

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



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0907

July 28, 2014

Bryan Yoo
Pest Mall
2730 North Berkeley Lake Road #B 600
Duluth, GA 30096

Re: Order of Consent
R4-2014-0616-124

Dear Mr. Yoo:

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

This will also acknowledge receipt of \$1,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: Inv. J. Paluch
M. Solan

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
R4-2014-0616-124

-by-

Pest Mall
2730 North Berkeley Lake Road #B 600
Duluth, GA 30096

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, Pestmall, located at 2730 North Berkeley Lake Road, Duluth, Georgia, is a mail order company which provides professional "Do it yourself" pest control products & termite treatment to exterminators and consumers.
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On October 18, 2013, Department staff placed an online order with Respondent for the purchase of one envelope of Demon WP Insecticide, a pesticide which is not registered in New York and which Respondent's website indicates is "*Not For Sale to CT, NY.*"
5. Department staff received and picked up the order on October 28, 2013 at the post office located in Slingerlands, New York.

6. ECL 33-0701 provides that “*Every pesticide which is used, distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered every two years with the office of the commissioner; provided that any pesticide imported into this state, which is registered under the provisions of any federal act.*”

7. ECL 33-1301(1)(a) makes it 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 pesticide that is not registered pursuant to ECL 33-0701.

8. Respondent’s distribution and offer for sale of Demon WP Insecticide, which is an unregistered pesticide in New York, are violations of ECL 33-0701 and ECL 33-1301(1)(a).

Civil Penalty

9. 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

10. 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 of the aforesaid alleged violations, a civil penalty in the amount of TWO THOUSAND DOLLARS (\$2,000) of which ONE THOUSAND DOLLARS (\$1,000) 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 ONE THOUSAND DOLLARS (\$1,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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 it.

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 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, 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 IV 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. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, which relate to the site, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

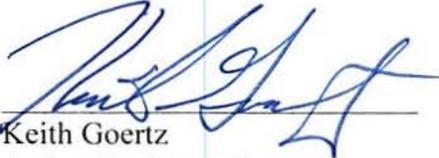
IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

X. Respondent shall comply with the attached Schedule of Compliance which is incorporated and made part of this Order.

DATED: July 28, 2014
Rotterdam, New York

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

BY:

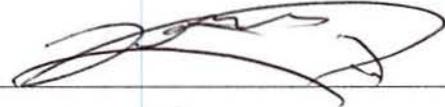

Keith Goertz
Acting Regional Director
Region 4

CONSENT BY RESPONDENT

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

Pest Mail

SIGNED: _____



TITLE: _____

OWNER

DATE: _____

7/22/14

STATE OF _____

Georgia

) ss.:

COUNTY OF _____

Gwinnett

On the 22 day of July in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Jee Sun Park 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.

Notary Public

Qualified in the County of:

My Commission Expires:



SCHEDULE OF COMPLIANCE

1. Within 60 days of the effective date of this Order, Respondent shall develop and maintain a Standard Operating Procedure to ensure that no unregistered pesticide products are sold to purchasers within New York State.
2. Within 60 days of the effective date of this Order on Consent document, Respondent must submit a signed and notarized Compliance Verification Affidavit (located at the end of this document) to the Department, certifying that compliance issues described in numbered paragraph 1 has been complied with. This confirmation should be addressed to:

Mr. Mark Solan
NYS Department of Environmental Conservation
Bureau of Pesticides
1130 North Westcott Rd
Schenectady, NY 12306

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation Law
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-by-

Pest Mall
2730 North Berkeley Lake Road #B 600
Duluth, GA 30096

Respondent

I, Jee SUN PARK, being duly sworn, do depose and say that I am employed as
owner, at Pest Mall and that I have complied with the
requirements of paragraph No. 2 of the Order on Consent's Schedule of Compliance
(R4-2014-0616-124) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me
On this 22 day of July, 2014


Notary Public

