

**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 9173

January 15, 2019

Joseph Sportman  
Sales and Service Technician  
Chemenergy, LLC  
8 Interstate Ave.  
Albany, NY 12205

Re: Order on Consent  
R4-2018-1114-201

Dear Mr. Sportman:

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

This will also acknowledge receipt of \$2,200 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: S. Whelen

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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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**  
R4-2018-1114-201

-by-

Chemenergy, LLC  
8 Interstate Ave  
Albany, NY 12205

Respondent

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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 Chemenergy, LLC, is a global supplier providing water treatment products, systems, parts and chemical engineering to its customer base worldwide.
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On October 4, 2018, Department staff conducted an inspection of Respondent's facility located at 8 Interstate Ave, Albany, New York ("site").

First Violation

5. ECL §33-1205 provides that:  
*"1. All commercial applicators shall maintain pesticide use records for each pesticide application containing the following:*
  - a. EPA registration number;*
  - b. product name;*
  - c. quantity of each pesticide used;*
  - d. date applied;*
  - e. location of application by address (including five-digit zip code).**Such records shall be maintained for a period of not less than three*

*years. All commercial applicators shall file, at least annually, a report or reports containing such information with the department on computer diskette or in printed form on or before February first for the prior calendar year. All commercial applicators shall also maintain corresponding records of the dosage rates, methods of application and target organisms for each pesticide application. These records shall be maintained on an annual basis and retained for a period of not less than three years and shall be available for inspection upon request by the department.”*

6. At the time of the October 4, 2018 inspection, Department staff determined that Respondent’s certified technician failed to maintain the dosage rate, method of application, place of application, and target organism for each pesticide application conducted in 2018, in violation of ECL §33-1205(1).

#### Second Violation

7. Regulations at 6 NYCRR §325.26 provide that “(a) *Each certified commercial applicator shall be provided by the department with a set of two numbered stickers for each piece of commercial application equipment. These stickers shall be prominently displayed on opposite sides of each piece of such equipment or on opposite sides of each vehicle used in transporting such equipment except however:*  
(1) *small pieces of hand held or portable equipment such as two and one-half gallon sprayers or back pack mistblowers do not require such stickers; and*  
(2) *noncommercial-type vehicles transporting small quantities of pesticides or portable pesticides equipment are not required to display the stickers if such display will change the rating of the vehicle and thereby limit its access to certain transportation routes normally used.”*

8. At the time of the October 4, 2018 inspection, Department staff determined that Respondent’s certified technician failed to display two numbered stickers on the commercial vehicle used to transport pesticide containers, in violation of regulations at 6 NYCRR §325.26(a).

#### Third Violation

9. Regulations at 6 NYCRR §325.2 (b) provides that “*pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department.”*

10. At the time of the October 4, 2018 inspection, Department staff determined that on April 23, 2018, Respondent’s certified technician used a pesticide, Bromicide Tablets (EPA Reg. No. 83451-1), in contravention of label directions. According to pesticide use records, the certified technician made an initial application of 3.75-pounds/1,000 gallons of water. This exceeds the label dosage rate for initial applications of 0.6-pounds/1,000-gallons of water, which is in violation of regulations at 6 NYCRR §325.2 (b).

### Civil Penalty

11. 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

12. 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 aforesaid violations, a civil penalty in the amount of TWO THOUSAND TWO HUNDRED DOLLARS (\$2,200) which shall be payable to the New York State Department of Environmental Conservation by Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

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: *January 15*, 2019  
Rotterdam, New York

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:



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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.

Chemenergy, LLC

SIGNED: 

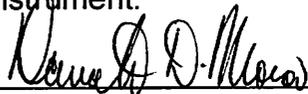
TITLE: SALES AND SERVICE TECH

DATE: 1/11/2019

STATE OF NY )

COUNTY OF ALBANY ) ss.:

On the 11<sup>th</sup> day of January in the year 2019 before me, the undersigned, a Notary Public in and for the State, personally appeared Joseph F. Sportman, Jr. 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.

  
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Notary Public  
Qualified in the County of: Schenectady  
My Commission Expires: May 12, 2020

DANMATEE D. MORA  
Notary Public in the State of New York  
Qualified in Schenectady County  
Registration No. 01MO6187048  
My Commission Expires May 12, 2020

## **SCHEDULE OF COMPLIANCE**

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

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

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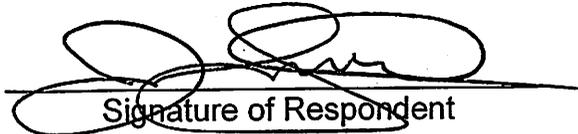
-by-

Chemenergy, LLC  
8 Interstate Ave  
Albany, NY 12205

Respondent

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I, Joseph Sportman, being duly sworn, do depose and say that I am the Sales and Service Technician of Chemenergy, LLC., and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2018-1114-201) effective on the date signed by the Regional Director.

  
Signature of Respondent

Subscribed and sworn to before me

On this 11<sup>th</sup> day of January, 2019



Notary Public

DANMATEE D. MORA  
Notary Public in the State of New York  
Qualified in Schenectady County  
Registration No. 01MO6187048  
My Commission Expires May 12, 2020