

Proposed Administrative Consent Agreement Background Summary

Subject: Shawn James
Orkin Exterminating Co.
960 Riverside Street
Portland, Me 04103

Date of Incident(s): September 27, 2007

Background Narrative: An Orkin applicator applied two separate insecticides, one indoor and one outdoor, to the wrong site. The customer requesting the application resides at 290 Gurney Hill Road in Hartford and also owns a rental property at 233 Gurney Hill Road. The properties are about a quarter of a mile apart. The intended site, correctly listed on the job order, was the rental property. The site incorrectly treated was the homeowner's house. This was not Orkin's first work at 233 Gurney Hill Road. In July of 2007, Orkin treated this site.

Summary of Violation(s): 22 M.R.S.A. §1471-D (8)(C), use or supervise the use of a pesticide in a careless, negligent or faulty manner...

Rationale for Settlement: The requirement to positively identify the correct site was not met in this case. No electric meter number was on the work slip. The applicator did not confirm the correct address through this system or any other Board approved system. The company self-reported the application to the wrong site.

Attachments: Proposed Consent Agreement

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

Shawn James) ADMINISTRATIVE CONSENT
Orkin Exterminating Co.) AGREEMENT
960 Riverside Street) AND
Portland, Me 04103) FINDINGS OF FACT

This Agreement by and between Orkin Exterminating Company (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 adopted by the Board on September 19, 1984.

The parties to this Agreement agree as follows:

1. That on September 28, 2007, the Company self-reported that pesticides were applied to the wrong site in Hartford the previous day.
2. That on October 10, 2007, in response to the call in paragraph one, a Board inspector conducted a follow-up inspection with the company applicator, Shawn James.
3. That from the inspection it was determined that James made two pesticide applications at the K. Ramsey Ludlow residence at 290 Gurney Hill Road in Hartford on September 27, 2007. One of the applications was made indoors and one of the applications was made outdoors.
4. That the pesticide applied indoors was EcoPCO AR•X insecticide, EPA Reg. number 67425-15 and the pesticide applied outdoors was Talstar P Professional Insecticide, EPA Reg. number 279-3206.
5. That the work order address was 233 Gurney Hill Road and listed the name Sharratt.
6. John Sharratt is K.Ramsey Ludlow's husband. They also own the property at 233 Gurney Hill Road. It is rented to a tenant and approximately a quarter of a mile from 290 Gurney Hill Road.
7. That Orkin correctly treated the 233 Gurney Hill Road address in July of 2007 and had the directions to the site at that time.
8. That the applicator acknowledged the applications made to the property located at 290 Gurney Hill Road in Hartford, as described in paragraphs one through four, were actually scheduled for 233 Gurney Hill Road.
9. That the residents at 290 Gurney Hill Road had not requested or authorized the pesticide application described in paragraph three.
10. That a Board policy concerning positive identification of the proper treatment site by commercial applicators has been in effect since July 29, 2005.

11. That obtaining a customer's electrical meter number in advance of the treatment to verify the correct application site is an appropriate positive identification method approved by the Board.
12. That the address on the work slip was correct and the Company applicator went to the wrong address. No electric meter number was on James's work slip. The applicator did not confirm the correct address through this system or any other Board approved system.
13. That the circumstances described in paragraphs one through nine constitute the use of pesticides in a careless, negligent or faulty manner in violation of 22 M.R.S.A. §1471-D (8)(C).
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 violation referred to in paragraph thirteen, the Company agrees to ensure they have a written policy in place for positive site identification. A copy of the Company's written procedures and training schedule for this document shall be submitted to the Board along with this Agreement. The Company also agrees to pay a penalty to the State of Maine in the sum of \$1000. This penalty is due and payable upon the signature of this agreement by the Company (Please make checks payable to Treasurer, State of Maine).

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

ORKIN EXTERMINATING COMPANY

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General



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Policy Statement and Company Procedure for Positive Identification of Pesticide Application Sites

This Policy implements the recommendations set forth in the Maine Board of Pesticides Control's Policy Concerning Positive Identification of the Proper Treatment Site by Commercial Applicators, Adopted by the Board on July 29th, 2005.

The Board of Pesticides Control recommends and has approved obtaining a customer's electrical meter number in advance of the treatment to verify the correct application site as an appropriate positive identification method.

- 1.) During our Initial service with new customers, signed service agreements will be obtained with the customer's proper billing and service address and alternate phone numbers where available.
- 2.) The number on the customer's Electrical Meter box will be obtained during the initial service by the servicing technician.



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- 3.) A Welcome to Orkin call will be made by the servicing technician from the home after the completion of the initial service. The electrical meter number will be captured in the Orkin computer operating system (Focus) by the branch administrative staff in the Contract Details tab under Tech Notes.
- 4.) The electrical meter number will be printed on all future invoices in the Tech Notes section.
 - 5.) The electrical meter number must be verified when performing services by every technician for all future services.
 - 6.) If a new customer has their initial service performed after or before branch operating hours it will be the responsibility of the Service Manager, Shawn James for Portland and Chris Plummer, for Bangor to capture the missing electrical meter number in Focus.

This Policy and Procedure will be reviewed on a quarterly basis with all Orkin employees who work in the state of Maine. The training schedule will be February, May, August, and November each year. All new employees will also be trained during their initial 4-6 week training period. A copy of the meeting attendance sign off will be placed into each employee's verifiable training file. The Compliance Officer responsible for adherence to this policy for the state of Maine is Jack Johnson.

From: Jack Johnson – Branch Manager

CC: Bill Minahan, Steve Oles, Shawn James, Chris Plummer and all other Orkin employees in The state of Maine.