

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Private Pesticide Certification Application filed pursuant to Environmental Conservation Law ("ECL") Article 33, Title 9, and Part 325 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR")

**ORDER OF
DISPOSITION**

- by -

DOUGLAS LAMOY,

Applicant.

Appearances of Counsel

Counsel for the Department:

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Counsel for the Applicant:

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ORDER OF DISPOSITION OF THE ADMINISTRATIVE LAW JUDGE

Proceedings

On March 24, 2009, staff of the Division of Solid and Hazardous Materials of the New York State Department of Conservation ("Department staff") served Applicant, Douglas Lamoy, ("Applicant") with a Notice of Intent to Deny his application for Private Pesticide Certification, pursuant to ECL

33-0909(1)(b) and 6 NYCRR 325.13, upon Department staff's determination that Applicant had been convicted of a felony. In particular, Department staff alleged that Applicant had been convicted of one count of Penal Law Section 130.40(2), Sodomy in the Third Degree, a class D felony. On April 18, 2009, Applicant requested a hearing in the matter.

A notice of hearing was published in the Environmental Notice Bulletin on February 3, 2010, and in The Pennysaver on February 4, 2010. The hearing notice invited members of the public to comment at the hearing or to participate as parties upon the filing of a petition pursuant to 6 NYCRR part 624.

The hearing was convened on March 3, 2010, at the Department's Region 5 Office, Route 86, Ray Brook, New York 12977, before the undersigned, an Administrative Law Judge with the Department's Office of Hearings and Mediation Services. No members of the public appeared to provide comment and no petitions for party status were received.

Department staff began its case by providing testimony from two witnesses, Kevin Maloney, Agency Program Aide, and Margaret O'Neil, Chief of the Department's Pesticide Reporting and Certification Section. Department staff also introduced a total of seventeen (17) exhibits into the record. Department Staff Exhibit 11 is a Statement of Conviction dated March 3, 2009, and certified by Jan Lavigne, Clerk of the Court, County Court of Clinton County, New York. The Statement of Conviction certifies that on April 26, 2004, in the County Court of Clinton County, New York, before the Honorable Patrick R. McGill, Judge of the County Court, Applicant was convicted, by plea, of one count of Penal Law Section 130.40(2), Sodomy in the Third Degree, a class D felony. The Statement of Conviction also states that on September 17, 2004, Judge McGill sentenced Applicant to a definite term of incarceration of five (5) months in the Clinton County Jail and to a term of probation of ten (10) years.

Department Staff Exhibit 17 is a New York State Certificate of Relief From Disabilities issued to Applicant pursuant to Article 23 of the Corrections Law. Signed by Judge McGill and dated October 1, 2009, the Certificate states that it "shall relieve [Applicant] of all forfeitures, disabilities or bars ... to enable registrant [Applicant] to obtain or renew [his] professional license as a private pesticide applicator in the State of New York."

Following the testimony of Ms. O'Neil, a recess was taken to allow discussions between the parties. As a result of these discussions, a proposed disposition was achieved which was satisfactory to the parties and placed on the record. Department staff agreed to issue Applicant a Private Pesticide Certification, subject to the following conditions:

(1) Applicant is not permitted to add any categories to his pesticide applicator certification and can only be certified in Private Pesticide Category 23, Vegetable.

(2) Applicant shall not employ and/or supervise minors at his farm so long as he is a certified private applicator.

(3) Applicant may only apply pesticides on his farm and/or any property that he rents.

The undersigned placed the Applicant under oath and asked him (1) if he understood the terms of the proposed disposition, and (2) if he agreed to abide by the terms of the proposed disposition. The Applicant answered each question in the affirmative.

The adjudicatory hearing was suspended without further proceedings, pending the filing of the present order of disposition.

Order of Disposition

The matter has been resolved by mutual consent of the parties. The matter is remanded to Department staff for issuance of a Private Pesticide Certification to Applicant, subject to the aforementioned conditions, and for any further administrative proceedings they deem appropriate. The hearing record in this matter is hereby closed.

/s/

Richard R. Wissler
Administrative Law Judge

Dated: April 15, 2010
Albany, New York