

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



**Respondent:**

Passwaters Landscaping  
18956 Sussex Highway  
Bridgeville, DE 19933

**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 (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 August 29<sup>th</sup>, 2019, In the agreement, Respondent agrees to the imposition of disciplinary sanctions which included a civil penalty of \$2240.00 for violating §1224(a)(3) and (b)(1).

**STIPULATED FACTS**

1. Passwaters Landscaping, (“Respondent”) is a commercial pesticide applicator business with an office located at 18956 Sussex Hwy, Bridgeville, DE 19933. Respondent does not have a pesticide business license issued by the Delaware Department of Agriculture (“Department”).
2. John Passwaters (“Passwaters”) is the owner of Passwaters Landscaping. At the time of the inspection Mr. Passwaters was not a certified applicator with the Department.
3. David Gray is employed by Passwaters Landscaping.
4. William Coulter Passwaters is employed by Passwaters Landscaping.

5. The Pesticide Section of the Department (“Complainant,”) is bringing this enforcement action against Respondent. Erin Gehrman, (“Gehrman”), is employed as an Environmental Scientist I with the Department.
6. On May 21<sup>st</sup>, 2019, the Department received a phone call from homeowner Terri Horner. Mrs. Horner hired respondent to install sod at her property located at 22543 Huff Road, Milton, DE 19933. Part of the service included the destruction of the existing lawn. Employees of the Respondent applied a herbicide to kill the existing lawn in preparation for the sod. Mrs. Horner contacted the Department because she suspected that her bedding plants had been damaged by the third herbicide application, this last application had been made to eliminate weeds that had not died during the first application.
7. On May 22<sup>nd</sup>, 2019, Gehrman arrived at the Horner residence. During this inspection Gehrman took photographs of the dead lawn and the damaged bedding plants that had allegedly been damaged by the last application of herbicide. Many of the plants showed signs of possible herbicide damage. Gehrman sampled these plants to determine if paraquat had been used during the application. These sample results came back with a non-detect for paraquat. During this visit Mrs. Horner provided a copy of the work estimate (#1878 dated October 16, 2018) which listed “Killing of entire existing lawn.”
8. Upon completion of the visit with Mrs. Horner, Gehrman contacted John Passwaters to find out what had been applied to the lawn in preparation for the sod. Mr. Passwaters stated on the phone that he was aware of the property and he had to check and see if Nanticoke Nursery Landscaping, LLC. had done the herbicide application because he contracts work out to them and he would get back to Gehrman once he got an answer. After Gehrman ended the conversation with Mr. Passwaters, using the Salesforce Application to find the phone number she contacted Nanticoke Nursery Landscaping, LLC. The owner Nate Milligan confirmed that he had never been to the property in question and that his company did not make any applications to that property.
9. On May 28<sup>th</sup> 2019 Gehrman reached out to the Respondent and left a voicemail. Gehrman had called the Respondent because she was still awaiting the treatment records for the property in question. The Respondent called back later that day and stated that he was waiting for his employee, William Coulter Passwaters to complete the records.
10. On May 29<sup>th</sup> 2019 at 5:00 p.m., Gehrman received the application records in an email from the respondent. The application occurred on May 16<sup>th</sup> 2019 at 9:24 a.m. The records list David Gray and William Coulter Passwaters as the applicators. The product used was Makaze Herbicides EPA Reg. No. 34704-890.
11. Makaze Herbicide is a pesticide which is registered for sale and use in Delaware.

The Makaze Herbicide label states in part: “Do not apply within 100 feet of any desirable vegetation or crops.” The bedding plants that were showing potential herbicide damage were located less than a foot away from the sprayed lawn areas.

12. On September 10<sup>th</sup> 2018, a Notice of Warning and Cease and Desist were issued to the Respondent.
13. In the past 5 years, Respondent has no pesticide compliance violations with the Department.



STATE OF DELAWARE  
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September 10, 2018

John Passwaters  
18956 Sussex Hwy  
Bridgeville, DE 19933

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**CEASE AND DESIST  
ORDER/NOTICE OF  
WARNING**

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Dear John Passwaters:

The Delaware Pesticide Law, **3 DEL. C.**, Chapter 12, ' 1206(a), states that no person shall engage in the business of applying pesticides to the lands or personal property of another, unless such person is licensed by the Delaware Department of Agriculture (DDA). On July June 25th, 2018, Dustin Borntreger, DDA Environmental Scientist II, conducted an inspection with your work crew and explained the Delaware Pesticide Law. Borntreger observed pesticide application equipment on your work trailer.

The purpose of this letter is to advise you that applying pesticides, as a part of your services, is not permitted unless a pesticide business license is applied for and granted by the Delaware Department of Agriculture. This issue was discussed during our pre-hearing meeting. During this meeting the Civil Penalty was reduced to a Notice of Warning. This letter also serves as record of this fact.

Until such time as a license application is received and approved, notice is hereby given that Passwaters Landscaping, or anyone acting under your direction, shall cease and desist from the commercial application of pesticides. This notice is given under authority of **3 DEL. C.**, Chapter 12, Section 1203 (i) and shall take effect upon receipt.

Violations of this Order and/or the Licensing provisions are subject to Class A Misdemeanor criminal penalties. Civil Penalties, through administrative orders of up to **\$2,500 for each offense**, may also be assessed. Each pesticide application may be considered a separate violation.

If you have any questions concerning this Order, please give me a call at, at 302-698-4570.

Sincerely,

Christopher Wade

