

Proposed Administrative Consent Agreement

Background Summary

Subject: TruGreen Lawncare
2 Delta Drive
Westbrook, Maine 04092

Date of Incident(s): August 22, 2017/ April 5, 2018/ May 6, 2019/ July 30, 2019

Background Narrative: On August 22, 2017, A TruGreen applicator applied Turflon Ester Ultra Herbicide and Quinclorac 75DF Select Herbicide to a residence at 254 Foreside Road in Cumberland Foreside. The resident told TruGreen on multiple prior occasions he did not want their services. The application was made anyways.

On April 5, 2018, a TruGreen applicator applied Barricade 4L herbicide to a customer on Jacob Avenue in Scarborough. The applicator recorded the wind and direction as 2.5 mph, from the W/SW at 9:18 AM. Official weather records at the Portland Jetport (3.47 miles from application site) for that date, before and after the application time, recorded the wind speed and direction as 21 mph with gusts to 30 mph from W/NW and 20 mph with gusts to 31 mph from W/NW. It is a violation to spray when winds exceed 15 mph.

On May 6, 2019, a TruGreen applicator applied two herbicides, Escalade 2 and Fertilizer with 0.29% Barricade to a complex of 24 condominiums and an additional 3 single homes in Windham. These applications were made to the wrong sites and were not TruGreen customers. TruGreen did not have a system in place to positively identify customer properties. Some of the treated properties were not posted. The company was aware pesticides were applied to the wrong properties but did not report these incidents to the Board.

On July 30, 2019, a TruGreen applicator applied Quinclorac 75 DF herbicide and Vista XRT herbicide to a property in Cape Elizabeth. That property was listed on the 2019 Maine Pesticide Notification Registry as an abutter to a registry member. The company did not provide notification to the registry member.

Summary of Violation(s):

- CMR 01-026 Chapter 20 Section 6(D)2 requires prior authorization from the property owner before a person can apply pesticides to their property.
- CMR 01-026 Chapter 22 Section 2(B)III requires “Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.”
- CMR 01-026 Chapter 20 Section 7(A) requires that commercial applicators making outdoor treatments to residential properties must implement a system, based on Board approved methods, to positively identify the property of their customers. The Board shall adopt a policy listing approved methods of positive identification of the proper treatment site.

- CMR 01-026 Chapter 28, Section 3 requires that pesticide applications to turf areas must be posted in a manner and at locations designed to reasonably assure that persons entering such areas will see the notice.
- CMR 01-026 Chapter 50, Section 2(C) requires commercial applicators to telephone spray incident reports into the Board.
- 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.

Rationale for Settlement: There were multiple violations in this case. They included unauthorized applications, application in excessive winds, failure to post turf applications, no approved system in place to identify customer properties, failure to report applications to wrong properties, and failure to provide the required notification to a registry member. The Company entered into an Administrative Consent Agreement with the Board for a registry notification violation occurring on April 29, 2016. Consequently, the violations described above are subsequent violations pursuant to 7 M.R.S. § 616-A (2)(B).

Attachments: Proposed Consent Agreement

Rec: DEC 18 2019
CK# 60347468
Amt \$21,500 -
CK Date 12-17-19

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

In the Matter of:
TruGreen Lawncare
2 Delta Drive
Westbrook, Maine 04092

) ADMINISTRATIVE CONSENT AGREEMENT
) AND
) FINDINGS OF FACT
)

9

This Agreement by and between TruGreen Lawncare (hereinafter called the "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 December 13, 2013.

The parties to this Agreement agree as follows:

1. That the Company provides lawn care services and has the firm license number SCF 1800 issued by the Board pursuant to 22 M.R.S. § 1471-D(1)(B).
2. That on August 24, 2017, Daniel Crewe, a resident at 254 Foreside Road in Cumberland Foreside emailed Board staff to report that the Company made an unauthorized pesticide application to his lawn on August 22, 2017. Crewe informed the Company in 2016 he did not want their services. The Company provided a service to his lawn in May of 2017 and Crewe immediately told the Company again he did not want their services. However, in June of 2017, he was home when a Company employee again tried to apply material to his lawn. Crewe informed the Company employee he did not want service to his property, the employee said he would inform his office.
3. That in response to the email described in paragraph two, a Board inspector contacted Crewe on August 25, 2017, and collected photocopies of Company service documents for applications on August 22, 2017. The August application included two herbicides, Quinclorac SPC 75DF and Turflon Ester Ultra.
4. That on August 25, 2017, a Board inspector conducted an inspection with Company Manager Chris Murphy.
5. That from the inspection described in paragraph four, the inspector documented that on August 22, 2017, Company applicator John Trip applied Turflon Ester Ultra Herbicide and Quinclorac 75DF Select Herbicide to Dan Crewe's lawn at 254 Foreside Road in Cumberland Foreside.
6. That CMR 01-026 Chapter 20 Section 6(D)2 requires prior authorization from the property owner before a person can apply pesticides to their property.
7. That the Company did not have Crewe's authorization for the August 22, 2017, application of pesticides to his property.
8. That the circumstances described in paragraphs one through seven constitute a violation of CMR 01-026 Chapter 20 Section 6(D)2.
9. That on April 5, 2018, the Board received a call alleging that a Company applicator was making a pesticide application to turf on Jacob Avenue in Scarborough at approximately 9 AM in high winds.

10. That the day of the complaint, a Board inspector conducted an inspection with Robert Fraser, the Company applicator for the Jacob Avenue application.
11. That from that the inspection described in paragraph ten, it was determined Fraser applied Barricade 4L herbicide to the lawn at 420 Jacob Avenue in Scarborough on April 5, 2018, at 9:18. Fraser recorded the wind as 2.5 mph from the W/SW.
12. That a Board inspector checked official wind speed records for the Portland Jet Port for the date of the 420 Jacob Avenue application before and after the 9:18 AM application. This jet port is 3.47 miles from the application site as measured on Google Earth. The wind at 8:51 AM was from the WNW measured at 21 mph with wind gusts to 30 mph and at 9:51 AM it was from the WNW measured at 20 mph with wind gusts to 31 mph.
13. That CMR 01-026 Chapter 22 Section 2(B)III requires “Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.”
14. That the circumstances described in paragraphs nine through thirteen constitute a violation of CMR 01-026 Chapter 22 Section 2(B)III.
15. That on May 10, 2019, the Board received a complaint from Windham resident Jon Jamieson who stated on May 6, 2019, he found Company signs posted on his lawn indicating a pesticide application had been made that day. He is not a Company customer.
16. That during the phone call described in paragraph fifteen, Jamieson said the Company also made unauthorized pesticide applications to neighbors Terry Burn’s lawn at 24 Corner Brook Drive and Adam Potter’s lawn at 49 Provost Drive.
17. That in response to the complaint call described in paragraphs fifteen and sixteen, two Board staff members conducted follow up inspections on May 13, 2019, with Jon Jamieson, the resident at 50 Provost Drive and Adam Potter. Jamieson completed a written statement about the unauthorized pesticide application the Company made to his lawn on May 6, 2019, and Board staff collected the Company sign used to post that application. Potter completed a written statement that included in part, that when he checked his outdoor video feed, it recorded the Company making an unauthorized application to his lawn. The Company did not post their pesticide application to Potter’s lawn.
18. That on May 13, 2019, Board staff also conducted a follow up inspection with Jacob Harvey, the Company General Manager at the Company’s 2 Delta Drive Westbrook office.
19. That during the inspection described in paragraph eighteen, Harvey provided the work order listing customer information as Wildwood Properties Inc., Provost Drive, Windham. Areas on the work order were listed as “entire area” and square feet as 200,000. There were no electric meter numbers or other approved methods to positively identify the treatment properties on the work order provided to John Sullivan, the Company applicator who made the application.
20. That CMR 01-026 Chapter 20 Section 7(A) requires that commercial applicators making outdoor treatments to residential properties must implement a system, based on Board approved methods, to positively identify the property of their customers. The Board shall adopt a policy listing approved methods of positive identification of the proper treatment site.

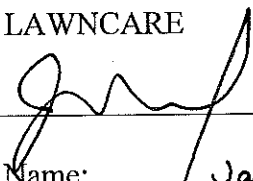
21. That during the inspection described in paragraphs eighteen and nineteen, Board staff asked Harvey what method the Company used to positively identify outdoor pesticide applications. Harvey was not familiar with this requirement and could not provide evidence the Company implemented a system based on Board approved methods, to positively identify the property of their customers.
22. That on May 13, 2019, Board staff conducted a follow up interview with Company applicator John Sullivan. From that interview it was determined that the Company provided insufficient information to Sullivan for him to know what properties to treat as described in paragraph nineteen.
23. That on May 20, 2019, a Board inspector met and interviewed Terrance Burns who resides at 24 Corner Brook Circle. Burns completed a written statement in which he wrote that on May 6, 2019, he noticed tracks on his front lawn and a pesticide flag on his neighbor's lawn. Burn's narrative included that Company General Manager Harvey went to Burn's home to assess the impact of the unauthorized herbicide application and proposed an offer to resolve the issue. Burns noted that no pesticide application sign was posted on his treated lawn.
24. That the Company was supposed to apply herbicides to the turf at the Corner Brook II condominiums on May 6, 2019, but mistakenly applied Escalade 2 and Fertilizer with 0.29% Barricade Herbicide to the turf of the Corner Brook I condominiums. Another licensed spray contracting firm, the Cutter's Edge had one contract for the condominiums in Corner Brook I. The Company made an unauthorized pesticide application to the Corner Brook I condominiums. Three additional single-family homes that received unauthorized pesticide applications: Jamison's, Potter's, and Burns' bring the total to 4 unauthorized applications for the Windham applications made on May 6, 2019.
25. That the circumstance described in paragraphs fifteen through twenty-four constitute a violation of CMR 01-026 Chapter 20 Section 7(A).
26. That the circumstances in paragraphs six, fifteen, seventeen, twenty-three and twenty-four constitute four violations of CMR 01-026 Chapter 20 Section 6(D)2.
27. That commercial pesticide applications to turf areas must be posted in a manner and at locations designed to reasonably assure that persons entering such areas will see the notice pursuant to CMR 01-026 Chapter 28, Section 3.
28. That the Company did not post the pesticide turf applications as described in paragraphs seventeen and twenty-three.
29. That the circumstances described in paragraphs sixteen, seventeen, twenty- three, twenty -seven and twenty-eight constitute two violations of CMR 01-026 Chapter 28, Section 3.
30. That CMR 01-026 Chapter 50, Section 2(C) requires commercial applicators to telephone spray incident reports into the Board. A reportable spray incident is any significant misapplication or accidental discharge of a pesticide. Such incidents include accidentally applying pesticides to the wrong site or places of human habitation.
31. That the Company did not report the spray incident of accidentally applying pesticides to the wrong sites as described in paragraphs fifteen, sixteen, seventeen, eighteen, nineteen, twenty-three, twenty-four, and thirty.

32. That the circumstances described in paragraphs fifteen, sixteen, seventeen, eighteen, nineteen, twenty-three, twenty-four, thirty, and thirty-one, constitute a violation of CMR 01-026 Chapter 50, Section 2(C).
33. That on August 13, 2019, a Maine Pesticide Notification Registry member, who resides in Cape Elizabeth, called the Board to report that the Company made a nearby turf application without providing her the necessary notification. The registry member's windows were open, and she did not have time to cover her fruit trees. She has two children, a five-year-old and a baby.
34. That on August 14, 2019, a Board inspector met with Sarvi Maisak, the registry member who resides at 24 Wood Road in Cape Elizabeth who is listed as a registry member on Maine's 2019 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2. Peggy Anderson, who resides at 28 Wood Road in Cape Elizabeth, is listed on the 2019 registry as an abutter within 250 feet of Maisak's property.
35. That on August 14, 2019, a Board inspector also conducted an inspection with Jacob Harvey. From the inspection it was determined that on July 30, 2019, Company applicator Earl Richards applied Quinclorac 75 DF herbicide and Vista XRT herbicide, to Peggy Anderson's lawn at 28 Wood Road in Cape Elizabeth.
36. That during the inspection described in paragraph thirty-five, the Board inspector asked Harvey about the Company's notification practices for the pesticide application made to Anderson's lawn on July 30, 2019. Harvey stated that the Company's corporate office in Manchester, NH is tasked with providing notification to Maine registry members and Maisak was not contacted about the July 30, 2019, pesticide application and no record of attempted notification was found.
37. 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.
38. That the Company failed to comply with the notification requirements of CMR 01-026 Chapter 28, Section 2 (D). No notification was provided to Maisak prior to making the application described in paragraph thirty-five.
39. That the actions described in paragraphs thirty-three through thirty-eight constitute a violation of CMR 01-026 Chapter 28, Section 2(D).
40. That the Company entered into Administrative Consent Agreements with the Board for a registry notification violation occurring on April 29, 2016. Consequently, the violations described in paragraphs eight, fourteen, twenty-five, twenty-six, twenty-nine, thirty-two and thirty-nine are subsequent violations pursuant to 7 M.R.S. § 616-A (2)(B).
41. That the Board has regulatory authority over the activities described herein.
42. 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.

43. That this Agreement shall not become effective unless and until the Board accepts it.
44. 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 eight, fourteen, twenty-five, twenty-six, twenty-nine, thirty-two and thirty-nine, the Company agrees to pay a penalty to the State of Maine in the sum of \$26,500, of which \$5,000 shall be suspended pending compliance with the condition outlined in paragraph 45 below. The unsuspended portion of the penalty (\$21,500) must be paid immediately. (Please make checks payable to Treasurer, State of Maine).
45. Prior to the start of the Company's 2020 pesticide application season, the Company shall provide mandatory training for all licensed applicators it employs. Such training shall be paid for by the Company and must be planned and presented by the Company staff. The training must focus on the violations in this consent agreement and be a minimum of one hour long. A Board staff member will be present at the training to monitor the presentation and collect a signature list of Company attendees. Attendees will not receive credit towards their certification for attendance at this training. The Company will also develop a method to provide equivalent training to Company employees hired after the 2020 preseason group training. The Company must inform the Board in writing, how they will implement this requirement. Upon completion of the preseason training and submission of the Company's written policy on new employee equivalent training, the suspended portion of the penalty will be discharged.
46. If the Company fails to provide mandatory training to all licensed applicators in its employ before the start of the 2020 pesticide application season as required by paragraph 45, or to develop a method to provide equivalent training to Company employees hired after the 2020 preseason group training as required by paragraph 45, the suspended penalty (\$5,000) shall then be immediately due and payable.
47. In addition to payment of the penalty amount required in paragraph forty-four, at the time of returning the signed consent agreement, the Company shall submit a written policy to the Board containing procedures to ensure that persons on the Pesticide Notification Registry are given notice in accordance with CMR 01-026 Chapter 28, Section 2 (D). Also, at the same time, the Company shall submit its written policy for the Board approved method it has implemented to positively identify the property of their customers when commercial applicators are making outdoor treatments to residential properties in accordance with CMR 01-026 Chapter 20 Section 7(A).

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

TRUGREEN LAWCARE

By:  Date: 12/16/19
 Type or Print Name: Jacob Harvey

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
 Megan Patterson, Director

APPROVED:

By: _____ Date: _____
 Mark Randlett, Assistant Attorney General

