

**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  
7015 0640 0005 8292 9884

August 29, 2016

Mr. Lee Warren  
Lake Onderdonk Improvement Association, Inc.  
3045 Jeanne Drive  
Schenectady, NY 12303

Re: Order on Consent  
R4-2016-0617-114

Dear Mr. Warren:

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

This will also acknowledge receipt of \$200 the civil penalty pursuant to Paragraph I.

Sincerely,

*Karen S. Lavery* 

Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: M. Solan

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**  
R4-2016-0617-114

-by-

Lake Onderdonk Improvement Association, Inc.  
3045 Jeanne Drive  
Schenectady, NY 12303

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, Lake Onderdonk Improvement Association, Inc. is an organization formed for the purpose of helping to maintain Lake Onderdonk which is located in Berne, New York ("site").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. Lake Onderdonk Improvement Association, Inc. has an Article 15 permit (Permit #4-0138-00014/003) to apply Aquathol Super K and Copper Sulfate to the lake for the 2016 season. Permit condition 21 provides that "*posting of warning signs for Aquathol K- The shoreline, and all public access sites including public boat launch sites, shall be posted no more than fifty (50) feet apart, with suitable signs bearing the water use restrictions prior to treatment and for the required number of days thereafter or depending upon the assay results.*"
5. On May 31, 2016, Lake Onderdonk was treated with Aquathol Super K for the control of curly leaf pondweed.
6. On June 3, 2016, Department staff inspected the site and observed the signs posted along the shoreline advising of the pesticide application. The average distance between the markers was 249 feet.

7. Regulations at 6 NYCRR 327.5 provides that "*Failure to abide by the terms of the permit or the application of chemicals without a permit shall be deemed to be in violation of the provisions of article 17 of the Environmental Conservation Law.*"

8. Respondent violated condition 21 of its Article 15 permit by failing to post warning signs for Aquathol Super K at a distance of no more than 50 feet apart. The violation of a permit condition is a violation of regulations at 6 NYCRR 327.5.

#### Civil Penalty

9. ECL 33-1301 (8) 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. With respect to the aforesaid violations, a civil penalty in the amount of TWO HUNDRED DOLLARS (\$200) 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.

X. This Order on Consent, including the Schedule of Compliance requirements, shall terminate six months after the effective date of this Order on Consent.

DATED: *August 29*, 2016  
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.

Lake Onderdonk Improvement Association, Inc.

SIGNED: *Lee E. Warren*  
TITLE: Treasurer  
DATE: 8/26/16

STATE OF New York

COUNTY OF Schenectady ) ss.:

On the 26 day of August in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Lee E. Warren 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.

*April D Englehart*

Notary Public  
Qualified in the County of:  
My Commission Expires:

April D Englehart  
01EN6014779  
Notary Public, State of New York  
Qualified in Schenectady County  
My commission expires OCTOBER 19th, 2018



## **SCHEDULE OF COMPLIANCE**

1. 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:

Mark Solan  
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

---

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-

Lake Onderdonk Improvement Association, Inc.  
3045 Jeanne Drive  
Schenectady, NY 12303

Respondent

---

I, Lee Warren, being duly sworn, do depose and say that I am the treasurer on behalf of the Lake Onderdonk Improvement Association, Inc. and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2016-0617-114) effective on the date signed by the Regional Director.

  
Signature of Respondent

Subscribed and sworn to before me  
On this 26 day of August, 2016

  
Notary Public

April D Englehart  
01EN6014779  
Notary Public, State of New York  
Qualified in Schenectady County  
My commission expires OCTOBER 19th, 2018

