

**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 3670

March 31, 2015

Mr. Bennett Edelman  
Midstate Pest Control, Inc.  
72 Valley Road  
Catskill, NY 12414

Re: Order of Consent  
R4-2015-0130-7

Dear Mr. Edelman:

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

This will also acknowledge receipt of \$6,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: S. Brandon



Department of  
Environmental  
Conservation

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**  
R4-2015-0130-7

-by-

Midstate Pest Control, Inc.  
72 Valley Road  
Catskill, NY 12414

Respondent

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WHEREAS:

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, Midstate Pest Control, Inc., located at 72 Valley Road, Catskill, NY, is a company which provides pest control services ("facility").
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On November 3, 2014, Respondent made a pesticide application at the Holiday Inn Express located at 12740 Rte 9W, W. Coxsackie, NY ("site"). The application consisted of treatment of Room 209 for bedbugs and a preventative bedbug treatment of Rooms 207, 211, 309 and 109.
5. On December 18, 2014, Department staff conducted an inspection of the site. On January 13, 2015, Department staff conducted an inspection of the facility.

### First Violation

6. Regulations at 6 NYCRR 325.2 provides that:

*(b) Pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department.”*

7. At the time of the inspection of the facility, Respondent produced application records which established the misapplication of the following pesticides:

- (a) Exciter (EPA Reg. # 655-798), which was applied below the labeled rate.
- (b) Phantom (EPA Reg. #241-392), which was applied below the labeled rate.
- (c) Nylar IGR (EPA Reg. #1021-1620-57076), which was applied to control bedbugs which are not listed as a target pest on the product label.
- (d) Tempo 1% Dust (EPA Reg. #432-1373), the label for which provides that “*In living areas, avoid deposits on exposed surfaces and avoid introducing the dust into the air.*” At the time of the inspection of Room 209, Department staff observed dust on exposed surfaces on the night stand and headboard.
- (e) Tempo 1% Dust (EPA Reg. #432-1373), the label for which instructs applicators to “*Let powder remain on treated surfaces for 4 to 6 hours, then vacuum the powder thoroughly, dispose of the vacuum bag properly, and place clean linens on the bed.*” At the time of the application, the applicator instructed Respondent’s staff to deep clean the rooms three weeks after the application.

8. Respondent violated Regulations at 6 NYCRR 325.2 by failing to adhere to label directions for the pesticides applied as provided in paragraph 7 above.

### Second Violation

9. ECL §33-0905(a) provide that “*Every certified applicator 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. Such information shall be supplied in either a written, digital or electronic format which shall be determined by the occupants of such dwelling, provided however that the certified applicator must also have a written copy of such information in his/her possession.*”

10. The applicator failed to provide the property owner with copies of the product labels of the products applied on the November 3, 2014 application, which is in violation of ECL §33-0905(a).

### Civil Penalty

11. ECL 71-2901 (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

12. 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. With respect of the aforesaid alleged violations, a civil penalty in the amount of SIX THOUSAND DOLLARS (\$6,000) 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. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. Respondent shall indemnify and hold harmless the Department, the State of New York, and its 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 Respondent 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 its obligations to obtain such formal approvals as may be required by this Order.

VIII. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, which relate to the site, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

X. Respondent shall comply with the attached Schedule of Compliance which is incorporated and made part of this Order.

DATED: *March 31* , 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 right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Midstate Pest Control, Inc.

SIGNED: Bennett Edelman

TITLE: owner / operator

DATE: 3/11/15

STATE OF New York

COUNTY OF Greene ) ss.:  
)

On the 11<sup>th</sup> day of March in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Bennett Edelman 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.

Amanda Eisenhardt Rose  
Notary Public  
Qualified in the County of: Greene  
My Commission Expires: June 15 2017

Amanda L Eisenhardt Rose  
01E16207683  
Notary Public, State of New York  
Qualified in Greene County  
My commission expires JUNE 15th, 2017.

## **SCHEDULE OF COMPLIANCE**

1. Within 7 days of signing this Order, Respondent must clean all powder remaining from the application of Tempo 1% Dust in Room 209.
2. Within 15 days of the effective date of this Order on Consent document, Respondent must submit a signed and notarized Compliance Verification Affidavit (located at the end of this document) to the Department, certifying that compliance issues described in numbered paragraph 1 has been complied with. This confirmation should be addressed to:

Ms. Selinda Brandon  
NYS Department of Environmental Conservation  
Bureau of Pesticides  
1130 North Westcott Rd  
Schenectady, NY 12306

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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Midstate Pest Control, Inc.  
72 Valley Road  
Catskill, NY 12414

*Bennett Edelman*

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Respondent

I, Bennett Edelman, being duly sworn, do depose and say that I am employed as Chief Executive Officer of Midstate Pest Control, Inc., and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2015-0130-7) effective on the date signed by the Regional Director.

*Bennett Edelman*

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Signature of Respondent

Subscribed and sworn to before me

On this 11<sup>th</sup> day of March, 20 15

*Amanda Eisenhardt Rose*  
Notary Public

Amanda L Eisenhardt Rose

01E16207683

Notary Public, State of New York

Qualified in Greene County

My commission expires JUNE 15th, 20 17.