

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

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Alexander B. Grannis
Commissioner

CERTIFIED – RETURN RECEIPT REQUESTED

7009 0960 0000 7433 6770

March 16, 2010

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

James S. Walsh, Esq.
Manatt, Phelps & Phillips, LLP
30 South Pearl Street
Albany, NY 12207
jwalsh@manatt.com

Re: Order on Consent
R4-2009-1123-178
TruGreen Limited Partnership

Dear Mr. Walsh:

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

Please note that the civil penalty of \$400,000 is due on or before April 15, 2010.

Sincerely,

Richard E. Ostrov
Regional Attorney

Enclosure

cc: A. Crocker
M. Serafini
A. Lamanno

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation Law
("ECL") Articles 17, 27 and 33
Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of
New York ("6 NYCRR"),

-by-

ORDER ON CONSENT
R4-2009-1123-178

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 at 23-A Walker Way, Albany, New York 12205, 5 Todd Court, Yaphank, New York 11980, 100 Mid County Drive, Orchard Park, New York 14127-0660, 629 Dickson Street, Endicott, New York 13760, 24 Riverview Dr, Marlboro, New York 12542-5310, 6700 Commerce Blvd, Syracuse, New York 13211-0428, and 40 Ridgeland Road, Rochester, New York 14623.

Department Findings

3. This Order settles all of Respondent's administrative and civil violations, throughout the state, of ECL Articles 17, 27, and 33 and 6 NYCRR, for the period from January 1, 2007 to the

effective date of this Order including, but not limited to, those violations identified in Appendix A. This Order does not supersede the requirements of Order on Consent CO1-2005-1114-1 (June 7, 2007).

4. The Department finds good cause to enter into this Order addressing all of Respondent's statewide administrative and civil violations for the period from January 1, 2007 to the effective date of this Order based on Respondent's commitment to retain an independent third party auditor to conduct an Environmental Management System ("EMS") review of Respondent's statewide operations, create an Environmental Management System Manual, and to implement the EMS set forth in the manual, all as required by this Order.

Civil Penalties

5. 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."

6. ECL Section 71-2703(1) generally provides for a maximum civil penalty of \$7,500 for the initial day of violation of Article 27 and regulations, permits and orders issued thereunder and a maximum of \$1,500 per day for each day thereafter and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.

7. ECL Section 71-1929 generally provides that a violation of Article 17 of the ECL and regulations promulgated thereunder subjects the violator to a civil penalty of up to \$37,500 per day for each violation as well as injunctive relief for violations.

Waiver of Hearing

8. 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 FIVE HUNDRED THOUSAND DOLLARS (\$500,000); provided, however, that a portion of the penalty equal to ONE HUNDRED THOUSAND DOLLARS (\$100,000) shall be suspended. In the event that the Department reasonably and in good faith determines that Respondent has materially failed to perform the terms set forth in this Order, the Department shall provide written notice to Respondent of such failure(s), including a detailed description of the material deficiencies in Respondent's performance, and Respondent shall have a period of thirty (30) days thereafter to cure such failure(s). If, at the end of such thirty (30) day period, Respondent shall have failed to cure such failure(s), the suspended penalty shall become due and payable upon written notice from the Department to Respondent, without prejudicing the Department from seeking further

appropriate penalties and relief for violations of this Order by Respondent. Respondent shall deliver the suspended penalty amount to the Department within ten (10) business days after receipt of such written notice to the Respondent. Payment of the civil penalty is due within thirty (30) days after the effective date of this Order. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

II. This Order on Consent resolves all of Respondent's administrative and civil liability for any and all violations of ECL Articles 17, 27, and 33 and 6 NYCRR for the period from January 1, 2007 to the effective date of this Order including, but not limited to, those violations identified in Appendix A.

III. 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.

IV. 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
Attn: Maureen Serafini
Director, Bureau of Pesticides Management
625 Broadway
Albany, NY 12233

For the Respondent:

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

V. 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.

VI. 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.

VII. 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.

VIII. 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.

IX. 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.

X. 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.

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

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full administrative and civil settlement of all violations of ECL Articles 17, 27, and 33 and 6 NYCRR from January 1, 2007 to the effective date of this Order.

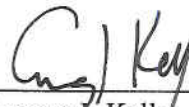
XIII. This Order shall not be construed in any respect to inure to the benefit of any third party.

XIV. The Order on Consent shall terminate three years after the effective date of this Order.

DATED: March 16, 2010
Rotterdam, New York

Alexander B. Grannis
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: [Signature]

TITLE: VICE PRESIDENT - ADMINISTRATION

DATE: MARCH 15, 2010

STATE OF TENNESSEE)
COUNTY OF Shelby) ss.:

On the 15th day of March in the year 2010, before me, the undersigned,
personally appeared Joseph M. Brown,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at
8771 Gumleaf Cove, Germantown, TN 38138
(Full mailing address)

and that he/she/they is (are) the Vice President - Administration
(President or other officer or director or attorney in fact duly appointed)

of the 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.

[Signature]
Notary Public, State of Tennessee



MY COMMISSION EXPIRES
November 09, 2011

Schedule of Compliance

(A) Within ninety days (90) days of the effective date of this Order, Respondent shall retain a third party independent professional ("auditor") who is qualified to conduct a review and evaluation of Respondent's environmental management system ("EMS").¹ The auditor shall prepare an independent EMS assessment and report of Respondent's ability to comply on a continuous basis with all applicable state and federal pesticide laws and rules and regulations. The EMS assessment shall include such key elements as the auditor shall recommend based on its review and evaluation. The EMS assessment shall also consider the following topics:

- (1) employee requirements to comply with federal and state regulations;
- (2) corporate policies (e.g., management bonus structure) that may contribute to noncompliance;
- (3) compliance staff's ability to effectuate immediate changes as needed;
- (4) internal record keeping and field application inspections and feedback process;
- (5) criteria for hiring service facility managers and employees;
- (6) material handling, storage and use procedures;
- (7) disposal procedures and compliance with RCRA;
- (8) internal service facility management training and education;
- (9) incident command procedures and reporting;
- (10) procedures for customer and regulatory agency issues, complaints/concerns and follow up;
- (11) pollution prevention protocols;
- (12) third party spot check inspections;
- (13) corporate level requirements for compliance and noncompliance;
- (14) employee retention;
- (15) job descriptions and minimum performance standards;
- (16) calibration and maintenance of all equipment associated with pesticide applications; and
- (17) interaction and communications between the Department and branch managers.

(B) The independent auditor shall submit its EMS assessment and report to the Department no later than one (1) year from the effective date of this Order. The report shall include recommendations for changes, improvements or enhancements to Respondent's EMS including, but not limited to, its compliance staffing levels.

(C) Within one hundred eighty (180) days from the receipt of the EMS report by the Department, the Respondent shall submit to the Department an "Environmental Management System Manual" which describes and documents its EMS and contains an expeditious EMS implementation schedule for each of the described systems and subsystems not already implemented. The Environmental Management System Manual shall describe the EMS, in detail, by explaining how the activity or

¹ "EMS" refers to standards and protocols for Respondent's management of its environmental programs in a comprehensive, systematic, planned and documented manner. It includes the organizational structure, planning and resources for developing, implementing and maintaining policies for compliance with applicable federal and state pesticide laws and regulations. The auditor shall also consider ISO 14000 series standards in its EMS assessment.

program is or will be: (i) established as a formal system, subsystem or task, (ii) integrated into ongoing corporate, department and service level operations, and (iii) continuously evaluated and improved.

(D) The Respondent shall submit implementation status reports to the Department on a schedule to be agreed by the parties, but in no event more often than on a quarterly basis following the submittal of the EMS report to the Department.

(E) The Department agrees to grant an extensions up to sixty (60) days for any of the time frames in Paragraphs A, B and C upon a timely written request by the Respondent setting forth its good faith efforts to comply and the need for the extension. An extension granted hereunder will not require a formal modification of this Order but shall be binding and enforceable under the terms, conditions and provisions of this Order.

(F) Within sixty (60) days of the effective date of this Order, Respondent shall certify to the Department that any floor drains within any process areas inside its service facilities have been sealed and/or bermed. A list identifying the location of the floor drains shall accompany the certification.

(G) Within sixty (60) days of the effective date of this Order, Respondent shall ensure that all pesticides not in their original packaging and not regulated as solid or hazardous waste are separately stored and identified by pesticide name, manufacturer and EPA registration number.

(H) Within sixty (60) days of the effective date of this Order, Respondent shall properly dispose of any comingled pesticides that are regulated as solid or hazardous waste at each of its service facilities in accordance with all applicable federal and state hazardous and solid waste regulations.

(I) Respondent's compliance with the Schedule of Compliance shall not be a defense to any violations after the effective date of this Order.

Appendix A

Department Findings

Region 1

Notice of Violation dated May 7, 2009 issued by Region 1 to Respondent.

Notice of Violation dated May 11, 2009 issued by Region 1 to Respondent.

Notice of Violation dated July 6, 2009 issued by Region 1 to Respondent.

Notice of Violation dated July 17, 2009 issued by Region 1 to Respondent.

Region 4

1. On April 23, 2009, Department staff observed Respondent performing a pesticide application when the winds were reportedly between 22-25 mph and gusting to 35 mph, and the product's label states that the product is not to be used in winds over 5 mph. On July 24, 2009, Department staff observed Respondent performing a pesticide application of a granular pesticide with pesticide material applied off target (e.g., granules located on the sidewalk, driveways, and parking lots). On April 23, 2009, Department staff observed Respondent performing a pesticide application following a rain event during which ponded water accumulated, and the labels state that the products are not to be applied to water. On April 23, 2009 and July 24, 2009, Respondent violated 6 NYCRR 325.2(b).

2. Department Staff reviewed approximately six weeks of Respondent's pesticide application records from 2007, 2008 and 2009 and many instances where Respondent's application records reflected the application of pesticides inconsistent with the label directions. Respondent applied pesticides in violation of 6 NYCRR 325.2(b)

3. On May 7, 2009, July 23, 2009 and July 24, 2009 Department staff observed that Respondent failed to properly label certain service containers in violation of ECL 33-1301.1(b).

4. On May 7, 2009, Department staff observed that one of Respondent's commercial vehicles used to transport pesticide application equipment had no registration sticker in violation of 6 NYCRR 325.26(a).

5. On July 22, 2009, Respondent made a category 6A pesticide application and neither the apprentice who made the application nor the certified applicator supervising the applicator were certified as category 6A applicators in violation of 6 NYCRR 325.7(b).

6. Department staff reviewed Respondent's records for a July 22, 2009 pesticide application and Respondent was unable to produce category 6A apprentice training records for the employee who made that application in violation of 6 NYCRR 325.10 (c).

7. Department staff inspected Respondent's records and documented numerous instances in 2009 in which Respondent provided "free service calls" and did not amend the contracts to reflect those applications in violation of ECL §33-1001.

8. Department staff reviewed a portion of Respondent's invoices from 2007, 2008 and 2009 and observed numerous invoices that failed to provide required information or that provided inaccurate information of 6 NYCRR 325.25 (a).

9. Department staff reviewed Respondent's 2007 and 2008 annual reports and observed numerous instances in which inaccurate information was reported in violation of ECL 33-1205.1.

10. On November 2, 2009, Respondent removed quarantined pesticides without the Department's permission in violation of ECL 33-1301.10.

11. On July 23, 2009, Department staff found evidence that weed killer and fertilizer enter a floor drain at Respondent's Albany, New York facility in violation of ECL 17-0803.