

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** Magic Carpet, Cleaning  
and Restoration Inc.  
623 Main Street  
South Portland, Maine 04016

**Date of Incident(s):** August 4, 2010

**Background Narrative:** The BPC received a call that Magic Carpet, Cleaning and Restoration Inc. is offering mold remediation services without having the required pesticide applicator license. The company is located in South Portland. A follow-up inspection with the company owner confirmed that the company routinely uses Microban Disinfectant Spray Plus (EPA reg. # 70385-5) for commercial mold remediation. The above date was selected to document a specific application made by an unlicensed company employee using this product.

**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.

**Rationale for Settlement:** The staff compared the violation to similar cases settled by the Board in formulating a penalty proposal. The penalty also took into account that upon being informed of the licensing requirement the company took immediate steps to obtain a firm license and licensed company personnel.

**Attachments:** Proposed Consent Agreement

**STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL**

Joseph Dell' Aquilla )  
Magic Carpet, Cleaning and ) ADMINISTRATIVE CONSENT AGREEMENT  
Restoration Inc. )  
623 Main Street ) AND  
South Portland, Maine 04016 ) FINDINGS OF FACT

This Agreement, by and between Magic Carpet, Cleaning and Restoration 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.A. §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 provides structural property damage services for hire, including mold remediation.
2. That on August 30, 2010, the Board received a call alleging the Company was performing unlicensed commercial mold remediation work.
3. That in response to the call in paragraph two, a Board inspector contacted the company president, Joseph Dell' Aquilla on August 31, 2010 to conduct a follow-up pesticide inspection. During this inspection Dell' Aquilla acknowledged his company routinely used Microban Disinfectant Spray Plus (EPA Reg. # 70385-5) for commercial mold remediation work.
4. That during the inspection in paragraph three, the inspector documented that Daniel Russell, an employee of the company, applied Mircroban Disinfectant Spray Plus (EPA Reg. # 70385-5) on August 4, 2010 for a residential customer that resides at the Highland Farm on the Barn Road in Yarmouth to control mold on a rug.
5. That 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 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.
6. 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.
7. That no one from the Company had a commercial pesticide applicator's license at the time of the application described in paragraph four.
8. That Dell' Aquilla stated to the inspector, and later in a letter to the Board, that he was not aware of the pesticide applicator licensing requirement until his technician learned of it when attending a water damage restoration class on August 19 through August 21 of this year.
9. That immediately after learning of the licensing requirement the Company sought appropriate licenses.

10. That the circumstances described in paragraphs one through eight constitute a violation of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A) III.
11. That the Board has regulatory authority over the activities described herein.
12. 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.
13. That this Agreement shall not become effective unless and until the Board accepts it.
14. That, in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violation referred to in paragraph ten, the Company agrees to pay to the State of Maine the sum of \$350. (Please make checks payable to Treasurer, State of Maine). This is a reduced penalty amount compared to similar violations, taking into consideration the fact that the Company took immediate steps to become licensed upon learning of that requirement.

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

MAGIC CARPET, CLEANING AND RESTORATION INC.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_

Henry Jennings, Director

APPROVED

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Randlett, Assistant Attorney General