

Proposed Administrative Consent Agreement Background Summary

Subject: TruGreen Lawncare
2 Delta Drive
Westbrook, Maine 04092

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Date of Incident(s): April 29, 2016

Background Narrative: On April 29, 2016, the Board received a call from Sarvi Maisak, a Cape Elizabeth resident who resides at 24 Wood Road and is a registrant on the 2016 Maine Pesticide Notification Registry (non-ag). Maisak said she and her two-year-old son and her friend with her two and a half- year-old son were outdoors and the two mothers noticed a TruGreen pesticide applicator in the process of spraying an abutting lawn at 22 Wood Road. Maisak asked the applicator if he was applying a pesticide. Maisak said the applicator did not stop to discuss anything but just confirmed that he was applying pesticides. No advance notification of the pending application was given. Maisak, her friend and the children left Maisak's property when they learned a pesticide application was being made.

A Board inspector conducted a follow-up inspection with TruGreen on May 3, 2016, and confirmed that the above pesticide application was made without the required notification to the registry member. The applicator applied TruPower 3 Selective Herbicide and Barricade R4L herbicide.

Summary of Violation(s): CMR 01-026 Chapter 28, Section 2(D)1. 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.

CMR 01-026 Chapter 28, Section 2 (D)5. Notification must be received between 6 hours and 14 days prior to the pesticide application.

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board and this company settled three prior consent agreements within a four year period of this current violation.

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. § 1471-D (1)(B).
2. That a Board inspection on May 3, 2016, showed that on April 29, 2016, Robert Thoits, a Company employee and a licensed commercial applicator, applied Trupower 3 Selective herbicide and Barricade 4FL herbicide to the lawn at Larry Braziel's residential property at 22 Wood Road in Cape Elizabeth, Maine.
3. That Sarvi Maisak who resides at 24 Wood Road in Cape Elizabeth is listed as a registry member on Maine's 2016 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2, and Susan and Larry Braziel are listed as abutters within 250 feet of Maisak's property.
4. That the Maine Pesticide Notification 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 Maisak 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 Administrative Consent Agreements with the Board for a registry notification violation occurring on May 2, 2012, an unauthorized application on July

20, 2012, and an unauthorized application on August 2, 2012. 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 \$2,750.00. (Please make checks payable to Treasurer, State of Maine).
13. In addition to payment of the penalty amount required in paragraph 12, 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).

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