

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

**Subject:** TruGreen Chemlawn  
PO Box 8100  
Manchester, NH 03108

**Date of Incident(s):** May 19, June 20, and June 29 of 2009

**Background Narrative:** The Board staff followed-up on two separate calls where the callers alleged that TruGreen Chemlawn failed to provide them with the required notification they requested. This involved three separate incidents (applications made twice at same location) of pesticides applied to lawns. TruGreen was asked to provide phone records to confirm they provided advance notification. They agreed to provide this information but never did.

**Summary of Violation(s):** Multiple violations of CMR 01-026, Chapter 28, Section 1(B). Once a request for notification has been made as provided in Section 1(A), the person receiving the request shall cause notification to be given as follows.... Where feasible, such general notification shall be given within one week after the request for notification is received and at least one day before any pesticide application is to occur.

**Rationale for Settlement:** The above violations were subsequent violations within a four-year period for TruGreen Chemlawn, previous violations having occurred on May 26, 2005, again in July of 2005 and in 2007. One of those previous violations involved a notification violation to someone on the Maine Pesticide Notification Registry. Neither of the callers in this current Consent Agreement was on the Maine Pesticide Notification Registry.

**Attachments:** Proposed Consent Agreement

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

In the Matter of:	)	
TruGreen Chemlawn	)	ADMINISTRATIVE CONSENT AGREEMENT
PO Box 8100	)	AND
Manchester, NH 03108	)	FINDINGS OF FACT

This Agreement by and between TruGreen Chemlawn (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 is a licensed spray contracting firm holding license number SCF15084 issued by the Board pursuant to 22 M.R.S.A § 1471-D (1)(B).
2. That on June 23, 2009, Jenny Freeman, who resides at 4 Prince Avenue, Kittery, Maine called the Board to state the Company was making pesticide applications without providing her notification pursuant to CMR 01-026 Chapter 28, Section 1.
3. That on June 23, 2009, a Board inspector conducted a follow-up inspection with the Company on Freeman's complaint.
4. That from the inspection in paragraph three, the Board inspector determined that Company employee Dan Patch applied Trupower 3 Selective Herbicide (EPA reg. no 228-551) to turf at Robert Read's residence on June 20, 2009. This property abuts Freeman's property.
5. That during the inspection in paragraph three, Patch told the inspector he first learned about Freeman's request for notification when he read it on his work order while on the road the day of the June 20, 2009, application. After seeing the request for notification on his work order Patch called his supervisor, Chris Oliver. Oliver instructed Patch to leave Freeman a message and complete the application. Patch called Freeman and left a phone message. He also knocked on her door, but Freeman was not home. Patch then proceeded to make the application to Read's property without direct contact with Freeman.
6. That CMR 01-026 Chapter 28, Section 1(B) requires that notification, if requested, must be provided at least one day prior to outdoor pesticide applications.
7. That the Company did not provide the required one day advanced notification for the pesticides application described in paragraph four.
8. That the circumstances described in paragraphs one through seven constitute a violation of CMR 01-026, Chapter 28, Section 1(B).

9. That on June 26, 2009, Emily Weir, who resides at 34 Page Street, Apartment B, in Brunswick, Maine called the Board to state the Company was making pesticide applications without providing her notification she requested pursuant to CMR 01-026 Chapter 28, Section 1. The landlord of the apartment building, Kristen Casey, contracts with the Company for lawn services.
10. That on June 29, 2009, a Board inspector conducted a follow-up inspection with the Company on Weir's complaint.
11. That from the inspection in paragraph ten, the Board inspector determined that Company employee John Hibbard, applied Dimension EW Herbicide (EPA reg. no. 62719-542) and Trupower 3 Selective Herbicide (EPA reg. no. 228-551) to turf at the apartment building at 34 Page Street in Brunswick on May 19, 2009.
12. That from the inspection in paragraph ten, it was also determined that on June 26, 2009, Company employee Christopher Russel applied the same two pesticides used during the May 19, 2009, application describe in paragraph eleven, as well as The Andersons Fertilizer with 0.2% Merit Insecticide (EPA reg. no. 432-1349-9198) to the 34 Page Street site.
13. That CMR 01-026 Chapter 28, Section 1(B) requires that notification, if requested, must be provided at least one day prior to outdoor pesticide applications.
14. That the Company did not provide the required one day advanced notification for the pesticides applications made in paragraphs eleven and twelve.
15. That the circumstances described in paragraphs nine through fourteen constitute violations of CMR 01-026, Chapter 28, Section 1(B).
16. That with respect to the complaints in paragraphs two and nine, the Company took the position that it did call the two complainants 24 hours in advance of making the applications described above. Both complainants stated they did not receive the required notification. The inspector asked the Company to verify that the advance notification calls were made by providing phone records as confirmation. The Company agreed to provide phone records but failed to produce them.
17. That CMR 01-026 Chapter 28, Section 1(B) 1 requires that notification be given in a manner that is effective in informing the person requesting the notice.
18. That the circumstances described in paragraphs one through seventeen demonstrate that the Company failed to use methods of notification that were effective in informing the complainants in violation of CMR 01-026, Chapter 28, Section 1(B)1.
19. That the violations described in paragraphs eight, fifteen and eighteen are subsequent violations within a four-year period for the purposes of 7 M.R.S.A. § 616-A (2)(B), the Company having committed previous violations of pesticide control laws on May 26, 2005, again in July of 2005 and in 2007.

20. The Board believes the circumstances described in paragraphs one through eighteen constitute multiple violations of CMR 01-026, Chapter 28, Section 1(B) and CMR 01-026, Chapter 28, Section 1(B)1. While the Applicator does not admit the violations, and while the Applicator believes there are factual disputes involving the violations alleged by the Board, the Applicator does agree to enter into this Consent Agreement for the purpose of resolving the alleged violations.

21. That the Board has regulatory authority over the activities described herein.

22. 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.
- d. That this Agreement shall not become effective unless and until the Board accepts it.

23. That in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violation referred to in paragraphs eight, fifteen and eighteen, the Company agrees to pay to the State of Maine the sum of \$1,500. (Please make checks payable to Treasurer, State of Maine.)

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

TRUGREEN CHEMLAWN

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_

Henry S. Jennings, Director

APPROVED:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Randlett, Assistant Attorney General