

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
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CERTIFIED - RETURN RECEIPT REQUESTED
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December 14, 2017

Robert G. Flood
R.F. Lawn Care Inc.
5 Schuyler Lane
Watervliet, NY 12189

Re: Order on Consent
R4-2017-1117-280

Dear Mr. Flood:

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

This will also acknowledge receipt of \$2,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: 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
R4-2017-1117-280

-by-

R.F. Lawn Care Inc.
5 Schuyler Lane
Watervliet, NY 12189,

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 §33-0301 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, R.F. Lawn Care Inc., is a domestic corporation 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

4. On October 31, 2017, Department Staff conducted a routine inspection of Respondent's records and facility.

First Violation:

5. Regulation 6 NYCRR § 325.10(c) requires that:
Documentation that a certified commercial pesticide applicator observed and instructed the apprentice as required in subdivision (a) of this section must be maintained by the certified commercial pesticide applicator or registered business for three years. Such documentation must be made available to the department upon request. Documentation must include the following:
- (1) name and address of apprentice;*
 - (2) date(s) of instruction or observation;*
 - (3) content of training and certification category;*
 - (4) instructor's name and certification identification number; and*
 - (5) an evaluation concluding that the apprentice is competent to perform pesticide applications.*
6. During the October 31, 2017 inspection, upon review of Respondent's records, Department staff discovered that Respondent maintained no written record of the training of William Ingram, an apprentice pesticide applicator employed by Respondent.
7. Respondent's failure to maintain a written record of apprentice training is a violation of 6 NYCRR § 325.10(c).

Second Violation:

8. ECL § 33-0905(5)(a) requires that prior to the application of a pesticide within or on the premises of a dwelling, every certified applicator must supply the occupants of the dwelling with "*a copy of the information, including any warnings, contained on the label of the pesticide to be applied,*" in a written, digital or electronic format to be determined by said occupants.
9. During the October 31, 2017 inspection, Department staff also discovered that Respondent did not provide its customers with pesticide label information prior to pesticide applications. As a specific example, Respondent had failed to provide pesticide label information to the occupants of 5 Britton Way, Watervliet, NY for any of its 2017 pesticide applications.
10. Respondent's failure to provide a copy of the information contained on the label of the pesticide to be applied prior to its application is a violation of ECL § 33-0905(5)(a).

Third Violation:

11. Regulations at 6 NYCRR § 325.25(a) require all registered pesticide businesses to "*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.”

12. During the October 31, 2017 inspection, Department staff further discovered that Respondent did not include the dosage rate, method of application, target organism and place of application in any of the records of its pesticide applications.

13. Respondent’s failure to maintain true and accurate daily use application records is in violation of regulation 6 NYCRR § 325.25(a).

Fourth Violation:

14. Regulation 6 NYCRR § 325.40(a), sets forth the required elements of a written contract for commercial pesticide application, and states (in relevant part) that any such written contract must:

- (1) specify the approximate date or dates of application. . . .;*
- (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; and*
- (4) include a written copy, in at least 12-point type of:*
 - (i) a list of pesticides to be applied including brand names and generic names of active ingredients;*
 - (ii) any warnings that appear on the label(s) of pesticide(s) to be applied that are pertinent to the protection of humans, animals or the environment; and*
-*
- (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. . . .;*

15. Department staff discovered on October 31, 2017 that Respondent’s 2017 written contracts failed to include the following items:

- Total number of pesticide applications;
- Total cost of pesticide applications;
- A list of the pesticides to be applied, including the generic name of the active ingredients;
- Warnings that appear on the label(s) of pesticide(s) to be applied that are pertinent to the protection of humans, animals, or the environment; and
- Signature of the pesticide applicator/business.

16. Respondent's failure to include all required items on its written contracts is in violation of regulation 6 NYCRR § 325.40(a).

Fifth Violation:

17. ECL § 33-1301(4) provides that it shall be unlawful "*For any person to store or dispose of any pesticide, or of any container which holds or has held a pesticide, except in compliance with the rules and regulations of the commissioner.*" Regulations at 6 NYCRR § 325.5(b) further specify that "*No pesticide containers shall be sold or used for any other purpose unless such purpose has been approved by commissioner in writing and the containers have been properly decontaminated.*"

18. During the October 31, 2017 inspection, Department staff discovered that rather than disposing of pesticide containers in accordance with the procedures set forth on the instruction labels posted on those containers, Respondent was reusing its pesticide containers as water supply jugs for the purpose of mixing pesticides in the field. Respondent did not receive written approval from the commissioner to reuse pesticide containers for that purpose.

19. Respondent's failure to properly dispose of pesticide containers per their label instructions violates ECL § 33-1301(4) and 6 NYCRR § 325.5(b).

Civil Penalty

20. 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

21. 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 FIVE THOUSAND DOLLARS (\$5,000). TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) 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 NYS Department of Environmental Conservation. Payment of this portion

of the civil penalty shall not alter Respondent's obligation to complete performance of the terms of this Order.

The balance of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is suspended and shall not be payable, provided that Respondent fully and timely complies with the Schedule of Compliance appended to this Order, and provided that Respondent commits no further violations of ECL Article 33 or 6 NYCRR Part 325 pertaining to pesticides, for the duration of this Order.

Should Respondent fail to so comply, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent, in addition to appropriate penalties for any further violations of this Order.

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:

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

For the Respondent:

R.F. Lawn Care Inc.
c/o Robert G. Flood
5 Schuyler Lane
Watervliet, NY 12189

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. **Review of Submitted Documentation.** 1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of Respondent's submittals pursuant to this Order to determine whether it was prepared, and whether the work performed to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3(a). If the Department disapproves a submittal, it shall notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submittal will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order, or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

X. **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.

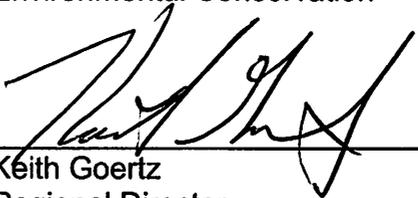
XI. **Schedule of Compliance.** Respondent shall comply with the attached Schedule of Compliance.

XII. **Termination.** The Order shall terminate two years after its Effective Date, upon Respondent's full compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: 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) **Within thirty (30) days of the effective date of the Order**, Respondent shall submit to the Department the following documentation:
 - a. A complete contract template which includes all elements required by 6 NYCRR § 325.4(a); and
 - b. A written record of the training provided to pesticide apprentices, in accordance with 6 NYCRR § 325.10(c);
- (2) Upon completion of the requirements of Paragraph 1 above, 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 actions specified in this document, have been completed.
- (3) Upon completion of Respondent’s first twenty (20) pesticide applications in calendar year 2018, Respondent shall submit a copy of each of the application records for those applications to the Department, along with a second signed and notarized Compliance Verification Affidavit (“CVA,” enclosed).
- (4) Compliance with this Schedule shall not be a defense to subsequent violations.

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

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(ECL) Article 33 and
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New York (6 NYCRR),

AFFIDAVIT

-by-

R.F. Lawn Care Inc.
5 Schuyler Lane
Watervliet, NY 12189,

Respondent

I, Robert G. Flood, being duly sworn, do depose and say that I am the owner of R.F. Lawn Care Inc., and that I have complied with the requirements of Paragraphs No. 1, 2, and 4 of the Order on Consent's Schedule of Compliance (R4-2017-1117-280) effective on the date signed by the Regional Director.

Robert Flood

Signature of Respondent

Subscribed and sworn to before me

On this 13th day of December 2021


Notary Public

Karen S. Lavery
Notary Public State of New York
Residing in Albany County
Reg No. 02LA6199409
My Comm. Expires January 12, 2021

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
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2ND AFFIDAVIT

-by-

R.F. Lawn Care Inc.
5 Schuyler Lane
Watervliet, NY 12189,

Respondent

I, Robert G. Flood, being duly sworn, do depose and say that I am the owner of R.F. Lawn Care Inc., and that I have submitted along with this affidavit a true and accurate copy of R.F. Lawn Care's first twenty (20) pesticide applications conducted in 2018, in compliance with the requirements of Paragraph No. 3 of the Order on Consent's Schedule of Compliance (R4-2017-1117-280) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me

On this 13th day of December, 2021


Notary Public

Karen S Lavery
Notary Public State of New York
Residing in Albany County
Reg No. 02LA6199409
My Comm. Expires January 12, 2021