

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation Law
("ECL") Article 33 and
Title 6, Part 325 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York ("6 NYCRR")

ORDER ON CONSENT

File No. R4-2008-0617-93

- by -

Chuck Guillaume d/b/a
Forever Green
83 Jones Drive
Schenectady, NY 12309

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (DEC) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §3-301 of the Environmental Conservation Law (ECL), among other authorities. In particular, DEC 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, Chuck Guillaume d/b/a Forever Green, 83 Jones Drive, Schenectady, New York operates a landscaping business.

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

4. On June 13, 2008, Department staff observed Respondent's company vehicle containing pesticides and pesticide equipment, without registration stickers, in the Home Depot parking lot, 2500 Cambridge Road, Schenectady, New York ("site").

First Violation

5. On June 13, 2008, Department staff observed Respondent's vehicle at the site with pesticides and pesticide application equipment in a commercial vehicle and the vehicle lacking the proper registration stickers.

6. Regulations at 6 NYCRR 325.26(a) provide that:

(a) Each certified commercial applicator shall be provided by the department with a set of two numbered stickers for each piece of commercial application equipment. These stickers shall be prominently displayed on opposite sides of each piece of such equipment or on opposite sides of each vehicle used in transporting such equipment except however:

(1) Small pieces of hand held or portable equipment such as two and one-half gallon sprayers or back pack mistblowers do not require such stickers and;

(2) noncommercial-type vehicles transporting small quantities of pesticides or portable pesticide equipment are not required to display the stickers if such display will change the rating of the vehicle and thereby limit its access to certain transportation routes normally used.

7. Respondent violated regulations at 6 NYCRR 325.26(a) by failing to have registration stickers on the commercial vehicle transporting pesticides.

Second Violation

8. Regulations at 6 NYCRR 325.7 provide that (a) An individual must not engage in the commercial application of pesticides, the private application of restricted use pesticides, or the sale of restricted use pesticides, unless that individual is a certified applicator and possesses, on their person, a valid identification card issued by the department and makes such identification card available upon request of this department. Full certification is not required for:

I.(1) a certified commercial technician, hereinafter referred to as "technician", using general use pesticides;

(2) a technician using pesticides under the direct supervision of a certified commercial pesticide applicator, as required in subdivision 325.7(d);

(3) a commercial pesticide apprentice, hereinafter referred to as "apprentice", using pesticides under the direct supervision of a certified commercial pesticide applicator, as required in subdivision 325.7(d);

(4) an individual using restricted use pesticides under the direct supervision of a certified private pesticide applicator, as required in subdivision 325.7(d), on agricultural commodities located on property owned or leased by the certified private pesticide applicator or the applicator's employer;

(5) an individual using antimicrobial agents, except where such pesticides have been classified as restricted use pesticides or are used in the pulp and paper process or cooling towers. In these cases, the requirements of paragraphs (1), (2) or (3) of this subdivision apply;

(6) an individual using aquatic pesticides purchased through a purchase permit, as provided in Title 6 NYCRR Part 326.8, in a body of water measuring one acre or less in size which lies exclusively on their property and has little or no outflow to any surface waters of the State

classified pursuant to Article 17 of New York State Environmental Conservation Law;

(7) a technician engaged in the application of microbial pesticides by ground equipment in or over any surface waters of the State classified pursuant to Article 17 of New York State Environmental Conservation Law. However, such individual must successfully complete a department-approved, 30-hour certification course related to this type of application;

(8) a doctor of veterinary medicine or a veterinary technician working under the veterinarian's direct supervision, licensed to practice within New York State. Such exemption from certification requirements applies only when engaged in the use of general use pesticides:

(i) on animals that are in the veterinarian's care within the veterinary facility;

(ii) on inanimate objects, surfaces, and areas within their veterinary establishments.

(9) an individual engaged in the residential application of pesticides.

9. Respondent violated regulations at 6 NYCRR 325.7 by applying pesticides commercially without the required certification or working under a certified applicator.

10. Regulations at ECL § 71-2901 (1) provide, *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

11. Respondent has affirmatively waived his 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:

Civil Penalty

I. In respect to the aforesaid violation, a civil penalty in the amount of TWO THOUSAND DOLLARS (\$2,000) is hereby assessed against the Respondent of which \$1,000 shall be payable to the New York State Department of Environmental Conservation by money order or certified check. Payment of the civil penalty is due in accordance with the following schedule:

1. \$200.00 with the return of the signed and notarized copy of this Order;
2. \$200.00 by September 1, 2008;
3. \$200.00 by October 1, 2008;
4. \$200.00 by November 3, 2008
5. \$200.00 by December 1, 2008

The balance (\$1,000) shall be suspended so long as Respondent shall comply with the 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 paid by certified or bank check made payable to the NYS DEC.

II. The provisions of this Order shall be deemed to bind Respondent, his agents, employees, and all persons, firms, corporations acting under or for them.

III. 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.

IV. 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, his directors, officers, employees, servants, agents, successors or assigns.

V. 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.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

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

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Pesticide Specialist
New York State Department of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. 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 Respondents, their agents, their servants, their employees, their successors and their 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 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.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: _____, 2008
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

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

Chuck Guillaume d/b/a Forever Green

DATE: _____

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

On the ____ day of _____ in the year 200_, before me, the undersigned, personally appeared _____, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York

SCHEDULE OF COMPLIANCE

1. In the event that the Respondent elects to discontinue commercial pesticide applications, Respondent shall submit to the Department within two weeks of the effective date of this Order, a notarized letter stating that he has ceased and desisted all commercial pesticide applications. In the event that Respondent elects to continue commercial pesticide applications, Respondent shall comply with paragraphs 2, 3 and 4 below.
2. Within 6 months of the effective date of this Order, Respondent shall submit to the Department, an application, appropriate fees, and proof of insurance for business registration.
3. Within 6 months of the effective date of this Order, Respondent or an employee of Respondent must become a certified applicator/technician.
4. Respondent must cease all pesticide applications until a business registration certificate and applicator/technician certification is obtained.