



California Regional Water Quality Control Board

Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: [http:// www.swrcb.ca.gov/rwqcb8](http://www.swrcb.ca.gov/rwqcb8)
3737 Main Street, Suite 500,
Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

December 10, 2002

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

TruGreen-LandCare dba Miramar Wholesale Nursery
C/o Ms. Carey Cooper, Attorney at Law
Klinedinst, Flieman & McKillop, P.C.
501 West Broadway, Suite 600
San Diego, CA 92101-3584

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0005

Dear Ms. Cooper:

Enclosed is Complaint No. R8-2003-0005 proposing administrative civil liability of \$10,000 for violations of Section 13376 of the California Water Code.

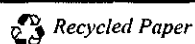
If necessary, a public hearing on this matter will be scheduled for the Regional Board Meeting on January 17, 2003, at the Orange County Water District located at 10500 Ellis Avenue in Fountain Valley. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have indicated that you wish to waive your right to a hearing without admitting guilt or liability. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and return it to us. You also agreed to participate in a supplemental environmental project (SEP). You agreed to contribute the assessed amount towards the cleanup of groundwater contaminated by perchlorate in the Colton-Rialto area. This amount shall be forwarded to this office at the address on this letterhead. The \$10,000 payment for the SEP shall be in the form of four checks, each in the amount of \$2,500. The checks shall be made payable to City of Colton, City of Rialto, West San Bernardino County Water District, and Fontana Water Company. These checks and the signed waiver form should be submitted to this office no later than January 3, 2003.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with the Board staff is recommended. Should you wish to schedule a meeting, please call us prior to December 27, 2002. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;

California Environmental Protection Agency



2. Your facility's ability to pay the proposed assessment;
3. Your facility's degree of culpability;
4. Economic benefit or savings;
5. Any prior history of violations; and
6. Such other matters as justice may require.

If you have any questions regarding this complaint, you may contact Michael Adackapara at (909) 782-3238. All legal questions should be referred to our legal counsel, Mr. Jorge Leon, at (916) 341-5180.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. RB8-2003-0005, Waiver Form

Cc with enclosures:

Regional Board

Bruce Fujimoto - State Water Resources Control Board, Division of Water
Quality

Jorge Leon - State Water Resources Control Board, Office of Chief Counsel

Tom Heutteman - US-EPA, Region 9 (WTR-7)

Karen Ashby - Orange County PFRD

Ted Simon - City of Lake Forest, NPDES Coordinator

Gene Spindler - Shea Properties

Mark Bulot - Bulot, Inc.

Steven J. Elie - Musick, Peeler & Garrett

California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

TruGreen-LandCare)	Complaint No. R8-2003- 0005
dba Miramar Wholesale Nursery)	
19480 Baker Ranch Road)	for
Lake Forest, CA 92610)	Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. TruGreen-LandCare (Trugreen) has violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose administrative civil liability pursuant to California Water Code Section 13385.
2. A hearing concerning this complaint will be held before the Board within 60 days of the date of issuance of this complaint, unless Trugreen waives its right to a hearing. Waiver procedures are specified on Page 7 of this complaint. If the hearing on this matter is not waived, the hearing will be held during the Board's regular meeting on January 17, 2003, at the Orange County Water District, 10500 Ellis Avenue, Fountain, California. The meeting begins at 9:00 a.m. Trugreen or its representative will have the opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of civil liability by the Board. An agenda announcement for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. If a hearing is held on this matter, the Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. This Complaint is based on the following:

Trugreen operates a commercial nursery, Miramar Wholesale Nursery, at the intersection of Highway 241 and Alton Parkway in Lake Forest. Trugreen leases the site from Shea Properties. A man-made tributary (Channel) to Borrego Wash is located at the western boundary of the site. A Trugreen employee allowed approximately 2,000 cubic yards of imported fill material to be deposited along the eastern bank of the Channel, where an access road had eroded due to flooding. This fill

material came from different sources, including a swimming pool contractor. The material was deposited along approximately 350 linear feet of the Channel without any regulatory approvals. This unauthorized deposition of fill material along the Channel bank is a violation of Section 13376 of the California Water Code. Section 13376 states:

“Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260.....”

7. As indicated above, the unauthorized fill material was deposited along the banks of the Channel tributary to Borrego Wash. The intermittent beneficial uses of Borrego Wash include: groundwater recharge; water contact recreation, non-contact water recreation; warm freshwater habitat; and wildlife habitat.
8. Pursuant to Section 13385(c), the Board is authorized to administratively assess civil liability in an amount not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.
9. The deposition of fill material took place over a two-year period. It started some time after April 2000 and was discontinued prior to May 2002. The exact number of days on which the material was deposited is unknown. Based on the soil types observed at the fill site, it appears that the fill material mostly came from ten different sources. From this information, and the estimated quantity of imported fill material (2,000 cubic yards), a conservative estimate for the number of days of violation is 20 (2000/10=200 cubic yards per source; two days per source).
10. Trugreen did not charge a fee for dumping the imported fill material at the site and has voluntarily agreed to restore the site to its original conditions by removing the fill material. It has prepared a workplan for site restoration and is seeking regulatory approvals prior to implementation of the workplan.
11. Regional Board staff spent approximately 40 hours investigating the incident (@\$70.00 per hour, the total cost for staff time is \$2,800). The company did not generate any income from allowing others to deposit fill material at the site. However, Trugreen saved approximately \$3,000 by not obtaining the required regulatory approvals.
12. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the

discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the following table:

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	<p>An employee of Trugreen, without Trugreen's and any regulatory approval, allowed other entities to deposit imported fill material along the bank of the Channel. Upon discovery of this illegal activity, Trugreen immediately stopped this illegal activity and voluntarily agreed to remediate the site.</p> <p><i>Sensitivity of Nearby Receiving Waters:</i> The Channel is tributary to Borrego Wash which discharges into San Diego Creek. San Diego Creek and Newport Bay are listed on the 303(d) list as impaired waterbodies.</p> <p><i>Beneficial Uses:</i> As described above, Borrego Wash has intermittent beneficial uses which could be adversely impacted by the discharge.</p>
B. Culpability	<p>Trugreen violated the Water Code, the Clean Water Act, and State Fish and Game Codes.</p>
C. Economic Benefit or Savings	<p>Trugreen saved approximately \$3,000.00 by not obtaining regulatory approvals. However, the remedial activities will cost Trugreen much more than this saving.</p>
D. Prior History of Violations	<p>No known violations in the past.</p>
E. Staff Costs	<p>Regional Board staff spent at least a total of 40 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$2,800.00).</p>
F. Ability to pay	<p>The discharger has not provided any information to indicate that it is unable to pay the proposed amount.</p>


14. The total maximum liability for the 20 days of violation is \$200,000. After consideration of the above factors, the Executive Officer proposes civil liability be imposed on Trugreen in the amount of \$10,000.

15. Trugreen has indicated that it wishes to waive its right to a hearing in this matter. Trugreen has agreed to participate in a supplemental environmental project (SEP) that will benefit the Upper Santa Ana Watershed. The proposed SEP is to contribute the entire assessed amount of \$10,000 towards cleanup of the perchlorate contamination in the groundwater in the Colton-Rialto area. The waiver of hearing form includes this proposed SEP.

If you have any questions concerning this complaint, contact Michael Adackapara at (909) 782-3238. All legal questions should be addressed to Jorge Leon, the Board's Staff Counsel, at (916) 341-5180.

12-10-02

Date


Gerard J. Thibeault
Executive Officer

California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

TruGreen-LandCare)	Complaint No. R8-2003-0005
19480 Baker Ranch Road)	for
Lake Forest, CA 92610)	Administrative Civil Liability

Waiver of Hearing

I agree to waive TruGreen-LandCare's (Trugreen) right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0005, without admitting guilt or liability. I understand that I am giving up Trugreen's right to be heard and to argue against the allegations made in the Complaint No. R8-2003-0005, and against the imposition of, and amount of, civil liability.

On behalf of Trugreen, I agree to participate in a supplemental environmental project (SEP). The entire amount of the assessment (\$10,000) will be contributed towards abating the perchlorate groundwater contamination in the Colton-Rialto area and payment is being forwarded to the Regional Board office.

Date

for TruGreen-LandCare