

Respondent:

Terminix International Company LP
2020 Shipley Drive
Salisbury, MD 21801

Violations:

§1224(a)(10) Neglecting or, after notice, refusing to comply with the LAW, the rules adopted under the LAW, or any lawful order of the Department;

Penalty:

Respondent signed a consent agreement June 16th 2016. In the agreement, Respondent agrees to the imposition of disciplinary sanctions which included a civil penalty of \$1750.00. Respondent also agreed to complete areas of the termite treatment which were excluded during initial treatment.

STIPULATED FACTS

1. Terminix International Company LP ("Respondent Terminix") is a commercial pesticide applicator business with an office located at 2020 Shipley Drive, Salisbury MD 21801. Troy Neumyer is the Branch Manager of Respondent. Respondent Terminix is licensed (License No. 530) by the Delaware Department of Agriculture ("the Department").
2. Mr. James Gray is employed by Respondent Terminix. Mr. Gray is certified by the Department in Category 7.7.1.2(b), Wood Destroying Pest Control and 7.7.1.1(a) General Pest Control (Certificate Number 08-768).
3. The Pesticide Section of the Department ("Complainant") is bringing this enforcement action against Respondents. James Hughes ("Mr. Hughes") is employed as an Environmental Program Manager I with the Department. Stephen J McReynolds, ("Mr. McReynolds") is employed as an Environmental Scientist II with the Department.
4. On December 11th 2015, the Delaware Department of Agriculture Pesticides Section received a phone call from Mrs. Diane Rulka. Mrs. Rulka was concerned about a termiticide application done at her residence at 110 Washington Ave. Lewes, DE 19958. She was concerned with the paperwork that had been issued and had questions about the application itself.
5. On December 16th 2015, Mr. Hughes met with Mrs. Rulka at 110 Washington Ave. Lewes, DE 19958. Mrs. Rulka discussed the details of the termite application and she presented the paperwork she had received from Respondent in December 2015. Mr. Hughes and Mrs. Rulka walked around the perimeter of the house and Mr. Hughes documented areas of treatment. These areas were photographed. Mr.

Hughes looked at the damaged window frames but was unable to confirm this to be termite damage. Mr. Hughes also viewed the crawlspace entrance and deemed the crawl space inaccessible. Mr. Hughes told Mrs. Rulka he would return with Stephen McReynolds to look at the window frames. Mr. McReynolds has been an inspector with the Delaware Department of Agriculture for more than 30 years and has more experience with structural pest damage identification.

6. While walking around the exterior perimeter of the house Mr. Hughes noted that the front porch had not been drilled for treatment. Mr. Hughes could not find any evidence that the porch had been drilled on top or side. The area behind the porch was not accessible from the crawl space. The treatment records stated that the crawlspace was inaccessible. The diagram of the house included in the treatment records only had the Respondent code for exterior trench and rod; no treatments were made to the interior perimeter of the house.
7. During the December 16th 2015 visit two exterior perimeter soil samples were taken. These samples were given sample numbers SN162015 and SN162016. The sample results showed 26.2 parts per million (ppm) and 17.8ppm fipronil in the soil. Fipronil is the active ingredient in Termidor SC, EPA Registration Number 7969-210.
8. On January 27th 2016, Mr. Hughes spoke with Mr. Troy Neumyer, Terminix's branch manager. Mr. Hughes requested all of the application records for 110 Washington Ave. Lewes, DE 19958. Mr. Hughes asked if the porch and crawl space had been treated. Mr. Neumyer stated that the crawl space was inaccessible and no drilling was done on the porch.
9. On February 9th 2016, Mr. Hughes received all of the treatment records, Notice of Termiticide Application, letter to Mrs. Rulka and Termidor SC label in an email from Mr. Neumyer. The Notice of Termiticide Application form provided by Mr. Neumyer did not have boxes checked showing how the treatment was different from a full labeled treatment and also did not have boxes checked showing what conditions existed the prevented the full label treatment.
10. Termidor SC, EPA Registration Number 7969-210, is registered for sale and use in the State of Delaware by the Department. The label of Termidor SC states in part:
 - a. "It is a violation to use this product in a manner inconsistent with its labeling."
 - b. **POST-CONSTRUCTION EXTERIOR PERIMETER/LOCALIZED INTERIOR STRUCTURAL TERMITE TREATMENT**
 - i. **EXTERIOR PERIMETER TREATMENT:** When conducting an exterior perimeter application, Termidor SC termiticide/insecticide must be applied in a manner to provide a continuous treatment zone to prevent termites from infesting the structure.

c. BASEMENT AND INACCESSIBLE CRAWL SPACE CONSTRUCTION

- i. Drilling and sub-slab injection treatment of sub-soil is necessary for exterior concrete structures adjoining the foundation such as patios, porches and sidewalks, to complete the exterior perimeter treatment zone.

11. Delaware Pesticide Rules and Regulations, *Revised June 1, 2004*, Section 22, established requirements for the use of soil applied termiticides. A continuous chemical barrier must be established according to the product label and all applicable areas must be treated as prescribed by the label. Specifically, the Section states:

22.3 Termiticides shall be used to establish a continuous chemical barrier in all applicable areas prescribed by the label. However, where the termiticide is applied such that a continuous barrier is not achieved, or where the termiticide is not applied to all applicable areas prescribed by the termiticide label, the conditions outlined in both 22.3.1 and 22.3.2 below must be satisfied:

22.3.1 One or more of the following situations is present:

22.3.1.1 Specific environmental conditions are such that application of the termiticide at the full labeled concentration and volume may result in adverse environmental impact. Examples may include the presence of a well, a footing drain that empties into a water body, a high water table, etc.;

22.3.1.2 Structural barriers or soil conditions or types exist that prohibit application of the labeled volume or limit access to applicable soil treatment areas;

22.3.1.3 Specific customer request, or the recommendation of the certified applicator.

22.3.2 Within fourteen (14) days following the termiticide application, the following information shall be furnished in writing to the customer or to the customer's agent:

22.3.2.1 A full disclosure explaining the difference between full and partial applications. The disclosure shall include the termite control strategies being utilized and the reasons for those alternatives;

22.3.2.2 The pesticide used, including brand name and EPA registration number;

22.3.2.3 The actual volume of the termiticide applied;

22.3.2.4 Specific information of sufficient detail to distinguish where treatment actually occurred, including a diagram of the structure identifying treated areas, known well heads, and sites of visible termite activity;

22.3.2.5 A clear, concise statement indicating whether the application has any guarantee or warranty, and the terms of the guarantee or warranty, e.g., retreatment (full or partial), damage repair and retreatment, or no warranty.

22.3.3 This information shall be furnished to the customer or customer's agent on a form approved by the Department. The applicator shall for a period of two years from the date of application, keep

and maintain all completed copies of disclosure documents. Such records shall be made available to authorized employees of the Department upon request.

12. In the past 5 years, Respondent has no pesticide compliance violations with the Department.