

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
7017 1070 0001 0125 8824

August 2, 2018

Allan Sagendorf
Beautiful Lawns, LLC
PO Box 344
Clifton Park, New York 12065

Re: Order on Consent
R4-2018-0176-156

Dear Mr. Sagendorf:

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,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: 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, and Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of
New York (“6 NYCRR”),

ORDER ON CONSENT
R4-2018-0176-156

-by-

Beautiful Lawns, LLC
5C Vatrano Rd.
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, Beautiful Lawns, LLC, is a domestic limited liability company engaged in the commercial pest control business in the State of New York.
3. Respondent is a person as defined in ECL § 33-0101(33).

VIOLATIONS

First Violation

4. On June 6, 2018, Department staff conducted a routine Non-Agricultural Use Observation and inspection of Respondent’s business and pesticide application records.
5. During the June 6, 2018 inspection, Department staff observed Respondent’s application records for premises to which pesticides were applied on that date.

6. Department staff observed that Respondent's application records for the premises lacked the place of application and dosage rate for the application of Dylox (EPA #432-1308).

7. Department staff further observed that the pesticide Eliminate (EPA #228-313-10404) was applied at the rate of 1.1 fluid ounces per 1000 square feet, but was inaccurately recorded as being applied at the rate of 1.5 fl.oz. / 1000 sq.ft.

8. Regulations at 6 NYCRR § 325.25(a) require all pesticide business to "keep true and accurate records in a manner specified by the department showing: the kind and quantity of each pesticide used; dosage rates; methods of application; target organisms; and the use, date and place of application for each pesticide used. These records shall be maintained on an annual basis and retained for a minimum of three years and shall be available for inspection upon request by the department."

9. Respondent's failure to keep true and accurate records regarding the method(s) and place(s) of application, and target organism(s), constitute violations of 6 NYCRR § 325.25(a).

Second Violation

10. During the June 6, 2018 inspection, Department staff observed that Respondent stored pesticide in an unlabeled push spreader which lacked any label showing:

- a) The manufacturer, registrant, or person for whom the pesticide was manufactured; and
- b) The name, brand, or trademark under which the pesticide is sold.

11. ECL § 33-1301(1)(b) states, in relevant part, that except as specified in regulation authorizing alternative pesticide containers, it is unlawful to use any pesticide unless it is in the manufacturer's unbroken immediate container, and there is affixed to such container "a label bearing (i) the name and address of the manufacturer, registrant, or person for whom manufactured; (ii) the name, brand, or trade-mark under which said article is sold; and (iii) the net weight or measure of the content[.]"

12. Respondent's failure to affix labels containing the required information to the push spreader is a violation of ECL § 33-1301(1)(b).

Civil Penalty

13. ECL § 71-2907 (1) provides, *inter alia*, that "any person who violates any provisions of article 33 of this chapter or any rule, regulation or order issued thereunder . . . shall be liable . . . for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense."

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 ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500). 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:

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

For the Respondent:

Beautiful Lawns, LLC
Attn: Allan Sagendorf
5C Vatrano Rd.
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 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. **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.

DATED: August 1, 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) **Within sixty (60) days of the effective date of this Order**, Respondent shall submit to the Department pesticide application records from the first twenty (20) applications made within forty-five (45) days of the effective date of this Order.
 - a. If fewer than twenty (20) applications are made within the forty-five (45) days following the Order's effective date, Respondent shall submit all records made within period.
 - b. All submitted records must demonstrate compliance with 6 NYCRR § 325.25(a) – Records and Reports.
 - c. **Within fifteen (15) days of submission of the required records**, Respondent shall submit to the Department a signed and notarized Compliance Verification Affidavit ("CVA," enclosed) certifying that the actions necessary to comply with the Department's regulatory program, and those actions specified in this document, have been completed, along with any supporting documentation.
- (2) Compliance with this Schedule shall not be a defense to subsequent violations.

The signed and notarized CVA should be addressed to:

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

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.

SIGNED: Alan M. Sagendorf
PRINTED: Alan M. Sagendorf Jr.
TITLE: Owner - Operator
DATE: 7/27/18

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

On the 27th day of July in the year 2018, before me, the undersigned,

personally appeared Alan M. Sagendorf Jr, personally known
(Pull 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 s/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.

Kelly Schubert
Notary Public
Qualified in the County of: Saratoga
My Commission Expires: 12-8-2018
KELLY SCHUBERT
NOTARY PUBLIC-STATE OF NEW YORK
No. 015C6315934
Qualified in Saratoga County
My Commission Expires December 08, 2018