

MINUTES OF ARKANSAS STATE PLANT BOARD PESTICIDE COMMITTEE ZOOM MEETING

February 24, 2021

Members via Zoom: Chairman Matthew Marsh, Tommy Anderson, Marty Eaton, Terry Fuller, Brad Koen, Scott Milburn, and Sam Stuckey

Scott Bray, Plant Board Director, Michael Bynum, Arkansas Agriculture Department Managing Attorney, and Susie Nichols, Pesticide Section Agri Division Manager, were present. Other department staff members, Board Members, and guests were attending via Zoom.

Chairman Matthew Marsh called the meeting to order at 09:32 A.M. and asked the Pesticide Committee Members and Board Members attending to introduce themselves. He then introduced the first item on the agenda to be presented to the Pesticide Committee, which was the review of enforcement actions and turned the floor over to Ms. Susie Nichols.

Ms. Nichols presented the enforcement actions (Attachment 1). The following enforcement actions were presented as uncontested warning letters:

- Enforcement actions # 1) through 17)

Board Member Bruce Alford made a motion to accept department staff's recommendation on enforcement actions # 1) through 17) with a second from Committee Member Marty Eaton. Motion Carried.

The following enforcement action was presented as an Informal Hearing egregious eligible consent agreement:

- Enforcement action # 18)

Board Member Bruce Alford made a motion to accept department Informal Hearing Panel's recommendation with a second from Committee Member Marty Eaton. Motion carried.

The following enforcement actions were presented as uncontested non-egregious eligible consent agreements:

At this point it was clarified that Board Member Bruce Alford was not a voting member of the Pesticide Committee and therefore not eligible to participate in Pesticide Committee Meeting motions.

- Enforcement action # 19)

Committee Member Tommy Anderson made a motion to accept department staff's recommendation with a second from Committee Member Marty Eaton. Motion carried.

- Enforcement action # 20)

Committee Member Marty Eaton made a motion to accept department staff's recommendation with a second from Committee Member Tommy Anderson. Motion carried.

- Enforcement action # 21)

Committee Member Marty Eaton made a motion to accept department staff's recommendation with a second from Committee Member Sam Stuckey. Motion carried.

The following enforcement action was presented as non-egregious eligible consent agreement with no response after 30 days:

- Enforcement action # 22)

Committee Member Tommy Anderson made a motion to accept department staff's recommendation with a second from Committee Member Brad Koen. Motion carried.

Discussion followed.

Chairman Marsh then asked Ms. Nichols to provide an update regarding the status of the other Case Files.

Ms. Nichols gave a brief update regarding the other Case Files and stated that she will provide a more detailed update regarding the Case Files on the upcoming Board Meeting.

Chairman Marsh then asked if there was any other business to come before the Pesticide Committee.

At this point in time it was determined that the first two motions regarding enforcement actions items #1) through #18) would need to be revisited since Board Member Bruce Alford participated in those motions.

- Enforcement action # 18)

Board Member Sam Stuckey made a motion to accept department Informal Hearing Panel's recommendation with a second from Committee Member Marty Eaton. Motion carried.

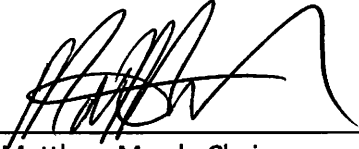
- Enforcement actions # 1) through 17)

Board Member Marty Eaton made a motion to accept department staff's recommendation on enforcement actions # 1) through 17) with a second from Committee Member Brad Koen. Motion Carried.

Chairman Marsh then asked for a motion to adjourn.

Pesticide Committee Member Marty Eaton moved the motion with a second by Pesticide Committee Member Brad Koen to adjourn. Motion Carried.

Meeting was adjourned.

Signed 
Matthew Marsh, Chairman
Pesticide Committee

ATTACHMENT 1

Pesticide Committee Meeting - February 24, 2021 at 9:30 a.m.

WARNING LETTERS

Item	Case #	Name/Company Name	Date of Violation	Violation	Penalty Level	Action Taken
1	19-015	Justin Haller	March 20, 2019	Drift - Class H	Level I Minor	Warning Letter
2	19-015	Justin Haller	March 20, 2019	Buffer Zone - Class H	Level I Minor	Warning Letter
3	19-179	Kris Kelton	May 26, 2019	Drift	Level I Minor	Warning Letter
4	19-283	Lonnie Don Jennings	Unknown	Record Keeping - Class F	Level I Minor	Warning Letter
5	20-030	Russell Anthony Johnson	April 3, 2020	Drift	Level I Minor	Warning Letter
6	20-034	Jerry Max Teague	April 3, 2020	Drift	Level I Minor	Warning Letter
7	20-034	Jerry Max Teague	April 3, 2020	Buffer Zone	Level I Minor	Warning Letter
8	20-078	Geoff Gamble	April 3, 2020	Drift - Class H	Level I Minor	Warning Letter
9	20-124	Lynn Hatcher	May 04, 05, 06, 2020	Drift	Level I Minor	Warning Letter
10	20-138	Robert Holden Tidwell	May 4, 2020	Drift	Level I Minor	Warning Letter
11	20-154	Trey Hall	April 18, 2020	Drift	Level I Minor	Warning Letter
12	20-154	Trey Hall	April 18, 2020	Buffer Zone	Level I Minor	Warning Letter
13	20-154	Trey Hall	April 18, 2020	Off Label Use	Level I Minor	Warning Letter
14	20-155	Aaron Conley Speer	May 26, 2020	Drift	Level I Minor	Warning Letter
15	20-155	Aaron Conley Speer	May 26, 2020	Buffer Zone	Level I Minor	Warning Letter
16	20-219	J. Randy Everett	June 11, 2020	Drift	Level I Minor	Warning Letter
17	20-266	Charles Allen Bell Jr.	June 26, 2020	Drift	Level I Minor	Warning Letter

INFORMAL HEARING SIGNED AGREEMENTS

Item	Case #	Name/Company Name	Date of Violation	Violation	Penalty Level	Agreed Amt**
18	19-176	Jeff A. Hillman	Unknown	Use During the Prohibited Period-Class H	Level I	\$3,125

**Amount agreed to by the individual when signing the Consent Agreement

Class F = all 2,4-D and 2,4-D containing pesticides Class H = all pesticides containing dicamba

NON-EGREGIOUS ELIGIBLE CONSENT AGREEMENTS - SIGNED

Item	Case #	Name/Company Name	Date of Violation	Violation	Penalty Level	Agreed Amt**
19	19-044	Charles Steven Bright	May 1, 2019	Drift	Level IV	\$900
20	19-143	Charles Steven Bright	June 10, 2019	Drift	Level IV	\$900
21	19-446	Charles Steven Bright	September 24, 2019	Drift	Level IV	\$900

NON-EGREGIOUS ELIGIBLE CONSENT AGREEMENTS

DELIVERY RECEIPT OR SENT CERTIFIED & REGULAR MAIL - NO RESPONSE AFTER 30 DAYS

Item	Case #	Name/Company Name	Date of Violation	Violation	Penalty Level	Staff Recommendation
22	20-006	Michael Ryan Simmons	February 8, 2020	Drift - Class H	Level II Major	\$600

**Amount agreed to by the individual when signing the Consent Agreement

Class F = all 2,4-D and 2,4-D containing pesticides Class H = all pesticides containing dicamba

Pesticide Committee Meeting
February 24, 2021
9:30 A.M.

WARNING LETTERS

CF19-015 Justin Haller (Drift - Class H)

The Plant Board alleged Mr. Justin Haller, Commercial Applicator Technician, made an aerial burndown application of Latigo, Roundup PowerMax II, and FirstShot SG to 27.85 acres (Stella 30) and 62.15 acres (Hershal House) for Mr. Curtis Miller on March 20, 2019. The evidence shows this application drifted off target onto Mr. Finch's wheat cover crop. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Haller was offered a Warning Letter and a signed certified mail receipt was received. Mr. Haller did not respond to this allegation.

CF19-015 Justin Haller (Buffer - Class H)

The Plant Board alleged Mr. Justin Haller, Commercial Applicator Technician, made an aerial burndown application of Latigo, Roundup Powermax II, and FirstShot SG to 27.85 acres (Stella 30) and 62.15 acres (Hershal House) for Mr. Curtis Miller on March 20, 2019. The evidence shows the application was made within approximately 60 feet of Mr. Finch's wheat which would be inside the upwind 500 foot buffer zone requirement for Roundup PowerMax II and the downwind 250 foot buffer zone requirement for Latigo; thus, this is considered a buffer zone violation. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Haller was offered a Warning Letter and a signed certified mail receipt was received. Mr. Haller did not respond to this allegation.

CF19-179 Kris Kelton (Drift)

The Plant Board alleged Mr. Kris Kelton, Private Applicator, made a postemergence ground application of Liberty 280 SL to 160 acres (N. Buffalo SW 80 and N. Buffalo SE 80) of cotton on May 26, 2019. The evidence shows this application drifted off target onto Mr. Hallett's trees. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Kelton was offered a Warning Letter and a signed certified mail receipt was received. Mr. Kelton did not respond to this allegation.

CF19-283 Lonnie Don Jennings (Record Keeping – Class F)

The Plant Board alleged Mr. Lonnie Don Jennings, Private Applicator, made a ground application of Grazon P+D. The evidence shows Mr. Lonnie Don Jennings failed to keep the proper records by not recording the name and address of person in control of crops, location of crop, date of application, start and ending times, wind speed and direction at the start and ending time of the application, complete brand name and EPA registration number of the material used, number of acres and type of crop to which material was applied, type of equipment used, distance from and any direction to susceptible crops, and name of application vehicle operator as required for Class F Products. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Jennings was offered a Warning Letter and a signed certified mail receipt was received. Mr. Jennings did not respond to this allegation.

CF20-030 Russell Anthony Johnson (Drift)

The Plant Board alleged Mr. Russell Anthony Johnson, Commercial Applicator, made an aerial application of Devour to 222 acres in field #31 for burndown for Vaughn, EDP on April 03, 2020. The evidence shows this application drifted off target onto Ms. Braxton's property. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Johnson was offered a Warning Letter and a signed certified mail receipt was received. Mr. Johnson did not respond to this allegation.

CF20-034 Jerry Max Teague (Drift)

The Plant Board alleged Mr. Jerry Max Teague, Commercial Applicator, made an aerial application of Roundup PowerMax II, FirstShot, and Compadre to 22 acres in Carres field for burndown for Mr. Justin Howard on April 03, 2020. The evidence shows this application drifted off target onto Ms. Newcomb's lawn and garden. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Teague was offered a Warning Letter and a signed certified mail receipt was received. Mr. Teague did not respond to this allegation.

CF20-034 Jerry Max Teague (Buffer Zone)

The Plant Board alleged Mr. Jerry Max Teague, Commercial Applicator, made an aerial application of Roundup PowerMax II, FirstShot, and Compadre to 22 acres in Carres field for burndown for Mr. Justin Howard on April 03, 2020. The evidence shows the application was made within approximately 40 feet of Ms. Newcomb's lawn and garden which would be inside the 100 foot aerial buffer zone requirement for Roundup PowerMax II; thus, this is considered a buffer zone violation. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Teague was offered a Warning Letter and a signed certified mail receipt was received. Mr. Teague did not respond to this allegation.

CF20-078 Geoff Gamble (Drift – Class H)

The Plant Board alleged Mr. Geoff Gamble, Commercial Applicator, made an aerial application of Roundup PowerMax II, Strut, and Section Three to 24 acres in the Hoard 34 field for burndown for Griffin Farms on April 03, 2020. The evidence shows this application drifted off target onto Mr. Smith's trees. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Gamble was offered a Warning Letter and a signed certified mail receipt was received. Mr. Gamble did not respond to this allegation.

CF20-124 Lynn Hatcher (Drift)

The Plant Board alleged Mr. Lynn Hatcher, Non-Commercial Applicator, made a ground application of Buccaneer Plus, Remedy Ultra, Diesel, and Blue Dye made to 18.5 acres in Community Center Field for burndown on May 04, May 05, and May 06, 2020. The evidence shows this application drifted off target onto Ms. Lee's property. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Hatcher was offered a Warning Letter and a signed certified mail receipt was received. Mr. Hatcher did not respond to this allegation.

CF20-138 Robert Holden Tidwell (Drift)

The Plant Board alleged Mr. Robert Holden Tidwell, Commercial Applicator, made a postemergence aerial application of Command 3ME to 70 acres of rice for Mr. Doyle Burnett on May 04, 2020. The evidence shows this application drifted off target onto Mr. Weatherly's pasture. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Tidwell was offered a Warning Letter and a signed certified mail receipt was received. Mr. Tidwell did not respond to this allegation.

CF20-154 Trey Hall (Drift)

The Plant Board alleged Mr. Trey Hall, Commercial Applicator, made a postemergence ground application of Command 3ME, Newpath, and Roundup PowerMax to 90 acres of rice for Mr. Steve Graham on April 18, 2020. The evidence shows this application drifted off target onto Mr. Bridges' trees. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Hall was offered a Warning Letter and a signed certified mail receipt was received. Mr. Hall did not respond to this allegation.

CF20-154 Trey Hall (Buffer Zone)

The Plant Board alleged Mr. Trey Hall, Commercial Applicator, made a postemergence ground application of Command 3ME, Newpath, and Roundup PowerMax to 90 acres of rice for Mr. Steve Graham on April 18, 2020. The evidence shows the application was made within approximately 15 feet of Mr. Bridges' property which would be inside the 300 foot buffer zone requirement for Command 3ME; thus, this is considered a buffer zone violation. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Hall was offered a Warning Letter and a signed certified mail receipt was received. Mr. Hall did not respond to this allegation.

CF20-154 Trey Hall (Off Label Use)

The Plant Board alleged Mr. Trey Hall, Commercial Applicator, made a postemergence ground application of Command 3ME, Newpath, and Roundup PowerMax to 90 acres of rice for Mr. Steve Graham on April 18, 2020. Roundup PowerMax is not labeled for postemergence application in rice; thus, this is an off label use. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Hall was offered a Warning Letter and a signed certified mail receipt was received. Mr. Hall did not respond to this allegation.

CF20-155 Aaron Conley Speer (Drift)

The Plant Board alleged Mr. Stacey Speer, operating under Mr. Aaron Conley Speer's Private Applicator License, made a ground application of GlyStar Plus and Command 3ME to 80 acres of rice at planting in Brasher 80 field on May26, 2020. The evidence shows this application drifted off target onto Ms. Dills' cotton. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Speer was offered a Warning Letter and a signed certified mail receipt was received. Mr. Speer did not respond to this allegation.

CF20-155 Aaron Conley Speer (Buffer Zone)

The Plant Board alleged Mr. Stacey Speer, operating under Mr. Aaron Conley Speer's Private Applicator License, made a ground application of GlyStar Plus and Command 3ME to 80 acres of rice at planting in Brasher 80 field on May26, 2020. The evidence shows the application was made within approximately 60 feet of Ms. Dills' cotton which would be inside the 300 foot buffer zone requirement for Command 3ME and the 500 foot buffer zone requirement for GlyStar Plus; thus, this is considered a buffer zone violation. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Speer was offered a Warning Letter and a signed certified mail receipt was received. Mr. Speer did not respond to this allegation.

CF20-219 J. Randy Everett (Drift)

The Plant Board alleged Mr. J. Randy Everett made a postemergence ground application of Interline and Interlock to 65 acres of soybeans in the Nelson field on June 11, 2020. The evidence shows this application drifted off target onto Mr. Goldmon's native grasses. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Everett was offered a Warning Letter and a signed certified mail receipt was received. Mr. Everett did not respond to this allegation.

CF20-266 Charles Allen Bell, Jr. (Drift)

The Plant Board alleged Mr. Charles Allen Bell, Jr., Commercial Applicator, made a postemergence aerial application of Stam and Storm to 123 acres of rice for Mr. Tim Burzynski on June 26, 2020. The evidence shows this application drifted off target onto Mr. Polston's vehicle. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Minor violation. The indicated action to be taken for this violation is a Warning Letter. Mr. Bell was offered a Warning Letter and a signed certified mail receipt was received. Mr. Bell did not respond to this allegation.

INFORMAL HEARING AGREEMENTS

Signed Agreements:

CF19-176 Jeff A. Hillman (Use During the Prohibited Period - Class H)

The Plant Board alleged Mr. Jeff A. Hillman, Private Applicator, made a ground application of an unknown dicamba product to soybeans in Field JM#16 on an unknown date. The evidence shows the application was made during the prohibited period of May 26th through October 31st. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level I Egregious Eligible violation. An Informal Hearing was conducted on November 12, 2020 with the Informal Hearing Panel (Scott Bray, Susie Nichols, Mark Stoll, and Leigh Gibson). Per the settlement guidelines, staff originally offered Mr. Hillman a consent agreement for the violation in the amount of \$12,500. The recommendation of the Informal Hearing Panel regarding the Use of a Class H product during the prohibited period is a reduction in the penalty from \$12,500 to \$6,250 since Mr. Hillman is a first time violator. The Informal Hearing panel also recommended an additional reduction from \$6,250 to \$3,125 since Mr. Hillman was cooperative. Mr. Hillman agrees to a Civil Penalty of \$3,125 for settlement of the allegation and did not wish to have a Formal Hearing.

NON-EGREGIOUS ELIGIBLE CONSENT AGREEMENTS

Signed Agreements:

CF19-044 Charles Steven Bright (Drift)

The Plant Board alleged Mr. Charles Steven Bright, Commercial Applicator, made an aerial application of Promote, Willowood Clomazone 3ME, Prize, and Pin-Dee 3.3 EC to 326 acres of rice (Rock House 1 & 2) for Legacy Farms, LLC on May 01, 2019. The evidence shows this application drifted off target onto Mr. Wayne Towery's property. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level IV Major violation. Mr. Bright agrees to a Civil Penalty of \$900 for settlement of the allegation and did not wish to have a Formal Hearing.

CF19-143 Charles Steven Bright (Drift)

The Plant Board alleged Mr. Charles Steven Bright, Commercial Applicator, made a postemergence aerial application of Clincher and Pilots COC to 40 acres of rice for Mr. Scott Sullivan on June 10, 2019. The evidence shows the application drifted off-target onto Mr. Robert Veach's cotton and soybeans. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level IV Major violation. Mr. Bright agrees to a Civil Penalty of \$900 for settlement of the allegation and did not wish to have a Formal Hearing.

CF19-446 Charles Steven Bright (Drift)

The Plant Board alleged Mr. Charles Steven Bright, Commercial Applicator, made a postemergence aerial application of Defol 5 to 324 acres of rice on September 24, 2019. The evidence shows this application drifted off target onto Mr. Turpen's vegetables. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level IV Major violation. Mr. Bright agrees to a Civil Penalty of \$900 for settlement of the allegation and did not wish to have a Formal Hearing.

NON-EGREGIOUS ELIGIBLE CONSENT AGREEMENTS

Delivery Receipt or Sent Certified & Regular Mail - No Response After 30 Days:

CF20-006 Michael Ryan Simmons (Drift – Class H)

The Plant Board alleged Mr. Michael Ryan Simmons, Commercial Applicator, made an aerial application of Glyphosate 53.8, Flumioxazin 51% WDG, Section 3, and Dicamba Max 4 to 51 acres in the 75 Pamplin field for burndown for Samson & Trinity on February 08, 2020. The evidence shows this application drifted off target onto Mr. Williams' trees. The Arkansas State Plant Board's Pesticide Enforcement Response Regulation's Penalty Matrix defines this violation as a Level II Major violation. Mr. Simmons was offered a Consent Agreement in the amount of \$600 and a signed certified mail receipt was received. Mr. Simmons did not respond to this allegation.