

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CONFIRMATION BY EMAIL ORDER RECEIVED

November 29, 2018

William M. Wallens, Esq.
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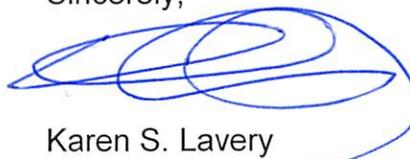
Re: Order of Consent
R4-2018-0920-178
City of Amsterdam

Dear Mr. Wallens:

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

This will also acknowledge receipt of \$1,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

ec: M. Solan



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
R4-2018-0920-178

-by-

City of Amsterdam
61 Church Street
Amsterdam, NY 12010

Respondent

WHEREAS:

Jurisdiction

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.

Facts

2. Respondent City of Amsterdam owns/operates a golf course known as Amsterdam Municipal Golf Course, located at 158 Upper VanDyke Ave, Amsterdam, New York ("site").

3. Respondent is a person as defined in ECL 33-0101 (33).

Laws and Regulations

4. Regulations at 6 NYCRR §325.2(b) provide that "*Pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department.*"

5. Regulations at 6 NYCRR §325.23(a) provide that “*Each agency that applies pesticide and each business offering, advertising or providing the services of commercial application of pesticides, either entirely or as part of the business, must register annually with the department on forms supplied by the department. Agency, as defined in section 33 of the ECL, means any State agency; municipal corporation; public authority; college, as that term is defined in the Education Law; railroad, as that term is defined in the Railroad Law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the State Transportation Corporations Law, which applies pesticides.*”

6. 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.*”

First through Third Violations

7. On August 9, 2018, Department staff inspected the site and observed that the Certified Applicator failed to follow 3 different label directions for the product *Fore 80WP* (EPA Reg No. 62719-388), specifically:

Label directions for *Fore 80WP* provide that:

- a. “*Handling of Water Soluble Packets- The enclosed packets of Fore 80WP Rainshield are water soluble. Do not remove the water soluble packets from overwrap packaging except to add directly to the spray tank... Do not open water soluble packets. Do not split packets. Partial use of packets is not allowed...*”
- b. “*This pesticide is toxic to aquatic organisms. Drift and runoff from treated areas may be hazardous to aquatic organisms in neighboring areas. Do not apply directly to water, or to areas where surface water is present, or to intertidal areas below the mean high water mark. Do not contaminate water when cleaning equipment or disposing of equipment washwaters or rinsate.*”
- c. “*Applications on golf courses or around municipal or industrial (office park) buildings and to ornamentals not grown for resale are not within the scope of the Worker Protection Standard.*
 - *Keep unprotected persons out of treated areas until sprays have dried.*”

8. The certified applicator cut open water soluble packets of *Fore 80WP* which allowed product concentrate to drift outside of the spray tank which is in violation of the label direction stated in paragraph No. 7(a) above and regulations at 6 NYCRR §325.2(b).

9. The certified applicator allowed the concentrate to drift and the wash water from cleaning spray equipment to enter surface waters which is in violation of the label direction stated in paragraph No. 7(b) above and regulations at 6 NYCRR §325.2(b).

10. The certified applicator failed to keep players off the golf course until the treated area had dried which is in violation of the label direction stated in paragraph No. 7(c) above and regulations at 6 NYCRR §325.2(b).

Fourth Violation

11. On August 9, 2018, Department staff inspected the site and determined that Respondent's Pesticide Agency Registration #09559, expired on June 30, 2009 in violation of regulations at 6 NYCRR §325.23(a).

Fifth Violation

12. On August 9, 2018, Department staff inspected the site and determined that the certified applicator failed to record EPA registration number, quantity used, and the place of application, dosage rate, method of application and target, in violation of regulations at 6 NYCRR §325.25 (a).

Civil Penalty

13. 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

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

In respect of the aforesaid violations, a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) of which ONE THOUSAND DOLLARS (\$1,000) shall be payable to the New York State Department of Environmental Conservation by money order, or check at the time this Order is signed, notarized and returned to the Department.

The balance FOUR THOUSAND DOLLARS (\$4,000) shall be suspended so long as Respondent shall comply with 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 payable to the New York State Department of Environmental Conservation by money order, or certified check.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

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. Respondent shall indemnify and hold harmless the Department, the State of New York, and his 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.

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 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 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 his obligations to obtain such formal approvals as may be required by this Order.

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

IX. Respondent shall comply with the attached Schedule of Compliance which is incorporated into this Order.

DATED: *November 29*, 2018
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 right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

City of Amsterdam

SIGNED:

Michael J. Villa

TITLE:

Mayor

DATE:

11-27-18

STATE OF New York

COUNTY OF

) ss.: Montgomery

On the 27th day of November in the year 2018 before me, the undersigned, a Notary Public in and for the State, personally appeared Michael J. Villa 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.

Laura Barquero

Notary Public

Qualified in the County of:

My Commission Expires: 12/26/2021

LAURA BARQUERO

Notary Public, State of New York

Qualified in Montgomery County

No. 01BA6369044

Commission Expires December 26, 2021

SCHEDULE OF COMPLIANCE

1. Within ninety (90) days of the effective date of this Order, Respondent shall obtain an agency registration.
2. Within one hundred eighty (180) days of the effective date of this Order, Respondent shall construct a pesticide mixing, loading and wash station. It shall be constructed on an impermeable surface and be able to contain rinse waters from cleaning application equipment or spilled concentrate.
3. Within 180 days of the effective date of this Order, Respondent shall 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 specified in this document, have been completed.

This document should be addressed and sent to:

Mark Solan
NYS Department of Environmental Conservation
Region 4
Bureau of Pesticides
1130 North Westcott Rd
Schenectady, NY 12306