

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:

**Agriflite Services, Inc.,
Petitioner**

V

**Michigan Department of Agriculture and
Rural Development,
Respondent**

Docket No.: 23-012503

Case No.: 21-PE-02320

Agency: MDARD

**Case Type: MDARD Pesticide
Licensing**

Filing Type: Administrative Fine

CERTIFICATION OF RECORD

I, Debbie Sterba, certify that the attached file is the original record of the Michigan Office of Administrative Hearings and Rules in the above captioned matter, and that said record consists of those entries shown below.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the Michigan Office of Administrative Hearings and Rules to be hereunto affixed this Tuesday, November 28, 2023.

<u>Date</u>	<u>Document</u>
1. 10/31/23	Proposal for Decision
2. 10/26/23	Respondent's Admitted Exhibits, 1-17
3. 10/23/23	Request for Correction of "Petitioner" in Heading to include David Eby; Request for Impartial Hearing by MOAHR per Hearing Information Page 2; Request for Dismissal of Violation and Administrative Fine of David Eby and AgriFlite Services, Inc.; and Petitioner's Comments to Respondent's Exhibits
4. 09/06/23	Respondent's Response to Petitioner's Motion to Dismiss
5. 09/06/23	Amended Order Granting Petitioner's Motion for Continuation, Amended Order Denying Petitioner's Motion to Dismiss, and Amended Order Granting Petitioner's Motion for Video Hearing

6. 09/06/23 Order Granting Petitioner's Motion for Continuation, Order Denying Petitioner's Motion to Dismiss, and Order Granting Petitioner's Motion for Video Hearing
7. 09/05/23 Request for Cancellation of Telephone Hearing on September 7, 2023 at 9:00 EST and Motion for Dismissal of Violation and Administrative Fine
8. 05/09/23 Order for Continuation
9. 05/03/23 Respondent's Exhibit Submission Cover Letter
10. 03/15/23 Notice of Hearing with Proof of Service
11. 03/14/23 Request for Hearing

Debbie Sterba

Debbie Sterba
Michigan Office of Administrative
Hearings and Rules



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Case No.: 21-PE-02320

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Agency: MDARD

**Michigan Department of Agriculture and
Rural Development
Respondent**

**Case Type: MDARD Pesticide
Licensing**

Filing Type: Appeal

**Issued and entered
this 31st day of October 2023
by: Stephen B. Goldstein
Administrative Law Judge**

PROPOSAL FOR DECISION

Procedural History

This matter originates as an appeal filed under Part 83, Pesticide Control, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.8301 *et. seq.*

On May 17, 2022, the Michigan Department of Agriculture and Rural Development, (Respondent) issued a Notice of Violation, alleging that Petitioner failed to apply a pesticide in a manner consistent with its label, in violation of Mich Admin Code, R 285.637.4(a). On August 12, 2022, Respondent issued a Notice of Administrative Fine in the amount of \$1,000.00 for Petitioner's alleged violations of this administrative rule.

On August 31, 2022, Petitioner requested an informal hearing with Respondent. The hearing was held on December 12, 2022. On January 26, 2023, Respondent issued an Informal Hearing Determination upholding the administrative fine.

On February 13, 2023, Petitioner filed its formal hearing request, and, on March 6, 2023, this matter was referred to the Michigan Office of Administrative Hearings and Rules (MOAHR) to conduct a contested case hearing.

On March 15, 2023, MOAHR issued a Notice of Telephone Hearing, scheduling a contested case telephone hearing to convene at 9:00 a.m. on May 9, 2023. The May 9, 2023, hearing convened as scheduled. Denise Eby, a non-attorney, appeared on behalf of the Petitioner-corporation. Respondent was represented by Danielle Allison-Yokum, Assistant Attorney General. The tribunal explained to Ms. Eby that under Michigan law, a

corporation is considered a separate legal entity and that a non-lawyer representing a corporation engages in the unauthorized practice of law.¹ The tribunal further explained to Ms. Eby that because she was not an attorney, she could not represent the Petitioner-corporation in this matter. By Order dated May 9, 2023, the hearing was continued to September 7, 2023, to afford Petitioner an opportunity to retain counsel.

On September 5, 2023, David and Denise Eby signed and filed a motion on the Petitioner-corporation's behalf, seeking to cancel the September 7, 2023, hearing and for dismissal of this matter. The Eby's motion also asserted that they had not yet had a chance to retain counsel, that Michigan law does not require their corporation to be represented by a licensed attorney, and that a telephone hearing is an insufficient medium to conduct the hearing.

By Order dated September 5, 2023, the September 7, 2023, hearing was adjourned and rescheduled to October 26, 2023, at 9:00 a.m., to afford Petitioner additional time to retain counsel. The Order further denied Petitioner's motion to dismiss the proceedings and granted its motion for a videoconference hearing.

On October 23, 2023, David and Denise Eby signed and filed a motion on the Petitioner-corporation's behalf, requesting that the caption be corrected to "David Eby", a request for impartial hearing by MOAHR, a request for dismissal, and Petitioner comments to Respondent's exhibits. Based on this tribunal's previous ruling regarding the unauthorized practice of law, this filing was accepted and docketed but not considered in this Proposal for Decision.

The October 26, 2023, hearing convened as scheduled. As of 9:25 a.m., Petitioner failed to appear. Respondent was again represented by Danielle Allison-Yokum, Assistant Attorney General. Based on Petitioner's failure to appear, Respondent moved for entry of a default against Petitioner, under Sections 72(1) and 78(2) of Michigan's Administrative Procedures Act, MCL 24.271 *et seq.* (APA) and Mich Admin Code, R 792.10134.

MCL 24.272(1) provides:

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

MCL 24.278(2) provides:

(2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

¹ *Shenkman v Bragman*, 261 Mich App 412, 416 (2004).

Mich Admin Code, R 792.10134(1) provides:

Rule 134.(1) If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the administrative law judge may conduct the proceedings without participation of the absent party. The administrative law judge may issue a default order or other dispositive order which shall state the grounds for the order.

After determining that Petitioner was properly served with notice of the October 26, 2023, hearing, the tribunal granted Respondent's motion for entry of a default under Section 78(2) of the APA. Respondent was thereafter allowed to proceed in Petitioner's absence, under Section 72(1) of the APA, and R 792.10134(1).

Summary of Exhibits

RESPONDENT EXHIBITS

Respondent offered the following exhibits, which were admitted into evidence unless otherwise indicated:

Respondent Exhibit 1: MDARD, Pesticide Inspection Report, dated 7/21/21.

Respondent Exhibit 2: MDARD, Test Report, dated 9/14/21.

Respondent Exhibit 3: Agriflute Services, Inc., Use Report.

Respondent Exhibit 4: Headline AMP Fungicide Manufacturer Label.

Respondent Exhibit 5: Tombstone Helios Insecticide Manufacturer Label.

Respondent Exhibit 6: Weather data.

Respondent Exhibit 7: Inspector's Report on samples.

Respondent Exhibit 8: Photo Identification Report.

Respondent Exhibit 9: Notice of Violation.

Respondent Exhibit 10: Notice of Administrative Fine.

Respondent Exhibit 11: Petitioner's Request for Hearing.

Respondent Exhibit 12: Informal Hearing Determination.

Respondent Exhibit 13: Request for Formal Hearing.

Respondent Exhibit 14: 2018 Notice of Violation.

Respondent Exhibit 15: 2018 Notice of Administrative Fine.

Respondent Exhibit 16: 2018 payment of administrative fine.

Respondent Exhibit 17: Respondent's Informal Hearing presentation.

Issue

The issue presented is whether Petitioner has violated Mich Admin Code, R 285.637.4(a), supporting the imposition of a \$1,000.00 Administrative Fine, under MCL 324.8333(2)?

Applicable Law

MCL 324.8333(2) provides:

Sec. 8333. (1) ***

(2) The director, upon finding after notice and an opportunity for a hearing that a person has violated or attempted to violate any provision of this part, may impose an administrative fine of not more than \$1,000.00 for each violation of this part.

Mich Admin Code, R 285.637.4(a) provides:

Rule 4. A pesticide application shall be made in compliance with all of the following provisions:

(a) A pesticide shall be used in a manner that is consistent with its label.

Findings of Fact

Based on a preponderance of the evidence, the tribunal finds, as material fact:

1. Petitioner holds a Pesticide Applicator Certification in the state of Michigan. On July 21, 2021, Petitioner applied pesticides, Tombstone Helios, and Headline AMP

to crops owned by Petitioner's customer, Nutrien-Blissfield, located in Whiteford, Monroe County, Michigan.²

2. On July 21, 2021, Rachel Bakowski of Ottawa Lake, Michigan, contacted Respondent to file a complaint against Petitioner. Ms. Bakowski alleged that while driving a tractor hauling a wagon of oats on Lake Road in Whiteford, Michigan, she was drifted upon by the pesticides Petitioner applied to the nearby crops.³
3. Respondent investigated Ms. Bakowski's complaint, and determined that Mr. Will Southern, an employee of Petitioner, applied Tombstone Helios (a restricted use pesticide) and Headline AMP to the cornfield west of Lake Road, as contracted by Nutrien Ag Solutions, Blissfield branch. A witness also confirmed that Ms. Bakowski had been driving along Lake Road during the application.⁴
4. Ms. Bakowski submitted to testing for the presence of Tombstone Helios and Headline AMP. The equipment Ms. Bakowski was operating, and the oats were also tested. Swab, clothing, and grain samples tested positive for the active ingredients found in these pesticides, indicating that Ms. Bakowski was contacted during Petitioner's application process.⁵
5. Based on its investigation, Respondent found Petitioner to be in violation of Mich Admin Code, R 285.637.4(a), by failing to follow the manufacturers label governing application of Headline AMP. The label for Headline AMP states: "DO NOT apply under AMP under circumstances where possible drift to endangered species, unprotected persons, to food, forage, or other plantings that might be damaged, or crops thereof rendered unfit for sale, use or consumption can occur."⁶
6. Per Ms. Bakowski's statement, Petitioner's plane flew "within a wing" of her, therefore, the Application Exclusion Zone was not maintained, which is inconsistent with the manufacturer's label for Headline AMP.⁷

² Respondent Exhibit 3.

Note: The hearing exhibits in this case were submitted electronically in portable document format (PDF). All references to exhibit page numbers are to the PDF page number of the electronic exhibit, not the page number at the bottom of the exhibit.

³ Respondent Exhibit 9, p. 30

⁴ *Id.*

⁵ *Id.*; Respondent Exhibit 2, pp. 17-28.

⁶ *Id.*

⁷ Respondent Exhibit 1, p. 3.

Conclusions of Law

Respondent bears the burden of establishing, by a preponderance of evidence, that Petitioner violated Mich Admin Code, R 285.637.4(a), supporting the imposition of a \$1,000.00 Administrative Fine, under MCL 324.8333(2). Proof by a preponderance of the evidence requires the trier of fact to determine that the evidence supporting the existence of a contested fact outweighs the evidence supporting its non-existence. *Martucci v Detroit Police Commissioners*, 322 Mich 270; 33 NW2d 789 (1948).

Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. *Smith v Lansing School District*, 428 Mich. 248 (1987). Here, Petitioner failed to appear for the hearing. As a result, the tribunal granted Respondent's motion for entry of a default. Based on entry of the default, all allegations in the Notice of Violation are deemed true and admitted and are adopted by the tribunal as fact.

The allegations in the Notice of Violation are substantiated by the evidence presented, which establishes that on July 21, 2021, Petitioner applied pesticides, Tombstone Helios, and Headline AMP to crops owned by Petitioner's customer, Nutrien-Blissfield, located in Whiteford, Monroe County, Michigan.⁸

The evidence further establishes that Rachel Bakowski of Ottawa Lake, Michigan, while driving a tractor hauling a wagon of oats on Lake Road in Whiteford, Michigan, was drifted upon by the pesticides Petitioner applied to the nearby crops.⁹ The evidence establishes that Ms. Bakowski submitted to testing for the presence of Tombstone Helios and Headline AMP as was the equipment she was operating and oats she was hauling. The evidence indicates that swab, clothing, and grain samples tested positive for the active ingredients found in Headline AMP, indicating that Ms. Bakowski was contacted during Petitioner's application process.¹⁰ Finally, the evidence demonstrates that based on an investigation, Petitioner was found to be in violation of Mich Admin Code, R 285.637.4(a), because it failed to follow the manufacturers label governing application of Headline AMP, which states that the pesticide should not be applied under circumstances where possible drift to endangered species, unprotected persons, to food, forage, or other plantings that might be damaged, or crops thereof rendered unfit for sale, use or consumption can occur."¹¹

Accordingly, and based on a preponderance of the evidence, the tribunal concludes that Petitioner has violated Mich Admin Code, R 285.637.4(a), warranting the imposition of a \$1,000.00 Administrative Fine, under MCL 324.8333(2).

⁸ Respondent Exhibit 3.

⁹ Respondent Exhibit 9, p. 30

¹⁰ *Id.*; Respondent Exhibit 2, pp. 17-28.

¹¹ Respondent Exhibit 2, pp. 17-28.

PROPOSED DECISION

Based upon the above Findings of Fact and Conclusions of Law, the tribunal proposes that a Final Order be issued as follows:

1. That Respondent's Notice of Violation and Notice of Administrative Fine be **AFFIRMED**.



Stephen B. Goldstein
Administrative Law Judge

EXCEPTIONS

The parties may file Exceptions to this Proposal for Decision within twenty-one (21) days after it is issued and entered. An opposing party may file a response within fourteen (14) days after initial Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the Michigan Office of Administrative Hearings and Rules, P.O. Box 30695, Lansing, Michigan 48909-8195, Note: Overnight Carrier Address (UPS, FedEx, DHL Deliveries): MOAHR-GA, c/o Department of Licensing and Regulatory Affairs, Mail Services, 2407 N. Grand River Avenue, Lansing, Michigan 48906, (MOAHR-GA@michigan.gov E-mail preferred) and served on all parties to the proceeding.

Notice to Agency to Provide MOAHR with Subsequent Agency or Court Orders

The state agency that is a party to this matter, and/or referred this matter to MOAHR, shall serve MOAHR with any subsequent orders entered because of this ALJ's decision or proposed decision, including but not limited to the agency's final order, order to remand the matter to MOAHR for further proceedings, or order on appeal, as soon as practicable following entry of the order to:

Michigan Office of Administrative Hearings and Rules, General Adjudication, by **email (preferred)** to: MOAHR-GA@michigan.gov; or by **regular mail** to: MOAHR-GA, P.O. Box 30695, Lansing, Michigan 48909-8195.

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 31st day of October 2023.

J. Swanson

J. Swanson
Michigan Office of Administrative
Hearings and Rules

Via Electronic Mail

Agriflite Services, Inc.
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STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:

Docket No.: 23-012503

AgriFlite Services, Inc.

Agency No.: 21-PE-02320

Part(s): Pesticide & Plant Pest
Management

Agency: Department of Agriculture
and Rural Development

Case Type: MDARD Pesticide Licensing

RESPONDENT'S EXHIBITS R-1-R-5

LF: AgriFlite Services (MDARD) MOAHR/AG# 2023-0369881-B/Respondent's Exhibits 2023-05-02

RESPONDENT'S EXHIBIT
R-1





Michigan Department of Agriculture and Rural Development

Pesticide & Plant Pest Management Division
P.O. Box 30017, Lansing, Michigan 48909
1-800-292-3939
www.michigan.gov/mdard

Inspection Number
21-PE-02320-000238

PESTICIDE INSPECTION REPORT

Inspection Date
7/21/2021

(In accordance with Act 451, Public Acts 1994, as amended)

Agriflite Services Inc.
30688 County Road 36
Wakarusa, IN 46573-9703

Project: **Investigation**
Agent: **David Eby**
Phone: **574-862-4392**
Email: **dave@agriflite.com**

South Region

A. Summary

On 7/21/2021, Ms. Rachel Bakowski contacted the Michigan Department of Agriculture and Rural Development (MDARD) to file a complaint against Agriflite alleging that an aerial pesticide application performed by the firm drifted onto her and feed for her animals while she was hauling a wagon of oats with her tractor on a road along the eastern edge of where the pesticide application was taking place.

Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. The investigation determined from samples obtained from the complainant's tractor, clothing, and wagon that the pesticide application by Agriflite drifted onto Ms. Bakowski and the wagon of oats (animal feed), which is not consistent with the label for Headline AMP. Per Ms. Bakowski's statement that Agriflite's plane flew "within a wing" of her, the Application Exclusion Zone was not maintained. Additionally, the application record and the customer paperwork did not include the target pest for both Tombstone Helios and Headline AMP.

Ms. Bakowski was referred to MDARD's Toxicologist, Dr. Kay Fritz.

B. Complainant Statements

On 7/21/2021, I spoke with Ms. Rachel Bakowski (complainant, 734.693.3701) by phone and she stated:

1. She was on the 9900th block of Lake Rd in Ottawa Lake, MI at approximately 1:30 pm on 7/21/2021, when she was drifted on by an aerial applicator.
 - a. She was driving an open cab tractor pulling an open wagon of oats when pesticide drifted on her from an aerial application.
 2. She was driving down the road and saw the plane and thought the pilot of the plane saw her so she continued to drive down Lake Rd.; when she first saw the plane no pesticide was being applied.
 3. However, she continued down Lake Rd. and the plane began to apply pesticide and the pesticide drifted onto her, the tractor, and the wagon with the oats.
 - a. The plane flew within a wing of her while spraying pesticide.
 - b. If she thought the pilot was going to spray pesticide on her, she would not have driven alongside the corn field/ field of application.
 - c. When the pesticide drifted onto her she felt wind-burned and like her skin was being irritated and she felt her mind get a little fuzzy.
 - d. She was wearing a head covering, a jacket, pants, socks, and shoes when the pesticide drifted onto her.
 4. She lives around the corner and was on the phone with Brad Strahan at Nutrien Ag in Blissfield; Mr. Strahan gave her information about which products were applied.
 5. She washed with soap and water and she laundered her clothes. She has not yet laundered a sweatband that she was wearing when the pesticide drifted onto her.
 6. She called Poison Control for advice.
 7. The oats in the wagon are for cattle feed and she is not sure the oats are safe to feed to her cattle. The oats are still in

the wagon.

On 7/22/2021, I spoke with Ms. Bakowski at her residence/ farm and she stated:

1. No pesticide applications have been made with her tractor.

[Note: I obtained swab samples from Ms. Bakowski's tractor; Ms. Bakowski was driving her tractor when she was drifted on.]

2. She does not apply pesticides to her farm or farm fields.

3. The tractor and wagon with oats were kept in separate barns on her property overnight.

[Note: I went to take samples from the tractor and wagon the day after Ms. Bakowski was drifted on; the tractor and wagon were moved into barns to protect them from morning dew.]

C. Firm Statements

On 7/21/2021, I left a voicemail and an email with Agriflite Services Inc. to request an application record. On 7/23/2021, I called the firm and requested the application record.

On 7/29/2021, I received the application record by email from Ms. Katie Miller (katieagriflite@gmail.com). The application record sent on 7/29/2021 listed Quilt Xcel (EPA Reg. No. 100-1324, Propiconazole and Azoxystrobin) and Tombstone Helios (EPA Reg. No. 34704-978, Cyfluthin) as the products applied; the products stated were not the products specified by Nutrien Ag (see: Other Contact Statements). Per the firm, the confusion arose because the products used, Tombstone Helios and Headline AMP, were "hot loaded" by Nutrien Ag.

On 8/2/2021, I reminded the firm about R285.636.15.3 via email and Ms. Miller responded by email, "My apologies, this was my fault. I should have taken care of it right away. We're in the busy corn run and I put it to the side too long."

A corrected application record was provided by Ms. Miller by email on 8/3/2021 (Att. 2).

On 9/16/2021, Ms. Miller provided the product labels for Tombstone Helios (Att. 4) and Headline AMP (Att. 3) by email.

On 5/9/2022, I inquired about information provided to the customer and Ms. Miller responded by email, "We send the Use Reports to Nutrien or they're able to print them out on their own in their AgSync Account. Nutrien then sends it to their customer if they so choose. The retailer decides what information they give to their customer but AgriFlite provides the Use Reports."

D. Applicator Statements

On 5/9/2022, I spoke with Mr. Will Souther (applicator,912.592.5171, willsouther24@gmail.com) by phone and he stated:

1. For 2021, this application was one of two that were next to a golf course and he maintained a buffer with the golf course to prevent drift. He was concerned about drift onto the golf course. [Note: there is a golf course on the west side of the corn field where the application took place, Att. 2.]

2. However, he does not remember seeing a tractor traveling on the road on the east side of the corn field. He is surprised there was drift on a vehicle on the east side of the field given the wind was coming out of the north (350 degrees, Att. 2). [Note: Ms. Bakowski was traveling on the road on the east side of the field when she was driving her tractor and was drifted on by the application, Att. 2]

3. He had soap and water available.

4. In the future, he will definitely shut-off or change a pass if he sees a vehicle.

5. He is aware of the AEZ.

6. He obtains WPS training annually.

7. He is very sorry that the complainant was drifted on.

E. Other Contact Statements

On 7/21/2021, I spoke with Mr. Brad Strahan (employee at Nutrien Ag in Blissfield, MI, 517.918.2309) by phone and he stated:

1. He was contacted by Mr. Jonathan Goetz regarding his sister's pesticide exposure.

2. He gave the SDS sheets of the products used to Mr. Goetz.

3. The firm that made the aerial application was Agriflite.

After our phone call, Mr. Strahan texted me the EPA Reg. No.'s of the products used which are:

1. Headline AMP, EPA Reg. No. 7969-291
2. Tombstone Helios, EPA Reg. No. 34704-978

On 5/9/2022, I contacted Ms. Jane Brenke, Administrative Coordinator, Nutrien Ag Jane.brenke@nutrien.com, by email to inquire about how information is provided to the farmer and she stated, "The salesman either calls or texts the farmer to tell them that the job has been completed."

On 5/10/2022, I contacted Mr. Strahan by email (Brad.Strahan@nutrien.com) and he stated, "When we have a 3rd party applicator like AgriFlite apply for us we text and or email the growers the when product was applied, REI, etc."

On 5/10/2022, I contacted Mr. Strahan by email to request an example of a text or email sent to the grower.

On 7/22/2021, I spoke with Ms. Amy Wahl (419.467.9144; 7215 Samaria Rd, Ottawa Lake, MI) at her residence/ horse farm and she stated:

Note: Ms. Wahl's residence and horse farm is on the corner of 223/ Samaria Rd and Lake Rd which is on the east side of the field of application (i.e., across Lake Rd from the field of application).

Note: Ms. Bakowski, complainant, was present with I spoke with Ms. Wahl.

1. She was outside with her horse during the pesticide application.
2. The plane spooked her horse but she did not feel any spray on her.
3. She observed Ms. Bakowski, the complainant, on Lake Rd during the aerial pesticide application.
4. The plane making the application flew over her corral.
5. When the plane applied pesticide in the corn field it was flying parallel to Lake Rd (i.e., the road on the east side of the field, Att. 2).

Note: this statement is consistent with the application record (Att. 2).

6. Because she perceived a risk of getting drifted on by the pesticide application, Ms. Wahl took her horse and herself inside her barn.

On 7/22/2021, Ms. Wahl provided by text photos (Att. 7) and video she obtained during the pesticide application. I viewed the videos and observed the following:

1. Video #1- Yellow plane applying over corn with pesticide spray visible. The plane was flying parallel with/ alongside Lake Rd but the plane did not appear to be flying over Lake Rd. [Note: Lake Rd is the road where Ms. Bakowski, complainant, was traveling when she was drifted on.]
2. Video #2- Yellow plane applying over corn with pesticide spray visible. The plane went up in altitude and turned around to make another trip across the corn field.

F. Inspector Observations

1. Agriflute Services Inc. holds a Pesticide Application Business License (#910003, Cat. 1A, 1B, 1C, 2, 7F, and AE, Exp. 12/31/2021). Note: Agriflute holds a valid license for 2022.

a. Per MDARD records, the firm does not have a Resident Agent; the firm is located in Indiana.

2. The applicator, Mr. William Souther, has commercial certification (C3210383, Cat. 1A, 1C, Exp. 12/31/2024).

a. Note: Mr. Souther is in MDARD records as William McNeill Souther

b. Note: Mr. Souther's exam results were received by MDARD on 7/1/2021 and his registration on 5/12/2021; his certification was valid at the time of the pesticide application.

3. I provided Mr. Souther materials regarding certification renewal by seminar credits by email on 5/10/2022

4. On 7/21/2021, I contacted MDARD's Toxicologist, Kay Fritz, regarding the complainant's exposure to pesticides and copied the complainant on the email.

a. On 7/22/2021, Dr. Fritz spoke with the complainant by phone.

5. On 9/9/2021, I provided the complainant a list of independent laboratories that analyze for pesticide residue; the complainant had further concerns regarding her oats that were drifted on.

a. On 9/15/2021, the complainant stated by email that she was in contact with a lab and she was planning to send out oat samples to the lab during the next week.

6. Headline AMP and Quilt Xcel are fungicides with similar modes of action.

7. Lab results from the samples I obtained from the complainant's headband, tractor, and oats indicate that drift occurred onto the complainant and the oats (animal feed; Att. 1).

8. The Azoxystrobin and/or propiconazole (actives in Quilt Xcel) detected on the headband and on the shade roof of the

tractor was very likely due to residue in the plane's tank.

9. I provided sample results from the lab via email to the complainant on 8/9/2021 (oats only, as those samples were expedited) and on 9/14/2021 (all samples and all active ingredients).

10. Along Lake Rd, the road the complainant was traveling on when she was drifted on, there is a vegetation buffer of approximately 15-20 ft between the corn field and the road.

G. Weather Data

1. Per the application record (Att. 2), the wind was 8 mph out of the north (i.e., 350 degrees or slightly west of north) and the temperature was 73 degrees F.

2. Per a local weather station (Att. 5), during the application the windspeed was between 6-8 mph and was out of the north.

H. Sample Narrative

1. On 7/22/2021, I met with the complainant on her property to obtain samples.

a. The only piece of unlaundered clothing available was the complainant's headband. The complainant was not able to indicate any particular area for the lab to sample the headband.

b. I obtained four swab samples from the complainant's tractor and one blank sample (Att. 7).

c. I obtained six samples of the oats in the wagon that was pulled by the complainant's tractor when drift occurred. The oat samples were distributed throughout the wagon (e.g., left/ right and front/ back; Att. 7).

2. All samples were obtained using the procedures outlined in MDARD's procedure's manual.

a. Samples were delivered to Geagley Laboratory (MDARD) by me on 7/22/2021 (i.e., the day the samples were obtained). Samples were dropped off at the lab with my Inspector's Report on Sample (Att. 6).

3. The oat samples were expedited at MDARD's lab because the oats were intended for animal feed. The lab initially tested the oats for cyfluthrin, metconazole, and pyraclostrobin (i.e., the active ingredients in Headline AMP and Tombstone Helios). The firm (Agriflite) initially submitted an inaccurate application record to me that stated Quilt Xcel (EPA Reg. No. 100-1324) and not Headline AMP was applied. Because of this confusion, the complainant requested that the oats be also tested for the active ingredients in Quilt Xcel, azoxystrobin and propiconazole (Att. 1).

4. The swab samples and the headband sample were tested for the active ingredients for Headline AMP, Tombstone Helios, and Quilt Xcel.

5. None of the active ingredients analyzed were detected in the blank sample.

6. Azoxystrobin and/or propiconazole (actives in Quilt Xcel) were detected on the headband and on the shade roof of the tractor.

7. Cyfluthrin, metconazole, and pyraclostrobin were detected for all samples except for the blank sample. The presence of the aforementioned active ingredients on the tractor driven by the complainant, on the headband worn by the complainant, and the oats in the wagon pulled by the tractor the complainant was driving indicate that drift occurred onto the complainant and the oats (i.e., animal feed).

Samples

Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
1	D8090	Complete	No	Blank	07/22/2021	7275 New US 223, Ottawa, MI, 49267	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No

Run/Not Run	Analyte	Detected/None Detected	Results	Detection Limit
Run	Azoxystrobin	No		0.0031 µg/swab (Estimated)
Run	Cyfluthrin	No		0.053 µg/swab
Run	Metconazole	No		0.025 µg/swab
Run	Propiconazole	No		0.050 µg/swab
Run	Pyraclostrobin	No		0.012 µg/swab

Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
2	D8091	Complete	No	Tool box on tractor	07/22/2021	7275 New US 223, Ottawa Lake, MI, 49267	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No

Run/Not Run	Analyte	Detected/None Detected	Results	Detection Limit
Run	Azoxystrobin	No		0.0031 false (Estimated)
Run	Cyfluthrin	Yes	0.053 µg/swab	0.053 µg/swab
Run	Metconazole	Yes	0.055 µg/swab	0.025 µg/swab
Run	Propiconazole	No		0.050 µg/swab
Run	Pyraclostrobin	Yes	0.12 µg/swab	0.012 µg/swab

Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
3	D8092	Complete	No	Left rear fender of tractor	07/22/2021	7275 New US 223, Ottawa Lake, MI 49267	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No

Run/Not Run	Analyte	Detected/None Detected	Results	Detection Limit
Run	Azoxystrobin	No		0.0031 µg/swab (Estimated)
Run	Cyfluthrin	Yes	0.11 µg/swab	0.053 µg/swab
Run	Metconazole	Yes	0.11 µg/swab	0.025 µg/swab
Run	Propiconazole	No		0.050 µg/swab

Run	Pyraclostrobin	Yes	0.25 µg/swab	0.012 µg/swab
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Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
4	D8093	Complete	No	Left tractor hood	07/22/2021	7275 New US 223, Ottawa Lake, MI, 49267	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No
	Run/Not Run	Analyte		Detected/None Detected	Results		Detection Limit	
	Run	Azoxystrobin		No			0.0031 µg/swab (Estimated)	
	Run	Cyfluthrin		Yes	2.1 µg/swab		0.053 µg/swab	
	Run	Metconazole		Yes	2.4 µg/swab		0.025 µg/swab	
	Run	Propiconazole		No			0.05 µg/swab	
	Run	Pyraclostrobin		Yes	8.7 µg/swab		0.012 µg/swab	

Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
5	D8094	Complete	No	Left side of shade roof	07/22/2021	7275 New US 223, Ottawa Lake, MI	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No
	Run/Not Run	Analyte		Detected/None Detected	Results		Detection Limit	
	Run	Azoxystrobin		Yes	0.0031 µg/swab (Estimated)		0.0031 µg/swab (Estimated)	
	Run	Cyfluthrin		Yes	0.98 µg/swab		0.053 µg/swab	
	Run	Metconazole		Yes	1.2 µg/swab		0.025 µg/swab	
	Run	Propiconazole		No			0.05 µg/swab	
	Run	Pyraclostrobin		Yes	3.9 µg/swab		0.012 µg/swab	

Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
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6	D8095	Complete	No	Right Front of Wagon	07/22/2021	7275 New US 223, Ottawa Lake, MI	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No
	Run/Not Run	Analyte		Detected/None Detected		Results		Detection Limit
	Run	Azoxystrobin		No				0.02 µg/g
	Run	Cyfluthrin		Yes		0.017 µg/g (Estimated)		0.0054 µg/g (Estimated)
	Run	Metconazole		Yes		0.016 µg/g		0.0079 µg/g (Estimated)
	Run	Propiconazole		No				0.041 µg/g
	Run	Pyraclostrobin		Yes		0.041 µg/g		0.01 µg/g

Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
7	D8096	Complete	No	Right Middle of Wagon	07/22/2021	7275 New US 223, Ottawa Lake, MI	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No
	Run/Not Run	Analyte		Detected/None Detected		Results		Detection Limit
	Run	Azoxystrobin		No				0.02 µg/g
	Run	Cyfluthrin		Yes		0.056 µg/g		0.0054 µg/g (Estimated)
	Run	Metconazole		Yes		0.062 µg/g		0.0079 µg/g (Estimated)
	Run	Propiconazole		No				0.041 µg/g
	Run	Pyraclostrobin		Yes		0.14 µg/g		0.01 µg/g

Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
8	D8097	Complete	No	Right Back of Wagon	07/22/2021	7275 New US 223, Ottawa Lake, MI	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No

Run/Not Run	Analyte	Detected/None Detected	Results	Detection Limit
Run	Azoxystrobin	No		0.02 µg/g
Run	Cyfluthrin	Yes	0.024 µg/g (Estimated)	0.0054 µg/g (Estimated)
Run	Metconazole	Yes	0.029 µg/g	0.0079 µg/g (Estimated)
Run	Propiconazole	No		0.041 µg/g
Run	Pyraclostrobin	Yes	0.066 µg/g	0.01 µg/g

Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
9	D8098	Complete	No	Left Back of Wagon	07/22/2021	7275 New US 223, Ottawa Lake, MI	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No

Run/Not Run	Analyte	Detected/None Detected	Results	Detection Limit
Run	Azoxystrobin	No		0.020 µg/g
Run	Cyfluthrin	Yes	0.0070 µg/g (Estimated)	0.0054 µg/g (Estimated)
Run	Metconazole	Yes	0.0079 µg/g (Estimated)	0.0079 µg/g (Estimated)
Run	Propiconazole	No		0.041 µg/g
Run	Pyraclostrobin	Yes	0.015 µg/g	0.01 µg/g

Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
10	D8099	Complete	No	Left Middle Wagon	07/22/2021	7275 New US 223, Ottawa Lake, MI	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No

Run/Not Run	Analyte	Detected/None Detected	Results	Detection Limit
Run	Azoxystrobin	No		0.020 µg/g
Run	Cyfluthrin	Yes	0.024 µg/g (Estimated)	0.0054 µg/g (Estimated)
Run	Metconazole	Yes	0.027 µg/g	0.0079 µg/g (Estimated)
Run	Propiconazole	No		0.041 µg/g
Run	Pyraclostrobin	Yes	0.061 µg/g	0.010 µg/g

Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
11	D8100	Complete	No	Left Front of Wagon	07/22/2021	7275 New US 223, Ottawa Lake, MI	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No
	Run/Not Run	Analyte		Detected/None Detected	Results		Detection Limit	
	Run	Azoxystrobin		No			0.020 µg/g	
	Run	Cyfluthrin		Yes	0.0054 µg/g (Estimated)		0.0054 µg/g (Estimated)	
	Run	Metconazole		No			0.0079 µg/g (Estimated)	
	Run	Propiconazole		No			0.041 µg/g	
	Run	Pyraclostrobin		Yes	0.011 µg/g		0.010 µg/g	

Field Sample Number	Sticker Number	Status	On Hold	Sample Description	Collection Date	Sample Location Address	Product Information	Rush
12	D8089	Complete	No	Sweatband worn head during drift	07/22/2021	7275 New US 223, Ottawa Lake, MI	Tombstone Helios (EPA Reg. No. 34704-978, Active: Cyfluthrin) and Headline AMP (EPA Reg. No. 7969-291, Active: Pyraclostrobin and Metconazole)	No
	Run/Not Run	Analyte		Detected/None Detected	Results		Detection Limit	
	Run	Azoxystrobin		Yes	0.000097 µg/cm2 (Estimated)		0.000031 µg/cm2 (Estimated)	
	Run	Cyfluthrin		Yes	0.12 µg/cm2		0.00053 µg/cm2	
	Run	Metconazole		Yes	0.17 µg/cm2		0.00025 µg/cm2	
	Run	Propiconazole		No			0.00050 µg/cm2	
	Run	Pyraclostrobin		Yes	0.42 µg/cm2		0.00012 µg/cm2	

I. Customer Paperwork Review

Information given by Agriflite to the customer, Nutrien Ag- Blissfield, was provided by Agriflite (Att. 2) and I reviewed the customer information as follows:

1. Per Agriflite (see: Firm Statement), use information is provided electronically to Nutrien Ag and this information includes REI's (Att. 2). [637.12.5]
2. Paperwork provided to the customer, Nutrien Ag- Blissfield, included (Att. 2): [637.12.2]

- a. Name, address, telephone: present
- b. Full name of the applicator: present
- c. **Description of the pests: not present**
- d. Brand name of pesticides and common names of active ingredients: present
- e. Time and date of application: present
- f. Precautionary warnings: present

J. Application Record Review

The application record was provided by Agriflute on 8/3/2021 by email (Att. 2) and I reviewed the record as follows:

- a. Brand name and EPA Reg. No. of product: present
- b. Concentration of product: present
- c. Amount of pesticide end use dilution applied: present
- d. **Target pest: not present**
- e. Date applied: present
- f. Address/ location: present
- g. Method and rate of application: present

K. Label Review

The product labels for Headline AMP (Att. 3) and Tombstone Helios (Att. 4) were provided to me by the firm via email on 9/16/2021. I reviewed the labels as follows:

Headline AMP:

1. EPA Reg. No. 7969-291 and Active Ingredients: pyraclostrobin and metconazole
2. REI is 12 hours and PPE required for early reentry is: coveralls, protective eyewear, chemical resistant gloves, shoes plus socks.
3. Drift:
 - a. "Do not spray when conditions favor drift beyond area intended for application. Conditions which may contribute to drift include thermal inversion, wind speed and direction, spray nozzle/pressure combinatins, spray droplet size, temperature/humidity, etc."
 - b. "Avoiding spray drift at the application site is the responsibility of the applicator."
 - c. "DO NOT apply under circumstances where possible drift to endangered species, unprotected persons, to food, forage, or other plantings that might be damaged, or crops thereof rendered unfit for sale, use or consumption can occur."
4. Wind: "DO NOT apply at wind speeds greater than 15 mph."
 - a. The wind was less than 15 mph when the product was applied (see: Weather Data).
5. Product is labeled for use on corn (Att.3) and the rate of application specified is 10 to 14.4 fl oz/ ac and 10.00 fl oz./ ac was applied (Att. 2)
6. "Headline AMP can be tank mixed with most recommended fungicides."
7. PHI for field corn grain and stover is 20 days and for field corn forage/silage is 7 days.

Tombstone Helios:

1. EPA Reg. No. 34704-978 and active ingredients: Cyfluthrin
2. REI is 12 hrs and and PPE required for early reentry is: coveralls, protective eyewear, chemical resistant gloves, shoes plus socks.
3. Drift: "Do not apply when the wind velocity exceeds 15 mph."
 - a. The wind was less than 15 mph (see: Weather Data).
4. Depending on pest, and the target pest was not specified by the firm (Att. 2), the rate applied may vary for corn applications from 0.8 to 2.8 fl oz per acre.
 - a. 2 fl oz per acre were applied.
 - b. The product is labeled for corn.
5. Restricted Use Pesticide
6. PHI for grain or fodder is 21 days.

Label Review

Brand Name	Common Name	EPA Registration Number	Pesticide Type	Restricted Use	Comments
Tombstone Helios	Cyfluthrin	34704-978	Insecticide	Yes	
Headline AMP	Pyraclostrobin and Metconazole	7969-291	Fungicide	No	

L. Worker Protection Standards

1. Per MDARD the applicator, Mr. Will Souther, was over the age of 18.
2. Per Mr. Souther, he receives WPS training annually; he is also a commercial certified applicator (see: Applicator Statement and Inspector Observations).
3. Mr. Souther stated he had decontamination supplies available (i.e., soap and water; see: Applicator Statement).
4. This was aerial application and the AEZ is 100 ft.; per Ms. Bakowski's statement (see: Complainant Statement), the AEZ was not maintained.
5. The road traveled by Ms. Bakowski, Lake Rd, abuts the field of application on the east side of the field and per the application record (Att. 2) the application included the east side of the field; application to the east side of the field would have included the road (Lake Rd) in the AEZ.
 - a. Per my observation (see: Inspector Observations), there was a 15-20 ft buffer between the field and the road. The applicator could have been in the corn field and the AEZ would have extended into the road.
6. Per Nutrien Ag (see: Other Contact Statement) the information exchange with the grower is over email or text.
7. Per Agriflite, Nutrien Ag handles the information exchange and provides information to Nutrien Ag electronically (see: Firm Statement).

Summary of Violations

Legal Citation/Short Description	Comments
R285.637.4(a) a pesticide shall be used in a manner consistent with its label	Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. Per the label for Headline AMP, "DO NOT apply under circumstances where possible drift to endangered species, unprotected persons, to food, forage, or other plantings that might be damaged, or crops thereof rendered unfit for sale, use or consumption can occur." Per samples obtained by MDARD, drift of the product occurred onto a person and to food for animals.

<p>R285.637.4(a) a pesticide shall be used in a manner consistent with its label</p>	<p>Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. Per the complainant, the plane making the pesticide application "flew within a wing" of the complainant and per samples of the complainant's clothing, tractor, and wagon the pesticide application drifted onto the complainant. There was an approximately 15-20 ft buffer between the field and the road. The applicator could have been in the corn field and the AEZ would have extended into the road. 40CFR§170.405(a)(1) states the application exclusion zone (AEZ) is defined for various types of outdoor applications as either 25 ft (when medium or larger spray droplets are sprayed from higher than 12 in from planting medium) or 100 ft (when applied aerially, via air blast, smaller than medium droplets, or as a fumigant, smoke, mist, or fog); AEZ extends horizontally from application equipment in all directions during the application. An AEZ of 100 ft for an aerial application must be maintained and the AEZ was not maintained during the aforementioned pesticide application.</p>
<p>R285.637.12(2) customer information is required to include the name/address/phone of firm providing pesticide application; full name of applicator; target pests; list of pesticides applied, including the common name(s) of the active ingredient(s); time and date of application; and precautionary statements from label applicable to the customer</p>	<p>Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. The customer information provided by Agriflite to Nutrien Ag (Blissfield) did not include the target pest.</p>
<p>R285.636.15(1) commercial applicators shall maintain restricted-use pesticide application records for 3 years that contain name and EPA registration number; concentration; amount of pesticide end use dilution applied; target pest/purpose/crop; date; address or location; method and rate</p>	<p>Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) for Nutrien Ag (Blissfield) on 7/21/2021. The application record did not include the target pest.</p>
<p>R285.636.15(2) commercial applicators shall maintain general-use pesticide application records for 1 year that contain name and EPA registration number; concentration; amount of pesticide end use dilution applied; target pest/purpose/crop; date; address or location; method and rate</p>	<p>Agriflite applied Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. The application record did not include the target pest.</p>

Attachment References

- Att. 1 Lab Results
- Att. 2 Application Record
- Att. 3 Headline AMP Label
- Att. 4 Tombstone Helios Label
- Att. 5 Weather Data
- Att. 6 IROS
- Att. 7 Photo Report

Signatures

Agent David Eby	Delivery Method Not Mailed on 5/13/2022	Signature
Inspector Lauren Young, Inspector	Additional Information YoungL13@michigan.gov 517-897-2791	Signature



RESPONDENT'S EXHIBIT
R-2

LB-021 (9/02)
(In Accordance with Act 380.
Public Acts 1965, as amended.)

Michigan Department of Agriculture
and Rural Development
Laboratory Division



GEAGLEY LABORATORY
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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8089

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: *Sweatband worn on head during drift*

Case * #: PE-21-02320

Lab Number: 21PEUS000328

Container: plastic bag

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTE - Sonication

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	0.000097 ug/cm2 estimated	0.000031 ug/cm2 estimated
Propiconazole	None Detected	0.00050 ug/cm2
Cyfluthrin	0.12 ug/cm2	0.00053 ug/cm2
Metconazole	0.17 ug/cm2	0.00025 ug/cm2
Pyraclostrobin	0.42 ug/cm2	0.00012 ug/cm2

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

Date Printed: 9/14/2021

Page 1 of 6


Approval: Jessica Pruettt

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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8090

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: **Blank swab**

Case * #: PE-21-02320

Lab Number: **21PEUS000329**

Container: glass vial

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTE - Sonication

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	None Detected	0.0031 ug/swab estimated
Propiconazole	None Detected	0.050 ug/swab
Cyfluthrin	None Detected	0.053 ug/swab
Metconazole	None Detected	0.025 ug/swab
Pyraclostrobin	None Detected	0.012 ug/swab

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

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Approval:  Jessica Pruett

R0017

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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8091

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: *Tool box on tractor*

Case * #: PE-21-02320

Lab Number: 21PEUS000330

Container: glass vial

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTE - Sonication

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	None Detected	0.0031 ug/swab estimated
Propiconazole	None Detected	0.050 ug/swab
Cyfluthrin	0.053 ug/swab	0.053 ug/swab
Metconazole	0.055 ug/swab	0.025 ug/swab
Pyraclostrobin	0.12 ug/swab	0.012 ug/swab

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

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R0018

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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8092

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: **Left rear fender of tractor**

Case * #: PE-21-02320

Lab Number: 21PEUS000331

Container: glass vial

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTE - Sonication

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	None Detected	0.0031 ug/swab estimated
Propiconazole	None Detected	0.050 ug/swab
Cyfluthrin	0.11 ug/swab	0.053 ug/swab
Metconazole	0.11 ug/swab	0.025 ug/swab
Pyraclostrobin	0.25 ug/swab	0.012 ug/swab

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

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Approval: 
Jessica Pruett

R0019

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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8093

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: **Left tractor hood**

Case * #: PE-21-02320

Lab Number: **21PEUS000332**

Container: glass vial

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTE - Sonication

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	None Detected	0.0031 ug/swab estimated
Propiconazole	None Detected	0.050 ug/swab
Cyfluthrin	2.1 ug/swab	0.053 ug/swab
Metconazole	2.4 ug/swab	0.025 ug/swab
Pyraclostrobin	8.7 ug/swab	0.012 ug/swab

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

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Approval: 
Jessica Pruet

R0020

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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8094

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: **Left side of shade roof**

Case * #: PE-21-02320

Lab Number: **21PEUS000333**

Container: glass vial

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTE - Sonication

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	0.0031 ug/swab estimated	0.0031 ug/swab estimated
Propiconazole	None Detected	0.050 ug/swab
Cyfluthrin	0.98 ug/swab	0.053 ug/swab
Metconazole	1.2 ug/swab	0.025 ug/swab
Pyraclostrobin	3.9 ug/swab	0.012 ug/swab

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

Date Printed: 9/14/2021

Page 6 of 6

Approval:  Jessica Pruett

R0021

Michigan Department of Agriculture
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Laboratory Division



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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8095

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: **Foliage - Right Front of Wagon**

Case * #: 21-PE-02320

Lab Number: 21PEUS000195

Container: plastic bag

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTA - QuEChERS

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	None Detected	0.020 ug/g
Propiconazole	None Detected	0.041 ug/g
Cyfluthrin	0.017 ug/g estimated	0.0054 ug/g estimated
Metconazole	0.016 ug/g	0.0079 ug/g estimated
Pyraclostrobin	0.041 ug/g	0.010 ug/g

Supplemental report adding compounds azoxystrobin and propiconazole, requested 8/9/21.

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

Date Printed: 9/14/2021

Page 1 of 6

Approval: 
Jessica Pruet

R0022

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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8096

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: **Foliage - Right Middle of Wagon**

Case * #: 21-PE-02320

Lab Number: 21PEUS000196

Container: plastic bag

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTA - QuEChERS

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	None Detected	0.020 ug/g
Propiconazole	None Detected	0.041 ug/g
Cyfluthrin	0.056 ug/g	0.0054 ug/g estimated
Metconazole	0.062 ug/g	0.0079 ug/g estimated
Pyraclostrobin	0.14 ug/g	0.010 ug/g

Supplemental report adding compounds azoxystrobin and propiconazole, requested 8/9/21.

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

Date Printed: 9/14/2021

Page 2 of 6

Approval: 
Jessica Pruet

R0023

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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8097

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: **Foliage - Right Back of Wagon**

Case * #: 21-PE-02320

Lab Number: 21PEUS000197

Container: plastic bag

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTA - QuEChERS

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	None Detected	0.020 ug/g
Propiconazole	None Detected	0.041 ug/g
Cyfluthrin	0.024 ug/g estimated	0.0054 ug/g estimated
Metconazole	0.029 ug/g	0.0079 ug/g estimated
Pyraclostrobin	0.066 ug/g	0.010 ug/g

Supplemental report adding compounds azoxystrobin and propiconazole, requested 8/9/21.

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

Date Printed: 9/14/2021

Page 3 of 6

Approval: 
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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8098

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: **Foliage - Left Back of Wagon**

Case * #: 21-PE-02320

Lab Number: 21PEUS000198

Container: plastic bag

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTA - QuEChERS

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	None Detected	0.020 ug/g
Propiconazole	None Detected	0.041 ug/g
Cyfluthrin	0.0070 ug/g estimated	0.0054 ug/g estimated
Metconazole	0.0079 ug/g estimated	0.0079 ug/g estimated
Pyraclostrobin	0.015 ug/g	0.010 ug/g

Supplemental report adding compounds azoxystrobin and propiconazole, requested 8/9/21.

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

Date Printed: 9/14/2021

Page 4 of 6

Approval: 
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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8099

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: **Foliage - Left Middle of Wagon**

Case * #: 21-PE-02320

Lab Number: 21PEUS000199

Container: plastic bag

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTA - QuEChERS

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	None Detected	0.020 ug/g
Propiconazole	None Detected	0.041 ug/g
Cyfluthrin	0.024 ug/g estimated	0.0054 ug/g estimated
Metconazole	0.027 ug/g	0.0079 ug/g estimated
Pyraclostrobin	0.061 ug/g	0.010 ug/g

Supplemental report adding compounds azoxystrobin and propiconazole, requested 8/9/21.

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

Date Printed: 9/14/2021

Page 5 of 6

Approval: 
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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8100

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: **Foliage - Left Front of Wagon**

Case * #: 21-PE-02320

Lab Number: 21PEUS000200

Container: plastic bag

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTA - QuEChERS

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	None Detected	0.020 ug/g
Propiconazole	None Detected	0.041 ug/g
Cyfluthrin	0.0054 ug/g estimated	0.0054 ug/g estimated
Metconazole	None Detected	0.0079 ug/g estimated
Pyraclostrobin	0.011 ug/g	0.010 ug/g

Supplemental report adding compounds azoxystrobin and propiconazole, requested 8/9/21.

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

Date Printed: 9/14/2021

Page 6 of 6

Approval: 
Jessica Pruet

RESPONDENT'S EXHIBIT
R-3





RESPONDENT'S EXHIBIT
R-4



We create chemistry

Group 3 11 Fungicide

SPECIMEN

Headline AMP[®]

Fungicide

For use in disease control and plant health in corn and sugarcane

Active Ingredients:

pyraclostrobin*: (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) 13.64%

metconazole**: 5-[(4-chlorophenyl)methyl]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol 5.14%

Other Ingredients: 81.22%

Total: 100.00%

*Equivalent to 1.22 pounds of pyraclostrobin per gallon.

**Equivalent to 0.46 pound of metconazole per gallon.

EPA Reg. No. 7969-291

EPA Est. No.

KEEP OUT OF REACH OF CHILDREN

WARNING/AVISO

Si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle. (If you do not understand this label, find someone to explain it to you in detail.)

See inside for complete **First Aid, Precautionary Statements, Directions For Use, Conditions of Sale and Warranty**, and state-specific crop and/or use site restrictions.

In case of an emergency endangering life or property involving this product, call day or night 1-800-832-HELP (4357).

Net Contents:

BASF Corporation
26 Davis Drive, Research Triangle Park, NC 27709

FIRST AID	
If swallowed	<ul style="list-style-type: none"> • Call a poison control center or doctor immediately for treatment advice. • Have person sip a glass of water if able to swallow. • DO NOT induce vomiting unless told to by a poison control center or doctor. • DO NOT give anything to an unconscious person.
If in eyes	<ul style="list-style-type: none"> • Hold eyes open and rinse slowly and gently with water for 15 to 20 minutes. • Remove contact lenses, if present, after first 5 minutes; then continue rinsing eyes. • Call a poison control center for treatment advice.
If on skin or clothing	<ul style="list-style-type: none"> • Take off contaminated clothing. • Rinse skin immediately with plenty of water for 15 to 20 minutes. • Call a poison control center or doctor for treatment advice.
If inhaled	<ul style="list-style-type: none"> • Move person to fresh air. • If person is not breathing, call 911 or an ambulance; then give artificial respiration, preferably mouth-to-mouth, if possible. • Call a poison control center for further treatment advice.
HOTLINE NUMBER	
Have the product container or label with you when calling a poison control center or doctor or going for treatment. You may also contact BASF Corporation for emergency medical treatment information at 1-800-832-HELP (4357).	

Precautionary Statements

Hazards to Humans and Domestic Animals

WARNING. May be fatal if swallowed. Causes moderate eye irritation. Avoid contact with skin, eyes, or clothing. Harmful if absorbed through skin. Remove and wash contaminated clothing before reuse. Harmful if inhaled. Avoid breathing vapor or spray mist.

Personal Protective Equipment (PPE)

Some materials that are chemically resistant to this product are listed below. For more options, refer to **Category A** on an EPA chemical-resistance category selection chart.

Applicators and other handlers must wear:

- Long-sleeved shirt and long pants
- Protective eyewear (goggles, face shield, or safety glasses with front, brow, and temple protection)
- Socks and shoes
- Chemical-resistant gloves made of any waterproof material (such as nitrile, butyl, neoprene and/or barrier laminate)

Follow the manufacturer's instructions for cleaning and maintaining PPE. If no such instructions for washables exist, use detergent and hot water. Keep and wash PPE separately from other laundry.

Engineering Controls Statement

When handlers use closed systems, enclosed cabs, or aircraft in a manner that meets the requirements listed in the Worker Protection Standard (WPS) for agricultural pesticides [40 CFR 170.240 (d) (4-6)], the handler PPE requirements may be reduced or modified as specified in the WPS.

USER SAFETY RECOMMENDATIONS

Users should:

- Wash hands before eating, drinking, chewing gum, using tobacco, or using the toilet.
- Remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
- Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

Environmental Hazards

This pesticide is toxic to birds, mammals, fish and aquatic invertebrates. Drift or runoff may be hazardous to aquatic organisms in water adjacent to treated areas. **DO NOT** apply directly to water, or to areas where surface water is present, or to intertidal areas below the mean high water mark. **DO NOT** contaminate water when disposing of equipment wash water or rinsate.

DO NOT discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans, or other waters unless in accordance with the requirements of a National Pollutant Discharge Elimination System (NPDES) permit and the permitting authority has been notified in writing prior to discharge. **DO NOT** discharge effluent containing this product to sewer systems without previously notifying the local sewage treatment plant authority. For guidance, contact your State Water Board or Regional Office of the EPA.

Groundwater Advisory

This product contains chemicals that have properties and characteristics associated with chemicals detected in groundwater. The use of this chemical in areas where soils are permeable, particularly where the water table is shallow, may result in groundwater contamination.

Surface Water Advisory

Metconazole and pyraclostrobin may impact surface water quality through spray and runoff of rain water. This product has a high potential for runoff for several months or more after application. Poorly draining soils or soils with shallow water tables are more prone to produce runoff that contains this product. A level, well-maintained vegetative buffer strip between areas to which this product is applied and surface water features, such as ponds, streams, and springs, will reduce the potential for contamination of water from rainfall runoff. Runoff of this product will be reduced by avoiding applications when rainfall is forecasted to occur within 48 hours. Sound erosion control practices will reduce this product's contribution to surface water contamination.

Directions For Use

It is a violation of federal law to use this product in a manner inconsistent with its labeling. **DO NOT** apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your state or tribe, consult the agency responsible for pesticide regulation.

AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard (WPS), 40 CFR part 170. This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE), notification to workers, and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard.

DO NOT enter or allow worker entry into treated areas during the restricted-entry interval (REI) of **12 hours** for all crops.

PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water, is:

- Coveralls
- Protective eyewear (goggles, face shield, or safety glasses with front, brow, and temple protection)
- Chemical-resistant gloves made of any waterproof material (such as nitrile, butyl, neoprene, and/or barrier laminate)
- Shoes plus socks

STORAGE AND DISPOSAL

DO NOT contaminate water, food, or feed by storage or disposal.

Pesticide Storage

Store in original containers only. Keep container closed when not in use. **DO NOT** store near food or feed.

Pesticide Disposal

Wastes resulting from using this product may be disposed of on site or at an approved waste disposal facility. If these wastes cannot be disposed of according to label instructions, contact your State Pesticide or Environmental Control Agency, or the Hazardous Waste representatives at the nearest EPA Regional Office for guidance.

Container Handling

Nonrefillable Container. DO NOT reuse or refill this container. Triple rinse or pressure rinse container (or equivalent) promptly after emptying; then offer for recycling, if available, or reconditioning, if appropriate, or puncture and dispose of in a sanitary landfill, or by incineration, or by other procedures approved by state and local authorities.

Triple rinse containers small enough to shake (capacity ≤ 5 gallons) as follows: Empty the remaining contents into application equipment or a mix tank and drain for 10 seconds after the flow begins to drip. Fill the container 1/4 full with water and recap. Shake for 10 seconds. Pour rinsate into application equipment or a mix tank, or store rinsate for later use or disposal. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times.

Triple rinse containers too large to shake (capacity > 5 gallons) as follows: Empty the remaining contents into application equipment or a mix tank. Fill the container 1/4 full with water. Replace and tighten closures. Tip container on its side and roll it back and forth, ensuring at least one complete revolution, for 30 seconds. Stand the container on its end and tip it back and forth several times. Turn the container over onto its other end and tip it back and forth several times. Empty the rinsate into application equipment or a mix tank, or store rinsate for later use or disposal. Repeat this procedure two more times.

(continued)

STORAGE AND DISPOSAL (continued)

Container Handling (continued)

Pressure rinse as follows: Empty the remaining contents into application equipment or mix tank and continue to drain for 10 seconds after the flow begins to drip. Hold container upside down over application equipment or mix tank, or collect rinsate for later use or disposal. Insert pressure rinsing nozzle in the side of the container and rinse at about 40 PSI for at least 30 seconds. Drain for 10 seconds after the flow begins to drip.

Refillable Container. Refill this container with pesticide only. **DO NOT** reuse this container for any other purpose. Triple rinsing the container before final disposal is the responsibility of the person disposing of the container. Cleaning before refilling is the responsibility of the refiller.

Triple rinse as follows: To clean the container before final disposal, empty the remaining contents from this container into application equipment or mix tank. Fill the container about 10% full with water. Agitate vigorously or recirculate water with the pump for 2 minutes. Pour or pump rinsate into application equipment or rinsate collection system. Repeat this rinsing procedure two more times.

When this container is empty, replace the cap and seal all openings that have been opened during use; return the container to the point of purchase or to a designated location. This container must only be refilled with a pesticide product. Prior to refilling, inspect carefully for damage such as cracks, punctures, abrasions, worn-out threads and closure devices. Check for leaks after refilling and before transport. **DO NOT** transport if this container is damaged or leaking. If the container is damaged, or leaking, or obsolete and not returned to the point of purchase or to a designated location, triple rinse emptied container and offer for recycling, if available, or dispose of container in compliance with state and local regulations.

In Case of Emergency

In case of large-scale spillage regarding this product, call:

- CHEMTREC 1-800-424-9300
- BASF Corporation 1-800-832-HELP (4357)

In case of medical emergency regarding this product, call:

- Your local doctor for immediate treatment
- Your local poison control center (hospital)
- BASF Corporation 1-800-832-HELP (4357)

Steps to be taken in case material is released or spilled:

- In case of spill on floor or paved surfaces, mop and remove to chemical waste storage area until proper disposal can be made if product cannot be used according to label.

- Dike and contain the spill with inert material (sand, earth, etc.) and transfer liquid and solid diking material to separate containers for disposal.
- Remove contaminated clothing and wash affected skin areas with soap and water.
- Wash clothing before reuse.
- Keep the spill out of all sewers and open bodies of water.

Product Information

Headline AMP® fungicide is a broad-spectrum fungicide containing 2 active ingredients, pyraclostrobin and metconazole. **Headline AMP** provides systemic, curative and long-lasting residual control of target plant diseases.

To maximize disease control, apply **Headline AMP** in a regularly scheduled protective spray program and use in a rotation program with other fungicides.

Preventative applications of **Headline AMP** optimize disease control resulting in improved plant health. The increase in plant health comes from the combined effect of disease control (including fungal diseases listed in Crop-specific directions), improved growth efficiency and improved stress tolerance. Overall increased plant health may result in an improvement in crop growth and crop quality as well as increased crop yields.

Information regarding the contents and levels of metals in this product is available on the Internet at <http://www.aapfco.org/metals.htm>.

Headline AMP is not for use in greenhouse or transplant production.

Mode of Action

Each of the components in **Headline AMP** provides a different mode of action against plant pathogenic fungi. Pyraclostrobin belongs to the group of respiration inhibitors classified by the US EPA and Canada PMRA as Quinone Outside Inhibitors (QoI) or target site of action **Group 11** fungicides. Metconazole inhibits demethylation of sterol biosynthesis (DMI), disrupting cell membrane synthesis or target site of action **Group 3** fungicides.

Resistance Management

Headline AMP contains pyraclostrobin, a **Group 11** fungicide, and is effective against pathogens resistant to fungicides with modes of action different from those of QoI fungicides (target site **Group 11**), such as dicarboximides, sterol inhibitors, benzimidazoles, or phenylamides.

Fungal isolates resistant to **Group 11** fungicides, such as pyraclostrobin, azoxystrobin, fluoxastrobin, trifloxystrobin, and kresoxim-methyl, may eventually dominate the fungal population if **Group 11** fungicides are used predominantly and repeatedly in the same field in successive years as the primary method of control for the targeted pathogen species. This may result in reduction of disease control by **Headline AMP** or other **Group 11** fungicides.

To maintain the performance of **Headline AMP** in the field, **DO NOT** exceed the maximum seasonal use rate or the

total number of applications of **Headline AMP** per season and the maximum number of applications of **Headline AMP** stated in **Restrictions and Limitations** and **Table 2. Headline AMP® fungicide Crop-specific Requirements**. Adhere to the label instructions regarding the use of **Headline AMP** or other target site of action **Group 11** fungicides that have a similar site of action on the same pathogens.

Resistance Management Advisory

The following recommendations may be considered to delay the development of fungicide resistance:

1. Tank Mixtures - Use tank mixtures with effective fungicides from different target site of action groups that are registered/permitted for the same use and that are effective against the pathogens of concern.

Use at least the minimum labeled rates of each fungicide in the tank mix.

2. IPM - Integrate **Headline AMP** into an overall disease and pest management program. Follow cultural practices known to reduce disease development. Consult your local extension specialist, certified crop advisor and/or BASF representative for additional IPM strategies established for your area. **Headline AMP** can be used in agricultural extension advisory (disease forecasting) programs which recommend application timing based on environmental factors favorable for disease development.

3. Monitoring - Monitor efficacy of all fungicides used in the disease management program against the targeted pathogen and record other factors that may influence fungicide performance and/or disease development.

Cleaning Spray Equipment

Clean spray equipment thoroughly before and after applying this product, particularly if a product with the potential to injure crops was used prior to **Headline AMP**.

Directions For Use Through Sprinkler Irrigation Systems

Sprayer Preparation

Chemical tank and injector system should be thoroughly cleaned. Flush system with clean water.

Application Instructions

Apply **Headline AMP** at rates and timings as required in this label.

Use Directions For Sprinkler Irrigation Applications

- Apply this product only through sprinkler irrigation systems including center pivot, lateral move, end tow, side [wheel] roll, traveler, big gun, solid set, or hand move irrigation systems.

DO NOT apply this product through any other type of irrigation system.

- Add this product to the pesticide supply tank containing sufficient water to maintain a continuous flow by the injection equipment. In continuous moving systems,

inject this product/water mixture continuously, applying the labeled rate per acre for that crop. **DO NOT** exceed 1/2 inch (13,577 gallons) per acre. In stationary or non-continuous moving systems, inject the product/water mixture in the last 15 to 30 minutes of each set allowing sufficient time for all of the required pesticide to be applied by all the sprinkler heads and applying the labeled rate per acre for that crop. **DO NOT** apply when wind speed favors drift beyond the area intended for treatment. Crop injury, lack of effectiveness, or illegal pesticide residues in the crop can result from non-uniform distribution of treated water. Thorough coverage of foliage is required for good control. Good agitation should be maintained during the entire application period.

- If you have questions about calibration, you should contact state extension service specialists, equipment manufacturers or other experts.
- The system must contain a functional check valve, vacuum-relief valve, and low-pressure drain appropriately located on the irrigation pipeline to prevent water-source contamination from backflow.
- The pesticide injection pipeline must contain a functional, automatic, quick-closing check valve to prevent the flow of fluid back toward the injection pump.
- The pesticide injection pipeline must also contain a functional, normally closed, solenoid-operated valve located on the intake side of the injection pump and connected to the system interlock to prevent fluid from being withdrawn from the supply tank when the irrigation system is either automatically or manually shut down.
- The system must contain functional interlocking controls to automatically shut off the pesticide-injection pump when the water pump motor stops.
- The irrigation line or water pump must include a functional pressure switch that will stop the water pump motor when the water pressure decreases to the point where pesticide distribution is adversely affected.
- Systems must use a metering pump, such as a positive displacement injection pump (e.g. diaphragm pump), effectively designed and constructed of materials that are compatible with pesticides and capable of being fitted with a system interlock.
- Allow sufficient time for pesticide to be flushed through all lines and all nozzles before turning off irrigation water. A person knowledgeable of the chemigation system and responsible for its operation, or under supervision of the responsible person, shall shut the system down and make necessary adjustments should the need arise.
- **DO NOT** connect an irrigation system (including greenhouse systems) used for pesticide application to a public water system unless the pesticide label-prescribed safety devices for public water systems are in place.

Specific Instructions for Public Water Systems

1. Public water system means a system for the provision to the public of piped water for human consumption if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

2. Chemigation systems connected to public water systems must contain a functional, reduced-pressure zone, back-flow preventer (RPZ) or the functional equivalent in the water supply line upstream from the point of pesticide introduction. As an option to the RPZ, the water from the public water system should be discharged into a reservoir tank prior to pesticide introduction. There shall be a complete physical break (air gap) between the outlet end of the fill pipe and the top or overflow rim of the reservoir tank of at least twice the inside diameter of the fill pipe.
3. The pesticide injection pipeline must contain a functional, automatic, quick-closing check valve to prevent the flow of fluid back toward the injection pump.
4. The pesticide injection pipeline must contain a functional, normally closed, solenoid-operated valve located on the intake side of the injection pump and connected to the system interlock to prevent fluid from being withdrawn from the supply tank when the irrigation system is either automatically or manually shut down.
5. The system must contain functional interlocking controls to automatically shut off the pesticide injection pump when the water pump motor stops, or in cases where there is no water pump, when the water pressure decreases to the point where pesticide distribution is adversely affected.
6. Systems must use a metering pump, such as a positive displacement injection pump (e.g. diaphragm pump), effectively designed and constructed of materials that are compatible with pesticides and capable of being fitted with a system interlock.

Application Instructions

Apply rates of **Headline AMP® fungicide** as instructed by **Table 2. Headline AMP® fungicide Crop-specific Requirements**. Apply **Headline AMP** with ground sprayer, aerial equipment or through sprinkler irrigation equipment. Check equipment frequently for calibration.

Under low-level disease conditions, use the minimum application rates. For severe or threatening disease conditions, use maximum/minimum application rates and shortened intervals.

For containers 5 gallons or less, shake well prior to use. For containers greater than 5 gallons, recirculate prior to use. Consult BASF Representatives for additional information regarding agitation and recirculation.

Ground Application

DO NOT use less than 5 gallons per acre (gpa) spray volume on sugarcane and 10 gpa spray volume on corn for ground applications. Thorough coverage of foliage is required for optimum disease control. An adjuvant may be used to improve spray coverage. Refer to the adjuvant product label for specific use directions.

Aerial Application

For aerial application in New York State, **DO NOT** apply within 100 feet of aquatic habitats (such as, but not limited to lakes, reservoirs, rivers, streams, marshes, ponds, estuaries, and commercial fish ponds).

DO NOT apply when conditions favor drift from target area. **DO NOT** use less than 2 gallons per acre (gpa) spray volume on corn and sugarcane.

A combination of spray nozzles and appropriate pressure should be selected to provide ASABE Standard S571.1 droplet size category of fine ($D_{v0.5}$ of $\geq 180 \mu\text{m}$) or coarser than fine. When applications are made with a cross-wind, the swath needs to be displaced downwind. The applicator should compensate for this displacement at the downwind edge of the application area by adjusting the path of the aircraft. Aerial applicator needs to leave at least half swath unsprayed at the downwind edge of the treated area.

For all aerial application volumes (gpa), an adjuvant may be used to improve spray coverage. Refer to the adjuvant product label for specific use directions. Select spray nozzles, pumping pressure, and sprayer height to provide medium-to-fine spray droplets that penetrate throughout the crop canopy. Spray calibration must be conducted to confirm spray droplet sizes. Continue to monitor spray application (including weather conditions) to assure proper droplet size and canopy penetration.

Adjuvant or Crop Oil Use Limitations on Corn

Adjuvant crop damage can occur when an adjuvant or crop oil is used after the V8 stage and before the VT stage (the VT stage is defined as when the tassel's last branch is completely visible outside the whorl). If an adjuvant or crop oil is used after the V8 stage and before the VT stage, the grower and user are responsible for contacting the adjuvant source (adjuvant distributor, retailer, or manufacturer) for advice and confirmation that the adjuvant has been tested and proven to be safe for application from V8 to VT corn stage. Refer to adjuvant and/or crop oil labels for specific use directions and restrictions. Always follow the most restrictive label.

Another fungicide or an insecticide may be included in the tank mix if needed and labeled for use on corn. Refer to the tank mix pesticide product labels for specific use directions and restrictions. Always follow the most restrictive label.

Spray Drift Management

DO NOT spray when conditions favor drift beyond area intended for application. Conditions which may contribute to drift include thermal inversion, wind speed and direction, spray nozzle/pressure combinations, spray droplet size, temperature/humidity, etc. Contact your state extension agent for spray drift prevention guidelines in your area. All aerial and ground application equipment must be properly maintained and calibrated using appropriate carriers.

Avoiding spray drift at the application site is the responsibility of the applicator.

Aerial Application Methods and Equipment

The interaction of many equipment-related and weather-related factors determines the potential for spray drift. The applicator and the grower are responsible for considering all these factors when making decisions.

DO NOT apply under circumstances where possible drift to endangered species, unprotected persons, to food, forage, or other plantings that might be damaged, or crops thereof rendered unfit for sale, use or consumption can occur.

The following drift management requirements must be followed to avoid off-target drift movement from aerial applications to agricultural field crops. These requirements **DO NOT** apply to forestry applications, public health uses or to applications using dry formulations.

1. The distance of the outermost nozzles on the boom must not exceed 3/4 the length of the wingspan or rotor.
2. Nozzles must always point backward parallel with the air stream and never be pointed downward more than 45 degrees.

Where states have more stringent regulations, they must be observed.

Information on Droplet Size

The most effective way to reduce drift potential is to apply large droplets. Use the largest droplet size consistent with acceptable efficacy. Applying larger droplets reduces drift potential but will not prevent drift if applications are made improperly or under unfavorable environmental conditions (see **Wind; Temperature and Humidity; and Temperature Inversions**).

Controlling droplet size:

- **Volume** - Use high flow rate nozzles to apply the highest practical spray volume. Nozzles with higher rated flows produce larger droplets.
- **Pressure** - **DO NOT** exceed the nozzle manufacturer's recommended pressures. For many nozzle types, lower pressure produces larger droplets. When higher flow rates are needed, use higher flow rate nozzles instead of increasing pressure.
- **Number of Nozzles** - Use the minimum number of nozzles that provide uniform coverage.
- **Nozzle Orientation** - Orienting nozzles so that the spray is released parallel to the air stream produces larger droplets than other orientations and is recommended practice. Significant deflection from the horizontal will reduce droplet size and increase drift potential.
- **Nozzle Type** - Use a nozzle type that is designed for the intended application. With most nozzle types, narrower spray angles produce larger droplets. Consider using low-drift nozzles. Solid-stream nozzles oriented straight back produce the largest droplets and the lowest drift.

Wind

DO NOT apply at wind speeds greater than 15 mph. Drift potential is lowest when wind speed does not exceed 10 mph. However, many factors, including droplet size and equipment type, determine drift potential at any given speed.

Avoid applications below 2 mph due to variable wind direction and high inversion potential. Local terrain can influence wind patterns. Every applicator must be familiar with local wind patterns and how they affect spray drift.

Temperature and Humidity

Low humidity and high temperatures increase the evaporation of spray droplets and, therefore, the likelihood of increased spray drift. Avoid spraying during conditions of low humidity and/or high temperatures. When making applications in low relative humidity, set up equipment to produce larger droplets to compensate for evaporation. Droplet evaporation is most severe when conditions are both hot and dry.

Temperature Inversions

Applications must not occur during a temperature inversion because drift potential is high. Temperature inversions restrict vertical air mixing, which causes small suspended droplets to remain in a concentrated cloud. This cloud can move in unpredictable directions due to the light, variable winds common during inversions. Temperature inversions are characterized by increasing temperatures with altitude and are common on nights with limited cloud cover and light-to-no wind. They begin to form as the sun sets and often continue into the morning. Their presence can be indicated by ground fog; however, if fog is not present, inversions can also be identified by the movement of smoke from a ground source or an aircraft smoke generator. Smoke that layers and moves laterally in a concentrated cloud (under low wind conditions) indicates an inversion, while smoke that moves upward and rapidly dissipates indicates good vertical air mixing.

Sensitive Areas

Only apply the pesticide when the potential for drift to adjacent sensitive areas (e.g. bodies of water or nontarget crops) is minimal and when wind is blowing away from the sensitive areas.

Additives and General Tank Mixing Information

Under some conditions, the use of additives or adjuvants may improve the performance of **Headline AMP® fungicide**. However, under some conditions, the use of additives or adjuvants with **Headline AMP** may cause an adverse crop response. The addition of a nitrogen-based fertilizer may result in some crop leaf burn from the fertilizer. The addition of an emulsifiable concentrate (EC)-based insecticide may result in some crop leaf burn.

DO NOT tank mix with products containing a prohibition against tank mixing. Follow the most restrictive labeling requirements of any tank mix product.

Headline AMP can be tank mixed with most recommended fungicides. However, all varieties and cultivars have not been tested with possible tank mix combinations. Local conditions can also influence crop tolerance and may not match those under which BASF has conducted testing. Physical incompatibility, reduced disease control, or crop injury may result from mixing **Headline AMP** with other products. Therefore, before using any tank mix (fungicides, insecticides, herbicides, liquid fertilizers, biological control products, adjuvants and additives), test the combination on a small portion of the crop to be treated to ensure that a phytotoxic response will not occur as a result of application.

Consult a BASF representative or local agricultural authorities for more information concerning additives.

When an adjuvant is to be used with this product, BASF recommends the use of a Chemical Producers and Distributors Association certified adjuvant.

Mixing Order

- 1) **Water** - Begin by agitating a thoroughly clean sprayer tank 3/4 full of clean water.
- 2) **Agitation** - Maintain constant agitation throughout mixing and application.
- 3) **Inductor** - If an inductor is used, rinse it thoroughly after each component has been added.
- 4) **Products in PVA bags** - Place any product contained in water-soluble PVA bags into the mixing tank. Wait until all water-soluble PVA bags have fully dissolved and the product is evenly mixed in the spray tank before continuing.
- 5) **Water-dispersible products** (such as dry flowables, wettable powders, suspension concentrates such as **Headline AMP**, or suspo-emulsions) - **For containers 5 gallons or less, shake well prior to use. For containers greater than 5 gallons, recirculate prior to use.** Consult BASF Representatives for additional information regarding agitation and recirculation.
- 6) **Water-soluble products**
- 7) **Emulsifiable concentrates** (or oil concentrates when applicable)
- 8) **Water-soluble additives** (such as ammonium sulfate (AMS) or urea ammonium nitrate (UAN) when applicable)
- 9) **Remaining quantity of water**

Make sure that each component is thoroughly mixed and suspended before adding tank mix partners. Maintain constant agitation during application. See **Table 2. Headline AMP® fungicide Crop-specific Requirements** for more details.

Restrictions and Limitations

- **DO NOT** use less than 5 gpa spray volume on sugarcane and 10 gpa spray volume on corn for ground applications.
- **DO NOT** use less than 2 gallons per acre (gpa) spray volume on corn and sugarcane for aerial applications.
- **DO NOT** exceed the maximum product rate (fl ozs/A) per year (season), the maximum product rate per application, or the total number of applications of **Headline AMP® fungicide** per year (season) as stated in **Table 1. Headline AMP® fungicide Restrictions and Limitations Overview** and **Table 2. Headline AMP® fungicide Crop-specific Requirements**. Preharvest interval (PHI) restrictions are also included in these tables.
- **DO NOT** apply more than the maximum annual use rate of ai/acre or fl ozs of product/acre for each specific crop from any combination of products containing pyraclostrobin or metconazole. To determine lbs of pyraclostrobin per acre, divide fl ozs of product/acre by 128, then multiply by 1.22. To determine lbs of metconazole per acre, divide fl ozs of product/acre by 128, then multiply by 0.46.
- **DO NOT** use **Headline AMP** in greenhouse or trans-plant production.
- **For aerial application in New York State, DO NOT apply within 100 feet of aquatic habitats (such as, but not limited to lakes, reservoirs, rivers, streams, marshes, ponds, estuaries, and commercial fish ponds).**

Crop Rotation Restriction

Leafy vegetables and Brassica leafy vegetables may be planted 30 days after the last application.

Crops on this label (corn and sugarcane) plus barley, canola, cotton, oats, peanuts, rye, soybeans, sugar beets, triticale and wheat, and tuberous and corm vegetables subgroup 1C may be planted immediately following the last application.

Dry beans, sorghum, and sunflower may be planted with a plant back interval (PBI) of 0-day.

All other crops may be planted 120 days after the last application.

Ground Application Directed or Banded Sprays

The application rates shown in the following tables pertain to both aerial and ground (broadcast) methods of application. **Headline AMP** may also be applied as a directed or banded spray over the rows or plant beds with alleys or row middles left unsprayed. For such uses, reduce the labeled **Headline AMP** rate in proportion to the area actually sprayed. This adjustment is necessary to avoid applying the product at use rates higher than permitted according to label directions.

Use the following formula to determine the broadcast equivalent rate for applying directed or banded sprays:

$$\text{sprayed bed width} + \text{unsprayed row middles} = \text{total row width}$$

$$\frac{\text{sprayed bed width in inches}}{\text{total row width in inches}} \times \frac{\text{broadcast rate}}{\text{treated acres}} = \frac{\text{band rate}}{\text{field acre}}$$

EXAMPLE: Directed spray application to 45-inch plant beds separated by 15-inch unsprayed row middles at 12 fl ozs/A label broadcast rate.

$$45 \text{ inches sprayed bed width} + 15 \text{ inches unsprayed row middles} = 60 \text{ inches total row width}$$

$$\frac{45 \text{ inches sprayed bed width}}{60 \text{ inches total row width}} \times \frac{12 \text{ fl ozs}}{\text{Headline AMP treated acres}} = \frac{9 \text{ fl ozs}}{\text{Headline AMP field acre}}$$

Table 1. Headline AMP® fungicide Restrictions and Limitations Overview*

Crop	Minimum Time from Application to Harvest (PHI) (days)	Maximum Product Rate per Application (fl ozs/A)	Maximum Number of Sequential Applications	Maximum Product Rate per Season (fl ozs/A)
Corn (all types)	**	14.4	2	57.6
Sugarcane	14	20	2	80

*** See Table 2. Headline AMP® fungicide Crop-specific Requirements for complete directions and restrictions.**

**** See Table 2. Headline AMP® fungicide Crop-specific Requirements.**

Aerial application is permitted. **For aerial application in New York State, DO NOT apply within 100 feet of aquatic habitats (such as, but not limited to lakes, reservoirs, rivers, streams, marshes, ponds, estuaries, and commercial fish ponds).**

Table 2. Headline AMP® fungicide Crop-specific Requirements

Crop	Target Disease	Product Use Rate per Application (fl ozs/A)	Maximum Number of Applications per Season	Maximum Product Rate per Season (fl ozs/A)	Minimum Time from Application to Harvest (PHI) (days)
Corn Field corn Pop corn Sweet corn Seed production corn	Anthracnose (<i>Colletotrichum graminicola</i>)	10 to 14.4	4	57.6	20 days for Field corn grain; Field corn stover;
	Eyespot (<i>Kabatiella zaeae</i>)				Pop corn grain; Pop corn stover; Sweet corn stover
	Gray leaf spot (<i>Cercospora zaeae-maydis</i>)				
	Northern corn leaf blight (<i>Exserohilum turcicum</i>)				7 days for Field corn
	Northern corn leaf spot (<i>Cochliobolus carbonum</i>)				forage/silage; Sweet corn forage;
	Physoderma brown spot (<i>Physoderma maydis</i>)				Sweet corn kernel; Pop corn forage; Seed production corn (all types)
	Rust (<i>Puccinia</i> spp.)				
	Southern corn leaf blight (<i>Bipolaris maydis</i>)				
Yellow leaf blight (<i>Phyllosticta maydis</i>)					

Application Directions. For optimal disease control, begin applications of **Headline AMP** prior to disease development and continue on a 7- to 14-day schedule if conditions for disease development persist. Use the higher rate and shorter interval when disease pressure is high.

Resistance Management. To limit the potential for development of resistance, **DO NOT** make more than two (2) sequential applications of **Headline AMP** before alternating to another fungicide with a different mode of action.

Crop	Target Disease	Product Use Rate per Application (fl ozs/A)	Maximum Number of Applications per Season	Maximum Product Rate per Season (fl ozs/A)	Minimum Time from Application to Harvest (PHI) (days)
Sugarcane*	Brown Rust (<i>Puccinia melanocephala</i>)	12 to 20	4	80	14
	Orange Rust (<i>Puccinia kuehnii</i>)				

Application Directions. For optimal disease control, begin applications of **Headline AMP** prior to disease development and continue on a 14 to 28 day interval if conditions are conducive for disease development. Use the higher rate and shorter interval when disease pressure is high.

Resistance Management. To limit the potential for development of resistance, **DO NOT** apply more than 80 fl ozs of **Headline AMP** per acre per season. **DO NOT** make more than two (2) sequential applications of **Headline AMP** before alternating to a labeled non **Group 11** or non **Group 3** fungicide with a different mode of action.

* Not registered for use in California.

Conditions of Sale and Warranty

The **Directions For Use** of this product reflect the opinion of experts based on field use and tests. The directions are believed to be reliable and must be followed carefully. However, it is impossible to eliminate all risks inherently associated with the use of this product. Crop injury, ineffectiveness or other unintended consequences may result because of such factors as weather conditions, presence of other materials, or use of the product in a manner inconsistent with its labeling, all of which are beyond the control of BASF CORPORATION ("BASF") or the Seller. To the extent consistent with applicable law, all such risks shall be assumed by the Buyer.

BASF warrants that this product conforms to the chemical description on the label and is reasonably fit for the purposes referred to in the **Directions For Use**, subject to the inherent risks, referred to above.

TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, BASF MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY OF FITNESS OR MERCHANTABILITY OR ANY OTHER EXPRESS OR IMPLIED WARRANTY.

TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, BUYER'S EXCLUSIVE REMEDY AND BASF'S EXCLUSIVE LIABILITY, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, SHALL BE LIMITED TO REPAYMENT OF THE PURCHASE PRICE OF THE PRODUCT.

TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, BASF AND THE SELLER DISCLAIM ANY LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES RESULTING FROM THE USE OR HANDLING OF THIS PRODUCT.

BASF and the Seller offer this product, and the Buyer and User accept it, subject to the foregoing **Conditions of Sale and Warranty** which may be varied only by agreement in writing signed by a duly authorized representative of BASF.

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BASF Corporation
26 Davis Drive
Research Triangle Park, NC 27709



We create chemistry



RESPONDENT'S EXHIBIT
R-5

RESTRICTED USE PESTICIDE

Due to Toxicity to Fish and Aquatic Organisms

For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.



Emulsifiable Pyrethroid Insecticide

For control of certain insect pests on field, vegetable, tree and vine crops.

ACTIVE INGREDIENT:

Cyfluthrin

Cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate

25%

OTHER INGREDIENTS*

75%

TOTAL

100%

Contains 2.0 pound Cyfluthrin per gallon.

*(This product contains aromatic petroleum distillates.)

**KEEP OUT OF REACH OF CHILDREN
WARNING—AVISO**

Si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle.
(If you do not understand the label, find someone to explain it to you in detail.)

FIRST AID

If in eyes:	<ul style="list-style-type: none"> • Hold eye open and rinse slowly and gently with water for 15 to 20 minutes. • Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. • Call a poison control center or doctor for treatment advice.
If swallowed:	<ul style="list-style-type: none"> • Call a poison control center or doctor immediately for treatment advice. • Do not induce vomiting unless told to do so by a poison control center or doctor. • Do not give any liquid to the person. • Do not give anything by mouth to an unconscious person.
If on skin or clothing:	<ul style="list-style-type: none"> • Take off contaminated clothing. • Rinse skin immediately with plenty of water for 15 to 20 minutes. • Call a poison control center or doctor for treatment advice.
If inhaled:	<ul style="list-style-type: none"> • Move person to fresh air. • If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably mouth-to-mouth if possible. • Call a poison control center or doctor for further treatment advice.

Have a product container or label with you when calling a poison control center or doctor, or going for treatment.

FOR A MEDICAL EMERGENCY INVOLVING THIS PRODUCT CALL: 1-866-944-8565.

Note to Physician: ANTIDOTE – No specific antidote is available. Treat symptomatically. Published data indicate vitamin E acetate can prevent and/or mitigate symptoms of paresthesia caused by synthetic pyrethroids. Contains petroleum distillates. Vomiting may cause aspiration pneumonia.

EPA REG. NO. 34704-978

EPA EST. NO. 34704-MS-002

NET CONTENTS 1.0 GAL (3.78 L)

022417 V1D 03017

TOMBSTONE™ HELIOS®
EPA REG. NO. 34704-978

PRECAUTIONARY STATEMENTS
HAZARDS TO HUMANS AND DOMESTIC ANIMALS

WARNING. Causes substantial but temporary eye injury. Do not get in eyes, skin or on clothing. Wear protective eyewear such as goggles, face shield or safety glasses. Harmful if swallowed or inhaled. Avoid breathing vapor or spray mist. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum or using tobacco. Remove and wash contaminated clothing before reuse.

Do not contaminate feed or food. Keep out of reach of children.

Personal Protective Equipment (PPE):

Applicators and other handlers must wear:

- Long-sleeved shirt and long pants,
- Chemical-resistant gloves, such as barrier laminate or viton. If you want more options, follow the instructions for category G on an EPA chemical-resistance category selection chart.
- Shoes plus socks
- Protective eyewear
- **Mixers/loaders supporting aerial applications and chemigation applications must wear also** (except when using closed mixing/loading systems): A NIOSH approved particulate respirator, with any N, R, or P filter with NIOSH approval number prefix TC-84A.

Discard clothing and other absorbent materials that have been contaminated with this product. Do not reuse them. Follow manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables, use detergent and hot water. Keep and wash PPE separately from other laundry.

Engineering Controls Statements

When handlers use closed systems, enclosed cabs, or aircraft in a manner that meets the requirements listed in the Worker Protection Standard (WPS) for agricultural pesticides [40 CFR 170.240(d)(4-6)], the handler PPE requirements may be reduced or modified as specified in the WPS.

USER SAFETY RECOMMENDATIONS

User should:

- Wash hands before eating, drinking, chewing gum, using tobacco or using the toilet.
- Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
- Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

ENVIRONMENTAL HAZARDS

This pesticide is extremely toxic to fish and aquatic invertebrates. **For terrestrial uses:** Do not apply directly to water, to areas where surface water is present or to intertidal areas below the mean high water mark. Do not apply when weather conditions favor drift from treated areas. Drift and runoff from treated areas may be hazardous to aquatic organisms in neighboring areas. Do not contaminate water when disposing of equipment washwaters.

This product is highly toxic to bees exposed to direct treatment or residues on blooming crops or weeds. Do not apply this product or allow it to drift to blooming crops if bees are foraging treatment area. Additional information may be obtained by consulting your Cooperative Extension Service.

OBSERVE THE FOLLOWING PRECAUTIONS WHEN SPRAYING IN THE VICINITY OF AQUATIC AREAS SUCH AS LAKES; RESERVOIRS; RIVERS, PERMANENT STREAMS, MARSHES OR NATURAL PONDS; ESTUARIES AND COMMERCIAL FISH FARM PONDS.

BUFFER ZONES

Vegetative Buffer Strip

Construct and maintain a minimum 10-foot-wide vegetative filter strip of grass or other permanent vegetation between the field edge and down gradient aquatic habitat (such as, but not limited to, lakes; reservoirs; rivers; permanent streams; marshes or natural ponds; estuaries; and commercial fish farm ponds).

Only apply products containing cyfluthrin onto fields where a maintained vegetative buffer strip of at least 10 feet exists between the field and down gradient aquatic habitat.

For guidance, refer to the following publication for information on constructing and maintaining effective buffers:

Conservation Buffers to Reduce Pesticide Losses. Natural Resources Conservation Services. USDA, NRCS. 2000. Fort Worth, Texas. 21 pp.

http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_023819.pdf

Buffer Zone for Ground Application (groundboom, overhead chemigation, or airblast)

Do not apply within 25 feet of aquatic habitats (such as, but not limited to, lakes, reservoirs, rivers, streams, marshes, ponds, estuaries, and commercial fish ponds).

Buffer Zone for ULV Aerial Application

Do not apply within 450 feet of aquatic habitats (such as, but not limited to, lakes, reservoirs, rivers, streams, marshes, ponds, estuaries, and commercial fish ponds).

Buffer Zone for Non-ULV Aerial Application

Do not apply within 150 feet of aquatic habitats (such as, but not limited to, lakes, reservoirs, rivers, streams, marshes, ponds, estuaries, and commercial fish ponds).

SPRAY DRIFT REQUIREMENTS

Wind Direction and Speed

Only apply this product if the wind direction favors on-target deposition.

Do not apply when the wind velocity exceeds 15 mph.

Temperature Inversion

Do not make aerial or ground applications into temperature inversions.

Inversions are characterized by stable air and increasing temperatures with height above the ground. Mist or fog may indicate the presence of an inversion in humid areas. The applicator may detect the presence of an inversion by producing smoke and observing a smoke layer near the ground surface.

Droplet Size

Use only Medium or coarser spray nozzles (for ground and non-ULV aerial application) according to ASAE (S572) definition for standard nozzles. In conditions of low humidity and high temperatures, applicators should use a coarser droplet size.

Additional Requirements for Ground Applications

Wind speed must be measured adjacent to the application site on the upwind side, immediately prior to application.

For ground boom applications, apply using a nozzle height of no more than 4 feet above the ground or crop canopy.

For airblast applications, turn off outward pointing nozzles at row ends and when spraying the outer two rows. To minimize spray loss over the top in orchard applications, spray must be directed into the canopy.

Additional Requirements for Aerial Applications

The spray boom should be mounted on the aircraft as to minimize drift caused by wingtip or rotor vortices. The minimum practical boom length should be used and must not exceed 75% of the wing span or 80% rotor diameter.

Flight speed and nozzle orientation must be considered in determining droplet size.

Spray must be released at the lowest height consistent with pest control and flight safety. Do not release spray at a height greater than 10 feet above the crop canopy unless a greater height is required for aircraft safety.

TOMBSTONE™ HELIOS®
EPA REG. NO. 34704-978

When applications are made with a cross-wind, the swath will be displaced downwind. The applicator must compensate for this displacement at the downwind edge of the application area by adjusting the path of the aircraft upwind.

RUNOFF MANAGEMENT

Do not cultivate within 10 feet of the aquatic areas to allow growth of a vegetative filter strip. When used on erodible soils, best management practices for minimizing runoff should be employed. Consult your local Soil Conservation Service for recommendations in your use area. Do not apply if soil is saturated with water. Do not apply under conditions that favor drift from runoff. Do not apply in the rain.

Insect Resistance Statement

Some insects are known to develop resistance to products used repeatedly for control. Because the development of resistance cannot be predicted, the use of this product should conform to resistance management strategies established for the use area. Consult your local or State agricultural authorities for details. If resistance to this product develops in your area, this product alone may not continue to provide adequate control of resistant pests. If poor performance cannot be attributed to improper application, extreme weather conditions, etc., a resistant strain of insect may be present. If you experience difficulty with control and resistance is a reasonable cause, immediately consult your local company representative or agricultural advisor/state Extension agent for the best alternative method of control in your area. Consult your state Cooperative Extension Service agent or agricultural advisor for insect resistance management strategies and recommended insect control methods in your area.

PHYSICAL OR CHEMICAL HAZARDS

Do not use or store near heat or open flame.

DIRECTIONS FOR USE

Restricted Use Pesticide

It is a violation of Federal law to use this product in a manner inconsistent with its labeling. Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your State or Tribe, consult the agency responsible for pesticide regulation.

AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exemptions pertaining to the statements on this label about personal protective equipment (PPE), and restricted entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard.

Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 12 hours. PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil or water, is:

- Coveralls,
- Chemical-resistant gloves, such as barrier laminate or viton,
- Shoes plus socks, and
- Protective eyewear.

Tombstone™ Helios® may be used for control of a broad spectrum of insect pests by contact action. Because of this contact activity, good spray coverage of the crop is needed for the highest level of control.

APPLICATION RECOMMENDATIONS

For all insects, timing of application should be based on careful scouting and local economic thresholds.

Foliar Spray Application

Foliar applications may be made using properly calibrated ground sprayers, fixed- or rotary-winged aircraft or through properly designed, sprinkler-type, chemigation equipment (See Chemigation Application directions below). Thorough and uniform coverage of plants, with direct contact of the spray mixture to the target pests, is required for satisfactory control.

Avoid application procedures where thorough coverage of plant is not possible. Applications made with less than thorough coverage may result in slower activity and/or less overall control from a single application than an application made with higher gallonages. See general, Spray Drift Reduction Management, section below for application guidelines on minimizing drift from all application methods.

Ground applications should be made in a minimum of 10.0 gallons per acre unless specified otherwise in crop-specific recommended application section.

Aerial applications should be made in a minimum of 2.0 gallons per acre, unless specified otherwise in crop-specific recommended application section; however 5.0 gallons per acre are recommended. See crop specific gallonage requirements. Aerial applications made to dense canopies may not provide sufficient coverage of lower leaves to provide pest control. Higher labeled rates of Tombstone Helios may be necessary for aerial applications.

Chemigation applications (See Chemigation Application directions below) should be made as concentrated as possible. For best results apply at 100% input/travel speed, for center pivots or 0.10 inch (2,716 gallons) up to 0.15 inch (4,073 gallons) of water per acre, for other systems. Higher labeled rates of Tombstone Helios may be necessary for chemigation applications.

Chemigation Application

Types of Irrigation Systems: Tombstone Helios may be applied through sprinkler type irrigation systems, only. These types include; center pivot, lateral move, or solid set irrigation systems. Do not apply Tombstone Helios through any other type of irrigation system.

Injection for Chemigation: Inject the specified dosage of Tombstone Helios into the irrigation main, water stream: (1) through a constant flow, metering device; (2) into the center of the main line flow via a pitot tube or equivalent; (3) at a point ahead of at least one, right-angle turn in main stream flow such that thorough mixing with the irrigation water is ensured.

Uniform Water Distribution and System Calibration: The irrigation system must provide uniform distribution of Tombstone Helios treated water. Crop injury, lack of effectiveness, or illegal pesticide residues in or on the crop can result from non-uniform distribution. The system must be calibrated to uniformly distribute the rates specified for chemigation application to specific crops. If you have questions about calibration, contact your Cooperative Extension Service agent, equipment manufacturers, or other experts.

Chemigation Monitoring: A person knowledgeable of the chemigation system and responsible for its operation, or under the supervision of the responsible person, shall shut the system down and make necessary adjustments should the need arise.

Required Injection and Sprinkler System Safety Devices: The system must contain a functional check valve, vacuum relief valve, and low pressure drain, appropriately located on the irrigation pipeline to prevent water source contamination from back-flow. The pesticide injection pipeline must contain a functional, automatic, quick-closing check valve to prevent the flow of fluid back toward the injection. The pesticide injection pipeline

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must also contain a functional, normally closed, solenoid-operated valve located on the intake side of the injection pump and connected to the system interlock to prevent fluid from being withdrawn from the supply tank when the irrigation system is either automatically or manually shut down. The system must contain functional interlocking controls to automatically shut off the pesticide injection pump when the water pump motor/engine stops, or in cases where there is no water pump, when water pressure decreases to the point where pesticide distribution is adversely affected. Injection systems must use a metering pump or equivalent, such as a positive displacement injection pump (e.g., diaphragm pump, venturi injection) effectively designed and constructed of materials that are compatible with pesticides and capable of being fitted with a system interlock.

Using Water from Public Water Systems: Public water system means a system for the provision to the public of piped water for human consumption; if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Chemigation systems connected to public water systems must contain a functional, reduced-pressure zone, back flow preventer (RPZ) or the functional equivalent in the water supply line upstream from the point of pesticide introduction. As an option to the RPZ, the water from the public water system should be discharged into a reservoir tank prior to pesticide introduction. There shall be a complete physical break (air gap) between the outlet end of the fill pipe and to top or overflow rim of the reservoir tank of at least twice the inside diameter of the fill pipe. The pesticide injection pipeline must contain a functional automatic quick-closing check valve to prevent the flow of fluid back toward the injection. The pesticide injection pipeline must contain a functional normally closed solenoid-operated valve located on the intake side of the injection pump and connected to the system interlock to prevent fluid from being withdrawn from the supply tank when the irrigation system is either automatically or manually shut down. The system must contain functional interlocking controls to automatically shut off the pesticide injection pump when the water pump motor stops or in cases where there is no water pump, when the water pressure decreases to the point where pesticide distribution is adversely affected. Systems must use a metering pump such as a positive displacement injection pump (e.g. diaphragm pump) effectively designed and constructed of materials that are compatible with pesticides and capable of being fitted with a system interlock.

Chemical Supply Tank Dilution and Agitation: For injection of Tombstone Helios use a chemical supply tank for pre-mixing Tombstone Helios with either, water or non-emulsifiable oil before injecting mixture into the irrigation line. Dilution ratio should be at least 4 parts of either water/or non-emulsifiable oil, to 1 part Tombstone Helios. If necessary, constant mechanical or hydraulic agitation should be maintained in the chemical supply tank during the entire period of application. Determine the required amounts of Tombstone Helios and either water or non-emulsifiable oil, to mix in the tank. The amount of Tombstone Helios needed equals the number of fluid ounces of Tombstone Helios to be applied per acre multiplied by the number of acres to be chemigated. The amount of emulsion needed equals the gallons of emulsion delivered per hour by the injection pump, multiplied by the number of hours chemigation will take place. The amount of either water or non-emulsifiable oil needed equals the amount of emulsion needed minus the amount of Tombstone Helios needed.

Posting Requirements: Posting of areas to be chemigated is required when 1) any part of a treated area is within 300 feet of sensitive areas such as residential areas, labor camps, businesses, day care centers, hospitals, in-patient clinics, nursing homes or any public areas such as schools, parks, playgrounds, or other public facilities not including public roads, or 2) when the chemigated area is open to the public such as golf courses or retail greenhouses.

Posting must conform to the following requirements: Treated areas shall be posted with signs at all usual points of entry and along likely routes of approach from the listed sensitive areas. When there are no usual points of entry, signs must be posted in the corners of the treated areas and in any other location affording maximum visibility to sensitive areas. The printed side of the sign should face away from the treated area towards the sensitive area. The signs shall be printed in English. Signs must be posted prior to application and must remain posted until foliage has dried and soil surface water has disappeared. Signs may remain in place indefinitely as long as they are composed of materials to prevent deterioration and maintain legibility for the duration of the posting period.

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All words shall consist of letters at least 2-1/2 inches tall, and all letters and the symbol shall be a color which sharply contrasts with their immediate background. At the top of the sign shall be the words KEEP OUT, followed by an octagonal stop sign symbol at least 8 inches in diameter containing the word STOP. Below the symbol shall be the words PESTICIDES IN IRRIGATION WATER.

This sign is in addition to any sign posted to comply with the Worker Protection Standard.

Cleaning the Chemical Injection System: In order to apply pesticides accurately, the chemical injection system must be kept clean; free from chemical or fertilizer residues and sediments. Refer to your owner's manual or ask your equipment supplier for the cleaning procedure for your injection system.

Flushing the Irrigation System: At the end of the application period, allow time for all lines to flush the pesticide through all nozzles before turning off irrigation water. To ensure the lines are flushed and free of pesticides, a dye indicator may be injected into the lines to mark the end of the application period.

Center-Pivot and Automatic-Move Linear Systems: Inject the specified dosage per acre continuously for one complete revolution (center pivot) or move of the system. The system should be run at maximum speed. It is recommended that nozzles in the immediate area of control panels, chemical supply tanks, pumps and system safety devices be plugged to prevent chemical contamination of these areas. The use of END GUNS is NOT recommended. End guns that provide uneven distribution of treated water can result in crop injury, lack of effectiveness, or illegal pesticide residues in or on the crop.

Solid Set and Manually Controlled Linear Systems: Injection should be during the last 30 to 60 minutes of a regular irrigation period or as a separate 30 to 60 minute application not associated with a regular irrigation.

CROP ROTATION STATEMENT

Treated areas may be replanted with any crop as soon as practical after last application.

MAXIMUM USAGE WHEN APPLYING BOTH CYFLUTHRIN AND BETA-CYFLUTHRIN PRODUCTS TO THE SAME CROP WITHIN THE SAME SEASON:

Do not apply more than the maximum seasonal total for each product when used alone, and do not apply more than the combined maximum seasonal total for both products as outlined in the table below.

Crop	Maximum Seasonal Total for Either Product Used Alone (lbs AI/A)		Maximum Seasonal Total When Applying Both Products to the Same Crop (lbs AI/A)
	beta-cyfluthrin*	cyfluthrin**	beta-cyfluthrin* Plus cyfluthrin**
Alfalfa	0.175	0.35	0.35
Corn (field, pop, seed)	0.088	0.175	0.175
Cotton	0.25	0.5	0.5
Grasses	0.089	0.176	0.176
Peanut	0.066	0.131	0.131
Sorghum	0.066	0.131	0.131
Soybean	0.088	0.175	0.175
Sugarcane	0.132	0.263	0.263
Sunflower	0.066	0.131	0.131
Tobacco	0.0022	0.0044	0.0044
Wheat	0.038	0.076	0.076
Brassica (Cole) Leafy Vegetables, CG 5	0.1	0.2	0.2

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Crop	Maximum Seasonal Total for Either Product Used Alone (lbs AI/A)		Maximum Seasonal Total When Applying Both Products to the Same Crop (lbs AI/A)
	beta-cyfluthrin*	cyfluthrin**	beta-cyfluthrin* Plus cyfluthrin**
Cucurbits, CG 9	0.088	0.175	0.175
Fruiting vegetables, CG 8	0.132	0.263	0.263
Leafy vegetables, CG 4	0.1	0.2	0.2
Dried Shelled Legume Vegetables, CSG 6C	0.05	0.1	0.1
Pea, Southern	0.083	0.165	0.165
Potato, and other tuberous & corm vegetables, CSG 1C	0.132	0.263	0.263
Carrot and Radish	0.11	0.22	0.22
Sweet corn	0.22	0.44	0.44
Citrus, CG 10	0.05	0.1	0.1
Grape	0.1	0.2	0.2
Hops	0.125	0.25	0.25
Pome fruit, CG 11	0.022	0.044	0.044
Stone fruit, CG 12	0.044	0.088	0.088
Tree nut crops, CG 14	0.022	0.044	0.044

* Products such as BAYTHROID® XL.

**Any cyfluthrin product approved for crop use.

FIELD CROPS

Recommended Applications – Tombstone Helios

For all crops, apply specific dosage of Tombstone Helios at early threshold for target pest, as population begins to develop. Degree of control or suppression of additional labeled pests will be determined, in part by the stage of pest development at application and infestation level of those pests.

Application timing should be based on local economic thresholds. Tombstone Helios may be applied before, during, or after planting. Use the higher rates for moderate to heavy insect pressure. Lower rates are generally adequate for low to moderate insect pressure but require careful scouting and may require more frequent application.

Tombstone Helios is an Emulsifiable Concentrate formulation and is active by contact and ingestion. Thorough coverage is necessary for optimum performance.

See application recommendations at the beginning of each section: **FIELD CROPS; VEGETABLE CROPS; TREE and VINE CROPS.**

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ALFALFA

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Alfalfa looper	0.8 to 1.6	0.013 to 0.025
Army cutworms		
Cutworms		
Green cloverworm		
Meadow spittlebug		
Potato leafhopper		
Alfalfa caterpillar	1.6 to 2.8	0.025 to 0.044
Alfalfa plant bug		
Alfalfa webworm		
Alfalfa weevil		
Armyworm (1st and 2nd instar)		
Aster leafhopper		
Beet armyworm (1st and 2nd instar)		
Corn earworm		
Corn rootworms (adult)		
Cucumber beetle (adult)		
Egyptian alfalfa weevil		
Fall armyworm (1st and 2nd instar)		
Grape colaspis (adult)		
Japanese beetle (adult)		
June beetle (adult)		
Loopers		
Lygus bug		
Mexican bean beetle		
Stink bugs		
Tarnished plant bug		
Threecornered alfalfa hopper		
Velvetbean caterpillar		
Yellowstriped armyworm (1st and 2nd instar)		
Blotch leafminer	2.0 to 2.8	0.031 to 0.044
Grasshoppers		
Western yellowstriped armyworm (1st and 2nd instar)		
Pests Suppressed		
Blue pea aphid	2.8	0.044
Cowpea aphid		
Pea aphid		
Whitefly (adult)		

Notes and Restrictions:

Pre-Harvest Interval (PHI) / Pre-Grazing Interval: **7 days.**

Maximum Tombstone Helios allowed per cutting: **5.6 fluid ounces per acre (0.088 pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **22.4 fluid ounces per acre (0.35 pounds active ingredient per acre).**

Make applications as necessary but no closer than a 5-day interval.

For applications to mixed-stands of ALFALFA with GRASSES intentionally grown for forage or hay, please see the section of this label entitled: GRASS - Pasture / Rangeland / Grass for Seed / Grass for Hay / Grass in mixed-stands with Alfalfa. Carefully observe the restrictions and use directions associated with both crops. Due to potential injury to bees, do not apply to alfalfa grown for seed.

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CORN - FOLIAR APPLICATIONS

Field Corn, Popcorn, Seed Corn (see Sweet Corn recommendations in Vegetable Crops Section)

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Black cutworm	0.8 to 1.6	0.013 to 0.025
Flea beetles		
Granulate cutworm		
Sand hill cutworm		
Armyworm (1st and 2nd instar)	1.6 to 2.8	0.025 to 0.044
Bean leaf beetle		
Cereal leaf beetle		
Chinch bug		
Click beetle (adult)		
Corn earworm		
Corn rootworms (adult)		
European corn borer*		
Grape colapsis (adult)		
Japanese beetle (adult)		
June beetle (adult)		
Leafhoppers		
Masked chafer (adult)		
Southern armyworm (1st and 2nd instar)		
Southern corn leaf beetle		
Southwestern corn borer*		
Stalk borer		
Stink bugs		
Webworm		
Western bean cutworm		
Yellowstriped armyworm (1st and 2nd instar)		
Grasshoppers	2.1 to 2.8	0.033 to 0.044
Fall armyworm (1st and 2nd instar)	2.8	0.044

Notes and Restrictions:

Pre-Harvest Interval (PHI): For grain or fodder **21 days**; Green forage may be fed **0 days** after last application. Maximum Tombstone Helios allowed per 7-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**.

Maximum Tombstone Helios allowed per crop season: **11.2 fluid ounces per acre (0.175 pounds active ingredient per acre)**.

Maximum number of application per season: **4**. *Three* applications may be applied up to early dent stage. One application may be made between early dent and 21 days before harvest.

Minimum ULV application volume (once refined cotton seed/vegetable oil): **1.0 quart per acre – aerial application**.

*Application must be made prior to the larva boring into the plant.

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CORN - SOIL APPLICATIONS
Field Corn, Popcorn, Seed Corn

Pests Controlled	Rate fl oz/1000 row ft	Rate** fl oz/A (based on 30 inch row spacing)
Seedcorn maggot Wireworm	0.12 to 0.16	2.0 to 2.8
Pest Suppressed		
White grub	0.14 to 0.16	2.5 to 2.8

Notes and Restrictions:

Pre-Harvest Interval (PHI): For grain or fodder **21 days**; Green forage may be fed **0 days** after last application. Maximum Tombstone Helios allowed at planting: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**.

Maximum Tombstone Helios allowed per crop season: **11.2 fluid ounces per acre (0.175 pounds active ingredient per acre)**.

APPLICATION INSTRUCTIONS:

Carrier: Tombstone Helios may be applied in water or in liquid pop-up fertilizer at planting. Apply in a **minimum of 2.0 gallons per acre** of total mix volume when applied in water. Good agitation must be maintained at all times during application.

Instruction for liquid pop-up fertilizer application: Perform a compatibility test prior to mixing the entire tank to ensure that Tombstone Helios will remain in solution while applying. Take a known amount of the fertilizer to be used as a carrier and place in a glass jar. Add the appropriate amount of Tombstone Helios based on the labeled use rate. Add other components to be tank mixed. Gently agitate the solution. Examine the solution for signs of incompatibility such as flocculation, precipitation, separation, etc. If incompatibility occurs contact your local Loveland Products Inc. representative for additional information.

Fertilizers containing zinc have been shown to be incompatible with Tombstone Helios and should not be mixed with Tombstone Helios.

Placement: Apply total mix volume in the open furrow ahead of the closing wheels for optimum coverage.

****Row width adjustment:** The above rate calculations are based on a standard 30 inch row spacing. For row spacing of less than 30 inches, adjust the rate of Tombstone Helios not to exceed **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**. Diminished control may occur when rates are decreased below the recommended minimum rates per 1000 row feet.

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COTTON

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Cotton leafperforator	0.8 to 1.6	0.013 to 0.025
Cotton leafworm		
Cutworms		
Thrips		
Boll weevil	1.6 to 2.6	0.025 to 0.041
Cabbage looper		
Cotton aphid		
Cotton bollworm*		
Cotton fleahopper		
Cucumber beetle		
European corn borer		
Flea beetles		
Garden webworm		
Lygus bug*		
Pink bollworm		
Saltmarsh caterpillar		
Southern garden leafhopper		
Stink bugs		
Tarnished plant bug*		
Threecornered alfalfa hopper		
Tobacco budworm*		
Ovicidal Control:		
Cotton bollworm and tobacco budworm		
Grasshopper	2.0 to 2.8	0.031 to 0.044
Beet armyworm (1st and 2nd instar)	3.2	0.05
Cotton leafminer		
Fall armyworm (1st and 2nd instar)		
Soybean looper		
Yellowstriped armyworm		
Pest Suppressed		
Whitefly (adult)	3.2	0.05

Notes and Restrictions:

Pre-Harvest Interval (PHI): **0 day.**

Maximum Tombstone Helios allowed per 3-day interval: **3.2 fluid ounces per acre (0.05 pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **32.0 fluid ounces per acre (0.5 pounds active ingredient per acre).**

Minimum ULV application volume (once refined cotton seed/vegetable oil): **1.0 quart per acre – aerial application.**

Do not graze treated fields.

Do not make more than a total of 10 synthetic pyrethroid applications (of one product or combination of products) to a cotton crop in one growing season.

*See INSECT RESISTANCE statement elsewhere on this label.

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GRASS

Pasture / Rangeland / Grass for Seed / Grass for Hay / Grass in mixed-stands with Alfalfa

PESTS CONTROLLED	Rate fl oz/A	Rate lb AI/A
Armyworms (1st and 2nd instar)	1.6 to 1.9	0.025 to 0.03
Grass thrips		
Grasshoppers	2.6 to 2.8	0.040 to 0.044

Notes and Restrictions: Grass for Pasture, Rangeland and Grass for Seed

Pre-Grazing Interval: **0 day** (minimum time between last application and beginning of foraging or seed harvest).
 Maximum Tombstone Helios allowed per 5-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**.

Maximum Tombstone Helios allowed per crop season: **11.3 fluid ounces per acre (0.176 pounds active ingredient per acre)**.

Notes and Restrictions: Grass for Hay

Pre-Harvest Interval (PHI): **0 day** (minimum time between last application and baling for harvest).

Maximum Tombstone Helios allowed per 5-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**.

Maximum Tombstone Helios allowed per cutting: **11.3 fluid ounces per acre (0.176 pounds active ingredient per acre)**.

Notes and Restrictions: Grass in mixed-stands with Alfalfa

See additional PESTS CONTROLLED from ALFALFA section of label.

Pre-Harvest Interval (PHI) / Pre-Grazing Interval: **7 days** (minimum time between last application and beginning of foraging or baling).

Maximum Tombstone Helios allowed per cutting: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**.

Maximum Tombstone Helios allowed per crop season: **11.3 fluid ounces per acre (0.176 pounds active ingredient per acre)**.

PEANUT

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Cutworms	1.0 to 1.8	0.016 to 0.028
Green cloverworm		
Potato leafhopper		
Rednecked peanutworm		
Velvetbean caterpillar		
Armyworm (1st and 2nd instar)	1.8 to 2.4	0.028 to 0.038
Bean leaf beetle		
Corn earworm		
Corn rootworms (adult)		
Grape colaspis (adult)		
Grasshoppers		
Japanese beetle (adult)		
June beetle (adult)		
Stink bugs		
Threecornered alfalfa hopper		
Vegetable weevil		
Beet armyworm (1st and 2nd instar)	2.4 to 2.8	0.038 to 0.044
Fall armyworm (1st and 2nd instar)		
Southern armyworm (1st and 2nd instar)		
Whitefringed beetle (adult)		

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PEANUT CONT'D

Pests Suppressed	Rate fl oz/A	Rate lbs AI/A
Soybean looper	2.8	0.044
Thrips		
Whitefly (adult)		

Notes and Restrictions: Pre-Harvest Interval (PHI): **14 days (minimum time between final application and threshing for seed).**

Maximum Tombstone Helios allowed per 10 day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**

Maximum Tombstone Helios allowed per crop season: **8.4 fluid ounces per acre (0.131 pounds active ingredient per acre)**

Minimum ULV application volume (once refined cotton seed/vegetable oil): **1.0 quart per acre - aerial application.**

SORGHUM

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Cutworms	1.0 to 1.3	0.016 to 0.020
Sorghum midge		
Armyworm (1st and 2nd instar)	1.3 to 2.8	0.020 to 0.044
Beet armyworm (1st and 2nd instar)		
Black woollybear		
European corn borer*		
Fall armyworm (1st and 2nd instar)		
False chinch bug		
Flea beetle		
Sorghum headworm (corn earworm)		
Sorghum webworm		
Southern armyworm (1st and 2nd instar)		
Southwestern corn borer*		
Stalk borer*		
Stink bugs		
True armyworm (1st and 2nd instar)		
Webworms		
Yellowstriped armyworm (1st and 2nd instar)		
Chinch bug	2.0 to 2.8	0.038 to 0.044
Grasshoppers		
Sugarcane rootstock weevil		

Notes and Restrictions: Pre-Harvest Interval (PHI): **14 days.**

If more than 5.6 fluid ounces per acre is applied, allow at least 14 days between last application and grazing.

Maximum Tombstone Helios allowed per 10-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **8.4 fluid ounces per acre (0.131 pounds active ingredient per acre).**

Minimum ULV application volume (once refined cotton seed/vegetable oil): **1.0 quart per acre – aerial application.**

*Application must be made prior to the larva boring into the plant.

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SOYBEAN

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Bean leaf beetle (growth stage VC – V2)	0.8 to 1.6	0.013 to 0.025
Cutworms		
Potato leafhopper		
Thrips		
Green cloverworm		
Armyworm	1.6 to 2.8	0.025 to 0.044
Bean leaf beetle		
Bean leaf webber		
Beet armyworm (1st and 2nd instar)		
Blister beetle		
Cabbage looper		
Click beetle (adult)		
Corn earworm		
Corn rootworms (adult)		
Cucumber beetle		
European corn borer		
Fall armyworm (1st and 2nd instar)		
Grape colaspis (adult)		
Japanese beetle (adult)		
June beetle (adult)		
Lygus bug		
Masked chafer (adult)		
Mexican bean beetle		
Saltmarsh caterpillar		
Silverspotted skipper		
Southern armyworm (1st and 2nd instar)		
Stink bugs		
Tarnished plant bug*		
Threecornered alfalfa hopper		
Tobacco budworm*		
Velvetbean caterpillar		
Webworm		
Woollybear caterpillar		
Yellowstriped armyworm		
Grasshoppers	2.0 to 2.8	0.031 to 0.044
Soybean aphid		
Pests Suppressed		
Lesser cornstalk borer	2.8	0.044
Soybean looper*		

Notes and Restrictions:

Pre-Harvest Interval (PHI) or feeding of dry vines: **45 days**. Green forage may be fed **15 days** after last application.

Maximum Tombstone Helios allowed per 7-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**

Maximum Tombstone Helios allowed per crop season: **11.2 fluid ounces per acre (0.175 pounds active ingredient per acre)**.

Minimum ULV application volume (once refined cotton seed/vegetable oil): **1.0 quart per acre – aerial application**.

*See INSECT RESISTANCE statement elsewhere on this label.

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SUGARCANE

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Sugarcane borer*	2.1	0.033
Rice stalk borer*	2.8	0.044

Notes and Restrictions:

Pre-Harvest Interval (PHI): **15 days**

Maximum Tombstone Helios allowed per 7-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **16.8 fluid ounces per acre (0.263 pounds active ingredient per acre).**

For ground application, apply in a minimum of 20.0 gallons per acre.

Minimum ULV application volume (once refined cotton seed/vegetable oil): **1.0 quart per acre – aerial application.**

Do not apply if soil is saturated with water.

Do not apply when under conditions that favor runoff.

Do not apply in the rain.

*Application must be made prior to the larva boring into the plant.

SUNFLOWER

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Cutworms	0.8 to 1.6	0.013 to 0.025
Sunflower beetle		
Sunflower stem weevil (adult)	1.6 to 2.4	0.025 to 0.038
Banded sunflower moth	2.0 to 2.8	0.031 to 0.044
Grasshoppers		
Stink bugs		
Sunflower bud moth		
Sunflower headclipping weevil		
Sunflower midge		
Sunflower moth		
Sunflower seed weevil		
Palestriped flea beetle	2.8	0.044

Notes and Restrictions:

Pre-Harvest Interval (PHI) and Pre-grazing or Foraging interval: **30 days.**

Maximum Tombstone Helios allowed per 7-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **8.4 fluid ounces per acre (0.131 pounds active ingredient per acre).**

DO NOT apply by ULV.

TOBACCO

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Cutworms	0.28	0.0044

Notes and Restrictions:

Apply up to 7 days following transplanting as an individual plant treatment.

Maximum Tombstone Helios allowed per crop season: **0.28 fluid ounces per acre (0.0044 pounds active ingredient per acre).**

Maximum number of applications : **1.**

Minimum application volume (water): **15.0 gallons per acre - ground**

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WHEAT

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Army cutworm	1.0 to 1.8	0.016 to 0.028
Cereal leaf beetle		
Cutworms		
Armyworm (1st and 2nd instar)	1.8 to 2.4	0.028 to 0.038
Bird cherry-oat aphid*		
English grain aphid*		
Fall armyworm (1st and 2nd instar)		
Flea beetles		
Grasshoppers		
Grass sawfly		
Pale western cutworm		
Russian wheat aphid*		
Southern armyworm (1st and 2nd instar)		
Stink bugs		
Yellowstriped armyworm (1st and 2nd instar)		
Chinch bug	2.4	0.038

Notes and Restrictions:

Pre-Grazing or Foraging Interval: **3 days**. Pre-Harvest Interval (PHI): **30 days**.

Maximum Tombstone Helios allowed per 3-day interval: **2.4 fluid ounces per acre (0.038 pounds active ingredient per acre)**.

Maximum Tombstone Helios allowed per crop season: **4.8 fluid ounces per acre (0.076 pounds active ingredient per acre)**.

Minimum ULV application volume (cotton seed/vegetable oil); **1.0 quart per acre - aerial application**.

*For best control, applications must be made prior to insects damaging the plants. Use the higher rate range and increased water volume for applications occurring after plant damage has taken place or following booting in order to receive better coverage. Once damage occurs or plant growth stage reaches booting, control may be limited to suppression only.

VEGETABLE CROPS

Recommended Applications - Tombstone Helios

For all crops, apply specific dosage of Tombstone Helios at early threshold for target pest, as population begins to develop. Degree of control or suppression of additional labeled pests will be determined, in part by the stage of pest development at application and infestation level of those pests.

Application timing should be based on local economic thresholds. Tombstone Helios may be applied before, during, or after planting. Use the higher rates for moderate to heavy insect pressure. Lower rates are generally adequate for low to moderate insect pressure but require careful scouting and may require more frequent application.

Tombstone Helios is an Emulsifiable Concentrate formulation and is active by contact and ingestion. Thorough coverage is necessary for optimum performance.

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BRASSICA (COLE) LEAFY VEGETABLES

Includes all members of Crop Group 5: Broccoli, Broccoli raab (rapini), Chinese (gai lon) broccoli, Brussels sprouts, Cabbage, Chinese (bok choy) cabbage**, Chinese (napa) cabbage, Chinese mustard (gai choy) cabbage, Cauliflower, Cavalo broccolo, Collards**, Kale**, Kohlrabi, Mizuna**, Mustard greens, Mustard spinach**, Rape greens**, and Turnip greens.**

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Cutworms	0.8 to 1.6	0.013 to 0.025
Potato leafhopper		
Thrips		
Alfalfa looper	1.6 to 2.4	0.025 to 0.038
Cabbage looper		
Cabbage webworm		
Imported cabbageworm		
Southern cabbageworm		
Armyworm	2.4 to 3.2	0.038 to 0.05
Beet armyworm (1st and 2nd instar)		
Cabbage flea beetle		
Corn earworm		
Diamondback moth (larvae)*		
Fall armyworm (1st and 2nd instar)		
Grasshoppers		
Japanese beetle (adult)		
Lygus bug		
Meadow spittlebug		
Southern armyworm (1st and 2nd instar)		
Stink bugs		
Tarnished plant bug*		
Vegetable weevil (adult)	2.4 to 3.2	0.038 to 0.05
Yellowstriped armyworm		
Pest Suppressed		
Whitefly (adult)	3.2	0.05

Notes and Restrictions:

Pre-Harvest Interval (PHI): **0 day.**

Maximum Tombstone Helios allowed per 7-day interval: **3.2 fluid ounces per acre (0.05 pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **12.8 fluid ounces per acre (0.2 pounds active ingredient per acre).**

For aerial applications, apply in a minimum of 5.0 gallons per acre.

Due to potential injury to bees, do not apply to cole crops grown for seed.

*See INSECT RESISTANCE statement elsewhere on this label.

** Use not permitted in CA.

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CUCURBITS (except crops grown for seed)

Includes all members of Crop Group 9: Balsam apple, Balsam pear, Bitter melon, Chayote, Chinese cucumber, Chinese waxgourd (Chinese preserving melon), Citron melon, Cucumber, Gherkin, Edible gourd (includes: hyotan, cucuzza, henchmia and Chinese okra), Muskmelon (includes: cantaloupe, true cantaloupe, casaba, Crenshaw melon, golden pershaw melon, honeydew melon, honey balls, mango melon, Persian melon, pineapple melon, Santa Claus melon, and snake melon), Pumpkin, Summer squash (includes: crookneck squash, scallop squash, straightneck squash, vegetable marrow, and zucchini), Watermelon, Winter squash (includes: butternut squash, calabaza, hubbard squash, acorn squash and spaghetti squash)

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Cutworms	0.8 to 1.6	0.013 to 0.025
Potato leafhopper		
Armyworm (1st and 2nd instar)	1.6 to 2.4	0.025 to 0.038
Cabbage looper		
Corn earworm		
Grasshoppers		
Melonworm		
Pickleworm		
Rindworm		
Stink bugs		
Cucumber beetle	2.4 to 2.8	0.038 to 0.044
Lygus bug		
Stripped cucumber beetle		
Tarnished plant bug*		
Tobacco budworm		
Pest Suppressed		
Whitefly (adult)	2.8	0.044

Notes and Restrictions:

Pre-Harvest Interval (PHI): **0 day.**

Maximum Tombstone Helios allowed per 7-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**

Maximum Tombstone Helios allowed per crop season: **11.2 fluid ounces per acre (0.175 pounds active ingredient per acre)**

*See INSECT RESISTANCE statement elsewhere in this label.

FRUITING VEGETABLES

Includes all members of Crop Group 8: Eggplant, Groundcherry, Pepino, Pepper (includes: bell pepper, chili pepper, cooking pepper, pimento, sweet pepper), Tomatillo, and Tomato

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Celery leaf-tier	1.6 to 2.8	0.025 to 0.044
Colorado potato beetle*		
European corn borer		
Garden webworm		
Potato aphid		
Potato leafhopper		
Stink bugs		
Tomato fruitworm (corn earworm)		
Tomato hornworm		

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FRUITING VEGETABLES CONT'D

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Beet armyworm (1st and 2nd instar)	2.1 to 2.8	0.033 to 0.044
Cabbage looper		
Southern armyworm (1st and 2nd instar)		
Tarnished plant bug*		
Thrips (except <i>Thrips palmi</i>)		
Tomato pinworm		
Variegated cutworm		
Western yellowstriped armyworm (1st and 2nd instar)		
Flea beetles	2.8	0.044
Garden symphylan**		
Pests Suppressed		
Leafminers	2.8	0.044
Pepper weevil		
Whitefly (adult)		

Notes and Restrictions:

Pre-Harvest Interval (PHI) for tomato: **0 days**. PHI for all other fruiting vegetables included in this section: **7 days**.

Maximum Tombstone Helios allowed per 7-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**

Maximum Tombstone Helios allowed per crop season: **16.8 fluid ounces per acre (0.263 pounds active ingredient per acre)**

For reduction of damage caused by garden symphylan. Apply specified dosage to the top of the planting beds prior to transplanting. Spray should cover the entire top of the beds. Thoroughly incorporate to a depth of approximately 4 to 6 inches. A maximum of 1 pre-transplant application is allowed per crop season.

* See INSECT RESISTANCE statement elsewhere on this label.

** Except California

LEAFY VEGETABLES

Includes all members of Crop Group 4: Amaranth (Chinese spinach), Arugula (roquette), Cardoon, Celery, Chinese celery, Celtuce, Chervil, Chrysanthemum (edible-leaved and garland), Corn salad, Cress (garden and upland), Dandelion, Dock (sorrel), Endive (escarole), Florence fennel, Lettuce (head and leaf), New Zealand spinach, Orach, Parsley, Purslane (garden and winter), Radicchio (red chicory), Rhubarb, Spinach, Swiss chard, Vine spinach

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Cutworms	0.8 to 1.6	0.013 to 0.025
Potato leafhopper		
Thrips		
Alfalfa looper	1.6 to 2.4	0.025 to 0.038
Cabbage looper		
Green cloverworm		
Imported cabbageworm		
Saltmarsh caterpillar		

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LEAFY VEGETABLES CONT'D

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Beet armyworm (1st and 2nd instar)	2.4 to 3.2	0.038 to 0.05
Corn earworm		
Diamondback moth (larvae)*		
European corn borer		
Fall armyworm (1st and 2nd instar)		
Flea beetles		
Grasshoppers		
Japanese beetle (adult)		
Leafhoppers		
Lygus bug		
Meadow spittlebug		
Southern armyworm (1st and 2nd instar)		
Stink bugs		
Tarnished plant bug*		
Vegetable weevil (adult)		
Yellowstriped armyworm		
Pest Suppressed		
Whitefly (adult)	3.2	0.05

Notes and Restrictions:

Pre-Harvest Interval (PHI): **0 day.**

Maximum Tombstone Helios allowed per 7-day interval: **3.2 fluid ounces per acre (0.05 pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **12.8 fluid ounces per acre (0.2 pounds active ingredient per acre).**

Minimum application volume (water): **10.0 gallons per acre – ground, 5.0 gallons per acre – aerial application.**

Due to potential injury to bees, do not apply to crops grown for seed.

*See INSECT RESISTANCE statement elsewhere on this label.

DRIED SHELLLED LEGUME VEGETABLES Includes all members of Crop Subgroup 6C: Adzuki bean, Blackeyed pea, Broad bean, Catjang, Chickpea, Cowpea, Crowder pea, Field bean, Field pea, Garbanzo bean, Guar, Kidney bean, Lablab bean, Lentil, Lima bean, Lupin (grain, sweet, white and white sweet), Moth bean, Mung bean, Navy bean, Pigeon pea, Pinto bean, Rice bean, Tepary bean, Urd bean

(Southern pea included in separate section.)

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Cutworms	0.8 to 1.6	0.013 to 0.025
Potato leafhopper		
Cowpea curculio*	1.6 to 2.4	0.025 to 0.038
Stink bugs		
Tarnished plant bug*		

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DRIED SHELLLED LEGUME VEGETABLES CONT'D

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Bean leaf beetle	2.4 to 3.2	0.038 to 0.05
Bean leaf webber		
Beet armyworm (1st and 2nd instar)		
Blister Beetle		
Cabbage looper		
Corn earworm		
Cucumber beetle		
European corn borer		
Fall armyworm (1st and 2nd instar)		
Grasshoppers		
Green cloverworm		
Japanese beetle (adult)		
Lygus bug		
Mexican bean beetle		
Pea leaf weevil		
Pea weevil		
Saltmarsh caterpillar		
Silverspotted skipper		
Soybean looper*		
Threecornered alfalfa hopper		
Tobacco budworm*		
Velvetbean caterpillar		
Webworm		
Woollybear caterpillar		
Yellowstriped armyworm (1st and 2nd instar)		
Pest Suppressed		
Pea aphid	3.2	0.05

Notes and Restrictions:

Pre-Harvest Interval (PHI): **7 days** (minimum time between final application and threshing for seed).

Maximum Tombstone Helios allowed per 14-day interval: **3.2 fluid ounces per acre (0.05 pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **6.4 fluid ounces per acre (0.1 pounds active ingredient per acre).**

Minimum application volume (water): **10.0 gallons per acre – ground, 5.0 gallons per acre – aerial application.**

For aerial applications, apply in a minimum of 5.0 gallons per acre.

Do not feed treated vines or hay to livestock.

*See INSECT RESISTANCE statement elsewhere on this label.

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PEA, SOUTHERN

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Cutworms	0.8 to 1.6	0.013 to 0.025
Potato leafhopper		
Beet armyworm (1st and 2nd instar)	1.6 to 2.1	0.025 to 0.033
Fall armyworm (1st and 2nd instar)		
Corn earworm		
Cowpea curculio		
Grasshoppers		
Lygus bug		
Stink bugs		
Southern armyworm (1st and 2nd instar)		
Tarnished plant bug*		
Thrips		
Yellowstriped armyworm (1st and 2nd instar)		

Notes and Restrictions:

Pre-Harvest Interval (PHI): **3 day.**

Maximum Tombstone Helios allowed per 5-day interval: **2.1 fluid ounces per acre (0.033 pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **10.5 fluid ounces per acre (0.165 pounds active ingredient per acre).**

Due to potential injury to bees, do not apply to southern peas grown for seed.

Do not feed treated vines or hay to livestock.

Do not apply to cowpea or southern pea varieties grown for livestock feed.

*See INSECT RESISTANCE statement elsewhere on this label.

POTATO, SWEET POTATO and other tuberous and corm vegetables:

Includes all members of Crop Subgroup 1C: Arracacha, Arrowroot, Artichoke (Chinese and Jerusalem), Edible canna, Cassava (bitter and sweet), Chayote root, Chufa, Dasheen, Ginger, Leren, Potato, Sweet potato, Tanier, True yam, Turmeric, Yam bean

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Cutworms	0.8 to 1.6	0.013 to 0.025
Potato leafhopper		
Cabbage looper	1.6 to 2.8	0.025 to 0.044
Colorado potato beetle*		
European corn borer		
Potato flea beetles		
Potato psyllid		
Potato tuberworm		
Sweet potato weevil (adult)		
Tarnished plant bug*		
Pest Suppressed		
Aphids	2.8	0.044

Notes and Restrictions:

Pre-Harvest Interval (PHI): **0 day**

If more than 5.6 fluid ounces per acre is applied, allow at least 14 days between last application and grazing.

Maximum Tombstone Helios allowed per 5-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **16.8 fluid ounces per acre (0.263 pounds active ingredient per acre).**

*See INSECT RESISTANCE statement elsewhere on this label.

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CARROT and RADISH

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Aster leafhopper	1.6 to 2.8	0.025 to 0.044
Cutworms		
Flea Beetle		
Potato leafhopper		
Carrot weevil	2.8	0.044

Notes and Restrictions:

Pre-Harvest Interval (PHI): **0 day**.

Maximum Tombstone Helios allowed per 7-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**

Maximum Tombstone Helios allowed per crop season: **14.0 fluid ounces per acre (0.22 pounds active ingredient per acre)**

Do not harvest radish tops (leaves) for human consumption.

Due to potential injury to bees, do not apply to any of the crops listed in this section grown for seed.

SWEET CORN - Foliar Applications

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Black cutworm	0.8 to 1.6	0.013 to 0.025
Flea beetles		
Granulate cutworm		
Sand hill cutworm		
Armyworm (1st and 2nd instar)	1.6 to 2.8	0.025 to 0.044
Bean leaf beetle		
Cereal leaf beetle		
Chinch bug		
Click beetle (adult)		
Corn earworm		
Corn rootworms (adult)		
Corn silk fly		
European corn borer*		
Grape colaspis (adult)		
Japanese beetle (adult)		
June beetle (adult)		
Leafhoppers		
Masked chafer (adult)		
Southern armyworm (1st and 2nd instar)		
Southern corn leaf beetle		
Southwestern corn borer*		
Stalk borer*		
Stink bugs		
Webworm		
Western bean cutworm		
Yellowstriped armyworm (1st and 2nd instar)		
Grasshoppers	2.0 to 2.8	0.031 to 0.044
Fall armyworm (1st and 2nd instar)	2.8	0.044

Notes and Restrictions:

Pre-Harvest Interval (PHI): **0 day**

Maximum Tombstone Helios allowed per 2-day interval: **2.8 fluid ounces per acre (0.044) pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **28.0 fluid ounces per acre (0.44 pounds active ingredient per acre).**

Minimum ULV application volume (once refined cotton seed/vegetable oil): **1.0 quart per acre – aerial application.**

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* Application must be made prior to the larva boring into the plant.

SWEET CORN – Soil Applications**

PESTS CONTROLLED	RATE fl oz/ 1000 row-ft	RATE fl oz/A
Seed corn maggot Wireworm	0.12 to 0.16	2.0 to 2.8
PEST SUPPRESSED		
White grub	0.14 to 0.16	2.5 to 2.8

Notes and Restrictions:

Pre-Harvest Interval (PHI): **0 day.**

Maximum Tombstone Helios allowed at planting: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre).**

Application Instructions: Tombstone Helios may be applied in water or in liquid, pop-up fertilizer at planting. Apply in a minimum of 2.0 gallons per acre of total mix volume when applied in water. Good agitation must be maintained at all times during application.

Instructions For liquid Pop-Up Fertilizer Application: Perform a compatibility test prior to mixing the entire tank to ensure that Tombstone Helios will remain in solution while applying. Take a known amount of the fertilizer to be used as a carrier and place in a glass jar. Add the appropriate amount of Tombstone Helios based on the labeled use rate. Add other components to be tank mixed. Gently agitate the solution. Examine the solution for signs of incompatibility such as flocculation, precipitation, separation, etc. If incompatibility occurs, contact your local representative of Loveland Products for additional information. Fertilizers containing zinc have been shown to be incompatible with Tombstone Helios.

Placement: Apply total mix volume in the open furrow ahead of the closing wheels for optimum coverage.

**Use not permitted in California.

TREE and VINE CROPS

Recommended Applications – Tombstone Helios

For all crops, apply specific dosage of Tombstone Helios at early threshold for target pest, as population begins to develop. Degree of control or suppression of additional labeled pests will be determined, in part by the stage of pest development at application and infestation level of those pests.

Application rates within this label are based on full-size mature trees and vines. Application timing should be based on careful scouting and local economic thresholds. Use the higher rates for moderate to heavy insect pressure. Lower rates are generally adequate for smaller trees/vines or low to moderate insect pressure but require careful scouting and may require more frequent application.

Tombstone Helios is an Emulsifiable Concentrate (EC) formulation and is active by contact and ingestion. Thorough coverage of foliage and fruit is necessary for optimum performance.

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CITRUS (California and Arizona, Only)

Includes all members of Crop Group 10:

Calamondin, Citrus citron, Citrus hybrids (includes chironja, tangelo, and tangor), Grapefruit, Kumquat, Lemon, Lime, Mandarin (tangerine), Orange (sweet and sour), Pummelo, Satsuma mandarin, Tangelo, White sapote, and other cultivars and/or hybrids of these.

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Glassywinged sharpshooter	1.6 to 3.2	0.025 to 0.05
Foliar feeding cutworms	2.4 to 3.2	0.038 to 0.05
Fuller rose beetle (larvae and adults on foliage)		
Grasshoppers		
Root-weevil complex (larvae and adults on foliage)		
Citrus thrips	6.4	0.1
Katydid		

Notes and Restrictions:

Pre-Harvest Interval (PHI): **0 day.**

Maximum Tombstone Helios allowed per 7-day interval: **6.4 fluid ounces per acre (0.1 pounds active ingredient per acre).**

Maximum Tombstone Helios allowed per crop season: **6.4 fluid ounces per acre (0.1 pounds active ingredient per acre).**

Minimum application volume (water): **25.0 gallons per acre – ground, 25.0 gallons per acre – aerial application.**

GRAPE

Includes: Table grape, Raisin, Wine and Muscadine grape

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Glassywinged sharpshooter	1.6 to 3.2	0.025 to 0.05
Grape leaf skeletonizer		
Western grape skeletonizer		
Climbing cutworm	2.4 to 3.2	0.038 to 0.05
Grape berry moth		
Grape bud beetle		
Grape cane gallmaker (adult)		
Grape flea beetle		
Grape leaf folder		
Grape leafhopper		
Grape leafroller		
Grape mealybug (crawlers)		
Omnivorous leafroller		
Orange tortrix		
Thrips		
Variiegated leafhopper		

Notes and Restrictions:

Pre-Harvest Interval (PHI): **3 days.**

Maximum Tombstone Helios allowed per 14-day interval: **3.2 fluid ounces per acre (0.05 pounds active ingredient per acre)**

Maximum Tombstone Helios allowed per crop season: **12.8 fluid ounces per acre (0.2 pounds active ingredient per acre)**

Minimum application volume (water): 50.0 gallons per acre - ground; 25.0 gallons per acre - aerial application.

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HOP

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Hop aphid	3.2	0.05
Hop flea beetle		
Hop looper		
Hop plant bug		

Notes and Restrictions:

Pre-Harvest Interval (PHI): **7 days**

Maximum Tombstone Helios allowed per 14-day interval: **3.2 fluid ounces per acre (0.05 pounds active ingredient per acre)**

Maximum Tombstone Helios allowed per crop season: **16.0 fluid ounces per acre (0.25 pounds active ingredient per acre)**

Minimum application volume (water): **25.0 gallons per acre - ground; 25.0 gallons per acre - aerial application.**

POME FRUIT

Includes all members of Crop Group 11: Apple, Crabapple, Loquat, Mayhaw, Pear, Oriental pear, Quince

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Green fruitworm	1.4 to 2.0	0.022 to 0.031
Potato leafhopper		
White apple leafhopper		
Codling moth	2.0 to 2.4	0.031 to 0.038
Oriental fruit moth		
Spotted tentiform leafminer		
Stink bugs		
Tarnished plant bug		
Western tentiform leafminer		
Apple leafroller	2.4 to 2.8	0.038 to 0.044
Apple maggot		
Ermine moth		
European apple sawfly		
Lesser appleworm		
Obliquebanded leafroller		
Pandemis leafroller		
Pear sawfly (larvae = pear slug)		
Periodical cicada		
Plum curculio		
Redbanded leafroller		
San Jose scale (crawlers)		
Tufted apple bud moth		
Variiegated leafroller		

Notes and Restrictions:

Pre-Harvest Interval (PHI): **7 days**

Maximum Tombstone Helios allowed per 14-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**

Maximum Tombstone Helios allowed per crop season: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**

Minimum application volume (water): **100 gallons per acre - ground application; 25.0 gallons per acre - aerial application.**

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STONE FRUIT

Includes all members of Crop Group 12: Apricot, Cherry (sweet and tart), Nectarine, Peach, Plum (includes chickasaw plum, damson plum, and Japanese plum), Plumcot, Prune (fresh and dried)

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Green fruitworm	1.4 to 2.0	0.022 to 0.031
Lesser peach tree borer		
White apple leafhopper		
Codling moth	2.0 to 2.4	0.031 to 0.038
Lygus bug		
Oriental fruit moth		
Stink bugs		
Tarnished plant bug		
American plum borer	2.4 to 2.8	0.038 to 0.044
Black cherry aphid		
Cherry fruit fly		
Obliquebanded leafroller		
Omnivorous leafroller		
Peach twig borer		
Periodical cicada		
Plum curculio		
Redbanded leafroller		
Western cherry fruit fly		

Notes and Restrictions:

Pre-Harvest Interval (PHI): **7 days.**

Maximum Tombstone Helios allowed per 14-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**

Maximum Tombstone Helios allowed per crop season: **5.6 fluid ounces per acre (0.088 pounds active ingredient per acre)**

Minimum application volume (water): **50.0 gallons per acre - ground application; 25.0 gallons per acre - aerial application.**

TREE NUT CROPS

Includes all members of Crop Group 14: Almond, Beechnut, Brazil nut, Butternut, Cashew, Chestnut, Chinquapin, Filbert, Hickory nut, Macadamia nut, Pecan, Pistachio, Walnut (black and English)

Pests Controlled	Rate fl oz/A	Rate lbs AI/A
Potato leafhopper	1.4 to 2.0	0.022 to 0.031
White apple leafhopper		
Ants (on foliage)	2.0 to 2.4	0.031 to 0.038
Codling moth		
Common earwig		
Filbertworm		
Leaffooted bug		
Navel orangeworm		
Pecan nut casebearer		
Pecan weevil		
Stink bugs		
Tarnished plant bug		
Twolined spittlebug		
Hickory shuckworm	2.4 to 2.8	0.038 to 0.044
Obliquebanded leafroller		
Peach twig borer		
Walnut husk fly		

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Notes and Restrictions:

Pre-Harvest Interval (PHI): **14 days**

Maximum Tombstone Helios allowed per 14-day interval: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**

Maximum Tombstone Helios allowed per crop season: **2.8 fluid ounces per acre (0.044 pounds active ingredient per acre)**

Minimum application volume (water): **100 gallons per acre - ground application; 25.0 gallons per acre - aerial application.**

RATE CONVERSION CHART

FL OZ/A	LBS AI/A	A/GAL
0.8	0.013	160
1.0	0.016	128
1.2	0.019	107
1.4	0.022	91
1.6	0.025	80
1.8	0.028	71
2.0	0.031	64
2.2	0.034	56
2.4	0.038	53
2.6	0.041	49
2.8	0.044	46
3.0	0.047	43
3.2	0.05	40
6.4	0.1	20

RATE CONVERSION CHART FOR TREE AND VINE APPLICATIONS

FL OZ/A	FL OZ/100 GAL OF WATER WHEN USING SPRAY VOLUME OF:						
	25.0 GPA	50.0 GPA	100 GPA	150 GPA	200 GPA	250 GPA	500 GPA
1.4	5.6	2.8	1.4	0.9	0.7	0.56	0.28
1.6	6.4	3.2	1.6	1.1	0.8	0.64	0.32
2.0	8.0	4.0	2.0	1.3	1.0	0.8	0.4
2.4	9.6	4.8	2.4	1.6	1.2	1.0	0.5
2.8	11.2	5.6	2.8	1.9	1.4	1.1	0.6
3.2	12.8	6.4	3.2	2.1	1.6	1.3	0.65
6.4	25.6	12.8	6.4	4.3	3.2	2.6	1.3

STORAGE AND DISPOSAL

Do not contaminate water, food or feed by storage or disposal.

PESTICIDE STORAGE: Store in a cool, dry place and away from open flame and extreme heat. Store in such a manner as to prevent cross contamination with other pesticides, fertilizers, food and feed. Store in original container and out of the reach of children, preferably in a locked storage area.

Handle open container in a manner as to prevent spillage. If container is leaking, invert container to prevent leakage. If the container is leaking or material spilled for any reason or cause, carefully dam up spilled material to prevent runoff. Refer to Precautionary Statements on label for hazards associated with the handling of this material. Do not walk through spilled material. Absorb spilled material with absorbing type compounds and dispose of as directed for pesticides below. In spill or leak incidents, keep unauthorized people away.

PESTICIDE DISPOSAL: Pesticide wastes are acutely hazardous. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, or the Hazardous Waste representative at the nearest EPA Regional Office for guidance.

CONTAINER HANDLING:

Nonrefillable container. Do not reuse this container to hold materials other than pesticides or dilute pesticides (rinsate). After emptying and cleaning, it may be allowable to temporarily hold rinsate or other pesticide-related materials in the container. Contact your state regulatory agency to determine allowable practices in your state. Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer, or contact The Agricultural Container Recycling Council (ACRC) at www.acrecycle.org. If not recycled, then puncture and dispose of in a sanitary landfill, or incineration, or if allowed by state and local authorities, by burning. If burned, stay out of smoke.

Triple rinse or pressure rinse container (or equivalent) promptly after emptying.

For packages up to 5 gallons: Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank and drain for 10 seconds after the flow begins to drip. Fill the container ¼ full with water and recap. Shake for 10 seconds. Pour rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times. **Pressure rinse as follows:** Empty the remaining contents into application equipment or a mix tank and continue to drain for 10 seconds after the flow begins to drip. Hold container upside down over application equipment or mix tank or collect rinsate for later use or disposal. Insert pressure rinsing nozzle in the side of the container, and rinse at about 40 PSI for at least 30 seconds. Drain for 10 seconds after the flow begins to drip.

For packages greater than 5 gallons or 50 lbs: Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank. Fill the container ¼ full with water. Replace and tighten closures. Tip container on its side and roll it back and forth, ensuring at least one complete revolution, for 30 seconds. Stand the container on its end and tip it back and forth several times. Turn the container over onto its other end and tip it back and forth several times. Empty the rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Repeat this procedure two more times. **Pressure rinse as follows:** Empty the remaining contents into application equipment or a mix tank and continue to drain for 10 seconds after the flow begins to drip. Hold container upside down over application equipment or mix tank or collect rinsate for later use or disposal. Insert pressure rinsing nozzle in the side of the container, and rinse at about 40 PSI for at least 30 seconds. Drain for 10 seconds after the flow begins to drip.

Storage & Disposal cont'd.:

For square bottom caged totes greater than 55 gals.: Triple rinse or pressure rinse as follows: Empty the remaining contents into application equipment or a mix tank and continue drain for 10 seconds after the flow begins to drip. Fill the container about 1/4 full with water, rinsing down all sides inside the container thoroughly. Recirculate water with the pump for 2 minutes. Empty the rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Repeat this procedure two more times.

For refillable containers: Refill this container with pesticide only. Do not reuse this container for any other purpose. Cleaning the container before final disposal is the responsibility of the person disposing of the container. Cleaning before refilling is the responsibility of the refiller. To clean the container before final disposal, empty the remaining contents from this container into application equipment or mix tank. Fill the container about 10 percent full with water. Agitate vigorously or recirculate water with the pump for 2 minutes. Pour or pump rinsate into application equipment or rinsate collection system. Repeat this rinsing procedure two more times.

For help with any spill, leak, fire or exposure involving this material, call day or night CHEMTREC – 1-800-424-9300.

CONDITIONS OF SALE AND LIMITATION OF WARRANTY AND LIABILITY

BEFORE BUYING OR USING THIS PRODUCT, read the entire Directions for Use and the following Conditions of Sale and Limitation of Warranty and Liability. By buying or using this product, the buyer or user accepts the following Conditions of Sale and Limitation of Warranty and Liability, which no employee or agent of LOVELAND PRODUCTS, INC. or the seller is authorized to vary in any way.

Follow the Directions for Use of this product carefully. It is impossible to eliminate all risks inherently associated with the use of this product. Crop or other plant injury, ineffectiveness, or other unintended consequences may result from such risks as weather or crop conditions, mixture with other chemicals not specifically identified in this product's label, or use of this product contrary to the label instructions, all of which are beyond the control of LOVELAND PRODUCTS, INC. and the seller. The buyer or user of this product assumes all such inherent risks.

Subject to the foregoing inherent risks, LOVELAND PRODUCTS, INC. warrants that this product conforms to the chemical description on the label and is reasonably fit for the purposes stated in the Directions for Use when the product is used in strict accordance with such Directions for Use under normal conditions of use. EXCEPT AS WARRANTED IN THIS LABEL AND TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, THIS PRODUCT IS SOLD "AS IS," AND LOVELAND PRODUCTS, INC. MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ELIGIBILITY OF THIS PRODUCT FOR ANY PARTICULAR TRADE USAGE.

IN THE UNLIKELY EVENT THAT BUYER OR USER BELIEVES THAT LOVELAND PRODUCTS, INC. HAS BREACHED A WARRANTY CONTAINED IN THIS LABEL AND TO THE EXTENT REQUIRED BY APPLICABLE LAW, BUYER OR USER MUST SEND WRITTEN NOTICE OF ITS CLAIM TO THE FOLLOWING ADDRESS: LOVELAND PRODUCTS, INC., ATTENTION: LAW DEPARTMENT, P.O. BOX 1286, GREELEY, CO 80632-1286.

TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, THE BUYER'S OR USER'S EXCLUSIVE REMEDY FOR ANY INJURY, LOSS, OR DAMAGE RESULTING FROM THE HANDLING OR USE OF THIS PRODUCT, INCLUDING BUT NOT LIMITED TO CLAIMS OF BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORTS, SHALL BE LIMITED TO ONE OF THE FOLLOWING, AT THE ELECTION OF LOVELAND PRODUCTS, INC. OR THE SELLER: DIRECT DAMAGES NOT EXCEEDING THE PURCHASE PRICE OF THE PRODUCT OR REPLACEMENT OF THE PRODUCT. TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, LOVELAND PRODUCTS, INC. AND THE SELLER SHALL NOT BE LIABLE TO THE BUYER OR USER OF THIS PRODUCT FOR ANY CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, OR DAMAGES IN THE NATURE OF A PENALTY.

TOMBSTONE™ HELIOS®
EPA REG. NO. 34704-978

Helios is a registered trademark and Tombstone is a trademark of Loveland Products, Inc.

SPECIMEN

FORMULATED FOR
LOVELAND PRODUCTS, INC.
P.O. BOX 1286, GREELEY, COLORADO 80632-1286



RESPONDENT'S EXHIBIT
R-6



Weather observations for the past three days



Lambertville, Toledo Suburban Airport

Enter Your "City, ST" or zip code

Go

metric

Date	Time (edt)	Wind (mph)	Vis. (mi.)	Weather	Sky Cond.	Temperature (°F)				Relative Humidity	Wind Chill (°F)	Heat Index (°F)	Pressure		Precipitation (in.)		
						Air	Dwpt	6 hour					altimeter (in)	sea level (mb)	1 hr	3 hr	6 hr
								Max.	Min.								
21	16:15	N 6	10.00	Overcast	SCT041 OVC050	73	55			53%	NA	NA	30.13	NA			
21	15:55	NE 5	10.00	Overcast	SCT039 OVC050	73	56			54%	NA	NA	30.13	NA			
21	15:35	N 5	10.00	Overcast	OVC050	73	55			53%	NA	NA	30.13	NA			
21	15:15	E 3	10.00	Overcast	OVC050	73	55			54%	NA	NA	30.13	NA			
21	14:55	N 8	10.00	Overcast	OVC050	73	57			56%	NA	NA	30.13	NA			
21	14:35	N 6	10.00	Overcast	SCT037 OVC048	72	55			57%	NA	NA	30.13	NA			
21	14:15	N 6	10.00	Overcast	SCT037 OVC047	72	56			58%	NA	NA	30.13	NA			
21	13:55	N 5	10.00	Overcast	OVC047	72	56	72	63	58%	NA	NA	30.14	NA			
21	13:35	N 6	10.00	Mostly Cloudy	SCT036 SCT041 BKN047	72	56			58%	NA	NA	30.14	NA			
21	13:15	N 6	10.00	Mostly Cloudy	SCT036 BKN043	72	56			58%	NA	NA	30.14	NA			
21	12:55	N 6	10.00	Mostly Cloudy	SCT036 BKN045	72	57			60%	NA	NA	30.14	NA			
21	12:35	N 7	10.00	Partly Cloudy	SCT035 SCT045	72	57			59%	NA	NA	30.15	NA			
21	12:15	N 8	10.00	Mostly Cloudy	BKN038	72	56			57%	NA	NA	30.14	NA			
21	11:55	N 7	10.00	Mostly Cloudy	SCT029 BKN036	71	57			62%	NA	NA	30.14	NA			
21	11:35	N 5	10.00	Mostly Cloudy	SCT026 BKN032	69	58			67%	NA	NA	30.13	NA			
21	11:15	NW 6	10.00	Partly Cloudy	SCT024	69	58			67%	NA	NA	30.13	NA			
21	10:55	N 6	10.00	Partly Cloudy	SCT020	69	57			68%	NA	NA	30.13	NA			
21	10:35	N 6	10.00	Partly Cloudy	SCT020	68	58			70%	NA	NA	30.13	NA			
21	10:15	N 5	10.00	Partly Cloudy	SCT019	66	56			71%	NA	NA	30.12	NA			
21	09:55	N 9	10.00	Partly Cloudy	SCT019	67	57			71%	NA	NA	30.12	NA			
21	09:35	N 8	10.00	Fair	CLR	66	57			72%	NA	NA	30.11	NA			
21	09:15	N 8	10.00	Fair	CLR	66	57			75%	NA	NA	30.10	NA			
21	08:55	N 5	10.00	Fair	CLR	64	58			79%	NA	NA	30.10	NA			
21	08:35	N 7	10.00	Fair	CLR	64	58			81%	NA	NA	30.10	NA			
21	08:15	N 6	10.00	Partly Cloudy	SCT015	64	57			80%	NA	NA	30.10	NA			
21	07:55	N 3	10.00	Overcast	OVC015	63	57	67	63	81%	NA	NA	30.09	NA			
21	07:35	N 5	10.00	Overcast	OVC013	63	57			82%	NA	NA	30.08	NA			
21	07:15	N 6	10.00	Overcast	OVC013	63	57			83%	NA	NA	30.07	NA			
21	06:55	N 5	10.00	Overcast	OVC013	63	58			84%	NA	NA	30.07	NA			
21	06:35	N 3	10.00	Overcast	OVC013	63	58			84%	NA	NA	30.06	NA			
21	06:15	NE 3	10.00	Overcast	OVC013	63	58			84%	NA	NA	30.06	NA			
21	05:55	N 8	10.00	Overcast	OVC013	63	58			84%	NA	NA	30.05	NA			
21	05:35	N 5	10.00	Mostly	BKN013	63	58			85%	NA	NA	30.04	NA			

				Cloudy	BKN060												
21	05:15	N 6	10.00	Overcast	BKN013 OVC060	63	58			84%	NA	NA	30.03	NA			
21	04:55	NE 8	10.00	Overcast	OVC013	64	59			84%	NA	NA	30.03	NA			
21	04:35	N 7	10.00	Overcast	OVC013	64	59			84%	NA	NA	30.03	NA			
21	04:15	N 8	10.00	Overcast	OVC015	64	59			84%	NA	NA	30.02	NA			
21	03:55	N 7	10.00	Mostly Cloudy	BKN015	64	59			84%	NA	NA	30.02	NA			
21	03:35	NE 7	10.00	Partly Cloudy	SCT015 SCT050	64	60			88%	NA	NA	30.02	NA			
21	03:15	NE 5	10.00	Partly Cloudy	SCT050	64	60			87%	NA	NA	30.02	NA			
21	02:55	NE 3	10.00	Mostly Cloudy	BKN050	65	61			85%	NA	NA	30.02	NA			
21	02:35	NE 3	10.00	Mostly Cloudy	BKN050	65	61			85%	NA	NA	30.02	NA			
21	02:15	NE 9	10.00	Partly Cloudy	SCT012	66	61			84%	NA	NA	30.02	NA			
21	01:55	N 6	10.00	Mostly Cloudy	SCT010 BKN014	67	64	81	66	89%	NA	NA	30.02	NA			
21	01:35	N 6	10.00	Partly Cloudy	SCT016	67	64			90%	NA	NA	30.01	NA			
21	01:15	N 3	10.00	Partly Cloudy	SCT014	67	64			91%	NA	NA	30.00	NA			
21	00:55	N 3	10.00	Fair	CLR	67	64			89%	NA	NA	30.01	NA			
21	00:35	Calm	10.00	Fair	CLR	67	64			88%	NA	NA	30.00	NA			
21	00:15	Calm	10.00	Partly Cloudy	SCT055	68	64			87%	NA	NA	30.01	NA			
20	23:55	Calm	10.00	Fair	CLR	69	64			85%	NA	NA	30.01	NA			
20	23:35	Calm	10.00	Fair	CLR	69	64			83%	NA	NA	30.01	NA			
20	23:15	NE 5	10.00	Fair	CLR	71	63			77%	NA	NA	30.01	NA			
20	22:55	Calm	10.00	Fair	CLR	71	63			75%	NA	NA	29.99	NA			
20	22:35	NW 5	10.00	Partly Cloudy	SCT120	74	62			67%	NA	NA	29.98	NA			
20	22:15	Calm	10.00	Partly Cloudy	SCT050 SCT060	74	60			63%	NA	NA	29.97	NA			
20	21:55	N 7	10.00	Mostly Cloudy	SCT038 SCT046 BKN060	75	60			60%	NA	NA	29.98	NA			
20	21:35	N 9 G 16	10.00	Mostly Cloudy	SCT040 BKN048 BKN050	76	61			60%	NA	78	29.97	NA			
20	21:15	W 3	10.00	Fair	CLR	78	66			66%	NA	80	29.96	NA			
20	20:55	W 3	10.00	Fair	CLR	79	66			64%	NA	81	29.96	NA			
20	20:35	W 3	10.00	Fair	CLR	79	66			65%	NA	81	29.96	NA			
20	20:15	Calm	10.00	Fair	CLR	80	66			63%	NA	82	29.95	NA			
20	19:55	Calm	10.00	Fair	CLR	81	66	84	81	61%	NA	83	29.95	NA			
20	19:35	Calm	10.00	Fair	CLR	82	65			57%	NA	84	29.94	NA			
20	19:15	Calm	10.00	Fair	CLR	81	65			59%	NA	83	29.95	NA			
20	18:55	W 5	10.00	Fair	CLR	82	64			54%	NA	83	29.95	NA			
20	18:35	W 6	10.00	Partly Cloudy	SCT050	83	64			53%	NA	84	29.95	NA			
20	18:15	W 6	10.00	Mostly Cloudy	BKN050	83	64			53%	NA	84	29.95	NA			
20	17:55	W 5	10.00	Partly Cloudy	SCT050	83	63			51%	NA	84	29.95	NA			
20	17:35	W 3	10.00	Partly Cloudy	SCT055	83	62			49%	NA	84	29.95	NA			
20	17:15	W 7	10.00	Partly Cloudy	SCT049	83	62			48%	NA	84	29.96	NA			
20	16:55	W 7	10.00	Partly Cloudy	SCT047	83	62			49%	NA	84	29.96	NA			

20	16:35	W 6	10.00	Partly Cloudy	SCT047	83	63			50%	NA	84	29.96	NA		
20	16:15	W 8	10.00	Partly Cloudy	SCT048	83	63			51%	NA	84	29.97	NA		
20	15:55	W 7	10.00	Partly Cloudy	SCT046	83	63			50%	NA	84	29.97	NA		
20	15:35	W 8	10.00	Partly Cloudy	SCT044	83	65			54%	NA	85	29.98	NA		
20	15:15	W 3	10.00	Partly Cloudy	SCT044	83	64			54%	NA	85	29.98	NA		
20	14:55	W 8	10.00	Partly Cloudy	SCT044	82	63			53%	NA	83	29.99	NA		
20	14:35	W 7	10.00	Fair	CLR	82	64			54%	NA	83	30.00	NA		
20	14:15	W 6	10.00	Fair	CLR	82	64			54%	NA	83	30.00	NA		
20	13:55	W 8	10.00	Fair	CLR	81	63	81	68	54%	NA	82	30.01	NA		
20	13:35	SW 6	10.00	Fair	CLR	81	63			54%	NA	82	30.01	NA		
20	13:15	W 8	10.00	Fair	CLR	81	63			55%	NA	82	30.02	NA		
20	12:55	W 5	10.00	Fair	CLR	80	65			59%	NA	82	30.03	NA		
20	12:35	W 5	10.00	Fair	CLR	80	64			58%	NA	82	30.03	NA		
20	12:15	W 3	10.00	Fair	CLR	80	65			61%	NA	82	30.04	NA		
20	11:55	NW 3	10.00	Fair	CLR	79	65			62%	NA	81	30.04	NA		
20	11:35	W 5	10.00	Fair	CLR	78	65			65%	NA	80	30.04	NA		
20	11:15	W 6	10.00	Fair	CLR	78	65			66%	NA	80	30.04	NA		
20	10:55	W 5	10.00	Fair	CLR	77	66			69%	NA	79	30.04	NA		
20	10:35	NW 3	10.00	Fair	CLR	76	65			69%	NA	78	30.04	NA		
20	10:15	NW 5	10.00	Fair	CLR	74	64			71%	NA	NA	30.05	NA		
20	09:55	NW 3	10.00	Fair	CLR	74	65			73%	NA	NA	30.05	NA		
20	09:35	W 5	10.00	Fair	CLR	73	65			76%	NA	NA	30.06	NA		
20	09:15	Calm	10.00	Fair	CLR	72	65			78%	NA	NA	30.06	NA		
20	08:55	Calm	10.00	Fair	CLR	71	65			81%	NA	NA	30.06	NA		
20	08:35	Calm	10.00	Partly Cloudy	SCT041 SCT049	70	65			83%	NA	NA	30.06	NA		
20	08:15	Calm	10.00	Mostly Cloudy	SCT041 BKN049	69	64			85%	NA	NA	30.06	NA		
20	07:55	NW 3	10.00	Partly Cloudy	SCT039 SCT047	68	64	70	66	88%	NA	NA	30.06	NA		
20	07:35	Calm	10.00	Partly Cloudy	SCT039	68	64			88%	NA	NA	30.05	NA		
20	07:15	Calm	10.00	Fair	CLR	67	64			89%	NA	NA	30.05	NA		
20	06:55	Calm	10.00	Fair	CLR	67	64			89%	NA	NA	30.05	NA		
20	06:35	Calm	10.00	Fair	CLR	67	64			89%	NA	NA	30.05	NA		
20	06:15	Calm	10.00	Fair	CLR	67	64			90%	NA	NA	30.05	NA		
20	05:55	Calm	10.00	Fair	CLR	67	64			89%	NA	NA	30.04	NA		
20	05:35	W 3	10.00	Fair	CLR	67	64			89%	NA	NA	30.05	NA		
20	05:15	Calm	10.00	Fair	CLR	67	64			89%	NA	NA	30.04	NA		
20	04:55	Calm	10.00	Fair	CLR	68	64			89%	NA	NA	30.04	NA		
20	04:35	Calm	10.00	Fair	CLR	68	64			88%	NA	NA	30.04	NA		
20	04:15	Calm	10.00	Fair	CLR	68	65			88%	NA	NA	30.04	NA		
20	03:55	Calm	10.00	Fair	CLR	68	65			88%	NA	NA	30.04	NA		
20	03:35	Calm	10.00	Fair	CLR	69	65			88%	NA	NA	30.04	NA		
20	03:15	W 3	10.00	Fair	CLR	69	65			88%	NA	NA	30.04	NA		
20	02:55	Calm	10.00	Fair	CLR	69	65			88%	NA	NA	30.04	NA		
20	02:35	Calm	10.00	Fair	CLR	69	65			87%	NA	NA	30.05	NA		
20	02:15	Calm	10.00	Partly Cloudy	SCT075	69	65			88%	NA	NA	30.05	NA		
20	01:55	W 3	10.00	Partly Cloudy	SCT075	70	66	80	69	86%	NA	NA	30.06	NA		
20	01:35	Calm	10.00	Partly Cloudy	SCT075	71	66			84%	NA	NA	30.07	NA		

20	01:15	Calm	10.00	Partly Cloudy	SCT085	71	66			85%	NA	NA	30.07	NA		
20	00:55	Calm	10.00	Mostly Cloudy	BKN085	71	66			86%	NA	NA	30.08	NA		
20	00:35	Calm	10.00	Partly Cloudy	SCT085	70	67			88%	NA	NA	30.08	NA		
20	00:15	Calm	10.00	Fair	CLR	69	66			91%	NA	NA	30.08	NA		
19	23:55	Calm	10.00	Fair	CLR	71	67			88%	NA	NA	30.08	NA		
19	23:35	Calm	10.00	Fair	CLR	70	66			89%	NA	NA	30.09	NA		
19	23:15	Calm	10.00	Fair	CLR	71	67			88%	NA	NA	30.09	NA		
19	22:55	Calm	10.00	Fair	CLR	71	67			86%	NA	NA	30.09	NA		
19	22:35	Calm	10.00	Fair	CLR	71	67			87%	NA	NA	30.09	NA		
19	22:15	Calm	10.00	Fair	CLR	72	68			86%	NA	NA	30.09	NA		
19	21:55	Calm	10.00	Fair	CLR	73	68			85%	NA	NA	30.08	NA		
19	21:35	Calm	10.00	Fair	CLR	73	68			84%	NA	NA	30.08	NA		
19	21:15	Calm	10.00	Fair	CLR	75	67			77%	NA	NA	30.08	NA		
19	20:55	Calm	10.00	Fair	CLR	76	69			78%	NA	77	30.07	NA		
19	20:15	Calm	10.00	Fair	CLR	80	66			63%	NA	82	30.07	NA		
19	19:55	Calm	10.00	Fair	CLR	81	66	82	81	61%	NA	83	30.07	NA		
19	19:35	Calm	10.00	Fair	CLR	81	65			59%	NA	83	30.07	NA		
19	19:15	Calm	10.00	Fair	CLR	81	65			59%	NA	83	30.07	NA		
19	18:55	NW 5	10.00	Fair	CLR	82	64			56%	NA	84	30.07	NA		
19	18:35	Calm	10.00	Fair	CLR	82	65			56%	NA	84	30.08	NA		
19	18:15	NW 5	10.00	Partly Cloudy	SCT041	82	65			56%	NA	84	30.09	NA		
19	17:55	NW 5	10.00	Partly Cloudy	SCT043	82	65			57%	NA	84	30.09	NA		
19	17:35	N 5	10.00	Partly Cloudy	SCT043	82	65			57%	NA	84	30.10	NA		
19	17:15	N 6	10.00	Partly Cloudy	SCT041	82	65			57%	NA	84	30.10	NA		
19	16:55	N 6	10.00	Fair	CLR	82	65			56%	NA	84	30.11	NA		
19	16:35	NW 5	10.00	Fair	CLR	82	65			56%	NA	84	30.11	NA		
19	16:15	NW 6	10.00	Fair	CLR	82	65			56%	NA	84	30.11	NA		
19	15:55	NW 5	10.00	Fair	CLR	82	65			56%	NA	84	30.11	NA		
19	15:35	NW 5	10.00	Fair	CLR	82	64			54%	NA	83	30.11	NA		
19	15:15	NW 5	10.00	Fair	CLR	81	63			53%	NA	82	30.12	NA		
19	14:55	NW 6	10.00	Fair	CLR	82	63			54%	NA	83	30.12	NA		
19	14:35	N 6	10.00	Fair	CLR	81	63			53%	NA	82	30.12	NA		
19	14:15	N 6	10.00	Fair	CLR	81	62			53%	NA	82	30.12	NA		
19	13:55	NW 5	10.00	Fair	CLR	81	63	81	67	54%	NA	82	30.12	NA		
19	13:35	N 7	10.00	Fair	CLR	80	62			53%	NA	81	30.13	NA		
19	13:15	N 8	10.00	Fair	CLR	80	62			53%	NA	81	30.13	NA		
19	12:55	NW 5	10.00	Fair	CLR	80	62			54%	NA	81	30.14	NA		
19	12:35	N 7	10.00	Fair	CLR	80	60			52%	NA	81	30.14	NA		
19	12:15	NW 7	10.00	Fair	CLR	79	61			53%	NA	80	30.15	NA		
19	11:55	NW 3	10.00	Fair	CLR	79	62			57%	NA	80	30.15	NA		
19	11:35	NW 3	10.00	Fair	CLR	78	63			59%	NA	80	30.15	NA		
19	11:15	W 5	10.00	Fair	CLR	78	64			62%	NA	80	30.15	NA		
19	10:55	NW 3	10.00	Partly Cloudy	SCT100	77	64			64%	NA	79	30.15	NA		
19	10:35	NW 5	10.00	Partly Cloudy	SCT100	76	63			64%	NA	78	30.15	NA		
19	10:15	W 5	10.00	Fair	CLR	75	64			68%	NA	NA	30.16	NA		
19	09:55	NW 5	10.00	Fair	CLR	74	64			72%	NA	NA	30.16	NA		
19	09:35	NW 3	10.00	Fair	CLR	73	65			76%	NA	NA	30.16	NA		
19	09:15	Calm	10.00	Fair	CLR	72	65			79%	NA	NA	30.16	NA		
19	08:55	Calm	10.00	Fair	CLR	70	64			82%	NA	NA	30.16	NA		

19	08:35	Calm	10.00	Fair	CLR	68	63			84%	NA	NA	30.16	NA		
19	08:15	Calm	10.00	Fair	CLR	67	63			86%	NA	NA	30.16	NA		
19	07:55	Calm	10.00	Fair	CLR	67	63	67	63	87%	NA	NA	30.16	NA		
19	07:35	Calm	10.00	Fair	CLR	66	62			86%	NA	NA	30.16	NA		
19	07:15	Calm	10.00	Fair	CLR	66	62			87%	NA	NA	30.16	NA		
19	06:55	Calm	10.00	Fair	CLR	64	61			89%	NA	NA	30.16	NA		
19	06:35	Calm	10.00	Fair	CLR	63	61			92%	NA	NA	30.15	NA		
19	06:15	Calm	10.00	Fair	CLR	63	61			92%	NA	NA	30.15	NA		
19	05:55	Calm	10.00	Fair	CLR	64	61			92%	NA	NA	30.15	NA		
19	05:35	Calm	10.00	Fair	CLR	64	62			93%	NA	NA	30.15	NA		
19	05:15	Calm	10.00	Partly Cloudy	SCT100 SCT120	63	61			93%	NA	NA	30.15	NA		
19	04:55	Calm	10.00	Partly Cloudy	SCT100	64	62			93%	NA	NA	30.15	NA		
19	04:35	Calm	10.00	Mostly Cloudy	BKN100	64	62			94%	NA	NA	30.15	NA		
19	04:15	Calm	10.00	Mostly Cloudy	BKN100 BKN120	64	62			94%	NA	NA	30.15	NA		
19	03:55	Calm	7.00	Mostly Cloudy	BKN100	63	61			93%	NA	NA	30.15	NA		
19	03:35	Calm	7.00	Partly Cloudy	SCT100 SCT120	64	62			93%	NA	NA	30.15	NA		
19	03:15	Calm	7.00	Partly Cloudy	SCT100 SCT120	64	62			93%	NA	NA	30.15	NA		
19	02:55	Calm	10.00	Fair	CLR	64	62			93%	NA	NA	30.15	NA		
19	02:35	Calm	7.00	Fair	CLR	65	63			93%	NA	NA	30.16	NA		
19	02:15	Calm	10.00	Fair	CLR	64	62			92%	NA	NA	30.16	NA		
19	01:55	Calm	10.00	Fair	CLR	65	62	78	65	92%	NA	NA	30.16	NA		
19	01:35	Calm	10.00	Fair	CLR	65	63			91%	NA	NA	30.17	NA		
19	01:15	Calm	10.00	Partly Cloudy	SCT110	66	64			92%	NA	NA	30.17	NA		
19	00:55	Calm	10.00	Partly Cloudy	SCT110	66	64			92%	NA	NA	30.18	NA		
19	00:35	Calm	10.00	Fair	CLR	67	64			91%	NA	NA	30.18	NA		
19	00:15	Calm	10.00	Fair	CLR	67	64			89%	NA	NA	30.18	NA		
18	23:55	Calm	10.00	Fair	CLR	68	64			89%	NA	NA	30.17	NA		
18	23:35	Calm	10.00	Fair	CLR	67	64			90%	NA	NA	30.17	NA		
18	23:15	Calm	10.00	Fair	CLR	68	65			89%	NA	NA	30.17	NA		
18	22:55	Calm	10.00	Fair	CLR	69	65			87%	NA	NA	30.17	NA		
18	22:35	Calm	10.00	Fair	CLR	69	65			87%	NA	NA	30.17	NA		
18	22:15	Calm	10.00	Fair	CLR	69	65			86%	NA	NA	30.17	NA		
18	21:55	Calm	10.00	Fair	CLR	71	65			84%	NA	NA	30.16	NA		
18	21:35	Calm	10.00	Fair	CLR	71	66			84%	NA	NA	30.16	NA		
18	21:15	Calm	10.00	Fair	CLR	73	66			80%	NA	NA	30.16	NA		
18	20:55	Calm	10.00	Fair	CLR	74	65			75%	NA	NA	30.16	NA		
18	20:35	Calm	10.00	Fair	CLR	76	65			68%	NA	78	30.16	NA		
18	20:15	Calm	10.00	Fair	CLR	78	65			65%	NA	80	30.16	NA		
18	19:55	Calm	10.00	Fair	CLR	79	64	83	79	60%	NA	81	30.16	NA		
18	19:35	Calm	10.00	Fair	CLR	80	63			56%	NA	81	30.15	NA		
18	19:15	Calm	10.00	Fair	CLR	80	61			53%	NA	81	30.16	NA		
18	18:55	Calm	10.00	Fair	CLR	80	62			53%	NA	81	30.16	NA		
18	18:35	Calm	10.00	Fair	CLR	82	61			50%	NA	83	30.16	NA		
18	18:15	Calm	10.00	Fair	CLR	81	60			50%	NA	82	30.17	NA		
18	17:55	Calm	10.00	Fair	CLR	82	60			48%	NA	82	30.17	NA		
18	17:35	NW 3	10.00	Fair	CLR	82	60			47%	NA	82	30.17	NA		
18	17:15	Calm	10.00	Fair	CLR	83	58			43%	NA	83	30.17	NA		
18	16:55	Calm	10.00	Fair	CLR	82	59			46%	NA	82	30.17	NA		
18	16:35	Calm	10.00	Fair	CLR	82	58			44%	NA	82	30.17	NA		

Date	Time (edt)	Wind (mph)	Vis. (mi.)	Weather	Sky Cond.	Air	Dwpt	Max.	Min.	Relative Humidity	Wind Chill (°F)	Heat Index (°F)	altimeter (in.)	sea level (mb)	1 hr	3 hr	6 hr
						Temperature (°F)			6 hour				Pressure	Precipitation (in.)			

National Weather Service
 Southern Region Headquarters
 Fort Worth, Texas
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RESPONDENT'S EXHIBIT
R-7

MICHIGAN DEPARTMENT OF AGRICULTURE
INSPECTOR'S REPORT ON SAMPLE

(In accordance with Act 380, Public Acts 1965, as amended)

Division: Pesticide & Plant Pest Management

Case #: PE-21-02320-0002238

Date: 07/22/21

POSSIBLE PESTICIDE HAZARD

- High Concentration Human Health Animal Health
- Tank Mix Unknown Suspected

PESTICIDE INSPECTION TYPE

- Monitoring Complaint Follow-up Sample
- Statistical Other:

LAB PROJECT PESTICIDE REFERENCE

- Pesticide Misuse Formulation Antimicrobial
- Food Safety Spill Plant pathology

Location Name: Bakowski Farm

Address: 7275 New US 223

City: Ottawa Lake

State: MI

Zip: 49267

Sample Taken From (description of):

Blank

Sample acknowledged by (name): NA (title) NA

Sample Type	Product Name	EPA Reg. No.	Active Ingredient(s)
<input checked="" type="checkbox"/> Swab			
<input type="checkbox"/> Foliage			
<input type="checkbox"/> Water			
<input type="checkbox"/> Soil			
<input type="checkbox"/> Other: (example)	Tombstone Helios and Headline AMP	34704-978 and 7969-291	Cyfluthrin, Pyraclostrobin, and Metconazole

Analyze for: Cyfluthrin, Pyraclostrobin, and Metconazole

- Qualitative Quantitative

Date sent to analyst: <u>NA</u>	How Sent: <u>Inspector</u>
<input checked="" type="checkbox"/> Not sent and location: <u>Geagley Lab</u>	<u>Receiving Clerk</u> <u>Analyst</u>

Reimbursement Instructions: Write the pre-printed Sample Report Number on the vendor's sales receipt. Attach the original receipt to your copy of the travel expense Voucher.

Inspector(s) Name &	District #	Inspector(s) Signature(s)
Lauren Young	D-376	

MICHIGAN DEPARTMENT OF AGRICULTURE
INSPECTOR'S REPORT ON SAMPLE

(In accordance with Act 380, Public Acts 1965, as amended)

Division: Pesticide & Plant Pest Management

Case #: PE-21-02320-0002238

Date: 07/22/21

POSSIBLE PESTICIDE HAZARD

- High Concentration Human Health Animal Health
- Tank Mix Unknown Suspected

PESTICIDE INSPECTION TYPE

- Monitoring Complaint Follow-up Sample
- Statistical Other:

LAB PROJECT PESTICIDE REFERENCE

- Pesticide Misuse Formulation Antimicrobial
- Food Safety Spill Plant pathology

Location Name: Bakowski Farm

Address: 7275 New US 223

City: Ottawa Lake

State: MI

Zip:

49267

Sample Taken From (description of):

Tool box on tractor

Sample acknowledged by (name): NA

(title) NA

Sample Type	Product Name	EPA Reg. No.	Active Ingredient(s)
<input checked="" type="checkbox"/> Swab	Tombstone Helios and Headline AMP	34704-978 and 7969-291	Cyfluthrin, Pyraclostrobin, and Metconazole
<input type="checkbox"/> Foliage			
<input type="checkbox"/> Water			
<input type="checkbox"/> Soil			
<input type="checkbox"/> Other ()			

Analyze for: Cyfluthrin, Pyraclostrobin, and Metconazole

- Qualitative Quantitative

Date sent to analyst: <u>NA</u>	How Sent: <u>Inspector</u>
<input checked="" type="checkbox"/> Not sent and location: <u>Geagley Lab</u>	Receiving Clerk _____ Analyst _____
Reimbursement Instructions: Write the pre-printed Sample Report Number on the vendor's sales receipt. Attach the original receipt to your copy of the travel expense Voucher.	
Inspector(s) Name & <u>Lauren Young</u>	District # <u>D-376</u> Inspector(s) Signature(s) _____

MICHIGAN DEPARTMENT OF AGRICULTURE
INSPECTOR'S REPORT ON SAMPLE

(In accordance with Act 380, Public Acts 1965, as amended)

Division: Pesticide & Plant Pest Management

Case #: PE-21-02320-0002238

Date: 07/22/21

POSSIBLE PESTICIDE HAZARD

- High Concentration Human Health Animal Health
- Tank Mix Unknown Suspected

PESTICIDE INSPECTION TYPE

- Monitoring Complaint Follow-up Sample
- Statistical Other:

LAB PROJECT PESTICIDE REFERENCE

- Pesticide Misuse Formulation Antimicrobial
- Food Safety Spill Plant pathology

Location Name: Bakowski Farm

Address: 7275 New US 223

City: Ottawa Lake

State: MI

Zip:

49267

Sample Taken From (description of):

Left side of shade roof

Sample acknowledged by (name): NA (title) NA

Sample Type	Product Name	EPA Reg. No.	Active Ingredient(s)
<input checked="" type="checkbox"/> Swab	Tombstone Helios and Headline AMP	34704-978 and 7969-291	Cyfluthrin, Pyraclostrobin, and Metconazole
<input type="checkbox"/> Foliage			
<input type="checkbox"/> Water			
<input type="checkbox"/> Soil			
<input type="checkbox"/> Other ()			

Analyze for: Cyfluthrin, Pyraclostrobin, and Metconazole

- Qualitative Quantitative

Date sent to analyst: <u>NA</u>	How Sent: <u>Inspector</u>
<input checked="" type="checkbox"/> Not sent and location: <u>Geagley Lab</u>	Receiving Clerk _____ Analyst _____
Reimbursement Instructions: Write the pre-printed Sample Report Number on the vendor's sales receipt. Attach the original receipt to your copy of the travel expense Voucher.	
Inspector(s) Name & <u>Lauren Young</u>	District # <u>D-376</u> Inspector(s) Signature(s) _____

MICHIGAN DEPARTMENT OF AGRICULTURE
INSPECTOR'S REPORT ON SAMPLE

(In accordance with Act 380, Public Acts 1965, as amended)

Division: Pesticide & Plant Pest Management

Case #: PE-21-02320-0002238

Date: 07/22/21

POSSIBLE PESTICIDE HAZARD

- High Concentration Human Health Animal Health
- Tank Mix Unknown Suspected

PESTICIDE INSPECTION TYPE

- Monitoring Complaint Follow-up Sample
- Statistical Other:

LAB PROJECT PESTICIDE REFERENCE

- Pesticide Misuse Formulation Antimicrobial
- Food Safety Spill Plant pathology

Location Name: Bakowski Residence

Address: 7275 New US 223

City: Ottawa Lake

State: MI

Zip: 49267

Sample Taken From (description of):
Right Front of Wagon

Sample acknowledged by (name): NA **(title)** NA

Sample Type	Product Name	EPA Reg. No.	Active Ingredient(s)
<input type="checkbox"/> Swab			
<input checked="" type="checkbox"/> Foliage			
<input type="checkbox"/> Water			
<input type="checkbox"/> Soil			
<input type="checkbox"/> Other: (example)	Tombstone Helios and Headline AMP	34704-978 and 7969-291	Cyfluthrin, Pyraclostrobin, and Metconazole

Analyze for: Cyfluthrin, Pyraclostrobin, and Metconazole

- Qualitative Quantitative

Date sent to analyst: NA	How Sent: Inspector
<input checked="" type="checkbox"/> Not sent and location: Geagley Lab	Receiving Clerk Analyst

Reimbursement Instructions: Write the pre-printed Sample Report Number on the vendor's sales receipt. Attach the original receipt to your copy of the travel expense Voucher.

Inspector(s) Name &	District #	Inspector(s) Signature(s)
Lauren Young	D-376	

MICHIGAN DEPARTMENT OF AGRICULTURE
INSPECTOR'S REPORT ON SAMPLE

(In accordance with Act 380, Public Acts 1965, as amended)

Division: Pesticide & Plant Pest Management

Case #: PE-21-02320-0002238

Date: 07/22/21

POSSIBLE PESTICIDE HAZARD

- High Concentration Human Health Animal Health
- Tank Mix Unknown Suspected

PESTICIDE INSPECTION TYPE

- Monitoring Complaint Follow-up Sample
- Statistical Other:

LAB PROJECT PESTICIDE REFERENCE

- Pesticide Misuse Formulation Antimicrobial
- Food Safety Spill Plant pathology

Location Name: Bakowski Residence

Address: 7275 New US 223

City: Ottawa Lake

State: MI

Zip:

49267

Sample Taken From (description of):

Right Middle of Wagon

Sample acknowledged by (name): NA **(title)** NA

Sample Type	Product Name	EPA Reg. No.	Active Ingredient(s)
<input type="checkbox"/> Swab			
<input checked="" type="checkbox"/> Foliage			
<input type="checkbox"/> Water			
<input type="checkbox"/> Soil			
<input type="checkbox"/> Other ()	Tombstone Helios and Headline AMP	34704-978 and 7969-291	Cyfluthrin, Pyraclostrobin, and Metconazole

Analyze for: Cyfluthrin, Pyraclostrobin, and Metconazole

- Qualitative Quantitative

Date sent to analyst: NA	How Sent: Inspector
<input checked="" type="checkbox"/> Not sent and location: Geagley Lab	Receiving Clerk Analyst
Reimbursement Instructions: Write the pre-printed Sample Report Number on the vendor's sales receipt. Attach the original receipt to your copy of the travel expense Voucher.	
Inspector(s) Name & District # Inspector(s) Signature(s)	
Lauren Young D-376	

MICHIGAN DEPARTMENT OF AGRICULTURE
INSPECTOR'S REPORT ON SAMPLE

(In accordance with Act 380, Public Acts 1965, as amended)

Division: Pesticide & Plant Pest Management

Case #: PE-21-02320-0002238

Date: 07/22/21

POSSIBLE PESTICIDE HAZARD

- | | | |
|---|---|--|
| <input type="checkbox"/> High Concentration | <input type="checkbox"/> Human Health | <input type="checkbox"/> Animal Health |
| <input type="checkbox"/> Tank Mix | <input checked="" type="checkbox"/> Unknown | <input type="checkbox"/> Suspected |

PESTICIDE INSPECTION TYPE

- | | | |
|--------------------------------------|---|---|
| <input type="checkbox"/> Monitoring | <input checked="" type="checkbox"/> Complaint | <input type="checkbox"/> Follow-up Sample |
| <input type="checkbox"/> Statistical | <input type="checkbox"/> Other: | |

LAB PROJECT PESTICIDE REFERENCE

- | | | |
|--|--------------------------------------|--|
| <input checked="" type="checkbox"/> Pesticide Misuse | <input type="checkbox"/> Formulation | <input type="checkbox"/> Antimicrobial |
| <input type="checkbox"/> Food Safety | <input type="checkbox"/> Spill | <input type="checkbox"/> Plant pathology |

Location Name: Bakowski Residence

Address: 7275 New US 223

City: Ottawa Lake

State: MI

Zip: 49267

Sample Taken From (description of):

Right Back of Wagon

Sample acknowledged by (name): NA **(title)** NA

Sample Type	Product Name	EPA Reg. No.	Active Ingredient(s)
<input type="checkbox"/> Swab			
<input checked="" type="checkbox"/> Foliage			
<input type="checkbox"/> Water			
<input type="checkbox"/> Soil			
<input type="checkbox"/> Other ()	Tombstone Helios and Headline AMP	34704-978 and 7969-291	Cyfluthrin, Pyraclostrobin, and Metconazole

Analyze for: Cyfluthrin, Pyraclostrobin, and Metconazole

- | | |
|--------------------------------------|--|
| <input type="checkbox"/> Qualitative | <input checked="" type="checkbox"/> Quantitative |
|--------------------------------------|--|

Date sent to analyst: <u>NA</u>	How Sent: <u>Inspector</u>
<input checked="" type="checkbox"/> Not sent and location: <u>Geagley Lab</u>	Receiving Clerk: _____ Analyst: _____
Reimbursement Instructions: Write the pre-printed Sample Report Number on the vendor's sales receipt. Attach the original receipt to your copy of the travel expense Voucher.	
Inspector(s) Name & <u>Lauren Young</u>	District # <u>D-376</u> Inspector(s) Signature(s) _____

MICHIGAN DEPARTMENT OF AGRICULTURE
INSPECTOR'S REPORT ON SAMPLE

(In accordance with Act 380, Public Acts 1965, as amended)

Division: Pesticide & Plant Pest Management

Case #: PE-21-02320-0002238

Date: 07/22/21

POSSIBLE PESTICIDE HAZARD

- | | | |
|---|---|--|
| <input type="checkbox"/> High Concentration | <input type="checkbox"/> Human Health | <input type="checkbox"/> Animal Health |
| <input type="checkbox"/> Tank Mix | <input checked="" type="checkbox"/> Unknown | <input type="checkbox"/> Suspected |

PESTICIDE INSPECTION TYPE

- | | | |
|--------------------------------------|---|---|
| <input type="checkbox"/> Monitoring | <input checked="" type="checkbox"/> Complaint | <input type="checkbox"/> Follow-up Sample |
| <input type="checkbox"/> Statistical | <input type="checkbox"/> Other: | |

LAB PROJECT PESTICIDE REFERENCE

- | | | |
|--|--------------------------------------|--|
| <input checked="" type="checkbox"/> Pesticide Misuse | <input type="checkbox"/> Formulation | <input type="checkbox"/> Antimicrobial |
| <input type="checkbox"/> Food Safety | <input type="checkbox"/> Spill | <input type="checkbox"/> Plant pathology |

Location Name: Bakowski Residence

Address: 7275 New US 223

City: Ottawa Lake

State: MI

Zip: 49267

Sample Taken From (description of):

Left Middle of Wagon

Sample acknowledged by (name): NA **(title)** NA

Sample Type	Product Name	EPA Reg. No.	Active Ingredient(s)
<input type="checkbox"/> Swab			
<input checked="" type="checkbox"/> Foliage			
<input type="checkbox"/> Water			
<input type="checkbox"/> Soil			
<input type="checkbox"/> Other ()	Tombstone Helios and Headline AMP	34704-978 and 7969-291	Cyfluthrin, Pyraclostrobin, and Metconazole

Analyze for: Cyfluthrin, Pyraclostrobin, and Metconazole

- | | |
|--------------------------------------|--|
| <input type="checkbox"/> Qualitative | <input checked="" type="checkbox"/> Quantitative |
|--------------------------------------|--|

Date sent to analyst: <u>NA</u>	How Sent: <u>Inspector</u>
<input checked="" type="checkbox"/> Not sent and location: <u>Geagley Lab</u>	Receiving Clerk: _____ Analyst: _____
Reimbursement Instructions: Write the pre-printed Sample Report Number on the vendor's sales receipt. Attach the original receipt to your copy of the travel expense Voucher.	
Inspector(s) Name & <u>Lauren Young</u>	District # <u>D-376</u> Inspector(s) Signature(s) _____

MICHIGAN DEPARTMENT OF AGRICULTURE
INSPECTOR'S REPORT ON SAMPLE

(In accordance with Act 380, Public Acts 1965, as amended)

Division: Pesticide & Plant Pest Management

Case #: PE-21-02320-0002238

Date: 07/22/21

POSSIBLE PESTICIDE HAZARD

- High Concentration Human Health Animal Health
- Tank Mix Unknown Suspected

PESTICIDE INSPECTION TYPE

- Monitoring Complaint Follow-up Sample
- Statistical Other:

LAB PROJECT PESTICIDE REFERENCE

- Pesticide Misuse Formulation Antimicrobial
- Food Safety Spill Plant pathology

Location Name: Bakowski Residence

Address: 7275 New US 223

City: Ottawa Lake

State: MI

Zip: 49267

Sample Taken From (description of):

Left Front of Wagon

Sample acknowledged by (name): NA **(title)** NA

Sample Type	Product Name	EPA Reg. No.	Active Ingredient(s)
<input type="checkbox"/> Swab			
<input checked="" type="checkbox"/> Foliage			
<input type="checkbox"/> Water			
<input type="checkbox"/> Soil			
<input type="checkbox"/> Other: Clothing	Tombstone Helios and Headline AMP	34704-978 and 7969-291	Cyfluthrin, Pyraclostrobin, and Metconazole

Analyze for: Cyfluthrin, Pyraclostrobin, and Metconazole

- Qualitative Quantitative

Date sent to analyst: NA	How Sent: Inspector
<input checked="" type="checkbox"/> Not sent and location: Geagley Lab	Receiving Clerk Analyst

Reimbursement Instructions: Write the pre-printed Sample Report Number on the vendor's sales receipt. Attach the original receipt to your copy of the travel expense Voucher.

Inspector(s) Name &	District #	Inspector(s) Signature(s)
Lauren Young	D-376	

MICHIGAN DEPARTMENT OF AGRICULTURE
INSPECTOR'S REPORT ON SAMPLE

(In accordance with Act 380, Public Acts 1965, as amended)

Division: Pesticide & Plant Pest Management

Case #: PE-21-02320-0002238

Date: 07/22/21

POSSIBLE PESTICIDE HAZARD

- High Concentration Human Health Animal Health
- Tank Mix Unknown Suspected

PESTICIDE INSPECTION TYPE

- Monitoring Complaint Follow-up Sample
- Statistical Other:

LAB PROJECT PESTICIDE REFERENCE

- Pesticide Misuse Formulation Antimicrobial
- Food Safety Spill Plant pathology

Location Name: Bakowski Residence

Address: 7275 New US 223

City: Ottawa Lake

State: MI

Zip:

49267

Sample Taken From (description of):

Sweatband worn on head during drift

Sample acknowledged by (name): R. Bakowski **(title)** Complainant

Sample Type	Product Name	EPA Reg. No.	Active Ingredient(s)
<input type="checkbox"/> Swab			
<input type="checkbox"/> Foliage			
<input type="checkbox"/> Water			
<input type="checkbox"/> Soil			
<input type="checkbox"/> Other ()	Tombstone Helios and Headline AMP	34704-978 and 7969-291	Cyfluthrin, Pyraclostrobin, and Metconazole

Analyze for: Cyfluthrin, Pyraclostrobin, and Metconazole

- Qualitative Quantitative

Date sent to analyst: NA	How Sent: Inspector
<input checked="" type="checkbox"/> Not sent and location: Geagley Lab	Receiving Clerk Analyst

Reimbursement Instructions: Write the pre-printed Sample Report Number on the vendor's sales receipt. Attach the original receipt to your copy of the travel expense Voucher.

Inspector(s) Name &	District #	Inspector(s) Signature(s)
Lauren Young	D-376	

RESPONDENT'S EXHIBIT
R-8





Michigan Department of Agriculture and Rural Development
Pesticide & Plant Pest Management Division
P.O. Box 30017, Lansing, Michigan 48909
www.michigan.gov/mdard
Phone: (800) 292-3939

Photo Identification Report			Date 5/12/2022	Case Number 21-PE-02320-0002238
Firm Name Agriflite			Agent/Owner David Eby	
Address 30688 County Road 36	City Wakarusa	State IN	Zip Code 46573	County Unknown
Project Pesticide Use Investigation			Phone 574-862-4392	Inspector Lauren Young

DIGITAL IMAGE DETAILS

Photo Number:
20210722_143622000_iO
S 1

Date: 7/21/2021

Time: Unknown

Direction: West

Distance: Unknown

Description: Photo by Amy Wahl and provided to L. Young via text. Per Ms. Wahl, the photo was taken during the pesticide application by Agriflite on 7/21/2021

PHOTO MODIFICATIONS

Date: NA

Type: NA

Reason for modification:
NA



DIGITAL IMAGE DETAILS

Photo Number:
20210722_151541182_iO
S

Date: 7/22/2021

Time: 11:15 am

Direction: NA

Distance: NA

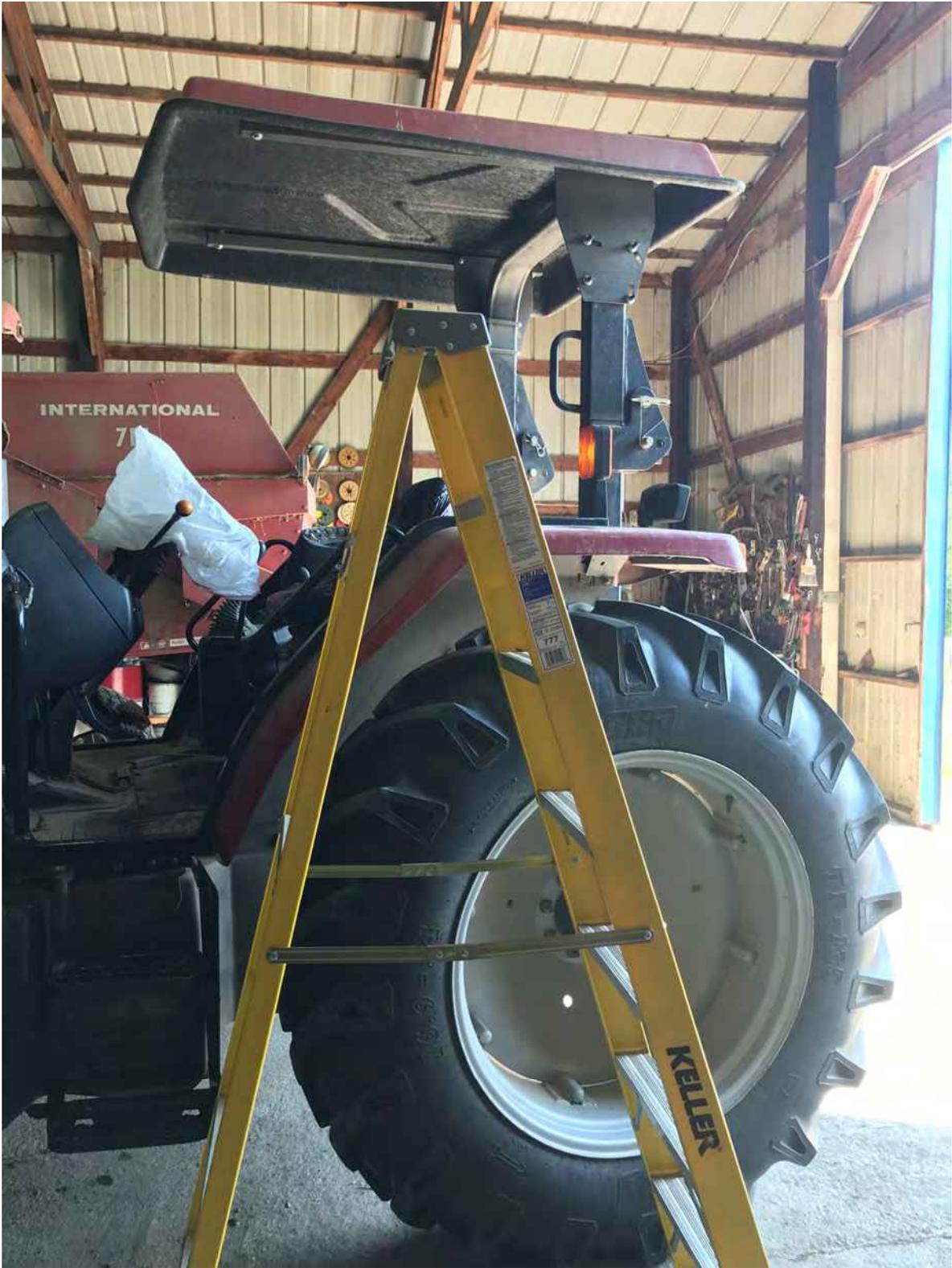
Description: Photo by L. Young. Photo is of the complainant's tractor; she was driving this tractor when pesticide drifted onto her. I obtained swab samples from the tractor.

PHOTO MODIFICATIONS

Date: NA

Type: NA

Reason for modification:
NA



DIGITAL IMAGE DETAILS

Photo Number:
20210722_151646543_iO
S

Date: 7/22/2021

Time: 11:16 am

Direction: NA

Distance: NA

Description: Photo by L. Young. Red arrow indicates location of toolbox on the complainant's tractor. I obtained a swab sample from the toolbox.



PHOTO MODIFICATIONS

Date: NA

Type: NA

Reason for modification:
NA

DIGITAL IMAGE DETAILS

Photo Number:
20210722_155553386_iO
S

Date: 7/22/2021

Time: 11:55 am

Direction: NA

Distance: NA

Description: Photo by L. Young. Photo is of the complainant's wagon which is full of oats. I sampled the oats in the wagon. The wagon was pulled by the complainant's tractor when the pesticide drift occurred.

PHOTO MODIFICATIONS

Date: NA

Type: NA

Reason for modification:
NA



DIGITAL IMAGE DETAILS

Photo Number:
20210722_155619063_iO
S

Date: 7/22/2021

Time: 11:56 am

Direction: NA

Distance: NA

Description: Photo by L. Young. Photo is of the complainant's wagon of oats. The wagon was stored in the barn overnight to avoid formation of dew.

PHOTO MODIFICATIONS

Date: NA

Type: NA

Reason for modification:
NA



RESPONDENT'S EXHIBIT
R-9





GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GARY MCDOWELL
DIRECTOR

Mr. David Eby
Agriflite Services Inc.
30688 County Road 36
Wakarusa, IN 46573-9703

Mail Date: May 17, 2022

Case No. 21-PE-02320
Delivery Confirmation No.
9114 9999 4431 3276 3175 03

NOTICE OF VIOLATION

Dear Mr. Eby:

You are hereby notified that the Director of the Michigan Department of Agriculture & Rural Development (MDARD) has sufficient information to believe that Mr. Dave Eby and Agriflite Services Inc. have violated the requirements of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. In accordance with MCL 324.8333, an administrative fine up to \$1,000 for each violation described below may be assessed, for a total of \$2,000.

On July 21, 2021, Ms. Rachel Bakowski of Ottawa Lake, Michigan, contacted MDARD to file a complaint against Agriflite Services Inc. Ms. Bakowski alleged that she was drifted upon while driving a tractor hauling a wagon of oats on Lake Road in Whiteford, Monroe county. During the investigation, MDARD determined that Mr. Will Souther, employee of Agriflite Services Inc., applied Tombstone Helios (a restricted use pesticide) and Headline AMP to the cornfield west of Lake Road, as contracted by Nutrien Ag Solutions, Blissfield branch. A witness also confirmed that Ms. Bakowski had been driving along Lake Road during the application.

Swab, clothing, and grain samples tested positive for the active ingredients found in Tombstone Helios and Headline AMP, indicating that the complainant had indeed been contacted during the application.

The following violations were identified:

Legal Citation/Short Description	Comments
R285.637.4(a) a pesticide shall be used in a manner consistent with its label	Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. Per the label for Headline AMP, "DO NOT apply under circumstances where possible drift to endangered species, unprotected persons, to food, forage, or other plantings that might be damaged, or crops thereof rendered unfit for sale, use or consumption can occur." Per samples obtained by MDARD, drift of the product occurred onto a person and to food for animals.

Legal Citation/Short Description	Comments
R285.637.4(a) a pesticide shall be used in a manner consistent with its label	Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. Per the complainant, the plane making the pesticide application "flew within a wing" of the complainant and per samples of the complainant's clothing, tractor, and wagon the pesticide application drifted onto the complainant. There was an approximately 15-20 ft buffer between the field and the road. The applicator could have been in the corn field and the AEZ would have extended into the road. 40CFR§170.405(a)(1) states the application exclusion zone (AEZ) is defined for various types of outdoor applications as either 25 ft (when medium or larger spray droplets are sprayed from higher than 12 in from planting medium) or 100 ft (when applied aerially, via air blast, smaller than medium droplets, or as a fumigant, smoke, mist, or fog); AEZ extends horizontally from application equipment in all directions during the application. An AEZ of 100 ft for an aerial application must be maintained and the AEZ was not maintained during the aforementioned pesticide application.

MDARD notes that per an arrangement between Agriflite Services Inc. and Nutrien Ag Solutions-Blissfield, Nutrien Ag informs the grower about scheduled pesticide applications. Be advised that if Nutrien Ag does not properly fulfill the requirements of providing customer information as described in R285.637.12(2) or R637.12 (5), the applying firm may be found in violation.

This letter is to provide notice of the above violations and offer an opportunity for an informal hearing pursuant to MCL 324.8333. You may request an informal hearing to dispute issues related to the violations and to provide additional information or evidence for MDARD to consider when determining an administrative fine, if any. An informal hearing request must be mailed to:

MDARD - PPPMD
PO Box 30017
Lansing, MI 48909

You may also contact MDARD to ask questions regarding this notice, discuss the violations, or provide additional information instead of, or before requesting, an informal hearing. Contact Caitlin Burkman, Pesticide Enforcement Program Specialist, at 517-599-5825 or BurkmanC@Michigan.gov.

Please See Page 3 for Additional Details

If you request an informal hearing, your request must be postmarked by June 1, 2022.

Sincerely,



Brian Verhougstraete
Section Manager
Pesticide & Plant Pest Management Division

Additional Information: The requirements for R285.637.12(2), R285.637.12(3), and R637.12(5) are as follows:

- (2) A commercial applicator who is required to be licensed by the act, or his or her authorized agent, shall provide all of the following written information to the customer or to the customer's authorized agent:
- (a) The name, address, and telephone number of the firm that provides the pesticide application services.
 - (b) The full name of the applicator who provides services.
 - (c) A general description of the target pest or pests to be controlled.
 - (d) A list of the pesticides applied, including the common name of the active ingredient.
 - (e) The time and date of the application.
 - (f) Applicable precautionary warnings or reentry restrictions which appear on the label of the pesticide or pesticides that are applied.
- (3) The information required in subrule (2) of this rule shall be provided in one of two ways:
- (a) Not later than at the time of each pesticide application.
 - (b) The information may be provided electronically within 48 hours after the application if the commercial applicator has the written approval of the customer or the customer's authorized agent prior to the application.
- (5) A commercial agricultural or aerial applicator may provide the information specified in both of the following provisions to the customer or the customer's authorized agent in place of the information requirements specified in subrules (2) and (3) of this rule:
- (a) Oral instructions to the customer or the customer's authorized agent on labeled reentry and preharvest interval requirements before application.
 - (b) A copy of the risk and benefit information sheet or the pertinent section of the label that pertains to risks and benefits.

cc: Caitlin Burkman, Enforcement Specialist
Eric McCumber, Regional Supervisor
Julie Yocum, Lead Inspector
Lauren Young, Inspector

RESPONDENT'S EXHIBIT
R-10





GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GARY MCDOWELL
DIRECTOR

Mr. David Eby, Owner
Agriflite Services Inc.
30688 County Road 36
Wakarusa, IN 46573-9703

Mail Date: August 12, 2022

Case No. 21-PE-02320

Delivery Confirmation No.

9114 9999 4431 3276 3177 94

NOTICE OF ADMINISTRATIVE FINE

Dear Mr. David Eby:

David Eby and Agriflite Services Inc. have been found in violation of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. The Michigan Department of Agriculture and Rural Development (MDARD) issued a Notice of Violation dated May 17, 2022, detailing the violations and providing an opportunity for an informal hearing.

On May 23, 2022, Ms. Denise Eby emailed Caitlin Burkman, Pesticide Enforcement Program Specialist, requesting more information and an extension in the deadline to request an informal hearing in order to review the report. Ms. Burkman informed Ms. Eby how to file a Freedom of Information Act (FOIA) request in order to obtain the report. As of August 11, 2022, the firm has not fulfilled a FOIA request as required after receiving communications from both Ms. Burkman and the FOIA coordinator on how to do so. MDARD has also not received a written request for an informal hearing and therefore has determined the violations and penalty as described below.

The following violations were identified:

Legal Citation/Short Description	Comments
R285.637.4(a) a pesticide shall be used in a manner consistent with its label	Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. Per the label for Headline AMP, "DO NOT apply under circumstances where possible drift to endangered species, unprotected persons, to food, forage, or other plantings that might be damaged, or crops thereof rendered unfit for sale, use or consumption can occur." Per samples obtained by MDARD, drift of the product occurred onto a person and to food for animals.

Please See Page 2 for Additional Details

Accounting Code 0189

Legal Citation/Short Description	Comments
R285.637.4(a) a pesticide shall be used in a manner consistent with its label	Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. Per the complainant, the plane making the pesticide application "flew within a wing" of the complainant and per samples of the complainant's clothing, tractor, and wagon the pesticide application drifted onto the complainant. There was an approximately 15-20 ft buffer between the field and the road. The applicator could have been in the corn field and the AEZ would have extended into the road. 40CFR§170.405(a)(1) states the application exclusion zone (AEZ) is defined for various types of outdoor applications as either 25 ft (when medium or larger spray droplets are sprayed from higher than 12 in from planting medium) or 100 ft (when applied aerially, via air blast, smaller than medium droplets, or as a fumigant, smoke, mist, or fog); AEZ extends horizontally from application equipment in all directions during the application. An AEZ of 100 ft for an aerial application must be maintained and the AEZ was not maintained during the aforementioned pesticide application.

Taking into consideration all the information MDARD has obtained, and in accordance with MCL 324.8333, MDARD is issuing an administrative fine in the amount of \$1,000.00.

See the document titled "Fine Payment" for payment instructions. Failure to submit the payment postmarked by the deadline will be deemed default. Payment defaults are referred to the Office of Attorney General for additional review and possible enforcement action. If you have any questions regarding this action, contact Caitlin Burkman, Pesticide Enforcement Program Specialist, at 517-599-5825.

The fine of \$1,000.00 is to be paid by August 27, 2022.

Sincerely,



Brian Verhougstraete
Section Manager
Pesticide & Plant Pest Management Division

cc: Caitlin Burkman, Enforcement Specialist
Eric McCumber, Regional Supervisor
Julie Yocum, Lead Inspector
Lauren Young, Inspector

Accounting Code 0189



STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

Fine Payment

Mr. David Eby, Owner
Agriflite Services Inc.
30688 County Road 36
Wakarusa, IN 46573-9703

Case No. 21-PE-02320

David Eby and Agriflite Services Inc. have been found in violation of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. In accordance with MCL 324.8333, an administrative fine has been assessed in response to that violation. In response to this fine, you may do one of the following:

A. RENDER PAYMENT

Mail a copy of this notice, postmarked by the due date below, along with a check or money order payable to the "State of Michigan" for \$1,000.00 to:

MDARD - ASC
PO Box 30776
Lansing, MI 48909

B. REQUEST A HEARING

You have the right to request a formal hearing, in accordance with the Natural Resources and Environmental Protection Act, MCL 324.8332 and the Administrative Procedures Act, 1969 PA 306, MCL 24.201 et seq. If you would like to request a formal hearing, you must submit your request in writing, postmarked by the due date below to:

MDARD - PPPM
Pesticide Section
PO Box 30017
Lansing, MI 48909

FAILURE TO PAY THE FINE OR REQUEST A HEARING BY AUGUST 27, 2022 WILL BE CONSIDERED DEFAULT OF PAYMENT.

Accounting Code 0189



RESPONDENT'S EXHIBIT
R-11

RECEIVED AUG 31 2022

To:
STATE OF MICHIGAN DEPARTMENT OF AGRICULTURE AND RURAL
DEVELOPMENT

MDARD -PPPM
Pesticide Section
PO Box 30017
Lansing, MI 48909

From:
David Eby
AgriFlite Services, Inc.

RE: Case No. 21-PE-02320

David Eby and AgriFlite Services, Inc request a formal hearing.

A handwritten signature in black ink, appearing to be 'D. Eby', followed by the date '8.26.22'.

David Eby



STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

Fine Payment

Mr. David Eby, Owner
Agriflite Services Inc.
30688 County Road 36
Wakarusa, IN 46573-9703

Case No. 21-PE-02320

David Eby and Agriflite Services Inc. have been found in violation of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. In accordance with MCL 324.8333, an administrative fine has been assessed in response to that violation. In response to this fine, you may do one of the following:

A. RENDER PAYMENT

Mail a copy of this notice, postmarked by the due date below, along with a check or money order payable to the "State of Michigan" for \$1,000.00 to:

MDARD - ASC
PO Box 30776
Lansing, MI 48909

B. REQUEST A HEARING

You have the right to request a formal hearing, in accordance with the Natural Resources and Environmental Protection Act, MCL 324.8332 and the Administrative Procedures Act, 1969 PA 306, MCL 24.201 et seq. If you would like to request a formal hearing, you must submit your request in writing, postmarked by the due date below to:

MDARD - PPPM
Pesticide Section
PO Box 30017
Lansing, MI 48909

FAILURE TO PAY THE FINE OR REQUEST A HEARING BY AUGUST 27, 2022 WILL BE CONSIDERED DEFAULT OF PAYMENT.

Accounting Code 0189

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30688 County Road 36
Wakarusa, IN 46573

MDARFD-PPPM
Pesticide Section
PO Box 30017
Lansing, MI 48909

EXPECTED DELIVERY DAY: 08/29/22

USPS TRACKING® #



9505 5104 3461 2238 3337 77



48909

U.S. POSTAGE PAID
PM
WAKARUSA, IN
46573
R2306K134160

-08

EP14H July 2013 Outer Dimension: 10 x 5

**RESPONDENT'S EXHIBIT
R-12**





GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

KATHLEEN ANGERER
ACTING DIRECTOR

January 26, 2023

David Eby, Owner
Agriflite Services, Inc.
30688 CR 36
Wakarusa, IN 46573

RE: Informal Hearing Determination Case No. 21-PE-02320

Delivery Confirmation : 9114 9999 4431 3276 3182 10

Dear Mr. Eby:

The Michigan Department of Agriculture and Rural Development (MDARD), Pesticide and Plant Pest Management Division is authorized to enforce Part 83, Pesticide Control, and Environmental Protection Act 451 of 1994 (Act 451) as amended, and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

On August 12, 2022, an Administrative Fine in the amount of \$1,000 was assessed to Agriflite Services, Inc. for violations of R285.637.4(a) by making an application of Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) in a manner not consistent with the pesticide label directions and as such resulting in human exposure. On August 31, 2022, your Request for Hearing was received.

Pursuant to your request, MDARD scheduled an Informal Hearing to provide Agriflite Services, Inc. with an opportunity to meet with the department and do the following:

- Present evidence as to why MDARD should withdraw or reduce the Administrative Fine.

The hearing was held at Constitution Hall in Lansing on Monday, December 12, 2022, at 1:00 PM. In attendance were Al Rodriquez, Eric McCumber, and Julie Yocum from MDARD. Mr. David Eby and Mrs. Denise Eby were in attendance on behalf of Agriflite Services, Inc.

Introductions were made. I reviewed the reasons for the informal hearing, which was to offer Agriflite Services an opportunity to present evidence as to why MDARD should withdraw the violations and/or reduce the Administrative Fine. Staff from the Pesticide and Plant Pest Management Division were present and ready to present their evidence. Agriflite Services staff stated that they would stipulate to the evidence and forgo the PPPMD presentation. Agriflite Services then conducted a presentation.

Agriflite Services' presentation covered a variety of issues. The two issues related to the hearing were:

1. MDARD found that the applicator had failed to follow the pesticide label requirements, which prohibited the applicator from drifting onto people and/or feed products. Agriflite Services did not present evidence showing why MDARD should withdraw that citation or reduce the administrative penalty.

2. MDARD found that the aerial applicator conducted the treatment within 100 feet of the complainant, who was driving a tractor on a public road. This was in violation of the federal worker protection standards for aerial application exclusion zones. Agriflite Services did not present evidence showing why MDARD should withdraw the citation or reduce the administrative penalty.

MDARD has reviewed all the documentation, considered the firm's evidence, and reached the following determination.

- The \$1,000 administrative fine issued on August 12, 2022, is upheld.

If you wish to appeal this decision to a formal hearing, you may do so in writing within 15 days to: MDARD, ATTN: Caitlin Burkman, PPPM, P.O. Box 30017, Lansing, MI 48909 or email: MDARD-PesticideCE@michigan.gov.

Sincerely,



Martin Al Rodriguez
Regulation Manager
Animal Industry Division

cc: Caitlin Burkman, Pesticide Enforcement Program Specialist
Eric McCumber, Pesticide Supervisor, Region South
Julie Yocum, Lead Pesticide Inspector, Region South



**RESPONDENT'S EXHIBIT
R-13**

From: [Denise Eby](#)
To: [MDARD-PesticideCE](#)
Cc: [McCumber, Eric \(MDARD\)](#); [Yocum, Julie \(MDARD\)](#); [Burkman, Caitlin \(MDARD\)](#)
Subject: Request to Appeal Decision of Informal Hearing Determination Case No. 21-PE-02320
Date: Monday, February 13, 2023 1:46:11 PM

**CAUTION: This is an External email. Please send suspicious emails to
abuse@michigan.gov**

Caitlin Burkman:

Per the MDARD letter from Martin Al Rodriguez dated 1/26/2023 and received 1/31/2023, **AgriFlite Services and David Eby would like to appeal the decision to a formal hearing** for Case No. 21-PE-02320.

Please respond as to the venue, procedure, and jurisdiction of this formal hearing.

David and Denise Eby will not be returning to Indiana until late May/early June 2023. Could you please schedule for the last half of June 2023 at the earliest.

AgriFlite's busy season is July-September, and we would not be available during that time.

All notifications and information should be sent via email to both dave@agriflite.com and denise@agriflite.com for timely delivery as the office is operating on off-season hours, and the accountant is involved in tax preparation at another office for the next couple months.

Thank you.

Regards,

Denise Eby

David Eby

--

Denise Eby

denise@agriflite.com

574-862-4392 office

574-536-0800 mobile



RESPONDENT'S EXHIBIT
R-14



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GORDON WENK
DIRECTOR

October 31, 2018

USPS DELIVERY CONFIRMATION:

9114 9014 9645 0616 2867 76

Mr. David Eby
AgriFlite Services, Inc.
30688 CR 36
Wakarusa, Indiana 46573

File Number: UI-18-257-07

NOTICE OF VIOLATION

You are hereby notified that the Director of the Michigan Department of Agriculture & Rural Development (MDARD) has sufficient information to believe that Mr. David Eby and AgriFlite Services, Inc. have violated the requirements of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. In accordance with MCL 324.8333, an administrative fine up to **\$1,000** for each violation described below may be assessed, for a total of **\$1,000**.

MDARD conducted an investigation initiated on May 18, 2018 and identified the following violations:

Specifically, on May 17, 2018, AgriFlite Services, Inc. employee and applicator Mr. Mike Doyle applied Roper DF (EPA Reg. No. 34704-1063) inconsistent with label directions by not making necessary swath adjustments to compensate for downwind displacement during the application, resulting in drift onto Mr. & Mrs. Stevens' property (41193 56th Ave, Paw Paw, MI 49079), a violation of MCL324.8311(9), R 285.637.4(a), and R285.637.10(1).

This letter is to provide notice of the above violations and offer an opportunity for an informal hearing pursuant to MCL 324.8333. You may request an informal hearing to dispute issues related to the violations and to provide additional information or evidence for MDARD to consider when determining an administrative fine, if any. In order to

request an informal hearing, the request must be in writing and must be postmarked by **November 21, 2018**. Send the written request to:

MDARD - PPPMD
Pesticide Section
PO Box 30017
Lansing, MI 48909

You may also contact MDARD to ask questions regarding this notice, discuss the violations, or provide additional information instead of, or before requesting, an informal hearing. Contact Molly Mott, Pesticide Enforcement Specialist, at 517-284-5654 or mottm@michigan.gov.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael Stoliecki". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Stoliecki".

Michael Stoliecki, Pesticide Section Manager
Pesticide and Plant Pest Management Division

MS/mm

cc: Michael Hansen, Regional Supervisor
Julie Yocum, Lead Pesticide Inspector



**RESPONDENT'S EXHIBIT
R-15**



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GORDON WENK
DIRECTOR

November 28, 2018

USPS DELIVERY CONFIRMATION: **9114 9014 9645 0616 2870 87**

Mr. David Eby
AgriFlite Services, Inc.
30688 CR 36
Wakarusa, Indiana 46573

File Number: UI-18-257-07

NOTICE OF ADMINISTRATIVE FINE

Mr. David Eby and AgriFlite Services, Inc. have been found in violation of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. The Michigan Department of Agriculture and Rural Development (MDARD) issued a Notice of Violation dated October 31, 2018, detailing the violations and providing an opportunity for an informal hearing. Mr. Mike Doyle contacted MDARD and spoke with Inspector Yocum regarding the investigation and Enforcement Specialist, Molly Mott. He did not request an informal hearing in writing as described in the Notice of Violation.

Taking into consideration all the information MDARD has obtained, and in accordance with MCL 324.8333, MDARD is issuing an administrative fine in the amount of **\$500**.

The fine of **\$500** is to be paid by **December 18, 2018**.

See the document titled "Fine Payment" for payment instructions. Failure to submit the payment postmarked by the deadline will be deemed default. Payment defaults are referred to the Office of Attorney General for additional review and possible enforcement action.

If you have any questions regarding this action, contact Molly Mott, Pesticide Enforcement Specialist, at 517-284-5654.

Respectfully,

Michael Stoliecki, Pesticide Section Manager
Pesticide and Plant Pest Management Division

MS/mm

cc: Michael Hansen, Regional Supervisor
Julie Yocum, Lead Pesticide Inspector



STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

FINE PAYMENT

Mr. David Eby
AgriFlite Services, Inc.
30688 CR 36
Wakarusa, IN 46573

File Number: UI-18-257-07

Mr. David Eby and AgriFlite Services, Inc. have been found in violation of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. In accordance with MCL 324.8333, an administrative fine has been assessed in response to that violation. In response to this fine, you may do one of the following:

A. RENDER PAYMENT

Mail a copy of this notice, postmarked by the due date below, along with a check or money order payable to the "State of Michigan" for **\$500** to:

MDARD - PPPM
PO Box 30776
Lansing, MI 48909

B. REQUEST A HEARING

You have the right to request a formal hearing, in accordance with the Natural Resources and Environmental Protection Act, MCL 324.8332 and the Administrative Procedures Act, 1969 PA 306, MCL 24.201 et seq. If you would like to request a formal hearing, you must submit your request in writing, postmarked by the due date below to:

MDARD - PPPM
Pesticide Section
PO Box 30017
Lansing, MI 48909

**FAILURE TO PAY THE FINE OR REQUEST A HEARING BY DECEMBER 18,
2018 WILL BE CONSIDERED DEFAULT OF PAYMENT**



RESPONDENT'S EXHIBIT
R-16



STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

MDARD 9909051-1 12/14/2018
7913PCAFINE
BFY 2019 \$500.00
0189 NEW YEAR
3320 1189

FINE PAYMENT

Mr. David Eby
AgriFlite Services, Inc.
30688 CR 36
Wakarusa, IN 46573

File Number: UI-18-257-07

Mr. David Eby and AgriFlite Services, Inc. have been found in violation of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. In accordance with MCL 324.8333, an administrative fine has been assessed in response to that violation. In response to this fine, you may do one of the following:

A. RENDER PAYMENT

Mail a copy of this notice, postmarked by the due date below, along with a check or money order payable to the "State of Michigan" for **\$500** to:

MDARD - PPPM
PO Box 30776
Lansing, MI 48909

B. REQUEST A HEARING

You have the right to request a formal hearing, in accordance with the Natural Resources and Environmental Protection Act, MCL 324.8332 and the Administrative Procedures Act, 1969 PA 306, MCL 24.201 et seq. If you would like to request a formal hearing, you must submit your request in writing, postmarked by the due date below to:

MDARD - PPPM
Pesticide Section
PO Box 30017
Lansing, MI 48909

**FAILURE TO PAY THE FINE OR REQUEST A HEARING BY DECEMBER 18,
2018 WILL BE CONSIDERED DEFAULT OF PAYMENT**



RESPONDENT'S EXHIBIT
R-17

Informal Hearing December 12, 2022



STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GARY MCDOWELL
DIRECTOR

GRETCHEN WHITMER
GOVERNOR

Mr. David Eby
Agriflora Services Inc.
30688 County Road 36
Wakarusa, IN 46573-9703

Mail Date: May 17, 2022

Case No. 21-PE-02320
Delivery Confirmation No.
9114 9999 4431 3276 3175 03

NOTICE OF VIOLATION



STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GARY MCDOWELL
DIRECTOR

GRETCHEN WHITMER
GOVERNOR

Mr. David Eby, Owner
Agriflora Services Inc.
30688 County Road 36
Wakarusa, IN 46573-9703

Mail Date: August 12, 2022

Case No. 21-PE-02320
Delivery Confirmation No.
9114 9999 4431 3276 3177 94

NOTICE OF ADMINISTRATIVE FINE

Dear Mr. David Eby:

David Eby and Agriflora Services Inc. have been found in violation of the Natural Resources and Environ Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. The Michigan Department of Agriculture and Rural Development (MDARD) issued a Notice of Violation dated May 17, 2022, detailing violations and providing an opportunity for an informal hearing.

On May 23, 2022, Ms. Denise Eby emailed Caitlin Burtman, Pesticide Enforcement Program Specialist requesting more information and an extension in the deadline to request an informal hearing in order to the report. Ms. Burtman informed Ms. Eby how to file a Freedom of Information Act (FOIA) request in o obtain the report. As of August 11, 2022, the firm has not fulfilled a FOIA request as required after receer communications from both Ms. Burtman and the FOIA coordinator on how to do so. MDARD has also n received a written request for an informal hearing and therefore has determined the violations and pena described below.

The following violations were identified:

Special Administrative Report 2021-0000000000

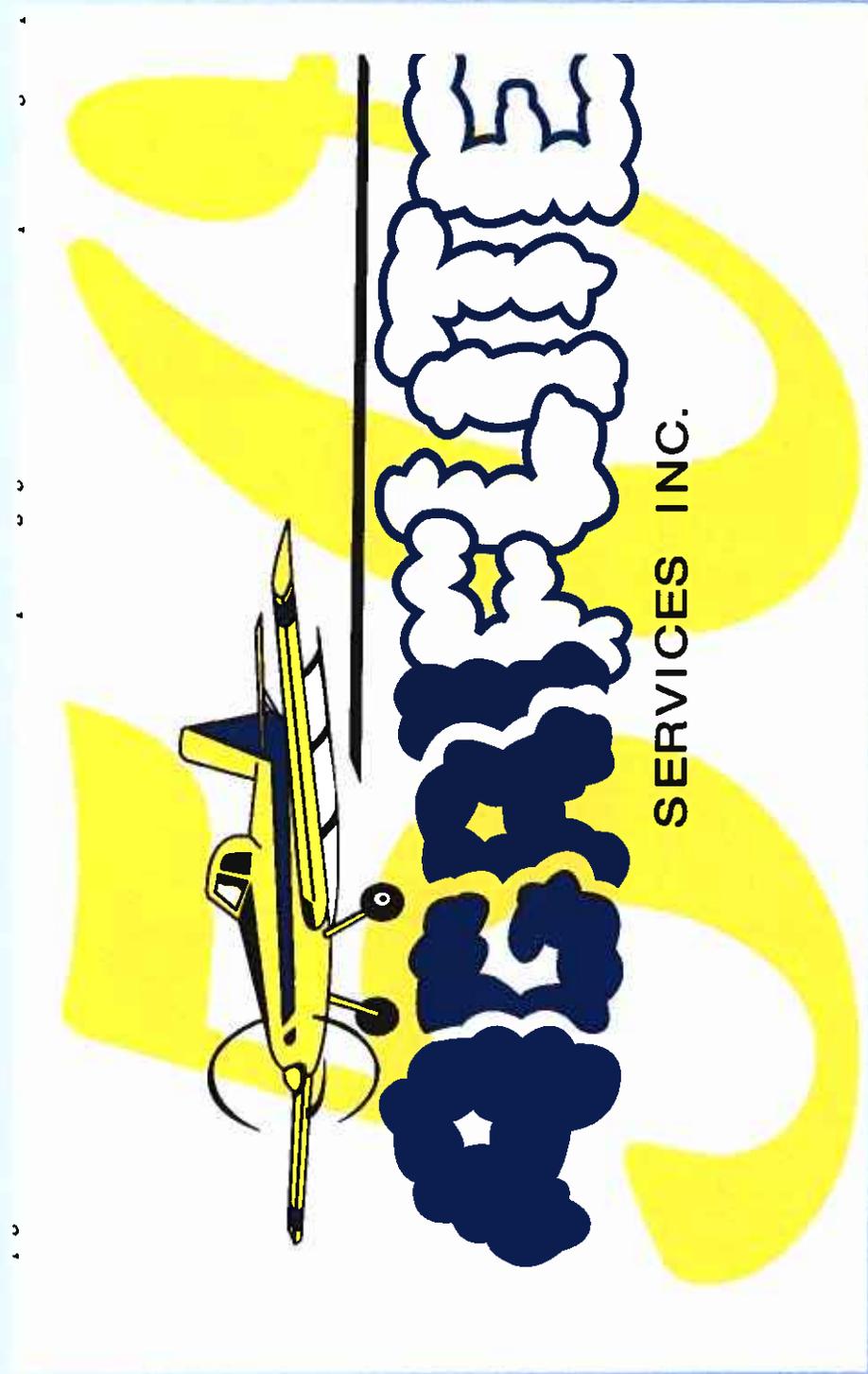
History of Michigan Pesticide Regulation

HISTORY OF MICHIGAN PESTICIDE REGULATION

Dates	Name of Act or Regulation	Brief summary of Act or Regulation (Refer to the actual act or regulation for details)
1972	Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)	This Act from the US Congress contains all federal regulations relating to pesticides and pesticide use. Each state must frame their pesticide regulations within the context of FIFRA. States may make pesticide regulations more restrictive than FIFRA but never less restrictive. The Environmental Protection Agency (EPA) administers FIFRA.
1976	Michigan Pesticide Control Act (Act 171)	This Act creates pesticide rules and regulations specific to Michigan. -requires all pesticides used in the state to be registered with the Michigan Department of Agriculture -defines licensing requirements for businesses selling restricted use pesticides and for businesses offering pesticide application services -defines requirements for private and commercial certified applicators
1988	Michigan Pesticide Control Act - As Amended	-defines requirements for registered technicians
1991	Regulation 636, as amended: Pesticide Applicators	-creates registered technician status -creates approved trainer status -expands pesticide recertifying requirements for commercial applicators -provides for incidental use * -Adds new registration subcategories for commercial applicators
1992	Regulation 637: Pesticide Use	-requires written service agreements -defines requirements for mix/load and wash/rinse operations -requires a drift management plan -defines pesticide use in and around schools -defines requirements for posting/notification -defines when and what personal protective equipment shall be worn for pesticide applications
1994	Michigan Pesticide Control Act - As Amended	-provides a general use ready-to-use exemption * -gives parents the right to be notified when pesticides are applied in schools -preempt local pesticide application ordinances
1995	Michigan Pesticide Control Act, as amended, is reclassified as part of Act 451: Natural Resources and Environmental Protection Act	Act 171 (see 1976, 1988, and 1994 above) is now Act 451 Part 83: Pesticide Control

*see General Definitions, page 12

Celebrating 50 years: 1973-2023



Who?
Is David Eby

What?

did he do?



STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GRETCHEN WHITMER
Governor

GARY MCDOWELL
Director

Mr. David Eby
Agriflits Services Inc.
30688 County Road 36
Wakarusa, IN 46573-6703

Mail Date: May 17, 2022
Case No. 21-PE-02320
Delivery Confirmation No.
9114 9999 4431 3276 3175 03

NOTICE OF VIOLATION

Dear Mr. Eby:

You are hereby notified that the Director of the Michigan Department of Agriculture & Rural Development (MDARD) has sufficient information to believe that Mr. Dave Eby and Agriflits Services Inc. have violated the requirements of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.6301 et seq. in accordance with MCL 324.6333, an administrative fine up to \$1,000 for each violation described below may be assessed, for a total of \$2,000.

On July 21, 2021, Ms. Rachel Bakowski of Ottawa Lake, Michigan, contacted MDARD to file a complaint against Agriflits Services Inc. Ms. Bakowski alleged that she was drifted upon while driving a tractor hauling a wagon of oats on Lake Road in Whitford, Monroe county. During the investigation, MDARD determined that Mr. WB Souther, employee of Agriflits Services Inc., applied Tombstone Helios (a restricted use pesticide) and Headline AMP to the cornfield west of Lake Road, as contracted by Nutrien Ag Solutions, Blissfield branch. A witness also confirmed that Ms. Bakowski had been driving along Lake Road during the application.

Swab, clothing, and grain samples tested positive for the active ingredients found in Tombstone Helios and Headline AMP, indicating that the complainant had indeed been contacted during the application.

The following violations were identified:

Legal Citation/Short Description	Comments
R285.637.4(e) a pesticide shall be used in a manner consistent with its label	Agriflits applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. Per the label for Headline AMP, "DO NOT apply under circumstances where possible drift to endangered species, unprotected persons, to food, forage, or other plantings that might be damaged, or crops thereof rendered unfit for sale, use or consumption can occur." Per samples obtained by MDARD, drift of the product occurred onto a person and to food for animals.

Licensing Compliance



PI 079 (07/03)

Michigan Department of Agriculture & Rural Development
Pesticide and Plant Pest Management Division
Pesticide Application Business License

License No: 910003
Issue Date: 03/24/2022
Expiration: 12/31/2022

Issued To
AGRIFLITE SERVICES, INC.
30688 CR 36
WAKARUSA, IN 46573-
Category(ies) 1A, 1B, 1C, 2, 7F, AE
Mailing Address

AGRIFLITE SERVICES, INC.
30688 CR 36
WAKARUSA, IN 46573-

GARY MCDOWELL
Director of Agriculture
& Rural Development

This license is issued in accordance with the provisions of Act 151, Part 30, PA of 1994, as amended & is only valid for the state of Michigan and categories listed above. Categories with an (*) are RESTRICTED (see back). This license is not transferable.

- (b) Procedures for verifying, and the responsibility of the trainer to verify, training.
- (c) Submission of necessary forms for the registration or certification of applicators.
- (d) The various methods of effective communication for the presentation of educational material.
- (2) A trainer of certified or registered applicators may also be any other person who is authorized by the director.

History: 1979 AC; 1991 AACCS.

R 285.636.12 Application for license.

Rule 12. (1) Application for a license to engage in the business of applying pesticides shall be made on a form prescribed by the director. The applicant shall be a certified applicator or shall employ a certified applicator to apply, or supervise the application of, pesticides. The certified applicator named on the license application shall not represent more than 1 licensee or place of business. The licensee shall notify the director of any changes relative to the status of a certified applicator named on the license application.

(2) A license application shall be accompanied by a certificate from an insurance company or an approved surplus lines company authorized to do business in this state which sets forth the insurance limits prescribed in R 285.636.14. The certificate shall be in effect for the entire license period or for the generally recognized time period in which the pesticide applications may occur.

(3) When an assumed name is used on an application, then the application for a license shall be accompanied by a registered assumed name certificate.

(4) A foreign corporation shall attach to the license application a certificate of authority to transact business in the state of Michigan which is issued from the corporation and securities bureau of the department of consumer and industry services under 1972 PA 284, MCL 450.1101 et seq.

(5) A new licensee shall comply with the experience requirements set forth in section 8313 of the act. The director shall review and verify the contents of a notarized statement that documents that the applicant has complied with the experience requirements as required by the act. Any false or misleading statements will be cause for license denial, suspension, or revocation.

History: 1979 AC; 1991 AACCS; 2002 AACCS

R 285.636.13 License renewals.

Rule 13. A license may be renewed on the form prescribed by the director if the applicant meets all of the qualifications set forth in the act and these rules.

History: 1979 AC; 1991 AACCS

R 285.636.14 Financial responsibility.

Page 13

Courtesy of www.michigan.gov/dnr

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state, the director shall cooperate and provide assistance and recommendations to eliminate or mitigate the danger. The director may waive or modify modification and exclusion requirements of this rule to facilitate response.

History: 1992 AACRS; 1995 AACRS; 2008 AACRS; 2021 MR 10, Eff. May 21, 2021.

R 285.637.12 Applicator service agreements.

Rule 12. (1) Before applying a pesticide, a commercial applicator who is required to be licensed by the act, or his or her authorized agent, shall enter into an oral or written service agreement with the customer or authorized agent. The agreement shall specify all of the following:

- (a) The customer's consent to services.
- (b) The name, address, and telephone number of the firm that provides the pesticide application services.
- (c) The approximate schedule, frequency, and duration of anticipated services.
- (2) A commercial applicator who is required to be licensed by the act, or his or her authorized agent, shall provide all of the following written information to the customer or to the customer's authorized agent:
 - (a) The name, address, and telephone number of the firm that provides the pesticide application services.
 - (b) The full name of the applicator who provides services.
 - (c) A general description of the target pest or pests to be controlled.
 - (d) A list of the pesticides applied, including the common name of the active ingredient.
 - (e) The time and date of the application.
 - (f) Applicable precautionary warnings or reentry restrictions which appear on the label of the pesticide or pesticides that are applied.
 - (3) The information required in subrule (2) of this rule shall be provided in one of two ways:
 - (a) Not later than at the time of each pesticide application.
 - (b) The information may be provided electronically within 48 hours after the application if the commercial applicator has the written approval of the customer or the customer's authorized agent prior to the application.
 - (4) Not later than at the time of initial pesticide application, a commercial applicator who is required to be licensed by the act, or his or her authorized agent, shall provide all of the following written risk and benefit information to the customer or the customer's authorized agent:
 - (a) The definition of a pesticide.
 - (b) A general description of how pesticides work.
 - (c) Why pesticides are used.
 - (d) General toxicity information related to all of the following:
 - (i) The type of compound used.
 - (ii) The environment in which the pesticide is applied.
 - (iii) General exposure information.
 - (iv) The amount or rate of pesticide applied.
 - (v) Proper pesticide applications in compliance with the label.

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Service Agreement



SERVICE AGREEMENT FOR AERIAL APPLICATION

This Service Agreement for Aerial Application (the "Agreement") is entered into and is effective as of May 1, 2021 (the "Effective Date"), by and between Nutrien Ag Solutions, Inc. ("NAS"), and Agri Plus Services, Inc. (the "Contractor") (collectively, the Parties).

WHEREAS, Contractor is in the business of applying agricultural products ("Products"); and Contractor and NAS desire to establish the terms and conditions under which Contractor shall perform aerial application services (the "Work") for NAS; and

WHEREAS, Contractor shall perform the Work for NAS, and NAS shall compensate Contractor therefore, on the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable considerations, the receipt and adequacy of which is hereby acknowledged, and in consideration of the mutual agreements, covenants and obligations hereinafter set forth, the Parties agree as follows:

1. SCOPE OF WORK

Subject to all of the terms of this Agreement, Contractor, using Contractor's own equipment and personnel, shall provide the Work (aerial applications services) on behalf of the NAS location(s) listed on the attached Exhibit A for NAS' customers.

2. TERM

This Agreement is effective as of the Effective Date above and shall remain in effect for a period of one (1) year unless earlier terminated as provided herein.

3. TERMINATION

This Agreement may be terminated by either Party at any time by giving the other Party thirty (30) days' advance written notice of such termination. In addition, upon such termination, NAS shall pay Contractor the amount due for fees and expenses incurred up to the time of termination, and no further Work shall be required except as may be reasonably requested by NAS to ensure that any of the Work in progress on the date of termination is completed. Contractor shall not be entitled to compensation for any Work performed or expenses incurred after the effective date of termination or for the Work performed or expenses incurred between the date of the notice of termination and the effective date of termination, unless such Work and expenses were approved in advance in writing by NAS. Payments made to Contractor upon termination shall constitute full and complete discharge of NAS' obligations under this Agreement. Notwithstanding the foregoing, this Agreement shall terminate immediately upon the death of Contractor, if Contractor is an individual person. Notwithstanding any other provisions of this Agreement, any obligation by a Party which has not been fully observed or performed shall survive the expiration or termination of this Agreement. NAS may also terminate this Agreement at any time if it determines in its sole discretion that the Work is inadequate or unsatisfactory.

4. PERFORMANCE STANDARDS

Contractor warrants that:

- 4.1 Contractor is fully qualified, competent, experienced, licensed (and where required, certified) to perform the Work. Contractor's applicator's license number is 910003, and Contractor shall provide a copy of such license prior to commencement of the Work.
 - 4.2 Contractor shall perform the Work using only trained and qualified workers, who possess the qualifications and licenses required by Federal and state agencies governing the Work.
 - 4.3 All equipment used to perform the Work shall be in good and safe operating condition and, in the case of aircraft, fully airworthy, suitably insured and equipped.
 - 4.4 The Work shall meet best industry standards and shall comply with all applicable state and other laws regarding use of the chemical being applied.
 - 4.5 Contractor shall comply with all requirements of the Federal Aviation Administration regarding maintenance, licensing and use of aircraft used to perform the Work.
 - 4.6 Contractor shall perform the Work with the standard of care, skill and diligence normally provided by a professional person or firm in the performance of services similar to the Work.
 - 4.7 Contractor shall properly clean all application equipment between applications and between applications of different products.
 - 4.8 All Products will be applied in accordance with their labels.
 - 4.9 Contractor shall discuss loading and application logistics with NAS after order is placed in AgSys and prior to aircraft arrival at airport.
 - 4.10 If the Work warrants, Contractor will supply additional loading equipment to service the aircraft. NAS warrants that:
 - 4.11 NAS shall be responsible for confirming the exact location and extent of the area to be covered with customer on whose property the chemicals are to be applied.
 - 4.12 NAS shall order this location to be treated through AgSys Order Management online software.
 - 4.13 NAS shall be responsible to provide and deliver Products to applied to the field in AgSys Order Management online software.
 - 4.14 If hot loads are delivered by NAS to the airport, NAS shall be responsible for the integrity of the pre-mixed chemicals and shall provide a delivery ticket listing of products, rates and total moisture. (Note: Reports in AgSys can be referenced to facilitate total product to be mixed.)
5. PAYMENT
- NAS agrees to pay Contractor pursuant to the rates outlined on the attached Exhibit A. Payment of the stated amount shall satisfy all of NAS' obligations to Contractor and shall be inclusive of all taxes, assessments, fees, costs, salaries, labor, or otherwise which might be payable by or to Contractor. All Work must be completed to the reasonable satisfaction of NAS in order for the Contractor to be entitled to the payment described. Payment by NAS constitutes for any Work performed will be made directly to NAS and Contractor shall receive no payment from NAS customers. All billing of the Work shall be through NAS and will be recorded on NAS invoices.

6. OPERATING COSTS

Page 2 of 4 Approved by Legal

Approved by Legal

Service Agreement or Contract Law

- (c) Common sense precautionary measures for the customer regarding pesticides.
- (f) General information on the environmental fate of pesticides.
- (g) Instructions to the customer to discuss site preparation and precautionary measures with the pesticide applicator.
- (h) Instructions to the customer to consult with a physician if an unusual reaction occurs.
- (5) A commercial agricultural or aerial applicator may provide the information specified in both of the following provisions to the customer or the customer's authorized agent in place of the information requirements specified in subrules (2) and (3) of this rule:
- (a) Oral instructions to the customer or the customer's authorized agent on labeled reentry and preharvest interval requirements before application.
- (b) A copy of the risk and benefit information sheet or the pertinent section of the label that pertains to risks and benefits.
- (6) If an emergency requires immediate pesticide application, the information that is required in subrule (2) of this rule may be provided after the application has occurred.
- (7) The department reserves the right to review and prohibit the use of written information required to be provided to customers in subrule (3) of this rule if the director determines that the information does not meet the intent of subrule (3) of this rule.
- (8) The duration of a service agreement shall not be more than 12 months unless either written notification of continuation of service is provided annually or unless the service agreement is a signed contract that specifies a definite time period during which the contract is valid. Written notification of continuation of service shall provide information to the customer regarding how to discontinue service.
- (9) When requested by the customer or his or her authorized agent, the commercial applicator shall provide all of the following documents to the customer:
- (a) Product labels.
- (b) Material safety data sheets.
- (c) Environmental protection agency fact sheets, if available.
- (d) A document that specifies the rate of application of the active ingredients of the products applied.
- (10) If the customer is acting in the interest of residents of the treated premises, then the customer shall make the information provided in this rule available to the residents upon request.

History: 1992 AACRS; 1995 AACRS; 2008 AACRS.

R 285.637.13 Misrepresentation of pesticide safety prohibited.

Rule 13. A commercial applicator shall not make false, misleading, deceptive, or fraudulent representations concerning pesticide safety. All of the following claims or statements are prohibited:

- (a) Any statement that implies a pesticide is recommended or endorsed by any federal or state agency.
- (b) Claims of absolute safety.

Rule 14. (1) A licensed commercial applicator shall maintain comprehensive general liability insurance for bodily injury and property damage during the licensing period or during the period of time necessary to span a seasonal operation, except as provided in subrule (5) of this rule. The insurance shall not exclude coverage for bodily injury and property damage which arise from pesticide applications.

(2) Minimum insurance coverage for persons who are engaged in aerial application, space fumigation, or night-of-way pest management shall be \$100,000.00 for each occurrence for bodily injury and \$25,000.00 for each occurrence for property damage or a combined single limit of \$300,000.00 for bodily injury and property damage.

(3) Minimum insurance for persons who are licensed in a category or subcategory described in R 285.636.3 shall be \$100,000.00 for each occurrence for bodily injury and \$25,000.00 for each occurrence for property damage, except as prescribed in subrule (2) of this rule.

(4) If an applicant is qualified for a license in 2 or more application categories with different minimum financial responsibilities, the greater requirement shall apply.

(5) A single comprehensive general liability insurance policy, as prescribed in subrules (2) and (3) of this rule, may be written to provide financial responsibility coverage for more than 1 licensed place of business owned and operated by the same person.

(6) If the required insurance coverage for a license expires or is canceled during the license period, the license shall be suspended and the licensee shall surrender the license to the director for the remainder of the licensing period or until such time as the financial responsibility requirements have been complied with.

History: 1991 AACR.

R 285.636.15 Commercial applicator records.

Rule 15. (1) All commercial applicators shall maintain verifiable records of restricted-use pesticide applications for a period of not less than 3 years following the application. The records shall show all of the following information:

- (a) The name and EPA registration number of the pesticide applied.
- (b) Concentration of the pesticide applied.
- (c) The amount of pesticide end use dilution applied.
- (d) The target pest, purpose, or crop site.
- (e) The date the pesticide was applied.
- (f) The address or location of pesticide application.
- (g) The method and the rate of application.

(2) All commercial applicators shall maintain verifiable records of general-use pesticide applications for a period of not less than 1 year following the application. Such records shall show all of the following information:

- (a) The name and EPA registration number of the pesticide applied.
- (b) The concentration of the pesticide applied.
- (c) The amount of pesticide end use dilution applied.
- (d) The target pest, purpose, or crop site.
- (e) The date the pesticide was applied.
- (f) The address or location of pesticide application.

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AgSync:/Online –Real time applicator records

- www.agsync.com
- 2007-present
- Replaced platbook with lat/long approach

Task Map with Driftwatch Layer

Task Details - Google Streets

Task #	Task Name	Area Sq	Total Orders	Task ID	Total Area
1	Block	62.79	5	698845	279.8 AC
2	Commercial Home	63.70		Watch Location	
3	Lottery	37.59		14002_Lenawee Co_Ashes, MI	
4	Residential 200	62.35			
5	Market	60.00			

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Work order from 1978

1571

AGRI FLITE SERVICES, INC.

NAME CARL DE VILLEGAS PHONE 284-3748 DATE 6/14/78
 ADDRESS R3 BOX 254 MORGAN 96506
 BILL TO _____
 NOTES: _____

WHITE FLAG IN FIELD TURKEY, BEES OR CHICKENS NEARBY

COUNTY	TWP.	SEC.	ACHES
MARSHALL	NEEDY	26	17

AGRI'S AUGUSTA DE VILLEGAS Total Acres 19

CROP CATS Treatment for SCB/WHIPS
 Material 1. DIMETHION
 and ? 2,4-D
 App. Rate _____

Job Completed by DDC:19 DDC:19 Wind _____

CHEMICAL OR SEED

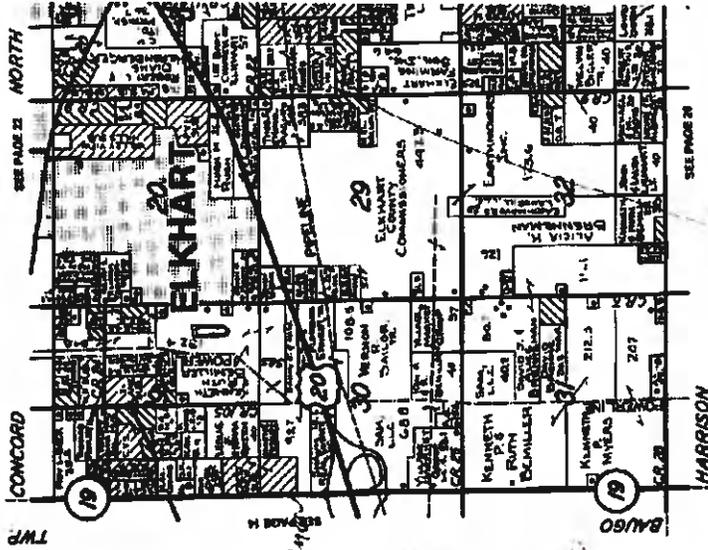
1. <u>10 qt MCP</u>	<u>0.117/pt</u>	<u>29.35</u>
2. <u> </u>	<u> </u>	<u> </u>
3. <u> </u>	<u> </u>	<u> </u>

APPLICATION CHARGE 19 @ 6.25 118.75
 Total Charge 148.10



Plat book map

TOWNSHIP 37 N.
RANGE 56 E.



Doc 538461

*TRUNK SIDEWAY
1314*

*APPLICANT S. 12/11
A.Z.S.*

*25789 CR20
637*

*-807.96124
41.15350*

321 South Th
Goshen.

574-
574-532

www.stewartel



stewart
title of elkhart county

*Doc 538461
710 28' 08" 2 46
-807.96124*

24

Early satellite maps with work order



2008 Work Order

Target Date: Ron Martin call
 Order Date: 8/22/08
 575-3-273



Customer: Steve Sherman
 Grower: Steve Sherman
 24789 CR 20, Godbee, IN
 Field: Sherman_13

Crop: Wheat Pest: Disease

ACRES: 13

Lat: 41.375985 N

Long: -85.574295

Airport: Home

Completion Data

Date: 2008
 Pilot: DJ, GF, RE, KM

Product	Rate	Units	Total	Actual	Supplier
Proline	5	OZ			Ron Martin
NIS					AFS

Invoice No.

Editor's Note: An obvious error in R 285.637.9 was corrected at the request of the promulgating agency, pursuant to Section 56 of 1969 PA 306, as amended by 2000 PA 262, MCL 24.236. The rule containing the error was published in Michigan Register, 2008 MR 4. The memorandum requesting the correction was published in Michigan Register, 2008 MR 12.

R 285.637.10 Off-target pesticide drift.

Rule 10. (1) Pesticide applications shall be made in a manner that minimizes off-target drift, unless prior authorization and consent as specified in subrule (3) of this rule is obtained from the owner or resident of the land onto which drift may occur.

- (2) Before making a pesticide application, an applicator shall do both of the following:
 - (a) Determine the likelihood of off-target drift.
 - (b) Determine the direction of possible off-target drift and any sensitive areas that may be impacted.
- (3) When pesticide off-target drift is likely to occur due to the nature of the application or atmospheric conditions, including, but not limited to wind speed and direction, a drift management plan shall be utilized by the applicator to minimize the occurrence and adverse effects of off-target drift. The plan shall include provisions to secure the informed consent of residents in the affected area before making the application. If, in the course of making an application off-target drift occurs, the applicator shall notify the residents in the affected area either verbally or with written notification which includes the name, address, and phone number of a person who may be contacted and who is responsible for supplying information concerning the application before leaving the application site. The drift management plan shall include drift minimization practices. Such practices may include any of the following:
 - (a) The use of a possible combination of nozzles, pressure, or volume to manage droplet size.
 - (b) The use of equipment that is designed to minimize off-target drift.
 - (c) The consideration of release distance to target to maximize deposition.
 - (d) The use of drift reduction additives.
 - (e) The establishment of a no-spray buffer zone. The buffer zone may be treated with nonpowered equipment.
 - (f) The identification of the maximum wind speed and direction under which applications can be made.
 - (g) The use of wind shields or windbreaks to contain spray drift or deflect spray drift.
 - (h) Other specific measures stated in the plan that are effective in minimizing the incidence of off-target drift.
- (4) Drift management plans shall be in writing. The plan will state the measures to be used and how those measures will reduce off-target drift. The drift management plan shall be annually reviewed by the person who utilizes the plan.
- (5) A record of the sites where the drift management plan was implemented and a copy of the drift management plan shall be retained for a period of 1 year for general use

Regulation

Off-target pesticide drift



MICHIGAN DRIFT MANAGEMENT PLAN

In accordance with Regulation 637, Pesticide Use, Rule 10

Our establishment uses a written drift management plan to minimize the occurrence of off-target drift. All pesticide applications conducted at this farm are made in accordance with this plan. If drift does occur, the applicator will record those incidents on the back of this form. Recognizing that pesticide applications should be made in a manner that prevents off-target direct discharge of pesticides, our drift management plan includes the following:

- A. Procedures used when spraying pesticides
- B. Procedures used when off-target drift is likely to occur due to the nature of the application or atmospheric conditions, including, but not limited to wind speed and direction
- C. Procedures used when off-target drift does occur
- D. Review records sheet
- E. Site record sheet

Note that for the purposes of this plan, off-target drift does NOT include off-target movement of a pesticide by means of erosion, volatilization, or wind-blown dust. The plan does not include off-target drift caused by a pesticide being applied to a target site, unless the pesticide label makes specific statements pertaining to drift related to those means. We recognize that applicators who apply pesticides in accordance with this plan do not include an applicator from competing with appropriate federal or state statutes and regulations. However, the Michigan Department of Agriculture and Rural Development (MDARD) will consider the presence and proper use of a drift management plan as a factor when determining appropriate enforcement action.

- A. To minimize the incidence of off-target drift, the following procedures and practices shall be utilized when applying pesticides (check all that apply):
 - D Use of the target spray droplets that provide effective coverage of the target site. This can be achieved by use of appropriate nozzles and the lowest pressure possible that still provides effective coverage
 - D Use of drift control additives when appropriate
 - D Release of the pesticide as close as possible to the target
 - D Use of the lowest effective rates of application
 - D Determine the wind speed, using a hand-held wind meter when necessary (suggested guidelines below)
 - a Zero to 10 mph - Generally OK to spray. Use normal procedures.
 - b 10 to 15 mph - Use extra caution when spraying. Consider use of drop spreader with granular material for turf sites
 - c 15 mph or more - Recommend no spraying.
 - d If area being treated is sheltered from the wind, these parameters may be adjusted
 - D Wind breaks may be used to contain or deflected spray or to block wind from the target site
 - D Target sites located in close proximity to the property line may need to be contacted or only partially sprayed to avoid off-target drift
- B. When pesticide drift is likely to occur due to the nature of the application/atmospheric conditions/unstable speed/wind direction, etc., the applicator shall:
 - 1 Secure prior informed consent of residents in the affected areas. Oral consent is acceptable, but written consent is preferred
 - 2 If contact with the affected residents is not possible or if consent is not obtained, the applicator shall employ all effective methods for drift control
 - 3 Any questionable areas of sensitive sites should be discussed with management before proceeding with the spray. Do not spray if sensitive areas are not clearly defined or are questionable
 - 4 If any off-target drift occurs, the applicator shall notify the property owner of the occurrence (See C1)
- C. Procedures to use when off-target drift does occur:
 - 1 The applicator shall notify the affected residents, BEFORE LEAVING THE APPLICATION SITE, and either verbally or with written notification that includes the name, address, and phone number of the person who may be contacted and is responsible for supplying information concerning the application
 - 2 The applicator shall IMMEDIATELY notify farm management of the occurrence of off-target drift
 - 3 Maintain a record at the office of all sites where the drift management plan was implemented. Records shall be maintained for a period of 1 year for general use pesticide products and 3 years for restricted use products and shall be provided to MDARD upon request

COMPLY



extension.osu.edu
fabe.osu.edu

Effect of Major Variables on Drift Distances of Spray Droplets

H. Erdal Ozkan, Professor, Food, Agricultural and Biological Engineering

Dr. Heping Zhu, Agricultural Engineer, USDA-ARS Application Technology Research Unit

Pesticide applications are required to ensure an adequate and high quality supply of many agricultural crops. Due to concerns for production costs, safety, and the environment, it is important to maximize the pesticide deposit on the target. One of the major problems challenging pesticide applicators is spray drift, which is defined as movement of pesticides by wind from the application site to an off-target site.

Spray drift occurs wherever liquid sprays are applied. Although complete elimination of spray drift is impossible, problems can be reduced significantly if the pesticide applicator is aware of major factors which influence drift, and takes precautions to minimize their influence on off-target movement of droplets.

Drift is influenced by many factors that usually may be grouped into one of the following categories: 1) Spray characteristics, 2) Equipment and application techniques used, 3) Weather, and 4) Operator care and skill. A general discussion of these factors can be found in another publication by Ozkan (1991). In this publication, you will find specific information on how much influence some of these major factors have on the drift distances of spray droplets.

The factors that significantly influence off-target movement of droplets are wind velocity and direction, droplet size and density, and distance from the atomizer to the target. Other factors that influence drift include droplet velocity and direction of discharge from the atomizer, volatility of the spray fluid, relative humidity, ambient temperature, and atmospheric turbulence intensity. Many scientists have conducted field tests to study influence of these variables on spray drift. Unfortunately, field tests have the limitation that weather conditions cannot be controlled and the variables that influence spray drift

Research

AgAir Update article and AeroFlow Ad 2022

Field Study in Corn Reveals Need to Maintain Correct Height Above Canopy

by Dr. Scott Brubaker, MAM Staff

Recent applications result in 5 ft of air deposition height for their aircraft. Flying too low prevents the spray pattern from developing to full width. It may also cause uneven application within the pattern field.

A field study by Aero Flow from AgAir Spray Consulting, Ken Jones from CropScan Consulting and Matt Gill from the University of Illinois at Urbana-Champaign examined deposition from aerial applications in a corn canopy. The study was done by David Sauer with Palmer Flying Service in Lincoln, Illinois. The project was sponsored by Bayer Crop Science. The purpose of the study was to identify potential causes for areas of the growing season to have fungicide applications from the 2021 season.

Several treatments were conducted with a single application, including different nozzle widths and application heights. The most treatment, an 65,000 nozzle was utilized across with a 90-foot swath width. Spray

coverage was captured on white anemometer cones located in the top, ear level and lower parts of the corn canopy. The corn was just entering the V7 growth stage. Sampling began at the center of the first pass and went to the center of the second pass to see if canopy penetration and deposition were reduced in the zone of overlap between the two passes.

Data for all the treatments showed high variability across the 50-foot swath, which is to be expected for spraying at a 5-foot interval in a closed canopy where much of the spray is intercepted by plant leaves. The results do correlate with full fan nozzles and the aircraft operated with a boom height of around 12 to 15 feet above the canopy. There was

an increase in deposition in spray coverage and penetration in the zone of spray overlap between the two passes.



This was true for all three overlapping locations in the canopy top, ear level and lower parts of the canopy.

Flying much lower, with the wheels almost in the canopy appears to have caused a roughly 15-foot gap with reduced spray deposition in the zone of overlap between the two passes. This reduction was found at all three sampling heights in the canopy. This reduces the fact that aerial operators need to fly at an appropriate height for their aircraft. Flying too low prevents the spray pattern from developing to its full width. It can also greatly reduce uniformity within the pattern field. If you have had your aircraft pattern tested at an Operation S.A.F.E. 0-16, do not expect to fly it at a much lower height in the field and use the same swath width.

When switching to straight stream nozzles, there was a gap in deposition between the two passes. This gap is to be expected, because, as the boom target needs' width of 90 feet was used for the plot. Based on the results of this study, a 75-foot swath width would have been more appropriate for these nozzles. Straight stream nozzles result in a larger deposit than the typical results in an aerial application spray pattern. This trend has also been seen at numerous Operation S.A.F.E. 0-16s. When switching nozzles from flat fans to straight streamers, it is critical to understand that swath width will have to be recalculated and spray reduced. Have your spray pattern analyzed at an Operation S.A.F.E. 0-16 to determine the optimum swath width.

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1995-2022

Fix and Improve



Early fungicide > "Crop Protection Products"

Gmail - Are Crop Diseases Here to Stay?

<http://mail.google.com/mail/?ui=2&ik=475146b6c&ik-view=fullsearch>



Dave Eby <daveagriffith@gmail.com>

Are Crop Diseases Here to Stay?

1 message

Ron Cowman <ron.cowman@syngenta.com> Fri, Jul 2, 2010 at 8:59 AM
To: daveagriffith@gmail.com



Plant Performance

Printer Friendly Version



Photo by Ron Cowman
Taken at June 28 (Cowman)

Are Diseases Here To Stay?

The 2010 season is shaping up to be a challenging year for corn and soybean growers thanks to Mother Nature, as periods of rain and flooding are plaguing parts of the Midwest. The widespread rain, coupled with early crop development, has set the stage for the invasion of foliar disease in both corn and soybean much earlier than normal.

You can be proactive and help prevent yield loss by protecting your crops with a fungicide application. Applying a preventive fungicide, when conditions are conducive to disease, can help

1 of 3

7/2/2010 8:36 AM

RESTRICTED USE PESTICIDE

Due to Toxicity to Fish and Aquatic Organisms
For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

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INSECTICIDE

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For control of certain insect pests on field, vegetable, tree and vine crops.

ACTIVE INGREDIENT:

Cyfluthrin
Cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethyl)-2,2-dimethyl-cyclopropanecarboxylate

OTHER INGREDIENTS* 28%
..... 73%
TOTAL 100%

Contains 2.0 pound Cyfluthrin per gallon.

*(This product contains aromatic petroleum distillates.)

KEEP OUT OF REACH OF CHILDREN

WARNING - AVISO
If used no enticelo la etiqueta, busque a alguien para que le explique a usted en detalle. (If you do not understand the label, find someone to explain it to you in detail.)

If in eyes:	<ul style="list-style-type: none"> Hold eyes open and rinse safety thoroughly with water for 15 to 20 minutes. Remove contact lenses if present, after the first 5 minutes, then continue rinsing eye. Call a poison control center or doctor for treatment advice.
If swallowed:	<ul style="list-style-type: none"> Call a poison control center or doctor immediately for treatment advice. Do not induce vomiting unless told to do so by a poison control center or doctor. Do not give anything by mouth to an unconscious person.
If on skin or clothing:	<ul style="list-style-type: none"> Take off contaminated clothing. Rinse skin thoroughly with plenty of water for 15 to 20 minutes. Call a poison control center or doctor for treatment advice.
If inhaled:	<ul style="list-style-type: none"> Move person to fresh air. If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably mouth-to-mouth if possible. Call a poison control center or doctor for further treatment advice.

Have a product container or label with you when calling a poison control center or doctor, or going for treatment.

FOR A MEDICAL EMERGENCY INVOLVING THIS PRODUCT CALL: 1-800-944-8686.
Note to Physician: ANTIDOTE - No specific antidote is available. Treat symptomatically. Published data indicate vitamin E acetate can prevent and/or mitigate symptoms of paresthesia caused by synthetic pyrethroids. Contains petroleum distillates. Vomiting may cause aspiration pneumonia.

EPA REG. NO. 34704-878
EPA EST. NO. 34704-883-002
NET CONTENTS 1.0 GAL (3.78 L)

022417 VID 03017

2520-0002259 Agriflora, AZ. 4 Tombstone Helios Label, Received by L. Young from R. Miller via email on 8/16/2021, 32

TOMBSTONE[®] HELIOS[®]
EPA REG. NO. 34704-878

CORN - FOLIAR APPLICATIONS

Field Corn, Sweet Corn (see Revised Corn Recommendations in Vegetable Crops Section)
Pests Controlled: Fall Armyworm, European Cornborer, Corn Earworm, Corn Rootworm, European Cornborer, Japanese Beetle (adult), June Beetle (adult), Leafhoppers, Masked Chaffer (adult), Southern Armyworm (1st and 2nd instar), Southern Corn Leaf Beetle, Southwestern Corn Borer*, Stalk Borer, Stink Bug, Webworm, Western Bean Cutworm, Yellow-striped Armyworm (1st and 2nd instar)

Rate II (oz/A) 0.8 to 1.6
0.013 to 0.025
0.025 to 0.044

Granulate cutworm
Sand hill cutworm
Armyworm (1st and 2nd instar) 1.6 to 2.8
Bean leaf beetle
Cereal leaf beetle
Chinch bug
Click beetle (adult)
Corn earworm
Corn rootworms (adult)
European corn borer
Grape colaspis (adult)
Japanese beetle (adult)
June beetle (adult)
Leafhoppers
Masked chaffer (adult)
Southern armyworm (1st and 2nd instar)
Southern corn leaf beetle
Southwestern corn borer*
Stalk borer
Stink bug
Webworm
Western bean cutworm
Yellow-striped armyworm (1st and 2nd instar) 2.1 to 2.8
Grasshopper 0.033 to 0.044
Fall armyworm (1st and 2nd instar) 2.8 0.044

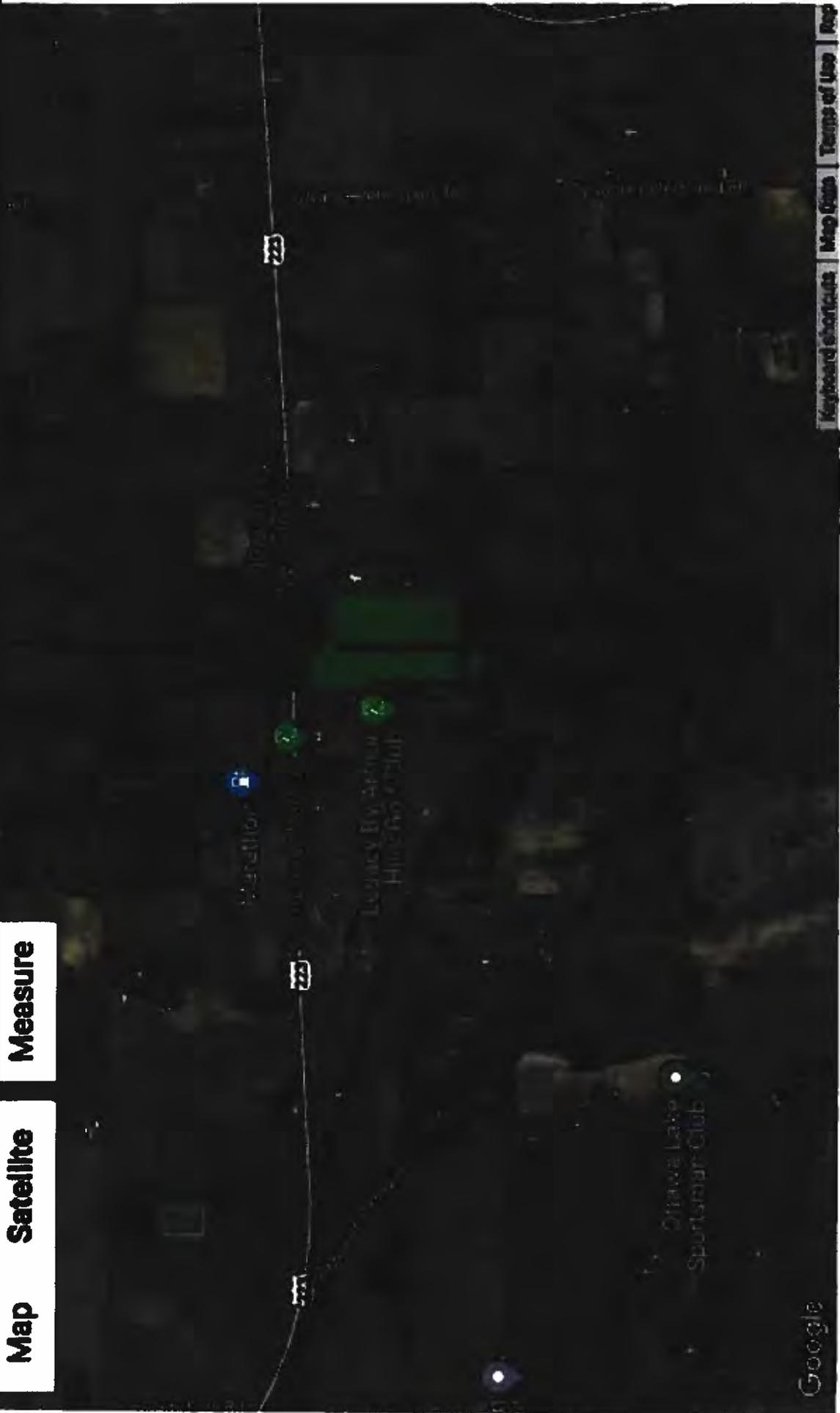
Notes and Restrictions:
Pre-Harvest Interval (PHI): For grain or fodder 21 days; Green forage may be fed 8 days after last application.
Maximum Tombstone Helios allowed per 7-day interval: 2.8 fluid ounces per acre (0.044 pounds and ingredient per acre).
Maximum Tombstone Helios allowed per crop season: 11.2 fluid ounces per acre (0.175 pounds and ingredient per acre).
Maximum number of application per season: 4. Three applications may be applied up to early dent stage.
One application may be made between early dent and 21 days before harvest.
Minimum ULV application volume (once refined cotton seed/vegetable oil): 1.0 quart per acre - aerial application.

*Application must be made prior to the larva boring into the plant.

Map

Satellite

Measure



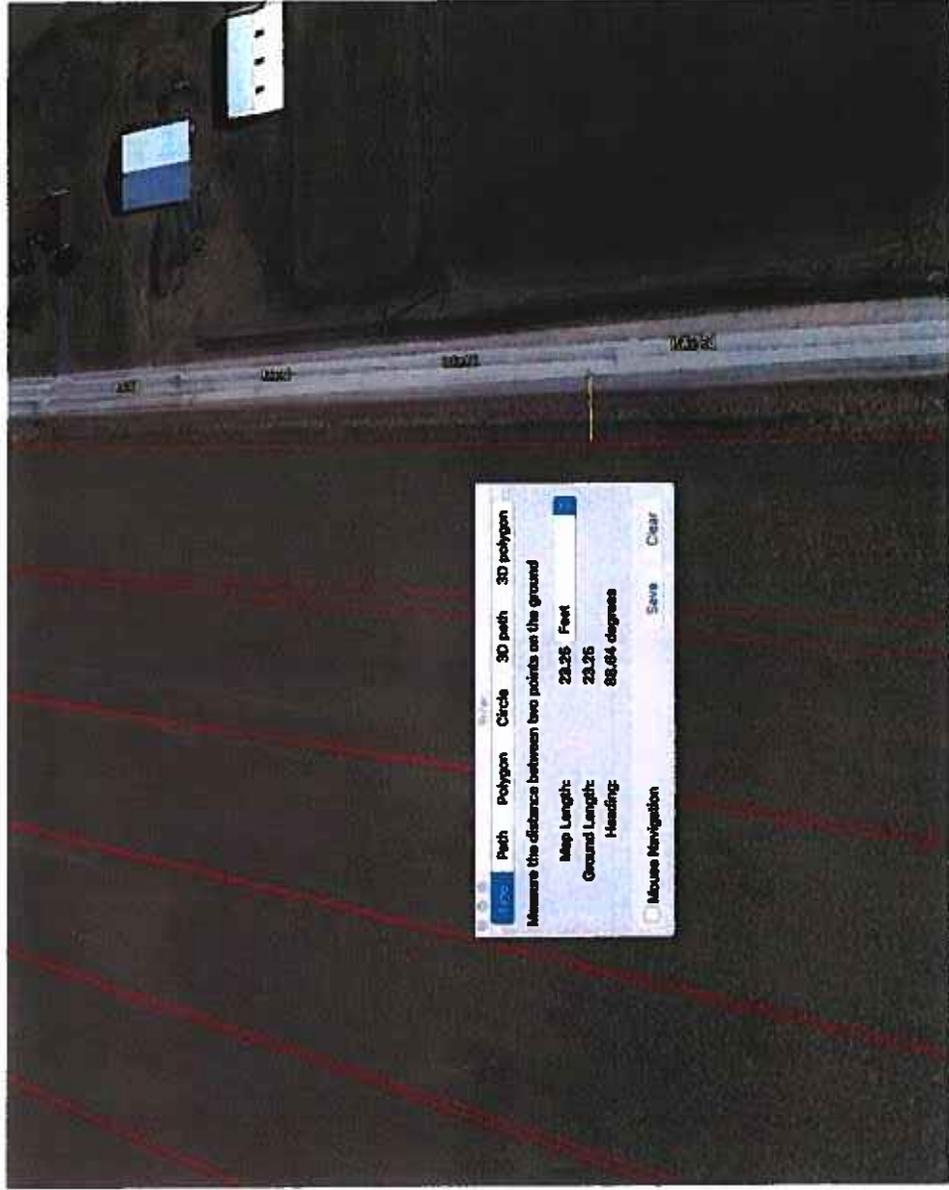
Google

Keyboard shortcuts | Map data | Terms of Use | Report

Target field: one mile zoom perspective



Estimated buffer: Google Earth



“Within a wing...”

???

Buffer Zones_ 2014 reply to EPA study

Ramifications of buffer zones for Aerial Applicators and Growers

This analysis is a reply to the EPA proposal (EPA-HQ OPP-2103-0678) to reduce and control off-target drift through the implementation of buffer zones. The report will demonstrate through field acreage calculations that buffer zone implementation has the potential to eliminate aerial application as well as financially ruin the family farm.

1. EPA's turgid definition of buffer zones

What are Buffer Zones?

Buffer zones provide insurance because the application block (i.e., edge of the treated field and boundaries, buffer zones) after an aerial application is applied before reaching the field, reducing the potential for fumigant exposure.

- Are established around the perimeter of the application block.
- Extend outward from the edge of the application block perimeter equally in all directions.



2. What is the buffer zone setback for aerial application?

Answer: There is no definitive distance with various researchers suggesting a minimum 100 feet to 3 miles depending on the pesticide.

3. What is the average farm size in the United States?

Source: http://usda.about.com/agriculture/farm_by_average_size.htm

4. Average acres at the State level: See reproduced chart on the next page:

Note: To obtain a quick idea of the dramatic effect of buffer zones on aerial applicators, an Indiana farm will be used as an illustration using a 100 foot buffer followed by a 200 foot buffer.

A rough estimate is to assume a rectangular shape of 253 acres, determine the



Farm 2: 72 Acres



100' buffer zone spray area reduced to 53 acres



Summary Comments

Aerial Application:

1. As a Midwest operator the loss of 42% (100' buffer) to 85% (200' buffer) in buffer zone would devastate our aerial application business overnight.
2. Farmers may forgo aerial spraying for ground applications to possibly reduce their losses to buffer zones.
3. Aerial application for agriculture except for specialized services and needs will cease to exist in the United States.

Producers (Farmers, growers and others) will take an even larger hit.

1. Buffer zones will financially devastate small farm crops by some type of grant, to prevent the buffer zone area from developing into a nursery for weeds, trees, and disease since pesticide use in buffer zones will be very limited.
2. Family farms will also cease to exist for financial reasons due to loss of production within the buffer zones. As in the very real example above with a 100 foot buffer zone 42% (85% for 200') of current crop production acres will be in controlled buffer zones which essentially will be taken out of production. Family farms cannot survive a financial loss of that magnitude.
3. Landowners will lose the rental income from high-income producing buffer zone acres possibly forcing farm sales or foreclosures.

In closing, The EPA buffer zone concept of controlling drift is a radical proposal that will fundamentally change American Agriculture resulting in financial ruin to everyone involved in agriculture. The intent of the current proposal is within the scope of the EPA's new agenda as initially presented by M. Jeff Dawson on February 14, 2014 to the NAAA (Spring Board Meeting) conference call that their new goal is "ecosystems social justice" not necessarily reducing off target spray drift. For that reason the current drift issue with its wider regulatory implications must be examined in more depth before any more action is taken. I am aware that the EPA is rapidly moving ahead with the concept of implementing buffer zones but as of now, both aerial applicators and growers must as a community organize and stop the farm happening.

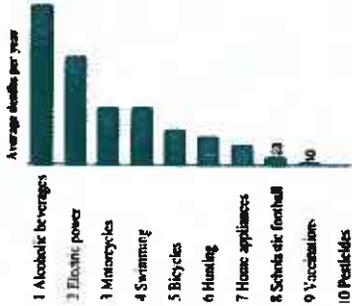
With new laws and laws cover additional new regulations among which are listed below:

1. Other zone management regulations
 2. Emissions and standards for off into adjacent landscapes
 3. Pesticide and herbicide use into adjacent landscapes
 4. Financial effects on farmers and agricultural infrastructure
 5. Pesticide Requirements and application procedures
- With USDA already building Regional Agricultural Compliance Offices, American Agriculture must move quickly to stop the implementation of buffer zones and develop a better solution consistent with current expanding technology.

David Eby
Aerial Application Services
dabe@agribiz.com
47-2014

Risks and Benefits

The Actual Risks



Source: The National Electrical Contractors' Association, by Robert L. Price, Science, American Farmer, 1982

Studies show college students rank pesticides as the most dangerous of the items listed above. In reality, when used according to label directions, pesticides are less risky than many everyday activities.

DID YOU KNOW?

What activities or products carry the greatest risk? How much do you know about food production in the United States? Here are some quick facts to test your knowledge.



DowElanco
9900 Purdue Road
Indianapolis, IN 46268

Phosphorus P.A. From No. 533 of 2001/23

Pesticide Residue

Insecticides cause little or no hazard to beneficial insects in many situations because few beneficial species, if any, are present. When insecticides are used to control household, structural and industrial pests and when they are applied directly to control insects on host animals, harm to beneficial insects is rarely an issue.²⁸

Predators are commonly given general credit for controlling rodent populations, but "the reverse is more accurate"; that is, the prey species must increase before the predator population can catch up and control the prey. Poison baits usually reduce rodent populations much more effectively than predators. For example, the average cat kills only about 25 to 30 rats a year—far too few to affect a colony's numbers.²⁹

Farmers must deal with the whole pest picture when selecting control methods to protect their crops. If a farmer is confronted with three pests, each of which can devastate his crop, he may have to spray against all three, even if one was being controlled by predatory insects which the spray will harm.

Pesticide Residues

As analytical methods are developed and improved, identification and measurement of smaller and smaller amounts of pesticides, pesticide metabolites and other trace chemicals become possible. Since the 1950s, analytical detectability has advanced from microgram (10^{-6} g.) to nanogram (10^{-9} g.) to even picogram (10^{-12} g.) amounts. As a result, residues previously reported in the parts per million (10^{-6}) range are now measurable in parts per billion (10^{-9}) or even parts per trillion (10^{-12}) concentrations.

With such incredibly minute quantities now being detectable, pesticides and other chemicals can be found almost everywhere in the environment, food, water or human or animal tissues. This too often results in fears of the "pesticide contamination" of the earth and in calls for more restrictions or bans on chemicals ... a kind of "toxic terror."³⁰

The ability to detect, however, has no relation to the biological effects of substances; that is, "residues only matter if they affect organisms."³⁰ As mentioned previously in Part 2, presence of minute pesticide quantities or other substances rarely presents even the slightest risk to

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human health. Since any biological effect is related to the size of the residues, the environment is similarly unaffected by minute residues. The extensive eating of and occupational exposure to much higher pesticide levels clearly demonstrate the lack of risk from minuscule amounts of these materials.

Indeed, some argument can be made that small amounts of toxic substances are often beneficial, according to the concept of hormesis³¹ or "sufficient challenge."³² It has been observed repeatedly in animal studies that the low dose animals often appear to be in better condition than the control (no dose) animals, e.g., by living longer, being larger, having fewer tumors, etc. The phenomenon of sufficient challenge was suggested in the historic "mug-mouse" study conducted by the National Center for Toxicological Research (NCTR), which was reviewed by a Special Committee of the Society of Toxicology. The study used 24,000 mice exposed to various amounts of the carcinogen 2-acetylaminofluorene (AAF). The Society's review noted that the results suggested "statistically significant evidence that low doses of a carcinogen are beneficial" and that if the extrapolation models are correct, "we must conclude that low doses of AAF protected the animals from bladder tumors"³³ (emphasis added).

Groundwater Pollution

Groundwater pollution rarely occurs when pesticides are properly applied. Groundwater is particularly critical for agricultural applications; nearly 70% of it is used annually is for agricultural irrigation.³⁴ Obviously, farmers have a strong incentive to avoid poisoning their own water sources. Contamination of neighboring groundwater subjects a careless pesticide applicator to civil and criminal penalties plus lawsuits for damages.

Trace amounts of pesticides have been detected in groundwater, but this fundamental question has to be addressed: Are the trace amounts detected toxic to humans or animals or otherwise detrimental to the use of the groundwater? Unfortunately, the "sophistication of present-day analytical methods may have outstripped our ability to interpret what they reveal, our ability to determine the significance of low-concentrations (sic) of contaminants on the environment and on public health."³⁵

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Agricultural Chemicals: Easy to Blame, Hard to Live Without

by Russ Agriculture Commissioner Rick Perry

The average American family spends 10 percent of its disposable income on food, less than any other country in the world. For a family of four in the United States, grocery bills average about \$79 a week. This plentiful, economical food supply has improved Americans' health and helped to increase our lifespan by more than 20 years since the early 1900s. U.S. residents could only expect to live some 30 years at the turn of the century. Today we are living into our late seventies and longer.

This increased life expectancy can be attributed to good medicine, as well as improved medical care. Agricultural chemicals have played an important role in helping improve the nutritional health of all Americans. The National Academy of Sciences credits public health improvements in part to pesticides, which provide more abundant harvests and make fruits and vegetables available at reasonable prices year-round.

So, why do ag chemicals and their applicators get blamed for cancer? It's because of the health of millions of consumers - especially when government scientists, other researchers and many medical experts have concluded the risk of contracting cancer from pesticide residues on food appears negligible.

A 1994 Food Marketing Institute Survey consumer study found that 70 percent of shoppers felt confident in the safety of the U.S. food supply. Seventy-two percent, however,

believed pesticides were "a very serious health hazard." Their beliefs differed significantly from those of the American Medical Association, which reported "no scientific evidence linking safe pesticide use and adverse health in humans."

The gap between the public's perceptions and the scientific community's findings can be traced to different ways of drawing conclusions. Scientists determine risk probabilities from quantitative research. Consumers, on the other hand, usually base their judgments on reports written by people who frequently have no scientific background. According to the International Food Information Council Review on Pesticides and Food Safety, "... information received from the media about pesticides may be inaccurate, confusing or incomplete. Many journalists lack sufficient understanding of agriculture or scientific methods to critically analyze news reports."

What's more, cancer risks are "additive" and not "multiplicative," the review states. Evidence that pesticide use causes a major disease risk is related to animal studies in which laboratory animals - particularly rats and cats - are fed high doses of chemicals over a lifetime.

Food safety is an emotional issue that can be manipulated in high-stakes consumer lawsuits in every bit. Evidence against the Aler cases, which convinced shoppers that the growth regulator used on apples presented a potent cancer risk. Apples sales dropped dramatically, and Aler was withdrawn voluntarily from the market. Yet when the EPA conducted further testing, it found that health risks reportedly linked to Aler had been blown very out of proportion.

Because people often fear what they don't know, it is easy to understand how consumers can panic over reports of pesticides poisoning their dinner. In our urban society, a mere 2 percent of the population produces the country's crops and livestock. Many of the remaining 98 percent "... are not familiar with farming and do not fully appreciate the multiple pest, weed and insect pressures that can devastate entire crops," says the IFIC review.

They are also aware that pesticides start breaking down soon after they are applied to crops. By the time crops leave the farm, most pesticide residues have already dropped before harvest. They decrease again during processing. Any that remain on fresh produce drop further during washing and peeling in consumers' kitchens.

Few Americans realize it takes years of testing, as many as 140 different studies and costs of up to \$70 million intended by the manufacturer before the Environmental Protection Agency registers a pesticide. Additional public health safeguards are built into registering a pesticide. For example, the EPA establishes each new chemical's potential to cause cancer, reproductive problems, birth defects and other health dangers. The agency also estimates likely dietary exposure to certain chemicals on 22 population groups.

The U.S. Food and Drug Administration provides further protection by checking for pesticide residues on food samples. Of 12,151 samples analyzed in 1993, the FDA found no residues on 64 percent of domestic samples and 69 percent of imports. Nearly all the rest had residues that fell within tolerance. Less than 1 percent of all residues detected exceeded tolerance. When you consider that pesticide residues in food and water are measured in parts per million, per billion and per trillion, the doses of ingesting a hazardous quantity grows even smaller. One part per million is the equivalent of a single pesticide in a five-gallon tank. One part per trillion is infinitely smaller - equal to one second in 32,000 years.

Natural toxins capable of causing cancer can be found almost everywhere. Bruce Ames, University of California molecular biology and biochemistry professor, calls them "natural pesticides," present in such common foods as lettuce, peanut butter and spinach. According to the IFIC, U.S. consumers ingest 10,000 times more natural pesticides than chemical residues.

Putting pesticide use into perspective should be the goal of everyone in the ag chemical industry. Pesticides have given the United States the abundant harvests that make our country the envy of the world. Consumers need to understand that pesticides when applied safely present negligible food safety risks and offer major benefits to their health.

Media: Fear component

Phony Risks, Phantom Residues

Protecting the health of children is one of our nation's highest priorities. That's why sound implementation of the Food Quality Protection Act is so important.

Too little protection can be risky. But protecting children from phantom dangers can pose needless risks as well. What risks? Risks of poorer nutrition due to decreased availability of healthy fruits and vegetables. Risk of increased asthma and other potentially deadly childhood diseases because effective pest control is no longer available.

If present decisions in carrying out the Food Quality Protection Act are allowed to continue, these potential risks could become a reality. Why? Because decisions are being made to pursue illusory risks.

- Example: EPA is proposing food safety standards to protect "theoretical" children who eat more than 20 jars of commercial applesauce (300 grams) in a single day.

- Example: Decision-makers are assuming that pesticides are present on fruit and vegetables even when no residues are detected. When pesticides aren't found, they are still assumed to be present below the levels that testing can detect. These phantom residues are then totaled up to create the illusion of an unacceptable risk.

Other decisions that create phantom risks include assumptions that all crops are treated with every pesticide registered for use on them. In practice, this would never happen because farmers can't afford to use multiple treatments of different products to kill the same bug.

Chasing phantom risks can create real-life dangers. When it comes to protecting children's health, let's make sure we do it right. The stakes are too high to rely on hasty decision-making based on ill-conceived policies.



Risks/Benefits

RISK AND BENEFIT INFORMATION FOR PESTICIDE APPLICATIONS

Company Name & Address (optional)

NOTICE TO CUSTOMER: Please ask your applicator about special preparations you may need to make (yard, house, pool) prior to application, and other precautionary measures specific to the material applied.

DEFINITION OF A PESTICIDE

A pesticide is any substance or mixture of substances intended to control pest infestations. The word "pesticide" is an umbrella term for products that control a wide range of pests. Pests commonly found include weeds, insects, diseases, snails and rodents. Pesticides designed to control these types of pests are called herbicides, insecticides, fungicides, raticides, or nematocides. Another group of pesticides called plant growth regulators are used to manage the growth of plants in the landscape.

State and federal laws require that pesticides must be applied in accordance with label directions. Labels direct users as to how, where and at what rate the material must be applied. Upon request, your applicator will supply you with a label of the material applied.

HOW PESTICIDES WORK

Products intended for use on your property may be applied as a liquid, dust, aerosol, granule, bait or fumigant and are generally active for a few minutes to a few months. Some compounds control pests in contact by damaging the physical structure of the pest. Other compounds become active only after they are absorbed or ingested. They often interfere with physical development or prevent the pest from reproducing.

Pesticides may be effective against a large class of organisms or may be specific to particular organisms. This means that applicators can often choose an effective pesticide or pest control strategy that will minimize potential impact to humans, pets or non-target organisms.

WHY PESTICIDES ARE USED

Pesticides are a tool people use to protect crops, homes, animals, structures, or ornamental plants from pest damage. Examples are protection of buildings from termites, turf from weeds or insects, utility right-of-way areas from damaging trees, and indoor environments from invasion of insects or rodents. Pesticides may be used to control mosquito or gypsy moth populations, to protect food crops or control weeds in lakes and ponds.

GENERAL TOXICITY INFORMATION

Toxicity is the measure of a substance to cause harm. Health risks from pesticides are generally related to the amount of exposure and the toxicity of the compound. Pesticides can enter the body by ingestion, inhalation, or absorption through the skin. One of the most effective ways of reducing exposure is by restricting access to the treated area.

There are two broad classes of pesticides established by the United States Environmental Protection Agency - general use products and restricted use products. General use products are usually considered to have a lower toxicity or risk than restricted use pesticides, and have fewer restrictions regarding who may purchase or use the products. The general public may purchase and use general use products. Restricted use products can be purchased and used only by state certified applicators. The majority of materials used in and around homes are general use pesticides.

COMMON SENSE PRECAUTIONARY MEASURES AND SITE PREPARATION

- Do not enter the treatment area while an application is in progress. Remain out of the treated area until the time period specified by the applicator has elapsed. Additional supervision may be needed for small children.
- If food crops are treated there may be a pre-harvest interval during which you may not harvest the crop.
- For indoor applications - pet away food, children's toys and clothing, cover fish tanks, and remove pets.
- For outdoor applications - pet away children's toys and any clothing drying on a line, remove pets, cover or discard water for pets and in birdbaths, and ensure that applications know if there are areas, such as children's play areas, that should not be treated.
- Persons on prescription medications including Tagamet and Dilantin, should consult their doctor regarding possible drug-pesticide interactions. Persons with medical conditions such as asthma should contact their doctor about possible implications.

ENVIRONMENTAL FATE OF PESTICIDES

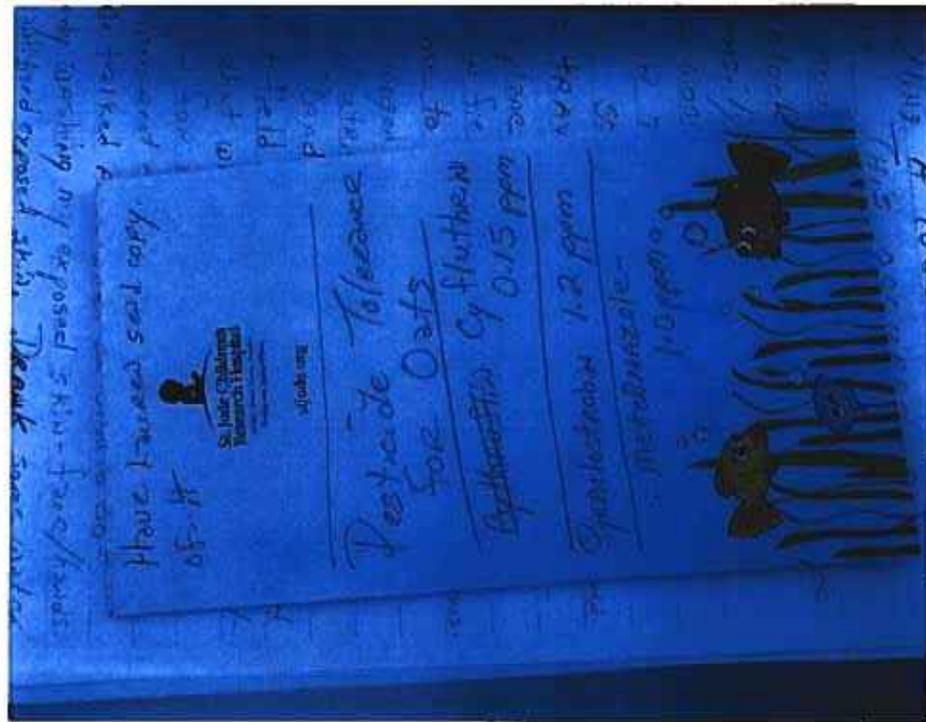
Exposure to light, heat and other environmental factors cause pesticides to deteriorate. The amount of time that it takes to break down the pesticide depends on temperature, humidity, light, moisture conditions and other factors. As a result, degradation times are highly variable depending on the compound and environmental situation. Generally these pesticides that are the most effective and least persistent should be selected by your applicator.

IF YOU THINK YOU HAVE AN UNUSUAL REACTION

If you have a reaction due to exposure, immediately wash the exposed areas with soap and water. Go to the nearest doctor or hospital. Do not drive yourself. Take any information you may have regarding the pesticide used, including a copy of the customer information provided to you by the commercial pesticide applicator. Have your doctor obtain emergency information about the pesticide you may have been exposed to by calling the Poison Control Center at 800-222-1222 or by calling the National Pesticide Telecommunications Hotline at 800-858-7378, or get information online at www.epa.gov/pesticides.

Ver 1m 2009

Ppm vs ug/m



Risks and Benefits in \$

- Unsprayed area in a buffer zone area would have cost Mr. Strahan \$100-200/acre loss

Aerial Application * Economic Impact



DISEASE: Emergency

MDARD response

Covid context

Facts about Michigan Agriculture

Agricultural Diversity

- Michigan produces more than 300 commodities on a commercial basis, including tart cherries, blueberries, dry beans, floriculture products, and cucumbers for pickles.

Economy

- The food and agriculture industry contributes \$104.7 billion annually to the state's economy
- Livestock (including dairy) has the greatest economic impact at \$5.13 billion, followed by field crops with an economic impact of \$5.12 billion.
- The total impact of nursery and landscape production, including backward linked industries, is \$1.26 billion. The direct value of the vegetable sector is \$278.32 million with a total economic impact of approximately \$428.2 million. The direct economic impact of fruit production in the state is \$485.44 million. The total economic activity including backward linked industries related to fruit production is \$753.01 million.

Employment

- Michigan's food and agriculture system is a large portion of this state's workforce. Total employment resulting from this sector is approximately 805,000, which accounts for about 17 percent of the state's employment.

Exports

- In 2018, Michigan exported \$1.98 billion in food and agricultural products. Michigan's top export markets are Canada, Mexico, Japan, South Korea, and China.
- Michigan's top agricultural exports are processed food products, wood and wood products, soybeans and soybean meal, vegetables and dry beans, and cereals, baked goods, and pasta.
- Exports help boost farm prices and income, while also supporting more than 17,065 Michigan jobs both on and off the farm in food processing, storage, and transportation.
- Every \$1 in export activity generates another \$2.87 in economic activity, meaning Michigan's total agriculture exports of \$1.98 billion have a local impact of an additional \$5.6 billion.

Farms & Farmland

- There are just under 10 million acres of farmland in Michigan, and the state is home to roughly 47,600 farms.

Case Timeline

Timeline Case	Date	Event	Comments/Concerns
	7/21/21	Application	
	7/21/21	Rachel Bakowski complainant called MDARD Drifted on at 1:30 pm	
	7/22/21	MDARD visited Bakowski farm: obtained samples/delivered to Geagley Lab	
	7/21/21	MDARD Toxicologist Kay Fritz	
	7/21/21	MDARD spoke with Brad Strahan at Nutrien	
	7/22/21	Dr. Fritz spoke to complainant	
	7/22/21	MDARD spoke to Amy Wahl/horse farm	
		AgriFlite	
	7/21/21	Voicemail and email	
	7/23/21	Call and request application record by MDARD	
	7/29/21	Katie emails application record : Quilt ordered/ Headline Amp hotloaded	
	8/2/21	Katie email concerning change from ordered Quilt to Headline Amp by Nutrien	
	8/3/21	Katie sends corrected Use Report	
	8/9/21	Sample results of oats sent to complainant by MDARD	
	9/9/21	Independent laboratories list to complainant by MDARD	
	9/16/21	Labels sent by AgriFlite to MDARD	
	5/9/22	Call to Will by Michigan	
	5/10/22	MDARD contacts Brad Strahan/Nutrien on pesticide notification procedure	

Remedy: Conservation

An official website of the United States government | Here's how you know



Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE



NEWS

USDA Conservation Funds Available for Western Lake Erie Basin

TOPICS: [MICHIGAN](#) | [SOIL](#) | [WATER](#) | [REGIONAL CONSERVATION PARTNERSHIP PROGRAM](#)

PUBLISH DATE: October 31, 2022



[Home](#) | [News](#) | [USDA Conservation Funds Available for Western Lake Erie Basin](#)

Michigan farmers in the Western Lake Erie Basin are encouraged to apply for conservation financial assistance to help address water and soil quality concerns in the region.

EAST LANSING, Oct. 31, 2022 - Michigan farmers in the Western Lake Erie Basin are encouraged to apply for conservation financial assistance from the U.S. Department of Agriculture to help address water quality concerns in the region. Financial assistance is

Appropriate Remedy based on:



David Eby

- Started AgriFlite Services in 1973
- AeroFlow Systems in 1995
- AgSync Order management 2007

Farmer

Pilot

Aerial Applicator

B.S. Engineering degree LeTourneau University

Problem solver

LICENSING LIBERTY

"No state shall convert a liberty into a license, and charge a fee therefore." (Murdock v. Pennsylvania, 319 U.S. 105)

"If the State converts a right (liberty) into a privilege, the citizen can ignore the license and fee and engage in the right (liberty) with impunity." (Shuttlesworth v. City of Birmingham, Alabama, 373 U.S. 262)

© 1997 Lexipol, Inc.

Implications of Licensing

... would be to ...
 ... Ohio St. 23, 136 ...
 ... 512, 232 N.W. 479 ...
 ... State Board of Equalization ...
 ... Permission to do a particular ...
 ... privilege or to carry on a ...
 ... pursue a certain occupation. Blatz ...
 ... Cal.App., 160 P.2d 37, 39, 40. Permission ...
 ... which without the license would not be ...
 ... of Shreveport v. Brister, 194 La. 615, 194 ...
 ... Great Atlantic & Pacific Tea Co. v. City of Lexington ...
 ... Ky. 355, 76 S.W.2d 884, 896. Privilege from state or sov ...
 ... reign. M. Izkowitz & Sons v. Geraghty, 247 N.Y.S. 703, ...
 ... 704, 139 Misc. 163; Alabama Power Co. v. Federal Power ...
 ... Commission, 75 U.S.App.D.C. 315, 128 F.2d 280, 289. Rev ...
 ... oable certificate of convenience and necessity. Ex parte ...
 ... Lockhart, 350 Mo. 1220, 171 S.W.2d 660, 666. To 'license' ...
 ... means to confer right or power which does not exist with ...
 ... out it. Inter-City Coach Lines v. Harrison, 172 Ga. 390 ...
 ... 157 S.E. 673, 676; S. S. Kresge Co. v. City of Bluefield, 117 ...
 ... W.Va. 17, 183 S.E. 601, 602.

1974 Indiana Licensing



Intent to comply

March 14, 1974

Mr. David Eby
R. R. #1
Wakarusa, Indiana 46573

Dear Mr. Eby:

In reply to your letter inquiring about requirements and licenses in our state for aerial applicators, we wish to advise you that Indiana has had no requirements since 1962, when the original regulation was repealed. The only requirement would be that you comply with Federal regulations.

This office has no knowledge of any professional organization of aerial applicators in our state.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Phyllis Hauser'.

Phyllis Hauser
Aeronautics Inspector

Violation & Administrative Fine >

Ex parte

/eks ˈpɑːr.tə/

adjective

1. done with respect to or in the interests of one side only or of an interested outside party: "the owners made an ex parte application to the High Court for a stay on the decision"

adverb

1. with respect to or in the interests of one side only or of an interested outside party: "lawyers are forbidden to meet with a judge ex parte, or outside the presence of opposing counsel"

More Definitions, Word Origin & Scrabble

People also ask

What does ex parte mean in law?

What does "ex parte" mean?

How to use ex parte in a sentence?

What type of decision is an ex parte?

[www.merriam-webster.com/dictionary/ex parte](http://www.merriam-webster.com/dictionary/ex%20parte)

Ex parte Definition & Meaning - Merriam-Webster

ex parte *eks-pair-tee*, -tee: on behalf of or involving only one party to a legal matter and in the absence of and usually without notice to the other party, an **ex parte** motion, relief granted a...

[www.law.cornell.edu/wex/ex parte](http://www.law.cornell.edu/wex/ex_parte)

ex parte | Wex | US Law | LII / Legal Information Institute

In civil procedure, **ex parte** is used to refer to motions for orders that can be granted without waiting for a response from the other side. Generally, these are orders that are only in place until...

legaldictionary.net/ex-parte

Ex Parte - Definition, Examples, Processes - Legal Dictionary

Introduction Other Facts Significance Usage Case >

The Latin term **ex parte** is used in law to refer to court proceedings for the benefit of one party to a controversy, without the other being present. This is an exception to basic court procedure which requires that both parties be present at any argument or proceeding, and that neither party may have contact with a judge without previously notifying...

See full list on legaldictionary.net

Supreme Court Comments: Administrative Agency

Cite as: 608 U. S. ____ (2018)

17

Rosberg, C. J., dissenting

powers, to the Executive. But there is another concern at play, no less firmly rooted in our constitutional structure. That is the obligation of the Judiciary not only to confine itself to its proper role, but to ensure that the other branches do so as well.

An agency's interpretive authority, entitling the agency to judicial deference, acquires its legitimacy from a delegation of lawmaking power from Congress to the Executive. Our duty to police the boundary between the Legislature and the Executive is as critical as our duty to respect that boundary. See *Zivotofsky v. Clinton*, 566 U. S. ____ (2012) (slip op., at 8). In the present context, that means ensuring that the Legislative Branch has in fact delegated lawmaking power to an agency within the Executive Branch, before the Judiciary defers to the Executive on what the law is. That concern is heightened, not diminished, by the fact that the administrative agencies, as a practical matter, draw upon a potent brew of executive, legislative, and judicial power. And it is heightened, not diminished, by the dramatic shift in power over the last 50 years from Congress to the Executive—a shift effected through the administrative agencies.

We reconcile our competing responsibilities in this area by ensuring judicial deference to agency interpretations under *Chevron*—but only after we have determined on our own that Congress has given interpretive authority to the agency. Our “task is to fix the boundaries of delegated authority.” Monaghan, 88 Colum. L. Rev., at 27; that is not a task we can delegate to the agency. We do not leave it to the agency to decide when it is in charge.

* * *

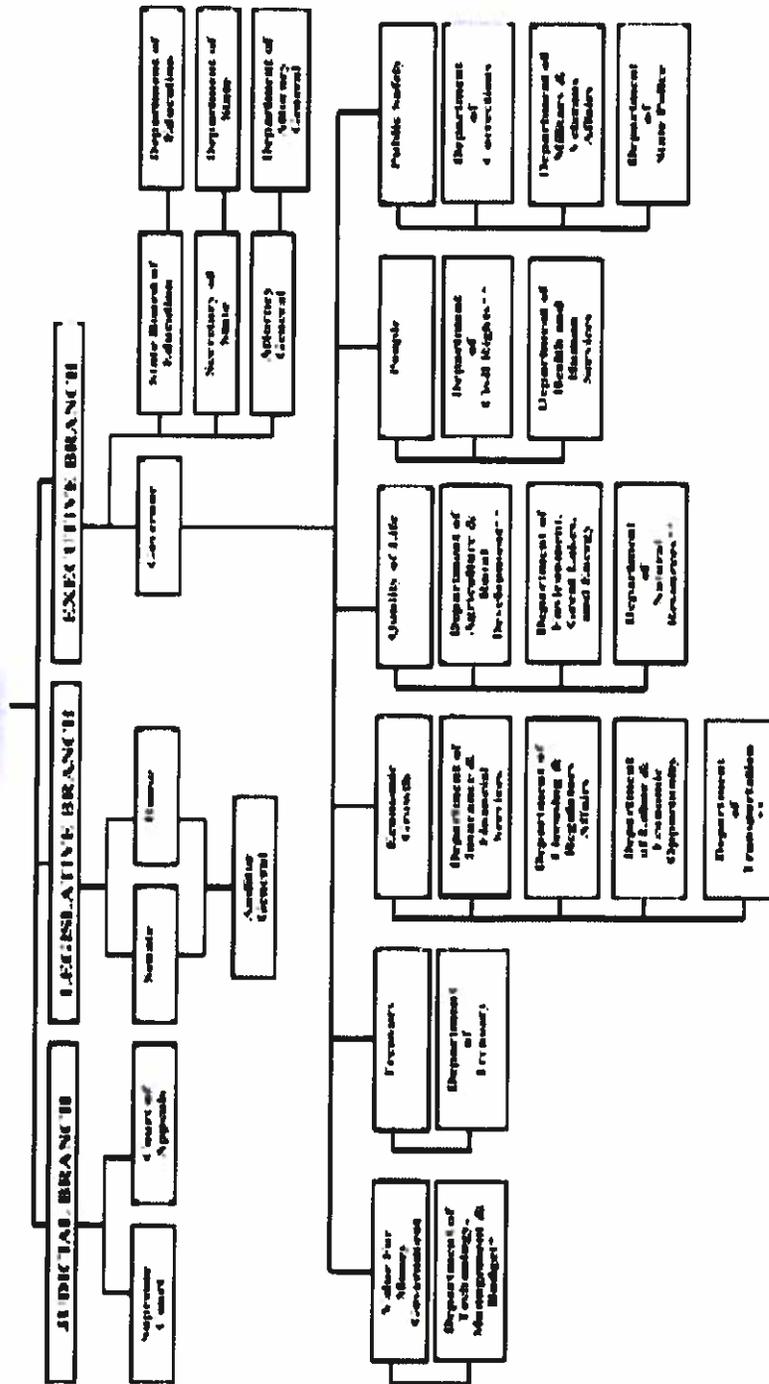
In these cases, the FCC issued a declaratory ruling interpreting the term “reasonable period of time” in 47 U. S. C. §332(c)(7)(B)(ii). The Fifth Circuit correctly rec-

3 *

STATE OF MICHIGAN ORGANIZATIONAL STRUCTURE

(As of March 6, 2020)

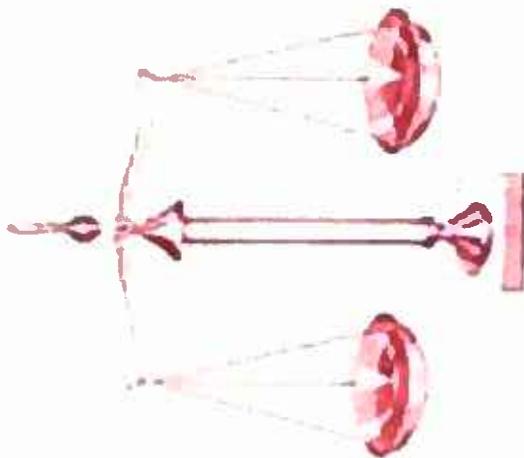
CITIZENS OF MICHIGAN



** Includes Civil Service Commission, established by Act 100 of 1976
 *** Information provided by Act 100 of 1976, modified by Act 100 of 1976

Accident, not Violation

LAW



WITH OVER 1,600 MAXIMS LISTED UNDER 105
DIFFERENT SUBJECT HEADINGS BEING
ALPHABETICALLY ARRANGED

1. ACCIDENT

- 1a. An unforeseen event, occurring without the will or design of the person whose mere act causes it, is known as an accident. *Burkhard v. Travelers' Ins. Co.*, 102 Pa. 262.
- 1b. A fortuitous event is not to be expected or presumed, and no one is bound to foresee it. *Coke*, 66; *Hardr.* 82, arg.
- 1c. No one is held to answer for the effects of a superior force, or of an accident, unless his own fault has contributed. *Fleta*, lib.2c. 72, s. 16.
- 1d. Mistakes, neglect, or misconducts are not to be regarded as accidents. *Citizens Nat. Bank v. Cincinnati*, 19 Ohio Decd. 685, 687.
- 1e. Laws cannot prevent accidents nor can a law equally protect all against them. *Louisiana v. Renweber*, 329 U.S. 459, 465.

Rescind Case: 21-PE-02320

- No intent to violate
- Compliant to regulations
- MDARD failed to follow up timely and facilitate a beneficial remedy for complainant
- Complainant's lack of common sense jeopardized safety of licensed ag pilot operating under FAR part 137
- Violation assessed against person not at target field
- Information withheld from defendant principals of case

Correct Case 22-PE-04032

- Recalculate carrier amounts
- Rephrase request for documents
- Reformat violation letter in proper style/grammar–
no box around violations
- Driftwatch compliance was not included in warning
case summary

FOIA Comments

- As principals of the business
- Why withheld information if source of complaint
- Law for prosecution to convey information to defendant?
- This delayed responses

RECEIVED

By SwansonJ7 at 11:56 am, 10/23/23

IN THE MATTER OF:

**David Eby and
AgriFlite Services, Inc.,
Petitioner**

V

**Michigan Department of Agriculture and
Rural Development,
Respondent**

Docket No.: 23-012503

Case No.: 23-PE-02320

Agency: MDARD

**Case Type: MDARD Pesticide
Licensing**

Filing Type: Administrative Fine

COVER PAGE to MOAHR for October 26, 2023 HEARING DOCUMENTS

- 1. Request for Correction of "Petitioner" in Heading to include David Eby**
- 2. Request for Impartial Hearing by MOAHR per Hearing Information Page 2**
- 3. Request for Dismissal of Violation and Administrative Fine of David Eby and AgriFlite Services, Inc.**
- 4. Petitioner's Comments to Respondent's Exhibits**

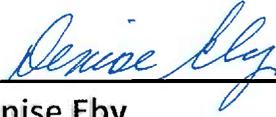
The above documents are in lieu of Petitioner participating in Remote Hearing on October 26, 2023 at 9:00 am EST as explained in Request document 2. If an impartial hearing cannot be conducted and the administrative judge recuses, please forward these documents to replacement MOAR reviewer.

Petitioner is available via email to answer any question applicable to the above documents.

Documents to be served via email to MOAHR and Respondent on 10/23/23.



David Eby
AgriFlite Services, Inc.
10/23/23



Denise Eby
AgriFlite Services, Inc.
10/23/23

RECEIVED

By SwansonJ7 at 11:57 am, 10/23/23

IN THE MATTER OF:

**AgriFlite Services, Inc.,
Petitioner**

V

Michigan Department of Agriculture and
Rural Development,
Respondent

Docket No.: 23-012503

Case No.: 23-PE-02320

Agency: MDARD

Case Type: MDARD Pesticide
Licensing

Filing Type: Administrative Fine

Request for Correction of "Petitioner" in Heading to include David Eby

1. A Notice of Violation followed by a Notice of Administrative Fine were mailed 5/17/22 and 8/12/22 respectively to David Eby **and** Agriflite Services from MDARD.
2. An informal hearing with MDARD for David Eby **and** AgriFlite Services, Inc. was held December 12, 2022 with Martin Al Rodriquez, Regulation Manager of the Animal Industry Division as the agency's personnel to evaluate and determine the hearing response. In the determination letter of 1/26/23 Rodriquez noted that David **and** Denise Eby were "on behalf of Agriflite Services, Inc." "Agriflite Services then conducted a presentation." This PowerPoint presentation was conducted by David **and** Denise Eby; thereby recognizing the owners as synonymous with AgriFlite Services, Inc.

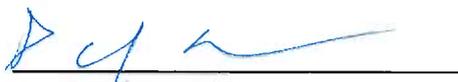
3. Rodriguez's determination letter naturally supported the MDARD agency as expected, and an appeal for a formal hearing was made by Denise and David Eby.

Caitlin Burkman forwarded the appeal request to the Director of Legal Affairs.
4. The **REQUEST FOR HEARING** was prepared by D. Allison-Yokom on 2/28/23 and omitted the **name of David Eby** as Petitioner. A completed **Request for Hearing** Form was sent via email on March 6, 2023 along with Exhibits A-D which lists **both David Eby and AgriFlite Services, Inc.** (See attachment: Request for Hearing)
5. An email was sent on 10/17/23 by Denise Eby to Danielle Allison-Yokom requesting **Clarification and Answers** to irregularities on the **Request for Hearing** MOAHR form. (See attached **Email to Allison-Yokom and Response.**)

Summary: Errors made by Respondent Danielle Allison-Yokom prejudiced the administrative hearing judge Stephen Goldstein whereby the appeal hearing protocols were inconsistent with **page 2 of Hearing information** (Attachment: Hearing Information) originally forwarded to David and Denise Eby.

On May 9, 2023 telephone hearing, Denise Eby was interrupted in a “special appearance request” to facilitate the hearing by submitting a written appeal for Summary Judgment and instead **ordered** to hire a Michigan licensed BAR attorney contrary to “hearing” information sheet. This remote protocol introduced additional errors resulting in postponement and establishing an unacceptable venue of remote hearing. No valid administrative regulations have been cited in support of the order to obtain counsel.

David and Denise Eby have been recognized by MDARD as “Agriflite Services, Inc. and will submit a written appeal/Request for Dismissal of Violation and Administrative Fine for **an impartial hearing with MOAHR** concerning the Violation and Administrative Fine in Case No. **23-PE-02320** with **David Eby as Petitioner.**



David Eby
10/20/23



Denise Eby
10/20/23

Attachments:
Request for Hearing
Email to Allison-Yokom and Response
Page 2 Hearing Information

Michigan Office of Administrative Hearings and Rules

REQUEST FOR HEARING

1. IN THE MATTER OF Agriflite Services, Inc. v Michigan Department of Agriculture and Rural Development			
2. CASE TYPE Review of Administrative Fine		3. AGENCY Department of Agriculture and Rural Development (MDARD)	
4. DIVISION Pesticide & Plant Pest Management		5. BOARD Not Applicable	
6. GEOGRAPHIC LOCATION FOR HEARING Lansing, Michigan			
7. INITIATING AGENCY'S FILE NUMBER 21-PE-02320		8. STATUTORY START DATE Not Applicable	
9. STATUTE, RULE, OR REGULATION Pesticide Control, Part 83, Natural Resources and Environmental Protection Act (NREPA), MCL 324.8301 et seq.			
10. ISSUE MDARD issued Agriflite a \$1,000 administrative fine pursuant to MCL 324.8333(2) for failing to apply a pesticide in a manner consistent with its label such that the application exclusion zone of 100 ft was not maintained and the pesticide was applied under circumstances where "possible drift" occurred to unprotected persons. Petitioner challenges MDARD's issuance of the administrative fine.			
11. PREPARED BY D. Allison-Yokom	PHONE NUMBER 517-355-7664	FAX NUMBER	DATE PREPARED February 28, 2023
12. COMMENTS On February 13, 2023, Agriflite emailed MDARD requesting a formal hearing to contest the administrative fine. Pursuant to MCL 324.8332, an aggrieved person may request a hearing pursuant to the Administrative Procedures Act, MCL 24.201 et seq. The following documents are being provided: (1) notice of violation (Ex A); (2) notice of administrative fine (Ex B); (3) informal hearing determinations (Ex C); and (4) Petitioner's request for a formal hearing (Ex D).			
For MOAHR Use Only			
DATE RECEIVED	DATE COMPLETED	COMPLETED BY	
DOCKET NUMBER		ALJ ASSIGNED	
COMMENTS			

1052

REQUEST FOR HEARING

13. CHECK ONE				
<input checked="" type="checkbox"/> Petitioner	<input type="checkbox"/> Respondent	<input type="checkbox"/> Intervenor	<input type="checkbox"/> Department	
<input type="checkbox"/> Petitioner's Attorney	<input type="checkbox"/> Respondent's Attorney	<input type="checkbox"/> Intervenor's Attorney	<input type="checkbox"/> Other	
<input type="checkbox"/> Petitioner's Representative	<input type="checkbox"/> Respondent's Representative	<input type="checkbox"/> Intervenor's Representative		
14. NAME Denise Eby				
15. FIRM				
16. ON BEHALF OF Agriflite Services Inc.				
17. STREET ADDRESS/P.O. BOX 30688 County Road 36				
18. CITY Wakarusa	19. STATE IN	20. ZIP CODE 46573-9703	21. PHONE 574-862-4392	22. FAX
23. EMAIL ADDRESS denise@agriflite.com			May documents be served to this party/representative via email only?	Yes <input type="checkbox"/> No <input type="checkbox"/>

24. CHECK ONE				
<input type="checkbox"/> Petitioner	<input type="checkbox"/> Respondent	<input type="checkbox"/> Intervenor	<input type="checkbox"/> Department	
<input checked="" type="checkbox"/> Petitioner's Attorney	<input checked="" type="checkbox"/> Respondent's Attorney	<input type="checkbox"/> Intervenor's Attorney	<input type="checkbox"/> Other	
<input type="checkbox"/> Petitioner's Representative	<input type="checkbox"/> Respondent's Representative	<input type="checkbox"/> Intervenor's Representative		
25. NAME Danielle Allison-Yokom, Assistant Attorney General				
26. FIRM Michigan Department of Attorney General				
27. ON BEHALF OF Michigan Department of Agriculture and Rural Development				
28. STREET ADDRESS/P.O. BOX 525 West Ottawa PO Box 30755				
29. CITY Lansing	30. STATE MI	31. ZIP CODE 48909	32. PHONE 517-355-7664	33. FAX
34. EMAIL ADDRESS allisonyokomd@gmail.com			May documents be served to this party/representative via email only?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

35. CHECK ONE				
<input type="checkbox"/> Petitioner	<input type="checkbox"/> Respondent	<input type="checkbox"/> Intervenor	<input type="checkbox"/> Department	
<input type="checkbox"/> Petitioner's Attorney	<input type="checkbox"/> Respondent's Attorney	<input type="checkbox"/> Intervenor's Attorney	<input checked="" type="checkbox"/> Other	
<input type="checkbox"/> Petitioner's Representative	<input type="checkbox"/> Respondent's Representative	<input type="checkbox"/> Intervenor's Representative		
36. NAME Kaela Copeland, Legal Secretary				
37. FIRM Michigan Department of Attorney General				
38. ON BEHALF OF Michigan Department of Agriculture and Rural Development				
39. STREET ADDRESS/P.O. BOX 525 West Ottawa PO Box 30755				
40. CITY Lansing	41. STATE MI	42. ZIP CODE 48909	43. PHONE 517-355-7664	44. FAX
45. EMAIL ADDRESS copelandk2@michigan.gov			May documents be served to this party/representative via email only?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Request for Answers from Danielle Allison-Yokom concerning Case No. 23-PE-02320

1 message

Denise Eby <denise@agriflite.com>
To: allisonyokomd@michigan.gov
Bcc: Denise Eby <denise@agriflite.com>

Tue, Oct 17, 2023 at 9:35 AM

To: Danielle Allison-Yokom:

Please respond to the attached **Request and attachments concerning Case No 23-PE-02320**.

The Request attached was compiled last week, but was not sent due to internet malfunctions and computer issues. For this exact reason, a video or telephone conference is unacceptable due to our location. Internet connection has been intermittent and frequent phone interference.

Reflecting on this case, it is not adversarial as represented in the matter of "v"

AgriFlite Services and David Eby have complied with MDARD for decades, and there is no intent to compromise at this time.

However, there is a serious issue that needs to be addressed by MDARD in a non-adversarial venue. The previous telephone hearing on May 9, 2023

did not set the tone for a remedy to the issues involved.

The administrative protocol heretofore is not productive.

The following attached is an attempt to clarify the involvement, and the proposed written appeal will clarify the position concerning the MDARD violation

assessed on "AgriFlite Services."

This written "Summary for Judgment" will be emailed to you next week.

Respectfully,

Denise Eby

David Eby

--

Denise Eby

denise@agriflite.com

574-862-4392 office

574-536-0800 mobile

4 attachments**Request for Clarification and Answers from Danielle Allison-Yokom.pdf**

392K

**Attachment 2_REQUEST FOR HEARING_page 2.pdf**

137K

**Attachment 3_ Hearing Information.pdf**

666K

**Attachment 4_Telephone Hearing, special appearance,May 9, 2023.pdf**

225K

IN THE MATTER OF:

Docket No.: 23-012503

**David Eby and
AgriFlite Services, Inc.,
Petitioner**

Case No.: 23-PE-02320

V

Agency: MDARD

**Michigan Department of Agriculture and
Rural Development,
Respondent**

**Case Type: MDARD Pesticide
Licensing**

Filing Type: Administrative Fine

To: Danielle Allison-Yokom, Assistant Attorney General, Michigan Department of Agriculture and Rural Development.

Request for Clarification and Answers to Questions

1. On February 13, 2023 an email **Request to Appeal Decision of Informal Hearing Determination Case No. 21-PE-02320** was sent to MDARD by Denise Eby.

Subsequent **REQUEST FOR HEARING** form *MOAHR RFH-05/2022 page 2*, was received by Denise Eby of AgriFlite Services (see attachment).

Why was David Eby omitted on this form?

Question: Is Danielle Allison-Yokom the Petitioner's Attorney or the Respondent's Attorney? Both are check marked; however, item 24 states "CHECK ONE."

On the same attachment, Denise Eby is listed as Petitioner. Why was this changed to “AgriFlite”?

2. In the **Request to Appeal Decision of Informal Hearing** why was the available date range ignored?
3. During the initial Telephone Hearing on May 9, 2023, Stephen Goldstein interrupted Denise Eby’s **special appearance** (reference **Attachment Telephone Hearing, May 9, 2023**) as principal of AgriFlite Services with a prejudice that AgriFlite Services was sole petitioner and needed counsel to represent a corporation. Then after eliciting the approval of Respondent ‘s Attorney would hear petitioner’s position no further; thereby, completely misunderstanding the intent, information, and request of this **appeal hearing to present in writing how David Eby and AgriFlite were not in violation and present a beneficial remedy.**
4. In Section II of RESPONDENT MICHIGAN DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT’S RESPONSE TO AGRIFLITE SERVICES, INC’S MOTION TO DISMISS, Stephen Goldstein ignores that Denise Eby was **making a special appearance to comply** with a directive of the Office of Administrative Hearings. The error perpetrated in the **Request for Hearing form** listed only AgriFlite Services, Inc. and **omitted David Eby.** Also, in the

Hearing Information, page 2 (attached), a party can represent self. Please read **the section on REPRESENTATION**.

Question: Could you also be representing the Petitioner as indicated by checkmark on REQUEST FOR HEARING per Question 1? This had me initially confused as to your involvement. There were no references to corporations and representation stipulations on the **Hearing Information page**.

Is AgriFlite a legal entity, a fictitious "person," or a convenient linguistic metaphor?

5. This pesticide case is very simple and could have been solved amenablely for all involved.

However, the actions of the MDARD involved certain errors and omissions that need to be addressed. These MDARD errors are the purpose of the appeal; however, the above MOAHR procedures have created more errors delaying a quick settlement. Prejudice, impulsiveness, and wrong interpretation with threats have compounded a simple resolution for this case.

Both a telephone or video conference hearing are a waste of time for both petitioner and respondent. You (MDARD) the respondent have our informal

hearing Powerpoint presentation (Respondent Exhibit 17) which states the position that **David Eby and AgriFlite Services did not violate.**

The MDARD violation is directed to the wrong “persons.”

6. A written appeal by petitioners David Eby and Denise Eby with exhibit particulars from FOIA documents that were not addressed at the informal hearing on December 9, 2022 can be presented for an impartial review by MOAHR.

Question: As spokesperson for Stephen Goldstein will you accept a written appeal document for review of Docket 23-012503 in lieu of contested case video conference hearing on October 26, 2023?

Question: What is the Michigan law/administrative regulation that prohibits a written appeal for a non-partial Summary Judgment/Disposition and/or Motion to Dismiss?

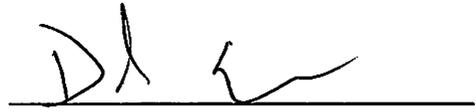
I would assume that the **Documents or Exhibits** section along with the **Motions or Requests** section of the **Hearing Information page 2** attached would allow this written appeal rather than a Remote hearing.

7. What is the appropriate email address to submit a Motion for Summary Judgment for an impartial hearing by the ALJ? Due to a previous prejudice, should Stephen Goldstein recuse himself from this case?

A handwritten signature in cursive script, reading "Denise Eby", positioned above a solid horizontal line.

Denise Eby

10/16/2023

A handwritten signature in cursive script, reading "David Eby", positioned above a solid horizontal line.

David Eby

10/16/2023

REQUEST FOR HEARING

13. CHECK ONE <input checked="" type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Intervenor <input type="checkbox"/> Department				
<input type="checkbox"/> Petitioner's Attorney <input type="checkbox"/> Respondent's Attorney <input type="checkbox"/> Intervenor's Attorney <input type="checkbox"/> Other				
<input type="checkbox"/> Petitioner's Representative <input type="checkbox"/> Respondent's Representative <input type="checkbox"/> Intervenor's Representative				
14. NAME Denise Eby				
15. FIRM				
16. ON BEHALF OF Agriflite Services Inc.				
17. STREET ADDRESS/P.O. BOX 30688 County Road 36				
18. CITY Wakarusa	19. STATE IN	20. ZIP CODE 46573-9703	21. PHONE 574-862-4392	22. FAX
23. EMAIL ADDRESS denise@agriflite.com			May documents be served to this party/representative via email only?	Yes <input type="checkbox"/> No <input type="checkbox"/>

24. CHECK ONE <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Intervenor <input type="checkbox"/> Department				
<input checked="" type="checkbox"/> Petitioner's Attorney <input checked="" type="checkbox"/> Respondent's Attorney <input type="checkbox"/> Intervenor's Attorney <input type="checkbox"/> Other				
<input type="checkbox"/> Petitioner's Representative <input type="checkbox"/> Respondent's Representative <input type="checkbox"/> Intervenor's Representative				
25. NAME Danielle Allison-Yokom, Assistant Attorney General				
26. FIRM Michigan Department of Attorney General				
27. ON BEHALF OF Michigan Department of Agriculture and Rural Development				
28. STREET ADDRESS/P.O. BOX 525 West Ottawa PO Box 30755				
29. CITY Lansing	30. STATE MI	31. ZIP CODE 48909	32. PHONE 517-355-7664	33. FAX
34. EMAIL ADDRESS allisonyokomd@gmail.com			May documents be served to this party/representative via email only?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

35. CHECK ONE <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Intervenor <input type="checkbox"/> Department				
<input type="checkbox"/> Petitioner's Attorney <input type="checkbox"/> Respondent's Attorney <input type="checkbox"/> Intervenor's Attorney <input checked="" type="checkbox"/> Other				
<input type="checkbox"/> Petitioner's Representative <input type="checkbox"/> Respondent's Representative <input type="checkbox"/> Intervenor's Representative				
36. NAME Kaela Copeland, Legal Secretary				
37. FIRM Michigan Department of Attorney General				
38. ON BEHALF OF Michigan Department of Agriculture and Rural Development				
39. STREET ADDRESS/P.O. BOX 525 West Ottawa PO Box 30755				
40. CITY Lansing	41. STATE MI	42. ZIP CODE 48909	43. PHONE 517-355-7664	44. FAX
45. EMAIL ADDRESS copelandk2@michigan.gov			May documents be served to this party/representative via email only?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

**Telephone Hearing 5/9/2023 @ 9:00 Eastern Time
Michigan Office of Administrative Hearings and Rules (MOAHR)**

Case No 21-PE-02320

According to the **NOTICE** of the MOAHR Docket No.: 23-012503, the **Petitioner is AgriFlite Services, Inc.**

My name is Denise Eby. I am the participant on this phone hearing by **special appearance** as a principal of AgriFlite Services, Inc. in Compliance and **not in Default**.

This special appearance in Compliance today is to **challenge the jurisdiction** of the Administrative Law Judge in two facets:

1. A **telephone venue** is an objection and **unacceptable to addressing the multiple errors and negligence** of MDARD in the case 21-PE-02320 which is the source of this appeal.
2. **Request** for appeal was made **via email on February 13, 2023** (Respondent's Exhibit D) with clear conditions that this hearing be scheduled for the **last half of June 2023** at the earliest. Reason being that the Petitioner principals are not at location in office with access to documents and multiple factors. Circumstances on this day are beyond my control. An attempt was made to contact MOAHR office on March 16, 2023 with no successful response to postpone this hearing.

Issue:

Whether Respondent's issuance of the Administrative Fine was proper pursuant to the Natural Resources and Environmental Protection Act, MCL 324.80301 et seq. And the administrative rules promulgated thereunder.

Response by Petitioner:

On December 12, 2022, David and Denise Eby presented evidence that MDARD should withdraw the Administrative Fine/Violation. The fine was based on a violation that had errors and negligence by MDARD. A ***Motion to Dismiss*** describing and documenting these alleged errors and negligence will be submitted to the Administrative Judge by the end of June, 2023. Respondent MDARD has included as **Exhibit R-17** a thorough powerpoint used to present AgriFlite's **Informal Hearing** information by David and Denise Eby on December 12, 2022. This compilation of the positive compliance of AgriFlite over the past 50 years includes a slide on page 43 of the "Mission" of the MDARD to "service, promote, and protect the food, agricultural, environmental, and economic interests if the people of Michigan," MDARD's investigation procedure thwarted this mission. Petitioner's forthcoming Response in the format of a ***Motion to Dismiss*** will address the particulars supporting this alleged infraction of administrative procedure and regulations which MDARD is expected to uphold in their administrative implementation of EPA regulations within "the State of Michigan."

Summary:

AgriFlite Services, Inc. and David Eby are not in violation of the Natural Resources and Environmental Protection Act as noticed by MDARD and an Administrative Fine is not warranted. A ***Motion to Dismiss*** will be issued to MOAHR by the end of June, 2023 to support this statement. (Respondent's Exhibit R-17 compiled by the Petitioner for the Informal Hearing on December 12, 2022 will be used as the source document and reference outline.)

David Eby

Denise Eby

5/9/2023



Denise Eby <deniseagriflite@gmail.com>

Request for Answers from Danielle Allison-Yokom concerning Case No. 23-PE-02320

2 messages

Denise Eby <denise@agriflite.com>
To: allisonyokomd@michigan.gov
Bcc: Denise Eby <denise@agriflite.com>

Tue, Oct 17, 2023 at 9:35 AM

To: Danielle Allison-Yokom:

Please respond to the attached **Request and attachments concerning Case No 23-PE-02320**.

The Request attached was compiled last week, but was not sent due to internet malfunctions and computer issues. For this exact reason, a video or telephone conference is unacceptable due to our location. Internet connection has been intermittent and frequent phone interference.

Reflecting on this case, it is not adversarial as represented in the matter of "v"
AgriFlite Services and David Eby have complied with MDARD for decades, and there is no intent to compromise at this time.
However, there is a serious issue that needs to be addressed by MDARD in a non-adversarial venue. The previous telephone hearing on May 9, 2023 did not set the tone for a remedy to the issues involved. The administrative protocol heretofore is not productive. The following attached is an attempt to clarify the involvement, and the proposed written appeal will clarify the position concerning the MDARD violation assessed on "AgriFlite Services."
This written "Summary for Judgment" will be emailed to you next week.

Respectfully,
Denise Eby
David Eby
--
Denise Eby
denise@agriflite.com
574-862-4392 office
574-536-0800 mobile

4 attachments

-  **Request for Clarification and Answers from Danielle Allison-Yokom.pdf**
392K
-  **Attachment 2_REQUEST FOR HEARING_page 2.pdf**
137K
-  **Attachment 3_ Hearing Information.pdf**
666K
-  **Attachment 4_Telephone Hearing, special appearance,May 9, 2023.pdf**
225K

Allison-Yokom, Danielle (AG) <AllisonYokomD@michigan.gov>
To: Denise Eby <denise@agriflite.com>

Tue, Oct 17, 2023 at 11:07 AM

Good afternoon Ms. Eby,

As I previously indicated, I am MDARD's attorney in this matter. I cannot provide you with legal advice.

If you would like some action taken related to the hearing scheduled for Thursday, October 26, 2023, you will need to reach out to ALJ Goldstein to request that action.

This process was initiated at AgriFlite's request because it disagreed with the administrative fine that MDARD issued to it. An informal hearing within MDARD was held and MDARD determined that the administrative fine was appropriate. AgriFlite sought to further challenge that administrative fine. The process for doing so is a formal hearing conducted pursuant to the Administrative Procedures Act.

ALJ Goldstein's previous orders have addressed the need for AgriFlite to be represented by an attorney to participate in the formal hearing and those orders are contained in the attached email.

Once you have retained an attorney to represent AgriFlite, please have them contact me and I will provide them with the previous pleadings related to this case.

As you are likely aware, if you want to reach out to the Tribunal directly, you can email it at MOAHR-GA@michigan.gov. Please copy me on any emails to the Tribunal.

Best regards,

Danielle Allison-Yokom

Danielle Allison-Yokom

Assistant Attorney General

Environmental, Natural Resources,

and Agriculture Division

[525 West Ottawa Street](#)

PO Box 30755

Lansing, Michigan 48909

(517) 335-7664

From: Denise Eby <denise@agriflite.com>
Sent: Tuesday, October 17, 2023 12:35 PM
To: Allison-Yokom, Danielle (AG) <AllisonYokomD@michigan.gov>
Subject: Request for Answers from Danielle Allison-Yokom concerning Case No. 23-PE-02320

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

[Quoted text hidden]

----- Forwarded message -----

From: "Allison-Yokom, Danielle (AG)" <AllisonYokomD@michigan.gov>
To: Denise Eby <denise@agriflite.com>
Cc:
Bcc:
Date: Thu, 28 Sep 2023 20:34:40 +0000
Subject: RE: Response to order for Petitioner to retain legal counsel by September 29, 2023

Good afternoon Ms. Eby,

As I understand your email below, you have concerns regarding the deadlines contained in the Tribunal's orders and are additionally requesting that Mr. Eby be identified as the party to the hearing.

I am the attorney for the Michigan Department of Agriculture and Rural Development (MDARD) in this matter. The order establishing both the date by which you need to obtain an attorney and the date of the hearing was issued by Administrative Law Judge Goldstein. I am not in a position to alter ALJ Goldstein's order.

Regarding the highlighted portion of the third attachment, both the ALJ Goldstein's order and MDARD's response to your motion to dismiss contain citations regarding the need for AgriFlite to obtain counsel. I have attached both here so the information is easily accessible when you retain counsel. Once you have retained counsel, please have them contact me if they are missing any of the previous filings.

Best regards,

Danielle

Danielle Allison-Yokom

Assistant Attorney General

Environmental, Natural Resources,

and Agriculture Division

[525 West Ottawa Street](#)

PO Box 30755

Lansing, Michigan 48909

(517) 335-7664

From: Denise Eby <denise@agriflite.com>

Sent: Wednesday, September 27, 2023 2:46 PM

To: Allison-Yokom, Danielle (AG) <AllisonYokomD@michigan.gov>

Subject: Response to order for Petitioner to retain legal counsel by September 29, 2023

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

To: Danielle Allison-Yokom

RE: Order to retain legal counsel by September 29, 2023 for MOAHR Docket No.: **23-012503**

Dear Danielle Allison-Yokom:

This email concerns the timing of Orders which were part of the Respondent's response to Petitioner's Motion to Dismiss.

Problem 1 is the calendar timing of the scheduled telephone hearings, and now the timing to secure legal counsel.

David and Denise Eby are not opposed to either; however, please reference the highlighted parts of the Attachment 1: **Request to Appeal Decision**.

As a seasonal business servicing Michigan customers, a definite request was stated initially that the time July-September we would not be available.

This is due to an on call schedule which is unpredictable. David and Denise have tried to comply with your past requests, but this has been an undue burden, as we are still in a seasonal work mode and have not had the opportunity to reschedule with the attorney contacted in late spring/early summer.

Problem 2 is the designation of Petitioner as only "AgriFlite Services" when it was **David Eby** that requested the hearing with the Attorney General. His name is on the Violation and Administrative fine but your office omitted his name in the filing papers. Please see **attachment 2**.

Problem 3 concerns the phrasing of the HEARING INFORMATION page sent to AgriFlite. Please see highlighted areas. Could you please cite the regulation/law that applies to this case so we can inform counsel when we meet in preparation for the October 12 hearing scheduled.

Summary: We have not met with counsel due to scheduling difficulties and will not be able to meet the September 29, 2023 deadline to retain counsel.

Regards,

Denise Eby

--

Denise Eby
denise@agriflite.com
574-862-4392 office
574-536-0800 mobile

3 attachments



[http][U0NC7OA30D1QA9][v][Order Continuing 9-7-23 Hrg].pdf
35K



[http][TZ09X44O0D73NG][v][Response to Req and Mot to Dis].pdf
111K



RE: Response to order for Petitioner to retain legal counsel by September 29, 2023.eml
219K

HEARING INFORMATION – PLEASE READ IMMEDIATELY

GENERAL INFORMATION: An impartial hearing will be conducted in accordance with the Michigan Office of Administrative Hearings and Rules (MOAHR) rules at Mich Admin Code, R 792.10101-R 792.11289 and the Michigan Administrative Procedures Act (APA), MCL 24.201 *et seq.* The Michigan Rules of Evidence and the Michigan Court Rules may be applicable. A party is expected to exercise proper respect and courtesy towards the other parties, witnesses, and administrative law judge (ALJ), which includes attending the hearing on time, silencing cell phones, and appropriate attire. For additional information, please refer to the MOAHR webpage on Frequently Asked Questions: [LARA - Administrative Hearings Frequently Asked Questions \(michigan.gov\)](#)

REPRESENTATION: A party may be represented by an attorney of the party's own choosing and at the party's own expense. MOAHR does not recommend or appoint attorneys. Under some circumstances, a non-attorney may also represent a party. Check applicable law to determine whether representation by a non-attorney is permitted in the case presented.

WITNESSES: A party may present witnesses to testify under oath or affirmation at a hearing, subject to cross-examination or questions by the opposing party and/or questions by the ALJ.

DOCUMENTS OR EXHIBITS: A party may present documentary evidence as exhibits, to be ruled upon by the ALJ in accordance with R 792.10126. A party must offer any proposed exhibits at hearing, along with the party's own copy and a copy for other parties. Proposed exhibits must be **filed and exchanged with other parties a minimum of 7 days before hearing**, unless the ALJ orders a different timeframe. Proposed exhibits must be paginated, marked by number or letter showing Petitioner or Respondent such as "P-1" or "R-1", bookmarked or in separate .pdf files, include a cover listing with case docket number, and submitted in electronic format to the e-mail address of: MOAHR-GA@michigan.gov. MOAHR is not responsible for photocopying a party's documents. Proposed video evidence must be in a format supported by Windows Media Player and complete a security scan before MOAHR can accept it. E-mail MOAHR-IT@michigan.gov in advance for instructions. **Overnight Carrier Address (UPS, FedEx, DHL Deliveries): MOAHR-GA, c/o Department of Licensing and Regulatory Affairs, Mail Services, 2407 N. Grand River Avenue, Lansing, Michigan 48906**

MOTIONS OR REQUESTS: A motion is a request filed by a party that certain action be taken in the case. Other than during prehearing or hearing, all motions, pleadings, or requests shall be submitted in writing to the attention of the ALJ at the address provided below with a copy to the other parties, **indicating the case docket number**. A party has no later than 3 business days prior to hearing to respond to the motion in writing, unless the ALJ sets a different due date for response.

Adjournment or Withdrawal: A motion to adjourn the hearing date or convert to prehearing conference shall be filed reasonably in advance and state good cause for the request. A motion to withdraw the request for hearing based on settlement or other reason may be filed by the party with the burden of proof prior to hearing.

Telephone/Video testimony: If an in-person hearing is scheduled, a party may request approval to present a witness by telephone or video for good cause. A party may request that a hearing be held by specific format.

Equipment or Interpreter: A party may request that audio or visual equipment be made available at time of hearing for presentation of evidence. Any request for non-English language, sign-language or other translator/interpreter service should be submitted in writing to MOAHR immediately after receipt of the Notice of Hearing

FAILURE TO APPEAR: A party's failure to timely appear or participate in a hearing may result in a default order against the party and/or dismissal of the case. Within seven (7) days after service of a default order, a party may file a written motion requesting that the order be vacated for good cause under Mich Admin Code, R 792.10134.

REASONABLE ACCOMMODATION: All **in-person** hearings are conducted in a barrier-free location in compliance with state and federal law. An individual requiring reasonable accommodation for effective participation in a hearing, including accessible documentation such as braille, large print, electronic or audio reader, should contact MOAHR by telephone at (517) 763-0148 or e-mail at MOAHR-GA@michigan.gov and complete the Disability Accommodation Request form immediately after receipt of the Notice of Hearing : https://www.michigan.gov/documents/lara/Disability_Accommodation_form_for_MOAHR_Internet_5-2_web_654057_7.pdf

PRIVACY OF INFORMATION: In order to conduct a comprehensive and fair hearing, a party's private or confidential information, such as health or financial information, may be disclosed to the ALJ and other parties and their attorneys or representatives. However, the following personal identifying information (PII) shall not be included in any public document or attachment filed with MOAHR except as provided by MCR 1.109 or specifically authorized by the assigned ALJ: (i) date of birth, (ii) social security number or national identification number, (iii) driver's license number or state-issued personal identification card number, (iv) passport number, and (v) financial account numbers. If a party considers disclosure of PII on a document necessary to adjudication of an issue presented in the case, the party may file a motion for special protection of the document(s) or other accommodation in the hearings process

ENTRY TO STATE OFFICE BUILDINGS: All attendees for in-person hearings at a state office building are required to present valid photo identification for entry into the building.

IN THE MATTER OF:

Docket No.: 23-012503

**David Eby and
AgriFlite Services, Inc.,
Petitioner**

Case No.: 23-PE-02320

V

Agency: MDARD

**Michigan Department of Agriculture and
Rural Development,
Respondent**

**Case Type: MDARD Pesticide
Licensing**

Filing Type: Administrative Fine

Petitioner's Comments to Respondent's Exhibits

1. **R-11** is the request to MDARD for a formal hearing from David Eby and AgriFlite Services, Inc.

MDARD Fine Payment form with options

Priority Mail envelope with expected delivery to MDARD on 8/29/22.

2. **R-12** is the Informal Hearing Determination letter from Martin Al Rodriguez.

3. **R-13** is an email from Denise Eby to MDARD appealing the decision for a formal hearing with scheduling request due to AgriFlite's busy season and the Eby's off season residence.

4. **R-14** is a Notice of Violation for an application in 2018 by aerial applicator Mike Doyle.

This exhibit does not apply to the case in appeal.

5. **R-15** is a Notice of Administrative Fine and Fine Payment notification for a supposed Violation in Exhibit R-14 in 2018 by Mike Doyle.

This exhibit does not apply to the case in appeal.

6. **R-16** is a repeat of R-15 document that does not apply to this case on appeal.

7. **R-17** is the December 12, 2022 Power Point presentation compiled by David and Denise Eby for the informal hearing with MDARD for Martin Al Rodriguez. The content of this Exhibit confirms that David Eby and AgriFlite Services, Inc. are in compliance and NOT in violation as per the ExParte Violation assessment by MDARD.

Exhibit R-17 should be used as a point of reference for the appeal document attached in lieu of the Remote Hearing scheduled for October 26, 2023 at 9:00 am.

8. **R-6** is the weather from Toledo Suburban Airport which confirms the weather on AgriFlite Use Report. The weather at 1:30 pm was N at 6 mph compliant with the product labels.

9. **R-7** is the MDA Inspector's Report on Sample submitted by Investigator Lauren Young. These samples were taken on 7/22/21 and delivered to Geagley Lab.

The information contains the name of the products to be analyzed.

More important is the Geagley Lab Report which states evidence destroyed.

10. **R-8** contains various pictures:

- a. Michigan licensed aerial applicator Will Souther spraying the field ordered by Nutrien Blissfield. The aircraft appears to be at proper altitude for dispersal of the fungicide and insecticide ordered/supplied by Nutrien Blissfield for the Strahan field. A closer analysis shows the aircraft in the field with wingtip within the boundary of the field. In the foreground is the unplanted buffer along the boundary of the field. There is also a fencepost(?) with an American flag which provides a perspective to assess position of the plane within the field.

Note: Dispersal nozzles do NOT extend to the end of the wing, only $\frac{3}{4}$ the distance from the fuselage which extends the buffer erroneously calculated by

the investigator. This is an excellent picture to our case taken by the neighbor Amy Wahl.

- b. The picture of the open cab tractor of the complainant is big enough that the pilot would have seen Bakowski, thus confirming that the driver had to come from behind, otherwise, pilot would have seen it. Therefore, by choice, the driver put the open cab tractor in an area of potential harm.
- c. Note: Attached by Petitioner is a Google picture of the 9900 Lake Road area as referred to in the investigation report. Investigator failed to identify where complainant was when complaint occurred. This info would have been helpful in determining how potential drift could have occurred. This road is open and a tractor would have been highly visible to the pilot. The buffer is apparent.

11. **R-9** is a Notice of Violation mailed to David Eby and Agriflite Services, Inc. on May 17, 2022 which was 10 months after the spray date of July 21, 2021. Had there been a problem, why did Bakowski not contact Nutrien Blissfield or the Ebys at AgriFlite for compensation?

12. **R-10** is a Notice of Administrative Fine mailed 8/12/22.

Please note the comment FOIA. Violation and Fine was assessed ExParte prior to supplying any evidence to David Eby or AgriFlite Services, Inc. supporting the Violation.

Exhibits from March 6, 2023 email from Danielle Allison-Yokom along with Request for Hearing,

Exhibit A: Same document as R-9

Exhibit B: Same document as R-10

Exhibit C: Same document as R-12

Exhibit D: Same document as R-13

Attachment:

Google pic of 9900 Lake Road

Handwritten signature of David Eby in blue ink, consisting of stylized initials 'DE' followed by a flourish.

David Eby
10/22/23

Handwritten signature of Denise Eby in blue ink, written in a cursive style.

Denise Eby
10/22/23

← 9900 Lake Rd, Ottawa Lake, MI 🔍 ✕

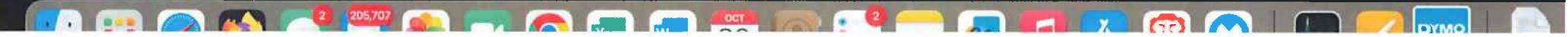
9900 Lake Rd ⋮
Ottawa Lake, Michigan
🗺️ Google Street View
Aug 2009 See more dates



By Arthur
Golf Club 📍
Expand 🗲️

Google

Image capture: Aug 2009 © 2023 Google [United States](#) [Terms](#) [Privacy](#) [Report a problem](#)



IN THE MATTER OF:

Docket No.: 23-012503

**David Eby and
AgriFlite Services, Inc.,
Petitioner**

Case No.: 23-PE-02320

V

Agency: MDARD

**Michigan Department of Agriculture and
Rural Development,
Respondent**

**Case Type: MDARD Pesticide
Licensing**

Filing Type: Administrative Fine

**REQUEST FOR DISMISSAL OF VIOLATION AND ADMINISTRATIVE FINE
OF DAVID EBY AND AGRIFLITE SERVICES, INC.**

MDARD has no valid information that David Eby and AgriFlite Services, Inc. violated the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control: MCL 324.83 et seq.

1. On July 21, 2021, Rachel Bakowski filed a complaint with MDARD against AgriFlite Services alleging drift while driving a large open-cab tractor pulling a wagon of uncovered oats. No signed complaint from Rachel Bakowski was sent to David Eby or AgriFlite Services with the FOIA request for "all sufficient information" for a violation.
2. Neither **David Eby nor AgriFlite Services, Inc.** were in the vicinity of Rachel Bakowski's alleged drift complaint on July 21, 2021.
3. David Eby and AgriFlite Services, Inc. were **not notified of a violation until 8/11/22** over a year later.

4. On July 22, 2021 MDARD investigator took various swab samples from the complainant's tractor and oats along with Bakowski's headband and delivered to Geagley Laboratory along with the name of the products to test for residue. On September 14, 2021 Lab results were completed with **no tolerance levels** listed only detection levels.

Per disclaimer on report, **samples were destroyed** on 11/13/21. (See Test Report)

Agriflite was not notified of lab results until the ExParte Violation was issued 6 months after the test samples were destroyed.

Geagley Lab knew exactly what chemistry to test, yet they had erratic results without applicable tolerances listed. (See Attachment_ Pesticide Residue.)

Geagley Lab is associated with MDARD and is a biased source of information.

Complainant Bakowski is alleged to have contracted with an additional lab for analysis; however, these results were not reported, most likely indicating non-detection.

These Geagley Lab test samples are invalid as evidence due to destruction of evidence in conjunction with the delay of time construing a violation ExParte by MDARD.

5. On 5/9/22, **ten months after the application**, the MDARD investigator calls the aerial applicator, Will Souther. If there is a drift complaint, the **first contact** should be made with the licensed aerial applicator making the application. As the licensing agency, MDARD has a responsibility to apply due diligence to represent the licensee.

This fungicide/insecticide application west of Lake Road was made within label requirement and according to Michigan regulations. A Michigan licensed pilot should be given the respect by the Michigan agency licensing that applicator to inquire of his perspective at the time of a complaint for firsthand details.

6. MDARD's lack of timeliness in investigating the appropriate personnel that could affect a potential remedy was thwarted by not contacting AgriFlite with questions at the time of the complaint.

Concern for the integrity of the oats in the wagon **could have been resolved by Agriflite** purchasing the oats and using them for cover crop during Fall of 2021 and Bakowski could have purchased oats to replace the questionable crop.

7. David and Denise Eby as principals of AgriFlite spent 2 hours explaining to MDARD how AgriFlite has complied with both Federal and Michigan Regulations and there was no violation (Exhibit R-17). **MDARD's errors and misunderstanding is the reason for this appeal.**
8. All product precautions for label compliance were observed by the pilot Will Souther. There is excellent visibility from the cockpit of the airplane and the fact that Bakowski's large open-cab tractor was **not seen** can **only** be explained that she came drove up behind him out of his field of vision.
9. This case is not Worker Protection applicable because Bakowski was not a worker in the field nor did the complainant work for AgriFlite or Nutrien Blissfield. The other question is still open concerning contact of product due to destruction of samples by Geagley Lab.

10. There is a ditch buffer on the side of the road that was **not included in the spray data swaths** of the field on the Use Report. **Use Reports for subsequent years 2022** and 2023 are attached for comparison and were flown with no incident. Each year of application to this target field, the focus has been to protect persons on the adjacent golf course. The same precaution would be given to any traffic or persons apparent in the target field locale, i.e. Lake Road to the east.
11. An annual Service Agreement is maintained each year per Michigan regulation with Nutrien Blissfield. Without appropriate questioning by MDARD of AgriFlite and Nutrien Blissfield, incorrect assertions concerning this case were made in the ExParte investigation of MDARD.
- One concern is WHY was a target pest not listed on the Use Report? The answer to this question is simple. Nine diseases are listed on the label for Headline Amp. Recommended timing of application is PRIOR to disease onset. Therefore, at the time the order is placed by Nutrien Blissfield, the TARGET PEST is not known by the scout/sales person. Per Service Agreement, Nutrien Blissfield is the responsible party to identify the field, product for use and timing of application. The Use Report receives the order information at the point of spray completion when the pilot indicates completion, time and weather conditions are gathered via the order management software from the closest weather station to the target field.
12. Included in the FOIA information for this case, a “scrap” notepad paper is included with “Pesticide Tolerance for Oats.” **(Copy attached)** There is no identifying

signature; however, a comparison of these amounts if correct render the Geagley Lab amounts void.

13. David Eby can respond to any additional question concerning compliance with the label directions; however, neither David Eby nor AgriFlite Services violated label direction because they were not at the scene of this case on July 21, 2021.

14. Any ramifications concerning the application should be directed to the licensed aerial applicator pilot who is licensed by Michigan Pesticide Licensing Division of MDARD. If this process is not observed and liability is placed on the business, then there is no need for the pilot of an agricultural aircraft to have an applicator license.

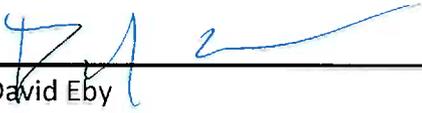
SUMMARY

MDARD has no valid information that David Eby and AgriFlite Services, Inc. violated the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control: MCL 324.83 et seq.

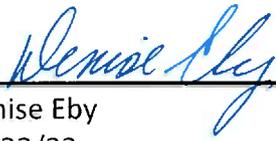
Pursuant to Exhibit R-17 page 55 presented by David and Denise Eby at the MDARD informal hearing on December 12, 2022, Case 21-PE-02320 should be rescinded (See attached Rescind Case)

What happened? No viable explanation has been given by MDARD. Exhibit R-17 page 54 attached is the resolution of the Maxim for ACCIDENT.

A **Warning Notice from MDARD** would be the appropriate action to inform all involved of the known circumstances and concerns in this case for a beneficial learning experience for safety in the agricultural community.



David Eby
10/22/23



Denise Eby
10/22/23

Attachments:
Pesticide Residue
Test Report Geagley Laboratory
Use Reports for subsequent years
FOIA scrap note on Pesticide Tolerance for Oats

Insecticides create little or no hazard to beneficial insects in many situations because few beneficial species, if any, are present. When insecticides are used to control household, structural and industrial pests and when they are applied directly to control insects on host animals, harm to beneficial insects is rarely an issue.⁵⁶

Predators are commonly given general credit for controlling rodent populations, but "the reverse is more accurate";⁵⁷ that is, the prey species must increase before the predator population can catch up and control the prey. Poison baits usually reduce rodent populations much more effectively than predators. For example, the average cat kills only about 25 to 30 rats a year—far too few to affect a colony's numbers.⁵⁸

Farmers must deal with the whole pest picture when selecting control methods to protect their crops. If a farmer is confronted with three pests, each of which can devastate his crop, **he may have to spray against all three**, even if one was being controlled by predatory insects which the spray will harm.

Pesticide Residues

As analytical methods are developed and improved, identification and measurement of smaller and smaller amounts of pesticides, pesticide metabolites and other trace chemicals become possible. Since the 1950s, analytical detectability has advanced from microgram (10^{-6} g.) to nanogram (10^{-9} g.) to even picogram (10^{-12} g.) amounts. As a result, residues previously reported in the parts per million (10^{-6}) range are now measurable in parts per billion (10^{-9}) or even parts per trillion (10^{-12}) concentrations.

With such incredibly minute quantities now being detectable, pesticides and other chemicals can be found almost *anywhere* in the environment, food, water or human or animal tissues. This too often results in fears of the "pesticide contamination" of the earth and in calls for more restrictions or bans on chemicals ... a kind of "toxic terror."⁵⁹

The ability to detect, however, has no relation to the biological effects of substances; that is, "residues only matter if they affect organisms."⁶⁰ As mentioned previously in Part 2, presence of minute pesticide quantities or other substances rarely presents even the slightest risk to

human health. Since any biological effect is related to the size of the residues, the environment is similarly unaffected by minute residues. The extensive testing of and occupational exposure to much higher pesticide levels clearly demonstrate the lack of risk from miniscule amounts of these materials.

Indeed, some argument can be made that small amounts of toxic substances are often *beneficial*, according to the concept of hormesis⁶¹ or "sufficient challenge."⁶² It has been observed repeatedly in animal studies that the low dose animals often appear to be in better condition than the control (no dose) animals, e.g., by living longer, being larger, having fewer tumors, etc. The phenomenon of sufficient challenge was suggested in the historic "mega-mouse" study conducted by the National Center for Toxicological Research (NCTR), which was reviewed by a Special Committee of the Society of Toxicology. The study used 24,000 mice exposed to various amounts of the carcinogen 2-acetylaminofluorene (AAF). The Society's review noted that the results suggested "statistically significant evidence that low doses of a carcinogen are *beneficial*" and that if the extrapolation models are correct, "we must conclude that low doses of AAF *protected* the animals from bladder tumors"⁶³ (emphasis added).

Groundwater Pollution

Groundwater pollution rarely occurs when pesticides are properly applied. Groundwater is particularly critical for agricultural applications; nearly 70% of it is used annually for agricultural irrigation.⁶⁴ Obviously, farmers have a strong incentive to avoid poisoning their own water sources. Contamination of neighboring groundwater subjects a careless pesticide applicator to civil and criminal penalties plus lawsuits for damages.

Trace amounts of pesticides have been detected in groundwater, but this fundamental question has to be addressed: Are the trace amounts detected toxic to humans or animals or otherwise detrimental to the use of the groundwater? Unfortunately, the "sophistication of present-day analytical methods may have outstripped our ability to interpret what they reveal, our ability to determine the significance of low-concentrations (sic) of contaminants on the environment and on public health."⁶⁵

*From A Report by the American Council on Science
and Health*

LB-021 (9/02)
(In Accordance with Act 380,
Public Acts 1965, as amended.)



Michigan Department of Agriculture
and Rural Development
Laboratory Division

GEAGLEY LABORATORY
1615 South Harrison Road
East Lansing, Michigan 48823-5224
Voice:(517)284-0500
Fax:(517)284-0457

This report shall not be reproduced, except in full, without written approval of the Laboratory Division. Lab not responsible for sampling or interpretation of results. These results relate only to the samples tested. Items with asterisk have been provided by the inspector.

Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8089

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: *Sweatband worn on head during drift*

Case *#: PE-21-02320

Lab Number: 21PEUS000328

Container: plastic bag

The sample(s) met sample acceptability requirements for the tests performed.

Method used - PEMTE - Sonication

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Oxystrobin	0.000097 ug/cm2 estimated	0.000031 ug/cm2 estimated
Propiconazole	None Detected	0.00050 ug/cm2
Cyfluthrin	0.12 ug/cm2	0.00053 ug/cm2
Metconazole	0.17 ug/cm2	0.00025 ug/cm2
Pyraclostrobin	0.42 ug/cm2	0.00012 ug/cm2

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

Date Printed: 9/14/2021

Page 1 of 6


Approval: Jessica Pruett

Michigan Department of Agriculture
and Rural Development
Laboratory Division



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Test Report

Inspector's Name *: Lauren Young

Inspector Seal *: D8090

Date Collected *: 7/22/2021

Delivery: Inspector

Date Received: 7/22/2021

Date Completed: 09/14/2021

Manufacturer *:

Retailer *:

Sample of *: *Blank swab*

Case *#: PE-21-02320

Lab Number: 21PEUS000329

Container: glass vial

The sample(s) met sample acceptability requirements for the tests performed.

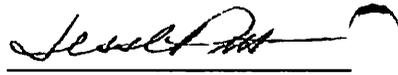
Method used - PEMTE - Sonication

<u>Analyte</u>	<u>Results</u>	<u>Detection Limit</u>
Azoxystrobin	None Detected	0.0031 ug/swab estimated
Propiconazole	None Detected	0.050 ug/swab
Cyfluthrin	None Detected	0.053 ug/swab
Metconazole	None Detected	0.025 ug/swab
Pyraclostrobin	None Detected	0.012 ug/swab

Unless the Laboratory is notified in writing, these sample(s) and containers will be destroyed on 11/13/2021

Date Printed: 9/14/2021

Page 2 of 6


Approval: Jessica Pruett

Use Report



Account: Nutrien - Blissfield
Address: 11200 E. US 223, PO Box 70
 Blissfield, MI 49228
Phone: 5174864391

Customer

Field Information

Application Company

Name: BLISSFIELD	Farm: Strahan	Name: AgriFlite Services Inc
Address: 11200 E. US 223 PO Box 70 Blissfield, MI 49228	Field: Wahls	Address: 30688 CR 36 Wakarusa, IN 46573
Office: 517-486-3422	Zone: MASTER	Office: 574-862-4392
Contact:	Crop: Corn	Contact: AgriFlite Services, Inc.
Cell: 517-206-7125	County: Monroe, MI	Cell: 574-536-1901
Alt:	Town: Whiteford	Alt: 800-686-2474
Email:	PLSS: 8S 6E Sec 8	Email: dave@agriflite.com
	Latitude: 41.792723	
	Longitude: -83.728415	



Applicator Information

Comments

Personnel: Beau Durrua	
License #: C003220257	
Certification #: 910003 MI	
Date: 2022-07-29	
Time Start: 06:27	
Time Stop: 06:44	
Wind Direction: N	
Wind Speed: Calm	
Temp: 56.00	
Equipment Name: N502EM	
Equipment ID: N502EM	

Material	Active Ingredient	EPA Number	REI	PHI	PPE	RU	Treated Pest	Rate	Completed Area (ac)	Total Product
Veltyma fungicide	Pyraclostrobin,	7969-409	12		No	No		7.00 fl oz/ac	60.00	3.28 gal
Tombstone Helios	Cyfluthrin	34704-978	12		No	Yes		2.00 fl oz/ac	60.00	0.94 gal
Franchise	Penetrant, Wetting Agent	EXEMPT			Yes	No		1.00 fl oz/ac	60.00	0.47 gal
Water								1.92 gal/ac	60.00	115.20 gal

Use Report



Account: Nutrien - Blissfield
Address: 11200 E. US 223, PO Box 70
 Blissfield, MI 49228
Phone: 5174864391

Customer

Field Information

Application Company

Name: BLISSFIELD	Farm: Strahan	Name: AgriFlite Services Inc
Address: 11200 E. US 223 PO Box 70 Blissfield, MI 49228	Field: Wahls Zone: MASTER Crop: Corn	Address: 30688 CR 36 Wakarusa, IN 46573
Office: 517-486-3422	County: Monroe, MI	Office: 574-862-4392
Contact:	Town: Whiteford	Contact: AgriFlite Services, Inc.
Cell: 517-206-7125	PLSS: 8S 6E Sec 8	Cell: 574-536-1901
Alt:	Latitude: 41.792735	Alt: 800-686-2474
Email:	Longitude: -83.728447	Email: dave@agriflite.com



Applicator Information

Comments

Personnel: Shelton Souther	
License #: C006130048 MI	
Certification #: MI 910003	
Date: 2023-07-24	
Time Start: 09:44	
Time Stop: 17:46	
Wind Direction: 240	
Wind Speed: 6	
Temp: 84.00	
Equipment Name: N8457V	
Equipment ID: N8457V	

Material	Active Ingredient	EPA Number	REI	PHI	PPE	RU	Treated Pest	Rate	Completed Area (ac)	Total Product
Veltyma fungicide	Pyraclostrobin,	7969-409	12		No	No		7.00 fl oz/ac	57.83	3.16 gal
Tombstone Helios	Cyfluthrin	34704-978	12		No	Yes		2.00 fl oz/ac	57.83	0.90 gal
Liberate	Lecithin, methyl esters of fatty	EXEMPT			No	No		1.00 fl oz/ac	57.83	0.45 gal
Water								1.92 gal/ac	57.83	111.03 gal

Washing my exposed skin - face/hands.
Drank some water.

Have Lauren send copy.
of it



St. Jude Children's
Research Hospital
ALSAC - Danny Thomas, Founder
Finding cures. Saving children.

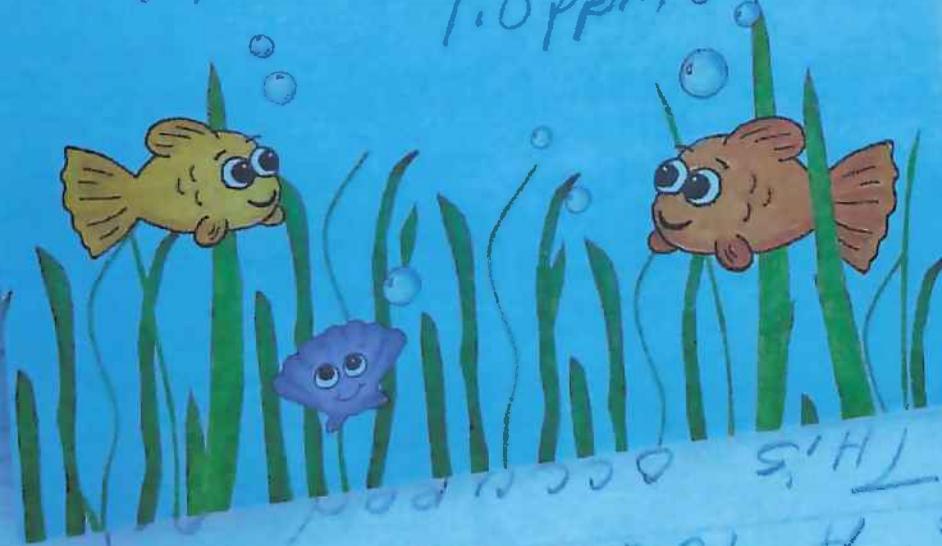
stjude.org

Pesticide Tolerance for Oats

~~Cyfluthrin~~ Cyfluthrin
0.15 ppm

Pyraclostrobin 1.2 ppm

metconazole -
1.0 ppm



De talked
appeared
ed for
re what w
that field
Bad
Nutr
in wagon
lose to
and fire
plane
FRAY
SC - P
M
c 1000
asi 1/3
block
sou
THIS OCCURRED

Rescind Case: 21-PE-02320

- No intent to violate
- Compliant to regulations
- MDARD failed to follow up timely and facilitate a beneficial remedy for complainant
- Complainant's lack of common sense jeopardized safety of licensed ag pilot operating under FAR part 137
- Violation assessed against person not at target field
- Information withheld from defendant principals of case

Accident, not Violation

LAW



WITH OVER 1,600 MAXIMS LISTED UNDER 105
DIFFERENT SUBJECT HEADINGS BEING
ALPHABETICALLY ARRANGED

1. ACCIDENT

- 1a. An unforeseen event, occurring without the will or design of the person whose mere act causes it, is known as an accident. *Burkhard v. Travelers' Ins. Co.*, 102 Pa. 262.
- 1b. A fortuitous event is not to be expected or presumed, and no one is bound to foresee it. 4 *Coke*, 66; *Hardr.* 82, arg.
- 1c. No one is held to answer for the effects of a superior force, or of an accident, unless his own fault has contributed. *Fleta*, lib.2c. 72, s. 16.
- 1d. Mistakes, neglect, or misconducts are not to be regarded as accidents. *Citizens Nat. Bank v. Cincinnati*, 19 Ohio Ded. 685, 687.
- 1e. Laws cannot prevent accidents nor can a law equally protect all against them. *Louisiana v. Resweber*, 329 U.S. 459, 465.

IN THE MATTER OF:

Docket No.: 23-012503

David Eby and
AgriFlite Services, Inc.,
Petitioner

Case No.: 23-PE-02320

Agency: MDARD

V

Case Type: MDARD Pesticide
Licensing

Michigan Department of Agriculture and
Rural Development,
Respondent

Filing Type: Administrative Fine

**REQUEST FOR IMPARTIAL HEARING BY MOAHR
PER HEARING INFORMATION PAGE 2**

Due to errors and omissions by MDARD in Case No. 23-PE-02320, David and Denise Eby, principals of AgriFlite Services, Inc. have requested an impartial hearing to review the determination of MDARD's informal hearing of 12/12/23 concerning a Notice of Violation and Notice of Administrative Fine.

Additional errors were introduced in the REQUEST FOR HEARING prepared by Danielle Allison-Yokom, MDARD Respondent, in that Petitioner David Eby was removed from the hearing request form and heading of documents which prejudiced the approach of the Administrative Judge Stephen Goldstein at the initial telephone hearing on May 9, 2023.

Subsequent representation Orders by Stephen Goldstein have delayed the review of Case 23-PE-02320 with an upcoming remote hearing scheduled October 26, 2023 at 9:00 EST.

1. Orders by Stephen Goldstein are not consistent with MOAHR HEARING INFORMATION PAGE 2 under the section of REPRESENTATION.
2. Orders erroneously cite the case *Shenkman v Bragman*, 261 Mich App 412, 416 (2004) which is not applicable to the Petitioners in this case. The *Shenkman v Bragman* case is in Appeals court (Judicial branch) for an estate representation. The case in question is in Administrative appeal under Executive branch.
3. MOAHR has not cited a specific Michigan law/regulation that applies to Petitioners in Case No. 23-PE-02320.
4. Petitioners are kindly asking for a review of the MDARD's determination letter dated 1/26/23 from an impartial view as MDARD agency is ruling same agency's determination letter and not taking into consideration errors that were introduced.
5. This case does not need the confusion of another "person" representing the Petitioners. There is not an adversarial situation, only an amenable resolution that the case has been interpreted correctly.

6. MDARD has not investigated this situation/complaint from the benefit of either the complainant Bakowski or the accused David Eby/AgriFlite Services, Inc.
7. Petitioners are submitting a written **Request for Dismissal** of Violation and Administrative Fine in lieu of the Remote Hearing on October 26, 2023 at 9:00 am EST.
8. Petitioners (retired) are in an area with intermittent internet and phone reception in addition to 3 hours behind EST.
9. Stephen Goldstein has been prejudiced in this case due to the MDARD errors by the MDARD Respondent in the Request for Hearing form.

If this case can be reviewed impartially from the various documents Submitted by email, i.e., Request for Dismissal, Petitioners welcome his comments; however, past experience may warrant recusal at your discretion.



David Eby
10/22/23



Denise Eby
10/22/23

RECEIVED

By SwansonJ7 at 2:51 pm, 9/6/23

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

September 6, 2023

Via Email at MOAHR-GA@michigan.gov

Michigan Office of Administrative
Hearings and Rules
Ottawa Building, 2nd Floor
611 West Ottawa Street
Lansing, MI 48933

Re: *In the Matter of: Agriflite Services, Inc.*
MOAHR Docket No.: 23-012503

Dear Clerk:

Attached is Respondent's Response to AgriFlite Services, Inc's Motion to Dismiss for filing in the above-referenced matter. Also enclosed is a Proof of Service for same.

Thank you for your assistance, and please feel free to contact me if you have any questions.

Sincerely,

/s/ Danielle Allison-Yokom

Danielle Allison-Yokom
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
(517) 335-7664
allisonyokomd@michigan.gov

DAY/sh

Attachments

cc: Denise Eby
Brad Deacon, MDARD (*via email*)
Michael Philip, MDARD (*via email*)
Caitlin Burkman, MDARD (*via email*)

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:	Docket No.: 23-012503
AgriFlite Services, Inc.	Agency No.: 21-PE-02320
	Part(s): Pesticide & Plant Pest Management
	Agency: Department of Agriculture and Rural Development
	Case Type: MDARD Pesticide Licensing

**RESPONDENT MICHIGAN DEPARTMENT OF AGRICULTURE AND
RURAL DEVELOPMENT'S RESPONSE TO AGRIFLITE SERVICES, INC'S
MOTION TO DISMISS**

Petitioner, AgriFlite Services, Inc. (AgriFlite), has filed a Request to Cancel the Telephone Hearing, currently scheduled for September 7, 2023, and Motion to Dismiss. The filing, drafted and signed by non-lawyers David and Denise Eby: (1) seeks to cancel the September 7, 2023 telephone hearing; (2) argues that AgriFlite Services, Inc. is not required to obtain counsel to represent it in the proceedings before the tribunal; and (3) argues, based on factual disputes, that the tribunal should grant AgriFlite's motion to dismiss.

I. Good cause has not been demonstrated to cancel the September 7, 2023 hearing.

This Tribunal's March 15, 2023 notice of hearing established the originally scheduled telephone hearing to be held on May 9, 2023 at 9:00 a.m. During the May 9, 2023 hearing, the parties agreed to adjourn the hearing until September 7, 2023.

At no time prior to September 5, 2023, did AgriFlite, David Eby, or Denise Eby file a motion objecting to the hearing occurring by telephone nor did they object to the September 7, 2023 date for the hearing. Now, less than three business days prior to the scheduled hearing, Ms. Eby has filed a document requesting that the telephone hearing be cancelled. Ms. Eby, in her filing, states that she “questions the jurisdiction of telephone conference hearings whereby Petitioner is confronted by unknown persons with no way to validate their capacity.” (Pet’s Req and Mot to Dismiss, p 2.)

This Tribunal is the proper forum to hear a challenge to MDARD’s administrative fine issuance. MCL 324.8332. A telephone hearing is more than sufficient to protect AgriFlite’s due process rights. Due process, in this case, “requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker.” *Hinky Dinky Supermarket, Inc v Dep't of Cmty Health*, 261 Mich App 604, 606 (2004), quoting *Cummings v Wayne Co*, 210 Mich App 249, 253 (1995). “The opportunity to be heard does not mean a full trial-like proceeding, but it does require a hearing to allow a party the chance to know and respond to the evidence.” A telephone hearing satisfies these due process concerns in this case.

However, even though AgriFlite has not demonstrated good cause as to why a telephone hearing is insufficient, MDARD does not oppose converting the September 7, 2023 hearing to one conducted by video conference.

II. AgriFlite Services, Inc. is a corporation that must be represented by counsel.

During the May 9, 2023 hearing and in its May 9, 2023 Order for Continuation, this Tribunal instructed Ms. Eby that the corporation, AgriFlite Services, Inc., must be represented by counsel. This is consistent with Michigan law that prohibits the unauthorized practice of law by non-attorneys. MCL 600.916. A corporation is a separate legal entity and a non-lawyer representing a corporation is engaged in the unauthorized practice of law. *Shenkman v Bragman*, 261 Mich App 412, 416 (2004). However, as evidenced by Ms. Eby's September 5, 2023 filing, that no appearance on behalf of AgriFlite Services, Inc. has been filed, and that the Motion to Dismiss was filed on behalf of AgriFlite Services, Inc. by non-attorney Ms. Eby, it appears that AgriFlite has failed to obtain counsel as this Tribunal previously directed.

It is not clear if AgriFlite has been unable to obtain counsel or just simply does not intend to obtain counsel to represent it in these proceedings. Giving AgriFlite the benefit of the doubt that it has been unable to obtain counsel, MDARD would not oppose a short adjournment or continuance of the hearing date to allow AgriFlite to obtain counsel. However, MDARD does not want to delay these proceedings indefinitely.

III. AgriFlite's Motion to Dismiss lacks merit and should be denied.

AgriFlite's Motion to Dismiss fails to identify which court rule or portion of the administrative rules it is based on. Presumably, AgriFlite's motion should be considered a motion for summary disposition under MCR 2.116 and Mich Admin

Code R 792.10129(1). Based on the arguments presented in AgriFlite's motion, it appears its position is that MDARD did not correctly collect or analyze the evidence supporting the administrative fine issued to AgriFlite; that AgriFlite properly applied pesticides; that AgriFlite's service agreement with Nutrien Blissfield makes this a contract issue and not a regulatory issue; that MDARD's issuance of the administrative fine does not serve the farming citizens of Michigan; and that a warning as opposed to a violation would be more appropriate to address this situation.

To the extent that AgriFlite's motion purports to advance legal arguments, it has failed to provide any legal analysis to support its positions making it impossible for MDARD to respond. To the extent that AgriFlite questions the evidence MDARD collected, MDARD's investigative techniques, and the conclusions that MDARD arrived at—including the appropriateness of the administrative fine—these are disputed questions of fact that are not appropriate for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 121 (1999). AgriFlite has not identified any admissible evidence to support its position that MDARD's facts are inaccurate or cannot be relied upon by this Tribunal, but instead advances only conjecture and assertions which is insufficient to support its position. *See Ghaffari v Turner Const Co*, 268 Mich App 460, 464 (2005).

AgriFlite has not filed or identified any exhibits that it intends to rely on in this proceeding. All exhibits were required to be filed at least seven days prior to the hearing. In contrast, MDARD has identified and produced 14 exhibits in

support of its position that AgriFlite violated Part 83 of the Natural Resources and Environmental Protection Act (NREPA) and was appropriately issued a fine for that violation. MDARD is also prepared to offer two witnesses that will testify regarding the complaint the department received, the investigation, how samples were collected, and the information it used to arrive at its determination that AgriFlite violated Part 83 and a \$1,000.00 fine is appropriate.¹

CONCLUSION AND RELIEF REQUESTED

AgriFlite's request and motion is untimely. However, it is clear from AgriFlite's filing that it has failed to obtain counsel to represent the corporation in these proceedings. Giving AgriFlite the benefit of the doubt, it appears that it has made attempts to obtain counsel to represent it in this matter. But proceeding with the hearing on September 7, 2023, when AgriFlite has failed to obtain counsel, is unlikely to be productive.

If this Tribunal is inclined to entertain the issues raised by AgriFlite or take any action in response to AgriFlite's untimely motion, MDARD respectfully requests that the Tribunal:

- A. Deny AgriFlite's Motion to Dismiss;
- B. Issue an order requiring AgriFlite to obtain counsel and for AgriFlite's counsel to file an appearance within 14 days;

¹ Given that AgriFlite's motion was filed less than 49 hours prior to the scheduled hearing, there is insufficient time for MDARD to obtain affidavits in addition to the documentary evidence already submitted to the Tribunal.

C. If AgriFlite’s counsel files a notice of appearance within 14 days, continue the hearing for a date no later than October 15, 2023;

D. If AgriFlite’s counsel fails to file a notice of appearance within 14 days, enter a default judgment against AgriFlite; and

E. If AgriFlite’s counsel upon filing their appearance requests a video conference hearing as opposed to a telephone hearing, convert the telephone hearing to a video conference hearing.

Respectfully submitted,

/s/ Danielle Allison-Yokom
Danielle Allison-Yokom (P70950)
Assistant Attorney General
Attorney for Michigan Department of
Agriculture and Rural Development
Environment, Natural Resources,
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664
allisonyokomd@michigan.gov

Dated: September 6, 2023

LF: AgriFlite Services (MDARD)/AG# 2023-0369881-B/Response to Req and Mot to Dismiss 2023-09-06

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:	Docket No.:	23-012503
AgriFlite Services, Inc.	Agency No.:	21-PE-02320
	Part(s):	Pesticide & Plant Pest Management
	Agency:	Department of Agriculture and Rural Development
	Case Type:	MDARD Pesticide Licensing

PROOF OF SERVICE

On September 6, 2023, I sent via email a copy of Respondent's Response to AgriFlite Services, Inc's Motion to Dismiss, to:

Denise Eby
denise@agriflite.com

I declare that the statements above are true to the best of my information, knowledge, and belief.

/s/ Sharon Hudecek

Sharon Hudecek, Legal Secretary

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

Docket No.: 23-012503

**Agriflite Services, Inc.,
Petitioner**

Case No.: 21-PE-02320

v

Agency: MDARD

**Michigan Department of Agriculture and
Rural Development,
Respondent**

**Case Type: MDARD Pesticide
Licensing**

**Filing Type: Appeal of
Administrative Fine**

**Issued and entered.
this 6th day of September 2023
by: Stephen B. Goldstein
Administrative Law Judge**

AMENDED ORDER GRANTING PETITIONER'S MOTION FOR CONTINUATION

AMENDED ORDER DENYING PETITIONER'S MOTION TO DISMISS

AND

AMENDED ORDER GRANTING PETITIONER'S MOTION FOR VIDEO HEARING

A contested case hearing was held in this matter on May 9, 2023. Denise Eby, a non-attorney, appeared on behalf of the Petitioner, Agriflite Services, Inc. Respondent was represented by Danielle Allison-Yokum, Assistant Attorney General. The tribunal explained to Ms. Eby that Michigan law requires corporations to be represented by licensed attorneys, and, because she was not an attorney, could not represent the Petitioner-corporation in this matter. By Order dated May 9, 2023, the hearing was continued to September 7, 2023, to afford Petitioner an opportunity to retain counsel.

On September 5, 2023, David and Denise Eby, both non-lawyers, signed and filed a motion on the corporate-Petitioner's behalf, seeking to cancel the September 7, 2023, hearing and for dismissal of this matter. The Eby's motion asserts that they had not yet had a chance to retain counsel, that Michigan law does not require their corporation to be represented by a licensed attorney, and that a telephone hearing is an insufficient medium to conduct the hearing.

Under Michigan law, a corporation is considered a separate legal entity and a non-lawyer representing a corporation engages in the unauthorized practice of law.¹ The tribunal finds, as a matter of law, that the filing by David and Denise Eby, both non-lawyers, of the motion to dismiss, constitutes the unauthorized practice of law. Therefore, because Petitioner's motion has not been properly filed by licensed counsel, it must be stricken and is hereby denied.

Petitioner's motions also reference unsuccessful attempts to retain and consult with an attorney. The record also reflects that Petitioner has not filed proposed witness or exhibits lists, nor does it appear that Petitioner has exchanged any proposed exhibits with Respondent. Given these factors, proceeding with the September 7, 2023, hearing is unlikely to be productive, primarily because this tribunal cannot legally and ethically permit David and Denise Eby, as non-attorneys, to represent the corporate Petitioner at the contested case hearing. Thus, to afford Petitioner additional time to retain counsel, the September 7, 2023, hearing shall be adjourned.

NOW THEREFORE IT IS HEREBY ORDERED that:

1. Petitioner's Motion to Dismiss is **denied**.
2. Petitioner's Motion to Adjourn the September 7, 2023, hearing is **granted**. The September 7, 2023, hearing is **adjourned**.
3. Petitioner shall retain a licensed Michigan attorney to represent its interests in this matter. Petitioner's attorney shall file a written appearance with the tribunal by no later than **September 29, 2023**.
4. Petitioner shall exchange with Respondent and file with the Tribunal its proposed exhibits, and a witness list, by no later than **October 12, 2023**. Exhibits not exchanged in accordance with this Order will not be considered and shall be excluded from evidence.

¹ *Shenkman v Bragman*, 261 Mich App 412, 416 (2004).

5. The contested case hearing shall be held at **9:00 a.m. on October 26, 2023, via Microsoft Teams Videoconference**. Petitioner shall appear at this hearing, represented by licensed counsel. In the event Petitioner appears without licensed counsel, a default for non-appearance will be entered in favor of Respondent and against Petitioner, pursuant to Sections 72(1) and 78(2) of Michigan's Administrative Procedures Act, MCL 24.271 *et seq.* (APA) and Mich Admin Code, R 792.10134.

To participate, please click on the link below:

Date: Thursday, October 26, 2023

Time: 9:00 a.m. Eastern Time

Link: <https://bit.ly/3Eva3XI>

Dial In: (248) 509-0316

Access Code: 656 975 560#



Stephen B. Goldstein
Administrative Law Judge

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 6th day of September 2023.

J. Swanson

J. Swanson
Michigan Office of Administrative
Hearings and Rules

Via Electronic Mail

Agriflite Services, Inc.
Attn: Dian Eby
30688 County Road 36
Wakarusa, IN 46573-9703
Denise@agriflite.com

Danielle Allison-Yokom
Department of the Attorney General
P.O. Box 30755
Lansing, MI 48909
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**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

Docket No.: 23-012503

**Agriflite Services, Inc.,
Petitioner**

Case No.: 21-PE-02320

v

Agency: MDARD

**Michigan Department of Agriculture and
Rural Development,
Respondent**

**Case Type: MDARD Pesticide
Licensing**

**Filing Type: Appeal of
Administrative Fine**

**Issued and entered.
this 6th day of September 2023
by: Stephen B. Goldstein
Administrative Law Judge**

ORDER GRANTING PETITIONER'S MOTION FOR CONTINUATION

ORDER DENYING PETITIONER'S MOTION TO DISMISS

AND

ORDER GRANTING PETITIONER'S MOTION FOR VIDEO HEARING

A contested case hearing was held in this matter on May 9, 2023. Denise Eby, a non-attorney, appeared on behalf of the Petitioner, Agriflite Services, Inc. Respondent was represented by Danielle Allison-Yokum, Assistant Attorney General. The tribunal explained to Ms. Eby that Michigan law requires corporations to be represented by licensed attorneys, and, because she was not an attorney, could not represent the Petitioner-corporation in this matter. By Order dated May 9, 2023, the hearing was continued to September 7, 2023, to afford Petitioner an opportunity to retain counsel.

On September 5, 2023, David and Denise Eby, both non-lawyers, signed and filed a motion on the corporate-Petitioner's behalf, seeking to cancel the September 7, 2023, hearing and for dismissal of this matter. The Eby's motion asserts that they had not yet had a chance to retain counsel, that Michigan law does not require their corporation to be represented by a licensed attorney, and that a telephone hearing is an insufficient medium to conduct the hearing.

Under Michigan law, a corporation is considered a separate legal entity and a non-lawyer representing a corporation engages in the unauthorized practice of law.¹ The tribunal finds, as a matter of law, that the filing by David and Denise Eby, both non-lawyers, of the motion to dismiss, constitutes the unauthorized practice of law. Therefore, because Petitioner's motion has not been properly filed by licensed counsel, it must be stricken and is hereby denied.

Petitioner's motions also reference unsuccessful attempts to retain and consult with an attorney. The record also reflects that Petitioner has not filed proposed witness or exhibits lists, nor does it appear that Petitioner has exchanged any proposed exhibits with Respondent. Given these factors, proceeding with the September 7, 2023, hearing is unlikely to be productive, primarily because this tribunal cannot legally and ethically permit David and Denise Eby, as non-attorneys, to represent the corporate Petitioner at the contested case hearing. Thus, to afford Petitioner additional time to retain counsel, the September 7, 2023, hearing shall be adjourned.

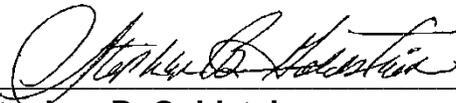
NOW THEREFORE IT IS HEREBY ORDERED that:

1. Petitioner's Motion to Dismiss is **denied**.
2. Petitioner's Motion to Adjourn the September 7, 2023, hearing is **granted**. The September 7, 2023, hearing is **adjourned**.
3. Petitioner shall retain a licensed Michigan attorney to represent its interests in this matter. Petitioner's attorney shall file a written appearance with the tribunal by no later than **September 29, 2023**.
4. Petitioner shall exchange with Respondent and file with the Tribunal its proposed exhibits, and a witness list, by no later than **October 12, 2023**. Exhibits not exchanged in accordance with this Order will not be considered and shall be excluded from evidence.

¹ *Shenkman v Bragman*, 261 Mich App 412, 416 (2004).

5. The contested case hearing shall be held at **9:00 a.m. on October 26, 2023, via Microsoft Teams Videoconference**. Petitioner shall appear at this hearing, represented by licensed counsel. In the event Petitioner appears without licensed counsel, a default for non-appearance will be entered in favor of Respondent and against Petitioner, pursuant to Sections 72(1) and 78(2) of Michigan's Administrative Procedures Act, MCL 24.271 *et seq.* (APA) and Mich Admin Code, R 792.10134.

To participate, please click on the link below:



Stephen B. Goldstein
Administrative Law Judge

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 6th day of September 2023.

J. Swanson

J. Swanson
Michigan Office of Administrative
Hearings and Rules

Via Electronic Mail

Agriflite Services, Inc.
Attn: Dian Eby
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Danielle Allison-Yokom
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Kaela Copeland, Legal Secretary
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RECEIVED

By SwansonJ7 at 8:46 am, 9/5/23

IN THE MATTER OF:

**David Eby and
AgriFlite Services, Inc.,
Petitioner**

V

**Michigan Department of Agriculture and
Rural Development,
Respondent**

Docket No.: 23-012503

Case No.: 23-PE-02320

Agency: MDARD

**Case Type: MDARD Pesticide
Licensing**

Filing Type: Administrative Fine

**REQUEST FOR CANCELLATION OF TELEPHONE HEARING ON SEPTEMBER 7, 2023 AT 9:00 EST
and
MOTION FOR DISMISSAL OF VIOLATION AND ADMINISTRATIVE FINE**

1. Following an informal hearing on December 12, 2022 with the MDARD Pesticide and Plant Pest Management Division and the subsequent determination letter of January 26, 2023, David Eby and AgriFlite Services, Inc. requested an appeal of the decision to a formal hearing for Case 23-PE-02320 with **specific availability restrictions in scheduling**. MDARD/MOHR ignored this request; however, AgriFlite Services, Inc. via principal Denise Eby complied by attending the May 9, 2023 telephone conference hearing scheduled with Stephen B. Goldstein.
2. To conserve time in the telephone conference hearing, Denise Eby, a principal of AgriFlite Services, attempted to read a position paper of this special appearance with a request to resolve the scheduling predicament with a proposed intent to submit a written paper of Motion to Dismiss. (See attached Exhibit-Telephone Position 5/9/2023)
3. Stephen Goldstein acting in the capacity as Administrative Judge refused to listen to this request, insisting an attorney is required to represent AgriFlite Services, Inc.

4. A Continuance was issued for AgriFlite Services, Inc. to retain counsel. No specific law or regulation was cited during the phone conference or in the Continuance as to why a principal of a corporation cannot represent itself.

5. David and Denise Eby discussed this Michigan representation with legal counsel and made an appointment to discuss this case; however, this appointment was cancelled by the attorney due to a doctor appointment. Rescheduling was not possible at that time due to AgriFlite's summer season schedule being unpredictable. AgriFlite's seasonal work is currently still in the active timeframe originally specified to MDARD at the initial scheduling of this appeal.

6. Due to the multiple errors by the executive agencies in this case, a telephone forum is inappropriate to obtain an unbiased resolution by the administrative agency.

The violation errors by MDARD will be addressed in the following Motion to Dismiss.

7. Errors by the Administrative Hearings and Rules Department include omitting a key factor of the name of David Eby as the Petitioner.

In the MOAHR Proof of Service, documents were addressed to the wrong person i.e. Attn: Dian Eby.

While in the Order For Continuation, no Michigan law or regulation was cited concerning self-representation, only tribunal opinion between judge and assistant attorney general in reference to Petitioner-corporation, yet it was David Eby's name that was omitted by the agency.

Stephen Goldstein failed to respond to the jurisdiction challenge. Petitioner questions the jurisdiction of telephone conference hearings whereby Petitioner is confronted by unknown persons with no way to validate their capacity. See *Hagans v Lavine*, 415 U.S. 533 where the law requires the proof of jurisdiction to appear on the record of the administrative agency and all

administrative proceedings.

8. Due to current scheduling conflicts and errors above, David Eby and AgriFlite Services, Inc. request a cancellation of the September 7, 2023 telephone hearing @ 9:00 a.m. in deference to a MOAHR review of the following Motion to Dismiss enumerating the errors of MDARD in the informal hearing determination using Respondents' Exhibit R-17 as a reference.

MOTION TO DISMISS CASE 21-PE-02320 BASED ON ERRORS BY MDARD

1. **Issue One** in the January 26, 2023 Determination Letter:

“MDARD found that the applicator had failed to follow the pesticide label requirements, which prohibited the applicator from drifting onto people and/or feed products. AgriFlite Services did not present evidence showing why DMARD should withdraw that citation or reduce the administrative penalty.”

This MDARD conclusion has multiple errors and omissions and is based on faulty investigation and evidence. On December 12, 2022 AgriFlite spent two hours explaining to the attendees of the informal hearing, compliance in a positive historical approach leading up to how this particular aerial application was handled to specifically comply with EPA and Michigan regulations.

The **Determination Letter** was written by Martin Al Rodriquez who is an employee of the MDARD agency. An underlying assumption is that employees will not rule/decide against their employer/administrative policy, so this was definitely not an impartial hearing.

The Use Report (Exhibit 17, page 12) documents the time, date, weather from nearest Weather station and area sprayed. There are no defects in this application, and the pilot flew in compliance with EPA regulations. The pilot was cognizant of the surroundings

and focused on avoiding any drift on the golf course to the west of the target field. When questioned as to this application, he did not recall any tractor on the road to the east of the target field. With an aerial view of this field and its surroundings, had a tractor been approaching from either direction, a swath would have been intentionally averted or spray turned off. This proves that there were additional circumstances **not covered in the MDARD's investigator's interview with the complainant. MDARD failed to produce a signed document by the complainant** of what actually transpired at the time of alleged drift. The interview with the complainant was basically a report of the investigator's conclusions/opinions. AgriFlite nor the pilot still do not know the position of the tractor and complainant when the alleged drift occurred. This omitted evidence would be helpful to determine how alleged drift could have occurred. At this point, due to the failure of an inadequate investigation **MDARD cannot claim that AgriFlite is in violation. MDARD must produce conclusive evidence** to support their violation claim rather than assertion of opinion.

Page 45 of Exhibit 17 is a Case Timeline.

The aerial application was on 7/21/21 and the investigation occurred on 7/22/21 during COVID lockdown. Lab samples were delivered to Geagley Lab. (See Timeline)

However, AgriFlite did **not** receive any notice of this violation until 5/9/22—**10 months later**. Per the Geagley Lab report, samples were to be destroyed 11/13/21 (prior to notification of AgriFlite) prohibiting any second evaluation of the samples submitted.

The lab knew exactly what chemical to test due to MDARD's contact with Brad Strahan

of Nutrien Blissfield which was the retail facility that had contracted with AgriFlite and supplied the chemical and location of field to be treated.

AgriFlite contests the validity of the Geahley lab samples due to first hand knowledge of the end result desired by MDARD and destruction of samples prematurely. No comment was made by the lab report concerning relevant tolerances of the measurements.

In compliance with Michigan regulations, AgriFlite and Nutrien Blissfield have an annual SERVICE AGREEMENT. This agreement puts this transaction into contract law.

MDARD's Failure to observe this contract arrangement focusing only on a possible violation jeopardized the complainant. Failure to inform the alleged timely compromised this situation whereby, if there were drift, a resolution to restore complainant's damaged product would be possible. With concerns as to the viability of the oats/grain in question, AgriFlite could have purchased the oats and applied the grain as a cover crop in the 2021 Fall season. This failure by MDARD to recommend a remedial mode of restorative action to the complainant does not support a violation to AgriFlite.

MDARD violated their own regulations in bypassing the Service Agreement

2. **Issue Two** in the January 26, 2023 Determination Letter:

"MDARD found that the aerial applicator conducted the treatment within 100 feet of the complainant who was driving a tractor on a public road. This was in violation of the federal worker protection standards for aerial application exclusion zones. AgriFlite Services did not present evidence showing why MDARD should withdraw the citation or reduce the administrative penalty."

Based on the errors in Issue 1 MDARD cannot conclude a violation based on exclusion zones because the complainant was not a worker in the target field. This position of the complainant is still unknown and the destroyed lab samples are not conclusive evidence.

AgriFlite did provide extensive evidence to show why the violation citation and administrative penalty should be rescinded. (See Respondent Exhibit 17 with Summary on page 55.)

As part of the State of Michigan Organization Structure (Page 53 of Exhibit 17) MDARD is an agency under the executive branch. An administrative agency is expected to be expert in its capacity to serve the "citizens of Michigan." Pursuance of this case does not serve the farming citizens of Michigan. Just as the citizens of Michigan were in "lockdown" at that time due to the pandemic Covid, the 2021 corn crop was infected by a disease called Black Tar Spot which caused an agricultural emergency situation endangering potential yields ranging from \$ 100-200/acre loss. Spread of the disease is aggressive.

Exhibit 17, page 43 quote from the MDRD internet site:

"The mission of the Michigan Department of Agriculture is to "serve, promote and protect the food, agricultural, environmental and economic interests of the people of Michigan. Promote Michigan agricultural products and the expansion of value-added opportunities and agricultural tourism in our state."

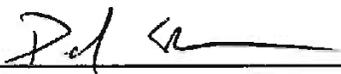
As public servants, MDARD investigators in Case 21-PE-02320 failed to observe their mission statement, focusing on pursuing a violation on an out of state licensed applicator who was servicing Michigan farm growers during an emergency situation.

MDARD failed to notify area residents of this serious corn disease with precautions.

AgriFlite's intent has been to be compliant throughout the History of Michigan Pesticide Regulation, see page 2 and following in Exhibit 17 for compliance examples.

A violation has not been proven, only an opinion based on an untimely, incomplete faulty investigation. This violation is focused on both a person and fictional person which were not at the site. From the Book of legal maxims, the definition of "accident," not violation better describes this situation if allegations are fact. Nevertheless a warning is more appropriate mode of addressing actions of a licensed pilot.

AgriFlite refuses to accept a violation for what it did not do. MDARD has failed to provide sufficient evidence to support their conclusion of violation or administrative penalty.



David Eby
Principal-AgriFlite Services, Inc.
9/3/2023



Denise Eby
Principal-AgriFlite Services, Inc.
9/3/2023

Attachment: Exhibit-Telephone Position 5/9/2023

SERVICE VIA EMAIL

9/3/2023

Danielle Allison-Yokum
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Kaela Copeland, Legal Secretary
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David Hagar, Legal Secretary
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hagard@michigan.gov

EXHIBIT:

TELEPHONE POSITION 5/9/2023

**Telephone Hearing 5/9/2023 @ 9:00 Eastern Time
Michigan Office of Administrative Hearings and Rules (MOAHR)**

Case No 21-PE-02320

According to the **NOTICE** of the MOAHR Docket No.: 23-012503, the **Petitioner is AgriFlite Services, Inc.**

My name is Denise Eby. I am the participant on this phone hearing by **special appearance** as a principal of AgriFlite Services, Inc. in Compliance and **not in Default.**

This special appearance in Compliance today is to **challenge the jurisdiction** of the Administrative Law Judge in two facets:

1. A **telephone venue** is an objection and **unacceptable to addressing the multiple errors and negligence** of MDARD in the case 21-PE-02320 which is the source of this appeal.
2. **Request** for appeal was made **via email on February 13, 2023** (Respondent's Exhibit D) with clear conditions that this hearing be scheduled for the **last half of June 2023** at the earliest. Reason being that the Petitioner principals are not at location in office with access to documents and multiple factors. Circumstances on this day are beyond my control. An attempt was made to contact MOAHR office on March 16, 2023 with no successful response to postpone this hearing.

Issue:

Whether Respondent's issuance of the Administrative Fine was proper pursuant to the Natural Resources and Environmental Protection Act, MCL 324.80301 et seq. And the administrative rules promulgated thereunder.

Response by Petitioner:

On December 12, 2022, David and Denise Eby presented evidence that MDARD should withdraw the Administrative Fine/Violation. The fine was based on a violation that had errors and negligence by MDARD. A ***Motion to Dismiss*** describing and documenting these alleged errors and negligence will be submitted to the Administrative Judge by the end of June, 2023. Respondent MDARD has included as **Exhibit R-17** a thorough powerpoint used to present AgriFlite's **Informal Hearing** information by David and Denise Eby on December 12, 2022. This compilation of the positive compliance of AgriFlite over the past 50 years includes a slide on page 43 of the "Mission" of the MDARD to "service, promote, and protect the food, agricultural, environmental, and economic interests of the people of Michigan," MDARD's investigation procedure thwarted this mission. Petitioner's forthcoming Response in the format of a ***Motion to Dismiss*** will address the particulars supporting this alleged infraction of administrative procedure and regulations which MDARD is expected to uphold in their administrative implementation of EPA regulations within "the State of Michigan."

Summary:

AgriFlite Services, Inc. and David Eby are not in violation of the Natural Resources and Environmental Protection Act as noticed by MDARD and an Administrative Fine is not warranted. A ***Motion to Dismiss*** will be issued to MOAHR by the end of June, 2023 to support this statement. (Respondent's Exhibit R-17 compiled by the Petitioner for the Informal Hearing on December 12, 2022 will be used as the source document and reference outline.)

David Eby

Denise Eby

5/9/2023

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

**Agriflite Services, Inc.,
Petitioner**

v

**Michigan Department of Agriculture and
Rural Development,
Respondent**

Docket No.: 23-012503

Case No.: 21-PE-02320

Agency: MDARD

**Case Type: MDARD Pesticide
Licensing**

Filing Type: Administrative Fine

**Issued and entered.
this 9th day of May 2023
by: Stephen B. Goldstein
Administrative Law Judge**

ORDER FOR CONTINUATION

A contested case hearing was held in this matter on May 9, 2023. Denise Eby, a non-attorney, appeared on behalf of the Petitioner, Agriflite Services, Inc. Respondent was represented by Danielle Allison-Yokum, Assistant Attorney General. The tribunal explained to Ms. Eby that Michigan law requires corporations to be represented by licensed attorneys, and, because she was not an attorney, could not represent the Petitioner-corporation in this matter. The hearing was therefore continued to afford Petitioner an opportunity to retain counsel.

NOW THEREFORE IT IS HEREBY ORDERED that the hearing is continued to **9:00 a.m. on September 7, 2023, via telephone.**

To participate in the hearing, dial in this telephone number: **1-877-336-1831**. After you dial in, enter Access Code: **2098995**. After the prompt, press # to connect as "guest".



**Stephen B. Goldstein
Administrative Law Judge**

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys to their last-known address in the manner specified below, this 9th day of May, 2023.



D. Hagar

**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

Agriflite Services, Inc.

Attn: Dian Eby

30688 County Road 36

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Denise@agriflite.com

Danielle Allison-Yokom

Department of the Attorney General

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STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

May 2, 2023

Via Email at MOAHR-GA@michigan.gov

Michigan Office of Administrative
Hearings and Rules
Ottawa Building, 2nd Floor
611 West Ottawa Street
Lansing, MI 48933

Re: *In the Matter of: AgriFlite Services, Inc.*
MOAHR Docket No.: 23-012503

Dear Clerk:

Attached is Respondent's Exhibits for filing in the above-referenced matter. Also enclosed is a Proof of Service for same.

Thank you for your assistance, and please feel free to contact me if you have any questions.

Sincerely,

/s/ Danielle Allison-Yokom

Danielle Allison-Yokom
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
(517) 335-7664
allisonyokomd@michigan.gov

DAY/kc

Attachments

cc: Denise Eby (*via email*)
Brad Deacon, MDARD (*via email*)
Michael Phillip, MDARD (*via email*)
Caitlin Burkman, MDARD (*via email*)



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

Date Mailed: 03/15/23

IN THE MATTER OF:

Docket No.: 23-012503

**Agriflite Services, Inc.,
Petitioner**

Case No.: 21-PE-02320

v

Agency: MDARD

**Michigan Department of Agriculture and
Rural Development,
Respondent**

**Case Type: MDARD Pesticide
Licensing**

Filing Type: Administrative Fine

NOTICE OF TELEPHONE HEARING

You are hereby notified that an administrative hearing has been scheduled to be held by **telephone conference call** before an Administrative Law Judge (ALJ) in the Michigan Office of Administrative Hearings and Rules (MOAHR) on:

Date: May 9, 2023 **Time:** 9:00 AM Eastern Time

ALJ: Stephen B. Goldstein

To participate in the hearing, dial in this telephone number: 1-877-336-1831. After you dial in, enter Access Code: 2098995. After the prompt, press # to connect as "guest".

Issue: Whether Respondent's issuance of the Administrative Fine was proper pursuant to the Natural Resources and Environmental Protection Act, MCL 324.8301 et seq. and the administrative rules promulgated thereunder.

This is an important legal document. Please have someone translate the document.
Il s'agit d'un document juridique important. S'il vous plaît quelqu'un traduire le document.
Este es un documento legal importante. Por favor, que alguien traduzca el documento.
المستند يترجم علي شخص علي الحصول الرجاء .هامه قانونيه وثيقة وهذه
这是一份重要的法律文件。请让人翻译文档
Đây là một văn bản pháp lý quan trọng. Xin vui lòng có ai đó dịch tài liệu.

HEARING INFORMATION – PLEASE READ IMMEDIATELY

GENERAL INFORMATION: An impartial hearing will be conducted in accordance with the Michigan Office of Administrative Hearings and Rules (MOAHR) rules at Mich Admin Code, R 792.10101-R 792.11289 and the Michigan Administrative Procedures Act (APA), MCL 24.201 *et seq.* The Michigan Rules of Evidence and the Michigan Court Rules may be applicable. A party is expected to exercise proper respect and courtesy towards the other parties, witnesses, and administrative law judge (ALJ), which includes attending the hearing on time, silencing cell phones, and appropriate attire. For additional information, please refer to the MOAHR webpage on Frequently Asked Questions: [LARA - Administrative Hearings Frequently Asked Questions \(michigan.gov\)](https://www.michigan.gov/lara/0,4570,7-153_7-154_7-155_7-156_7-157_7-158_7-159_7-160_7-161_7-162_7-163_7-164_7-165_7-166_7-167_7-168_7-169_7-170_7-171_7-172_7-173_7-174_7-175_7-176_7-177_7-178_7-179_7-180_7-181_7-182_7-183_7-184_7-185_7-186_7-187_7-188_7-189_7-190_7-191_7-192_7-193_7-194_7-195_7-196_7-197_7-198_7-199_7-200_7-201_7-202_7-203_7-204_7-205_7-206_7-207_7-208_7-209_7-210_7-211_7-212_7-213_7-214_7-215_7-216_7-217_7-218_7-219_7-220_7-221_7-222_7-223_7-224_7-225_7-226_7-227_7-228_7-229_7-230_7-231_7-232_7-233_7-234_7-235_7-236_7-237_7-238_7-239_7-240_7-241_7-242_7-243_7-244_7-245_7-246_7-247_7-248_7-249_7-250_7-251_7-252_7-253_7-254_7-255_7-256_7-257_7-258_7-259_7-260_7-261_7-262_7-263_7-264_7-265_7-266_7-267_7-268_7-269_7-270_7-271_7-272_7-273_7-274_7-275_7-276_7-277_7-278_7-279_7-280_7-281_7-282_7-283_7-284_7-285_7-286_7-287_7-288_7-289_7-290_7-291_7-292_7-293_7-294_7-295_7-296_7-297_7-298_7-299_7-300_7-301_7-302_7-303_7-304_7-305_7-306_7-307_7-308_7-309_7-310_7-311_7-312_7-313_7-314_7-315_7-316_7-317_7-318_7-319_7-320_7-321_7-322_7-323_7-324_7-325_7-326_7-327_7-328_7-329_7-330_7-331_7-332_7-333_7-334_7-335_7-336_7-337_7-338_7-339_7-340_7-341_7-342_7-343_7-344_7-345_7-346_7-347_7-348_7-349_7-350_7-351_7-352_7-353_7-354_7-355_7-356_7-357_7-358_7-359_7-360_7-361_7-362_7-363_7-364_7-365_7-366_7-367_7-368_7-369_7-370_7-371_7-372_7-373_7-374_7-375_7-376_7-377_7-378_7-379_7-380_7-381_7-382_7-383_7-384_7-385_7-386_7-387_7-388_7-389_7-390_7-391_7-392_7-393_7-394_7-395_7-396_7-397_7-398_7-399_7-400_7-401_7-402_7-403_7-404_7-405_7-406_7-407_7-408_7-409_7-410_7-411_7-412_7-413_7-414_7-415_7-416_7-417_7-418_7-419_7-420_7-421_7-422_7-423_7-424_7-425_7-426_7-427_7-428_7-429_7-430_7-431_7-432_7-433_7-434_7-435_7-436_7-437_7-438_7-439_7-440_7-441_7-442_7-443_7-444_7-445_7-446_7-447_7-448_7-449_7-450_7-451_7-452_7-453_7-454_7-455_7-456_7-457_7-458_7-459_7-460_7-461_7-462_7-463_7-464_7-465_7-466_7-467_7-468_7-469_7-470_7-471_7-472_7-473_7-474_7-475_7-476_7-477_7-478_7-479_7-480_7-481_7-482_7-483_7-484_7-485_7-486_7-487_7-488_7-489_7-490_7-491_7-492_7-493_7-494_7-495_7-496_7-497_7-498_7-499_7-500_7-501_7-502_7-503_7-504_7-505_7-506_7-507_7-508_7-509_7-510_7-511_7-512_7-513_7-514_7-515_7-516_7-517_7-518_7-519_7-520_7-521_7-522_7-523_7-524_7-525_7-526_7-527_7-528_7-529_7-530_7-531_7-532_7-533_7-534_7-535_7-536_7-537_7-538_7-539_7-540_7-541_7-542_7-543_7-544_7-545_7-546_7-547_7-548_7-549_7-550_7-551_7-552_7-553_7-554_7-555_7-556_7-557_7-558_7-559_7-560_7-561_7-562_7-563_7-564_7-565_7-566_7-567_7-568_7-569_7-570_7-571_7-572_7-573_7-574_7-575_7-576_7-577_7-578_7-579_7-580_7-581_7-582_7-583_7-584_7-585_7-586_7-587_7-588_7-589_7-590_7-591_7-592_7-593_7-594_7-595_7-596_7-597_7-598_7-599_7-600_7-601_7-602_7-603_7-604_7-605_7-606_7-607_7-608_7-609_7-610_7-611_7-612_7-613_7-614_7-615_7-616_7-617_7-618_7-619_7-620_7-621_7-622_7-623_7-624_7-625_7-626_7-627_7-628_7-629_7-630_7-631_7-632_7-633_7-634_7-635_7-636_7-637_7-638_7-639_7-640_7-641_7-642_7-643_7-644_7-645_7-646_7-647_7-648_7-649_7-650_7-651_7-652_7-653_7-654_7-655_7-656_7-657_7-658_7-659_7-660_7-661_7-662_7-663_7-664_7-665_7-666_7-667_7-668_7-669_7-670_7-671_7-672_7-673_7-674_7-675_7-676_7-677_7-678_7-679_7-680_7-681_7-682_7-683_7-684_7-685_7-686_7-687_7-688_7-689_7-690_7-691_7-692_7-693_7-694_7-695_7-696_7-697_7-698_7-699_7-700_7-701_7-702_7-703_7-704_7-705_7-706_7-707_7-708_7-709_7-710_7-711_7-712_7-713_7-714_7-715_7-716_7-717_7-718_7-719_7-720_7-721_7-722_7-723_7-724_7-725_7-726_7-727_7-728_7-729_7-730_7-731_7-732_7-733_7-734_7-735_7-736_7-737_7-738_7-739_7-740_7-741_7-742_7-743_7-744_7-745_7-746_7-747_7-748_7-749_7-750_7-751_7-752_7-753_7-754_7-755_7-756_7-757_7-758_7-759_7-760_7-761_7-762_7-763_7-764_7-765_7-766_7-767_7-768_7-769_7-770_7-771_7-772_7-773_7-774_7-775_7-776_7-777_7-778_7-779_7-780_7-781_7-782_7-783_7-784_7-785_7-786_7-787_7-788_7-789_7-790_7-791_7-792_7-793_7-794_7-795_7-796_7-797_7-798_7-799_7-800_7-801_7-802_7-803_7-804_7-805_7-806_7-807_7-808_7-809_7-810_7-811_7-812_7-813_7-814_7-815_7-816_7-817_7-818_7-819_7-820_7-821_7-822_7-823_7-824_7-825_7-826_7-827_7-828_7-829_7-830_7-831_7-832_7-833_7-834_7-835_7-836_7-837_7-838_7-839_7-840_7-841_7-842_7-843_7-844_7-845_7-846_7-847_7-848_7-849_7-850_7-851_7-852_7-853_7-854_7-855_7-856_7-857_7-858_7-859_7-860_7-861_7-862_7-863_7-864_7-865_7-866_7-867_7-868_7-869_7-870_7-871_7-872_7-873_7-874_7-875_7-876_7-877_7-878_7-879_7-880_7-881_7-882_7-883_7-884_7-885_7-886_7-887_7-888_7-889_7-890_7-891_7-892_7-893_7-894_7-895_7-896_7-897_7-898_7-899_7-900_7-901_7-902_7-903_7-904_7-905_7-906_7-907_7-908_7-909_7-910_7-911_7-912_7-913_7-914_7-915_7-916_7-917_7-918_7-919_7-920_7-921_7-922_7-923_7-924_7-925_7-926_7-927_7-928_7-929_7-930_7-931_7-932_7-933_7-934_7-935_7-936_7-937_7-938_7-939_7-940_7-941_7-942_7-943_7-944_7-945_7-946_7-947_7-948_7-949_7-950_7-951_7-952_7-953_7-954_7-955_7-956_7-957_7-958_7-959_7-960_7-961_7-962_7-963_7-964_7-965_7-966_7-967_7-968_7-969_7-970_7-971_7-972_7-973_7-974_7-975_7-976_7-977_7-978_7-979_7-980_7-981_7-982_7-983_7-984_7-985_7-986_7-987_7-988_7-989_7-990_7-991_7-992_7-993_7-994_7-995_7-996_7-997_7-998_7-999_8000)

REPRESENTATION: A party may be represented by an attorney of the party's own choosing and at the party's own expense. MOAHR does not recommend or appoint attorneys. Under some circumstances, a non-attorney may also represent a party. Check applicable law to determine whether representation by a non-attorney is permitted in the case presented.

WITNESSES: A party may present witnesses to testify under oath or affirmation at a hearing, subject to cross-examination or questions by the opposing party and/or questions by the ALJ.

DOCUMENTS OR EXHIBITS: A party may present documentary evidence as exhibits, to be ruled upon by the ALJ in accordance with R 792.10126. A party must offer any proposed exhibits at hearing, along with the party's own copy and a copy for other parties. Proposed exhibits must be **filed and exchanged with other parties a minimum of 7 days before hearing**, unless the ALJ orders a different timeframe. Proposed exhibits must be paginated, marked by number or letter showing Petitioner or Respondent such as "P-1" or "R-1", bookmarked or in separate .pdf files, include a cover listing with case docket number, and submitted in electronic format to the e-mail address of: MOAHR-GA@michigan.gov. MOAHR is not responsible for photocopying a party's documents. Proposed video evidence must be in a format supported by Windows Media Player and complete a security scan before MOAHR can accept it. E-mail MOAHR-IT@michigan.gov in advance for instructions. **Overnight Carrier Address (UPS, FedEx, DHL Deliveries): MOAHR-GA, c/o Department of Licensing and Regulatory Affairs, Mail Services, 2407 N. Grand River Avenue, Lansing, Michigan 48906**

MOTIONS OR REQUESTS: A motion is a request filed by a party that certain action be taken in the case. Other than during prehearing or hearing, all motions, pleadings, or requests shall be submitted in writing to the attention of the ALJ at the address provided below with a copy to the other parties, **indicating the case docket number**. A party has no later than 3 business days prior to hearing to respond to the motion in writing, unless the ALJ sets a different due date for response.

Adjournment or Withdrawal: A motion to adjourn the hearing date or convert to prehearing conference shall be filed reasonably in advance and state good cause for the request. A motion to withdraw the request for hearing based on settlement or other reason may be filed by the party with the burden of proof prior to hearing.

Telephone/Video testimony: If an in-person hearing is scheduled, a party may request approval to present a witness by telephone or video for good cause. A party may request that a hearing be held by specific format.

Equipment or Interpreter: A party may request that audio or visual equipment be made available at time of hearing for presentation of evidence. Any request for non-English language, sign-language or other translator/interpreter service should be submitted in writing to MOAHR immediately after receipt of the Notice of Hearing

FAILURE TO APPEAR: A party's failure to timely appear or participate in a hearing may result in a default order against the party and/or dismissal of the case. Within seven (7) days after service of a default order, a party may file a written motion requesting that the order be vacated for good cause under Mich Admin Code, R 792.10134.

REASONABLE ACCOMMODATION: All **in-person** hearings are conducted in a barrier-free location in compliance with state and federal law. An individual requiring reasonable accommodation for effective participation in a hearing, including accessible documentation such as braille, large print, electronic or audio reader, should contact MOAHR by telephone at (517) 763-0148 or e-mail at MOAHR-GA@michigan.gov and complete the Disability Accommodation Request form immediately after receipt of the Notice of Hearing : https://www.michigan.gov/documents/lara/Disability_Accommodation_form_for_MOAHR_Internet_5-2.web_654057_7.pdf

PRIVACY OF INFORMATION: In order to conduct a comprehensive and fair hearing, a party's private or confidential information, such as health or financial information, may be disclosed to the ALJ and other parties and their attorneys or representatives. However, the following personal identifying information (PII) shall not be included in any public document or attachment filed with MOAHR except as provided by MCR 1.109 or specifically authorized by the assigned ALJ: (i) date of birth, (ii) social security number or national identification number, (iii) driver's license number or state-issued personal identification card number, (iv) passport number, and (v) financial account numbers. If a party considers disclosure of PII on a document necessary to adjudication of an issue presented in the case, the party may file a motion for special protection of the document(s) or other accommodation in the hearings process

ENTRY TO STATE OFFICE BUILDINGS: All attendees for in-person hearings at a state office building are required to present valid photo identification for entry into the building.

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 15th day of March, 2023.

K. Nelson

**K. Nelson
Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

Agriflite Services, Inc.
Attn: Dian Eby
30688 County Road 36
Wakarusa, IN 46573-9703
Denise@agriflite.com

Danielle Allison-Yokom
Department of the Attorney General
P.O. Box 30755
Lansing, MI 48909
allisonyokomd@michigan.gov

Kaela Copeland, Legal Secretary
Michigan Department of Attorney General
525 West Ottawa
PO Box 30755
Lansing, MI 48909
CopelandK2@michigan.gov

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

March 6, 2023

Via Email at MOAHR-GA@michigan.gov

Michigan Office of Administrative
Hearings and Rules
Ottawa Building, 2nd Floor
611 West Ottawa Street
Lansing, MI 48933

Re: *In the Matter of: Agriflite Services, Inc.*
MOAHR Docket No.: TBD

Dear Clerk:

Attached is a Request for Hearing with Exhibits A–D for filing in the above-referenced matter. Also enclosed is a Proof of Service for same.

Thank you for your assistance, and please feel free to contact me if you have any questions.

Sincerely,

/s/ Danielle Allison-Yokom

Danielle Allison-Yokom
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
(517) 335-7664
allisonyokomd@michigan.gov

DAY/kc

Attachments

cc: Denise Eby
Brad Deacon, MDARD (*via email*)
Michael Phillip, MDARD (*via email*)
Caitlin Burkman, MDARD (*via email*)

Michigan Office of Administrative Hearings and Rules

REQUEST FOR HEARING



1. IN THE MATTER OF			
2. CASE TYPE		3. AGENCY	
4. DIVISION		5. BOARD	
6. GEOGRAPHIC LOCATION FOR HEARING			
7. INITIATING AGENCY'S FILE NUMBER		8. STATUTORY START DATE	
9. STATUTE, RULE, OR REGULATION			
10. ISSUE			
11. PREPARED BY	PHONE NUMBER	FAX NUMBER	DATE PREPARED
12. COMMENTS			
For MOAHR Use Only			
DATE RECEIVED	DATE COMPLETED	COMPLETED BY	
DOCKET NUMBER		ALJ ASSIGNED	
COMMENTS			

REQUEST FOR HEARING

13. CHECK ONE <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Intervenor <input type="checkbox"/> Department						
<input type="checkbox"/> Petitioner's Attorney <input type="checkbox"/> Respondent's Attorney <input type="checkbox"/> Intervenor's Attorney <input type="checkbox"/> Other						
<input type="checkbox"/> Petitioner's Representative <input type="checkbox"/> Respondent's Representative <input type="checkbox"/> Intervenor's Representative						
14. NAME						
15. FIRM						
16. ON BEHALF OF						
17. STREET ADDRESS/P.O. BOX						
18. CITY		19. STATE	20. ZIP CODE	21. PHONE	22. FAX	
23. EMAIL ADDRESS				May documents be served to this party/representative via email only?	Yes	No

24. CHECK ONE <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Intervenor <input type="checkbox"/> Department						
<input type="checkbox"/> Petitioner's Attorney <input type="checkbox"/> Respondent's Attorney <input type="checkbox"/> Intervenor's Attorney <input type="checkbox"/> Other						
<input type="checkbox"/> Petitioner's Representative <input type="checkbox"/> Respondent's Representative <input type="checkbox"/> Intervenor's Representative						
25. NAME						
26. FIRM						
27. ON BEHALF OF						
28. STREET ADDRESS/P.O. BOX						
29. CITY		30. STATE	31. ZIP CODE	32. PHONE	33. FAX	
34. EMAIL ADDRESS				May documents be served to this party/representative via email only?	Yes	No

35. CHECK ONE <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Intervenor <input type="checkbox"/> Department						
<input type="checkbox"/> Petitioner's Attorney <input type="checkbox"/> Respondent's Attorney <input type="checkbox"/> Intervenor's Attorney <input type="checkbox"/> Other						
<input type="checkbox"/> Petitioner's Representative <input type="checkbox"/> Respondent's Representative <input type="checkbox"/> Intervenor's Representative						
36. NAME						
37. FIRM						
38. ON BEHALF OF						
39. STREET ADDRESS/P.O. BOX						
40. CITY		41. STATE	42. ZIP CODE	43. PHONE	44. FAX	
45. EMAIL ADDRESS				May documents be served to this party/representative via email only?	Yes	No

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:

Docket No.:

AgriFlite Services, Inc.

Agency No.:

Part(s): Pesticide & Plant Pest
Management

Agency: Department of Agriculture and
Rural Development

Case Type:

PROOF OF SERVICE

On March 6, 2023, I sent via First-class mail a copy of the Request for
Hearing with Exhibits A–D to:

Denise Eby
AgriFlite Services Inc.
30688 County Road 36
Wakarusa, IN 46573

I declare that the statements above are true to the best of my information,
knowledge, and belief.

/s/ Kaela Copeland
Kaela Copeland, Legal Secretary

EXHIBIT A



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GARY MCDOWELL
DIRECTOR

Mr. David Eby
Agriflite Services Inc.
30688 County Road 36
Wakarusa, IN 46573-9703

Mail Date: May 17, 2022

Case No. 21-PE-02320
Delivery Confirmation No.
9114 9999 4431 3276 3175 03

NOTICE OF VIOLATION

Dear Mr. Eby:

You are hereby notified that the Director of the Michigan Department of Agriculture & Rural Development (MDARD) has sufficient information to believe that Mr. Dave Eby and Agriflite Services Inc. have violated the requirements of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. In accordance with MCL 324.8333, an administrative fine up to \$1,000 for each violation described below may be assessed, for a total of \$2,000.

On July 21, 2021, Ms. Rachel Bakowski of Ottawa Lake, Michigan, contacted MDARD to file a complaint against Agriflite Services Inc. Ms. Bakowski alleged that she was drifted upon while driving a tractor hauling a wagon of oats on Lake Road in Whiteford, Monroe county. During the investigation, MDARD determined that Mr. Will Souther, employee of Agriflite Services Inc., applied Tombstone Helios (a restricted use pesticide) and Headline AMP to the cornfield west of Lake Road, as contracted by Nutrien Ag Solutions, Blissfield branch. A witness also confirmed that Ms. Bakowski had been driving along Lake Road during the application.

Swab, clothing, and grain samples tested positive for the active ingredients found in Tombstone Helios and Headline AMP, indicating that the complainant had indeed been contacted during the application.

The following violations were identified:

Legal Citation/Short Description	Comments
R285.637.4(a) a pesticide shall be used in a manner consistent with its label	Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. Per the label for Headline AMP, "DO NOT apply under circumstances where possible drift to endangered species, unprotected persons, to food, forage, or other plantings that might be damaged, or crops thereof rendered unfit for sale, use or consumption can occur." Per samples obtained by MDARD, drift of the product occurred onto a person and to food for animals.

Legal Citation/Short Description	Comments
R285.637.4(a) a pesticide shall be used in a manner consistent with its label	Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. Per the complainant, the plane making the pesticide application "flew within a wing" of the complainant and per samples of the complainant's clothing, tractor, and wagon the pesticide application drifted onto the complainant. There was an approximately 15-20 ft buffer between the field and the road. The applicator could have been in the corn field and the AEZ would have extended into the road. 40CFR§170.405(a)(1) states the application exclusion zone (AEZ) is defined for various types of outdoor applications as either 25 ft (when medium or larger spray droplets are sprayed from higher than 12 in from planting medium) or 100 ft (when applied aerially, via air blast, smaller than medium droplets, or as a fumigant, smoke, mist, or fog); AEZ extends horizontally from application equipment in all directions during the application. An AEZ of 100 ft for an aerial application must be maintained and the AEZ was not maintained during the aforementioned pesticide application.

MDARD notes that per an arrangement between Agriflite Services Inc. and Nutrien Ag Solutions-Blissfield, Nutrien Ag informs the grower about scheduled pesticide applications. Be advised that if Nutrien Ag does not properly fulfill the requirements of providing customer information as described in R285.637.12(2) or R637.12 (5), the applying firm may be found in violation.

This letter is to provide notice of the above violations and offer an opportunity for an informal hearing pursuant to MCL 324.8333. You may request an informal hearing to dispute issues related to the violations and to provide additional information or evidence for MDARD to consider when determining an administrative fine, if any. An informal hearing request must be mailed to:

MDARD - PPPMD
PO Box 30017
Lansing, MI 48909

You may also contact MDARD to ask questions regarding this notice, discuss the violations, or provide additional information instead of, or before requesting, an informal hearing. Contact Caitlin Burkman, Pesticide Enforcement Program Specialist, at 517-599-5825 or BurkmanC@Michigan.gov.

Please See Page 3 for Additional Details

If you request an informal hearing, your request must be postmarked by June 1, 2022.

Sincerely,



Brian Verhougstraete

Section Manager

Pesticide & Plant Pest Management Division

Additional Information: The requirements for R285.637.12(2), R285.637.12(3), and R637.12(5) are as follows:

- (2) A commercial applicator who is required to be licensed by the act, or his or her authorized agent, shall provide all of the following written information to the customer or to the customer's authorized agent:
- (a) The name, address, and telephone number of the firm that provides the pesticide application services.
 - (b) The full name of the applicator who provides services.
 - (c) A general description of the target pest or pests to be controlled.
 - (d) A list of the pesticides applied, including the common name of the active ingredient.
 - (e) The time and date of the application.
 - (f) Applicable precautionary warnings or reentry restrictions which appear on the label of the pesticide or pesticides that are applied.
- (3) The information required in subrule (2) of this rule shall be provided in one of two ways:
- (a) Not later than at the time of each pesticide application.
 - (b) The information may be provided electronically within 48 hours after the application if the commercial applicator has the written approval of the customer or the customer's authorized agent prior to the application.
- (5) A commercial agricultural or aerial applicator may provide the information specified in both of the following provisions to the customer or the customer's authorized agent in place of the information requirements specified in subrules (2) and (3) of this rule:
- (a) Oral instructions to the customer or the customer's authorized agent on labeled reentry and preharvest interval requirements before application.
 - (b) A copy of the risk and benefit information sheet or the pertinent section of the label that pertains to risks and benefits.

cc: Caitlin Burkman, Enforcement Specialist
Eric McCumber, Regional Supervisor
Julie Yocum, Lead Inspector
Lauren Young, Inspector

EXHIBIT B



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GARY MCDOWELL
DIRECTOR

Mr. David Eby, Owner
Agriflite Services Inc.
30688 County Road 36
Wakarusa, IN 46573-9703

Mail Date: August 12, 2022

Case No. 21-PE-02320

Delivery Confirmation No.

9114 9999 4431 3276 3177 94

NOTICE OF ADMINISTRATIVE FINE

Dear Mr. David Eby:

David Eby and Agriflite Services Inc. have been found in violation of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. The Michigan Department of Agriculture and Rural Development (MDARD) issued a Notice of Violation dated May 17, 2022, detailing the violations and providing an opportunity for an informal hearing.

On May 23, 2022, Ms. Denise Eby emailed Caitlin Burkman, Pesticide Enforcement Program Specialist, requesting more information and an extension in the deadline to request an informal hearing in order to review the report. Ms. Burkman informed Ms. Eby how to file a Freedom of Information Act (FOIA) request in order to obtain the report. As of August 11, 2022, the firm has not fulfilled a FOIA request as required after receiving communications from both Ms. Burkman and the FOIA coordinator on how to do so. MDARD has also not received a written request for an informal hearing and therefore has determined the violations and penalty as described below.

The following violations were identified:

Legal Citation/Short Description	Comments
R285.637.4(a) a pesticide shall be used in a manner consistent with its label	Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. Per the label for Headline AMP, "DO NOT apply under circumstances where possible drift to endangered species, unprotected persons, to food, forage, or other plantings that might be damaged, or crops thereof rendered unfit for sale, use or consumption can occur." Per samples obtained by MDARD, drift of the product occurred onto a person and to food for animals.

Please See Page 2 for Additional Details

Accounting Code 0189

Legal Citation/Short Description	Comments
R285.637.4(a) a pesticide shall be used in a manner consistent with its label	Agriflite applied Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) for Nutrien Ag (Blissfield) on 7/21/2021. Per the complainant, the plane making the pesticide application "flew within a wing" of the complainant and per samples of the complainant's clothing, tractor, and wagon the pesticide application drifted onto the complainant. There was an approximately 15-20 ft buffer between the field and the road. The applicator could have been in the corn field and the AEZ would have extended into the road. 40CFR§170.405(a)(1) states the application exclusion zone (AEZ) is defined for various types of outdoor applications as either 25 ft (when medium or larger spray droplets are sprayed from higher than 12 in from planting medium) or 100 ft (when applied aerially, via air blast, smaller than medium droplets, or as a fumigant, smoke, mist, or fog); AEZ extends horizontally from application equipment in all directions during the application. An AEZ of 100 ft for an aerial application must be maintained and the AEZ was not maintained during the aforementioned pesticide application.

Taking into consideration all the information MDARD has obtained, and in accordance with MCL 324.8333, MDARD is issuing an administrative fine in the amount of \$1,000.00.

See the document titled "Fine Payment" for payment instructions. Failure to submit the payment postmarked by the deadline will be deemed default. Payment defaults are referred to the Office of Attorney General for additional review and possible enforcement action. If you have any questions regarding this action, contact Caitlin Burkman, Pesticide Enforcement Program Specialist, at 517-599-5825.

The fine of \$1,000.00 is to be paid by August 27, 2022.

Sincerely,



Brian Verhougstraete
Section Manager
Pesticide & Plant Pest Management Division

cc: Caitlin Burkman, Enforcement Specialist
Eric McCumber, Regional Supervisor
Julie Yocum, Lead Inspector
Lauren Young, Inspector

Accounting Code 0189



STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

Fine Payment

Mr. David Eby, Owner
Agriflite Services Inc.
30688 County Road 36
Wakarusa, IN 46573-9703

Case No. 21-PE-02320

David Eby and Agriflite Services Inc. have been found in violation of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 83 Pesticide Control; MCL 324.8301 et seq. In accordance with MCL 324.8333, an administrative fine has been assessed in response to that violation. In response to this fine, you may do one of the following:

A. RENDER PAYMENT

Mail a copy of this notice, postmarked by the due date below, along with a check or money order payable to the "State of Michigan" for \$1,000.00 to:

MDARD - ASC
PO Box 30776
Lansing, MI 48909

B. REQUEST A HEARING

You have the right to request a formal hearing, in accordance with the Natural Resources and Environmental Protection Act, MCL 324.8332 and the Administrative Procedures Act, 1969 PA 306, MCL 24.201 et seq. If you would like to request a formal hearing, you must submit your request in writing, postmarked by the due date below to:

MDARD - PPM
Pesticide Section
PO Box 30017
Lansing, MI 48909

FAILURE TO PAY THE FINE OR REQUEST A HEARING BY AUGUST 27, 2022 WILL BE CONSIDERED DEFAULT OF PAYMENT.

Accounting Code 0189

EXHIBIT C



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

KATHLEEN ANGERER
ACTING DIRECTOR

January 26, 2023

David Eby, Owner
Agriflite Services, Inc.
30688 CR 36
Wakarusa, IN 46573

RE: Informal Hearing Determination Case No. 21-PE-02320

Delivery Confirmation : 9114 9999 4431 3276 3182 10

Dear Mr. Eby:

The Michigan Department of Agriculture and Rural Development (MDARD), Pesticide and Plant Pest Management Division is authorized to enforce Part 83, Pesticide Control, and Environmental Protection Act 451 of 1994 (Act 451) as amended, and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

On August 12, 2022, an Administrative Fine in the amount of \$1,000 was assessed to Agriflite Services, Inc. for violations of R285.637.4(a) by making an application of Tombstone Helios (EPA Reg. No. 34704-978) and Headline AMP (EPA Reg. No. 7969-291) in a manner not consistent with the pesticide label directions and as such resulting in human exposure. On August 31, 2022, your Request for Hearing was received.

Pursuant to your request, MDARD scheduled an Informal Hearing to provide Agriflite Services, Inc. with an opportunity to meet with the department and do the following:

- Present evidence as to why MDARD should withdraw or reduce the Administrative Fine.

The hearing was held at Constitution Hall in Lansing on Monday, December 12, 2022, at 1:00 PM. In attendance were Al Rodriquez, Eric McCumber, and Julie Yocum from MDARD. Mr. David Eby and Mrs. Denise Eby were in attendance on behalf of Agriflite Services, Inc.

Introductions were made. I reviewed the reasons for the informal hearing, which was to offer Agriflite Services an opportunity to present evidence as to why MDARD should withdraw the violations and/or reduce the Administrative Fine. Staff from the Pesticide and Plant Pest Management Division were present and ready to present their evidence. Agriflite Services staff stated that they would stipulate to the evidence and forgo the PPPMD presentation. Agriflite Services then conducted a presentation.

Agriflite Services' presentation covered a variety of issues. The two issues related to the hearing were:

1. MDARD found that the applicator had failed to follow the pesticide label requirements, which prohibited the applicator from drifting onto people and/or feed products. Agriflite Services did not present evidence showing why MDARD should withdraw that citation or reduce the administrative penalty.

2. MDARD found that the aerial applicator conducted the treatment within 100 feet of the complainant, who was driving a tractor on a public road. This was in violation of the federal worker protection standards for aerial application exclusion zones. Agriflite Services did not present evidence showing why MDARD should withdraw the citation or reduce the administrative penalty.

MDARD has reviewed all the documentation, considered the firm's evidence, and reached the following determination.

- The \$1,000 administrative fine issued on August 12, 2022, is upheld.

If you wish to appeal this decision to a formal hearing, you may do so in writing within 15 days to: MDARD, ATTN: Caitlin Burkman, PPPM, P.O. Box 30017, Lansing, MI 48909 or email: MDARD-PesticideCE@michigan.gov.

Sincerely,



Martin Al Rodriguez
Regulation Manager
Animal Industry Division

cc: Caitlin Burkman, Pesticide Enforcement Program Specialist
Eric McCumber, Pesticide Supervisor, Region South
Julie Yocum, Lead Pesticide Inspector, Region South

EXHIBIT D

From: [Denise Eby](#)
To: [MDARD-PesticideCE](#)
Cc: [McCumber, Eric \(MDARD\)](#); [Yocum, Julie \(MDARD\)](#); [Burkman, Caitlin \(MDARD\)](#)
Subject: Request to Appeal Decision of Informal Hearing Determination Case No. 21-PE-02320
Date: Monday, February 13, 2023 1:46:11 PM

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Caitlin Burkman:

Per the MDARD letter from Martin Al Rodriquez dated 1/26/2023 and received 1/31/2023, **AgriFlite Services and David Eby would like to appeal the decision to a formal hearing** for Case No. 21-PE-02320.

Please respond as to the venue, procedure, and jurisdiction of this formal hearing.

David and Denise Eby will not be returning to Indiana until late May/early June 2023. Could you please schedule for the last half of June 2023 at the earliest.

AgriFlite's busy season is July-September, and we would not be available during that time.

All notifications and information should be sent via email to both dave@agriflite.com and denise@agriflite.com for timely delivery as the office is operating on off-season hours, and the accountant is involved in tax preparation at another office for the next couple months.

Thank you.

Regards,

Denise Eby

David Eby

--

Denise Eby

denise@agriflite.com

574-862-4392 office

574-536-0800 mobile

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 23-012503

AgriFlite Services, Inc.

Agency No.: 21-PE-02320

Part(s): Pesticide & Plant Pest
Management

Agency: Department of Agriculture and
Rural Development

Case Type: MDARD Pesticide Licensing

FINAL DECISION AND ORDER

This matter was the subject of a contested case hearing resulting in the issuance of a Proposal for Decision (PFD) dated October 31, 2023. FDO 005-012. Exceptions to the October 31, 2023, PFD were filed by Petitioner, AgriFlite Services, Inc. FDO 298-314. However, the exceptions were filed by non-attorneys.¹

Nonetheless, a Response to these exceptions was filed by Respondent, the Michigan Department of Agriculture and Rural Development (MDARD) on December 1, 2023. FDO 319-326. This matter is now before the Director of MDARD for a final agency decision pursuant to MCL 24.285 and Mich Admin Code, R 792.10122.

DEFAULT ENTERED

¹ As a corporation, AgriFlite must be represented by counsel licensed to practice law in Michigan. A non-lawyer representing a corporation engages in the unauthorized practice of law, in violation of Michigan law, which prohibits the unauthorized practice of law by non-attorneys. *Shenkman v Bragman*, 261 Mich App 412, 416 (2004); MCL 600.916.

During proceedings before the Michigan Office of Administrative Hearings and Rules (MOAHR), Petitioner AgriFlite was informed multiple times of the requirement that it must be represented by counsel. After offering Petitioner full opportunity to obtain counsel, AgriFlite continued to attempt to file motions without counsel. Ultimately, the Administrative Law Judge (ALJ) refused to further consider the filings. On October 26, 2023, Petitioner failed to appear for the scheduled hearing. The ALJ then entered a default against Petitioner under Sections 72(1) and 78(2) of Michigan's Administrative Procedures Act, MCL 24.271 *et seq.* (APA) and Mich Admin Code, R 792.10134. (10/31/23 PFD, pp 002-003.)

LEGAL STANDARD GOVERNING REVIEW OF A PFD

Michigan's Administrative Procedures Act sets forth the requirements for a final decision and order at MCL 24.285, which provides:

A final decision or order of an agency in a contested case shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact and conclusions of law separated into sections captioned or entitled "findings of fact" and "conclusions of law", respectively. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence. A copy of the decision or order shall be delivered or mailed immediately to each party and to his or her attorney of record.

Michigan law further provides that the final decision maker in a contested case may remand, reverse, modify, or set aside a PFD. Mich Admin Code, R 324.74(3). The final decision maker shall consider whether the proposal for decision is deficient on the grounds that it does any of the following:

- (a) Misapplies a rule, statute, or constitutional provision governing the issues involved.
- (b) Adopts an incorrect interpretation of a rule or statute or an incorrect conclusion of law.
- (c) Incorporates typographical, mathematical, or other obvious errors that affect the substantial rights of one or all of the parties to the action.
- (d) Fails to address a relevant issue.
- (e) Makes factual findings inconsistent with the evidentiary record.
- (f) Improperly excludes or includes evidence that substantially affects the outcome of the case.

Mich Admin Code, R 324.74(3).

PETITIONER'S EXCEPTIONS TO THE PFD

As discussed above, on October 31, 2023, Petitioner filed, again without counsel, Exceptions to the PFD. FDO 298-314. Accordingly, these exceptions were not properly filed and are not properly before this Tribunal, therefore they need not be considered. However, out of an abundance of caution, this Tribunal has reviewed them, along with the Respondent's Response to Petitioner's Exceptions to the

Proposal for Decision. Even if Petitioner's Exceptions had been filed by a licensed attorney, each exception would be rejected as discussed below.

Exceptions Related to Procedural History

In this exception, Petitioner essentially repeats the argument that AgriFlite need not be represented by counsel and regardless, Mr. David Eby should also be listed as a Petitioner in this matter. As correctly set forth in the PFD, MDARD's response to Petitioner's Exceptions, and discussed above, AgriFlite must be represented by counsel. *Shenkman v Bragman*, 261 Mich App 412, 416 (2004); MCL 600.916. Further, MCL 324.8311(8) is clear that "A commercial applicator is responsible for pesticide applications made by persons under his or her supervision." In this instance, AgriFlite, not David Eby, is the licensed commercial applicator. MCL 324.8313; Respondents Exhibit R-1 to 10/31/23 PFD at R0007. Petitioner's Exception is therefore denied.

Exceptions Related to MDARD's Exhibits

Petitioner next raises various concerns related to the Exhibits offered by Respondent MDARD. Since Petitioner failed to appear at the October 26, 2023, hearing, the ALJ entered a default against Petitioner at the request of MDARD and entered into evidence Respondent's exhibits 1-17. (10/31/23 PFD, pp 002-003.)

Each exhibit offered by Respondent is relevant to the issue before this Tribunal and not otherwise inadmissible. Additionally, the administrative law judge "may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs." Mich Admin Code, R

792.10125. Respondent's exhibits 1-8 were part of MDARD's investigation of the alleged violation at issue in this case. Likewise, Respondent's Exhibits 9-17 contain other documents related to notice of the violation, procedural history, and the informal hearing. The Respondent's Exhibits were properly admitted and are relevant to the issue before this Tribunal. MCL 24.272(1) and 24.278(2), Mich Admin Code R 792.10134(1) and 792.10125. Petitioner's Exception is therefore denied.

Exception to Issue

Here Petitioner essentially reasserts the primary argument raised in Petitioner's Exceptions to Procedural History. Again, the argument fails. As the commercial applicator, AgriFlite is responsible for the pesticide application. MCL 324.8311(8). Petitioner's Exception is therefore denied.

Exceptions to the Findings of Fact

Here also Petitioner asserts that AgriFlite is not the responsible party. Again this argument fails. MCL 324.8311(8). Petitioner again characterizes the investigation and evidence presented by MDARD as faulty or invalid. However, this Tribunal finds the evidence presented to be relevant and probative of the alleged violations. Taken as a whole, the evidence demonstrates a complete and thorough investigation by MDARD. Petitioner's Exception is therefore denied.

Exceptions to the Conclusions of Law

Petitioner again argues that AgriFlite is not responsible for the violation (FDO 308-309 at para. 1 and 3), the default was not properly entered by the ALJ

(FDO 308 at para. 2), and that the evidence was improper or insufficient to establish a violation (FDO at para. 4). For the reasons previously identified, Petitioner's Exception is denied.

FINDINGS OF FACT

The findings of fact set forth in the PFD are adopted and incorporated into this Final Decision and Order by reference.

CONCLUSIONS OF LAW

The conclusions of law set forth in the PFD are adopted and incorporated into this Final Decision and Order by reference.

NOW, THEREFORE, IT IS ORDERED:

1. That Respondent, AgriFlite Services, Inc., violated Mich Admin Code, R 285.637.4(a), warranting the imposition of a \$1,000.00 Administrative Fine, under MCL 324.8333(2).
2. The May 17, 2022, and August 12, 2022, Notices are affirmed.
3. MDARD does not retain jurisdiction in this matter.

Date: February 23, 2024



Dr. Tim Boring, Director
Michigan Department of Agriculture
and Rural Development

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

December 1, 2023

Via Email at MOAHR-GA@michigan.gov

Michigan Office of Administrative
Hearings and Rules
Ottawa Building, 2nd Floor
611 West Ottawa Street
Lansing, MI 48933

Re: *In the Matter of: Agriflite Services, Inc.*
MOAHR Docket No.: 23-012503

Dear Clerk:

Attached is Respondent's Response Exceptions to Proposal for Decision for filing in the above-referenced matter. Also enclosed is a Proof of Service for same.

Thank you for your assistance, and please feel free to contact me if you have any questions.

Sincerely,

/s/ Danielle Allison-Yokom

Danielle Allison-Yokom
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
(517) 335-7664
allisonyokomd@michigan.gov

DAY/sh

Attachments

cc: Denise Eby
Brad Deacon, MDARD (*via email*)
Michael Philip, MDARD (*via email*)
Caitlin Burkman, MDARD (*via email*)

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:	Docket No.:	23-012503
AgriFlite Services, Inc.	Agency No.:	21-PE-02320
	Part(s):	Pesticide & Plant Pest Management
	Agency:	Department of Agriculture and Rural Development
	Case Type:	MDARD Pesticide Licensing

**RESPONSE TO AGRIFLITE'S EXCEPTIONS
TO THE PROPOSAL FOR DECISION**

As an initial matter, the exceptions filed by Petitioner, AgriFlite Services, Inc., continue to be filed by non-attorneys. Administrative Law Judge Goldstein, on multiple occasions, informed AgriFlite that, as a corporation, it must be represented by counsel licensed to practice law in Michigan. Petitioner continues to ignore this requirement.

Respondent, the Michigan Department of Agriculture and Rural Development (MDARD), files the following response to AgriFlite's exceptions.

**MDARD'S RESPONSE TO AGRIFLITE'S
PROCEDURAL HISTORY EXCEPTIONS**

AgriFlite's primary claim of error with the Tribunal's procedural history description is that David Eby should be a petitioner in this matter. AgriFlite is incorrect. AgriFlite, not David Eby, was the licensee responsible for the alleged violations. As a corporate licensee, AgriFlite was required to disclose an agent to

MDARD and identified Mr. Eby as that person. AgriFlite was the appropriate Petitioner in this matter and the exception should be denied.¹

AgriFlite appears to also take issue with the requirement that it must be represented by a licensed attorney during the proceedings before the Michigan Office of Administrative Hearings and Rules (MOAHR). During the May 9, 2023 hearing, in its May 9, 2023 Order for Continuation, and in its September 6, 2023 Order Denying Dismissal and Granting Continuance, the Tribunal instructed the Ebys that the corporation, AgriFlite Services, Inc., must be represented by counsel. This is consistent with Michigan law which prohibits the unauthorized practice of law by non-attorneys. MCL 600.916. A corporation is a separate legal entity and a non-lawyer representing a corporation is engaged in the unauthorized practice of law. *Shenkman v Bragman*, 261 Mich App 412, 416 (2004). The Tribunal provided AgriFlite with ample time to obtain an attorney, but AgriFlite refused to do so. AgriFlite did not comply with the Tribunal's orders, did not file a witness or exhibit list, and did not appear at the October 26, 2023 hearing. The Tribunal properly held AgriFlite in default and AgriFlite's exceptions should be denied.

MDARD'S RESPONSE TO AGRIFLITE'S EXCEPTIONS TO MDARD'S EXHIBITS

AgriFlite had its opportunity to challenge the evidence MDARD relied upon in issuing the administrative fine by appearing at the October 26, 2023 hearing.

¹ Some communications from MDARD to AgriFlite indicated that David Eby and AgriFlite were in violation of Part 83 and responsible for the administrative fine. However, AgriFlite, not David Eby, is the licensed commercial applicator under MCL 324.8313 and therefore the entity responsible for the administrative fine.

AgriFlite failed to do so, and as such, relinquished its right to challenge the exhibits MDARD presented. The issues raised by AgriFlite in its exceptions are issues that could properly have been raised by counsel during a hearing. However, AgriFlite instead chose not to participate in the proceedings—despite being warned that their failure to obtain counsel and appear would result in entry of default. AgriFlite’s attempts to attack MDARD’s exhibits after-the-fact is inappropriate and the challenges to MDARD’s exhibits should be denied.

MDARD’S RESPONSE TO AGRIFLITE’S EXCEPTION TO ISSUE

AgriFlite asserts that it has not violated Mich Admin Code, R 285.637.4(a) because it was not the aerial applicator. However, AgriFlite was the licensed commercial applicator who was responsible for the aerial application. Exhibit R-3, the application record which is created by AgriFlite has an AgriFlite logo and heading, identifies AgriFlite as the application company, and directs contacts to be made to AgriFlite. As the licensed commercial applicator, AgriFlite was responsible for meeting the standards for pesticide use outlined in Mich Admin Code, R 285.637.4 and ensuring that those in its employ did not apply pesticides in a manner that resulted in off-target direct discharges of pesticides. AgriFlite failed to do so, and its exception should be denied.

MDARD’S RESPONSE TO AGRIFLITE’S EXCEPTIONS TO THE FINDINGS OF FACT

Just as AgriFlite had the opportunity to object to MDARD’s exhibits at the October 26, 2023 hearing, AgriFlite had its opportunity to challenge the facts underlying MDARD’s administrative fine by appearing at the October 26, 2023

hearing. AgriFlite failed to do so and relinquished its right to challenge the facts before the Tribunal. AgriFlite's attempts to attack the Tribunal's factual findings when it failed to appear at the hearing and offer contrary facts is inappropriate and the exception should be denied.

MDARD'S RESPONSE TO AGRIFLITE'S EXCEPTIONS TO THE CONCLUSIONS OF LAW

AgriFlite sought a formal hearing to challenge the administrative fine MDARD issued. Administrative hearings are governed by Michigan law and parties before the tribunal are bound by the regulations governing administrative hearings. Mich Admin Code, R 792.10101 *et seq.* Those rules adopt, generally, Michigan's rules of evidence. Mich Admin Code, R 792.10125 *et seq.* AgriFlite makes frivolous allegations that MDARD and the Administrative Law Judge colluded against it but provides no evidence or support to prove its allegations (because none exists). AgriFlite cites no law, evidence, or other support for its exceptions and instead simply asserts that MDARD's position is wrong. This is insufficient to undermine the Tribunal's well-reasoned conclusions of law and the exceptions should be denied.

CONCLUSION AND RELIEF REQUESTED

AgriFlite continues to ignore the Tribunal's directions and Michigan law and refuses to obtain counsel to represent it in these proceedings. Despite directions by the Tribunal otherwise, Ms. Eby continues to engage in the unauthorized practice of law.

But even if that flaw is ignored and the exceptions are considered, they should still be denied. AgriFlite was afforded the opportunity to present its case to the Tribunal. Had it obtained counsel and attended the October 26, 2023 hearing, AgriFlite would have had the opportunity to challenge MDARD's evidence and the factual basis for the administrative fine. AgriFlite failed to appear and, thus, forfeited its ability to challenge MDARD's evidence or question MDARD's inspectors. AgriFlite should not be permitted to, post-hearing, challenge the basis for the Tribunal's decision.

AgriFlite points to no facts, evidence, or law that would undermine the Tribunal's proposal for decision. For all these reasons, AgriFlite's exceptions should be denied.

Respectfully submitted,

/s/ Danielle Allison-Yokom
Danielle Allison-Yokom (P70950)
Assistant Attorney General
Attorney for Michigan Department of
Agriculture and Rural Development
Environment, Natural Resources,
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664
allisonyokomd@michigan.gov

Dated: December 1, 2023

LF: AgriFlite Services (MDARD)/AG# 2023-0369881-B/Response to Exceptions 2023-12-01

RECEIVED

By SwansonJ7 at 3:47 pm, 12/1/23

IN THE MATTER OF:

**David Eby and
AgriFlite Services, Inc.,
Petitioner**

V

**Michigan Department of Agriculture and
Rural Development,
Respondent**

Docket No.: 23-012503

Case No.: 21-PE-02320

Agency: MDARD

**Case Type: MDARD Pesticide
Licensing**

Filing Type: Administrative Fine

**Service Cover Page to MOAHR and Respondent
for Petitioner Documents to EXCEPTIONS TO PROPOSAL FOR DECISION**

1. EXCEPTIONS to PROPOSAL for DECISION with attachments
2. REQUEST FOR IMPARTIAL HEARING BY MOAHR PER HEARING INFORMATION PAGE 2
Original sent 10/23/2023. This document is re-submitted.
3. AFFIDAVIT OF DAVID EBY for CASE 21-PE-02320

IN THE MATTER OF:

Docket No.: 23-012503

David Eby and
AgriFlite Services, Inc.,
Petitioner

Case No.: 21-PE-02320

Agency: MDARD

V

Case Type: MDARD Pesticide
Licensing

Michigan Department of Agriculture and
Rural Development,
Respondent

Filing Type: Administrative Fine

EXCEPTIONS to PROPOSAL for DECISION

Procedural History Exceptions:

1. "This matter originates as an appeal" from **David Eby and** AgriFlite Services, Inc. See REQUEST TO CORRECT PETITIONER which was sent via email on 10/23/2023 to Moahr-GA.gov for filing for the October 26, 2023 hearing. This REQUEST TO CORRECT PETITIONER contains an e-mail attachment which was originally sent to Danielle Allison-Yokom for a correction of the **Request for Hearing** original filing where the **Petitioner DAVID EBY** was omitted.
2. "On May 17, 2022, MDARD issued a Notice of Violation" to **David Eby and** AgriFlite Services. This Violation Notice was issued ex parte two days AFTER a Disposition Letter was issued to Complainant Rachel Bakowski dated May

15, 2022 (two days earlier) and 10 months **after** the investigation **without** notifying or talking to **Petitioner David Eby** concerning the complainant's issue or MDARD's concerns.

3. "On August 31, 2022 Petitioner" David Eby requested an informal hearing with Respondent. The MDARD agency ruled on January 26, 2023 and upheld its own agency determination after David and Denise Eby, principals of AgriFlite presented factual history why there was no violation for David Eby or AgriFlite Services, Inc. (See Respondent's Exhibit 17 of hearing presentation.
4. "On February 13, 2023 Petitioner" David Eby appealed for a formal hearing request with MOAHR.
5. "On March 15, 2023 MOAHR issued a Notice of Telephone Hearing" for May 9, 2023. This date was outside the requested date range of availability for Petitioner David and Denise Eby of AgriFlite Services, Inc.

Also, an in-person hearing was expected. Denise Eby of AgriFlite Services challenged the jurisdiction of the remote telephone hearing and was denied presentation of request. (See Attachment 1--Telephone Hearing 5/9/2023)

The administrative judge erroneously cited *Shenkman v Bragman*, 261 Mich App 412, 416 (2004) which does not apply to this situation. For explanation

see REQUEST FOR IMPARTIAL HEARING BY MOAHR PER HEARING INFORMATION PAGE 2 filed 10/23/23 via email. This Request entered 10/23/23 is being resubmitted because it has been ignored in alleged collusion between Respondent and administrative judge.

6. On September 5, 2023 **David” (Petitioner)** and Denise Eby of AgriFlite Services, Inc. filed a motion to cancel September 7, 2023 due to seasonal work schedule. A dismissal was requested due to the errors of the MDARD investigation whereby there was no violation by Petitioners.
7. “By Order dated September 5, 2023,” order for videoconferencing which is not feasible in our area. Request for a written appeal in lieu has continually been ignored by the tribunal.
8. “On October 23, 2023 David and Denise filed in an attempt to correct the errors of MDARD and call attention to MOAHR’s error and prejudice of the administrative judge. This prejudice is evident in that the filing was not considered based on the false assumption/error of “AgriFlite” as the only Petitioner.
9. The October 26, 2023 hearing convened as scheduled.” The administrative judge and Respondent failed to review the Petitioner’s written filings as requested in lieu of the phone/videoconferencing which is not conducive in

the locale Petitioner David Eby is in between mountains. (Internet is intermittent and phone calls are often dropped.)

10. "After determining that Petitioner was properly served with notice of the October 26, 2023 hearing, the tribunal" agency made a favorable ruling for the MDARD agency. Please note that the Respondent Danielle Allison-Yokom from MDARD initiated the REQUEST FOR HEARING error whereby the administrative judge was prejudiced. The administrative judge should have properly acknowledged an error or recused his person in this case.

EXCEPTIONS TO RESPONDENT EXHIBITS

Petitioner's Comments to Respondent's Exhibits have been email and filed with Moahr-GA.gov on 10/23/23. Summary of observations applicable to these Exceptions follow:

1. Respondent Exhibit 2: The Test Report dated 9/14/2021 from MDARD Geagley Laboratory is **not valid** evidence in this case. The samples identified on the Report are "Foliage"; however, per the investigation, it was oat grain that was the food object of concern. QuEChERS is a method to determine food tolerances. Results are listed, but no tolerances, only Detection Limit.

No chain of custody is listed, and the samples were supposedly destroyed on 11/13/21 which was before the Violation was assessed to Petitioners.

What was actually tested?

Petitioner's FOIA request was for "all sufficient information," and no samples were sent for a second test by the Petitioners David Eby-AgriFlite. Also, the MDARD investigator told the lab what chemical to test and which samples were the control. The AgriFlite Use Report of application was compliantly supplied by AgriFlite office staff upon request (R-Exhibit 3).

The investigator was incomplete in sampling because there were no samples for comparison from the field or the buffer area along road where Bakowski was driving the open cab tractor.

2. Respondent Exhibit 1: The Complainant's Statement in the Pesticide Inspection Report of 7/21/21 is **not valid evidence** because there is **no** signed report or affidavit from Bakowski. The statements are from the investigator as second-hand evidence/hearsay.
3. Respondent Exhibit 6: Weather from Toledo Airport reports a consistent 6 mph from 1:00 to 2:00 pm. The Use Report from the pilot Recorded 350 @ 8 mph which is within the label application parameters. All other label precautions were observed.

Observing the pilot's flight pattern, he circled the field to assess any precautions with a focus on the golf course to the west. The swaths to the east were open at the time he began to spray, and no tractor was in sight per the investigator report and the inquiry from AgriFlite personnel.

Therefore, **the pilot did not violate** the label precautions.(Attachment 2— Flight Pattern)

4. Respondent Exhibits 9-10: Concerning the violation MCL 324.8301 is Meaning of words and phrases....????

Concerning the Legal Citation R285.637.4(a) David Eby and AgriFlite Services are compliant and did not violate this Michigan Administrative Code Rule. (See Respondent Exhibit 17)

Neither David Eby nor AgriFlite Services, Inc. were involved **as applicator** or handler in the actual spray application of Headline Amp and Tombstone Helios on July 21, 2021.

The actual spray application was performed by a Michigan licensed pilot in a conscientious manner. Should MDARD investigation conclude that a drift condition occurred, the investigation should have centered on the ag pilot involved to correctly determine the "facts" of the scenario.

A Violation of the corporate entity AgriFlite Services, Inc. which complied with business licensing is counterproductive to MDARD. If the agricultural pilot discerns that the business is the responsible party, why have a State applicator license to spray a field and be cautious to follow label precautions? **THIS is the most crucial precedent established if a Violation is affirmed in this case.**

5. Respondent Exhibit 17: This PowerPoint presentation was a 2-hour dissertation on how both David Eby and AgriFlite Services has complied with Michigan Pesticide Code historically to the present including this application on July 21, 2021. The investigator has focused on the wrong aspects of this Violation. A constructive approach could have benefitted all involved. The many errors of investigation have caused much confusion and wasted time. Respondent Exhibit 17 outlines a potential constructive solution incorporating MDARD's pesticide licensing requirement; however, this approach was unfortunately **not utilized by the MDARD investigators.** David Eby and AgriFlite must pursue this course of action because a Violation to the business entity not involved in the actual spray rather than the pilot will cause a detrimental precedent, whereby pilots will not see the need to be licensed by the state of Michigan. As operators of an aerial

application firm, we have seen this attitude developing in agricultural pilots due to the burdensome requirements of continuing education and relicensing. **Surrounding states address the agricultural pilot** rather than the business entity and principals in drift complaints.

A Warning letter is appropriate in this case, but a **Violation is not substantiated** and would eventually be detrimental to MDARD.

6. Respondent Exhibit 12: The informal hearing Determination states that “MDARD found that **the applicator** had failed to follow the pesticide label requirements, which prohibited **the applicator** from drifting onto people and/or feed products.” **Neither David Eby nor AgriFlite Services, Inc. was the “applicator” in this case.** The Michigan licensed aerial applicator was Will Souther.

Issue 2 in the Determination Letter states that the **aerial applicator** conducted the treatment within 100 feet of the complainant. This has not been proven by MDARD. Location of the complainant has not been determined or proven by the investigation of MDARD. Petitioners are still waiting for this information to assess this situation for future dispersal calibrations. Worker Protection Standards are not applicable in this scenario as Bakowski is not an employee worker in this case.

Data has been submitted to show spray swaths and flight paths in Respondent Exhibit 17 page 29 and also Attachment 2 Spray data and flight path.

EXCEPTION to Issue: Based on the above Exceptions, Petitioner has not violated Michigan Admin Code, R285.637.4(a) (attached) because neither David Eby nor AgriFlite Services was the aerial applicator at the Michigan location on the AgriFlite Use Report.

EXCEPTION to Applicable Law: No Violation

EXCEPTIONS TO Findings of Fact

The preponderance of evidence of MDARD is based on a multitude of errors and false assumptions based on a faulty investigation.

1. The Petitioners **did not apply** the pesticides Tombstone Helios and Headline Amp to crops owned by Nutrien Blissfield.

David Eby is 75 years old and has not flown since 2012. The crop is not owned by Nutrien -Blissfield

4. Destroyed lab tests are invalid as evidence.

5. **Michigan licensed agpilot** Will Souther **applied** Headline Amp **per label** requirement.

6. Bakowski does **not** have a signed statement/affidavit of complaint, only investigator comments. The phrase “within a wing” has no definitive confirmed meaning and is only subjective. Pilot Will Souther stated that he did not see any tractor on the road when he sprayed the field. (See Attachment 2--Flight path for the perspective of visibility.

Bakowski has failed to give a valid confirmation of her location at the time of alleged drift; therefore, Application Exclusion Zone is **not applicable** as a basis for violation. This is not a Worker Protection Standard scenario.

EXCEPTIONS to Conclusions of Law

1. “Respondent bears the burden of establishing, by a preponderance of evidence, that Petitioner violated Michigan Admin Code, R285.637.4 (a)” and there is **no valid material evidence** that David Eby or AgriFlite Services, Inc. violated the above Michigan Code.
2. “...all alleged facts” are not taken as true in this case. The Petitioner did not fail to appear for the hearing, but in lieu filed documents with Moahr-GA.gov affirmed by the administrative judge; however, the administrative

judge and MDARD Respondent colluded to ignore the Petitioners' responses and REQUESTS. (See email sent to Moahr-GA@michigan.gov on 10/23/2023)

There was NO DEFAULT because the Petitioner was represented by written documents in lieu of in-person appearance which Petitioner attempted to explain to the administrative judge multiple times. The administrative judge failed to honor Michigan hearing rules, did not cite a Michigan law, and cited an inapplicable legal case. Federal CFR's allow for self-representation.

3. "The allegations in the Notice of Violation are" NOT substantiated by the evidence. **The Petitioner did NOT apply the pesticides Tombstone Helios and Headline Amp to crops owned by Nutrien-Blissfield. Nutrien-Blissfield did not own crop treated.**
4. "The evidence further established that Rachel Bakowski," did not submit a signed complaint or affidavit and the investigation data is second-hand evidence of the MDARD investigator.

Lab testing was incomplete, inaccurate, and destroyed on 11/13/21 per note on Test Reports.

Petitioner followed the manufacturer's label governing application of Headline Amp as demonstrated in Respondent Exhibit 17.

EXCEPTION to PROPOSED DECISION

The Findings of Fact and Conclusions of Law of the tribunal are invalid, untrue, inaccurate, and supported by collusion between the Respondent of the administrative agency MDARD and administrative judge of MOAHR.

The Notice of Violation and Notice of Administrative Fine should **NOT BE AFFIRMED.**



David Eby
11/17/2023



Denise Eby
11/17/2023

EXCEPTIONS

The EXCEPTIONS in this document are being serviced to:

MOAHR-GA@michigan.gov via email

Respondent to Danielle Allison-Yokom via email: allisonyokomd@michigan.gov

Kaela Copeland: CopelandK2@michigan.gov

Tim Boring, MDARD director, BoringT1@michigan.gov



David Eby
11/17/2023



Denise Eby
11/17/2023

Attachment 1
Telephone Hearing 5/9/2023

Telephone Hearing 5/9/2023 @ 9:00 Eastern Time
Michigan Office of Administrative Hearings and Rules (MOAHR)

Case No 21-PE-02320

According to the **NOTICE** of the MOAHR Docket No.: 23-012503, the **Petitioner is AgriFlite Services, Inc.**

My name is Denise Eby. I am the participant on this phone hearing by **special appearance** as a principal of AgriFlite Services, Inc. in Compliance and **not in Default**.

This special appearance in Compliance today is to **challenge the jurisdiction** of the Administrative Law Judge in two facets:

1. A **telephone venue** is an objection and **unacceptable to addressing the multiple errors and negligence** of MDARD in the case 21-PE-02320 which is the source of this appeal.
2. **Request** for appeal was made **via email on February 13, 2023** (Respondent's Exhibit D) with clear conditions that this hearing be scheduled for the **last half of June 2023** at the earliest. Reason being that the Petitioner principals are not at location in office with access to documents and multiple factors. Circumstances on this day are beyond my control. An attempt was made to contact MOAHR office on March 16, 2023 with no successful response to postpone this hearing.

Issue:

Whether Respondent's issuance of the Administrative Fine was proper pursuant to the Natural Resources and Environmental Protection Act, MCL 324.80301 et seq. And the administrative rules promulgated thereunder.

Response by Petitioner:

On December 12, 2022, David and Denise Eby presented evidence that MDARD should withdraw the Administrative Fine/Violation. The fine was based on a violation that had errors and negligence by MDARD. A ***Motion to Dismiss*** describing and documenting these alleged errors and negligence will be submitted to the Administrative Judge by the end of June, 2023. Respondent MDARD has included as **Exhibit R-17** a thorough powerpoint used to present AgriFlite's **Informal Hearing** information by David and Denise Eby on December 12, 2022. This compilation of the positive compliance of AgriFlite over the past 50 years includes a slide on page 43 of the "Mission" of the MDARD to "service, promote, and protect the food, agricultural, environmental, and economic interests if the people of Michigan," MDARD's investigation procedure thwarted this mission. Petitioner's forthcoming Response in the format of a ***Motion to Dismiss*** will address the particulars supporting this alleged infraction of administrative procedure and regulations which MDARD is expected to uphold in their administrative implementation of EPA regulations within "the State of Michigan."

Summary:

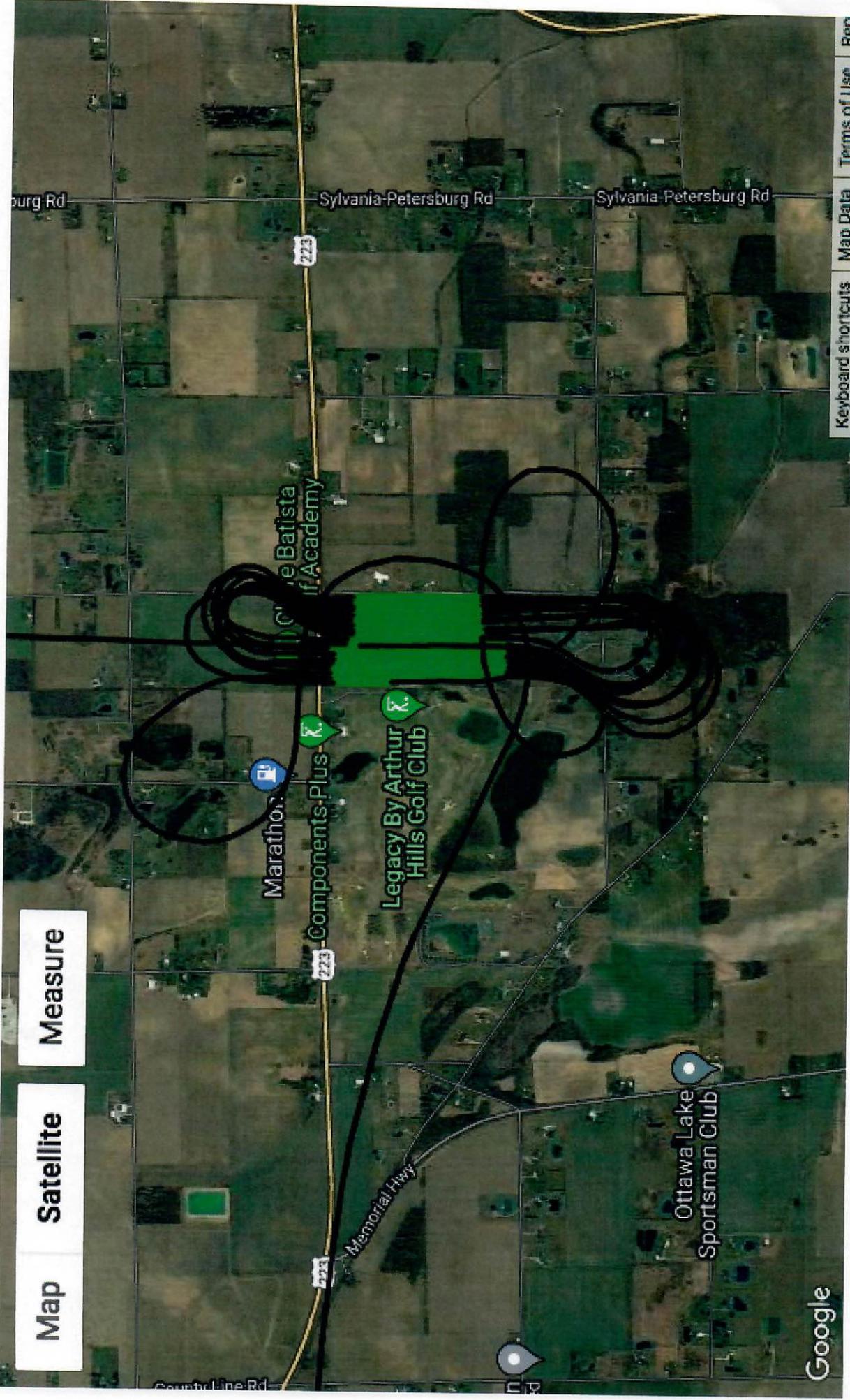
AgriFlite Services, Inc. and David Eby are not in violation of the Natural Resources and Environmental Protection Act as noticed by MDARD and an Administrative Fine is not warranted. A ***Motion to Dismiss*** will be issued to MOAHR by the end of June, 2023 to support this statement. (Respondent's Exhibit R-17 compiled by the Petitioner for the Informal Hearing on December 12, 2022 will be used as the source document and reference outline.)

David Eby

Denise Eby

5/9/2023

Attachment 2
Flight Pattern





Docket No. 23-012503 Hearing October 26, 2023 Documents to be filed

1 message

Denise Eby <denise@agriflite.com>

Mon, Oct 23, 2023 at 6:42 AM

To: Moahr-GA@michigan.gov, allisonyokomd@michigan.gov, CopelandK2@michigan.gov

Bcc: Denise Eby <denise@agriflite.com>

To: MOAHR

Please see attached Documents with Cover Sheet for Hearing scheduled 10/26/23 at 9:00 am EST.

Petitioner will not be attending remote hearing and submits documents in lieu of attendance.

Petitioner is not in default and requests correction of errors listed below.

Service to Respondent via electronic mail.

--

Denise Eby

denise@agriflite.com

574-862-4392 office

574-536-0800 mobile

5 attachments



COVER PAGE to MOAHR for October 26, 2023 HEARING DOCUMENTS.pdf

182K



Request for Correction of "Petitioner" in Heading to include David Eby with attachments.pdf

3895K



REQUEST FOR IMPARTIAL HEARING BY MOAHR PER HEARING INFORMATION PAGE 2.pdf

481K



Request for Dismissal of violation and Administrative fine of David Eby and AgriFlite Services with attachments.pdf

3438K



Petitioner's Comments to Respondent's Exhibits with Attachment.pdf

650K

IN THE MATTER OF:

David Eby and
AgriFlite Services, Inc.,
Petitioner

V

Michigan Department of Agriculture and
Rural Development,
Respondent

Docket No.: 23-012503

Case No.: 23-PE-02320

Agency: MDARD

Case Type: MDARD Pesticide
Licensing

Filing Type: Administrative Fine

**REQUEST FOR IMPARTIAL HEARING BY MOAHR
PER HEARING INFORMATION PAGE 2**

Due to errors and omissions by MDARD in Case No. 23-PE-02320, David and Denise Eby, principals of AgriFlite Services, Inc. have requested an impartial hearing to review the determination of MDARD's informal hearing of 12/12/23 concerning a Notice of Violation and Notice of Administrative Fine.

Additional errors were introduced in the REQUEST FOR HEARING prepared by Danielle Allison-Yokom, MDARD Respondent, in that Petitioner David Eby was removed from the hearing request form and heading of documents which prejudiced the approach of the Administrative Judge Stephen Goldstein at the initial telephone hearing on May 9, 2023.

Subsequent representation Orders by Stephen Goldstein have delayed the review of Case 23-PE-02320 with an upcoming remote hearing scheduled October 26, 2023 at 9:00 EST.

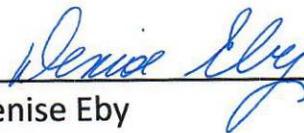
1. Orders by Stephen Goldstein are not consistent with MOAHR HEARING INFORMATION PAGE 2 under the section of REPRESENTATION.
2. Orders erroneously cite the case *Shenkman v Bragman*, 261 Mich App 412, 416 (2004) which is not applicable to the Petitioners in this case. The *Shenkman v Bragman* case is in Appeals court (Judicial branch) for an estate representation. The case in question is in Administrative appeal under Executive branch.
3. MOAHR has not cited a specific Michigan law/regulation that applies to Petitioners in Case No. 23-PE-02320.
4. Petitioners are kindly asking for a review of the MDARD's determination letter dated 1/26/23 from an impartial view as MDARD agency is ruling same agency's determination letter and not taking into consideration errors that were introduced.
5. This case does not need the confusion of another "person" representing the Petitioners. There is not an adversarial situation, only an amenable resolution that the case has been interpreted correctly.

6. MDARD has not investigated this situation/complaint from the benefit of either the complainant Bakowski or the accused David Eby/AgriFlite Services, Inc.
7. Petitioners are submitting a written **Request for Dismissal** of Violation and Administrative Fine in lieu of the Remote Hearing on October 26, 2023 at 9:00 am EST.
8. Petitioners (retired) are in an area with intermittent internet and phone reception in addition to 3 hours behind EST.
9. Stephen Goldstein has been prejudiced in this case due to the MDARD errors by the MDARD Respondent in the Request for Hearing form.

If this case can be reviewed impartially from the various documents Submitted by email, i.e., Request for Dismissal, Petitioners welcome his comments; however, past experience may warrant recusal at your discretion.



David Eby
10/22/23



Denise Eby
10/22/23

IN THE MATTER OF:

Docket No.: 23-012503

**David Eby and
AgriFlite Services, Inc.,
Petitioner**

Case No.: 23-PE-02320

Agency: MDARD

V

**Case Type: MDARD Pesticide
Licensing**

**Michigan Department of Agriculture and
Rural Development,
Respondent**

Filing Type: Administrative Fine

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IN THE MATTER OF:

Docket No.: 23-012503

**David Eby and
AgriFlite Services, Inc.,
Petitioner**

Case No.: 21-PE-02320

V

Agency: MDARD

**Michigan Department of Agriculture and
Rural Development,
Respondent**

**Case Type: MDARD Pesticide
Licensing**

Filing Type: Administrative Fine

AFFIDAVIT OF DAVID EBY for CASE 21-PE-02320

1. My name is David Leonard Eby.
2. My Indiana residence address is 30688 County Road 36, Wakarusa, IN 46573. I have lived at this address since 1971.
3. In 1973, my wife Denise and I started AgriFlite Services.
4. AgriFlite Services is an aerial application business serving the Michiana area and has expanded to neighboring states due to demand from ag retailers and growers.
5. In 1976, AgriFlite Services was incorporated.
6. In 2000, AgriFlite Services, Inc. was reorganized due to expansion.
7. AgriFlite has serviced customers in Michigan since the mid-1970's.

8. AgriFlite's resident Michigan agent is inhouse CPA accountant Donna Mansell of Edwardsburg, Michigan.
9. David and Denise Eby are principals of AgriFlite Services, Inc.
10. From 1973 to 2012, I flew as an aerial applicator and operated the business entity AgriFlite Services, Inc.
11. In 2012, I retired from flying ag due to medical issues.
12. Currently, my wife Denise and I still operate AgriFlite; however, we are off-site in retirement during the months of late September through May and in the Indiana office full-time June through mid-September during the busy season.
13. The Violation from MDARD in this case was received in mid-May, 2022 for an application on July 21, 2021.
14. No contact was made to me from MDARD for questions until a Violation and Administrative fine was assessed in mid-May, 2022.
15. Because I was not the aerial applicator in this Violation a request was made for an informal hearing to dispute the incorrect findings and errors and to show that I, David Eby, and my business was in compliance.
16. A non-adversarial approach was taken in the PowerPoint presentation at the informal hearing on December 12, 2022 to affirm that agencies such as

MDARD can be a benefit for all involved due to the increased research and technology.

17. The Determination Letter dated January 26, 2023 by Martin Al Rodriquez affirmed the MDARD's fine. It did not surprise me that the agency would not rule against itself. However, the two issues state, "MDARD found that **the applicator**" **not the business** was the crux of the issue. Nevertheless, there was no change in the Violation, so the Determination Letter had to be appealed. Unfortunately, MDARD did not see the additional errors and implications of these misdirected conclusions.

18. My wife Denise and I have developed AgriFlite over the past 50 years. We each have our own areas of expertise, but she has been the principal to respond to the document filings in this case. We are in complete agreement in the statements and have both signed the filed documents to affirm our concerted efforts.

19. The interaction and responses from MOAHR have entered an additional multitude of errors and false assumption in the procedures of appealing this case for an impartial review.

20. Currently, in addition to the investigation errors, the MDARD Respondent attorney has introduced these procedural errors that also need to be

addressed complicating a viable resolution. An email was sent to Allison-Yokom requesting the correction and it was not corrected.

21. The latest MOAHR documents on Oct 23, 2023 were filed and docketed; however, the administrative judge had been prejudiced by the Respondent's error, and it appears there was collusion with the Respondent to ramrod the case as a default.
22. As the owner/principal of AgriFlite Services, Inc. my focus and interest is in compliance with state regulations and hiring conscientious state-licensed ag pilots for our ag retailers and growers.
23. The assessment of a Violation on a business for an applicator issue is contrary and detrimental to the purpose of the state licensing and state regulations.
24. Per Michigan rules, AgriFlite Services has an annual Service Agreement with the ag retailer Nutrien in Blissfield, Michigan. This contract essentially puts this relationship under contract law.
25. Had the MDARD investigator contacted me at AgriFlite Services per your contact information on both David Eby and AgriFlite pesticide licensing division, a constructive resolution plan/remedy for the complainant could

have been implemented to purchase the questionable oats which could have then been applied 2021 fall season as a cover crop.

26. I am unaware of the recommendations given to Bakowski by MDARD for her personal concerns and outcome.

27. I have many questions about this spray situation that have not been addressed by MDARD regarding calibration/droplet spectrum to assess the dispersal system. AgriFlite calibrates each aircraft annually.

28. The MDARD alleged "facts" in this case **do not align**, and the ag pilot Will Souther flew thousands of acres that 2021 season with no other incidents. His piloting and application skills and technique have been exemplary.

29. Will Souther is not an employee of AgriFlite Services but serves as a contract pilot when needed seasonally on call.

30. MDARD's delay (from July 21, 2021 to mid-May, 2022) in notifying David Eby and AgriFlite Services, Inc. of this complaint along with its progress has caused errors in the investigation resulting in an invalid Violation issued with a subsequent inaccurate fine on Michigan licensed "persons"-
Petitioners David Eby and AgriFlite Services, Inc.

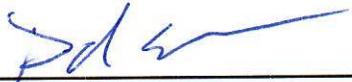
31. This delay thwarted a remedy/resolution **if** the accusations are true.

32. MDARD has caused harm to David Eby and AgriFlite Services, Inc. by

assessing an invalid Violation causing Petitioners much time to defend against errors of fact and administrative procedure.

33. This agency case needs to be handled with logic and common sense rather than perverted by the administrative "legal" procedure attempting to be judicial, but discriminating and denying due process.

This is my sworn statement,



David Eby

11/17/2023
Date

Subsequent representation Orders by Stephen Goldstein have delayed the review of Case 23-PE-02320 with an upcoming remote hearing scheduled October 26, 2023 at 9:00 EST.

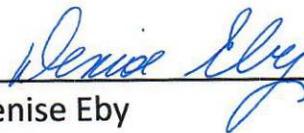
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