

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

-by-

File No. R4-2009-0910-147

Adirondack Pest Control, Inc.

Respondent

WHEREAS:

1. The Department has jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides, pursuant to ECL Article 33.
2. Respondent, Adirondack Pest Control, Inc., 1566 Vley Rd., Scotia, New York, is in the business of applying pesticides.
3. Respondent is a "person" as defined in ECL Section 33-0101(33).
4. On August 25, 2009, Department staff conducted an inspection at Respondent's office located at 1566 Vley Rd., Scotia, New York. The inspection revealed that on two occasions (August 8, 2009 and August 14, 2009) a certified technician employed by Respondent applied DEMON MAX (EPA# 100-1218) and TALSTAR P (EPA# 279-3206) at an apartment located at 1004 Arrowhead Dr. South, Glenville, New York ("apartment"). Both pesticides are restricted use pesticides.
5. The DEMON MAX label states "For use by commercial applicators in, on and around building and structures for the control of listed pests, including lawns and landscape use."
6. 6 NYCRR 325.2(b) provides that "pesticides are to be used only in accordance with label and labeling directions or a modified or expanded or approved by the department."
7. The application of DEMON MAX by Respondent's certified technician, who is not a commercial applicator, is a violation of the label directions per 6 NYCRR 325.2(b).
8. During the August 25, 2009 inspection, Respondent's supervising certified applicator stated that he was unaware of what pesticides were applied by the certified technician at the apartment on August 8, 2009 and August 14, 2009 and that he would not have approved of the applications made by the certified technician.

9. 6 NYCRR 325.7(d)(5) provides that “during pesticide use that allows off-site direct supervision, the certified commercial applicator must ensure that the apprentice or technician has a means to contact and is able to contact the supervising certified applicator within a reasonable time not to exceed 30 minutes and that a technician applying pesticides by aircraft maintains radio contact with the certified applicator.”

10. Respondent’s failure to properly supervise the certified technician during the pesticide applications is a violation of 6 NYCRR 325.7(d)(5).

11. A review of Respondent’s application records during the August 25, 2009 inspection revealed that the records did not contain the dosage rates for the DEMON MAX and TALSTAR P applications made at the apartment on August 8, 2009 and August 14, 2009.

12. 6 NYCRR 325.25(a) provides 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.”

13. Respondent’s failure to list the dosage rates for either pesticide in their service records is a violation of 6 NYCRR 325.25(a).

14. On August 19, 2009, Department staff conducted an inspection of the apartment and the apartment’s rental office. The apartment’s landlord is The Reserve at Glenville, located at 100 Reserve Court, Glenville, New York. During the inspection of the apartment, the tenant stated to Department staff that on August 17, 2009 she requested a label of the pesticides applied by Respondent and Respondent was not able to supply the label information. During the inspection of the rental office, Department staff requested the label and label information from the Assistant Property Manager and the maintenance man. They stated that they had not been provided with the labels or specific label information on the pesticides applied in the apartment.

15. ECL 33-0905.5(b) provides that “every certified applicator shall, 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 his agent, with a copy of the information, including all warnings, contained on the label of the pesticide to be applied. Such information shall be supplied in either a written, digital or electronic format which shall be determined by the owner or his or her agent, provided however that the certified applicator must also have a written copy of such information in his or her possession. Such owner or agent shall make available upon request at reasonable times such information in written or electronic form if available to the occupants or residents of such multiple dwelling, building, or structure.”

16. Respondent’s failure to provide the requested pesticide label information is a violation of ECL 33-0905.5(b).

17. ECL 71-2907 provides that any person who violates any provision of Article 33 of the ECL or any rule or regulation promulgated thereunder shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for a first violation and not to exceed ten thousand dollars (\$10,000) for a subsequent offense.

18. Respondent has affirmatively waived their 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. In respect of the aforesaid violations, a civil penalty in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500) is hereby assessed against the Respondent. Payment of the civil penalty is due in accordance with the following schedule:

1. \$500 with the return of the signed and notarized copy of this Order;
2. \$500 by November 15, 2009;
3. \$500 by December 15, 2009;
4. \$500 by January 15, 2010;
5. \$500 by February 15, 2010;
6. \$500 by March 15, 2010, and
7. \$500 by April 15, 2010.

The failure to make a timely payment shall result in the entire balance of civil penalty being immediately due. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

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

III. 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.

IV. 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, their directors, officers, employees, servants, agents, successors or assigns.

V. 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.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. All communications except where otherwise specifically directed should be sent to:
Regional Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

VIII. This Order is deemed effective on the date signed by the Department.

IX. 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, their agents, their servants, their employees, their successors and their 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 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.

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

DATED: _____, 2009
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

