

**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  
7012 3050 0000 4246 2514

March 31, 2015

SIMONIZ USA, Inc.  
201 Boston Turnpike  
Bolton, CT 06043

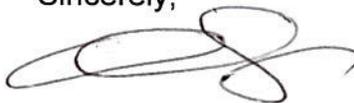
Re: Order of Consent  
R4-2015-0130-6

Dear Mr. Gorra:

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

This will also acknowledge receipt of \$22,200 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: B. Pendell



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**  
R4-2015-0130-6

-by-

SIMONIZ USA, Inc.  
201 Boston Turnpike  
Bolton, CT 06043

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, SIMONIZ USA, Inc., located at 201 Boston Turnpike, Bolton, CT, is a company which provides car care products and janitorial/sanitation cleaning supplies.
3. Respondent is a person as defined in ECL 33-0101 (33).
4. On October 22, 2014, Department staff conducted an inspection of Capital District Transportation Authority ("CDTA") located at 110 Watervliet Ave, Albany, NY ("facility").
5. At the time of the inspection, Department staff observed an unregistered pesticide, Simonz Foam Disinfectant (EPA Reg # 47371-89-18305), at the facility. In total, according to documents obtained by the Department, 888 containers of Simoniz Foam Disinfectant were sold and shipped into New York State by SIMONIZ, USA, Inc., on or about the following dates: 9/15/2014, 9/25/2014, 10/16/2014, 10/13/2014, and 10/22/2014.
6. This pesticide is not registered for use or sale in New York State.

7. ECL 33-1301(1)(a) makes it unlawful 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 pesticide that is not registered pursuant to ECL 33-0701.

8. Respondent's distribution and offer for sale of Simoniz Foam Disinfectant, which is an unregistered pesticide in New York, is a violation of ECL 33-1301(1)(a).

#### Civil Penalty

9. 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

10. 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 TWENTY TWO THOUSAND TWO HUNDRED DOLLARS (\$22,200) 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.

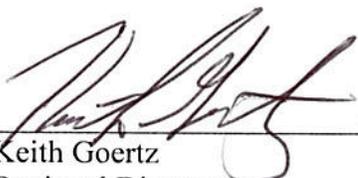
IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

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

DATED: *March 30*, 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.

SIMONIZ USA, Inc.

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

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

President

DATE: 3/26/2015

STATE OF Connecticut

COUNTY OF Tolland ) ss.: Bolton  
)

On the 26<sup>th</sup> day of March in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared William Gorra 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.

Donna J. Phillips  
Notary Public  
Qualified in the County of: Tolland

My Commission Expires: **DONNA J. PHILLIPS**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES SEP. 30, 2017

## **SCHEDULE OF COMPLIANCE**

1. Within 30 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:

Mr. Brayton Pendell  
NYS Department of Environmental Conservation  
Bureau of Pesticides  
1130 North Westcott Rd  
Schenectady, NY 12306

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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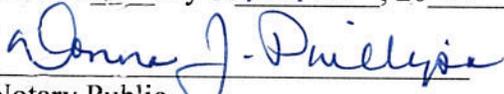
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I, William Gorra, being duly sworn, do depose and say that I am employed as Chief Executive Officer, at SIMONIZ USA, Inc., and that I have complied with the requirements of paragraph No. 1 of the Order on Consent's Schedule of Compliance (R4-2015-0130-6) effective on the date signed by the Regional Director.



Signature of Respondent

Subscribed and sworn to before me  
On this 26<sup>th</sup> day of March, 2015

  
Notary Public

**DONNA J. PHILLIPS**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES SEP. 30, 2017