

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of  
Article 33 of the Environmental Conservation  
Law ("ECL") of the State of New York

**Order**

-By-

DEC Case No.  
R7-20021007-119

**Bruce Curtis**  
**of Bruce and James Curtis Farm**  
1448 Burch Road  
West Edmeston, New York 13485,

Respondent.

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WHEREAS:

1. Pursuant to a notice of hearing and complaint dated February 6, 2004, staff of the New York State Department of Environmental Conservation ("Department") commenced an administrative enforcement proceeding against Bruce Curtis ("respondent").
2. Service of process was accomplished in accordance with 6 NYCRR 622.3. The affidavit of service of Environmental Conservation Officer Brett Armstrong states that on April 9, 2004, he personally served a copy of the notice of hearing and the complaint on respondent.
3. The complaint alleges that respondent:
  - a. is a person as defined by ECL 33-0101(33), residing at 1448 Burch Road, West Edmeston, New York 13485;
  - b. was and is a certified applicator with the Department (Certified Applicator Identification Number P7-720982); and
  - c. on or before July 10, 2002, failed to maintain any records of applications of Bicep Lite II Magnum (EPA Reg. #100-827), a restricted use pesticide and, accordingly, has violated section 33-1205(2)(b) of the Environmental Conservation Law ("ECL").

4. Pursuant to 6 NYCRR 622.4(a), respondent's time for serving an answer to the complaint expired on April 29, 2004, and respondent has waived its right to a hearing.

5. On July 14, 2004, Department staff made a motion for default judgment.

6. Pursuant to ECL 71-2907(1), a violation of ECL article 33 ("Pesticides"), or its implementing regulations, authorizes the imposition of civil penalties not to exceed five thousand dollars for a first violation. An affirmation sworn to by Margaret A. Sheen, Esq. of Department staff on July 14, 2004, includes a justification for a penalty of two thousand five hundred dollars (\$2,500) in this matter.

7. The matter was assigned to Administrative Law Judge ("ALJ") Molly T. McBride. Subject to my comments in this order, I adopt the ALJ's summary report, which is attached.

NOW, THEREFORE, having considered this matter and being duly advised, it is ORDERED that:

I. Department staff's motion for a default judgment against respondent is granted.

II. Pursuant to 6 NYCRR 622.15, respondent is found to be in default. As a consequence, respondent is deemed to have admitted the factual allegations in the complaint and to have waived his right to a hearing.

III. Respondent is found to have violated ECL 33-1205(2)(b).

IV. Respondent is assessed a civil penalty in the amount of two thousand five hundred dollars (\$2,500). No later than 30 days after the date of this order, payment of the penalty shall be made in the form of a cashier's or certified check or money order payable to the order of the "New York State Department of Environmental Conservation" and sent by certified mail, overnight delivery or hand delivery to the Department at the following address: New York State Department of Environmental Conservation, Region 7, 615 Erie Boulevard West, Syracuse, New York 13204-2400, Attn: Margaret Sheen, Esq.

V. All communications between respondent and Department staff concerning this order shall be made to Margaret A. Sheen, Esq., New York State Department of Environmental Conservation, Region 7, 615 Erie Boulevard West, Syracuse, New York 13204-2400.

VI. The provisions, terms and conditions of this order shall bind respondent and respondent's heirs and assigns, in any and all capacities.

FOR THE NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

/s/

By: \_\_\_\_\_  
Erin M. Crotty, Commissioner

Albany, New York  
Dated: October 18, 2004

TO: Bruce Curtis  
of Bruce and James Curtis Farm  
1448 Burch Road  
West Edmeston, New York 13485

Margaret A. Sheen, Esq.  
Attorney for Department Staff  
New York State Department of  
Environmental Conservation, Region 7  
615 Erie Boulevard West  
Syracuse, N.Y. 13204-2400  
Tel. (315) 426-7405

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of  
Article 33 the Environmental Conservation  
Law of the State of New York, by:

Default Summary  
Report

DEC Case No.  
R7-20021007-119

BRUCE CURTIS  
of Bruce and James Curtis Farm,  
Respondent.

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Proceedings

By notice of motion dated July 12, 2004, staff of the Department of Environmental Conservation ("DEC" or "Department") sought a judgment by default against respondent Bruce Curtis ("Respondent") concerning an alleged violation of the Article 33 of the Environmental Conservation Law ("ECL"). DEC Staff alleges that respondent violated ECL 33-1205(2)(b) by failing to maintain any records of applications of Bicep Lite II Magnum (EPA Reg #100-827), a restricted use pesticide. In support of its motion, DEC submitted an affirmation by DEC staff Attorney Margaret A. Sheen, a proposed order and an affidavit of service evidencing personal service on the respondent of the notice of hearing and complaint.

As of the date of the motion, respondent has failed to appear and serve an answer or otherwise move.

DEFAULT PROCEDURES:

6 NYCRR 622.15, "Default procedures" provides, in pertinent part: "(b) The motion for a default judgment .... must contain: (1) proof of service upon the respondent of the notice of hearing and complaint or such other document which commenced the proceeding; (2) proof of the respondent's failure to appear or failure to file a timely answer; and (3) a proposed order."

The following Findings are based upon the papers submitted, as identified above.

FINDINGS

1. On April 9, 2004 Staff served a notice of hearing and complaint personally on the respondent.
2. Respondent has not appeared in the action and the time to do so has expired.
3. The requirements for a default judgment have been adequately met as prescribed by 6 NYCRR 622.15(b).

CONCLUSION

The motion for default judgment should be granted.

DATED: August 25, 2004  
Albany, New York

/s/

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Molly T. McBride  
Administrative Law Judge

To: Margaret A. Sheen, Esq.  
NYS Department of Environmental Conservation  
Division of Legal Affairs  
615 Erie Boulevard  
Syracuse, N.Y. 13204-2400

Bruce Curtis  
1448 Burch Road  
RD #1 1463 State Route 8  
West Edmeston, New York 13485