

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 7601

November 8, 2017

Thomas J. Butcher, Owner
Homestead Tree Care
3 Jarmann Way
Castleton-on-Hudson, NY 12033

Re: Order on Consent
R4-2017-1020-254

Dear Mr. Butcher:

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

This will also acknowledge receipt of \$3,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
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, Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of
New York ("6 NYCRR"),

ORDER ON CONSENT
R4-2017-1020-254

-by-

Homestead Tree Care, LLC
3 Jarmann Way
Castleton-on-Hudson, NY 12033,

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 §3-301 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, Homestead Tree Care, LLC, is a limited liability company engaged in the pesticide application business in the State of New York.
3. Respondent is a person as defined in ECL § 33-101(33).

VIOLATIONS

Application of Pesticides Not Prescribed by Product Labels

4. On September 14, 2017, Department staff conducting a routine inspection discovered, upon a review of Respondent's records, that Respondent had, on June 10, 2015, engaged in the application of pesticide to treat a pest not listed on the product label as a target pest.

5. Department staff discovered further that on July 31, 2017, a separate instance occurred where Respondent applied a pesticide to treat a pest not listed on the product label as a target pest.

6. Respondent's applications of the subject pesticides are violations of regulation 6 NYCRR 325.2(b).

Failure to Include an Applied Pesticide on a Commercial Application Contract

7. On October 3, 2017, Department Staff conducted a follow-up inspection of Respondent's records and discovered that on July 31, 2017, Respondent applied a pesticide which was not included as a pesticide to be applied on the corresponding Commercial Application Contract ("Contract").

8. Respondent's failure to specify the approximate date of application of a pesticide on the corresponding Contract is a violation of regulation 6 NYCRR 325.40(a)(1).

9. Respondent's failure to include the brand name of an applied pesticide and the generic name of its active ingredients on the corresponding Contract is a violation of regulation 6 NYCRR 325.40(a)(4)(i).

10. Respondent's failure to include any warnings pertinent to the protection of humans, animals, or the environment that appear on the label(s) of (an) applied pesticide(s) on the corresponding Contract is a violation of regulation 6 NYCRR 325.40(a)(4)(ii).

Civil Penalty

11. 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

12. 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 THREE THOUSAND DOLLARS (\$3,000). 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 bank check made payable to the NYS DEC.

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:

Department of Environmental Conservation
Region 4
Attn: Michael Leidy
1130 North Westcott Road
Schenectady, NY 12306

For the Respondent:

Homestead Tree Care, LLC
c/o Thomas J. Butcher
3 Jarmann Way
Castleton-on-Hudson, NY 12033

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.

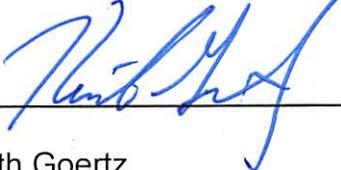
IX. For the purpose of ensuring compliance with the ECL and this Order, Respondent shall not deny the Commissioner or his duly authorized representative access at all reasonable times to inspect Respondent's New York facilities and all pesticide records for applications within the State of New York.

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

XI. **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: November 7, 2017
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

By:  _____

Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

- (1) Effective from the date of this Order, Respondent shall:
 - a. Adhere to all pesticide label instructions, including those defining which target organisms may be treated with that pesticide product; and
 - b. Include all pesticides to be applied during each commercial lawn application in the respective commercial application contract into which Respondent enters with a customer.

- (2) Upon signing the Order, Respondent must submit to the 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.

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.

Homestead Tree Care, LLC
Authorized Representative

SIGNED: Thomas J Butcher

TITLE: owner/partner

DATE: 10/30/17.

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

On the 30th day of October in the year 2017, before me, the undersigned, personally appeared Thomas J Butcher, personally known
(Full name)

to me who, being duly sworn, did depose and say that he/she/they reside at:
3 Jarmann Way Castleton-On-Hudson NY 12033
(Full mailing address)

and that he/she/they is (are) the owner/partner
(Corporate officer or attorney in fact duly appointed)
of Homestead Tree Care, LLC
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Carol N Van Denburgh
Notary Public

Qualified in the County of:
My Commission Expires:
10/15/21

CAROL N. VAN DENBURGH
Notary Public - State of New York
No. 01VA6291251
Qualified in Columbia County
My Commission Expires October 15, 2017
2021

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),

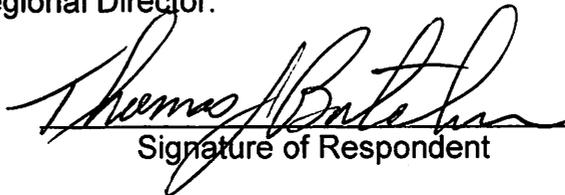
AFFIDAVIT

-by-

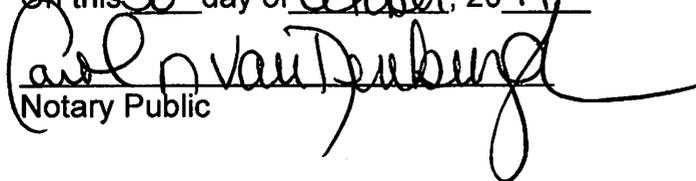
Homestead Tree Care, LLC
3 Jarmann Way
Castleton-on-Hudson, NY 12033,

Respondent

I, Thomas J. Butcher, being duly sworn, do depose and say that I am the owner of Homestead Tree Care, LLC, and that I have complied with the requirements of paragraph Nos. 1-2 of the Order on Consent's Schedule of Compliance (R4-2017-1020-254) effective on the date signed by the Regional Director.


Signature of Respondent

Subscribed and sworn to before me
On this 30 day of October, 2017


Notary Public

CAROL N. VAN DENBURGH
Notary Public - State of New York
No. 01VA6291251
Qualified in Columbia County
My Commission Expires October 15, 2017 ~~2021~~