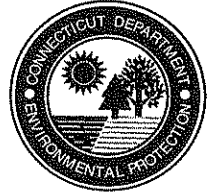


STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT

VS.

CONSENT ORDER NUMBER
COWSPST 10-067

DAVID VARNI, SR.
dba/LOUIS W. VARNI COMPANY
RESPONDENT

A. With the agreement of David Varni, Sr. dba/Louis W. Varni Company ("Respondent"), the Commissioner of Environmental Protection ("the Commissioner") finds:

1. Louis W. Varni Company is registered with the Secretary of the State of Connecticut with a principal place of business at 236 Forest Lane in Glastonbury, Connecticut. David Varni, Sr. is the President of Louis W. Varni Company.
2. Respondent is registered as a commercial pesticide application business with the Commissioner of Environmental Protection as L.W. Varni Company, Inc.. Respondent may continue to apply pesticides in Connecticut pursuant to the pesticide application business registration.
3. On 4/15/10, Respondent applied the pesticide Malathion 5EC to apple trees at the Carroll property located at 564 Birch Mountain Road in Glastonbury, Connecticut in a manner inconsistent with labeling as it is not registered for use on apple trees.
4. Respondent failed to provide notice to a registered abutter of the time and date of a pesticide application that was performed on 4/15/10 at the Carroll property located at 564 Birch Mountain Road, Glastonbury, Connecticut.
5. Permanent pesticide application records maintained by the Respondent do not contain specific required information including the name(s) and certification number(s) of the applicators, the crop treated, the kind and amount of pesticide used and the target pest.

By virtue of the above, Respondent has violated Connecticut General Statutes Sections 22a-61(b)(7), 22a-66a(b) and 22a-66g(a)(1).

B. With the agreement of Respondent, the Commissioner, acting under §22a-6, §22a-63e, §22a-66a(k) and §22a-66h of the Connecticut General Statutes, orders Respondent as follows:

1. Effective immediately upon issuance of this consent order, Respondent shall take all steps necessary to comply with all applicable provisions of chapter 441 of the Connecticut General Statutes governing Pesticide Control and regulations promulgated thereunder and shall maintain such compliance.

2. Full compliance. Respondent shall not be considered in full compliance with this consent order until all actions required by this consent order have been completed as approved and to the Commissioner's satisfaction.

3. Civil penalty. On or before thirty (30) days after issuance of this consent order, Respondent shall pay a penalty of \$2,750.00 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraphs A.3 through A.5 of this consent order.

4. Payment of penalties. Payment of penalties under this consent order shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to "Treasurer, State of Connecticut." The check shall state on its face, "Bureau of Materials Management & Compliance Assurance, Pesticide Management Program civil penalty, consent order COWSPST 10-067."

5. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.

6. Dates. The date of "issuance" of this consent order is the date the consent order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this consent order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this consent order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this consent order, the word "day" as used in this consent order means calendar day. Any document or action which is required by this consent order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.

7. Noncompliance. This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this consent order may subject Respondent to an injunction and penalties.

8. False statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.

9. Notice of transfer; liability of Respondent. Until Respondent has fully complied with this consent order, Respondent shall notify the Commissioner in writing no later than 15 days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this consent order or after obtaining a new mailing or location address. Respondent's obligations under this consent order shall not be affected by the passage of title to any property to any other person or municipality.

10. Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties, nothing in this consent order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this consent order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.

11. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.

12. No assurance by Commissioner. No provision of this consent order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this consent order will result in compliance [or prevent or abate pollution].

13. Access to site. Any representative of the Department of Environmental Protection may enter the place of business without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.

14. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons or municipalities that are not parties to this consent order.

15. Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this consent order or of any document required hereunder, Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.

16. Submission of documents. Any document required to be submitted to the Commissioner under this consent order shall, unless otherwise specified in this consent order or in writing by the Commissioner, be directed to:

Diane Jorsey, Environmental Analyst III
Department of Environmental Protection
Bureau of Materials Management & Compliance Assurance
Pesticide Management Program
79 Elm Street
Hartford, Connecticut 06106-5127

Respondent consents to the issuance of this consent order without further notice. The undersigned certifies that he is fully authorized to enter into this consent order and to legally bind the Respondent to the terms and conditions of the consent order.

DAVID VARNI, SR.
dba/LOUIS W. VARNI COMPANY
RESPONDENT

BY: David Varni SR
DAVID VARNI, SR.
PRESIDENT

AUGUST 10, 2010
Date

Issued as a final order of the Commissioner of Environmental Protection.

Amey Marrella
Amey W. Marrella
Commissioner

8/19/10
Date

RECEIVED

AUG 17 2010

WASTE MANAGEMENT BUREAU
PESTICIDE MANAGEMENT