

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7011 1570 0003 0363 4458

July 16, 2013

Tina Morgan, Paralegal
TruGreen Limited Partnership
860 Ridge Lake Boulevard
Memphis, TN 38120

Re: Order on Consent
R4-2013-0530-76

Dear Ms. Morgan:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$3000 the civil penalty pursuant to Paragraph I.

Sincerely,

Richard Ostrov
Regional Attorney
Region 4

Enclosure

cc: S. Brandon

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation Law
("ECL") Article 33
Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of
New York ("6 NYCRR"),

-by-

ORDER ON CONSENT
R4-2013-0530-76

TruGreen Limited Partnership
860 Ridge Lake Boulevard
Memphis, TN 38120

Respondent

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (Department) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §3-301 of the Environmental Conservation Law (ECL), among other authorities. The Department is and has been responsible for the regulation of the use, and for the enforcement of the provisions of law governing the use of pesticides in the State pursuant to ECL Article 33 and the rules and regulations promulgated thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 325. The Department is also empowered to safeguard the water resources of the state and to regulate the disposal of solid waste pursuant to ECL Articles 17 and 27.

2. Respondent, TruGreen Limited Partnership owns and operates pesticide application business throughout the State of New York including 3 Fritz Blvd., Albany, New York 12205.

VIOLATIONS

Failure to Properly Label Service Container

3. On May 15, 2013, Department staff responding to a complaint observed a service container in the back of Respondent's truck that was improperly labeled by missing the manufacturer's name and address of the pesticides applied.

4. Respondent's failure to properly label a service container is a violation of ECL Section 33-1301.1(b).

Failure to Posses a Label for Pesticide Being Applied

5. On May 15, 2013, Department observed Respondent's employee applying pesticides on a parcel on Exchange Street, Albany without possessing a label for one of the applied pesticides, Surflan AS.
6. Respondent's application of a pesticide without possessing a label is a violation of 6 NYCRR 325.2(d).

Failure to Include Necessary Information in Contract

7. On May 15, 2013, Department observed Respondent's employee applying pesticides on a parcel on Exchange Street, Albany and the contract provided to Department staff failed to include approximate date or dates of application(s).
8. Respondent's failure to include the approximate date or dates of application(s) in its contract is a violation of 6 NYCRR 325.40(a)(1).

Civil Penalties

9. ECL § 71-2907 (1) provides, *inter alia*, that "any person who violates any provisions of Article 33 of that chapter, or any rule, regulation or order issued thereunder, shall be liable for a civil penalty not to exceed \$5,000 for a first violation, and an additional penalty of up to \$10,000 for each subsequent violation."

Waiver of Hearing

10. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

- I. Respondent is assessed a civil penalty in the amount of **THREE THOUSAND HUNDRED DOLLARS (\$3,000)**. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by bank check made payable to the NYS DEC.
- II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or controlled by it.

III. Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to:

For the Department:

Department of Environmental Conservation
Region 4
Attn: Mark Solan
1130 North Westcott Road
Schenectady, NY 12306

For the Respondent:

TruGreen Limited Partnership
Attn: Vice President & Associate General Counsel—TruGreen Companies
860 Ridge Lake Boulevard
Memphis, Tennessee 38120

IV. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

V. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns, except to the extent that any such claims arise or result from the acts or omissions by the Department, the State of New York, or its employees.

VI. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee, such change to be made only upon written agreement of the parties.

VII. This Order is deemed effective on the date signed by the Department. The Department will provide Respondent a fully executed copy of this Order as soon as practicable following the effective date of this Order.

VIII. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department or State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its agents, its servants, its employees, its successors and its assigns; and

C. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

IX. For the purpose of ensuring compliance with the ECL, Respondent shall not deny the Commissioner or his duly authorized representative access at all reasonable times to inspect Respondent's New York facilities and all pesticide records for applications within the State of New York.

X. Respondent shall comply with the attached Schedule of Compliance.

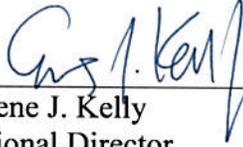
XI. This Order shall not be construed in any respect to inure to the benefit of any third party.

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DATED: ~~June~~ ^{July} 15, 2013
Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

TruGreen Limited Partnership

Authorized Representative

SIGNED: Carol J. Pearson

TITLE: Vice President & Division General Counsel

DATE: 7/9/13

STATE OF TENNESSEE)
COUNTY OF Shelby) ss.:

On the 9th day of July in the year 2013, before me, the undersigned, personally appeared Carol J. Pearson,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at 860 Ridge Lake Blvd., Memphis, TN 38120
(Full mailing address)

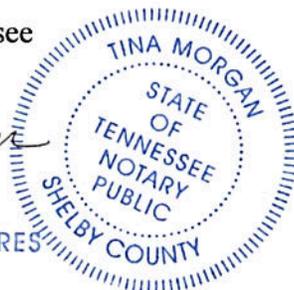
and that he/she/they is (are) the V.P. and Division General Counsel
(President or other officer or director or attorney in fact duly appointed)

of the TruGreen, Inc., managing general partner of TruGreen Limited Partnership
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Notary Public, State of Tennessee

Tina Morgan



MY COMMISSION EXPIRES
MARCH 23, 2016

Schedule of Compliance

- (1) Within thirty days (30) days of the effective date of this Order, Respondent shall either submit to the Department revisions to its environmental management system (“EMS”) that have been disseminated to all New York branches and/or notification to New York branches reiterating need to: (1) properly label service containers; (2) possess all labels of applied pesticides; and (3) minimum contract standards including the date(s) of approximate application.
- (2) The attached Compliance Verification Affidavit (“CVA”) shall be submitted to certify compliance with Paragraph 1 above.