

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

File No. R4-2009-0626-108

-by-

Olsen Property Maintenance, LLC

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, Olsen Property Maintenance, LLC, is in the business of applying pesticides.
3. Respondent is a “person” as defined in ECL Section 33-0101(33).
4. On June 17, 2009, Department staff conducted a Pesticide Applicator/Business/Use Inspection at 40 Schuyler Rd., Loudonville, New York (“inspection”).
5. During the inspection, Department staff observed that Respondent’s commercial vehicle used to transport pesticides and pesticide application equipment did not have any business registration stickers displayed on it.
6. 6 NYCRR 325.26(1)(a) requires that two numbered stickers must be prominently displayed on opposite sides of each vehicle used to transport commercial application equipment.
7. Respondent’s failure to display business registration stickers on its commercial vehicle is a violation of 6 NYCRR 325.26(1)(a).
8. During the inspection, Department staff also observed that Respondent was transporting a 80 pound capacity granular spreader containing Scott's Turf Builder in the company’s trailer. The spreader is considered a service container and was not labeled.

9. ECL 33-1301.(b) requires that all service containers must be labeled with the following off of the pesticide label: “(1) The name and address of the manufacturer, registrant, or person for whom manufactured; (2) The name, brand, or trade-mark under which said article is sold; and (3) The net weight or measure of the content; subject, however, to such reasonable variations as the commissioner may permit.”

10. Respondent’s failure to label the granular spreader with information off of the pesticide label is a violation of ECL 33-1301.1(b).

11. ECL 71-2907 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.

12. Respondent has affirmatively waived their 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 violation, a civil penalty in the amount of FOUR HUNDRED DOLLARS (\$400) is hereby assessed against the Respondents. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

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

III. The terms of this Order shall not be construed to prohibit the Commissioner or 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 harmless the Department, the State of New York, and their 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, their directors, officers, employees, servants, agents, successors or assigns.

V. 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. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent’s compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

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

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

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

X. 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, their agents, their servants, their employees, their successors and their 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.

XI. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations 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. Within 60 days of the effective date of the Order, Respondent shall submit an application, appropriate fees and proof of insurance for business registration.
2. Within 60 days of the effective date of the Order, Respondent shall obtain commercial applicator/technician certification in category 3a or 3b.
3. Respondent shall cease and desist all pesticide applications until a business registration certificate and applicator/technician certification is obtained.

If Respondent decides to discontinue the use of pesticides, a notarized letter shall be submitted to the Department stating that it will not offer, advertise or apply pesticides commercially without first obtaining applicator certification and registering the pesticide business.