

Proposed Administrative Consent Agreement

Background Summary

Subject: Tripp Middle School
RSU/MSAD 52
486 Center Bridge Road
Turner, Maine 04282

Date of Incident(s): November 30, 2011

Background Narrative: A District Maintenance Worker for the school system was directed to apply an aerosol insecticide, Misty Wasp and Hornet Killer Iib, to the kitchen area of the Tripp Middle School to control a flying ant problem. The maintenance worker made the application on a Wednesday after school hours from 2:15-2:30 PM. The following day at 5:00 AM, a cleanup crew made up of three school kitchen workers, the applicator and another maintenance worker cleaned up the kitchen (a custodian helped towards the end) as directed previously by the Facilities Director/IPM Coordinator and/ or the Food Service Manager.

The cleanup crew reported wet places where pools of pesticides collected and fumes in the kitchen. Five school workers, including the three kitchen workers and the custodian assigned to the cleanup and a teacher/teachers association officer who went to the kitchen to interview the cleanup crew complained of different symptoms. In aggregate, these symptoms included light-headedness, headaches, burning eyes and burning lungs. They were later examined at an outpatient medical facility in Lewiston.

Summary of Violation(s):

- CMR 01-026 Chapter 27, Section 2(B)(3) : The IPM Coordinator shall maintain and make available to parents, guardians and staff upon request records of all pesticide applications as required under CMR 01-026 Chapter 50 – Record Keeping and Reporting Requirements.
- 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.
- CMR 01-026 Chapter 31 Section 1(A) III: Any commercial applicator must be either: supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property.
- 7 U.S.C. § 136j (a)(2)(G): Unlawful acts: to use any registered pesticide in a manner inconsistent with its labeling.

- 7 M.R.S.A. § 606 (2)(B): A person may not: use or cause to be used any pesticide in a manner inconsistent with its labeling or with rules of the board, if those rules further restrict the uses provided on the labeling.
- 22 M.R.S.A § 1471-D(8)(F): Has made a pesticide recommendation, use or application, or has supervised such use or application, inconsistent with the labeling or other restrictions imposed by the board.
- CMR 01-026 Chapter 27, Section 4(C): During the school year when classes are regularly scheduled, schools shall provide notice of pesticide applications.
- CMR 01-026 Chapter 27, Section 5: Integrated Pest Management Techniques- identify the pest specifically.

Rationale for Settlement: This case did not involve an application for hire. The school's IPM Coordinator misinterpreted an exemption in Chapter 27 Section 3 of the Board's regulations. The superintendent took remedial steps to prevent a recurrence of this type of incident and submitted those steps to the Board in writing. There is a new School IPM Coordinator.

Attachments: Proposed Consent Agreement

MAINE SCHOOL ADMINISTRATIVE DISTRICT #52

Greene ♦ Leeds ♦ Turner

486 Turner Center Road
Turner, Maine 04282

FEB 29 2012

DR. HENRY ALIBERTI, JR.
SUPERINTENDENT

BECKY FOLEY
ASSISTANT SUPERINTENDENT

DEBORAH HOLLAND
BUSINESS MANAGER

DEBORAH ALDEN
DIRECTOR OF SPECIAL EDUCATION

February 27, 2012

Maine Bureau of Pesticide Control
Mr. Raymond Connors, Manager of Compliance
28 State House Station
Augusta, Maine 04333-0028

Dear Mr. Connors:

I have had the opportunity to review the *Administrative Consent Agreement and Findings of Fact* and the *Compliance Verification Statement* dated January 31, 2012. I have signed each document in agreement.

I want to assure you MSAD #52 has taken steps to prevent future incidences of improper pesticide application. As noted in earlier correspondence, on December 16, 2011, a directive was issued from my office to all administrators, directors, managers, and nurses noting, in part, that any pesticide spraying will be done in accordance with District Policy: *Pest management in School Facilities and on School Grounds Policy ECB and Chapter 27: Standards for Pesticide Applications and Public Notification in Schools*. All pesticide products including sprays, baits, cups, etc. have been removed from custodial storage areas in schools. These products are presently being stored in a centralized maintenance facility. These products will be returned to vendors or disposed of properly.

Any work related injuries are to be processed immediately with supervisor reports completed within 24 hours. All injuries are to be reported to the superintendent and supervisors are to follow-up with injured employees on an on-going basis during their health care.

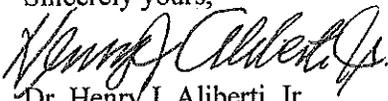
In addition, all custodial and maintenance staff have been instructed, in writing, not to do any pesticide application. Building principals with their custodians did onsite school inspections of custodial storage areas to insure no pesticide products were present.

The District is committed to use *green* preventative strategies prior to the consideration of any licensed pesticide application.

The District is seeking a new director for school facilities and transportation that will be our IPM officer. This person will access appropriate training as part of his/her job orientation.

I thank you for your support during this time and will seek to continue our positive relationship.

Sincerely yours,



Dr. Henry J. Aliberti, Jr.
Superintendent

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

Henry Aliberti, Jr.)	
Tripp Middle School)	ADMINISTRATIVE CONSENT AGREEMENT
RSU 52/MSAD 52)	AND
486 Center Bridge Road)	FINDINGS OF FACT
Turner, Maine 04282)	

This Agreement, by and between RSU 52/MSAD 52 Tripp Middle School(hereinafter called the "School") 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 Tripp Middle School, located at 65 Matthews Way in Turner, is part of RSU 52/MSAD 52.
2. That on December 9, 2011, the Board received a call from a Tri Town Education Association (TTEA) staff person seeking information on the toxicity of two pesticides that may have been sprayed at the School. These were Misty Wasp & Hornet Killer IIb (EPA reg. # 10807-196) and Raid Wasp and Hornet Killer 33 (EPA reg. # 4822-553).
3. That in response to the call in paragraph two, on December 12, 2011, a Board inspector met with two TTEA Officers (Susan Shaw and James Harwood) who were representing School staff members who were directed to clean up the residue after a pesticide application made to the School kitchen on November 30, 2011.
4. That as a result of the meeting described in paragraph 3 and records obtained during it, the Board inspector determined that a pesticide application was made to the kitchen area of the School on the afternoon of November 30, 2011, after school hours, as a result of flying ants being reported.
5. That on December 1, 2011, at 5:00 AM, three School kitchen workers (Jessica Hafford, Tina Smith and Lisa Keen) carried out an earlier directive by Susan Weston (Facilities Director/IPM Coordinator) and/or Dave Roberts (Food Service Manager) to clean the residual pesticides in the kitchen. The kitchen workers were joined by School maintenance workers Jessica Tessier, Jim Abbott, and Romeo Morrisette (custodian). After the clean-up, Harwood came to the kitchen to interview school staff.
6. That the cleanup crew reported there were wet places and areas where pools of pesticides were present, the air was thick with chemical fumes and mist. Some members of the clean-up crew reported there was no protective eyewear, gloves, or smocks provided to do the cleanup. Tessier and Weston, in written statements, contended gloves and masks were available in the kitchen at the time of clean-up.
7. That five school workers, including the three kitchen workers from the cleanup crew identified in paragraph 5 above, complained of different symptoms. In aggregate, these symptoms included: light-headedness, headaches, burning eyes and burning lungs. Subsequently, they were examined at Concentra, a medical facility in Lewiston.
8. That on December 2, 2011, school staff asked Weston for information on the pesticides applied in the kitchen on November 30, 2011. Weston did not provide the information requested at that time.

9. That on December 5, 2011, Concentra contacted Weston to find out which pesticides the workers were exposed to and requested the Material Safety Data Sheets for the pesticides. Weston provided Concentra with the MSDS for Misty Wasp and Hornet Killer IIB on December 6, 2011.
10. That CMR 01-026 Chapter 27, Section 2 (B)(3) of the Board's rules requires that the School IPM Coordinator be responsible for maintaining labels and material safety data sheets for all pesticides applied and that they be made available to staff upon request.
11. That when School staff requested information from Weston on December 2, 2011, about the pesticide application made to the School it was not provided upon request.
12. That the circumstances described in paragraphs one through eleven constitute a violation of CMR 01-026 Chapter 27, Section 2(B)(3)
13. That a Board inspector attempted to contact Weston by phone on December 12, 2011, and left voice messages both on her office phone and cell phone. The inspector also left his business card in Weston's mail box on this same date. Henry Aliberti, the School Superintendent called the inspector later in the day and told him Jessica Tessier (District Maintenance Worker) at the School, was the applicator for the pesticide application described in paragraph four.
14. That on December 19, 2011, the inspector interviewed Tessier. Tessier stated she applied 6 (some were partial cans) cans of Misty Wasp and Hornet Killer (EPA reg. no. 10807-196) to the kitchen area of Tripp Middle School on November 30, 2011, from 2:15 PM to 2:30 PM to control flying ants. Tessier estimated she used a total of 3 full cans (40.5 ounces total). The inspector estimated the kitchen area was 15 feet by 35 feet (525 square feet). Tessier said she sprayed along the mopboards, around some pipes, and above some ceiling tiles in the kitchen where a nest of flying ants was found.
15. 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, or in a food establishment licensed under Chapter 551 or an eating establishment licensed under Chapter 562.
16. That the School kitchen is licensed under 22 M.R.S. Chapter 562 as an eating establishment.
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 the definition of Commercial applicator in 22 M.R.S. § 1471-C(5) also includes individuals who apply any pesticides in connection with their duties as officials or employees of federal, state or local governments.
19. That Tessier, as an employee of RSU 52/MSAD 52, is an employee of a local governmental entity.
20. That Tessier did not have a commercial pesticide applicator's license at the time of the application described in paragraph fourteen, nor was she under the direct supervision of a certified commercial applicator as required by 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A) III.
21. That the circumstances described in paragraphs one through twenty constitute a violation of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A) III.

22. That the Misty Wasp & Hornet Killer Iib (EPA reg. # 10807-196) label states “ Do not use in commercial food/feed handling establishments, restaurants or other sites where food/feed is commercially prepared, processed or served”.
23. That the School kitchen described in paragraph fourteen is a site where food is commercially prepared, processed or served.
24. That the circumstances described in paragraphs fourteen, twenty-two, and twenty-three constitute the use of a pesticide inconsistent with the product labeling in violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F).
25. That CMR 01-026 Chapter 27, Section 2 (B)(3) requires that pesticide application records be kept as specified.
26. That on December 19, 2011, after meeting with Tessier a Board inspector did a follow-up inspection with Weston, the School IPM Coordinator.
27. That from the inspection in paragraph twenty-six, the inspector determined that no pesticide application record was kept by the School IPM Coordinator for the pesticide application made to the kitchen of the School in paragraph fourteen.
28. That the circumstances in paragraphs fourteen, and twenty-five through twenty-seven, constitute a violation of CMR 01-026 Chapter 27, Section 2(B)(3).
29. That CMR 01-026 Chapter 27, Section 4(C) requires that schools shall provide notification to school staff and parents or guardians of students of pesticide applications made when classes are regularly scheduled.
30. That from the inspection in paragraph twenty-six, it was determined that notification was not provided to school staff and parents or guardians of students when the application in paragraph fourteen was made.
31. That the circumstances in paragraphs fourteen, twenty-six, twenty-nine, and thirty, constitute a violation of CMR 01-026 Chapter 27, Section 4(C).
32. That prior to any non-exempt pesticide application, CMR 01-026 Chapter 27, Section 5 requires that schools take the following steps and record them: monitor for pest applications conducive to pest outbreaks, identify the pest specifically, determine that IPM thresholds were exceeded, and utilize non-pesticide control measures.
33. That from the inspection in paragraph twenty-six, it was determined that the requirements in paragraph thirty-two were not met prior to the pesticide application in paragraph fourteen.
34. That the circumstances in paragraphs fourteen, thirty-two, and thirty-three, constitute a violation of CMR 01-026 Chapter 27, Section 5.
35. That the Board has regulatory authority over the activities described herein.
36. That the School 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.

37. That this Agreement shall not become effective unless and until the Board accepts it.

38. That, in consideration for the release by the Board of the causes of action which the Board has against the School resulting from the violations referred to in paragraphs twelve, twenty-one, twenty-four, twenty-eight, thirty-one, and thirty-four, the School 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 four pages.

RSU 52/MSAD 52 TRIPP MIDDLE SCHOOL

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General