

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

**Subject:** George Bishop  
Penobscot Cleaning Services Inc.  
565 Wilson Street  
Brewer, Maine 04412

**Date of Incident(s):** Throughout 2012

**Background Narrative:** Penobscot Cleaning Services Inc. is a Brewer based company that does commercial cleaning and mold remediation work. Their master applicator was licensed from December of 2005 through December 31, 2011. At that time, both the master applicator's license and firm license were terminated because the master applicator's recertification cycle expired and he did not have the necessary credits to renew. The company continued to make commercial pesticide applications throughout 2012 without a certified or licensed applicator or firm license.

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

- 22 M.R.S. § 1471-D(1)(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
  
- CMR 01-026 Chapter 31 Section 1(A)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 the entire time it takes to complete an application conducted by an unlicensed applicator. This supervision must include visual and voice contact. Visual contact must be continuous except when topography obstructs visual observation for less than five minutes. Video contact does not constitute visual observation. The voice contact requirement may be satisfied by real time radio or telephone contact. In lawn care and other situations where both the licensed and unlicensed applicator are operating off the same application equipment, the licensed applicator may move to an adjoining property on the same side of the street and start another application so long as he or she is able to maintain continuous visual and voice contact with the unlicensed applicator.
  
- CMR 01-026 Chapter 31 Section 6(d) Commercial applicators who apply pesticides for hire (custom applicators) and operate a company that is incorporated or which employs more than one applicator (licensed or unlicensed) must comply with Chapter 35, Certification & Licensing Provisions/Spray Contracting Firms which requires an additional Spray Contracting Firm License

**Rationale for Settlement:** The staff compared the violation to similar cases settled by the Board and the extent of the unlicensed applications in formulating the penalty proposal.

**Attachments:** Proposed Consent Agreement

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

George Bishop )  
Penobscot Cleaning Services Inc. ) ADMINISTRATIVE CONSENT AGREEMENT  
565 Wilson Street ) AND  
Brewer, Maine 04412 ) FINDINGS OF FACT

This Agreement, by and between Penobscot Cleaning Services 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.. §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 is located in Brewer, Maine at 565 Wilson Street and is in the business of commercial cleaning and mold remediation.
2. That on April 11, 2013, a Board inspector conducted a records/operations check inspection with the Company because they were suspected of making unlicensed commercial pesticide applications in 2012. Both their spray contracting firm license and master applicator's license had expired on December 2011.
3. That during the inspection in paragraph two, the inspector documented that the Company did make numerous unlicensed commercial pesticide applications in 2012.
4. 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.
5. 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.
6. That the pesticide applications made by the Company in 2012 as described in 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.
7. That no one from the Company had a commercial pesticide applicator's license at the time of the pesticide applications described in paragraph three.
8. That the circumstances described in paragraphs one through seven constitute multiple violations of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
9. That CMR 01-026 Chapter 31 Section 6(d) requires that commercial applicators who apply pesticides for hire (custom applicators) and operate a company that is incorporated or which employs more than one applicator (licensed or unlicensed) must comply with Chapter 35, Certification & Licensing Provisions/Spray Contracting Firms which requires an additional Spray Contracting Firm License.
10. That the circumstances described in paragraphs one through seven and nine constitute a violation of CMR 01-026 Chapter 31 Section 6(d)

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 violations referred to in paragraphs eight and ten, the Company agrees to pay to the State of Maine the sum of \$350. (Please make checks payable to Treasurer, State of Maine.)

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

PENOBSCOT CLEANING SERVICES INC.

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

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

BOARD OF PESTICIDES CONTROL

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

Henry Jennings, Director

APPROVED

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

Mark Randlett, Assistant Attorney General