

**Delaware Department of Agriculture
Pesticides Section
2320 S. DuPont Highway, Dover, Delaware 19901
Pesticide Enforcement Action**



Respondent:

Kirkwood Pest Control
89 Club Road
Earleville, MD 21919

Violation:

§1224(a)(3) Engaging in the business of applying a pesticide on the lands of another without having a license granted by the Department;
§1224 (a)(10) Neglecting or, after notice, refusing to comply with the LAW, the rules adopted under the LAW, or any lawful order of the Department;
§1224 (b)(1) The first offense of 1224(a)(1) – Making a pesticide recommendation or use or application inconsistent with the labeling.

Penalty:

Respondent signed a consent agreement June 23rd 2019. In the agreement, Respondent agrees to the imposition of disciplinary sanctions which included a civil penalty of \$7,850.00 (seven thousand eight hundred fifty dollars) for violating §1224(a)(3), (a)(10), and (b)(1).

STIPULATED FACTS

1. Kirkwood Pest Control (“Respondent Kirkwood”) is a commercial pesticide applicator business with an office located at 89 Club Lane, Earleville MD 21919. Thomas Bredahl is the owner/operator. Respondent Kirkwood is licensed (License No. 792) by the Delaware Department of Agriculture (“the Department”). The license was expired at the time of the inspection.
2. Mr. Thomas Bredahl (“Mr. Bredahl”) is certified by the Department in Category 8.3.5.3, Mosquito Control, 8.3.7.1.1 General Pest and 8.3.7.1.2 Wood Destroying Pest (Certificate Number 93-691).
3. Chris Gipe (“Mr. Gipe”) is employed by Respondent Kirkwood as a Registered Service Employee. Mr. Gipe was not listed as a registered service employee at the time of inspection.

4. Tracey Fitzpatrick (“Mrs. Fitzpatrick”) is employed by Respondent Kirkwood as a Registered Service Employee. Mrs. Fitzpatrick was not listed as a registered service employee at the time of inspection.
5. The Pesticide Section of the Department (“Complainant”) is bringing this enforcement action against Respondent. Christopher Wade, (“Mr. Wade”) is employed as an Environmental Program Administrator. Dustin Borntreger, (“Mr. Borntreger”) is employed as an Environmental Scientist II with the Department.
6. On March 8th 2019, Borntreger conducted a business license check with Respondent Kirkwood after seeing the service vehicle on the road. Mr. Borntreger contacted the office of Respondent Kirkwood while he was following the service vehicle. The office personnel told Mr. Borntreger that the service vehicle was on its way to Milford, DE. Upon arrival a notice of inspection was issued to Mr. Gipe. This inspection occurred at the location of 6512 Shawnee Road, Milford DE 19963. During this inspection, Mr. Borntreger checked the license status using his Salesforce App on his state-issued cell phone. The App showed that Respondent Kirkwood’s license had expired 12/31/2017. Borntreger then asked if either Mr. Gipe or Mrs. Fitzpatrick were certified or registered employees. Neither were certified or registered in Delaware. During this interview both individuals stated that they make pesticide applications in Delaware for the Respondent Kirkwood. They also stated that they were only at the Milford location to conduct a termite damage inspection.
7. On March 11th 2019, Mr. Borntreger conducted a records inspection with Respondent Kirkwood as a follow-up to the March 8th inspection. Mr. Borntreger explained to Respondent Kirkwood that this inspection was in response to the March 8th, 2019 inspection. Mr. Borntreger requested one years’ worth of pesticide application records that had occurred within Delaware. Mr. Bredahl supplied Mr. Borntreger with one-hundred forty seven (147) application records; these applications took place between the dates of February 13th, 2018 – March 8th, 2019. These records included twenty seven (27) termite applications made by Mr. Bredahl, sixty three (63) general pest applications made by Mr. Gipe, forty-three (43) general pest applications made by Mrs. Fitzpatrick, fourteen (14) general pest applications made by Mr. Bredahl and five (5) joint general pest applications made by Mr. Gipe and Mrs. Fitzpatrick.
8. Upon review of the termiticide records, it was noted that the incorrect rate had been recorded. A total of twenty three (23) termite application records were received during the inspection. The rate at which the Termidor HE (EPA Registration Number 7969-329) was listed on the records as 0.06% at 4 gallons per 10 linear feet. The Termidor HE label states in part: “Termidor HE finished dilution. Pre-construction vertical and all post-construction treatments (including applications to posts/poles/wood landscape ornamentation and applications for termites above ground) listed on this label must be made using a 0.125% Termidor HE finished

- dilution (exception 0.06% finished dilution option for inaccessible crawl space construction). During the review of the records and diagrams it was noted that no Termiticide Disclosure forms had been issued for treatments that had been made using the EP/LI section of the Termidor HE label. The Termidor HE labels states in part: "This treatment method is designed to be non-invasive to the interior of the structure by applying a continuous treatment along the exterior of the foundation and treating interior areas that show termite activity. It may not be considered a conventional complete treatment. If you have questions regarding this treatment, consult your lead state agency."
9. The Department contacted Mr. Bredahl to discuss the recorded rate for the termiticide used. Mr. Bredahl stated that he had used the 0.125% Termidor HE and that the 0.06% rate had been recorded in error. The lack of diagrams was also discussed during this phone conversation. Mr. Bredahl stated that he would send the diagrams and the "corrected termite records" to the Department for review. Mr. Wade received the emails containing the diagrams on April 12th 2019. Mr. Wade received the email containing the "corrected termite records" on April 14th 2019. Upon review of the "corrected termite records" it was noted that the total amount of gallons had also changed. On May 3rd 2019, Mr. Wade sent an email to Mr. Bredahl concerning the change in gallons. Mr. Bredahl replied to this email on May 3rd 2019. The email response has been included in the case file.
 10. During the review of application records, invoice 31196 dated March 8th 2019 was reviewed. The invoice was for a termiticide application made at 6512 Shawnee Road, Milford, DE 19963. This application occurred the same day and location that Respondent Kirkwood had been inspected by Mr. Borntreger. During the initial interview Mr. Gipe and Mrs. Fitzpatrick stated that they would only be conducting an inspection of the property. Mr. Gape signed the Notice of Inspection at 12:50 PM; Mr. Gipe then showed Mr. Borntreger the location of the termite infestation. The infestation was located in the basement of the structure. The license renewal payment was processed at 1:38 PM according to the Salesforce database. The invoice states that the in time was 11:30 AM and the out time was 3:00 PM. The invoice also documents that Mr. Gipe and Mrs. Filtzpatrick were the applicators. Section 22.4 of the Delaware Administrative Code 601 Delaware Pesticide Rules and Regulations states that any application of termiticides, pursuant to this section, must be conducted with a commercial applicator at the site of application. This commercial applicator must be certified in category 7.7.2, Wood Destroying Pest Control.
 11. Termidor HE, EPA Reg. No. 7969-329 is a registered pesticide for sale and use in Delaware. The Termidor HE labels states: Termidor HE finished dilution. Pre-construction vertical and all post construction treatments (including applications to post/poles/wood landscape ornamentation and applications for termites above ground) listed on this label must be made using a 0.125% Termidor HE finished dilution (exception 0.06% finished dilution option for inaccessible crawl space construction)

12. In the past 5 years, Respondent has no pesticide compliance violations with the Department.