

**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](http://www.dec.ny.gov)



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3641

December 8, 2014

Mr. C. Erik Nichol森  
Sunny Hill Golf Course  
Thunderhart Golf Course  
352 Sunny Hill Road  
Greenville, NY 12083

Re: Order on Consent  
R4-2014-1031-165

Dear Mr. Nichol森:

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

This will also acknowledge receipt of \$1500 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

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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**  
R4-2014-1031-165

-by-

Mr. C. Erik Nichol森  
Sunny Hill Golf Course  
Thunderhart Golf Course  
352 Sunny Hill Road  
Greenville, NY 12083

Respondent

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WHEREAS:

1. The Department of Environmental Conservation ("Department") has jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides, pursuant to ECL Article 33.
2. Respondent, Mr. C. Erik Nichol森, is a Certified Applicator employed by Sunny Hill Golf Course and Thunderhart Golf Course, located at 352 Sunny Hill Road, Greenville, New York ("facilities").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On September 25, 2014, Department staff conducted an inspection of the facilities to determine their compliance with all applicable laws, rules and regulations.

### First Violation

5. Regulations at 6 NYCRR §325.25 (a) provide that “*All businesses required to register pursuant to section 325.23 of this Part shall 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.*”

6. At the time of the October 14, 2014 inspection, Department staff determined that Respondent failed to record the target organism and method of application on the June 5, 2014 daily use records. Records showed that Chlorothalonil 720SFT (EPA Reg. No. 66222-154), Trinexapac-Ethyl 1 AQ (EPA Reg No. 66222-212), and Propiconazole 14.3 (EPA Reg No. 66222-41) were applied, but failed to show the target organism and method of application for all three products. This results in six record keeping violations, which is in violation of regulations at 6 NYCRR §325.25 (a).

### Second Violation

7. Regulations at 6 NYCRR §352.2 (b) require that “*pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department.*”

8. At the time of the October 14, 2014 inspection, Sunny Hill Golf Course failed to apply the following products according to labeling directions which is in violation of regulations at 6 NYCRR §352.2 (b):

1. According to daily use records, Propiconazole 14.3 (EPA Reg No. 66222-41) was applied to the Sunny Hill greens on June 5, 2014 and again, 11 days later, on June 16, 2014. According to the Propiconazole 14.3 product label, the minimum application interval for this product is 14 days.

2. According to daily use records, Sevin SL (EPA Reg No. 432-1227) was applied to the Sunny Hill greens on five occasions in 2014, specifically May 19, 2014, June 16, 2014, July 11, 2014, September 8, 2014, and October 7, 2014. The Sevin SL label states “*Repeat applications as necessary up to a total of four times per year but not more than once every 7 days,*”

### Civil Penalty

9. ECL 33-1301 (8) 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

10. 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 violations identified in this Order, Respondent is hereby assessed a civil penalty of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) which 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, his agents, employees, and all persons, firms, corporations acting under or for him.

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, his 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 Respondent 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, his agents, his servants, his employees, his successors and his 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. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, which relate to the site, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

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

DATED: *December 8*, 2014  
Rotterdam, New York

Joseph J. Martens  
Commissioner  
New York State Department of  
Environmental Conservation

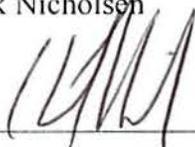
BY:

  
Keith Goertz  
Regional Director  
Region 4

CONSENT BY RESPONDENT

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

Mr. C. Erik Nicholson

SIGNED: 

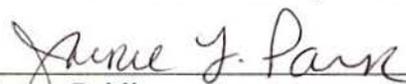
TITLE: Applicater

DATE: 12-5-2014

STATE OF New York

COUNTY OF greene ) ss.:  
)

On the 5<sup>th</sup> day of December in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Erik Nicholson 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:

JACKIE L. PARK  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01PA6280936  
QUALIFIED IN GREENE COUNTY  
COMMISSION EXPIRES MAY 13, 20 17

## **SCHEDULE OF COMPLIANCE**

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

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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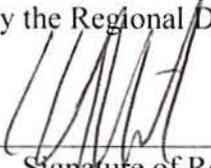
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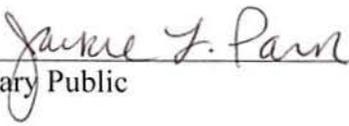
Respondent

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I, C. Erik Nichol森, being duly sworn, do depose and say that I am the Certified Applicator for Sunny Hill Golf Course and Thunderhart Golf Course, and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2014-1031-165) effective on the date signed by the Regional Director.

  
\_\_\_\_\_  
Signature of Respondent

Subscribed and sworn to before me  
On this 5<sup>th</sup> day of December 20 14

  
\_\_\_\_\_  
Notary Public

JACKIE L. PARK  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01PA6280936  
QUALIFIED IN GREENE COUNTY  
COMMISSION EXPIRES MAY 13, 20 17