

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

7013 1090 0002 3365 4905

August 12, 2015

Mr. Scott Kirby
Trugreen Limited Partnership
3 Fritz Blvd.
Albany, NY 12205

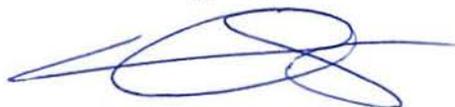
Re: Order of Consent
R4-2015-0708-82

Dear Mr. Kirby:

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

This will also acknowledge receipt of \$7,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: B. Pendell



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
R4-2015-0708-82

-by-

Trugreen Limited Partnership
3 Fritz Blvd
Albany, NY 12205

Respondent

WHEREAS:

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.
2. Respondent, Trugreen Limited Partnership, located at 3 Fritz Blvd, Albany, NY, is a company which provides pest control services ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On June 24, 2015, Respondent erroneously made a pesticide application at a residence located at 16 Schuyler Meadows Road, Loudonville, NY ("site"), which was intended for 6 Schuyler Meadows Road, Loudonville, NY.
5. On June 30, 2015, Department staff conducted an inspection of the site. On June 30, 2015, Department staff conducted an inspection of the facility.

First Violation

6. Regulations at 6 NYCRR 325.40(a) provides 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.”*

7. On June 24, 2015, Respondent applied Heritage Fungicide (EPA Reg. # 100-1093), Azatin O (EPA Reg. #70051-9-59807) and Conserve SC (EPA Reg. # 62719-291) to the site, without first entering into a written contract with the property owner.

8. Respondent violated regulations at 6 NYCRR 325.40(a) by failing to first enter into a written contract with the property owner of the site to which the pesticide application was made.

Second Violation

9. Regulations at 6 NYCRR 325.40(i)(1) provide that: *“As provided in Environmental Conservation Law Section 33-0905, every certified applicator must, prior to application of a pesticide within or on the premises of a dwelling, supply the occupants therein with a written copy of the information, including any warnings, contained on the label(s) of the pesticide(s) to be applied.*

(1) Every certified applicator must, prior to the application of a pesticide within or on the premises of a multiple dwelling, building, or structure other than a dwelling, supply the owner or the owner's agent, with a written copy of the information, including all warnings, contained on the label(s) of the pesticide(s) to be applied. The owner or owner's agent must make available upon request at reasonable times the written copy of the information contained on the label to the occupants or residents of such multiple dwelling, building, or structure.”

10. On June 24, 2015, Respondent applied Heritage Fungicide (EPA Reg. # 100-1093), Azatin O (EPA Reg. #70051-9-59807) and Conserve SC (EPA Reg. # 62719-291) to the site, without first providing product labels for all three products to the property owner.

11. Respondent violated regulations at 6 NYCRR 325.40(i)(1) by failing to first provide product labels to the property owner of the site to which the pesticide application was made.

Civil Penalty

12. ECL 71-2901 (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

13. 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 of the aforesaid alleged violations, a civil penalty in the amount of SEVEN THOUSAND DOLLARS (\$7,000) 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.

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

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 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 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 its obligations to obtain such formal approvals as may be required by this Order.

VIII. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, which relate to the site, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

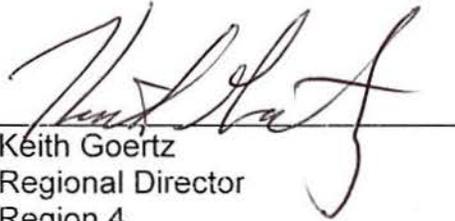
IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

X. Respondent shall comply with the attached Schedule of Compliance which is incorporated and made part of this Order.

DATED: *August 11*, 2015
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.

Trugreen Limited Partnership

SIGNED: [Signature]

TITLE: General Manager

DATE: 8/10/15

STATE OF New York

COUNTY OF Albany) ss.:

On the 10th day of August in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Scott Kirby 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:
My Commission Expires:

EMERSON R MCMURRAY
Notary Public - State of New York
No. 01MC6298573
Qualified in Rensselaer County
My Commission Expires March 17, 2018

SCHEDULE OF COMPLIANCE

1. Within the return of the signed and notarized Order on Consent, 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.

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

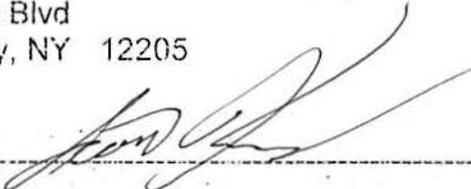
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Trugreen Limited Partnership
3 Fritz Blvd
Albany, NY 12205



Respondent

I, Scott Kirby, being duly sworn, do depose and say that I am employed as General Manager of Trugreen Limited Partnership, and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2015-0708-82) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me
On this 10th day of August, 20 15

Notary Public

EMERSON R MCMURRAY
Notary Public - State of New York
No. 01MC6298573
Qualified in Rensselaer County
My Commission Expires March 17, 2018