

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

In the Matter of the Decision of  
Agricultural Commissioner of  
San Joaquin County  
(County File No. 027-ACP-SJ-08/09)

Administrative Docket No. 170

**DIRECTOR'S  
DECISION**

**Mr. Russell P. Davenport**  
**7640 E. Acampo Road**  
**Acampo, California 95220**

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 may levy civil penalties up to \$5,000 per violation against a person who violates certain pesticide laws.

After notice and a hearing, the San Joaquin County Agricultural Commissioner levied a \$250 penalty against Mr. Davenport for violating 3 CCR section 6434 by failing to notify the Commissioner twenty-four hours before he applied a pesticide requiring a restricted materials permit. Mr. Davenport appealed the Commissioner's action to the Director of the Department of Pesticide Regulation. The Director has jurisdiction over the appeal under FAC section 12999.5.

**Appellant's Contentions**

Mr. Davenport contends that the Commissioner failed to prove his case.

**Standard of Review**

The Director decides the appeal on the record before the Hearing Officer. The Director affirms the Commissioner's decision if it is supported by "substantial evidence." Substantial evidence is relevant evidence that a reasonable person could find sufficient to support a conclusion, even if a reasonable person might also have reached a different conclusion. The Director decides questions of law using her independent judgment.

**Findings and Analysis**

3 CCR section 6434 requires that the Commissioner be notified at least twenty-four hours before use of a pesticide requiring a permit. There is substantial evidence in the record to support a finding that Mr. Davenport used a pesticide requiring a permit without giving the Commissioner prior notice. Mr. Davenport testified that he used Firestorm, U.S. Environmental Protection Agency registration number 82557-1-400, as reflected on his Pesticide Use Report for

February 2009. That report listed a use of Firestorm on February 4, 2009 (Exhibit E). Parties stipulated that use of Firestorm requires a permit. San Joaquin County staff biologist Mr. Long testified that he had not received a notice of intent (NOI) to apply for Mr. Davenport's February application of Firestorm and that the other biologist he checked with had not either.

Mr. Long testified to the procedures the Commissioner's office follows when it receives an NOI substantially as follows. NOI's may be submitted by telephone, facsimile, or electronically. For call-in NOIs, the office has a form that the person who received the call, generally the office assistant, uses to elicit required information from the caller, and record the NOI. See 3 CCR section 6434(b). The office assistant will then give that form to a staff biologist to be evaluated. Each biologist maintains a file of NOIs they have been given. Mr. Davenport testified that he did not remember whether or not he had notified the Commissioner of his Firestorm application, and that his wife or son might have. Neither was available at the hearing.

Mr. Davenport questioned why failure to give notice to the Commissioner warrants a penalty even if he knew how to properly apply Firestorm, had done so in this case, and had no history of violations. The answer is that the Commissioner has a right to prior notice of all applications of restricted materials in San Joaquin County. General compliance with the NOI requirement is critical to the Commissioner's ability to fulfill his legal responsibilities to evaluate restricted material applications and to enforce the conditions of restricted material permits by conducting regular inspections of such applications. Therefore, it is reasonable and appropriate for him to penalize any and all noncompliance with the NOI requirement.

### **Conclusion**

For the foregoing reasons, the Commissioner's decision to levy a penalty of \$250 against Mr. Davenport for violating 3 CCR section 6434 is supported by substantial evidence and there is otherwise no cause to reverse or modify it.

### **Disposition**

The Commissioner's decision and order is affirmed. The \$250 is due within 14 days of the date of this decision.

**STATE OF CALIFORNIA  
DEPARTMENT OF PESTICIDE REGULATION**

Dated: March 9, 2010

By:  for \_\_\_\_\_  
Mary-Ann Warmerdam, Director