

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott, Schenectady, New York 12306-2014

Phone: (518) 357-2048 § Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED.

7011 1570 0003 0363 3802

July 31, 2013

Mr. Bruce Evans d/b/a
Blue Mantis Pest Control
412 Broadway, Apt 4
Rensselaer, NY 12144

Re: Order of Consent
R4-2013-0517-69

Dear Mr. Evans:

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

This will also acknowledge receipt of \$300 1st of 5 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$300 is due on or before August 30, 2013.

Sincerely,

Karen s. Lavery
Assistant Regional Attorney
Region 4

cc: S. Brandon

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
R4-2013-0517-69

-by-

Mr. Bruce Evans d/b/a
Blue Mantis Pest Control
412 Broadway, Apt 4
Rensselaer, NY 12144

Respondent

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, Bruce Evans d/b/a Blue Mantis Pest Control, 412 Broadway, Apt 4, Rensselaer, New York, owns and operates a structural pest control business.
3. Respondent is a person as defined in ECL ' 33-0101 (33).
4. On May 3, 2013, Department staff conducted a Pesticide Business/Applicator/Use/Inspection of the facility.

First Violation

5. Department staff determined that the unregistered general use pesticide, Drione Insecticide (EPA Reg. #4816-353) was applied by the Respondent, a certified technician, six times in 2012.

6. ECL 33-1301 (1) (a) provides that:

It shall be unlawful:

For any person to distribute, sell, offer for sale or use within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

a. Any pesticide which has not been registered pursuant to the provisions of this article or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided that in the discretion of the commissioner a change in the labeling or formula of a pesticide may be made within a registration period without requiring re-registration of the product.

7. Respondent is in violation of ECL 33-1301.1 (a) for applying an unregistered general use pesticide.

Second Violation

8. At the time of the inspection, Respondent was not able to produce the following information from his 2013 pesticide application records:

EPA registration number, quantity, dosage rate, method of application.

9. 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.

10. Respondent violated ECL 33-1205.1 by failing to maintain and produce the necessary records.

Civil Penalty

11. 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

12. Respondent has affirmatively waived his 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 TWO THOUSAND DOLLARS (\$2,000) is hereby assessed against the Respondent of which ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) 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. The balance FIVE HUNDRED DOLLARS (\$500) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

Payment of the civil penalty is due in accordance with the following schedule:

1. \$300.00 with the return of the Order by July 30, 2013;
2. \$300.00 by August 30, 2013;
3. \$300.00 by September 30, 2013;
4. \$300.00 by October 30, 2013;
5. \$300.00 by November 29, 2013;

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, his 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, his 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, his agents, his servants, his employees, his successors and his 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.

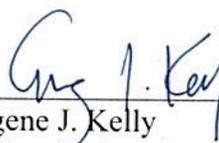
VII. The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed 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 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.

DATED: 7/31, 2013
Rotterdam, New York

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

BY:



Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives his right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Bruce Evans d/b/a
Blue Mantis Pest Control

SIGNED: Bruce Evans
TITLE: OWNER
DATE: 07/29/2013

STATE OF New York

) ss.:
COUNTY OF Rensselaer

On the 29th day of July in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared Bruce Evans 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.

Daisy Mae Estabrook

Notary Public

Qualified in the County of:

My Commission Expires: 05/25/2017

Daisy Mae Estabrooks
Notary Public, State of New York
Qualified in Rensselaer County
No. 01ES6278778
Commission Expires May 25, 2017

SCHEDULE OF COMPLIANCE

1. As of the effective date of this Order, Respondent shall cease and desist the commercial application of pesticides in category 7A, until such time as the registered business employs a certified applicator holding certification in category 7A.
2. Within 30 days of the effective date of this Order, Respondent must submit copies of the business' 2012 pesticide application records.
3. 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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of the Environmental Conservation Law
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-by-

Mr. Bruce Evans d/b/a
Blue Mantis Pest Control
412 Broadway, Apt 4
Rensselaer, NY 12144

BRUCE EVANS Respondent

I, Bruce Evans, being duly sworn, do depose and say that I am the owner/operator of Blue Mantis Pest Control, and that I have complied with the requirements of paragraph Nos. 1 and 2 of the Order on Consent's Schedule of Compliance (R4-2013-0517-69) effective on the date signed by the Regional Director.

Bruce Evans
Signature of Respondent

Subscribed and sworn to before me
On this 30th day of July, 2013

[Signature]
Notary Public

Keri Freiler
Notary Public, State of New York
Qualified in Albany County
No. 01FR6212796
Commission Expires October 19, 2013