

**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**  
7015 0640 0000 6900 2710

December 10, 2015

Mr. Bill Bass, Vice President Store Services  
Dollar General Corporation  
100 Mission Ridge  
Goodlettsville, Tennessee 37072

Dollar General Corporation  
4 County Estates Road  
Greenville, New York 12083

Re: Order of Consent  
R4-2015-1026-125

Dear Mr. Bass:

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

This will also acknowledge receipt of \$2,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsely  
Assistant Regional Attorney  
Region 4

Enclosure

ec: N. Hartigan



Department of  
Environmental  
Conservation

**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.  
R4-2015-1026-125

Dollar General Corporation  
4 County Estates Road  
Greenville, New York 12083,

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 §33-301 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 Dollar General Corporation has its corporate office located at 100 Mission Ridge, Goodlettsville, Tennessee, 37072. Respondent owns and/or operates a Dollar General store (#10430) located at 4 County Estates Road, Greenville, New York 12083 (Greene 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(a) 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(a).

## **First Violation**

6. ECL §33-0905 states that “Any person who engages in the commercial or private application of pesticides or the sale of restricted use pesticides shall be certified by the commissioner except as provided in subdivision two of this section. No certification shall be valid unless the certified person also holds a valid identification card issued by the commissioner.”
7. ECL §33-1301.8 provides that it shall be unlawful “For any person to engage in application of pesticides without a pesticide applicator certificate registration issued by the commissioner, except while working under the direct supervision of a certified applicator.”
8. 6 NYCRR Part 325.7(a) states that “An individual must not engage in the commercial application of pesticides, the private application of restricted use pesticides, or the sale of restricted use pesticides, unless that individual is a certified applicator and possesses, on their person, a valid identification card issued by the department and makes such identification card available upon request of this department.”
9. ECL §33-0101(10) states that "Certified applicator" means any individual who is certified to use or supervise the use of any pesticide in any category of use covered by his certification.
10. 6 NYCRR Part 325.1(l) states that “Certified pesticide applicator means a commercial or private pesticide applicator who is certified by the department to use, supervise the use of, or train another individual in the use of any pesticide in any category of use covered by the individual's certification or any individual who is certified to sell restricted use pesticides as described in subdivision 325.16(l).”
11. On October 13, 2015, Department staff determined that Respondent, through its employee Katie Jordan (“Employee”), applied Raid Flying Insect Killer on the Commercial Property without a certified commercial applicator’s license.
12. Raid Flying Insect Killer is a federally registered pesticide with an EPA Registration Number of 4822-569.
13. Neither Respondent nor Employee, at all times relevant herein, held a commercial pesticide certification and/or was a certified pesticide applicator.
14. Employee was not working under the direct supervision of a certified applicator on October 13, 2015 when she applied Raid Flying Insect Killer to the Commercial Property.
15. Respondent violated ECL §33-0905, ECL §33-1301.8, ECL §33-0101(10), 6 NYCRR Part 325.7(a), and 6 NYCRR Part 325.1(l) when Employee applied pesticide to

the Commercial Property on October 13, 2015 without being a certified pesticide applicator and while she was not under the direct supervision of a certified applicator.

### **Second Violation**

16. ECL §33-1301 states “It shall be unlawful: 1. 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: . . . b. Except as specified in regulation authorizing alternative pesticide containers, any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing: (1) The name and address of the manufacturer, registrant, or person for whom manufactured; (2) The name, brand, or trade-mark under which said article is sold; and (3) The net weight or measure of the content; subject, however, to such reasonable variations as the commissioner may permit.”

17. During the October 13, 2015 inspection, Department staff determined that Respondent offered for sale at the Commercial Property three bottles of pesticides in damaged containers as follows:

- a. a 24 fl. oz. bottle of Clorox Clean Up Cleaner and Bleach, EPA Reg. #5813-21, was for sale with an illegible label and residue found on the top of the bottle by the spray nozzle, and
- b. two bottles of 4 fl. oz. bottles of OFF! Deep Woods Insect Repellent, EPA Reg. #4822-572, where one was found without a cap and the other was found with residue leaking from the spray nozzle.

18. Respondent's offer for sale the bottle of Clorox Clean Up Cleaner and Bleach and two bottles of OFF! Deep Woods Insect Repellent with illegible labels and without a cap are violations of ECL §33-1301.

### **Civil Penalty**

19. 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.”

20. **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 TWO THOUSAND DOLLARS (\$2,000) is assessed against the Respondent for the above violations. TWO THOUSAND DOLLARS (\$2,000) 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.** Respondents shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance 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 advise, 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. **Default.** Respondent shall not be in default of compliance with this Order if they are unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war strike, riot, or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify the Department in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

XIII. **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:

Rhonda Taylor  
Executive Vice President & General Counsel  
Dollar General Corporation  
100 Mission Ridge  
Goodlettsville, TN 37072

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

DATED: December 10, 2015  
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, Dollar General Corporation, 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: Bill Bass  
TITLE: V.P Store Services  
DATE: 12-1-15

Tennessee  
STATE OF NEW YORK )  
COUNTY OF Davidson ) ss.:

On the 1st day of December in the year 2015, before me, the undersigned, personally appeared Bill Bass (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at work at 100 Mission Ridge, G'ville, TN (full mailing address) and that he/she/they is (are) the Vice President Store Services (president or other officer or director or attorney in fact duly appointed) of the Dollar General Corporation (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.

Joann Lampe  
Notary Public, State of New York  
Tennessee

My Commission Expires MAY 8, 2017



### Schedule of Compliance

1. Respondent shall not apply commercial pesticides unless it has complied with all applicable pesticide regulations and laws.
2. Respondent shall not offer for sale commercial pesticides unless it has complied with all applicable pesticide regulations and laws.
3. Respondent shall 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 at the time this Order is returned to the Department signed and notarized.

COMPLIANCE VERIFICATION AFFIDAVIT

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

----- X  
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  
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ORDER ON  
CONSENT

- By -

Case No.  
R4-2015-1026-125

Dollar General Corporation  
4 County Estates Road  
Greenville, New York 12083,

Respondent.

----- X  
I, Bill Bass, in the position of VP Store Services with Dollar  
General Corporation, being duly sworn, do depose and say that Dollar General  
Corporation:

- a. will not apply commercial pesticides unless it has complied with all applicable pesticide regulations and laws; and
- b. will not offer for sale commercial pesticides unless it has complied with all applicable pesticide regulations and laws.

DOLLAR GENERAL CORPORATION

By:

Bill Bass

Name

V.P. Store Services

Position

12-1-15

Date Signed