

Proposed Administrative Consent Agreement Background Summary

Subject: Penquis
262 Harlow Street
Bangor, Maine 04401

Date of Incident(s): August 8, 2017

Background Narrative: Penquis is a community action agency. On August 8, 2017, an agency employee applied roundup herbicide to the Pre-K grade playground at the Milo Elementary School. MSAD 41 owns the property and building where the elementary school is housed. The agency oversees the Pre-K grade and owns the Pre-K playground equipment.

The agency did not employ a master applicator, and no one from the agency had a commercial pesticide applicator's license at the time of the application.

The applicator did not obtain written authorization from the school Integrated Pest Management Coordinator prior to making the pesticide application.

Summary of Violation(s): 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....

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 27 Section 6(A) Prior to conducting a pesticide application not exempted in Section 3 in a school building or on school grounds, commercial pesticide applicators shall obtain written authorization from the IPM Coordinator. Authorization must be specific to each application and given no more than 10 days prior to the planned application.

Rationale for Settlement: Ready to use product-no mixing, school was not in session, school's integrated pest management coordinator acted quickly.

Attachments: Proposed Consent Agreement

**STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION, AND FORESTRY
BOARD OF PESTICIDES CONTROL**

Penquis)	
262 Harlow Street)	ADMINISTRATIVE CONSENT AGREEMENT
Bangor, Maine 04401)	AND
		FINDINGS OF FACT

This Agreement, by and between Penquis (hereinafter called the "Agency") 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 December 13, 2013.

The parties to this Agreement agree as follows:

1. That the agency, located at 26 Harlow Street in Bangor, is a community action agency covering Penobscot, Piscataquis, and Knox counties.
2. That on August 14, 2017, a Board inspector met with agency employee Steve Ward to follow up on a complaint about a pesticide application made at the Milo elementary school (pre-K to grade 2) at 18 Belmont Street in Milo.
3. That Ward acknowledged that on August 8, 2017, he applied Roundup Ready-To-Use Weed & Grass Killer III to kill weeds on the Pre-K playground at the school.
4. That MSAD 41 owns the property and building where the Milo elementary school is housed. The school itself is a public school that is administratively part of MSAD 41 although the agency oversees the Pre-K grade and owns the Pre-K playground equipment.
5. That the Milo elementary school is a school as defined in CMR 01-026 Chapter 27 Section 1(B). It was not in session at the time of the application described in paragraph three.
6. That CMR 01-026 Chapter 27 Section 5(D) requires that, when a pesticide application is deemed necessary at a school, the applicator must comply with all the requirements of CMR 01-026 Chapter 31–Certification and Licensing Provisions/Commercial Applicator
7. 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.
8. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) includes 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.
9. That the circumstances described in paragraphs one through eight constitute a custom application of a pesticide in accordance with 22 M.R.S. § 1471-C (5-A).
10. That the agency did not employ a master applicator, and no one from the agency had a commercial pesticide applicator's license at the time of the application described in paragraph three.

11. That the circumstances described in paragraphs one through ten constitute a violation of 22 M.R.S. 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
12. That CMR 01-026 Chapter 27 Section 6(A) requires that commercial pesticide applicators shall obtain written authorization from the IPM Coordinator. Authorization must be specific to each application.
13. That the applicator did not obtain written authorization from the school Integrated Pest Management Coordinator (IPMC) prior to making the pesticide application described in paragraph three.
14. That the circumstances described in paragraphs one through five, twelve, and thirteen constitute a violation of CMR 01-026 Chapter 27 Section 6(A).
15. That the Board has regulatory authority over the activities described herein.
16. 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.
17. That this Agreement shall not become effective unless and until the Board accepts it.
18. That, in consideration for the release by the Board of the causes of action which the Board has against the agency resulting from the violations referred to in paragraphs seven and eleven, the agency agrees to pay to the State of Maine the sum of \$250. (Please make checks payable to Treasurer, State of Maine).

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

PENQUIS

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Cam Lay, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General