

Delaware Department of Agriculture
Pesticides Section, Enforcement
2320 South DuPont Highway
Dover, Delaware 19901
Enforcement Action/Violation

Respondent:

Maguire Pest Control
1035 Philadelphia Pike Suite C
Wilmington, Delaware 19809

Violations:

§1224(a)(1) Use or Application inconsistent with Labeling.
§1224(a)(2) Making false or fraudulent records, invoices or reports

Penalty:

Respondent signed a consent agreement August 6th, 2015. In the agreement, Respondent agreed to the imposition of disciplinary sanctions which included a civil penalty of \$2,016.00 (two thousand sixteen dollars) for violating §1224(a)(1) and §1224(a)(2).

STIPULATED FACTS

1. Maguire Pest Control (“Respondent”) is a commercial pesticide applicator business with a mailing address of P.O. Box 684 Claymont, Delaware 19703. Respondent is licensed (License No. 577) by the Delaware Department of Agriculture (“the Department”).
2. Allan Maguire is the owner/operator of Maguire Pest Control and is certified by the Department in Categories 7A, General Pest Control and 7B, Wood Destroying Pest Control. Reginald May (Cert. No. 04-815) is employed by Respondent and is certified by the Department in Categories 7A, General Pest Control and 7B, Wood Destroying Pest Control.
3. The Pesticide Section of the Department (“Complainant”) is bringing this enforcement action against Respondent. Stephen J. McReynolds, (“McReynolds”), is employed as an Environmental Scientist II with the Department.
4. The Department received a telephone call from Mr. James Tevebaugh on June 1, 2015, regarding a termite treatment that had been made to his property located at: 5 Paschall Ct. Wilmington, Delaware 19803. Mr. Tevebaugh was concerned that his house had not received a thorough termite treatment and that the ground was frozen at the time of the treatment. The initial treatment of the house was done on January 9, 2015 using 75 gallons of .05% Premise 75. On February 27, 2015 a contractor found live termites while replacing hard wood flooring; he photographed the live termite. Maguire Pest Control did a re-treatment on March 3, 2015.

5. On June 2nd, 2015, McReynolds contacted Respondent concerning the complaint. McReynolds arranged to stop by the office of Maguire Pest Control to review the application records and gather facts to conduct an investigation. During this visit, Mr. Allan Maguire stated that the ground was not frozen next to the house. McReynolds received the January 9, 2015 records during this visit. The records of the March 3, 2015 application were in storage at the time of McReynolds' visit. Respondent agreed to fax a copy of the March 3, 2015 application records to the Department.
6. On June 4th, 2015, McReynolds met with Mr. Tevebaugh at his home. During this visit two samples were taken from the exterior perimeter of the house. These were given sample numbers SN151117 and SN151118. McReynolds then photographed the drill holes in the garage area. Some of the drill holes on the left side of the garage were spaced 29 inches apart, while some on the right side were 18 inches apart. Mr. Tevebaugh then showed McReynolds an Annual Termite Control Warranty Inspection Form which noted termite activity found on March 3, 2015, but did not contain information/details stating how the termite activity was treated. Using this information McReynolds took a sample of just the area next to the chimney located on the right side of the house. This sample was given sample number SN151119.
7. On June 5th, 2015, McReynolds received the re-treatment records from Maguire Pest Control. The fax received contained a Notice of Termiticide Application Form, an updated graph and a hand written page noting a termite treatment on January 9, 2015, a spot treatment on March 3, 2015, and an inspection on April 9, 2015.

According to the Notice of Termiticide Application, 20 gallons of .05% Premise 75 was used to treat a limited area where termites have been found to be active. During the re-treatment of the house, Reginald May sprayed the subfloor of the infested area, drilled the baseboard and injected Premise 75 foam into wall void to the left of the hearth. May also re-treated the area along the right side of the house, near the chimney.

8. The diagram for the January 9, 2015 treatment shows that the front porch slab was treated. During the inspection of the treatment area McReynolds noted that no drill holes were found on the exterior of the house near the front porch area. McReynolds documented this with photographs.
9. During the review of the records and while interviewing Mr. Tevebaugh, it was discovered that the Notice of Termiticide Application for the re-treatment and the diagram for the treatment was never given to Mr. Tevebaugh. The document is also missing the signature of "customer's name or agent".
10. Delaware Pesticide Rules and Regulations, Revised June 1, 2004, Section 22, establishes requirements for the use of soil applied termiticides. A continuous chemical barrier must be established according to the product label and all applicable areas must be treated as prescribed by the label. Where a continuous chemical barrier is not achieved, or where the termiticide is not applied to all applicable areas prescribed by the label, conditions outlined in both 22.3.1 and 22.3.2 must be satisfied:

22.3.1 One or more of the following conditions is present:

22.3.1.1 Specific environmental conditions are such that application of the termiticide at the full labeled concentration and volume may result in adverse environmental impact. Examples may include the presence of a well, a footing drain that empties into a body of water, a high water table, etc.

22.3.1.2 Structural barriers or soil conditions or types exist that prohibit application of the labeled volume or limit access to applicable soil treatment areas.

22.3.1.3 Specific customer request, or the recommendation of the certified applicator.

22.3.2 Within fourteen (14) days following the termiticide application, the following information shall be furnished in writing to the customer or to the customer's agent:

22.3.2.1A full disclosure explaining the difference between full and partial applications. The disclosure shall include the termite control strategies being utilized and the reasons for those alternatives;

22.3.2.2The pesticide used, including the brand name and EPA registration number;

22.3.2.3The actual volume of the termiticide applied;

22.3.2.4Specific information of sufficient detail to distinguish where treatment actually occurred, including a diagram of the structure identifying treated areas, known well heads, and sites of visible termite activity;

22.3.2.5A clear, concise statement indicating whether the application has any guarantee or warranty, and the terms of the guarantee or warranty, e.g., retreatment (full or partial), damage repair and retreatment, or no warranty.

22.3.3 This information shall be furnished to the customer or customer's agent on a form approved by the Department. The applicator shall for a period of two years from the date of application, keep and maintain all completed copies of disclosure documents. These records shall be made available to authorized employees of the Department upon request.

11. On June 18th, 2015, the sample results were returned from the laboratory. The two exterior perimeter samples SN151117 and SN151118 came back with zero (0) parts per million of Imidacloprid found. The area that was retreated on March 3, 2015 sample number SN151119 came back with fifty-six (56) parts per million.

12. **Premise 75**, EPA Registration Number 3125-455 is registered for sale and use in the State of Delaware by the Department. The label of Premise 75 states, in part:

a. "The purpose of chemical soil treatment for termite control is to establish a continuous chemical treated zone (horizontal and/or vertical as needed) between the wood and other cellulose material in the structure and the termite colonies in the soil."

b. "To apply a treatment under the slab, including attached porches, carports, entrance platforms, garages and similar slab structures, it may be necessary to drill through the slab or exterior foundation"

13. In the past 5 years, Respondent has no pesticide compliance violations with the Department.