



STATE OF DELAWARE
DEPARTMENT OF AGRICULTURE
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SECRETARY

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Respondent:

Herker Building & Lawn Maintenance
2 LaFrance Way
Glen Mills, PA 19342

Violations:

§1224(c)(1) – Operating in a faulty, careless, or negligent manner.

Penalty:

Respondent signed a consent agreement on April 2023. In the agreement, Respondent agrees to the imposition of disciplinary sanctions which included a civil penalty of \$560.00.

STIPULATED FACTS

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1. Herker Building & Lawn Maintenance (“Respondent”) is a commercial pesticide applicator business with an office located at 2 LaFrance Way, Glen Mills PA 19342. Respondent holds a valid license (License No. 1127) that was issued by the Delaware Department of Agriculture (“the Department”) at the time of inspection.
2. George Herker (“Herker”) is the owner of Herker Building & Lawn Maintenance.
3. Martin Mancera is employed by the Respondent as a field worker. Mr. Mancera is not listed as a registered service employee in the Departments Salesforce database.
4. “Mr. Raul” is employed by the Respondent as a field worker. Mr. Raul is not listed as a registered service employee in the Departments Salesforce database.
5. “Mr. Andrian is employed by the Respondent as a field worker. Mr. Andrian is not listed as a registered service employee in the Departments Salesforce database.

6. The Pesticide Section of the Department (“Complainant,”) is bringing this enforcement action against Respondent. James Hughes (“Hughes”) is employed as an Environmental Program Manager I with the Department.
7. On March 16th 2023, while on patrol in Sussex county Hughes observed three of the Respondents employees working in the parking lot of the Wawa in Bridgeville Delaware. Two of these workers were wearing and using backpack style sprayers, making applications to the rocks and mulch areas, neither employee was wearing gloves while using he spray equipment.
8. Hughes identified himself and issued a notice of inspection to Mr. Mancera. Hughes asked if any of them were certified or registered employees. None of the workers were certified or registered service employees. Hughes asked the workers how long they had worked for the company. Mr. Mancera replied that he had worked there for three years and the other two had been there a few months or more.
9. Hughes then asked what pesticide was being applied at the Wawa. Mr. Mancera replied that “weed killer” was being applied. When Hughes asked what the brand name of the product was, none of the workers knew what they were applying. Hughes then asked to see a copy of the product label. They did not have a copy of the product label at the site of application. Hughes also noted that one of the backpack sprayers had the word “insecticide” written on it. Photographs of the application equipment was taken at the time of inspection.
10. 601 Delaware Pesticide Rules and Regulations, Section 14.0 Records states in part:

14.1 Commercial Applicators

Commercial applicators shall, for a period of two years from the date of application, keep records detailing the application of any pesticides to include:

14.1.1 The brand name of the pesticide used. In the case of a Restricted Use Pesticide or a pesticide which is used under the provisions of **40 Code of Federal Regulations**, Part 170, Worker Protection Standards, the EPA Registration Number shall also be recorded at or before the time of application.

14.1.2 When applicable, the dilution rate of the pesticide and the amount of diluted material applied per unit (i.e. gallons/acre, lbs./acre, etc.)

14.1.3 The date and specific area treated.

14.1.4 The pest against which the pesticide was used.

14.1.5 The applicator's name, and when applicable, the name of the certified applicator responsible for his supervision.

14.1.6 When label directions advise precaution in regard to drift, on-site weather conditions to include:

14.1.6.1 Wind velocity and direction

14.1.6.2 Temperature

14.1.6.3 Relative humidity

14.1.7 In addition to the above record keeping requirements, the applicator shall have available at the site of application, a copy of the label of the pesticide being used. Upon request, the applicator shall provide any interested person at or adjacent to the application site, with any information contained on the pesticide label.

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

601 Delaware Pesticide Rules and Regulations, Section 4.2 Employee Registration states in part: 4.2 Employee Registration

4.2.1 Licensees shall register with the Department all employees who handle pesticides. Registration shall be made when making an application for a license or within 45 days after employment. The fee for registering an employee shall be \$25.00. However, the employee registration fee shall be waived if the employee is certified under the LAW.

4.2.2 Licensees shall be responsible for insuring that all employees handling pesticides (other than a certified applicator) have successfully completed a training program approved by the Department. This training shall be completed within 45 days of employment and before the employees are registered with the Department.

4.2.2.1 The Department will not approve any training program that does not include the following subjects:

4.2.2.1.1 Pesticide Law and Regulations;

4.2.2.1.2 Label comprehension;

4.2.2.1.3 Safety and emergency procedures;

4.2.2.1.4 Proper pesticide handling, storage and disposal;

4.2.2.1.5 Pest identification and control procedures;

4.2.2.1.6 Pesticide application techniques;

4.2.2.1.7 Environmental and health concerns; and

4.2.2.1.8 Integrated pest management principles

4.2.2.2 Upon request by the Department, each licensee shall provide written verification that an employee has completed an approved training program.

4.2.3 The name and address of employees who have been trained according to this Section shall be provided to the Department by the licensee. The Department shall issue a registration card bearing the employee's name and the licensee's name, address and license number. The employee registration shall become null and void upon termination of employment with the licensee. This card is to be carried by the employee during working hours and is to be displayed upon request.

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