

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 5782

October 13, 2017

Mr. Michael Sheridan
Capital District Household Services, Inc. d/b/a
518 Pest and Fert
193 Schoolhouse Road
Albany, NY 12203

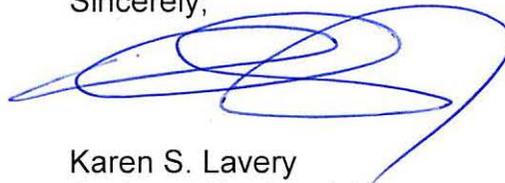
Re: Order on Consent
R4-2017-0821-234

Dear Mr. Sheridan:

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: M. Leidy
M. Solan



Department of
Environmental
Conservation

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
R4-2017-0821-234

-by-

Capital District Household Services, Inc. d/b/a
518 Pest and Fert
193 Schoolhouse Road
Albany, NY 12203

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 Capital District Household Services, Inc. d/b/a 518 Pest and Fert, owns/operates a pest control business located at 193 Schoolhouse Road, Albany, New York ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On July 31, 2017, Department staff conducted a Non-Agricultural Use Observation ("NAUO") of the facility, resulting from Respondent's advertisement for services outside the scope of the pesticide business's registration.
5. Specifically, the advertisement listed termite control as services which Respondent offered, which falls under Category 7C.
6. Respondent's pesticide certification is current in categories 3A and 7A and the business is currently registered only in Category 3A.

7. At the time of the inspection, Department staff reviewed two of Respondent's application records, one from April 9, 2017 and one from June 7, 2017. Neither application contained the dosage rate, place of application, method of application or target information.

Violations

8. Regulations at 6 NYCRR 325.23(a) provide that "*Each agency that applies pesticide and each business offering, advertising or providing the services of commercial application of pesticides, either entirely or as part of the business, must register annually with the department on forms supplied by the department. Agency, as defined in section 33 of the ECL, means any State agency; municipal corporation; public authority; college, as that term is defined in the Education Law; railroad, as that term is defined in the Railroad Law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the State Transportation Corporations Law, which applies pesticides.*"

9. Respondent violated regulations at 6 NYCRR 325.23(a) by distributing a printed advertisement which offered services to control termites while lacking business registration in Category 7C, which was required for such treatment.

10. 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.*"

11. Respondent violated regulations at 6 NYCRR 325.25(a) by failing to record the dosage, rate, place of application, and target organisms for applications made on April 9, 2017 and June 7, 2017.

Civil Penalty

12. ECL 33-1301 (8) 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

13. 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

With respect to the violations identified in this Order, Respondent is hereby assessed a civil penalty of ONE THOUSAND DOLLARS (\$1,000) of which FIVE HUNDRED DOLLARS (\$500) 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 FIVE HUNDRED DOLLARS (\$500) 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.

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

DATED: 10/12, 2017
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:

A handwritten signature in black ink, appearing to read 'Keith Goertz', written over a horizontal line.

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.

Capital District Household Services, Inc. d/b/a
518 Pest and Fert

SIGNED: 

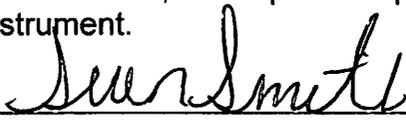
TITLE: Owner

DATE: 10/9/12

STATE OF NY

COUNTY OF Albany) ss.:

On the 10th day of October in the year 2011 before me, the undersigned, a Notary Public in and for the State, personally appeared Michael Sheridan 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.


Notary Public
Qualified in the County of: Albany
My Commission Expires: 09/04/2020

SEAN SMITH
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SM6268196
Qualified In Albany County
My Commission Expires 09-04-2020

SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a copy of application records for August 2017, which shall include all elements required by regulations at 6 NYCRR 325.25(a)
2. Within 30 days of the effective date of this Order, Respondent shall remove from all advertisements, any references to termite control, until such time as Respondent's business registration is updated to include Category 7C.
3. Upon signing the Order, Respondent shall submit to the Department, a signed and notarized Compliance Verification Affidavit ("CVA") (enclosed) certifying that the actions necessary to come into compliance with the Department's regulatory program, and those specified in this document, have been completed.

This document should be addressed and sent to:

Michael Leidy
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

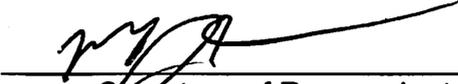
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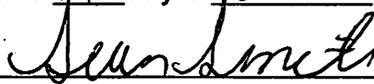
Capital District Household Services, Inc. d/b/a
518 Pest and Fert
193 Schoolhouse Road
Albany, NY 12203

Respondent

I, Michael Sheridan, being duly sworn, do depose and say that I am the owner of Capital District Household Services, Inc. d/b/a 518 Pest and Fert, and that I have complied with the requirements of paragraph Nos. 1-3 of the Order on Consent's Schedule of Compliance (R4-2017-0821-234) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me
On this 12 day of October, 2017


Notary Public

SEAN SMITH
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SM6268196
Qualified In Albany County
My Commission Expires 09-04-2020