



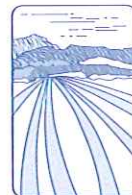
Oregon

John A. Kitzhaber, MD, Governor

Department of Agriculture

635 Capitol St NE
Salem, OR 97301-2532

PESTICIDES PROGRAM
TEL: 503-986-4635



CERTIFIED MAIL

August 8, 2014

Steven S. Owen
660 Avenue 'C'
White City, Oregon 97503

Stuart W. Smith and Timothy E. Miller,
Attorneys at Law
Miller & Associates
5005 SW Meadows Road, Suite 405
Lake Oswego, Oregon 97035

Re: NOTICE OF
IMPOSITION OF CIVIL PENALTY,
PROPOSED REVOCATION OF APPLICATOR LICENSE,
PROPOSED REFUSAL TO ISSUE OR RENEW APPLICATOR LICENSE,
OPPORTUNITY FOR A HEARING, and
PROPOSED/FINAL ORDER;
ODA CASE NO. 140147

This Notice is a combined Notice of Imposition of Civil Penalty, Proposed Revocation of Applicator License, Proposed Refusal to Issue or Renew Applicator License, Opportunity for a Hearing, and Proposed/Final Order; it is based on a pesticide investigation performed by the Pesticides Program of the Oregon Department of Agriculture. This Notice addresses violation of Oregon Revised Statutes (ORS) Chapter 634. The action is taken pursuant to statutory and regulatory provisions including but not limited to ORS chapter 183, ORS 634.900 *et seq.*, Oregon Administrative Rules (OAR) chapter 137, division 3, and OAR 603-057-0500 *et seq.*

Also enclosed is information on contested case rights and procedures. This information is provided for your consideration should you select to contest the Notice and request an administrative hearing of this matter.

Read all of the Notice carefully.

If you request a hearing in this matter, your request for hearing must be made in writing to the Oregon Department of Agriculture so that it is received by the Department within ten business days of the date that you receive the Notice. If you do not request a hearing this Notice will become the Final Order, and the Final Order shall constitute a judgment.

Important Note: The Department has also issued a separate proposed enforcement action to your business Pacific Air Research, Inc. That proposed action is specific to PAR as a business. Your request for a hearing or payment of penalty is separate from and has no bearing on PAR's response to its enforcement action, although hearing processes could be combined if both parties request hearings.

DALE L. MITCHELL
PESTICIDES COMPLIANCE PROGRAM MANAGER
OREGON DEPARTMENT OF AGRICULTURE

Encl: Notice of Contested Case Rights and Procedures



STATE OF OREGON
DEPARTMENT OF AGRICULTURE

Before The Director of The Department of Agriculture

In the Matter of:)	NOTICE OF
)	IMPOSITION OF CIVIL PENALTY,
)	PROPOSED REVOCATION OF APPLICATOR LICENSE,
)	PROPOSED REFUSAL TO ISSUE OR RENEW
Steven S. Owen,)	APPLICATOR LICENSE,
)	OPPORTUNITY FOR A HEARING, and
)	PROPOSED/FINAL ORDER,
Commercial Pesticide)	for Violation of the State Pesticide Control Act,
Applicator Licensee)	ODA Pesticides Case No. 140147

The Director of the Oregon Department of Agriculture (ODA or the Department) hereby assesses a civil penalty in the amount of \$10,000, against Steven S. Owen, as authorized by statutory and regulatory provisions including, but not limited to, ORS 634.900 to ORS 634.915 and OAR 603-057-0500 to 603-057-0532. The findings and conclusions on which this determination is based, and the criteria used to calculate the penalty, are set out below.

Furthermore, the Director of ODA proposes to revoke and not issue or renew the Commercial Pesticide Applicator license of Steven S. Owen for one year, for providing false pesticide application information to the Department, specifically information about pesticide applications that were made on or about October 16, 2013 in Curry County, Oregon, in the Cedar Valley and Grizzly Mountain areas near Gold Beach. Providing false, misleading or fraudulent records or reports on commercial pesticide applications is a violation of ORS 634.372(6), which is grounds for revocation and refusals to issue or renew under ORS 561.305(2) or ORS 634.322(4).

I. APPLICABLE LAW

1. The applicable law includes the following: Oregon Revised Statutes (ORS) Chapters 60 (corporations), 183 (administrative law), 561 (agriculture), and 634 (pesticides), Oregon Administrative Rules (OAR) Chapter 137, division 3; and OAR Chapter 603, division 57; Federal Insecticide, Fungicide, and Rodenticide Act, 7 United States Code (USC) §§ 136 *et seq.*; and 40 Code of Federal Regulations (CFR) Parts 152 through 180.

2. Oregon's pesticide control law is known as the State Pesticide Control Act and is codified in Oregon Revised Statutes (ORS) Chapter 634.

3. ORS 634.005 states: "The purpose of this chapter, which shall be known as the State Pesticide Control Act and shall be enforced by the State Department of Agriculture, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulation and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new

pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state.”

4. ORS 634.006(8) states: “Pesticide’ includes: ...
- (a) ‘Defoliant’ which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;
 - (b) ‘Desiccant’ which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;
 - (c) ‘Fungicide’ which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;
 - (d) ‘Herbicide’ which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;
 - (e) ‘Insecticide’ which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever;
 - (f) ‘Nematocide’ which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;
 - (g) ‘Plant regulator’ which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments; or
 - (h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, humans, animals, or be present in any environment thereof.”

5. ORS 634.006(13) states: “Pesticide operator’ means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.”

6. ORS 634.116(4) states: “At least one owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator’s license if the pesticide operator is a sole proprietorship or a partnership. At least one officer or employee shall obtain and maintain a pesticide applicator’s license if the pesticide operator is a corporation. If a pesticide operator is found to be in violation of this subsection, the pesticide operator’s license, notwithstanding ORS chapter 183, is automatically suspended until the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to the individual under ORS 634.122.”

7. ORS 634.006(9) states: “Pesticide applicator’ or ‘applicator’ means a person who:
- (a) Is spraying or applying pesticides for others;
 - (b) Is authorized to work for and is employed by a pesticide operator; and
 - (c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity.”

8. ORS 634.122 states in part that “(2) An applicant for a pesticide applicator’s license shall be required to demonstrate satisfactorily by written examination or any reexamination given by

the department, an adequate knowledge of:

- (a) The characteristics of pesticides and the effect of their application to particular crops.
- (b) The practices of application of pesticides.
- (c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.
- (d) The applicable laws and rules relating to pesticides and their application in this state.
- (e) Integrated pest management techniques, as defined in ORS 634.650, for pest control.
- (f) Other requirements or procedures which will be of benefit to and protect the pesticide applicator, the persons who use the services of the pesticide applicator and the property of others."

9. OAR 603-057-0120 provides general standards of competence for commercial pesticide applicators; it establishes a system of written examination of applicator candidates, certification, recertification and renewal. Under these rules recertification may be obtained by re-examination or by attending training classes. OAR 603-057-0120 states, in part:

- (1) Competence in the use or handling of pesticides shall be determined on the basis of written examinations which, in addition to the requirements of OAR 603-057-0125, shall include the following general standards:
 - (a) Comprehension of labeling format, labeling terminology, and the labeled warnings and instructions;
 - (b) Knowledge of safety factors to be considered, including need and use of protective clothing, first aid procedures in the event of accidents, symptoms of various pesticide poisonings, and proper storage, transportation, handling, and disposal methods;
 - (c) Knowledge of potential consequences to the environment from the use or misuse of pesticides, as influenced by climate, topography, and existence of animal life;
 - (d) Knowledge of methods of use or application, including the various forms (dust, wettable powder, etc.) of pesticides, the compatibility of various pesticides, the types of application equipment or devices, and the times when various pesticide forms or equipment would be appropriately used; and
 - (e) Knowledge and comprehension of existing laws and rules governing pesticide use or application, including classifications of various pesticides (highly toxic, restricted use, or general). ...
- (3) An applicant for a pesticide applicator's license renewal shall be required to take a reexamination each fifth year after taking the original examination, and be subject to the provisions of this section and OAR 603-057-0125 in regard thereto. However, if the Department's records indicate the applicant for license renewal has complied with the provisions of OAR 603-057-0150, the written examination shall be waived"

10. OAR 603-057-0150 provides for license renewal through attending recertification classes in lieu of reexamination.

11. ORS 634.146 states: "(1) Pesticide operators shall prepare and maintain records on forms approved by the State Department of Agriculture. Such records shall include:

- (a) The name of the person for whom the pesticide was applied.
- (b) The approximate location of the land or property on which the pesticide was applied.
- (c) The date and approximate time of application.

- (d) The person who supplied the pesticides.
 - (e) The trade name and the strength of such pesticides.
 - (f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).
 - (g) The specific property, crop or crops to which the pesticide was applied.
 - (h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the Federal Aviation Administration number.
 - (i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.
- (2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department. ...”

12. ORS 634.372(6) states: “A person may not ... Make false, misleading or fraudulent records, reports or application forms required by the provisions of this chapter.”

13. ORS 561.305(2): states “The department may refuse to issue, refuse to renew, revoke or suspend any license or application for license issued or which may be issued pursuant to any law under its jurisdiction where it finds that the licensee has violated any provision of such law or regulations promulgated thereunder. ...”

14. ORS 634.322 states: “In carrying out and enforcing the provisions of this chapter, the State Department of Agriculture is authorized: ...

- (4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this chapter.”

15. The Department has responsibility and authority for the Pesticides program and may make any rule necessary for enforcement of program requirements. ORS 561.020; ORS 561.190; ORS Chapter 634.

16. Oregon Administrative Rules (OAR) Chapter 603 Division 057 is entitled Pesticide Control and implements provisions of the State Pesticide Control Act, ORS Chapter 634.

17. ORS 634.900 authorizes the Department to impose Civil Penalties for violations of ORS Chapter 634. ORS 634.900(2) and (3) state that:

- “(2) Notwithstanding subsection (1) of this section, if the violation of a provision relating to pesticide application, sale or labeling results from gross negligence or willful misconduct, the civil penalty for a first or subsequent violation may not exceed \$10,000.
- (3) A civil penalty may not be imposed under this section for violations other than those involving pesticide application, sale or labeling violation under this chapter.”

18. OAR 603-057-0500(13) states that “Willful misconduct’ means an act or omission that is characterized by or resulting from calculation and consideration of effects and consequences, and with awareness that the act or omission will be incompatible with any purpose of the State Pesticide Control Act.”

19. OAR 603-057-0500(5) states that “Gross negligence’ means an act or omission that does not reflect an exercise of reasonable care under the circumstances and that is characterized by conscious indifference to or reckless disregard of any purpose of the State Pesticide Control Act.”

20. ORS 634.915 states that: "(1) The State Department of Agriculture shall adopt by rule a schedule establishing the amount of civil penalty that may be imposed for a particular violation.

(2) In imposing the penalty pursuant to the schedule authorized by this section, the Director of Agriculture shall consider the following factors:

- (a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.
- (b) Any prior violations of statutes, rules or orders pertaining to pesticide application, sale or labeling.
- (c) The gravity and magnitude of the violation.
- (d) Whether the violation was repeated or continuous.
- (e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.
- (f) The violator's cooperativeness and efforts to correct the violation.
- (g) The immediacy and extent to which the violation threatens the public health or safety."

21. OAR 603-057-0500 to 603-057-0532 provide rules for the implementation of the Department's authority to impose civil penalties under ORS 634.900 through 634.915.

22. ORS 183.310(2)(a) states that: "Contested case' means a proceeding before an agency:

...

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; ..."

23. ORS chapter 60 regulates corporations transacting business in Oregon.

II. FINDINGS OF FACT

ODA Pesticides Case No. 140147

1. This Notice results from ODA's investigation of complaints associated with aerial pesticide applications performed during October of 2013, near Gold Beach, in the Cedar Valley and Grizzly Mountain areas of Curry County, Oregon. The applications were made by Pacific Air Research, Inc. (PAR). The representatives of PAR who were in contact with ODA during this investigation included its licensed applicator Steven S. Owen.

2. In order to effectively investigate complaints and allegations of possible pesticide misuse it is vital that ODA have timely access to accurate pesticide application information. This was recognized by the Oregon legislature in ORS 634.146 when it required Commercial Pesticide Operators to provide to ODA, upon the Department's request, specific application information, including truthful identity of the pesticide products applied. Through outreach and routine record inspections spanning some decades, the ODA has been advising Commercial Pesticide Operators (CPO) of the need to keep true records and provide them to ODA upon request.

3. PAR is a domestic business corporation with a principal place of business at 660 Avenue 'C', White City, Jackson County, Oregon. PAR provides aerial pesticide application services for foresters, agricultural growers, and public entities in the southwest region of Oregon.

4. PAR is licensed by ODA as a CPO, license number AG-L0000006CPO. The several categories and endorsements on this license include Forestry and Aerial Helicopter; it was originally issued during January of 1977 and has been renewed repeatedly, including for 2013 and 2014.

Steven S. Owen

5. PAR uses or employs various agents or employees. These persons include Steven S. Owen (Mr. Owen) and Connie Owen (Mrs. Owen). Mr. Owen is the applicator that is associated with PAR for purposes of ORS 634.116(4). Mr. Owen is licensed by ODA as a Commercial Pesticide Applicator (CPA), license number AG-L0074922CPA. The several categories and endorsements on this license include Forestry and Aerial Helicopter; it was originally issued during April of 1993 and has been renewed repeatedly, including for 2013 and 2014. During 2002 through 2011 Mr. Owen attended 114 hours of recertification training. Since 1994 the Department has repeatedly renewed Mr. Owen's CPA license based on certification acquired by recertification training or by examination. Mr. Owen is the sole Oregon-licensed CPA with PAR. In 2013 Mr. Owen was aware of pesticide record keeping requirements. With this knowledge Mr. Owen was responsible for preparing and maintaining pesticide records required of PAR by ORS chapter 634, and providing them to ODA upon request.

6. On October 18, 2013, ODA started getting calls from residents in Cedar Valley, alleging various health impacts and attributing them to a helicopter that had been flying overhead on October 16, 2013. On October 18, 2013 ODA knew nothing about pesticide applications in the Cedar Valley area, but knew about an application to be made by Mr. Owen for PAR onto Flynn 2008, a unit in the Grizzly Mountain area, south of the Rogue River. On October 21, 2013 ODA asked PAR, for a copy of their record of the application to Flynn 2008.

7. In Oregon allegations of pesticidal impacts on health and the environment are addressed by member agencies of the Oregon Pesticide Analytical and Response Center (PARC, ORS 634.550). Member agencies of PARC include ODA, the Oregon Department of Forestry (ODF), the Oregon Health Authority (OHA), and others.

8. On October 22, 2013 a Family Nurse Practitioner with Curry County Public Health called PARC about aerial pesticide applications in the Cedar Valley or Grizzly Mountain areas on or about October 16, 2013. Curry County Public Health wanted information for toxicology screening for Cedar Valley residents concerned about possible health impacts from PAR's pesticide applications on or about October 16, 2013. PARC inquired of ODA about these applications. As of this time ODA had not yet been told what had been applied on or about October 16, 2013 in the Cedar Valley and Grizzly Mountain areas. After Mr. Owen applied pesticides for PAR in the Cedar Valley and Grizzly Mountain areas on October 16, 2013, PARC referred multiple individuals with health concerns about these applications to OHA's Pesticide Exposure Safety & Tracking Program, and referred others, with associated animal health concerns, to PARC's consulting veterinarian. In the week or two after the Cedar Valley and Grizzly Mountain applications ODA or PARC received complaints from 16 local residents or families.

9. On October 23, 2013 ODA went to Cedar Valley, Curry County, Oregon, and met with various complainants and collected the samples tabulated below, each from the property of a complainant who had alleged health impacts attributable to the October 16, 2013 helicopter applications of pesticides, or the helicopter transiting overhead. Most of the complainants also reported detecting odors concurrent with helicopter overflights on October 16, 2013.

Sample Nos.	Description
140147 - 1A and 1B	apple leaves, back yard, 32830 Cedar Valley Road
140147 - 2A and 2B	apple leaves, front yard, 32830 Cedar Valley Road
140147 - 3A and 3B	leaves, back yard, 32855 Cedar Valley Road
140147 - 4A and 4B	camellia leaves, by driveway, 95791 Ponderosa Drive
140147 - 5A and 5B	apple leaves, back yard, 95791 Ponderosa Drive
140147 - 6A and 6B	clematis leaves, deck railing, 95791 Ponderosa Drive

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For each sample set both sample A and sample B was collected and sealed concurrently by ODA, which then offered the complainant/land owners their choice of sample A or B. The complainants all chose sample A. The ODA kept all of the samples B, secured them and sent them to ODA Laboratory Services, Portland, Oregon (the ODA lab), with a request for analysis for 2,4-D, triclopyr, glyphosate, imazapyr, and metsulfuron-methyl. At this time the ODA did not know what had been applied, and based its analysis request on pesticides listed in notifications filed with ODF for Squaw V 2013 and Squaw 2008.

10. At 1122 hours on October 28, 2013, Mr. Owen for PAR faxed to ODA a record of three October 16 applications. This record indicated that the only pesticide product applied was the glyphosate herbicide Roundup Original, EPA Reg. No. 524-445. According to the record it was applied to the Squaw V 2013, Squaw 08, and Flynn 2008, which may be referred to herein as the Crook Timberland units. The Squaw V 2013 and Squaw 08 units are on the west side of Cedar Valley. This record was faxed to ODA with a cover sheet signed by Mr. Owen. ODA told OHA, PARC, and a Cedar Valley resident spokesperson that glyphosate was the product used. Later on October 28, at 1555 hours, Mr. Owen spoke with ODA by telephone and reasserted that Roundup Original had been the only pesticide product he had applied to the Crook Timberland units on October 16, 2013.

11. On October 30, 2013 ODA called PAR and spoke with Mrs. Owen, to request any supplemental label PAR might have for applying Roundup Original to Forestry sites. During this conversation Mrs. Owen reasserted that Roundup Original had been the only product PAR had applied to the Crook Timberland units on October 16, 2013. (PAR provided the requested supplemental label on November 4.)

12. On November 6, 2013 ODA went to the Cedar Valley and Grizzly Mountain area application sites and collected the following samples:

Sample No.	Description
140147 - 8	Foliage, Flynn 2008 unit, 90 acres at ~ 42° 22.8' N, 124° 23' W
140147 - 9	Foliage, Squaw V 2013 unit, 86 acres at ~ 42° 30.5' N, 124° 23' W
140147 - 10	Foliage, Squaw 2008 unit, 90 acres at ~ 42° 31.3' N, 124° 22.9' W

The ODA secured the samples and sent them to the ODA lab with a request for analysis for glyphosate, imazapyr, metsulfuron-methyl, triclopyr, and 2,4-D. Again, the analysis request was based on pesticides listed in notifications filed with ODF.

13. On November 13, 2013, ODA went to PAR's principal place of business and met with Mr. Owen, who reiterated that the only pesticide he had applied on October 16, 2013 to the Crook Timberland units was Roundup Original. These pesticide applications may be referred to herein as the Crook Timberland applications.

14. On November 15, 2013, in response to ODA's request, PAR sent to ODA flight maps of the Cedar Valley area applications and the Flynn 2008 application. These applications included an application to a treatment site on the east side of Cedar Valley, the Kaufman unit, owned by Joseph Kaufman. This was the first ODA had heard about the Kaufman unit or the application thereto (the Kaufman application). The Department inquired of PAR about the Kaufman unit and requested a copy of PAR's record of it. Mr. Owen told ODA that he had sprayed all or at least some of these units while staged at the Squaw V 2013 unit. He stated that he had ferried sprayer loads from the Squaw V 2013 unit to the Kaufman unit. The flight maps provided by PAR showed a GPS (geographic positioning

system) record of the paths taken over and around the treated units, and showed that the helicopter flew across Cedar Valley between Squaw V 2013 and Kaufman eight times. In this Notice PAR's pesticide applications on or about October 16, 2013, on the east and west sides of Cedar Valley, may be referred to as the Cedar Valley applications.

15. On November 18, 2013 OHA advised ODA about the livestock health concerns of a Cedar Valley resident. On November 15, 2013 the resident had reported to OHA that she and her horses were exhibiting adverse health symptoms as a result of the Cedar Valley applications. PARC contacted the resident, while under the impression that the only product applied had been glyphosate.

16. On November 26 and 27, 2013 the ODA lab issued the following results of its analyses of the foliage samples collected on October 23 and November 6, 2013. Results are reported in parts per million (ppm):

Sample No.	Description	Detected 2,4-D	Detected glyphosate	Detected triclopyr	Detected imazapyr
140147 - 1B	back yard, 32830 Cedar Valley Rd	<0.010 ppm	<0.010 ppm	<0.010 ppm	<0.010 ppm
140147 - 2B	front yard, 32830 Cedar Valley Rd	0.010 ppm	<0.010 ppm	0.011 ppm	<0.010 ppm
140147 - 3B	back yard, 32855 Cedar Valley Rd	0.016 ppm	<0.010 ppm	<0.010 ppm	<0.010 ppm
140147 - 4B	by driveway, 95791 Ponderosa Dr	<0.010 ppm	<0.010 ppm	<0.010 ppm	<0.010 ppm
140147 - 5B	back yard, 95791 Ponderosa Dr	<0.010 ppm	<0.010 ppm	<0.010 ppm	<0.010 ppm
140147 - 6B	deck railing, 95791 Ponderosa Dr	<0.010 ppm	<0.010 ppm	<0.010 ppm	<0.010 ppm
140147 - 7B	back yard, 95789 Ponderosa Dr	<0.010 ppm	<0.010 ppm	<0.010 ppm	<0.010 ppm
140147 - 8	Foliage, Flynn 2008 unit,	26 ppm	0.12 ppm	51 ppm	<0.010 ppm
140147 - 9	Foliage, Squaw V 2013 unit,	0.11 ppm	16 ppm	34 ppm	0.830 ppm
140147 - 10	Foliage, Squaw 2008 unit,	28 ppm	0.81 ppm	46 ppm	0.130 ppm

No metsulfuron-methyl was detected. The minimum detection level (MDL) for all analyses was 0.010 ppm.

17. On November 27, 2013 PAR faxed to ODA its record of the Kaufman application. This record documented that on October 16, 2013 Mr. Owen, in his capacity as applicator for PAR, used a helicopter to perform the following pesticide application onto the forest property of another in Curry County, Oregon, near Gold Beach:

Treated unit	Time	Purpose	Pesticide products applied	Pesticide application rate, per acre	Active ingredient per acre	Customer
Kaufman	1200 - 1230	release	Element 4 Weedone LV6	1.25 quarts 1 quart	1.25 pounds triclopyr 1.35 pounds 2,4-D	Joseph Kaufman

The pesticide products listed above are the following herbicides:

Weedone LV6 EC broadleaf herbicide, EPA Reg. No. 71368-11, a.i. 2,4-D, Nufarm, Inc., Burr Ridge, Illinois

Element 4 specialty herbicide, EPA Reg. No. 62719-40, a.i. triclopyr, Dow AgroSciences LLC, Indianapolis, Indiana

The treatment site in the above table is approximately located as indicated below:

Unit name	size	General location	Township, Range	Section/s	Quarter/s
Kaufman	24 acres	E of Cedar Valley, N of Rogue River	36S, 14W	3 2	NE NW

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The Kaufman unit is in Curry County, Oregon, east of Gold Beach.

18. On December 3, 2013, ODA spoke with Rick Barnes of Barnes and Associates, managing consultant for the Crook Timberland sites. Mr. Barnes indicated that for the Crook Timberland applications his client, Crook Timberland, had contracted with PAR to apply various herbicides in addition to glyphosate; Mr. Barnes emailed to ODA a list of the herbicides.

19. On December 10, 2013, PAR provided to ODA an amended record of the Crook Timberland applications. This record was faxed to ODA with a cover sheet signed by Mrs. Owen, and documented that on October 16, 2013 Mr. Owen, in his capacity as applicator for PAR, used a helicopter to perform the following pesticide applications onto the forest properties of another in Curry County, Oregon, near Gold Beach:

Treated unit	Time	Purpose	Pesticide products applied	Pesticide application rate, per acre	Active ingredient per acre	Customer
Squaw V 2013	1024 - 1122	site prep	Accord XRT II Oust XP Polaris AC Element 4	8 pints 4 ounces 16 fluid ounces 2 quarts	5.07 pounds glyphosate 3 ounces sulfometuron methyl 0.5 pound imazapyr 2 pounds triclopyr	Crook Timberlands
Squaw 2008	1129 - 1240	release	Accord XRT II Weedone LV6	2.5 pints 1 quart	1.58 pounds glyphosate 1.35 pounds 2,4-D	Crook Timberlands
Flynn 2008	1630 - 1726	release	Accord XRT II Weedone LV6	2.5 pints 1 quart	1.58 pounds glyphosate 1.35 pounds 2,4-D	Crook Timberlands

The pesticide products listed in the above table are the following herbicides:

- Dupont Oust XP herbicide, EPA Reg. No. 352-601, active ingredient sulfometuron-methyl, DuPont, Wilmington, Delaware
- Weedone LV6 EC broadleaf herbicide, EPA Reg. No. 71368-11, a.i. 2,4-D, Nufarm, Inc., Burr Ridge, Illinois
- Element 4 specialty herbicide, EPA Reg. No. 62719-40, a.i. triclopyr, Dow AgroSciences LLC, Indianapolis, Indiana
- Polaris AC complete herbicide, EPA Reg. No. 228-570, a.i. imazapyr, Nufarm Americas, Inc., Burr Ridge, Illinois
- Accord XRT II herbicide, EPA Reg. No. 62719-556, a.i. glyphosate, Dow AgroSciences LLC, Indianapolis, Indiana

The treatment sites in the above table are approximately located as indicated below:

Unit name	size	General location	Township, Range	Section/s	Quarter/s
Squaw V 2013	86 acres	W of Cedar Valley, N of Rogue River	35S, 14W	32	NE, NW
Squaw 2008	90 acres	W of Cedar Valley, N of Rogue River	35S, 14W	29	NE
Flynn 2008	90 acres	S of Rogue River, near Grizzly Mntn	37S, 14W	17	NE

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These units are all in Curry County, Oregon, generally east of Gold Beach. These pesticide applications may be referred to individually by unit name. In addition, those north of the Rogue River, on either side of Cedar Valley, may be referred to collectively as the Cedar Valley area applications.

20. For the Cedar Valley applications on October 16, 2013 the helicopter loading pad was at Squaw V 2013. To get from there to the Kaufman unit Mr. Owen flew to the southeast, over residential properties in Cedar Valley.

21. On January 23, 2014 ODA went to the Kaufman unit and collected the following sample:

Sample No.	Description
140147 - 11	Foliage, Kaufman unit, 24 acres at ~ 42° 29.5' N 124° 20.5' W

The ODA secured the sample and sent it to the ODA lab, with a request for analysis for glyphosate, imazapyr, metsulfuron-methyl, triclopyr, and 2,4-D.

22. On February 3, 2014 the ODA lab issued the following results of its analysis of the Kaufman unit sample:

Sample No.	Description	Detected 2,4-D	Detected triclopyr
140147 - 11	Foliage, Kaufman unit	6.4 ppm	3.6 ppm

No glyphosate, imazapyr, or metsulfuron-methyl was detected. The minimum detection level (MDL) for all analyses was 0.010 ppm.

III. ULTIMATE FINDINGS OF FACT

1. During 2013 Pacific Air Research, Inc. was an Oregon-licensed commercial pesticide operator, managed by Steven S. Owen, an experienced Oregon-licensed commercial pesticide applicator. As a CPO and CPA, PAR and Mr. Owen used a helicopter to apply pesticides onto the forest or agricultural properties of others in Oregon. On or about October 16, 2013 PAR and Mr. Owen applied pesticide products by helicopter to forest sites in the Cedar Valley and Grizzly Mountain areas of Curry County, Oregon. Neither PAR nor Mr. Owen owned or controlled these treatment sites.

2. On October 18, 2013, ODA and PARC started getting calls from residents in Cedar Valley, alleging various health impacts and attributing them to helicopter pesticide applications performed by PAR and Mr. Owen on or about October 16, 2013. The pesticide applications had been made to forest sites in the Cedar Valley and Grizzly Mountain areas. On October 21, 2013, in response to allegations of odors and adverse health impacts, the ODA contacted PAR and requested information on the Cedar Valley and Grizzly Mountain area applications.

3. The Cedar Valley area residents, or their medical or veterinary representatives, directly or through PARC, asked ODA what had been applied during the Cedar Valley applications. On October 22, 2013 a Curry County Family Nurse Practitioner called PARC, on behalf of several Cedar Valley residents concerned about possible health impacts, and requested the pesticide application information. PARC asked ODA about this but ODA could not say what had been applied because PAR had not yet provided the requested information. During the week after the Cedar Valley and Grizzly Mountain applications multiple local residents with health concerns asked ODA, directly or

through PARC, what pesticides had been applied; for multiple weeks ODA was not able to provide that information because Mr. Owen and PAR had not truthfully responded to ODA's request.

4. On October 28, 2013, seven days after ODA's request, Mr. Owen for PAR responded with a pesticide application record that stated that the only pesticide product they had applied on or about October 16, 2013 to the Crook Timberland units, including units of the west side of Cedar Valley, was Roundup Original (glyphosate). On November 13, 2013 Mr. Owen again told ODA verbally, in person, that Roundup Original was the only product applied.

5. On November 15, 2013 a Cedar Valley resident reported her livestock health concerns to OHA, which passed the report on to ODA. The resident had reported that she and her horses had experienced adverse health symptoms as a result of the Cedar Valley applications. PARC contacted the resident, thinking that the only product applied had been glyphosate.

6. On November 26 and 27, 2013 the ODA lab issued results of its analyses of samples taken from residential areas in Cedar Valley and from the treatment sites. These results showed the detection of multiple active ingredients, in addition to glyphosate. On December 3, 2013 the managing consultant for the Crook Timberland sites advised ODA that PAR had agreed to use several herbicides, in addition to glyphosate, in the Crook Timberland applications. On December 10, 2013 PAR sent to ODA an amended record of the Crook Timberland applications, showing that the products applied to the Squaw V 2013 and Squaw 2008 units, both west of Cedar Valley, and/or to the Flynn 2008 unit, in the Grizzly Mountain area south of the Rogue River, were Weedone LV6 (2,4-D), Element 4 (triclopyr), Accord XRT II (glyphosate), Oust XP (sulfometuron methyl), and Polaris AC (imazapyr).

7. The importance of accurate and complete pesticide application records for Oregon's pesticide compliance and enforcement program has been well known in Oregon for many years. For various health and environmental reasons, the public has a strong interest in maintaining an effective pesticide compliance and enforcement program. Mr. Owen, an experienced CPA, was aware of this. From Mr. Owen's training and experience he was aware of legal requirements regarding pesticide application records, including the need to provide the Department timely access to truthful records. Mr. Owen was aware that three purposes of the State Pesticide Control Act are to prevent adverse health impacts from pesticides, to regulate the use of pesticides in the public interest, to maintain high standards in the use of pesticides. Mr. Owen knew that ODA needs timely and true information about pesticide applications in order to meet these purposes of Oregon's pesticide laws. By meeting these purposes ODA is better able to assure the public that pesticides are used responsibly in Oregon, and to maintain the ability to effectively use pesticides without unacceptable risks. A person applying or using pesticides in a responsible manner in Oregon would cooperate with and make accurate and complete information available to the agency responsible for meeting the purposes of Oregon's State Pesticide Control Act, ORS chapter 634.

8. ORS 634.146 requires CPOs to develop and maintain pesticide application records, and provide ODA timely access to them upon request. Mr. Owen, as PAR's sole CPA and senior agent or employee, made herbicide applications onto the Oregon properties of others and knew ORS 634.146 required timely and true provision of pesticide application records upon ODA's request. Based on his pesticide education and experience Mr. Owen was aware of pesticide record requirements.

9. On October 21, 2013 ODA asked PAR for its record of the Flynn 2008 application. For 50 days, from October 21, to December 10, 2013, PAR and Mr. Owen withheld from ODA the true

record of the herbicide applications of October 16, 2013, to the Crook Timberland units. During this time ODA's ability to respond to the public's health concerns was compromised.

10. Regarding the October 16, 2013 applications to the Crook Timberland units, and subsequent to ODA's request, Mr. Owen for PAR provided ODA with false record information on three occasions: First, the October 28 provision of false written records. Second, the October 28 telephonic reassertion that the only pesticide applied had been a glyphosate herbicide. Third, the November 13 in-person reassertion that the only pesticide applied had been a glyphosate herbicide.

11. Mr. Owen calculated and considered the effects and consequences of failing to timely provide true information. Before, during and after the Crook Timberland and Kaufman applications of October 16, 2013, Mr. Owen had access to ORS 634.146 and knew what it required. As of October 23, 2013 Mr. Owen knew that local residents had raised concerns about potential health and environmental impacts from the Crook Timberland applications, and why ODA wanted the requested information. During this calculation and consideration Mr. Owen was aware of the fact that failing to timely provide true information, when ODA needed the information to address local citizens' allegations of adverse health and environmental impact, was an act or omission that was incompatible with purposes of the State Pesticide Control Act: To prevent adverse health impacts from pesticides, to regulate the use of pesticides in the public interest, and to maintain high standards in the use of pesticides.

12. Mr. Owen did not exercise reasonable care after the Crook Timberland applications because he failed to provide timely access to true records as requested by ODA and required by ORS 634.146. Mr. Owen's failure to comply with these statutory requirements, when ODA needed the information to address local citizens' allegations of adverse health and environmental impact, were acts or omissions that did not reflect the exercise of reasonable care. During these acts or omissions Mr. Owen was aware of ORS 634.146 requirements regarding records and why ODA wanted them. In committing these acts or omissions Mr. Owen was consciously indifferent to or recklessly disregarded purposes of the State Pesticide Control Act: To prevent adverse health impacts from pesticides, to regulate the use of pesticides in the public interest, and to maintain high standards in the use of pesticides.

These ultimate findings of fact are based on the findings of fact.

IV. CONCLUSION OF LAW

The Oregon Department of Agriculture determines that Steven S. Owen violated Oregon Revised Statutes (ORS) Chapter 634 as follows:

VIOLATION NO. 1

Steven S. Owen violated ORS 634.372(6), which states: **A person may not: ... Make false, misleading or fraudulent records, reports or application forms required by the provisions of this chapter.** Since 1993 Mr. Owen has been an Oregon-licensed Commercial Pesticide Applicator. During 2013 he was the owner/manager of, and sole CPA for, Pacific Air Research, Inc., an Oregon-licensed Commercial Pesticide Operator. Mr. Owen was the pesticide applicator for PAR for the purposes of ORS 634.116(4). As a CPA Mr. Owen applied pesticide products to properties owned or controlled by others in Oregon. On October 16, 2013 Mr. Owen, as owner/applicator with PAR, used a helicopter to apply pesticide products to forest sites of others in Oregon. The treated forest sites included Crook Timberland units and were in the Cedar Valley and Grizzly Mountain areas of Curry County, Oregon.

Steven S. Owen

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On October 21, 2013, having received complaints about the applications in the Cedar Valley area, ODA asked PAR for copies of the subject pesticide application records. On October 28 Mr. Owen faxed to ODA a record, under cover with his own signature, that stated that he had applied Roundup Original herbicide, EPA Reg. No. 524-445, and no other pesticide product, to the Crook Timberland units. Mr. Owen repeated this assertion verbally on October 28. On November 13, 2013 Mr. Owen again asserted to ODA, in person, that glyphosate had been the only pesticide used. On November 27, 2013 ODA's laboratory analysis of samples from the treatment sites found all of the active ingredients in Weedone LV6 EC (2,4-D), Element 4 (triclopyr), Polaris AC (imazapyr), and Accord XRT II (glyphosate), rather than just glyphosate, the active ingredient of Roundup Original. On December 3, 2013 Crook Timberland's managing consultant identified to ODA the several herbicides that PAR had been contracted to apply to the Crook Timberland units on or about October 16, 2013. On December 10, 2013 PAR provided ODA with a record that documented the pesticides applied to the Crook Timberland units by Mr. Owen and PAR on or about October 16, 2013; the pesticide products were:

Dupont Oust XP herbicide, EPA Reg. No. 352-601
Weedone LV6 EC broadleaf herbicide, EPA Reg. No. 71368-11
Element 4 specialty herbicide, EPA Reg. No. 62719-40
Polaris AC complete herbicide, EPA Reg. No. 228-570
Accord XRT II herbicide, EPA Reg. No. 62719-556

ORS 634.146 states: "(1) Pesticide operators shall prepare and maintain records on forms approved by the State Department of Agriculture. Such records shall include: ...

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons). ...

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department. ..."

ORS 634.116(4) requires that a CPO have at least one Oregon-licensed CPA as an officer or employee. Mr. Owen is the only Oregon-licensed CPA PAR has or had during 2013. Consequently, during this time Mr. Owen was the only person at PAR who had demonstrated knowledge about the responsibilities of CPOs and CPAs, and he was responsible for PAR's meeting its responsibilities as a CPO, including pesticide record keeping and provision of such records to ODA upon request.

The information about the Crook Timberland applications that Mr. Owen provided to ODA prior to December 10 was false, misleading or fraudulent, in violation of ORS 634.372(6). Persisting in providing false information for 50 days, and through three additional communications with ODA, was the result of willful misconduct or gross negligence and occurred after June 25, 2007. ORS 634.900(2) authorizes a civil penalty of up to \$10,000 for this violation.

1. During 2013 Mr. Owen was the sole CPA for PAR and the person with the education and experience informing him, and the business, of the requirements for preparing and maintaining pesticide application records for the commercial applications it performed in Oregon, and the provision of access to such records to ODA upon the Department's request. For seven weeks after ODA's request for records Mr. Owen intentionally and willfully refused to provide true information, as required by ORS 634.146, and ODA was thus unable to provide citizens with information they requested that was potentially important to their health. Failing to provide truthful pesticide application information as required by ORS 634.146 was contrary to the public's interest in having effective pesticides available for use at acceptable levels of risk. This public interest is supported by three purposes of the State

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Pesticide Control Act. Those purposes are to prevent adverse health impacts from pesticides, to regulate the use of pesticides in the public interest, and to maintain high standards in the use of pesticides. Mr. Owen had experience and/or training regarding pesticides and took actions relevant to these matters. Mr. Owen knew that it was unlawful to fail to timely provide truthful pesticide application information as required by ORS 634.146, knew that it was inconsistent with purposes of the State Pesticide Control Act, and knew that it would compromise ODA's ability to respond to health concerns.

2. Mr. Owen calculated and considered the effects and consequences of providing false information about pesticide use, in spite of the requirements of ORS 634.146, and persisted in false claims about what he had applied, knowing that such falsehood was incompatible with at least three purposes of the State Pesticide Control Act: To prevent adverse health impacts from pesticides, to regulate the use of pesticides in the public interest, and to maintain high standards in the use of pesticides.

Alternatively, in providing false information about pesticide use, Mr. Owen committed an act or omission that did not reflect reasonable care under the circumstances, and was characterized by conscious indifference to or reckless disregard of at least three purposes of the State Pesticide Control Act: To prevent adverse health impacts from pesticides, to regulate the use of pesticides in the public interest, and to maintain high standards in the use of pesticides.

3. ORS 634.146 provided understandable information about the records that CPOs must keep, and when it must be provided or made available to ODA. CPOs applying pesticides to Oregon properties of others must maintain records of those applications, including the identities of the pesticides used. Such records must be made available to ODA upon the Department's request. ORS 634.146 provides a reasonable standard of records maintenance and provision. Mr. Owen knew the requirements of ORS 634.146, and disregarded them.

4. Mr. Owen was a managing owner of, and pesticide applicator for, PAR at all times during 2013 that are relevant to these matters. Mr. Owen was responsible for the operations of PAR, including all herbicide application or handling activity. Mr. Owen had experience and training regarding pesticides and took the actions relevant to these matters. Mr. Owen was responsible for his activities as a managing owner, agent or employee of PAR, including herbicide application activity and record keeping.

This violation is based on the findings of fact and ultimate findings of fact.

V. PENALTY and DEPARTMENT ACTION

VIOLATION NO. 1

In response to this violation the Department hereby issues a civil penalty to Steven S. Owen, and proposes to revoke Mr. Owen's CPA license; after revocation this license will not be renewed and another license will not be issued until one year has passed, when a new CPA license may be issued to Mr. Owen. The total civil penalty for Violation No. 1 is \$10,000.00. The penalty is determined using the criteria in ORS 634.900 to 634.915 and OAR 603-057-0500 to 603-057-0532.

CIVIL PENALTY

The provisions for civil penalties imposed for violations of ORS 634 are given in ORS 634.900. Section (2) of ORS 634.900 states "Notwithstanding subsection (1) of this section, if the violation of a

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provision relating to pesticide application, sale or labeling results from gross negligence or willful misconduct, the civil penalty for a first or subsequent violation may not exceed \$10,000."

The violation cited in this Notice resulted from willful misconduct. OAR 603-057-0500(13) states that "Willful misconduct" means an act or omission that is characterized by or resulting from calculation and consideration of effects and consequences, and with awareness that the act or omission will be incompatible with any purpose of the State Pesticide Control Act." Alternatively, the violation cited in this Notice resulted from Gross negligence. OAR 603-057-0500(5) states that "Gross negligence" means an act or omission that does not reflect an exercise of reasonable care under the circumstances and that is characterized by conscious indifference to or reckless disregard of any purpose of the State Pesticide Control Act."

The penalty for the violation is calculated using the formula in OAR 603-057-0525 and 603-057-0532. The calculation is summarized as follows:

$$\begin{aligned} & \text{NB} + [(0.1 \times \text{NB}) (\text{P}+\text{H}+\text{C})] \\ & 1 \times \$10,000.00 + [(0.1 \times 10,000) (0+0+2)] = \$12,000.00 \\ & \$12,000.00 \times 1 \text{ current violation} = \$12,000.00 \end{aligned}$$

1. N, the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act, is 1. OAR 603-057-0532(1)(a).

2. B, the base penalty is \$10,000.00. OAR 603-057-0532(1)(b). The base penalty was determined as follows:

a. The MAGNITUDE is CATEGORY I (MAJOR) under OAR 603-057-0532(1)(b)(A) and OAR 603-057-0525(2)(a)(H).

b. The GRAVITY is HIGH LEVEL because the product applied was used in a wide area of application. OAR 603-057-0532(1)(b)(B), OAR 603-057-0525(3)(a)(D)(i).

3. P, past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act, is 0 (zero) because there were no prior violations within the previous three years. OAR 603-057-0532(1)(c), OAR 603-057-0530(1)(c)(A).

4. H, the history of taking steps to correct a violation, is 0 (zero) because there is no prior history or there is insufficient information on which to base a finding. OAR 603-057-0532(1)(d), OAR 603-057-0530(1)(d)(B).

5. C, cooperativeness is 2 (two). Mr. Owen was uncooperative with this investigation and repeatedly provided false information. OAR 603-057-0532(1)(e), OAR 603-057-0530(1)(f)(A).

As required by ORS 634.900, the civil penalty is decreased to \$10,000.00

LICENSE REVOCATION, REFUSAL TO ISSUE OR RENEW

The Commercial Pesticide Applicator license of Steven S. Owen, (AG-L0074922CPA), is revoked as of the date this Notice becomes Final. One year after revocation, subject to ODA's satisfaction with

Steven S. Owen

Mr. Owen's compliance with the terms of the Final Order in this case, the Department may issue a new CPA license to Mr. Owen.

VI. RIGHT TO A HEARING

You are entitled to a contested case hearing as provided by statutes and rules including, but not limited to: ORS Chapter 183 (the Administrative Procedures Act), including 183.413 to 183.470, and ORS 183.745; OAR Chapter 137, division 3, including OAR 137-003-0501 to 137-003-0700; ORS 634.905; and OAR chapter 603, division 57. **If you want a hearing regarding the Civil Penalty your request must be made in writing to the Department within ten business days of the date that you receive the NOTICE; OAR 603-057-0510(4)(f).**

If you want a hearing regarding the License Revocation or Refusal to Issue or Renew, your request must be made in writing to the Department within 21 calendar days of the date that you receive the NOTICE; ORS 183.415.

Any request for a hearing should be made to the attention of:

Michael Babbitt
Pesticides Program
Oregon Department of Agriculture
635 Capitol Street NE
Salem, Oregon 97301-2532

If you make a timely request for a hearing you will be notified of the date, time and place of such hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. An administrative law judge from the Office of Administrative Hearings will preside at any hearing, assigned as required by ORS 183.635. The Director of the Department has authority to issue the final order.

If the recipient of the enforcement notice is a corporation, partnership, limited liability company, unincorporated association, trust, or other entity that is not a natural person or individual, it must be represented in the contested case process by an attorney unless otherwise authorized by law. Furthermore, the attorney representing such a corporation or other entity must ratify the request for hearing, in writing, within 28 days of the date that the request is received by the agency; OAR 137-003-0550. This provision does not, however, require any entity to be represented by an attorney at any informal conference. Individuals may but are not required to be represented by counsel. The state will not provide legal counsel in administrative cases such as this, but private legal aid organizations may be able to assist a person with limited financial resources.

VII. FINAL ORDER

If you do not make a timely request for a hearing, you will waive your right to request a hearing and this order will become final and effective; OAR 137-003-0672(2).

If you request a hearing but later fail to appear at the hearing, withdraw the request for a hearing, or notify the agency or administrative law judge that you will not appear at the hearing and it is not rescheduled, you will waive your right to a hearing and this order will become final; OAR 137-003-0672(3). In these circumstances, the Department will mail you a notice stating when this order became final.

Steven S. Owen

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The Department has designated the relevant portions of its files on the subject of this matter, including all materials that you have submitted relating to this matter, as the record in this case for the purpose of proving a *prima facie* case upon default.

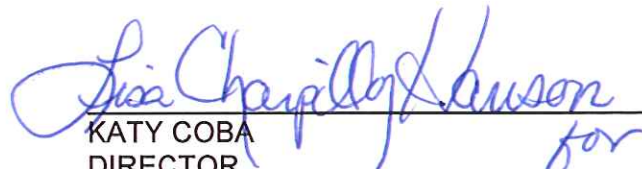
If this order becomes final, the Department will issue a judgment against you and a civil penalty in the amount set out in this Notice will become due and payable 70 (seventy) days after the order becomes final. ORS 183.745. Your check or money order should be made payable to the Oregon Department of Agriculture and sent to:

Oregon Department of Agriculture
635 Capitol Street NE
Salem, Oregon 97301-2532

If this order becomes final, the Department will have revoked your CPA license and will refuse to renew it or issue a new license.

If this order becomes final you will have the right to appeal the order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the date this order becomes final. If you do not file a petition for judicial review within this time period you will lose your right to appeal.

DATED this 8th day of August, 2014


KATY COBA
DIRECTOR
OREGON DEPT. OF AGRICULTURE
for

NOTE: Copies of the Department's investigation report will be provided upon request. The request must be made in writing. There may be a monetary charge for some reports. The written request should be made to: Oregon Department of Agriculture, Pesticides Program, ATTN: SUNNY JONES, 635 Capitol Street NE, Salem, Oregon 97301-2532.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

STEVEN S. OWEN

Oregon Department of Agriculture, Pesticides Case No. 140147

Notice of Contested Case Rights and Procedures:

Pursuant to ORS 183.413(2), you are entitled to be informed of the following:

1. **Time and place of hearing.** The time and place of hearing is or will be set forth in the Notice of Hearing issued by the Administrative Law Judge (ALJ) after the prehearing conference.
2. **Issues to be considered at hearing.** The issues to be considered at hearing are those set forth in the Notice issued by the Oregon Department of Agriculture (ODA), entitled Notice of Imposition of Civil Penalty, Proposed Revocation of Applicator License, Proposed Refusal to Issue or Renew Applicator License, Opportunity for a Hearing, and Proposed/Final Order, and dated August 8, 2014, and those issues related thereto that are properly before the presiding officer to this proceeding.
3. **Law that applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in Chapter 183 and 634 of the Oregon Revised Statutes (ORS); the administrative rules of the ODA, OAR 603-057-0505 through 603-057-0515, and the Attorney General's Office of Administrative Hearing Rules, OAR 137-003-0501 to 137-003-0700. Other laws involved include: ORS Chapters 561, 570, and 616; additional rules of the ODA, OAR 603-057; Title 7, Chapter 6, Subchapter II of the United States Code; and Title 40, Parts 152, 156, and 180 of the Code of Federal Regulations.
4. **Right to attorney.** You may be represented by an attorney at the hearing. Most persons are represented by counsel for hearings involving ORS 634. You are not required to be represented by counsel, unless you are a corporation, partnership, or similar entity, in which case you are required to be represented by an attorney at the hearing, and more immediately, your request for a hearing must be ratified by an attorney within 28 days of the agency's receipt of the request, OAR 137-003-0550. If you are not represented at the hearing and during the hearing you determine that representation by an attorney is necessary, you may request a recess to allow you an opportunity to secure the services of an attorney. The hearing ALJ will decide whether to grant such a request. The ODA will be represented by an attorney. Legal aid organizations may be able to assist a party with limited financial resources.
5. **Administrative Law Judge.** The person presiding at the hearing is known as the administrative law judge (ALJ). The ALJ will rule on all matters that arise at the hearing, subject to agency consideration of matters transmitted for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640 or OAR 137-003-0570. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings (OAH). The OAH consists of employees of, and independent contractors with, the Chief ALJ. The ALJ does not have the authority to make the final decision in the case. The final determination will be made by the Director of the ODA.
6. **Discovery.** If the agency or the ALJ authorizes discovery, the agency or the ALJ shall control the methods, timing and extent of discovery. Discovery is permitted in this proceeding. Discovery is permitted as provided in OAR 137-003-0570, OAR 137-003-0572, and OAR 137-003-0573.
7. **Witnesses.** A witness must testify under oath or affirmation to tell the truth. The ODA or the ALJ will issue subpoenas for witnesses on your behalf upon a showing that their testimony is relevant to the case and is reasonably needed by you to establish your position. If you are represented by an attorney, your attorney may issue subpoenas for attendance of witnesses at hearing. Payment of witness fees and mileage to the person subpoenaed is your responsibility.
8. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the ODA's proposed action is appropriate. The order of presentation of evidence is normally as follows:
 - a. Testimony of witnesses and other evidence of the ODA in support of its proposed action.
 - b. Testimony of your witnesses and your other evidence.
 - c. Rebuttal evidence by the ODA and by you.
9. **Burden of presenting evidence.** The burden of presenting evidence to support an allegation or position rests upon the proponent of the allegation or position. If you have the burden of proof on an issue, or if you intend to present evidence on an issue in which the agency has the burden of proof, you should approach the hearing prepared to present the testimony of

witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by ALJ.

10. **Admissible evidence.** Relevant evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much reliance the ALJ and the Director of the ODA will place on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of the agency or ALJ. The agency or ALJ may take "official notice" of facts based on the agency's or ALJ's knowledge in a specialized field. This includes notice of general, technical or scientific facts. The agency or ALJ may also take "judicial notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. You will be informed if the agency or ALJ takes "official notice" or "judicial notice" of any fact and you will be given an opportunity to contest any facts so noticed.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of the facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written material may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.

11. **Objections to evidence.** Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

12. **Continuances.** There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.

13. **Record.** A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This may be done by use of a tape or digital recorder or court reporter. The record is generally not transcribed, unless there is an appeal to the Court of Appeals. However, you may obtain a copy of the tape recording upon payment of the costs of making a copy of the tape. If a court reporter is used, you may obtain a transcript or a copy of the court reporter's transcript upon payment of a transcription fee or other fee that the parties may agree upon.

14. **Proposed Order and Exceptions.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended agency action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions," to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed. You will be notified when you may appear and make oral argument to the agency.

15. **Final Order.** The agency will render the final order in this case. The agency may modify the proposed order issued by the ALJ. If the agency modifies the proposed order in any substantial manner, the agency in its order will identify the modifications and will provide an explanation as to why the agency made the modifications. The agency may modify a proposed finding of "historical" fact only if the proposed finding is not supported by a preponderance of the evidence in the record.

16. **Appeal.** If you wish to appeal the final order, you must file a petition for judicial review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See Oregon Revised Statutes 183.482.

17. **Notice to Active Duty Servicemembers.** Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.