

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
7016 0340 0000 4616 5805

November 30, 2017

Mr. Jeffrey Peck, Partner
Advantage Pest Control
442 Duglin Avenue
Schenectady, NY 12303

Re: Order on Consent
R4-2017-0929-249

Dear Mr. Peck:

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

This will also acknowledge receipt of \$312.50 1st of 4 payments of the civil penalty pursuant to Paragraph I. Your second payment of \$312.50 is due on or before February 16, 2018.

Sincerely,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: S. Whelen

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER ON CONSENT
R4-2017-0929-249

-by-

Jeffrey Peck
d/b/a Advantage Pest Control
442 Duglin Avenue
Schenectady, NY 12303

Respondent

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (Department) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §33-301 of the Environmental Conservation Law (ECL), among other authorities. The Department 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.

Respondent

2. Respondent, Jeffrey Peck, d/b/a Advantage Pest Control, owns and operates a pesticide application business in the State of New York.

3. Respondent is a person as defined in ECL § 33-101(33).

Violations

Application of Pesticide without Required Certification

4. On September 15, 2017, Department staff responding to a complaint discovered, through direct conversation with Respondent and upon a review of Respondent's records, that Respondent had, on August 31, 2017, engaged in the application of pesticide designated as EPA category "7f," while Respondent was only certified to apply category "7a" pesticides.
5. Respondent's failure to have the required certification to apply the subject pesticide is a violation of 6 NYCRR 325.7.

Failure to Maintain Required Records of Pesticide Applications

6. On September 15, 2017, Department Staff inspected a random sampling of five (5) of Respondent's pesticide application records, dated May 11, 2017, July 31, 2017, and August 31, 2017 respectively. All selected records failed to maintain corresponding records of the dosage rates for each pesticide application.
7. Respondent's failure to record to maintain dosage rates for each pesticide application is a violation of ECL § 33-1205(1).

Failure to Have an Effective Anti-Siphon Device

8. On September 15, 2017, Department observed that the water source used by Respondent to fill equipment did not utilize an anti-siphon device to prevent backflow.
9. Respondent's failure to have an effective anti-siphon device in place is a violation of 6 NYCRR 325.2(c).

Civil Penalty

10. 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

11. 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.** Respondent is assessed a civil penalty in the amount of ONE THOUSAND ONE HUNDRED TWENTY-FIVE DOLLARS (\$1,125). The civil penalty shall be paid by bank check or company check made payable to the NYS Department of Environmental Conservation. Payment of the civil penalty is due according to the following payment schedule:

1. \$312.50 with the return of the signed and notarized copy of this Order;
2. \$312.50 by Friday, February 16, 2018;
3. \$312.50 by Thursday, May 17, 2018;
4. \$312.50 by Friday, August 17, 2018.

Failure to make a timely payment shall result in the entire balance of civil penalty being immediately due.

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

II. **Binding Effect.** The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or controlled by it.

III. **Communications.** Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to:
For the Department:

Department of Environmental Conservation
Region 4
Attn: Sarah Whelen
1130 North Westcott Road
Schenectady, NY 12306

For the Respondent:

Jeffrey Peck
d/b/a Advantage Pest Control
442 Duglin Avenue
Schenectady, NY 12303

IV. **Summary Abatement.** The terms of 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.

V. **Indemnification.** Respondent shall indemnify and hold harmless the Department, the State of New York, and their 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, except to the extent that any such claims arise or result from the acts or omissions by the Department, the State of New York, or its employees.

VI. **Modification.** 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, such change to be made only upon written agreement of the parties.

VII. **Effective Date.** This Order is deemed effective on the date signed by the Department. The Department will provide Respondent a fully executed copy of this Order as soon as practicable following the effective date of this Order.

VIII. **Scope.** 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 Department or 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 agents, its servants, its employees, its successors and its assigns; and

C. 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. **Access.** To ensure compliance with the ECL and this Order, Respondent shall not deny the Commissioner or his duly authorized representative access at all reasonable times to inspect Respondent's New York facilities and all pesticide records for applications within the State of New York.

X. **Schedule of Compliance.** Respondent shall comply with the attached Schedule of Compliance.

XI. **Termination.** The Order shall terminate upon Respondent's complete compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: November 29, 2017
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

- (1) Within thirty days (30) days of the effective date of this Order, Respondent shall submit to the Department:
 - (i) documentation (e.g., sales receipt) sufficient to demonstrate the utilization of software that will allow Respondent to comply with all pesticide dosage recording requirements, along with printouts (to be submitted within six (6) months of the effective date of this Order) demonstrating such compliance; and
 - (ii) proof of installation of an anti-siphon device or air gap separation to prevent backflow to Respondent's water line while filling equipment.

- (2) Respondent shall submit to the Department proof of proper certification to apply EPA category "7f" pesticides within thirty (30) days of receipt of any such certification.

- (3) Within thirty (30) days of completing the items listed in Paragraphs 1 and 2 above, Respondent shall submit the attached Compliance Verification Affidavit ("CVA") to certify compliance with those requirements.

All documentation should be addressed and sent to:

NYS Department of Environmental Conservation
Region 4
Attn: Sarah Whelen
Bureau of Pesticides
1130 North Westcott Road
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),

AFFIDAVIT

-by-

Jeffrey Peck
d/b/a Advantage Pest Control
442 Duglin Avenue
Schenectady, NY 12303,

Respondent

I, Jeffrey Peck, being duly sworn, do depose and say that I am the owner of Advantage Pest Control, and that I have complied with the requirements of paragraphs No. 1 and 2 of the Order on Consent's Schedule of Compliance (R4-2017-0929-249) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me

On this 28 day of November 2017



Notary Public

AMY R. BADGER
Notary Public State of New York
No. 01BA6194224
Qualified in Schenectady County
Commission Expires 9/29/20