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. 037-ACP-PLA-06/07)

Docket. No. 148

DECISION

Erik Mogensen
Mogensen Landscaping
8209 Scarlet Oak Circle
Citrus Heights, California 95610
Appellant/

Procedural Background

Under Food and Agricultural Code (FAC) section 12999.5, and Title 3, California Code of Regulations (3 CCR), section 6130, county agricultural commissioners (CACs) may levy a civil penalty up to $5,000 for certain violations of California's pesticide laws and regulations.

After giving notice of the proposed action and providing a hearing, the Placer CAC found that the Appellant, Mogensen Landscaping, committed six violations of the state's pesticide laws. The commissioner imposed a total penalty of $1,100 for the violations.

The Appellant appealed from the commissioner's civil penalty decision to the Director of the Department of Pesticide Regulation. The Director has jurisdiction in the appeal under FAC section 12999.5.

Standard of Review

The Director decides matters of law using her 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

The Placer CAC issued a Notice of Proposed Action on March 2, 2007, to the Appellant for violations of 3 CCR sections 6602, 6670, 6724, 6726, and 6738, and one violation of FAC section 11701.

The Placer CAC found that the Appellant failed to have the pesticide label for QuikPRO Roundup, registration number 524-535, at the application site when its employee was making an application, a violation of 3 CCR section 6602. The Appellant, through its employee Mr. Alfredo Vasquez, left the QuikPRO Roundup container unattended at the use site, a violation of 3 CCR section 6670. The Appellant did not have any written pesticide training records for his employee applying the QuikPRO Roundup, a violation of 3 CCR section 6724. The Appellant failed to post emergency medical care information at the use site when its employee was applying QuikPRO Roundup, a violation of 3 CCR section 6726. The Appellant's employee was not wearing protective eyewear or chemical-resistant gloves while applying QuikPRO Roundup, as required by the label, a violation of 3 CCR sections 6738(b) and 6738(c), respectively. Finally, the Appellant did not possess a valid pest control business license when its employee was applying QuikPRO Roundup, a violation of FAC section 11701. The Appellant stipulated to all of the six counts during the hearing.

Appellant's Arguments

The Appellant argues in his written appeal, dated June 27, 2007, that when he was cited by the Placer CAC, he was unaware of the requirements and laws regarding application of the QuikPRO Roundup. The Appellant also argues that the actions taken by the Placer CAC and the Department were inadequate to inform applicators of the necessity of the applicator's license. The Appellant argues that neither the State Contractor's Licensing Board nor his pesticide suppliers told him that he needed to possess an applicator's license. The Appellant argues that a warning in lieu of a fine would have been a sufficient consequence to bring him into compliance, an opportunity he alleges other companies have been afforded.

Analysis

It is a well-settled legal principal that ignorance of the law is not an excuse. The Placer CAC found four violations that directly impacted the safety of his employee, and one that directly impacted the safety of any person passing by the application site. All of the fines assessed were at the lowest limits allowable by law. Section 6130 establishes the permissible range of the civil penalties for each violation class. The fine assessed for each violation here is the lowest fine allowable under the regulation.

The Appellant stipulated to each of the violations at the hearing; thus, substantial evidence of the violations exists in the record. The decision of the Placer CAC to bring an action against the Appellant as opposed to providing the Appellant with a warning is well within the CAC's discretion.

Conclusion

The commissioner's decision is supported by substantial evidence.

Disposition

The commissioner's decision is affirmed in its entirety. The commissioner shall notify the Appellant how and when to pay the $1,100 fine.

Judicial Review

Under FAC 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: 14 August 2007

By: Mary-Ann Warmerdam
Mary-Ann Warmerdam, Director

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