

**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  
7016 0340 0000 4616 5744

September 19, 2017

Mr. David Perone  
Turfco Lawn and Landscape, Inc.  
495 Swaggertown Road  
Scotia, NY 12302

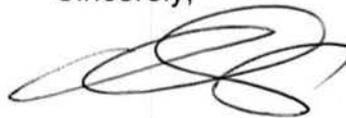
Re: Order on Consent  
R4-2017-0719-223

Dear Mr. Perone:

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,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: M. Leidy

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**  
R4-2017-0719-223

-by-

Turfco Lawn & Landscape, Inc.  
495 Swaggertown Rd  
Scotia, NY 12302

Respondent

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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 Turfco Lawn & Landscape, Inc., owns/operates a landscaping and pest control business located at 495 Swaggertown Rd, Scotia, New York ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On June 5, 2017, Department staff conducted a Non-Agricultural Use Observation ("NAUO"), resulting from a pesticide application which occurred on June 5, 2017, at a residence located at 9 Brendan Lane, Niskayuna, New York ("site").
5. At the time of the June 5, 2017 application, Respondent had applied to the lawn, a non-pesticide granular fertilizer and Lesco Eliminate (EPA #228-313-10404) which was being used to spot treat broadleaf weeds, specifically clover and dandelion.
6. On June 7, 2017, Department staff reviewed the lawn application contract and the customer log for the application which occurred June 5, 2017 at 9 Brendan Lane, Niskayuna, New York.

### First Violation

7. 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.”*
8. Respondent’s customer log did not reflect the places on the property to which the pesticide was applied nor did it reflect the size of the area to which the area of the pesticide was applied, making it impossible to determine the dosage rate, both of which are in violation of regulations at 6 NYCRR 325.25(a).

### Second Violation

9. Regulations at 6 NYCRR 325.40(a)(1) 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:*  
*(1) specify the approximate date or dates of application or applications; if requested by the property owner or owner’s agent, the specific date or dates of the application(s) must be provided by the pesticide applicator or business and that date must be stated in the contract. The following statement must be prominently displayed in the contract:*  
*“The property owner or owner’s agent may request the specific date or dates of the application(s) to be provided and, if so requested, the pesticide applicator or business must inform of the specific dates and include that date or dates in the contract.”*
10. Respondent’s contract did not contain the statement *“The property owner or owner’s agent may request the specific date or dates of the application(s) to be provided and, if so requested, the pesticide applicator or business must inform of the specific dates and include that date or dates in the contract”* which is in violation of regulations at 6 NYCRR 325.40(a)(1).

### Third Violation

11. Regulations at 6 NYCRR 325.40(a)(4)(ii) 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:*  
*(4) include a written copy, in at least 12-point type of:*  
*(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.”*

12. The contract referred the customer to the “Product Labels” section of the company website, [www.turfcowlawncare.com](http://www.turfcowlawncare.com), to communicate any warnings pertinent to the protection of humans, animals, or the environment contained in the product label. Department staff was able to access the site however when clicked on the link for the product Eliminate, the label displayed was not the same product which had been used at the site. The product label displayed on the website was for Eliminate D (EPA#10404-44). The two products contain similar but not identical active ingredients and the warning language on the label is different. The omission of the correct label is in violation of regulations at 6 NYCRR 325.40(a)(4)(ii).

### Civil Penalty

13. 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

14. 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

With respect to the aforesaid violations, a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) which shall be payable to the New York State Department of Environmental Conservation by 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 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, 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 violations cited in this Order.

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

DATED: *September 18* 2017  
Rotterdam, New York

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:



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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.

Turfco Lawn & Landscape, Inc.

SIGNED: David Ferone

TITLE: PRESIDENT

DATE: 9/18/17

STATE OF New York )

COUNTY OF Saratoga ) ss.:

On the 18<sup>th</sup> day of September in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared David Ferone 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:  
My Commission Expires:

MICHAEL L LASCALA  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01LA6327735  
Qualified in Saratoga County  
My Commission Expires July 13, 2019

## **SCHEDULE OF COMPLIANCE**

1. Within 30 days of the effective date of the Order, Respondent shall submit to the Department, a sample contract which includes all elements required by regulations at 6 NYCRR 325.40(a).
2. Upon signing the Order, Respondent must submit to this 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.

This document should be addressed and sent to:

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

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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-by-

Turfco Lawn & Landscape, Inc.  
495 Swaggertown Rd  
Scotia, NY 12302

Respondent

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I, David Perone, being duly sworn, do depose and say that I am the Chief Executive Officer of Turfco Lawn & Landscape, Inc., and that I have complied with the requirements of paragraph Nos. 1 and 2 of the Order on Consent's Schedule of Compliance (R4-2017-0719-223) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me  
On this 18<sup>th</sup> day of September, 2017



Notary Public

MICHAEL L LASCALA  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01LA6327735  
Qualified in Saratoga County  
My Commission Expires July 13, 2019