

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
P: (518) 357-2048 | F: (518) 357-2087  
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED  
7015 0640 0000 2327 0346

November 10, 2015

Greg Albright  
d/b/a Albright Lawn Care  
54 Bridge Street  
Selkirk, New York 12158

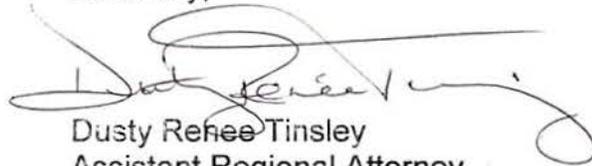
Re: Order of Consent  
R4-2015-0722-91

Dear Mr. Albright:

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

This will also acknowledge receipt of \$2,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Reece Tinsley  
Assistant Regional Attorney  
Region 4

Enclosure

ec: B. Pendell



Department of  
Environmental  
Conservation

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violation of  
Article 33 of the Environmental Conservation  
Law and Title 6 of the Official Compilation  
of Codes, Rules and Regulations of the  
State of New York

ORDER ON  
CONSENT

- By -

Case No.  
R4-2015-0722-91

Greg Albright d/b/a  
Albright Lawn Care  
54 Bridge Street,  
Selkirk, NY 12158,

Respondent.

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WHEREAS:

1. The New York State Department of Environmental Conservation (“DEC” or “Department”) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §33-301 of the Environmental Conservation Law (“ECL”). In particular, DEC 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 (“NYCRR”) Part 325.
2. Respondent Greg Albright is doing business as Albright Lawn Care, a commercial lawn care business, located at 54 Bridge Street, Selkirk, New York 12158.
3. Sarah Albright is an employee of Respondent and at all times relevant was acting in the capacity of an employee of Respondent (“Employee”).
4. ECL §33-0101(33) states that “‘Person’ means any individual, partnership, association, corporation, organized group of persons whether incorporated or not, private or public authority, state government or agency, political subdivision, governmental agency or any other legal entity whatever.”
5. 6 NYCRR Part 325.1(au) states that “‘Person’ means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.”

6. Respondent is a person as defined in ECL §33-0101(33) and 6 NYCRR Part 325.1(au).

7. RoundUp ProMax is a registered pesticide assigned EPA Registration Number 524-579.

### **First Violation**

8. ECL §33-1301.8 provides that it shall be unlawful “For any person to engage in application of pesticides without a pesticide applicator certificate registration issued by the commissioner, except while working under the direct supervision of a certified applicator.”

9. 6 NYCRR Part 325.7(a) states that “An individual must not engage in the commercial application of pesticides, the private application of restricted use pesticides, or the sale of restricted use pesticides, unless that individual is a certified applicator and possesses, on their person, a valid identification card issued by the department and makes such identification card available upon request of this department.”

10. ECL §33-0101(10) states that "Certified applicator" means any individual who is certified to use or supervise the use of any pesticide in any category of use covered by his certification.

11. 6 NYCRR Part 325.1(l) states that “Certified pesticide applicator means a commercial or private pesticide applicator who is certified by the department to use, supervise the use of, or train another individual in the use of any pesticide in any category of use covered by the individual's certification or any individual who is certified to sell restricted use pesticides as described in subdivision 325.16(l).”

12. On June 29, 2015, Department staff observed Employee spraying RoundUp ProMax on commercial property located at 2500 Cambridge Road, Schenectady, New York 12304 (“Site”).

13. Employee, at all times relevant herein, did not hold a commercial pesticide certification and was not a certified pesticide applicator.

14. Employee was not working under the direct supervision of a certified applicator on June 29, 2015 when she applied RoundUp ProMax to the commercial Site.

15. Respondent violated ECL §33-1301.8 when Employee applied pesticide to the commercial Site on June 29, 2015 without being a certified pesticide applicator and while she was not under the direct supervision of a certified applicator.

## **Second Violation**

16. 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.”

17. Respondent did not register Albright Lawn Care with the Department of Environmental Conservation.

18. Respondent violated ECL §33-01301.8-a by engaging in the commercial application of a pesticide on June 29, 2015 without having registered Albright Lawn Care with the Department of Environmental Conservation.

## **Third Violation**

19. 6 NYCRR Part 325.40(a) states that “Prior to a commercial lawn application, . . . the pesticide applicator or business providing these services must enter into a written contract with the owner of the property to which the commercial lawn application is to be made or the owner's agent.”

20. Respondent did not enter into a written contract with the owner of the Site prior to his commercial pesticide application on June 29, 2015.

21. Respondent violated 6 NYCRR Part 325.40(a) by failing to enter into a written contract with the owner of the Site prior to the commercial lawn application on June 29, 2015.

## **Fourth Violation**

22. 6 NYCRR Part 325.40(h)(2) states that “Visual notification markers: . . . must be placed by the pesticide applicator or business making the commercial lawn application prior to the application and remain posted for a period of not less than 24 hours following the application.”

23. Employee conducted a commercial pesticide application to the Site on June 29, 2015 without first posting visual notification markers around the perimeter of the treatment area.

24. Respondent violated 6 NYCRR §325.40(h)(2) when on June 29, 2015 Employee conducted a commercial pesticide application to the Site without first posting visual notification markers around the perimeter of the treatment area.

## **Civil Penalty**

25. ECL §71-2901(1) provides that “any person who violates any provision of article 33 of this chapter or any rule, regulation or order issued thereunder or commits any offense described in section 33-1301 of this chapter shall be liable to the people of the state for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense.”

## **Waiver of Hearing**

26. Respondent has affirmatively waived his right to a hearing as provided by law and has consented to the issuing of this Order and has agreed to be bound by the provisions, terms and conditions of this Order.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

### **I. Civil Penalty**

With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of FOUR THOUSAND DOLLARS (\$4,000) of which TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) 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. ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) of the civil penalty is suspended conditioned on Respondent’s compliance with the Schedule of Compliance. Payment of the suspended civil penalty shall be due within 30 days receipt of notice from the Department setting forth the nature of the violations. The civil penalties shall be paid by check made payable to the Department of Environmental Conservation.

Payment of the above penalties shall not in any way alter Respondent’s obligation to complete performance under the terms of this Order.

### **II. Schedule of Compliance**

Respondent shall comply with the Schedule of Compliance and any plans approved thereunder which are incorporated into the Order and are enforceable thereunder.

### **III. Summary Abatement**

Pursuant to ECL §71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

IV. Binding Effect

This Order is binding upon the Respondent, his agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. Communications

For Department:

New York State Department of Environmental Conservation - Region 4  
Attn. Brayton Pendell  
1130 N. Westcott Road  
Schenectady, New York 12306

For Respondent:

Greg Albright  
54 Bridge Street  
Selkirk, New York 12158

Please include entity name and address on all correspondence.

VI. Modifications

No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

VII. Access

For insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to Respondent's location at 54 Bridge Street, Selkirk, New York 12158 in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent compliance herewith.

VIII. Effective Date of Order

The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

IX. Indemnification

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

X. Scope of Order

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 Respondent for any other violations of the ECL, rules or regulations promulgated there under or permits issued there under based upon other than existing contamination.

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, his officers, directors, agents, servants, employees, successors and 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.

XI. Review of Submitted Documents

(A) Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

(B) (1) If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

(2) After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent

in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Settlement Terms

Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full settlement of the violations cited in this Order.

XIII. Withdrawal of Notice if Hearing and Complaint

This Order settles all violations set forth in the August 18, 2015 Complaint upon payment of the civil penalty and compliance with the Schedule of Compliance. The Notice of Hearing and Complaint in this matter shall be withdrawn as of the effective date of this Order.

DATED: November 10, 2015  
Rotterdam, New York

Basil Seggos  
Acting Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
Keith Goertz  
Regional Director  
Region 4



### Schedule of Compliance

1. Respondent shall no longer offer the service of commercial pesticide application unless he has complied with all applicable pesticide regulations and laws, including those in which he violated as cited in this Order.
2. Respondent shall return the attached Compliance Verification Affidavit, signed and notarized by Respondent, to Brayton Pendell, NYS Department of Conservation – Region 4, Bureau of Pesticides Management, 1130 North Westcott Rd., Schenectady, New York 12306 at the time this Order is returned to the Department signed and notarized.

**COMPLIANCE VERIFICATION AFFIDAVIT**

**ORDER ON CONSENT**

R4-2015-0722-91

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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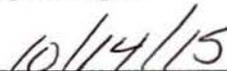
Greg Albright d/b/a  
Albright Lawn Care,

Respondent.

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I, Greg Albright, d/b/a Albright Lawn Care, being duly sworn, do depose and say that I affirm that I am no longer offering and/or providing the service of commercial pesticide application and that I will not offer such service unless I have complied with all applicable pesticide regulations and laws.

  
\_\_\_\_\_  
Greg Albright

  
\_\_\_\_\_  
Date Signed