

**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](http://www.dec.ny.gov)



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0969

July 3, 2014

Terri Gargano  
d/b/a Scott's Lawn Service  
437 Second Street  
Schenectady, NY 12306

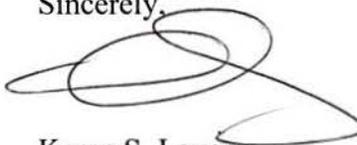
Re: Order of Consent  
R4-2014-0506-112

Dear Ms. Gargano:

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

This will also acknowledge receipt of \$1,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

cc: B. Pendell

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

**ORDER ON CONSENT**  
R4-2014-0506-112

-by-

Terri Gargano  
d/b/a Scott's Lawn Service  
437 Second Street  
Schenectady, NY 12306

Respondent

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WHEREAS:

1. The Department of Environmental Conservation ("Department") has jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides, pursuant to ECL Article 33.
2. Respondent, Terri Gargano d/b/a Scott's Lawn Service, 437 Second Street, Schenectady, New York, owns and operates a commercial lawn care business.
3. Respondent is a person as defined in ECL § 33-0101 (33).
4. On April 23, 2014, Department staff conducted a routine Pesticide Applicator/Business/Use Inspection.
5. After a review of Respondent's daily use records, lawn care contracts and service slips, Department staff determined that Respondent had made a total of 1,567 pesticide applications between July 1, 2013 and April 4, 2014, during which time Respondent had an expired business registration.
6. ECL §33-1301.8-a provides that:  
*It shall be unlawful:  
For any person or business to engage in the business of applying pesticides unless the business is registered by the commissioner.*

7. Respondent violated ECL §33-1301.8-a by engaging in commercial applications of pesticides without having first registered its business with the Department.

Civil Penalty

8. ECL § 71-2901 (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

9. Respondent has affirmatively waived her 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. With respect of the aforesaid alleged violation, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

II. The provisions of this Order shall be deemed to bind Respondent, her agents, employees, and all persons, firms, corporations acting under or for them.

III. Respondent shall indemnify and hold harmless the Department, the State of New York, and its 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, her directors, officers, employees, servants, agents, successors or assigns.

IV. 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.

V. This Order is deemed effective on the date signed by the Department.

VI. 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 State may have against Respondents for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued 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, her agents, her servants, her employees, her successors and her assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. 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 or any other third party, provided, however, that Respondent waive 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.

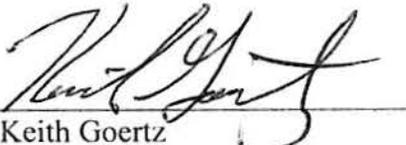
VII. The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph IV of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

VIII. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

DATED: *July 2*, 2014  
Rotterdam, New York

Joseph J. Martens  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
Keith Goertz  
Acting Regional Director  
Region 4

CONSENT BY RESPONDENT

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

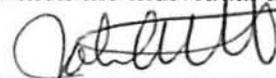
Terri Gargano  
d/b/a Scott's Lawn Service

SIGNED:   
TITLE: Office manager  
DATE: 7/1/14

STATE OF New York

COUNTY OF Schenectady ss.:

On the 1 day of July in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Terri Gargano personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public  
Qualified in the County of: Albany  
My Commission Expires: 2/11/2018

JOHNA MITCHELL  
Notary Public-State of New York  
No. 01-MI6069773  
Qualified in Albany County  
My Commission Exp. 02/11/2018

## **SCHEDULE OF COMPLIANCE**

1. Within 30 days of signing this Order, Respondent must submit a signed and notarized Compliance Verification Affidavit (enclosed) to the Department certifying that actions necessary to come into compliance with the Department's regulatory program have been completed.

This document should be addressed and sent to:

Mr. Brayton Pendell  
NYS Department of Environmental Conservation  
Bureau of Pesticides Management  
1130 North Westcott Rd  
Schenectady, NY 12306

COMPLIANCE VERIFICATION AFFIDAVIT

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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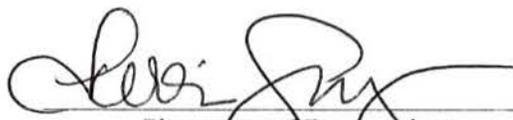
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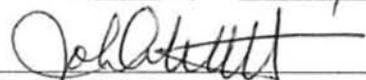
Respondent

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I, Terri Gargano, being duly sworn, do depose and say that I am the owner of Scott's Lawn Service, and that Scott's Lawn Service has complied with the requirements of paragraph No. 1 of the Order's Schedule of Compliance on Consent (R4-2014-0506-112) effective on the date signed by the Regional Director.

  
Signature of Respondent

Subscribed and sworn to before me  
On this 1 day of July, 2014

  
Notary Public

JOHNA MITCHELL  
Notary Public-State of New York  
No. 01-MI6069773  
Qualified in Albany County  
My Commission Exp. 02/11/2018