

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
7013 1090 0002 3365 3793

April 13, 2015

Mr. Michael Dalton, Esq.
The Home Depot SSC
2455 Paces Ferry Road, C-20
Atlanta, GA 30339

Re: Order of Consent
R4-2015-0306-25

Dear Mr. Dalton:

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

This will also acknowledge receipt of \$2,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: Capt. M. Jacoby
ECO K. Bush
M. Ellis
M. Solan



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Article 35 the Environmental Conservation
Law and Title 6 of the New York Code of
Rules and Regulations

- by -

Order on Consent
File No. R4-2015-0306-25

Home Depot U.S.A., Inc.
2455 Paces Ferry Road
Atlanta, GA 30339

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (“DEC”) is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State, pursuant to §3-0302 of the Environmental Conservation Law (“ECL”), Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York (“NYCRR”), and any Orders or permits issued thereunder.
2. DEC has jurisdiction over the abatement and prevention of pollution of state waters pursuant to ECL Article 35, *et seq.* and Title 6 NYCRR Part 659, *et seq.*. This statute and/or its accompanying regulations provide that the distribution, possession, use, sale, offering for sale, or exposing for sale, of household cleansing products containing more than a trace quantity of a phosphorous compound measured as elemental phosphorous, is prohibited in New York State.
3. Regulations at 6 NYCRR §659.1 (a) provides that “ *Household cleansing product shall mean any product, including but not limited to, soaps and detergents containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including but not limited to the cleansing of fabrics, dishes, food utensils and household and commercial premises. Household cleansing product shall not mean:*
 - (1) *foods, drugs and cosmetics, including personal care items such as toothpaste, shampoo and hand soap;*
 - (2) *products labeled, advertised, marketed and distributed for use primarily as pesticides, as defined in article 33 of the Environmental Conservation Law.*
4. Regulations at 6 NYCRR § 659.1 prohibit the selling of household cleaning products containing more than .1% of the contents by the weight of the elemental phosphorous.”

5. On February 13, 2015 and March 2, 2015, Department staff observed Respondent offering for sale at its Home Depot store located at 579 Troy Schenectady Road, Latham, New York, Trisodium Phosphate, a heavy duty cleaner containing an average phosphate content of 6.1% in the form of phosphates in 4.5 pound and one pound containers.

6. Respondent violated regulations at 6 NYCRR § 659.1 by offering for sale, a household cleaning product containing more than .1% phosphates.

7. ECL Section 71-3103 provides that anyone who violates any provision of Article 35, or the rules or regulations promulgated thereunder, shall be liable for a penalty not to exceed \$2,500 for the first such violation and an additional penalty of \$500 for each subsequent day of violation, and such person may be enjoined from continuing such violation.

8. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order on Consent and agrees to be bound by the provisions, terms and conditions of this Order.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. Penalty

With respect to the aforesaid alleged violations, a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) 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.

II. Compliance Schedule

Respondent shall commence implementation of the activities described in the attached Compliance Schedule, which is an enforceable part of this Order, in accordance with its terms. Respondent shall meet the schedule therein.

III. Force Majeure

If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe or other condition which is not caused by the negligence or misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall make its best effort to comply nonetheless and shall, within seventy-two hours (unless notice is required sooner by State or Federal law), notify the Department by telephone and in writing, pursuant to the communications provision of this Order, after it obtains knowledge of any such condition or event and request an appropriate extension or modification of this Order.

IV. Reports

All reports required herein shall be made to the Region 4 office of DEC, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Enforcement Coordinator.

V. Access

Respondent shall allow duly authorized agents and employees of DEC access to any facility, site, or records owned, operated, controlled, or maintained by Respondent, without prior notice, at such times as may be desirable or necessary, and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

VI. 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 this Order by Respondent, its employees, servants, agents, successors or assigns.

VII. Successors and Assigns

The provisions of this Order shall be deemed to bind Respondent, its agents employees, successors, and assigns, and all persons, firms, and corporations acting under or for Respondent.

VIII. Effective Date

The effective date of this Order shall be the date that the Commissioner or his Designee signs it. The Department will provide Respondent (or the Respondent's Counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or her designee signs it.

IX. Default

The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL, and shall constitute sufficient grounds for revocation of any permit, license, certification or approval issued to Respondent by DEC.

X. Entire Agreement; Modification

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

XI. Other Rights

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

DATED: April 13 2015
Rotterdam, New York

Joseph J. Martens
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.

Home Depot U.S.A., Inc.

SIGNED: [Signature]

TITLE: Assistant General Counsel

DATE: April 2, 2015

STATE OF Georgia

COUNTY OF Cobb) ss.:

On the 2nd day of April in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Mike Dalton 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.

Evelyn R. Clayton
Notary Public
Qualified in the County of: DeKalb
My Commission Expires: 8/17/15



Schedule of Compliance

1. Effective immediately, Respondent shall not disseminate, sell, give away, disperse or otherwise distribute Trisodium Phosphate in New York State.
2. Within 30 days of signing this Order, Respondent must submit to this Department, a signed and notarized Compliance Verification Affidavit ("CVA") (enclosed) certifying that Respondent has removed from its shelves in all its stores within New York State, all product known as "TSP" (Trisodium Phosphate) containing more than .1% of the contents by weight of the elemental phosphorus.

This document should be addressed and sent to:

Marcia Ellis
Regional Enforcement Coordinator
NYS Department of Environmental Conservation
1130 North Westcott Rd
Schenectady, NY 12306

COMPLIANCE VERIFICATION AFFIDAVIT

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation Law
("ECL") Article 35 and Title 6 of the New York Code of
Rules and Regulations

-by-

Home Depot U.S.A., Inc.
2455 Paces Ferry Road
Atlanta, GA 30339

Respondent

I, Michelle O'Brien, being duly sworn, do depose and say that I am an Environmental
Regulatory Compliance Specialist with Home Depot U.S.A., Inc. and that I have
complied with the requirements of paragraph No. 2 of the Order on Consent's Schedule
of Compliance (R4-2015-0306-25), effective on the date signed by the Regional
Director.

Michelle O'Brien
Signature of Respondent

Subscribed and sworn to before me
On this 2nd day of April, 2015

Evelyn R. Clayton
Notary Public

