

Proposed Administrative Consent Agreement Background Summary

Subject: Lucas Tree Experts Company
PO Box 958
Portland, Maine 04104-0958

Date of Incident(s): July 23, 2010

Background Narrative: The Board received a complaint call from Scarborough resident who is a registrant on the 2010 Maine Pesticide Notification Registry (non-ag). The caller stated she received about 90 seconds advance notification about a pesticide application. The property being treated is listed as an abutter on the notification registry. A follow-up inspection confirmed that a pesticide application was made without sufficient notification.

Summary of Violation(s): CMR 01-026 Chapter 28, Section 2 (D). 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 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
Lucas Tree Experts Company)	AGREEMENT
PO Box 958)	AND
Portland, Maine 04104-0958)	FINDINGS OF FACT

This Agreement by and between Lucas Tree Experts Company (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 adopted by the Board on September 19, 1984.

The parties to this Agreement agree as follows:

1. That the Company provides lawn care services and has the firm license number SCF 15035 issued by the Board pursuant to 22 M.R.S.A § 1471-D (1)(B).
2. That on July 23, 2010, Scott Warden, a Company employee and a licensed commercial applicator (COA 43857), applied Up-Star Gold Insecticide, EPA Reg. No. 70506-24 to the outdoor area at the Kim Sproull residence, located at 3 Cutlass Lane in Scarborough, Maine to control mosquitoes.
3. That the outdoor area at 3 Cutlass Lane is located within 250 feet from property which is the residence of Laura Hannan at 17 Powderhorn Drive in Scarborough, Maine.
4. That Laura Hannan is listed on Maine's 2010 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2. The 3 Cutlass Lane address is also listed on the Registry as a property located within 250 feet of Laura Hannan's residence. The 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), by notifying Laura Hannan approximately only 90 seconds prior to arriving on site to make 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 Board has regulatory authority over the activities described herein.

9. 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.
10. That this Agreement shall not become effective unless and until the Board accepts it.
11. 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 \$500.00. (Please make checks payable to Treasurer, State of Maine).

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

LUCAS TREE EXPERTS COMPANY

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Robert I. Batteese, Jr., Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General