

**BEFORE THE DIRECTOR OF THE  
DEPARTMENT OF PESTICIDE REGULATION  
STATE OF CALIFORNIA**

In the Matter of the Decision of  
the Agricultural Commissioner of  
the County of Placer  
(County File No. 030-ACP-PLA-17/18)

Docket No. 216

**DIRECTOR'S  
DECISION**

Eugene Barrows  
Barrow's Landscaping Inc.  
764 Winship Road  
Yuba City, California 95991  

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Appellant/

**Procedural Background**

Under Food and Agricultural Code section 12999.5, county agricultural commissioners may levy a civil penalty up to \$5,000 for certain violations of California's pesticide laws and regulations. When levying fines, the commissioner must follow the fine guidelines established in California Code of Regulations, Title 3, section 6130, and must designate each violation as Class A, Class B, or Class C. Each classification has a corresponding fine range.

After giving notice of the proposed action and providing a hearing on July 25, 2018, the Placer County Agricultural Commissioner (Commissioner) ordered Barrow's Landscaping Inc. (Appellant) to pay a \$500 fine. The Commissioner found that Appellant violated California Code of Regulations, Title 3, section 6678 for using a service container that did not have a pesticide label and Food and Agricultural Code, section 12973 (failure to follow label instructions) when he applied a pesticide without wearing waterproof gloves. The Commissioner fined Appellant \$250 for each violation, for a total fine amount of \$500.

Appellant appeals the Commissioner's civil penalty decision to the Director of the Department of Pesticide Regulation (Director). Appellant admits to violating California Code of Regulations, Title 3, section 6678 (failure to label a service container). Appellant's only contention on appeal is that he did not make any application without wearing gloves in violation of Food and Agricultural Code, section 12973.

Appellant does not challenge the fine amounts or classification of either violation.

### **Standard of Review**

The Director decides matters of law using his independent judgment. Matters of law include the meaning and requirements of laws and regulations. For other matters, the Director decides the appeal on the record before the hearing officer. In reviewing the Commissioner's decision, the Director looks to see if there was substantial evidence, contradicted or uncontradicted, before the hearing officer to support the hearing officer's findings and the Commissioner's decision. The Director notes that witnesses sometimes present contradictory testimony and information; however, issues of witness credibility are the province of the hearing officer.

The substantial evidence test requires only enough relevant information and inferences from that information to support a conclusion, even though other conclusions might also have been reached. In making the substantial evidence determination, the Director draws all reasonable inferences from the information in the record to support the findings, and reviews the record in the light most favorable to the Commissioner's decision. If the Director finds substantial evidence in the record to support the Commissioner's decision, the Director affirms the decision.

### **Factual Background**

On March 12, 2018, Appellant made a pesticide application of Milestone (Reg. No. 62719-519-AA) and Grounded-CA (Reg. No. 5905-50096-AA) in Placer County at or near Ingram Road Trail in Lincoln, California. The Grounded-CA label requires the use of waterproof gloves when making a pesticide application.

During the application, Appellant used a utility vehicle with a power sprayer and 100-gallon tank to make the application. Placer County Agricultural and Standards Inspector Kelsey Lewis (County inspector) observed a portion of that application.

### **Relevant Laws and Regulations**

Food and Agricultural Code, section 12973 states:

The use of any pesticide shall not conflict with labeling registered pursuant to this chapter which is delivered with the pesticide or with any additional limitations applicable to the conditions of any permit issued by the director or commissioner.

California Code of Regulations, Title 3, section 6678 states:

Service containers, other than those used by a person engaged in the business of farming when the containers are used on the property the person is farming, shall be labeled with:

- (a) the name and address of the person or firm responsible for the container;
- (b) the identity of the pesticide in the container; and
- (c) the word "Danger," "Warning," or "Caution" in accordance with the label on the original container.

When levying fines, the Commissioner must follow the fine guidelines in California Code of Regulations, Title 3, section 6130. Under section 6130, violations shall be designated as Class A, Class B, or Class C.

A Class B violation is a violation of a law or regulation that mitigates the risk of adverse health, property, or environmental effects that is not designated as Class A.

(Cal. Code Regs., tit. 3, § 6130.) The fine range for a Class B violation is \$250 to \$1,000.  
(Cal. Code Regs., tit. 3, § 6130, subd. (c).)

### **Appellant's Contentions**

Appellant argues that when he applied the pesticides, he was wearing waterproof gloves. During his application, his gloves ripped. He immediately stopped applying at that point and was in the process of going back to his truck to get a pair of gloves when the inspector approached him. Appellant states that when the inspector saw him, he was not applying, and he was in the process of going back to his truck to get new gloves.

### **The Hearing Officer's Decision**

The Hearing Officer stated the following:

"County provided sufficient evidence to convince me that during some part of the herbicide application, respondent did not wear the label required chemical resistant gloves. I find that respondent violated FAC 12973.

Issue 1A- Class B \$250

The proposed penalty of \$250 was set by the commissioner consistent with the provisions of 3 CCR 6130.

Issue 2 - 3 CCR 6678

I find that a violation of 3 CCR 6678 occurred. Parties agreed that complete service container labeling required by regulation was not present at the initial time of Inspection.

Issue 2A- Class B \$250

The proposed penalty of \$250 was set by the commissioner consistent with the provisions of 3 CCR 6130.”

**The Director's Analysis**

Appellant admits to violating California Code of Regulations, Title 3, section 6678 (failure to label a service container) and only argues on appeal that he never made an application without wearing waterproof gloves. The County inspector testified that she witnessed Appellant make the application without gloves.

As discussed above, in reviewing the Commissioner's decision, the Director must look to see if substantial evidence supports the Commissioner's decision. If so, the Director affirms the decision. Here, Appellant and the County presented contradictory testimony. The Hearing Officer, as the fact-finder, determined that Appellant made at least part of the application without gloves. Substantial evidence (the County inspector's testimony) supports the Commissioner's decision.

Appellant did not challenge the fine amount for either violation. The Director finds that the Commissioner properly determined that Appellant's violations of California Code of Regulations, Title 3, section 6678 and Food and Agricultural Code section 12973 were both Class B violations. Each \$250 fine was appropriate and within the violation range for Class B.

**Conclusion**

The Director affirms the Commissioner's decision that Appellant violated California Code of Regulations, Title 3, section 6678 and Food and Agricultural Code, section 12973.

**Disposition**

The Commissioner shall notify Appellant of how and when to pay the \$500 fine.

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**Judicial Review**

Under Food and Agricultural Code, section 12999.5, Appellant may seek court review of the Director's decision within 30 days of the date of the decision. Appellant must file a petition for writ of mandate with the court and bring the action under Code of Civil Procedure, section 1094.5.

**STATE OF CALIFORNIA  
DEPARTMENT OF PESTICIDE REGULATION**

Dated: 10/31/18

By: Brian R Leahy  
Brian R. Leahy, Director