

Proposed Administrative Consent Agreement Background Summary

Subject: Lucas Tree Expert Co.
PO Box 958
Portland, ME 04104

Date of Incident(s): June 29, 2006

Background Narrative: On June 29, 2006, Lucas Tree Expert Co. employees Jared Polchies and Jeff Gielow applied Talstar One insecticide for mosquito control to the backyard (including an herb garden) of Richard Buhr's residence at 52 Wildwood Drive in Saco. Buhr had not authorized any applications. Applicators Polchies and Gielow did not check Buhr's electric meter number to confirm the correct site location, nor did they report the misapplication to Buhr or their company supervisor. Buhr learned of the incident because his in-laws, present in his house at the time, witnessed it. Buhr called Lucas Tree Expert Co two days after the application and requested that the company self-report the incident to the BPC and send him a copy for confirmation. Lucas Tree had not been aware of the incident before this call; the company did send a letter to the Board about the incident and a copy to Buhr. In a follow-up letter to the Board, Buhr wrote that the company's letter did not accurately report the incident as it actually occurred.

Summary of Violation(s): 22 M.R.S.A. § 1471-(D) (8) (C), Used or supervised the use of pesticides in careless, negligent or faulty manner ...

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

)	ADMINISTRATIVE CONSENT
John Lucas Tree Expert Co.)	AGREEMENT
PO Box 958)	AND
Portland, ME 04104)	FINDINGS OF FACT

This Agreement by and between the John Lucas Tree Expert Co. (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 is a licensed spray contracting firm with license number SCF15035 issued by the Board pursuant to 22 M.R.S.A. § 1471-D (1)(B).
2. That Company employee Jared Polchies holds commercial applicator license number COA43217 and Company employee Jeff Gielow holds commercial applicator license number COA43358.
3. That on June 29, 2006, Polchies and Gielow made a mosquito control application of Talstar One, EPA Reg. No. 279-3206 to the backyard area, including an herb garden, at the residence of Richard Buhr, 52 Wildwood Drive, in Saco, Maine.
4. That Richard Buhr had not granted authorization for the application described in paragraph three.
5. That Polchies and Gielow were treating a series of residences for mosquito control, and thought Burh's backyard was part of that series.
6. That a Board policy requiring positive identification of the proper treatment site by commercial applicators has been in effect since July 29, 2005.
7. That obtaining a customer's electric meter number in advance of the treatment and using it to verify the correct application site is a Board approved method of positive identification.
8. That according to inspector Eugene Meserve's report of the incident, Polchies and Gielow did not positively identify the residence by checking the electric meter number.
9. That Polchies and Gielow did not report the misapplication to the Company or to Richard Buhr.
10. That according to the label, Talstar One should not be used on edible crops.

11. That Buhr and his family routinely eat fresh herbs from the herb garden that received the pesticide application outlined in paragraph three.
12. That Buhr contacted the Company on July 3, 2006 regarding the incident, and the Company was not aware of the misapplication at that time.
13. That as a result of Buhr's phone call to the Company about the misapplication, the Company reported the incident to the Board.
14. That the Company is responsible for the acts of its employees and is punishable for any violation of the pesticide control statutes or regulations that is committed by them.
15. That the circumstances described in paragraphs one through four constitute unconsented off-target direct discharge of pesticides, in violation of CMR 01-026 Chapter 22, Section 3 (A).
16. That the circumstances described in paragraphs one through eleven constitute the use of pesticides in a careless, negligent or faulty manner in violation of 22 M.R.S.A. § 1471-D (8)(C).
17. That the circumstances described in paragraphs one through eleven constitute the use or application of a pesticide in a manner inconsistent with its label in violation of 22 M.R.S.A. § 1471-D (8)(F).
18. That the Board has regulatory authority over the activities described herein.
19. 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.
20. That this Agreement shall not become effective unless and until the Board accepts it.
21. That in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violations referred to in paragraph five, the Company agrees to pay to the State of Maine the sum of \$500.00. (Please make checks payable to Treasurer, State of Maine). The fine reflects a reduced amount for these violations taking into consideration the fact that the Company reported the violations to the Board as soon as it became aware of them.

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

JOHN LUCUS TREE EXPERTS CO.

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Acting Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General