

**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 Imperial
(County File No. 23-01/02)

Administrative Docket No.114

DECISION

JEFFREY M. NIGH
Colorado River Consulting, Inc.
5402 West 8th Street
Yuma, Arizona 85364

Appellant /

Procedural Background

Under Food and Agricultural Code (FAC) section 12999.5 and section 6130 of Title 3, California Code of Regulations (3 CCR), county agricultural commissioners may levy a civil penalty up to \$1,000 for certain violations of California's pesticide laws and regulations.

After giving notice of the proposed action and providing a hearing, the Imperial County Agricultural Commissioner found that the appellant, Jeffrey M. Nigh, violated FAC section 11792. The commissioner imposed a penalty of \$151 for the violation. The Hearing Officer reduced the fine to \$100.

Jeffrey M. Nigh appealed from the commissioner's civil penalty decision to the Director of the Department of Pesticide Regulation (DPR). The Director has jurisdiction in the appeal under FAC 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 them on the record before the Hearing Officer. In reviewing the record, 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 in 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 findings and decision, the Director affirms the decision.

FAC section 11792

FAC section 11792 states, in relevant part, that it is unlawful for any person that is subject to this division (Division 6 of the FAC) to make a false record or report.

There is information in the record that the appellant was licensed by DPR as an Agricultural Pest Control Adviser at the time of the violation. Therefore, the appellant is required to comply with the requirements of Division 6.

There is also information in the record that on October 29, 2001, the appellant made a written recommendation for an application of Rovral 4FL to an approximately 31-acre field identified as lettuce on the recommendation. The application was to be made on October 31, 2001. There is information in the record that approximately 31 acres were used to grow lettuce and endive. The written recommendation was false because only ten of the acres were being used to grow lettuce. The remaining acreage was being used to grow endive. The appellant admitted during the hearing that the field contained both leaf lettuce and endive.

A reasonable inference from this information is that the appellant violated FAC section 11792.

Conclusion

The record shows the commissioner's decision is supported by substantial evidence, and there is no cause to reverse or modify the decision.

Disposition

The commissioner's decision is affirmed.

The commissioner shall notify the appellant how and when to pay the \$100 penalty for its violation of FAC section 11792.

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Judicial Review

Under FAC section 12999.5, the appellant may seek court review of the Director's decision within 30 days of the date of the decision. The 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**

By: original signed by Dated: November 20, 2002
Paul Helliker
Director