

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

7011 1570 0003 0363 4045

February 29, 2016

Charlie Collins
Senior Counsel
Family Dollar Stores, Inc.
10401 Monroe Rd
Matthews, NC 28105

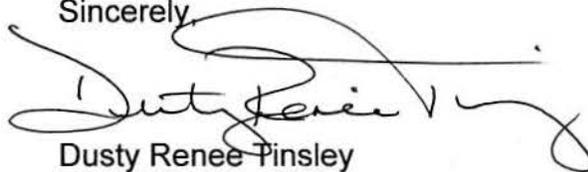
Re: Order on Consent
R4-2015-1026-126

Dear Mr. Collins:

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

This will also acknowledge receipt of \$1000 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Pinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: B. Pendall
M. Solan



Department of
Environmental
Conservation

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

----- x

In the Matter of the Violation of
Article 33 of the Environmental Conservation
Law and Title 6 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York

ORDER ON
CONSENT

- By -

Case No.
R4-2015-1026-126

Family Dollar Inc.
118-24 St. Rt. 9W
West Coxsackie, New York 11324,

Respondent.

----- x

WHEREAS:

1. The New York State Department of Environmental Conservation (“DEC” or “Department”) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §33-0301 of the Environmental Conservation Law (“ECL”). 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 (“NYCRR”) Part 325.
2. Respondent Family Dollar Inc. has its corporate offices located at 10401 Monroe Road, Matthews, North Carolina, 28105. Respondent owns and/or operates a Family Dollar store located at 118-24 St. Rt. 9W, West Coxsackie, New York 11324 (Greene County)(“Commercial Property”).
3. ECL §33-0101(33) states that “‘Person’ means any individual, partnership, association, corporation, organized group of persons whether incorporated or not, private or public authority, state government or agency, political subdivision, governmental agency or any other legal entity whatever.”
4. 6 NYCRR Part 325.1(au) states that “‘Person’ means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.”
5. Respondent is a person as defined in ECL §33-0101(33) and 6 NYCRR Part 325.1(au).

Violation

6. ECL §33-1301 states “It shall be unlawful: 1. For any person to distribute, sell, offer for sale or use within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following: a. Any pesticide which has not been registered pursuant to the provisions of this article or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided that in the discretion of the commissioner a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.”

17. During the October 16, 2015 inspection, Department staff determined that Respondent offered for sale the following varieties of pesticide products which were unregistered in New York State, totaling 37 containers:

- a. Raid Max Plus Combo Packs, EPA Reg #s 4822-411 and 4822-400 (23 containers);
- b. 0.634 oz. containers of Combat Roach Baits, EPA Reg. #64240-4 (8 containers); and
- c. 0.42 oz. containers of Combat Roach Prevention, EPA Reg. #64240-2 (6 containers).

18. Respondent’s offer for sale of pesticide products which are unregistered in New York State are violations of ECL §33-1301(1)(a).

Civil Penalty

19. ECL §71-2907(1) provides that “any person who violates any provision of article 33 of this chapter or any rule, regulation or order issued thereunder or commits any offense described in section 33-1301 of this chapter shall be liable to the people of the state for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense.”

20. **Waiver of Hearing.** Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order and has agreed to be bound by the provisions, terms and conditions of this Order.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. **Civil Penalty.** In respect to the Order’s violations, a civil penalty for ONE THOUSAND DOLLARS (\$1,000) is assessed against the Respondent for the above

violations. ONE THOUSAND DOLLARS (\$1,000) shall be paid to the Department by company or bank check made payable to the Department of Environmental Conservation at the time this Order is signed, notarized, and returned to the Department. Payment of the civil penalty shall not in any way alter Respondent's obligation to complete performance under the terms of the Order.

II. **Schedule of Compliance.** Respondent shall comply with the terms and conditions of this Order including the Schedule of Compliance. The attached Schedule of Compliance any plans approved thereunder are incorporated into the Order and are enforceable thereunder. Any records submitted to the Department shall have the owner's name, facility name and address, and contact and phone number.

III. **Settlement.** This Order settles all violations identified herein as of the effective date of the Order.

IV. **Binding Effect.** This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Indemnification.** Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless 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.

VII. **Modification.** 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 the provisions of the Order. No informal oral or written advise, 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 its obligation to obtain such formal approvals as may be required by this Order.

VIII. **Access.** Respondent shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

X. **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 State or Department may have against Respondent for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

E. 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.

XI. **Review of Submitted Documentation.** 1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3.a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department

that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

XII. **Default.** Respondent shall not be in default of compliance with this Order if they are unable to comply with any provision of this Order solely because of an action of a national government or court, or an act of nature, war strike, riot, or catastrophe, as to any of which the negligence or willful misconduct of Respondent was not a proximate cause. Respondent shall notify the Department in writing immediately upon obtaining knowledge of any such event. Relief under this clause shall not be available if Respondent fails to timely comply with the notice requirement set out in this paragraph.

XIII. **Communications.** Communications shall be sent to

For Department:

Nicole Hartigan
New York State Department of Environmental Conservation - Region 4
1130 N. Westcott Road
Schenectady, New York 12306

For Respondent:

Jim Snyder – General Counsel
Family Dollar Inc.
10401 Monroe Road
Matthews, North Carolina 28201-1017

Please include entity name, address, and permit number (if applicable) on all correspondence.

DATED: February 29, 2016
Rotterdam, New York

Basil Seggos
Acting Commissioner
New York State Department of
Environmental Conservation

BY:


Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent Family Dollar Inc. hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

BY: Sandra L Boscia
TITLE: Assistant Secretary
DATE: February 26, 2011

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the 26th day of February in the year 2015, before me, the undersigned, personally appeared Sandra L. Boscia (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at 10401 Monroe Rd., Matthews, NC 28105 (full mailing address) and that he/she/they is (are) the Assistant Secretary (president or other officer or director or attorney in fact duly appointed) of the Family Dollar Inc. (full legal name of corporation) the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Marcia G Van Ginhoven
Notary Public, ~~State of New York~~
North Carolina

MARCIA G VAN GINHOVEN
Notary Public, North Carolina
Mecklenburg County
My Commission Expires
08/09/2020

Schedule of Compliance

1. Respondent shall not offer for sale commercial pesticides unless it has complied with all applicable pesticide regulations and laws.
2. Respondent shall arrange for disposal and dispose of, or return to the distributor, quarantined pesticide products within six months of signing this Order. **Before actual disposal or shipment takes place**, after arrangements for disposal has been made, contact Nicole Hartigan by phone (518-357-2354) or e-mail (nicole.hartigan@dec.ny.gov) to arrange a quarantine release of the products.
3. Documentation showing that the quarantined products have been disposed of or returned to the distributor shall be provided by Respondent to the Department within 7 months of the effective date of this Order.
4. Respondent shall return the attached Compliance Verification Affidavit, signed and notarized by Respondent, to Nicole Hartigan, NYS Department of Conservation – Region 4, Bureau of Pesticides Management, 1130 North Westcott Rd., Schenectady, New York 12306 at the time this Order is returned to the Department signed and notarized.

COMPLIANCE VERIFICATION AFFIDAVIT

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

----- X
In the Matter of the Violation of
Article 33 of the Environmental Conservation
Law and Title 6 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York

ORDER ON
CONSENT

- By -

Case No.
R4-2015-1026-126

Family Dollar Inc.
118-24 St. Rt. 9W
West Coxsackie, New York 11324,

Respondent.

----- X
I, James L. Berne, in the position of Assistant Secretary with
Family Dollar Inc., being duly sworn, do depose and say that Family Dollar Inc. shall not
offer for sale commercial pesticides unless it has complied with all applicable pesticide
regulations and laws.

FAMILY DOLLAR INC.

By:

James L. Berne
Name

Assistant Secretary
Position

February 26, 2014
Date Signed