

**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 6093

April 4, 2018

Scott Andre  
Andre & Son, Inc.  
17150 State Route 706  
Montrose, PA 18801

Re: Order on Consent  
R4-2018-0322-81

Dear Mr. Andre:

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

This will also acknowledge receipt of \$3,000 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”),

**ORDER ON CONSENT**  
R4-2018-0322-81

-by-

Andre & Son, Inc.  
17150 State Route 706  
Montrose, PA 18801,

Respondent.

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**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, Andre & Son, Inc., is a Pennsylvania domestic corporation which holds a New York State commercial permit #R04792.
3. Respondent is a person as defined in ECL § 33-0101(33).

**Background**

4. On October 3, 2017, Department staff conducting an inspection at Colonial Ridge Golf Course in Laurens, New York (“Colonial”), discovered that in 2017, one of Colonial’s employees had purchased eight (8) thirty-pound (30lb) bags of 3336 *DG Lite* (EPA Reg. No. 1001-70), a restricted use pesticide.
5. Department staff subsequently determined that the Colonial employee who purchased the 3336 *DG Lite* was not permitted or certified to purchase restricted use pesticides as required by ECL § 33-1301(7).

6. Records produced by the golf course during the October 3, 2017 inspection indicated that Respondent had sold the 3336 *DG Lite* to the Colonial employee.

7. ECL § 33-1301(6) states that it shall be unlawful “[f]or a commercial permit holder to sell restricted use pesticides except to the holder of a non-cancelled purchase permit or to the holder of a commercial permit or a certified applicator.”

8. On December 4, 2017, Department staff issued a Notice of Violation (“NOV”) to Respondent notifying Respondent that the sale to Colonial’s employee was a violation of ECL § 33-1301(6).

9. The December 4, 2017 NOV also requested Respondent’s records of all sales of restricted use pesticides for 2016 and 2017.

10. On December 28, 2017 and January 8, 2018, Respondent provided Department staff with the information requested in the NOV.

11. The information provided by Respondent in response to the NOV indicated that in 2016 and 2017, Respondent had executed the following sales of restricted use pesticides to purchasers who possessed neither a non-cancelled purchase permit, a commercial permit, nor an applicator certification, in violation of ECL § 33-1301(6):

- a) On December 8, 2016, two (2) ten-gallon link pak units of *Primo Maxx* (EPA Reg. # 100-937).
- b) On May 3, 2017:
  - One (1) gallon of *Quali-Pro Bifenthrin Golf & Nursery 7.9F* (EPA Reg. No. 66222-192);
  1. Eight (8) one-gallon containers of *Quali-Pro Dithiopyr 2L* (EPA Reg. No. 53883-311);
  2. Eight (8) one-gallon containers of *PrimeraOne Imidacloprid 2F Insecticide* (EPA Reg. No. 83100-6-88975); and
  3. Two (2) one-gallon containers of *Quali-Pro T-Nex 1AQ* (EPA Reg. No. 66222-212).
- c) On July 20, 2017, eight (8) thirty-pound bags of 3336 *DG Lite* (EPA Reg. No. 1001-70).

### **Violations**

12. Each sale by Respondent of the restricted use pesticides cited above to persons who did not hold non-cancelled purchase permits or commercial permits, and were not certified applicators, constitutes a discrete violation of ECL § 33-1301(6).

### **Civil Penalty**

13. 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**

14. 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 THREE THOUSAND DOLLARS (\$3,000). Payment 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 money order, company or bank check made payable to the NYS Department of Environmental Conservation. Payment of the civil penalty shall not alter Respondent’s obligation to complete performance of the terms 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 Pesticides  
1130 North Westcott Road  
Schenectady, NY 12306

For the Respondent:

Andre & Son, Inc.  
17150 State Route 706  
Montrose, PA 18801

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. Any documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each submittal from Respondent pursuant to this Order to determine whether it was prepared, and whether the work performed to generate the data in the submittal was prepared, in accordance with this Order and with 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 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 stated reasons for disapproval of 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 the 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 shall be reasonable and consistent with customary engineering standards.

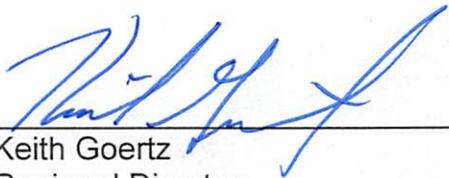
X. **Schedule of Compliance.** Respondent shall comply with the attached Schedule of Compliance.

XI. **Termination.** The Order shall terminate 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: April 3, 2018  
Rotterdam, New York

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
\_\_\_\_\_  
Keith Goertz  
Regional Director  
Region 4



## **SCHEDULE OF COMPLIANCE**

- (1) **Upon signing this Order**, Respondent shall submit to the Department a signed and notarized Compliance Verification Affidavit (“CVA,” enclosed) certifying that the actions necessary to come into compliance with the Department’s regulatory program have been completed.

The signed and notarized CVA should be addressed to:

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

- (2) Compliance with this Schedule shall not be a defense to subsequent violations.

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),

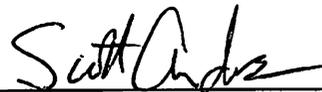
**AFFIDAVIT**

-by-

Andre & Son, Inc.  
17150 State Route 706  
Montrose, PA 18801,

Respondent.

I, Scott Andre, being duly sworn, do depose and say  
(Full Name)  
that Andre & Son, Inc., has complied with the requirements of Paragraph No. 1 of the  
Order on Consent's Schedule of Compliance (R4-2018-0322-81) effective on the date  
signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me  
on this 29 day of 3, 2018

Shana L Benedict  
Notary Public

