

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 33 of
the New York State Environmental Conservation Law (ECL)
and Part 325 of Title 6 of the Official Compilation of
Codes, Rules and Regulations of the State of New York
(6 NYCRR),

ORDER

DEC Case No.
R8-20150715-91

-by-

**WILLIAM SCHULT
and EARTHLY SURROUNDINGS, LLC,**

Respondents.

This administrative enforcement proceeding addresses allegations by staff of the New York State Department of Environmental Conservation (Department) that William Schult and Earthly Surroundings, LLC (respondents) violated several statutory and regulatory provisions in article 33 of the ECL and 6 NYCRR part 325, respectively, relating to the commercial application of pesticides.

Administrative Law Judge (ALJ) D. Scott Bassinson of the Department's Office of Hearings and Mediation Services was assigned to this matter. ALJ Bassinson prepared the attached default summary report, which I adopt as my decision in this matter, subject to my comments below.

As set forth in the ALJ's default summary report, Department staff served a notice of hearing and complaint on respondents by certified mail. Neither respondent filed an answer to the complaint within 20 days after completion of service of the notice of hearing and complaint (see Default Summary Report at 1). At the March 31, 2016 pre-hearing conference, attended by respondents and their counsel, Department staff made an oral motion for default. The ALJ reserved on the motion. The parties agreed to continue settlement discussions and that, if such discussions were unsuccessful, respondents could file papers in opposition to staff's motion by May 31, 2016. The parties did not settle, and respondents did not file papers in opposition to staff's oral motion for default. Department staff thereafter filed and served a written motion for default judgment with supporting papers on August 17, 2016.

As the ALJ held, Department staff has satisfied the procedural requisites for obtaining a default judgment, submitting (i) proof of service upon respondent of the notice of hearing and complaint; (ii) proof of respondent's failure to file an answer; and (iii) a proposed order (see Default Summary Report at 2; see also 6 NYCRR 622.15[b][1]-[3]).

Liability

Earthly Surroundings, LLC is an active domestic limited liability company (see Complaint, ¶ 2). William Schult is the sole member of Earthly Surroundings, LLC (see Default Summary Report at 3 n3).

The ALJ held that staff submitted proof of the facts sufficient to support the four causes of action asserted in the complaint, as required by Matter of Queen City Recycle Center, Inc., Decision and Order of the Commissioner, December 12, 2013, at 3 (see Default Summary Report at 2-6). I concur with the ALJ, as discussed below.

--First Cause of Action (Commercial Application of Pesticides without a Pesticide Business Registration)

The record reflects that respondents William Schult and Earthly Surroundings, LLC applied pesticides during the period from August 31, 2008 to May 14, 2015 without being registered with the Department and, consequently, were in violation of ECL 33-0907(1) and ECL 33-1301(8-a). Staff's review of the Department's database indicated that the registration for Earthly Surroundings, LLC had expired in 2008 (see Affidavit of Justin Schoff, Pesticide Control Specialist 1 in the Department's Division of Materials Management, sworn to August 17, 2016 [Schoff Affidavit], ¶¶ 3-4). Respondents' pesticide annual reports indicated that respondents performed at least 684 applications of pesticides during the period from August 31, 2008 to December 31, 2014 when respondents were not registered (see id., ¶ 6 and Exhibit D [Annual Reports]).

--Second Cause of Action (Pesticide Use Records)

The record demonstrates that respondents violated 6 NYCRR 325.25(a) and ECL 33-1205(1) by failing to maintain proper pesticide use records for 252 pesticide applications. Respondents' annual reports failed to include information relating to dosage rates, methods of application, places of application or target organisms between 2012 and 2014 (see Schoff Affidavit ¶¶ 13-14). As commercial applicators, both Earthly Surroundings, LLC and William Schult were responsible to comply with these requirements, but failed to do so.

--Third Cause of Action (Commercial Lawn Care Contracts)

The record demonstrates that respondents failed to include required information and language in commercial lawn care contracts with their customers. DEC staff reviewed respondents' lawn care contracts and found that required information was not specified, including but not limited to approximate date(s) of application(s) and the number of applications to be provided (see Schoff Affidavit ¶ 9). Accordingly, respondents were in violation of ECL 33-1001 and 6 NYCRR 325.40(a).

--Fourth Cause of Action (Label Information)

Respondents failed to provide pesticide label information to respondents' customers prior to applying pesticides (see Schoff Affidavit ¶ 12) as required by ECL 33-0905(5) and 6 NYCRR 325.40(i).

Although ECL 33-0905(5) and 6 NYCRR 325.40(i) speak in terms of "certified applicator" which is statutorily defined as an "individual" (see ECL 33-0101[10]), ECL 71-2913 provides that "[i]n construing and enforcing the provisions of article 33 [Pesticides Law] relating to penalties, the act of a director, officer, agent or other person acting for or employed by a person, association, or corporation subject to the provisions of article 33 . . . and acting within his scope of his employment, shall be deemed the act of such person, association or corporation." Certified applicator Schult's failure to provide the required information would be deemed the failure of Earthly Surroundings, LLC to provide that information. Accordingly, both respondents are in violation of ECL 33-0905(5) and 6 NYCRR 325.40(i) (see Matter of Toraco Landscaping, Order of the Commissioner, July 6, 2004, at Whereas Clause, par 7 [holding Toraco Landscaping, Inc. liable for violations of pesticide laws and regulations based on the acts of its president in violating those requirements]; see also Matter of DeCaprio/Nationwide Exterminating, Decision and Order of the Commissioner, January 24, 1996 [attached hearing report noting that employer or principal in a pesticides enforcement matter would be responsible for the acts of its employee/agent under ECL 71-2913 and the doctrine of respondeat superior]).

Civil Penalty

ECL 71-2907(1) provides for a penalty of up to \$5,000 for a first violation of "any provision of [ECL] article 33 . . . or any rule, regulation or order issued thereunder," and up to \$10,000 for each subsequent offense. In this proceeding, the ALJ recommends that I grant staff's request for a total civil penalty of twenty-two thousand dollars (\$22,000) (see Default Summary Report at 6). The requested penalty of twenty-two thousand dollars (\$22,000) is authorized and appropriate on this record.

In its complaint, Department staff states that the civil penalty should be imposed upon respondent (singular). However, in the proposed Commissioner order that Department staff has submitted pursuant to 6 NYCRR 622.15, Department staff requests that respondents (plural) be subject to the civil penalty (see Default Motion Exhibit J [Proposed Order]. Based on the record before me, including Department staff statements relating to respondents' liability for all the violations, it is clear that staff sought to impose civil penalty jointly and severally on William Schult and Earthly Surroundings, LLC and that the use of respondent "in the singular" was a typographical error. Accordingly, I direct that the civil penalty shall be assessed on both respondents, jointly and severally. Respondents are to submit the civil penalty to the Department within thirty (30) days of the service of this order upon them.

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted.
- II. Respondents William Schult and Earthly Surroundings, LLC are adjudged to have violated:
 - A. ECL 33-0907(1) and 33-1301(8-a), by applying pesticides during the period from August 31, 2008 to May 14, 2015 without registering with the Department;
 - B. 6 NYCRR 325.25(a) and ECL 33-1205(1), by failing to maintain proper pesticide use records;
 - C. ECL 33-1001 and 6 NYCRR 325.40(a), by failing to include required information and language in commercial lawn care contracts; and
 - D. ECL 33-0905(5) and 6 NYCRR 325.40(i), by failing to provide pesticide label information to respondents' customers prior to applying pesticides.
- III. I hereby assess a civil penalty of twenty-two thousand dollars (\$22,000) jointly and severally upon William Schult and Earthly Surroundings, LLC. Within thirty days of the service of this order upon respondents, respondents shall pay a civil penalty in the amount of twenty-two thousand dollars (\$22,000) by certified check, cashier's check or money order made payable to the "New York State Department of Environmental Conservation" The penalty payment shall be sent to the following address:

Office of General Counsel, Region 8
NYS Department of Environmental Conservation
6274 East Avon-Lima Road
Avon, New York 14414
Attn: Dudley D. Loew, Esq.
- IV. Any questions or other correspondence regarding this order shall also be addressed to Dudley D. Loew, Esq. at the address referenced in paragraph III of this order.

- V. The provisions, terms and conditions of this order shall bind respondents William Schult and Earthly Surroundings, LLC, and their agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By: _____

Basil Seggos
Commissioner

Dated: Albany, New York
September 9, 2016

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violation of Article 33 of
the New York State Environmental Conservation Law
and Part 325 of Title 6 of the Official Compilation of
Codes, Rules and Regulations of the State of New York,

DEFAULT SUMMARY REPORT

DEC Case No.
R8-20150715-91

-by-

**WILLIAM SCHULT
and EARTHLY SURROUNDINGS, LLC,**

Respondents.

I. Procedural History

Staff of the New York State Department of Environmental Conservation (“Department”) served respondents William Schult and Earthly Surroundings, LLC (collectively “respondents”) with a notice of hearing and complaint, dated February 9, 2016, alleging that respondents violated ECL article 33 and implementing regulations regarding the commercial application of pesticides. The complaint seeks an order of the Commissioner (1) finding respondents in violation of the pesticide statutes and regulations; (2) imposing a civil penalty “in an amount no less than twenty-two thousand dollars (\$22,000);”¹ (3) ordering respondents to become and remain in compliance with the ECL and title 6 of the NYCRR; and (4) granting such other and further relief as may be deemed just, proper and equitable under the circumstances.

On February 9, 2016, Department staff served the notice of hearing and complaint on respondents and, separately, on respondents’ counsel, by certified mail. See Default Motion Exhibit (“Ex.”) A, Affirmation of Dudley D. Loew, Esq. dated August 16, 2016, at ¶ 2; see also Default Motion Ex. B (affidavit of service of Tammy Schubmehl, sworn to March 21, 2016 (“Schubmehl Aff.”)). Staff has submitted signed certified mail receipts reflecting that respondents and their counsel received the notice of hearing and complaint. Respondents failed to file answers to the complaint within 20 days after receipt of the notice of hearing and complaint.

On March 31, 2016, respondents and their counsel appeared at a pre-hearing conference before the undersigned at the Department’s Region 8 offices in Avon, New York. At that time, Department staff made an oral motion for a default judgment. I reserved on the motion. It was agreed that the parties would continue settlement discussions and, if no settlement was reached,

¹ Given due process concerns, I will consider Department staff’s request for a penalty of “no less than” twenty-two thousand dollars (\$22,000) to be a request for that specific amount. See e.g. Matter of Reliable Heating Oil, Inc., Decision and Order of the Commissioner, October 30, 2013, at 3.

respondents would file and serve a written response to staff's oral motion for default no later than May 31, 2016. The parties did not settle the matter by May 31, 2016, and respondents did not file a written response to staff's March 31, 2016 oral motion for default by the May 31, 2016 deadline. Respondents have also not filed a written response to staff's written motion for default.

II. Discussion

A. Liability

A respondent upon whom a complaint has been served must serve an answer within 20 days of receiving a notice of hearing and complaint. See 6 NYCRR § 622.4(a). A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a hearing." 6 NYCRR § 622.15(a). Upon a respondent's failure to answer a complaint, Department staff may make a motion to an ALJ for a default judgment. Such motion must contain (i) proof of service upon respondent of the notice of hearing and complaint; (ii) proof of respondent's failure to file a timely answer; and (iii) a proposed order. See 6 NYCRR § 622.15(b)(1)-(3).

In this case, Department staff's motion papers establish that: (i) Department staff served the notice of hearing and complaint upon respondents; and (ii) respondents failed to file an answer to the complaint. See Schubmehl Aff. and mail receipts attached thereto. Staff has also submitted a proposed order. See Default Motion Ex. J. Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to 6 NYCRR § 622.15.

Staff served respondents with copies of the motion for default judgment and supporting papers, in both paper copy and by electronic means. See August 17, 2016 letter from Dudley D. Loew, Esq. to the undersigned, enclosing motion papers and copying respondents' counsel. Respondents have failed to file or serve any response to the motion. As the Commissioner has held, "a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them." Matter of Alvin Hunt, d/b/a Our Cleaners, Decision and Order of the Commissioner, July 25, 2006, at 6 (citations omitted).

In addition, in support of a motion for a default judgment, staff must "provide proof of the facts sufficient to support the claim." Matter of Queen City Recycle Center, Inc., Decision and Order of the Commissioner, December 12, 2013, at 3. As discussed below, Department staff's submissions in support of the motion for a default judgment provide proof of the facts sufficient to support all four of staff's causes of action.

1. First Cause of Action

The first cause of action alleges that respondents performed "at least 684 commercial application of pesticides between August 31, 2008 and May 14, 2015 in violation of ECL §§ 33-0907(1) and 33-1301(8-a)." Complaint at 5, ¶ 27. ECL § 33-0907(1) states that "Any pesticide business or agency as defined in this article shall register with the commissioner." See also 6 NYCRR § 325.23(a) ("each business offering, advertising or providing the services of

commercial application of pesticides ... must register annually with the department”). A “pesticide business” is defined in the statute as “any person providing commercial application of pesticides for hire.” ECL § 33-0101(36). A “person” is defined as “any individual, partnership, association, corporation organized group of persons whether incorporated or not ... or any other legal entity whatever.” ECL § 33-0101(33).

ECL § 33-1301(8-a) states in relevant part as follows: “It shall be unlawful ... [f]or any person or business to engage in the business of applying pesticides unless the business is registered by the commissioner.” See also ECL § 33-0101(9) (defining “business registration” as “the requirement of each person or business providing services of commercial application of pesticides, either entirely or as part of the business, to register with the department”).

In support of the motion for a default judgment, Department staff has submitted the affidavit of Justin Schoff, a Pesticide Control Specialist 1 in the Department’s Division of Materials Management. See Default Motion Ex. C, Affidavit of Justin Schoff in Support of Motion for Default Judgment, sworn to August 17, 2016 (“Schoff Aff.”). Mr. Schoff states that, prior to performing an inspection of respondents’ business, he searched the New York State Pesticide Business Database, and determined that the pesticide business registration for respondent Earthly Surroundings, LLC, identified as registration number 13060, had expired on August 31, 2008. See Schoff Aff. ¶¶ 3-4.

Mr. Schoff also searched the Department’s image retrieval database to determine whether respondents had performed commercial pesticide applications after the registration had expired. See id. ¶ 5. Mr. Schoff states that respondents’ annual reports reflect that respondents performed “at least 684 pesticide applications between August 31, 2008 and December 31, 2014 without a business registration.” Id. ¶ 6. Moreover, Mr. Schoff states that, because pesticide business registrations are valid for three years, respondents failed to register the business for three registration periods, during which respondents continued to apply pesticides. Id.²

Other documents submitted establish that (i) respondent Schult is the owner of respondent Earthly Surroundings, LLC, see Default Motion Ex. E (May 14, 2015 inspection report, signed by William Schult as “Owner”);³ and (ii) respondent Schult is a certified pesticide applicator who applied pesticides on behalf of respondent Earthly Surroundings, LLC between 2008 and 2014, see Default Motion Ex. D (Applicator/Technician Annual Reports 2008-2014, identifying Schult as applicator/technician and the Business Registration No. as “13060,” the registration number of respondent Earthly Surroundings, LLC).

Department staff has submitted proof of facts sufficient to support the first cause of action. I therefore recommend that the Commissioner grant staff’s motion for a default judgment with respect to the first cause of action.

² Although Mr. Schoff does not specify, the relevant three-year periods during which respondents have failed to register the pesticide application business are presumably (1) September 1, 2008-August 31, 2011; (2) September 1, 2011-August 31, 2014; and (3) September 1, 2014 – August 31, 2017.

³ Staff has also alleged that Mr. Schult is “the sole member of Earthly Surroundings, LLC,” see Complaint at 1, ¶ 3, an allegation deemed admitted by respondents’ default.

2. Second Cause of Action

The second cause of action alleges that respondents did not maintain proper pesticide use records, including failing to record “dosage rate, method of application, place of application, and target organism in violation of 6 NYCRR § 325.25(a) and ECL § 33-1205(1).” Complaint at 5, ¶ 32. Staff alleges that respondents’ violations relate to “at least 252 commercial pesticide applications between 2012 and 2014.” *Id.* at 5-6, ¶ 34.

ECL § 33-1205(1) requires, among other things, that “[a]ll commercial applicators shall ... maintain ... records of the dosage rates, methods of application and target organisms for each pesticide application.” *See also* 6 NYCRR § 325.25(a) (“All businesses required to register ... shall keep true and accurate records in a manner specified by the department showing: the kind and quantity of each pesticide used; dosage rates; methods of application; target organisms; and the use, date and place of application for each pesticide used”).

During a May 14, 2015 inspection of respondents’ business, staff pesticide control specialist Schoff asked respondents for their pesticide use records. Respondents provided Mr. Schoff with annual reports but no records containing dosage rate, method of application, place of application or target organism between 2012 and 2014. Schoff Aff. ¶¶ 13-14. In addition, the records submitted reflected 252 applications of pesticides during the period 2012-2014. *See id.* ¶ 14; *see also* Default Motion Ex. D.

Department staff has submitted proof of facts sufficient to support the second cause of action. I therefore recommend that the Commissioner grant staff’s motion for a default judgment with respect to the second cause of action.

3. Third Cause of Action

The third cause of action alleges that respondents’ commercial lawn care contracts did not comply with the requirements of ECL § 33-1001⁴ and 6 NYCRR § 325.40(a). Specifically, Department staff alleges that respondents’ contracts did not specify the approximate dates of application or the number of commercial lawn applications to be provided, and did not include a list of pesticides to be applied including brand names and generic names of active ingredients, any warnings appearing on labels of pesticides to be applied that are pertinent to the protection of humans, animals or the environment, a business registration number and pesticide applicator’s certification identification card number in at least 12-point font, and did not include specific language required by regulation relating to including dates in the contract when dates are specifically requested by a property owner. *See* Complaint at 6, ¶¶ 37-38.

During his inspection of respondents’ business, Mr. Schoff reviewed “at least eight” of respondents’ commercial lawn care contracts, and made copies of respondents’ commercial lawn

⁴ The complaint twice refers to “ECL § 1001,” *see* Complaint at 4, ¶ 23, and *id.* at 6, ¶ 37, but these are clearly typographical errors. There is no ECL provision numbered simply “§ 1001,” and ECL § 33-1001 concerns requirements relating to commercial lawn pesticide application contracts, which is the subject matter of this cause of action. Moreover, staff quotes ECL § 33-1001, but cites “§ 1001.” *See* Complaint at 4, ¶ 23.

care contract and contract renewal. See Schoff Aff. ¶¶ 8 and 10; see also Default Motion Exs. F-1 and F-2. Mr. Schoff states that the contracts he reviewed (i) failed to specify the approximate dates of application; (ii) did not state the number of applications to be provided; and (iii) did not include the specific text required by regulation, to wit: “The property owner or owner’s agent may request the specific date or dates of the application(s) to be provided and, if so requested, the pesticide applicator or business must inform of the specific dates and include that date or dates in the contract.” See Schoff Aff. ¶ 9; see also 6 NYCRR § 325.40(a).

Moreover, Mr. Schoff states that “the Respondents indicated that, prior to application, they did not provide a list of pesticides to be applied including brand names and generic names of active ingredients; any warnings that appear on the label(s) of pesticide(s) to be applied that are pertinent to the protection of humans, animals or the environment; or the business registration number as required by ECL § 33-1001(2).” Schoff Aff. ¶ 9; see also ECL § 33-1001(2)(a)-(c).

The copies of the contract and renewal contract submitted with staff’s motion do not contain the information required by the statute and regulation. See Default Motion Exs. F-1 and F-2. Mr. Schoff states that the commercial lawn care contracts that he reviewed during his inspection were missing the same information as is missing from Exhibits F-1 and F-2. See Schoff Aff. ¶ 11.

Department staff has submitted proof of facts sufficient to support the third cause of action. I therefore recommend that the Commissioner grant staff’s motion for a default judgment with respect to the third cause of action.

4. Fourth Cause of Action

The fourth cause of action alleges that respondents failed to provide label information to their customers prior to applying pesticides, in violation of ECL § 33-0905(5) and 6 NYCRR § 325.40(i). See Complaint at 6-7, ¶¶ 41-42. ECL § 33-0905(5)(a) requires each certified applicator, prior to applying a pesticide at a dwelling, to

supply the occupants therein with a copy of the information, including any warnings, contained on the label of the pesticide to be applied. Such information shall be supplied in either a written, digital or electronic format which shall be determined by the occupants of such dwelling, provided however that the certified applicator must also have a written copy of such information in his/her possession.

ECL § 33-0905(5)(a); see also 6 NYCRR § 325.40(i) (requiring pre-application provision of “a written copy of the information, including any warnings, contained on the label(s) of the pesticide(s) to be applied”).

Mr. Schoff states in his affidavit that respondents indicated to him that “they did not currently provide label information in any format: written, digital or electronic to the property owner/occupants.” Schoff Aff. ¶ 12. Mr. Schoff’s sworn statement comprises

proof of facts sufficient to support the fourth cause of action. I therefore recommend that the Commissioner grant staff's motion for a default judgment with respect to the fourth cause of action.

B. Civil Penalty

ECL § 71-2907(1) provides for a penalty of up to \$5,000 for a first violation of "any provision of [ECL] article 33 ... or any rule, regulation or order issued thereunder," and up to \$10,000 for each subsequent offense. Staff's requested penalty of "no less than" \$22,000 was determined following calculation of the maximum statutory penalties and penalty amounts under the Department's Pesticide Enforcement Policy (DEE-12).⁵ See Default Motion Ex. G, Affidavit of Christopher Wainwright in Support of Motion for Default Judgment, sworn to August 16, 2016 ("Wainwright Aff."); see also Default Motion Ex. I (calculation sheet entitled "Justification for Requested Penalty").

According to staff's calculation, the maximum statutory penalty for the violations alleged here would be \$2,635,000. See Default Motion Ex. I.⁶ Under the Department's Pesticide Enforcement Policy, staff calculated the civil penalty as \$152,100. See id. Staff's requested penalty is far below the penalty amount authorized by statute or Department policy. The facts established by this motion reflect respondents' long-term and repeated failure to comply with the requirements of the pesticide statutes and regulations. I therefore recommend that the Commissioner grant staff's request to impose a civil penalty of twenty-two thousand dollars (\$22,000) for the violations.

C. Other Requested Relief

Department staff has requested in its complaint that the Commissioner order respondents "to become and remain in compliance with the ECL and Title 6 of NYCRR." Complaint at 7, Wherefore Clause ¶ 3; see also Motion for Default Judgment, at 1; but see Default Motion Ex. J, Proposed Order (omitting this item from the Ordering clauses). Respondents are already required to be in compliance with the ECL and relevant regulations; any future actions in derogation thereof will subject respondents to further enforcement action. Staff's request in this regard is unnecessary.

Recommendations

Based upon the foregoing, I recommend that the Commissioner issue an order:

⁵ As discussed in footnote 1 above, and in accordance with prior Commissioner Decisions and Orders, I interpret staff's request for "no less than" \$22,000 as a request for \$22,000.

⁶ This figure was calculated using a total of 264 violations, comprised of (i) three business registration violations; (ii) 252 pesticide use record violations; (iii) eight commercial lawn contract violations; and (iv) one violation of failing to provide pesticide label information. See id.

1. Granting Department staff's motion for default, holding respondents William Schult and Earthly Surroundings, LLC in default pursuant to the provisions of 6 NYCRR § 622.15;
2. Holding that respondents William Schult and Earthly Surroundings, LLC violated:
 - a. ECL §§ 33-0907(1) and 33-1301(8-a), by performing the commercial application of pesticides without registering with the Department;
 - b. ECL § 33-1205(1) and 6 NYCRR § 325.25(a), by failing to maintain proper pesticide use records for 252 pesticide applications; and
 - c. ECL § 33-1001 and 6 NYCRR § 325.40(a), by failing to comply with requirements applicable to written commercial lawn care contracts; and
 - d. ECL § 33-0905(5) and 6 NYCRR § 325.40(i), by failing to provide label information prior to applying pesticides;
3. Directing respondents William Schult and Earthly Surroundings, LLC to pay a civil penalty in the amount of twenty-two thousand dollars (\$22,000) within thirty (30) days of service of the Commissioner's order; and
4. Directing such other and further relief as he may deem just and appropriate.

/s/

D. Scott Bassinson
Administrative Law Judge

Dated: Albany, New York
August 24, 2016

APPENDIX A

Matter of William Schult and Earthly Surroundings, LLC

DEC Case No. R8-20150715-91

Exhibits Submitted with Motion for Default Judgment

- A. Affirmation of Dudley D. Loew, Esq. in Support of Motion for Default Judgment, dated August 16, 2016
- B. Affidavit of Service of Tammy Schubmehl, sworn to March 21, 2016, attaching notice of hearing and complaint and mail return receipts
- C. Affidavit of Justin Schoff, sworn to August 17, 2016
- D. Applicator/Technician Pesticide Annual Reports, 2008-2014
- E. Notice of Inspection, dated May 14, 2015
- F. Commercial Lawn Care Contract and Lawn Care Renewal Contract
- G. Affidavit of Christopher Wainwright, sworn to August 16, 2016
- H. [OMITTED]
- I. Undated document entitled “Justification for Requested Penalty”
- J. Proposed Order