

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 0679

October 7, 2014

Mr. Joseph Mack
Aramark Management Services Limited Partnership
1 Hartwick Drive
Oneonta, New York 13820

Re: Order of Consent
R4-2014-0821-140

Dear Mr. Mack:

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

This will also acknowledge receipt of \$1,500 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
R4-2014-0821-140

-by-

Aramark Management Services Limited Partnership
1 Hartwick Drive
Oneonta NY 13820

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, Aramark Management Services Limited Partnership, provides facilities management for Hartwick College located at 1 Hartwick Drive, Oneonta, New York ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On August 8, 2014, Respondent made a commercial pesticide application to the Hartwick College Campus located at Hartwick Drive, Oneonta, New York ("site").

First Violation

5. At the time of the August 8, 2014 commercial pesticide application, Respondent did not place visual notification markers every 50 feet around the perimeter of the treatment area, prior to the application.

6. Regulations at 6 NYCRR 325.40(h)(4) provide that “*visual notification markers must be placed not more than fifty (50) feet apart along the perimeter of the treated area in the event that markers used are between four inches by five inches in size and five inches by five inches in size; or not more than one-hundred (100) feet apart along the perimeter of the treated area in the event that markers used are at least five inches by six inches in size.*”

7. Respondent violated regulations at 6 NYCRR 325.40(h)(4) by failing to place visual notification markers every 50 feet around the perimeter of the treatment area prior to the application.

Second Violation

8. At the time of the August 8, 2014 commercial pesticide application, Respondent did not post visual markers at the common points of entry adjacent to the treated areas including but not limited to driveways and walkways.

9. Regulations at 6 NYCRR 325.40(h)(5) provide that “*visual notification markers must also be placed at common points of entry adjacent to the treated areas including, but not limited to, driveways and walkways.*”

10. Respondent violated regulations at 6 NYCRR 325.40(h)(5) by failing to post visual markers at the common points of entry adjacent to the treated areas including but not limited to driveways and walkways.

Third Violation

11. At the time of the August 8, 2014 commercial pesticide application, Respondent was not in possession of the Ranger Pro Herbicide label, which was the pesticide being applied.

12. Regulations at 6 NYCRR 325.2(d) provide that “*during pesticide use, the certified applicator, certified technician or commercial pesticide apprentice must have in their custody a copy of the label for each pesticide being used. The certified applicator, certified technician or commercial pesticide apprentice must make each label available for inspection upon request of the department.*”

13. Respondent violated regulations at 6 NYCRR 325.2(d) by failing to be in possession of the label for the pesticide which was being applied.

Fourth Violation

14. At the time of the August 8, 2014 commercial pesticide application, the pickup truck which Respondent was using to transport pesticides and application equipment did not have business registration stickers on it.

15. Regulations at 6 NYCRR 325.26(a) provide that “*each certified commercial applicator shall be provided by the department with a set of two numbered stickers for each piece of*

commercial application equipment. These stickers shall be prominently displayed on opposite sides of each piece of such equipment or on opposite sides of each vehicle used in transporting such equipment.”

16. Respondent violated regulations at 6 NYCRR 325.26(a) by failing to post business registration stickers on the truck used to transport pesticides and application equipment.

Civil Penalty

17. ECL 71-2901 (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

18. 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 violations, a civil penalty in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) 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, its 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 its 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.

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, its agents, its servants, its employees, its successors and its 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 IV 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 its 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 settlement of the violations cited in this Order.

IX. Respondent shall comply with the attached Schedule of Compliance which is incorporated into this Order.

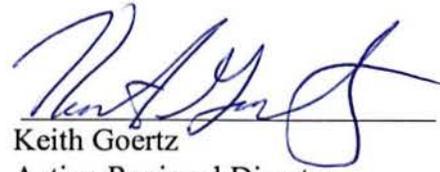
X. This Order shall not create any presumption of law or fact which shall inure to the benefit of any person other than the Department or Respondent.

DATED: _____, 2014
Rotterdam, New York

DATED: *October 6*, 2014
Rotterdam, New York

Commissioner
New York State Department of
Environmental Conservation

BY:

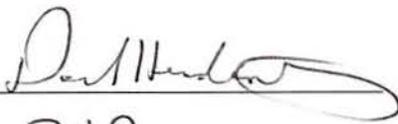
A handwritten signature in blue ink, appearing to read "Keith Goertz", written over a horizontal line.

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.

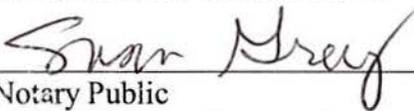
Aramark Management Services Limited Partnership

SIGNED: 
TITLE: RVP
DATE: 9/29/14

STATE OF MA

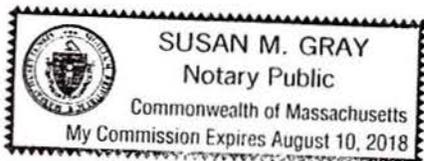
COUNTY OF Middlesex) ss.:

On the 29 day of Sept in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared _____ 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.


Notary Public

Qualified in the County of:

My Commission Expires:



SCHEDULE OF COMPLIANCE

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

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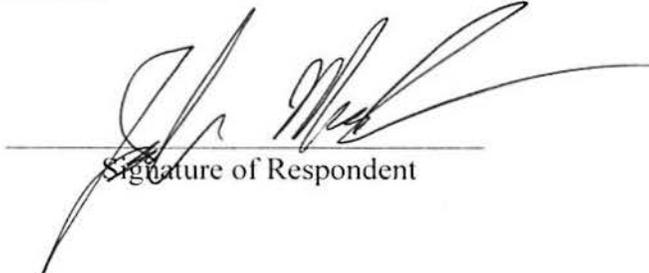
ORDER ON CONSENT
R4-2014-0821-140

-by-

Mr. Joseph Mack
Aramark Management Services Limited Partnership
1 Hartwick Drive
Oneonta, NY 13820

Respondent

I, Joseph Mack, being duly sworn, do depose and say that I am Facilities Supervisor at Aramark Management Services Limited Partnership and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2014-0821-140), effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me
On this 15 day of September, 20 14

Stacy L. Aldrich
Notary Public

STACY L. ALDRICH
Notary Public, State of New York
Reg. No. 01AL6123925
My Commission Expires March 14, 2017