

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

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

**Date of Incident(s):** August 8, 2011

**Background Narrative:** The Board received a complaint call from a South Portland resident who is a registrant on the 2011 Maine Pesticide Notification Registry (non-ag). The caller stated she received no notification about a pesticide application made to a nearby property. 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 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 August 8, 2011, Charles Rhodda, a Company employee and a licensed commercial applicator (COA 45569), applied Astro Insecticide, EPA Reg. No. 279-3141 to a willow tree on Orane Walsh's residential property at 97 School Street in South Portland to control aphids.
3. That the outdoor treated area at 97 School Street is located within 250 feet from a property which is the residence of Janice Ionta at 88 School Street in South, Portland.
4. That Janice Ionta is listed on Maine's 2011 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2. The Orane Walsh property located at the 97 School Street address is also listed on the Registry as a property within 250 feet of Janice Ionta'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). No notification was provided to Ionta prior to making 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 Company entered into an Administrative Consent Agreement with the Board for insufficient notification to a person on the Maine Pesticide Notification Registry when a

pesticide application was made on July 23, 2010. Consequently, the violation described in paragraph seven is a subsequent violation pursuant to 7 M.R.S.A. § 616-A (2)(B).

9. That the Board has regulatory authority over the activities described herein.
10. 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.
11. That this Agreement shall not become effective unless and until the Board accepts it.
12. 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: \_\_\_\_\_

Henry Jennings, Director

APPROVED:

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

Mark Randlett, Assistant Attorney General