

STATE OF CONNECTICUT

VS

CONSENT ORDER NUMBER  
COWSPST2017-002

Issue Date October 23, 2018

JOHN LUCAS TREE EXPERT CO  
RESPONDENT

A. With the agreement of John Lucas Tree Expert Co (Respondent), the Commissioner of Energy and Environmental Protection finds:

1. Respondent is a pesticide application business registered with the Department of Energy and Environmental Protection (DEEP) with a physical business address of 12 Northbrook Drive in Falmouth, Maine.
2. Arthur Batson III is the Chief Financial Officer of Lucas Tree Expert Co..
3. On 6/23/16, Arthur Batson III failed to indicate all certified pesticide applicators employed by Respondent, including but not limited to, certified commercial pesticide supervisor Bruce Baxter on an application for the renewal of the DEEP pesticide application business registration.
4. On at least 6/30/16, a commercial pesticide supervisor employee of Respondent, Bruce Baxter, failed to provide supervisory written instructions for the use of pesticides to certified commercial operator employees prior to a pesticide application to a utility right-of-way for Eversource Utility at No Name Road, across from Nutmeg and Spoonville Road located in Windsor and/or East Granby, Connecticut.
5. On 6/30/16, three commercial pesticide operators employed by Respondent acted as a commercial pesticide supervisor by deciding whether or not to apply pesticides, how they would be mixed, where they would be used, which pesticides would be used, the dosage and timing of the application, the method of application and precautions to be taken for an application performed for Eversource Utility as a utility right-of-way application at No Name Road, across from Nutmeg and Spoonville Road in Windsor and/or East Granby, Connecticut.
6. On 6/30/16, three certified commercial operators employed by Respondent applied a custom blend pesticide comprised of the pesticides Milestone VM, Arsenal Powerline Herbicide and Rodeo to a utility right-of-way under the control of Eversource Utility located at No Name Road across from Nutmeg and Spoonville Road in Windsor/East Granby Connecticut. Milestone VM was applied in a manner

inconsistent with the directions for use on the pesticide label by exceeding the maximum label rate, using a method of application prohibited on the label and applying the product on an area abutting a property where loss of desirable broadleaf plants, specifically tobacco, could not be tolerated.

7. Permanent pesticide applications records maintained by Respondent at multiple locations in Connecticut on 6/24/16, 6/27/16, 6/28/16, 6/29/16 and 6/30/16 do not contain specific required information including the name(s) and certification number(s) of the commercial supervisor(s) and commercial operator(s) that performed the pesticide applications, the place of application including the town, the kind and amount of pesticide used and target pest is not specific. The kind of pesticide applied is identified in Respondent's records as "CMP Foliar" and the records do not include the registered trade name(s) of the pesticide(s) used.

By virtue of the above, the Respondent has violated Connecticut General Statutes sections 22a-61(b)(7), 22a-61(e), 22a-66c(b), 22a-66e(a)(3), 22a-66g(a)(1) and Regulations of Connecticut State Agencies section 22a-66-5(g)(2).

By agreeing to the issuance of this consent order, Respondent makes no admission of fact or law with respect to the matters addressed herein, other than the facts asserted in paragraphs A.1 through A.2 inclusive.

B. With the agreement of Respondent, the Commissioner, acting under sections 22a-6, 22a-63(e) 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 chapters 441 governing Pesticide Control and 451 governing arboriculture of the Connecticut General Statutes and regulations promulgated thereunder and shall maintain such compliance.

2. Respondent shall assure that refillable pesticide service containers are accompanied by end use labels and directions for use for each pesticide used by employee applicators on the Respondents behalf.

3. Respondent shall assure that a certified commercial supervisor is available when and if needed, and shall be able to be present at the site of pesticide application not later than two hours after being contacted by a commercial operator.

4. Respondent shall assure that certified commercial supervisor and operator employees making pesticide applications on their behalf take all steps necessary to minimize the potential for pesticide drift by avoiding applications during temperature inversions or windy conditions, using coarse low pressure spray and spraying away from non-target and sensitive areas.



5. 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.

6. Civil penalty. On or before thirty (30) days after issuance of this consent order, Respondent shall pay a penalty of twelve-thousand dollars (\$12,000.00) as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraphs A.3 through A.7 of this consent order.

7. 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 COWSPST17-002."

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

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

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

15. 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.

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

17. 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.

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 Respondents 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, SUPERVISING ENVIRONMENTAL ANALYST  
Department of Energy and 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.

**JOHN LUCAS TREE EXPERT CO**

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

ARTHUR BATSON III  
CHIEF FINANCIAL OFFICER

10-16-18  
DATE

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

\_\_\_\_\_  
Robert E. Kaliszewski  
Deputy Commissioner

10-23-18  
DATE