



DEPARTMENT OF AGRICULTURE AND MEASUREMENT STANDARDS

RUBEN J. ARROYO
Agricultural Commissioner
Sealer of Weights and Measures

1001 South Mount Vernon Avenue · Bakersfield, California 93307
Telephone 661-868-6300 · Fax 661-868-6301 · agcomm@co.kern.ca.us

NOTICE OF PROPOSED ACTION, GROUNDS THEREFORE, AND OF OPPORTUNITY TO BE HEARD

Ha's Farm
20916 Steuber Road
Tehachapi, CA 93516

Operator Identification Number: 15-09-1504828
File Number: 009 -ACP-KER-09/10

You are hereby notified that pursuant to the provisions of Section 12999.5 of the California Food and Agricultural Code, the Agricultural Commissioner proposes to fine you \$10,750.00.

Grounds upon which the proposed fine is based are as follows:

On July 10, 2009, Ha's Farm applied FujiMite® 5EC (E.P.A. Registration Number 71711-19) and Assail 70WP (E.P.A. Registration Number 8033-23-82695) by ground to your apple orchard identified as Site 2 on Operator Identification Number 15-09-1504828. During the application, the pesticides moved off site onto a crew of fieldworkers harvesting green onions. As a result of the off site movement of the pesticides, several fieldworkers experienced physical symptoms which included nausea, headaches and eye and throat irritations.

Eleven fieldworkers were triaged, decontaminated and evaluated by emergency responders. Of the eleven workers, five were transported by ambulance to local hospitals for further examination. Laboratory analysis from clothing samples collected from those transported to local hospitals showed the presence of both FujiMite® (fenpyroximate) and Assail® (acetamiprid).

As a result of a subsequent pest control records inspection the following violations were discovered:

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1. Ha's Farm failed to provide a written pesticide safety training program and failed to document pesticide safety training for their employee, Lupe Mesa, before he was allowed to handle pesticides;
2. Ha's Farm failed to display a copy of a completed written Hazard Communication Information for Employees Handling Pesticides in Agricultural Settings (PSIS leaflet A-8) before their employee, Lupe Mesa, was allowed to handle pesticides;
3. Ha's Farm failed to display application-specific information for their employee, Lupe Mesa, who handles pesticides.

The individual statutes (regulations) violated are cited below with a description of the facts of each violation and an explanation of how the fine level was determined.

VIOLATION I

Ha's Farm violated section 6614(a)(b)(1) of the California Code of Regulations by making and continuing a pesticide application when there was a reasonable possibility of contamination of the bodies or clothing of persons not involved in the application process.

The Agricultural Commissioner proposes to fine you \$2,000.00 times 5 counts, one count for each person transported to a hospital, for a total of \$10,000.00 for the above described violation. The violation is considered as a Class A violation because it created an actual health hazard. The fine range for a Class A violation is \$700.00 - \$5,000.00.

CODE SECTION VIOLATED

6614. Protection of Persons, Animals, and Property.

(a) An applicator prior to and while applying a pesticide shall evaluate the equipment to be used, meteorological conditions, the property to be treated, and surrounding properties to determine the likelihood of harm or damage.

(b) Notwithstanding that substantial drift would be prevented, no pesticide application shall be made or continued when:

- (1) There is a reasonable possibility of contamination of the bodies or clothing of persons not involved in the application process;

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(2) There is a reasonable possibility of damage to nontarget crops, animals, or other public or private property; or

(3) There is a reasonable possibility of contamination of nontarget public or private property, including the creation of a health hazard, preventing normal use of such property. In determining a health hazard, the amount and toxicity of the pesticide, the type and uses of the property and related factors shall be considered.

VIOLATION II

Ha's Farm violated section 6724 of the California Code of Regulations by failing to have a written pesticide training program and document pesticide safety training before their employee was allowed to handle pesticides.

The Agricultural Commissioner proposes to fine you \$250.00 for the above described violation. The violation is considered as a Class B violation because it posed a reasonable possibility of creating a health or environmental effect. The fine range for a Class B violation is \$250.00 - \$1,000.00.

CODE SECTION VIOLATED

6724. Handler Training.

The employer shall assure that employees who handle pesticides have been trained pursuant to the requirements of this Section and that all other provisions of this Section have been complied with for employees who handle pesticides.

(a) The employer shall have a written training program. The training program shall describe the materials (e.g., study guides, pamphlets, pesticide product labeling, Pesticide Safety Information Series leaflets, Material Safety Data Sheets, slides, video tapes) and information that will be provided and used to train his or her employees and identify the person or firm that will provide the training. The training program shall address each of the subjects specified in subsection (b) that is applicable to the specific pesticide handling situation. The employer shall maintain a copy of the training program while in use and for two years after use, at a central location at the workplace.

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(b) The training shall cover, for each pesticide or chemically similar group of pesticides, to be used:

(1) Format and meaning of information, such as precautionary statements about human health hazards, contained in pesticide product labeling;

(2) Hazards of pesticides, including acute and chronic effects, delayed effects, and sensitization, as identified in pesticide product labeling, Material Safety Data Sheets, or Pesticide Safety Information Series leaflets;

(3) Routes by which pesticides can enter the body;

(4) Signs and symptoms of overexposure;

(5) Emergency first aid for pesticide overexposure;

(6) How to obtain emergency medical care;

(7) Routine and emergency decontamination procedures, including spill clean up and the need to thoroughly shower with soap and warm water after the exposure period;

(8) Need for, limitations, appropriate use, and sanitation, of, any required personal protective equipment;

(9) Prevention, recognition, and first aid for heat-related illness;

(10) Safety requirements and procedures, including engineering controls (such as closed systems and enclosed cabs) for handling, transporting, storing, and disposing of pesticides;

(11) Environmental concerns such as drift, runoff, and wildlife hazards;

(12) Warnings about taking pesticides or pesticide containers home;

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(13) Requirements of this chapter and chapter 4 relating to pesticide safety, Material Safety Data Sheets, and Pesticide Safety Information Series leaflets;

(14) The purposes and requirements for medical supervision if organophosphate or carbamate pesticides with the signal word "DANGER" or "WARNING" on the labeling are mixed, loaded, or applied for the commercial or research production of an agricultural plant commodity;

(15) The location of the written Hazard Communication Information For Employees Handling Pesticides (Pesticide Safety Information Series leaflet A-8), other Pesticide Safety Information Series leaflets, and Material Safety Data Sheets;

(16) The employee's rights, including the right;

(A) To personally receive information about pesticides to which he or she may be exposed;

(B) For his or her physician or employee representative to receive information about pesticides to which he or she may be exposed; and

(C) To be protected against retaliatory action due to the exercise of any of his or her rights.

(c) The training shall be in a manner the employee can understand, be conducted pursuant to the written training program, and include response to questions.

(d) Training shall be completed before the employee is allowed to handle pesticides, continually updated to cover any new pesticides that will be handled, and repeated at least annually thereafter. Initial training may be waived if the employee submits a record showing that training meeting the requirements of this Section and covering the pesticides and use situations applicable to the new employment situation was received within the last year. A certified applicator is considered trained for the purposes of this Section.

(e) The date and extent of initial and annually required training given to the employee and the job to be assigned shall be recorded. This record shall be verified by the employee's signature and retained by the employer for two years at a central location at the workplace accessible to employees.

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VIOLATION III

Ha's Farm violated section 6723 of the California Code of Regulations by failing to display a copy of a completed written Hazard Communication Information for Employees Handling Pesticides in Agricultural Settings (Pesticide Safety Information Series leaflet A-8) before employees are allowed to handle pesticides.

The Agricultural Commissioner proposes to fine you \$250.00 for the above described violation. This violation is considered as a Class B violation because it posed a reasonable possibility of creating a health or environmental effect. The fine range for a Class B violation is \$250.00 - \$1,000.00.

CODE SECTION VIOLATED

6723. Hazard Communication for Pesticide Handlers.

(a) Before employees are allowed to handle pesticides, the employer shall display a copy of a completed written Hazard Communication Information for Employees Handling Pesticides in Agricultural Settings (Pesticide Safety Information Series leaflet A-8) or Hazard Communication Information for Employees Handling Pesticides in Noncrop Settings (Pesticide Safety Information Series leaflet N-8), as applicable, at a central location in the workplace. Upon request, the employer shall read to the requesting employee, in a language understandable to that employee, Pesticide Information Series leaflet A-8/N-8. Pesticide Information Series leaflet A-8/N-8 shall be written by the Department of Pesticide Regulation in English and Spanish. Pesticide Information Series leaflets are available from the department.

(b) The employer shall maintain, at a central location at the workplace accessible to employees who handle pesticides the following:

(1) Pesticide use records as specified in Section 6624 (b), (c), and (e) for pesticides that have been handled by his or her employees;

(2) Copies of available Pesticide Safety Information Series leaflets which are applicable to the pesticides and handling activities listed in the pesticide use records referred to in subsection (b) (1); and

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(3) A Material Safety Data Sheet (MSDS), as specified by Title 8 California Code of Regulations, Section 5194, for each pesticide listed in the pesticide use records referred to in subsection (b) (1). If the MSDS is not provided by the registrant of a pesticide, the employer shall:

(A) Within seven working days of a request for a MSDS from an employee, employee representative or employee's physician, make written inquiry to the registrant of the pesticide, asking that a MSDS be sent to the employer. If the employer has made written inquiry within the last twelve months as to whether the pesticide is subject to the requirement for a MSDS or the employer has made a written inquiry within the last six months requesting new, revised or later information on the MSDS, the employer need not make additional written inquiry. A copy of the written inquiry shall immediately be sent to the person requesting the MSDS;

(B) Notify the requester of the availability of the MSDS or provide a copy of the MSDS to the requester within fifteen days of receipt of the MSDS from the registrant; and

(C) If a response has not been received from the registrant within twenty-five working days of the date the inquiry was made, send the department a copy of the inquiry with a notation that no response has been received. The employer is not precluded from obtaining and providing the MSDS utilizing other more expedient methods in lieu of those provided in this subsection.

(c) The employer shall inform employees, before they are allowed to handle pesticides and at least annually thereafter, of the location and availability of the records and other documents listed in this Section or relating to employee training, monitoring, and potential exposure. If the location of the records and other documents changes, an employer shall promptly inform his or her employees of the new location.

(d) The employer shall provide, upon request of his or her employee, employee representative, or employee's physician, access to any records or other documents required to be maintained pursuant to this chapter. Access shall be granted as soon as possible and not to exceed forty-eight hours from the date of the request.

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VIOLATION IV

Ha's Farm violated section 6723.1 of the California Code of Regulations by failing to display application-specific information at a central location for their employee who handles pesticides.

The Agricultural Commissioner proposes to fine you \$250.00 for the above described violation. This violation is considered as a Class B violation because it posed a reasonable possibility of creating a health or environmental effect. The fine range for a Class B violation is \$250.00 - \$1,000.00

CODE SECTION VIOLATED

6723.1. Application-Specific Information For Handlers.

(a) The operator of property used for the commercial or research production of an agricultural plant commodity shall display, at a central location, the following application-specific information while employees are employed to handle pesticides:

- (1) Identification of the treated area;
- (2) Time and date of the application;
- (3) Restricted entry interval; and
- (4) Product name, EPA registration number, and active ingredients.

(b) The information shall be displayed within 24 hours of the completion of an application and include all applications that have been made to any treated field on the agricultural establishment within 1/4 mile of where employees will be working. Once displayed, the information shall remain displayed until the area no longer meets the definition of a treated field or handler employees will no longer be on the establishment, whichever occurs earlier.

(c) The original or copies of documents otherwise required to be maintained by this chapter may be used to meet the requirements of this Section provided they contain the information required by this Section.

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The amount of each fine is determined by applying the circumstances of each violation to the fine guidelines that have been adopted for use in these actions. Those guidelines are found in Title 3, California Code of Regulations Section 6130 which provides:

6130. Civil Penalty Actions by Commissioners.

(a) When taking civil penalty action pursuant to section 12999.5 of the Food and Agricultural Code, county agricultural commissioners shall use the provisions of this section to determine the violation class and the fine amount.

(1) For purposes of this article, violations shall be designated as "Class A," "Class B," and "Class C."

(A) Class A: Violations which created an actual health or environmental hazard, violations of a lawful order of the commissioner issued pursuant to sections 11737, 11737.5, 11896, or 11897 of the Food and Agricultural Code, or violations that are repeat Class B violations. The fine range for Class A violations is \$700-\$5,000.

(B) Class B: Violations which posed a reasonable possibility of creating a health or environmental effect or violations that are repeat Class C violations. The fine range for Class B violations is \$250-\$1,000.

(C) Class C: Violations that are not defined in either Class A or Class B. The fine range for Class C violations is \$50-\$400.

(2) A violation shall be classified as a repeat violation, if it occurs within two years of a violation for which a civil penalty was levied against that person in the same county and of the same class.

(3) The person charged with a violation(s) shall be notified of the proposed fine action, including the amount of the proposed fine(s). When a penalty is proposed for a repeat violation, the Notice of Proposed Action shall identify the prior violation and the record of the proceedings shall include a copy of the decision regarding that prior violation. The commissioner shall send a copy of the notice to the department at the same time the notice is provided to the person charged with a violation(s).

(4) If the person against whom the commissioner levied a fine requested and appeared at the hearing offered by the commissioner, the commissioner's decision shall include information concerning the person's right to appeal the commissioner's decision to the Director.

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(5) The Department, on at least an annual basis, shall inform commissioners of violations for which fines have been levied.

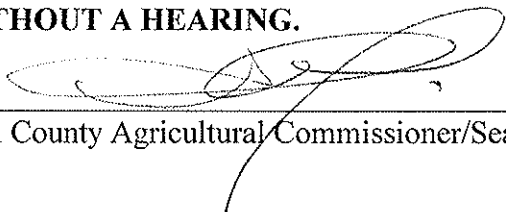
You are entitled to review the Agricultural Commissioner's evidence supporting these charges during the regular business hours at the office of the Kern County Department of Agriculture and Measurement Standards, 1001 South Mount Vernon Avenue, Bakersfield, California 93307.

You are also entitled to a hearing to review the Commissioner's evidence and present any evidence, oral or written, as to why the Commissioner should not take the proposed action against you. You are not required to be represented by legal counsel, but your attorney may be present if you wish. A tape recording will be made of the entire hearing proceeding and will be available for review on appeal to the Director of the California Department of Pesticide Regulation.

A hearing in this matter will be scheduled and held at the office of the Kern County Department of Agriculture and Measurement Standards located at the above noted address, if you request a hearing in writing within 20 days after receipt of this notice.

FAILURE TO TIMELY REQUEST A HEARING IS A WAIVER OF THE RIGHT TO A HEARING, AND THE AGRICULTURAL COMMISSIONER MAY TAKE THE ACTION PROPOSED IN THIS NOTICE WITHOUT A HEARING.

Dated: 10-6-09



Kern County Agricultural Commissioner/Sealer

Check payable to: KERN COUNTY DEPARTMENT OF AGRICULTURE
Mail to: KERN COUNTY DEPARTMENT OF AGRICULTURE AND
MEASUREMENT STANDARDS
1001 South Mount Vernon Avenue
Bakersfield, CA 93307