

Proposed Administrative Consent Agreement

Background Summary

Subject: Purely Organic
PO Box 211
York Harbor, Maine 03911

Date of Incident(s): Years 2008-2010

Background Narrative: Purely Organic is a company that provides lawn care services that include pesticide applications. Additional services include tick/mosquito spraying and tree/shrub spraying. Their customers include both residential and commercial accounts.

A Board inspector, in the course of routine coverage of his district, conducted an inspection on May 10, 2010, with a three-man Purely Organic crew that was in the process of making an application to turf at Colby College in Waterville.

During that inspection, samples were collected from the application equipment and an unmarked jug used to fill the application equipment. From information obtained from the Purely Organic foreman on the job, an interview with the contact at Colby College involved with the contracted work, and from Purely Organic's co-owner, it was determined that Purely Organic was in violation of numerous pesticide laws and regulations including fraudulent business practices. Purely Organic sold the job as an organic turf treatment, but lab results revealed chemical herbicides were applied. A sample collected from the application equipment was positive for 2,4-D at 0.129 % and for Dicamba at 0.0323%. A sample collected from the unmarked jug was positive for 2,4-D at 3.15% and for Dicamba at 0.418%. The signs used to post the treated turf at Colby College read "PURELY ORGANIC LAWCARE, ORGANIC FERTILIZER APPLICATON, Totally safe for kids and pets, Application made on 5-10, Remove after 5-12".

On May 17, 2010, the Board received a complaint call from a concerned parent whose child played on an athletic field on May 15, 2010, that was part of the South Portland Wainwright Recreation Complex. The caller's primary concern at that time was that the turf at this complex, which included multiple athletic fields and the turf in non-playing areas, appeared to have been treated with an herbicide and no signs were posted to notify the public that the fields had been treated. He estimated 200 kids were on the fields on May 15, 2010.

A Board inspector contacted the Sport Turf Manager for the City of South Portland in charge of the South Portland Wainwright Recreation Complex. The city's Sport Turf Manager told the inspector that the most recent application to the fields was made by Purely Organic on May 7, 2010, and that he contracted with Purely Organic for an organic, non-synthetic/chemical free application. The Sports Turf Manager signed a written statement affirming this. The inspector collected a copy of the Purely Organic invoice for work done at the sports complex on May 7, 2010. The inspector also collected Purely Organic's work proposal for the Wainwright Complex dated November 13, 2009.

Based on his on-site observations of the condition of the turf weeds, the inspector collected two vegetation samples from the turf at the Wainwright Recreation Complex. One sample was collected from an athletic field, the other from turf at the complex but not on a playing field. The lab result for the athletic field sample was

positive for 2,4-D at 8.10 ppm. The lab result for the sample collected inside the complex, but not on a playing field, was positive for 2,4-D at 4.79 ppm.

On December 3, 2010, a Board inspector again contacted the City of South Portland's Sport Turf Manager to collect information about Purely Organic's proposed work and product line. The Sports Turf Manager provided a typed and signed statement that in part stated that he made a decision to switch from synthetic fertilizers and pesticides to organics because of environmental concerns and proximity to Casco Bay.

On this same date, the inspector also contacted a secretary with the South Portland Parks Department and collected invoices for services completed by Purely Organic, including services to the Wainwright Recreation Complex.

None of Purely Organic's job proposals, product information sheets or invoices listed any products containing 2,4-D herbicide. Based on the above evidence, it was determined that Purely Organic engaged in fraudulent business practices in the application of pesticides at the South Portland Wainwright Recreation Complex.

On December 3, 2010, and December 13, 2010, an inspector completed a records and operations check at Purely Organic's office. During these checks, the 2008, 2009, and 2010 pesticide application records for this company were collected and the co-owner was interviewed about operational practices including relabeling of pesticide products at this site. The company co-owner acknowledged relabeling at least 3 products at their facility. None of the 3 products were registered with EPA or the State of Maine. The company's facility was not registered with EPA as a Pesticide Producing Establishment, a requirement when relabeling products that make pesticidal claims.

A review of the Purely Organic's website further revealed five other Purely Organic products made pesticidal claims and were not registered with EPA or the State of Maine. Additionally, their website listed pesticide control services the company offered. Although the company was only certified and licensed to make pesticide applications to turf, they advertised tick and mosquito control and tree/shrub spraying. Application records collected from the company confirmed that they made numerous applications in these two categories for which they were not certified or licensed. The records also indicated that Purely Organic made hundreds of turf applications to residential customers using company products claiming to control various broadleaf weeds and crabgrass.

On March 11, 2011, a Board inspector completed a marketplace inspection at a pesticide dealer in central Maine. Invoices collected during that inspection indicated that Purely Organic purchased a significant volume of chemical pesticides on five different dates in 2010. These purchases included three, 30 gallon drums of *Speed Zone Broadleaf Herbicide for Turf*. This product contains the active ingredients: Carfentrazone-ethyl, 2,4-D, Mecoprop-p-acid, and Dicamba acid.

When Purely Organic's co-owner was asked where the 90 gallons of *Speed Zone Broadleaf Herbicide for Turf* was applied he told Board staff that it was applied in 2010 at Pembroke Country Club in Pembroke, Massachusetts. The 2010 pesticide application records collected from the Pembroke Country Club by a Massachusetts pesticide inspector did not indicate any applications of *Speed Zone Broadleaf Herbicide for Turf* in 2010.

The promotional literature distributed by Purely Organic to its clients including Colby College and South Portland indicated that pests, including broadleaf weeds, were managed by a variety of organic pesticides produced by the company. Board staff believes that currently available science indicates that established weeds could not feasibly be controlled by the use of products described in Purely Organic's literature. Purely Organic

records indicated that Purely Organic claimed to treat turf problems of hundreds of its residential customers using company organic products to control pest problems.

Based on the above evidence, Board staff concluded that Purely Organic engaged in a pattern of fraudulent business practices involving both commercial and residential customers from 2008-2010. Through promotional material and statements to customers, the company represented that lawn pest and other pests would be managed using company produced organic pesticides and then knowingly and intentionally applied conventional chemical pesticides including 2,4-D when necessary to control the pests instead of using organic pesticides as represented.

Summary of Violation(s):

CMR 01-026 Chapter 28 Section 3

Where outdoor commercial pesticide applications in certification and licensing categories III(a) - Outdoor Ornamentals, III(b) - Turf, and VII(a) - Structural General will take place, the area shall be posted in a manner and at locations designed to reasonably assure that persons entering such area will see the notice.

7 M.R.S.A. §606(2)(D)

A person may not: Handle, transport, store, display or distribute pesticides in such a manner as to endanger human beings or their environment....

22 M.R.S.A. §1471- D(8)(B)

Has engaged in fraudulent business practices in the application or distribution of pesticides.

CMR 01-026 Chapter 20 Section 5

- A. Any person applying pesticide shall instruct their employees and those working under their direction about the hazards involved in the handling of pesticides to be employed as set forth on the pesticide label and shall instruct such persons as to the proper steps to be taken to avoid such hazards.
- B. Any person applying pesticides shall provide and maintain, for the protection of their employees and persons working under their direction, the necessary safety equipment as set forth on the label of the pesticide to be used.

7 U.S.C. § 136e REGISTRATION OF ESTABLISHMENTS

(a) REQUIREMENT.—No person shall produce any pesticide subject to this Act or active ingredient used in producing a pesticide subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator. The application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such establishment.

7 U.S.C. § 136j(a)(1)(A)

(1) Except as provided by subsection (b), it shall be unlawful for any person in any State to distribute or sell to any person—

(A) Any pesticide that is not registered under section 3 or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this Act;

7 M.R.S.A. §606 (1)(A)

606. Prohibited acts

1. Unlawful distribution. A person may not distribute in the State any of the following:

A. A pesticide that has not been registered pursuant to the provisions of this subchapter.

CMR 01-026 Chapter 31 Section 1(D)

Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. This Master must be licensed in all categories which the branch office of the company or agency performs applications and any Operators must also be licensed in the categories in which they perform or supervise pesticide applications....

CMR 01-026 Chapter 50 Section 1

Commercial agricultural producers and commercial applicators shall maintain pesticide application records consistent with paragraph II. below for a period of two years from the date of application. Such records shall be kept current by recording all the required information on the same day the application is performed. These records shall be maintained at the primary place of business and available for inspection by representatives of the Board at reasonable times, upon request.

22 M.R.S.A. §1471- D(8)(G)

Has made false or fraudulent records or reports required by the board under this chapter or under regulations....

Rationale for Settlement:

- Scope: The violations were not isolated incidents, but ingrained operating practices of the company. The types of violations were extensive and included violations covering many areas of both State and Federal pesticide laws, regulations, and statutes as cited above.
- Duration: The violations occurred over a long period of time, 2008-2010.
- Degree of harm or potential harm to the public and the environment: Company employees, customers and the public were informed the products used were organic pest control products or fertilizers when in fact the products used included conventional, chemical pesticides.
- The company realized an economic benefit and competitive advantage from their practices.
- Deterrence of future violations
- The willful nature of the violations
- The company had previous violations based on an application in 2007.
 - 22 M.R.S.A. § 1471-D (1)(A) – unlicensed commercial application
 - 7 MRSA section 606(1)(A) and 7 MRSA section 606(1)(A) 7 MRSA section 606(1)(A)– unlawful distribution and applying an unregistered pesticide
 - CMR 01-026 Chapter 28, Section 3 – did not post treated area
- The gravity of the violations, including fraud

Attachments: Proposed Consent Agreement

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

Purely Organic)	ADMINISTRATIVE CONSENT AGREEMENT
PO Box 211)	AND
York Harbor, Maine 03911)	FINDINGS OF FACT

This Agreement by and between Purely Organic (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, tick and mosquito control services, and tree and shrub services for compensation.
2. That the Company is a licensed spray contracting firm holding license number SCF 44757 issued by the Board pursuant to 22 M.R.S.A § 1471-D (1)(B).
3. That the licensed master applicator (CMA 44756) was part owner of the Company for the time frame covering the events in this consent agreement.
4. That the Company employee licensed as commercial operator (COA 44936), was employed as a commercial service manager by the Company for the time frame covering the events in this consent agreement.
5. That on May 10, 2010, while providing routine field coverage of his assigned district, a Board inspector observed a Company vehicle and Company personnel at the Colby College campus in Waterville in the process of making an application of an unknown product to the turf.
6. That in response to these observations, the inspector stopped and conducted a routine inspection with the Company's commercial service manager who was the foreman on the job. Two unlicensed Company employees were also on the job.
7. That the foreman told the inspector that they were making an application to control weeds using an unknown Purely Organic's organic weed control product.
8. That the inspector collected a one half liter sample (# 100510BCB01A) of liquid from an unmarked 2 ½ gallon container (photo # 100510BCB01C) on the Company truck. The foreman said he used the material in this container to add to his sprayer for this job. The inspector also noted that there were a total of four unmarked 2 ½ gallon containers on the Company truck.
9. That the inspector then collected a one half liter sample (# 100510BCB01B) of liquid directly from the Permagreen sprayer that the foreman used to make the application.
10. That the lab result from the sample collected in paragraph eight was positive for 2,4-D at 3.15% and for Dicamba at 0.418%.
11. That the lab result from the sample collected in paragraph nine was positive for 2,4-D at 0.129 % and for Dicamba at 0.0323%.

12. That CMR 01-026 Chapter 28 Section 3, requires that when applications are made to turf which fall under certification and licensing category III(b) (CMR 01-026 Chapter 31), the treated area must be posted prior to making the pesticide application. The sign used for posting must comply with the requirements of Chapter 28 Section 3(D)(1)-(7), which includes the words “CAUTION, PESTICIDE APPLICATION”, and the Board designated symbol, the name of the company making the pesticide application and its telephone number, the date and time of the application, any reentry precautions from the pesticide labeling, and the date and/or time to remove the sign.
13. That the inspector documented (photograph sample # 100510BPC01C) at the time of the inspection in paragraph six, that the signs used for posting the treated area contained the following information: “PURELY ORGANIC LAWN CARE, ORGANIC FERTILIZER APPLICATION, Totally safe for kids and pets, Application made on 5-10, Remove after 5-12”. The label the Company owner provided to the Board in paragraph 24 contained the following reentry precaution “do not enter treatment areas until sprays have dried” The Company therefore did not comply with the requirements of Chapter 28 Section 3(D)(1)-(6).
14. That the circumstances described in paragraphs one through thirteen constitute a violation of CMR 01-026 Chapter 28 Section 3.
15. That 7 M.R.S.A. §606(2)(D), prohibits handling, transporting or otherwise distributing pesticides in such a manner as to endanger human beings or their environment.
16. That the circumstances in paragraphs one through fifteen, constitute a violation of 7 M.R.S.A. §606(2)(D). The Company transported and used pesticides in unmarked containers. The employees did not know the contents of those containers which is careless, faulty, and negligent handling of a pesticide. In addition, posting false information on the signs at the treated areas created a risk of exposure for pets, children, and other people.
17. That on May 10, 2010, during the inspection described in paragraph six, Peter McDonald (Grounds Supervisor at Colby College) arrived on site and spoke with the inspector and the Company foreman. McDonald later provided a typed statement dated May 18, 2010.
18. That immediately after McDonald’s discussion with the inspector and the Company foreman, McDonald called a Company official to confirm that “everything was in order”. McDonald was told by the Company official that the crew was just applying 2,4-D as the Company official had previously discussed with McDonald. McDonald told the Company official he did not want 2,4-D applied on the Colby Campus and that he ordered an organic weed management product.
19. That McDonald documented in his May 18, 2010, written statement that, after several follow up conversations with the Company official on the same day of the application, the Company official changed his account of why 2,4-D was applied alleging that the Company truck had been loaded over the weekend and unmarked containers were on the truck. His crew simply took the wrong truck to the Colby job.
20. That as part of the conversation described in paragraph nineteen, McDonald asked the Company official to send him the MSDS for the pesticide his company applied at the Colby Campus on May 10, 2010.
21. That in response to McDonald’s request in paragraph twenty, the Company official emailed McDonald an MSDS for 4-Speed XT Selective Herbicide, EPA Reg. No. 228-590 on May 10, 2010.

22. That on May 10, 2010, after the Colby pesticide inspection took place, the Company official called a Board staff member. The Company official stated that there had been a problem with his Colby client. The client thought he was supposed to get an organic application but his crew put out a traditional chemical pesticide. The Company official said he would email a copy of the label to the BPC staff member for the pesticide the Company applied at Colby College on May 10, 2010.
23. That on May 11, 2010, in response to the phone conversation in paragraph twenty-two, the Company official emailed a Board staff member a label for 4-Speed Selective Herbicide EPA Reg. No. 228-589.
24. That the MSDS that the Company official emailed to McDonald, for 4-Speed XT Selective Herbicide, EPA Reg. No. 228-590, described in paragraph twenty-one and the pesticide label the Company official gave to a Board staff member, 4-Speed Selective Herbicide EPA Reg. No. 228-589, described in paragraph twenty three are not for the same product.
25. That on May 12, 2010, a Board inspector met with McDonald and collected a copy of the email and MSDS for 4-Speed XT Selective Herbicide, EPA Reg. No. 228-590 that the Company official sent McDonald as indicated in paragraph twenty-one. The MSDS was marked with sample number 100512BCB01D.
26. That, as described in paragraphs eighteen and nineteen, the Company official gave conflicting accounts for why 2,4-D was applied to the Colby Campus on May 10, 2010. One account involved a miscommunication between the Company official and McDonald (Colby contact) which lead to a misunderstanding between the two parties. The other was that Purely Organic was supposed to make an organic turf application but that the Purely Organic crew simply took the wrong truck to the Colby job site and applied 2,4-D.
27. That, pursuant to 22 M.R.S.A. §1471-J, the commission of any act punishable under section 1471-D, subsection 8, except paragraphs A and H, is a civil violation subject to the penalties established in Title 7, section 616-A. Title 22 M.R.S.A. §1471- D(8)(B) prohibits the use of fraudulent business practices in the application or distribution of pesticides.
28. That the circumstances described in paragraphs one through twenty-seven establish that the Company engaged in fraudulent business practices in connection with the pesticide application made at Colby College on May 10, 2010. The Company sold the job to the customer as an organic application, intentionally and knowingly applied an herbicide containing 2,4-D, Mecocrop-p, Dicamba, and Pyrafluren ethyl instead of an organic application, and posted signage falsely stating that organic fertilizer had been applied.
29. That the circumstances described in paragraphs one through twenty-eight constitute a violation of 22 M.R.S.A. §1471- D(8)(B).
30. That on May 17, 2010, the Board received a call from a parent with a concern that athletic fields at the South Portland Wainwright Recreation Complex were treated with a pesticide and the fields were not posted. The caller estimated that on the Saturday, May 15, 2010, there were 200 kids on these fields.
31. That in response to the complaint described in paragraph thirty, a Board inspector conducted a follow-up inspection on May 17, 2010, with Rick Perruzzi, the Sports Turf Manager for the City of South Portland.
32. That during the inspection described in paragraph thirty-one, Perruzzi stated that neither he nor his crew applied pesticides to the recreation complex turf and had made no chemical pesticide application requests to Purely Organic. Perruzzi stated that Purely Organic only applied organic products to the

sports fields. The most recent Purely Organic application took place on May 7, 2010. Perruzzi signed a written statement affirming that he requested organic, non-synthetic/chemical free applications to the sports complex.

33. That during the inspection described in paragraph thirty-one, the inspector decided to sample the turf based on the condition of the broadleaf weeds which appeared to have been treated for weed control. The inspector collected two vegetation samples from turf at the Wainwright Recreation Complex. Sample # 100517EPM01C was collected from the turf in the cul-de-sac in front of the field house and Sample # 100517EPM01D was collected from the turf in the southeast corner of the greater soccer quad.
34. That the lab result for sample #100517EPM01C was positive for 2,4-D at 4.79 ppm and lab result for sample #100517EPM01D was positive for 2,4-D at 8.10 ppm.
35. That during the inspection described in paragraph thirty-one the inspector also collected copies of documents from Perruzzi which included a Purely Organic Invoice #8328 dated May 10, 2010, for work done on May 7, 2010, (sample # 100517EPM01A) and the Purely Organic Estimate # 2958 dated November 13, 2009, (sample # 100517EPM01B). The inspector also collected MSDSs and the related cover sheet that Purely Organic provided to Perruzzi for work Purely Organic did at the Wainwright Recreation Complex on May 7, 2010, (sample # 100517EPM01F). None of these documents specify the use of 2,4-D and the MSDS and cover letter are specific that vinegar and sodium laurel sulfate were applied which “reduce the exposure to synthetic pesticides”.
36. That on December 3, 2010, another Board inspector conducted an additional follow-up inspection with Perruzzi at Peruzzi’s South Portland office.
37. That during the inspection described in paragraph thirty-six the inspector asked Perruzzi if he contracted with Purely Organic to apply traditional weed control products including the use of 2,4-D to turf. Perruzzi responded “no” and that he ordered a natural, non traditional weed control program. Perruzzi provided a typed and signed statement to this affect (sample # 101203BCB01C).
38. That during the inspection described in paragraph thirty-six the inspector collected documents including a cover letter from Purely Organic to the City of South Portland stating “Proposal for Organic Turf Care Services” (101203BCB01D). This included a copy of the same estimate #2958, collected as described in paragraph thirty-five, for the Wainwright Recreation Complex. None of the products listed for use on these proposals included 2,4-D as an active ingredient.
39. That on December 3, 2010, after the inspector met with Perruzzi, he contacted Barbara Romano, a secretary with the South Portland Parks Department. The inspector collected invoices and a statement for services provided to the city of South Portland in 2009 and 2010 (sample #101203BCB02A). The invoice numbers were 8483, 8418, 8328, 203, 7602, 5700, 6795, 6180, and the statement was dated July 6, 2010. None of these documents indicates the use of 2,4-D.
40. That the circumstances described in paragraphs thirty through thirty-nine establish that the Company engaged in fraudulent business practices in connection with the pesticide application made at the South Portland Wainwright Recreation Complex on May 7, 2010. The Company sold the job to the city personnel as an organic application and intentionally and knowingly applied 2,4-D herbicide instead of an organic application.
41. That the circumstances described in paragraphs thirty through forty constitute a violation of 22 M.R.S.A. §1471- D(8)(B).

42. That on December 13, 2010, a Board inspector met with the Company official to conduct a records and operations inspection of the Company. The inspector called a week earlier to confirm this appointment.
43. During the inspection in paragraph forty-two, the inspector asked for copies of all pesticide application records for the past two years. The Company official said it would not be possible for him to provide those records at that time but the inspector would be able to have copies if he returned on December 17, 2010.
44. That the inspector asked the Company official what personal protective equipment he provided to his employees when they made pesticide applications. The Company official stated the Company does not use pesticides so he does not have to provide personal protective equipment to his employees.
45. That CMR 01-026 Chapter 20 Section 5 requires that employers instruct their employees on the hazards of handling pesticides and provide the necessary safety equipment specified on the label.
46. That the pesticide label for 4-Speed Selective Herbicide EPA Reg. No. 228-589, the pesticide label the Company official sent to the Board for the pesticide applied in paragraph seven, requires the use of long-sleeved shirt, long pants, shoes plus socks and chemical resistant gloves for all mixers, loaders and applicators who use this product.
47. That the failure to instruct his employees on the hazards of handling pesticides and to provide the necessary safety equipment specified on the label for 4-Speed Selective Herbicide EPA Reg. No. 228-589 with respect to the pesticide applications described in paragraphs three through eleven, eighteen, twenty-three and twenty-four, as admitted to by the Company official during the inspection described in paragraphs forty-four, and forty-five constitute a violation of CMR 01-026 Chapter 20 Section 5.
48. That on December 17, 2010, a Board inspector returned to the Company to conduct a records and operations check. The inspector collected copies of records from the Company that included the years 2008, 2009, and 2010. These were marked with sample # 101217BCB01B.
49. That during the inspection described in paragraph forty-eight, the inspector also collected the labels for four products from the Company official, as follows: Purely Organic 2 Lawncare Compost Tea (sample #101217BCB01C); Purely Organic Lawncare Gluten-8 OLP (sample #101217BCB01D); Purely Organic Lawncare Essential 1 PHE Plant Health Enhancement (sample #101217BCB01E); and Purely Organic NPP Lawncare Natural Plant Protection (sample #101217BCB01F).
50. That 7 U.S.C. § 136(u) (1) defines a pesticide in part as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests.
51. That 7 U.S.C. § 136e(a) states that - No person shall produce any pesticide subject to this Act or active ingredient used in producing a pesticide subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator.
52. That three of the products in paragraph forty-nine, Purely Organic Lawncare Gluten-8 OLP (sample #101217BCB01D), Purely Organic Lawncare Essential 1 PHE Plant Health Enhancement (sample #101217BCB01E), and Purely Organic NPP Lawncare Natural Plant Protection (sample #101217BCB01F), make pesticidal claims on their labels. These claims are:

Purely Organic NPP

“Our NPP (Natural Plant Protection) is used to enhance plant growth while boosting resistance to pathogens. Processed from marine byproducts, chitosan triggers plant defences [sic] due to its similarity to the cell walls of fungi”

“to enhance plant defenses”

Purely Organic Lawncare Essential 1 PHE

“Essential 1 PHE packs a one-two punch to pests and pathogens. A broad range of recognized botanical extracts and pungent essential oils suppresses pest pressure while its rich base of fermented sucrose boosts plant metabolism and phyto-defense”.

Purely Organic Gluten -8 OLP

“Organic Liquid Pre-Emergent”

“Gluten -8 OLP combines the effectiveness of Corn Gluten Meal (CGM) with the convenience of a sprayable liquid material’

“economical organic pre-emergent product”.

“Gluten -8 OLP (Organic Liquid Pre-emergent) is a sprayable liquid material to be used in our easy Mix & Spray System to suppress crabgrass and broad leaf weeds”.

53. That a review of the Purely Organic product labels on their website at <http://www.purelyorganiclawncare.com/index.html>, disclosed an additional five products that make pesticidal claims. These products and their claims are:

- Purely Organic 6-0-2 FW
“a high level of weed suppression”
- Purely Organic 4-1-1 FW
“a high level of weed suppression”
- Purely Organic Compost Tea Powder
“This beneficial fungi is used to prevent disease causing, or harmful fungi in the soil and at the plant roots. Trichoderma contains spores, which grow around the plant’s roots depriving pathogenic fungi nutrients and living space. The spores of trichoderma produce antibiotics which destroy the spores of pathogenic fungi thus helping to prevent disease”
- Purely Organic Purely Eytmology
“Purely Eytmology packs a one-two punch to pests and pathogens. A broad range of recognized botanical extracts and pungent essential oils suppresses pest pressure while its rich base of fermented sucrose boosts plant metabolism and phyto-defense. Stronger plants and pest-unfriendly environment add up to improved results, without dangerous and expensive synthetics”

“Ingredients include: Activated pepper (capsaicin)... neem...All ingredients classified as exempt under EPA Sect 25b;
- Purely Organic Nature’s Cure

“Nature’s Cure is used to enhance plant growth while boosting resistance to pathogens. Processed from marine byproducts, chitosan triggers plant defenses due to its similarity to cell walls of fungi. Also as a pre-dip solution it acts as an anti-microbial to help prevent mold and decay of fruits and vegetables”.

“Directions: Nature’s Cure is a concentrated foliar application material to be used to enhance plant defenses, and improve soil moisture retention”.

54. The Company produced pesticides without their facility being registered with the Administrator.
55. That the circumstances described in paragraphs forty-eight through fifty-three constitute a violation of 7 U.S.C. § 136e(a).
56. That both the federal statute contained in 7 U.S.C. § 136j(a)(1)(A) and Maine statute in 7 M.R.S.A. §606 (1)(A) require that before any pesticide is distributed or sold it must first be registered.
57. That the pesticides described in paragraphs fifty-two and fifty-three were not registered prior to being distributed and sold.
58. That a review of the Company application records collected in paragraph forty-eight revealed that the Company’s unregistered pesticides described in paragraphs fifty-two and fifty-three were distributed and sold in Maine.
59. That the circumstances described in paragraphs forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-seven, and fifty-eight constitute multiple violations of 7 U.S.C. § 136j(a)(1)(A) and 7 M.R.S.A. §606 (1)(A).
60. That CMR 01-026 Chapter 31 Section 1(D) requires that the master applicator for each branch office of a company be licensed in all categories that the branch office performs applications in and that any operator must be licensed in the categories in which they perform or supervise pesticide applications.
61. That a review of the Company’s pesticide application records collected in paragraph forty-eight documented hundreds of separate pesticide applications to control ticks and/or mosquitoes.
62. That CMR 01-026 Chapter 31 Section 2(A)VII(e) specifies category VII(e) as the license category necessary for applicators to perform tick and mosquito control work.
63. That no one employed by the Company at the time of the applications described in paragraph sixty-one, were licensed in category VII(e).
64. That the circumstances described in paragraphs sixty through sixty-three constitute multiple violations of CMR 01-026 Chapter 31 Section 1(D).
65. That a review of the Company’s pesticide application records collected during the inspection described in paragraph forty-eight documented additional pesticide applications made to trees and shrubs.
66. That CMR 01-026 Chapter 31 Section 2(A)III(a) specifies category III(a) as the license category necessary for applicators to perform work on outdoor ornamental trees and shrubs.
67. That no one employed by the Company at the time of the applications in paragraph sixty-five, were licensed in category III(a).

68. That the circumstances described in paragraphs sixty-five through sixty-seven constitute multiple violations of CMR 01-026 Chapter 31 Section 1(D).
69. That CMR 01-026 Chapter 50 Section 1 requires that commercial applicators keep pesticide applicator records that include specific data for each application. These records must be completed on the same day as the application and kept for a period of at least two years.
70. That the Company made hundreds of pesticide applications and none of the pesticide application records collected in paragraph forty-eight for those applications were complete as required by CMR 01-026 Chapter 50 Section 1.
71. That the circumstances described in paragraphs forty-eight, sixty-eight and sixty-nine constitute hundreds of violations of CMR 01-026 Chapter 50 Section 1.
72. That CMR 01-026 Chapter 50 Section 2 requires that commercial applicators submit annual summary reports for each calendar year by January 31 of the following year.
73. That the 2008 Commercial Applicator Annual Summary Report submitted by the Company stated that the Company made no pesticide applications in the state of Maine in 2008.
74. That the 2009 Commercial Applicator Annual Summary Report submitted by the Company indicated that the Company made no pesticide applications in 2009.
75. That the Company submitted its Commercial Applicator Annual Summary Report for the year 2010 on July 11, 2011, and the reporting deadline for that report was January 31, 2011.
76. That a review of the pesticide application records collected during the inspection described in paragraph forty-eight document that pesticide applications were made by the Company in 2008 and 2009, and the 2010 report was incomplete.
77. That Title 22 M.R.S.A. §1471- D(8)(G) prohibits the submission of false or fraudulent records or reports to the board.
78. That the circumstances described in paragraphs forty-eight and seventy-two through seventy-seven constitute multiple violations of 22 M.R.S.A. §1471- D(8)(G).
79. That on March 11, 2011, a Board inspector conducted a marketplace inspection in Lewiston, Maine at a pesticide dealer. Invoices were collected that show pesticide purchases were made by the Company at this facility (sample #110311EPM01A).
80. That pesticide purchases made by the Company, as documented from the invoices collected in paragraph seventy-eight, included the following:
 - Order date: July 28, 2010, Speed Zone PBI 30 gal drum (invoice #370574)
 - Order date: June 7, 2010, Kleenup Pro LPI 2x2.5 gal (invoice #354484)
 - Order date: June 7, 2010 Scythe 2 x 2.5 gal (invoice # 354847)
 - Order date: June 4, 2010, Acelepryn Insecticide 1/2 gallon (invoice # 354851)
 - Order date: June 1, 2010, Speed Zone PBI 30 gal drum (invoice #359751)
 - Order date: May 19, 2010 Speed Zone PBI 30 gal drum (invoice #350380)
81. That the Company pesticide application records collected in paragraph forty-eight do not indicate the use of any of the pesticides described in paragraph eighty.

82. That the Company official stated that the 90 gallons of Speed Zone was applied in 2010 at Pembroke Country Club in Pembroke, Massachusetts.
83. That the 2010 pesticide application records collected from the Pembroke Country Club by a Massachusetts state inspector, do not indicate any applications of Speed Zone in 2010.
84. That promotional literature distributed by the Company to its clients, including Colby College and South Portland, indicates that pests, including broadleaf weeds, are managed using a variety of organic pesticides produced by the Company.
85. That the Board believes that currently available science indicates that established broadleaf weeds could not feasibly be controlled by the use of the products described in the Company literature.
86. That the Board believes that the circumstances described in paragraphs one through twenty-nine, thirty through forty-one, and forty-two through eighty-five, constitute evidence that the Company has engaged in a pattern of fraudulent business practices with its lawn service customers from 2008-2010, by representing, through promotional literature and by statements made to those customers, that lawn pests, including broadleaf weeds, would be managed using only Company produced organic pesticides and then intentionally and knowingly applying conventional pesticides, including 2,4-D when necessary to control those pests instead of using organic products as represented, without the customers' knowledge or consent. Both the Colby College case and the South Portland Wainwright Recreation Complex case confirm this with lab results indicating that conventional pesticides were applied. Additionally, Company application records indicate organic pesticides were applied to hundreds of Company customers, but evidence indicates that large volumes of conventional pesticides were purchased by the Company and applied to these customers' properties.
87. That the circumstances described in paragraphs one through eighty-six constitute a pattern of violations of 22 M.R.S.A. §1471- D(8)(B).
88. That the Company denies the Board allegations described in paragraphs twenty-nine, forty-one, eighty-seven, and offers alternative explanations.
89. That the Company entered into an Administrative Consent Agreement with the Board on January 29, 2008, for violations involving a pesticide application to a residential lawn on May 14, 2007, in Wells. The violations included: 22 M.R.S.A. § 1471-D (1)(A) – unlicensed commercial application, 7 MRSA section 606(1)(A) and CMR 01-026 Chapter 20, Section 1, A – unlawful distribution and applying an unregistered pesticide, CMR 01-026 Chapter 28, Section 3 – did not post treated area. Consequently, the violations described in paragraphs fourteen, sixteen, twenty-nine, forty-one, forty-seven, fifty-five, fifty-nine, sixty-four, sixty-eight, seventy-one, seventy-eight and eighty-seven, are a subsequent violations pursuant to 7 M.R.S.A. § 616-A (2)(B).
90. That the Board has regulatory authority over the activities described herein.
91. 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.

92. That this Agreement shall not become effective unless and until the Board accepts it.

93. That in consideration for the release by the Board of the multiple causes of action which the Board has against the Company resulting from the violations referred to in paragraphs fourteen, sixteen, twenty-nine, forty-one, forty-seven, fifty-five, fifty-nine, sixty-four, sixty-eight, seventy-one, seventy-eight and eighty-seven, the Company agrees to pay a penalty to the State of Maine in the amount of \$37,000.00, of which \$19,000 shall be suspended. The unsuspended amount, \$18,000.00, is to be paid in twelve monthly payments of \$1,500. Payments shall be made during the months of April through November of each year until payment has been made in full. No payments are required during the months of December through March. (Please make checks payable to Treasurer, State of Maine.) The penalty assessed in this consent agreement reflects a reduced amount from the total penalties that could be assessed against the Company for the multiple violations described in this consent agreement. The reduction was offered as an inducement to the settlement of this case. The Board believes that the penalty is substantial enough to adequately address the seriousness of the violations, including those involving fraud. Any violations within the next two years from the date of the settlement of this consent agreement, involving violations cited in this consent agreement will result in the imposition of the suspended penalty amount. If there is no evidence of violations in this two-year timeframe, the suspended penalty amount will be rescinded.

94. That the Company representative signing below is duly and sufficiently authorized to sign this consent agreement on behalf of the Company and to bind the Company to its terms and conditions.

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

PURELY ORGANIC

By: _____ Date: _____
James Reinertson

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED:

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