

**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 Butte
(County File No. ACP-BUT-24/25-007)

Administrative Docket No. 230

DECISION

**Harris Farms
Christopher Harris
2595 Stafford Road
Live Oak, CA 95953**

Appellant /

Procedural Background

Under Food and Agricultural Code (FAC) section 12999.5 and section 6130 of Title 3, California Code of Regulations (3 CCR), county agricultural commissioners (CACs) may levy a civil penalty up to \$15,000 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 issuing a Notice of Proposed Action (NOPA) and providing a hearing on April 30, 2025, the Butte County Agricultural Commissioner (Butte CAC) found appellant Harris Farms (Appellant or Harris), committed one violation of FAC section 12973 for using *Movento* (DPR Reg. No. 264-1050-AA) and *Senstar Insecticide* (DPR Reg. No. 59639-243-AA) in conflict with their labels, resulting in a human health hazard. The Butte CAC classified the violation as Class A in accordance with 3 CCR section 6130 and issued a \$3,000 fine.

Harris Farms appealed 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 over the appeal under FAC section 12999.5.

Standard of Review

The Director decides matters of law using their independent judgement. 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 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.

Relevant Laws and Regulations

California 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.

When levying fines, the Commissioner must follow the fine guidelines set forth in the California Code of Regulations, title 3, section 6130. Under section 6130, violations shall be designated as Class A, Class B, or Class C using the following definitions:

- (1) A Class A violation is one of the following:
 - (A) A violation that caused a health, property, or environmental hazard.
 - (B) A violation of a law or regulation that mitigates the risk of adverse health, property, or environmental effects, and the commissioner determines that one of the following aggravating circumstances support elevation to Class A.
 1. The respondent has a history of violations;
 2. The respondent failed to cooperate in the investigation of the incident or allow a lawful inspection; or
 3. The respondent demonstrated a disregard for specific hazards of the pesticide used.
 - (C) A violation of a lawful order of the commissioner issued pursuant to sections 11737, 11737.5, 11896, 11897, or 13102 of the Food and Agricultural Code.
- (2) 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.
- (3) A Class C violation is a violation of a law or regulation that does not mitigate the risk of an adverse health, property, or environmental effect, including, but not limited to, Title 3, California Code of Regulations, sections 6624 through 6628, and Food and Agricultural Code section 11732, 11733, and 11761.

Cal. Code. Regs., tit. 3, § 6130(b).

The fine range for a Class A violation is \$700 - \$15,000. (3 CCR, § 6130, subd. (c).) 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. (3 CCR, § 6130, subd. (d).)

Factual Background

On September 1, 2024, at approximately 8:23 am, the Butte County Assistant Agricultural Commissioner, Katherine Quist, received a call and message from Stephanie Taylor (Ms. Taylor or Complainant), regarding a pesticide application. (C-1, p. 2.) Complainant reported to Ms. Quist that she and her children were drifted on by a pesticide application while walking south down Gilstrap Avenue in Gridley, California, adjacent to an almond orchard. (*Ibid.*) Ms. Quist notified the Gridley District Supervising Agricultural Biologist Eric Jennings, Agricultural Biologist III and Investigator Derek Ellen, and Agricultural Biologist Jose Torres. (*Ibid.*)

On September 1, 2024 between the hours of 6 am and 9 am, Christopher Harris, owner of Harris Farms reported to Investigator Derek Ellen that an application of *Movento* (DPR Reg. No. 264-1050-AA; active ingredient spirotetramat) and *Senstar Insecticide* (DPR Reg. No. 59639-243-AA; active ingredient pyriproxyfen) using an air blast sprayer to Harris Farms' almond orchard, located east of Gilstrap Avenue and south of E Gridley Road in Gridley, California ("Site Gilstrap"). (C-1, p. 2; Stipulation 6 of Proposed Decision, p. 1.) Appellant submitted a Pesticide Use Report for *Senstar Insecticide* on October 22, 2024, for the September 1, 2024 application, however, did not submit a Pesticide Use Report for *Movento*. (C-1, p. 132-133; Stipulation 7 of Proposed Decision, p. 2; Recorded Hearing on April 30, 2025 (Hearing Record), Clip 2 at 9:40-9:53.) Site Gilstrap is an almond orchard adjacent to Gilstrap Avenue, a road which runs in a north-south direction. (C-1, p. 17-19; R-1.) According to Appellant's written statement, typed on behalf of their applicator, beginning the morning of September 1, 2024, Appellant's employee started treating the west side of the almond field, moving south down the rows, with the air blast sprayer blowing in an eastward direction into the orchard rows. (R-1.)

At approximately 8:30 am, Complainant reports walking with her three children and neighbor when they noticed a pesticide application being conducted in the almond orchard, adjacent to their location. (C-1, p. 2-3, Exhibit 8.) Ms. Taylor reports waving to the applicator, while two of her children were riding bikes ahead of her, the neighbor, and third child. (C-1, Exhibit 8.) Complainant told the Investigator that she believed the applicator did not see her and did not turn off the sprayer as he made the turn at the end of the orchard row. (*Ibid.*) She alleges the spray drifted on her, her neighbor and her daughter across the road in front of the driveway of 1545 Gilstrap Avenue (C-1, p. 2-3, Exhibit 8.) She waited until the applicator was further into the orchard before continuing onto Gilstrap Avenue. (*Ibid.*)

According to Appellant's statement on behalf of their applicator, the applicator was applying pesticides halfway down the 3rd row of the northwest corner of the orchard heading west towards Gilstrap when he saw a kid go by on a bike. (R-1.) He states he shut off his sprayer at the 2nd tree when he got to the end of the row and noticed a woman north of Gilstrap Avenue, waving her hands. (*Ibid.*) According to his statement, he stopped the sprayer and then she waved again. (*Ibid.*) He then states he made a turn into the next row and turned on the sprayer when he passed the second tree in the row. (*Ibid.*) The applicator reports looking back halfway down the row and saw that she continued to walk south down Gilstrap Avenue. (*Ibid.*)

In a written statement submitted at the April 30, 2025 hearing, Mr. Harris confirms seeing Ms. Taylor around 8:30 am with her three children and another woman, walking towards the south end of the orchard, between the house located at 1520 Gilstrap Avenue and the last row of almond trees. (R-2.)

The wind direction between 8 am and 9 am on September 1, 2024, was generally out of the southeast, blowing to the northeast at speeds of 2.83 mph to 7.70 mph. (C-1, Exhibit 11; R-4.)

The County searched for Pesticide Use Reports for any pesticide applications on September 1, 2024, and found applications within one-half mile south of the incident location. However, the Pesticide Use Reports submitted for the other applications were herbicides, not the nematicides, *Movento* (DPR Reg. No. 264-1050-AA) and *Senstar Insecticide* (DPR Reg. No. 59639-243-AA), used at Site Gilstrap. (Recorded Hearing on April 30, 2025, Clip 2, 8:10-8:43.)

On September 1, 2024, Investigators Derek Ellen, Eric Jennings, and Jose Torres drove to the site of the alleged drift to investigate the site of the alleged drift. They observed no active application, however reported seeing fresh tire marks and empty containers near a recently used mix and load site. (C-1, p. 2.) The County took pictures of three empty pesticide containers found at the application site: (1) *Movento* (DPR Reg. No. 264-1050-AA); (2) *Senstar Insecticide* (DPR Reg. No. 59639-243-AA); and (3) *Pro-Tron* (DPR Reg. No. 71058-50008-AA) (C-1, Exhibits 3A, 3B & 3C.)

On September 1, 2024, the Investigator interviewed Harris about the incident. (C-1. p. 2.) After leaving the orchard, Derek Ellen spoke with Ms. Taylor on the phone and met Ms. Taylor at her residence to discuss the incident. (*Id.* at p. 2-3.) There, Jose Torres and Derek Ellen collected three clothing samples from the Complainant and two of her children, to be analyzed by the California Department of Food and Agriculture (CDFA) Center for Analytical Chemistry located at 3292 Meadowview Road, Sacramento, CA: (1) Sample R24C00436 – adult shirt worn by Ms. Taylor; (2) Sample R24C00437 – child skirt worn by Ms. Taylor's daughter; (3) Sample R24C00438 – child shirt worn by Ms. Taylor's daughter. (*Id.* at p. 3.)

On December 10, 2024, the results from the CDFA lab revealed all three clothing samples tested positive for Spirotetramet and Pyriproxyfen, the active ingredients in both pesticides used by Appellant in Site Gilstrap, *Movento* and *Senstar Insecticide*, in the following amounts:

- (1) Sample R24C00436
 - a. Spirotetramet: 13 ug/sample
 - b. Pyriproxyfen: 3.1 ug/sample

- (2) Sample R24C00437
 - a. Spirotetramet: 7.2 ug/sample
 - b. Pyriproxyfen: 2.7 ug/sample

- (3) Sample R24C00438
 - a. Spirotetramet: 5.2 ug/sample
 - b. Pyriproxyfen: 7.8 ug/sample

(Proposed Decision, p. 4-5; C-1, Exhibit 10.)

The *Movento* (DPR Reg. No. 264-1050-AA; active ingredient spirotetramet) label states: “Do not apply this product in a way that will contact workers or other persons, either directly or through drift.” (C-1, Exhibit 4.)

The *Senstar Insecticide* (DPR Reg. No. 59639-243-AA; active ingredient pyriproxyfen) label states: “Do not apply this product in a way that will contact workers or other persons, either directly or through drift.” (C-1, Exhibit 5.)

The Hearing Officer’s Proposed Decision

A hearing was held before Hearing Officer, Scott T. Paulsen, on April 30, 2025. At the hearing, the County and Appellant both had the opportunity to present oral and documentary evidence. At issue was whether the incident resulted in a violation of FAC section 12973, as alleged.

Testifying for Butte County was Eric Pittman, Butte County Deputy Agricultural Commissioner, Butte County Assistant Agricultural Commissioner Uriah Johnson, Butte County Agricultural Biologist III and Investigator Derek Ellen, and Butte County Agricultural Biologist Jose Torres. Testifying on behalf of Harris Farms were Christopher Harris and Shae Harris, owners of Harris Farms. The County presented Exhibits C-1 to C-8. C-1: Harris Farms Investigation; C-2: Pesticide Use Enforcement Program Standard Compendium, Volume 5, Investigation Procedures, Chapter 3; C-3: Notice of Proposed Action (NOPA), ACP-BUT-24/25-007; C-4: Signed acknowledgment of receipt of NOPA and request for hearing; C-5: Email acknowledgment of hearing request; C-6: Food and Agricultural Code, section 12973; C-7: Video from Gilstrap Avenue where drift incident occurred; and C-8: University of California

Article on Airborne Pesticide Drift. Christopher and Shae Harris presented Exhibits R-1 to R-9. R-1: Applicator's statement and map; R-2: Supervisor's statement and map; R-3: Training record for applicator; R-4: September 1, 2024 weather data from 608 Cowee Avenue, Gridley, CA; R-5: Landlord's statement; R-6: Harris Farms & Lechtaler Family Partnership Lease at 1520 Gilstrap Avenue, Gridley, CA; R-7: Local Farmers Statement; R-8: List of inaccuracies and inconsistencies in the investigation of the incident at 1520 Gilstrap Avenue on September 1, 2024; and R-9: DPR's Pesticide Use Enforcement Program Standards Compendium References. (See Proposed Decision, p. 2-3 [Evidence Docket].)

Appellant argued Harris Farms did not violate FAC section 12973. Appellant cited to a statement made on behalf of their applicator, who reports turning off the sprayer when making the turn out of the orchard, into the next row, adjacent to Gilstrap, Avenue. (R-1.) Appellant also claimed Ms. Taylor is a "frequent caller" to Butte CAC and complainant of pesticide application, often trespassing on Appellant's and neighboring properties. (R-2; R-5; R-6; R-7.) Appellant argued the Butte CAC made several errors in the County's investigation report and acted inconsistent with DPR's Pesticide Use Enforcement Compendium Volume 5 Investigation Procedures ("Compendium"). (R-8; R-9.) Appellant argued the weather data used by Butte CAC was less accurate than the data Appellant provided from a weather station closer to the application site. (R-4.) Finally, Appellant alleged Ms. Taylor could have contaminated her clothing after coming into contact with treated foliage on the south side of the almond orchard. (Hearing Record, Clip 4 at 8:13-9:43.)

The Hearing Officer found Appellant's allegations that the Complainant is a frequent caller to the Butte CAC and complainant of pesticide applications has no merit to this case. (Proposed Decision, p. 6.) The Hearing Officer also found there is no evidence in the record that Complainant or her children on the day of the application came into contact with treated foliage at Site Gilstrap. (*Ibid.*)

The County did not rebut Appellant's argument in hearing that some errors and inconsistencies were made in the investigation. (Proposed Decision, p. 6.) The County has acknowledged there were some errors and procedures that were not followed, as outlined in the Compendium. (*Ibid.*) The Hearing Officer found these errors were minor, technical, and did not affect the integrity or outcome of the investigation, nor the credibility of the CDFA laboratory sample analysis reported results. (*Ibid.*)

The Hearing Officer found the wind direction, from evidence presented from both the County and Respondent's exhibits, indicated a wind direction generally coming from the southeast blowing towards the northwest, which would have been in the general direction of the Complainant and her children as they approached the air blast sprayer application. (Proposed Decision, p. 6.)

The Hearing Officer notes there is conflicting evidence in the record as to whether the applicator turned off the spray nozzle when turning out of the orchard row. (Proposed Decision, p. 6.) However, neither the applicator nor the Complainant attended the hearing to testify and be

questioned. (*Ibid.*) Ultimately, the Hearing Officer found compelling the fact the clothing worn by Complainant and her children tested positive for the active ingredients in *Movento* and *Senstar Insecticide*, Spirotetramat and Pyriproxyfen, both pesticides applied by Harris Farms the morning of September 1, 2024. (Proposed Decision, p. 6.) The Hearing Officer found there was no evidence in the record that the detections of the active ingredients, Spirotetramat and Pyriproxyfen, found on the clothing worn by Complainant or her children came from another source or were contaminated by the County's failure to follow the exact procedures for sampling collection, as outlined in the Compendium. (*Ibid.*)

The Hearing Officer found the *Movento* and *Senstar Insectide* labels put responsibility on the applicator to not apply the pesticides in a way that will contact people either directly or through drift. (Proposed Decision, p. 6.) For the reasons stated above, the Hearing Officer determined that Harris Farms violated FAC section 12973, for using both pesticide products in conflict with their labels. (*Id.* at p. 6-7.) The Hearing Officer further found the Commissioner's proposed \$3,000, Class A fine appropriate. (*Id.* at p. 7.)

On May 13, 2025, the Butte Agricultural Commissioner adopted the Hearing Officer's Proposed Decision in its entirety. (Commissioner's Decision Upheld.)

Appellant's Contentions on Appeal

On appeal, the Appellant argues the County's (1) failure to follow the proper procedure to collect, store, and analyze samples, (2) incomplete, inaccurate and contradictory Investigative Report and evidence, and (3) failure to follow required procedures and policies for investigation and reporting, warrant the exclusion of all the County's evidence. (Appeal.) Appellant argues at the very least the Hearing Officer should have applied a lesser weight to the County's evidence and a greater weight to Appellant's evidence and found in favor of Harris. (Appeal, p. 4.) Appellant requests the Director overturn the Hearing Officer and Butte County Agricultural Commissioner's decision, dated May 13, 2025. (Appeal, p. 4.)

The Director's Analysis

I. There is substantial evidence in the record to support the Commissioner's decision that Appellant violated FAC section 12973, for use in conflict with the provisions of two pesticide labels.

The Director decides this appeal on the record of the hearing, including the written evidence that was submitted at hearing, as well as a written argument to the Director stating grounds for affirming the county agricultural commissioner's decision. (Food & Agr. Code, § 12999.5, subs. (d)(2) & (d)(7).)

Evidentiary hearings, like other administrative proceedings, are not bound by the technical rules of evidence that apply in civil or criminal courts. (Gov. Code, § 11513(c).) Further, while hearings pursuant to FAC section 12999.5 are subject to the adjudicative bill of

rights under the Administrative Procedures Act (APA), they are not subject to chapter 5 of the APA. (*Patterson Flying Service v. Dept. Pesticide Regulation* (2008) 161 Cal. App 4th 411, 422.) Thus, CAC hearings are not subject to the formal rules of evidence nor formal hearing procedures under the APA.

Under the formal rules of evidence, a verdict or finding can be set aside if the erroneous admission or exclusion of evidence resulted in a miscarriage of justice. (Evid. Code, § 353(b).) Under formal APA hearing procedures, the standard for the admission of evidence in administrative proceedings is any relevant evidence, “if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.” (Gov. Code, § 11513(c).) Evidence relied upon in administrative hearings must be both relevant and reliable. (*Aengst v. Board of Med. Quality Assur.* (1980) 110 Cal. App. 3d 275, 283.)

As discussed in detail below, the Appeal alleges numerous issues and/or deficiencies with the CAC’s investigation procedures and evidence collection that appellant argues amount to evidentiary deficiencies that warrant reversal of the CAC decision. While in certain instances the Appellant articulates arguments for how the CAC may have deviated from DPR enforcement guidance, the legal assertions are vague, conclusory and lack citations to any authority. Appellant asserts very generally that the “[b]asic rules of evidence would lead to the exclusion of the Department’s evidence”, however the appeal does not cite to any particular legal authority upon which Appellant relies, explain how the County failed to comply with any such authority, or analyze what the legal effect of such an alleged deficiency might be. (Appeal, p. 4.) With this in mind, the Director has addressed all cognizable arguments on appeal below. The Director is under no obligation to address arguments that are not raised on appeal and such arguments are deemed waived. The Director has grouped Appellant’s contentions on appeal as follows: (1) the County’s failure to follow proper procedure to collect, store and analyze samples; (2) incomplete, inaccurate and contradictory Investigative Report and evidence; and (3) failure of County personnel to follow required procedures and policies for investigation and reporting.

Here, the County responded to a complaint regarding an alleged spray drift of pesticides onto Complainant and Complainant’s two children while walking on Gilstrap Avenue near 1520 Gilstrap Avenue¹ in Gridley, CA by an air blast sprayer applying pesticides to an almond orchard at approximately 8:30 am on September 1, 2024. (C-1, p. 2, Exhibit 8; Proposed Decision, p. 5.) The Appellant’s employee performed an application of both *Movento* and *Senstar Insecticide* to the almond orchard, directly adjacent to the east of where Complainant and her children were walking. (C-1, p. 2, Exhibits 2 & 8; C-7; R-1.) Eyewitness statements from Ms. Taylor, Harris, and the applicator all confirm Complainant’s presence on Gridley Avenue, adjacent to the almond orchard, during the time of Harris’ active application. (C-1, p. 2, Exhibit 8; R-1; R-2.) Moreover, Appellant has stipulated that Appellant made an application consisting

¹ The Butte CAC investigatory report states an address of 1620 Gilstrap Avenue in Gridley, CA. At hearing, the Appellant corrected the address of the incident, which is 1520 Gilstrap Avenue in Gridley, CA. (Hearing Record, Clip 4 at 17:00-17:21.)

of a pesticide with the active ingredients Spirotetramat and Pyriproxyfen to Site Gilstrap on September 1, 2024. (Proposed Decision, p. 2.) Appellant submitted a late Pesticide Use Report for *Senstar Insecticide* on October 22, 2024 for the September 1, 2024 application, however, did not submit a Pesticide Use Report for *Movento*. (C-1, p. 132-133; Stipulation 7 of Proposed Decision, p. 2; Hearing Record, Clip 2 at 9:40-9:53.)

CIMIS data for windspeed and direction on September 1, 2024, during Harris' application to Site Gilstrap favored drift toward the Complainant's location relative to the application. (C-1, Exhibit 11; R-4; Proposed Decision, p. 6.)

The County collected samples of Ms. Taylor's t-shirt (Sample R24C00436), her child's skirt (Sample R24C00437), and her other child's shirt (Sample R24C00438) and submitted the samples to the CDFA laboratory for analysis. (C-1, p. 3 & Exhibit 9.) The lab results confirmed the presence of spirotetramat residue, the active ingredient in *Movento*, and pyriproxyfen residue, the active ingredient in *Senstar Insecticide*. (C-1, Exhibits 4, 5, & 10.)

Statements made by the Complainant and the applicator confirm the applicator was aware of Complainant's location in relation to the active application when the alleged drift occurred, as the applicator reports seeing Ms. Taylor wave to him. (C-1, p. 2, Exhibit 8; R-1.) There are inconsistent statements as to whether the applicator turned off the spray nozzle as he made the turn at the end of the orchard row, toward where Ms. Taylor and her children were walking. Ms. Taylor told Investigators the applicator did not turn off the sprayer as he made the turn at the end of the orchard row, and the spray hit her and her daughters across the other side of the road. (C-1, p. 2, Exhibit 8.) However, in the applicator's statement submitted by Appellant, the applicator reports he did turn off the sprayer before turning into the next row. (R-1.)

The Director agrees with the Hearing Officer's analysis that the *Movento* and *Senstar Insecticide* labels place the responsibility of not applying the product in a way that will contact other people, either directly or through drift, on the applicator. Although there are inconsistent statements in the record as to whether the spray nozzle was turned off while the applicator made the turn into the next row, the Director agrees with the Hearing Officer that all other evidence including the eyewitness testimony, three positive clothing samples, weather data, and stipulations from Appellant are consistent with the occurrence of drift in violation of FAC section 12973 for applying the pesticides in conflict with the *Movento* and *Senstar Insecticide* product labels.

A. Butte CAC's procedures in collecting, storing and analyzing the clothing samples do not warrant an overturn of the County's proposed violation of FAC section 12973.

According to Appellant's ground for appeal alleging the "Failure to Follow Proper Procedure to Collect, Store and Analyze Samples", the County: (1) failed to properly wear gloves and PPE; (2) failed to collect samples in paper bags, then place in plastic bags; (3) failed to use paper bags for samples collected and transported; (4) failed to accurately and completely fill out the Investigative Sample Analysis/Custody Record form; (5) failed to check completely

box showing method of keeping samples; (6) failed to check box for primary sample container; (7) improper recording of date, time and purpose of change of custody “impacting the laboratories ability to verify the resulting analysis and verify the chain of custody.” (Appeal, p. 3-4.)

Appellants’ assertions are vague, conclusory, and lack citations to legal authority. The Director cannot discern Appellant’s legal argument, because Appellant does not explain the relevancy of the assertions or how the alleged issues affect the sufficiency of the evidence or fairness of the hearing. Based on the reasoning below, the Director holds the County’s procedures to collect, store and analyze the clothing samples did not affect the relevance or reliability of the evidence and does not warrant an overturn of Butte CAC’s finding of a violation of FAC section 12973. To the extent there were deviations in the County’s procedures with the Compendium or ministerial errors in the record, these deviations and errors were either cured at hearing or nonprejudicial to the Appellant.

The Department and the CACs are jointly responsible for pesticide use enforcement in the state of California. (Food & Agr. Code, § 12977.) The Department has the authority to issue instructions and recommendations to counties, while CACs are responsible for following the record instructions and recommendations of the Department. (Food & Agr. Code, § 2281.) The Pesticide Use Enforcement Standards Compendium is a series of eight manuals that contain pesticide use enforcement directives, interpretations, recommendations, and guidance to the CACs in their enforcement of pesticide use laws at the local level.

The purpose of collecting samples is to provide physical evidence of the presence of pesticides and “to prove or disprove an element of a violation or to establish the cause of pesticide related incident.” (Compendium, Vol. 5, Ch. 3, p. 35.) CACs are guided to “[d]etermine the goal of sampling and the appropriate sampling methods to meet that goal” as the “nature of the incident will largely determine the types of samples and method of collection.” (*Ibid.*) As stated in the Compendium, the CDFA Laboratory, where samples are taken for analysis, does not accept any shipment of investigative samples without prior approval from DPR. (*Ibid.*) Additionally, when the CAC decides to collect an investigative sample, the CAC must provide an explanation as to how the information will meet DPR’s sampling protocol. (*Ibid.*) Clothing samples are meant to “provide information about the pesticide exposure incident” and “only tell you that a pesticide exposure occurred and possibly the extent of the exposure, not whether the exposure resulted in a health hazard.” (Compendium, Vol. 5, Ch. 3, p. 48.) Clothing samples should be collected “away from the incident site.” (*Ibid.*) Moreover, the Compendium notes, “[i]f prior contact with the EBL or EB regional office is not possible, follow the protocols in this manual, noting any deviation from the protocol in the report.” (*Id.* at p. 36.)

First, Appellant asserts the County deviated from glove and PPE requirements in the Compendium when collecting three clothing samples from Ms. Taylor and her children. According to the Sampling Procedures in the Compendium, Counties are instructed to: “[a]lways wear new disposable gloves, label required PPE and use uncontaminated tools for each sample. For multiple samples, wear new disposable gloves for each sample, and decontaminate the tools

between sampling.” (Compendium, Vol. 5, Ch. 3, p. 44.) In this case, the samples were placed in three separate quarter-sized plastic bags per instructions given to Ms. Taylor from the Butte CAC’s office prior to Mr. Ellen’s collection of the clothing samples. (Hearing Record, Clip 2 at 20:52 – Clip 3 at 1:58.) The CAC does not dispute the deviation from the Compendium, however Mr. Ellen stated he did not wear gloves while handling the clothing samples because the clothing samples were already in three separate plastic bags. (*Ibid.*)

The Director finds there was no cross-contamination risk by CAC staff or human health risk to CAC staff, when Butte CAC staff collected the clothing samples from Ms. Taylor, as there was no direct contact with the clothing. Therefore, the Director finds the clothing sample evidence relevant and reliable, despite the County’s deviation from the Compendium in PPE requirements because the use of PPE was unnecessary in Mr. Ellen’s collection of Ms. Taylor’s clothing samples.

Appellant’s second and third contention state the County deviated from the Compendium’s sampling procedures in its collection of samples by placing the samples in plastic bags versus paper bags and using plastic bags for transportation of the samples. (Appeal, p. 3.)

The Compendium procedures state CACs should:

Collect unwashed clothing that was worn on the day of the incident or all unwashed clothing if they were at the same site for multiple days. Document what is known about the clothing. Contact the DPR Regional Office if unable to collect clothing samples on the day of the incident or requiring special circumstances. When collecting whole articles 2 PUE Compendium Volume 5 Investigation Procedures (Revised 5-2019) Page 48 of clothing, contact the DPR Regional Office who will coordinate with WH&S.

...

Place each sample in a clean, unused paper bag to prevent cross-contamination, and then put the bagged samples in a properly sealed plastic bag for shipment. Chill the samples on dry ice as they are collected. If the samples cannot be shipped immediately, store the samples in the freezer.

(Compendium, Vol. 5, Ch. 3, p. 48)

The Compendium also states CACs should: “Collect samples in previously unused paper bags or clean glass jars. New jars do not need to be cleaned. Sample material should never come in contact with metal or plastic. Metal lids for glass jars should be lined with aluminum foil or Teflon®.” (Compendium, Vol. 5, Ch. 3, p. 44.)

At hearing, the County does not dispute the deviation and agrees the placement of the clothing samples in plastic bags instead of paper bags was a deviation from the Compendium. (Hearing Record, Clip 3 at 12:10-14:00.) The County explains this deviation by stating staff did

not remove the clothing from the plastic bags they were originally placed in and move them to paper bags because of a concern of cross contaminating the samples, and to protect the integrity of the samples. (Hearing Record, Clip 3 at 12:10-14:00.)

The Compendium instructs CACs to place samples in unused paper bags prior to placing them in plastic bags, however, this guideline is no longer relevant. Prior to 2010, the CDFA laboratory used a gas chromatograph equipped to an Electronic Capture Detector (GC ECD), Gas chromatograph with a Flam Photometric Detector (GC FPD), and HPLC Diode Array Detector (HPLCADA) to analyze samples. Under this prior equipment, plastic could have interfered with the sample analysis, as the equipment could only test for a limited number of compounds. Since 2010, the CDFA laboratory now uses a GC and LC triple quad mass spectrometer, which can detect compounds with more specificity than the previous equipment, and the CDFA laboratory has since not had any issues with plastic contaminating the samples with the new equipment. Thus, keeping the clothing samples in plastic bags did not risk interference with the sample analysis. The Director finds the County's deviation from the Compendium did not affect the relevance or reliability of the clothing sample evidence.

Appellant's fourth assertion states the County failed to accurately and completely fill out the Investigative Sample Analysis Custody Record form. Due to insufficient information from Appellant as to how the Sample Analysis Custody Record form was either inaccurate or incomplete, the Director is unable to assess this claim.

Fifth, Appellant claims the County failed to check the box showing method of keeping samples. On the Investigative Sample Analysis Report – Custody Record form, there is no box for "method of keeping samples." The Director assumes Appellant is referring to the "Preservation Method During Transport" box, which is checked as "cooler" for all three samples. (C-1, Exhibit 10.) When transporting the samples to the CDFA laboratory, Mr. Ellen clarified he placed the samples in a cooler with blue ice, consistent with the procedures outlined in the Compendium. (Hearing Record, Clip 3 at 0:00 – 4:45.) Thus, the Director finds this claim is incorrect.

Sixth, Appellant claims the County failed to check the box for primary sample container. According to Section H of the Investigative Sample Analysis Report – Custody Record forms for samples R24C00436, R24C00437, and R24C0043, the primary sample container description box is checked as "Plastic Bag." Thus, the Director finds this claim is incorrect.

Appellant's seventh claim states the County made errors in the recording of the date, time and purpose of change of custody, impacting the CDFA's ability to verify the analysis and chain of custody. (Appeal, p. 3-4.) It is unclear to the Director what error Appellant is referring to when stating the "improper recording of the date." The dates throughout the Investigative Sample Analysis Report – Custody Record forms are properly recorded. Due to insufficient information from Appellant, the Director is unable to assess this claim.

Ministerial errors on the time recorded in the Investigative Sample Analysis Report – Custody Record forms were cured at hearing. On the Investigative Sample Analysis Report – Custody Record, the time stamp for samples R24C00438 and R24C00437 are missing in the chain of custody section for the time Mr. Ellen removed the samples from the Gridley office refrigerator for transport to the CDFA laboratory on September 3, 2024. (C-1, Exhibit 10.) However, the time stamp for sample R24C00436 is correctly filled out for this section, with a time of removal from the Gridley office refrigerator at 9 am to be transported to the CDFA laboratory. (*Ibid.*) This issue was cured at hearing, when Mr. Ellen stated that he transported all three clothing samples from the CAC office to the CDFA laboratory at 9 am. (Hearing Record, Clip 3 at 4:45-6:25.) Further, all three samples were received by the CDFA laboratory together. (*Ibid.*; C-1, Exhibit 10.) Thus, the Director finds the chain of custody was maintained and the relevance and reliability of the clothing sample evidence was not affected.

Regarding Appellant’s alleged error in the purpose of change custody, the chain of custody sections of the Sample Analysis – Custody Record forms for samples R24C00436, R24C00437, and R24C00438 do not have the box “for storage” checked for the time the samples were transported from Derek Ellen to the Gridley Office Refrigerator at 239 Sycamore Street in Gridley. (C-1, Exhibit 10.) This error was cured at hearing when Mr. Ellen stated he and Mr. Torres placed the samples in the Gridley Office Refrigerator for storage at approximately 1pm as noted in the Investigative Sample Analysis Report – Custody Record. (Hearing Record, Clip 2 at 20:52 – Clip 3 at 1:58.; C-1, Exhibit 10.) According to the custody record, Mr. Ellen transported the samples from the CAC office to the CDFA laboratory at 9 am the following day. (C-1, Exhibit 10.) The Director finds the chain of custody was maintained and Appellant’s contention does not affect the relevance or reliability of the clothing sample evidence.

Appellant contends the County’s recording of the date, time and purpose of change of custody impacted the CDFA’s ability to verify the analysis and chain of custody. Appellant provides no argument or evidence to support this claim. On the contrary, the CDFA laboratory did not have any concerns with the chain of custody, as evidenced by the lab proceeding in its analysis of the clothing samples. The Department reviewed and approved the sample analysis request forms from the County prior to submission to the CDFA laboratory. If the CDFA laboratory has concerns with the sample analysis request form or method of storing the samples, the lab will contact the Department for further clarification and does not proceed with the testing and analysis of the samples.² Therefore, the CDFA’s analysis was not impacted by the ministerial errors noted in the Investigative Sample Analysis/Custody Record forms.

² In this case, the CDFA laboratory did speak with the Department on a misspelling of the pesticide, Pyriproxyfen, on the Investigative Sample Analysis Report, however the CDFA corrected the misspelling and confirmed the lab was able to run the report. (Email message from CDFA Laboratory to Dennis Whitley, “Spelling Error”, October 13, 2024.)

B. The County's Investigative Report and Evidence Record do not warrant an overturn of Butte CAC's proposed violation of FAC section 12973.

According to Appellant's ground for appeal alleging the "Incomplete, Inaccurate and Contradictory Investigative Report and Evidence", Appellant claims the County had the following issues: (1) The Investigator wrote in the NOPA that the County "did notice an active application," but the Investigatory Narrative states "did not see actual pesticide application."; (2) Inconsistency of reports on who literally made the application of the chemical.; (3) Inaccurate time accounting.; (4) Contradictory evidence as to when samples were transported, impacting the accuracy of the tests and raising serious questions as to the required chain of custody elements for any collection activity.; (5) Missing information on the Investigative Sample Analysis Report.; (6) Incorrect use of quantity measurement standards. Investigative Report "ppm", but Sample Analyzed Report used "ug/S." There is no conversion between the two.; (7) Inaccurate, contradictory weather data provided from Department, with accurate data provided by Harris.; (8) Wrong report of incident location. If the Investigator cannot even get the address correct, it puts in question the accuracy and veracity of the entire report, investigation and evidence presented at hearing.; (9) Missing Report/Investigation attachments with no reference attaching Investigation Report (INU-04-20240901-0329), no applicator interview, and no pesticide use reports for other growers in the area on date of incident, or proof that there are other users in the area. (Appeal, p. 3.)

Appellant's assertions are vague, conclusory, lack citations to legal authority, and include repetitive claims made elsewhere on appeal. The Director cannot discern Appellant's legal argument, because Appellant does not explain the relevancy of the assertions or how the alleged issues affect the sufficiency of the evidence or fairness of the hearing. Based on the reasoning below, the Director finds all inaccuracies, contradictions, and incomplete information Appellant alleges in the Investigatory Report and County's evidence were either cured at hearing, irrelevant, or nonprejudicial to the Appellant. Therefore, the County's evidence and Investigatory Report are relevant and reliable in the determination of whether Appellant violated FAC section 12973.

First, Appellant claims the NOPA and Investigative Narrative are inconsistent on whether or not investigators observed an active application. This inconsistency was cured at hearing, when the Investigator confirmed he did not come across an active application. (Hearing Record, Clip 2 at 11:07-11:40.) Therefore, the Director finds Appellant's claim does not affect the relevance or reliability of the Investigatory Report.

Second, Appellant claims there is an inconsistency of reports on who made the application of the pesticide. Appellant does not cite to the inconsistencies they are referencing on appeal, but attaches Exhibit A, a "List of Inaccuracies and inconsistencies made in the 'investigation' of the Incident at 1520 Gilstrap Avenue on September 1, 2024." (Appeal, Exhibit A; R-8.) Appellant states: "[i]n one portion of the investigation narrative the investigator stated that an employee of Harris Farms made the application, but in a different portion, he stated that

the application was made by Mr. Harris.” (Appeal, Exhibit A; R-8.) There is only one line in the “Findings” paragraph of the Investigation Narrative that states the application was made by Mr. Harris. (C-1, p. 3.) It is well established by the evidence record submitted on behalf of the County, evidence submitted by the Appellant at hearing, and by statements made at the hearing from the County and Appellant that the application of *Senstar Insecticide* and *Movento* conducted on Site Gilstrap of Harris Farms on September 1, 2025 was made by an employee of Harris Farms, named Luis Villegas. (C-1, p. 1-3; R-1.) The Investigatory Report has multiple mentions of the fact that an employee of Harris Farms made the application to site Gilstrap. (C-1, p. 1-3.) Therefore, the Director finds this was a minor error that does not affect the relevance or reliability of the Investigatory Report.

Appellant’s third claim simply lists “inaccurate time accounting.” (Appeal, p. 3.) The Director assumes this is in reference to “Accurate Time of Accounting of Events” listed in Exhibit A of the appeal, where Appellant asserts: “[t]here is only one timestamp in the whole of the investigation report narrative, which is later contradicted in Ms. Taylor’s statement”, citing to paragraph 1 of the Investigation Narrative and Exhibit 8 of the County’s evidence at hearing. (Appeal, Exhibit A.) Paragraph one of the Investigation Narrative of the Investigatory Report discusses how the Complainant first notified the County of the incident at 8:23 am the morning of September 1, 2024. (C-1, p. 2.) Exhibit 8 of the County’s Investigatory Report is a later written narrative of the incident by Ms. Taylor, where Ms. Taylor estimates her walk took place at 8:30 am on September 1, 2024. (C-1, Exhibit 8.) The Director finds the timestamp of the later written narrative to be an approximation from Ms. Taylor. Together with the substantial evidence collected by the County and by Appellants on appeal, all confirming Ms. Taylor’s location and timing at Site Gilstrap during the application on September 1, 2024, the Director finds this assertion does not affect the relevance or reliability of the Investigatory Report.

Fourth, Appellant claims there is contradictory evidence as to when samples were transported in the Investigatory Report. The Director assumes this is in reference to “Accurate Time of Accounting of Events” listed in Exhibit A of the appeal, where Appellant asserts: “[t]he investigator states contradicting dates as to when he transported samples for testing. In the Investigation Narrative he states he transported the samples on September 23, 2024, but according to the Investigation Sample Analysis Report the samples were transported on September 3, 2024.” At hearing, the investigator cured an error in the written statement in the Investigation Narrative, clarifying all three clothing samples were transported on September 3, 2024, not September 23, 2024. (Hearing Record, Clip 2 at 3:10-4:23.) September 3, 2024 is also consistent with the dates in the Investigative Sample Analysis Report. (C-1; Exhibit 10.) Thus, the Director finds this claim does not affect the relevance or reliability of the Investigatory Report.

Appellant’s fifth claim, as discussed more fully in subsection A of this decision, asserts there is missing information in the Investigative Sample Analysis Report. The Director assumes this “missing information” is the information discussed in Exhibit A of Appeal, under “Sample Reporting & Chain of Custody”, stating: “Missing timestamp on transfer in Chain of Custody for samples R24C00437 and R24C00438”; “Missing purpose for transfer in Chain of Custody for

samples R24C00436, R24C00437, and R24C00438”; “Missing Preservation Method During Transport for samples R24C00436, R24C00437, and R24C00438”; and “Missing Primary Sample Container Description for samples R24C00436, R24C00437, and R24C00438.” These issues were cured by the County’s Investigator at hearing, as discussed more fully in subsection A of this decision. Thus, the Director finds this claim does not affect the relevance or reliability of the Investigatory Report.

Sixth, Appellant claims the Investigatory Report used the incorrect unit of measurement in the Investigation Narrative when referring to the Investigative Sample Analysis Report. This issue was cured at hearing by the County Investigator who acknowledged the active ingredient amounts detected in each of the clothing samples should be micrograms per sample (ug/sample) as written in the sample analysis form, not as parts per million (ppm). (Hearing Record, Clip 2 at 14:18-15:26; C-1; Exhibit 10.) Thus, the Director finds this claim does not affect the results of the positive detection of Spirotetramat and Pyriproxyfen on the clothing samples and does not affect the relevance or reliability of the Investigatory Report.

Appellant’s seventh claim states the County used inaccurate, contradictory weather data and that Appellant’s wind data is accurate. The Director agrees with the Hearing Officer, that the wind data provided by both the County and Respondent indicates a wind direction generally coming from the southeast and blowing towards the northwest, in the general direction of Ms. Taylor and her children as they approached Appellant’s application of *Movento* and *Senstar Insecticide* to Site Gilstrap on September 1, 2024. (Proposed Decision, p. 6; C-1, Exhibit 11; R-4.) Thus, the Director finds this claim does not affect the relevance or reliability of the Investigatory Report.

Eighth, Appellant claims the Investigatory Report lists the incorrect address of the incident location. The Investigatory Report lists 1620 Gilstrap Avenue. (C-1.) However, Appellant cured this error at hearing by stating the correct address is 1520 Gilstrap Avenue. (Hearing Record, Clip 4 at 17:00-17:21.) Appellant acknowledged Google Maps has the wrong address listed for that site location. (*Ibid.*) Thus, the Director finds this claim does not affect the relevance or reliability of the Investigatory Report.

Appellant’s ninth claim states there is missing information in the Investigatory Report, including: (1) no reference attaching Investigation Report (INU-04-20240901-0329); (2) no applicator interview; (3) and no pesticide use reports for other applications in the area on September 1, 2024.

First, the Director cannot identify what Appellant means by no reference attaching Investigation Report (INU-04-20240901-0329), therefore the Director is unable to assess this claim. Second, although the County did not conduct an interview of the applicator who applied the pesticides to Site Gilstrap on September 1, 2024, the County interviewed Mr. Harris, who confirmed the application that took place at Site Gilstrap on September 1, 2024. (C-1.) The County’s evidence, together with the statement Appellant submitted on behalf of the applicator, establishes the application took place by Appellant’s employee. (C-1; R-1; R-2.) Third, as added

to the evidence record at hearing and contrary to Appellant's argument, the County did conduct a search as part of their investigation for all pesticide use reports for nearby applications. (Hearing Record, Clip 2 at 8:10-8:43.) The County stated they ruled out all other nearby pesticide applications that occurred on September 1, 2024, because the other applications were of herbicides, not nematicides like *Movento* and *Senstar Insecticide*, used at Site Gilstrap. (*Ibid.*) Thus, the Director finds these claims do not affect the relevance or reliability of the Investigatory Report.

C. The County's investigative and reporting procedures do not warrant an overturn of a violation of FAC section 12973.

According to Appellant's ground for appeal alleging the "Failure of [County] Personnel to Follow Required Procedures and Policies for Investigation and Reporting", Appellant claims the County: (1) failed to wear PPE when entering the site; (2) failed to interview the applicator; (3) failed to follow procedure on witness interview; (4) failed to include all field note information and attach interview questionnaire to report; (5) omitted relevant and important information from the report; and (6) failed to utilize PEIR form (PR-ENF-127). (Appeal, p. 2-3.)

Appellant's assertions are vague, conclusory, lack citations to legal authority, and include repetitive claims made elsewhere on appeal. The Director cannot discern Appellant's legal argument, because Appellant does not explain the relevancy of the assertions or how the alleged issues affect the sufficiency of the evidence or fairness of the hearing. Based on the reasoning below, the Director finds the County's procedures did not affect the relevance or reliability of the evidence and Investigatory Report. To the extent there were deviations in the County's procedures with the Compendium, these deviations were either cured at hearing or nonprejudicial to the Appellant.

First, the personal protective equipment (PPE) instruction in the Compendium is a protective measure to ensure CAC staff do not contaminate themselves if entering a site during the Restricted Entry Interval. (Compendium, Vol. 5, Ch. 3, p. 43.) In this case, this Compendium provision is irrelevant to the matter and nonprejudicial to the Appellant.

Appellant's second claim is repetitive of their ninth claim in subsection B of this decision. The County Investigator did not interview the applicator who applied the pesticides to Site Gilstrap on September 1, 2024. However, the County interviewed Mr. Harris, following the County's visit to the application site. (C-1.) Appellant submitted a written statement on behalf of the applicator at hearing. (R-1.) Therefore, the Director finds this claim does not affect the relevance or reliability of the Investigatory Report and is nonprejudicial to Appellant.

Third, Appellant claims the County failed to follow procedure on witness interviews. Due to insufficient information from Appellant as to what specific procedures were not followed, the Director is unable to assess this claim.

Regarding Appellant's fourth claim, field notes are not required to be in the final investigation report. The Compendium provides guidance that field notes can be destroyed if the field notes are incorporated in the final report and if it is consistent with county policy. (Compendium, Vol. 5, Ch. 3, p. 64.) It is recommended that the interview questionnaire be attached to the investigative report. (*Ibid.*) Since Investigators summarized both phone interviews with Mr. Harris and Ms. Taylor in the Investigation Narrative, and included a written statement from Ms. Taylor, the Director finds the omission of the interview questionnaire was nonprejudicial. (C-1, p. 2-3; Exhibit 8.)

Fifth, Appellant claims the County omitted relevant and important information from the report. Due to insufficient information from Appellant as to what other relevant and important information was omitted from the report, the Director is unable to assess this claim.

Sixth, Appellant claims the County failed to utilize the PEIR form. At hearing, County investigators stated they did complete the requisite Pesticide Episode Investigation Report (PEIR) form. (Hearing Record, Clip 3 at 10:55 - 11:50.) Pesticide Episode Investigation Reports are submitted to and for use by the Department, not the Respondent. Thus, this claim is irrelevant to the matter and nonprejudicial to the Appellant.

II. The Commissioner's Decision to categorize the violation as a Class A violation and penalty of \$3,000 was appropriate.

When levying fines, the Commissioner must follow the guidelines contained in 3 CCR section 6130. A Class A violation is "a violation that caused a health, property or environmental hazard". (3 CCR, § 6130, subd. (b)(1).) The fine range for a Class A violation is \$700 to \$15,000. (3 CCR, § 6130, subd. (c)(1).) In determining the fine level, the commissioner shall use the relevant facts of the case, including the severity of the actual or potential effects and a respondent's compliance history. On Appeal, the Appellant does not contest the fine classification or amount. Here, the Class A violation fine was set at \$3,000. The Director agrees with the hearing officer's finding that the fine of \$3,000 is at the lower end of the Class A fine range and appropriate because although a human health hazard was created when Complainant and two minors were drifted on by Appellant's September 1, 2024 application of *Movento* and *Senstar Insecticide*, there were no reported actual health effects to Complainant or her children and the Appellant had no history of previous violations. (Proposed Decision, p. 7.) Accordingly, the Director upholds the Class A violation classification and the \$3,000 fine amount.

Conclusion

The record shows the commissioner's decision is supported by substantial evidence; therefore, there is no cause to reverse or modify the decision.

Harris Farms, Inc.
Docket No. 230
Page 19 of 19

Disposition

The commissioner's decision is affirmed. The commissioner shall notify the appellant how and when to pay the \$3,000 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**

By:  _____
Karen Morrison, Director

Dated: 11/24/25