

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



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0709

September 10, 2014

Mr. Brian Chateauvert
RWC, Inc.
248 Lockhouse Road
Westfield, MA 01086

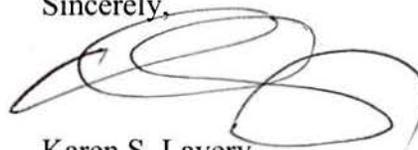
Re: Order of Consent
R4-2014-0722-131

Dear Mr. Chateauvert:

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

This will also acknowledge receipt of \$1000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: B. Pendell

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
R4-2014-0722-131

-by-

RWC, Inc.
248 Lockhouse Road
Westfield, MA 01086

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 RWC, Inc. is a company that provides vegetation control, located at 248 Lockhouse Road, Westfield, MA ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On July 9, 2014, Respondent commercially applied pesticides to the Cheviot Railroad Crossing located on Cheviot Road, Germantown, New York, ("site") which is within 100 feet of the Cheviot Town Park and two private dwellings.
5. On July 10, 2014, Department staff inspected the site.

First Violation

6. On July 9, 2014, Respondent failed to post visual notification markers prior to applying pesticides to the Cheviot Road rail.

7. Regulations at 6 NYCRR 325.1 (s) (4) provide that:

(s) Commercial lawn application means the application of pesticide to ground, trees, or shrubs on public or private outdoor property. The following pesticide applications are not considered commercial lawn application:

(4) the application of pesticides by or on behalf of agencies except that agencies are subject to commercial lawn application visual notification requirements of this Part pursuant to subdivisions 325.40(f), (g) and (h) of this Part where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park.

8. Respondent violated regulations at 6 NYCRR 325.1 (s) (4) by failing to post visual notifications markers prior to applying pesticides within 100 feet of the Cheviot Town Park and two private dwellings near the Cheviot Road rail crossing.

Civil Penalty

9. ECL 33-1301 (8) 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

10. 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 violation, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) is hereby assessed against the Respondent and 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, his 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 his 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, his 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, 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 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.

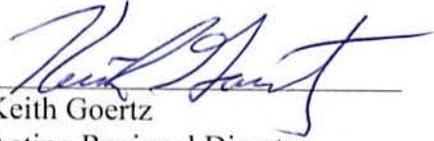
VII. The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph X 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 his 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 settlement of the violations cited in this Order.

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

Joseph J. Martens
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 its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

RWC, Inc.

SIGNED: Brian Chateauvert
TITLE: V.P.
DATE: 9/8/2014

STATE OF Massachusetts

COUNTY OF Hampden) ss.:
)

On the 8th day of September in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Brian Chateauvert 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 capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Teresa M. Jabb
Notary Public
Qualified in the County of: Massachusetts
My Commission Expires: April 14, 2017

SCHEDULE OF COMPLIANCE

1. Within 30 days of signing this Order, Respondent must submit to the 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"),

-by-

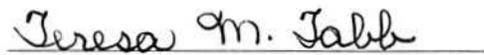
RWC, Inc.
248 Lockhouse Road
Westfield, MA 01086

Respondent

I, Brian Chateauvert, being duly sworn, do depose and say that I am the Vice President of RWC, Inc., and that I have complied with the requirements of paragraph No 1 of the Order on Consent's Schedule of Compliance (R4-2014-0722-131) effective on the date signed by the Regional Director.


Signature of Respondent

Subscribed and sworn to before me
On this 8th day of September 2014


Notary Public