

**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 8886

August 23, 2018

James T. Cullinan  
Chief Executive Officer  
Hewitt's Garden Centers, Inc.  
3 Charlton Road  
Scotia, New York 12302

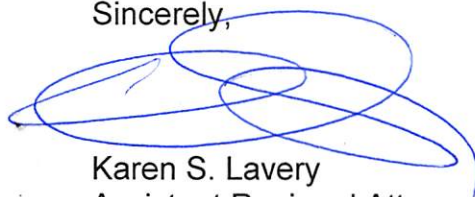
Re: Order on Consent  
R4-2018-0929-247

Dear Mr. Cullinan:

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

This will also acknowledge receipt of \$1,000 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**  
R4-2018-0528-134

-by-

Hewitt's Garden Centers, Inc.  
5 Charlton Road  
Schenectady, NY 12302

Respondent

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WHEREAS:

Jurisdiction

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 Hewitt's Garden Centers, Inc. owns/operates a garden center and commercial pesticide business located at 5 Charlton Road, Schenectady, New York, with another location at 1129 Troy Schenectady Road, Latham, New York ("site").
3. Respondent is a person as defined in ECL '33-0101 (33).

Laws

4. ECL 33-1301(1)(a) provides that  
*"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.”*

#### Violations

5. On April 27, 2018, Department staff inspected the site and determined that Respondent was offering for sale, the following four (4) unregistered pesticides:

- 6, 32-floz containers of Bonide Caterpillar Killer (EPA Reg. No. 4-469);
- 4, 16-floz containers of Bonide Borer-Miner Killer (EPA Reg. No. 4-408);
- 3, 32-oz containers of Concern Fast Acting Weed Killer (EPA Reg. No. 67702-7-50932);
- 2, 4.4-lb bags of St. Gabriel’s Organics Insect Dust (EPA Reg. No. 63191-13).

6. Respondent violated ECL 33-1301(1)(a) by offering for sale four (4) unregistered general use pesticides.

#### Civil Penalty

7. 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

8. 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 ONE THOUSAND DOLLARS (\$1,000) 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: *August 22,* 2018  
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 (30) days of the effective date of this Order, Respondent, Hewitt's Garden Centers, Inc., shall file the Compliance Verification Affidavit (located at the end of this document) with the Department certifying compliance issues described in numbered paragraph 1 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  
Bureau of Pest Management  
1130 North Westcott Rd  
Schenectady, NY 12306

CONSENT BY RESPONDENT

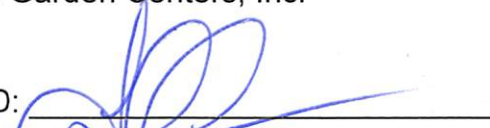
Respondent hereby consents to the issuing and entering of this Order, waives its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Hewitt's Garden Centers, Inc.

SIGNED: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

  
President  
15/08/2018

STATE OF New York

) ss.:  
COUNTY OF Schenectady

On the 15<sup>th</sup> day of AUGUST in the year 2018 before me, the undersigned, a Notary Public in and for the State, personally appeared JAMES T CULLINAN 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.

Theresa - Butrym  
Notary Public  
Qualified in the County of: Schenectady  
My Commission Expires: NOV 10, 2019

THERESA BUTRYM  
Notary Public, State of New York  
No. 018U6101274  
Qualified in Schenectady County  
Commission Expires Nov. 10, 2019