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COMMONWEALTH of VIRGINIA

Department of Agriculture and Consumer Services

Division of Consumer Protection

Office of Pesticide Services

P.O. Box 1163, Richmond, Virginia 23218

Phone: 800/552-9963 or 804/371-6558 • Fax: 804/786-9149 • Hearing Impaired: 800/828-1120

www.vdacs.virginia.gov

Matthew J. Lohr
Commissioner

November 5, 2012
CERTIFIED MAIL

Mr. Lee Stevenson, Administrative Principal
Mr. Charles Blackman, Custodian I
Mrs. Elba Cartagena, Custodian II
Hayfield Secondary School
7630 Telegraph Road
Alexandria, VA 22315

NOTICE OF VIOLATION
Case Number: 49255

Dear Messrs. Stevenson and Blackman and Mrs. Cartagena:

This letter is a Notice of Violation of the Virginia Pesticide Control Act. Actions taken herein are in accordance with the Virginia Pesticide Control Act and other laws, regulations, and guidelines that govern this process. A copy of these laws, regulations and guidelines are available at <http://agva.vi.virginia.gov/pesticide/intro.htm>. Hard copies are available upon request.

A. Factual Basis of Action

On August 27, 2012, Pesticide Investigator Frank Filipy received a complaint regarding a pesticide application made by Hayfield Secondary School personnel. Specifically, the complainant alleged that on August 23, 2012, personnel were observed spraying a fence line at the Hayfield Secondary School, 7630 Telegraph Road, Alexandria, VA. The complainant also alleged that the applicator did not seem to be appropriately trained in the use of pesticides.

On August 27, 2012, Investigator Filipy spoke with you on the phone. In the course of the conversation, you stated that the school janitorial staff made an application of *Round Up Herbicide* to the fence line at the school on August 23, 2012.

On August 28, 2012, Pesticide Investigator Frank Filipy interviewed you along with Mrs. Elba Cartagena and Mr. Charles Blackman in reference to this investigation. The interview revealed that on August 23, 2012, Mrs. Cartagena and Mr. Blackman both applied an end use dilution of *Round Up Weed & Grass Killer Super Concentrate* (EPA Registration Number 71995-25) to a fence line at the Hayfield Secondary School. Mrs. Cartagena stated that the product was applied with a three-gallon hand-held sprayer and

-Equal Opportunity Employer-

mixed at the rate of 2.5 oz/gallon of water which is consistent with the product label. The label also did not have any mandatory personal protective equipment requirements.

Inspector Filipy conducted a non-agricultural pesticide license/certification inspection with the school. Records maintained by our office reflect that Mrs. Cartagena and Mr. Blackman were not then, and are not now, certified as commercial pesticide applicators or registered technicians.

On August 28, 2012, Investigator Filipy issued an Adverse Findings Report to Mrs. Cartagena noting the above conditions. He also issued you a Good Faith Effort Reporting Form. To date, this office has not received your completed Good Faith Effort Reporting Form.

B. Virginia Pesticide Control Act Sections Violated

Code section 3.2-3930(A) of the Code of Virginia (1950), as amended, states

No person shall use...or supervise the use of any pesticide in exchange for compensation of any kind...without first obtaining certification as either a commercial applicator or registered technician... (A) All state agencies, municipal corporations, or other governmental agencies shall be exempt from certification fees prescribedbut remain subject to the provisions of this article and regulations adopted hereunder concerning the application of pesticides.

C. Conclusion of Law

Based on the evidence, the Office of Pesticide Services concludes that Fairfax County Public Schools violated Code section 3.2-3930(A) when Mrs. Cartagena and Mr. Blackman both applied a pesticide commercially without being certified as commercial pesticide applicators or registered technicians.

D. Penalty Assessment

Virginia Code section 3.2-3943(A) provides for the assessment of monetary civil penalties when violations of the Act and regulations occur.

For applying a pesticide without first complying with the pesticide applicator certification requirements, Fairfax County Public Schools is assessed a penalty of \$280.

Enclosed is an itemized explanation of each penalty assessment along with a payment statement for the total amount assessed of \$280.

E. Appeal Procedure

You have the **right to appeal** this Notice of Violation and any other actions taken herein by requesting a Fact-Finding Conference **to present additional information not available during the inspection or the case review process.** If you request a Fact-Finding Conference, a Conference Officer will be assigned to your case. The Conference Officer shall affirm, raise, lower, or abate the penalty, or negotiate a settlement.

A request for an appeal of either the civil penalty or non-monetary violation **must be submitted on the enclosed form** to the Commissioner of the Virginia Department of Agriculture and Consumer Services. Pursuant to Section 3.2-3943(D) of the Virginia Pesticide Control Act "The person to whom a civil

penalty is issued shall have 15 days to request an informal fact-finding conference... Thus, **the request for appeal must be postmarked within fifteen (15) calendar days from receipt of this Notice of Violation.**

F. Payment of Civil Penalty

If you do not request an appeal within fifteen (15) calendar days of receipt of this Notice of Violation, the Notice of Violation, and any civil penalty assessed, becomes final, due and payable **in full** by the date indicated on the enclosed invoice.

Payment of the civil penalty affirms your intention not to request a conference to contest the penalty. **Payment of the civil penalty may be made by either check (certified or cashier's) or money order made payable to the Treasurer of Virginia.** Please print the invoice number on the check or money order.

If you have any questions concerning this violation, the appeal procedure, or payment of the civil penalty, you may call me at 804-371-8485.

Sincerely,

for Douglas Edwards
for Rohan Williams
Compliance Manager

Enclosures

cc: Andres Alvarez, Division Director
Liza J. Fleeson, Program Manager
Douglas N. Edwards, Supervisor, Enforcement & Field Operations
Jeffrey Rogers, Environmental Program Planner
Frank L. Filipy, Pesticide Investigator
Karen Roth, Finance Office
Douglass T. O'Neill, Fairfax County Public Schools

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
Office of Pesticide Services
P. O. Box 1163, Richmond, Virginia 23218

PENALTY ASSESSMENT EXPLANATION

PERSON/FIRM NAME: Mr. Lee Stevenson, Administrative Principal; Mr. Charles Blackman, Custodian I; Mrs. Elba Cartagena, Custodian II; Hayfield Secondary School, 7630 Telegraph Road, Alexandria, VA 22315

APPLICATOR CERTIFICATION NUMBER: none

PESTICIDE BUSINESS LICENSE NUMBER: none

CASE NUMBER: 49255

VIOLATION 1 OF 1

POINTS ASSESSED

- | | | |
|--|----------------------------------|----------|
| A. Type of Violation | RANGE 1 → 10 PTS | 2 |
| Failure to comply with pesticide certification requirements. | | |
| B. Damage Caused by Violation | RANGE 0 → 10 PTS | 1 |
| Slight actual or potential damage to property or the environment or threat to human health and safety. | | |
| C. Culpability | RANGE 0 → 6 PTS | 2 |
| Negligent. | | |
| D. History of Previous Violations | 0 PT / PREVIOUS VIOLATION | 0 |
| E. Good Faith Credit for Prompt Compliance | RANGE 0 → 4 PTS | 0 |

TOTAL POINTS: 5

BASE PENALTY AMOUNT: \$350.00

F. Reduction of base penalty by 20%, if no previous violation -70.00

G. Additional Penalty for Serious Damage/Injury/Death +0.00
No additional penalty.

TOTAL PENALTY AMOUNT: \$280.00

Compliance Manager: *Stephan Edwards* Date: 11/6/12
for Rohan Williams



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Invoice #: 222975

Total Amount Due: \$280.00

Payment is due 30 days after billing date, unless a contract or the Code of Virginia requires different payment terms. The Code of Virginia authorizes the Department of Agriculture and Consumer Services to charge interest, late fees, collection costs and/or administrative costs and to deny services on past due accounts. A fee of \$50.00 will be assessed on each returned check.

Invoice Date: Nov 08, 2012

Due Date: Dec 08, 2012

Amount Remitted: \$ _____

FAIRFAX COUNTY PUBLIC SCHOOLS
HAYFIELD SECONDARY SCHOOL
7630 TELEGRAPH ROAD
ALEXANDRIA VA 22315-
ATTN: LEE STEVENSON, ADM PRINCIPAL; C
BLACKMAN, E CARTAGENA, CUST.

Make Check Payable to:
TREASURER OF VIRGINIA

Mail Payment to: VDACS
PO Box 430
Richmond VA 23218-0430

Customer #1402764 RETURN THIS PORTION WITH PAYMENT FOR PROPER CREDIT
VDACS, PO BOX 430, RICHMOND VA 23218-0430, (804) 371-6560 Customer #1402764

Page 1 of 1

Invoice #: 222975

Date of Service	Description of Service	Unit Price	Qty	Line Total
Nov 05, 2012	PESTICIDE CIVIL PENALTY ASSESSMENT CASE NO. 49255 FAILURE TO COMPLY WITH PESTICIDE CERTIFICATION REQUIREMENTS 770-08319-CP-PSTENF	\$280.00	1	\$280.00

Total Amount Due: \$280.00

Virginia Department of Agriculture and Consumer Services

OFFICE OF PESTICIDE SERVICES

102 Governor Street
Richmond, Virginia 23219

COMPLAINT INVESTIGATION NARRATIVE REPORT

CASE REF. NO. 49255
OFFICE USE

DATE COMPLAINT RECEIVED: 8/27/12
DATE OF FIRST CONTACT: 8/27/12
DATE(S) OF INVESTIGATION: 8/28/12

INVESTIGATED BY: Frank Filipy

Frank Filipy

COMPLAINANT: Carol Bass Homeowner 5736 Buckhaven Ct. Alexandria VA 22315
tel. 703 971-2088

NATURE OF COMPLAINT: Mrs. Bass alleged improper application of pesticide(s) by allegedly untrained applicators on Hayfield Secondary School property Alexandria VA.

PESTICIDE(S) USED: Round Up Weed & Grass Killer Super Concentrate EPA Reg. No. 71995-25
TARGET PEST(S): unwanted weeds and grasses
WHEN APPLIED: August 23, 2012
WHERE APPLIED: Fence Line, Fairfax County Public Schools Hayfield Secondary School 7630
Telegraph Rd. Alexandria VA 22315 tel. 703 924-7400 FIPS CODE: 059

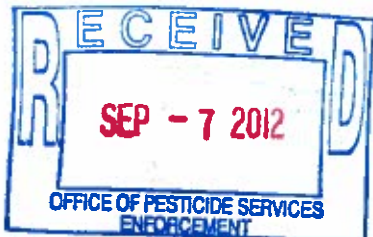
<u>PESTICIDE APPLICATOR(S) INVOLVED</u>	<u>TY PE</u>	<u>CERT. NUMBER</u>	<u>EXPIRE DATE</u>	<u>CATEGORIES HELD</u>
Elba Cartagena	na	none	na	na
Charles Blackman	na	none	na	na

APPLICATOR FIRM: Fairfax County Public Schools Hayfield Secondary School 7630 Telegraph Rd. Alexandria VA 22315 tel. 703 924-7400 BLN#: 2634

TYPE INSPECTION: Non ag

PHOTOGRAPHS TAKEN Y/N: Y

SAMPLES: none



Carol Bass/Hayfield Secondary School Alexandria VA

SUMMARY OF INVESTIGATION

On August 23, 2012 Fairfax County Public Schools employees Mrs. Elba Cartagena Custodian II and Mr. Charles Blackman Custodian I applied an end use dilution of Round Up Weed & Grass Killer Super Concentrate to a fence line at Hayfield Secondary School Alexandria VA. Mrs. Cartagena and Mr. Blackman were not VA certified pesticide applicators and no certified commercial pesticide applicator was on site to provide direct on site supervision. Interview with the applicators and review of the pesticide product label indicated the product was mixed at a labeled rate and applied to a labeled site. There was no record of the application. An Adverse Findings Report was completed and a Good Faith Effort Report Form was provided.

DETAILS OF INVESTIGATION

August 27, 2012 I received an email from Carol Bass, print enclosed. The email stated on Thursday August 23, 2012 Mrs. Bass observed an applicator spraying a fence line at Fairfax County Public Schools Hayfield Secondary School 7630 Telegraph Rd. Alexandria VA 22315. Mrs. Bass said based on her observations the applicator did not seem to be appropriately trained in the use of pesticides. Please see enclosed email print.

I spoke with on the telephone with Lee Stevenson Administrative Principal Hayfield Secondary School Alexandria VA. I described the concerns expressed by Mrs. Bass. Mr. Stevenson said school janitorial staff had applied Round Up Herbicide to the fence line at the school on August 23, 2012. Arrangements were made to meet with Hayfield Secondary School staff on Tuesday August 28, 2012.

August 28, 2012 I met with Mr. Lee Stevenson Administrative Principal, Mrs. Elba Cartagena Custodian II and Charles Blackman Custodian I at Hayfield Secondary School. On August 23, 2012 Mrs. Elba Cartagena and Mr. Charles Blackman both applied an end use dilution of Round Up Weed & Grass Killer Super Concentrate EPA Reg. No. 71995-25 to a fence line at Hayfield Secondary. Please see enclosed product label. The product was labeled for use along fences. Mrs. Cartagena said the product was applied with a three gallon hand held sprayer and mixed at the rate of 2.5 oz./gallon of water. This mix rate was consistent with the label. The label stated under the heading *How To Apply Spray the weeds or grasses you want to kill until thoroughly wet.* The label did not have mandatory personal protective equipment requirements. The label stated under the heading *Precautionary Statements Caution: Causes moderate eye irritation. Avoid contact with eyes or clothing. Wash thoroughly with soap and water after handling.* Please see enclosed photographs.

Neither Mrs. Cartagena nor Mr. Blackman was certified as pesticide applicators in VA. There was no certified commercial pesticide applicator on site to provide direct on site supervision. There was no record of the pesticide application.

Carol Bass/Hayfield Secondary School Alexandria VA

An Adverse Findings Report was completed with Mrs. Cartagena and a Good Faith Effort Report Form provided.


Also observed in the schools warehouse was a case of Spectracide Wasp & Hornet Killer, EPA Reg. No. 9688-190-8845 a ready to use aerosol formulation. Mr. Stevenson said this product was used on an as needed basis on school grounds when stinging insects posed an immediate threat.

August 29, 2012 I received an email from Douglass T. O'Neill Coordinator Safety and Environmental Health Office of Safety and Security Fairfax County Public Schools. Mr. O'Neill requested he be copied on any formal outcome of this investigation. Please see enclosed email print.

Mr. O'Neill's mailing address is:

Douglass T. O'Neill
Fairfax County Public Schools
Office of Safety and Security
8115 Gatehouse Rd.
Falls Church VA 22042

This report is submitted for administrative review.

Submitted by:  Frank Filipy Report Date: September 6, 2012
Pesticide Investigator