

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of the Environmental
Conservation Law ("ECL") Article 33

- by -

ORDER ON CONSENT

File No. R4-2009-0826-141

Brennan Landscaping, Inc.
1100 Erie Blvd.
Schenectady, NY 12305

Respondent

WHEREAS:

1. The Department has jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides, pursuant to ECL Article 33.
2. Respondent, Brennan Landscaping, Inc., 1100 Erie Blvd., Schenectady, NY 12305 owns and operates a pesticide applicator business.
3. The Respondent is a person as defined in ECL § 33-0101(33).
4. The New York pesticides law at ECL Section 33-1301(1)(a) provides that: "It shall be unlawful for any person to distribute, sell, offer for sale or use within this state.....any pesticide which has not been registered pursuant to this article..."
5. The registration for Bisect-CG (EPA Reg. #279-3167-65783) in New York State expired on December 31, 2008.
6. An inspection of Respondent's records by Department staff found that Respondent had applied Bisect-CG in New York State on August 3, 2009 and August 4, 2009.
7. Respondent's application of Bisect-CG are violations of ECL Section 33-1301(1)(a).
8. Section 71-2907 of the Environmental Conservation Law provides that any person who violates any provision of Article 33 of the ECL or any rule or regulation promulgated thereunder shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for a first violation and not to exceed ten thousand dollars (\$10,000) for a subsequent offense.

9. Respondent has affirmatively waived its 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. Respondent is hereby assessed a civil penalty in the amount of TWO THOUSAND DOLLARS (\$2,000) for the violations stated herein. ONE THOUSAND DOLLARS (\$1,000) of the civil penalty is payable with the return of the signed and notarized Order. ONE THOUSAND DOLLARS (\$1,000) 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 15 days of receipt of a notice of violation from the Department setting forth nature of the violations.

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

III. The terms of this Order shall not be construed to prohibit the Commissioner of his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. 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, its directors, officers, employees, servants, agents, successors or assigns.

V. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

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

VII. All reports required herein shall be made to the Region 4 Office of DEC, 1150 North Westcott Road, Schenectady, NY 12306, Attn: Regional Hazardous Waste Engineer.

VIII. 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 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, his agents, his servants, his employees, his successors and his 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 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.

IX. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil and administrative settlement of the violations alleged in this Order.

DATED: _____, 2009
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. As of the effective date of this Order, Respondent shall cease the use of any pesticide not registered in New York State.