

# New York State Department of Environmental Conservation

## Office of General Counsel, Region 4

1130 North Westcott, Schenectady, New York 12306-2014

Phone: (518) 357-2048 § Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 3672

December 16, 2014

James Smith  
Red Maple Land Services, LLC  
64 Severson Hill Road  
Voorheesville, NY 12186

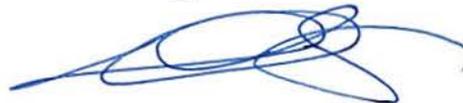
Re: Order on Consent  
R4-2014-1117-169

Dear Mr. Smith:

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

This will also acknowledge receipt of \$300 1st of 5 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$300 is due on or before January 15, 2014.

Sincerely,



Karen s. Lavery  
Assistant Regional Attorney  
Region 4

cc: B. Pendell

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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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**  
R4-2014-1117-169

-by-

Red Maple Land Services, LLC  
64 Severson Hill Road  
Voorheesville, NY 12186

Respondent

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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 Section 33-301 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 Red Maple Land Services, LLC is a company that provides landscape services, located at 64 Severson Hill Road, Voorheesville, New York ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On November 5, 2014, Department staff conducted an inspection of the facility to determine its compliance with all applicable laws, rules and regulations.

First Violation

5. Regulations at 6 NYCRR §325.25(a) provide that "*All businesses required to register pursuant to section 325.23 of this Part shall keep true and accurate records in a manner specified by the department showing: the kind and quantity of each pesticide used; dosage rates; methods of application; target organisms; and the use, date and place of application for each pesticide used. These records shall be maintained on an annual basis and retained for a minimum of three years and shall be available for inspection upon request by the department.*"

6. At the time of the November 5, 2014 inspection, Department staff determined that Respondent failed to record the dosage rate, EPA registration number, method of application and target organism for the April 21, 2014 application of Dimension (EPA Reg. No. 10404-85), which is in violation of regulations at 6 NYCRR §325.25(a).

#### Second and Third Violations

7. Regulations at 6 NYCRR §325.40(a) provide that “*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:* (2) *state the total number of commercial lawn applications to be provided.* (3) *state the total cost of the commercial lawn application service to be provided.*”

8. At the time of the November 5, 2014 inspection, Department staff determined that the lawn care contract between Respondent and a client residing at 8 Cherryvale Boulevard, Slingerlands, New York, failed to state the total cost and the total number of commercial lawn applications to be provided, which are violations of regulations at 6 NYCRR §325.40(a)(2) and (3).

#### 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 alleged violation, a civil penalty in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) is hereby assessed against the Respondent and 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.

Payment of the civil penalty is due in accordance with the following schedule:

1. \$300.00 with the return of the signed and notarized copy of this Order by December 15, 2014;
2. \$300.00 by January 15, 2015;
3. \$300.00 by February 16, 2015;
4. \$300.00 by March 16, 2015;
5. \$300.00 by April 15, 2015;

The failure to make a timely payment shall result in the entire balance of civil penalty being immediately due. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

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 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 violation cited in this Order.

IX. Respondent shall comply with the attached Schedule of Compliance which is incorporated into this Order.

DATED: 12/15, 2014  
Rotterdam, New York

Joseph J. Martens  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

A handwritten signature in blue ink, appearing to read "Keith Goertz", is written over a horizontal line.

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.

Red Maple Land Services, LLC

SIGNED: [Signature]  
TITLE: SOLE MEMBER  
DATE: 12/11/2014

STATE OF New York

COUNTY OF Albany ) ss.:  
)

On the 11<sup>th</sup> day of December in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared JAMES P Smith 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.

[Signature]

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

**Catherine L. OKeefe**  
**Notary Public-State of New York**  
**No. 01-OK6063434**  
**Qualified in Washington County**  
**My Commission expires 08-27-20** 17

## SCHEDULE OF COMPLIANCE

1. Within 30 days of signing this Order, Respondent must submit to the 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:

Brayton Pendell  
NYS Department of Environmental Conservation  
Bureau of Pesticides Management  
1130 North Westcott Rd  
Schenectady, NY 12306

**COMPLIANCE VERIFICATION AFFIDAVIT**

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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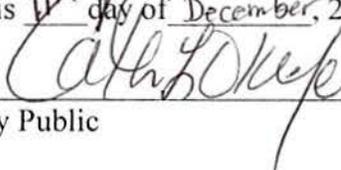
-by-

Red Maple Land Services, LLC  
64 Severson Hill Road  
Slingerlands, NY 12186

Respondent

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I, James Smith, being duly sworn, do depose and say that I am the Sole Member at Red Maple Land Services, LLC, and that I have complied with the requirements of paragraph No 1 of the Order on Consent's Schedule of Compliance (R4-2014-1117-169) effective on the date signed by the Regional Director.

  
\_\_\_\_\_  
Signature of Respondent

Subscribed and sworn to before me  
On this 11 day of December, 20 14  
  
\_\_\_\_\_  
Notary Public

**Catherine L. O'Keefe**  
**Notary Public-State of New York**  
**No. 01-OK6063434**  
**Qualified in Washington County**  
**My Commission expires 08-27-2017**