

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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CERTIFIED - RETURN RECEIPT REQUESTED
7016 0340 0000 4616 5799

November 28, 2017

Mr. Jeffrey Waffle
Colonial Ridge Golf, Inc.
195 Bateman Road
Laurens, NY 12203

Re: Order on Consent
R4-2017-1018-253

Dear Mr. Waffle:

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

This will also acknowledge receipt of \$1,000, 1st of 2 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$1,000 is due on or before February 1, 2018.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: S. Whelen



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
R4-2017-1018-253

-by-

Colonial Ridge Golf, Inc.
195 Bateman Road
Laurens, NY 12203

Respondent

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 Colonial Ridge Golf, Inc., owns/operates a golf course located at 195 Bateman Road, Laurens, New York ("site").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On October 3, 2017, Department staff conducted a routine compliance inspection of the site.

First Violation

5. At the time of the inspection, Respondent's agent admitted that in 2015 and 2016, he had applied the pesticides *Prophesy 0.72 Fungicide* (EPA Reg. No. 9198-219) and *Headway* (EPA Reg. No. unknown) during which time he had not been issued a pesticide applicator certificate registration nor was he working under the direct supervision of a certified applicator.

6. ECL 33-1301(8) provides that it shall be unlawful “*for any person to engage in application of pesticides without a pesticide applicator certificate registration issued by the commissioner, except while working under the direct supervision of a certified applicator.*”

7. Respondent violated ECL 33-1301(8) in 2015 and 2015 by applying the pesticides *Prophesy 0.72 Fungicide* and *Headway* without being a certified applicator or working under the direct supervision of a certified applicator.

Second Violation

8. At the time of the inspection, Respondent’s agent admitted that at the time he applied pesticides, he did not record any information regarding what he had applied and how much was applied.

9. 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.*”

10. Respondent violated regulations at 6 NYCRR 325.25(a) by failing to keep records indicating the kind and quantity of each pesticide applied.

Third Violation

11. At the time of the inspection, Department staff determined that one of Respondent’s agents did not wear the label required personal protective equipment during the application of *Prophesy 0.72 Fungicide*, in 2017.

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

13. Respondent violated regulations at 6 NYCRR 325.2(b) by failing to follow pesticide label directions.

Civil Penalty

14. 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

15. 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

With respect to the aforesaid alleged violation, a civil penalty in the amount of TWO THOUSAND DOLLARS (\$2,000) is hereby assessed against the Respondent which shall be payable to the New York State Department of Environmental Conservation by money order, or company check at the time this Order is signed, notarized and returned to the Department.

Payment of the civil penalty is due in accordance with the following schedule:

1. \$1,000.00 with the return of the signed and notarized copy of this Order;
2. \$1,000.00 by February 1, 2018;

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.

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

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 27*, 2017
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.

Colonial Ridge Golf, Inc.
SIGNED: [Signature]
TITLE: President
DATE: 11/20/17

STATE OF New York

COUNTY OF Otsego) ss.:
)

On the 20 day of November in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared Jeffrey Waffle 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.

[Signature]
Notary Public
Qualified in the County of:
My Commission Expires: 08/02/2018

EMILY L. BOSS
Notary Public, State of New York
Reg. #01BO6226088
Qualified in Otsego County
My Commission Expires 08 / 02 / 2018

SCHEDULE OF COMPLIANCE

1. By January 30, 2019, Respondent shall submit to the Department, compliant daily use records for 2018.

2. Upon signing the 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:

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

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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of the Environmental Conservation Law
(ECL) Article 33 and
Title 6 of the Official
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New York (6 NYCRR),

-by-

Colonial Ridge Golf, Inc.
195 Bateman Road
Laurens, NY 12203

Respondent

I, Jeffrey Waffle, being duly sworn, do depose and say that I am the owner of Colonial Ridge Golf, Inc, and that I have complied with the requirements of paragraph Nos. 1-2 of the Order on Consent's Schedule of Compliance (R4-2017-1018-253) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me
On this 20 day of November, 2017



Notary Public

EMILY L. BOSS
Notary Public, State of New York
Reg. #01BO6226088
Qualified in Otsego County
My Commission Expires 08 / 02 / 2018