

CASE INVESTIGATION SUMMARY

Company: A-One Exclusion **License(s):** SCF 41878 & CMA41877

Origin of Case: Complaint call to BPC from a licensed competitor

Date of Incident: 12-2-09 **Pesticide(s) Involved:** Timbor XE

Summary of Allegation(s): Caller requested we check status of a N.H. applicator working in Maine at one of his customers in Waterville.

Staff Action: Reviewed billing invoice caller gave to BPC staff, checked our licensing database, and scheduled a follow-up inspection with the applicator (he did not show up to the meeting)

Staff Findings: Applicator made commercial pesticide applications with an expired applicator license. Applicator acknowledged violations and signed a Consent Agreement to settle this case, but did not pay. Board staff and applicator agreed on a payment schedule. The applicator did not meet the payment schedule. The applicator did not attend an agreed upon meeting to discuss resolution of this case.

Attachment(s): Signed Consent Agreement
History of failure to pay consent agreement penalty

Applicable Citations of Law:

CMR 01-026, Chapter 31, Section 1(A).

Any commercial applicator must be either:

- I. licensed as a commercial applicator/master; or
- II. licensed as a commercial applicator/operator; or
- III. supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client....

22 M.R.S. § 1471-D

1. Certification required; commercial applicators and spray contracting firms. Certification is required for commercial applicators and spray contracting firms as follows.
 - A. No commercial applicator may use or supervise the use of any pesticide within the State without prior certification from the board, provided that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator; and [1983, c. 819, Pt. A, §42 (NEW).]
 - B. No spray contracting firm may use or supervise the use of any pesticide within the State without prior certification from the board.

Note: Records violation was incorrectly cited on signed Consent Agreement

Staff Recommendation(s): Refer case to Attorney General's Office

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

Paul Nobile)
A-One Exclusion) ADMINISTRATIVE CONSENT AGREEMENT
62 Jim Town Road) AND
Gorham, NH 03581) FINDINGS OF FACT

This Agreement, by and between A-One Exclusion. (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 wildlife removal and pest control services for hire, including in the Waterville area.
2. That, in response to a call the Board received on January 6, 2010, about pesticide applications made by the Company at the Elias and Elana Nawfel residence located at 22 Lloyd Road, and the Jamila Nawfel residence at 31 North Riverside, both in Waterville, Board staff initiated a pesticide follow-up investigation.
3. That Board staff met with the caller in paragraph two and caller gave staff the work order/invoice for work done at the sites in paragraph two. The work order/invoice was from A-One Exclusion and the specialist who completed the work was Paul Nobile.
4. That the work order/invoice in paragraph three specified that pest control was done at the residences in paragraph two to control woodborer bark beetles. Four gallons on Timbor XE mix was recorded as the pesticide applied. The application date was December 2, 2009.
5. That review of Board's license database by staff showed that Paul Nobile's commercial master applicator license (CMA 41877) and firm license (SCF 41878) for A-One Exclusion expired on December 31, 2007 and that it was not renewed.
6. That Board staff scheduled two separate meeting dates with Company owner/applicator Paul Nobile at a mutually agreed up time and place to conduct a follow-up use inspection related to the applications made in paragraph two.
7. That Nobile cancelled both meetings in paragraph six before the meeting date arrived.
8. That on February 1, 2010 Nobile faxed Board staff a copy of the work order/invoice for the pesticide applications made in paragraph two and a label and MSDS for Timbor Professional Insecticide and Fungicide (EPA reg. # 64405-8), the pesticide applied.
9. That the work order/invoice in paragraph eight, confirms that Nobile applied Timbor Professional Insecticide and Fungicide (EPA reg. # 64405-8) to the properties in paragraph two on December 2, 2009, and that the application was made for compensation.
10. That application of any pesticide for compensation constitutes a commercial pesticide application pursuant to 22 M.R.S.A. § 1471-C (5) and (5-A).

11. That commercial pesticide applications must be made or directly supervised by a licensed commercial applicator as required by 22 M.R.S. § 1471-D(1) and CMR 01-026, Chapter 31, Section 1(A).
12. That no one from the Company had a commercial pesticide applicator's license at the time of the application described in paragraphs two, eight and nine.
13. That the circumstances described in paragraphs one through twelve constitute violations of 22 M.R.S. § 1471-D(1) and CMR 01-026 Chapter 50, Section 1.
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 causes of action which the Board has against the Company resulting from the violations referred to in paragraph thirteen, the Company agrees to pay to the State of Maine the sum of \$500. (Please make checks payable to Treasurer, State of Maine.)

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

A-ONE EXCLUSION

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General

History of A- One Exclusion's Failure to Pay Consent Agreement Penalty:

- June 19, 2010: Company owner signs \$500 Consent Agreement- Payment due July 2, 2010. No payment made.
- Sept 13, 2010: Board staff member calls Company owner to discuss. Owner asked if he could make two split payments of equal amounts to resolve the \$500 delinquent penalty payment (payments to be made Sept 20, 2010 and October 3, 2010). Board staff member verbally agrees to this request. No payments made.
- October 4, 2010: Company pays \$50 towards \$500 Consent Agreement.
- January 27, 2011: Board staff called company owner about delinquent \$450 penalty balance. Company owner called back the following day and said he would come to the Board office February 3, 2011 with a \$200 payment and discuss payment of balance at that time. Owner did not show up as arranged.