



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Commissioner

IN THE MATTER OF : ADMINISTRATIVE ORDER
ZAPP TERMITE & PEST CONTROL : NOTICE OF LICENSE REVOCATION
AND VINCENT K. TAYLOR : AND
5 TRIDENT BLVD : NOTICE OF CIVIL ADMINISTRATIVE
NEPTUNE CITY, NJ 07753 : PENALTY ASSESSMENT

EA ID # PEA120005 - 94360A
EA ID # PEA120005 - 20028B

This Administrative Order, Notice of License Revocation, and Notice of Civil Administrative Penalty Assessment (hereinafter "AO/NOR/NOCAPA") are issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP" or the "Department") by N.J.S.A. 13:1D-1 et seq., and the Pesticide Control Act, N.J.S.A.13:1F-1 et seq. (the "Act"), and duly delegated to the Assistant Commissioner for Compliance & Enforcement pursuant to N.J.S.A.13:1B-4.

FINDINGS

- 1. VINCENT K. TAYLOR ("Taylor") owns and operates ZAPP TERMITE & PEST CONTROL ("Zapp") located at 5 Trident Blvd., Neptune City, Monmouth County, New Jersey (collectively "Respondents"). Taylor is a licensed commercial pesticide applicator, License No. 94360A, and Zapp is a pesticide applicator business, License No. 20028B.
2. On January 10, 2012, the Department received a complaint from a citizen alleging that Respondents were misapplying pesticides, improperly storing pesticides, keeping incomplete records, and had service vehicle violations.
3. In response to that complaint, a Department representative went to 4 J's Sub Shop, 1200 Asbury Avenue, Asbury Park, New Jersey. When he arrived, the owner of the business confirmed that Respondents had performed pesticide services at that location. During this inspection, the Department representative observed rat bait boxes containing the rodenticide Final All Weather Blox (EPA Reg. No. 12455-89) placed around the premises by Respondents without being secured to the ground, contrary to the labeling and regulatory requirements.

4. On February 8, 2012, a Department representative performed a compliance inspection at Respondents' place of business located at 5 Trident Blvd., Neptune City, Monmouth County, New Jersey. During this inspection the Department representative observed that the Respondents' service vehicle was missing absorbent material and a fire extinguisher.
5. During this inspection, the Department representative also obtained a copy of the consumer information notification that Respondents used and discovered that it was out-of-date and incomplete. The notification did not include the correct phone number to report issues and did not contain information regarding the specific products used. Taylor also informed the Department representative that he did not have the diagrams required when he applied termiticides and that he did not provide a copy to his clients.
6. Taylor also informed the Department representative during the February 8, 2012 inspection that he: (1) did not maintain and keep on file a list of the pesticides he used and stored at his place of business, (2) did not provide the local fire department of a list of pesticides used and stored at his place of business, and (3) did not provide a copy of the regulations to clients when he applied termiticides as required. The Department representative instructed Mr. Taylor to correct those deficiencies. The Department representative also obtained copies of Respondents' application records.
7. The application records revealed that Respondents had performed pesticide services at the following locations: Perkins, 710 Hwy 35, Neptune Twp., New Jersey; H&R Block, 706 Main Street, Asbury Park, New Jersey; and Rodeio Grille, 78 Oceanport Ave, Oceanport, New Jersey. Based on those records, a Department representative inspected each location on February 13, 2012. A representative from each location confirmed that Respondents had performed pesticide services at their location.
 - a. During the compliance inspection of the Perkins, 710 Hwy 35, Neptune Twp., New Jersey, the Department representative took three swab samples for the presence of pesticides, nos. 22021-02-13-02 through 22021-02-13-04, from indoors near the back door and under the sink and microwave. Each sampling result revealed Fipronil, the active ingredient found in the pesticide Termidor SC (EPA Reg. No 7969-210). During this inspection, the Department representative requested the records provided to Perkins by Respondents, but they had not received the required consumer notification. In addition, the Department representative observed that the permanent notice posted by Respondents was out-of-date and incomplete
 - b. During the compliance inspection of the H&R Block, 706 Main Street, Asbury Park, New Jersey, the Department representative took two swab samples for the presence of pesticides, nos. 22021-02-13-05 through 22021-02-13-06, from indoors near the sink and refrigerator. Each sampling result revealed Fipronil, the active ingredient found in the pesticide Termidor SC. During this inspection, the Department representative requested the records provided to H&R Block by

Respondents, but they had not received the required consumer notification. In addition, the Department representative did not observe a permanent notice posted by Respondents as required.

- c. During the compliance inspection of the Rodeio Grille, 78 Oceanport Ave, Oceanport, New Jersey, the Department representative took two swab samples for the presence of pesticides, nos. 22021-02-13-07 through 22021-02-13-08, from indoors near the service counter and stove. Each sampling result revealed Fipronil, the active ingredient found in the pesticide Termidor SC. During this inspection, the Department representative requested the records provided to Rodeio Grille by Respondents, but they had not received the required consumer notification. In addition, the Department representative did not observe a permanent notice posted by Respondents as required.
8. Respondents' application records also revealed that Respondents had performed pesticide services at El Oxaqueno, 9 Memorial Parkway, Long Branch, New Jersey. On February 16, 2012, a Department representative inspected the location and a representative from El Oxaqueno confirmed that Respondents had performed pesticide services at its location. The Department representative took four swab samples for the presence of pesticides, nos. 22021-02-16-01 through 22021-02-16-04, from indoors near the kitchen side door, the freezer door and the dining area. The sampling results for the samples taken near the freezer door and the dining area revealed Fipronil, the active ingredient found in the pesticide Termidor SC. During this inspection, the Department representative requested the records provided to El Oxaqueno by Respondents, but they had not received the required consumer notification. In addition, the Department representative did not observe a permanent notice posted by Respondents as required.
 9. Respondents' application records also revealed that he performed pesticide services at the Red Bank Housing Authority, Red Bank, New Jersey. On March 6, 2012, a Department representative inspected Unit Nos. 6, 32, and 138. When he arrived at the Red Bank Housing Authority, a representative of the Red Bank Housing Authority confirmed that Respondents were the only company that had applied pesticides in its units. The Department representative also requested the records provided to Red Bank Housing Authority by Respondents, but they had not received the required consumer notification.
 - a. During the compliance inspection of Unit No. 32 of the Red Bank Housing Authority, Red Bank, New Jersey, the Department representative took three swab samples for the presence of pesticides, nos. 22021-03-06-02 through 22021-03-06-04, from indoors in the living room and near the kitchen baseboard and cabinet. Each sampling result revealed Fipronil, the active ingredient found in the pesticide Termidor SC. There were no decals posted anywhere in the unit as required.
 - b. During the compliance inspection of Unit No. 6 of the Red Bank Housing Authority, Red Bank, New Jersey, the Department representative took three swab samples for the presence of pesticides, nos. 22021-03-06-05 through 22021-03-

06-07, from indoors on the kitchen counter and in the bathroom and bedroom. Each sampling result revealed Fipronil, the active ingredient found in the pesticide Termidor SC. There were no decals posted anywhere in the unit as required.

- c. During the compliance inspection of Unit No. 138 of the Red Bank Housing Authority, Red Bank, New Jersey, the Department representative took three swab samples for the presence of pesticides, nos. 22021-03-06-08 through 22021-03-06-10, from indoors on the kitchen counter and in the bathroom and living room. The sampling results for the bathroom and living room swab revealed Fipronil, the active ingredient found in the pesticide Termidor SC. There were no decals posted anywhere in the unit as required.
10. Respondents' application records also revealed that he performed pesticide services at the McDonald's, Rt. 33 & Rt. 35, Neptune, New Jersey. On April 2, 2012, a Department representative inspected the location and a representative from McDonald's confirmed that Respondents had performed pesticide services at its location. The Department representative took five swab samples for the presence of pesticides, nos. 22021-04-02-01 through 22021-04-02-05, from indoors near the CO2 tank, the freezer, the side entrance and under the sink. Four of the sampling results revealed Fipronil, the active ingredient found in the pesticide Termidor SC. During this inspection, the Department representative requested the records provided to McDonald's by Respondents, but they had not received the required consumer notification. In addition, the Department representative did not observe a permanent notice posted by Respondents as required.
11. The BASF Corporation's ("BASF") label for Termidor SC prohibits the application of Termidor SC to surfaces indoors.
12. A Department representative performed a compliance inspection at Respondents' place of business on May 3, 2012. During this inspection, the Department representative obtained three years' worth of Respondents' application records.
13. The records obtained on May 3, 2012 showed that Respondents applied the pesticide Phantom (EPA Reg. No. 241-392), active ingredient Chlorfenapyr, at the following locations within less than 28 days from the previous application:

<u>Location</u>	<u>Prior Date Applied</u>	<u>Subsequent Date Applied</u>
LaValentina 186 Broadway Long Branch, NJ	10/25/2011	11/18/2011
McDonald's Rt. 66 Neptune, NJ	4/4/2011	4/18/2011

McDonald's Rt. 66 Neptune, NJ	9/12/2011	9/26/2011
McDonald's Rt. 66 Neptune, NJ	12/5/2011	12/19/2011
McDonald's Rt. 66 Neptune, NJ	7/9/2012	7/23/2012
McDonald's Rt. 33 & 35 Neptune, NJ	4/4/2011	4/18/2011
McDonald's Rt. 33 & 35 Neptune, NJ	9/12/2011	9/26/2011
McDonald's Rt. 33 & 35 Neptune, NJ	11/7/2011	11/21/2011
McDonald's Rt. 33 & 35 Neptune, NJ	7/9/2012	7/23/2012
McDonald's Hwy. 35 Cliffwood Beach, NJ	2/8/2011	2/22/2011
McDonald's Hwy. 35 Cliffwood Beach, NJ	7/10/2012	7/24/2012
McDonald's Rt. 9 Woodbridge, NJ	2/8/2011	2/22/2011
McDonald's Rt. 9 Woodbridge, NJ	11/8/2011	11/22/2011

McDonald's Rt. 9 Woodbridge, NJ	12/5/2011	12/20/2011
McDonald's Rt. 9 Woodbridge, NJ	7/10/2012	7/24/2012
McDonald's Rt. 9 South Amboy, NJ	10/18/2011	10/26/2011
McDonald's Rt. 9 South Amboy, NJ	12/6/2011	12/20/2011
McDonald's Rt. 9 South Amboy, NJ	7/10/2012	7/24/2012
Red Bank Housing Auth. Red Bank, NJ	4/11/2011	5/4/2011
Red Bank Housing Auth. Red Bank, NJ	10/6/2011	11/2/2011
Red Bank Housing Auth. Red Bank, NJ	1/9/2012	2/2/2012

14. The BASF label for Phantom prohibits application of the pesticide within 28 days of the prior application.
15. During the May 3, 2012 compliance inspection, a Department representative issued to Respondents a Stop Use Notice ordering Respondents to no longer use Termidor SC indoors. The Department representative also issued a Notice of Violation ("NOV") to Respondents for violations of the Pesticide Control Act, N.J.S.A.13:1F-1 et seq., and the regulations promulgated thereto, specifically N.J.A.C. 7:30-10.2(a), (c), (d) and (e). The NOV ordered Respondents to stop applying pesticides indoors, to non-targeted sites, and in a manner that causes a significant risk of harm, injury or damage.
16. A review of the application records obtained on February 8, 2012 and May 3, 2012 showed that the following application records, as well as many others, contained insufficient information:

- a. The application records for applications applied by Respondents on November 10, 2010 and November 12, 2012 to several units of the Red Bank Housing Authority, Red Bank, New Jersey did not include the brand name of the pesticide used, the EPA registration number for the pesticide used, the active ingredient of the pesticide used, the location where the pesticide was applied, and the pesticide concentration mix ratio.
- b. The application records for applications applied by Respondents on January 7, 2011, January 13, 2011 and January 21, 2011 to several units of the Red Bank Housing Authority, Red Bank, New Jersey did not include the applicator's signature and license number.
- c. The application records for applications applied by Respondents on February 7, 2011, February 21, 2011, April 4, 2011, April 18, 2011, September 12, 2011, September 26, 2011, November 7, 2011 and November 21, 2011 at McDonald's, Rt. 33 & Rt. 35, Neptune, New Jersey, did not include the brand name of the pesticide used, the EPA registration number for the pesticide used, the location where the pesticide was applied, and the pesticide concentration mix ratio.
- d. The application records for applications applied by Respondents on February 17, 2011 and November 17, 2011 at El Oxaqueno, 9 Memorial Parkway, Long Branch, New Jersey, did not include the brand name of the pesticide used, the EPA registration number for the pesticide used, the active ingredient of the pesticide used, the location where the pesticide was applied, the quantity of the pesticide concentration, and the pesticide concentration mix ratio.
- e. The application records for applications applied by Respondents on October 6, 2011 at El Oxaqueno, 9 Memorial Parkway, Long Branch, New Jersey, did not include the EPA registration number for the pesticide used, the active ingredient of the pesticide used, the location where the pesticide was applied, the quantity of the pesticide concentration, and the pesticide concentration mix ratio.
- f. The application records for applications applied by Respondents on January 26, 2012 at El Oxaqueno, 9 Memorial Parkway, Long Branch, New Jersey, did not include the brand name of the pesticide used, the EPA registration number for the pesticide used, the location where the pesticide was applied, the quantity of the pesticide concentration, and the pesticide concentration mix ratio.
- g. The application records for applications applied by Respondents on March 8, 2011 and October 18, 2011 at Rodeio Grille, 78 Oceanport Ave, Oceanport, New Jersey, did not include the brand name of the pesticide used, the EPA registration number for the pesticide used, the active ingredient of the pesticide used, the location where the pesticide was applied, and the pesticide concentration mix ratio.

- h. The application records for applications applied by Respondents on July 27, 2011 at Rodeio Grille, 78 Oceanport Ave, Oceanport, New Jersey, did not include the brand name of the pesticide used, the EPA registration number for the pesticide used and the active ingredient of the pesticide used.
 - i. The application records for applications applied by Respondents on August 23, 2011 at Rodeio Grille, 78 Oceanport Ave, Oceanport, New Jersey, did not include the brand name of the pesticide used, the EPA registration number for the pesticide used, the active ingredient of the pesticide used, the location where the pesticide was applied, the quantity of the pesticide concentrate used, and the pesticide concentration mix ratio.
 - j. The application records for applications applied by Respondents on September 20, 2011 at Rodeio Grille, 78 Oceanport Ave, Oceanport, New Jersey, did not include the brand name of the pesticide used, the EPA registration number for the pesticide used, the active ingredient of the pesticide used, and what type of treatment the application was for.
 - k. The application records for applications applied by Respondents on October 13, 2011 at the Perkins, 710 Hwy 35, Neptune Twp., New Jersey, did not include the brand name of the pesticide used, the EPA registration number for the pesticide used, the active ingredient of the pesticide used, the location where the pesticide was applied, and the pesticide concentration mix ratio.
 - l. The application records for applications applied by Respondents on January 23, 2012 at the H&R Block, 706 Main Street, Asbury Park, New Jersey, did not include the EPA registration number for the pesticide used and the pesticide concentration mix ratio.
17. On May 10, 2012, a Department representative returned the application record books to Vincent Keith Taylor after making photocopies of the records.
18. During a compliance evaluation performed on August 17, 2012, a Department representative provided to Respondents a Compliance Response Form to respond to the May 3, 2012 Stop Use Notice and Notice of Violation.

19. Vincent Keith Taylor completed the Compliance Response Form and provided it to the Department that same day, where he certified that he was no longer using Termidor SC, he was mixing all of the pesticides according to their labels, and he was applying all pesticides to targeted areas according to their labels. The Department representative observed that Respondents had not put a fire extinguisher in the service vehicle, had not updated the consumer notification, had not obtained a copy of the regulations to provide customers when he applied termiticides, had not prepared a list of the pesticides stored, and had not provided a copy of the list of pesticides stored at his place of business to the fire department despite being instructed by a Department representative to correct those violations during the February 8, 2011 inspection.
20. While performing his inspection on August 17, 2012, a Department representative observed two concentration containers labeled "Phantom," one container was marked with an "X" while the other was not. The Department representative took samples of the contents of each container, sample nos. 22012-08-17-01 and 22102-08-17-02. The sample results revealed that the container not marked with a "X" had a 50% concentrate of Chlorfenapyr, the active ingredient in the pesticide Phantom, and a 50% concentrate of Fipronil, the active ingredient in the pesticide Termidor SC. Thus, contrary to Vincent Keith Taylor's certified statement that all containers are labeled properly and that he only mixes pesticide concentrates according to the charts on the labels, he had adulterated the pesticide Phantom with Termidor SC.
21. Based on the compliance evaluations conducted, review of Respondents' application records and the results of the samples taken, the Department has determined that ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR, as Responsible Pesticide Applicator, failed to comply with applicable requirements as follows:
 - A. **Requirement:** Pursuant to N.J.A.C. 7:30-2.7(a)(4), no person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State... 4. Any pesticide which is adulterated or misbranded....
Description of Noncompliance: The sampling taken on August 17, 2012 disclosed that Respondents held, used, distributed, sold, or offered for sale within the State of New Jersey or delivered for transportation or transport in intrastate commerce or between points within the State through any point outside the State the pesticide Phantom, which was adulterated with the pesticide Termidor SC, as identified in paragraph 20, above.
 - B. **Requirement:** Pursuant to N.J.A.C. 7:30-10.2(a), no person shall use or apply a pesticide in a manner inconsistent with its federal or state registered label or labeling or restrictions as provided for by the regulations.
Description of Noncompliance: The investigation disclosed that Respondents used or applied the pesticide Termidor SC in a manner inconsistent with its Federal or State registered label or labeling by applying it indoors at the following

locations: Perkins, 710 Hwy 35, Neptune Twp., New Jersey; H&R Block, 706 Main Street, Asbury Park, New Jersey; Rodeio Grille, 78 Oceanport Ave, Oceanport, New Jersey; El Oxaqueno, 9 Memorial Parkway, Long Branch, New Jersey; Unit Nos. 6, 32, and 138 of the Red Bank Housing Authority, Red Bank, New Jersey; and McDonald's, Rt. 33 & Rt. 35, Neptune, New Jersey, as identified in paragraphs 7 through 10, above.

The investigation disclosed that Respondents used or applied the pesticide Phantom in a manner inconsistent with its Federal or State registered label or labeling by applying it at the same locations within twenty-eight days of a previous application of Phantom, as identified in paragraph 13, above.

The investigation disclosed that Respondents used or applied the rodenticide Final All-Weather Blox in a manner inconsistent with its Federal or State registered label or labeling by not securing or immobilizing the bait stations to prevent the bait from being shaken out, as identified in paragraph 3, above.

- C. **Requirement:** Pursuant to N.J.A.C. 7:30-10.2(c), no person shall apply pesticides in a manner that causes: 1. Harm, injury or damage to persons, property or the environment; or 2. A significant risk of harm, injury or damage.

Description of Noncompliance: The investigation disclosed that Respondents applied the pesticide Termidor SC in a manner that caused a significant risk of harm, injury or damage to persons, property or the environment by applying it indoors when it should only be applied outdoors at the following locations: Perkins, 710 Hwy 35, Neptune Twp., New Jersey; H&R Block, 706 Main Street, Asbury Park, New Jersey; Rodeio Grille, 78 Oceanport Ave, Oceanport, New Jersey; El Oxaqueno, 9 Memorial Parkway, Long Branch, New Jersey; Unit Nos. 6, 32, and 138 of the Red Bank Housing Authority, Red Bank, New Jersey; and McDonald's, Rt. 33 & Rt. 35, Neptune, New Jersey, as identified in paragraphs 7 through 19, above.

The investigation disclosed that Respondents applied the pesticide Phantom in a manner that caused a significant risk of harm, injury or damage to persons, property or the environment by applying it at the same locations within twenty-eight days of a previous application of Phantom, as identified in paragraph 13, above.

The investigation disclosed that Respondents applied the rodenticide Final All-Weather Blox in a manner that caused a significant risk of harm, injury or damage to persons, property or the environment, by not securing or immobilizing the bait stations to the ground, thus allowing the bait to be shaken from them, as identified in paragraph 3, above.

- D. **Requirement:** Pursuant to N.J.A.C. 7:30-10.2(d), no person shall directly apply any pesticide to a non-target site.

Description of Noncompliance: The investigation disclosed that Respondents directly applied the pesticide Termidor SC to a non-target site, specifically, indoors at the following locations: Perkins, 710 Hwy 35, Neptune Twp., New Jersey; H&R Block, 706 Main Street, Asbury Park, New Jersey; Rodeio Grille, 78 Oceanport Ave, Oceanport, New Jersey; El Oxaqueno, 9 Memorial Parkway, Long Branch, New Jersey; Unit Nos. 6, 32, and 138 of the Red Bank Housing Authority, Red Bank, New Jersey; and McDonald's, Rt. 33 & Rt. 35, Neptune, New Jersey, as identified in paragraphs 7 through 10, above.

- E. **Requirement:** Pursuant to N.J.A.C. 7:30-10.2(e), no person shall make any application of a pesticide unless he or she takes reasonable precautions, before, during and after the application, to minimize exposure of individuals or the environment to the pesticide and ensure the safety of any individuals or the environment unnecessarily exposed. Such precautions shall include, but not be limited to, transmittal from the applicator to the exposed and/or potentially exposed individual of precautionary label statements relevant to such individuals or the environment.

Description of Noncompliance: The investigation disclosed that Respondents applied the pesticide Termidor SC without taking reasonable precautions, before, during and after the application, to minimize the exposure of individuals or the environment to the pesticide and ensure the safety of individuals and the environment unnecessarily exposed. Respondents applied the product indoors, when the label calls for outdoor use only, at the following locations: Perkins, 710 Hwy 35, Neptune Twp., New Jersey; H&R Block, 706 Main Street, Asbury Park, New Jersey; Rodeio Grille, 78 Oceanport Ave, Oceanport, New Jersey; El Oxaqueno, 9 Memorial Parkway, Long Branch, New Jersey; Unit Nos. 6, 32, and 138 of the Red Bank Housing Authority, Red Bank, New Jersey; and McDonald's, Rt. 33 & Rt. 35, Neptune, New Jersey, as identified in paragraphs 7 through 10, above.

The investigation disclosed that Respondents applied the pesticide Phantom without taking reasonable precautions, before, during and after the applications, to minimize the exposure of individuals or the environments to the pesticide and ensure the safety of individuals and the environment unnecessarily exposed when applying it at the same locations within twenty-eight days of a previous application of Phantom, as identified in paragraph 13, above.

The investigation disclosed that Respondents applied the rodenticide Final All-Weather Blox without taking reasonable precautions, before, during and after the application, to minimize the exposure of individuals or the environment to the pesticide(s) and ensure the safety of individuals and the environment

unnecessarily exposed. The bait stations were not secured or immobilized to prevent the bait from being shaken out, as identified in paragraph 3, above.

- F. **Requirement:** Pursuant to N.J.A.C. 7:30-10.3(b), no person shall use or otherwise possess any pesticide in any rodent bait box or bait tray unless: 1. The bait box is secured against tampering when placed in areas accessible to pets, domestic animals, non-target wildlife or children; and i. The bait box or tray has attached to it or contained therein as part of the actual packaging of the pesticide, a copy of the registered label of the pesticide; or ii. The bait box or tray has attached to it a readable label with the following information about the pesticide contained therein: (1) The brand or trade name; (2) The EPA registration number; (3) The name and percentage of active ingredient(s) in the bait box; and (4) An appropriate signal word, that is, Danger-Poison, Warning, or Caution.

Description of Noncompliance: The investigation disclosed that Respondents used or otherwise possessed a pesticide(s) in a rodent control bait box(es) that: 1. was not secured against tampering when placed in an area accessible to children, pets, domestic animals or non-target wildlife, as identified in paragraph 3, above.

- G. **Requirement:** Pursuant to N.J.A.C. 7:30-6.8(a), a commercial pesticide applicator shall keep, for each application of pesticides made by him or her or under his or her direct supervision, a record of application.

Description of Noncompliance: The investigation disclosed that VINCENT K. TAYLOR, a commercial pesticide applicator, maintained inadequate records of pesticide applications. Specifically, these records were missing the following items of information: 1. The brand or trade name of the pesticide used or symbol representing such name, with a list which clearly correlates the symbol used with full and complete pesticide product name(s) and EPA Registration Number(s); 2. The total amount of each pesticide concentrate or formulation used; 3. The total amount of diluent; 4. The full name and pesticide applicator license number, or a symbol which corresponds to that person's name and license number on a separate list of all commercial applicators and/or commercial pesticide operators; 5. The site of application. and; 6. For applications by a commercial applicator of a termiticide, the record shall also include a diagram of the structure treated, depicting: i. The lower level of the structure; ii. The general location of the termite infestation(s) or re-infestation(s) and visible damage; iii. Areas treated; and iv. Any significant items such as location of known wells, drainage systems and streams and ponds which may be affected by the application, as identified in paragraphs 5 and 16, above.

- H. **Requirement:** Pursuant to N.J.A.C. 7:30-7.3(a), every business required to be licensed pursuant to the provisions of N.J.A.C. 7:30-7.1 shall keep, for each application of pesticides made by that business, a record of application.

Description of Noncompliance: The investigation disclosed that ZAPP TERMITE & PEST CONTROL maintained inadequate records of pesticide applications. Specifically, application records were missing the following items of information: 1. the brand or trade name of the pesticide(s) used or symbol(s) representing such name(s). 2. the total amount of each pesticide concentrate or formulation used. 3. the total amount of diluent. 4. the full name and pesticide registration number of the person making the application(s). 5. the site of the application. 6. for termiticide applications, the record did not include a diagram depicting: i. the lower level of the structure treated, ii. the general location of the termite infestations and visible damage, iii. the areas treated, iv. any significant items such as the location of known wells, drainage systems and streams and ponds which may be affected by the application, as identified in paragraphs 5 and 16, above..

- I. **Requirement:** Pursuant to N.J.A.C. 7:30- 9.5(b), any person required to be a licensed pesticide applicator or pesticide dealer who stores any pesticide shall maintain a list of the pesticides stored or likely to be stored during the license year and shall annually send a copy of this list with an explanatory cover letter to the local fire company along with a written description or diagram depicting the exact location of the area on the property where the pesticide is stored; provided that the provisions of this subsection shall not apply to individuals who are storing pesticides for their personal use on their private residence or persons who are storing pesticides for less than seven calendar days at loading or application sites in connection with their use. 1. The list shall be updated and sent to the local fire company each year by May 1. 2. The list shall be kept at a location which is separate from the actual storage site. 3. The cover letter shall explain that this list has been sent pursuant to N.J.A.C. 7:30-9.5(b). 4. A copy of each year's cover letter shall be kept on file for three years and shall be provided immediately upon request by the Department.

Description of Noncompliance: The investigation disclosed that Respondents failed to maintain a list of the pesticide(s) stored or likely to be stored during the license year, and failed to provide a copy of the list to the local fire department, as identified in paragraphs 6 and 19, above.

- J. **Requirement:** Pursuant to N.J.A.C. 7:30- 9.5(f)(5) and (6), no person shall store or transport pesticides in any service vehicle unless:...5. The service vehicle is provided with a supply of an absorbent material, sufficient to soak up or contain any liquid spills which may occur, and a shovel and/or broom and pan used exclusively to help contain the spills; 6. The service vehicle is equipped with at least a 10-B:C dry chemical, or carbon dioxide fire extinguisher....

Description of Noncompliance: The investigation disclosed that Respondents stored or transported pesticide(s) in a service vehicle which was not provided with a sufficient supply of an absorbent material and was not equipped with at least a

10-B:C dry chemical, or carbon dioxide fire extinguisher, as identified in paragraphs 4 and 19, above.

- K. **Requirement:** Pursuant to N.J.A.C. 7:30-10.4(p), prior to entering into any contract to apply a termiticide, the applicator or applicator business shall provide the contracting party with a copy of the regulation, N.J.A.C. 7:30-10.4, included with the consumer information required pursuant to N.J.A.C. 7:30-9.12. The applicator or applicator business may provide a summary in lieu of a copy of N.J.A.C. 7:30-10.4, subject to the approval of the summary by the Department.

Description of Noncompliance: The investigation disclosed that prior to entering into a contract to apply a termiticide, Respondents failed to supply the contracting party with a copy of N.J.A.C. 7:30-10.4 or a Department approved summary of this section on each application made, as identified in paragraphs 6 and 19, above.

- L. **Requirement:** Pursuant to N.J.A.C. 7:30-9.12(b)(1), at single family residences, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out and sufficient time given to take appropriate precautions: (1) no application shall be made until the residents of the property are given the following consumer information notice in writing, with the opportunity to review (i.) A statement that the exact dates of application are be available if requested, by the contracting party/residents, (ii.) the pesticide(s) to be used (brand name and common chemical names, if available, of the active ingredients), (iii.) label instructions relating to resident or general public safety, including specific precautions for each pesticide, (iv.) the name, address and telephone number of the applicator or applicator business, (v.) The telephone number of the National Pesticide Information Center for general health and pesticide toxicology information and the New Jersey Poison Information and Education System telephone number for emergency situations, (vi.) The telephone number of the Pesticide Control Program and the statement: This number for pesticide regulation information, pesticide complaints and health referrals., (vii.) A statement, in writing, that a copy of the label(s) for the pesticide(s) used will be available, if requested by the contracting party, (viii.) The statement: Sanitation, as well as physical and biological control measures, should be considered as a part of a good pest control program. Pesticides may be used as another part of a good pest control program. Pesticides are substances used to control living organisms and vary in degree of toxicity., (ix.) For termite control applications, a copy of N.J.A.C. 7:30-10.4 or a Department approved summary of N.J.A.C. 7:30-10.4.

Description of Noncompliance: The investigation disclosed that Respondents made commercial applications of pesticide(s) to single family residences for control of household or structural pests without providing an updated and complete consumer information notification to the resident(s), as identified in paragraphs 5, 9 and 19, above.

- M. **Requirement:** Pursuant to N.J.A.C. 7:30-9.12(c)4, at multiple family residences, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out and sufficient time given to take appropriate precautions: (1) no application shall be made until the residents of the property are given the following consumer information notice in writing, with the opportunity to review (i.) A statement that the exact dates of application are be available if requested, by the contracting party/residents, (ii.) the pesticide(s) to be used (brand name and common chemical names, if available, of the active ingredients), (iii.) label instructions relating to resident or general public safety, including specific precautions for each pesticide, (iv.) the name, address and telephone number of the applicator or applicator business, (v.) The telephone number of the National Pesticide Information Center for general health and pesticide toxicology information and the New Jersey Poison Information and Education System telephone number for emergency situations, (vi.) The telephone number of the Pesticide Control Program and the statement: This number for pesticide regulation information, pesticide complaints and health referrals., (vii.) A statement, in writing, that a copy of the label(s) for the pesticide(s) used will be available, if requested by the contracting party, (viii.) The statement: Sanitation, as well as physical and biological control measures, should be considered as a part of a good pest control program. Pesticides may be used as another part of a good pest control program. Pesticides are substances used to control living organisms and vary in degree of toxicity., (ix.) For termite control applications, a copy of N.J.A.C. 7:30-10.4 or a Department approved summary of N.J.A.C. 7:30-10.4.

Description of Noncompliance: The investigation disclosed that Respondents made commercial applications of pesticide(s) to multi-family residences for control of household or structural pests, without providing an updated and complete consumer information notification to the contracting party, as identified in paragraphs 5, 9 and 19, above.

- N. **Requirement:** Pursuant to N.J.A.C. 7:30-9.12(c), at multiple family residences, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out, and sufficient time given to take appropriate precautions to minimize potential exposure to individuals, pets and non-target sites.

Description of Noncompliance: The investigation disclosed that Respondents made commercial applications of pesticide(s) to occupied multiple family residences for control of household or structural pest(s) without providing posting a decal notice in unit(s) prior to the start of the application, as required in NJAC 7:30-9.12(c)2, as identified in paragraph 9, above.

- O. **Requirement:** Pursuant to N.J.A.C. 7:30-9.12(d)1, at institutions, commercial or public buildings, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being

carried out and sufficient time given to take appropriate precautions: (1) no application shall be made until the contracting party and the building manager, or building contact person at that location, has been given the following consumer information notice in writing, with the opportunity to review (i.) A statement that the exact dates of application are be available if requested, by the contracting party, building manager, or contact person, (ii.) the pesticide(s) to be used (brand and common chemical names, if available, of the active ingredients), (iii.) label instructions relating to building user or general public safety, including specific precautions for each pesticide, (iv.) the name, address and telephone number of the applicator or applicator business, (v.) The telephone number of the National Pesticide Information Center for general health and toxicology information and the New Jersey Poison Information and Education System telephone number for emergencies, (vi.) The telephone number of the Pesticide Control Program and the statement: This number for pesticide regulation information, pesticide complaints and health referrals., (vii.) A statement that a copy of the label(s) for the pesticide(s) used will be available, if requested by the contracting party, (viii.) The statement: Sanitation, as well as physical and biological control measures, should be considered as a part of a good pest control program. Pesticides may be used as another part of a good pest control program. Pesticides are substances used to control living organisms and vary in degree of toxicity., (ix.) For termite control applications, a copy of N.J.A.C. 7:30-10.4 or a Department approved summary of N.J.A.C. 7:30-10.4.

Description of Noncompliance: The investigation disclosed that Respondents made commercial applications of pesticide(s) institutions, commercial or public buildings for control of household or structural pests without providing an updated and complete consumer information notification to the contracting party, building manager, or building contact person at that location, as identified in paragraphs 5, 7, 8, 10 and 19, above.

- P. **Requirement:** Pursuant to N.J.A.C. 7:30- 9.12(d)3, the applicator or applicator business shall post permanent notices, prior to the start of the application, as specified below, such notice to include date of latest application, pesticide(s) used (brand name and common chemical names, if available), the name of a contact person and telephone number for additional information, and the intended date of next application. The Department will allow removal of the notice after 60 days if no further treatments are projected. i. At health care facilities, the notice shall be prominently posted at the nurse's station adjacent to the areas treated; ii. At restaurants, or any food handling establishment, the notice shall be prominently posted next to the Health Department inspection card; iii. At hotels and motels, the notice shall be prominently posted at the main desk; iv. At schools, places of worship and public meeting places, the notice shall be prominently posted at the central bulletin board; and v. At commercial and industrial work places, the notice shall be posted in a prominent place for the benefit of the employees.

Description of Noncompliance: The investigation disclosed that Respondents made commercial applications of a pesticide(s) to institutions, commercial or

public buildings for the control of household or structural pests without permanently posting the following notification information: (i.) date of the latest application. (ii.) pesticide(s) used (brand name and active ingredient). (iv.) the intended date of the next application, as identified in paragraphs 7, 8 and 10, above.

- Q. **Requirement:** Pursuant to N.J.A.C. 7:30-10.4(q), a diagram of the structure to be treated, depicting the lower level of the structure, the location of termite infestations, areas treated and any significant items such as location of known wells, drainage systems, streams and ponds which may be affected by the application shall become a part of the termite application records and shall be maintained by the applicator for a minimum of five years. [N.J.A.C. 7:30-10.4(q)]

Description of Noncompliance: The investigation disclosed that prior to entering into a contract to apply a termiticide, Respondents failed to maintain a diagram of the structure to be treated, depicting the lower level of the structure, the location of termite infestations, areas treated and any significant items such as location of known wells, drainage systems, streams and ponds which may be affected by the termiticide for any of the applications, as identified in paragraph 5, above.

22. Based on the facts set forth in these FINDINGS, the Department has determined that ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR have violated the Act and the regulations promulgated pursuant thereto, specifically, N.J.A.C. 7:30- 2.7(a), N.J.A.C. 7:30- 7.3(a), N.J.A.C. 7:30- 9.5(b), N.J.A.C. 7:30- 9.5(f), N.J.A.C. 7:30-10.4(p), N.J.A.C. 7:30- 6.8(a), N.J.A.C. 7:30- 9.12(b)1, N.J.A.C. 7:30- 9.12(c)4, N.J.A.C. 7:30-9.12(c), N.J.A.C. 7:30-9.12(d)1, N.J.A.C. 7:30- 9.12(d)3, N.J.A.C. 7:30-10.2(a), N.J.A.C. 7:30-10.2(c), N.J.A.C. 7:30-10.2(d), N.J.A.C. 7:30-10.2(e), N.J.A.C. 7:30-10.3(b), and N.J.A.C. 7:30-10.4(q).

23. ZAPP TERMITE & PEST CONTROL has committed numerous violations warranting revocation of its pesticide applicator business license to operate a pest control business in the State of New Jersey. Grounds exist to revoke ZAPP TERMIT & PEST CONTROL's pesticide applicator business license, No. 20028B, pursuant to the following:

- A. **N.J.A.C. 7:30-7.6(b)1:** Zapp refused, after receiving notice from DEP, to comply with the provisions of the Pesticide Control Act and the regulations promulgated thereto.

Description: See Paragraph 21, H, I, J, K, L, M and O, above.

- B. **N.J.A.C. 7:30-7.6(b)2:** Zapp operated in such a manner so as to cause harm, injury or damage to persons, property or the environment, or a significant risk of harm, injury or damage.

Description: See Paragraph 21, A, B, C, D, E, F, J, M, N, and O, above.

- C. **N.J.A.C. 7:30-7.6(b)3**: Zapp made false claims through written communications.

Description: See Paragraph 21, A, above.

- D. **N.J.A.C. 7:30-7.6(b)4**: Zapp made pesticide applications not in accordance with the pesticide label.

Description: See Paragraph 21, B, above.

- E. **N.J.A.C. 7:30-7.6(b)7**: Zapp failed to keep or falsified required records.

Description: See Paragraph 21, H, K, L, M, O and Q, above.

24. VINCENT KEITH TAYLOR has committed numerous violations warranting revocation of his commercial pesticide applicator license to apply pesticides in the State of New Jersey. Grounds exist to revoke VINCENT KEITH TAYLOR's pesticide applicator business license pursuant to the following:

- A. **N.J.A.C. 7:30-6.9(b)1**: Taylor refused, after receiving notice from DEP, to comply with the provisions of the Pesticide Control Act and the regulations promulgated thereto.

Description: See Paragraph 21, G, I, J, K, L, M and O, above.

- B. **N.J.A.C. 7:30-6.9(b)2**: Taylor operated in such a manner so as to cause harm, injury or damage to persons, property or the environment, or a significant risk of harm, injury or damage.

Description: See Paragraph 21, A, B, C, D, E, F, M, N, and O, above.

- C. **N.J.A.C. 7:30-6.9(b)3**: Taylor made false claims by through written communications.

Description: See Paragraph 21, A, above.

- D. **N.J.A.C. 7:30-6.9(b)4**: Taylor made pesticide applications not in accordance with the pesticide label.

Description: See Paragraph 21, B, above.

- E. **N.J.A.C. 7:30-6.9(b)7**: Taylor failed to keep or falsified required records.

Description: See Paragraph 21, G, I, K, L, M, O and Q, above.

ADMINISTRATIVE ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

25. No person employed by ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR may apply pesticides until they are properly licensed pursuant to N.J.A.C. 7:30-6.1.
26. Respondents shall only use or apply all pesticides in a manner consistent with the Federal and State registered label or labeling. N.J.A.C. 7:30-10.2(a). Specifically:
 - A. Apply the pesticide Termidor SC, (EPA Reg. No.7969-210), in a manner consistent with its Federal or State registered label or labeling by applying it only to exterior sites listed on Federal or State registered label or labeling.
 - B. Apply the pesticide Phantom, (EPA Reg. No.241-392), in a manner consistent with its Federal or State registered label or labeling by not applying the pesticide at the same location within twenty-eight days of a previous application of Phantom.
 - C. Apply the rodenticide Final All-Weather Blox (EPA Reg. No.12455-89), in a manner consistent with its Federal or State registered label or labeling by securing or immobilizing the bait stations to prevent the bait from being shaken out.
27. Respondents shall cease falsifying pesticide application records, and immediately begin keeping records with all required information listed in N.J.A.C. 7:30-6.8(a) and N.J.A.C. 7:30-7.3(a).
28. Respondents shall cease applying pesticides in a manner that causes a significant risk to persons, property or the environment. N.J.A.C. 7:30-10.2(c). Specifically:
 - A. Apply the pesticide Termidor SC (EPA Reg. No.7969-210) only to exterior sites listed on Federal or State registered label or labeling in order to avoid potential exposure to people which would not occur through legal use.
 - B. Apply the pesticide Phantom (EPA Reg. No.241-392), at the proper time interval at the same location in order to avoid potential exposure to people which would not occur through legal use.
 - C. Apply the rodenticide Final All-Weather Blox, (EPA Reg. No. 12455-89), using tamper-resistant bait stations that are secured or immobilized to prevent the bait from being shaken out by small children, pets, or non-target animals.
29. Respondents shall begin applying pesticides only to target sites listed on the pesticide label and which meet the definition of "target site" at N.J.A.C. 7:30-1.2, pursuant to N.J.A.C. 7:30-10.2(d).

30. Respondents shall begin to take reasonable precautions, before, during and after pesticide applications to minimize exposure of individuals N.J.A.C. 7:30-10.2(e). Specifically,
 - A. Provide all the required notification information required by N.J.A.C. 7:30-9.10 to customers and the public including precautions to avoid exposure before during and after all applications.
 - B. Apply the pesticide Termidor SC (EPA Reg. No.7969-210) only to exterior sites listed on Federal or State registered label or labeling in order to avoid potential exposure to people which would not occur through legal use.
 - C. Apply the pesticide Phantom (EPA Reg. No.241-392), at the proper time interval at the same location in order to avoid potential exposure to people which would not occur through legal use.
 - D. Apply the rodenticide Final All-Weather Blox (EPA Reg. No. 12455-89) using bait stations that are secured or immobilized to prevent the bait from being shaken out by small children, pets, or non-target animals.
31. Respondents shall provide a diagram of the structure to be treated, depicting the lower level of the structure, the location of termite infestations, areas treated and any significant items such as location of known wells, drainage systems, streams and ponds which may be affected by the application shall become a part of the termite application records and maintain this diagram for a minimum of five years pursuant to N.J.A.C. 7:30-10.4(q).
32. This Order shall be effective upon receipt by ZAPP TERMITE & PEST CONTROL and/or VINCENT K. TAYLOR or someone on ZAPP TERMITE & PEST CONTROL and/or VINCENT K. TAYLOR's behalf authorized to accept service.

NOTICE OF LICENSE REVOCATION
AND
NOTICE OF RIGHT TO A HEARING

33. ZAPP TERMITE & PEST CONTROL'S pesticide applicator business license (No. 94360A) is **hereby revoked in the State of New Jersey**. ZAPP TERMITE & PEST CONTROL is debarred and may not engage in the pesticide control business in the State of New Jersey. ZAPP TERMITE & PEST CONTROL shall not engage in, direct, operate, or perform pest control or pesticide applications in the State of New Jersey. ZAPP TERMITE & PEST CONTROL shall return the pesticide applicator business license (No. 94360A) to the Pesticide Control Program within 7 days of this ORDER becoming final pursuant to N.J.A.C. 7:30-7.6.

34. VINCENT K. TAYLOR'S commercial pesticide applicator license (No.20028B) is **hereby revoked in the State of New Jersey**. VINCENT K. TAYLOR is debarred and may not engage in the application of pesticides in the State of New Jersey. VINCENT K. TAYLOR shall not engage in, direct, operate, or perform pesticide applications in the State of New Jersey. VINCENT K. TAYLOR shall return the commercial pesticide applicator/operator licenses (No.20028B) to the Pesticide Control Program within 7 days of this ORDER becoming final pursuant to N.J.A.C. 7:30-6.9.
35. Pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 7:30-5.7(e), -6.9(e), and -7.6(e)., ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR are entitled to request a hearing on the Notice of License Revocation. ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR shall, in its request for a hearing, complete and submit the enclosed ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this ORDER.
36. If no request for a hearing is received within twenty (20) calendar days from receipt of this Notice of License Revocation, it shall become a Final Order upon the twenty first (21st) calendar day following its receipt.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT
AND
NOTICE OF RIGHT TO A HEARING

37. Pursuant to N.J.S.A. 13:1F-10 and based upon the above FINDINGS, the Department has determined that a civil administrative penalty is hereby assessed against ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR in the amount of **\$495,000.00**. The Department's rationale for the civil administrative penalty is set forth in the attachment, and incorporated herein.
38. Additionally, the Department has assessed a sampling fee of **\$12,875.00** in accordance with N.J.A.C. 7:30-10.8, to reflect actual laboratory costs for 25 samples taken by the Department to define violations of the Act or determine the extent of contamination.
39. Pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 13:1F-10d., ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR are entitled to request a hearing on the Notice of Civil Administrative Penalty Assessment. ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR shall, in its request for a hearing, complete and submit the enclosed ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this ORDER.

40. If no request for a hearing is received within thirty-five (35) calendar days from receipt of this Notice of Civil Administrative Penalty Assessment, it shall become a Final Order upon the thirty-sixth (36th) calendar day following its receipt, and the penalty shall be due and payable.
41. If a timely request for a hearing is received, payment of the penalty is due when ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR receive a notice of the denial of the request, or, if the hearing request is granted, when ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR withdraw the request or abandon the hearing, or, if the hearing is conducted, when ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR receive a final decision from the Commissioner in this matter.
42. Payment shall be made by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

GENERAL PROVISIONS

43. This AO/NOR/NOCAPA is binding on ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR, their principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.
44. No obligations imposed by this AO/NOR/NOCAPA are intended to constitute a debt which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare and the environment.
45. This AO/NOR/NOCAPA is issued only for the violation(s) identified in the FINDINGS hereinabove and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AO/NOR/NOCAPA, NJDEP does not waive its rights to initiate additional enforcement actions.
46. Neither the issuance of this AO/NOR/NOCAPA nor anything contained herein shall relieve ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.

47. Pursuant to N.J.S.A. 13:1F-10d., any person who violates the provisions of the Act, or any code, rule, regulation or order promulgated or issued pursuant thereto, or who fails to pay a civil administrative penalty in full, shall be liable to a penalty of up to \$25,000. Each day during which the violation continues constitutes an additional, separate and distinct offense.
48. Pursuant to N.J.S.A. 13:1F-10f., any person who purposely, knowingly or recklessly violates any provision of the Act, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or both.
49. Pursuant to N.J.S.A. 13:1F-10f., any person who purposely, knowingly or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of the Act or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to the Act or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall be subject to a fine of not more than \$50,000 per day of violation, or by imprisonment, or both.

DATE: 1/27/2014



John Giordano
Assistant Commissioner
Compliance & Enforcement

PESTICIDE CONTROL PROGRAM PENALTY RATIONALE

Pursuant to the Pesticide Control Act (“PCA”), P.L.1971, c.176, N.J.S.A. 13:1F-1 et seq., the Legislature has found and/or declared that:

New Jersey, as the most urban State in the Nation, must be especially alert to any possibilities of disturbing natural ecological balance. It is essential to coordinate the activities of State agencies involved in the use of pesticides and, in addition, to formulate State policies regulating the use, transportation, storage, sale and disposal of pesticides and their containers. This requires consideration of many factors, including long term effects on the environment, as well as the safety and effectiveness of pesticides.

The Legislature finds and declares that pesticides have been of value in preventing the outbreak of diseases and insuring bountiful production of agricultural crops, however, indiscriminate use of pesticides in this State would constitute a serious threat to the environment; and that this threat can be eliminated only by the adoption and enforcement of regulations governing the sale, use and application of all pesticides.
[N.J.S.A. 13:1F-2].

The protections and benefits identified in the PCA are only realized to the extent the provisions of it are complied with. Violations of the PCA, its regulations and/or the permits or licenses issued thereunder contravene and undermine the intent and purpose of the PCA and cause negative, or potentially negative environmental, ecological, social, or health impacts. The Department is charged with and responsible for implementation, oversight, and enforcement of the PCA and the environmental benefits it provides to the citizens of New Jersey.

Inspections and investigations, as detailed in the Findings above, have revealed that unauthorized regulated activities and/or violations of Department-issued permits and/or licenses have occurred, which have negatively impacted, or potentially negatively impacted, human health or the environment.

On January 4, 2008, the Environmental Enforcement Enhancement Act (“EEEE”), P.L. 2007, c. 246, was signed into law. The EEEA modified the applicable enforcement provisions of the PCA. The EEEA states:

The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1971, c.176 or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each violation continues shall constitute an additional, separate, and distinct offence. Any amount assessed under this subsection shall fall within a range established by regulation by the Commissioner for violations of similar type, seriousness, duration, and conduct; provided however, that prior to the adoption of the regulation, the Commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein.

Accordingly, the Department is utilizing the above-referenced authority, prior to the adoption of a regulation, to assess a penalty. In accordance with the EEEA and the PCA, the Department has determined that the penalty as detailed below shall be assessed.

A. PENALTY FOR VIOLATIONS OF THE PESTICIDE CONTROL ACT AND REGULATIONS PROMULGATED THEREUNDER

In this matter, for each violation the Department shall determine the applicable base penalty pursuant to the following matrix:

		SERIOUSNESS		
		MAJOR	MODERATE	MINOR
CONDUCT	MAJOR	\$15,000 - \$25,000	\$5,000 - \$15,000	\$2,500 - \$7,500
	MODERATE	\$5,000 - \$15,000	\$1,500 - \$5,000	\$500 - \$2,500
	MINOR	\$2,500 - \$7,500	\$500 - \$2,500	\$0 - \$250

The “Seriousness” of the violation is classified as major, moderate or minor as follows:

1. “Major” seriousness includes any violation which has caused or has the potential to cause substantial harm to human health, safety, the Pesticide Control regulatory program, or the environment, or seriously deviates from the applicable law and/or condition.

Examples of violations of “major” seriousness include, direct application to, or pesticide drift onto persons or domestic animals, or damage to property; pesticide spills or runoff causing harm to fish or other aquatic life; failure to ensure use of proper safety equipment resulting in pesticide exposure; and the failure to comply with a mitigation requirement.

2. “Moderate” seriousness include any violation that has caused or has the potential to cause some degree of harm to human health, safety, the Pesticide Control regulatory program or the environment, or substantially deviates from the applicable law and/or condition.

Examples of violations of “moderate” seriousness include, pesticide drift onto non-target property; failure to notify the Department of a pesticide spill requiring Department notice; failure to notify a person that requests pesticide application notice.

3. “Minor” seriousness includes violations that cannot be classified as “Major” or “Moderate.”

The “Conduct” of the violator is classified as major, moderate or minor as follows:

1. “Major” conduct includes any intentional, deliberate, purposeful, knowing, or willful act or omission by the violator. The Department presumes all violations of Department permits or authorizations to be "knowing" violations;
2. “Moderate” conduct shall include any unintentional but foreseeable act or omission by the violator; and
3. “Minor” conduct includes any other conduct that cannot be categorized as Major or Moderate

The Department may, in its discretion, adjust the base penalty amount to no greater than the maximum amount on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. Other specific circumstances of the violator or violation.

B. TOTAL PENALTY IN THIS MATTER

ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR operate a commercial pest control business in New Jersey. As a New Jersey-licensed applicator business, and commercial pesticide applicator, Respondents are aware, or should be aware, of the need to comply with Federal and State laws regarding pesticide use and recordkeeping. The Department, in its discretion, assesses the following penalties for the following deliberate and willful violations:

1. ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR willfully held or used within the State of New Jersey the pesticide Phantom (EPA Reg. No. 241-392) adulterated with Termidor SC (EPA Reg. No. 7969-210). A minor seriousness/major conduct penalty of \$7,500 according to the penalty matrix is assessed against each ZAPP TERMITE & PEST CONTROL and VINCENT K. TAYLOR, Responsible Commercial Applicator.

Phantom Container Containing Fipronil			
Violations	Penalty Amount ZAPP TERMITE & PEST CONTROL	Penalty Amount VINCENT K. TAYLOR	Total Penalty Amount
N.J.A.C. 7:30-2.7(a)	\$7,500	\$7,500	\$7,500 X 2 = \$15,000
	Total: \$7,500	Total: \$7,500	\$15,000

2. For the 9 locations with sample results confirming the willful interior use of Termidor SC(fipronil) the penalty is calculated as follows: \$7,500 (found in the matrix at a Minor/Major assessment of Seriousness and Conduct) for each of the 2 pesticide misuse violations cited against ZAPP TERMITE & PEST CONTROL and \$7,500 for each of the 2 pesticide misuse violations cited against VINCENT K. TAYLOR, as Responsible Commercial Applicator. The total amount of the violations was multiplied by the 9 locations sampled.

Fipronil Applications Found at 9-Sampled Locations			
Violations	Penalty Amount ZAPP TERMITE & PEST CONTROL	Penalty Amount VINCENT K. TAYLOR	Total Penalty Amount
N.J.A.C. 7:30-10.2(a)	\$7,500	\$7,500	\$15,000 X 2 = \$30,000
N.J.A.C. 7:30-10.2 (c)	\$7,500	\$7,500	\$30,000 X 9 Sites
	Total: \$15,000	Total: \$15,000	\$270,000

3. For the 15 locations where records of application confirm that Phantom (chlofenapyr) was applied at a greater frequency than permitted by the EPA registered labeling, the penalty assessed is \$2,500 (Moderate/Moderate classification) for each of the 2 pesticide misuse violations cited against ZAPP TERMITE & PEST CONTROL and \$2,500 for each of the 2 pesticide misuse violations cited against VINCENT K. TAYLOR, as Responsible Commercial Applicator. The total amount of the penalties was then multiplied by the 15 locations based on applications records indicating frequency of use.

Phantom Applications 21 Locations Based on Application Records Indicating Frequency of Use			
Violations	Penalty Amount ZAPP TERMITE & PEST CONTROL	Penalty Amount VINCENT K. TAYLOR	Total Penalty Amount
N.J.A.C. 7:30-10.2(a)	\$2,500	\$2,500	\$5,000 X 2 = \$10,000
N.J.A.C. 7:30-10.2(c)	\$2,500	\$2,500	\$10,000 X 21 Locations
	Total: \$5,000	Total: \$5,000	\$210,000

Total Penalty Amount	
Violations	Penalty Amounts
Phantom Container Containing Fipronil	\$15,000.00
Fipronil (Termidor SC) Applications at 9 Sampled Sites	\$270,000.00
Phantom Applications 21 Locations Based on Application Records Indicating Frequency of Use	\$210,000.00
Total Penalty Amount: \$495,000.00	



PESTICIDE CONTROL COMPLIANCE AND ENFORCEMENT

Program Interest
ZAPP TERMITE & PEST CONTROL
5 TRIDENT BLVD
Neptune City, NJ. 07753
94360A

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 495,000.00

Billing Date
01/24/14

Due Date
02/23/14

NJEMS Bill ID
000000121941000

Summary table with columns for description and amount. Includes Total Amount Assessed (495,000.00), Amount Received Before Creating Installment Plan (0.00), and Total Amount Due (495,000.00). Includes a REMINDER section with instructions on how to pay.

See Back Of Page for Billing Inquiries

INVOICE NO. 140068210

D9901F (R 3/14/02)



PESTICIDE CONTROL COMPLIANCE AND ENFORCEMENT

NJEMS Bill ID
000000121941000

Program Interest ID
94360A

Type of Notice
ORIGINAL (NON-INITIAL)

Billing Date
01/24/14

Due Date
02/23/14

Amount Due
\$ 495,000.00

For name and/or address change, check box and write corrections on the back of this invoice.

Input box for corrections

DO NOT FOLD, BEND OR MARK

Enter the Amount of your payment ->

Input box for payment amount

RETURN THIS PORTION

with your check made payable to:

TREASURER - STATE OF NEW JERSEY and mail to:

NJ DEPARTMENT OF TREASURY
DIVISION OF REVENUE
PO BOX 417
TRENTON, NJ 08646-0417



ZAPP TERMITE & PEST CONTROL

A8

5 TRIDENT BLVD
Neptune City

NJ 07753-2916

EP101010101010101009040306001111111049500000000041400682100A81



**PESTICIDE CONTROL
COMPLIANCE AND ENFORCEMENT**

Program Interest

ZAPP TERMITE & PEST CONTROL
5 TRIDENT BLVD
Neptune City, NJ. 07753
94360A

Type of Notice

ORIGINAL (NON-INITIAL)

Amount Due

\$ 495,000.00

Billing Date

01/24/14

Due Date

02/23/14

NJEMS Bill ID

000000121941000

AONOCAPA
Prescribed Enforcement Action

ASSESSMENTS

Start-End Date: 01/24/2014-01/24/2014 Activity: PEA120005
 Assessment Type: PENALTY Status: Open (Pending Payment)
 Regulatory Basis: [N.J.S.A. 13:1F-10] Amount: \$ 495000.00
 Total Amount Assessed: \$ 495,000.00



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
PESTICIDE REIMBURSEMENTS

INVOICE NO.
140070580

Program Interest
ZAPP TERMITE & PEST CONTROL
5 TRIDENT BLVD
Neptune City, NJ. 07753
94360A

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 12,875.00

Billing Date
01/24/14

Due Date
02/23/14

NJEMS Bill ID
000000121941400

Summary	
Total Amount Assessed	12,875.00
Amount Received Before Creating Installment Plan (if installment plans is allowed)	0.00
Amount Transferred To Installment Plan	0.00
Installment Amount	0.00
Total Amount Credited	0.00
Total Amount Debited (Other Than Amounts Assessed)	0.00
Total Amount Due	12,875.00

REMINDER:
 . SEE BACK OF INVOICE FOR DEP CONTACT INFORMATION
 . MAKE CHECKS PAYABLE TO: TREASURER - STATE OF NEW JERSEY
 . WRITE PROGRAM INTEREST ID ON YOUR CHECK (SEE BOTTOM STUB)
 . RETURN THE BOTTOM STUB WITH YOUR PAYMENT
 . MAIL PAYMENT AND STUB TO NJ DEPARTMENT OF TREASURY (SEE BOTTOM STUB)

See Back Of Page for Billing Inquiries

INVOICE NO.
140070580

D9901F (R 3/14/02)



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
PESTICIDE REIMBURSEMENTS

INVOICE NO.
140070580

NJEMS Bill ID
000000121941400

Program Interest ID
94360A

Type of Notice
ORIGINAL (NON-INITIAL)

Billing Date
01/24/14

Due Date
02/23/14

Amount Due
\$ 12,875.00

For name and/or address change, check box and write corrections on the back of this invoice.

DO NOT FOLD, BEND OR MARK

Enter the Amount of your payment → \$

RETURN THIS PORTION

with your check made payable to:

TREASURER - STATE OF NEW JERSEY
and mail to:

NJ DEPARTMENT OF TREASURY
DIVISION OF REVENUE
PO BOX 417
TRENTON, NJ 08646-0417



ZAPP TERMITE & PEST CONTROL

5 TRIDENT BLVD
Neptune City

NJ 07753-2916



PESTICIDE REIMBURSEMENTS

Program Interest

ZAPP TERMITE & PEST CONTROL
 5 TRIDENT BLVD
 Neptune City, NJ. 07753
 94360A

Type of Notice

ORIGINAL (NON-INITIAL)

Amount Due

\$ 12,875.00

Billing Date

01/24/14

Due Date

02/23/14

NJEMS Bill ID

000000121941400

AONOCAPA
 Prescribed Enforcement Action

ASSESSMENTS

Start-End Date: 01/24/2014-01/24/2014 Activity: PEA120005
 Assessment Type: FEE(Cost Recovery) Status: Open (Pending Payment)
 Regulatory Basis: Amount: \$ 12875.00
 Total Amount Assessed: \$ 12,875.00

**Administrative Hearing Request Checklist
and Tracking Form**

Document Being Appealed: EA ID NO. PEA120005-94360

I. _____

Date Document Issued

II. Person Requesting Hearing:

Name/Company

Name of Attorney (if applicable)

Address

Address

Telephone #

Telephone #

III. Please Include the Following Information As Part of Your Request:

- A. The date the alleged violator received the Enforcement Document.
- B. A **copy of the Enforcement Document** and a list of all issues being appealed.
- C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
- D. The defenses to each of the findings of fact in the enforcement document;
- E. Information supporting the request;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachment, to:
 - 1. New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
P.O. Box 402, 401 E. State Street
Trenton, New Jersey 08625
 - 2. Roy Meyer, Chief
Bureau of Pesticide Compliance
MC 401-04A
PO Box 420
Trenton, New Jersey 08625-0420

IV. Signature: _____

Date: _____