

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
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CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 8466

June 12, 2018

William J. Shea III
d/b/a Premier Turf and Landscapes
6 Eastmount Drive
Slingerlands, NY 12159

Re: Order on Consent
R4-2018-0423-117

Dear Mr. Shea:

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

This will also acknowledge receipt of \$750 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

cc: 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
R4-2018-0423-117

-by-

William J. Shea III
d/b/a Premier Turf and Landscapes
6 Eastmount Drive
Slingerlands, NY 12159,

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, William J. Shea III, is an individual holding a Category 3A pesticide application certificate (#C467752) and doing business as Premier Turf and Landscapes in the State of New York.
3. Respondent is a person as defined in ECL § 33-0101(33).

VIOLATIONS

4. On February 15, 2018, Department staff conducted an inspection of Respondent's pesticide application records.

5. Regulation 6 NYCRR § 325.25(a) requires that all registered pesticide businesses “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.”
6. During the February 15, 2018 inspection, Department staff observed that Respondent’s pesticide application records from the years 2015 to 2017 failed to include the method(s) of application; target organism; and dosage rate; and that most records observed failed to include the place of application.
7. Respondent’s failure to record and maintain true and accurate records with all required information violated Regulation 6 NYCRR § 325.25(a).
8. Regulation 6 NYCRR § 325.40(a)(1) requires, in relevant part, that the following statement must be prominently displayed in every written commercial lawn care 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.”
9. During the February 15, 2018 inspection, Department staff observed that Respondent’s written commercial lawn care contract with the owner of 9 Haswell Green in Delmar, New York, failed to contain the statement required by 6 NYCRR § 325.40(a)(1).
10. Respondent’s failure to include the required statement constitutes a violation of Regulation 6 NYCRR § 325.40(a)(1).
11. Regulation 6 NYCRR § 325.40(a)(2) requires that every written commercial lawn care contract “state the total number of commercial lawn applications to be provided.”
12. During the February 15, 2018 inspection, Department staff observed that Respondent’s written commercial lawn care contract with the owner of 9 Haswell Green in Delmar, New York, failed to state the total number of commercial lawn applications to be provided.
13. Respondent’s failure to include the total number of commercial lawn applications to be provided constitutes a violation of Regulation 6 NYCRR § 325.40(a)(2).
14. Regulation 6 NYCRR § 325.40(a)(3) requires that every written commercial lawn care contract “state the total cost of the commercial lawn application service to be provided.”
15. During the February 15, 2018 inspection, Department staff observed that

Respondent's written commercial lawn care contract with the owner of 9 Haswell Green in Delmar, New York, included applications consisting of non-pesticide products in the calculation of its total, without stating separately the total cost of the commercial lawn applications alone.

16. Respondent's failure to include the total cost of the commercial lawn applications to be provided constitutes a violation of Regulation 6 NYCRR § 325.40(a)(3).

Civil Penalty

17. 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

18. 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 TWO THOUSAND DOLLARS (\$2,000). SEVEN HUNDRED FIFTY DOLLARS (\$750) 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/cashier's 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 ONE THOUSAND, TWO HUNDRED FIFTY DOLLARS (\$1,250) 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.

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:

William J. Shea III
d/b/a Premier Turf and Landscapes
6 Eastmount Drive
Slingerlands, NY 12159

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: June 11, 2018
Rotterdam, New York

Basil Seggos
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 rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

SIGNED: [Signature]
PRINTED: W.S. SHEA III
DATE: 7 JUNE 18

STATE OF NEW YORK)
COUNTY OF Albany) ss.:

On the 7 day of June in the year 2018, before me, the undersigned,

personally appeared William Shea, personally known
(Full name)

to me who, being duly sworn, did depose and say that he resides at:

2 Winthrop St Albany NY 12208
(Full mailing address)

and who executed the above instrument.

[Signature]
Notary Public
Qualified in the County of:
My Commission Expires:

NANETTE M. MURRAY
Notary Public, State of New York
No. 01MUG100073
Qualified in Albany County
My Commission Expires Oct. 8, 2019.

SCHEDULE OF COMPLIANCE

- (1) **Within sixty (60) days of the effective date of the Order**, Respondent shall submit for approval by Department staff a draft compliant commercial lawn application contract.
- (2) **Within thirty (30) days of notification from Department staff that a draft compliant commercial lawn application contract has been approved**, 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 Schedule, have been completed.
- (3) Compliance with this Schedule shall not be a defense to subsequent violations.

The draft contract and CVA 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

In the Matter of Violations
of the Environmental Conservation Law
("ECL") Article 33, Title 6 of the Official
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New York ("6 NYCRR"),

AFFIDAVIT

-by-

William J. Shea III
d/b/a Premier Turf and Landscapes
6 Eastmount Drive
Slingerlands, NY 12159,

Respondent.

I, WJ SHEA III, being duly sworn, do depose and state
(Full Name)

that I have complied with the requirements of Paragraphs No. 1 and 2 of the Order on Consent's Schedule of Compliance (R4-2018-0423-117) effective on the date signed by the Regional Director.

[Signature]
Signature of Respondent

Subscribed and sworn to before me
On this 7 day of Jul, 2018

[Signature]
Notary Public

NANETTE M. MURRAY
Notary Public, State of New York
No. 01MU6100073
Qualified in Albany County
My Commission Expires Oct. 8, 2019