

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 5782

October 13, 2017

Mr. Anthony Rappazzo
Hidden Meadow Golf Course, Inc.
138 Smultz Road
Glenmont, NY 12077

Re: Order on Consent
R4-2017-0908-241

Dear Mr. Rappazzo:

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

ec: M. Leidy



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
R4-2017-0908-241

-by-

Hidden Meadow Golf Course, Inc.
138 Smultz Road
Glenmont, NY 12077

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 Hidden Meadow Golf Course, Inc., owns/operates a golf course located at 138 Smultz Rd, Glenmont, New York ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).

Facts

4. On August 24, 2017, Department staff conducted a Non-Agricultural Use Observation ("NAUO") Inspection for the purpose of determining Respondent's compliance with all applicable laws and regulations.

5. Department staff inspected the pesticide storage area. Respondent advised Department staff that the area is not temperature controlled, but that in the winter, any excess pesticides are moved from that area to one inside the main building which is heated. Most of the products stored what appeared to be in their original containers, however what appeared to be a Styrofoam cooler with no service container label, which contained a dark green powder, was also on the floor of the storage area. There was a strong chemical odor in the storage area. Upon inquiry, Respondent stated that that the green powder was Insecticide III (9198-167), which had been left over from a previous application. Department staff requested a label for Insecticide III and was provided with one.

First Violation

6. §33-1301(1)(b)(1) provides that:

"It shall be unlawful:

1. For any person to distribute, sell, offer for sale or use within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(b) Except as specified in regulation authorizing alternative pesticide containers, any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, 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; subject, however, to such reasonable variations as the commissioner may permit."

7. Respondent violated §33-1301(1)(b)(1) by failing to affix a label containing the information required per the i-iii in paragraph 6 above, to the Styrofoam cooler used to store leftover Insecticide III in pesticide storage area.

Civil Penalty

8. 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

9. 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 ONE THOUSAND DOLLARS (\$1,000) 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: 10/2 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.

Hidden Meadow Golf Course, Inc.

SIGNED: Anthony Rappazzo

TITLE: Superintendent

DATE: 10/10/17

STATE OF New York

COUNTY OF Albany) ss.:

On the 10 day of October in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared Anthony Rappazzo 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.

[Signature]

Notary Public

Qualified in the County of:
My Commission Expires:

ALYSIA D. MILLER
Notary Public, State of NY
No. 01M16217955
Qualified in Rensselaer County
Commission Expires 2/22/18

SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of the Order, Respondent shall submit to the Department, photographs of the pesticide storage area which show that all pesticides are kept in their original containers or alternative pesticide containers bearing labels that include:
 - (1) The name and address of the manufacturer, registrant, or person for whom manufactured;
 - (2) The name, brand, or trademark under which said article is sold; and
 - (3) The net weight or measure of the content; subject, however, to such reasonable variations as the commissioner may permit.

2. Respondent shall adhere to all label instructions regarding the use and storage of pesticides, including the use of all required personal protective equipment ("PPE").

3. Upon signing the 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:

Michael Leidy
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

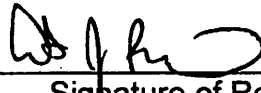
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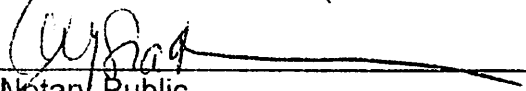
Respondent

I, Anthony Rappazzo, being duly sworn, do depose and say that I am the superintendent of Hidden Meadow Golf Course, Inc., and that I have complied with the requirements of paragraph Nos. 1 and 2 of the Order on Consent's Schedule of Compliance (R4-2017-0908-241) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me
On this 10 day of October, 2017


Notary Public

ALYSIA D. MILLER
Notary Public, State of NY
No. 01M16217955
Qualified in Rensselaer County
Commission Expires 2/22/18