

Office of the Secretary
116 State Street
Montpelier, VT 05620
www.VermontAgriculture.com

[phone] 802-828-5667
[fax] 802-828-2361

Agency of Agriculture Food & Markets

May 29, 2018

Mr. Dan Brosseau
Brosseau's Sweet Corn
1062 Brosseau Road
Highgate, Vermont 05459

AFFM Docket Number: 2018-01-07 PT

On May 17, 2018, a hearing was held at the Agency of Agriculture, Food and Markets on the following issue:

The Agricultural Resource Management Division of the Vermont Agency of Agriculture, Food and Markets puts Mr. Daniel Brosseau on notice of having violated 6 V.S.A. §1111 and the Vermont Regulations for Control of Pesticides.

The following are the findings of fact, rationale and conclusion and order from that hearing held on May 17, 2018.

Finding of Fact:

This matter is before me Director of Administrative Services IV Diane Bothfeld, under delegated authority of Secretary Tebbetts pursuant to 6 V.S.A. §1(a)(1) and 3 V.S.A. §253(e), to consider the merits of the Agricultural Resource Management Division's *Notice of Violation on two counts*. The *Notice*, alleges violations of 6 V.S.A §1111 and the Vermont Regulations for Control of Pesticides.

The merits were heard May 17, 2018, at the Agency of Agriculture in Montpelier. Farmer owner Mr. Dan Brosseau took part in the hearing and was represented by Brian Hehier. Agricultural Resource Management Specialist IV Matt Wood, and Chief Policy Enforcement Officer David Huber testified for the Division. The division was represented by Assistant Attorney General Melanie Kuehne. The division submitted documentary evidence without objection. Mr. Brosseau provided documentary evidence that was accepted with one correction.

The following findings are supported by the testimony and evidence adduced at the hearing on this matter conducted on May 17, 2018.

Mr. Dan Brosseau and his wife Lise operate a farm in Highgate, Vermont where they raise sweet corn. Mr. Brosseau stated that the sweet corn is marketed to Hannafords and that the production of sweet corn is certified by USDA in the Good Agricultural Practices Program (GAP). The farm undergoes a GAP Audit yearly for the production of sweet corn. Mr. Brosseau became a certified pesticide applicator as a private applicator in February 9, 2016. He is approved for commodity groups 2 (tree fruit) and 6 (field crops) as a private pesticide applicator. Mr. Brosseau earns credits required to maintain his pesticide applicators certification by reading and taking the quizzes provided by the Agency through newsletters. As a part of obtaining the private applicator pesticide certification, Mr. Brosseau had to study and successfully complete an examination on pesticide applications and regulations. Proper record keeping, calculation of application rates and pounds of active ingredients and safety were all a part of the training manual and examination.



On July 14, 2017, Wood visited Mr. Brosseau in Highgate to complete a routine records inspection. There was no complaint lodged against the Mr. Brosseau or the Brosseau Farm. As a certified private applicator, routine records checks are completed on a rotating basis every three years at the farm or place of business. Mr. Wood obtained photographic copies of the records from 2016 and 2017 on July 14. This is shown in Exhibit C. Wood conducted a follow-up visit on July 21, 2018 to discuss concerns with the records obtained on July 14. Wood documented those concerns in a Certified Applicator Records Inspection Report. This is shown in Exhibit B. Wood indicated that there were concerns with the records from 2016. From the records, two applications of atrazine based pesticides were applied to three different fields. Lumax EZ and Atrazine 4L were applied to three fields, one of 4 acres and two at 8 acres. It is unclear from the records if these two products were applied at the same time mixed together or that two separate applications occurred. Wood indicated in the inspection report that there were inconsistencies in the 2016 records especially in calculation of the rate per acre on the 4 acre field. 2.5 pound of product applied to 4 acres would indicate 2.5 quarts per acre. The records completed by Mr. Brosseau show 3 quarts per acre of Lumax EZ and 2 quarts per acre of Atrazine 4L - Exhibit C. The meeting with Mr. Brosseau on July 21 was to clarify these inconsistencies.

Wood testified that during the visit on July 21, he requested that Mr. Brosseau document, to clarify the inconsistencies found in the 2016 records, through an official statement – Exhibit G. Wood states that Mr. Brosseau was reluctant to do so but agree that Wood would write and review with Mr. Brosseau clarifying statements. The official statement was completed by Wood and signed by Mr. Brosseau. The official statement clarifies how much products was used and the acreage amounts. Wood testified that he did not coerce or pressure Mr. Brosseau into writing or signing the official statement. The 4 acre parcel was clarified as 3.5 acres and the 8 acre parcels were clarified as 7 acre parcels – Exhibit G.

Wood calculated the amount of active ingredient – atrazine- for the applications completed on May 17, 28 and 29, 2016. The calculation is indicated in Exhibit H. Using the information provided by Mr. Brosseau in the records for May 17, 28 and 29, 2016, the amount of atrazine applied to the three fields exceeded the amount indicated on the label for Lumax EZ and Atrazine 4L in a sequential or combined application to these fields. Lumax EZ has 0.935 pounds of atrazine per gallon and Atrazine 4L contains 4 pounds of atrazine per gallon.

Product	Date Applied	Field size	Gallons applied	Gallons per acre	Pounds atrazine
Lumax EZ	5/17/16	4 acres	2.5	0.625	0.584
Atrazine 4L	5/17/16	4 acres	2.5	0.625	2.500
Total application on that date and field					3.084
Lumax EZ	5/28/16	8 acres	5	0.625	0.584
Atrazine 4L	5/28/16	8 acres	5	.0625	2.50
Total					3.084
Lumax EZ	5/29/16	8 acres	5	0.625	0.584
Atrazine 4L	5/29/16	8 acres	5	0.625	2.500
total					3.084

Through these calculations, Wood determined that atrazine was applied to the three fields in an amount beyond the specified application rate on the product label for each product regarding atrazine – Exhibit D under product information and Exhibit E page 10. The labels with the information on application rates are affixed to the jugs containing the product when purchased. Labels with the information can also be obtained by contacting the distributor.

Chief Policy Officer Huber testified that Count 1 – over application of an active ingredient in a pesticide is a serious offense with potential to harm the environment and animal and human life. Mr. Brosseau produces a sweet corn crop for human consumption and pesticide application must be done with the upmost care. Due to the seriousness of the offense, the penalty was set at \$500. The second count is a records violations for the data for calendar year 2016 and 2017. There were inaccuracies in the 2016 records for amounts applied per acre and in 2017 the amount of product used was not documented. This violation did not result in a monetary penalty.

Counsel Hehier lead Mr. Brosseau through testimony through question and answer. Mr. Brosseau maintains his private pesticide applicator certification and earns credits through reading the newsletter sent out by the Agency and completing and submitting the quizzes to the Agency. Mr. Brosseau is concerned with the tone and demeanor shown by Wood on the visits to the farm. Mr. Brosseau felt pressured and coerced to provide the official statement. Mr. Brosseau states that the fields are 4 acres and 8 acres and he disputes the information included in the official statement reducing those acreage amounts. Mr. Brosseau signed the official statement but did so under duress. Mr. Brosseau is concerned that acreage amounts are not consistently used in the calculations provided by the agency and in Exhibits B and H. Mr. Brosseau stated that he did not mix the two herbicides in one tank but did two consecutive trips around the three fields with the spray rig mounted to his four-wheeler. He did state that he made two trips around all three fields – once with Lumax EZ and once with Atrazine 4L. Mr. Brosseau stated that the 2016 records were his first attempt at keeping pesticide records on the format provided by the state.

Lise Brosseau also provided testimony through question and answer by Counsel Hehier. Mrs. Brosseau encountered Wood on July 13. Mr. Wood pulled into the driveway asking to see Mr. Brosseau so the pesticide records could be reviewed. Mr. Brosseau was unavailable and Mrs. Brosseau felt concerned for her safety due to the lack of identifying signage on the car and a lack of a uniform for Wood. Wood did share a business card with Mrs. Brosseau and requested that Mr. Brosseau call as soon as possible.

Mrs. Brosseau stated that Wood returned the following day – July 14 and met with Mr. Brosseau. The meeting appeared cordial and there was no concern for safety. Mrs. Brosseau stated that on the third visit on July 21, 2017 that she was at the house but in a different room out of sight of Mr. Brosseau and Wood. Mrs. Brosseau testified that she heard raised voices and left the room she was in to be able to hear the conversation. She did not interact with Mr. Brosseau and Wood. Mrs. Brosseau testified that Wood was loud and insisting that Mr. Brosseau sign the official statement or he would not leave the farm. She considered calling 911. Mrs. Brosseau felt that Mr. Brosseau signed the official statement under duress and should not have signed off on that document.

Mr. Hehier submitted a separate calculation of the herbicides amounts applied to the 3 fields as Exhibit I. Mr. Hehier submitted that there was an error on this exhibit that Atrazine 4L contains 4 pounds of atrazine per acre instead of 2.84 pounds as shown in the exhibit.

Rationale and Conclusions

The Agency of Agriculture, Food and Markets Agricultural Resource Management Division documented violations of Vermont Regulations for Control of Pesticides and 6 V.S.A. §1111.

COUNT 1

On May 17, 28 and 29, 2016, Mr. Brosseau violated 6 V.S.A. §1111 and Section IV.1 (a) of the Vermont Regulations for Control of Pesticides by failing to comply with the Lumax EZ (EPA registration number: 100-1442) and the Atrazine 4L (EPA Registration number 1381-158) product labels and exceeded both the rate allowed per acre and annual amount per acre of atrazine on approximately 18 acres of sweet corn.

Vermont Regulations for Control of Pesticides in Accordance with 6 V.S.A. Chapter 87

Section I – Definition

63. Use of a pesticide: any handling, release or exposure of a pesticide to a human or the environment including but not limited to:

- a) application of a pesticide, which includes mixing or loading of equipment and any required supervisory action in or near the areas of application;
- b) storage of pesticide and pesticide containers;
- c) disposal of pesticides and containers;
- d) recommendation of pesticide application

Section IV – Restriction on the Use and Application of Pesticides

1. Registered and recommended uses of pesticides

- a. All pesticides uses or recommendations for use shall comply with that pesticide's label, which shall be registered with the U.S. Environmental Protection Agency and the Department (except as provided under authority for pesticide use in Section 18 and 24 (c) of FIFRA as amended).

The specific area noted on the inspection report was over application of the active ingredient atrazine on three separate field in 2016. The application exceeded the label requirements on Lumax EZ and Atrazine 4L for per acre and yearly application rate.

Count 1

Based on the credible evidence and finding of fact provided by the Agency of Agriculture Agricultural Resource Management Division, I conclude that the Mr. Brosseau was out of compliance with Section IV Restrictions of the Use and Application of Pesticides from the Vermont Regulations for Control of Pesticides. Mr. Brosseau documented the use of these herbicides on three separate dates and locations on his farm in Exhibit C pesticide use record. There is some concern for the accurate recording of the acreage of land that the herbicides were applied to as well if the applications were sequential or mixed and applied as one. The calculation of application of the active ingredient and the label instruction state that either separately or sequentially, the amount of active ingredient, atrazine, should not exceed 2 pounds per acre per application or 2.5 pounds for the year. Utilizing reported acreage and amount applied from pesticide use record – Exhibit C – over application was documented.

An administrative penalty of \$500 is proposed by the Agricultural Resource Management Division.

Count 2

On or about May 17, 28, and 29, 2016, and June 2 and 14, 2017, Mr. Brosseau violated 6 V.S.A. §1111 and Section V.1. of the Vermont Regulations for Control of Pesticides by having incorrect information on his pesticide application records.

Section V – Maintenance of Records by Certified Licensed Companies License Pesticide Dealers and Pesticide Producing Establishments

1. Certified private applicators shall record, for all registered use pesticides, the pesticide product name, Environmental Protection Agency (EPA) Registration Number, amount used date of application, location of application (farm name and town) and the pest(s) treated for during each year. This information is to be held of a period of two years and shall be furnished to the Commissioner upon request.

The specific area noted on the inspection report was inaccurate records for May 17, 28 and 29, 2016 – incorrect rate in quarts per acre and in 2017 – failure to provide the volume of pesticide by product used to treat the fields.

Count 2

Based on the credible evidence and finding of fact provided by the Agency of Agriculture Agricultural Resource Management Division, I conclude that the farm was out of compliance with Section V – Maintenance of Records by Certified Licensed Companies License Pesticide Dealers and Pesticide Producing Establishments. Mr. Brosseau's records from 2016 and 2017 (Exhibit C) were reviewed and inaccuracies in reporting were found for 2016 on the rate per acre and information was missing on amount of pesticide product used in the 2017 records.

Mr. Brosseau testified that this was the first time he had documented his pesticide use in the state form. It was indicated that the use of the state record form was positive by Wood.

No administrative penalty was proposed for this violation by the Agricultural Resource Management Division.

Final Order

Count 1

Mr. Brosseau failed to be in compliance with Section IV Restrictions of the Use and Application of Pesticides from the Vermont Regulations for Control of Pesticides.

Section IV – Restriction on the Use and Application of Pesticides

1. Registered and recommended uses of pesticides
 - a. All pesticides uses or recommendations for use shall comply with that pesticide's label, which shall be registered with the U.S. Environmental Protection Agency and the Department (except as provided under authority for pesticide use in Section 18 and 24 (c) of FIFRA as amended).

An administrative penalty in the amount of \$500 is imposed.

\$200 of the penalty is suspended if Mr. Brosseau correctly applies pesticides based on label specifications and maintains proper, accurate records using the forms supplied by the state for calendar year 2018 and 2019. Records review will occur in fall of 2018 and 2019 by the Agency of Agriculture Agricultural Resource Management Division. Mr. Brosseau will mail these records directly to Wood by November 1 of 2018 and 2019. If there are inaccuracies in these records or improper application rates per acre in 2018 or 2019, the suspended penalty will be reinstated in full.

If a visit to the farm is necessitated after review of the records, Wood will contact Mr. Brosseau in advance of the visit and Wood will be accompanied by an additional employee of the Agency of Agriculture during the visit.

The Administrative Penalty of \$300 is imposed and should be remitted to the Agency of Agriculture.

Count 2

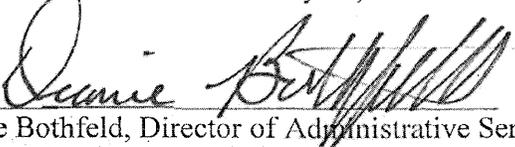
Mr. Brosseau failed to be in compliance with Section V – Maintenance of Records by Certified Licensed Companies License Pesticide Dealers and Pesticide Producing Establishments.

Section V – Maintenance of Records by Certified Licensed Companies License Pesticide Dealers and Pesticide Producing Establishments

1. Certified private applicators shall record, for all registered use pesticides, the pesticide product name, Environmental Protection Agency (EPA) Registration Number, amount used date of application, location of application (farm name and town) and the pest(s) treated for during each year. This information is to be held of a period of two years and shall be furnished to the Commissioner upon request.

No monetary penalty was imposed for this violation. Mr. Brosseau should review the record keeping requirements in the training manuals for private pesticides applicators.

So Ordered: DATE: May 29, 2018


Diane Bothfeld, Director of Administrative Services IV

Appeal Rights

6 V.S.A. § 15. Administrative penalties (e) Any party aggrieved by a final decision of the secretary may appeal de novo to the superior court within 30 days of the final decision of the secretary. The secretary may enforce a final administrative penalty by filing a civil collection action in any district or superior court.