

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
7017 1070 0001 0125 8572

July 24, 2018

Ryan W. Miosek, Esq.
Miosek Law
29 Pioneer St.
P.O. Box 1290
Cooperstown, NY 13326

Re: Order on Consent
R4-2018-0615-144
Epic Landscapes, Inc.

Dear Mr. Miosek:

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

This will also acknowledge receipt of \$1,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
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
R4-2018-0615-144

-by-

Epic Landscapes, Inc.
6132 State Highway 28
Fly Creek, NY 13337,

Respondent.

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (Department) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §33-0301 of the Environmental Conservation Law (“ECL”), among other authorities. The Department 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, Epic Landscapes, Inc., is a domestic business corporation in the commercial pest control business in the State of New York.
3. Respondent is a person as defined in ECL § 33-0101(33).

VIOLATIONS

First Violation

4. On June 11, 2018, Department staff conducted a routine compliance inspection of Respondent’s facility, equipment, and pesticide application records.

5. During the June 11, 2018 inspection, Department staff observed Respondent filling a truck-mounted spray tank that contained pesticides using a garden hose without an approved anti-siphon device.

6. Regulation 6 NYCRR § 325.2(c) requires that “[a]ll equipment containing pesticides and drawing water from any water source shall have an effective anti-siphon device to prevent backflow.”

7. Respondent’s failure to use an approved anti-siphon device while filling a pesticide-containing tank is a violation of 6 NYCRR § 325.2(c).

Second Violation

8. During the June 11, 2018 inspection, Department staff learned through conversation with Respondent that Respondent provided pesticide label information to customers upon request only.

9. ECL § 33-0905(5)(a) requires 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.”

10. Respondent’s failure to provide copies of pesticide label information to customers prior to pesticide applications constitute violations of ECL § 33-0905(5)(a).

Third Violation

11. During the June 11, 2018 inspection, Department staff observed a large spray tank, a 50-gallon tank, and a backpack sprayer which to which no labels were affixed displaying the name and address of the manufacturer, registrant, or person for whom the pesticides contained therein were manufactured; the name, brand or trademark under which those pesticides were sold, or the net weight and measure of the containers’ contents.

12. ECL § 33-1301(1)(b) states, in relevant part, that except as specified in regulation authorizing alternative pesticide containers, it is unlawful to use any pesticide unless it is in the manufacturer’s unbroken immediate container, and there is affixed to such container “a label bearing (i) the name and address of the manufacturer, registrant, or person for whom manufactured; (ii) the name, brand, or trade-mark under which said article is sold; and (iii) the net weight or measure of the content[.]”

13. Respondent's failure to affix labels containing the required information to the two tanks and backpack sprayer constitute violations of ECL § 33-1301(1)(b).

Civil Penalty

14. ECL § 71-2907 (1) provides, *inter alia*, that "any person who violates any provisions of article 33 of this chapter or any rule, regulation or order issued thereunder . . . shall be liable . . . for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense."

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.** Respondent is assessed a civil penalty in the amount ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500). Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by money order, company or bank check made payable to the NYS Department of Environmental Conservation. Payment of the civil penalty shall not alter Respondent's obligation to complete performance of the terms of this Order.

II. **Binding Effect.** The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or controlled by it.

III. **Communications.** Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to:

For the Department:

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

For the Respondent:

Epic Landscapes, Inc.
Attn: Kevin Green
6132 State Highway 28
Fly Creek, NY 13337

IV. **Summary Abatement.** 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.

V. **Indemnification.** 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, its directors, officers, employees, servants, agents, successors or assigns, except to the extent that any such claims arise or result from the acts or omissions by the Department, the State of New York, or its employees.

VI. **Modification.** 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, such change to be made only upon written agreement of the parties.

VII. **Effective Date.** This Order is deemed effective on the date signed by the Department. The Department will provide Respondent a fully executed copy of this Order as soon as practicable following the effective date of this Order.

VIII. **Scope.** 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 Department or State may have against Respondent for any other violations of the ECL, rules or regulations promulgated 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; and

C. 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 waives 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.

IX. Review of Submitted Documentation.

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each submittal from Respondent pursuant to this Order to determine whether it was prepared, and whether the work performed to generate the data in the submittal was prepared, in accordance with this Order and with generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3(a). If the Department disapproves a submittal, it shall notify Respondent in writing and shall specify the reasons for disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all the stated reasons for disapproval of the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by the Department to make it approvable. If Respondent does not accept such modifications, the revised submittal will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order, or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies shall be reasonable and consistent with customary engineering standards.

X. **Access.** To ensure compliance with the ECL and this Order, Respondent shall not deny the Commissioner or his duly authorized representative access at all reasonable times to inspect Respondent's New York facilities and all pesticide records for applications within the State of New York.

XI. **Schedule of Compliance.** Respondent shall comply with the attached Schedule of Compliance.

DATED: July 23, 2018
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

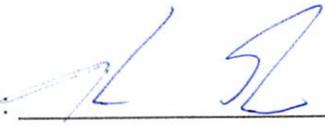
BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

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

SIGNED: 

PRINTED: Kevin Green

TITLE: President

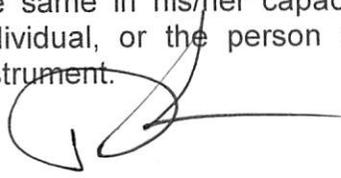
DATE: 7/13/18

STATE OF NEW YORK)
COUNTY OF Chego) ss.:

On the 13 day of July in the year 2018, before me, the undersigned,

personally appeared Kevin Green, personally known
(Full name)

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 s/he executed the same in his/her capacity, and that by his/her signature on said 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:

RYAN W. MIOSEK
Notary Public, State of New York
Reg. No. 02MI6208808
Qualified in Otsego County
Commission Expires July 27, 2021

SCHEDULE OF COMPLIANCE

- (1) **Within thirty (30) 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 comply with the Department’s regulatory program, and those actions specified in this document, have been completed, along with any supporting documentation.

- (2) Compliance with this Schedule shall not be a defense to subsequent violations.

The signed and notarized CVA should be addressed to:

Sarah Whelen
NYS Department of Environmental Conservation
Region 4
Bureau of Pest Management
1130 North Westcott Road
Schenectady, NY 12306

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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And Title 6 of the Official Compilation of Codes,
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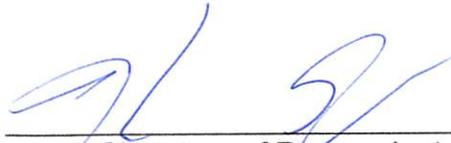
AFFIDAVIT

-by-

Epic Landscapes, Inc.
6132 State Highway 28
Fly Creek, NY 13337,

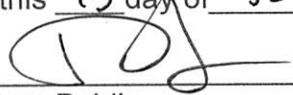
Respondent.

I, Kevin Green, being duly sworn, do depose and say
(Full Name)
that I have complied with the requirements of Paragraph No. 1 of the Order on Consent's
Schedule of Compliance (File# R4-2018-0615-144) effective on the date signed by the
Regional Director.



Signature of Respondent

Subscribed and sworn to before me
on this 15 day of July, 2018



Notary Public

RYAN W. MIOSEK
Notary Public, State of New York
Reg. No. 02MI6208808
Qualified in Otsego County
Commission Expires July 27, 2021