

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. R4-2009-0803-123

Buckhorn Lake, Inc.
37 Main St.
Deposit, New York 13754

Respondent

WHEREAS:

1. The Department (or DEC) has jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides, pursuant to ECL Article 33.
2. Respondent, Buckhorn Lake, Inc. 37 Main St., Deposit, New York 13754 was issued a "Permit to Use Chemicals for the Control or Elimination of Aquatic Vegetation Permit" ("permit") on April 24, 2009 for BuckHorn Lake.
3. Permit condition 7 requires that Respondent notify the Department at least 7 days prior to an application.
4. On July 10, 2009, Respondent had chemicals applied to the Buckhorn Lake without providing the Department advance notice.
5. Regulations at 6 NYCRR 327.5 provide that the "Failure to abide by the terms of the permit or the application of chemicals without a permit shall be deemed to be in violation of the provisions of the Conservation Law and Article 12 of the Public Health Law."
6. Respondent violated 6 NYCRR 327.5 by failing to abide by the advance notice provision in permit condition 7.
7. Section 71-2907(1) 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.
8. 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. Civil Penalty

In respect of the aforesaid violations, a civil penalty in the amount of TWO HUNDRED FIFTY DOLLARS (\$250) is assessed against the Respondent for the above violations. Payment of the civil penalty by certified check made payable to the NYS Department of Environmental Conservation is due with the return of the signed Order.

II. Settlement and Reservation of Rights

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil, and administrative penalties concerning the violations described herein against Respondent.

B. Except as provided in Subparagraph II.A of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

III. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, 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.

IV. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent.

V. Modification

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.

VI. Effective Date of Order on Consent

The effective date of this Order on Consent shall be the date it is signed by the Regional Director.

DATED: August , 2009
Rotterdam, New York

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

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

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

BY: _____

TITLE: _____

DATE: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year 200__, before me, the undersigned,
personally appeared _____,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

(Full mailing address)

and that he/she/they is (are) the _____
(President or other officer or director or attorney in fact duly appointed)

of the _____,
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Notary Public, State of New York