



Dave Scott, Secretary

INDIANA PESTICIDE REVIEW BOARD

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February 20, 2017

BEFORE THE INDIANA PESTICIDE REVIEW BOARD

IN RE:

COUCH HELICOPTER
SERVICE, INC.,

Petitioner,

CASE NO. : 2016/0816

vs.

OFFICE OF THE
INDIANA STATE CHEMIST

Respondent.

SUMMARY OF APPEAL HEARING

On January 13, 2017, from 11:16 a.m. to 2:31 p.m. EST, at the Office of the Indiana State Chemist, 175 South University Street, West Lafayette, Indiana 47907, a hearing was held on the appeal of the warning issued by the State Chemist on August 10, 2016, to Mr. Sherman Powell and Couch Helicopter Service Inc., P.O. Box 42, Walcott, Arkansas, 72474, for violation of I.C. 15-16-65(2): "Recommended, used, or supervised the use of any registered pesticide product in a manner inconsistent with its labeling approved by the United States Environmental Protection Agency or Indiana state registration for that pesticide, or in violation of the United States Environmental Protection Agency or Indiana state restrictions on the use of that pesticide product."

Present representing the Indiana Pesticide Review Board (IPRB) were Ron Hellenthal, Board President, and Administrative Law Judge Panel and Board Members Tim Gibb, Julia Tipton Hogan, and Bob Andrews. Present representing the Office of the Indiana Attorney General was Kevin McDowell. Present representing Couch Helicopter Service, Inc. were Casey Couch and Sherman Powell. Present representing the Office of the Indiana State Chemist was George Saxton. Various members of the public were also present.

Deliberations by the Administrative Law Judge Panel included the following paraphrased comments: 1) The integrity of OISC's investigation is not in questions; 2) There appear to be discrepancies regarding the wind data for the date and time of application; 3) There are concerns that not all pesticides in the tank mix applied were analyzed for by OISC in the environmental residue samples; 4) Residue samples reportedly collected from the investigation site by Couch's insurance company reportedly found no insecticide in the samples analyzed; 5) Would vote to rescind the warning; 6) Appreciate the reasons of efficiency, timing, and technical difficulties that OISC cited for their lab not routinely analyzing environmental samples for every pesticide alleged to be in a tank mix, but in consideration of the current widespread use of aerially applied fungicides in Indiana, the presence of a commonly used fungicide in the OISC samples seems inconclusive; 7) The GIS spray map provided by Couch seemed to suggest that the aerial applicator may have left some sort of unsprayed buffer area next to the complainant's property; 8) A conclusive finding of violation in this case is not supported by the evidence presented; 9) The OISC lab results do show off-target residues of fungicide present, but it is unclear what those seemingly small part per billion residue levels actually mean; 10) OISC lab results do seem to suggest a gradient of higher to lower residue levels in the samples moving from the target field toward the complainant's property, but it still seems inconclusive, since only one of the pesticides in the tank mix was analyzed; 11) The conflicting weather data between OISC's sources and Couch's sources sort of cancel each other out; 12) It seems that the fungicide found in the OISC samples can be found at very low levels for long periods of time, making the origin of that one reported pesticide residue questionable.

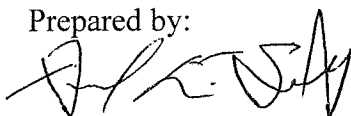
RECOMMENDED DECISION OF THE PANEL

Following deliberations, Julia Tipton Hogan and Bob Andrews respectively made a motion and seconded the motion to recommend to the IPRB that the warning issued by OISC to Sherman Powell and Couch Helicopter Service, Inc. be rescinded. The panel vote was three in favor of the motion and zero opposed.

RIGHT OF APPEAL OF THIS DECISION

As provided in I.C. 4-21.5-3-29(d), any party aggrieved by the Recommended Decision of the Panel may file written objections with the Indiana Pesticide Review Board. The written objections must be filed with the Board within fifteen (15) days after the Recommended Decision is served. Any written objections must also be provided to the other party in this action.

Prepared by:



David E. Scott
IPRB Secretary

CASE SUMMARY

Case #2016/0816

Complainant: Karen Rutherford
4999 E. Baseline Road
Milan, IN 47031
812-654-2530

Respondent: Couch Helicopter Service, Inc. Licensed Business
Sherman Powell Certified Applicator
P.O. Box 42
Walcott, AR 72474
870-573-6350

1. On May 12, 2016, Karen Rutherford contacted the Indiana State Chemist (OISC) to report a helicopter making turns over her property. Mrs. Rutherford is concerned the helicopter is dripping pesticides on her property and bees.
2. On May 12, 2016, I contacted Joe Olson, Area Branch Manager and Business & Operations for Helena Chemical Co. in Dillsboro, Indiana (47018). Mr. Olson stated Couch Helicopter Service Inc. was contracted to perform aerial applications to the field south of Mrs. Rutherford's Property. Mr. Olson provided me with Couch Helicopter Services' contact information and a copy of an application record for the application of Prosaro (EPA Reg. #264-862, active ingredients prothioconazole and tebuconazole) and Mustang Maxx (EPA Reg. #279-3426, active ingredient zeta-cypermethrin) on May 12, 2016, beginning time 10:21 a.m. with wind out of the west at 2 mph.
3. On May 16, 2016, I spoke with Casey Couch, owner of Couch Helicopter Services. Mr. Couch stated Sherman Powell, certified applicator for Couch Helicopter Services, performed the application on May 12, 2016. Mr. Couch stated he would provide me with a copy of Couch Helicopter Services' application record and map of the application showing flight path and application data. Mr. Couch stated he was unaware any bee hives existed in the area.
4. On May 17, 2016, I received Couch Helicopter Services' application record and flight path. Couch Helicopter Services' application record shows wind was out of the north northwest at 3 mph. Furthermore, the flight path showed the helicopter made several turns over the frontage of Mrs. Rutherford's property. However, the flight data showed that pesticide products were not directly applied to the Rutherford property.
5. On May 17, 2016, I met with Mrs. Rutherford at her property in Milan, Indiana. Mrs. Rutherford stated she was new at bee keeping and was concerned about her bee hires. Mrs. Rutherford stated she noticed several dead bees in and around here multiple bee hires.
6. On May 17, 2016, I made the following observations:

- A. Dead bees on hives and around entrance to hives. See figures 1-2.
- B. Several dead bees on ground in front of hive entrance. See figure 3
- C. Wheat field approximately 171 yds-192yds from bee hives.
- D. Topography from wheat field to hives, is a low area between field and bee hives. Bee hives appear to be on the high side of the elevation change. See figure 4.

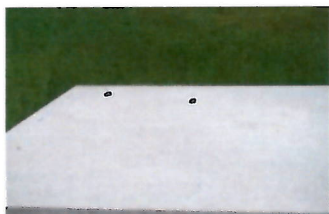


Fig. 1-Dead bees on hive



Fig. 2-Dead bees at entrance



Fig. 3-Dead bees on ground in front of hive



Figure 4-Topography

- 7. On May 17, 2016, I collected dead bee samples, swab samples, and vegetation samples to be analyzed by OISC's Residue Lab.
- 8. On June 17, 2016, OISC's Residue Lab reported the following;

OFFICE OF INDIANA STATE CHEMIST
Pesticide Residue Laboratory
Lab Report

Case # 2016/0816		Investigator: Jay Kelley	
Sample #	Sample Description	Sample Matrix	Amount Found
			Tebuconazole
2016-501555	dead bees	Bees	21.2 ppb
2016-501556	trip blank	Swab	BDL
2016-501557	swab from south window facing target field	Swab	5.51 ng/swab
2016-501558	swab from maple tree leaves next to house	Swab	9.30 ng/swab
2016-501559	vegetation from maple tree next to house	Vegetation	87.6 ppb
2016-501560	swab of south outside of bee hive #3	Swab	20.0 ng/swab
2016-501561	swab of south outside of bee hive #5	Swab	38.5 ng/swab
2016-501562	swab from vegetation near bee hives #1-4	Swab	9.56 ng/swab
2016-501563	swab from vegetation near bee hives #5-6	Swab	2.71 ng/swab
2016-501564	vegetation near bee hives #1-4	Vegetation	28.4 ppb
2016-501565	vegetation near bee hives #5-6	Vegetation	19.1 ppb
2016-501566	swab from 107 yds from target field onto Rutherford property	Swab	2.94 ng/swab
	vegetation from 107 yds from target field onto Rutherford property	Vegetation	60.6 ppb
2016-501568	swab from target field	Swab	726 ng/swab
2016-501569	vegetation from target field	Vegetation	207 ppb
2016-501570	swab from bee hive #4	Swab	9.64 ng/swab

PPM= Parts Per Million; PPB=Parts Per Billion; CONF=Confirmed; LOQ=Limit of Quantitation; BDL=Below detection Limits: this analyte was not detected using the standard analytical methods employed by OISC; BQL=Below quantification limits: this analyte was detected however the amount was lower than the quantification limit established using the standard analytical methods employed by OISC.

LOQs:
 Swab LOQ =0.4 ng/swab
 Veg LOQ=0.1 ppb
 Bee LOQ=0.1 ppb

9. Wind data from Weather Underground, www.wunderground.com, indicated the wind was variable out of the south, either southwest or southeast, at 0-6 mph with gust at 7 mph blowing toward the Rutherford property. See figure 5.

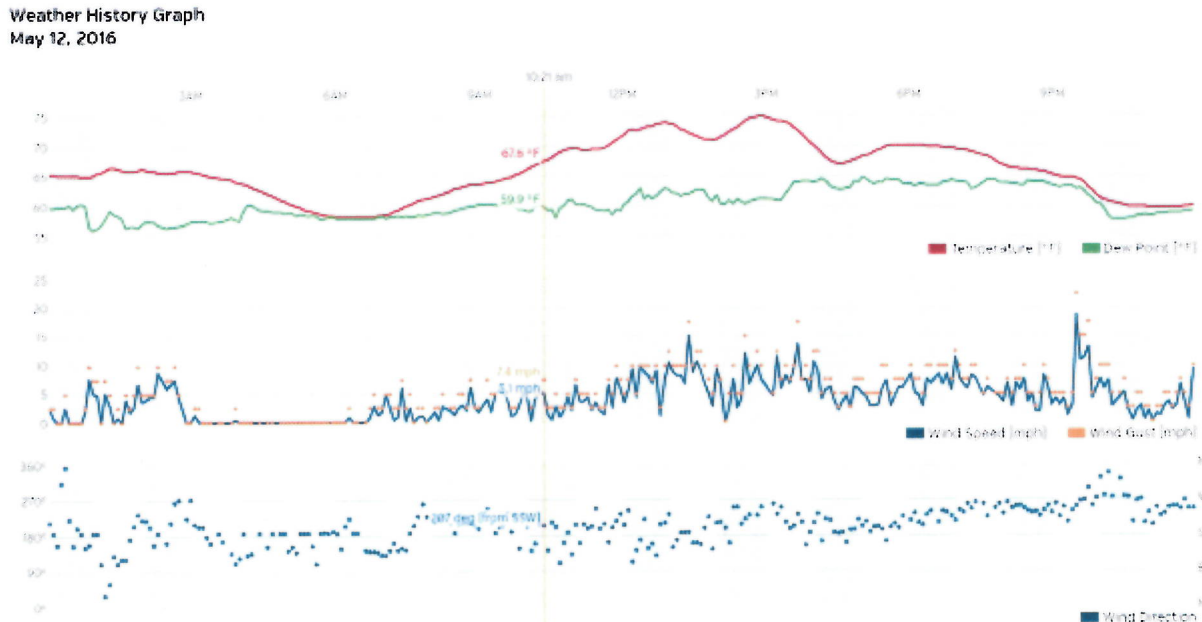


Figure 5-wind data

10. Label language for Prosaro states in part, *“Do not apply when wind speed favors drift beyond the area intended for treatment.”*

Paul J. Kelley III

Paul J. Kelley
Investigator

Date: July 5, 2016

DISPOSITION:

- A. Sherman Powell was warned for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift beyond the intended treatment area. Consideration was given to the fact this was his first violation of similar nature.
- B. On January 13, 2017, a three-person Administrative Law Judge panel met to review the facts in this case. After deliberation, the ALJ decided to report to the full Indiana Pesticide Review Board that the warning be dismissed in this investigation.

George N. Saxton
Compliance Officer

Draft Date: January 13, 2017

CC
Joe Olson
Helena Chemical Co.

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Dillsboro, IN 47018
812-654-3177