

Proposed Administrative Consent Agreement

Background Summary

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Subject: Hughes Inc.
284 US Route 1
Freeport, Maine 04032

Date of Incident(s): April 16, 2019

Background Narrative: A resident in Falmouth called the Board to report that Hughes Inc. made an unauthorized pesticide application to her trees on or about April 16, 2019. The resident said although she hired Hughes Inc. the past two years, she had no agreement to hire Hughes Inc. in 2019. The resident emailed company owner Michael Hughes, prior to the application, to inform him that she had made alternate arrangements for brown tail moth management for 2019 and asked to be removed from his schedule. Hughes made the application anyway.

Summary of Violation(s): CMR 01-026 Chapter 20 Section 6(D)2 No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property.

Rationale for Settlement: Hughes Inc. did not have the property owner's authorization to apply a pesticide to her property and did not take the necessary steps to get that authorization.

Attachments: Proposed Consent Agreement

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

In the Matter of:)
Hughes Inc.) ADMINISTRATIVE CONSENT AGREEMENT
284 US Route 1) AND
Freeport, Maine 04032) FINDINGS OF FACT

This Agreement by and between Hughes Inc. (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 offers commercial pesticide services and has the firm license number SCF 1319 issued by the Board pursuant to 22 M.R.S. § 1471-D(1)(B).
2. That on April 23, 2019, Alicia Faller, a resident at 9 Underwood Spring Way in Falmouth called the Board to report that the Company made an unauthorized pesticide application to her trees on or about April 16, 2019. Faller said although she hired the Company the last two years, she had no agreement to hire the Company in 2019. Faller emailed Company owner Michael Hughes, prior to the application, to inform him that she had made alternate arrangements for brown tail moth management for 2019 and asked to be removed from his schedule. Faller said Hughes made the application anyway.
3. That on April 23, 2019, after the phone call to the Board described in paragraph two, Faller emailed Board staff summarizing the timeline of her correspondence with Hughes for the 2019 season. In mid-March the Company sent Faller a form on which she was asked to circle her family's desired brown tail moth treatment. In response, Faller emailed Hughes on March 27, 2019, stating they wanted to get treatment again this year but wanted to know the difference between the newer treatments the Company was offering and what they had used to treat Faller's property in the past. In Faller's email to Hughes, Faller stated she tried to call Hughes but his mail box was full. Faller provided two phone numbers by which Hughes could reach her to discuss her questions.
4. That Hughes did not call Faller back to discuss the treatment options listed in his earlier mailing to Faller. Faller continued to call Hughes but did not reach him. On April 11, 2019, having not heard back from Hughes, Faller emailed Hughes that she had made alternate arrangements for brown tail moth management for 2019 and asked to be removed from Hughes' schedule.
5. That in response to the call described in paragraph two, a Board inspector met with Faller on April 29, 2019, and documented the Company's treatment invoice for the pesticide application made on April 16, 2019. The invoice listed an application of Acephate 97 UP insecticide as a drench to eleven oak trees to control brown tail moth. The inspector also documented the sign the Company used to post the application site and the Company invoice dated April 16, 2019. Company owner Michael Hughes was the commercial applicator.
6. That on May 3, 2019, Board staff conducted a follow up inspection with Michael Hughes. Hughes stated that he mixed one pound of Acephate 97 UP in 100 gallons of water and applied ten gallons of the mix to the eleven oaks on Faller's property on April 16, 2019. Hughes estimated nine of the eleven oaks were 60-70 feet tall and two of the oaks were small. The application was made as a basal drench to the bole of the trees

one foot up from the root flare and as a soil drench immediately around the trunks. In an envelope post marked May 28, 2019, Hughes mailed Board staff a letter with the scanned invoice for the application the Company made to Faller's property on April 16, 2019.

7. That during the inspection described in paragraph six, Hughes stated he was dealing with a medical issue for a week during the time frame Faller left him phone and email messages and was not able to manage his correspondence during that time.
8. That CMR 01-026 Chapter 20 Section 6(D)2 requires prior authorization from the property owner before a person can apply pesticides to their property.
9. That the Company did not have Faller's authorization for the April 16, 2019, pesticide application the Company made to her property.
10. That the circumstances described in paragraphs one through nine constitute a violation of CMR 01-026 Chapter 20 Section 6(D)2.
11. That commercial applicators making pesticide applications, must keep pesticide application records as required by CMR 01-026 Chapter 50, Section I(A).
12. That the Company's pesticide application record kept for the pesticide application described in paragraphs two, five, and six was incomplete. Missing elements from the record included: restricted entry interval, method of application (type of equipment), the pesticide application rate, wind speed, wind direction, air temperature, and sky conditions.
13. That the circumstances described in paragraphs eleven and twelve, constitute a violation of CMR 01-026 Chapter 50, Section I(A).
14. That the Board has regulatory authority over the activities described herein.
15. 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.
16. That this Agreement shall not become effective unless and until the Board accepts it.
17. 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 and thirteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$600. (Please make checks payable to Treasurer, State of Maine).

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

HUGHES INC.

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Megan Patterson, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General