

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

7012 3050 0000 4246 3825

October 31, 2013

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

Re: Order of Consent
R4-2013-0927-117

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 11 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$500 is due on or before December 2, 2013.

Sincerely,



Karen s. Lavery
Assistant Regional Attorney
Region 4

cc: S. Brandon

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
R4-2013-0927-117

-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 July 8, 2013, Respondent made a commercial pesticide application at Hudson Harbour Apartments, 9B Hudson Harbour Drive, Poughkeepsie, New York ("site").
5. On July 16, 2013 and July 31, 2013, Department conducted a Pesticide Applicator/Business/Use Inspection of Respondent's facility.

First Violation

6. At the time of the July 8, 2013 pesticide application, Maxforce FC (EPA Reg. # 432-1257) was recorded on the service receipt as having been applied to apartment #s 310, 7A, and 4B for the purpose of controlling ants. The only target pest listed on Maxforce's label is cockroaches.

7. 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.*"

8. Respondent violated 6 NYCRR 325.2 (b) by failing to comply with Maxforce's label directions by applying the product to a pest not listed on the label.

Second Violation

9. At the time of the July 16, 2013 inspection, Respondent was unable to produce apprentice training records for Kyle Palombo who was the applicator for the July 8, 2013 pesticide application at the site.

10. Regulations at 6 NYCRR 325.10 (a) provide that "*each individual engaged in the commercial application of pesticides who is not a certified applicator or technician is considered a pesticide apprentice. An apprentice must be at least 16 years of age. An apprentice is required to receive 40 hours of pesticide use experience under the supervision of a certified applicator and receive a minimum of 8 hours of instruction on the requirements in section 325.18 of this Part, before such apprentice can apply general use pesticides under the off-site direct supervision of a certified applicator. It is the responsibility of the certified pesticide applicator or registered business to determine and so state that an apprentice is competent to perform applications.*"

11. Respondent violated regulations at 6 NYCRR 325.10 (a) by failing to provide to the Department at the time of the inspection, the required apprentice training documents for applicator Kyle Palombo.

Third Violation

12. At the time of the inspections, Department staff reviewed Respondent's pesticide application records for the July 8, 2013 pesticide application for the six apartments at the site and determined the following record keeping violations:

a. Demand CS (EPA Reg # 100-1066) was recorded on the service receipt as having been applied to the interior of apartment numbers 10C, 402, and 407. According to a voluntary statement from the applicator, Demand CS was not applied to the interior of the apartment but rather to the exterior door frames of the apartments. The place of application was recorded inaccurately for the application of Demand CS to apartments 10C, 402 and 407. The dosage rate

was omitted on the July 8, 2013 service receipt for the application of Demand CS to apartments 10C, 402 and 407.

b. The application records did not differentiate the place of application of Gourmet Ant Gel (EPA Reg # 73766-1) to apartments 310, 7A, and 4B.

c. According to a voluntary statement obtained from the applicator, the pesticides Exciter (EPA Reg # 655-798) and Onslaught (EPA Reg # 1021-1815) were applied to the interior of apartments 10C, 402 and 407 on July 8, 2013. The applicator's records did not identify those products as having been applied. The applicator failed to record the target pest, dosage rate, method of application and place of application for the applications of Exciter and Onslaught to apartments 10C, 402 and 407.

13. Regulations at 6 NYCRR 325.25 (a) provide 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.”*

14. Respondent violated regulations at 6 NYCRR 325.25 (a) resulting from the record keeping violations cited above in paragraph No. 11 a-c.

Civil Penalty

15. 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

16. 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:

I. With respect to the aforesaid alleged violation, a civil penalty in the amount of ELEVEN THOUSAND FIVE HUNDRED DOLLARS (\$11,500) is hereby assessed against the Respondent of which FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$5,250) 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.

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

1. \$500.00 with the return of the signed and notarized copy of this Order;
2. \$500.00 by December 2, 2013;
3. \$500.00 by January 1, 2014;
4. \$500.00 by February 3, 2014;
5. \$500.00 by March 3, 2014;
6. \$500.00 by April 1, 2014;
7. \$500.00 by May 1, 2014;
8. \$500.00 by June 2, 2014;
9. \$500.00 by July 1, 2014;
10. \$500.00 by August 1, 2014;
11. \$250.00 by September 1, 2014

The failure to make a timely payment shall result in the entire balance of civil penalty being immediately due. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance (\$6,250) 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 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.

DATED: 10/31, 2013
Rotterdam, New York

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

BY:



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 notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Adirondack Pest Control, Inc.

SIGNED: Michael Palomb

TITLE: President

DATE: 12/31/13

STATE OF ^{New York} ~~Saratoga~~)

COUNTY OF Saratoga) ss.:

On the 31st day of October in the year 2013 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.

[Signature]

Notary Public
Qualified in the County of:
My Commission Expires:

RICHARD E. OSTROV
Notary Public, State of New York
Residing in Saratoga County
Reg. No. 4879173
My Comm. Expires March 25, 2015

SCHEDULE OF COMPLIANCE

1. Within 90 days of the effective date of this Order, Respondent's employee, Kyle Palombo, must obtain pesticide certification with the Department.

2. Within 90 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:

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

COMPLIANCE VERIFICATION AFFIDAVIT

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
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Regulations of the State of
New York ("6 NYCRR"),

-by-

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

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Respondent

I, Michael F. Palombo, being duly sworn, do depose and say that I am the Chief Executive Officer of Adirondack Pest Control, Inc., and that I have complied with the requirements of paragraph Nos. 1 and 2 of the Order on Consent's Schedule of Compliance (R4-2013-0927-117) effective on the date signed by the Regional Director.

Michael F. Palombo, Inc.

Signature of Respondent

Subscribed and sworn to before me
On this 21st day of April, 2013

[Signature]

Notary Public

RICHARD E. OSTROV
Notary Public, State of New York
Residing in Saratoga County
Reg. No. 4879173
My Comm. Expires March 25, 2015