

**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  
7011 1570 0003 0363 3895

January 13, 2016

Michael A. Veney  
Environmental Programs Manager  
The Davey Tree Expert Company  
141 Wade Road  
Latham, NY 12110

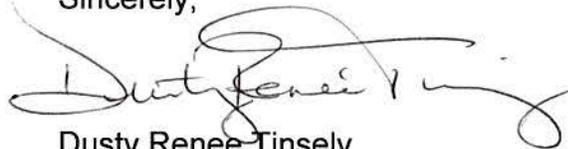
Re: Order of Consent  
R4-2015-1204-138

Dear Mr. Veney:

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

This will also acknowledge receipt of \$6,250 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsely  
Assistant Regional Attorney  
Region 4

Enclosure

ec: N. Hartigan  
M. Solan  
V. Schmitt

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Violation of  
Article 33 of the Environmental Conservation  
Law and Title 6 of the Official Compilation  
of Codes, Rules and Regulations of the  
State of New York

**ORDER ON  
CONSENT**

- By -

Case No.  
R4-2015-1204-138

The Davey Tree Expert Company  
141 Wade Road  
Latham, New York 12110,

Respondent.

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WHEREAS:

1. The New York State Department of Environmental Conservation (“DEC” or “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”). In particular, DEC 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 (“NYCRR”) Part 325.
2. Respondent The Davey Tree Expert Company owns and/or operates a commercial business located at 141 Wade Road, Latham, New York 12110 (Albany County) (“Commercial Property”).
3. ECL §33-0101(33) states that “‘Person’ means any individual, partnership, association, corporation, organized group of persons whether incorporated or not, private or public authority, state government or agency, political subdivision, governmental agency or any other legal entity whatever.”
4. 6 NYCRR Part 325.1(au) states that “‘Person’ means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.”
5. Respondent is a person as defined in ECL §33-0101(33) and 6 NYCRR Part 325.1(au).

### **First Violation**

6. 6 NYCRR Part 325.2(b) states that “Pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department.”
7. During a November 17, 2015 inspection, Department staff determined that:
  - a. Respondent allowed apprentices to apply 19-0-6 Fert. w/.10% Dimension (EPA Reg. #10404) on July 5, 2013, May 5, 2015, and May 8, 2015. The label of 19-0-6 Fert. w/.10% Dimension states “In New York State this product may only be used by commercial applicators.”
  - b. The Mec Amine-D (EPA Reg. #37404-239) label stated “Do not make more than two applications per year.” Respondent applied Mec Amine-D in excess of two applications per year as follows:
    - i. 4 Mystic Lane – on May 2, 2014, June 8, 2014, and August 6, 2014;
    - ii. 239 Tampa Avenue – on May 12, 2014, July 11, 2014, and August 20, 2014; and
    - iii. 80 Fairview Avenue – on May 10, 2013, June 13, 2013, September 18, 2013, and October 23, 2013.
  - c. The labels for Mec Amine-D and 19-0-6 Fert. w/.10% Dimension have not been modified or expanded and approved by the department.
8. Respondent violated 6 NYCRR Part 325.2(b) when it failed to use 19-0-6 Fert. w/.10% Dimension and Mec Amine-D in accordance with label and labeling directions.

### **Second Violation**

9. 6 NYCRR Part 325.25(a) states 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.”
10. During the November 23, 2015 inspection, Department staff determined that Respondent omitted the dosage rate recordkeeping category from its daily use records.

11. Respondent's failure to include the dosage rate recordkeeping category in its daily use records are violations of 6 NYCRR Part 325.25(a).

### **Civil Penalty**

12. ECL §71-2907(1) provides that "any person who violates any provision of article 33 of this chapter or any rule, regulation or order issued thereunder or commits any offense described in section 33-1301 of this chapter shall be liable to the people of the state 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."

13. **Waiver of Hearing.** Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order and has agreed to be bound by the provisions, terms and conditions of this Order.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. **Civil Penalty.** In respect to the Order's violations, a civil penalty for SIX THOUSAND TWO HUNDRED FIFTY DOLLARS (\$6,250) is assessed against the Respondent for the above violations. SIX THOUSAND TWO HUNDRED FIFTY DOLLARS (\$6,250) shall be paid to the Department by company or bank check made payable to the Department of Environmental Conservation at the time this Order is signed, notarized, and returned to the Department. Payment of the civil penalty shall not in any way alter Respondent's obligation to complete performance under the terms of the Order.

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Order and are enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact and phone number.

III. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

IV. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Indemnification.** Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless 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.

VII. **Modification.** 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 the provisions of the 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 obligation to obtain such formal approvals as may be required by this Order.

VIII. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

X. **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 State or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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.

**XI. 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 the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done 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 so 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 of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission 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 submission 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.

XII. **Communications.** Communications shall be sent to

For Department:

Nicole Hartigan  
New York State Department of Environmental Conservation - Region 4  
1130 N. Westcott Road  
Schenectady, New York 12306

For Respondent:

Gary Schermerhorn  
District Manager  
The Davey Tree Expert Company  
141 Wade Road  
Latham, New York 12110

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: January 12, 2016  
Rotterdam, New York

Basil Seggos  
Acting Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
Keith Goertz  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Respondent The Davey Tree Expert Company 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.

BY: PHIL SNYDEN

TITLE: Vice President

DATE: 1-6-16

STATE OF ~~NEW YORK~~ <sup>OHIO</sup> )  
COUNTY OF PORTAGE ) ss.:

On the 6 day of January in the year 2016, before me, the undersigned, personally appeared PHIL SNYDEN (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at 489 Devon Park Dr, W. York, PA 19087 (full mailing address) and that he/she/they is (are) the Vice President (president or other officer or director or attorney in fact duly appointed) of the Davey Tree Expert Co. (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.

Mary Ann Schaefer  
Notary Public, State of ~~New York~~ Ohio



### Schedule of Compliance

1. Respondent shall, at the time the signed and notarized Order is submitted to the Department, return the attached Compliance Verification Affidavit, signed and notarized by Respondent, to Nicole Hartigan, NYS Department of Conservation – Region 4, Bureau of Pesticides Management, 1130 North Westcott Rd., Schenectady, New York 12306.

COMPLIANCE VERIFICATION AFFIDAVIT

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

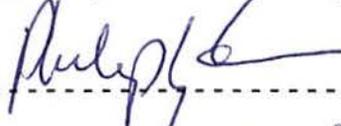
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State of New York

ORDER ON  
CONSENT

- By -

Case No.  
R4-2015-1204-138

The Davey Tree Expert Company  
141 Wade Road  
Latham, New York 12110,

 Respondent.  
----- X

I, Philip Snyder, in the position of Vice President with The  
Davey Tree Expert Company being duly sworn, do depose and say that:

1. Respondent shall use pesticides only in accordance with label and labeling directions or as modified or expanded and approved by the department; and
2. Respondent shall keep true and accurate records of its use of pesticides 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.

The Davey Tree Expert Company

By:

PHIL SNYDER  
 Name  
Vice President  
 Position  
 \_\_\_\_\_  
 Date Signed

<sup>Ohio</sup>  
 STATE OF NEW YORK )  
 ) ss.:  
 COUNTY OF Portage )

On the 11 day of January in the year 2015, before me, the undersigned, personally appeared PHIL SNYDER (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at 487 Devoe Park Dr, Wayne, PA 19087 (full mailing address) and that he/she/they is (are) the Vice President (president or other officer or director or attorney in fact duly appointed) of the Davey Tree Expert Co. (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.

Mary Ann Schaeffer  
 Notary Public, State of New York

<sup>Ohio</sup>

