

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Violations of the Environmental  
Conservation Law ("ECL") Article 33

- by -

**ORDER ON CONSENT**  
File No. R4-2009-1008-158

Siena College  
515 Loudon Rd.  
Loudonville, NY 12211

Respondent

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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, Siena College, owns and operates dormitories and other buildings on its Loudonville, New York campus.
3. The Respondent is a person as defined in ECL § 33-0101(33).
4. Regulations at 6 NYCRR 325.2(b) provide that: Pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department.
5. New York State pesticide laws at ECL Section 33-0905(1) provide 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.
6. On October 1, 2009, Department staff conducted an inspection and reviewed Respondent's records. On August 28, 2009, an employee of the Respondent applied Dynachem Knockout (EPA Reg. # 10807-48-36582) to Room 417 of Roger Bacon Hall for the control of bees. The product's label states that it is for "outdoor use only. Respondent's application of Dynachem Knockout is a violation of 6 NYCRR 325.2(b) because the pesticide was applied inconsistent with the label's directions.
7. On October 1, 2009, Department staff determined that the employee who made the commercial application of pesticides as described in Paragraph 6 above isn't a certified pesticide applicator and therefore Respondent violated ECL Section 33-0905(1).

8. Section 71-2907 of the Environmental Conservation Law 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.

9. Respondent has affirmatively waived its rights 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 ONE THOUSAND DOLLARS (\$1,000) is hereby assessed against the 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. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question during reasonable hours, in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance with this Order.

IV. The terms of this Order shall not be construed to prohibit the Commissioner of his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

V. 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.

VI. Respondent shall comply with the Schedule of Compliance.

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

DATED: October ,2009  
Rotterdam, New York

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

BY:

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Eugene J. Kelly  
Regional Director  
Region 4

CONSENT BY RESPONDENT

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

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2009, before me, the undersigned,  
personally appeared \_\_\_\_\_  
*(Full name)*

personally known to me who, being duly sworn, did depose and say that he/she/they reside at  
\_\_\_\_\_  
*(Full mailing address)*

and that he/she/they is (are ) the

\_\_\_\_\_  
*(President or other officer or director or attorney in fact duly appointed)*

of the \_\_\_\_\_  
*(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.

\_\_\_\_\_  
Notary Public, State of New York

## SCHEDULE OF COMPLIANCE

1. The Respondent must cease and desist all pesticide applications by its employees unless the employee applying the pesticides obtains a category 7A pesticide applicator/technician certification.