

Proposed Administrative Consent Agreement Background Summary

Subject: Lucas Tree Experts Company
PO Box 958
Portland, Maine 04104-0958

Date of Incident(s): June 11, 2014

Background Narrative: On June 12, 2014, the Board received a complaint from a Scarborough resident who is a registry member on the 2014 Maine Pesticide Notification Registry (non-agricultural). The registry member stated she received no notification about a pesticide application that was made to a property listed as an abutter to her property on the 2014 pesticide notification registry. A follow-up inspection confirmed that a pesticide application was made without the required notification.

Summary of Violation(s): CMR 01-026 Chapter 28, Section 2 (D). Notification must be received between 6 hours and 14 days prior to the pesticide application.

Rationale for Settlement: The company entered into three previous consent agreements involving violations of the notification requirements for registry members. On July 23, 2010, a pesticide application was made and insufficient notification was given. On August 8, 2011, a pesticide application was made and the required notification was not provided. On June 13, 2013, a pesticide application was made and the required notification was not provided. Consequently, this violation is a subsequent violation pursuant to 7 M.R.S.A. § 616-A (2)(B) and these facts were taken into account when setting the penalty amount.

Attachments: Proposed Consent Agreement

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

In the Matter of:)	ADMINISTRATIVE CONSENT
Lucas Tree Experts Company)	AGREEMENT
PO Box 958)	AND
Portland, Maine 04104-0958)	FINDINGS OF FACT

This Agreement, by and between Lucas Tree Experts Company (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 lawn care services and has the firm license number SCF 15035 issued by the Board pursuant to 22 M.R.S. § 1471-D (1)(B).
2. That on June 11, 2014, Adam Bendiksen, a Company employee and a licensed commercial master applicator (CMA 46667), applied Merit 0.2 Plus Turf Fertilizer, Q4 Plus Turf Herbicide and Lesco Cross X Check Plus Multi-Insecticide to the lawn of customer Brian Young's residential property at 4 Cutlass Lane in Scarborough.
3. That the outdoor treated area at 4 Cutlass Lane is located within 250 feet from a property which is the residence of Laura Hannan at 17 Powderhorn Drive in Scarborough.
4. That Laura Hannan is listed on Maine's 2014 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2. Brian Young's residential property at 4 Cutlass Lane in Scarborough address is also listed on the Registry as a property within 250 feet of Laura Hannan's residence. The Registry is distributed to commercial applicators annually.
5. 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 registrant's listed property.
6. That the Company failed to comply with the notification requirements of CMR 01-026 Chapter 28, Section 2 (D). No notification was provided to Hannan prior to making the application described in paragraph two.
7. That the actions described in paragraphs two through six constitute a violation of CMR 01-026 Chapter 28, Section 2 (D).
8. That the Company entered into an Administrative Consent Agreement with the Board for insufficient notification to a person on the Maine Pesticide Notification Registry when a pesticide application was made on July 23, 2010. The Company entered into two other Administrative Consent Agreements with the Board for not providing notification to people on the Maine Pesticide Notification Registry when a pesticide applications were made on August 11, 2011 and June 3, 2013. Consequently, the violation described in paragraph seven is a subsequent violation pursuant to 7 M.R.S. § 616-A (2)(B).

9. That the Board has regulatory authority over the activities described herein.
10. 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.
11. That this Agreement shall not become effective unless and until the Board accepts it.
12. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violation referred to in paragraph seven, the Company agrees to pay a penalty to the State of Maine in the sum of \$2,000. (Please make checks payable to Treasurer, State of Maine). In addition, the Company will include a copy of their written policy with the signed consent agreement that outlines procedures in place to notify those individuals on the Maine Pesticide Notification Registry.

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

LUCAS TREE EXPERTS COMPANY

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General