

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of General Counsel, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
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CERTIFIED - RETURN RECEIPT REQUESTED  
7017 1070 0001 0125 8664

July 9, 2018

Scott Philips  
The Terminix International Company LP  
Catseye Pest Control  
31 Commercial Drive  
Castleton on Hudson, NY 12033

Re: Order on Consent  
R4-2018-0605-139

Dear Mr. Philips:

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

This will also acknowledge receipt of \$3,000 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, Title 6 of the Official  
Compilation of Codes, Rules and  
Regulations of the State of  
New York ("6 NYCRR"),

-by-

**ORDER ON CONSENT**  
R4-2018-0605-139

The Terminix International Company LP –  
Catseye Pest Control  
31 Commercial Drive  
Castleton on Hudson, NY 12033,

Respondent.

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**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, The Terminix International Company LP – Catseye Pest Control, is a commercial pest control business with offices at 31 Commercial Drive, Castleton on Hudson, in the State of New York.
3. Respondent is a person as defined in ECL § 33-0101(33).

**VIOLATIONS**

**First Violation**

4. On May 3, 2018, Department staff conducted a routine compliance inspection of Respondent's facility, equipment, and pesticide application records.
5. During the May 3, 2018 inspection, Department staff observed several instances

where Respondent's pesticide use records did not contain dosage rates or methods of application.

6. ECL § 33-1205 requires commercial pesticide applicators to keep pesticide application records which contain information including "dosage rates, methods of application and target organisms for each pesticide application," maintained on an annual basis and retained for a period of not less than three years.

7. Respondent's failure to maintain pesticide use records of the dosage rates and methods of application for each pesticide application constitute violations of ECL § 33-1205.

#### Second Violation

8. During the May 3, 2018 inspection, Department staff reviewed pesticide use records that showed that on April 23, 2018, Respondent applied a pesticide (trade name "Tick Killz") at a rate of 2oz to 4 gallons of water.

9. The Tick Killz product label specifies that it is to be used at a concentration of 1oz to 5 gallons of water.

10. Regulations at 6 NYCRR § 325.2(b) state that "Pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department."

11. Respondent's failure to apply a pesticide in accordance with its labeling directions violated 6 NYCRR § 325.2(b).

#### Third Violation

12. During the May 3, 2018 inspection, Department staff observed that Respondent's commercial lawn care contract did not include date(s) of application; the total cost of all lawn applications; the signature of the owner or owner's agent; a list of substances to be applied; pertinent label warnings; the business registration number; or the certified applicator's certification number.

13. Regulations at 6 NYCRR § 325.40(a) require that "prior to a commercial lawn application . . . a pesticide applicator or business must enter into a written contract with the owner of the property," and that the contract must (in relevant part):

- (1) specify the approximate date or dates of application or applications; if requested by the property owner or owner's agent, the specific date or dates of the application(s) must be provided by the pesticide applicator or business and that date must be stated in the contract. The following

statement must be prominently displayed in the contract: “The property owner or owner's agent may request the specific date or dates of the application(s) to be provided and, if so requested, the pesticide applicator or business must inform of the specific dates and include that date or dates in the contract”;

....

(3) state the total cost of the commercial lawn application service to be provided; and

(4) include a written copy, in at least 12-point type of:

- (i) a list of pesticides to be applied including brand names and generic names of active ingredients;
- (ii) any warnings that appear on the label(s) of pesticide(s) to be applied that are pertinent to the protection of humans, animals or the environment; and
- (iii) the name, address, telephone number and pesticide business registration number of the pesticide business providing the commercial lawn application service and the pesticide applicator certification identification card number of the person employed by the pesticide business who will provide or supervise the commercial lawn application service;

....

(6) be signed by both the pesticide applicator or business providing the commercial lawn application and the owner or owner's agent of the property to which the commercial lawn application is to be made; provided, however, the signature of the owner or owner's agent is not required if the pesticide applicator or business possesses a separate document that specifically evidences the owner or owner's agent signature as acceptance of the written contract, such as a copy of a prepayment check, in the exact amount specified in the written contract for the agreed-upon services;

14. Regulations at 6 NYCRR § 325.40(d) further require that “[i]f the contract does not state which pesticide(s) of a group of pesticides will be applied on a proposed date, or if the pesticide applicator or business has not advised the owner or owner's agent of this information, the pesticide applicator or business must, prior to application, provide to the owner or owner's agent a written notice which indicates the specific pesticide(s) to be used.

15. Respondent’s failure to include in its commercial lawn care contract the

approximate or specific date(s) of application; total cost of all lawn applications; signature of the owner or owner's agent; list of substances to be applied; pertinent label warnings; business registration number; and the certified applicator's certification number, constitute violations of 6 NYCRR § 325.40(a) and (d).

#### Fourth Violation

16. During the May 3, 2018 inspection, Department staff observed that Respondent failed to affix to a pesticide-containing bulb duster, a label bearing the name and address of the manufacturer; the name, brand, or trademark under which the pesticide is sold, and the net weight or measure of the content.

17. ECL § 33-1301(1)(b) states, in relevant part, that it is unlawful to use any pesticide unless it is in the manufacturer's unbroken immediate container, and there is affixed to such container "a label bearing (i) the name and address of the manufacturer, registrant, or person for whom manufactured; (ii) the name, brand, or trade-mark under which said article is sold; and (iii) the net weight or measure of the content[.]"

18. Respondent's failure to affix a label bearing the name and address of the manufacturer; the name, brand, or trademark under which the pesticide is sold; and the net weight or measure of the content of pesticide in the bulb duster constitutes a violation of ECL § 33-1301(1)(b).

#### Civil Penalty

17. 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

18. 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 THREE THOUSAND DOLLARS (\$3,000). 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:

The Terminix International Company LP – Catseye Pest Control  
Attn: Scott Philips  
31 Commercial Drive  
Castleton on Hudson, NY 12033

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. Review of Submitted Documentation.**

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each submittal from Respondent pursuant to this Order to determine whether it was prepared, and whether the work performed to generate the data in the submittal was prepared, in accordance with this Order and with generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3(a). If the Department disapproves a submittal, it shall notify Respondent in writing and shall specify the reasons for disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all the stated reasons for disapproval of the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by the Department to make it approvable.

If Respondent does not accept such modifications, the revised submittal will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order, or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies shall be reasonable and consistent with customary engineering standards.

X. **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.

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

DATED: July 9, 2018  
Rotterdam, New York

Basil Seggos  
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.

SIGNED:   
PRINTED: Sara D'Angelo  
DATE: 6/29/18

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

On the 29<sup>th</sup> day of June in the year 2018, before me, the undersigned,

personally appeared Sara D'Angelo, 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.

  
Notary Public  
Qualified in the County of: Rensselaer  
My Commission Expires: 12-28-2019

Rebecca Shortsleeve  
Notary Public, State of New York  
Qualified in Rensselaer County  
No. 01SH6334884  
Commission Expires December 28, 2019

## **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