

**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 0693

September 10, 2014

Jill Cullen  
d/b/a Moonlight Horticultural Services  
2223 Weast Road  
Pattersonville, NY 12137

Re: Order of Consent  
R4-2014-0715-128

Dear Ms. Cullen:

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

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

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

cc: B. Pendell  
M. Solan

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----  
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**  
R4-2014-0715-128

-by-

Jill Cullen  
d/b/a Moonlight Horticultural Services  
2223 Weast Road  
Pattersonville, NY 12137

Respondent

-----  
WHEREAS:

1. The New York State Department of Environmental Conservation (DEC) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to Section 33-301 of the Environmental Conservation Law (ECL), among other authorities. 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 (6 NYCRR), Part 325.
2. Respondent, Jill Cullen d/b/a Moonlight Horticultural Services, 2223 Weast Road, Pattersonville, New York, owns and operates a commercial lawn care business.
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On June 24, 2014, Respondent made a commercial pesticide application to a commercial property located at Mallards Pond Lane, Schenectady, New York ("site").

First Violation

5. Department staff reviewed the business's commercial lawn care contract for the treated property and determined that the lawn care contract did not contain the correct address to be treated as the address listed in the contract was 1976 Curry Road, Schenectady, New York instead of Mallards Pond Lane, Schenectady, New York.

6. Regulations at 6 NYCRR 325.40 (a)(5) provide that *“This section shall be effective on January 1, 2004. The requirements of this section pertain to any commercial lawn application of a pesticide except for the application of a pesticide to a right-of-way (unless required pursuant to paragraph 325.1 (s)(4).*

*(a) Written Contracts. Prior to a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, 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. A written contract must:*

*(5) state the name of the property owner or owner's agent and the address of the premises to be treated.*

7. Respondent violated regulations at 6 NYCRR 325.40 (a)(5) by failing to provide the correct address of the premises to be treated in the written commercial lawn care contract.

#### 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 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. With respect to the aforesaid alleged violations, a civil penalty in the amount of FIVE HUNDRED DOLLARS (\$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.

II. The provisions of this Order shall be deemed to bind Respondent, its 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, its 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, its agents, its servants, its employees, its successors and its 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 and criminal settlement of the violations cited in this Order.

IX. Respondent shall comply with the attached Schedule of Compliance which is incorporated into this Order.

DATED: *September 10*, 2014  
Rotterdam, New York

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.

With 2 page "Attachment to R4-2014-0715-128 - September 04, 2014"

Jill Cullen  
d/b/a Moonlight Horticultural Services

SIGNED: Jill Cullen

TITLE: partner

DATE: 09/02/14

STATE OF New York

COUNTY OF Schenectady ss.:

On the 2nd day of September in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Jill Cullen 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 her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Donna M. Bennett

Notary Public

Qualified in the County of:

My Commission Expires:

DONNA M. BENNETT  
Notary Public, State of New York  
County of Schenectady  
Reg. No. 01BE6101028  
My Commission Expires Nov. 3, 2015

## **SCHEDULE OF COMPLIANCE**

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

This document should be addressed and sent to:

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

-----  
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**  
R4-2014-0715-128

-by-

Jill Cullen  
d/b/a Moonlight Horticultural Services  
2223 Weast Road  
Pattersonville, NY 12137

Respondent

-----  
I, Jill Cullen, being duly sworn, do depose and say that I am a partner at Moonlight Horticultural Services and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2014-0715-128), effective on the date signed by the Regional Director.

\_\_\_\_\_  
Signature of Respondent

Subscribed and sworn to before me  
On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public