

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott, 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 0730

January 8, 2015

Michael Palombo
Adirondack Pest Control, Inc.
1566 Vley Road
Scotia, NY 12302

Re: Order on Consent
R4-2014-1031-163

Dear Mr. Palombo:

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

This will also acknowledge receipt of \$500 1st of 12 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$500 is due on or before February 2, 2015.

Sincerely,

Karen s. Lavery
Assistant Regional Attorney
Region 4

cc: B. Pendell

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
R4-2014-1031-163

-by-

Adirondack Pest Control, Inc.
1566 Vley Road
Scotia, NY 12302

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (DEC) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to 3-301 of the Environmental Conservation Law (ECL), among other authorities. 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 (6 NYCRR), Part 325.
2. Respondent Adirondack Pest Control, Inc., owns/operates a pest control business located at 1566 Vley Road, Scotia, New York ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On March 10, 2014, June 30, 2014, and September 15, 2014, Respondent made commercial pesticide applications to the apartment building located at 2 Thurlow Terrace, Albany, New York ("site").
5. On September 30, 2014, Department conducted an inspection of the site.

Violations

6. Regulations at 6 NYCRR 325.25(a) provides 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.*”

7. At the time of the March 10, 2014 application, a tank mix of Gentrol (EPA Reg. No. 2727-351), Onslaught (EPA Reg. No. 1021-1815) and Zenprox (EPA Reg. No. 2724-351) was used to control bedbugs in 12 separate units on the 9th floor of the site, specifically, 9A, 9B, 9C, 9E, 9F, 9G, 9H, 9J, 9M, 9N, 9O, and 9P. The dosage for Zenprox was recorded incorrectly as an 82% solution and was applied to all 12 units on the March 10, 2014 application, which is in violation of regulations at 6 NYCRR §325.25(a).

8. At the time of the June 30, 2014 application, a tank mix of Gentrol (EPA Reg No. 2727-351), Onslaught (EPA Reg No.1021-1815) and ExciteR (EPA Reg No. 655-798) was used for bedbug control in one unit on the 9th floor of the site. The dosage rate was missing on daily use records for all three products in this unit for the June 30, 2014 application, which is in violation of regulations at 6 NYCRR §325.25(a).

9. At the time of the September 15, 2014 application, a tank mix of Gentrol (EPA Reg. No. 2727-351), Onslaught (EPA Reg. No. 1021-1815) and ExciteR (EPA Reg. No. 655-798) was used for bedbug control in one unit of the 8th floor, as well as stairwells and hallways on the 1st through 9th floors. The stairwells and hallways are considered a separate application from the unit on the 8th floor. Each application requires specific daily use records. The September 15, 2014 daily use records did not include the dosage rate for all three products for each application made that day, and also did not include the place of application for the ExciteR and Gentrol for each application, which is in violation of regulations at 6 NYCRR §325.25(a).

Civil Penalty

10. 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

11. Respondent has affirmatively waived his 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:

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. With respect to the aforesaid violations, a civil penalty in the amount of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500) of which SIX THOUSAND DOLLARS (\$6,000) 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 SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

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.

Payment of the civil penalty is due in accordance with the following schedule:

1. \$500.00 with the return of the Order by January 2, 2015;
2. \$500.00 by February 2, 2015;
3. \$500.00 by March 2, 2015;
4. \$500.00 by April 2, 2015;
5. \$500.00 by May 4, 2015
6. \$500.00 by June 2, 2015
7. \$500.00 by July 2, 2015
8. \$500.00 by August 3, 2015
9. \$500.00 by September 2, 2015
10. \$500.00 by October 2, 2015
11. \$500.00 by November 2, 2015
12. \$500.00 by December 2, 2015

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

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for them.

III. Respondent shall indemnify and hold harmless the Department, the State of New York, and his 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 Respondents 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 his obligations to obtain such formal approvals as may be required by this Order.

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

IX. Respondent shall comply with the attached Schedule of Compliance which is incorporated into this Order.

DATED: *Jan. 8*, 2015
Rotterdam, New York

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

BY:



Keith Goertz
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.

Adirondack Pest Control, Inc.

SIGNED: Michael A Palomb

TITLE: President

DATE: 12/31/14

STATE OF NEW YORK)

COUNTY OF SCHENECTADY) ss.:

On the 31st day of December in the year 2014 before me, the undersigned, a Notary Public in and for the State, personally appeared Michael Palomb 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.

Premnarine Jaddu
Notary Public

Qualified in the County of:

My Commission Expires:

PREMNARINE JADDU
Notary Public, State of New York
No. 01JA6228798
Qualified in Schenectady County)
Commission Expires September 27, 20 18

SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of this Order, Respondent shall submit to the Department for review, a sample of its revised Daily Use Record form, in compliance with 6 NYCRR §325.25(a).

2. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a signed and notarized Compliance Verification Affidavit (“CVA”) (enclosed) certifying that actions necessary to come into compliance with the Department’s regulatory program, and those actions specified in this document, have been completed.

This document should be addressed and sent to:

Brayton Pendell
NYS Department of Environmental Conservation
Bureau of Pesticides Management
1130 North Westcott Rd
Schenectady, NY 12306