



STATE OF CONNECTICUT

VS

CONSENT ORDER NUMBER
COWSPST15-042

Issue Date August 2, 2016

FRANK C. FORSTER
RESPONDENT

A. The Commissioner of Energy & Environmental Protection ("the Commissioner") finds:

1. Respondent is an individual who resides at 3 Cecelia Lane in New Fairfield, Connecticut.
2. Respondent holds Private Applicator certification issued by the Commissioner with an expiration date of 1/31/2017.
3. On at least 4/19/13, 5/21/13, 5/30/13, 4/25/14 and 5/27/14, Respondent applied the pesticide Danitol 2.4 EC Spray to fruit trees at 3 Cecelia Lane In New Fairfield, Connecticut in a manner inconsistent with labeling by failing to measure the wind speed to the application site on the upwind side immediately prior to the application and repeating the application on at least one occasion sooner than ten days from the prior treatment.
4. On at least 6/13/13, 8/15/13 and 5/2/14, Respondent applied the pesticide Imidan 70 W to fruit trees at 3 Cecelia Lane in New Fairfield, Connecticut in a manner inconsistent with labeling by failing to have and use specified personal protective equipment including a chemical resistant apron and respirator with a pre-filter or canister approved for organic vapor pesticides, failing to measure the wind speed adjacent to the application site on the upwind side immediately prior to the application.
5. On at least 4/19/13, 5/14/13, 5/21/13, 5/30/13, 6/21/13, 7/5/13, 7/26/13 and 8/15/13, Respondent applied Rubigan EC to apple trees at 3 Cecelia Lane in New Fairfield, Connecticut in a manner inconsistent with labeling by applying the pesticide more than four times per year.
6. On at least 4/25/14, 5/2/14, 5/12/14 and 5/27/14, Respondent applied Rubigan EC in a manner inconsistent with labeling by treating crops for which the product is not approved including peach and/or plum trees at 3 Cecelia Lane in New Fairfield, Connecticut.
7. On at least 4/19/13, 5/14/13, 5/21/13, 5/30/13, 6/13/13, 7/5/13, 7/26/13, 8/15/13, 4/25/14, 5/2/14, 5/12/14 and 5/27/14, Respondent used pesticides including Danitol 2.4 EC Spray, Imidan 70 W and Rubigan EC in a faulty, careless or negligent manner by failing to fully comply with

pesticide label requirements and applying one or more of the pesticides to one or more sites for which the pesticide(s) are not labeled for use including but not limited to peach and/or plum trees.

8. On 6/30/14, Respondent used Drexel Captan 50W in a manner inconsistent with labeling by failing to have and use required personal protective equipment including a chemical resistant apron when mixing and loading and a NIOSH approved dust/mist filtering respirator with a TC 21C, N2, R, P or HE filter. Respondent also allowed Robert Farney, an unprotected handler as defined by the Federal Worker Protection Standard, to remain in the area and assist with spraying apple, peach and plum trees at 3 Cecelia Lane in New Fairfield, Connecticut without first providing required training, personal protective equipment including at least one container designed specifically for flushing eyes and both oral and written notification by posting signs at entrances to treated area.

9. On 6/30/14, Respondent used Rally 40WSP Fungicide in a manner inconsistent with labeling by applying it in a manner that resulted in drift to neighboring residential properties located at 4, 5 and 7 Great Meadow Road in New Fairfield, Connecticut while treating apple, peach and plum trees at 3 Cecelia Lane in New Fairfield, Connecticut. Respondent also allowed Robert Farney, an unprotected handler as defined by the Federal Worker Protection Standard, to remain in the area and assist with the treatment without first providing required training and personal protective equipment. The volume of spray solution that was prepared exceeded the amount necessary to treat the target crop(s).

10. On 6/30/14, Respondent used Sevin 80 Solupak in a manner inconsistent with labeling by applying it in a manner that resulted in drift to neighboring residential property located at 7 Great Meadow Road in New Fairfield, Connecticut while treating apple, peach and plum trees at 3 Cecelia Lane in New Fairfield, Connecticut. Respondent also allowed Robert Farney, an unprotected handler as defined by the Federal Worker Protection Standard, to remain in the area and assist with the treatment without first providing required training, personal protective equipment and oral and written notification by posting signs at entrances to the treated area. Respondent also failed to have and use required personal protective equipment including a chemical resistant apron when mixing and loading and a NIOSH approved dust/mist filtering respirator with a TC 21C, N, R, or HE filter immediately available.

11. On 6/30/14, Respondent used pesticides including Agway Malathion 25W, Drexel Captan 50W, Rally 40WSP and Sevin 80 Solupak in a faulty, careless or negligent manner resulting in drift of at least one of the pesticides onto at least three neighboring properties while treating apple, peach and plum trees at 3 Cecelia Lane in New Fairfield, Connecticut. Respondent also allowed Robert Farney, an unprotected handler as defined by the Federal Worker Protection Standard, to remain in the area and assist with the treatment without first providing required training, personal protective equipment and oral and written notification by posting signs at entrances to the treated area.

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

Respondent disagrees with the findings of the Commissioner as set forth above, but in an effort to avoid litigation and the costs associated therewith, Respondent has agreed to sign the Consent Order. In doing so, Respondent makes no admission of fact or violation of law with respect to the matters asserted herein, other than the facts set forth above in paragraphs A.1 and A.2.

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

1. Respondent shall assure that any pesticide applications that he performs, or any pesticide applications performed by an individual under his supervision must comply with all requirements of Chapter 441 of the Connecticut General Statutes governing pesticides.
2. Respondent shall assure that any pesticide applications that he performs, or any pesticide applications performed by an individual under his supervision are performed in a manner consistent with the requirements of the pesticide label including all requirements of the Federal Worker Protection Standard when referred to by the pesticide label.
3. For a period of two years from the date of issuance of this consent order, Respondent shall provide seventy-two (72) hour pre-notification of all planned pesticide applications and twenty-four (24) hour pre-notification of emergency pesticide applications to the Department of Energy & Environmental Protection, Pesticide Management Program and neighbors whose property directly abuts the property to be treated.
- 4.a. For a period of two (2) years from the date of issuance of this consent order, Respondent shall make not less than two (2) attempts to notify neighbors whose property directly abuts the property to be treated of all pesticide applications. Such attempts shall be made as early as practicable, but not less than twenty-four (24) hours before the application. Notice may be by any method, including telephone, mail or personal notification. Notification shall include but not be limited to the common name of the pesticide to be applied; the location of the pesticide application, the date and approximate time of the pesticide application.
- b. If a pesticide application is not made on the date specified in the notice, Respondent shall notify neighbors whose property directly abuts the property to be treated of any change in application date at least twenty-four (24) hours prior to the amended date of pesticide application.
- c. For each notification or attempted notification, Respondent shall keep a record of the date, name of person notified or attempted to be notified and the method of notification or attempted notification.
5. Staff of the Pesticide Management Program may enter Respondent's property without prior notification to inspect pesticide storage areas and records of pesticide application and to observe applications of pesticides, including the mixing, loading, calibration and post application cleanup of equipment performed by Respondent and/or any individual under his supervision.

6. For a period of two (2) years from the date of issuance of this consent order, Respondent, or any individual under his supervision, shall apply any and all pesticides in a manner that prevents drift of the pesticides to any property other than his own and in a manner that prevents the pesticides from contacting unprotected persons and pets;
7. For a period of two (2) years from the date of issuance of this consent order, Respondent shall submit copies of pesticide application records to the Commissioner for each use of a pesticide, including general and restricted-use pesticides, which shall include but not be limited to, a copy of the pesticide label or labels, the wind speed and direction at the time of application, the name and certification number (if applicable) of the applicator, the kind and amount of pesticide used to include the dilution rate, total amount of pesticide used and total gallons applied, the date and place of application, the crop or site treated and the amount of acreage treated.
8. Respondent may retain his Private Applicator certification and may renew such certification in accordance with normal renewal requirements including proof of CEU's and submission of annual pesticide use summaries.
9. Progress reports: On or before the last day of March, June, September, and December of each year after issuance of this consent order, and continuing until all actions required by this consent order have been completed, Respondent shall submit a progress report to the Commissioner describing the actions which Respondent has taken to date to comply with this consent order.
10. 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 by the Commissioner.
11. Civil penalty. On or before sixty (60) days after issuance of this consent order, Respondent shall pay a penalty of \$625.00 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraphs A.3 through A.11 of this consent order.
12. Supplemental Environmental Project.
- a. In addition to the penalty referenced in paragraph B.11, Respondent has agreed to fund a supplemental environmental project ("SEP") or projects as selected by the Department according to its February 15, 1996 "Policy on Supplemental Environmental Projects." Therefore, on or before sixty (60) days after the date of issuance of this consent order, Respondent shall pay one-thousand eight-hundred seventy five dollars (\$1,875.00) to the Statewide SEP Account. The payment shall be mailed or personally delivered to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127, and shall be by certified or bank check payable to the "Connecticut Department of Energy and Environmental Protection," with notation thereon "Statewide SEP Account" and "Consent Order No. COWSPST15-042."
- b. If Respondent fails to fund the SEP in accordance with paragraph 12.a. above, Respondent shall immediately pay a civil penalty of Two-thousand Five-hundred dollars (\$2,500.00). Respondent shall pay such civil penalty in accordance with the provisions of paragraph B.13 for "Payment of penalties" of this consent order.

c. 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.

d. 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.

13. Payment of penalties. Payment of penalties under this consent order shall be mailed or personally delivered to the Department of Energy and 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 the "Connecticut Department of Energy and Environmental Protection." The check shall state on its face, "BMMCA, Pesticide Management Program civil penalty, consent order COWSPST15-042."

14. 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.

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

16. 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.

17. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this consent order shall be signed by Respondent or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in §22a-430-3(b)(2) of

the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and each such individual shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law."

18. 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.

19. 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.

20. 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.

21. 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 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.

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

23. Access to site. Any representative of the Department of Energy and Environmental Protection may enter the Forster property located at 3 Cecelia Lane in New Fairfield, Connecticut without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.

24. 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.

25. 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.

26. 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.

27. 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 Energy and Environmental Protection
Bureau of Materials Management & Compliance Assurance
Pesticide Management Program
79 Elm Street
Hartford, Connecticut 06106-5127

The Respondent agrees that this Consent Order can be issued without further notice.

FRANK C. FORSTER

BY: Frank C. Forster
FRANK C. FORSTER

07-20-16
Date

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

Michael Sullivan
Michael Sullivan
Deputy Commissioner

8/2/16
Date