

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations
of the Environmental Conservation Law
("ECL") Article 33 and
Title 6, Part 325 of the Official
Compilation of Codes, Rules and
Regulations of the State of
New York ("6 NYCRR")

ORDER ON CONSENT
File No. R4-2008-0609-83

- by -

Schuyler Meadows Club, Inc.
17 Schuyler Meadows Rd.
Loudonville, NY 12211

Respondent

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 §3-301 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, Schuyler Meadows Club, Inc., 17 Schuyler Meadows Road, Loudonville, New York, owns and operates a golf course ("facility").
3. Respondent is a person as defined in ECL §33-0101 (33).
4. On June 2, 2008, Department staff conducted an inspection of the facility.

First Violation

5. Regulations at 6 NYCRR Part 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.
6. Respondent violated regulations at 6 NYCRR 325.2 (b) by making 14 applications of Ensign (EPA # 34704-966), not in accordance with labeling directions, during the 2007 growing season.

Second Violation

7. Regulations at 6 NYCRR 325.10 (a) provide that:

(a) Each individual engaged in the commercial application of pesticides who is not a certified applicator or technician is considered a pesticide apprentice. An apprentice must be at least 16 years of age. An apprentice is required to receive 40 hours of pesticide use experience under the supervision of a certified applicator and receive a minimum of 8 hours of instruction on the requirements in section 325.18 of this Part, before such apprentice can apply general use pesticides under the off-site direct supervision of a certified applicator. It is the responsibility of the certified pesticide applicator or registered business to determine and so state that an apprentice is competent to perform applications.

8. Respondent violated regulations at 6 NYCRR 325.10 (a) by failing to maintain apprentice training records/documentation for the apprentice who was working at the time of the inspection and who had made at least two separate applications to date, during the 2008 growing season.

Civil Penalty

9. Regulations at ECL § 71-2901 (1) provide, *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 their 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 TEN THOUSAND DOLLARS (\$10,000) of which FIVE THOUSAND DOLLARS (\$5,000) 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.

The balance (\$5,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for them.

III. 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.

IV. 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, his directors, officers, employees, servants, agents, successors or assigns.

V. 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.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Pesticide Specialist
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. 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 Respondents, their agents, their servants, their employees, their successors and their 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 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.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: _____, 2009
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. As of the effective date of this Order, Respondent shall begin the certification process for admission into the Audubon Cooperative Sanctuary Program (“program”). Respondent shall obtain certification in the program by 2011. Respondent shall maintain certification in the program for seven (7) years after obtaining certification. Respondent shall submit to the Department at the end of each calendar year, documentation to demonstrate their compliance with the program. Respondent may opt out of the program prior to the ten years and if they elect to do so, the suspended penalty shall be paid within 30 days of opting out.
2. Within 120 days of the effective date of the Order, Respondent shall ensure that both certified applicators (Mr. Robert Johnson and Mr. Gregory Becmer) obtain five re-certification credits in their corresponding categories. There credits are in addition to the 10 credits required for pesticide re-certification every three years. Documentary evidence of the certification shall be submitted to Selinda Schlierman at the Department within 30 days of completion.