



OFFICE OF THE
AGRICULTURAL COMMISSIONER
SEALER OF WEIGHTS & MEASURES

Lisa D. Herbert
Agricultural Commissioner
Sealer of Weights & Measures

August 14, 2020

Yuba City Unified School District

██████████
750 Palora Avenue
Yuba City, CA 95991

Dear Mr. ██████████

Attached are the necessary legal papers for a proposed Agricultural Civil Penalty action against you or your company.

This action has been taken because of alleged violations of the Food and Agricultural Code and the California Code of Regulations.

In dealing with this proposed action, you have the following options:

1. **ACCEPT THE PROPOSED ACTION:** If you take this option please date, sign and return the Stipulation and Waiver to Order, and follow the conditions of the order.
2. **APPEAR OR HAVE YOUR REPRESENTATIVE APPEAR FOR A HEARING:** At the hearing all pertinent evidence will be reviewed by the Agricultural Commissioner. After the hearing the Agricultural Commissioner will notify you of the decision.
3. **FAIL TO ACCEPT THE PROPOSED ACTION OR FAIL TO APPEAR AT THE HEARING:** If you fail to take any action in this matter the Agricultural Commissioner will take into consideration all evidence submitted at the hearing. A decision order will be issued to you.

Sincerely,

Lisa D. Herbert
Agricultural Commissioner



OFFICE OF THE
AGRICULTURAL COMMISSIONER
SEALER OF WEIGHTS & MEASURES

Lisa D. Herbert
Agricultural Commissioner
Sealer of Weights & Measures

Date: August 12, 2020

FILE NO. ACP SUT 20/21 005

**NOTICE OF PROPOSED ACTION (NOPA), NATURE OF VIOLATION, AND
RIGHT TO REQUEST HEARING**

TO: Yuba City Unified School District
[REDACTED]
750 Palora Avenue
Yuba City, CA 95991

You are hereby notified that the Agricultural Commissioner for the County of Sutter proposes to fine you, Yuba City Unified School District, a civil penalty of \$500 for violating the California Code of Regulations 6614 when there is a reasonable possibility of damage to nontarget crops, animals, or other public or private property while applying Spectracide (EPA #9688-293-8845). The authority for this action is granted to the County Agricultural Commissioner pursuant to the provisions of section 12999.5 of the Food and Agricultural Code.

FACTUAL CIRCUMSTANCES

On August 11th, 2019 the Sutter County Agricultural Department received a drift complaint from a property owner directly adjacent to Tierra Buena School property that occurred on August 11, 2019. Christopher Ramirez, Agricultural and Standards Biologist II, was assigned to investigate the incident at [REDACTED] Yuba City, CA. Christopher Ramirez called [REDACTED] (complainant) around 10:00am to discuss what had occurred and to obtain permission to go onto her property to collect samples.

[REDACTED] was in her house when she saw a school employee spray on different areas on the school property. When she saw the school employee, Harmesh Bains, spraying on the shared fence line she went outside and spoke with him about spraying onto her property. He stopped the application for the rest of the day. Harmesh was the applicator at that time and was spot spraying Spectracide (EPA #9688-293-8845) on weeds along the shared fence line [REDACTED] and the school share. The active ingredients of Spectracide are Diquat Dibromide, Dicamba, and Fluazifop-p-Butyl. There was no other employee spraying or company spraying on behalf of the school district. Weather data collected from 142 Garden Highway recorded wind direction for the morning of the incident was WNW towards [REDACTED] residence with an average speed of 2 mph and a high gust of 10 mph.

On August 15th, 2019, Christopher Ramirez, Agricultural and Standards Biologist II, conducted a gradient sampling plan. He took 3 samplings of lawn clippings. The lawn clippings were foliage which consisted of treatment site (8/15/19 CR1), 5 feet away into [REDACTED] backyard (8/15/19 CR2), and the third sample was 10 feet away from the treatment site (8/15/19 CR3). Christopher Ramirez took the samples to the CDFA for analysis on 8/15/19 at 3:15pm.

VIOLATION

California Code of Regulations title 3, section 6614(b) states:

“Notwithstanding that substantial drift would be prevented, no pesticide application shall be made or continued when...(2) There is a reasonable possibility of damage to nontarget crops, animals, or other public or private property..”

Respondent applied the herbicide in close proximity to the neighboring household. Respondent applied it in a way that created a reasonable possibility of off-site movement in the direction of the household and drifted on home owner’s property. In fact the fungicide label directs users against applying the product “in a way that will contact persons...through drift further states that respondent acted unreasonably”.

The levels of active ingredient from the herbicide present in the collected sample and a 10-foot buffer between application and [REDACTED] residence showed that the applicator did not apply it in a method to prevent it from moving offsite. [REDACTED] saw the applicator from her backyard porch and saw that he was spot spraying the shared fence.

PENALTY

This is considered a Class B violation and the proposed fine is \$500.00 dollars.

A Class B violation is a violation of a law or regulation that does not mitigate the risk of adverse health, property, or environmental effects. The fine range for Class B violations is \$250-\$1000 per violation. The proposed fine is set at the mid-level in the fine range.

The amount of each fine is determined by applying the circumstances of each violation to the fine guidelines that have been adopted for use in these actions. Those guidelines are found in Title 3, California Code of Regulations, Section 6130, which is enclosed with this notice.

ENCLOSURE(S)

A copy of the text of 3 CCR, sections 6614, 6130, FAC section 12999.5 is enclosed for your convenience

You May Review the Evidence Against You

You are entitled to review the Commissioner’s evidence supporting these charges during regular business hours at the office of the Sutter County Agricultural Commissioner, located at 142 Garden Highway in Yuba City, California. We will provide one copy of the case file free of charge. We may charge you reasonable costs for additional copies.

You May Request a Hearing and Present Evidence at the Hearing

You may request a hearing to review the Commissioner's evidence, and to present any evidence, oral or written, on your behalf. You are not required to be represented by legal counsel at the hearing. Your attorney may accompany you and represent you if you wish. You will be provided a written decision of the Commissioner's finding. Although not required by the authorizing statute, a tape-recording will be made of the hearing proceedings. If you require a translator at the hearing, you must inform the Commissioner within 14 days before the scheduled hearing date.

How to Request a Hearing - Failure to Request – FAC 12999.5

A hearing in this matter will be scheduled and held at the office of the County Agricultural Commissioner, located at the above noted address, if you request a hearing by signing, dating, and returning the enclosed Hearing Request (*or a hearing request letter*) within 20 days of receipt of this Notice of Proposed Action. Failure to timely request a hearing is a waiver of the right to a hearing. The Commissioner may take the action proposed in this notice without a hearing. Further, failure to request a hearing is a waiver of your right to appeal the Commissioner's decision (*see Appeal Rights After Hearing*).

Stipulation and Waiver to Order – FAC section 12999.5

If you do not wish to request a hearing to contest the charges and proposed action, you may stipulate (agree) to the enclosed Order by dating, signing, and returning the enclosed Stipulation and Waiver to Order within 20 days of receipt of this notice.

Appeal Rights After Hearing – FAC section 12999.5

Should you disagree with the Commissioner's decision, you may request an appeal to the Director of DPR within 30 days of receiving the Commissioner's decision and order. However, you waive these appeal rights if you do not request and attend the hearing at the scheduled time and date, or if you fail to request an appeal within the 30-day time frame.

The request for appeal must be mailed to the Director of the Department of Pesticide Regulation (Director), 1001 I Street, P.O. Box 4015, Sacramento, California 95812-4015.

The request for appeal:

1. Must be signed by you or your authorized agent; and
2. Must state the grounds for the appeal; and
3. Must include a copy of the Commissioner's Decision and Order; and
4. Must be filed or mailed to the Commissioner at the same time you mail it to the Director.

Failure to follow any of the above requirements may affect your right to appeal.

If the Director grants an appeal, you will receive the Director's written decision approximately 45 days after receipt of your appeal, or as soon thereafter as practical.

Pesticide Incident Reimbursement Notice - FAC section 12997.5

Any person found in violation of pesticide laws and regulations that resulted in illness or injury requiring emergency medical transport or emergency medical treatment of any individual, in a non- occupational setting, from a pesticide used in the production of an agricultural commodity

shall be liable to the individual harmed or to the medical provider for the immediate costs of uncompensated medical care from acute injuries and illnesses of the exposed individual.

Timely Reimbursement - Penalty Offset and Proof Notice – FAC sections 12996.5 and 12997.5

If you offer to reimburse, or have already reimbursed, the immediate medical costs for acute medical illnesses and injury, the Commissioner may reduce the proposed administrative civil penalty by an amount up to fifty percent. You must request a hearing and provide proof at the hearing of immediate reimbursement in order for the Commissioner to consider reducing the penalty.

DIVISION 6.
CALIFORNIA CODE OF REGULATIONS

6130.

Civil Penalty Actions by Commissioners.

(a) When taking civil penalty action on incidents or violations related to agricultural or structural use of pesticides and all uses of fumigants pursuant to section 12999.5 of the Food and Agricultural Code, county agricultural commissioners shall use the provisions of this section to determine the violation class and the fine amount. This section may also be used to determine the violation class and fine amount for violations involving other uses of pesticides.

(b) County agricultural commissioners shall designate violations 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 sections 11732, 11733, and 11761.

(c) The fine range for each class of violation is:

(1) Class A: \$700 to \$5,000.

(2) Class B: \$250 to \$1,000.

(3) Class C: \$50 to \$400.

(d) When determining the fine amount within the fine range, the commissioner shall use relevant facts, including severity of actual or potential effects and the respondent's compliance history, and include those relevant facts in the notice of proposed action.

(e) The commissioner shall send a copy of the notice of proposed action to the Director no later than the time the notice is provided to the respondent.

(f) If the respondent requested and appeared at the hearing offered by the commissioner, the commissioner's decision shall include information concerning the person's right to appeal the decision to the Director.

(g) The commissioner shall send a copy of the notice of final action to the Director no later than the time the notice is provided to the respondent.

Note: Authority cited: Sections 12781, 12976, and 15203, Food and Agricultural Code.

Reference: Sections 11892, 12973, 12997, 12999.5, and 15202, Food and Agricultural Code; and Section 8617, Business and Professions Code.

6614.

(a) An applicator prior to and while applying a pesticide shall evaluate the equipment to be used, meteorological conditions, the property to be treated, and surrounding properties to determine the likelihood of harm or damage.

(b) Notwithstanding that substantial drift would be prevented, no pesticide application shall be made or continued when:

(1) There is a reasonable possibility of contamination of the bodies or clothing of persons not involved in the application process;

(2) There is a reasonable possibility of damage to nontarget crops, animals, or other public or private property; or

(3) There is a reasonable possibility of contamination of nontarget public or private property, including the creation of a health hazard, preventing normal use of such property. In determining a health hazard, the amount and toxicity of the pesticide, the type and uses of the property and related factors shall be considered.

DIVISION 7
FOOD AND AGRICULTURAL CODE

12999.5.

(a) In lieu of civil prosecution by the director, the county agricultural commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, Chapter 3.7 (commencing with Section 14160), Chapter 7.5 (commencing with Section 15300), or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars (\$1,000) for each violation. Any violation determined by the county agricultural commissioner to be a Class A violation as defined in Section 6130 of Title 3 of the California Code of Regulations is subject to a fine of not more than five thousand dollars (\$5,000) for each violation. It is unlawful and grounds for denial of a permit under Section 14008 for a person to refuse or neglect to pay a civil penalty levied pursuant to this section once the order is final.

(b) If a person has received a civil penalty for pesticide drift in a school area subject to Section 11503.5 that results in a Class A violation as defined in subdivision (a), the county agricultural commissioner shall charge a fee, not to exceed fifty dollars (\$50), for processing and monitoring each subsequent pesticide application that may pose a risk of pesticide drift made in a school area subject to Section 11503.5. The county agricultural commissioner shall continue to impose the fee for each subsequent application that may pose a risk of drift, until the person has completed 24 months without another Class A violation as defined in subdivision (a).

(c) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the county agricultural commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the county agricultural commissioner may take the action proposed without a hearing.

(d) If the person upon whom the county agricultural commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the county agricultural commissioner's decision to the director within 30 days of the date of receiving a copy of the county agricultural commissioner's decision. The following procedures apply to the appeal:

- (1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the county agricultural commissioner's decision. The appellant shall file a copy of the appeal with the county agricultural commissioner at the same time it is filed with the director.
- (2) The appellant and the county agricultural commissioner may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present the record of the hearing, including written evidence that was submitted at the hearing, and a written argument to

the director stating grounds for affirming, modifying, or reversing the county agricultural commissioner's decision.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set for the oral argument. The times may be altered by mutual agreement of the appellant, the county agricultural commissioner, and the director.

(5) The director shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the director finds substantial evidence in the record to support the county agricultural commissioner's decision, the director shall affirm the decision.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may affirm the county agricultural commissioner's decision, modify the county agricultural commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the county agricultural commissioner's decision. A civil penalty increased by the director shall not be higher than that proposed in the county agricultural commissioner's notice of proposed action given pursuant to subdivision (c). A copy of the director's decision shall be delivered or mailed to the appellant and the county agricultural commissioner.

(8) Any person who does not request a hearing pursuant to subdivision (c) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The county agricultural commissioner may levy a civil penalty pursuant to subdivisions (a), (c), and (d) against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the county agricultural commissioner, carrying proof of that registration, and filing changes of address with the county agricultural commissioner.

(f) After the exhaustion of the appeal and review procedures provided in this section, the county agricultural commissioner or his or her representative may file a certified copy of a final decision of the county agricultural commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or his or her authorized representative rendered on an appeal from the county agricultural commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. Fees shall not be charged by the clerk of the superior court for the performance of official service required in connection with the entry of judgment pursuant to this section.



OFFICE OF THE
AGRICULTURAL COMMISSIONER
SEALER OF WEIGHTS & MEASURES

Lisa D. Herbert
Agricultural Commissioner
Sealer of Weights & Measures

ORDER

FILE NO. ACP SUT 20/21 005

TO: Yuba City Unified School District
Mark Button
750 Palora Avenue
Yuba City, CA 95991

ORDER: It is hereby ordered that Yuba City Unified School District is fined \$500. The fine is due now and payable.

A handwritten signature in blue ink, appearing to read "Lisa D. Herbert".

Lisa D. Herbert
Agricultural Commissioner
Sutter County

Instructions to Respondent:

If you wish to pay the fine and not request (waive) a hearing, you may sign the Stipulation and Waiver to Order below. By doing so, you also waive your right to a hearing, appeal, or any other review in this matter. If you wish to sign the Stipulation and Waiver to Order, you must submit it to the Agricultural Commissioner within 20 days of receipt of this notice.

STIPULATION AND WAIVER TO ORDER

I hereby stipulate that the Agricultural Commissioner's Notice of Proposed Action in the above-entitled matter states grounds for civil penalty action based on the evidence now before the Commissioner.

Without admitting to the violations alleged in the Notice of Proposed Action, I stipulate to the Commissioner's Order, as set forth above, and I waive all rights to a hearing and appeal or any other review in this matter.

Respondent's Signature

Date: _____

Make the check payable to: COUNTY OF SUTTER. Mail the check and the signed **Stipulation and Waiver to Order** to:

County of Sutter
142 Garden Highway
Yuba City, CA 95991



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AGRICULTURAL COMMISSIONER
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Lisa D. Herbert
Agricultural Commissioner
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HEARING REQUEST

**ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF
PROPOSED ACTION AND REQUEST FOR HEARING**

FILE NO. ACP SUT 20/21 005

Important: The Hearing Request must be submitted to the Agricultural Commissioner within 20 days of receipt of the Notice of Proposed Action.

TO: Yuba City Unified School District
Mark Button
750 Palora Avenue
Yuba City, CA 95991

I, the undersigned respondent in this proceeding, hereby acknowledge receipt of a copy of the Notice of Proposed Action.

I hereby request a hearing to permit me to have an opportunity to present my defense to the violations contained in the Notice of Proposed Action.

Respondent's Signature

Date

Respondent's Name (printed)

Telephone: (____) _____

Mail this form to: County of Sutter
142 Garden Highway
Yuba City, CA 95991

If you have any questions regarding this matter, please contact Scott Bowden, Deputy Agricultural Commissioner, at (530)822-7503.

Lisa D. Herbert
Agricultural Commissioner
142 Garden Highway
Yuba City, CA 95991
(530)822-7500