

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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www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED  
7016 0340 0000 4616 5973

January 26, 2018

Christian Frese  
Frese's L.L.C.  
32 Brookman Avenue  
Delmar, NY 12054

Re: Order on Consent  
R4-2017-1129-285

Dear Mr. Frese:

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

This will also acknowledge receipt of \$500 1st of 2 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$500 is due on or before March 30, 2018.

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”),

-by-

**ORDER ON CONSENT**  
R4-2017-1129-285

Frese’s L.L.C.  
32 Brookman Avenue  
Delmar, NY 12054,

Respondent.

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**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, Frese’s L.L.C., is a domestic limited liability company engaged in the pesticide application business in the State of New York.
3. Respondent is a person as defined in ECL § 33-0101(33).

**VIOLATION**

4. On September 27, 2017, Department staff conducted a routine compliance inspection of a pesticide application business unrelated to Respondent.
5. During this inspection, Department staff discovered that Respondent had entered into written commercial lawn application contracts with customers, although Respondent contracted the unrelated business to apply the pesticides commercially on its behalf.
6. Department staff subsequently determined that Respondent is not registered with

the Department as a commercial pesticide application business,

7. Regulation 6 NYCRR § 325.23(a) requires, in relevant part, that, “[e]ach 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.”

8. Respondent’s failure to register with the Department as a commercial pesticide business while entering into commercial lawn application contracts with customers and contracting another business to apply pesticides on its behalf is a violation of 6 NYCRR § 325.23(a).

### **Civil Penalty**

9. ECL § 71-2907(1) 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**

10. 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 of ONE THOUSAND DOLLARS (\$1,000). The civil penalty shall be paid by company or bank/cashier’s check made payable to the NYS Department of Environmental Conservation. Payment of the civil penalty is due according to the following payment schedule:

1. \$500 with the return of the signed and notarized copy of this Order;
2. \$500 by Friday, March 30, 2018.

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:

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

For the Respondent:

Frese's L.L.C.  
c/o Christian Frese  
32 Brookman Avenue  
Delmar, NY 12054

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. **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.

X. **Termination.** The Order shall terminate upon Respondent's complete compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: January 25, 2018  
Rotterdam, New York

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
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Keith Goertz  
Regional Director  
Region 4

