

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violations  
of the Environmental Conservation Law  
(ECL)Article 33

**ORDER ON CONSENT**  
File No. R4-2008-1229-179

- by -

Turf Care Supply Corp.  
50 Pearl Road, Suite 200  
Brunswick, OH 44212

Respondent

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**WHEREAS:**

1. The New York State Department of Environmental Conservation (DEC) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §3-301 of the Environmental Conservation Law (ECL), among other authorities. In particular, DEC 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, Turf Care Supply Corp., 50 Pearl Road, Suite 200, Brunswick, Ohio is a distributor of pesticides which distributes Termidor SC, an insecticide/termiticide.
3. Respondent is a person as defined in ECL §33-0101 (33).
4. On September 17, 2008, Department staff conducted a Marketplace Inspection of the Lesco Service Center located at 2166 Maxon Road Ext., Schenectady, New York ("site").
5. During the September 17, 2008 inspection, Department staff found containers of Termidor SC, which was labeled as an insecticide/termiticide. Respondent had distributed Termidor SC to the site on August 15, 2008.
6. On August 15, 2008 and September 26, 2008, Respondent distributed Termidor SC to the Lesco Service Center located at 51 Goodway Drive, Rochester, New York.
7. Termidor SC was not registered as a pesticide pursuant to regulations at ECL 33-1301 (a).

8. Regulations at ECL 33-1301 (a) provide that *“it shall be unlawful:*
1. *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 of the following:*
    - a) *Any pesticide which has not been registered pursuant to the provisions of this article or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition as represented in connection with its registration; provided that in the discretion of the commissioner a change in the labeling or formula of a pesticide may be within a registration period without requiring re-registration of the product”*
9. Respondent violated regulations at ECL 33-1301 (a) by distributing an unregistered pesticide.

### **Civil Penalty**

10. Regulations at ECL § 71-2901 (1) provide, *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**

11. Respondent has affirmatively waived their 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. In respect of the aforesaid violations, a civil penalty in the amount of SIX THOUSAND DOLLARS(\$6,000) is hereby assessed against the Respondent. 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 certified or bank check made payable to the NYS DEC.
- II. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for them.
- III. The existence of this Order on Consent shall not give rise to any presumption of law or fact or create any rights which shall inure to the benefit of any third party. For purposes of this provision the State is not considered a third party.
- IV. 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. Respondent shall indemnify and hold harmless the Department, the State of New York, and his 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, his directors, officers, employees, servants, agents, successors or assigns.

VI. 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.

VII. This Order is deemed effective on the date signed by the Department.

VIII. 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 Respondents, their agents, their servants, their employees, their successors and their 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 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.

IX. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

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

DATED: \_\_\_\_\_, 2009  
Rotterdam, New York

Alexander B. Grannis  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

\_\_\_\_\_  
Eugene J. Kelly  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Turf Care Supply Corp.

Respondent hereby consents to the issuing and entering of this Order, waives their right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

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

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_, before me, the undersigned, personally appeared \_\_\_\_\_,  
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at \_\_\_\_\_  
(Full mailing address)

and that he/she/they is (are ) the \_\_\_\_\_  
(President or other officer or director or attorney in fact duly appointed)

of the \_\_\_\_\_  
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public, State of New York

## SCHEDULE OF COMPLIANCE

1. Respondent shall not sell/offer for sale, distribute, possess, use or transport or deliver for transport within or between two points within New York State, any restricted use pesticide product which is unregistered or misbranded.
2. Within 60 days of the effective date of the Order, Respondent shall recall Termidor SC (EPA Reg No. 7969-210) from all stores within New York State.