

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

9590 9403 0269 5155 5531 57

June 30, 2015

Mr. Kevin McCarty
Old Saratoga Associates, LLC
7 Canfield Ct
Gansevoort, NY 12831

Re: Order of Consent
R4-2015-0529-62

Dear Mr. McCarty:

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,



Karen Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: S. Brandon



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

ORDER ON CONSENT
R4-2015-0529-62

-by-

Old Saratoga Associates, LLC
7 Canfield Ct
Gansevoort, NY 12831

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, Old Saratoga Associates, LLC., is a business which provides aquatic weed control, located at 7 Canfield Ct, Gansevoort, NY ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On May 5, 2015, the Department issued an Aquatic Vegetation Control Permit (AV-4-15-06) for Cutrine Plus, to Loudonwood East HOA. The permit allowed the product to be applied at a rate of 0.6 gallons/acre foot. The permit allowed for the treatment of two ponds totaling 1.06 acres.
5. On May 9, 2015, Respondent made an algaecide application to a pond located at one of its property's ponds located at Loudonwood East Apartments, Menands Road and Barry Court, Loudonville, New York ("site"), resulting in a fish kill.
6. On May 21, 2015, Department staff conducted a Pesticide Applicator/Business/Use Inspection.

7. At the time of the inspection, Department staff determined that Respondent applied a total of one gallon of Cutrine Plus to the two ponds identified in the permit application. Respondent treated the entire water bodies for both ponds.
8. The Cutrine Plus label states that “*No more than ½ of the water body may be treated at one time.*”
9. 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.*”
10. Respondent violated regulations at 6 NYCRR §325.2(b) by failing to comply with label directions in the application of Cutrine Plus at the site on May 9, 2015.

Civil Penalty

11. 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

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. With respect of the aforesaid alleged violations, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) 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 it.
- 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 Respondent 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 its obligations to obtain such formal approvals as may be required by this Order.

VIII. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, which relate to the site, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

DATED: *June 30*, 2015
Rotterdam, New York

Joseph J. Martens
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.

Old Saratoga Associates, LLC

SIGNED: Kevin McCarty

TITLE: Owner

DATE: 6/24/15

STATE OF New York

COUNTY OF Saratoga ss.:

On the 24th day of June in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Kevin McCarty 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.

Becky A. Snell
Notary Public

Qualified in the County of: Fulton
My Commission Expires: 05/29/2019

BECKY A SNELL
NOTARY PUBLIC STATE OF NEW YORK
FULTON COUNTY
LIC. #01SN6167041
MY COMMISSION EXPIRES MAY 29, 2019

SCHEDULE OF COMPLIANCE

1. Upon signing this Order on Consent document, 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
1130 North Westcott Rd
Schenectady, NY 12306

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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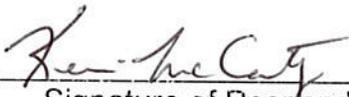
ORDER ON CONSENT
R4-2015-0529-62

-by-

Old Saratoga Associates, LLC
7 Canfield Ct
Gansevoort, NY 12831

Respondent

I, Kevin McCarty, being duly sworn, do depose and say that I am the owner Old Saratoga Associates, LLC, and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (2015-0529-62) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me

On this 24th day of June, 20 15



Notary Public

BECKY A SNELL
NOTARY PUBLIC STATE OF NEW YORK
FULTON COUNTY
LIC. #01SN6167041
MY COMMISSION EXPIRES MAY 29, 20 19