

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

**ORDER ON CONSENT**

- by -

File No. R4-2009-0803-122

Ocean State Job Lot of NY2007 LLC  
d/b/a Ocean State Job Lot  
375 Commerce Park Rd.  
North Kingstown, RI 02852

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, Ocean State Job Lot of NY2007 LLC, owns and operates a retail establishment at 2330 Watt St., Schenectady, New York 12305 ("store").
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. On June 2, 2009, Department staff inspected the store and found the following New York State unregistered pesticides for sale:
  - 3 bottles of Aquamate 50% (EPA Reg. 1839-141-45458); and
  - 14 containers of Pool Mate Dura Chlor (EPA Reg. 7124-60-53822).
6. Department staff reviewed Respondent's shipping records and found that 84 bottles of Aquamate and 18 containers of Pool Mate Dura Chlor.
7. Respondent's sale of the unregistered pesticides identified in Paragraphs 5 and 6 above 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. In respect of the aforesaid alleged violations, a civil penalty in the amount of THREE THOUSAND DOLLARS (\$3000) is hereby assessed against the Respondent. Payment of the civil penalty is due with the return of the signed and notarized Order 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 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  
1150 N. Westcott Road  
Schenectady, New York 12306

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

VII. 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.

VIII. 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

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.

\_\_\_\_\_  
Ocean State Job Lot of NY2007 LLC

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

## SCHEDULE OF COMPLIANCE

1. As of the effective date of this Order, Respondent shall cease the sale of Aquamate 50% (EPA Reg. 1839-141-45458) and Pool Mate Dura Chlor (EPA Reg. 7124-60-53822) (“products”) in New York until the products are registered with the Department.