

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 5874

December 14, 2017

Dave Hostig
Normanskill Creek LLC
150 Salisbury Road
Delmar, NY 12054

Re: Order on Consent
R4-2017-1027-264

Dear Mr. Hostig:

Enclosed please find a copy of the fully executed Order on Consent referenced above. In light of the execution of this Order, the Department hereby withdraws its Notice of Hearing and Complaint, dated December 4, 2017.

This will also acknowledge receipt of the \$1,250 civil penalty, pursuant to Paragraph I of the Order.

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
R4-2017-1027-264

-by-

Normanskill Creek, LLC
150 Salisbury Road
Delmar, NY 12054,

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, Normanskill Creek, 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 § 33-0101(33).

VIOLATIONS

Failure to Maintain Accurate Application Records

4. On September 29, 2017, Department staff conducting a routine inspection at the Normanside Golf Course discovered, upon a review of Respondent's records, that Respondent failed to specify a target pest for pesticide applications made on May 21, 2015; May 22, 2015, and September 19, 2017.

5. Department staff further discovered that Respondent failed to record dosage information for all pesticide applications for the three-year period 2015 through 2017.

6. Respondent's failures to record the required target pest and dosage information are violations of regulation 6 NYCRR § 325.2(c).

Civil Penalty

7. 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

8. 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 ONE THOUSAND, TWO HUNDRED FIFTY DOLLARS (\$1,250). 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 company or bank check made payable to the Department.

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:

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

For the Respondent:

Normanskill Creek, LLC
c/o David Hostig
150 Salisbury Road
Delmar, NY 12054

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 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~~ ^{December} 14, 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 immediately, Respondent shall adhere to all pesticide label instructions regarding the use and storage of pesticides, including the dosage rate.
- (2) Within forty-five (45) days of the effective date of the Order, Respondent shall submit to the Department a photocopy of all complete pesticide application records from September 30, 2017 through October 31, 2017. These records shall contain all elements required by regulations, including the dosage rate and target organism.
- (3) 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.

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
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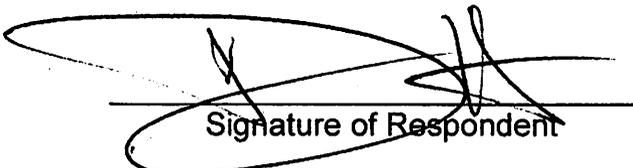
AFFIDAVIT

-by-

Normanskill Creek, LLC
150 Salisbury Road
Delmar, NY 12054,

Respondent

I, David Hostig, being duly sworn, do depose and say that I am the owner of Normanskill Creek, LLC, and that I have complied with the requirements of Paragraph Nos. 1-2 of the Order on Consent's Schedule of Compliance (R4-2017-1027-264) effective on the date signed by the Regional Director.


Signature of Respondent

Subscribed and sworn to before me
On this 30TH day of NOVEMBER, 20 17


Notary Public

WILLIAM J. LYNCH
Notary Public, State of New York
Qualified in Albany County
Reg. No. 01LY6334977
Commission Expires December 28, 20 19