

STATE OF CONNECTICUT

VS

CONSENT ORDER NUMBER
COWSPST13-063

Issue Date January 21, 2014

MICHAEL F. MORIN AND DONALD P. FREY
DBA/BED BUG FINDERS, LLC
RESPONDENT

A. With the agreement of the Michael F. Morin and Donald P. Frey dba/Bed Bug Finders, LLC ("Respondent"), the Commissioner of Energy & Environmental Protection ("the Commissioner") finds:

1. Respondent is registered with the Secretary of the state as Bed Bug Finders, LLC with a principal place of business at 440 Ocean Avenue, Stratford, Connecticut. Michael F. Morin and Donald P. Frey are each indicated as Members of the business.
2. Michael F. Morin and Donald P. Frey are also doing business as Northeast Heat Treatment, LLC with a principal place of business at 440 Ocean Avenue, Stratford, Connecticut. Northeast Heat Treatment, LLC is registered with the Secretary of the state. Michael F. Morin and Donald P. Frey are each indicated as a Member of the business.
3. Northeast Heat Treatment, LLC performs heat treatment services for the eradication of bed bugs.
4. Northeast Heat Treatment, LLC is not a Respondent to the violations alleged.
5. Since at least 2/24/13, Respondent has engaged in the operation of a commercial pesticide application business without first obtaining a certificate of registration from the Commissioner of Energy and Environmental Protection.
6. Since at least 2/24/13, Respondent has engaged in the operation of a commercial application business for the control of bed bugs without first employing a certified commercial supervisor or having a certified commercial supervisor directly involved with or having knowledge of pesticide applications performed by its employees.
7. Since at least 2/24/13, Respondent aided or abetted or conspired with certified commercial operator, Alan Provost, to evade provisions of Chapter 441 of the Connecticut General Statutes governing the use of pesticide by soliciting to perform and performing commercial applications of pesticides without the involvement or oversight of a certified commercial supervisor for the control of bed bugs at 401 Heights Drive in Torrington, Connecticut.
8. On at least 2/24/13, 3/8/13, 3/13/13, 3/16/13 and 4/1/13, one or more employees of Respondent performed work requiring commercial pesticide supervisor certification by determining the need to apply restricted and general use pesticides for the control of bed bugs at 401 Heights Drive in Torrington, Connecticut including deciding which pesticide

to apply, how they were to be mixed, where they were to be applied and the dosages and timing involved in their application.

9. On or about 2/24/13 and 3/13/13, an employee of Respondent applied Phantom Termiticide Insecticide in a manner inconsistent with the pesticide label by mixing and applying a dilution concentration greater than the maximum allowed as a general surface spray and re-applied more often than every four weeks at 401 Heights Drive in Torrington, Connecticut.

10. On or about 3/8/13 and 3/16/13, an employee of Respondent applied Defense Insecticide in a manner inconsistent with the pesticide label by applying as a general surface spray in sufficient volume to allow puddling to occur and re-applied more often than every twenty-one days at 401 Heights Drive in Torrington, Connecticut.

11. On or about 3/8/13, an employee of Respondent applied Delta Dust Insecticide in a manner inconsistent with the pesticide label by applying and leaving heavy deposits of the insecticide dust on exposed surfaces at 401 Heights Drive in Torrington, Connecticut.

12. On or about 2/24/13, 3/8/13, 3/13/13, 3/16/13 and 4/1/13, an employee of Respondent disposed of excess dilute pesticides by pouring into the kitchen sink, potentially contaminating waters of the state at 401 Heights Drive in Torrington, Connecticut.

By virtue of the above, Respondent has violated sections 22a-66c(a), 22a-66f, 22a-61(f)(1)(I), 22a-66e(a)(8), 22a-61(e), 22a-61(b)(7), 22a-61(f)(1)(E), 22a-66e(a)(4) of the Connecticut General Statutes and section 22a-65-1 of Regulations of Connecticut State Agencies.

B. With the agreement of Respondent, the Commissioner, acting under §22a-6, §22a-61(f), §22a-63(e) and §22a-66h of the Connecticut General Statutes, orders Respondent as follows:

1) Effective immediately upon issuance of this consent order, Respondent shall take all steps necessary to comply with all applicable provisions of Chapter 441 governing Pesticide Control of the Connecticut General Statutes and regulations promulgated thereunder and shall maintain such compliance.

2) Progress reports: On a quarterly schedule beginning 3/30/14 and continuing until all actions required by this consent order have been completed as approved and to the Commissioner's satisfaction, Respondent shall submit written progress reports, in accordance with paragraph B.21 of this consent order, describing the actions which Respondent has taken to date to comply with this consent order.

3) Full compliance. Respondent shall not be considered in full compliance with this consent order until all actions required by this consent order have been completed as approved and to the Commissioner's satisfaction.

4) Civil penalty. Respondent shall pay a penalty of four-thousand two-hundred seventy-five dollars \$4,275.00 in four installments as follows; \$1,068.75 due on or before 1/31/14; \$1,068.75 due on or before 5/1/14; \$1,068.75 due on or before 7/30/14 and \$1,068.75 due on or before 10/28/14 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in A.5 through A.12 of this consent order.

B.5 Supplemental Environmental Project.

a. In addition to the civil penalty referenced in paragraph B.4, Respondent has agreed to undertake the following supplemental environmental project(s) ("SEP(s)") requiring an expenditure of at least twelve-thousand eight-hundred twenty-five dollars (\$12,825.00), which is the total estimated cost as determined by the Commissioner for all SEP's required under this paragraph.

b. Respondent shall perform the SEP identified and described in Attachment A to this consent order in accordance with the project proposal prepared by the Respondent on November 19, 2013. Respondent shall perform each such SEP in accordance with the schedule approved by the Commissioner, and shall obtain any federal, state or local permit or approval necessary to carry out such SEP.

c. If Respondent fails to fully perform any SEP in accordance with paragraph B.5.a., Respondent shall immediately notify the Commissioner in writing of such noncompliance and shall, upon written request by the Commissioner, remit a payment equal to: the total estimated cost, as determined by the Commissioner, of all such SEP(s); plus either \$2,500 or 10% of such total estimated cost, whichever is greater. Within fourteen (14) days after the date of the Commissioner's written request, Respondent shall make such payment in accordance with the remittance procedures for unexpended SEP funds in subparagraph B.5.e. of this consent order.

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

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

f. Should the Commissioner determine that the actual cost to the Respondent of any fully completed SEP is less than the estimated cost, as determined by the Commissioner, of such SEP, Respondent shall pay the difference between such actual cost and the estimated cost to the Commissioner as unexpended SEP funds. The Commissioner shall notify the Respondent in writing of the amount of any such unexpended SEP funds that are due. Respondent shall, within fourteen (14) days after the date of such written notice, remit the full amount of the unexpended SEP funds. Payment of unexpended SEP funds shall be by certified or bank check payable to the "Connecticut Department of Energy and Environmental Protection" and the check shall state on its face "Statewide SEP Account, Consent Order No. COWSPST13-063." Respondent shall mail or personally deliver such payment to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127.

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

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

6) Payment of penalties. Payment of penalties under this consent order shall be mailed or personally delivered to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to the "Connecticut

Department of Energy and Environmental Protection.” The check shall state on its face, “BMMCA, Pesticide Management Program civil penalty, consent order COWSPST13-063.”

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

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

9) Dates. The date of “issuance” of this consent order is the date the consent order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this consent order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this consent order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this consent order, the word “day” as used in this consent order means calendar day. Any document or action which is required by this consent order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.

10) Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this consent order shall be signed by Respondent or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in §22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and each such individual shall certify in writing as follows:

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

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

12) False statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.

13) Notice of transfer; liability of Respondent. Until Respondent has fully complied with this consent order, Respondent shall notify the Commissioner in writing no later than 15 days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this consent order or after obtaining a new mailing or location

address. Respondent's obligations under this consent order shall not be affected by the passage of title to any property to any other person or municipality.

14) Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties, nothing in this consent order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this consent order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.

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

16) No assurance by Commissioner. No provision of this consent order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this consent order will result in compliance.

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

18) No effect on rights of other persons. This consent order neither creates nor affects any rights of persons or municipalities that are not parties to this consent order.

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

20) Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this consent order or of any document required hereunder, Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.

21) Submission of documents. Any document required to be submitted to the Commissioner under this consent order shall, unless otherwise specified in this consent order or in writing by the Commissioner, be directed to:

Diane Jorsey, Environmental Analyst III
Department of Energy and Environmental Protection
Bureau of Materials Management and Compliance Assurance

Pesticide Management Program
79 Elm Street
Hartford, Connecticut 06106-5127

22) Joint and several liability. Respondents shall be jointly and severally liable for compliance with this consent order.

Respondent consents to the issuance of this consent order without further notice. The undersigned certifies that he is fully authorized to enter into this consent order and to legally bind the Respondent to the terms and conditions of the consent order.

**MICHAEL F. MORIN AND DONALD P. FREY
DBA/BED BUG FINDERS, LLC
RESPONDENT**

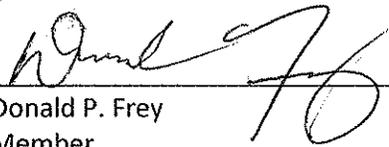
BY:  1/4/14
Michael F. Morin Date
Member

BY:  1/4/14
Donald P. Frey Date
Member

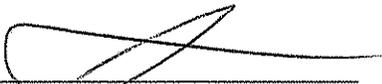
The undersigned certifies that he is fully authorized to enter into this consent order and to legally bind Northeast Heat Treatment, LLC to the terms and conditions of the Supplemental Environmental Project described in paragraphs B.5.a through B.5.h and Attachment A of this consent order.

**MICHAEL F. MORIN AND DONALD P. FREY
DBA/NORTHEAST HEAT TREATMENT, LLC**

BY:  1/4/14
Michael F. Morin Date
Member

BY:  1/4/14
Donald P. Frey Date
Member

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

 1/16/14
Macky McCleary Date
Deputy Commissioner

Attachment A - Description of Supplemental Environmental Project
Michael Morin and Donald Frey dba/Bed Bug Finders, LLC COWSPST 13-063

In lieu of paying penalties, the Respondent has agreed to perform visual and canine inspections and provide for the performance of heat treatments by Northeast Heat Treatment, LLC for the eradication of bed bugs at one or more residences/buildings where a determination has been made that bed bugs are present. Staff of the DEEP, Pesticide Management Program will approve each location to receive inspection and/or heat treatment services prior to the performance of any services within the scope of this project. Suitable locations for inspection/heat treatment which may be considered are residences or other structures owned or leased by state agencies other than the Department of Energy and Environmental Protection and/or residences or other structures owned or leased by not for profit organizations, including municipalities, which provide housing or other accommodations for homeless, mentally or physically disabled persons or persons otherwise in need of shelter where bed bugs are determined to be.

Criteria for heat treatment locations are as follows;

- 1) Only those locations where bed bugs are known to be present.
- 2) Only those locations where the heat treatment hose can reach inside the building, generally single family homes, office spaces and apartments. The heat treatment hose is one hundred feet in length and must be able to reach to the mid-point in the area to be treated, taking into account the proximity of parking to the building being treated.
- 2) Only those locations where the entire structure (excluding unfinished basements) can be treated. Partial treatments will not be considered for this project.
- 3) The recipient of the service is responsible to properly prepare, or pay a third party to prepare, the area for treatment if they are unable.
- 4) A canine inspection will be conducted within five days of the initial heat treatment at no charge
- 5) Re-treatment will be conducted at no charge if the 5-day post treatment canine inspection identifies a continued presence of bed bugs, unless there is evidence to show that bed bugs have been re-introduced to the structure.
- 6) Respondent and Northeast Heat Treating, LLC will provide current certificates of liability insurance prior to each treatment.
- 7) Respondent and Northeast Heat Treating, LLC will notify staff of the DEEP, Pesticide Management Program at least two days prior to performing inspections and heat treatments of their scheduled service in order to allow DEEP staff and/or staff of CAES the opportunity to observe.

Record Keeping

- The Respondent will be responsible for maintaining records documenting the initial inspection (visual and/or canine). The records shall indicate the name of the property owner, the address to be inspected, a description of the property including number of residences, locations where bed bugs have been identified and any special considerations or conditions which may affect the success of the heat treatment.
- The Respondent will also be responsible to provide records of the heat treatment performed by Northeast Heat Treatment, LLC including the name of the property owner, the address to be inspected, condition(s) which may affect the success of the heat treatment and records of monitoring heat levels during the heat treatment.
- The Respondent will provide copies of all records associated with the inspection and/or heat treatments that have been performed as part of this project within thirty days of the treatment to the Commissioner in accordance with paragraph B.21 of the consent order.

Estimated Value

- The values assigned to this project are as follows;
- Visual inspections = no charge
- \$350.00 = Initial canine inspection
- \$2,500.00 minimum - heat treatment for an area up to 1,500 square feet
- \$1.75 per square foot above 1,500 square feet
- Surcharge of +15% in circumstances where high levels of infestation exist
- For this project, the presence of 25 bugs and/or eggs will be considered a "high level of infestation"
- The services will be performed for a total project value of at least twelve-thousand eight-hundred twenty-five dollars (\$12,825.00)