

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 9142

December 20, 2018

Joseph R. White d/b/a
Joe White Pest Control
124 North Ferry Street
Schenectady, NY 12305

Re: Order on Consent
R4-2018-1205-208

Dear Mr. White:

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,



Stephen Repsher
Assistant Regional Attorney
Region 4

Enclosure

ec: S. Whelen



Department of
Environmental
Conservation

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
R4-2018-1205-208

-by-

Joseph R. White, d/b/a
Joe White Pest Control
124 North Ferry Street
Schenectady, NY 12305,

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, Joseph R. White, is an individual, doing business as Joe White Pest Control, registered with the Department (Pesticide Business Reg. #11521) and certified to apply pesticides in the State of New York (Cert. #C4802657).
3. Respondent is a person as defined in ECL § 33-0101(33).

Violation

4. On September 28, 2018, Department staff conducted a routine inspection of Respondent’s pesticide application records.

5. During the September 28, 2018 inspection, Department staff observed that Respondent's pesticide application records for both years 2017 and 2018 failed to include: dosage rates, methods of application, and places of application.

6. Regulation 6 NYCRR § 325.25(a) requires, in relevant part, that pesticide businesses "keep true and accurate records in a manner specified by the department showing: the kind and quantity of each pesticide used; dosage rates; methods of application; target organisms; and the use, date and place of application for each pesticide used. These records shall be maintained on an annual basis and retained for a minimum of three years and shall be available for inspection upon request by the department."

7. Respondent's failure to maintain pesticide application records that include the dosage rates, methods of application, and places of application for each pesticide application, violated 6 NYCRR § 325.25(a).

Civil Penalty

8. ECL § 71-2907 (1) provides, *inter alia*, that "any person who violates any provisions of article 33 of this chapter or any rule, regulation or order issued thereunder . . . shall be liable . . . 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."

Waiver of Hearing

9. 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 ONE THOUSAND DOLLARS (\$1,000). Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by money order, company or bank check made payable to the NYS Department of Environmental Conservation. Payment of the civil penalty shall not alter Respondent's obligation to complete performance of the terms 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:

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

For the Respondent:

Joseph R. White, d/b/a
Joe White Pest Control
124 North Ferry Street
Schenectady, NY 12305

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. **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.

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

DATED: December 20, 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 shall submit to the Department a signed and notarized Compliance Verification Affidavit (“CVA,” enclosed) certifying that the actions necessary to comply with the Department’s regulatory program, and those actions specified in this document, have been completed, along with any supporting documentation.

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

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

CONSENT BY RESPONDENT

Respondent, Joseph R. White, d/b/a Joe White Pest Control, 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: Joseph R White
PRINTED: Joseph R White
DATE: 12/17/18

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

On the 17 day of December in the year 2018, before me, the undersigned,

personally appeared Joseph R. White, personally known
(Full name)

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 s/he executed the same in his/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Stacey L Stowell
Notary Public
Qualified in the County of: Saratoga
My Commission Expires: 4/27/2019

Stacey L Stowell
Notary Public, State of New York
Qualified in Saratoga County
No. 01ST632373
Commission Expires April 27, 2019