



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
TRUGREEN LIMITED PARTNERSHIP
FOR
Incident Report (“IR”) No. 2017-S-2594
at 1556 Mill Pond Drive, Galax, VA**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and TruGreen Limited Partnership regarding Incident Report (“IR”) No. 2017-S-2594 which occurred at 1556 Mill Pond Drive, Galax, Virginia, for the purpose of memorializing a two-year compliance schedule.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. “Discharge” means the discharge of a pollutant.

5. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
6. “IR” means Incident Report.
7. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. “Order” means this document, also known as a “Consent Order” or “Order by Consent”, a type of Special Order under the State Water Control Law.
9. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
10. “Pollution” means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.
11. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
12. “Site” means the property located at 1556 Mill Pond Drive, Galax, Virginia, at which Incident Report No. 2017-S-2594 occurred.
13. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
15. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
16. "TruGreen" means TruGreen Limited Partnership, a partnership, and its affiliates, partners, and subsidiaries. Trugreen is a "person" within the meaning of Va. Code § 62.1-44.3.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. On, March 15, 2017, a truck owned and operated by TruGreen wrecked on State Route 720 near Galax, in Grayson County, Virginia. As a result of this incident, the truck spilled approximately 300 gallons of liquid fertilizer that contained two herbicides (Barricade 4FL and Escalade) onto the shoulder of the road and an adjoining residential yard, located at 1556 Mill Pond Drive, Galax, Virginia (Site).
2. When DEQ staff arrived at the Site that afternoon, the truck had already been removed. Personnel from First Call Environmental, a contractor retained by TruGreen, were on site and were covering the spill site with plastic, planning to excavate the affected soil the following day.
3. Two rounds of excavation were conducted, removing and shipping a total of 70.16 tons of impacted soil (61.66 tons on April 12, 2017 and 8.5 tons on April 18, 2017) for disposal at First Piedmont Landfill in Ringgold, Virginia.
4. First Call Environmental collected a water sample from a groundwater well located behind the residence located at the Site on April 12, 2017. The residence and groundwater well are situated immediately down gradient from the location of the wreck and spill.
5. Analysis of the groundwater well sample detected 2,4-D, a component of the herbicide Escalade spilled on March 15, 2017, at a concentration of 0.500 ug/l as reported on a Certificate of Analysis by Air, Water and Soil Laboratories, Inc. on April 18, 2017. This incident was investigated by DEQ as IR No. 2017-S-2594.
6. Groundwater is "state water" under the State Water Control Law.

7. A review of DEQ files indicates that the Department has issued no permits or certificates to TruGreen for the unauthorized discharge to state waters.
8. SWRO issued a Notice of Violation for the incident noted above. NOV-008- 0517-WA was issued to TruGreen on May 31, 2017. Conference calls between DEQ staff and representatives of TruGreen were held on May 17, 2017 and August 18, 2017.
9. TruGreen submitted a Spill Compliance Plan to DEQ on June 6, 2017. A revised Spill Compliance Plan was received by DEQ on June 15, 2017. After review, the revised plan was approved by DEQ on June 23, 2017.
10. TruGreen's second consultant, Ensafe, collected water samples of both the residential well and a spring, and soil samples, at the Site on July 25-27, 2017. A report of analysis results were provided to DEQ electronically on August 17, 2017. Results of the additional water sampling of the residential well and the spring indicated no detection of any constituents of concern. The additional soil sampling results (from soils that have not been excavated) indicated that there were no results above the Residential Exposure Regional Screening Level. However, constituents were detected in soil above the transfer to groundwater screening criteria.
11. TruGreen submitted a revised laboratory report for the initial groundwater sampling from the residential well at the Site (conducted April 12, 2017 by the first environmental consultant utilized by TruGreen) on August 28, 2017. The revised lab report indicated that none of the analytes, including 2,4-D, were detected. It was reported that the lab chemist had determined that the initial result was not reported correctly.
12. DEQ staff and TruGreen have agreed to the Schedule of Compliance proposed on behalf of Trugreen by its second consultant via e-mail on September 1, 2017. This Schedule of Compliance is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders TruGreen Limited Partnership and TruGreen Limited Partnership agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of TruGreen for good cause shown by TruGreen, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those items specifically identified in Section C of this Order and in NOV No. NOV-008-0517-WA, dated May 31, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, TruGreen admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. TruGreen consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. TruGreen declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by TruGreen to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. TruGreen shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. TruGreen shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. TruGreen shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

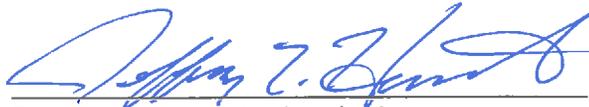
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and TruGreen. Nevertheless, TruGreen agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after TruGreen has completed all of the requirements of the Order;
 - b. TruGreen petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to TruGreen.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve TruGreen from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by TruGreen and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of TruGreen certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind TruGreen to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of TruGreen.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the incident identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, TruGreen voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 22^{nd.} day of February, 2018.



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

TruGreen Limited Partnership voluntarily agrees to the issuance of this Order.

Date: 12-18-17 By: James D. Jones, Vice President
PERSON TITLE
TruGreen Limited Partnership

Commonwealth of ~~Virginia~~ Tennessee

City/County of Shelby

The foregoing document was signed and acknowledged before me this 18th day of

December, 2017, by James D. Jones who is

Vice President of TruGreen Limited Partnership, on behalf of the limited partnership.

Lakita Peek
Notary Public

Registration No. _____

My commission expires: _____

MY COMMISSION EXPIRES
April 21, 2020

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law and the Regulation, TruGreen Limited Partnership agrees to implement the following actions, as they relate to IR No. 2017-S-2594, which occurred at 1556 Mill Pond Drive, Galax, Virginia, by the dates noted below:

1. Groundwater monitoring of the residential well located at 1556 Mill Pond Drive, Galax, Virginia shall be conducted, with sampling for 2,4-D and dicamba, during each of the following months:
 - October, 2017;
 - January, 2018;
 - April, 2018;
 - October, 2018; and
 - April, 2019.
2. TruGreen shall notify DEQ in writing within ten days of completion of each sampling event noted in Item 1 above.
3. TruGreen shall submit the laboratory analysis results for each sampling event noted in Item 1 above to DEQ within ten days of receipt from a VELAP certified laboratory.
4. In the event that any analysis result for either 2,4-D or dicamba detects the presence of the constituent (even if below applicable groundwater criteria), additional corrective action shall be required at the Site.
5. Unless otherwise specified in this Order, TruGreen shall submit all requirements of Appendix A of this Order to:

Ralph T. Hilt
Enforcement/Compliance Specialist, Sr.
Virginia DEQ – Southwest Regional Office
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