

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
R4-2009-0918-150

David Perone
19 Saddlewood Lane
Scotia, New York

d/b/a Turfco Lawn Care

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, David Perone, is doing business as Turfco Lawn Care.

3. The Respondent is a person as defined in ECL § 33-0101(33).

4. On August 25, 2009, Department observed the following at a pesticide application at a residence on Mountainwood Road in Scotia, New York:

A. The apprentice training documents were missing the address of the apprentice, the dates and content of training and an evaluation concluding the apprentices competence in applying pesticides. The apprentice had not received the 8 hours of core training required under 6 NYCRR 325.10;

B. The visual notification markers weren't placed along the perimeter of the side lawns of the property . The above regulation requires that markers be placed around the entire perimeter of the treatment area.

5. Regulations at 6 NYCRR 325.10(c) provides that:Documentation that a certified commercial pesticide applicator observed and instructed the apprentice as required in subdivision 325.10(a) of this Part must be maintained by the certified commercial pesticide applicator or registered business for three years. Such documentation must be made available to the department upon request. Documentation must include the following:

- (1) name and address of apprentice;
- (2) date(s) of instruction or observation;

- (3) content of training and certification category;
- (4) instructor's name and certification identification number; and
- (5) an evaluation concluding that the apprentice is competent to perform pesticide applications.

6. Regulations at 6 NYCRR 325.40(h)(4) provides that visual notification marker posting. Visual notification markers:(4) must be placed not more than fifty (50) feet apart along the perimeter of the treated area in the event that markers used are between four inches by five inches in size and five inches by five inches in size; or not more than one-hundred (100) feet apart along the perimeter of the treated area in the event that markers used are at least five inches by six inches in size.

7. Respondent violated regulations at 6 NYCRR 325.10(c), and 6 NYCRR 325.40(h)(4) as described in Paragraph 4 above.

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 his rights 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 violations, a civil penalty in the amount of ONE THOUSAND EIGHT HUNDRED (\$1,800) is hereby assessed against the Respondent.

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

III. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question during reasonable hours, in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance with this Order.

IV. 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.

V. 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.

VI. Respondent shall comply with the Schedule of Compliance.

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

DATED: October ,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 30 days of the effective date of the Order, Respondent shall send to the Department a copy of revised apprentice training documents for Mr. Josh Caisse demonstrating compliance with 6 NYCRR Part 325.10.