

Proposed Administrative Consent Agreement Background Summary

Subject: TruGreen Lawncare
2 Delta Drive
Westbrook, ME 04092

Date of Incident(s): June 25, 2020 - September 15, 2022

Background Narrative: On October 10, 2020, a licensed applicator for TruGreen Lawncare applied Talstar P Insecticide, EPA Reg. No. 279-3206, to a residential property located in Saco, Maine for control of mosquitoes and ticks. Prior to the start of the application, a TruGreen co-worker asked the applicator to hold-off applying the insecticide in the backyard so that they could complete the lawn aeration service assigned to them. The applicator ignored the request of their co-worker, and the individual was exposed to the spray solution while conducted the lawn aeration. The exposed worker sought medical attention.

On October 29 & November 5, of 2020 a licensed applicator for TruGreen Lawncare experienced exposure to Talstar P Insecticide, EPA Reg. No. 279-3206, when the powered backpack being used for the application had a leak and the applicator's clothing became saturated with the pesticide and contacted their skin. The applicator was not instructed to properly wash themselves or their clothing and was encouraged to continue working.

Prior to pesticide applications conducted on March 22, 2021, May 10, 2021, June 30, 2021, & August 22, 2022, TruGreen Lawncare failed to notify a member of the Pesticide Notification Registry in Cape Elizabeth. Failure to notify the same registrant on several occasions was settled with Board in Consent Agreement in January of 2020.

During a pesticide spray application to a lawn with powered spray equipment conducted by a licensed applicator for TruGreen Lawncare on May 26, 2021, in Westbrook, Maine a neighbor was exposed to Merit 2F Systemic Insecticide, EPA Reg. No. 432-1312, Barricade 4FL Herbicide, EPA Reg. No. 110-1139, & Escalade 2 Herbicide, EPA Reg. No. 228-442, through drift.

On June 3, 2021, a licensed applicator for TruGreen Lawncare was conducting herbicide applications with Turpower 3 Herbicide, EPA Reg. No. 228-551, to common space lawn areas in a neighborhood in Scarborough, Maine. The applicator was observed not wearing the proper PPE (Personal Protective Equipment). The ensuing inspection confirmed the failure to wear proper PPE and the application being conducted with powered spray equipment was done at higher wind speeds the label allows.

Summary of Violations: CMR 01-026, Chapter 28, Section 2 (D) requires commercial applicators to provide advance notification of outdoor pesticide applications made within 250 feet of the property of any participant on the current year Notification Registry.

The violations described above are considered a second, third, fourth and fifth offense within a four-year period pursuant to 7 M.R.S. § 616-A (2) A (2).

7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) prohibit the use of a pesticide inconsistent with its label.

The Talstar P label contains the following statements: “Do not apply this product in a way that will contact any person or pet either directly or through spray drift.” “Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.”

Barricade 4FL label contains the following statement: “Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”

Escalade 2 label contains the following statement: “Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”

CMR 01-026, Chapter 22, Section 2 (D) contains the statement: “The applicator shall cease spray activities at once upon finding evidence showing the likely presence of unprotected persons in the target area or in such proximity as to result in unconsented exposure to pesticides.”

The Trupower 3 label contains the following statements: “All mixers, loaders, applicators and other handlers must wear:

- a) Long-sleeved shirt and long pants
- b) Shoes plus socks, and
- c) Protective eyewear (Goggles or face shield or shielded safety glasses)
- d) Chemical-resistant gloves (except for applicators using groundboom equipment).
- e) Chemical-resistant apron when mixing or loading, cleaning up spills or equipment, or otherwise exposed to the concentrate.
- f) Do not apply at wind speeds greater than 10 mph.”

Rationale for Settlement: TruGreen Lawncare failed to contact a member of the Pesticide Notification Registry on four occasions. Pesticide applications conducted by applicators allowed exposure to pesticides through direct contact and drift on four separate occasions. The incidents of exposure, failure to wear proper PPE and applications during high wind speed are all violations of pesticide labeling. These violations occurred within a four-year period of a previously settled consent agreement that included failure to notify members of the Pesticide Notification Registry, applications in high winds and applications to the incorrect property.

Attachments: Proposed Consent Agreement

NOV 22 2023

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

Ck Amount \$25000-
Ck Date 11-13-23
Ck # 60533856

In the Matter of:) ADMINISTRATIVE CONSENT
TruGreen Lawncare) AGREEMENT
2 Delta Drive) AND
Westbrook, Maine 04092) FINDINGS OF FACT

This Agreement by and between TruGreen Lawncare (hereinafter referred to as the "Company") and the State of Maine Board of Pesticides Control (hereinafter referred to as the "Board"), as approved by the Office of the Attorney General ("OAG"), 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 Company provides a variety of turf, landscaping and mosquito control services across the United States, including the State of Maine. Said services include pesticide applications.
- 2) That on October 10, 2020, Daniel Berensen, a Company employee was aerating a customer's lawn at 20 Wedgewood Drive in Saco, Maine.
- 3) That during the lawn aeration process described in paragraph two, Patrick O'Donnell, another Company employee arrived at the same address to make a tick and mosquito control application using Talstar P Insecticide, EPA Reg. No. 279-3206.
- 4) That Berensen spoke to O'Donnell explaining that he only needed to finish aerating behind the house prior to departing the location. Berenson believed that O'Donnell would therefore refrain from spraying in his immediate vicinity until he was finished.
- 5) That shortly thereafter, O'Donnell began spraying behind the house while Berenson was still present. Berenson was directly down wind of O'Donnell.
- 6) That Berenson stated that immediately he was "hit by the chemical."
- 7) That approximately an hour later, Berenson reported that he began to experience symptoms including a hot sensation on his face, burning eyes and nausea.
- 8) That Berensen's supervisor instructed him to seek a medical evaluation at a Concentra Urgent Care location in Portland. According to Berensen, the attending physician advised him to monitor his symptoms for the next few days and seek additional attention if symptoms worsened.
- 9) That the Talstar P label contains the following statements: "Do not apply this product in a way that will contact any person or pet either directly or through spray drift. Do not allow people or pets on treated surfaces until spray has dried. Let surfaces dry before allowing people or pets to contact surfaces."
- 10) That 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) prohibit the use or supervision of such use of a pesticide inconsistent with its label, and 22 M.R.S. § 1471-D(8)(F) provides for court action to seek suspension or revocation of an applicator's license and/or certification for use or supervision of such use of a pesticide inconsistent with its label.

- 11) That the circumstances described in paragraphs two through ten constitute a violation of 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) and would permit court action to seek suspension or revocation of an applicator's license and/or certification pursuant to 22 M.R.S. § 1471-D(8)(F).
- 12) That CMR 01-026, Chapter 22, Section 2 (D) contains the statement: "The applicator shall cease spray activities at once upon finding evidence showing the likely presence of unprotected persons in the target area or in such proximity as to result in unconsented exposure to pesticides."
- 13) That the Company applicator did not cease spray activities when in such proximity to Berensen so as to result in unconsented exposure to pesticides.
- 14) That the circumstances described in paragraphs two through ten and thirteen constitute a violation of CMR 01-026, Chapter 22, Section 2 (D).
- 15) That Brett Haynes, a Company employee, contacted the Board with concerns about a series of chemical discharges that occurred during the course of Haynes' work for the Company between October 29 and November 5, 2020.
- 16) That during the first chemical discharge event on October 29, Haynes' backpack, containing a spray solution of Talstar P Insecticide, EPA Reg. No 279-3206, developed a leak which quickly saturated Haynes' underpants, undershirt, pants and shirt.
- 17) That Haynes returned to the Westbrook branch location whereupon he was provided a clean set of pants and a replacement backpack, and he was instructed to continue spraying.
- 18) That two additional chemical discharge events occurred on November 3 and November 5. The November 3 event resulted in a small spill. The November 5 event resulted in the loss of 2.5 gallons of spray mix and another chemical exposure event in which Haynes' pants became saturated.
- 19) That the Talstar P label contains the following statement: "Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing."
- 20) That upon returning to the Westbrook branch following the exposure incident on October 29, Haynes was not instructed to remove all saturated clothing and to thoroughly wash exposed skin.
- 21) That 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) prohibit the use of a pesticide inconsistent with its label, and 22 M.R.S. § 1471-D(8)(F) provides for court action to seek suspension or revocation of an applicator's license and/or certification for use of a pesticide inconsistent with its label.
- 22) That the Company's supervision of the use of Talstar P was inconsistent with the product labeling.
- 23) That the circumstances described in paragraphs fifteen through twenty-two constitute a violation of 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) and would permit court action to seek suspension or revocation of an applicator's license and/or certification pursuant to 22 M.R.S. § 1471-D(8)(F).
- 24) That the Company entered into an Administrative Consent Agreement and Findings of Fact with the Maine Board of Pesticides Control ratified by the Board on January 15, 2020, in which the Company acknowledged a series of Maine pesticide law violations which occurred in calendar years 2017, 2018 and 2019.
- 25) That among the violations acknowledged in the Consent Agreement described in paragraph twenty-four was an August 13, 2019, turf pesticide application to 28 Wood Road in Cape Elizabeth, Maine.

- 26) That the violation described in paragraph twenty-five was to a property listed as an abutter to a participant in the 2019 Maine Pesticide Notification Registry, thereby requiring notification to the participant, Sarvenaz Maisak.
- 27) That the Company acknowledged failing to notify Maisak prior to the August 13, 2019, application in violation of CMR 01-026, Chapter 28, Section 2 (D).
- 28) That on March 22, 2021, a Company employee applied Omni Supreme Spray (insecticide-miticide) Liquid, EPA Reg. No. 5905-368 to dormant landscape plants at 22 Wood Road in Cape Elizabeth.
- 29) That 22 Wood Road is listed as an abutter to a participant in the 2021 Pesticide Notification Registry, Sarvenaz Maisak.
- 30) That CMR 01-026, Chapter 28, Section 2 (D) requires pesticide applicators to notify registry participants prior to making an application to properties listed as abutters on the registry.
- 31) That Company did not notify Maisak prior to the pesticide application described in paragraph twenty-eight.
- 32) That the circumstances described in paragraphs twenty-eight through thirty-one constitute a violation of CMR 01-026, Chapter 28, Section 2 (D).
- 33) That the violation described in paragraph thirty-two is a second violation within a four-year period pursuant to 7 M.R.S. § 616-A(2)(A)(2).
- 34) That on May 10, 2021, a Company employee applied Escalade 2 Herbicide, EPA Reg. No. 228-442 to the turf areas at 22 Wood Road in Cape Elizabeth.
- 35) That 22 Wood Road is listed as an abutter to a participant in the 2021 Pesticide Notification Registry, Sarvenaz Maisak.
- 36) That CMR 01-026, Chapter 28, Section 2 (D) requires pesticide applicators to notify registry participants prior to making an application to properties listed as abutters on the registry.
- 37) That Company did not notify Maisak prior to the pesticide application described in paragraph thirty-four.
- 38) That the circumstances described in paragraphs thirty-four through thirty-seven constitute a violation of CMR 01-026, Chapter 28, Section 2 (D).
- 39) That the violation described in paragraph thirty-eight is a third violation within a four-year period pursuant to 7 M.R.S. § 616-A(2)(A)(2).
- 40) That on June 30, 2021, a Company employee applied Merit 2F insecticide, EPA Reg. No. 432-1312 and Trupower 3 herbicide, EPA Reg. No. 228-551 to the turf areas at 22 Wood Road in Cape Elizabeth.
- 41) That 22 Wood Road is listed as an abutter to a participant in the 2021 Pesticide Notification Registry, Sarvenaz Maisak.
- 42) That CMR 01-026, Chapter 28, Section 2 (D) requires pesticide applicators to notify registry participants prior to making an application to properties listed as abutters on the registry.
- 43) That Company did not notify Maisak prior to the pesticide application described in paragraph forty.


- 44) That the circumstances described in paragraphs forty through forty-three constitute a violation of CMR 01-026, Chapter 28, Section 2 (D).
- 45) That the violation described in paragraph forty-four is a fourth violation within a four-year period pursuant to 7 M.R.S. § 616-A(2)(A)(2).
- 46) That on August 22, 2022, a Company employee applied Tempo SC Ultra Insecticide, EPA Reg. No. 432-1363, Eagle 20 EW Specialty Fungicide, EPA Reg. No. 62719-463 and Forbid 4F Ornamental Insecticide/Miticide, EPA Reg. No. 432-1279 to the landscape plants at 22 Wood Road in Cape Elizabeth.
- 47) That 22 Wood Road is listed as an abutter to a participant in the 2022 Pesticide Notification Registry, Sarvenaz Maisak.
- 48) That CMR 01-026, Chapter 28, Section 2 (D) requires pesticide applicators to notify registry participants prior to making an application to properties listed as abutters on the registry.
- 49) That Company did not notify Maisak prior to the pesticide application described in paragraph forty-six.
- 50) That the circumstances described in paragraphs forty-six through forty-nine constitute a violation of CMR 01-026, Chapter 28, Section 2 (D).
- 51) That the violation described in paragraph fifty is a fifth violation within a four-year period pursuant to 7 M.R.S. § 616-A(2)(A)(2).
- 52) That on May 26, 2021, John Sullivan, an employee for the Company applied Merit 2F, EPA Reg. No 432-1312, Barricade 4FL, EPA Reg. No. 100-1139 and Escalade 2, EPA Reg. No 228-442 to the turf areas located at 250 Duck Pond Road in Westbrook, Maine.
- 53) That during the course of the application described in paragraph fifty-two, John Stewart, an abutting neighbor, emerged from his back door onto his back lawn.
- 54) That Stewart immediately detected a chemical taste in his mouth and his eyes started burning.
- 55) That Stewart quickly identified the source of the chemical exposure as arising from the turf pesticide application taking place on the abutting lawn.
- 56) That Stewart stated that the wind speed was 14 miles per hours blowing from the application site toward his property.
- 57) That Stewart subsequently approached the Company applicator and requested that the applicator cease and desist due to the weather conditions and the proximity to him and his property.
- 58) That a heated exchange ensued between Stewart and the Company applicator who expressed the view that it was proper from him to continue.
- 59) That ultimately the applicator agreed to switch to a granular application.
- 60) That the Barricade 4FL label contains the following statement: "Do not apply this product in a way that will contact workers or other persons, either directly or through drift."

- 61) That the Escalade 2 label contains the following statement: “Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”
- 62) That the spray mists from the application described in paragraph fifty-two contacted John Stewart.
- 63) That 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) prohibit the use or supervision of such use of a pesticide inconsistent with its label, and 22 M.R.S. § 1471-D(8)(F) provides for court action to seek suspension or revocation of an applicator’s license and/or certification for use or supervision of such use of a pesticide inconsistent with its label.
- 64) That the Company employee’s use of Barricade 4FL and Escalade 2 was inconsistent with the product labeling.
- 65) That the circumstances described in paragraphs fifty-two through sixty-four constitute a violation of 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) and would permit court action to seek suspension or revocation of an applicator’s license and/or certification pursuant to 22 M.R.S. § 1471-D(8)(F).
- 66) That CMR 01-026, Chapter 22, Section 2 (D) states that “The applicator shall cease spray activities at once upon finding evidence showing the likely presence of unprotected persons in the target area or in such proximity as to result in unconsented exposure to pesticides.”
- 67) That the Company applicator described in paragraph fifty-two did not cease spray activities when John Stewart came into such proximity as to result in unconsented exposure.
- 68) That the circumstances described in paragraphs sixty-six and sixty-seven constitute a violation of CMR 01-026, Chapter 22, Section 2 (D).
- 69) That on June 3, 2021, Reginald Poulin, a Company employee, applied Trupower 3 herbicide, EPA Reg. No. 228-551 to the turf areas of the commonly owned property at Scottow Hill Woods, 1 Plantation Drive in Scarborough, Maine.
- 70) That the Board received a complaint from Deven Morrill relating to the application described in paragraph sixty-nine.
- 71) That Morrill alleged that the Company applicator was not wearing appropriate protective equipment.
- 72) That Morrill alleged that the windspeeds were high during the application described in paragraph sixty-nine.
- 73) That the Trupower 3 label contains the following statements: “All mixers, loaders, applicators and other handlers must wear:
- a) Long-sleeved shirt and long pants
 - b) Shoes plus socks, and
 - c) Protective eyewear (Goggles or face shield or shielded safety glasses)
 - d) Chemical-resistant gloves (except for applicators using groundboom equipment).
 - e) Chemical-resistant apron when mixing or loading, cleaning up spills or equipment, or otherwise exposed to the concentrate.
 - f) Do not apply at wind speeds greater than 10 mph.”
- 74) That the Company applicator was not wearing a long sleeve shirt or chemical resistant gloves at the time of the application described in paragraph sixty-nine.
- 75) That the Company applicator recorded a windspeed 11.5 miles per hour on the applicator record.

- 76) That 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) prohibit the use or supervision of such use of a pesticide inconsistent with its label, and 22 M.R.S. § 1471-D(8)(F) provides for court action to seek suspension or revocation of an applicator's license and/or certification for use or supervision of such use of a pesticide inconsistent with its label.
- 77) That the Company employee's use of Trupower 3 was inconsistent with the product labeling.
- 78) That the circumstances described in paragraphs sixty-nine through seventy-seven constitute a violation of 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) and would permit court action to seek suspension or revocation of an applicator's license and/or certification pursuant to 22 M.R.S. § 1471-D(8)(F).
- 79) 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.
- 80) That this Agreement shall not become effective unless and until the Board accepts it.
- 81) That in consideration for the release by the Board and the OAG of the causes of action which the Board and the OAG have against the Company resulting from the violations referred to in paragraphs eleven, fourteen, twenty-three, thirty-two, thirty-eight, forty-four, fifty, sixty-five, sixty-eight and seventy-eight, the Company agrees to pay a penalty to the State of Maine in the sum of \$25,000.00 by November 27, 2023. (Please make checks payable to Treasurer, State of Maine).
- 82) The Board and OAG grant a release of their causes of actions against the Company for the specific violations cited in the immediately preceding paragraph (Paragraph 81) on the express condition that all actions listed in Paragraph 81 of this Agreement are completed in accordance with the express terms and conditions of this Agreement and to the satisfaction of the Board and the OAG. The release shall not become effective until the Company has completed its obligations pursuant to Paragraph 81.
- 83) Any non-compliance with any term or condition of this Agreement, as determined by the Board and OAG in their sole discretion, voids the release set forth in Paragraph 82 of this Agreement and may lead to an enforcement, suspension/revocation, equitable, and/or civil violation action pursuant to Titles 7 and 22 of the Maine Revised Statutes and/or M.R. Civ. P. 80H.
- 84) Nothing in this Agreement shall be construed to be a relinquishment of the Board's or OAG's powers under Titles 7 and 22 of the Maine Revised Statutes against the Company for any other violations other than those expressly listed in this Agreement.
- 85) This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding; this contract may not be enlarged, modified, or altered except in writing signed by the parties and indorsed on this Agreement.
- 86) The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

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

TRUGREEN LAWNCARE

By:  Date: November 21, 2023

Type or Print Name: Carol J. Pearson, Vice President

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
John Pietroski, Acting Director

APPROVED:

By: _____ Date: _____
Carey Gustanski, Assistant Attorney General