

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** TruGreen Lawncare  
2 Delta Drive  
Westbrook, Maine 04092

**Date of Incident(s):** July 20, 2012

**Background Narrative:** On July 20, 2012, the Board received a complaint call from a Westbrook resident. The caller said he was an ex-customer of TruGreen Lawncare, but cancelled their services in 2010. TruGreen Lawncare continued to solicit him as a customer. He never responded. The Westbrook resident and his wife returned home on July 20, 2012, and his lawn was posted with TruGreen Lawncare pesticide signs. The posted signs and paper work left by TruGreen indicated that TruGreen made a preventative grub application of Merit 0.2% Plus Turf Fertilizer to the lawn.

**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

APR 16 2013

CHK#  
21907607  
CHK date:  
3-25-13  
Amount:  
\$ 2,000.-

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 July 23, 2012, Paul Willey, a previous customer of the Company, called the Board to report that the Company made an unauthorized pesticide application to his lawn at 64 Kennard Street in Westbrook on July 20, 2012.
3. That in response to the call in paragraph two, a Board inspector conducted a follow-up inspection with Becky Miller, who works in commercial customer service for the Company, on July 25, 2012. The inspector also spoke with Michael Basso, the Company manager.
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 Willey's lawn at 64 Kennard Street on July 20, 2012.
5. That Basso told the inspector that Willey had been a Company customer, but cancelled the Company's services in 2010. The Company subsequently bought out another lawn care company (The Turf Doctor) in the Portland area. Basso said Willey was a customer of the Turf Doctor and the Company simply made the application the Turf Doctor had already scheduled with Willey.
6. That the Board inspector contacted Willey about the incident. Willey told the inspector the he never hired the Turf Doctor directly. Willey further indicated that he hired a landscaper a couple of years ago (at least two) and that landscaper may have subcontracted some of the work to The Turf Doctor. Willey emphasized that he had no direct contact with the Turf Doctor and never authorized them to do any work.
7. That during the inspection in paragraph three the Company could not document that they had authorization to make the July 20, 2012, pesticide application to Willey's lawn.
8. 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.
9. That the Company did not have Willey's consent for the July 20, 2012, application of pesticide to his property.

10. That the circumstances described in paragraphs one through nine constitute a violation of CMR 01-026 Chapter 20 Section 6(B).
11. That the Company entered into an Administrative Consent Agreement with the Board for an unauthorized application of pesticide made on August 2, 2012. 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 ten is a subsequent violation pursuant to 7 M.R.S.A. § 616-A (2)(A).
12. That the Board has regulatory authority over the activities described herein.
13. 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.
14. That this Agreement shall not become effective unless and until the Board accepts it.

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 ten, 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 addition the Company will submit a written plan or policy to the Board specifying how they will avoid future pesticide applications to properties without the owners' consent. The written plan or policy must be submitted at the same time the Company signs and submits this Consent Agreement to the Board.

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

**TRUGREEN LAWNCARE**

By:  Date: 4/11/2013

Type or Print Name: Michael T Bassi

**BOARD OF PESTICIDES CONTROL**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Henry Jennings, Director

**APPROVED:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark Randlett, Assistant Attorney General



## Maine Customer Renewal Process-2013

We will use the following process before applying pesticides to any customer in 2013.

1. Any customer who has pre-paid for services will be considered renewed for 2013.
2. Customers who have returned signed mail cards will be considered renewed for 2013.
3. Emails or faxes from customers with the form below will be considered renewed for 2013.
4. If we have not received renewals outlined in steps 1-3 we will call customers and record the following information.

Date and time of the call, name of the person agreeing to the service, name of our representative.

Phone Script-“Thank you for using Trugreen last season. We are calling to inform you that we may need to use pest control measures this season and to get your approval if they are needed to be used. Examples of these would be weed, insect or disease controls for your lawn or landscape. These products may be used during 2013 unless sooner terminated by you or us. Thank you, we will see you in the Spring.”

All customers will be called before each service by an automated calling system referred to as “Trudy”.

*Michael Bass*

*4/12/2013*

*Michael Bass*

*4/12/2013*