

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
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CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 8350

May 16, 2018

Jack Johnson, Jr.
Family Pest Solutions, Inc.
1039 Gates Drive
Schenectady, NY 12306

Re: Order on Consent
R4-2018-0423-116

Dear Mr. Johnson:

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

This will also acknowledge receipt of \$1,625 the civil penalty pursuant to Paragraph I.

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, and Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of
New York (“6 NYCRR”),

ORDER ON CONSENT
R4-2018-0423-116

-by-

Family Pest Solutions, LLC
1039 Gates Drive
Schenectady, NY 12306,

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 §33-0301 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.
2. Respondent, Family Pest Solutions, LLC, is a domestic liability company engaged in the pesticide application business in the State of New York.
3. Respondent is a person as defined in ECL § 33-0101(33).

VIOLATIONS

First Violation

4. On March 9, 2018, Department staff conducted an inspection of Respondent’s pesticide application records, and a Non-Agricultural Use Observation inspection.
5. Regulation 6 NYCRR § 325.10(c) requires certified commercial pesticide

applicators that train pesticide apprentices to maintain observation and training records, for a period of three years, which must include:

- (1) name and address of apprentice;
- (2) date(s) of instruction or observation;
- (3) content of training and certification category;
- (4) instructor's name and certification identification number; and
- (5) an evaluation concluding that the apprentice is competent to perform pesticide applications.

6. During the March 9, 2018 inspection, Department staff learned that Respondent failed to maintain the required documentation pertaining to the training of an employee as a pesticide apprentice.

7. Respondent's failure to maintain documentation of the observation and instruction of an employee is a violation of regulation 6 NYCRR § 325.10(c).

Second Violation

8. ECL § 33-0905 states that certified applicators "shall, **prior to** the application of a pesticide within or on the premises of a dwelling, supply the occupants therein with a copy of the information, including any warnings, contained on the label of the pesticide to be applied." (Emphasis added).

9. During the March 9, 2018 inspection, Department staff observed that Respondent failed to provide the occupants of a premises to which Respondent applied pesticide with a copy of the pesticide label information until after the application.

10. Respondent's failure to provide a copy of the pesticide label information to the occupants of a dwelling at which Respondent applied pesticide prior to the application violated ECL § 33-0905.

Third Violation

11. Regulation 6 NYCRR § 325.2(b) states that "[p]esticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department."

12. During the March 9, 2018 inspection, Department staff found that on February 18, 2018, Respondent applied the pesticide Phantom Termiticide (EPA Reg. No. 241-392) at a rate of 1.5 fluid ounces per gallon.

13. Label directions for Phantom Termiticide specify that the pesticide is to be applied at the rate of 3.0 fluid ounces per gallon.

14. Respondent's failure to follow label directions for the application of Phantom Termiticide on February 18, 2018 violated regulation 6 NYCRR § 325.2(b).

Fourth Violation

15. Regulation 6 NYCRR § 325.40(a) requires that, prior to commercial lawn applications, pesticide applicators must enter into a written contract with the owner (or owner's agent) of the premises to which the application is to be made, which contract, in relevant part, must:

- (1) specify the approximate date or dates of application or applications;
[. . .]
- (2) state the total number of commercial lawn applications to be provided;
- (3) state the total cost of the commercial lawn application service to be provided; and
- (4) include a written copy, in at least 12-point type of:
 - (i) a list of pesticides to be applied including brand names and generic names of active ingredients;
 - (ii) any warnings that appear on the label(s) of pesticide(s) to be applied that are pertinent to the protection of humans, animals or the environment; and
 - (iii) the name, address, telephone number and pesticide business registration number of the pesticide business providing the commercial lawn application service and the pesticide applicator certification identification card number of the person employed by the pesticide business who will provide or supervise the commercial lawn application service;

16. During the March 9, 2018 inspection, Department staff observed that Respondent failed to include in its written commercial care contracts the following required items prior to conducting a commercial lawn application: the approximate date(s) of application(s); the total number of commercial lawn applications to be provided; a list of pesticides to be applied including brand names and generic names of active ingredients; any warnings that appear on the label(s) of pesticide(s) to be applied; and Respondent's pesticide business registration number and certification identification card number.

17. Respondent's failure to enter into written commercial contracts that included all required items of information prior to its commercial lawn applications of pesticides is in violation of regulation 6 NYCRR § 325.40(a).

Civil Penalty

18. 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

19. 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 THREE THOUSAND, TWO HUNDRED FIFTY DOLLARS (\$3,250). ONE THOUSAND, SIX HUNDRED TWENTY-FIVE DOLLARS (\$1,625) of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department, and shall be paid by money order, company or bank check made payable to the NYS Department of Environmental Conservation. Payment of this portion of the civil penalty shall not alter Respondent’s obligation to complete performance of the terms of this Order.

The balance of ONE THOUSAND, SIX HUNDRED TWENTY-FIVE DOLLARS (\$1,625) is suspended and shall not be payable, provided that Respondent fully and timely complies with the Schedule of Compliance appended to this Order, and provided that Respondent commits no further violations of ECL Article 33 or 6 NYCRR Part 325 pertaining to pesticides, for a period of two (2) years from the effective date 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:

Sarah Whelen
NYS Department of Environmental Conservation
Region 4, Bureau of Pesticides
1130 North Westcott Road
Schenectady, NY 12306

For the Respondent:

Jack Johnson Jr., Owner
Family Pest Solutions, LLC
1039 Gates Drive
Schenectady, NY 12306

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. Review of Submitted Documentation.

1. Any documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each submittal from Respondent pursuant to this Order to determine whether it was prepared, and whether the work performed to generate the data in the submittal was prepared, in accordance with this Order and with 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 notify Respondent in writing and shall specify the reasons for 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 the stated reasons for disapproval of the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal 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 the Department to make it approvable. If Respondent does not accept such modifications, the revised submittal 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 shall be reasonable and consistent with customary engineering standards.

X. **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.

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

XII. **Termination.** The Order shall terminate two years from its effective date, upon Respondent's full compliance, as determined by the Department, with the terms, provisions, and conditions of the Order, including its Schedule of Compliance.

DATED: May 16, 2018
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4



CONSENT BY RESPONDENT

Respondent 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.

SIGNED: [Signature]
PRINTED: Sach Johnson
DATE: May 8th 2018

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

On the 8 day of May in the year 2018, before me, the undersigned,

personally appeared Sach Johnson, personally known
(Full name)

to me who, being duly sworn, did depose and say that he resides at:

1039 Gates DR. Schenectady, NY 12306
(Full mailing address)

and who executed the above instrument.

Paula J. Diamante
Notary Public
Qualified in the County of:
My Commission Expires: 1/27/2022

PAULA J. DIAMANTE
Notary Public, State of New York
Certified Schenectady County
#01DI6296235
Commission Expires: 1/27/2022



SCHEDULE OF COMPLIANCE

- (1) **Within thirty (30) days of the effective date of this Order, Respondent shall submit to the Department:**
- a. Documents demonstrating completion of compliant apprentice training;
 - b. A draft compliant commercial lawn application contract; and
 - c. A signed and notarized Compliance Verification Affidavit (“CVA,” enclosed) certifying that the actions necessary to come into compliance with the Department’s regulatory program have been completed, and/or stating what steps Respondent will take to do so, along with any supporting documentation.

The signed and notarized CVA should be addressed to:

Sarah Whelen
NYS Department of Environmental Conservation
Region 4, Bureau of Pest Management
1130 North Westcott Road
Schenectady, NY 12306

- (2) Compliance with this Schedule shall not be a defense to subsequent violations.

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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-

Family Pest Solutions, LLC
1039 Gates Drive
Schenectady, NY 12306,

Respondent.

I, Jack Johnson, being duly sworn, do depose and say
(Full Name)
that Family Pest Solutions, LLC, has complied with the requirements of Paragraph No. 1
of the Order on Consent's Schedule of Compliance (R4-2018-0423-116), effective on the
date signed by the Regional Director.


Signature of Respondent

Subscribed and sworn to before me
on this 9 day of May, 2018


Notary Public

