

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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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**  
File No. R4-2009-0703-112

- by -

Beautiful Lawns LLC  
5C Vatrano Road  
Albany, NY 12205

Respondent

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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 §3-301 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, BEAUTIFUL LAWNS LLC, located at 5C Vatrano Road, Albany, New York, operates a commercial and residential lawn care company.
3. Respondent is a person as defined in ECL §33-0101 (33).
4. On June 17, 2009, Department staff observed Respondent applying pesticides at a residence located at 19 Sonya Place, Niskayuna, New York ("site").
5. On June 30, 2009, Department staff conducted a Business Records Inspection at Respondent's office located at 5C Vatrano Road, Albany, New York ("facility").

**First Violation**

6. On June 17, 2009, Department staff observed Respondent applying pesticides at the site, wearing a short-sleeved shirt, long pants, shoes and socks.

7. The label of the pesticide which was being applied indicates that the minimum personal protective equipment required while applying the product are: face shield, goggles, or safety glasses and long-sleeved shirt and rubber gloves.

8. 6 NYCRR 325.2 (b) provides that “*pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the Department.*”

9. Respondent violated 6 NYCRR 325.2 (b) by failing to wear the required personal protective equipment in accordance with the pesticide label directions.

### **Second Violation**

10. On June 17, 2009, Department staff observed that the Respondent’s service container, which was being used to apply pesticides at the site, was unlabeled.

11. ECL §33-1301 provides that it shall be unlawful:

*1. (b) Except as specified in regulation authorizing alternative pesticide containers, any pesticide unless it is in the registrant’s or the manufacturer’s unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:*

*(1) The name and address of the manufacturer, registrant or person for whom manufactured;*

*(2) The name, brand, or trade-mark under which said article is sold; and*

*(3) The net weight or measure of the content; subject, however, to such reasonable variations as the Commissioner may permit.*

12. Respondent violated ECL §33-1301 by failing to properly label the service container which was used to apply pesticides.

### **Third Violation**

13. On June 17, 2009, Department staff inspected the site and observed that Respondent’s employee failed to post the common points of entry of the treated areas with visual notification markers.

14. 6 NYCRR 325.40 (h) provides that “*Visual notification markers:*

*(1) must be placed such that the top of the marker is at least twelve inches above the ground; and*

*(2) must be placed by the pesticide applicator or business making the commercial lawn application prior to the application and remain posted for a period of not less than 24 hours following the application; and*

*(3) must be placed such that the front of the marker is clearly visible from outside the treated area; and*

*(4) 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; and*

*(5) must also be placed at common points of entry adjacent to the treated areas including, but not limited to, driveways and walkways; and*

*(6) need not be placed at any portion of the perimeter of the treated premises or treated area which is rendered impassible by a fence, wall, hedge or similar device or natural topographic feature; provided, however, every treated premises or treated area must be marked by at least two visual notification markers, except only one visual notification marker is required when an*

15. Respondent violated 6 NYCRR 325.40 (h) by failing to properly mark the site prior to the application of pesticides.

#### **Fourth Violation**

16. On June 17, 2009, Respondent's employee who was applying pesticides, was not in possession of a copy of the label for each pesticide used that day.

17. 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."*

18. Respondent violated 6 NYCRR 325.2 (d) by failing to be in possession of a copy of the label for each pesticide that he was using that day.

#### **Fifth Violation**

19. On June 30, 2009, Department staff inspected Respondent's pesticide application records and determined that some of the records were found to be missing the dosage rate and place of application.

20. ECL 33-1205.1 provides that *"all commercial applicators shall maintain pesticide use records for each pesticide application containing the following:*

- a. EPA registration number;*
- b. product name;*
- c. quantity of each pesticide used;*
- d. date applied;*

*e. location of application by address (including five-digit zip code). Such records shall be maintained for a period of not less than three years. All commercial applicators shall file, at least annually, a report or reports containing such information with the department on computer diskette or in printed form on or before February first for the prior calendar year. All commercial applicators shall also maintain corresponding records of the dosage rates, methods of application and target organisms for each pesticide application. These records shall be maintained on an annual basis and retained for a period of not less than three years and shall be available for inspection upon request by the department.”*

21. Respondent violated ECL 33-1205.1 by failing to properly complete its pesticide application records.

Civil Penalty

22. 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

23. 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. In respect to the aforesaid violation, a civil penalty in the amount of ONE THOUSAND THREE HUNDRED FIFTY DOLLARS (\$1,350) is hereby assessed against the Respondent. 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 certified or bank check made payable to the NYS DEC. Payment of the civil penalty is due in accordance with the following schedule:

1. \$450.00 with the return of the signed and notarized copy of this Order;
2. \$450.00 by November 11, 2009;
3. \$450.00 by December 9, 2009;

The failure to make a timely payment shall result in the entire balance of civil penalty being immediately due. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

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. 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.

IV. 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, his directors, officers, employees, servants, agents, successors or assigns.

V. 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.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. All communications except where otherwise specifically directed should be sent to:

For Department:  
Regional Pesticide Specialist  
New York State Department  
of Environmental Conservation  
Region 4  
1130 N. Westcott Road  
Schenectady, New York 12306

VIII. This Order is deemed effective on the date signed by the Department.

IX. 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 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.

X. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondents in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

DATED: \_\_\_\_\_, 2009  
Rotterdam, New York

Alexander B. Grannis  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

\_\_\_\_\_  
Eugene J. Kelly  
Regional Director  
Region 4

