

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

7016 0340 0000 4616 5300

February 6, 2017

Mr. John B. Casey
Dreyer Boyajian LLP
75 Columbia Street
Albany, NY 12210

Re: Order on Consent
Cedar Tree Properties LLC
R4-2016-1129-168

Dear Mr. Casey:

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

This will also acknowledge receipt of \$2,250 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: M. Solan
M. Crew



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
R4-2016-1129-168

-by-

Cedar Tree Properties, LLC
4217 Albany Street
Albany, NY 12205

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 Cedar Tree Properties, LLC, owns/operates a pest control business located at 4217 Albany Street, Albany, New York ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On August 30, 2016 and October 11, 2016, Department staff conducted a Non-Agricultural Use Observation ("NAUO") of the facility, resulting from a pesticide application which occurred on July 19, 2016 at a residence located at 8 Coventry Lane, Clifton Park, New York ("site").
5. At the time of the July 19, 2016 application at the site, Respondent had applied to the lawn and in or around the structure, a total of five products, for the purpose of treating pests.

First Violation

6. ECL §33-0905 provides that *“Every certified applicator shall, prior to the application of a pesticide within or on the premises of a dwelling, supply the occupants therein with a copy of the information, including any warnings, contained on the label of the pesticide to be applied. Such information shall be supplied in either a written, digital or electronic format which shall be determined by the occupants of such dwelling, provided however that the certified applicator must also have a written copy of such information in his/her possession.”*

7. Prior to the application of a pesticide, Respondent and its employees failed to supply the owners/occupants of the site of the application, with a copy of the information, including any warnings, contained on the label of the pesticide, which is in violation of ECL §33-0905.

Second Violation

8. Regulations at 6 NYCRR 325.10 (a) provide that *“Each individual engaged in the commercial application of pesticides who is not a certified applicator or technician is considered a pesticide apprentice. An apprentice must be at least 16 years of age. An apprentice is required to receive 40 hours of pesticide use experience under the supervision of a certified applicator and receive a minimum of 8 hours of instruction on the requirements in section 325.18 of this Part, before such apprentice can apply general use pesticides under the off-site direct supervision of a certified applicator. It is the responsibility of the certified pesticide applicator or registered business to determine and so state that an apprentice is competent to perform applications.”*

9. Regulations at 6 NYCRR 325.10(c) provide that *“Documentation that a certified commercial pesticide applicator observed and instructed the apprentice as required in subdivision (a) of this section must be maintained by the certified commercial pesticide applicator or registered business for three years. Such documentation must be made available to the department upon request. Documentation must include the following:*
(1) name and address of apprentice;
(2) date(s) of instruction or observation;
(3) content of training and certification category;
(4) instructor's name and certification identification number; and
(5) an evaluation concluding that the apprentice is competent to perform pesticide applications.”

10. The internal application was made by Respondent's employee who was certified in Category 3A Turf and Ornamental only. The employee was not certified in category 7A structural and rodent pest control. Respondent was unable to provide apprentice training records which is in violation of regulations at 6 NYCRR 325.10(c).

Third Violation

11. Regulations at 6 NYCRR 325.25 (a) provides 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.”*

12. Respondent failed to accurately record the quantity of Merit 0.2 Plus fertilizer (EPA Registration No. 432-1349-10404) which was applied at the site on July 19, 2016, 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

With respect to the aforesaid violations, a civil penalty in the amount of TWO THOUSAND TWO HUNDRED FIFTY DOLLARS (\$2,250) which shall be payable to the New York State Department of Environmental Conservation by 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, 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.

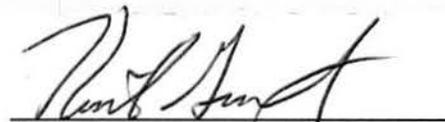
VIII. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

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

DATED: February 03 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.

Cedar Tree Properties, LLC

SIGNED: Peter Zoller

TITLE: MBR

DATE: 1/30/17

STATE OF NEW YORK)

COUNTY OF ALBANY) ss.:

On the 30th day of January in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared Peter Zoller 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.

John B. Casey
Notary Public
Qualified in the County of: ALBANY
My Commission Expires: 10/29/17

JOHN B. CASEY
Notary Public, State of New York
Qualified in Albany County
No. 02CA6065684
Commission Expires October 29, 2017

SCHEDULE OF COMPLIANCE

1. Within 6 months of the effective date of this Order, the owner of the business shall submit apprentice training documents to the Department or, in the alternative, have the employee become certified in category 7A.
2. Within 6 months of the effective date of this Order, Respondent must submit to this 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 actions 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

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-

Cedar Tree Properties, LLC
4217 Albany Street
Albany, NY 12205

Respondent

I, Peter Zoller, being duly sworn, do depose and say that I am the owner of Cedar Tree Properties, LLC, and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2016-1129-168) effective on the date signed by the Regional Director.

Signature of Respondent

Subscribed and sworn to before me
On this ____ day of _____, 20____

Notary Public