

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

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

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Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3856

November 6, 2013

Thomas Bucci
Lawn Dwag, Inc.
25 Walker Way
Ste 3B
Albany, NY 12205

Re: Order on Consent
R4-2013-0712-94

Dear Mr. Bucci:

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

This will also acknowledge receipt of \$3,200 of the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: S. Brandon

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
R4-2013-0712-94

-by-

Lawn Dawg, Inc.
25 Walker Way
Ste 3B
Albany, NY 12205

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, Lawn Dawg, Inc., 25 Walker Way, Ste 3B, Albany, New York, owns and operates a commercial lawn care company ("facility").
3. Respondent is a person as defined in ECL §33-0101 (33).
4. On June 26, 2013, Respondent's employee commercially applied pesticides to a residential lawn located at 25 Springfield Drive, Voorheesville, New York ("site").

First Violation

5. At the time of the inspection, the applicator was applying Merit 0.2 Plus Turf Fertilizer (EPA Reg. # 432-1349-82757), the label on which requires the applicator to wear shirt and pants, gloves, shoes and socks when applying the product. The applicator was also applying Quincept (EPA Reg # 228-531), the label on which requires mixers, loaders and applicators to wear a long-sleeved shirt and long pants, shoes, socks, and chemical resistant gloves. At the time of the inspection, the applicator was not in possession of any 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 and Third Violations

8. Department staff reviewed the business’s commercial lawn care contract for the treated property located at 25 Springfield Dr., Voorheesville, New York, and determined that the contract failed to identify the total number of commercial lawn applications provided.

9. Department staff reviewed the business’s commercial lawn care contract for the treated property located at 25 Springfield Dr., Voorheesville, New York, and determined that the contract did not contain the signature of the pesticide applicator or business providing the commercial lawn application.

10. Regulations at 6 NYCRR 325.40 provide that “*This section shall be effective on January 1, 2004. The requirements of this section pertain to any commercial lawn application of a pesticide except for the application of a pesticide to a right-of-way (unless required pursuant to paragraph 325.1 (s)(4).*”

(a) Written Contracts. Prior to a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, the pesticide applicator or business providing these services must enter into a written contract with the owner of the property to which the commercial lawn application is to be made or the owner's agent. A written contract must:

(6) be signed by both the pesticide applicator or business providing the commercial lawn application and the owner or owner's agent of the property to which the commercial lawn application is to be made; provided, however, the signature of the owner or owner's agent is not required if the pesticide applicator or business possesses a separate document that specifically evidences the owner or owner's agent signature as acceptance of the written contract, such as a copy of a prepayment check, in the exact amount specified in the written contract for the agreed-upon services;

11. Respondent violated regulations at 6 NYCRR 325.40 (a)(6) by failing to identify in the business's commercial lawn care contract, the total number of commercial lawn applications provided as well as failing to contain the signature of the pesticide applicator or business providing the commercial lawn application.

Fourth Violation

12. At the time of the inspection, Department staff observed that Respondent's applicator had failed to post visual notification markers at the common points of entry of the treated property.

13. Regulations at 6 NYCRR 325.40 (h)(5) provide that visual notification markers: *"must also be placed at common points of entry adjacent to the treated areas, including but not limited to, driveways and walkways."*

14. Respondent violated regulations at 6 NYCRR 325.40 (h)(5) by failing to post visual notification markers at the common points of entry of the site.

Civil Penalty

15. 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

16. 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 of the aforesaid violation, a civil penalty in the amount of THREE THOUSAND TWO HUNDRED DOLLARS (\$3,200) shall be payable to the New York State 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 its 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.

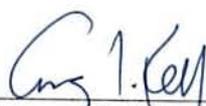
VII. The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph X 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 its 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: 4/5, 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 this 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:

Ms. Selinda Brandon
NYS Department of Environmental Conservation
Bureau of Pesticides Management
1130 North Westcott Rd
Schenectady, NY 12306