

**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](http://www.dec.ny.gov)



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7011 1570 0003 0363 4427

June 24, 2013

Mr. Xuyong Wang  
Able Pest Control, LLC  
108 Fox Run Drive  
Schenectady, New York 12303

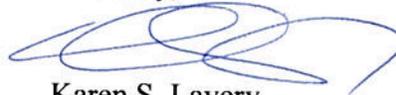
Re: Order on Consent  
R4-2013-0528-73

Dear Mr. Wang:

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

This will also acknowledge receipt of \$500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

cc: S. Brandon

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations  
of the Environmental Conservation Law  
(AECL@)Article 33 and  
Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of  
New York (A6 NYCRR@),

**ORDER ON CONSENT**  
R4-2013-0528-73

-by-

Able Pest Control, LLC  
108 Fox Run Drive  
Schenectady, NY 12303

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, Able Pest Control, LLC, 108 Fox Run Drive, Schenectady, New York, owns and operates a commercial pest control company.
3. Respondent is a person as defined in ECL ' 33-0101 (33).
4. On May 10, 2013, Department staff conducted a Pesticide Business/Applicator/Use/Inspection of the facility.

First Violation

5. At the time of the inspection, Department staff inspected Respondent’s 2011-2013 pesticide application records and determined that:
  - (a) the wrong quantity of pesticide applied was recorded for an application of a termiticide in 2013 and;
  - (b) the place of application recorded on the business’s service slips did not differentiate between products if more than one product was applied.

6. ECL §33-1205.1 provides that:  
*All commercial applicators shall maintain pesticide use records for each pesticide application containing the following:*
- a. EPA registration number;*
  - b. product name;*
  - c. quantity of each pesticide used;*
  - d. date applied;*
  - e. location of application by address (including five-digit zip code).*
- Such records shall be maintained for a period of not less than three years. All commercial applicators shall file, at least annually, a report or reports containing such information with the department on computer diskette or in printed form on or before February first for the prior calendar year. All commercial applicators shall also maintain corresponding records of the dosage rates, methods of application and target organisms for each pesticide application. These records shall be maintained on an annual basis and retained for a period of not less than three years and shall be available for inspection upon request by the department.*

7. Respondent violated ECL §33-1205.1 by recording the wrong quantity of pesticide for an application of a termiticide in 2013 and for failing to properly record the place of application on the business's service slips, when more than one product was applied.

#### Civil Penalty

8. 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

9. 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 FIVE HUNDRED DOLLARS (\$500) 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.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

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

DATED: 6/24, 2013  
Rotterdam, New York

Joseph J. Martens  
Commissioner  
New York State Department of  
Environmental Conservation

BY:



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Eugene J. Kelly  
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.

Able Pest Control, LLC

SIGNED: [Signature]

TITLE: Owner

DATE: 6/10/2013

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

On the 10th day of JUNE in the year 2013, before me, the undersigned,

personally appeared XUYONG WANG  
\_\_\_\_\_  
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at  
108 FOX HUNTER DR, SCHEMECTADA NY 12303  
(Full mailing address)

and that he/she/they is (are) the Owner  
(President or other officer or director or attorney in fact duly appointed)

of the Able Pest Control, LLC  
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

[Signature]  
\_\_\_\_\_  
Notary Public, State of New York

EINARS TUPURITIS  
NOTARY PUBLIC IN THE STATE OF NEW YORK  
QUALIFIED IN ALBANY COUNTY No. 01TU615717#  
COMMISSION EXPIRES DECEMBER 4, 20 14

## **SCHEDULE OF COMPLIANCE**

1. Within 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 come into compliance with the Department’s regulatory program, have been completed.

This document should be addressed and sent to:

Ms. Selinda Brandon  
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

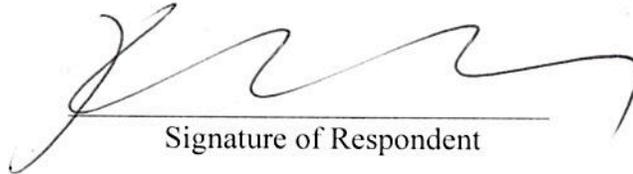
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-by-

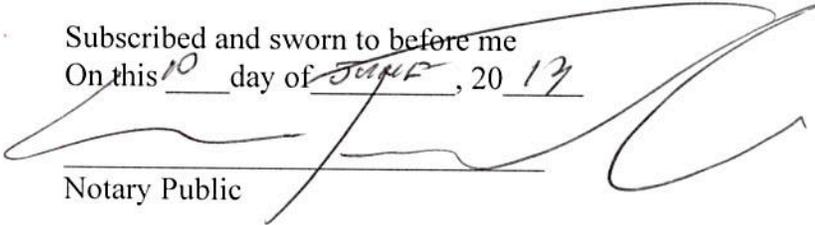
Able Pest Control, LLC  
108 Fox Run Drive  
Schenectady, NY 12303

Respondent  
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I, Xuyong Wang, being duly sworn, do depose and say that I am the owner/operator of Able Pest Control, LLC, and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2013-0528-73) effective on the date signed by the Regional Director.

  
Signature of Respondent

Subscribed and sworn to before me  
On this 10 day of JUNE, 20 17

  
Notary Public

**EINARS TUPURITIS**  
NOTARY PUBLIC IN THE STATE OF NEW YORK  
QUALIFIED IN ALBANY COUNTY No. 01TU6157178  
COMMISSION EXPIRES DECEMBER 4, 20 17