

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, 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

7013 1090 0002 3365 0808

March 9, 2015

Mr. Edward LeMay
The Gallivan Corporation
215 Oakwood Avenue
Troy, NY 12182

Re: Order on Consent
R4-2014-0812-134

Dear Mr. LeMay:

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 S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: B. Pendell

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
R4-2014-0812-134

-by-

The Gallivan Corporation
215 Oakwood Avenue
Troy, NY 12182

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 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 The Gallivan Corporation is a company which provides commercial pesticide applications, among other services, located at 215 Oakwood Avenue, Troy, New York ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On July 25, 2014, Respondent commercially applied pesticides to a property located at 2088 Curry Road, Schenectady, New York ("site").
5. On July 10, 2014, Department staff inspected the site.
6. At the time of the July 10, 2014 inspection, Department staff observed that Respondent did not post visual notification markers prior to the commercial pesticide application.

7. Regulations at 6 NYCRR 325.40 (h) (2) provide that: “*visual notification markers must be placed by the pesticide applicator or business making the commercial lawn application prior to the application and remain posted for a period of not less than 24 hours following the application.*”

8. Respondent violated regulations at 6 NYCRR 325.40 (h) (2) by failing to post visual notifications markers prior to the commercial pesticide application.

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 DOLLARS (\$1,000) 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.

II. The provisions of this Order shall be deemed to bind Respondent, his 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, his 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.

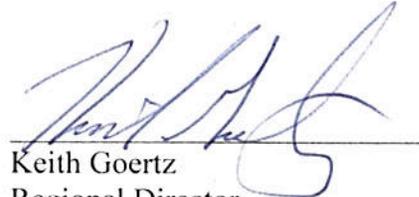
VIII. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violation cited in this Order.

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

DATED: *March 9*, 2014
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.

The Gallivan Corporation

SIGNED: [Signature]
TITLE: Vice President
DATE: 3/4/15

STATE OF New York,
COUNTY OF Rensselaer ss.:

On the 4th day of March in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Shannon Gallivan 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: Rensselaer
My Commission Expires: 5/4/18

KARA DETLEFSEN
NOTARY PUBLIC, State of New York
Qualified in Columbia County
No. 01DE6005774
Commission Expires May 04, 2018

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

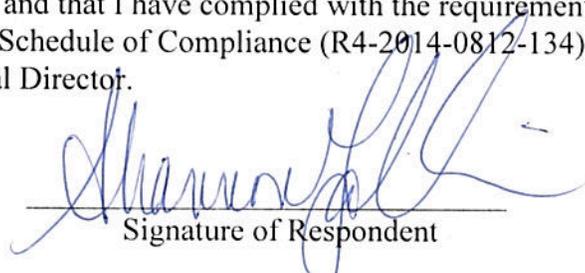
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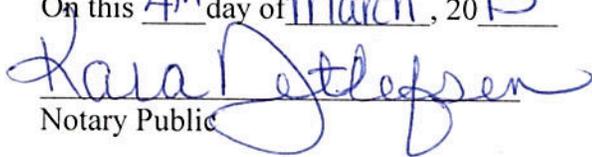
The Gallivan Corporation
215 Oakwood Avenue
Troy, NY 12182

Respondent

I, Edward LaMay, being duly sworn, do depose and say that I am the Director of Landscape Management at The Gallivan Corporation, and that I have complied with the requirements of paragraph No 1 of the Order on Consent's Schedule of Compliance (R4-2014-0812-134) effective on the date signed by the Regional Director.


Signature of Respondent

Subscribed and sworn to before me
On this 4th day of March, 2015


Notary Public

KARA DETLEFSEN
NOTARY PUBLIC, State of New York
Qualified in Columbia County
No. 01DE6005774
Commission Expires May 04, 2018