

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED

7016 0340 0000 4616 5928

January 4, 2018

Brendan White
518 Landscapes L.L.C.
19 Isbestor Street
Albany, NY 12205

Re: Order on Consent
R4-2017-1129-284

Dear Mr. White:

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

This will also acknowledge receipt of \$500 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: S. Whelen



Department of
Environmental
Conservation

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-

ORDER ON CONSENT
R4-2017-1129-284

518 Landscapes L.L.C.
19 Isbestor Street
Albany, NY 12205,

Respondent.

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (Department) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §33-0301 of the Environmental Conservation Law (ECL), among other authorities. The Department 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, 518 Landscapes L.L.C., is a domestic limited liability company engaged in the pesticide application business in the State of New York.
3. Respondent is a person as defined in ECL § 33-0101(33).

VIOLATION

4. On October 4, 2017, Department staff conducted a routine compliance inspection of Respondent’s written records.
5. During this inspection Department staff learned that Respondent’s written contracts for commercial pesticide applications did not separate the total cost of pesticide applications from the cost of other lawn care services.
6. Regulation 6 NYCRR § 325.40(a), sets forth the required elements of a written

contract for commercial pesticide applications. Subparagraph (3) of that section states that any such written contract must: “*state the total cost of the commercial lawn application service to be provided.*”

7. Respondent’s failure to include the total cost of pesticide application services as a discrete element in its commercial lawn care contracts is in violation of regulation 6 NYCRR § 325.40(a)(3).

Civil Penalty

8. ECL § 71-2907 (1) 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

9. 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. **Civil Penalty.** Respondent is assessed a civil penalty in the amount ONE THOUSAND DOLLARS (\$1,000). FIVE HUNDRED DOLLARS (\$500) 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 company or bank/cashier’s check made payable to the NYS Department of Environmental Conservation. Payment of this portion of the civil penalty shall not alter Respondent’s obligation to complete performance of the terms of this Order.

The balance of FIVE HUNDRED DOLLARS (\$500) is suspended and shall not be payable, provided that Respondent fully and timely complies with the Schedule of Compliance appended to this Order, and provided that Respondent commits no further violations of ECL Article 33 or 6 NYCRR Part 325 pertaining to pesticides, for the duration of this Order.

Should Respondent fail to so comply, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent, in addition to appropriate penalties for any further violations of this Order.

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

III. **Communications.** Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to:

For the Department:

Sarah Whelen
NYS Department of Environmental Conservation
Region 4
Bureau of Pest Management
1130 North Westcott Road
Schenectady, NY 12306

For the Respondent:

518 Landscapes L.L.C.
c/o Brendan White
19 Isbestor Street
Albany, NY 12205

IV. **Summary Abatement.** 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.

V. **Indemnification.** 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, its directors, officers, employees, servants, agents, successors or assigns, except to the extent that any such claims arise or result from the acts or omissions by the Department, the State of New York, or its employees.

VI. **Modification.** 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, such change to be made only upon written agreement of the parties.

VII. **Effective Date.** This Order is deemed effective on the date signed by the Department. The Department will provide Respondent a fully executed copy of this Order as soon as practicable following the effective date of this Order.

VIII. **Scope.** 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 Department or State may have against Respondent for any other violations of the ECL, rules or regulations promulgated 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, its agents, its servants, its employees, its successors and its assigns; and

C. 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.

IX. Review of Submitted Documentation. 1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of Respondent's submittals pursuant to this Order to determine whether it was prepared, and whether the work performed to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3(a). If the Department disapproves a submittal, it shall notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submittal will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order, or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

X. **Access.** To ensure compliance with the ECL and this Order, Respondent shall not deny the Commissioner or his duly authorized representative access at all reasonable times to inspect Respondent's New York facilities and all pesticide records for applications within the State of New York.

XI. **Schedule of Compliance.** Respondent shall comply with the attached Schedule of Compliance.

XII. **Termination.** The Order shall terminate two years after its Effective Date, upon Respondent's full compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: January 3, 2018
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

518 Landscapes L.L.C.
Authorized Representative

SIGNED: B. White

PRINTED: Brendan White

TITLE: owner

DATE: 12/20/17

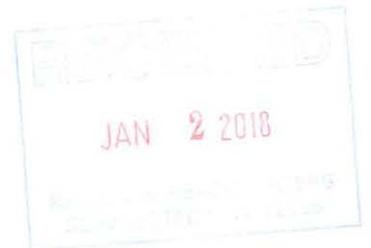
STATE OF NEW YORK)
COUNTY OF Albany) ss.:

On the 20th day of December in the year 2017, before me, the undersigned, personally appeared Brendan White, personally known (Full name)

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/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

George Anthony Wade
Notary Public
Qualified in the County of:
My Commission Expires:

George Anthony Wade
Notary Public, State of New York
Qualified in Albany County
No. 01WA6345379
Commission Expires July 25, 2026



SCHEDULE OF COMPLIANCE

- (1) **Within thirty (30) days of the effective date of the Order**, Respondent shall submit to the Department for approval a draft compliant commercial lawn application contract that specifies the total cost of pesticide applications; and
- (2) **Within thirty (30) days of the effective date of the Order**, Respondent shall submit to the Department the enclosed Compliance Verification Affidavit, signed and notarized, certifying that the compliance issue described in Paragraph No. 1 of this Schedule has been corrected, and/or setting forth what steps will be taken to correct them, along with any supporting documentation.
- (3) Compliance with this Schedule shall not be a defense to subsequent violations.

All documentation should be addressed and sent to:

Sarah Whelen
NYS Department of Environmental Conservation
Region 4
Bureau of Pest Management
1130 North Westcott Road
Schenectady, NY 12306

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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AFFIDAVIT

-by-

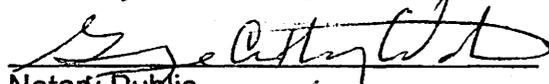
518 Landscapes L.L.C.
19 Isbestor Street
Albany, NY 12205,

Respondent.

I, Brendan White, being duly sworn, do depose and say that I am the owner of 518 Landscapes L.L.C., and that I have complied with the requirements of Paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2017-1129-284) effective on the date signed by the Regional Director.


Signature of Respondent

Subscribed and sworn to before me
On this 20th day of December, 2017


Notary Public

George Anthony Wade
Notary Public, State of New York
Qualified in Albany County
No. 01WA6345379
Commission Expires July 25, 2020