

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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CERTIFIED - RETURN RECEIPT REQUESTED
7016 0340 0000 4616 5812

November 30, 2017

Donald Zee, P.C.
1 Winners Circle
Suite 140
Albany, NY 12205

Re: Order on Consent
R4-2017-1027-263
JNC Management Company, LLC

Dear Mr. Zee:

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

This will also acknowledge receipt of \$1,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

cc: 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
R4-2017-1027-263

-by-

JNC Management Company, LLC
2 Tower Place
Albany, NY 12203,

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 §33-301 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, JNC Management Company, LLC, owns and operates a pesticide application business in the State of New York.
3. Respondent is a person as defined in ECL § 33-0101(33).

VIOLATIONS

Application of Pesticide without Required Certification

4. ECL § 33-0905(1) provides that: "Any person who engages in the commercial or private application of pesticides ... shall be certified by the commissioner except as

provided in subdivision two of this section. No certification shall be valid unless the certified person also holds a valid identification card issued by the commissioner.”

5. On August 8, 2017, Department staff responding to complaints discovered, through direct conversation with Respondent and upon a review of Respondent’s records, that on July 12, 2017 and July 14, 2017, Respondent’s employee applied the pesticide RoundUp RTU Weed and Grass Killer III (EPA#71995-33) at several locations on the grounds at 52 Washington Street, Rensselaer, New York.

6. These applications constitute commercial application of pesticide; however, Respondent’s employee did not possess the certification or certification identification card required by the ECL to make such applications.

7. Respondent’s application of pesticide without the requisite certification or certification identification card is a violation of ECL § 33-0905(1).

Failure to Register as a Pesticide Business
Prior to Commercial Application of Pesticide

8. ECL § 33-0907(1) provides that: “Any pesticide business or agency as defined in this article shall register with the commissioner.”

9. On August 8, 2017, Department staff also discovered that Respondent was not registered with the Department commissioner as a pesticide business when the July 12 and July 14, 2017, pesticide applications were made.

10. Respondent’s application of pesticide as part of its business, without registering as a commercial pesticide business, is a violation of ECL § 33-0907(1).

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 TWO THOUSAND DOLLARS (\$2,000). ONE THOUSAND DOLLARS (\$1,000) of the civil penalty shall be paid upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by company or bank check made payable to "NYS DEC." Payment of this portion of the civil penalty shall not alter Respondent's obligation to complete performance under the terms of the Order.

The balance of ONE THOUSAND DOLLARS (\$1,000) is suspended and shall not be payable, provided that Respondent fully and timely complies with the Schedule of Compliance appended to this Order, and provided that Respondent commits no further violations of ECL Article 33 or 6 NYCRR Part 325, pertaining to pesticides, for the duration of this Order.

Should Respondent fail to so comply, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent, in addition to appropriate penalties for any further violations of this Order.

II. **Binding Effect.** The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, or 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:

Joseph Caranfa, Owner
JNC Management Company, LLC
2 Tower Place
Albany, NY 12203

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. **Schedule of Compliance.** Respondent shall comply with the terms of the attached Schedule of Compliance, which is incorporated into this Order and shall be enforceable under it.

XI. **Termination.** The Order shall terminate two years after its Effective Date, upon Respondent's full compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: November 29, 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) Within thirty days (30) days of the effective date of this Order, Respondent shall submit to the Department a written statement attesting that JNC Management Company, LLC, will not engage in the commercial application of any pesticides, unless and until Respondent:

- i) obtains proper registration through the Department as a pesticide business; and
- ii) ensures that any employee who applies pesticides possesses commercial pesticide applicator certification in the appropriate category.

(2) 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.

All documentation should be addressed and sent to:

Michael Leidy
NYS Department of Environmental Conservation
Region 4
Bureau of Pesticides
1130 North Westcott Road
Schenectady, NY 12306

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-

JNC Management Company, LLC
2 Tower Place
Albany, NY 12203,

Respondent

I, Joseph Caranfa, being duly sworn, do depose and say that I am the owner of JNC Management Company, LLC, and that I have complied with the requirements of Paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2017-1027-263) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me

On this 20 day of November, 2017



Notary Public

ANDREW BRICK
Notary Public, State of New York
No. 02BR6032002
Qualified in Albany County
Commission Expires November 03, 2017