

Proposed Administrative Consent Agreement Background Summary

Subject: TruGreen Lawncare
2 Delta Drive
Westbrook, Maine 04092

Date of Incident(s): May 2, and June 8, 2012

Background Narrative: On May 2, 2012, the Board received a complaint call from a Wells resident who is a registrant on the 2012 Maine Pesticide Notification Registry (non-ag). The caller stated there were TruGreen pesticide application signs posted on a lawn at the property across from her home and that she did not receive any notification about the application. The property that was treated is listed as an abutter to the caller on the notification registry. A follow-up inspection confirmed that a pesticide application was made without the required notification. On June 8, 2012, the Board received another call from the same Wells resident. She said that TruGreen applied pesticides to the same property she called about in May and again she received no notification about the application. Through a follow up inspection, a Board inspector confirmed that TruGreen made the June 8 pesticide application without the required notification to the registry member.

Summary of Violation(s): CMR 01-026 Chapter 28, Section 2 (D). Commercial applicators shall notify individuals listed on the registry when performing an outdoor, non-agricultural pesticide application that is within 250 feet to the property boundary of the listed registry residence.

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board and the Company's violation history in formulating a penalty proposal.

Attachments: Proposed Consent Agreement

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

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 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.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 the Company provides lawn care services and has the firm license number SCF 15084 issued by the Board pursuant to 22 M.R.S.A § 1471-D (1)(B).
2. That on May 2, 2012, Robert Thoits, a Company employee and a licensed commercial applicator (COA 45542), applied Barricade 4L Herbicide (EPA Reg. No. 100-1139) and Trupower 3 Selective Herbicide (EPA Reg. No. 228-551) to the lawn on Marjorie Weiner's residential property at 98 Bayview Terrace in Wells, Maine.
3. That on June 8, 2012, Steven Thomas, a Company employee and a licensed commercial applicator (COA 45793), applied Dimension 2EW Specialty Herbicide (EPA Reg. No. 62719-542), Trupower 3 Selective Herbicide (EPA Reg. No.228-551, and Merit 2F Insecticide (EPA Reg. No. 432-1312) to the lawn on Marjorie Weiner's residential property at 98 Bayview Terrace in Wells, Maine.
4. That the outdoor treated area at 98 Bayview Terrace is located within 250 feet from a property which is the residence of Noella Hoyt at 99 Bayview Terrace in Wells. That Noella Hoyt is listed on Maine's 2012 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2. Marjorie Weiner's property located at the 98 Bayview Terrace address is also listed on the Registry as a property within 250 feet of Noella Hoyt's residence.
5. That the Registry is distributed to commercial applicators annually.
6. 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.
7. That the Company failed to comply with the notification requirements of CMR 01-026 Chapter 28, Section 2 (D). No notification was provided to Hoyt prior to making the applications described in paragraphs two and three.
8. That the actions described in paragraphs two through seven constitute violations of CMR 01-026 Chapter 28, Section 2(D).
9. That the Company entered into an Administrative Consent Agreement with the Board for insufficient notification to two people when pesticide applications were made on June 19, June 20, and June 26, in 2009.

Consequently, the violations described in paragraph six are subsequent violations pursuant to 7 M.R.S.A. § 616-A(2)(A).

- 10. That the Board has regulatory authority over the activities described herein.
- 11. 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.
- 12. That this Agreement shall not become effective unless and until the Board accepts it.
- 13. 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 paragraph eight, the Company agrees to pay a penalty to the State of Maine in the sum of \$2,500.00. (Please make checks payable to Treasurer, State of Maine).

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

TRUGREEN LAWCARE

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General