



**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,

Petitioner,

v.

Collier Mosquito Control District,

Respondent.

Agency Clerk # B10613
BLE Case # 317-529-6014 MS &
317-584 6014 MS

**ADMINISTRATIVE COMPLAINT
AND WARNING LETTER**

INVESTIGATION

The Department of Agriculture and Consumer Services ("Department") conducted an investigation, and has identified the following violation(s):

The Department received information from an anonymous source in November of 2017 alleging pesticide misuse by the Collier Mosquito District following Hurricane Irma. The Bureau of Inspection and Incident Response (BIIR) initiated an investigation on November 13, 2017 (BLE Case# 317-529-6014).

While BLE Case# 317-529-6014 was under review by the Bureau of Licensing and Enforcement (BLE), a second anonymous complaint (317-584-6014) was received by the Department alleging pesticide misuse by Collier Mosquito Control District (CMCD). Specifically, the second complainant alleged CMCD routinely made fixed wing aerial applications that targeted bodies of water, regularly performed aerial applications at rates greater than permitted by the pesticide label, conducted multiple missions resulting in blank maps rendering the treatments untraceable, performed applications where the flight path was not the actual treatment area, and does not have a baseline to evaluate thresholds of treatment.

On December 11, 2017 the BIIR suggested that the BLE suspend the review of BLE Case # 317-529-6014 until BLE Case # 317-584-6014 had been investigated and submitted for review. The BIIR initiated a second investigation (BLE Case# 317-584-6014) on December 12, 2017. The investigative file was submitted to the BLE on January 22, 2018.

During the course of the investigations affidavits describing routine operational procedures as well as details of specific mosquito control missions were obtained from Patrick Linn (Executive Director, PH0530), John Appezzato (Director of Operations, PH0199), and Christopher Laidlaw-Bell (Chief Pilot, PH0327). The BIIR also obtained copious operational records including application and maintenance records for specific missions covering a span of time from June 2016 through September 2016 and June 2017 through September 2017.

Upon review of the investigative case files by the BLE, it has been determined CMCD used Zenivex E20 (EPA Reg. No. 2724-791) and Dibrom Concentrate Insecticide (EPA Reg. No. 5481-480) inconsistently with product label requirements.

The Dibrom Concentrate Insecticide (EPA Reg. No. 5481-480) label states:

“For each application, a record must be kept of:

- Date, time and areas where application occurred
- Type and size spray nozzle used
- Dilution and application rate
- Speed of application vehicle (whether air or ground)
- A description of insecticide delivery system used for the specific application
- Climate factors (e.g. ambient temperature, wind speed/direction) as determined using reliable means
- Employees involved in mixing, loading, and applying DIBROM Concentrate.

These records must be kept by the responsible public agency or their designee for a minimum of two years using storage methods that will allow the records to be easily retrieved.”

The Dibrom Concentrate Insecticide (EPA Reg. No. 5481-480) spray mission records submitted by Collier Mosquito Control District do not list the names of the personnel involved in mixing and loading Dibrom Concentrate Insecticide (EPA Reg. No. 5481-480), the records only list the name of the pilot who applied Dibrom Concentrate Insecticide (EPA Reg. No. 5481-480).

The Zenivex E20 (EPA Reg. No. 2724-791) label states:

“Apply Zenivex E20 at rates from 0.00175 to 0.0070 pounds of etofenprox per acre.”

Application records for the aerial application performed on April 20, 2017 using aircraft N52934 indicate 910 acres were treated with 5 gallons of Zenivex E20 (EPA Reg. No. 2724-791). The application rate is 0.0081 pounds of etofenprox per acre which exceeds the application rate range specified by the Zenivex E20 (EPA Reg. No. 2724-791) product label.

Lastly, On January 05, 2018, Mr. Appezzato stated application thresholds were set district wide with no distinction between beaches and bay shores and the rest of the district. Mr. Linn and Mr. Appezzato indicated during the investigation that base population information predated both of their tenures. CMCD failed to establish a threefold increase over base populations prior to making aircraft applications of Dibrom Concentrate Insecticide (EPA Reg. No. 5481-480) and Zenivex E20 (EPA Reg. No. 2724-791) over the beaches and bayshores within the district as is required by Rule 5E-13.036(2), Florida Administrative Code.

On January 15, 2018, CMCD issued Standard Operating Procedure No. 9, “Determining Treatment Thresholds for Adult and Larval Mosquitoes in Areas within 1500 Feet of Beaches and Bay Shores” indicating a baseline of three (3) mosquitoes per minute (any genus of concern), as determined by landing-rate count.

Rule 5E-13.0331(1), Florida Administrative Code, states:

Only those pesticides having state registration shall be used for arthropod control. All registered pesticides used for arthropod control, including adulticides or larvicides, must be used in accordance with the registered label and labeling or be otherwise accepted by the United States Environmental Protection Agency or the Department.

Rule 5E-13.036(2), Florida Administrative Code, states:

Aircraft applications of mosquito adulticides along beaches and bayshores shall be justified only when there is a demonstrable three-fold increase over a base population.

Violations found:

Violation - Collier Mosquito Control District is in violation of Rules 5E-13.0331(1) and 5E-13.036(2), Florida Administrative Code, for failure to establish a threefold increase over base populations prior to making Dibrom Concentrate Insecticide (EPA Reg. No. 5481-480) applications along beaches and bay shores as well as misuse of Dibrom Concentrate Insecticide (EPA Reg. No. 5481-480) by failing to keep complete application records including names of personnel involved with mixing and loading Dibrom Concentrate Insecticide (EPA Reg. No. 5481-480).

Violation - Collier Mosquito Control District is in violation of Rules 5E-13.0331(1) and 5E-13.036(2), Florida Administrative Code, for failure to establish a threefold increase over base populations prior to making Zenivex E20 (EPA Reg. No. 2724-791) applications along beaches and bay shores as well as misuse of Zenivex E20 (EPA Reg. No. 2724-791) for exceeding the label directed application rate range of active ingredient during the aerial application performed on April 20, 2017.

Violations of Chapter 388, Florida Statutes, or Rule Chapter 5E-13, Florida Administrative Code, subjects the Respondent to discipline as provided in Section 388.3711, Florida Statutes.

Wherefore, Petitioner intends to take action pursuant to Section 388.3711, Florida Statutes, and issues this notice of noncompliance (warning letter).

WARNING

Please be advised that additional violations of Chapter 388, Florida Statutes, or Rule Chapter 5E-13, Florida Administrative Code, subjects the Respondent to discipline as provided in Section 388.3711, Florida Statutes.

ADMINISTRATIVE HEARING AVAILABLE

If you wish to contest this warning letter, you have the right to request an administrative hearing to be conducted in accordance with Sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses, and to have subpoena and subpoena duces tecum issued on your behalf if a hearing is requested. Your request for hearing must contain your name and address for purposes of service, a statement requesting either a hearing involving disputed issues of material fact or a hearing not involving disputed issues of material fact, and a reference to this administrative complaint.

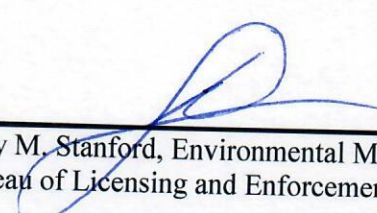
DEADLINE

If you do not request an administrative hearing within twenty-one (21) days of receipt of this letter, the Department will consider the matter concluded and place a copy of this Warning Letter in your official file.

FURTHER INFORMATION

If you wish to discuss this matter, please contact me at (850) 617-7880.

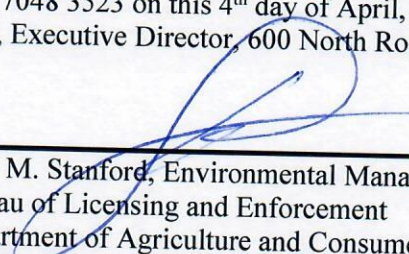
Dated this 4th day of April, 2018.



Gary M. Stanford, Environmental Manager
Bureau of Licensing and Enforcement

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Administrative Complaint and Warning Letter has been furnished by USPS CERTIFIED MAIL # 7010 1060 0001 7048 3523 on this 4th day of April, 2018 to: Collier Mosquito Control District, Attn: Patrick Linn, Executive Director, 600 North Road, Naples, FL 34104.



Gary M. Stanford, Environmental Manager
Bureau of Licensing and Enforcement
Department of Agriculture and Consumer Services
Division of Agricultural Environmental Services
The Conner Building, No. 8
3125 Conner Boulevard
Tallahassee, FL 32399-1650



ADAM H. PUTNAM
COMMISSIONER

Florida Department of Agriculture and Consumer Services

**ELECTION OF RIGHTS
ADMINISTRATIVE COMPLAINT**

Case No. 317-584-6017 MS

This form must be received by the Division of Agricultural Environmental Services office in Tallahassee, Florida, within 21 days of receipt of the Administrative Complaint. Failure to do so shall be deemed a waiver of your right to an administrative hearing.

Select one of the following options and sign below:

Stipulation

I have read and understand the enclosed Stipulation and Settlement. By signing the agreement I choose not to litigate the issues or facts alleged, hereby waive my right to a hearing under Sections 120.569 and 120.57, Florida Statutes, and will abide by the conditions imposed.

Informal Hearing

I do not dispute the facts upon which the agency action is based. I wish to make an explanation of those facts by speaking on my behalf at an informal hearing. The informal hearing will be conducted before a hearing officer of the Department of Agriculture and Consumer Services in accordance with Sections 120.569 and 120.57(2), Florida Statutes, and applicable portions of Chapter 28-106, Florida Administrative Code.

Informal Hearing by Written Statement

I do not dispute the facts upon which the agency action is based. I wish to make an explanation of those facts by submitting a written statement to a hearing officer and I waive my right to appear in person at an informal hearing. The informal hearing will be conducted before a hearing officer of the Department of Agriculture and Consumer Services in accordance with Sections 120.569 and 120.57(2), Florida Statutes, and applicable portions of Chapter 28-106, Florida Administrative Code.

Formal Hearing

I dispute the facts upon which the agency action is based. **I have attached to this form a petition or written statement of the disputed issues of material fact** and hereby request a formal hearing to be conducted pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and applicable portions of Chapter 28-106, Florida Administrative Code. **I realize that failure to state the disputed issues of material fact may result in the denial of my request for a formal hearing.** The formal hearing will be held before an Administrative Law Judge of the Division of Administrative Hearings where I may present evidence and argument on the issues.

I have read and understand the Election of Rights form and understand that I have the right to be represented by counsel or qualified representative at either an informal or formal hearing.

Mediation, pursuant to Section 120.573, Florida Statutes, is not available as an alternative remedy.

Respondent's Signature

Collier Mosquito Control District

Type or print your name

Respondent's mailing address

Respondent's city, state and zip

Respondent's telephone number and email address

Attorney's Signature if represented

Type or print attorney's name

Attorney's mailing address

Attorney's city, state and zip

Attorney's telephone number and email address

Upon completion of this form, return it to:

Florida Department of Agriculture and Consumer Services

Division of Agricultural Environmental

3125 Conner Blvd, Bldg. 8, Rm. 811

Tallahassee, Florida 32399-1650

Note: In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in a hearing should contact the Division no later than seven (7) days prior to the hearing at which such special accommodation is required. The Division may be contacted at (850) 617-7880 Administrative Complaint # B10613. Hearing and voice impaired persons may call the Florida Relay Service at (800) 955-8771 (TDD) to reach (850) 245-5491.