

Proposed Administrative Consent Agreement Background Summary

Subject: TruGreen Lawncare
2 Delta Drive
Westbrook, Maine 04092

Date of Incident(s): August 2, 2012

Background Narrative: On August 3, 2012, the Board received a complaint call from a Scarborough resident. The caller said he was an ex-customer of TruGreen Lawncare, but cancelled their services in 2011. TruGreen Lawncare continued to solicit him as a customer. He never responded. He came home the evening of August 2, 2012, and his lawn was posted with TruGreen Lawncare pesticide signs. The caller was also concerned that the pesticide application could affect his vegetable garden.

Summary of Violation(s): CMR 01-026 Chapter 20 Section 6(B) requires prior consent from the property owner before a person can apply pesticides to the property of another.

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, CONSERVATION AND FORESTRY
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 August 3, 2012, Ben Viola, a previous customer of the Company, called the Board to report that the Company made an unauthorized pesticide application to his lawn at 7 Militia Lane in Scarborough the previous day.
3. That in response to the call in paragraph two, a Board inspector conducted a follow-up inspection with Mike Basso, the Company Manager, on August 7, 2012.
4. That from the inspection in paragraph three, it was determined that Company applicator Robert Sirois (license COA 46496) applied Merit 0.2 Plus Fertilizer, EPA # 432-1349-10404, to Viola's lawn at 7 Militia Lane on August 2, 2012.
5. That during the inspection in paragraph three that the Company could not document that they had authorization to make the August 2, 2012, pesticide application to Viola's lawn.
6. That on August 15, 2012, Viola called the Board inspector investigating this complaint and confirmed that he did not authorize the Company to make any pesticide applications to his property in 2012. Viola stated that the Company called him to apologize for their unauthorized August 2, 2012, pesticide application, an indication that he had cancelled their services prior to the August 2, 2012, application.
7. That CMR 01-026 Chapter 20 Section 6(B) requires prior consent from the property owner before a person can apply pesticides to the property of another.
8. That the Company did not have Viola's consent for the March 2, 2012, application of pesticide to his property.
9. That the circumstances described in paragraphs one through eight constitute a violation of CMR 01-026 Chapter 20 Section 6(B).

10. 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. The Company also entered into an Administrative Consent Agreement with the Board on June 28, 2012, for not providing notification to a registry member for applications made on May 2, and June 8, 2012. Consequently, the violation described in paragraph nine is a subsequent violation pursuant to 7 M.R.S.A. § 616-A (2)(A).
11. That the Board has regulatory authority over the activities described herein.
12. 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.
13. That this Agreement shall not become effective unless and until the Board accepts it.
14. 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 nine, the Company agrees to pay a penalty to the State of Maine in the sum of \$2,000.00. (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