

# Proposed Administrative Consent Agreement Background Summary

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**Subject:** The Turf Doctor Inc.  
60 Industrial Drive  
Augusta, Maine 04330

**Date of Incident(s):** June 12, 2018 and August 9, 2018

**Background Narrative:** On June 12, 2018, a Turf Doctor applicator applied Quali-Pro Bifenthrin I/T 7.9 F Insecticide/Termiticide to a customer's property at 12 Cummings Ave in Augusta. The purpose of the application was to control outdoor biting insects. A powered backpack was used to make the application.

A registry member on Maine's 2018 Pesticide Notification Registry lives within 250 feet of the Turf Doctor customer. The Turf Doctor did not provide the registry member the required notification prior to making the pesticide application.

On August 9, 2018, a Turf Doctor applicator applied Talstar 0.069% Plus Fertilizer to 8,100 sq. ft. of turf to a home at 16 South Crane Lane in Rome. This home is on the shore of Great Pond. A Board inspector determined that the application included treatment to turf that was within 25 feet of the pond.

## Summary of Violation(s):

- CMR 01-026 Chapter 28, Section 2 (D) requires that commercial applicators notify individuals listed on the Maine Pesticide Notification Registry at least six hours in advance of any pesticide application made within 250 feet of a registrant's listed property.
- CMR 01-026 Chapter 29 Section 6(A)(I) provides that no person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of: Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State.

**Rationale for Settlement:** There were two separate pesticide applications associated with this consent agreement. Both violations that were cited were foreseeable by the applicators and avoidable.

**Attachments:** Proposed Consent Agreement

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

In the Matter of:	)	ADMINISTRATIVE CONSENT
The Turf Doctor Inc.	)	AGREEMENT
60 Industrial Drive	)	AND
Augusta, Maine 04330	)	FINDINGS OF FACT

This Agreement, by and between The Turf Doctor 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 provides commercial lawn care services and has the firm license number SCF 2460 issued by the Board pursuant to 22 M.R.S. § 1471-D (1)(B).
2. That complaints were originally lodged with the Maine Department of Environmental Protection on August 14 and 15 of 2018, about a Company employee applying pesticides to turf close to Great Pond in Rome. The complaint was referred to the Board on August 15, 2018.
3. That in response to the complaint in paragraph two, a Board inspector went to the application site, a home at 16 South Crane Lane in Rome. This home is on the shore of Great Pond. At that time, the inspector documented that a granular application was made to the entire lawn at this home. The a home at 16 South Crane Lane in Rome. This home is on the shore of Great Pond. The inspector collected a sample of the granules that were applied to the lawn and took digital photos of the treated property.
4. That on August 30, 2018, the Board inspector met with William Price, the Company applicator who made the application of Talstar 0.069% Plus Fertilizer to 8,100 sq. ft. of turf to the property described in paragraph three. The application was to control insects feeding on the surface of the turf. This was confirmed by Price's written statement and a copy of the Company invoice/log for this application.
5. That CMR 01-026 Chapter 29 Section 6(A)(I) provides that no person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of: Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State.
6. That the circumstances described in paragraphs one through five constitute a violation of CMR 01-026 Chapter 29 Section 6(A)(I).
7. That Louise Neault called the Board on June 13, 2018, to report that the Company made a pesticide application to Theresa Dostie's residence at 12 Cummings Avenue on June 12, 2018, at approximately 5:15 PM without providing the required advance notification. Additionally, the Neaults thought the wind was too strong to be spraying that day as evidenced by their outdoor Adirondack chairs having been blown over and there was a strong chemical odor inside their house.
8. That on June 14, 2018, a Board inspector responded to the Neaults' complaint. At that time the inspector took a wipe sample from the Neaults' porch window.

9. That the lab reported the wipe sample from the Neaults' porch window had no detectable pesticide on it.
10. That on June 15, 2018, a Board inspector conducted a follow up inspection with Company applicator Phillip Gallant.
11. That from the inspection described in paragraph ten, the inspector documented that Gallant applied Quali-Pro Bifenthrin I/T 7.9 F Insecticide/Termiticide to Dostie's property at 12 Cummings Ave on June 12, 2018, from 5:06 PM to 5:20 PM with a powered backpack to control outdoor biting insects.
12. That on June 18, 2018, a Board inspector collected written statements from Jerry Neault, Louise Neault, and Tonya Lerley, the resident at 8 Cummings Avenue. Jerry Neault was home when the application described in paragraphs eleven was in progress. In Jerry Neault's written statement he thought his wife forgot to close their house windows after getting notification from the Company. Louise Neault arrived home as the applicator was leaving the posted application site. Louise Neault told the Board inspector they did not receive any notification about this application. She included this fact in her written statement as well. Lerley had concerns about drift, and exposure to pesticides from the Company's application.
13. That Jerry and Louise Neault were listed as registry members on Maine's 2018 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2. The residential property at the 12 Cummings Avenue in Augusta was also listed on the registry as a property within 250 feet of the Neaults' residence. The Board makes the annually updated registry available to commercial applicators each year
14. That the outdoor treated area at 12 Cummings Avenue in Augusta is located within 250 feet from a property which is the residence of Jerry and Louise Neault at 20 Cummings Avenue.
15. That during the inspection described in paragraph eleven, Gallant completed a written statement acknowledging that he did not provide notification to the Neaults for the pesticide application described in paragraph eleven.
16. That commercial applicators are required by CMR 01-026 Chapter 28, Section 2 (D) to notify individuals listed on the Maine Pesticide Notification Registry at least six hours in advance of any pesticide application made within 250 feet of a registry member's listed property.
17. That the Company failed to comply with the notification requirements of CMR 01-026 Chapter 28, Section 2(D). No notification was provided to the Neaults prior to making the application described in paragraph eleven.
18. That the circumstances described in paragraphs seven through seventeen constitute a violation of CMR 01-026 Chapter 28, Section 2(D).
19. That the Board has regulatory authority over the activities described herein.
20. 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.
21. That this Agreement shall not become effective unless and until the Board accepts it.

22. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violations referred to in paragraphs six and eighteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$750. (Please make checks payable to Treasurer, State of Maine).

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

THE TURF DOCTOR INC.

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

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

BOARD OF PESTICIDES CONTROL

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

Megan Patterson, Director

APPROVED:

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

Mark Randlett, Assistant Attorney General