

**BEFORE THE DISCIPLINARY REVIEW COMMITTEE  
STATE OF CALIFORNIA**

In the Matter of the Decision of  
the Agricultural Commissioner of  
the County of San Bernardino  
(County File No. 36-15-056S)

Docket No. S-028

**Mega Fume, Inc.**  
**P.O. Box 17716**  
**Anaheim, CA 92817**

**DECISION**

Appellant/  
\_\_\_\_\_

**Procedural Background**

Under Business and Professions Code (BPC) section 8617, and Food and Agricultural Code (FAC) section 15202, the County Agricultural Commissioner may levy a civil penalty up to \$5,000 for a violation of California's structural pest control and pesticide laws and regulations.

After giving notice of the proposed action and providing a hearing, the San Bernardino County Agricultural Commissioner (CAC) found that Mega Fume, Inc. (appellant or Mega Fume) violated California Code of Regulations (CCR) title 3, section 6726 (section 6726) by failing to post at the work site required information about emergency medical facilities. The CAC classified the violation as "moderate" and levied an \$800 fine.

The appellant appealed from the commissioner's civil penalty decision to the Disciplinary Review Committee (Committee). The Committee has appellate jurisdiction under BPC section 8662. Members serving on the Disciplinary Review Committee were John Tengan for the structural pest control industry, Susan Saylor for the Structural Pest Control Board (SPCB), and Daniel Rubin for the Department of Pesticide Regulation (DPR). No party requested oral argument and the Committee determined oral argument was not necessary.

**Standard of Review**

The Committee decides the appeal on the record before the hearing officer. In reviewing the CAC's decision, the Committee looks to see if there was substantial evidence in the record, contradicted or uncontradicted, before the hearing officer to support the commissioner's decision. The Committee 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 Committee 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 Committee finds

substantial evidence in the record to support the commissioner's decision, the Committee affirms the commissioner's decision.

### **Factual Background**

On April 30, 2015, Mega Fume performed a structural fumigation of a private residence located at 766 West Hawthorne Street in Bloomington, California (fumigation site) using Vikane (Reg. No. 62719-4), a DPR-registered pesticide. (County Exhibit C4.) The fumigation site is located in San Bernardino County, California. C. Romo was the Mega Fume field representative present at the fumigation. At the time of the fumigation, C. Romo was licensed by the California Structural Pest Control Board (License No. FR48786). Prior to the fumigation, C. Romo completed several pesticide safety training courses. (Respondent Exhibits RC; RD; RE.) Additionally, Mega Fume provided C. Romo with a list of every emergency medical facility in Southern California, including those located in San Bernardino County. (Respondent Exhibit RB.)

During the fumigation, L. Rodriguez, Agricultural Standards Officer with San Bernardino County, performed a routine structural fumigation use monitoring inspection of the fumigation site. During the inspection, L. Rodriguez inspected the Mega Fume vehicle that was parked on-site. L. Rodriguez observed and documented a sign posted in the vehicle that listed seventeen (17) emergency medical facilities with corresponding addresses and phone numbers. All of the facilities listed on this sign are located in San Diego County, California. (County Exhibits C2; C4.)

On July 29, 2016, the CAC issued a Notice of Proposed Action (NOPA), charging Mega Fume with violating section 6726 for failing to prominently post information in the work vehicle about accessible emergency medical facilities. Mega Fume requested a hearing. On October 6, 2016, a hearing was held before Renee Reid, the hearing officer appointed by the CAC.

### **Applicable Statutes and Regulations**

CCR title 3, section 6726, subdivision (b) states:

“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.”

BPC section 8617, subdivision (a) states:

“The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars (\$1,000) or direct

the licensee to attend and pass a board-approved course of instruction at a cost not to exceed the administrative fine, or both, for each violation of this chapter or Chapter 14.5... or any regulations adopted pursuant to these chapters.”

CCR title 16, section 1922 states:

“(B) ‘Moderate’: Violations that are repeat violations... or violations which pose a reasonable possibility of creating a health of environmental effect. The fine range for moderate violations is \$250-\$1,000.”

### **Appellant’s Contention**

Appellant does not challenge the violation itself, fine classification, or fine amount. Instead, appellant argues that because C. Romo is a trained and licensed field representative, and Mega Fume provided C. Romo with a list of medical facilities located in San Bernardino County, the CAC should have charged the licensee—not the company—with the violation. Appellant also argues that the CAC should have provided Mega Fume with the opportunity to informally discuss the violation prior to issuing the NOPA, and that the CAC improperly delivered the notice of violation to C. Romo.

### **The CAC Decision**

In the NOPA, the CAC classified the violation as a “moderate” violation of section 6726 and proposed a fine of \$800. The hearing officer found that Mega Fume violated section 6726 because the San Diego County emergency medical facilities posted in the vehicle were not “reasonably accessible” to employees performing the fumigation in San Bernardino County, and Mega Fume alternatively failed to provide any procedures for obtaining emergency medical care. (Hearing Officer’s Decision, pg. 3.) The hearing officer upheld the CAC’s proposed “moderate” fine classification because the failure to post the phone numbers and addresses of accessible medical facilities could pose a reasonable possibility of creating a health effect for employees or bystanders seeking medical care in the event of an emergency. *Id.* Finally, the hearing officer upheld the fine amount—which is near the top of the allowable range—based on Mega Fume’s history of recent violations committed in San Bernardino County. (Hearing at 18:05.) The CAC adopted the hearing officer’s decision in its entirety.

### **Analysis**

As stated above, appellant does not challenge the CAC decision that Mega Fume violated section 6726, the classification of the violation as “moderate,” or the penalty amount. Instead, appellant argues that the CAC improperly charged the company with the violation and should have instead charged the licensee, C. Romo. In the appeal, Mega Fume argues that “[a] state qualified, fully trained, and licensed individual should have been violated for this infraction.” Appellant notes that as a licensee, C. Romo works in a supervisory role and in fact, has authority to qualify her own branch office. Appellant notes that prior to the application, C. Romo completed a variety of pesticide trainings and coursework including: the DPR Pesticide Safety

Information Series for non-agricultural settings; hazardous materials transportation training; and the Vikane caretakers program.

Appellant also argues that “[once] the employer provides the licensee with all items to complete their task, the licensee must be responsible for said duty.” Specifically, appellant notes that Mega Fume provided C. Romo with a label book that includes a list of every hospital in Southern California, including those located in San Bernardino County; but C. Romo ultimately failed to post those locations at the work site.

BPC section 8617 expressly provides the CAC with authority to levy administrative penalties against licensees *or* companies. But in this case, the CAC could not have charged the licensee with violating section 6726 at all. Under that section, only “employers” are responsible for posting information at the work site about health care facilities. C. Romo was a Mega Fume employee at the time of the fumigation. Although C. Romo was licensed and had supervisory duties, “employer” is a defined term that excludes “[a] foreman, crew leader, supervisor, or similarly situated person...” (Cal. Code Regs., tit. 3, § 6000.) As such, section 6726 does not allow—let alone require—the CAC to charge the licensee instead of the company, and the CAC properly levied a penalty against Mega Fume, as opposed to C. Romo.

Appellant also argues that the CAC should have provided an opportunity for informal discussion of the violation prior to issuing the NOPA. There is no requirement that the CAC provide such an opportunity. The CAC may do so as a courtesy, but is under no legal obligation.

Finally, appellant argues that the CAC should have delivered the notice of violation directly to Mega Fume, not to C. Romo. At the time of the violation, C. Romo was an employee of Mega Fume and Mega Fume’s licensed field representative at the fumigation site. As such, C. Romo was a proper recipient of the notice of violation. Mega Fume was not deprived of any required notice.

### **Conclusion**

The record demonstrates no cause to reverse or modify the decision.

### **Disposition**

The San Bernardino CAC’s decision is affirmed. The CAC’s order is stayed until thirty (30) days after the date of this decision to provide opportunity for the appellant to seek judicial review of the Committee’s decision as set forth below.

The \$800 civil penalty levied by the CAC against the appellant is due and payable to the “Structural Pest Control Education and Enforcement Fund” thirty (30) days after the date of this decision. The appellant is to mail the payment along with a copy of this decision to:

Structural Pest Control Board  
2005 Evergreen Street, Ste. 1500  
Sacramento, CA 95815

**Judicial Review**

BPC section 8662 provides the appellant may seek court review of the Committee's decision pursuant to Code of Civil Procedure Section 1094.5.

**STATE OF CALIFORNIA  
DISCIPLINARY REVIEW COMMITTEE**

Dated:           JAN 30 2017          

By:                       
Daniel Rubin, Member  
For the members of the Disciplinary  
Review Committee