

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

**Subject:** William Burke  
Sea Urchin Cottage  
57A Long Beach Avenue  
York, Maine 03909

**Date of Incident(s):** July 12, 2012

**Background Narrative:** The Health Inspection Division of the Maine Centers for Disease Control called the Board of Pesticides Control to convey a complaint they received from vacationers renting a bed bug infested cottage. The renters alleged that due to the infestation, the owner of the property made pesticide applications to the interior of the cottage while they were renting it. A follow up inspection confirmed that the manager/significant other of the owner did apply an aerosol insecticide as well as a liquid insecticide to the interior of the cottage while the vacationers were renting the cottage.

**Summary of Violation(s):** 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.

**Rationale for Settlement:** The staff compared the violation to similar cases settled by the Board and the applicator's lack of candor in formulating the penalty proposal.

**Attachments:** Proposed Consent Agreement

JUN 4 2013

CK# 114

Amnt: 500.00

Date: 5/31/13

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

William Burke )  
Sea Urchin Cottage ) ADMINISTRATIVE CONSENT AGREEMENT  
57A Long Beach Ave ) AND  
York, Maine 03909 ) FINDINGS OF FACT

This Agreement, by and between Sea Urchin Cottage (hereinafter called the "Cottage") 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 Cottage is located in York Maine and is rented to the public for overnight accommodations. The Cottage is co-owned by William Burke and is managed by his spouse, Cedar Gordon.
2. That the Board received an email from the Health Inspection Division of the Maine Centers for Disease Control ("CDC") on July 20, 2012, about a complaint the CDC received from renters concerning a bed bug infestation at the Cottage when they stayed there during July, 2012. The renters told CDC personnel that a pesticide fog application had been made to the interior of the Cottage during the interval when they were instructed to leave the cottage for a period of time and return later the same day.
3. That the email from the CDC to the Board further noted that in response to the complaint the CDC received in paragraph two, a CDC inspector from the Health Inspection Division went to the Cottage on July 20, 2012. The inspector found one live bed bug and some cast skins at that time.
4. That an email to the Board on July 23, 2012, from a CDC supervisor, indicated that when their inspector went to the Cottage as outlined in paragraph three, William Burke was making a pesticide application inside the Cottage at that time to address the bed bug problem.
5. That in response to the information the Board received in paragraphs two and four a Board inspector conducted a follow up inspection with Cedar Gordon on July 24, 2012.
6. That during the inspection in paragraph five, Gordon stated to the inspector that she applied two different insecticides to the interior of the Cottage on Thursday, July 12, 2012, to control a bedbug infestation. She used a liquid pesticide in a jug with a trigger type applicator to spray the beds, walls, and floors of the entire Cottage and later in the day followed up with 3 cans of an aerosol insecticide. Gordon told the inspector the Cottage was not rented and vacant at the time of her application, but was rented within a day or two after her application. Gordon described the pesticides that she applied and told the inspector where she purchased them. Gordon said she no longer had the containers.
7. That on September 18, 2012, a BPC staff member called the CDC inspector that went to the Cottage as described in paragraphs three and four. The CDC inspector said that when he was at the Cottage, Burke was making a pesticide application using a jug approximately one gallon in size with a built in retractable hose and a trigger type handle. The application was to mopboards in the dining area to control bed bugs. Burke showed the inspector a hand written receipt from an exterminator he hired on an earlier date to treat the Cottage for bed bugs. The inspector said rental customers had just left and he thought new people were coming later that day.

8. That on December 14, 2012, Board staff called one of the renters referred to in paragraph 2 concerning the complaint alleged in paragraph 2.
9. That the renter confirmed that she and her convalescing sister stayed at the Cottage starting on Saturday, July 7, 2012, but by the following Tuesday night and Wednesday morning (July 10 and 11) it was clear to them there was a bug problem.
10. That the renter also stated that on Wednesday morning, July 11, 2012, she contacted Gordon and showed Gordon some of the bugs she had in a baggie which the renter had collected from the mattress she was sleeping on in the Cottage.
11. That that the renter also stated that Gordon told her she had no idea what the bugs were, but showed the renter a spray bottle of insecticide with pictures on it of the same bug. The renter pointed out to Gordon they were the same bug. The renter and Gordon agreed they were bed bugs.
12. That the renter also stated that Gordon said she would have her husband go to the hardware store to get cans of fog to treat the inside of the Cottage and that the renters would have to stay somewhere else for 24 hours. Gordon instructed the renter where and how to launder their bedding and Gordon said she would also use the bottle product to spray the beds, walls, and cracks and crevices of the Cottage to treat for bed bugs.
13. That the renter also stated that she later called Gordon to inquire of the status of the bed bugs and treatment. Gordon informed the renter her husband had not returned from the hardware store.
14. That the renter also stated that by mid-afternoon Gordon called her to inform her that the fog they used would be completed in two hours and it would be safe to go back into the Cottage after that.
15. That the renter also stated that on Wednesday, July 11, 2012, at around 4 or 5 PM, she and her sister returned and entered the Cottage. A can of fogger was discovered on the lunch counter and there was a chemical smell inside the Cottage. One of the renters lifted a mattress and bed bugs were still scurrying around.
16. That the renter also stated that on Wednesday, July 11, 2012, after the sequence of events outlined in paragraphs nine through fifteen, she spoke with Burke to inform him the living conditions in the Cottage were unacceptable. Because Gordon was not present, the renter left Gordon a written note, and the renters collected their possessions and returned to their out of state home.
17. 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.
18. 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. Applications made to rented cottages are considered applications made to areas that are open to use by the public.
19. That the pesticide applications made to the Cottage in July, 2012 as described in that paragraphs above constitute custom applications under 22 M.R.S. § 1471-C(5-A) and, therefore, a commercial applicator's license was required for those applications.
20. That no one from the Cottage had a commercial pesticide applicator's license at the time of the pesticide applications described in paragraphs four, six, and fourteen.

21. That the circumstances described in paragraphs one through twenty constitute multiple violations of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
22. That the Board has regulatory authority over the activities described herein.
23. That the Cottage 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.
24. That this Agreement shall not become effective unless and until the Board accepts it.
25. That, in consideration for the release by the Board of the causes of action which the Board has against the Cottage resulting from the violations referred to in paragraph twenty- one, the Cottage 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 three pages.

SEA URCHIN COTTAGE

By: Cedar Gordon Date: 5/31/13

Type or Print Name: Cedar Gordon

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Henry Jennings, Director

APPROVED

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark Randlett, Assistant Attorney General