

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
7017 1070 0001 0125 8978

October 5, 2018

Craig Hamer
A.M. Leonard, Inc.
241 Fox Drive
Piqua, OH 45356

Re: Order on Consent
R4-2018-0907-173

Dear Mr. Hamer:

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,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: S. Whelen



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

R4-2018-0907-173

-by-

A.M. Leonard, Inc.
241 Fox Drive
Piqua, OH 45356,

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, A.M. Leonard, Inc., is a foreign business corporation located at 241 Fox Drive in the town of Piqua in the State of Ohio.
3. Respondent is a person as defined in ECL § 33-0101(33).

VIOLATIONS

4. On June 28, 2018, Department staff conducted a routine compliance inspection of Rivage Landscaping, LLC, (“Rivage”) a pesticide business with an address located in Cohoes, New York.
5. As a result of the June 28, 2018 inspection, the owner of Rivage informed Department staff that Rivage had purchased an unspecified quantity of a restricted use

pesticide, *The Andersons Turf Products Fertilizer with 0.2% Merit Insecticide* (EPA Reg. No. 432-1349-9198) ("Merit") from Respondent.

6. On August 1, 2018, Department staff spoke with Respondent's staff to request sales records demonstrating all dates and amounts of Merit sold to Rivage by Respondent.

7. On August 9, 2018, Department staff received the sales records forwarded by Respondent and determined that on or about May 10, 2018, Respondent sold Rivage one hundred sixty (160) fifty-pound bags of Merit; and that on or about March 6, 2017, Respondent sold Rivage two hundred forty (240) fifty-pound bags of Merit.

8. At all relevant times, Respondent did not possess a commercial permit for the sale of Merit in New York State.

9. ECL § 33-1301(5) states that it shall be unlawful "[f]or any person to distribute, sell, offer for sale, purchase for the purpose of re-sale, or possess for the purpose of re-sale any restricted use pesticide without a commercial permit issued by the commissioner."

10. Regulations at 6 NYCRR § 326.3(a) likewise state that "[i]t shall be unlawful for any person to distribute, sell, offer for sale, purchase for the purpose of resale, or possess for the purpose of resale, any restricted pesticide unless said person shall have applied for, and been issued a commercial permit."

11. Respondent's sales of a restricted use pesticide, without a commercial permit, were in violation of ECL § 33-1301(5) and 6 NYCRR § 326.3(a).

Civil Penalty

12. ECL § 71-2907 (1) provides, *inter alia*, that "any person who violates any provisions of article 33 of this chapter or any rule, regulation or order issued thereunder . . . shall be liable . . . for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense."

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. **Civil Penalty.** Respondent is assessed a civil penalty in the amount TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500). Payment 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 money order, company or bank check made payable to the NYS Department of Environmental Conservation. Payment of the civil penalty shall not alter Respondent's obligation to complete performance of the terms 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:

NYS Department of Environmental Conservation
Region 4
Bureau of Pesticides
Attn: Sarah Whelen
1130 North Westcott Road
Schenectady, NY 12306

For the Respondent:

A.M. Leonard, Inc.
241 Fox Drive
Piqua, OH 45356
Attn: Craig Harmer

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. **Schedule of Compliance.** Respondent shall comply with the attached Schedule of Compliance.

X. **Termination.** This Order shall terminate upon the Department's determination that Respondent has complied with all the requirements of this Order.

DATED: October 4, 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, A.M. Leonard, Inc., 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: C. Leonard
PRINTED: Craig Harmer
TITLE: Dir.
DATE: 9-28-18

Ohio
STATE OF NEW YORK)
) ss.:
COUNTY OF Miami)

On the 28 day of September in the year 2018, before me, the undersigned,

personally appeared Craig Harmer, personally known
(Full name)

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 s/he executed the same in his/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Carolyn P. Magoteaux

Notary Public

Qualified in the County of:

My Commission Expires:



CAROLYN P. MAGOTEAUX

NOTARY PUBLIC
STATE OF OHIO

My Commission Expires
March 15, 2021

SCHEDULE OF COMPLIANCE

- (1) **Within thirty (30) days of the effective date of this Order**, Respondent shall submit to the Department a signed and notarized Compliance Verification Affidavit (“CVA,” enclosed) certifying that the actions necessary to comply with the Department’s regulatory program, and those actions specified in this document, have been completed, along with any supporting documentation.
- (2) Compliance with this Schedule shall not be a defense to subsequent violations.

The signed and notarized CVA should be addressed to:

Sarah Whelen
NYS Department of Environmental Conservation
Region 4
Bureau of Pest Management
1130 North Westcott Road
Schenectady, NY 12306

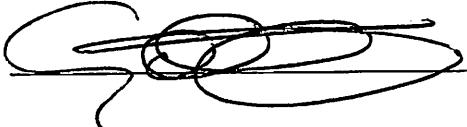
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AFFIDAVIT

-by-

A.M. Leonard, Inc.
241 Fox Drive
Piqua, OH 45356,

 Respondent.

I, Craig Harmer, being duly sworn, do depose and say
(Full Name)

that A.M. Leonard, Inc., has complied with the requirements of Paragraph No. 1 of the Order on Consent's Schedule of Compliance (File# R4-2018-0907-173) effective on the date signed by the Regional Director.

 Signature of Respondent

Subscribed and sworn to before me
on this 28 day of September, 2018

Carolyn P. Magoteaux
Notary Public



CAROLYN P. MAGOTEAU

NOTARY PUBLIC
STATE OF OHIO

My Commission Expires
March 15, 2021