. Do not make applications during rain;
 - b. This pesticide is extremely toxic to fish and aquatic invertebrates;
 - c. Applying this product in calm weather when rain is not predicted for the next 24 hours will help to ensure that wind or rain does not blow or wash pesticide off the treated area.
8. That the applications described in paragraph five were conducted while it was raining.

9. That the circumstances described in paragraphs five through eight constitute use of a pesticide inconsistent with the product label.
10. 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.
11. That the circumstances described in paragraphs five through ten constitute seven violations 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).
12. That during the course of the investigation described herein, the Board representative discovered that two Company applicators had been certified but not licensed with the Company dating back to the previous calendar year. As a result, the Board representative obtained copies of the Company's pesticide application records for the relevant period.
13. That a review of the records described in paragraph twelve revealed that a total of 461 pesticide applications were made by Company employees Brian Rice and David Scotton in 2021 and 2022 while neither applicator held a valid Company applicator's license. Rice made 281 of the unlicensed applications and Scotton made 180 unlicensed applications.
14. That CMR 01-026, Chapter 31, Section 1 (A) prohibits commercial application of pesticides by applicators who are not properly licensed.
15. That the circumstances described in paragraphs twelve through fourteen constitute 461 violations of CMR 01-026, Chapter 31, Section 1 (A).
16. 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.
17. That this Agreement shall not become effective unless and until the Board accepts it.
18. 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 eleven and fifteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$22,860.00 by November 16, 2023. (Please make checks payable to Treasurer, State of Maine).
19. 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 (Paragraph 18) on the express condition that all actions listed in Paragraph 18 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 Paragraph 18.
20. 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 19 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.

21. 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.
22. 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.
23. 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 three pages.

ORKIN LLC

By: Bonnie M. Rale Date: 1/16/24

Type or Print Name: _____
BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
John Pietroski, Acting Director

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