

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3795

October 21, 2013

James Gordon
318 2nd Street
Troy, NY 12180

Re: Order on Consent
R4-2013-0820-107

Dear Mr. Gordon:

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

This will also acknowledge receipt of \$1000 the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: B. Pendell

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
R4-2013-0820-107

-by-

James Gordon
318 2nd Street
Troy, NY 12180

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 James Gordon, of 318 2nd Street, Troy, New York, is a certified pesticide technician (T4865586) employed by Cap Com Federal Credit Union.
3. Respondent is a person as defined in ECL §33-0101 (33).
4. On July 3, 2013, Respondent applied a pesticide product to a commercial property located at 341 New Karner Road, Albany, New York ("site").

First Violation

5. At the time of the July 3, 2013 application, the applicator was applying Speed Zone Lawn Weed Killer (EPA Reg. # 2217-864), the label on which requires the applicator to wear a long sleeved shirt, long pants, shoes, socks and chemical resistant gloves.
6. Regulations at 6 NYCRR 325.2 (b) provide that "*pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department.*"

7. Respondent violated 6 NYCRR 325.2 (b) by failing to don the label required personal protective equipment when mixing, loading or applying pesticides.

Second Violation

8. At the time of the July 3, 2013 application, Respondent was not in possession of the Speed Zone Lawn Weed Killer label.

9. Regulations at 6 NYCRR 325.2 (d) provide that “*during pesticide use, the certified applicator, certified technician or commercial pesticide apprentice must have in their custody a copy of the label for each pesticide being used. The certified applicator, certified technician or commercial pesticide apprentice must make each label available for inspection upon request of the department.*”

10. Respondent violated regulations at 6 NYCRR 325.2 (d) by failing to be in possession of the product label at the time of application.

Third Violation

11. At the time of the August 6, 2013 application, Respondent’s pesticide applicator did not post visual notification markers around the perimeter of the treated areas prior to the application.

12. Regulations at 6 NYCRR 325.40 (h)(2) provide that visual notification markers “*must be placed by the pesticide applicator or business making the commercial lawn application prior to the application and remain posted for a period of not less than 24 hours following the application.*”

13. Respondent violated regulations at 6 NYCRR 325.40 (h)(2) by failing to post visual notification markers around the perimeter of the treated areas prior to the application.

Civil Penalty

14. ECL §71-2901 (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

15. 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:

I. With respect to the aforesaid violation, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) is hereby assessed against the Respondent and 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:

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

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, his 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, his agents, his servants, his employees, his successors and his 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.

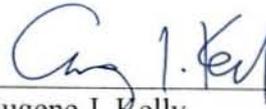
VII. The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed 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.

DATED: 10/18, 2013
Rotterdam, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Eugene J. Kelly
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within 30 days of signing this Order, Respondent must submit to the Department, a signed and notarized Compliance Verification Affidavit (“CVA”) (enclosed) certifying that 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:

Brayton Pendell
NYS Department of Environmental Conservation
Bureau of Pesticides Management
1130 North Westcott Rd
Schenectady, NY 12306

COMPLIANCE VERIFICATION AFFIDAVIT

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

-by-

James Gordon
318 2nd Street
Troy, NY 12180

Respondent

I, James Gordon, being duly sworn, do depose and say that I have complied with the
requirements of paragraph No 1 of the Order on Consent's Schedule of Compliance
(R4-2013-0820-107) effective on the date signed by the Regional Director,


Signature of Respondent

Subscribed and sworn to before me
On this 18th day of October, 2013



Notary Public

My Comm. Expires March 25, 2015
Reg. No. 4879173
Residing in Saratoga County
Notary Public, State of New York
RICHARD E. OSTROV