

**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 Ventura  
(County File No. ACP-VEN-20/21-086)

Administrative Docket No. 226

**DIRECTOR'S DECISION**

**Bennett Farms  
960 Gridley Road  
Ojai, CA 93023**

Appellant/

**Procedural Background**

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

After giving a Notice of the Proposed Action (NOPA) and providing a hearing on April 30, 2021, the Ventura County Agricultural Commissioner's (Commissioner) found appellant Bennett Farms committed one violation of 3 CCR section 6726 related to emergency medical care. The Commissioner classified the violation as Class B in accordance with 3 CCR section 6130 and issued a \$250 fine.

Appellant appeals the Commissioner's civil penalty decision to the Director of the Department of Pesticide Regulation (DPR or Department). The Director of the Department (Director) has jurisdiction to review the appeal under FAC section 12999.5.

**Standard of Review**

The Director decides matters of law using their 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.

If the Director finds substantial evidence in the record to support the Commissioner's decision, the Director affirms the decision. The substantial evidence test requires only enough relevant information and inferences from that information to support a conclusion, even though other conclusions could also be 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.

### **Relevant Laws and Regulations**

California Code of Regulations, title 3, section 6726, subdivisions (a) and (b) (emphasis added) state:

6726. Emergency Medical Care.

(a) Emergency medical care for employees handling pesticides shall be planned for in advance. The employer shall locate a facility where emergency medical care is available for employees who will be handling pesticides.

(b) Employees ***shall be informed*** of the name and location of a facility where emergency medical care is available. The employer shall post ***in a prominent place*** at the work site, or work vehicle if there is no designated work site, the name, address and telephone number of a facility able to provide emergency medical care whenever employees will be handling pesticides and, if the identified facility is not reasonably accessible from that work location, procedures to be followed to obtain emergency medical care.

When levying fines, the Commissioner must follow the fine guidelines set forth 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..." (*Id.* at subd. (b)(2).) The fine range for a Class B violation is \$250 to \$1,000. (*Id.* at subd. (c)(2).) The Commissioner shall use relevant facts, including the severity of actual or potential effects of the violation and the respondent / appellant's compliance history when determining the fine amount within the fine range, and include those relevant facts in the Notice of Proposed Action. (*Id.* at subd. (d).)

### **Factual Background**

On June 17, 2020, Ventura County Agricultural Inspector / Biologist T. Yanagihara performed an inspection at Bennett Farms, located at 960 Gridley Road in Ojai, California. (County Exh. E [Pesticide Use Inspection Report (Inspection Report)]; County Exh. F [Violation Notice]; County Exh. G, p. 3 [site map].) Inspector Yanagihara observed an application of Makaze Herbicide (County Exh. H, Makaze Herbicide Label [excerpts]) was being made to the property by G. Bolanos, an employee of Bennett Farms. (County Exh. F, at p. 1; Testimony of T. Yanagihara, pp. 13:2 to 14:5; County Exh. C, p. 1.)

Inspector Yanagihara testified that he holds a “first level Spanish qualification” from the County. (Testimony of T. Yanagihara, pp. 15:2 – 15:6; 24:12 – 25:7.) It appears from the record that Inspector Yanagihara conducted his conversation with Mr. Bolanos entirely or primarily in Spanish. (*See id.*)

Inspector Yanagihara asked Mr. Bolanos to show him the emergency medical care posting, per 3 CCR section 6726. (Testimony of T. Yanagihara, pp. 14:6 – 18:7.) Inspector Yanagihara explained to Mr. Bolanos that the emergency medical care posting contains the name and location of a facility where emergency medical care is available in the event of a medical emergency (i.e., pesticide exposure.) (Testimony of T. Yanagihara, p. 15:10 - 15:17.)

Mr. Bolanos and Inspector Yanagihara were unable to locate the emergency medical posting. (Testimony of T. Yanagihara, pp. 15:18 – 18:6; County Exh. C, p. 1.) Specifically, Inspector Yanagihara spent 45 minutes at Bennett Farms, including 15 to 20 minutes with Mr. Bolanos in an attempt to locate the information. To accomplish this task, Mr. Bolanos and Inspector Yanagihara searched the work vehicles and on-site office area. (Testimony of T. Yanagihara, pp. 15:18 – 18:7; 18:24 -19:1.) Mr. Bolanos presented Inspector Yanagihara with a binder of safety protocols, which did not contain the emergency medical posting. (Testimony of Inspector Yanagihara, p. 16:1 – 16:10.) Mr. Bolanos stated he could not contact his employer. (*Id.* at pp. 16:23 to 16:24.)

Inspector Yanagihara also asked Mr. Bolanos if he could identify the name and location of an emergency medical facility. He could not. (Testimony of T. Yanagihara, pp. 16:25 – 17:25.) Inspector Yanagihara then cited Bennett Farms for a violation of 3 CCR section 6726 for failing to inform its employees of the location of a facility where medical care is available and to have that information prominently posted at the work site or on the work vehicle. (County Exh. E, p. 2.) The Inspection Report also included a cease and desist order, prohibiting Bennett Farms from continuing with the pesticide application until the violation was corrected. (*Id.*; Testimony of T. Yanagihara, pp. 17:25 – 18:2).

On December 23, 2020, the Commissioner issued a NOPA to Bennett Farms, File No. ACP-VEN-20/21/-086. (County Exh. C.) The Commissioner proposed to fine Bennett Farms \$250 for a single Class B violation of 3 CCR section 6726 pertaining to emergency medical care. (*Ibid.*)

On December 30, 2020, the Commissioner issued a Violation Notice, signed by S. Bennett on behalf of Bennett Farms. (County Exh. F.) On January 19, 2021, appellant signed and returned an Acknowledgement of Receipt of Notice of Proposed Action and Request for a Hearing. (County Exh. B.) On April 6, 2021, Deputy Agricultural Commissioner A. Calderwood issued a Notice of Hearing. (County Exh. A.)

A hearing was duly held on April 30, 2021 before Hearing Officer Susan Johnson. Hearing Officer Johnson issued her Proposed Decision to the Commissioner on May 21, 2021. Hearing Officer Johnson found Bennett Farms violated 3 CCR section 6726 and proposed that a \$250 Class B fine be levied. On May 28, 2021, Agricultural Commissioner Edmund E. Williams issued a Commissioner’s Notice of Decision and Order to Pay to Bennett Farms. The

Commissioner fully adopted the Hearing Officer's Proposed Decision and ordered Bennett Farms to pay \$250 for a Class B violation of 3 CCR section 6726. The Commissioner's Notice of Decision and Order to Pay was sent to the appellant on July 14, 2021. Appellant timely filed this appeal on August 3, 2021 (Appeal.)

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

A hearing was held before Hearing Officer Johnson on April 30, 2021. At the hearing, the County and appellant both had the opportunity to present oral and documentary evidence.

Testifying for the County was Deputy Calderwood and Inspector Yanagihara. Testifying on behalf of Bennett Farms was Mr. Bennett. The County presented Exhibits A to H (described above.) Bennett Farm presented Appellant Exhibits 1 to 6: Exhibit 1 (photo); Exhibit 2 (photo); Exhibit 3 (document purporting to be emergency medical posting); Exhibit 4 (danger sign for poison storage area); Exhibit 5 (statement signed by G. Bolanos); Exhibit 6 (training records). (See Proposed Decision, p. 2 [listing and describing appellant's exhibits].)

Mr. Bennett stipulated that G. Bolanos conducted a pesticide application on June 17, 2020 at Bennett Farms. (Proposed Decision, p. 2.) Appellant contended that Mr. Bolanos and Inspector Yanagihara overlooked the posting, even though it was in the office area, and Mr. Bolanos forgot where it was. Mr. Bolanos would have located it, or made a greater effort to find his employer, had he had known the violation was serious and a fine would ensue. Appellant posited that Inspector Yanagihara did not effectively communicate with Mr. Bolanos because there was a language barrier. (Proposed Decision, p. 3.)

Appellant presented a photograph (App. Exh. 1) of Mr. Bolanos pointing to a piece of paper on a door. Appellant presented a photograph (App. Exh. 2) of Mr. Bolanos pointing to a piece of paper inside the office area. Appellant contended that these are pictures of the employee pointing to the emergency medical posting. (Proposed Decision, p. 3; *see also*, App. Exh. 3 [emergency medical posting].) Appellant also presented a statement, purportedly written and signed by Mr. Bolanos, stating that the posting had been on the work vehicle, but it had fallen off. (Proposed Decision, p. 3; *see also* App. Exh. 5.) The appellant also stated he was not aware that the inspection had occurred until months later. (Proposed Decision, p. 3; *see also* Testimony of S. Bennett, pp. 25:23 – 26:8.) The appellant also stated there was a language barrier between the employee and the Inspector. (Proposed Decision, p. 3.)

The Hearing Officer evaluated the County and appellant's conflicting evidence as to whether or not the emergency medical care information was posted at the site, consistent with 3 CCR section 6726. As discussed in detail below, the Hearing Officer weighed this evidence and determined that appellant's contention lacked support. The Hearing Officer found appellant's contention that the Inspector "should have stressed more vigorously that the violation could result in a fine so that the employee would make a greater effort to locate the required posting to be without merit. The Inspector did more than was required and it is not his job to manage Mr. Bennett's employee." (Proposed Decision, p. 3.)

The Hearing Officer found appellant's contention that there was a language barrier between Inspector Yanagihara and the employee to be without merit, as the County presented credible evidence that the Inspector was bilingual, as certified by the County. (Testimony of T. Yanagihara, p. 15:2 – 15:6; Proposed Decision, p. 3) Appellant also had sufficient notice that the violation occurred, as a cease and desist order was issued at the conclusion of the inspection; thus it was "unusual" for appellant to claim he was not aware that inspection had occurred. (Proposed Decision, p. 3.)

The Hearing Officer called into question the credibility of Appellant Exhibit 5 (Mr. Bolanos' signed statement) as it was written after the inspection had occurred and Mr. Bolanos was not present at the hearing to "attest to its accuracy." (Proposed Decision, p. 3.)

Regarding Appellant Exhibits 1 and 2 (photographs of Mr. Bolanos pointing to pieces of paper), Hearing Officer Johnson determined that it is "not clear exactly what Mr. Bolanos was pointing to and the photographs were clearly taken at another time after the inspection." (Proposed Decision, p. 3.) The Hearing Officer also noted that the employee did not remember the medical information. (Proposed Decision, p. 3.)

For the reasons stated above, the Hearing Officer determined that Bennett Farms violated 3 CCR section 6726, subdivision (b) by failing to inform employees of the location of an emergency medical facility and to have that information prominently posted on a work vehicle or at the work site. The Hearing Officer further found the Commissioner's proposed \$250, Class B fine was appropriate. (Proposed Decision, pp. 3-4.)

On May 28, 2021, the Commissioner adopted the Hearing Officer's Proposed Decision in its entirety. (Commissioner's Notice of Decision and Order to Pay.)

### **Appellant's Contentions on Appeal**

The appellant does not challenge the classification and fine amount of the violation under 3 CCR section 6130. Appellant raises seven interrelated issues on appeal: 1) contrary to his testimony, Inspector Yanagihara did not identify himself in uniform or present his badge or business card when he approached Mr. Bolanos; 2) the Inspector's failure to identify himself confused Mr. Bolanos and caused Mr. Bolanos to not understand the gravity of the situation. Because of this confusion, Mr. Bolanos failed to find the emergency medical posting; 3) Mr. Bolanos was not aware that he could call Mr. Bennett for assistance in locating this information, or in the alternative, Inspector Yanagihara should have called appellant; 4) the emergency medical care posting has been posted on the wall for over five years. Appellant "walked into the office and saw it posted" after the inspection; 5) appellant did not receive the Violation Notice until September 2020; and 6) the Violation Notice [Inspection Report] was not signed by the employee.

## The Director's Analysis

**I. There is substantial evidence in the record to support the Commissioner's Decision that Appellant violated 3 CCR section 6726 by failing to prominently post emergency medical information and inform employees of the name and location of an emergency medical facility.**

There is substantial evidence in the record that the appellant violated 3 CCR section 6726, subsection (b). In relevant part, the regulation states “[e]mployees *shall be informed* of the name and location of a facility where emergency medical care is available. The employer shall post *in a prominent place* at the work site, or work vehicle if there is no designated work site, the name, address and telephone number of a facility able to provide emergency medical care whenever employees will be handling pesticides . . . .” (3 CCR, § 6726, subd. (b), emphasis added.)

As noted above, the appellant conceded the documentation was not on the work vehicle and a pesticide application was occurring at the time of the inspection. (Proposed Decision, p. 2; Appellant Exh. 5.) Therefore, the focus of this inquiry is whether the County presented substantial evidence that Bennett Farms employee G. Bolanos was “informed” of the emergency medical care information and whether the information was posted “in a prominent place” at the time of the inspection as required under 3 CCR section 6726.

“In construing a statute, our fundamental task is to ascertain the Legislature's intent so as to effectuate the purpose of the statute. [Citation.] We begin with the language of the statute, giving the words their usual and ordinary meaning.” (*Fipke v. California Horse Racing Board* (2020) 55 Cal.App.5th 505, 514; *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 890 [applying the same rule to regulatory interpretation].)

The term “informed” is not defined in the Food and Agricultural Code or DPR regulations. The dictionary definition is: 1) “having information;” 2) “based on possession of information;” and 3) “educated, knowledgeable.” (Merriam-Webster Dictionary Online, *Informed*, available at <https://www.merriam-webster.com/dictionary/informed>, last viewed Dec. 27, 2021.) Inspector Yanagihara testified under oath that the following exchanged occurred when he asked Mr. Bolanos for the emergency medical information:

brought to. He did not know the name of the  
hospital. He did not know the direction of the  
hospital. He did not know the number and he  
believed that his son would have that information  
to provide.

(Testimony of T. Yanagihara, pp. 39:1 – 39:5.) Inspector Yanagihara went on to explain that Mr. Bolanos called his son, who Mr. Bolanos believed worked at the designated emergency

medical care facility, but could not reach him. (*Id.* at p. 39:5 – 39:16.)

As Mr. Bolanos could not answer these questions, the Director finds that appellant’s employee did not have or possess this information at the time of the inspection.

The Director further notes that a violation would still have occurred, even if, as appellant implies, this information may have been imparted to Mr. Bolanos during training. (*See* App. Exh. 5 [statement from G. Bolanos stating that he receives training regarding medical procedures and the location of a medical facility]; App. Exh. 6 [training records in Spanish].) Because even if Mr. Bolanos were “informed” as specified in 3 CCR section 6726, the information was not “prominently displayed” as required by law.

The phrase “prominently displayed” is not defined in the Food and Agricultural Code or DPR regulations. The dictionary definition of “prominent” includes: 1) “easily noticed or seen;” 2) “sticking out in a way that is easily noticed or seen.” (Merriam-Webster Dictionary Online, *Prominent*, available at <https://www.merriam-webster.com/dictionary/informed>, last viewed Dec. 27, 2021.) In interpreting the meaning of “prominent” case law in other jurisdictions is illustrative. In *Brown v. Wells Fargo* (2012) 284 F.R.D 432 (D. Minn.), the court considered whether an automated teller machine transaction fee was “prominent and conspicuous” as required under statute. The statute did not define the term. In making this analysis, the court can consider “the location of the disclaimer, the type size used, whether the notice is set off in some way (e.g. font style, spacing, or the use of capital letters), and the location of the warning.” (*Id.* at p. 442.)

The record reflects the uncontradicted testimony of Inspector Yanagihara that he and appellant’s employee were at the site for 45 minutes and spent approximately 15 to 20 minutes searching for the documentation. (Testimony of T. Yanagihara, pp. 15:18 – 18:6; 18:24 -19:1.) The documents could not be located. The Hearing Officer stated that “I find that ... the required posting could not be located by the employee” and so a violation of 3 CCR section 6726 occurred. (Proposed Decision, p. 3.) Further, even assuming as true appellant’s assertion that the medical posting was on the wall at the time of the inspection, that a violation occurred is still supported. Because even if physically present, the information was not “easily noticed or seen” as it was not detected by the Inspector or the appellant’s employee during the inspection.

The Director notes 3 CCR section 6726, subdivision (b) has been in effect using virtually the same language, since 1974.<sup>1</sup> (*See Order Amending Regulations of the Department of Food and Agriculture Pertaining to Worker Safety Involving Exposures to Pesticides*, OAL File No. 74-0107-00; see also *Order Amending, Adopting and Repealing Regulations of the Department of Food and Agriculture Pertaining to Pesticide Worker Safety*, OAL File No. 76-0728-03.) The purpose of 3 CCR section 6726 has been succinctly stated:

Purpose: The purpose of these changes is to more clearly state the three points of emergency care: (1) plan for it; (2) tell employees about it; and (3) use it if illness occurs.

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<sup>1</sup> Previously codified at 3 CCR section 2477, subdivision (i).

*(Final Statement of Reasons for Adopting Changes in the Regulations of the Department of Food and Agriculture Pertaining to Pesticide Worker Safety, (1988) OAL File No. 88-0826-04, p. 17.)* If medical care information can only be located after a protracted search, by contacting others, or through other time-consuming methods, then the purpose and efficacy of the regulation is frustrated.

For the foregoing reasons, the Director finds as a matter of law that the appellant's employee was not "informed" regarding the availability of emergency medical care nor was the emergency medical posting "prominently displayed" within the meaning of 3 CCR section 6726.

## **II. Appellant's additional arguments on appeal lack merit, are not supported by evidence in the record, or are irrelevant.**

The appellant raises several issues on appeal that lack merit, are not supported by the evidence, or are irrelevant to the issues before the Commissioner, which are limited to determining whether a violation occurred under 3 CCR section 6726 and if the fine classification and amount are appropriate under 3 CCR section 6130.

Appellant contends Inspector Yanagihara did not sufficiently identify himself (by appearing in uniform or by presenting a badge or business card) when he approached Mr. Bolanos. (Appeal, p. 1.) Appellant contends this was "contrary to" Inspector Yanagihara's sworn testimony. (*Ibid.*) Inspector Yanagihara's sworn testimony is that he arrived at the site wearing his badge, which is connected to his clothing. (Testimony of Inspector Yanagihara, pp. 63:20 – 64:4.) Beyond this assertion in the appeal, appellant has not presented evidence that contradicts the Inspector's sworn statement. Rather, evidence presented by the appellant *supports* the County's argument. In Appellant Exhibit 5, which purports to be a statement by Mr. Bolanos, Mr. Bolanos states that on June 17, 2020 "the Ventura County agricultural commissioner came out to inspect." (App. Exh. 5, p. 1.) This is an acknowledgement that Mr. Bolanos knew who Inspector Yanagihara was and understood the purpose of his visit. Thus, the contentions raised by appellant lack support in the record and are contradicted by appellant's own evidence.

Appellant contends that confusion over Inspector Yanagihara's identity and purpose caused Mr. Bolanos to be unable to find the emergency medical information. (Appeal, p. 1.) Appellant fails to demonstrate how any confusion on Mr. Bolanos' part contributed to his failure to locate the information. Rather, there is uncontradicted testimony in the record that Inspector Yanagihara spent 45 minutes at the Bennett Farms site, where Mr. Bolanos showed the Inspector numerous documents and allowed him to inspect the office and surrounding areas. (Testimony of T. Yanagihara, pp. 15:18 – 18:6; 18:24 -19:1.) This demonstrates that Mr. Bolanos knew who Inspector Yanagihara was, understood the purpose of his visit and diligently searched for the information in an effort to ascertain if the appellant was in compliance with 3 CCR section 6726.

Appellant contends that Mr. Bolanos was not aware that he could call his employer (the appellant), or in the alternative, that Inspector Yanagihara should have called appellant. (Appeal, p. 1.) Contacting the employer is not an element of 3 CCR section 6726. Thus, this argument is not relevant. This contention is also directly contradicted by evidence in the record. Inspector



Yanagihara testified Mr. Bolanos was given an opportunity to contact the appellant, but that Mr. Bolanos “could not contact” his employer. (Testimony of T. Yanagihara, 17:9 – 17:12.) Moreover, as discussed above, this information must be available to the employee, for the employee’s protection. If this information can only be located after a protracted search, by contacting others, or through other time-consuming methods, then the purpose and efficacy of the regulation is frustrated.

Appellant states he did not receive notice of the violation until September 2020, when the Violation Notice was sent to him by email. (Appeal, p. 1 [stating that Violation Notice was sent in September 2020]; Testimony of S. Bennett, p. 66:11 [stating that Violation Notice was emailed to appellant].) Although the email is not included in the record that the Violation Notice was sent to the appellant by email at some point after the inspection appears to be uncontradicted. However, the appellant fails to establish why this contention is relevant under 3 CCR section 6726. And, as noted at the April 30, 2021 hearing, the appellant was timely served with a NOPA within the statute of limitations. (Testimony of T. Yanagihara, pp. 40:23 – 42:11 and citing FAC, § 13000.)

Appellant contends the Violation Notice [Inspection Report] was not signed by appellant’s employee. (Appeal, p. 1.) Page two of the Inspection Report contains a signature block for the signature of the inspector and an acknowledgement from the party inspected, “Inspection Acknowledged by:”. (County Exh. E., p. 2.) The signature block for Inspector Yanagihara contains his printed name, signature, the date and the time (June 17, 2020, 09:38 AM.) The acknowledgment contains G. Bolanos’ name and the date (June 17, 2020). The signature block for Mr. Bolanos reads in block print “COVID-19.” (County Exh. E., p. 2.) In his testimony, Deputy Calderwood explained Mr. Bolanos did not physically sign the document “because of COVID-19. It’s a special emergency procedure we’ve been using since mid-March of 2020 just to minimize contact between people.” (Testimony of A. Calderwood, p. 44:1 – 44:5.)

The purpose of the acknowledgement is discussed in the *Pesticide Use Enforcement Compendium (Compendium)*. The *Compendium* states (vol. 4, p. 33.):

Have the person at the inspection site sign the form to acknowledge it, whether or not violations were found. This identifies the person who was inspected for the employer’s information and provides evidence that you conducted the inspection.

As a threshold matter, the significance of appellant’s objection is unclear. Appellant does not argue the inspection did not occur. Indeed, this argument would be precluded by appellant’s own evidence; in Appellant Exhibit 5, Mr. Bolanos stated that on June 17, 2020 “the Ventura County agricultural commissioner came out to inspect.” (App. Exh. 5, p. 1.) Therefore, there is substantial evidence in the record to support a finding that the inspection occurred.

In addition, an acknowledgement on an inspection report is not required. The *Compendium* states that the “inspected person must be requested to sign the inspection form.” (*Compendium*, p. 33.) Appellant does not allege that Mr. Bolanos was not asked to sign the

form. The *Compendium* further provides the person may refuse or be unable to sign the inspection report. If the inspector is “unable to get the person to sign for any other reason explain in [the acknowledgement] space.” (*Ibid.*) Here, the Inspector explained in the acknowledgement space why Mr. Bolanos was unable to sign the form, by writing “COVID-19” in reference to the safety protocols in place at the time. (Testimony of A. Calderwood, p. 44:1 – 44:5.)

For the reasons stated above, the Director finds appellant’s arguments on appeal lack merit, are not supported by substantial evidence or are not relevant to the issue of whether a violation occurred and the appropriate fine classification and range.

**III. There is substantial evidence in the record to support the Commissioner’s Decision to categorize the violation as a Class B violation and set the penalty at \$250.**

The appellant does not challenge the fine classification and amount. Nevertheless, the Director finds there is substantial evidence in the record to support the Commissioner’s Decision to assign the violation as a Class B violation with a \$250 fine amount.

A Class B violation is “a violation of a law or regulation that mitigates the risk of adverse health, property, or environmental effects” that are not otherwise Class A violations. (3 CCR, § 6130, subd. (b)(2).) The purpose of 3 CCR section 6726 is to mitigate the health effects to any workers who are experiencing symptoms of pesticide exposure, as discussed in detail in section II *supra*.

The fine range for a Class B violation is \$250 to \$1,000. (3 CCR, § 6130, subd. (c)(2).) The Commissioner shall use relevant facts, including the severity of the actual or potential effects of the violation and the respondent / appellant’s compliance history when determining the fine amount within the fine range, and include those relevant facts in the Notice of Proposed Action. (*Id.* at subd. (d).) Here, the fine was set at the lowest level in range, at \$250. The Director finds this was appropriate, as no lower amount can be assessed for a Class B violation.

**Conclusion**

The Director finds there is substantial evidence in the record to support a finding that the appellant violated 3 CCR section 6726, subdivision (b). Substantial evidence in the record supports the Commissioner’s finding that the appellant failed to inform employees of the name and location of an emergency medical facility and to have this information prominently posted at the work site or on a work vehicle. Deferring to the Commissioner’s factual findings concerning the weight of the evidence and credibility of the witnesses, the Director finds that appellant’s contrary contentions are unsupported, contradicted by evidence in the record, or are irrelevant to the issue of whether a violation occurred. The Director further finds that substantial evidence to support the Commissioner’s classification of the violation as a Class B violation and \$250 fine amount.

**Disposition**

The Commissioner's decision and levy of fine is affirmed. The Commissioner shall notify appellant of how and when to pay the \$250 fine.

**Judicial Review**

Under Food and Agricultural Code, section 12999.5, the appellant may seek court review of the Director's decision within 30 days of the date of the decision. The 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: 3/29/2022

By:   
Julie Henderson, Director