

**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 Monterey
(County File No. 1271305)

Administrative Docket. No. 196

DIRECTOR'S DECISION

**Gomes Farm Air Service
P.O. Box 7547
Spreckels, CA 93962**

Appellant/

Procedural Background

Under Food and Agricultural Code section 12999.5, county agricultural commissioners may levy a civil penalty up to \$5,000 for certain violations of California's pesticide laws and regulations. When levying fines, the Commissioner must follow the fine guidelines established in California Code of Regulations, title 3, section 6130, and must designate each violation as Class A, Class B, or Class C. Each classification has a corresponding fine range.

After giving notice of the proposed action and providing a hearing on August 2, 2013, the Monterey County Agricultural Commissioner (Commissioner) found that Appellant Gomes Farm Air Service violated California Code of Regulations, title 3, section 6614, subdivision (b)(1) in connection with an aerial application made on July 7, 2011. Specifically, Gomes Farm Air Service applied the pesticide *Revus* (Reg. No. 100-1254-AA) when there was a reasonable possibility of contamination to the bodies or clothing of persons not involved in the application process. As a result, two individuals who were not involved in the pesticide application were contaminated. The Commissioner classified the violation as a Class B violation and levied a fine in the amount of \$550.

Gomes Farm Air Service appeals the Commissioner's civil penalty decision to the Director of the Department of Pesticide Regulation. The Director has jurisdiction to review the appeal under Food and Agricultural Code section 12999.5.

Standard of Review

The Director decides matters of law using his independent judgment. 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.

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. If the Director finds substantial evidence in the record to support the Commissioner's decision, the Director affirms the decision.

Factual Background

On July 7, 2011, at approximately 10:00 a.m., Gomes Farm Air Service, operating as a pest control business, made an application of *Revus* (Reg. No. 100-1254-AA), a pesticide containing the active ingredient mandipropamid, to romaine lettuce on Willoughby Farms DSA Ranch, Block 2 (Block 2). (Stipulated Facts (Facts) 13-15; County Exhibit (Ex.) 2.)

That same morning, Driscoll Research and TCR Ranch employees Mr. Martin Madesko and Mr. Ruben Garcia, individuals who were not involved in the pesticide application taking place on Block 2, were working in the adjacent fields of TCR Ranch's 1800 San Juan Road Ranch. (Facts 8-9, 16-17; Testimony of M. Madesko (Madesko Testimony); Testimony of R. Garcia (Garcia Testimony); Pesticide Episode Investigation Report (County Report) at pp. 4, 7.) At the hearing, Mr. Madesko testified that on the morning of July 7, 2011, he observed a helicopter fly the perimeter of Block 2. (Madesko Testimony.) At that time, the helicopter did not deploy any type of spray. (Madesko Testimony.) However, about ten minutes later, Mr. Madesko stated that the helicopter returned and proceeded to spray the lettuce in Block 2 while coming towards him. (Madesko Testimony.) Mr. Madesko testified that at that point, he immediately turned and ran away from the helicopter and felt a "mist" on his person. (Madesko Testimony.) Mr. Madesko further testified that he had a clear view of the pilot and that there was nothing except for a row of corn about three feet tall and a chain link fence separating him from Block 2. (Madesko Testimony.)

A second witness, Mr. Ruben Garcia, also testified at the hearing that on the morning of July 7, 2011, he was driving a utility cart on 1800 San Juan Road Ranch when he observed a helicopter make a pesticide application to Block 2. (Garcia Testimony; County Report at p. 7.) Mr. Garcia testified that everything happened quickly, but that immediately after the helicopter flew near him, he felt wind pressure and spray come over his body, especially on his face and hands. (Garcia Testimony.) Mr. Garcia further testified that after he was sprayed, he felt

physical discomfort along with a tingling and burning sensation on his hands and face that lasted for about fifteen minutes. (Garcia Testimony.) After the incident, Mr. Garcia washed his face with soap and water and reported the incident to his supervisor. (Garcia Testimony.) Mr. Garcia testified that he felt his presence was obvious to the pilot because he was standing in a flat place and could see through the fence. (Garcia Testimony.)

Later that day, both Mr. Madesko and Mr. Garcia were medically evaluated at a local clinic. (Madesko Testimony; Garcia Testimony; County Report at pp. 6-7.) Neither Mr. Madesko or Mr. Garcia required further medical treatment. (Madesko Testimony; Garcia Testimony; County Report at pp. 6-7.)

Following the incident, Mr. Madesko called the Monterey County Agricultural Commissioner's Office in Pajaro to report the incident. (Madesko Testimony; County Report at p. 3.) Monterey County Agricultural Biologist and Inspector Hannah Wallis (Inspector Wallis) conducted an investigation into the incident. (Testimony of H. Wallis (Wallis Testimony); County Report at p. 3.) On July 7, 2011, at around 10:30 a.m., Inspector Wallis drove to the incident site and interviewed witnesses, collected residue samples, and documented her findings in the Pesticide Episode Investigation Report. (Wallis Testimony; *See* County Report.)

At the incident site, Inspector Wallis interviewed Mr. Frank Gomes, pilot and owner of Gomes Farm Air Service. (County Report at p. 5.) Mr. Gomes informed Inspector Wallis that at approximately 9:45 a.m. on July 7, 2011, he arrived in his helicopter to treat sixteen acres of lettuce on Block 2 with the pesticide *Revus*. (Wallis Testimony; County Report at p. 5.) Mr. Gomes stated that before the application, he flew around the perimeter of Block 2, applied his smoker to evaluate wind conditions, determined that the conditions were safe for application, and returned to the mix and load site to have his helicopter loaded with pesticides. (Wallis Testimony; Testimony of F. Gomes (Gomes Testimony); County Report at pp. 5, 8.) About fifteen minutes later, Mr. Gomes returned to the application site and applied *Revus* to sixteen acres of lettuce on Block 2. (Wallis Testimony; Gomes Testimony.) Mr. Gomes testified that he did not see any people at risk of exposure or drift while he was conducting his aerial application. (Gomes Testimony; County Report at pp. 5, 8.)

During her investigation, Inspector Wallis collected Mr. Madesko's sweatshirt that he was wearing on the day of the incident for analysis. (Wallis Testimony; County Report at p. 5.) On July 8, 2011, Inspector Wallis returned to the incident site and collected a swab sample of a sign in the 1800 San Juan Road Ranch facing Block 2, and four gradient foliar residue samples from 1800 San Juan Road Ranch and Block 2. (County Report at p. 6; County Ex. 3a, 3b, 4a, 4b, and 5; Investigative Sample Analysis Reports.) Inspector Wallis sent the residue samples to the California Department of Food and Agriculture (CDFA) Center for Analytical Chemistry for analysis. (Wallis Testimony; County Report at p. 7; Investigative Sample Analysis Reports.) On September 9, 2011, Inspector Wallis received the sample analysis results from the CDFA

laboratory which confirmed that the clothing sample, swab sample, and foliar samples all tested positive for mandipropamid, the active ingredient in *Revus*. (County Report at pp. 7-8; Investigative Sample Analysis Reports.)

The County's investigation concluded that Appellant Gomes Farm Air Service violated California Code of Regulations, title 3, section 6614, subdivision (b)(1) by making an aerial application of the pesticide *Revus* on July 7, 2011, that resulted in contamination to Mr. Martin Madesko and Mr. Reuben Garcia, individuals who were not involved in the pesticide application. (Wallis testimony, County Report at p. 10.)

On March 19, 2013, the Commissioner issued a Notice of Proposed Action charging Appellant Gomes Farm Air Service with violating California Code of Regulations, title 3, section 6614(b)(1). (County Ex. 8.) Gomes Farm Air Service requested a hearing on April 8, 2013. (Fact 3.) The Commissioner granted Gomes Farm Air Service's request and on August 2, 2013, Rafael Albarrán, a Hearing Officer designated by the Commissioner, held a hearing at 1428 Abbott Street, Salinas, California. (Fact 3.)

Relevant Laws and Regulations

California Code of Regulations, title 3, section 6614, subdivision (b)(1) states:

- (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.

When levying fines, the Commissioner must follow the fine guidelines in California Code of Regulations, title 3, section 6130. Under section 6130, violations shall be designated as Class A, Class B, or Class C. 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." (Cal. Code Regs., tit. 3, § 6130, subd. (b)(2).) The fine range for a Class B violation is \$250 to \$1,000. (Cal. Code Regs., tit. 3, § 6130, subd. (c)(2).)

The Commissioner shall use relevant facts, including severity of actual or potential effects and the respondent's compliance history when determining the fine amount within the fine range, and include those relevant facts in the Notice of Proposed Action. (Cal. Code of Regs., tit. 3, § 6130, subd. (d).)

Appellant's Allegations

Appellant Gomes Farm Air Service's main contentions on appeal are:

- Gomes Farm Air Service was denied due process and the Hearing Officer abused his discretion by relying on inadmissible hearsay evidence; specifically, the CDFA laboratory reports, to establish the presence of the pesticide *Revus* which allegedly contaminated two individuals not involved in the aerial pesticide application on July 7, 2011.
- The Hearing Officer incorrectly interpreted the word "contamination," as set forth in California Code of Regulations, title 3, section 6614, subdivision (b)(1).

(See Appellant's Argument in Support of Appeal to the Director of the California Department of Pesticide Regulation ("Appeal").)

The Hearing Officer's Decision

At the hearing, the Hearing Officer received both oral and documentary evidence, and the County and Gomes Farm Air Service had the opportunity to present evidence and question witnesses. The Hearing Officer determined that there was sufficient evidence to show that Gomes Farm Air Service violated California Code of Regulations, title 3, section 6614, subdivision (b)(1) by making an aerial application of the pesticide *Revus* on July 7, 2011, when there was a reasonable possibility of contamination to the bodies or clothing of persons not involved in the application process and as a result, two individuals who were not involved in the pesticide application were contaminated.

At the hearing, over the county's numerous objections, the Hearing Officer excluded both the county's Pesticide Episode Investigation Report and the Investigative Sample Analysis Reports as being inadmissible hearsay. As a result, counsel for Gomes Farm Air Service argued that the county was unable to provide admissible evidence demonstrating that Mr. Madesko and Mr. Garcia were in fact exposed to *Revus*. However, the Hearing Officer found that Mr. Gomes's testimony and the Application Work Order submitted as an exhibit by the county supported the fact that on July 7, 2011, Mr. Gomes conducted an aerial application of the pesticide *Revus* on sixteen acres of romaine lettuce on Block 2. The Hearing Officer also relied on the direct testimony of both Mr. Madesko and Mr. Garcia who testified that on July 7, 2011, they were present in a field adjacent to Block 2 and felt a mist or spray on their persons immediately after they observed a helicopter making an aerial application to the lettuce field. Mr. Garcia also testified that after he felt a mist on his hands and face, he experienced physical discomfort, including a tingling and burning sensation on his skin.

Based on the evidence presented, the Hearing Officer upheld the violation and held that the fine of \$550 was appropriate and properly classified within the Class B category because it was a violation of law or regulation aimed at mitigating the risk of adverse health, property or environmental effects.

The County Agricultural Commissioner's Decision

The Commissioner affirmed the Hearing Officer's decision, but disagreed with and overturned the Hearing Officer's conclusions of law that the Notice of Proposed Action, the Pesticide Episode Investigation Report prepared by Inspector Wallis, and the CDFA's Investigative Sample Analysis Reports were inadmissible hearsay. The Commissioner specifically noted that the Hearing Officer mistakenly believed that hearsay was inadmissible in administrative hearings. The Commissioner did not, however, disturb any of the Hearing Officer's findings of fact or determinations regarding the credibility of witness testimony.

The Commissioner held that both the Pesticide Episode Investigative Report prepared by Inspector Wallis and CDFA's Investigative Sample Analysis Reports with a properly completed Report Custody Record, should have been admitted as evidence under an exception to the hearsay rule contained in Evidence Code section 1280 [public employee record exception]. Both reports were prepared by a public employee within the scope of their duty, made at or near the time of the incident, and the sources of information and method and time of preparation are such as to indicate its trustworthiness. The Commissioner also cited *Lake v. Reed*, a case holding that hearsay may be used in administrative hearings for the purpose of supplementing or explaining other evidence, but is not sufficient in itself to support a finding. (*Lake v. Reed* (1997) 16 Cal.4th 448, 461.) Since the Hearing Officer reached his decision based on substantial evidence after excluding the reports, the Commissioner found that the reports should have also been admissible as acceptable hearsay used to supplement or explain other evidence presented at the hearing.

The Commissioner accepted and adopted all other portions of the Hearing Officer's decision and ordered Appellant to pay a fine of \$550.

The Director's Analysis

- A. Substantial evidence supports the Commissioner's decision that Gomes Farm Air Service violated California regulations by making a pesticide application when there was a reasonable possibility of contamination to the clothing or bodies of individuals not involved in the pesticide application process.**

On appeal, Gomes Farm Air Service argues that the Hearing Officer and Commissioner unjustly relied on inadmissible hearsay evidence to find a violation of California Code of Regulations, title 3, section 6614, subdivision (b)(1), and that the Commissioner relied on an

Regulations, title 3, section 6614, subdivision (b)(1), and that the Commissioner relied on an incorrect interpretation of the word "contamination." (*See Appeal.*) After reviewing the evidence and testimony presented at the hearing and reports included by the Commissioner, the Director finds that there is substantial evidence to support the Commissioner's decision.

At the hearing, the county and Appellant presented evidence that on July 7, 2011, Gomes Farm Air Service sprayed sixteen acres of romaine lettuce with the pesticide *Revus* in Block 2, a field adjacent to where Mr. Madesko and Mr. Garcia were working that day. (*See Facts 9-15; County Ex. 2; Wallis Testimony; Gomes Testimony; Madesko Testimony; Garcia Testimony; County Report at p. 5.*) Mr. Madesko and Mr. Garcia provided direct testimony that on the morning of July 7, 2011, they felt a mist or spray on their persons immediately after they observed a helicopter make an aerial application to the lettuce field. (*Madesko Testimony; Garcia Testimony; see also County Report at pp. 4-5, 7.*) Both witnesses also testified that they had a clear view of the helicopter, with only a chain link fence and a small row of corn between them and the helicopter. (*Madesko Testimony; Garcia Testimony.*) Mr. Garcia further testified that immediately after he felt the air pressure generated from the helicopter, he felt a mist on his hands and face and subsequently experienced physical discomfort, including a tingling and burning sensation on his skin. (*Garcia Testimony; see also County Report at p. 7.*) Finally, Inspector Wallis testified that following the incident, she interviewed witnesses and collected samples from Mr. Madesko's sweatshirt and the incident site, which she submitted to the CDFA Center for Analytical Chemistry for analysis. (*Wallis Testimony; see also County Report at pp. 5-8.*) On September 9, 2011, Inspector Wallis received the laboratory results which confirmed that the clothing sample, swab sample, and foliar samples taken from the incident site all tested positive for mandipropamid, the active ingredient in *Revus*. (*County Report at pp. 7-8; Investigative Sample Analysis Reports; Facts 14-15.*)

Accordingly, the Director finds that there was substantial evidence to support the Commissioner's decision that on July 7, 2011, Gomes Farm Air Service violated California Code of Regulations, title 3, section 6614(b)(1) by making or continuing an aerial application of the pesticide *Revus* (Reg. No. 100-1254-AA) when there was a reasonable possibility of contamination to the bodies or clothing of individuals not involved in the application process.

1. The Pesticide Episode Investigation Report and Investigative Sample Analysis Reports are admissible evidence under both a hearsay exception or as supplementing or explaining other evidence presented at the hearing.

Gomes Farm Air Service contends that the Hearing Officer and Commissioner abused their discretion and violated its due process rights by basing their decisions on inadmissible hearsay evidence.¹ (*Appeal at 1-2.*) Specifically, Gomes Farm Air Service argues that since the

¹ However, contrary to the Appellant's contentions, the Hearing Officer's proposed decision finding Gomes Farm Air Service in violation of California regulations clearly stated that he did not rely on either the Pesticide Episode

Hearing Officer ruled that the Investigative Sample Analysis Reports were inadmissible at the administrative hearing, and was “the only competent evidence of the presence of *Revus* fungicide,” there can be no violation against Gomes Farm Air Service. (Appeal at 1:27-2:8.)

The Director decides matters of law using his independent judgment. California evidentiary rules allow the admissibility of hearsay evidence under expressed exceptions or to supplement or explain other evidence presented at an administrative hearing. Accordingly, the Director finds that both the Pesticide Episode Investigation Report and Investigative Sample Analysis Reports are admissible evidence and should have been admitted at the administrative hearing. (*See Evid. Code, § 1280; see also, Gov. Code, § 11513, subd. (c), (d).*)

First, both reports are admissible evidence under the public employee record exception to the hearsay rule. Evidence Code section 1280 states that if a report was prepared by a public employee within the scope of their duty, made at or near the time of the incident, and the sources of information and method and time of preparation are such as to indicate its trustworthiness, it is admissible as evidence under an exception to the hearsay rule. (*See Evid. Code, § 1280.*) Here, both the Pesticide Episode Investigation Report and the Investigative Sampling Analysis Reports were written by public employees within the scope of their duties and were made at or near July 7, 2011, the date of the incident, under methods described as reliable, such as to indicate trustworthiness. (*See Evid. Code, § 1280; Wallis Testimony; County Report; Investigative Sample Analysis Reports.*)

Further, both reports are admissible as hearsay used to supplement or explain other evidence presented at the administrative hearing. Government Code section 11513 states that, “Any relevant evidence shall be admitted [in an administrative hearing] 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. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.” (Gov. Code, § 11513, subd. (c), (d); *Lake v. Reed* (1997) 16 Cal.4th 448, 461.)

In this case, much of the information contained in both reports supplemented or explained stipulated facts or direct testimony regarding what witnesses observed, experienced, or documented on the morning of July 7, 2011. (*See Pesticide Episode Investigation Report; Investigative Sample Analysis Reports.*) Although Gomes Farm Air Service argues that the Investigative Sample Analysis Reports were “the only competent evidence of the presence of

Proposed Decision (Proposed Decision), p. 4 [“the [investigative] report itself ... [is] inadmissible and ha[s] not been relied upon by the Hearing Officer to establish that Mr. Gomes applied *Revus* to Willoughby Ranch on July 7, 2011.”]; and p. 5 [“[t]he laboratory reports are inadmissible evidence to establish the presence of *Revus* on ... the strawberry foliage and on the two workers.”].)

Revus fungicide,” (Appeal 1:27-2:8), the county presented ample evidence at the hearing that on July 7, 2011, Mr. Gomes applied *Revus* to a field adjacent to Mr. Madesko and Mr. Garcia and exposed them to a mist from the aerial application. (See County Ex. 2; Wallis Testimony; Gomes Testimony; Madesko Testimony; Garcia Testimony; County Report at p. 5; Facts 9-15.) In addition, Inspector Wallis provided testimony that following the incident, she interviewed witnesses, documented her findings in the Pesticide Episode Investigation Report, and collected residue samples from Mr. Madesko’s sweatshirt and the incident site, which she submitted on specific Investigative Sample Analysis Reports to the CDFA Center for Analytical Chemistry for analysis. (Wallis Testimony; County Report at pp. 5-7; County Ex. 3a, 3b, 4a, 4b, and 5; Investigative Sample Analysis Reports)

As a result, the Director finds that both the Pesticide Episode Investigation Report and Investigative Sample Analysis Reports are admissible evidence under both an exception to the hearsay rule and as acceptable hearsay used in an administrative hearing to supplement or explain other admissible evidence. Accordingly, the Commissioner’s finding that there was substantial evidence to demonstrate that Gomes Farm Air Service violated California Code of Regulations, title 3, section 6614, subdivision (b)(1), is affirmed.

2. Gomes Farm Air Service’s argument that Mr. Madesko and Mr. Garcia were not “contaminated,” as set forth in California Code of Regulations, title 3, section 6614, subdivision (b)(1), is misguided and unsupported.

Appellant Gomes Farm Air Service argues that the Commissioner incorrectly interpreted the word “contamination” in finding that Gomes Farm Air Service violated California Code of Regulations, title 3, section 6614, subdivision (b)(1). (Appeal at 2:24-3:10.) Specifically, Gomes Farm Air Service contends that the “alleged minor, temporary exposure of the two workers to a ‘mist’” does not qualify as “contamination” under the regulation. (Appeal at 3:1-10.) Appellant’s interpretation is misguided and unsupported.

As a general matter, “courts will be deferential to government agency interpretations of their own regulations, particularly when the interpretation involves matters within the agency’s expertise and does not plainly conflict with statutory mandate.” (*Environmental Protection Information Ctr. v. California Dept. of Forestry and Fire* (2008) 44 Cal.4th 459, 490.) Further, it is clear from the plain language of the regulation at issue, entitled, “Protection of Persons, Animals, and Property,” that this regulation was specifically aimed at protecting individuals who are not involved in the pesticide application process from being exposed or subjected to drift from pesticide applications. Although there is no definition of “contaminate” under either regulation or statute, the Merriam Webster Dictionary defines “contaminate” as, “to make (something) dangerous, dirty, or impure by adding something harmful or undesirable to it.”²

² See <http://www.merriam-webster.com/dictionary/contaminate>.

Basic common sense and reason dictate that being aeri­ally sprayed with *any* unknown substance, even a “low hazard” pesticide in a small amount would be undesirable to any person. At the hearing, Mr. Madesko testified that when he observed the helicopter deploy a spray, he immediately ran in the opposite direction of the helicopter to avoid being further exposed to the spray. (Madesko Testimony.) Mr. Garcia also testified that when the mist from the helicopter contacted his body, he felt physical discomfort and a tingling and burning sensation on his face and hands. (Garcia Testimony.) The fact that Mr. Madesko and Mr. Garcia were only temporarily exposed to a mist from a low-hazard pesticide and did not need further medical treatment is wholly irrelevant to whether or not Gomes Farm Air Service in fact violated California Code of Regulations, title 3, section 6614, subdivision (b)(1).

B. Substantial evidence supports the Commissioner’s decision to classify the violation as a Class B violation and that the fine was appropriate.

When levying fines, the Commissioner must follow the fine guidelines contained in California Code of Regulations, title 3, section 6130, set forth above. Here, there is substantial evidence to support the Commissioner’s decision that this violation was a Class B violation and that the fine was appropriate. At the hearing, Ms. Wallis testified that the violation against Gomes Farm Air Service was appropriately classified as a Class B violation because the specific violation (i.e. continuing an application when there was a reasonable possibility of contamination to the bodies of individuals not involved in the application process) was a violation of law or regulation intended to mitigate the risk of adverse health, property, or environmental effects. (Cal. Code of Regs., tit. 3, § 6130, subd. (b)(2); Wallis Testimony.)

The fine range for Class B violations is \$250-\$1,000. (Cal. Code of Regs., tit. 3, § 6130, subd. (c)(2).) At the hearing, Ms. Wallis also testified that the \$550 fine was appropriate because two individuals who were not involved in the pesticide application process testified that they felt drift from the helicopter’s pesticide application on the adjacent field. (Wallis Testimony; Madesko Testimony; Garcia Testimony.)

Based upon the facts of this case, the Director finds that the violation was appropriately charged as a Class B violation and that the \$550 fine levied is not excessive, and is a reasonable exercise of the Commissioner’s discretion.

Conclusion

The Commissioner’s decision that Appellant Gomes Farm Air Service violated California Code of Regulations, title 3, section 6614(b)(1) and that the violation qualified as Class B violation is affirmed. The fine of \$550 is upheld.

Disposition

The Commissioner's decision and levy of fine is affirmed. The Commissioner shall notify Appellant Gomes Farm Air Service of how and when to pay the \$550 fine.

Judicial Review

Under Food and Agricultural Code, section 12999.5, Appellant Gomes Farm Air Service may seek court review of the Director's decision within 30 days of the date of the decision. 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**

Dated: January 28, 2014

By: Brian Leahy
Brian Leahy, Director