

Connecticut Department of

**ENERGY &
ENVIRONMENTAL
PROTECTION**

STATE OF CONNECTICUT

VS

CONSENT ORDER NUMBER
COWSPST12-004

TOTAL TREE CARE, INC.
RESPONDENT

ISSUE DATE February 9, 2012

A. With the agreement of Total Tree Care, Inc. ("Respondent"), the Commissioner of Energy & Environmental Protection ("the Commissioner") finds:

1. Respondent is registered as a commercial pesticide application business with the Commissioner of Energy & Environmental Protection as Total Tree Care, Inc. with a principal place of business located at 280 School House Road in Cheshire, Connecticut. Respondent may continue to apply pesticides in Connecticut pursuant to the pesticide application business registration.
2. Respondent is registered with the Secretary of the State of Connecticut as Total Tree Care, Inc. with a principal place of business at 280 School House Road in Cheshire, Connecticut. John L. Williams is President of Total Tree Care, Inc.
3. On 6/10/11, a certified commercial operator employed by Respondent applied Talstar One Multi Insecticide in a manner inconsistent with labeling by allowing the pesticide to contact fruit-bearing plants including blueberry, raspberry and currant being grown at 66 Middle Road in Hamden, Connecticut through inadvertent application within the drip line of trees treated on the Devine property located at 72 Middle Road in Hamden, Connecticut.
4. On 6/10/11, a commercial operator employed by Respondent acted as a commercial supervisor by deciding to perform a pesticide application of Talstar One Multi Insecticide on hemlock trees at the Devine property located at 72 Middle Road in Hamden, Connecticut without supervisory written instructions to treat the specific site.
5. Permanent pesticide application records maintained by Respondent for an application of Talstar One Multi Insecticide on 6/10/11 at the Devine property located at 72 Middle Road in Hamden, Connecticut are inaccurate and/or do not contain specific required information including the name and certification number of the commercial supervisor involved in the application, the certification number of the commercial operator and did not indicate hemlocks as a site that was treated on the property.

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

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

79 Elm Street, Hartford, CT 06106-5127
www.ct.gov/deep
Affirmative Action/Equal Opportunity Employer

1. Effective immediately upon issuance of this consent order, Respondent shall take all steps necessary to comply with all applicable provisions of Chapter 441 governing Pesticide Control and Chapter 451 governing licensing for arboriculture of the Connecticut General Statutes 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. Respondent shall pay a penalty of \$872.50 in three installments as follows; \$291.50 on or before 30 days from the date of issuance of this consent order; \$291.00 on or before 150 days from that date of issuance of this consent order and \$290.00 on or before 270 days from the date of issuance of this consent order 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. Supplemental Environmental Project.

In addition to the civil penalty referenced in paragraph B.3, Respondent has agreed to undertake the following supplemental environmental project (SEP) requiring an expenditure of at least Two-Thousand Six-Hundred Fifteen dollars (\$2,615.00), which is the total estimated cost as determined by the Commissioner for all SEPs required under this paragraph, or make payment(s) as follows:

a. Respondent shall perform arboricultural services at the Abbey of Regina Laudis located at 273 Flander Road in Bethlehem, Connecticut. Respondent shall perform each such SEP in accordance with the schedule approved by the Commissioner, and shall obtain any federal, state or local permit or approval necessary to carry out such SEP.

b. If Respondent fails to fully perform any SEP in accordance with paragraph B.4.a., Respondent shall immediately notify the Commissioner in writing of such noncompliance and shall, upon written request by the Commissioner, remit a payment equal to: the total estimated cost, as determined by the Commissioner, of all such SEP(s); plus either \$2,500 or 10% of such total estimated cost, whichever is greater. Within fourteen (14) days after the date of the Commissioner's written request, Respondent shall make such payment in accordance with the remittance procedures for unexpended SEP funds in subparagraph B.4.e of this consent order.

c. On or before ninety (90) days after the date of issuance of this consent order, Respondent shall submit written progress reports to the Commissioner in accordance with the schedule approved by the Commissioner. Each progress report shall include the following information: Respondent's progress in performing each SEP including tasks performed to date, a complete accounting of actual project costs incurred to date, planning for the remaining project tasks to be performed, significant activities or findings related to the project, and any other reasonable information requested by the Commissioner for the purpose of evaluating Respondent's progress in performing the SEP(s).

d. On or before thirty (30) days after completion of each SEP, Respondent shall submit for the Commissioner's review and written approval a comprehensive final report that certifies completion of such SEP. Such final report shall include, at a minimum, a narrative history of the project, detailed explanation of its design and implementation, summary of any data collected, complete final accounting of actual project costs including receipts for out-of-pocket costs, and a discussion of environmental benefits resulting from the SEP.

e. Should the Commissioner determine that the actual cost to the Respondent of any fully completed SEP is less than the estimated cost, as determined by the Commissioner, of such SEP, Respondent shall pay the difference between such actual cost and the estimated cost to the Commissioner as unexpended SEP funds. The Commissioner shall notify the Respondent in writing of the amount of any such unexpended SEP funds that are due. Respondent shall, within fourteen (14) days after the date of such written notice, remit the full amount of the unexpended SEP funds. Payment of unexpended SEP funds shall be by certified or bank check payable to "Treasurer, State of Connecticut" and the check shall state on its face "Statewide SEP Account, Consent Order No. COWSPST12-004." Respondent shall mail or personally deliver such payment to the Department of Energy & Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127.

f. If and when Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.

g. Respondent shall not claim or represent that any SEP payment made pursuant to this consent order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.

5. 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, "BMMCA/Pesticide Program civil penalty, consent order COWSPST12-004."

6. Approvals. Respondent shall use best efforts to submit to the Commissioner all documents required by this consent order in a complete and approvable form. If the Commissioner notifies Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within 30 days of the Commissioner's notice of deficiencies. In approving any document or other action under this consent order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this consent order. Nothing in this paragraph shall excuse noncompliance or delay.

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

8. 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.

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

10. 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.

11. 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.

12. 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.

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

14. 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

15. 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.

16. 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.

17. Notice to Commissioner of changes. Within 15 days of the date Respondent becomes aware of a change in any information submitted to the Commissioner under this consent order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondent shall submit the correct or omitted information to the Commissioner.

18. 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.

19. 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
Department of Energy & 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.

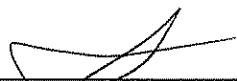
TOTAL TREE CARE, INC.
RESPONDENT



JOHN L. WILLIAMS
PRESIDENT

1-30-12
DATE

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



Daniel C. Esty
Commissioner

2/8/12
Date