

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
7017 1070 0001 0125 7841

July 1, 2019

Garrett Lewis
1 Stop Pest Control, LLC
100 Riverchase Drive
Rensselaer, NY 12144

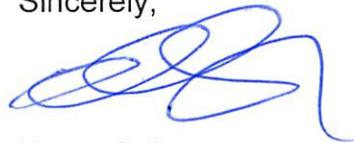
Re: Order on Consent
R4-2019-0430-26

Dear Mr. Lewis:

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

This will also acknowledge receipt of \$500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: S. Whelen
M. Wells

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
R4-2019-0430-26

-by-

1 Stop Pest Control, LLC
100 Riverside Drive
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 1 Stop Pest Control, LLC, owns/operates a pest control business located at 100 Riverchase Drive, Rensselaer, New York ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On March 26, 2019, Department staff conducted a routine Non-Agricultural Use Observation ("NAUO") of the facility as a routine compliance check to determine if the company was operating in compliance with the laws and regulations that pertain to the use of pesticides in New York State.

First Violation

5. ECL §33-0905 provides that:
(a) *"Every certified applicator shall, prior to the application of a pesticide within or on the premises of a dwelling, supply the occupants therein with a copy of the information, including any warnings, contained on the label of the pesticide to be applied. Such information shall be supplied in either a written, digital or electronic format which shall be determined by the occupants of such dwelling, provided however that the certified applicator must also have a written copy of such information in his/her possession."*

(b) *“Except as provided in paragraph c of this subdivision, every certified applicator shall, prior to the application of a pesticide within or on the premises of a multiple dwelling, building, or structure other than a dwelling supply the owner or his agent, with a copy of the information, including all warnings, contained on the label of the pesticide to be applied. Such information shall be supplied in either a written, digital or electronic format which shall be determined by the owner or his or her agent, provided however that the certified applicator must also have a written copy of such information in his or her possession. Such owner or agent shall make available upon request at reasonable times such information in written or electronic form if available to the occupants or residents of such multiple dwelling, building, or structure.”*

6. At the time of the March 26, 2019 inspection, Department staff determined that Respondent’s agent, who is a member of the LLC as well as a certified commercial applicator, failed to provide occupants of dwellings and owners or owners’ agents, of structures other than a dwelling, with a copy of the information contained on the label of the pesticides to applied, which is in violation of ECL §33-0905.

Second Violation

7. ECL §33-1301 provides that:

“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:*

(1) 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:

(i) the name and address of the manufacturer, registrant, or person for whom manufactured;

*(ii) the name, brand, or trade-mark under which said article is sold;
and;*

(iii) the net weight or measure of the content; subject, however, to such reasonable variations as the commissioner may permit.”

8. At the time of the inspection, Department staff determined that Respondent’s agent, who is a member of the LLC as well as a certified commercial applicator, failed to affix to a bulb duster and a backpack sprayer, both of which contained pesticides, a label bearing the name and address of the manufacturer, the name, brand, or trade-mark under which the pesticide is sold, and the net weight or measure of the content, which is in violation of ECL §33-1301.

Civil Penalty

9. ECL 71-2907 (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. Civil Penalty

In respect of the aforesaid violations, a civil penalty in the amount of FIVE HUNDRED DOLLARS (\$500) shall be paid by money order, or check made payable to the order of “New York State Department of Environmental Conservation,” with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check. The check shall be sent to:

**The Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway
10th Floor
Albany, NY 12233-4900**

In the alternative, payment of the civil penalty can be made by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line>

The penalty assessed in the Order on Consent constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order on Consent, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset by the penalty amount any tax refund or other monies that may be owed to you by the State of New York.

Payment of the above penalties shall not in any way alter Respondent’s obligation to complete performance under the terms of this Order.

The signed and notarized Order on Consent shall be sent to:

**New York State Department of Environmental Conservation
Region 4 Main Office
1130 North Westcott Road
Schenectady, NY 12306-2014
ATTN: Karen S. Lavery, Esq.**

II. Communications

All communications or submissions required herein shall be made to: Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attention- Sarah Whelen, Pesticide Control Specialist 1, Division of Materials Management, sarah.whelen@dec.ny.gov. All communications shall include a reference to the Order on Consent Case Number R4-2019-0430-26.

III. Schedule of Compliance

Respondent shall comply with the Schedule of Compliance set forth in this Order on Consent which is incorporated and made part of the terms, provisions, and conditions of this Order on Consent.

IV. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order 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 or the ECL.

V. Summary Abatement

This Order shall not be construed to prohibit the Commissioner or his duly authorized representative 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 DEC, New York State, and their representatives and employees harmless for all claims, suits, 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. Review of Submittals

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 accepts 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.

VIII. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

IX. Modifications and Extensions

No modifications or extensions of this Order shall be made or become effective except as may be specifically set forth in writing by the Department.

X. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein.

XI. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

XII. Reservation of Rights

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.

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 officers, directors, agents, servants, employees, successors and assigns;

C. 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

XIII. 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.

IX. This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, their trustees, officers, employees, successors and assigns for the above-referenced violations.

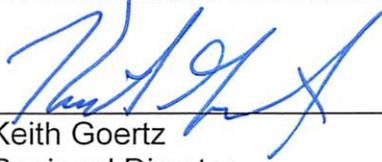
XV. This Order on Consent is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondent's compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein.

XVI. The Order on Consent will terminate when all requirements imposed by this Order on Consent are completed to the Department's satisfaction.

DATED: June 28 2019
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent, 1 Stop Pest Control, LLC, hereby consents to the issuing and entering of this Order on Consent and waives its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

BY: Mausti Tein

DATE: 6-28-19

STATE OF NEW YORK)
 SS:
COUNTY OF)

On the 28 day of JUNE in the year 2019 before me, the undersigned, a Notary Public in and for the State, personally appeared GARRETT K Lewis 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual executed the instrument.

Thomas Prawdzik
Notary Public
Qualified in the County of: Schenectady
My Commission Expires: 9/30/22

THOMAS PRAWDZIK
Notary Public, State of New York
Residing in Schenectady County
My Commission Expires 9-30-22

SCHEDULE OF COMPLIANCE

1. Within thirty days (30) days of the effective date of this Order, Respondent shall submit to this Department, a signed and notarized Compliance Verification Affidavit ("CVA") (located at the end of this document) certifying that compliance issues have been corrected and/or what steps will be taken to correct them and include supporting documents.

This document should be addressed and sent to:

Sarah Whelen
NYS Department of Environmental Conservation
Region 4
Bureau of Pesticides
1130 North Westcott Rd
Schenectady, NY 12306

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

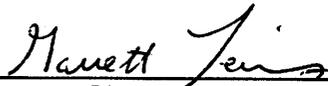
In the Matter of Violations
of the Environmental Conservation Law
(ECL) Article 33 and
Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of
New York (6 NYCRR),

-by-

1 Stop Pest Control, LLC
100 Riverside Drive
Rensselaer, NY 12144

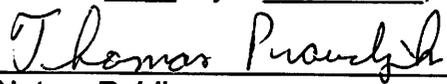
Respondent

I, Garrett Lewis, being duly sworn, do depose and say that I am a member of 1 Stop Pest Control, LLC, and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2019-0430-26) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me
On this 28 day of June, 2019



Notary Public

THOMAS PRAWDZIK
Notary Public, State of New York
Residing in Schenectady County
My Commission Expires 7-30-22