

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"),

- by -

ORDER ON CONSENT
File No. R4-2009-0624-106

Thaddeus Randazzo
d/b/a Carefree Lawns
PO Box 383
Guilderland, NY 12205

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 §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, Thaddeus Randazzo d/b/a Carefree Lawns, owns/operates a lawn care and landscaping business with a mailing address of P.O. Box 383, Guilderland, New York.
3. Respondent is a person as defined in ECL §33-0101 (33).
4. On June 8, 2009, Department staff observed Respondent applying pesticides at a residence located at 160 Kennewyck Circle, Slingerlands, New York ("site").
5. On June 11, 2009, Department staff conducted a Business Records Inspection at Respondent's office located at 2166 Maxon Road, Schenectady ("facility").

First Violation

6. On June 9, 2009, Department staff observed that the pump sprayer containing pesticides, which Respondent was utilizing during an application at the site, was not labeled.

7. 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.

8. Respondent violated regulations at ECL §33-1301 by failing to properly label the pump sprayer which was utilized to store and transport pesticides.

Second Violation

9. On June 9, 2009, Department staff observed that the perimeter of the area to which the pesticides were being applied at the site was not properly marked with visual notification markers prior to the application of the pesticides.

10. ECL 33-1003 provides that: *"All persons providing commercial lawn application shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size."*

11. Respondent violated ECL 33-1003 by failing to properly post visual notification markers around the perimeter of the treatment area prior to the application of pesticides.

Third Violation

12. On June 9, 2009, Department staff observed Respondent applying pesticides at the site, wearing a short-sleeved shirt, shorts, shoes and socks.

13. The label of the pesticide which was being applied indicates that the minimum personal protective equipment required while applying the product are: a long-sleeved shirt, long pants, protective footwear in addition to socks and protective eyewear.

14. 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."*

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

Fourth Violation

16. On June 8, 2009, Department staff observed Respondent's agent applying pesticides at the site. After reviewing that agent's apprentice training documents on June 11, 2009, Department staff determined that the applicator had not received all of the training required to be considered a pesticide apprentice.

17. 6 NYCRR 325.7(a)(3) provides that:

(a) An individual must not engage in the commercial application of pesticides, the private application of restricted use pesticides, or the sale of restricted use pesticides, unless that individual is a certified applicator and possesses, on their person, a valid identification card issued by the department and makes such identification card available upon request of this department. Full certification is not required for:

(3) a commercial pesticide apprentice, hereinafter referred to as "apprentice", using pesticides under the direct supervision of a certified commercial pesticide applicator, as required in subdivision 325.7(d);

18. Respondent violated 6 NYCRR 325.7 by applying pesticides without having completed all of the training required to be considered a pesticide apprentice.

Fifth Violation

19. On June 8, 2009, Department staff observed that the business registration stickers were not prominently displayed on Respondent's company vehicle, which was used to transport pesticides.

20. 6 NYCRR 325.26 provides that:

(a) 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 except however:

(1) Small pieces of hand held or portable equipment such as two and one-half gallon sprayers or back pack mistblowers do not require such stickers and;

(2) noncommercial-type vehicles transporting small quantities of pesticides or portable pesticide equipment are not required to display the stickers if such display will change the rating of the vehicle and thereby limit its access to certain transportation routes normally used.

21. Respondent violated at 6 NYCRR 325.26 by failing to prominently display business registration stickers on either side of the business vehicle, which was used for the purpose of transporting pesticides.

Sixth Violation

22. On June 9, 2009, Department staff reviewed Respondent's lawn care contracts and observed that they did not specify the approximate date or dates of application and were not signed by the property owners.

23. 6 NYCRR 325.40 (a)(1)(6) provides that:

This section shall be effective on January 1, 2004. The requirements of this section pertain to any commercial lawn application of a pesticide except for the application of a pesticide to a right-of-way (unless required pursuant to paragraph 325.1 (s)(4).

(a) Written Contracts. Prior to a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, the pesticide applicator or business providing these services must enter into a written contract with the owner of the property to which the commercial lawn application is to be made or the owner's agent. A written contract must:

(1) specify the approximate date or dates of application or applications; if requested by the property owner or owner's agent, the specific date or dates of the application(s) must be provided by the pesticide applicator or business and that date must be stated in the contract. The following statement must be prominently displayed in the contract: "The property owner or owner's agent may request the specific date or dates of the application(s) to be provided and, if so requested, the pesticide applicator or business must inform of the specific dates and include that date or dates in the contract.

(6) be signed by both the pesticide applicator or business providing the commercial lawn application and the owner or owner's agent of the property to which the commercial lawn application is to be made; provided, however, the signature of the owner or owner's agent is not required if the pesticide applicator or business possesses a separate document that specifically evidences the owner or owner's agent signature as acceptance of the written contract, such as a copy of a prepayment check, in the exact amount specified in the written contract for the agreed-upon services;

24. Respondent violated 6 NYCRR 325.40 by failing to specify in the lawn care contracts, the approximate time and dates of pesticide application and for failing to have the contracts signed by the property owners.

Civil Penalty

25. Regulations at ECL § 71-2901 (1) provide, *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

26. 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 FOUR THOUSAND FOUR HUNDRED DOLLARS (\$4,400) is hereby assessed against the Respondent of which \$3,000 shall be payable to the New York State Department of Environmental Conservation by money order or certified check. Payment of the civil penalty is due in accordance with the following schedule:

1. \$500.00 with the return of the signed and notarized copy of this Order;
2. \$500.00 by November 27, 2009;
3. \$500.00 by December 31, 2009;
4. \$500.00 by January 29, 2010;
5. \$500.00 by February 26, 2010;
6. \$500.00 by March 26, 2010;

The balance (\$1,400) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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, his 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. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. 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

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

X. 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.

XI. 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.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: _____, 2009
Rotterdam, New York

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

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives his rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Thaddeus Randazzo d/b/a Carefree Lawns

SIGNED: _____

TITLE: _____

DATE: _____

STATE OF _____)

)

)ss.:

COUNTY OF _____)

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On the ___ day of _____ in the year ____ 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 the effective date of this Order, Respondent shall submit to the Department, a copy of the revised/updated apprentice training documents.
2. By March 1, 2010, Respondent shall amend all lawn care contracts to include the approximate date or dates of application and the signature of the property owner or owner's agent. This may be done through the use of a mailing to all property owners, stating that the approximate date or dates of each pesticide treatment. By the property owner signing the mailing and returning it to Carefree Lawns, Respondent may accept the signature as proof of acceptance of the 2009 lawn care contract.

Compliance with the above requirements will be determined by a follow-up inspection in the future.