

**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 Placer  
(County File No. 040-ACP-PLA-05/06)

Docket. No. 140

**DECISION**

**Robert Hughes  
Bloom's Landscape Maintenance  
P.O. Box 2505  
Roseville, California 95746**

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 (CAC) may levy a civil penalty up to \$5,000 for certain violations of California's pesticide laws and regulations.

After giving notice of the proposed action and providing a hearing, the Placer CAC found that the appellant, Robert Hughes-Bloom's Landscape Maintenance ("Mr. Hughes" or "Appellant"), committed six violations of the State's pesticide laws and regulations pertaining to FAC section 11701, and 3 CCR sections 6602, 6678, 6724, 6726, 6738(b)(1)(C). The commissioner imposed a total penalty of \$2,400 for the six violations.

Appellant has stipulated to violation of FAC section 11701 and 3 CCR section 6678, but appealed from the commissioner's civil penalty decision on the remaining violations to the Director of the Department of Pesticide Regulation. The Director has jurisdiction in the appeal under FAC section 12999.5.

**Standard of Review**

The Director decides matters of law using her 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 February 14, 2006, Mr. Josh Huntsinger, Placer County Senior Agricultural Inspector, conducted a pesticide application inspection of Appellant's employee, Mr. Armando Garibaldo. Mr. Garibaldo was applying Roundup Pro herbicide with a backpack sprayer to the landscaping around the Storage USA facility located in Roseville, Placer County. As a result of Mr. Huntsinger's inspection, the Placer CAC issued a Notice of Proposed Action on May 3, 2006. The Placer CAC charged Appellant with six violations of California's pesticide laws. At the hearing, Appellant stipulated to two violations and was found to be in violation of the other four by the Hearing Officer.

Violation one found that Appellant failed to provide its employee with a copy of the Roundup Pro herbicide label when he was applying that pesticide at a landscape maintenance job site, a violation of 3 CCR section 6602. The Placer CAC found violation one to be a Class B violation and assessed a fine of \$250.

Violation two found that Appellant failed to assure that its employee who was applying Roundup Pro had been properly trained about pesticides, a violation of 3 CCR section 6724. The Placer CAC found violation two to be a Class B violation, as it was Appellant's second violation of 3 CCR section 6724 in two years, and assessed a fine of \$250.

Violation three found that Appellant had failed to provide its employee who applied pesticides with emergency medical care information, a violation of 3 CCR section 6726. The Placer CAC found violation three to be a Class B violation, as it was Appellant's second violation of 3 CCR section 6726 in two years, and assessed a fine of \$250.

Violation four found that Appellant had failed to assure its employee wore protective eyewear as required by the Roundup Pro label, a violation of 3 CCR section 6738(b)(1)(C). The Placer CAC found violation four to be a Class A violation, as it was Appellant's second violation of 3 CCR section 6738(b)(1)(C) in two years, and assessed a fine of \$700.

Violation five found that Appellant had failed to properly label its backpack sprayer containing Roundup Pro used by the employee and transported in the employee's work vehicle, a violation of 3 CCR section 6678. At the hearing, Appellant stipulated that the backpack sprayer was not properly labeled.

Violation six found that Appellant had failed to possess a valid pest control business license when it operated as a pest control business, a violation of FAC section 11701. At the hearing, Appellant stipulated that it did not have a valid pest control business license.

### **Appellant's Arguments**

Appellant's argument for reversal of the Placer CAC's decision is that Mr. Garibaldo spoke only Spanish and does not understand English. During the hearing, Mr. Huntsinger testified that he spoke to Mr. Garibaldo in Spanish and that he believed that Mr. Garibaldo understood his questions.

Appellant argues in its written brief that Mr. Huntsinger knew very little Spanish and that he was very hard to comprehend; hence, Mr. Garibaldo did not understand any of Mr. Huntsinger’s questions and did not understand that an inspection was taking place. Appellant argues that had Mr. Garibaldo understood Mr. Huntsinger’s questions, no violations would have been issued.

Appellant did not contest the amounts of the fines levied by the Placer CAC.

### **Analysis of the Hearing Officer’s Decision**

#### **Violation One**

On February 14, 2006, Mr. Josh Huntsinger, Placer County Senior Agricultural Inspector, conducted a pesticide application inspection of Mr. Armando Garibaldo. Mr. Huntsinger observed Mr. Garibaldo applying Roundup Pro Herbicide with a backpack sprayer. There is information in the record that during his inspection, Mr. Huntsinger asked Mr. Garibaldo if he had in his possession the Roundup Pro label. Mr. Garibaldo told Mr. Huntsinger that he did not have the label, a violation of 3 CCR section 6602. Huntsinger testified that he asked Mr. Garibaldo if the information was behind the seat, in the glove box, or other location in Mr. Garibaldo’s work vehicle. Mr. Garibaldo told Mr. Huntsinger that he did not have the label.

During the hearing, Mr. Hughes testified that if Mr. Garibaldo understood Mr. Huntsinger, Mr. Garibaldo would have provided the label to Mr. Huntsinger. During the hearing, Mr. Hughes did not speak any Spanish, nor did Mr. Huntsinger. Mr. Huntsinger testified that he believed that Mr. Garibaldo understood his questions and responded to his questions. Although Mr. Garibaldo was still employed by Appellant during the hearing, he did not appear at the hearing. Mr. Huntsinger’s testimony about what he observed firsthand is not contradicted by anything other than Mr. Hughes unsupported assertions.

Therefore, substantial evidence exists to support the Hearing Officer's findings and the commissioner's decision.

#### **Violation Two**

In the February 14, 2006, pesticide application inspection of Mr. Garibaldo, Mr. Huntsinger asked Mr. Garibaldo if he had received any documented pesticide safety training from his employer. Mr. Garibaldo told Mr. Huntsinger that he had not been trained, a violation of 3 CCR section 6724. Mr. Huntsinger testified that after his initial inspection, he called Mr. Hughes repeatedly to confirm or deny that Mr. Garibaldo had been trained. Mr. Huntsinger testified that Mr. Hughes did not return Mr. Huntsinger’s telephone calls. Mr. Hughes testified that he did not call Mr. Huntsinger back because he receives many telephone calls a day.

Mr. Hughes did not offer any into evidence any documentation that Mr. Garibaldo had been trained. During the hearing, Mr. Hughes testified that if Mr. Garibaldo understood Mr. Huntsinger, Mr. Garibaldo would have shown the information to Mr. Huntsinger. Mr. Huntsinger testified that he believed that Mr. Garibaldo understood his questions and responded to his questions. In his

written argument, Mr. Hughes stated that he had spoken to Mr. Huntsinger in Spanish and that Mr. Huntsinger spoke very little Spanish and that he was very hard to comprehend; however, during the hearing, Mr. Hughes did not speak any Spanish, nor did Mr. Huntsinger. Although Mr. Garibaldo was still employed by Appellant during the hearing, he did not appear at the hearing.

The Hearing Officer apparently found Mr. Huntsinger's testimony more credible than Mr. Hughes' assertions. Therefore, substantial evidence exists to support the Hearing Officer's findings and the commissioner's decision.

#### Violation Three

In the February 14, 2006, pesticide application inspection of Mr. Garibaldo, Mr. Huntsinger asked Mr. Garibaldo if he had emergency medical information in his possession. Mr. Garibaldo told Mr. Huntsinger that he did not have the medical information, violation of 3 CCR section 6726. Mr. Huntsinger testified that he asked Mr. Garibaldo if the information was behind the seat, in the glove box, or other location in Mr. Garibaldo's work vehicle. Mr. Garibaldo told Mr. Huntsinger that he did not have the emergency medical information, but he did know where the hospital was located.

During the hearing, Mr. Hughes testified that if Mr. Garibaldo understood Mr. Huntsinger, Mr. Garibaldo would have provided the emergency medical information to Mr. Huntsinger. At the hearing, Mr. Hughes admitted a one-page document which lists four alternative hospitals in the event an employee was injured. The document is in English, but not Spanish. (Respondent's Exhibit A.)

During the hearing, Mr. Hughes did not speak any Spanish, nor did Mr. Huntsinger. Mr. Huntsinger testified that he believed that Mr. Garibaldo understood his questions. Mr. Garibaldo did not show Mr. Huntsinger any emergency medical information. Although Mr. Garibaldo was still employed by Appellant during the hearing, he did not appear at the hearing.

The Hearing Officer apparently found Mr. Huntsinger's testimony more credible than Mr. Hughes' assertions. Therefore, substantial evidence exists to support the Hearing Officer's findings and the commissioner's decision.

#### Violation Four

In the February 14, 2006, pesticide application inspection of Mr. Garibaldo, Mr. Huntsinger observed Mr. Garibaldo using hand-held equipment to apply Roundup Pro without wearing his protective eye glasses, a violation of 3 CCR section 6738(b)(1)(C).

Mr. Hughes testified during the hearing that Mr. Garibaldo was spraying under a tree; hence, Mr. Garibaldo removed his glasses because it was dark under the tree. However, Mr. Huntsinger testified that he observed Mr. Garibaldo while he sprayed Roundup Pro without his protective eye wear under the tree and elsewhere. Mr. Hughes' testimony supports the finding that Mr. Garibaldo was not wearing his protective eyewear while spraying under the tree. Although Mr. Garibaldo was still employed by Appellant during the hearing, he did not appear at the hearing.

Therefore, Mr. Huntsinger's testimony and Mr. Hughes' admission provide substantial evidence to support the Hearing Officer's findings and the commissioner's decision.

**Conclusion**

For violations one, two, three, and four, the commissioner's decision is supported by substantial evidence.

**Disposition**

The commissioner's decision is affirmed in its entirety. The commissioner shall notify Appellant how and when to pay the \$2,400 fine.

**Judicial Review**

Under FAC section 12999.5, Appellant 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: 29 November 2006

By: MaryAnn Warner  
Mary-Ann Warner, Director