

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 7557

October 23, 2017

Mr. Kermit Weaver
Oneonta Country Club, Inc.
9 Country Club Drive
Oneonta, NY 13820

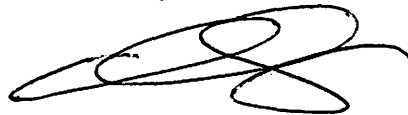
Re: Order on Consent
R4-2017-0929-248

Dear Mr. Weaver:

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

This will also acknowledge receipt of \$1000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: S. Whelen
M. Vencak, ECO



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
R4-2017-0929-248

-by-

Oneonta Country Club, Inc.
9 Country Club Drive
Oneonta, NY 13820

Respondent

WHEREAS:

Jurisdiction

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.

Facts

2. Respondent Oneonta Country Club, Inc. owns/operates a golf course located at 9 Country Club Drive, Oneonta, New York ("site").

3. Respondent is a person as defined in ECL 33-0101 (33).

4. On July 31, 2017, Department staff conducted a Non-Agricultural Use Observation ("NAUO") of the facility.

First Violation

5. At the time of the inspection, Respondent were not in possession of records available for review, at the site.

6. Regulations at 6 NYCRR 325.25(c) provide that *“Commercial applicators who are not employed by a registered business, including but not limited to building superintendents and employees of cemeteries or golf courses, shall keep true and accurate records as provided in subdivision (a) of this section and file reports as provided in subdivision (b) of this section.”*

7. Respondent violation regulations at 6 NYCRR 325.25(c) by failing to maintain records at the site.

Second Violation

8. At the time of the inspection, Department staff determined that Respondent had been combining Dawn dish detergent, Hydrogen Peroxide and water as a method to treat moss.

9. This treatment is not a registered product in New York State.

10. ECL § 33-1301(1)(a) provides that *“It shall be unlawful:*

1. *For any person to distribute, sell, offer for sale or use within this state or deliver for transportation or transport in intrastate commerce or between points within his state through any point outside this state any of the following:*
 - a. *Any pesticide which has not been registered pursuant to the provisions of this article or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided that in the discretion of the commissioner a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.”*

11. Respondent violated ECL §33-1301(1)(a) by using a pesticide treatment which is not registered in New York State.

Third Violation

12. At the time of the inspection, Department staff determined that Respondent was not using an effective anti-siphon device.

13. Regulations at 6 NYCRR 325.2(c) provide that *“All equipment containing pesticides and drawing water from any water source shall have an effective anti-siphon device to prevent backflow.”*

14. Respondent violated regulations at 6 NYCRR 325.2(c) by failing to use an effective anti-siphon device.

Civil Penalty

15. 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

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. Civil Penalty

With respect to the aforesaid violations, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) 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.

DATED: *October 20*, 2017
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.

Oneonta Country Club, Inc.

SIGNED: Kent Weaver

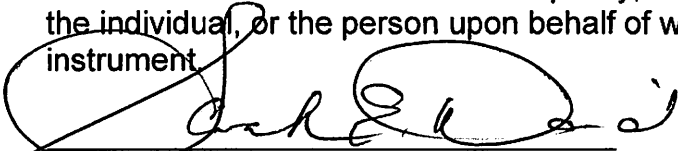
TITLE: President

DATE: 10/13/17

STATE OF New York

COUNTY OF Otsego) ss.:

On the 13th day of October in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared Kermit Weaver 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



Notary Public
Qualified in the County of: Delaware
My Commission Expires: 5/28/2021

Sarah E. Waid 01WA6282987
Notary Public, State of New York
Qualified in Delaware County
Commission Expires 5/28/2021

SCHEDULE OF COMPLIANCE

1. Effective immediately, all records must be maintained on site in compliance with regulations at 6 NYCRR 325.25(c).
2. Within 15 days of the effective date of this Order, Respondent shall submit to the Department, photographic evidence to establish that the improper anti-siphon device has been replaced with a effective one pursuant to regulations at 6 NYCRR 325.2(c).
3. Upon signing the Order, Respondent shall 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 specified in this document, have been completed.

This document should be addressed and sent to:

Sarah Whelen
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

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-by-

Oneonta Country Club, Inc.
9 Country Club Road
Oneonta, NY 13820

Respondent

KW
Kermit Weaver

I, ~~Bruce Carroll~~, being duly sworn, do depose and say that I am the Chief Executive Officer of Oneonta Country Club, Inc., and that I have complied with the requirements of paragraph Nos. 1-3 of the Order on Consent's Schedule of Compliance (R4-2017-0929-248) effective on the date signed by the Regional Director.

Kermit Weaver

Signature of Respondent

Subscribed, and sworn to before me

On this 13th day of October, 2017

Sarah E. Waid
Notary Public

Sarah E. Waid 01WA6282987
Notary Public, State of New York
Qualified in Delaware County
Commission Expires 5/29/2021