

Respondent:

H&H Brand Farm, Inc
7781 Main Street
Bethel, DE 19931

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 15th 2015. In the agreement, Respondent agreed to the imposition of disciplinary sanctions which included a civil penalty of \$280.00 for violating §1224(b)(1).

STIPULATED FACTS:

1. H&H Brand Farms, Inc. T/A Jeff's Greenhouses ("Respondent A") is a farming operation and greenhouse with an office located at 7781 Main Street, Bethel DE 19931.
2. Jeffrey Hastings ("Hastings") is currently certified by the Department (Certification Number 7-1556) as a private applicator.
3. Kim Hastings, co-owner of H&H Brand Farms, Inc. T/A Jeff's Greenhouses.
4. C& S Farms is a commercial application company located at 31509 Dogwood Lane, Laurel DE 19956. Scot Givens (Certification Number 10-226) is the commercial applicator listed on the business license.
5. The Pesticide Section of the Department ("Complainant") is bringing this enforcement action against the Respondent. James Hughes, ("Hughes"), is employed as an Environmental Program Manager with the Department.
6. On Tuesday August 25th, 2015 an unannounced Tier I Worker Protection Standard (WPS) inspection was conducted with Hughes. The Notice of Inspection was issued to Kim Hastings. Upon inspecting the central posting location in the greenhouse, Hughes documented that the application records were not posted at the central posting location. Mr. Hastings participated in inspection over the phone. Mr. Hastings stated that all records of application are recorded on calendar in his office. During this inspection Mrs. Hastings was unable to show Hughes any of the application records. Mr. Hastings stated he would fax the greenhouse records to Hughes.
7. On August 25th, 2015 Hughes also asked about central posting area in watermelon

- fields. Hastings stated that the central posting is stapled to a pallet and placed in field when workers are present. Hughes asked if records of application accompany these posters. Mr. Hastings stated that he only receives invoices from C&S Farms.
8. On August 26th 2015 the Department received a fax from Mr. Jeff Hastings. The fax included records from the greenhouse, restroom invoices, and application invoices from C&S Farms.
 9. On October 27th 2015, Hughes returned to Jeff's Greenhouse to follow up on the August 25th inspection. The purpose of the follow up visit was to verify when the watermelons were harvested. The watermelons were harvested July 28th 2015 and August 12th 2015. During this visit Hastings confirmed that the only records he received for the watermelon applications were the invoices from C&S Farms. The invoices from C&S Farms are dated July 26th 2015.
 10. The invoices from C&S Farms are missing required components for the Worker Protection Standard §170.122(c). The invoices are missing the active ingredient, EPA Registration Number, time of application, the restricted-entry interval (REI).
 11. On October 9th 2012 the Department issued a Notice of Warning (NOW) to Mr. Jeffrey Hastings. The NOW documented three Worker Protection Standards (WPS), 40 CFR Part 170 violations:
 1. §170.122(a)(3) – The application records were not displayed in the location of the pesticide safety poster. The applications information required are product name, active ingredient, EPA Reg. No., restricted entry interval, location/description of the treated area, and date/time of application.
 2. §170.150(a)(1) – The employer did not provide the workers with the required decontamination supplies in accordance with the Federal Workers protection Standard Regulations.
 3. §170.135(a) – The employer does not have a central posting area for the greenhouse operation and did not post pesticide applications made in the greenhouse as required by the Regulation.
 12. Greenhouse records provided show that an application of Orthene and Tame was made to "G.H #19" on August 6th 2015. The inspection took place on August 25th 2015. The August 6th 2015 application record was not posted at the central posting location at the time of the inspection. This application falls within the 30 day posting requirement in CFR 40 Part §170.122.
 13. Reviewing the C&S Farms invoices shows watermelon farms "Bethel", "Community House", "Tucker" and "Hastings" received pesticide applications on June 29th 2015, July 3rd 2015, July 9th 2015 and July 10th 2015. These fields were harvested on July 28th 2015 and August 12th 2015. These application dates fall within the 30 day posting requirement in CFR 40 Part §170.122.

14. **1300 Orthene TR**, EPA Registration Number 499-421, is registered for sale and use in the State of Delaware by the Department. The label of 1300 Orthene TR states, in part:
- a. “It is a violation to use this product in a manner inconsistent with its labeling.”
 - b. “**AGRICULTURAL USE REQUIREMENTS:** Use this product in accordance with its labeling and with the Worker Protection Standard (WPS), 40 CFR part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries and greenhouses and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about PPE and restricted entry interval (REI) The requirements in this box only apply to uses of this product that are covered by the WPS. Do not enter or allow worker entry into treated areas during the REI of 24hr.”
15. **Tame 2.4 EC SPRAY INSECTICIDE-MITICIDE**, EPA Registration Number 59639-77, is registered for sale and use in the State of Delaware by the Department. The label of Tame 2.4 EC SPRAY INSECTICIDE – MITICIDE states, in part:
- a. “It is a violation to use this product in a manner inconsistent with its labeling.”
 - b. “For Commercial Nonfood Use on Indoor and Outdoor Ornamental and Nursery Plantings.”
 - c. “**AGRICULTURAL USE REQUIREMENTS:** Use this product in accordance with its labeling and with the Worker Protection Standard (WPS), 40 CFR part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries and greenhouses and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about PPE and restricted entry interval (REI) The requirements in this box only apply to uses of this product that are covered by the WPS. Do not enter or allow worker entry into treated areas during the REI of 24hr.”
16. **Bravo Weather Stik**, EPA Registration Number 50534-188-100, is registered for sale and use in the State of Delaware by the Department. The label of Bravo Weather Stik state, in part:
- a. “It is a violation to use this product in a manner inconsistent with its labeling.”
 - b. “**AGRICULTURAL USE REQUIREMENTS:** Use this product in accordance with its labeling and with the Worker Protection Standard (WPS), 40 CFR part 170. This Standard contains requirements for the protection of

agricultural workers on farms, forests, nurseries and greenhouses and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about PPE and restricted entry interval (REI) The requirements in this box only apply to uses of this product that are covered by the WPS. Do not enter or allow workers to enter treated areas during the restricted-entry interval (REI) of 12hours.”

- c. “Special Eye Irritation Provisions: Chlorothalonil in this product is a severe eye irritant. Although the restricted-entry interval expires after 12 hours, for the next 6.5 days entry is permitted only when the following safety measures are provided:
 - i. At least one container designed specifically for flushing eyes must be available in operating condition at the WPS-required decontamination site intended for workers entering the treated area
 - ii. Workers must be informed, in a manner they can understand:
 - 1. That residues in the treated area may be highly irritating to their eyes
 - 2. That they should take precautions, such as refraining from rubbing their eyes, to keep the residues out of their eyes
 - 3. That if they do get residues in their eyes they should immediately flush their eyes using the eye flush container that is located at the decontamination site or using other readily available clean water
 - 4. How to operate the eye flush container”

17. **Pristine Fungicide**, EPA Registration Number 7969-199, is registered for sale and use in the State of Delaware by the Department. The label of Pristine Fungicide states, in part:

- a. “It is a violation to use this product in a manner inconsistent with its labeling.”
- b. “AGRICULTURAL USE REQUIREMENTS: Use this product in accordance with its labeling and with the Worker Protection Standard (WPS), 40 CFR part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries and greenhouses and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about PPE and restricted entry interval (REI) The requirements in this box only apply to uses of this product that are covered by the WPS. Do not enter or allow workers to enter treated areas during the restricted-entry interval (REI) of 12hours.”

18. **Poast Herbicide**, EPA Registration Number 7969-58, is registered for sale and use in the State of Delaware by the Department. The label of Poast Herbicide states, in part:

- a. “It is a violation to use this product in a manner inconsistent with its labeling.”
- b. “AGRICULTURAL USE REQUIREMENTS: Use this product in accordance with its labeling and with the Worker Protection Standard (WPS), 40 CFR part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries and greenhouses and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about PPE and restricted entry interval (REI) The requirements in this box only apply to uses of this product that are covered by the WPS. Do not enter or allow workers to enter treated areas during the restricted-entry interval (REI) of 12hours.”

19. Under **Title 3, Delaware Code**, Chapter 12, it is a violation of the state’s pesticide law to use a pesticide inconsistent with its labeling. WPS is considered part of the labeling, and therefore subject to enforcement under the Delaware Code.