

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 5850

December 14, 2017

Kelly G. Dodson, Owner
Audubon Landscape Services, LLC
264 Waldermaier Road
Feura Bush, NY 12067

Re: Order on Consent
R4-2017-1026-261

Dear Mr. Kelly:

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

This will also acknowledge receipt of \$250 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

cc: M. Leidy



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, Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of
New York ("6 NYCRR"),

ORDER ON CONSENT
R4-2017-1026-261

-by-

Audubon Landscape Services, LLC
264 Waldermaier Road
Feura Bush, NY 12067,

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, Audubon Landscape Services, LLC, is a 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

Failure to Maintain Accurate Application Records

4. On October 10, 2017, Department Staff Department staff conducting a routine inspection discovered, upon a review of Respondent's records, that all such records failed to include an accurate recording of the area(s) of application of pesticides on the properties where they were applied.

5. Respondent's failure to accurately record the place of application of pesticides were violations of regulation 6 NYCRR § 325.23(a)

Civil Penalty

6. 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

7. 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 of TWO HUNDRED FIFTY DOLLARS (\$250). 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 company or bank check made payable to the NYS DEC.

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:

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

For the Respondent:

Audubon Landscape Services, LLC
c/o Kelly G. Dodson
264 Waldermaier Road
Feura Bush, NY 12067

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. **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.

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

XI. **Termination.** The Order shall terminate upon Respondent's complete compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: ~~November~~ ^{December} 14, 2017
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.

Audubon Landscape Services, LLC
Authorized Representative

SIGNED: [Signature]

PRINTED: KELLY DODSON

TITLE: OWNER

DATE: 12-5-17

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

On the 5th day of DECEMBER in the year 2017, before me, the undersigned, personally appeared Kelly Dodson, 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.

[Signature]
Notary Public
Qualified in the County of: Albany
My Commission Expires: July 13, 2021

Melissa Orner
Notary Public, State of New York
Qualified in Albany County
No. 01OR6205218
Commission Expires July 13, 2021

SCHEDULE OF COMPLIANCE

- (1) Within 30 days of the effective date of this Order, Respondent shall submit to the Department a contract template which provides for approximate date(s) of application with a date range of twenty-one (21) days or fewer.

- (2) Upon signing the Order, Respondent must 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, and those actions specified in this document, have been completed.

All documentation should be addressed and sent to:

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

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
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New York (6 NYCRR),

AFFIDAVIT

-by-

Audubon Landscape Services, LLC
264 Waldermaier Road
Feura Bush, NY 12067,

Respondent

I, Kelly G. Dodson, being duly sworn, do depose and say that I am the owner of Audubon Landscape Services, LLC, and that I have complied with the requirements of Paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2017-1026-261) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me
On this 5th day of DECEMBER 20 17



Notary Public

Melissa Orner
Notary Public, State of New York
Qualified in Albany County
No. 010R6205218
Commission Expires July 13, 2021