

Respondent:

Air Enterprises, Inc.
4403 Irish Hill Road
Magnolia DE 19962

Violation:

§1224(b)(1)The first offense of 1224(a)(1). Making a pesticide recommendation or use or application inconsistent with the labeling, the EPA or state registration for the pesticide, or in violation of the EPA or state restrictions of the use of that pesticide;

Penalty:

Respondent signed a consent agreement December 7th 2015. In the agreement, Respondent agreed to the imposition of disciplinary sanctions which included a civil penalty of \$720.00 for violating §1224(b)(1).

STIPULATED FACTS:

1. Air Enterprises, Inc. (“Respondent A”) is a commercial pesticide applicator business with an office located at 4403 Irish Hill Road, Magnolia, DE. Respondent has a license (License Number 185) issued by the Delaware Department of Agriculture (“the Department”).
2. Al Johnson is President of Respondent. Al Johnson is currently certified by the Department (Certification Number 82-295), as a commercial pesticide applicator in Categories 7.01(a), Agricultural Plant Pest Control; 7.02, Forest Pest Control; and 7.05(c) Mosquito Control.
3. Justin Hoffman is employed by Respondent and is currently certified by the Department (Certification Number 10-314), as a commercial applicator in Categories 7.01(a), Agricultural Plant Pest Control; 7.05(a) Aquatic; and 7.05(c) Mosquito Control.
4. Roger Kruser is employed by Respondent and is currently certified by the Department (Certification Number 12-649), as a commercial applicator in Categories 7.01(a), Agricultural Plant Pest Control; 7.05(a) Aquatic; and 7.05(c) Mosquito Control.
5. The Pesticide Section of the Department (“Complainant”) is bringing this enforcement action against the Respondent. Dustin Borntreger, (“Borntreger”), is employed as an Environmental Scientist I with the Department.
6. On September 24th 2015, at approximately 9:30AM the Department received a complaint call from Ms. Nachet Scott. Ms. Scott was riding her bike along Wheatleys Pond Road just past Bryn Zion Road in Smyrna DE. As the yellow and grey bi-plane made a parallel to the road pass, she felt the mist contact her skin and

- she also had a metallic taste in her mouth. Ms. Scott called the Department from her cell phone on the side of the road. She spoke with Dustin Borntreger, Environmental Scientist I. Borntreger instructed Ms. Scott to go home and shower. Borntreger also instructed Ms. Scott not to wash her bike, helmet and shirt. Ms. Scott was told to put her shirt in a plastic bag and place into freezer. Borntreger also told Ms. Scott to contact her doctor if she felt any signs of sickness.
7. On September 24th 2015, Borntreger contacted Justin Hoffman from Air Enterprises to inquire about possible drift case. Mr. Hoffman confirmed that Roger Kruser had been applying pesticides to crops in the area of the drift complaint. Mr. Hoffman said he would fax a copy of the applications records to the Department. Mr. Hoffman stated that Kruser did not see a bike in the area when he was spraying.
 8. On September 25th 2015, Borntreger received the application records from Air Enterprises. The lima bean field in question had been sprayed with ProPhyt Fungicide, EPA Reg. No. 42519-22-5905, Belt SC Insecticide, EPA Reg. No. 264-1025 and Mustang Maxx Insecticide, EPA Reg. No. 279-3426. Mustang Maxx is Restricted Use Pesticide (RUP).
 9. On September 25th 2015, Borntreger met with Ms. Scott at her residence. During this visit Borntreger took three samples. Ms. Scott gave her frozen shirt which was in a plastic bag to Borntreger. Borntreger placed the bagged shirt into official sample bag and sealed it. The shirt was given sample number SN163007. Borntreger then took an alcohol swab from the bike that Ms. Scott was riding during the incident. The bike swab sample was given sample number SN163008. Borntreger also took an alcohol swab of the bike helmet worn by Ms. Scott. The bike helmet sample was given sample number SN163009. The swab samples were both placed into amber vials and sealed in tamper evident evidence bags.
 10. On October 15th 2015, the Pesticide laboratory reported the sample analysis results. The active ingredients for Belt Sc Insecticide, EPA Reg. No. 264-1025 and Mustang Maxx Insecticide, EPA Reg. No. 279-3426 were detected on all three items sampled. These three items were the bike frame, bicycle helmet and shirt. The field blank sample did not show any of the active ingredients. ProPhyt Fungicide, EPA Reg. No. 42519-22-5905 was not analyzed for due to lack of standard.
 11. In the past 5 years, Respondent has not received notices involving violations of **3 DEL.C.**, Chapter 12, and/or the Delaware Pesticide Rules and Regulations:
 12. Mustang Maxx Insecticide, EPA Registration Number 279-3426, is a pesticide registered for sale and use in the State of Delaware by the Department. The label of Mustang Maxx Insecticide states, in part:
 - a. "It is a violation to Federal law to use this product in a manner inconsistent with its labeling."
 - b. "Do not apply this product in a way that will contact workers or other persons,

either directly or through drift.”

13. Belt SC Insecticide, EPA Registration Number, 264-1025, is a pesticide registered for sale and use in the State of Delaware by the Department. The label of Belt SC Insecticide states, in part:

- a. “It is a violation of Federal law to use this product in a manner inconsistent with its labeling.”
- b. “Do not apply this product in a way that will contact workers or other persons, or pets either directly or through drift.”