

**OFFICE OF ADJUDICATIONS**

**IN THE MATTER OF** : **RENEWAL OF REGISTRATIONS  
NO. B-0372, B-1140 and B-0215**

**TERMINIX INTERNATIONAL  
CO., L.P.** : **APRIL 11, 2002**

**PROPOSED FINAL DECISION**

**SUMMARY**

Between the years 1998-1999 through 2001-2002, Terminix International Co., L.P. (Terminix) applied for the renewal of its business registrations for its North Haven, Trumbull, and Waterbury offices. The Department of Environmental Protection Pesticide Management Division issued letters of denial for all of the requested renewals. Terminix appealed these denials, which were consolidated into one proceeding. The extensive record includes 54 days of hearing, two site visits, and approximately 6,000 pages of transcripts and 20,000 exhibits.

Based upon my review of the entire record, I find that there is a substantial preponderance of credible evidence to support the denial of the renewal of Terminix's business registrations for the three subject offices. I further find that (1) Terminix failed to meet its burden of demonstrating that it is entitled to renewal of its business registrations, and (2) that its compliance history is so egregious that renewal of its registrations is not warranted.

I recommend that the denials for the North Haven, Trumbull and Waterbury offices be affirmed and that the Commissioner of Environmental Protection prohibit Terminix from reapplying for renewal of the above registrations for a period not to exceed five years from the date of the Final Decision in this matter.

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*I*  
**INTRODUCTION**

*Procedural History*

On July 28, 1998, Terminix International Co., L.P. (the applicant), applied to the Department of Environmental Protection (DEP) Pesticide Management Division (pesticide staff or staff) for renewal of its 1998-1999 business registrations for its North Haven (No. B-0372), Trumbull (B-1140) and Waterbury (B-0215) offices<sup>1</sup>. Pesticide staff issued denials of these renewals, and the applicant requested a hearing pursuant to General Statutes §22a-66d(a). The hearing, including two site visits<sup>2</sup>, continued for 54 days between March 18, 1998 and June 15, 2001. Thirty-nine witnesses testified at the hearing, which resulted in approximately 6,000 pages of transcripts and which involved 20,000 exhibits. The record closed on November 7, 2001. The hearings were suspended twice at the parties' request to pursue court mediation, which was unsuccessful.

*Consolidation of Proceedings*

Because these business registrations were valid for only one year and the hearing continued well past the time when a determination could be made on the first appeal, the applicant submitted requests for renewal of its business registrations for succeeding years through its 2000-2001 registration. Staff denied these renewal requests, and the applicant appealed.

The parties jointly moved to consolidate the proceedings for denial of renewals from its 1998-1999 to 2000-2001 registrations. I granted this motion under the Regulations of Connecticut State Agencies §22a-3a-6(d)(2)(G). I also consolidated the 2001-2002 business registration denials with the existing proceeding. This hearing therefore covers four years of denials of applications for renewals of business registrations, the years 1998-1999 through 2001-2002.

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<sup>1</sup> Annual business registrations run from September 1 through August 31 (e.g., September 1, 1998 to August 31, 1999 is the period for the 1998-1999 business registration).

<sup>2</sup> I conducted two site visits, the first to the site of an alleged violation (the Mehler residence in Deep River), and the second, which was also a hearing, to the applicant's North Haven office to observe its new internal compliance procedures.

### Relevant Statutes and Regulations

As an insight for the reader of this decision, and to understand the myriad of the pesticide statutes and regulations controlling this proceeding, I have attached a copy of the *Pertinent Pesticide Statutes and Regulations for Certified Commercial Supervisors and Arborists* (Revised to February, 2001).

### Grounds for Denial

The applicant's requests for renewals of its business registrations for each of its three offices were denied under the provisions of General Statutes §22a-66e. The provisions of this statute that apply to the denials of the business registration renewals for each of the three offices are listed at the beginning of each section of this decision that address such offices.

### Explanation of Grids

Because of the number of exhibits and the complexity of allegations, I directed the parties to prepare grids to facilitate an understanding of the allegations brought by pesticide staff against each of the applicant's offices, both for pesticide and termite treatments. These grids were admitted as exhibits for illustrative purposes only and were not to be considered as indicative of any violations except as explained herein. The grids were broken down by exhibit number, customer identification, date of service, and for the last four columns, the category of alleged violations. For example, Regs., Conn. State Agencies §22a-66-5g (written instruction), General Statutes §22a-61(b)(14) (falsification), §22a-61(e) (certification), and §22a-66g (records). In each of the last four columns, staff placed an X where it alleged a violation. If the applicant did not contest the allegation, a circle was drawn around the X. Staff placed a W in the extreme left-hand column where it had withdrawn its allegations of a violation.

### Burdens of Proof

Under the Regulations of Connecticut State Agencies §22a-3a-6(f), in a proceeding on an application, the applicant has the burden of going forward with evidence and the burden of persuasion with respect to each issue that the Commissioner

is required by law to consider in deciding whether to grant or deny the application. Staff must then support its reasons for denial. The applicant must therefore show by a preponderance of the credible evidence that it is entitled to have its business registrations renewed.

#### DEP Regulatory Authority over Pesticide Application Businesses

Under the applicable statutes, the DEP regulates pesticide application businesses and their employees. Pursuant to General Statutes §22a-54, the DEP regulates “commercial applicators” that apply pesticides on “property not owned or rented by him or his employer”. The applicators are regulated under General Statutes §22a-54(b) by the establishment of a two-tiered licensing system known as supervisory and operational certification. Supervisors are permitted to use and apply pesticides in a manner prohibited to operators, such as deciding whether pesticides are to be used, how they are to be mixed, where they are to be used, what pesticides are to be used, the dosages and timing involved in the pesticide use, and the methods of application and precautions to be taken in the use of such pesticides. Operational certification is required for commercial applicators (operators) who actually use pesticides in other than a supervisory manner. Under the Regulations of Connecticut State Agencies §22a-66-5(g)(2), an operator may assist in the application of a pesticide under the supervision of a supervisor, but may not mix or handle pesticides unless a supervisor is present or unless a supervisor has provided an operator with written instructions outlining: (1) the pest to be controlled; (2) the pesticide to be used; and (3) the directions for use of the pesticide. These written instructions require the name and certification number of both the supervisor and the operator<sup>3</sup>.

#### Search Warrant

Under General Statutes §§22a-58(d) and 22a-66g(a), every pesticide application business is required to maintain records containing required elements of statutory record-keeping of each pesticide application for not less than five years from the date such

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<sup>3</sup> In this decision, the term “operator” refers to an applicator. Supervisors can be applicators, however, the term “supervisor” will be used to refer specifically to that certification when applicable.

record is made or amended. Pursuant to subsection (c), the DEP may inspect all such records maintained by the business. See also §22a-59. General Statutes §§22a-6(a)(5) and 22a-59(b) authorize a search warrant and entry into the place of business to inspect for compliance with state statutes and regulations. Because of the difficulty staff had in obtaining access to records from the applicant on April 13, 1998 at its North Haven office, the Commissioner of Environmental Protection obtained administrative search warrants for that office<sup>4</sup>. In issuing the warrant, the Superior Court found that grounds existed for issuance of the search warrants because there was probable cause that the applicant had violated General Statutes §§22a-54(b) and (c)(1), 22a-59(b), 22a-61(b)(2) and (12), 22a-66c(b), and Regs., Conn. State Agencies §22a-66-5(g)(2). The records seized by pesticide staff, which includes service tickets<sup>5</sup> as a result of the search warrants became a significant portion of the extensive exhibits in the record.

*Actions of Employees are Actions of Applicant*

General Statutes §22a-66i provides: “In any proceeding regarding denial, suspension or revocation of a certificate of registration . . . the action, omission or failure to act of any officer, agent or other person acting for or employed by the pesticide application business shall also be deemed to be the action, omission or failure to act of the pesticide application business as well as that of the person employed”. Evidence of any illegal activities by the applicant’s employees is therefore deemed to be the actions, omissions or failure to act of the applicant as well as the employee.

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<sup>4</sup> The search warrant also included the Meriden office, which is not the subject of these proceedings.

<sup>5</sup> Service tickets serve as written instructions for an operator, and are the permanent record of a treatment. See attached service ticket marked as Attachment 2, which is for illustrative purposes only. It has been redacted to protect the customer’s privacy and to conceal handwritten comments.

## *II*

### **DECISION**

#### *(A)*

#### ***North Haven Office: B-0372***

In letters dated August 26, 1998, August 5, 1999, October 13, 2000 and July 23, 2001, pesticide staff notified the applicant that it was denying its request to renew Business Registration No. B-0372 for its North Haven office for the years 1998-1999 to 2001-2002, pursuant to General Statutes §22a-66d. The grounds for denial contained in these letters are:

- General Statutes §22a-66e(a)(2): Failure to notify the commissioner of changes in the information contained in the business registration as required by §22a-66c.
- General Statutes §22a-66e(a)(3): Inclusion of false or misleading information in records required to be maintained pursuant to §22a-66g and the failure to provide the commissioner with the records required by said section.
- General Statutes §22a-66e(a)(4): Use of a pesticide in a manner inconsistent with the registered labeling on the use of such pesticides.
- General Statutes §22a-66e(a)(8): Aiding or abetting certified persons to evade the provisions off the Connecticut Pesticide Control Act and regulations adopted thereunder.
- General Statutes §22a-66e(a)(9): Making false or misleading statements during an investigation concerning violations of the Connecticut Pesticide Control Act and regulations adopted thereunder.
- General Statutes §22a-66e(a)(10): The performance of work in a category for which the applicator is not certified.

The October 13, 2000 letter added the following ground for denial for the years 2000-2001 and subsequent years.

- Section 22a-66e(a)(1): Violation of Section 22a-66g(a)(1) (i.e., failure to maintain records in accordance with statutory provisions) as set out in Exhibits “Substituted DEP 4502-NH(A)” and “Substituted DEP 4502-NH(B)”

(Exs. DEP-A, 4607; Joint Exs.-1, 2; Ex. TERM-NH-007.)

The facts concerning each of the above grounds for denial will be addressed below in the context of the application to renew the applicant's North Haven office business registration.

*(1)*

**FINDINGS OF FACT**

1. The applicant employed Dennis Szalecki (Szalecki), as an audit clerk for seven years until September 18, 1998. As part of Szalecki's job, he was required to visit the applicant's various offices to review their pesticide records. Szalecki's audit duties included verifying that each supervisor's or operator's license was current, and reviewing service tickets for compliance with the law. He did not review any computer printouts. After completion of his review, he prepared an audit report that he submitted to the applicant's regional manager. (Test. D. Szalecki, tr. volume 13<sup>6</sup>, pp. 195-8, 1194-95.)

2. One column of the audit forms was entitled "Pesticide Handwritten not Apprv'd". Exhibit DEP4528-NH contains 56 such audit reports covering the period June 14, 1996 through April 9, 1998. (Ex. DEP-4528-NH.<sup>7</sup>)

3. These reports show 66 instances where operators had handwritten on service tickets the pesticide(s) used without a supervisor's authorization. Szalecki interviewed the operators. They indicated that they wrote in pesticides without proper authorization because the operator did not have the authorized pesticide to apply or felt that a more potent one was needed. (Ex. DEP-4528-NH; test. D. Szalecki, tr. volume 13, pp. 1214, 1304.)

4. During Szalecki's seven years with the applicant, operators used blank, preprinted tickets. These tickets constituted "written instructions". Despite lacking the customer's name and address and having the wrong supervisor's name, the blank tickets contained preprinted instructions and target pests. (Test. D. Szalecki, tr. volume 13, pp. 1207-12.)

5. Unauthorized "write-ins" were common and Szalecki believed that a "write-in" was the proper application of a pesticide without pre-approval by a supervisor.

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<sup>6</sup> A listing of all transcript volumes, dates and pages is attached as Attachment 3.

<sup>7</sup> The initials "NH" refer to exhibits relative to the applicant's North Haven office.



(Test. D. Szalecki volume 13, pp. 12-15; volume 14, p. 1339; see also test. D. Szalecki, volume 14, discussing the following exhibits: Exs. DEP-220, p. 1345; DEP-1093, p. 1368; DEP-1114, p. 1370; DEP-1128, p. 1373; DEP-1328, p. 1374; DEP-1335, p. 1378; DEP-1479, p. 1379.)

6. The record is replete with service tickets where a supervisor did not authorize the “write-in” made by the operator prior to the application. (Test. D. Szalecki, exhibit, volume and pages where exhibit discussed as follows.)

<u>DEP Exhibit</u> <u>No.</u>	<u>Transcript</u> <u>Volume</u>	<u>Page</u>
55	14	1334 1335
110	14	1337 1338
158	14	1339
159	14	1340
161	14	1340 1341
162	14	1341
164	15	1342
210	15	1342 1343
212	15	1343
214	15	1345
221	15	1346
257	15	1348
261	15	1348
263	15	1349 1350
462	15	1351 1352
538	15	1352
663	15	1354
721	15	1356

7. In at least 19 instances, operators wrote in written instructions on tickets. These tickets were just a representative sample of all the North Haven tickets seized pursuant to a search warrant. (Test. D. Szalecki, tr. volume 14, discussing the following exhibits.)

<u>DEP Exhibit</u>	<u>Page(s)</u>
403	1350-51
660	1353
840	1360-61
913A	1363-64
917, 1024	1364
1075, 1091, 1092	1366-68
1322	1373
1336	1376
1431, 1477, 1478	1377-78
1822, 1850	1390
1855	1429-1430
1879	1430

8. Varrick Nelson (Nelson) was employed as an operator by the applicant between December, 1996 and the summer of 1998. He applied pesticides to houses using blank, pre-printed tickets as his written instructions. These tickets lacked the customer's name, account number, Nelson's name and license number, and the amount of pesticide used. Bob Poirier, the North Haven branch manager, directed Nelson to use these tickets. They were readily accessible and Nelson used them when he did not have regular service tickets (i.e., those with the required information on them). (Test. V. Nelson, tr. volume 24, pp. 2525-31.)

9. Acting on instructions from Poirier, Nelson applied pesticides without a supervisor giving him written instructions. Poirier told Nelson to apply the pesticide and have a supervisor sign the ticket later. Nelson was never told this was wrong. In some instances where a pesticide was not part of the written instructions, Nelson would use the pesticide(s) he had on hand because his supervisors had told him to use what he had. (Test. V. Nelson, tr. volume 24, pp. 2433-34, 2538.)

10. Nelson, an operator, created his own written instructions. As demonstrated in at least thirty-nine exhibits, he filled in numerous service tickets without prior supervisory approval. Nelson also applied pesticides with incomplete written instructions. (See for example, test. V. Nelson, tr. volume 24, discussing exhibits listed below at the noted pages.)

<u>DEP</u> <u>Exhibit</u>	<u>Page(s)</u>	<u>DEP</u> <u>Exhibit</u>	<u>Page(s)</u>
1328	2541	1628	2559-60
1329	2542-43	1629	2559-60
1331	2544	1633	2560-61
1334	2544-45	1641	2562-63
1335	2545	1643	2563
1336	2546	1648	2571
1396	2546-47	1649	2572-73
1423	2547-48	1743	2576-77
1435	2548-50	1744	2577-78
1454	2550	1746	2578-84
1456	2551	1751	2589
1477	2551-52	1754	2589-90
1478	2552-53	1855	2593-94
1510	2555	1871	2594
1537	2555-56	1872	2594
1627	2558-60	1873	2595
		1874	2595

11. The applicant employed David Guy (Guy) in its North Haven office as an operator from April, 1990 to October, 1998. During this time, the applicant mailed service tickets for forthcoming pesticide applications to Guy's home in Stonington. Guy also had blank preprinted service tickets in his truck that were either mailed to him or that he picked up at the North Haven office. (Ex. DEP-4518; test. D. Guy, tr. volume 20, pp. 1915-17, 1920, 1927, 1990.)

12. Guy used the blank tickets and created his own service tickets and written instructions. Guy would go to a new customer's home with a blank service ticket that he would fill in after the work was done. (Test. D. Guy, tr. volume 20, pp. 1924-28, 1932.)

13. The applicant's sales people had access to and in their possession, blank pre-printed tickets and, at times, after selling a job, would leave a blank service ticket for Guy to pick up. Sometimes, sales people filled out service tickets at the customer's residence even though they were not supervisors. At other times, sales people left service tickets with Guy. Guy selected the pesticide to use by picking the blank preprinted service tickets that he determined the job required. Guy did not call the North Haven office for instructions. If Guy did call the office, he was told to "inspect and treat as

needed”. (Ex. DEP-4518, pp. 5-6; test. D. Guy, tr. volume 20, pp. 1932-37, 1944-45, 2060.)

14. Guy either filled out the preprinted service tickets or was told by the North Haven office to “treat as needed” or both. There are at least 146 such tickets in the record. (See for example, test. D. Guy, tr. volume 20 discussing the following exhibits: DEP-16, at pp. 1947-48; DEP-24, at pp. 1951-53; DEP-25, at p. 1965; DEP-34, at pp. 1971-72; DEP-35, at pp. 1975-77.)

15. Karyl Watts (Watts) was employed by the applicant as an operator and supervisor from February, 1995 to June, 1998 and then from June, 1999 to October, 1999. (Test. K. Watts, tr. volume 24, pp. 2459-60.)

16. During Watts’ employment through 1998, four of the applicant’s service managers, Bob Poirier, Mike Caldwell, Fred Markovich and Jim Martinick, encouraged operators to carry blank preprinted service tickets with them. The applicant trained Watts to do the same. (Test. K. Watts, tr. volume 24, pp. 2466-67.)

17. The applicant’s managers advised employees to keep a supply of blank preprinted tickets in their vehicles so that they would not have to shuttle back and forth to the office to get more. It was the operators’ understanding that blank preprinted service tickets were acceptable because the supervisor’s name was preprinted on the same ticket, and that they could fill in the information required on the ticket. The applicant never told these operators that this practice was unlawful. (Ex. DEP-4513, p. 5.)

18. Kevin Gydus (Gydus) was employed by the applicant from April, 1993 through March, 1998. Gydus also held a supervisory certification from June or July, 1994, in the categories of pest control, general pests, rodents and termites. During his tenure at the North Haven office, Gydus observed that blank preprinted service tickets were kept by the office printer. These tickets were available for operators’ use and it was a common practice for them to have access to these tickets. (Test. K. Gydus, tr. volume 23, pp. 2309, 2346-47.)

19. John Wallace (Wallace) was employed by the applicant as an operator from March, 1994 through March, 1998. He worked at various offices of the applicant, including North Haven. Wallace knew that supervisors were signing-off on pesticide

applications after the fact. Wallace also performed pesticide applications without written instructions. (Test. J. Wallace, tr. volume 31, pp. 3343-44, 3349.)

20. At times, the applicant gave Wallace incomplete written instructions. For example, he was paged on the road to do a termite re-treatment without a graph indicating where the treatment was to be done. These instructions could come from people other than supervisors and took place every day for four years. (Test. J. Wallace, tr. volume 31, pp. 3350-51.)

21. The applicant's procedure was to assign Wallace additional work when he was on the road without written instructions provided by a supervisor. A supervisor would sign-off on the work later. (Test. J. Wallace, tr. volume 31, p. 3350.)

22. At times, lacking a qualified supervisor in the applicant's North Haven office, Wallace had to go to the applicant's other offices to have a supervisor sign a service ticket with incomplete instructions, i.e., non-site specific instruction. This was because the North Haven office did not always have a qualified supervisor assigned to it. There is no evidence in the record that any or all of these changes were reported to the Commissioner of Environmental Protection. (Test. J. Wallace, tr. volume 31, pp. 3351-52.)

23. With the applicant's knowledge, Wallace kept blank preprinted service tickets and termite graphs in his truck. Wallace followed this practice because when the customer paid him, he could fill in the ticket while he was at the job. (Test. J. Wallace, tr. volume 31, pp. 3355-57.)

24. If no termite graph was supplied with a service ticket, Wallace had, at times, knowing it was illegal, created his own graph and therefore, his own written instructions because his supervisor, Bob Poirier, had so instructed him. (Test. J. Wallace, tr. volume 31, pp. 3349, 3356, 3456.)

25. The record contains evidence of at least thirty-six instances when Wallace took blank preprinted service tickets and created his own written instructions before or after a pesticide application or termite treatment, or where he altered written instructions.

(See for example, test. J. Wallace, tr. volume 34 discussing the following exhibits at the noted pages. )

<u>DEP Exhibit</u>	<u>Page(s)</u>
9	3373
26	3376-77
48	3377-78
68	3380-81
129, 136, 137	
141 & 361	3384-87
385	3391
386, 387	3388-90
931, 1097, 1223, 1436	
1505, 1689, 1697, 1698	3392-98
2662	3406-08
2785	3409-10
2303	3411-13
2491, 2542A & 2548	3414-19
2720	3421-23
2725	3427-28
2731	3428-30
2751	3430-31
2767	3431
2772, 2779	3433-34
2796	3435-36
2798, 2824 & 2836	3436-38

26. There is no evidence in the record to suggest that the applicant had disciplined Gydus, Nelson, Guy or Wallace in conjunction with either the application of pesticides and/or the records created in association with all the above findings. (Test. J. Wallace, tr. volume 31, p. 3367.)

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant's business registration under the grounds set forth in General Statutes §22a-66e(a)(1), (2), (8) and (10) as set forth below.

1. Between early 1996 to August 1998, the applicant's North Haven office routinely violated the law when operators filled out blank or altered preprinted service tickets, in which they were in effect creating their own written instructions. These written instructions included what pesticide to use, where to use it, how much, etc. Under General Statutes §22a-54(b) and the Regulations of Connecticut State Agencies §22a-66-5-(g)(2), written instructions can only be created by a supervisor, not by an operator. By creating their own written instructions, operators were acting beyond their certification, i.e., as supervisors. General Statutes §22a-66e(a)(10).

2. Between early 1996 through August, 1998, the applicant aided and abetted its operators to act as supervisors in two respects: 1) By calling operators on the road to add work for a day without written instructions; and 2) By its practice of making blank preprinted service tickets readily available to operators to complete. This allowed operators to act as supervisors by preparing their own written instructions. General Statutes §22a-66e(a)(8).

3. The applicant evaded state laws regarding written instructions by allowing operators to keep blank preprinted service tickets in their vehicles that did not contain supervisor's instructions. These tickets were filled in by the operator after work had been performed. The operators thus created their own written instruction for which they were not certified. General Statutes §22a-66e(a)(1).

4. The applicant failed to notify the Commissioner of changes in its business records, specifically the lack of a certified supervisor in its office. General Statutes §22a-66e(a)(2).

(2)

**FINDINGS OF FACT**

1. In the course of Szalecki's duties as auditor at the applicant's North Haven office, he routinely returned service tickets to operators that did not comport with state statutes or regulations. The applicant treated those tickets as both the written

instructions and the permanent record. (Test. M. Dezzani, tr. volume 12, pp. 1131-34; test. D. Szalecki, tr. volume 13, p. 1198.)

2. During his audits, Szalecki reviewed numerous service tickets and determined that operators wrote in instructions without supervisory approval. He also found that the supervisors then altered these written instructions by putting their initials on the service tickets after the application was done. (Test. D. Szalecki, see tr. volumes 14 and 15, listed below discussing noted exhibits at listed page(s).)

<u>DEP Exhibit No.</u>	<u>Transcript Volume</u>	<u>Page</u>
55	14	1334-35
110	14	1337-38
158	14	1339
159	14	1340
161	14	1340-41
162	14	1341
164	15	1342
210	15	1342-43
212	15	1343
214	15	1345
221	15	1346
257	15	1348
261	15	1348
263	15	1349-50
462	15	1351-52
663	15	1354
721	15	1356
722	15	1356
753	15	1356
777	15	1358
779	15	1358-59
911	15	1362
1189	15	1372-73

3. Szalecki directed operators to get a supervisor's initials approving service ticket write-ins done by the operator after the work was performed. Alternatively, he required that supervisors directly place their initials next to write-ins by operators or change the name of the wrong supervisor to the name of the correct supervisor. (Ex. DEP-4514, pp. 2, 36.)



4. The applicant's North Haven operators had specific routes on which they were allowed a limited number of missed or untreated customers. These allowances were permitted on a monthly basis. To keep the number of their allowances down, operators would falsely indicate a job as "done" when in fact it was a missed or untreated customer. (Test. J. Wallace, tr. volume 31, pp. 3347-48.)

5. This problem of treating all monthly stops persisted for over a year. In response to the problem, the applicant compiled a "countdown form", indicating the number of untreated customers per month. (Ex. DEP-4519, pp. 29, 32, 48-49.)

6. In one month, the North Haven office had 300 unserviced stops. These unserviced stops were reported as completed by six operators in two days. This was not feasible. (Ex. DEP-4519, p. 49.)

7. The applicant's North Haven manager, Bob Poirer, recorded 300 stops as treated even though they had not been. He entered unserviced accounts as serviced into the applicant's computer. Other branch managers repeated this practice. (Exs. DEP-4519, p. 30; 4513, p. 2; test. K. Watts, tr. volume 24, pp. 2178-80.)

8. The applicant sent facsimiles to the North Haven office indicating that "nothing else will be tolerated other than zero [allowances for unserviced stops]". While issuing this policy, the applicant's management ignored the fact that the North Haven office completed an unattainable number of stops the last few days of the month. (Exs. DEP-4518, 4519, pp. 50-52.)

9. The North Haven operators' pay was reduced if they had missed more than five stops per month. Near the end of the month, sheets were hanging from the North Haven office's wall showing the number of untreated customers and operators. Operators initialed the sheets to indicate they had or would perform the work. If the operators missed the stops, they indicated they had treated the stop to keep their allowances down. Poirer kept the branch's allowances down when he reported them to the regional office, because he did not want his bonuses affected. Watts filled out records

of pesticide applications to maintain his pay level. (Test. K. Watts, tr. volume 24, p. 2508, tr. volume 31, pp. 3347-48; ex. DEP-4513, p. 2.)

10. Because it was common practice for operators to create service tickets of pesticide applications that they did not perform, there is no definitive way to determine which of the applicant's records are for work performed or not performed. (Test. K. Watts, tr. volume 24, pp. 2476-77, 2481, 2508.)

11. Supervisors knew that operators were creating records of pesticide applications so that allowances for the operator and the North Haven office were not exceeded. The applicant often billed customers for exterior services that were not performed. (Exs. DEP-4510, p. 3; 4519, p. 31.)

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the grounds for denial of the applicant's business registration under General Statutes §22a-66e(a)(1)(3) and (8) as set forth below.

1. Whenever Szalecki directed an operator to get post-application supervisory approval as an employee of the applicant, the applicant aided and abetted the operator to create false written instructions. These instructions were false because they did not exist with supervisory pre-application approval. General Statutes §22a-66e(a)(8).

2. Every time a supervisor approved post-applications in writing of the written instructions created by an operator, a false record of the application was created. This is because the supervisor who signed the written instruction was unaware at the time that the operators applied the pesticide, did not supervise the operation at the time of the pesticide application, or know who the operators were and what the write-in instructions represented. In addition, the applicant included supervisors names on records in which a supervisor had no pre-application pesticide role. General Statutes §22a-66e(a)(3).

3. The applicant violated General Statutes §22a-66g as a result of its business practice of returning incomplete service tickets after the fact for approval by supervisors. These supervisors were unaware of these applications. This practice constitutes the inclusion of false or misleading information in records, which are required to be maintained. General Statutes §22a-66e(a)(1) and (3).

4. Every time an applicant's North Haven employee created a record for an application that was not done, the applicant included false information in a record. Under four branch managers, the North Haven office created false pesticide records and because these false records are indistinguishable from actual treatments, the records the applicant maintained are false and contrary to the provisions of §22a-66g. General Statutes §22a-66e(a)(1) and (3).

(3)

**FINDINGS OF FACT**

1. Based upon the following, pesticide staff concluded that they needed to review the applicant's North Haven business records to determine if the applicant was complying with the pesticide laws.

- a. A complaint had been filed with pesticide staff that an employee of the applicant had punctured an oil line at the Mehler residence at 9 Maritone Lane, Deep River, releasing 800 gallons of fuel oil into the soil and bedrock beneath the house. (Ex. DEP-4508A(NH) Affidavit; test. D. Catuccio, tr. volume 14, pp. 1284, 1293, 1877-1883.)
- b. Since 1987, Debra Catuccio (Catuccio) has been employed by DEP. Her current duties as an Environmental Analyst III include reviewing field staff reports for violations of pesticide law. (Test. D. Catuccio, tr. volume 14, pp. 1266-67.)
- c. Catuccio learned from communications with the applicant that it was experiencing an unusually high number of supervisory turnovers from summer 1996 through mid-April, 1998. She thought this was unusual based on her many years of experience dealing with the pesticide industry. (Ex. DEP-408A(NH), Aff. ¶12; test. D. Catuccio, tr. volume 17, pp. 1744-45.)
- d. After Gydus abruptly left the employ of the applicant, he notified Catuccio in writing that he was concerned that service tickets with written

instructions bearing his name still existed in the North Haven Office. (Ex. DEP-4522-NH, p. 35; test. D. Catuccio, tr. volume 15, pp. 1407-09.)

2. On April 3, 1998, pesticide staff Catuccio and James Lavery (Lavery) went to the North Haven office of the applicant at 9:30 a.m. Catuccio asked Charles Wormer (Wormer) for access to the permanent pesticide application records for late February and March of 1998 to find out who replaced Gydus as a supervisor. (Ex. DEP-4508NH(A), Aff. ¶14; test. Catuccio, tr. volume 15, p. 1409; tr. volume 17, pp. 1750-51.)

3. Wormer told Catuccio and Lavery that the records were in a vehicle in the field with Gydus' successor Bill Edwards. Wormer asked Catuccio and Lavery to call later in the day to set up an appointment to meet with Edwards. (Ex. DEP-4508-NH(A), Aff. ¶15; test. D. Catuccio, tr. volume 15, p. 1410.)

4. At approximately 2:00 p.m. pesticide staff returned to the office and was told that they needed to make an appointment to conduct a record inspection. (Ex. DEP-4508A(NH), Aff. ¶16; test. Catuccio, tr. volume 15, p. 1411.)

5. When Catuccio called the applicant's regional manager Brian Alexson (Alexson) from the applicant's office, Alexson reiterated his position that DEP should make an appointment to conduct a record inspection. Catuccio advised him of the DEP's statutory authority to inspect records at reasonable times, which the DEP interprets as normal business hours. Alexson restated his position. Catuccio and Lavery left without reviewing any records. (Ex. DEP-4508A(NH), Aff. ¶16; test. D. Catuccio, tr. volume 15, p. 1413.)

6. On April 13, 1999, Curry told pesticide staff that the applicant's North Haven office had had a serious theft of the records that Catuccio had requested. Curry indicated she had been at the North Haven office on Friday, April 10, 1998, to prepare the records that Catuccio wanted. Curry said this folder had been left on Wormer's desk that Friday but that sometime between then and the meeting on Monday, the records for pest treatments (other than records of nine termite retreatments already shown to staff) had been stolen from the folder she was holding. Curry stated that they had called the

police to report the theft. (Ex. DEP-4508NH(A), Aff. ¶18; test. D. Catuccio, tr. volume 15, pp. 1412-13, 1415-16, tr. volume 19, pp. 1883-84.)

7. Catuccio asked that she and Lavery be allowed to review the applicant's records from January, 1998 up to the time of the missing record. Curry refused this request until the police had conducted an investigation and until the Waterbury branch manager arrived in North Haven. (Ex. DEP-4308-NH(A), Aff. ¶18; test. D. Catuccio, tr. volume 158, pp. 1416-1417.)

8. Catuccio called the North Haven Police Department to inquire about the theft and was told by the dispatcher that no complaint was received by either the complaint desk or the detective bureau. (Ex. DEP-4508NH(A), Aff. ¶18; test. D. Catuccio, tr. volume 15, pp. 1417-18.)

9. After Catuccio had initially called the North Haven police, the applicant contacted them and they arrived at the office. Pesticide staff then issued a new notice of inspection in writing for review of records and to obtain a statement regarding the certified supervisor for the North Haven branch office. (Ex. DEP-4508-NH (A), Aff. ¶19; test. D. Catuccio, tr. volume 15, pp. 1419-22.)

10. Curry left the room and returned with a calendar in her hand to schedule an appointment for a later date for record inspection. Catuccio advised her that she wanted to review the record that day. Curry refused, giving staff several excuses and Catuccio advised Curry that it was a violation of General Statutes §22a-59 to deny staff access to records. (Ex. DEP-4508-NH(A), Aff. ¶19; test. D. Catuccio, tr. volume 15, pp. 1422-23; tr. volume 19, pp. 1855-58.)

11. Alexson issued a directive for its Connecticut offices that if pesticide staff came to any branch for an inspection, they were to be told to schedule an appointment and that as a matter of policy, Alexson must be present. (Ex. DEP-4516, pp. 1, 3, 47-48; test. B. Alexson, tr. volume 42, p. 4854).

12. On April 10, 1998, Curry gathered records in preparation for the meeting with pesticide staff on April 13, 1998, but reported them as stolen. These records had previously been reviewed in the applicant's North Haven office by its auditor, Szalecki. (Ex.-2622, 2624, 2625, 2626; test. D. Szalecki, tr. volume 15, pp. 1476-79.)

13. Because of these events, upon Catuccio's return to Hartford, pesticide staff prepared the documentation to obtain an administrative search warrant. (Test. D. Catuccio, tr. volume 15, pp. 1423-24.)

14. During the execution of the search warrant in the North Haven office, Catuccio found the records that Curry said were "stolen" on top of two filing cabinets in the bookkeeper's office. The applicant never informed Catuccio that these "stolen" records had been found. Catuccio therefore surmised that the records had never been stolen because they were in the North Haven office at the time of the execution of the search warrant. (Test. D. Catuccio date, tr. volume 15, pp. 1495-98.)

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant's business registrations under General Statutes §22a-66e(a)(1) and (9) as set forth below.

1. The DEP is authorized to inspect pesticide business application records to ensure regulatory compliance and to protect public health, safety and the environment from the dangers arising from exposure to pesticides misapplication. At the applicant's North Haven office, pesticide staff was prohibited from carrying out its express statutory authority to enter and inspect records "at reasonable times". This is a violation of General Statutes §§22a-59 and 22a-66g(c). The applicant also violated § 22a-66g(c) by its March, 1998 directive requiring the DEP to make an appointment to inspect its records. General Statutes §22a-66e(a)(1).

2. The applicant's employees gave false and/or misleading statements to the pesticide staff during an inspection. Specifically, Curry stated that business records were stolen from the applicant's North Haven office. These records were reviewed the next day by the applicant's auditor Szalecki, and found three days later in its office by pesticide staff while executing the search warrant. General Statutes §22a-66e(a)(9).

(4)

**FINDINGS OF FACT**

1. In October, 1997, the DEP Bureau of Water Management notified the pesticide staff of a potential groundwater problem resulting from the applicant's termite treatment at the Mehler home at 9 Maritone Lane, Deep River. Shortly thereafter, pesticide staff was notified that the DEP Oil and Chemical Spill Response Division was following up on an incident where oil was being released into the soil surface areas of properties adjacent to 9 Maritone Lane. (Test. D. Catuccio, tr. volume 14, pp. 1268-69.)

2. Pesticide staff conducted a site visit and obtained the applicant's pesticide records of this treatment. Lavery interviewed Fred Markovitz (Markovitz), a supervisor, about this incident. In the interview, Markovitz described the specific procedures that the applicant's employees follow in preparing a termite treatment. These procedures involve a salesman preparing a graph indicating the location of termite activity and damage. The salesman is responsible for identifying hazards such as wells, underground utilities, and other items that could interfere with a safe termite application. On the graph, he identifies the areas the applicant would treat, the code defining the treatment method, and the location of termite activity or damage. (Ex. DEP-4503-NH, pp. 3, 39-43; test D. Catuccio, tr. volume 14, pp. 1269-71.)

3. In November, 1997, Lavery discussed the Mehler property account with the applicant's salesman Donald Balint (Balint). Balint had inspected the property on July 12, 1996, and prepared a graph of the property indicating termite activity and treatment codes. On this graph, he checked the box indicating the house had a well but did not identify its location. He turned his graph into the office, but was unsure whether it had been reviewed. (Ex. DEP-4503-NH, pp. 3, 32, 38, 46-47.)

4. The applicant treated the Mehler property on two separate occasions. Each application had separate written instructions. However, both sets of instructions incorporated Balint's graph. (Ex. DEP-4503-NH, pp. 16, 32-36.)

5. In July of 1996, the applicant's operator punctured an oil line at the Mehler residence causing the release of approximately 800 gallons of home heating oil to the subsurface soils during a termite application. The spill resulted in the release of total petroleum hydrocarbons (THP) into the Mehler's drinking water supply, which still exist.

The THP in the soil is a threat to the residents' groundwater in the vicinity of 9 Maritone Lane. There is no evidence in the record to indicate that the applicant received a state permit to discharge THP to the groundwater. (Test. A. Green, tr. volume 49, pp. 5631-5634, 5641; Ex. 8203C, p. 2., 8204C, Marin Report, p. 2, 8206C, 8207C.)

6. On July 24, 1996, Balint returned to the Mehler property accompanied by Victor Santos (Santos), an operator for the applicant. During this visit, Balint found a well under the front stoop. The pump was visible from the cellar. This "well pump" was actually the water storage tank for the well. (Test. D. Balint, tr. volume 19, pp. 1877-79; ex. DEP-4503-NH, pp. 13-15, 47-48.)

7. After finding the water storage tank, Balint called the applicant's North Haven office about the situation. He was told by an unknown person "it would be no problem" to treat the Mehler property, but that no treatment should be made to the outside stoop. The operator could trench and treat up to the stoop, but not the stoop itself. (Ex. DEP-4503-NH, pp. 48-49; test. D. Balint, tr. volume 9, p. 754.)

8. Neither Balint nor any of the supervisors changed the graph treatment codes to reflect the presence of the well. Also, no supervisor noted the lack of the location of any subslab elements and the precautions that should be applied to such. (Ex. DEP-4503-NH, pp. 32-36, 49.)

9. The Mehler well is located in a crawl space, which is approximately 5 x 8 feet, enclosed on three sides by a cement block foundation, and accessed only through the basement.<sup>8</sup> (Ex. DEP-4503-NH, p. 4, photos pp. 88-92; DEP 4560-NH(A), crawl space photo.)

10. The applicant treated the Mehler's property with the pesticide Dagnet FT, a temiticide, EPA registration No. 279-3062 ("Dagnet FT"). Dagnet FT's label prohibits the use of this product on soil beneath a structure that contains a cistern or well. The label's directions also specifically identify a crawl space as being inside a structure. (Ex. DEP-4503-NH, pp. 18, 33-35.)

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<sup>8</sup> On November 15, 1999, accompanied by the parties, I conducted a site visit at the Mehler residence. When the hearing reconvened in Hartford, I summarized my observations for the record. (Tr. 11/15/99, vol. 18, p. 1777.)



11. The applicant treated the Mehler house by drilling holes in the basement floor and injecting Dragnet FT into the soil under the structure. On the applicant's graph and operations code sheet, this method of treatment is Treatment Code No. "122". (Ex. DEP-4503-NH, pp. 3, 36.)

12. Andrew Triolo (Triolo) of the Environmental Protection Agency (EPA) Region 1, is the state contact person on matters concerning pesticide labeling and their interpretation. Triolo has more than 20 years of experience within the EPA pesticide branch as an environmental scientist and, as such, he reviewed pictures of the crawl space in the context of Dragnet FT's label. (Test. M. Dezzani, tr. volume 32, p. 3497-5009; test. B. Robinson, tr. volume 19, p. 1897; ex. DEP-4503-NH, pp. 88-90.)

13. Contrary to the applicant's position that because the crawl space was not in the Mehler house, there was no violation of federal labeling law, Triolo concluded that the area in the photographs was a crawl space and that the applicant had violated the Dragnet FT's label instructions by applying a pesticide inconsistent with the label. (Test. M. Dezzani, tr. volume 32, p. 3499.)

14. At my request, the state building inspector's office furnished me with the *BOCA National Building Code Means Illustrated Construction Dictionary* defines a crawl space as: "(1) In a building or portion of a building without a basement, the accessible space between the surface of the ground and the bottom of the first floor joists, with less than normal headroom. (2) Any interior space of limited height designed to permit access to components such as ductwork, wiring and pipe fittings." (Ex. HO-1.)

15. DEP Pesticide Management Division analyst Bradford Robinson and Catuccio both defined a "crawl space" as an area where one cannot stand erect, underneath, or contiguous to a house, which is frequently used as access to utilities. (Test. D. Catuccio, tr. volume 14, p. 1266, tr. volume 18, p. 1808; test. B. Robinson, tr. volume 19, pp. 1888, 1893.)

16. The applicant trained Wallace and other employees to identify crawl spaces as three feet or less in height. Wallace identified the well storage tank on the Mehler property as a crawl space. (Test. D. Guy, tr. volume 20, pp. 1973-75; test. J. Wallace, tr. volume 31, pp. 3365-66.)

17. An investigation of the punctured oil line in the Mehler house by the Pesticide Management Division indicated that the applicant's operator Santos failed to identify the oil lines in the basement floor prior to application. (Test. D. Catuccio, tr. volume 14, p. 1289.)

18. The label of Dragnet FT clearly states that "caution must be taken to avoid puncturing and injection into these elements", which include radiant heat pipes, water and sewer lines. (Ex. DEP-4503-NH, p. 18; test. J. Balint, tr. volume 16, pp. 1566-67; test. B. Robinson, tr. volume 19, pp. 1888, 1895-96.)

19. Michael Caldwell (Caldwell) was the applicant's North Haven service manager at the time of the Mehler incident. Acting upon a complaint about the punctured oil line by the Mehlers, Caldwell and Porier visited the Mehler home to investigate. After inspecting the water tank pump and cinderblocks, Caldwell concluded the well was inside the foundation and that he would not have treated the Mehler home with Dragnet FT because of the proximity of the oil line to the termite damage and because the pump was in the cellar. (Ex. DEP-4503-NH, pp. 53-60.)

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant's business registration under General Statutes §22a-66e(a)(1), (4) and (8) as set forth below.

1. The incomplete written instructions given to operators regarding the Mehler property indicated the presence of a water supply well, but lacked information on the well's location or that of the subslab oil line. The applicant violated the provisions of the Regulations of Connecticut State Agencies §22a-66-5(g)(2) by giving its operators incomplete "written instructions" as to how to apply Dragnet FT at the Mehler property. General Statutes §22a-66e(a)(1).

2. The label instructions for Dragnet FT prohibit its application within a structure where a well is present, in this case in the crawl space. The label defines a crawl space as being within the structure. The applicant applied Dragnet FT in a manner inconsistent with its labeling when it applied Dragnet FT inside the Mehler house, which contained a well within its crawl space. The applicant's actions in the Mehler house are

also inconsistent with the Dragnet FT label's instructions because the operator failed to locate a subslab fuel line prior to application of the pesticide. This action resulted in the fuel line being punctured and the release of fuel oil. This is a clear violation of the label instructions. General Statutes §22a-66e(a)(4).

3. The applicant aided and abetted the operators at the Mehlers to evade the pesticide laws requiring written instructions by giving the operator verbal instructions as to how to proceed when said operator called the applicant's North Haven office for instructions on how to proceed after reporting the existence of a well. The applicant should have issued written instructions on how to proceed or had a supervisor present at the site. General Statutes §22a-66e(a)(8).

(5)

**FINDINGS OF FACT**

*General Statute §22a-66g(a)(1) provides that: "For each application of a pesticide made on behalf of the business, [the records of the business shall include] (A) the name and certification number of the commercial supervisor and the commercial operator, (B) the kind and amount of pesticide used and the amount of acreage treated, if applicable, (C) the date and place of application, (D) the pest treated for, and (E) the crop or site treated." (Emphasis added.)*

1. The applicant's employee Jerry Bukovsky (Bukovsky), a registered technical specialist, defined the word "site" to mean where on the structure the pesticide was applied. DEP pesticide staff Michael Dezzani agreed with this definition. (Test. J. Bukovsky, 9/13/99, tr. volume 6, pp. 353, 366; test. M. Dezzani, tr. volume 12, pp. 1047-48.)

2. On the North Haven grids<sup>9</sup>, the applicant did not contest a circle being placed around the "X" in the various areas of alleged violations, acknowledging that the grid indicates a requisite item is missing or wrong. There are 1088 instances where it cannot be ascertained from the service tickets what pesticide was applied and where it was applied. (Hereinafter referred to as the "what/where" type of pesticide/site where

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<sup>9</sup> Please refer to explanation of grids, supra.

applied scenario, i.e., what pesticide was applied where.) There are 969 pesticide and 119 termite service tickets from which it cannot be determined what was applied and where. (Exs. JP 4502-NH(A) and (B).)

3. The applicant did not contest that information regarding the identification of the site is missing from 61 of 150 pesticide application service tickets (Ex. DEP-4502-NH(A)) and 117 of 119 termite service tickets (Ex. DEP-4502-NH(B)).

4. The applicant maintained that it did not contest the missing information because that data is retrievable from their computers. This argument was undermined by the applicant's regional manager, Alexson, who had to recant his earlier testimony regarding the ability to retrieve this information. (Test. D. Szalecki, tr. volume 13, pp. 1197-98; test. B. Alexson, tr. volume 40, pp. 4564, 4608, 5462, tr. volume 41, pp. 4622-33.)

5. Staff only set aside a portion of the service tickets reviewed pursuant to the search warrant as evidence of violations. Most of the tickets with alleged violations were returned to the applicant as "there were simply too many [service tickets to retain for evidence]." However, staff felt it retained enough service tickets to allege various patterns or practices of violations. (Test. D. Catuccio, tr. volume 25, pp. 2556-60.)

6. It is critical for pesticide staff to know the exact "site" where a pesticide was applied. For example, staff receives inquiries from doctors needing to know what pesticide was applied at what "site" inside a structure, and whether the pesticide was applied near a kitchen sink or in a child's room. (Test. M. Dezzani 10/14/99, tr. volume 12, p. 1048.)

7. Nelson, one of the applicant's former operators, was never trained to circle the name of the pesticide used at the site on service tickets. Nelson only knew what was applied where from his own personal past practices. The only way someone could find the "what/where" for a particular application was to ask Nelson. There were at least 109 identified instances in the record where Nelson was the operator and where it is unknown what pesticide was applied where. (See, for example, test. V. Nelson, tr. volume 24 and 25, discussing exhibits at pages noted below.)

<u>DEP Exhibit No.</u>	<u>Transcript Volume</u>	<u>Page(s)</u>
1422	24	2547
1423	24	2548
1509	24	2554-55
1619	24	2556
1620	24	2556-57
1621	24	2557
1622	24	2557
1623	24	2558
1629	24	2560
1632	24	2560
1633	24	2560
1634	24	2561
1637	24	2562
1638	24	2562
1643	24	2563
1647	25	2570
1650	25	2573
1651	25	2573
1674	25	2573-74
1740	25	2575
1741	25	2575-76

8. Guy, one of the applicant's former operators, did not record where he applied pesticides in the applicant's records. If someone inquired as to what pesticide was applied where, they would have to ask Guy. (Test. D. Guy, tr. volume 20, pp. 1992-93.)

9. During the course of an inspection, the only way pesticide staff could determine what pesticides had been used where was to ask Guy. Guy could not always recall from memory what he used and instead, he relied on his common practices when applying pesticides. (Test. D. Guy, tr. volume 20, p. 1993.)

10. There are 80 exhibits identifying applications of pesticide where it cannot be ascertained from the record what was applied where. (See for example, Test. D. Guy, tr. volume 20, discussing DEP exhibits at noted page(s).)

<u>DEP Exhibit</u>	<u>Page(s)</u>
447	1990-91, 1993
448B	2001-02
569	2004-05
576	2008-09
784	2024
882	2031
896	2034
902	2035
904	2035

11. The following are examples of the above-noted problem: Gydu, after reviewing service ticket no. Ex. DEP-1785, could not determine which of two pesticides he used in a kitchen (Test. K. Gydu, tr. volume 23, pp. 2452-59); Wallace, a former operator, after reviewing one of his applications, could only tell “what/where” from his experience, not from the service ticket (Test. J. Wallace, tr. volume 31, p. 5383); and employee Robert Young, after examining Service Ticket No. Ex. DEP-73, could not determine where a pesticide was applied (Test. R. Young, tr. volume 18, p. 611). When employee Joseph Butler (Butler) was asked whether he could determine how much pesticide was applied in a kitchen based upon his review of Exhibit DEP-73, he stated that it was his interpretation of the regulations that it is not necessary to list the specific site. He also said he believed that that was the applicant’s position on the issue for the last eight to ten years. However, under cross-examination, Butler admitted after reviewing service ticket number Ex. DEP-757 that it was “impossible to tell” which pesticide was applied in what area. (Test. J. Butler, tr. volume 9, pp. 713-14, 727).

12. During the course of auditing service tickets, Szalecki, the applicant’s former audit clerk, noted instances where the applicant’s operators had not indicated at what site a pesticide was applied. (See for example, Exs. DEP-73, 110, 158, 164, 212, 220, 221, 248, 257, 261.) (Test. D. Szalecki, tr. volume 14, pp. 1298-1403; tr. volume 15, pp. 1429-1492.)

13. In 1998, the applicant and DEP entered into a consent order under which the applicant agreed to pay a \$135,000 penalty and change some of its business practices. To that end, it sought DEP review of proposed changes to its written instructions and

permanent records, which would be incorporated into the service tickets. (Test. M. Dezzani, tr. volume 12, pp. 1030-31; test. G. Piontek, tr. volume 12, p. 1001.)

14. Pesticide staff met with Henry Wagner and John Chapman, employees of the applicant. Staff was concerned about multiple target pests and the identification of which pesticide was used on which site. (Test. M. Dezzani, tr. volume 12, pp. 1030-32.)

15. The applicant wanted a generic form that would give it the flexibility to fit different situations while pesticide staff wanted to know which target pests were being treated for and what pesticide was applied to each site (“what/where”). This issue was resolved by the applicant agreeing to circle both the target pest and the pesticide used on its service tickets. (Test. G. Piontek, tr. volume 12, pp. 1003-04.)

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant’s business registration under General Statutes §22a-66e(a)(1) and (8) as set forth below.

1. The applicant violated the provisions of General Statutes §§22a-58(d) and 22a-66g(a)(1) on at least the 1269 service tickets, which are only representative of the total number of service tickets seized, in that it failed to keep and maintain complete records indicating the target pest and what pesticides were used at which sites. Because of these failures, the applicant’s operators and pesticide staff could not identify what pesticides were used at which sites. This type of information is vital to the DEP in carrying out its mission to protect the public’s health and safety. Furthermore, because of the “what/where scenario”, staff is not able to determine from the applicant’s records what pesticide was applied where. The applicant is therefore maintaining incomplete records of pesticide applications in violation of the requirements of §§22a-58(d) and 22a-66g(a)(1). General Statutes §22a-66e(a)(1).

2. The applicant aided and abetted its operators to evade the provisions of the record keeping statutes by failing to properly supervise them so that they would prepare accurate and complete records. General Statutes §22a-66e(a)(8).

(6)

**FINDINGS OF FACT**

1. Catuccio and Lavery reviewed the records seized pursuant to the search warrant looking for evidence of violations. Because there were so many service tickets, Catuccio and Lavery retained only those selected service tickets that they deemed illustrated certain pattern(s) of violations. The service tickets shown on the grid, Ex. DEP-4502-NH(A) and DEP-4502-NH(B), are the only ones pesticide staff retained. (Test. D. Catuccio, tr. volume 25, pp. 2656-2660.)

2. The pesticide record grid and the termite record grid reflect approximately 2030 instances where components of the applicant's records are either missing or incomplete. Specifically, there are 1589 and 441 alleged instances of record keeping violations for pesticides and termites, respectively. These figures include the alleged site violations on the grids, discussed in the previous grounds for denial. (Exs. DEP-4502-NH(A) and DEP-4502-NH(B).) (See service tickets referenced in grids.)

3. The evidence is uncontested that the record requirements are incomplete on 579 pesticide tickets referred to on grid Ex. DEP-4502-NH(A). The applicant indicated that although the record requirements may be lacking on these service tickets (e.g., date of pesticide application, incomplete address, supervisors or operator's name and/or number), this information is retrievable from accounts receivable information stored in the computer at the North Haven office. (Ex. DEP-4502-NH-(A); test. Alexson, tr. volume 40, pp. 4561-4608.)

4. An example of the inherent inaccuracy in the applicant relying upon extrinsic information to supplement the information on a service ticket can be seen when Alexson testified to this fact, but later could not rely or retrieve information from North Haven's accounts receivable to supplement the information missing on the service tickets. (Test. B. Alexson, tr. volume 41, pp. 4622-33.)

5. The applicant's assertion that the information from service tickets can be found in other places was not supported by its actions. First, the applicant asked for DEP approval in 1998 of a revised service ticket that would include the written instructions and permanent record on the service ticket. Second, Szalecki, the applicant's compliance auditor, never retrieved supplementary information from a computer when



reviewing incomplete service tickets for compliance with state law. (Test. D. Szalecki, tr. volume 13, pp. 1197-98.)

6. Guy, a former operator, could not identify with any certainty what the target pest was when the ticket contained more than one target pest and none were circled. In some instances, Guy relied on the season or information not on the service ticket. In other instances, Guy could not identify the target pest or other operators. (Test. D. Guy, tr. volume 20, pp. 1994-2010.)

7. There are 17 service tickets from the applicant's North Haven service records of applications performed by Guy where either the target pest is not identified because there is more than one target pest listed or the pest that was treated for is not circled. These exhibits are listed below.

(Test. D. Guy, tr. volume 20.)

<u>DEP Exhibit</u>	<u>Page(s)</u>	<u>DEP Exhibit</u>	<u>Page(s)</u>
448	1994	592	2013-14
448A	1999-2000	779	2023
571	2006	804	2028
578	2010	881	2031
579	2010	882	2031
580	2010-11	897	2034

(Test. D. Guy, tr. volume 21.)

<u>DEP Exhibit</u>	<u>Page(s)</u>
1153	2067
165	2070
1354	2093-94
1555	2110
1562	2114

8. Nelson, a former operator, created his own written instructions and then the record of the application by using blank preprinted tickets when, at the time, he did not have blank preprinted instructions with the correct target pest. There were times when the applicant issued Nelson service tickets listing a number of target pests on applications he performed, yet he knew that only one of the target pests was accurate.

(Test. V. Nelson, tr. volume 24, pp. 2560, 2564-65; test. V. Santos, tr. volume 25, pp. 2604-05, 2612-13.)

9. The exhibits referenced below are the applicant's North Haven office records of Nelson's application of pesticides where there is more than one target pest listed but the target pest is not circled. This type of record keeping makes it impossible for pesticide staff to identify the actual target pest treated.

(Test. V. Nelson, tr. volume 24.)

<u>DEP Exhibit</u>	<u>Page(s)</u>
1509	2553
1632	2560

(Test. V. Nelson, tr. volume 25.)

<u>DEP Exhibit</u>	<u>Page(s)</u>
1934	2602-03
1935	2603-04
1936	2604-05
2045	2612-13
2170	2618
2225	2624-25
2227	2625-26
2235	2629

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of the credible evidence to support the denial of the applicant's business registration under General Statutes §22a-66e(a)(1) and (8) as set forth below.

1. The applicant failed to retain all statutorily required data concerning pesticide applications in one record. Retrieval of a portion of the statutorily required data from accounts receivable was not reliable and easily accessible for review by pesticide staff. This does not satisfy the statutory requirements that all required data be maintained by the applicant in one record, in violation of §22a-66g(c)(1)(A) through (E). General Statutes §22a-66e(a)(1).

2. The applicant violated the record-keeping provisions of General Statutes §§22a-58(d) and 22a-66g(a)(1) in that it failed to maintain a complete record of statutorily required components on the above-identified 2030 pesticide applications. Since the 2030 pesticide applications are only a portion of the service tickets seized under the search warrant that contained record violations, the actual quantity of said violations is unknown. General Statutes §22a-66e(a)(1).

3. The applicant failed to provide proper supervisory management of pesticide operators and in doing so, it aided and abetted its operators to evade the statutory record-keeping requirements of the State of Connecticut. General Statutes §22a-66e(a)(8).

(7)

**SITE VISIT**

*On June 13, 2001, I conducted the 54<sup>th</sup> day of hearing at the North Haven office in conjunction with a site visit. The applicant requested I make this visit to observe its record-keeping process and how it had changed since 1998.<sup>10</sup> A court reporter was present and prepared a record of this proceeding. The following facts are found as a result of this site visit/hearing.*

**FINDINGS OF FACT**

1. Amy Dancy (Dancy) is employed by the applicant as a compliance officer in its North Haven office. Her duties include reviewing service tickets for compliance with state law. When she reviews tickets and finds errors, they are usually corrected within 24 hours. (Test. A. Dancy, tr. volume 54, pp. 6012-6014.)

2. The applicant uses a service ticket that it considers to function as both the written instructions and permanent record. (Ex. APP-76; test. M. Dezzani, tr. volume 12, pp. 1031, 1033; test. A. Dancy, tr. volume 54, p. 5994.)

3. Dancy takes blank preprinted tickets for telecenter sales from a locked cabinet or drawer. On an average day, Dancy finds between five to ten service tickets that needed correction. This could average, on a worse case basis, between 250 to 500

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<sup>10</sup> (Tr. volume 54, p. 5989.)

errors annually. Typical errors on service tickets included: failure to identify where the pesticide was applied; amount of pesticide; and date of application missing or wrong. These errors continue on a daily basis. (Test. A. Dancy, tr. volume 54, pp. 5995, 6014, 6017, 6019.)

4. Operators realize that their errors are violations of state statutes and regulations. The applicant requires repeat offenders to attend compliance meetings. (Test. A. Dancy, tr. volume 54, p. 6016.)

5. An example of the type of confusion that arises from an inconsistent service ticket is the kind that was pulled from the files during this site visit/hearing and marked as Exhibit DEP B-C. In that ticket, the operator failed to fill in the amount of pesticide used. The ticket also has noted, in the supervisor's comments, the words "must treat for fleas" with four or five exclamation points, yet fleas are not circled as a target pest. When questioned on this, Dancy could not say with certainty whether or not the property was treated for fleas. (Test. A. Dancy, tr. volume 54, pp. 6023-6026; Ex. DEP-B-C.)

6. This same type of problem was evident upon reviewing another service ticket marked as "Fobery Ex. DEP C-C". On this undated ticket, one could only speculate whether bait or wood was used or removed for the Sentricon monitoring.<sup>11</sup> (Test. A. Dancy, tr. volume 54, pp. 6026-6027.)

7. Other problems were noted on service tickets newly pulled during the site visit/hearing. The operators' name and number were missing on service tickets marked Exhibits DEP E-C, and DEP F-C. On the service ticket marked as Ex. DEP H-C, the operator failed to identify when and where he applied the pesticide. The DEP pesticide staff considered the operator's handwriting of "565 plus pesticides" to be a major violation of the record-keeping statute. (Test. A. Dancy, tr. volume 54, pp. 6028-6033; test. D. Catuccio, tr. volume 54, p. 6057; exs. DEP E-C, DEP F-C, H-C.)

8. Dancy described correctable error as follows:

In my eyes, going down through the ticket, a correctable error would be: The time in and out; the target pest they treated for, for that specific day; the chemicals they used within those special areas in the home; the site being

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<sup>11</sup> Placement of wood bait to determine the presence of termites is not a pesticide treatment.

treated, checked off inspected and treated; the amount of materials they used within the home; their operator name and number at the bottom of the ticket; and the date of application.

She considered these types of errors violations of state law. (Test. A. Dancy, tr. volume 54, pp. 6035-36.)

9. Dancy noted that on a service ticket where the amount of pesticide used is left blank and the operator cannot remember the amount used, the service ticket is left blank. This is a noncorrectable error. It would be a “violation for the company” to fill in an unsubstantiated amount of pesticide used. (Test. A. Dancy, tr. volume 54, p. 6039.)

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant’s business registration under General Statutes §22a-66e(a)(1), (3), (8) and (10) as set forth below.

1. The applicant employs compliance officers to prevent, detect and correct “errors” on service tickets (if the errors are correctable). Despite the applicant using this term, each and every “error” in which the written instructions or record keeping requirements of the statute are not met by the applicant is a “violation” of General Statutes §§22a-58(d) and 22a-66g(d)(1)(A) through (E) and relevant regulations. General Statutes §22a-66e(a)(1).

2. While the applicant has made strides in improving its compliance with state law, the same types of violations on service tickets with which this record is replete still exist. These include failure of operators to: put their name and number; to list quantity of pesticide use and where applied; and to circle target pests. The applicant, therefore, is continuing to violate the written record requirement of §§22a-58(d) and 66g(a)(1)(A) to (E) and the relevant regulations. General Statutes §22a-66e(a)(1).

3. There is evidence in this record that at times the applicant cannot fill in the requisite statutory requirement on its service ticket for items such as the amount of pesticide used because it is unknown. In instances such as this, the applicant is in violation of the permanent record-keeping requirement of the law because its permit

records are incomplete in violation of General Statutes §§22a-58(d) and 66g(a)(1)(A) to (E). General Statutes §22a-66e(a)(1).

4. Every time Dancy found a “correctable error” as she defined it and the operator corrected the error of an incomplete service ticket and permanent record he was acting outside the scope of his certification as an operator because only a supervisor can determine the target pest, type of pesticide to be used, etc. This is a violation of General Statutes §22a-54. General Statutes §22a-66e(a)(1) and (10).

5. Every time the applicant’s supervisors approve correctable errors, “write-ins”, a false record is created because the supervisor who signed the record after the fact did not know or supervise the treatment it affected a violation, and in so doing, the applicant aided and abetted its operators to evade the law. General Statutes §22a-66e(a)(3) and (8).

**(B)**

**Trumbull Office: Business Registration No. B-1140**

In letters dated August 26, 1998, August 5, 1999, October 13, 2000 and July 23, 2001, the pesticide staff notified the applicant that it was denying its request to renew Business Registration No. B-1140 for its Trumbull office<sup>12</sup> for the years 1998-1999 to 2001-2002 pursuant to General Statutes §22a-66d. The grounds for denial contained in these letters are:

- General Statutes §22a-66e(a)(1): Failure to provide pesticide label information to persons requesting pesticide applications pursuant to §22a-66a(a)(2).
- General Statutes §22a-66e(a)(2): Failure to notify the commissioner of changes in the information contained in the business registration as required by §22a-66c.
- General Statutes §22a-66e(a)(3): Inclusion of false or misleading information in records required to be maintained pursuant to §22a-66g.
- General Statutes §22a-66e(a)(4): Use of a pesticide in a manner inconsistent with the registered labeling on the use of such pesticides.

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<sup>12</sup> In 2000, the Trumbull office moved to Shelton.

- General Statutes §22a-66e(a)(8): Aiding or abetting certified persons to evade the provisions of the Connecticut Pesticide Control Act and regulations adopted thereunder.
- General Statutes §22a-66e(a)(9): Making false or misleading statements during an investigation concerning violations of the Connecticut Pesticide Control Act and regulations adopted thereunder.
- General Statutes §22a-66e(a)(10): The performance of work in a category for which the applicator is not certified.

In the letter dated October 13, 2000, staff notified the applicant of the following additional grounds for denial for the years 2000-2001 and subsequent years.

- General Statutes §22a-66e(a)(1): Violation of §22a-66g(a)(1) (i.e., failure to maintain records in accordance with statutory provisions) as set out in Exhibits “Substituted DEP 4536-T”.

(Exs. DEP-B, 4608; Ex. APP-T-007; Joint Exs. 1 and 2.)

The facts concerning each of the above grounds for denial will be addressed below in the context of the application to renew the applicant’s Trumbull office business registration.

***(1)***

**FINDINGS OF FACT**

Anthony Coviello (Coviello), a former employee of the applicant, gave important testimony at the hearing concerning specific incidents at the applicant’s Trumbull office. I find Coviello’s testimony regarding these incidents both credible and reliable, and the facts found herein are supported in part based on his testimony.

1. Coviello was employed by the applicant from 1995 through 1998, first as an operator and then as a supervisor. From February, 1998 through July 1998, Coviello held the only supervisory license in the Trumbull office. He was certified in the category of general pest and rodent control. (Test. A. Coviello, tr. volume 33, pp. 3652-53.)

2. Coviello did not review the applicant’s computer-generated monthly written instructions for preexisting accounts in the system. However, he initialed all written instructions that he reviewed. (Test. A. Coviello, tr. volume 33, p. 3657.)

3. On either August 8, 9 or 10, 1998, Coviello was called into the office to meet with his branch manager Nob Savard (Savard) and another employee, Monica Curry. Coviello was told that DEP would be doing an inspection and that there were problems with the paperwork (tickets). (Test. A. Coviello, tr. volume 33, pp. 3665-67, 3671-72.)

4. At this meeting, Coviello was given records to correct from February through April, 1998. Curry showed Coviello the required corrections to the tickets. The corrections varied and included correcting the target pest, the type of pesticide used and the supervisor's name. Coviello was told to go into a room with the stack of tickets where he then altered and signed the permanent records to coincide with the specific instructions on the service contracts in front of him. (Test. A. Coviello, tr. volume 33, pp. 3667-3670, 3674-75, 3725.)

5. Coviello felt pressure from Savard to alter these records. Savard told him that his wife was pregnant and he was concerned that DEP would shut down the Trumbull office and both of them needed a job to support their families. (Test. A. Coviello, tr. volume 33, pp. 3671-72.)

6. On April 9, 1998, Curry called the regional manager, Bessler, to report that Coviello was reviewing the tickets and starting to change them. Bessler knew it was against the applicant's policy to alter records, however, he considered "correcting" a record acceptable, as long as it was done by the person who performed the treatment. Bessler did, however, consider Coviello's altering of the applicant's records a violation of an important company policy. (Test. M. Bessler, tr. volume 40, pp. 4506, 4539.)

7. There is no evidence in the record to indicate the applicant took any disciplinary or corrective actions against Coviello for his altering of records in violation of an important company policy. Because of what he had been asked to do, Coviello left the applicant's employ in August, 1998. Coviello testified at these proceedings pursuant to a DEP-issued subpoena. (Test. A. Coviello, tr. volume 33, pp. 3651, 3676; tr. volume 34, pp. 3754-55.)



### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant's business registration under General Statutes §22a-66e(a)(1), (3) and (8) as set forth below.

1. From February 1 through early April, 1998, the pesticide application records of the applicant's Trumbull office contained false or incomplete statutory or regulatory requirements of record-keeping. General Statutes §22a-66e(a)(1) and (3).

2. The applicant's employee, Coviello, falsified said records at the behest of the applicant. By its actions, the applicant aided and abetted Coviello to falsify said records. General Statutes §22a-66e(a)(8).

(2)

### **FINDINGS OF FACT**

1. Pesticide staff conducted an extensive investigation in response to a February 19, 1998 complaint by Francis Walker about the applicant's termite treatment at her Greenwich home. The results of this investigation are contained in a 225-page report, which includes written interviews with the applicant's staff and others, graphs, pictures, a video and the applicant's paperwork. (Ex. DEP-4540-T<sup>13</sup>, pp. 1-16.)

2. The Walker house was built into a large hillside with ledge outcropping that makes up a portion of the house's foundation. Both the kitchen and living room have a wooden floor over a concrete slab. (Ex. DEP-4540-T, pp. 64-65, 70-72; test. D. Catuccio, tr. volume 32, pp. 3517-3520.)

3. The applicant's salesman, Jon Tracy (Tracy), inspected the Walker residence on March 10, 1997 and found termite activity in the kitchen. He prepared a written graph, which was incorporated into the written instructions. Drawing graphs of the location of termites and recommending treatment was part of his job as a salesman. Upon Tracy's review of the written instructions for the Walker residence after treatment, he noted that the only writing on the graph that was not his was the operator's notation and Walker's signature. (Ex. DEP-4540-T, pp. 152-154, 1457.)

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<sup>13</sup> The initial "T" refers to exhibits relative to the applicant's Trumbull office.

4. Tracy's written instructions for the treatment of the exterior of the Walker residence included trenching, drilling and applying of pesticides along the entire exterior perimeter, including the front stoop. (Ex. DEP-4540-T, pp. 140-142, 155.)

5. The applicant's operator Calvin Talbert (Talbert) indicated on the applicant's permanent records that he treated the Walker residence as graphed by Tracy and used 100 gallons of Dragnet FT. But in fact, Talbert did not treat the interior or exterior of the residence in accordance with the instructions. Because of the wood floor above the slab, Talbert was not able to treat the interior except for one area near the laundry room. It is not an acceptable practice to treat a wood floor above a slab. A wood floor prevents a thorough inspection of the interior and sub-interior and treating termites by drilling through the wood floor into a slab prevents the holes in the slab from being sealed and monitored for pesticide leakage. (Test. D. Catuccio, tr. volume 32, p. 3514; ex. DEP-4540-T, pp. 91-101, 141.)

6. Talbert is uncertain whether the 100-gallon figure entered on the applicant's records as the amount of pesticide used at the Walkers is the true amount used or whether the figure simply reflects the estimated amount used. Talbert's best estimate is that he used 30 gallons of pesticide instead of the 100 gallons recorded because the area was very difficult to treat as graphed. (Ex. DEP-4540-T, p. 92.)

7. Talbert and the other operators understood that the applicant wanted the estimates of the amount of pesticides used and needed to be very similar "so that no one, including the customer, questioned the work done". (Ex. DEP-4540-T, p. 92.)

8. Because of the presence of ledge, Talbert was unable to treat the Walker's residence exterior in accordance with the written instructions. Instead, Talbert treated the exterior by tracking pesticide into cracks he found. (Ex. DEP-4540, pp. 94-95.)

9. Talbert indicated that at the time of his application at the Walker residence, his written instructions matched the homeowner's copy, but not the applicant's record file copy. Talbert would not have applied pesticides to the Walker interior if he had had written instructions to open wood floor prior to treatment. None of his written instructions indicated that the wood floor should be opened prior to treatment. (Ex. DEP-4540-T, pp. 95, 96, 140.)

10. The applicant's permanent record file copy contain the following handwritten instructions concerning treating the Walker residence: "Floor needs to be opened to treat slab and back living room", and "floor needs to be opened to treat slab under." These handwritten instructions were not on the written instructions Talbert took with him for the Walker pesticide application. (Ex. DEP-4540-T, pp. 45-46.)

11. Fred Markovich's (Markovich) name and supervisory number are on the applicant's written instructions and record of a March, 1997 application at the Walker residence. Markovich was never at the Walker's and had no knowledge of the job. Kevin Koris (Koris), another of the applicant's employees, wrote in some of the written instructions. Markovich is not aware who wrote his name, supervisory number and initials on the applicant's records. Markovich knows that none of it was done by him nor did he authorize anyone to do it on his behalf. Markovich would never have approved treatment of the Walker residence had he seen the paperwork for this job because the applicant's policy is not to perform partial termite treatments. (Ex. DEP-4540-T, pp. 147, 148, 150.)

12. On February 19, 1998 and on several subsequent occasions, pesticide staff inspected the applicant's treatment at the Walker residence and observed sealed drill holes in the kitchen's wooden flooring. When the flooring was lifted, staff observed unsealed drill holes in the concrete slab. (Ex. DEP-4540-T, pp. 3-5m 24, 76-80; photos.)

13. In February, 1998, despite a termite retreatment between mid-March and mid-June, 1997, the wood floor under the Walker's refrigerator was destroyed by termites. Upon looking under the floor, the Walkers observed termite damage. After an inspection of the Walker residence, including the inside and outside drill holes, pesticide staff concluded that the applicant did not treat the residence as graphed in the applicant's record. (Test. D. Catuccio, tr. volume 32, pp. 3519-23; ex. DEP-4540-T, pp. 35-37.)

14. The applicant failed to supply Mrs. Walker with any label for the pesticide used on her property. (Ex. DEP-4540-T, p. 35.)

15. Jeff Geaman (Geaman) was employed by the applicant at its Trumbull office from August, 1989 to March, 1998. He held an operator's license and a supervisor's license in the category of termite and wood-destroying insects. Geaman rarely filled out written instructions. Most of his work involved completing HUD forms

regarding wood-destroying insects. Geaman was unaware of and had no involvement with the Walker treatment. He does not know who prepared the written instructions for the Walker account. (Ex. DEP-4540-T, p. 183; test. J. Geaman, tr. volume 33, pp. 3581-82, 3584, 3586, 3590.)

16. The February 14, 1998 written instructions for treatment at the Walker residence indicated that Geaman was the supervisor of record. Geaman received the instructions and signed off on them after the treatment had been done. He had no involvement in creating the written instructions. Although Geaman never spoke to any operators about the Walker account, he would have signed the written instructions prior to the February 14, 1998 application if he had seen them. (Ex. DEP-4540-T, p. 120; test. J. Geaman, tr. volume 33, p. 3388, 3591.)

17. Prior to meeting with pesticide staff concerning this investigation, Geaman met with three of the applicant's employees: Butler, Savard, and Curry. Butler told Geaman that he (Geaman), had written the paperwork and instructions and that he did not need to have initial it. Geaman had in fact, never seen the Walker account paperwork until the morning of the DEP meeting with the applicant. (Test. J. Geaman, tr. volume 33, pp. 3592-93.)

18. Geaman told Butler that he had never seen the Walker instructions before and did not write them. Butler told Geaman that Geaman had written the Walker instructions. Geaman interpreted this statement to mean that the applicant was on his side and that indirectly was encouraging him to lie about the Walker written instructions. (Test. J. Geaman, tr. volume 33, pp. 3617-19, 3594, 3648.)

19. Geaman felt coerced by the applicant into saying he had provided the Walkers with written instructions and was nervous about the DEP meeting. He felt he was in a no-win situation; either he would lie to pesticide staff or he would let down his employer. (Test. J. Geaman, tr. volume 33, pp. 3594-95, 3597, 3648-49.)

20. On March 23, 1998, Geaman met with pesticide staff and gave them a signed written statement, even though he knew it was inaccurate because it indicated that he reviewed the original Walker treatment and prepared the written instructions for the February 14, 1998 treatment. (Ex. DEP-4540-T, pp. 175-183; test. J. Geaman, tr. volume 33, pp. 3587, 3594.)

21. Geaman resigned from the applicant on March 31, 1998, in a letter to the branch manager. He stated in that letter: “[u]nfortunately I feel that I was put in an unconscionable situation which went against my business ethics, personal beliefs, and caused me great embarrassment. This, in effect, has caused me to lose trust in the company.” (Ex. DEP-4512, p. 28; test. J. Geaman, tr. volume 33, p. 3596.)

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant’s business registration under General Statutes §22a-66e(a)(1), (3), (8), (9) and (10) as set forth below.

1. The applicant maintained a false record of the Walker property’s termite treatment in that its record indicated that on the initial treatment of the residence, the property was treated as graphed. The record information referring to sites treated, amounts of pesticide used and the supervisor, were also false. Based upon its creation and maintenance of these false records, the applicant has violated the record keeping provisions of General Statutes §§22a-58(d) and 22a-66g(a)(1). General Statutes §22a-66e(a)(1) and (3).

2. The applicant, by its failure to have a supervisor provide Talbert with written instructions, aided and abetted Talbert to evade the pesticide laws. General Statutes §22a-66e(a)(8).

3. The applicant, by its failure to provide the proper written instructions to its operator Talbert with regard to the ledge surrounding the Walker residence, and by its failure to provide the appropriate treatment codes for said ledge on its graph, allowed an operator to perform work for which he was not certified. General Statutes §22a-66e(a)(10).

4. During the course of pesticide staff’s investigation at the Walker residence, the applicant made a false or misleading statement to staff by providing a copy of the written instructions/record of the initial treatment with the handwritten entries that the customer must open up the wooden floor. These handwritten instructions were neither on Talbert’s copy, which he used as a basis to treat the residence, nor on the Walker’s copy of the treatment. General Statutes §22a-66e(a)(3) and (9).

5. The applicant violated the provisions of General Statutes §22a-66a(a) by not giving Ms. Walker a copy of the pesticide label for pesticides used at her residence. General Statutes §22a-66e(a)(1).

6. During the investigation of the Walker residence, the applicant, through its employee Geaman, gave a false statement to pesticide staff on March 25, 1998, when Geaman signed a written statement knowing it to be untrue that he had created the written instructions for the February 14, 1998 retreatment of the Walker residence. General Statutes §22a-66e(a)(9).

7. The applicant aided and abetted Geaman in providing a false written statement during the course of pesticide staff's investigation. General Statutes §22a-66e(a)(8).

8. A supervisor did not prepare the written instructions for the February 14, 1998 Walker retreatment. The applicant, therefore, failed to provide valid written instructions to its operator, who then treated the residence without proper certification and in violation of the Regulations of Connecticut State Agencies §22a-66-5(g)(2). General Statutes §22a-66e(a)(1) and (10).

(4)

**FINDINGS OF FACT**

1. Szalecki prepared audit reports for the applicant's Trumbull office, as he had for its office in North Haven. Here again, he found operators were filling out blank preprinted service tickets without supervisory approval. (Test. D. Szalecki, tr. volume 13, pp. 1200-1207, 1214, 1304, 1351, 52; ex. DEP-4528-NH.)

2. Notations on the following Trumbull audit reports indicate write-ins made without supervisory approval.

<u>Page</u>	<u>Dates of Tickets Reviewed</u>
Term-T 006	12/1/97 - 12/9/97
Term-T 026	3/18/97 - 3/25/97
Term-T 033	1/10/97 - 1/21/97
Term-T 036	12/1/96 - 12/14/96
Term-T 037	11/20/96 - 11/30/96
Term-T 043	8/1/96 - 8/9/96
Term-T 045	7/1/96 - 7/11/96

(Ex. DEP-4545-T.)

3. Michael Bessler, the applicant's Eastern Division Technical Training Director, noted the following on Szalecki's audit reports: "[T]his needs to [be] fixed", drawing a line to Szalecki's note that "write-ins being made without supervisory approval". (Ex. DEP-4545-T, p. Term-T026; test. M. Bessler, tr. volume 1, p. 36, volume 2, p. 229, volume 3, pp. 278-85.)

4. Coviello, a supervisor for the applicant in its Trumbull office, was aware that operators commonly used blank preprinted service tickets and that they were most likely provided by the service manager or clerical staff. Coviello had no control over the use of these blank preprinted service tickets. (Test. A. Coviello, tr. volume 33, p. 3659.)

#### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant's business registration under General Statutes §22a-66e(a)(8) and (10) as set forth below.

1. The applicant permitted its Trumbull office operators to act as supervisors, a category for which they were not properly certified. In this instance, operators were allowed to perform supervisory duties that were outside of their authorization when they filled out blank preprinted service tickets, which served as the written instructions, or change previous written instructions. General Statutes §22a-66e(a)(1) and (10).

2. The applicant permitted its operators to use blank preprinted service tickets that they filled in with information as to what pesticides to use, where to use them, how to use them, etc., in effect creating their own written instructions. These types of decisions can only be made by a supervisor, not an operator. The applicant, in permitting its operator to act as supervisors, violated General Statutes §22a-54 and as such, aided and abetted its operators to evade the law. General Statutes §22a-66e(a)(8) and (10).

(5)

**FINDINGS OF FACT**

Several of the applicant's salespeople testified about irregularities concerning written instructions at the applicant's Trumbull office. Evidence of these irregularities are as follows.

1. On twelve service tickets, Coviello, a former supervisor, did not provide written instructions to the operators prior to the application of pesticides. (Exs. DEP-4459, 4461, 4462, 4464, 4465, 4466, 4468, 4469, 4471, 4472, 4486, and 4499.)

2. Joe Berucki (Berucki), one of the applicant's service managers who did not possess a supervisory certification for termites, created written instructions that operators were using for pesticide treatments. Berucki used Geaman's name and supervisory license number to prepare written instructions for termite treatment between the time Jim O'Neill, a supervisor, left the Trumbull office until Kevin Koris (Koris) received his supervisory license. After Koris left the Trumbull office, his name appeared as the supervisor of record on written instructions that he did not prepare. There is no evidence in the record to indicate that the applicant notified the Commissioner that Koris no longer held the Trumbull supervisory license. (Test. J. Geaman, tr. volume 133, pp. 3584-3585; exs. DEP-4483, 4484, 4485, 4487, 4491, 4492, 4493, 4495, 4496, 4497, 4498, 4500 and 4501.)

3. Szalecki required operators to correct service tickets that had incorrect or missing information. For example, Szalecki would require an operator to fill in his missing operator number on a service ticket. In cases where the corrections required supervisory approval (e.g., write-ins for pesticides used but not listed on the preprinted service tickets), Szalecki required the operator to get a supervisor to initial or sign next to the write-in. He also required supervisors to initial next to write-ins by the operator's name or correct the wrong supervisor's name on same. (Test. D. Szalecki, tr. volume 13, pp. 1198, 1251-52; exs. DEP-4514, pp. 2-3; 4513, p. 6.)



### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant's business registration under General Statutes §22a-66e(a)(1), (2), (3) and (8) as set forth below.

1. Every time the applicant's supervisor approved corrected write-ins on its records after the fact at Szalecki's direction, the applicant created a false record of the pesticide application because the supervisor who signed the record after the application did not know or supervise the operator's write-ins and the treatment they reflected. These practices continued for approximately the seven years that Szalecki was the audit clerk. These written instructions and permanent records also failed to properly identify which supervisor was actually the supervisor of an operator's work. General Statutes §22a-66e(a)(1) and (3).

2. The applicant failed to notify the Commissioner of changes in its Trumbull registration as required under General Statutes §22a-66c. General Statutes §22a-66e(a)(2).

3. The applicant aided or abetted its operators in creating a false written instruction every time Szalecki directed an operator to get supervisory approval after the operator had applied the pesticide. These written instructions were false because they did not exist with supervisory approval prior to the operator applying the pesticide. General Statutes §22a-66e(a)(8).

### **(6)**

### **FINDINGS OF FACT**

#### **Bowman Application:**

1. On May 5, 1998, pesticide staff received a complaint from Wayne Bowman concerning the applicant's treatment for rats on his property located at 225 Topaz Place, Stratford. On May 6, 1998, Catuccio and Lavery met with Bowman, who explained that he had entered into a monthly contract with the applicant and at that time he had specifically made known his concern for the safety of his two dogs. (Ex. DEP-4541-T, pp. 1-2, 27.)

2. On April 9, 1998, the applicant dispatched operator Dennis Manchester (Manchester) to treat the Bowman residence. During the investigation, Bowman indicated that he showed Manchester where he had seen rat activity. He characterized Manchester as being confused and disorganized. (Ex. DEP-4541-T, pp. 1, 8.)

3. Manchester placed three rat boxes containing the rodenticide Contrac Blox around the Bowman residence: one under the deck near the pool; one under the stairs to the deck; and one under the ramp to the shed. The bait blocks were put in boxes with skewers; the lids were not locked but secured with black plastic ties that would slip off. None of the boxes were secured to anything, and the boxes under the deck were accessible to Bowman's dogs. (Ex. DEP-4541, pp. 1, 6, 9-11, 27.)

4. The label for Contrac Blox requires in relevant part:

“IMPORTANT: Do not expose . . . pets . . . to rodenticides . . .

2. Apply bait in locations out of reach of . . . pets . . . or in tamper-resistant bait stations. These stations must be resistant to destruction by dogs . . . If bait can be shaken from stations when they are lifted, units must be secured or otherwise immobilized.”

In regards to “Application Directions for Rats and Mice”, the above label/directions in relevant part requires spoiled or contaminated bait to be immediately replaced. (Ex. DEP-4541-T, p. 32, “Directions for Use”.)

5. Catuccio visited the residence and inspected and observed the following: bait boxes were not fastened closed; bait was not secured to fixed objects; one of the four bait blocks was moldy and another moldy block was found in with a new block. Finally, a plastic tie that was used to close the lid also slid open easily. (Ex. DEP-4541-T, photos by Catuccio.)

6. At a meeting with pesticide staff, Coviello, whose name was on the written instruction, said he had no knowledge of the Bowman account and had not issued any written instructions for the application of rodenticides. He would have added rats to the instructions as a target pest if he had seen them beforehand. Manchester's written instructions did not identify rats as the target pest. (Test. Catuccio, tr. volume 32, pp. 3553-55; ex. DEP-4541-T, pp. 16-17.)

7. Coviello gave a written statement to the pesticide staff in which he attested to the truthfulness of his comments but was advised by the applicant's representative, Young, not to sign it until receiving permission from headquarters. Coviello refused to sign his statement for fear of losing his job. (Ex. DEP-4541-T, pp. 4, 16-21.)

8. Manchester applied pesticides at the Bowman residence on May 4, 1998. He treated the attic with a white power for wasps and used a pressurized can to spray the family room baseboard for ants. He neither had any written instructions for the treatments, nor left a service ticket with Mr. Bowman when he left. (Ex. DEP-4541-T, pp. 2-3.)

9. When pesticide staff asked Manchester to show it a copy of the May 4, 1998 treatment at the Bowman residence for ants and wasps, he showed them a blank ticket that he got from the service manager, Berucki. Manchester was planning on having Coviello approve the application after the fact and then create a record. He also showed staff nine blank preprinted service tickets he had in his back pocket. Coviello's name was listed as supervisor was on all these tickets. (Ex. DEP-4541-T, p. 3.)

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant's business registration under General Statutes §22a-66e(a)(3), (4), (8) and (10) as set forth below.

1. The applicant maintained records containing false information when its records falsely indicated that Coviello had provided the written instructions and was the supervisor for the Contrac Blox treatment at the Bowman residence. General Statutes §22a-66e(a)(3).

2. The applicant applied the rodenticide Contrac Blox at the Bowman property inconsistent with its label, when it failed to secure the bait box and failed to properly secure the bait within the bait box. This also occurred when it left moldy bait in the bait box instead of properly disposing of it. General Statutes §22a-66e(a)(4).

3. The applicant aided and abetted Manchester to evade the law when it provided him with blank preprinted tickets for him to fill out and use as written instructions. General Statutes §22a-66e(a)(8).

4. The applicant's operator Manchester acted outside of the category of his certification by making supervisory decisions when he treated the Bowman residence for ants and wasps without written instructions. General Statutes §22a-66e(a)(10).

### **FINDINGS OF FACT**

#### **Manfredi Application:**

1. On March 22, 1999, pesticide staff received a complaint from Verna Manfredi regarding a termite treatment performed by the applicant's Trumbull office on December 29, 1998 at her Norwalk. The substance of Mrs. Manfredi's complaint to staff was that the operator had a hose failure that caused a release of a termiticide onto her living room floor and that the operator drilled into a sub-slab radiant heat water pipe causing damage. (Test. D. Catuccio, tr. volume 34, p. 3815; Ex. DEP- 4564-T, pp. 1, 9.)

2. Manfredi was under contract with the applicant for termite treatment for a period of six to seven years. (Test. D. Catuccio, tr. volume 34, p. 3815.)

3. The applicant used the termiticide Dragnet FT to control termites at the Manfredi residence. The label for this termiticide states in pertinent part, under the heading of post construction subterranean termite treatment, "do not apply emulsion until location of wells, radiant pipes, water and sewer lines, and electrical conduits are known and identified. Caution must be taken to avoid puncturing and injection into these elements." (Ex. DEP-4564-T, pp. 2, 25.)

4. During the December 29, 1998, treatment of the Manfredi residence, the operator failed to inspect the pressurized hose outside. As the application process began, the application hose ruptured upon being pressurized leaving the living room with a two by six foot puddle of termiticide. On his way out, the operator dragged the ruptured hose through the living room and foyer leaving a six inch wide trail of termiticide in these rooms, which then came into contact with a chair and chest of drawers. (Exs. DEP-8000C and DEP-4564-T.)

5. Prior to the treatment at issue, Mrs. Manfredi met with the applicant's representatives to discuss the proposed termite treatment. At this meeting, she made the applicant aware that her house had radiant heat hot waterlines in the slab beneath the house. (Test. D. Catuccio, tr. volume 34, p. 3816.)

6. Mrs. Manfredi hired a plumber to find the radiant pipes while the applicant was at her house, but the plumber was unsuccessful. Despite this unsuccessful attempt, the applicant's operator began drilling into the slab anyway. (Test. D. Catuccio, tr. volume 34, pp. 3816-17; Ex. DEP-4564-T, pp. 1, 6.)

7. On January 2, 1999, Mrs. Manfredi's son noticed cold water on the living room floor near a patched drill hole. The applicant had punctured the radiant pipe during its treatment. (Ex. DEP-4564-T, pp. 1, 2; see photos pp. 11-13.)

### **CONCLUSION OF LAW**

Based on the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant's business registrations under the provisions of §22a-66e(a)(4) due to the applicant's application of pesticides in a manner that was inconsistent with the pesticide's label when the operator failed to locate the radiant water pipes prior to treatment and failed to prevent puncturing the Manfredi's water pipeline.

(7)

### **FINDINGS OF FACT**

1. On April 8 and 13, 1998, the applicant's Trumbull office gave Catuccio its records. On April 8, upon inspecting the Trumbull office records, Catuccio noticed Koris' name as supervisor of record on numerous accounts, even though as of January 31, 1998, he was no longer at the Trumbull office or served as its service manager. Catuccio notified Curry that Koris' name was still listed on the records and written instructions. There is no evidence in the record indicating that the pesticide staff was notified of a change in condition as required by §22a-66c, i.e., Koris was no longer the supervisor of record in the Trumbull office. (Test. D. Catuccio, tr. volume 34, pp. 3809-3811; Ex. DEP-4540-T, p. 226.)

2. On April 13, 1998, Catuccio returned to the Trumbull office to pick up more records. Upon review, Catuccio found that some of these records still had Koris' name preprinted on them, but on most his name was crossed out and replaced with

Coviello's, who was then the office supervisor. (Test. D. Catuccio, tr. volume 34, pp. 3811-12.)

3. Szalecki's audit reports for the Trumbull office contained numerous instances where the information in the records does not contain the target pest, amount of pesticide used and address of application in violation of statutory record-keeping requirements. (Test. D. Szalecki, tr. volume 13, pp. 1198, 1251-52.)

4. The applicant's Trumbull office treated the Crouse residence at 15 Highland Road, Westport, for termites. Because of an on-going problem with termites, Mrs. Crouse contacted DEP, who then investigated. The investigation revealed that the exterior foundation of the living room addition and rear stoops did not show signs of drilling, which is associated with termite treatment. During the April 21, 1999 inspection, pesticide staff observed that termites were active. According to the applicant's records of the application, the living room addition (graphed as "dirt slab") had been treated by drilling and rodding through the foundation wall on the exterior (graph code 124) and drilling through the living room floor on the interior (graph code 126) and injecting termiticide into the soil beneath the living room slab and where the rear steps were treated (graph code 120). The applicant's records indicate that the application was made in accordance with the graph. (Exs. DEP-4567-T, pp. 16,18, 46-51, 54-56 and 8003C.)

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant's business registration under General Statutes §22a-66e(a)(1), (3) and (8) as set forth below.

1. The applicant violated the requirements of the record-keeping statute by its failure to list the target pest, the amount of pesticide used, and the address of the application in its permanent records. General Statutes §22a-66e(a)(1).

2. The applicant provided false information on records it maintained, specifically, the applicant furnished Catuccio with false records showing Koris or Coviello as the supervisor of record when they were not. General Statutes §22a-66e(a)(3).

3. Through Szalecki's audit reports, the applicant's management was aware that operators were creating their own written instructions. In condoning this practice and not stopping it, the applicant aided and abetted operators to evade the provisions of the laws and regulations regarding written instructions. General Statutes §22a-66e(a)(8).

(C)

**Waterbury Office: Business Registration No. B-0215**

In letters dated August 26, 1998, August 5, 1999, October 13, 2000 and July 23, 2001, the DEP pesticide staff notified the applicant that it was denying its request to renew Business Registration No. B-0215 for its Waterbury office from the period 1998-1999 to 2001-2002, pursuant to General Statutes §22a-66d. The grounds for denial contained in these letters are:

- General Statutes §22a-66e(a)(1): Failure to provide pesticide label information to persons requesting pesticide applications pursuant to §22a-66a(a)(2).
- General Statutes §22a-66e(a)(2): Failure to notify the commissioner of changes in the information contained in the business registration as required by §22a-66c.
- General Statutes §22a-66e(a)(3): Inclusion of false or misleading information in records required to be maintained pursuant to §22a-66g.
- General Statutes §22a-66e(a)(4): Use of a pesticide in a manner inconsistent with the registered labeling on the use of such pesticides.
- General Statutes §22a-66e(a)(8): Aiding or abetting certified persons to evade the provisions of the Connecticut Pesticide Control Act and regulations adopted thereunder.
- General Statutes §22a-66e(a)(9): Making false or misleading statements during an investigation concerning violations of the Connecticut Pesticide Control Act and regulations adopted thereunder.
- General Statutes §22a-66e(a)(10): The performance of work in a category for which the applicator is not certified.

(Exs. DEP-C, 4609; Joint Exs. 1, 2.)

The facts concerning each of the above grounds for denial will be addressed below in the context of the application to renew the applicant's Waterbury office business registration.

(1)

**FINDINGS OF FACT**

1. As in the applicant's North Haven and Trumbull offices, Szalecki prepared audit reports for the Waterbury office. (Test. D. Catuccio, tr. volume 13, pp. 1351-52.)

2. Szalecki's Waterbury audit reports contain at least fifteen instances where he noted write-ins made without supervisory approval. Some of these reports also note instances where a customer was not given label information.

<u>Page</u>	<u>Dates of Tickets Reviewed</u>
Term-W 002 <sup>14</sup>	3/10/98 - 3/21/98
Term-W 004	1/21/98 - 1/28/98
Term-W 006	1/2/98 - 1/13/98
Term-W 007	12/18/97 - 12/31/97
Term-W 008	12/7/97 - 12/31/97
Term-W 011	11/1/97 - 11/17/97
Term-W 016	9/2/97 - 9/17/97
Term-W 018	8/14/97 - 8/23/97
Term-W 023	6/13/97 - 6/25/97
Term-W 025	5/16/97 - 5/31/97
Term-W 036	2/1/97 - 2/12/97
Term-W 045	10/16/96 - 10/31/96
Term-W 052	8/1/96 - 8/10/96
Term-W 054	7/19/96 - 7/25/96
Term-W 056	6/18/96 - 6/29/96

(Ex. DEP-4556-W.)

3. Prior to leaving the applicant's employ, Gary Newhart, Jr. (Newhart) had worked as an operator in its Waterbury, Trumbull and other offices. He knew that "it was customary and common practice for operators to have a supply of 30 to 50 generic service tickets (blank tickets) in their vehicles". (Ex. DEP-4517, pp. 1, 4, 5.)

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<sup>14</sup> The initial "W" refers to exhibits relative to the applicant's Waterbury office.



4. Either branch managers or service managers or both told operators to take blank service tickets, which were readily available to them in the branch office whenever they needed them. Operators often had a few of each target test blank service tickets in their truck and filled in the requisite information in themselves. During audits, Szalecki would question operators who wrote in written instructions and would note on the ticket that “write-in needs supervisory approval”. (Ex. DEP-4517, pp. 4-6.)

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denial of the applicant’s business registration renewal under the provisions of §22a-66e(a)(1)(3), (8) and (10) as set forth below.

1. The applicant’s operators filled out blank preprinted tickets, which served as the written instruction, or altered properly prepared written instructions. Operators are not certified to prepare or alter written instructions. General Statutes §22a-66e(a)(3) and (10).

2. Operators were not providing customers with label information as required by law. General Statutes §22a-66e(a)(1).

3. Through Szalecki’s audit reports, the applicant was aware that operators were creating their own written instructions. In condoning this practice and not stopping it, the applicant aided and abetted its Waterbury operators to evade the written instruction requirements of the law and relevant regulations. General Statutes §22a-66e(a)(8).

4. The applicant’s operators acted outside their certification when they used blank preprinted service tickets to perform pesticide applications without supervisory approval. In doing so, said operators acted as supervisors in determining, for example, what pesticide to use, where and how to apply them. General Statutes §22a-66e(a)(10).

### **(2)**

### **FINDINGS OF FACT**

1. In the Waterbury office, Szalecki reviewed service tickets for compliance with state requirements. These tickets served as both the permanent record and written instructions. If he found service tickets that did not comply with state requirements, he

would bring them to the attention of the appropriate operator who would have to explain the ticket or correct it. Szalecki required operators to make corrections on their service tickets for items such as areas treated and their operator number. Szalecki also required operators to get supervisors to sign-off or initial next to their write-ins after the application had been performed with proper supervisory approval. (Test. D. Szalecki, tr. volume 13, pp. 1198, 1251; test. M. Dezzani, tr. volume 12, pp. 1031, 1034; ex. DEP-4514, pp. 2-3.)

2. Szalecki audited on a weekly basis. He observed problems with new operators making notes on their service tickets, especially if they saw the other operators making notes on their tickets. (Ex. DEP-4514, p. 2; test. D. Szalecki, tr. volume 13, p. 1198.)

3. Newhart, an operator, described the process of complying with Szalecki's request concerning taking write-ins on service tickets to a supervisor as described above as "fixing a ticket". This term meant giving the service ticket with the operator's write-ins to a supervisor to be signed or initialed. The applicant's managers would say this process "made legal" the unapproved write-ins on the tickets. This process was common in the applicant's North Haven, Trumbull and Waterbury offices. (Ex. DEP-4517, pp. 2-9.)

### **CONCLUSIONS OF LAW**

Based upon the above findings, I conclude that there is a preponderance of credible evidence to support the denials of the applicant's business registration under General Statutes §22a-66e(a)(3) and (8) as set forth below.

1. Every time a supervisor signed or initialed approval of a write-in on a service ticket "after-the-fact", the applicant created a false record of the pesticide application because the supervisor who signed the service ticket did not supervise the operator before the applications or know of the operator's write-in and the treatment it reflected in violation of law and the Regulations of Connecticut State Agencies §22a-66-5(g)(2). General Statutes §22a-66e(a)(3).

2. During the approximately seven years Szalecki was the audit clerk for the applicant, it was the applicant's business practice to have "after-the-fact" write-ins done

without a supervisor's prior approval or knowledge of the application. Said practice by the applicant constitutes knowing inclusions of false and misleading information in records required to be maintained, and is a violation of General Statutes §22a-66e(a)(3).

3. In conducting its business as described above, the applicant failed to maintain records and written instructions that accurately and truthfully reflected which supervisor was supervising the work and whether the instructions were created by a supervisor and provided to the operator prior to application. General Statutes §22a-66e(a)(3).

4. The applicant aided and abetted its operators to violate the law by creating false written instructions every time an operator was directed to get written supervisory approval after an application was performed. The written instructions were false because there was no prior supervisory approval before the applications. General Statutes §22a-66e(a)(3) and (8).

5. The evidence in the record does not support denial under the grounds set out in §22a-66e(a)(2), (4) and (9), as alleged in the denial letters.

**(D)**

***COMPLIANCE HISTORY***

***FINDINGS OF FACT***

1. In 1988, the pesticide staff sought the revocation or suspension of the business registration of six Terminix offices serving Connecticut. It also issued an order to a seventh office to cease operations because of violations of the pesticide laws and because it had no business registration. (Exhibit Nos. DEP-7000C<sup>15</sup> (Bridgeport); 7006C (Elmsford, NY); 7002C (Waterbury, CT); 7003C (Springfield, MA); 7004C (West Hartford, CT); 7005C (New Milford, CT); and 7006C (North Haven, CT)). [For a complete description of the investigations of the above offices, see Exs. DEP-7000C through 7006C.]

2. At that time, the applicant committed some or all of the following pesticide violations at the above seven offices.

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<sup>15</sup> The letter "C" after an exhibit number means that the exhibit was intended to address compliance history.

- a. elements of statutorily required record-keeping missing or incomplete;
- b. written instructions missing or incomplete;
- c. operators determining pesticides to use, either contrary to their written instructions, or without written instructions;
- d. operators applying pesticides without certification;
- e. application of a pesticide known to be ineffective or improper for use;
- f. failure to present pesticide label; and
- g. the making of false or misleading statements during the course of an investigation.

(Test. L. Schmidt, tr. volume 50, pp. 5674-5746; ex. DEP-6999C)

3. As a result of the above violations, the applicant entered into a consent order resolving DEP's 1988 notice to revoke. This consent order required the applicant to change its business practices, imposed conditions on how the applicant operated its business, and required payment of a \$135,000 penalty. The consent order remained in effect for three years. This consent order was subsequently amended by the parties to increase the number of supervisors certified in the category of general pesticide certification from two to three in each office. (Test. M. Dezzani, tr. volume 50, p. 5800; exs. DEP-7007C, 7010C.)

4. The applicant paid another \$103,000 to DEP during the time this consent order was in effect for violations of this order and/or violations involving auditing records. (Exs. DEP-7008C, 7009C.)

5. The applicant submitted a September, 1988 audit report, which was required as a condition of the consent order, and subsequently noted in a November 21, 1988 letter that most of the commercial service records failed to list the site treated because the commercial account format did not provide the proper format or sufficient room to allow operators to record this information. The applicant advised pesticide staff that it was working on a new form and notified branches to have operators include sites treated in the category currently designated for "location of evidence". Copies of the August and October 1988 audits were sent to the pesticide staff. The applicant used the

same reasoning for not listing the site treated in its records. In response to pesticide staff's concerns that the site treated was not identified on the applicant's existing service tickets, the applicant created a new service ticket format. (Exs. DEP-7012C through 7015C.)

6. The violations regarding the following account are examples of noncompliance within the pesticide laws. The applicant serviced the Animal Haven Kennel account for years, first from the Trumbull office and later from the Meriden office.<sup>16</sup> Pesticide staff investigated the application of Rotenticide at the Animal Haven Kennels and found the following violations:

- a) The applicant failed to anchor bait boxes to fixed objects. (Test. D. Catuccio, tr. volume 46, 5262-63; Ex. DEP-6001C, pp. 3-4, 19, 56.
- b) The applicant failed to anchor the bait inside bait boxes. (Ex. DEP-6001C, pp. 3-4, 19-20, 22-23, 55.)
- c) The applicant failed to secure bait box lids so they would open. (Test. D. Catuccio, tr. volume 45, p. 5151, tr. volume 46, p. 5264.)
- d) The applicant failed to properly dispose of the bait. (Test. D. Catuccio, tr. volume 45, p. 5130, tr. volume 46, pp. 5265-76, 5271, 4276.)

7. Since February, 1998, pesticide staff had an on-going investigation of the Animal Haven account. Staff went to the Meriden office numerous times. On April 13, 1998, staff went to this office to review the Animal Haven Kennel service records from April, 1997 through April, 1998. The branch manager John Bradley (Bradley), could not find any more Animal Haven Kennel records and told staff to make an appointment to review the records. (Test. D. Catuccio, tr. volume 54, p. 5164.)

8. Dezzani previously informed Catuccio that the applicant reported a theft of records in its North Haven and Meriden offices. Catuccio asked Bradley if they had any thefts and he confirmed that there was a theft of the records for the "Animal Haven Kennel account". (Test. J. Bradley, tr. volume 45, p. 5164, 5166.)

9. On April 16, 1998, Lavery was part of the pesticide staff that executed the search warrant in regard to those records. During the search inspection, Lavery found a

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<sup>16</sup> The business registration for the Meriden office is not at issue in this proceeding.

pile of Animal Haven Kennel records in the top drawer of Bradley's desk. A note on the top of the file contained the following wording: "Animal Haven, Debbie Catuccio". The records reported stolen on April 13, 1998 were actually in the applicant's possession. (Test. J. Lavery, tr. volume 46, pp. 5279-5280.)

10. Records seized pursuant to a search warrant on the Meriden office revealed:

- a) sixty-nine occasions where audit clerk Szalecki noted that a write-in needs supervisory approval, which was added after the fact;
- b) five hundred thirty two records where the site for each pesticide application was not disclosed;
- c) one hundred eighteen records where the supervisor's name and/or license numbers are missing;
- d) eleven instances where the operator's name and/or number was missing;  
and
- e) forty records where the date of application is missing.

(Exs. DEP-6000C through 6002C; test. D. Catuccio, tr. volume 45, pp. 5161-62.)

11. In accordance with General Statutes §22a-6m(a), the compliance history of the applicant is not confined to the boundaries of this state. There are examples of violations in other states. In Missouri the applicant admitted that on April 7, 1997, it had applied a termiticide inconsistent with its label, thereby contaminating ceiling tiles, ducts and a sofa at the Klien residence. The applicant also admitted it failed to maintain a complete record. In New Hampshire, the New Hampshire Department of Agriculture, Markets and Food Agency held an administrative hearing, and found that on July 17, 1998 the applicant failed to apply Ficam D 1% Dust in accordance with its label. (Exs. DEP-8301C, DEP-8302C.)

## CONCLUSIONS OF LAW

General Statutes §22a-6m(a) provides:

*“In exercising any authority to issue, renew, transfer, modify or revoke any permit, registration, certificate or other license under any of the provisions of this title, the Commissioner of Environmental Protection may consider the record of the applicant for, or holder of, such permit, registration, certificate or other license, the principals, and any parent company or subsidiary, of the applicant or holder, regarding compliance with environmental protection laws of this state, all other states and the federal government. If the commissioner finds that such record evidences a pattern or practice of noncompliance which demonstrates the applicant’s unwillingness or inability to achieve and maintain compliance with the terms and conditions of the permit, registration, certificate or other license for which application is being made, or which is held, the commissioner, in accordance with the procedures for exercising any such authority under this title, may (1) include such conditions as he deems necessary in any such permit, registration certificate or other license, (2) deny any application for the issuance, renewal, modification or transfer of any such permit, registration, certificate or other license, or (3) revoke any such permit, registration, certificate or other license.”*

A preponderance of the above credible evidence and my earlier findings supporting the denial of renewals of the registrations of the three subject offices, incorporated herein, support the conclusion that the applicant violated state law in at least the following respects: by failing to maintain records in compliance with all statutory elements; by failing to provide complete written instructions to operators; by allowing operators to act as supervisors; by violating a consent order; by committing out-of-state violations; by allowing operators to apply pesticides without certification; by applying pesticides known to be ineffective or improper for use; by failing to present pesticide labels in accordance with applicable law; by maintaining records with false or incomplete information; by employees making false or misleading statements during the course of an investigation; and by aiding and abetting its employees to violate the law. These types of violations are reflective of the applicant’s compliance history and are sufficient grounds for denial of renewal of the subject business registration.

The common thread running through the evidence concerning the applicant’s compliance history and indeed, through this entire record, is that substantial credible evidence exists that indicates that the applicant chronically and consistently demonstrated in its behavior a pattern or practice of unwillingness to achieve and maintain compliance with the terms and conditions of its business registrations. This pattern of behavior or

conduct persists today despite the applicant's effort to prevent it. This was evident during the hearing/site visit at the applicant's North Haven office, where it was clear that despite the best efforts of the applicant's compliance officer, violations similar to those alleged in the 1998 and subsequent denial letters continue to occur. General Statutes §22a-6m(a).

### ***III*** **DISCUSSION**

#### ***(A)*** ***SEARCH WARRANT***

A significant portion of this proceeding is based on the voluminous records seized by the pesticide staff from the applicant's offices pursuant to an administrative search warrant issued by the Superior Court. The applicant does not concede that the seizure was legal.<sup>17</sup> The applicant also claims in its brief that the seizure of documents by the pesticide staff violated its rights to unreasonable search and seizure under the Fourth Amendment to the Constitution, and Article 1, Section 7, of the Connecticut Constitution.

Courts have recognized that the state has the responsibility to protect the public health, and that regular inspections are necessary to carry out this duty. See *Linda Elf v. Dept. of Public Health*, 66 Conn. App. 410 (2001). Holders of licenses consent to regular inspections (not dissimilar to staff inspections) that include the state's exercise of its police power through search warrants to protect the health and welfare of the public. See *Id.*, *State v. Vachon*, 140 Conn. 478 (1953).

Even assuming *arguendo* that the execution of search warrants or any collateral matters were improper, I have no authority to consider constitutional issues and declare a court-issued search warrant invalid.

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<sup>17</sup> Initially, counsel for the applicant did not object to the admission of the seized tickets. At a later point in the hearing, however, the applicant did object to the admission of tickets. (Tr. volume 14, p. 1334, tr. volume 46, p. 5292.)



**(B)**

***DEP INTERPRETATION OF LAWS AND REGULATIONS***

The applicant has challenged the interpretation of various regulatory terms such as “site” vs. “place” (the what/where scenario) by pesticide staff. In its enforcement of its statutes and regulations, the way in which an agency interprets or understands applicable laws and regulations does not necessarily require the agency to adopt regulations to guide its interpretation or understanding. Administrative agencies must inevitably interpret statutes that are made for their guidance, but they may do so without reference to regulations. *Sweetman v. State Election Enforcement Commission*, 249 Conn. 296 (1999). Deference is accorded an agency’s interpretation of its regulations, especially when these interpretations have been followed for a long period of time. *Sulton v. Lopes*, 201 Conn. 115 (1986); see *Mumford Cove Assoc., Inc. v. Town of Groton*, 786 F.2d 530 (2<sup>nd</sup> Cir. 1986). An agency’s practical construction of a statute is “high evidence of what the law is.” *Anderson v. Ludgin*, 175 Conn. 545, 556-57 (1978). “Although the interpretation of statutes is ultimately a question of law . . . it is the well established practice of this court to accord great deference to the construction given [a] statute by the agency charged with its enforcement.” *State Board of Labor Relations v. Freedom of Information Commission*, 244 Conn. 487, 494 (1998).

The DEP may therefore interpret its own regulations and statutes. Consequently, the foundation upon which the DEP functions in its understanding and interpretation of its statutes and regulations does not require that foundation to be adopted as a regulation.

**(C)**

***MOOTNESS OF THE 1998-1999 AND 1999-2001 DENIALS***

The applicant has argued that the denial of its business registrations for the period September 1, 1998 through August 31, 1999, and September 1, 1999 through August 31, 2000 are moot because the only remedy available to pesticide staff in denying a renewal of a business registration is to prevent an applicant from operating from September 1 through August 31 of a following year. I disagree with this argument.

The above denials are not moot. In determining whether to renew an application for renewal of a business registration, the Commissioner can take into consideration the

compliance history of the applicant. General Statutes §22a-6m. The focus of this entire hearing has been the applicant's compliance with state law. I have addressed this issue obliquely in my March 27, 2000 ruling on the applicant's *Motion to Revoke DEP's Denials for September 1, 1998 through August 31, 1999*, where I declined to grant the applicant's motion. Even if I revoked the denials, there was a collateral legal issue of the applicant's compliance history during this period which is relevant to this proceeding. All past violations of the applicant should be considered as they may show a pattern or practice of non-compliance with the law in granting or denying the next year's denial.

The matters that are the subject of this hearing are a good example of the reason for the application of the exception to the mootness doctrine, "capable of repetition yet evading review". See, *State Farm Insurance and Accident Company v. Jackson*, 188 Conn. 152 (1982). Here, although the applicant's licenses are for one year, this was a protracted hearing process that involved relevant evidence to be considered for actions during prior years. The Commissioner therefore has jurisdiction to consider and rule on each year's denial letters.

**(D)**

**FEDERAL PREEMPTION OF DEP  
WRITTEN INSTRUCTION REGULATION**

Section 22a-66-5(g)(2) of the Regulations of Connecticut State Agencies provides that a certified supervisor must either be present at the time of application of a pesticide or provide written instructions to the certified operator. The applicant claims that this "written instructions" requirement is preempted by §136v (b) of the *Federal Insecticide, Fungicide and Rodenticide Act* (FIFRA). The applicant therefore maintains that neither the alleged violations of this requirement, or alleged violations of other requirements based entirely or partly on this requirement, can be a legal or appropriate basis for the denial of the applicant's business registrations. Pesticide staff claims that because the two laws do not conflict, the issue of preemption does not apply.

Without an explicit statement that Congress intends to preempt state law, such intent may be inferred only in three specific circumstances. *Barbieri v. United Technologies Corporation*, 255 Conn. 708, 717 (2001). These conditions are not

applicable here. First, FIFRA does not expressly provide that it is the exclusive scheme to regulate pesticide applicators and applications. Second, there is no evidence that in passing FIFRA Congress intended to occupy the entire field of this regulatory scheme. Third, Connecticut's statutory and regulatory provisions do not conflict with FIFRA.

States may regulate pesticide use as long as the state's regulation is at least as strict as FIFRA. 7 U.S.C. §136v(b). Connecticut's "written instructions" requirement, codified in §22a-66-5(g)(2) of the Regulations of Connecticut State Agencies, is the federal equivalent of the instructions for uncertified persons set out in FIFRA. This state regulation and the FIFRA provision regulate the use of pesticides. Under both the state and federal scenarios, users of pesticides must comply with the labeling instructions on a pesticide. Section §22a-61 (b)(7) is not more strict or different than FIFRA.

The "written instructions" requirement of §66-5 (g) (2) of the Regulations of Connecticut State Agencies is a valid regulation. The enforcement of this regulation by the DEP is a proper exercise of the Department's authority.

#### *IV*

#### **FINAL CONCLUSIONS OF LAW**

Based on the findings and conclusions contained in this decision, my final conclusions are as follows.

1. In a licensing proceeding such as this, the burden is upon the applicant to establish that it has satisfactorily met the statutory requirements and that it is entitled to a renewal of its business registrations. The preponderance of the substantial and credible evidence in this record supports the finding that the applicant has failed to meet this burden.

2. The applicant's compliance history is a determining factor and a basis for denial of renewal of its business registrations. The preponderance of the substantial credible evidence in this record of the applicant's compliance history demonstrates an egregious behavioral pattern or practice of noncompliance with state law regarding the terms and conditions of its business registrations as well as the conditions of a consent order between it and the DEP.

3. The grounds for denial of the applicant's business registrations that are the subject of these appeals are fully supported by a substantial preponderance of the credible evidence in this record.

V

**RECOMMENDATIONS**

Based on the above findings and conclusions, and with due consideration given to General Statutes §§22a-6m(a)(2) (which gives the Commissioner the authority to deny the renewal of a business registration) and 22a-66e(b) (which gives the Commissioner authority to determine how much time shall elapse before a company may reapply for a business registration) it is recommended:

1. The denial of the applicant's request for renewal of its business registrations for its North Haven, Trumbull and Waterbury offices for the period September 1, 1998 to August 31, 2002 *be affirmed*.

2. Based upon the severity and nature of the applicant's violations, including its violation of a 1998 three-year consent order, staff has recommended that the business registration for the three subject offices be denied for five years. The applicant has not maintained its business in accordance with the laws of this state. It failed to comply with a previous consent order, which should have put it on notice that the state would not tolerate violations of its pesticide laws.

Therefore, I recommend that the Commissioner prohibit the applicant from reapplying for renewal of its business registrations of its North Haven, Trumbull and Waterbury offices for a period not to exceed five years from the date of the final decision in this matter.

April 11, 2002  
Date

/s/ Lewis J. Miller  
Lewis J. Miller, Hearing Officer