

**BEFORE THE DIRECTOR OF
THE DEPARTMENT OF AGRICULTURE OF
THE STATE OF WASHINGTON**

**In the Matter of the
Pesticide Application of:**

Randall Gleasman

Respondent

PM 14-0009

STIPULATION AND FINAL ORDER

The Washington State Department of Agriculture, Pesticide Management Division (Department), and Randall Gleasman (“Mr. Gleasman”), Chelan, Washington, Respondent, stipulate and agree to the following for the purposes of settlement of the above referenced matter:

AGREED FACTS

1. On December 1, 2014, the Department issued a Notice of Intent to assess Mr. Gleasman a civil penalty in the amount of one thousand eight hundred dollars (\$1,800). A copy of the Notice of Intent is attached as “Exhibit A” and is incorporated by reference into this Stipulation and Final Order. The Notice of Intent alleges that Mr. Gleasman violated provisions of chapters 15.58 and 17.21 RCW and chapter 16-228 WAC.
2. Mr. Gleasman timely requested a hearing in this matter.
3. Mr. Gleasman now desires to resolve this matter without the necessity of an administrative hearing. The Department and Mr. Gleasman have reached certain agreements and now enter into the following Stipulation and Final Order to settle this matter:


STIPULATION

1. All parties agree that the Department has jurisdiction over this matter.
2. To settle this matter, Mr. Gleasman agrees to pay the Department one thousand two hundred dollars (\$1,200). Payment is due thirty (30) days after the Director signs this Stipulation and Final Order.

3. The Department contends that off target pesticide drift did occur onto the Keeler property. To help mitigate future pesticide drift concerns, Mr. Gleasman has removed the outer row of fruit trees providing a seventy-five foot buffer, is installing a twenty-five foot high windscreen, and will have a person (spotter) monitoring applications who will also video tape applications, as needed. Mr. Gleasman denies the Department's allegation of human exposure as alleged in the Notice of Intent. The agreement of the parties in this stipulation is made to settle this matter. The payment of money as set forth in this stipulation, shall not be construed as a finding against or an admission by Mr. Gleasman that he caused a human exposure condition and thus violated provisions of chapter 15.58 and 17.21 RCW and chapter 16-228 WAC.
4. In consideration of Mr. Gleasman's agreement to, and performance of, the conditions set forth in paragraph 2., the Department agrees that the acts as set forth in the Notice of Intent will not form the basis of future administrative action, but if Mr. Gleasman commits a future violation of the pesticide laws or rules, this incident will be considered a previous violation and used for the purposes of determining an appropriate sanction under chapters 34.05, 43.05, 15.58, and 17.21 RCW and rules adopted thereunder.
5. Mr. Gleasman agrees to release and discharge the state of Washington, the Department, its agents and employees from all claims, damages and causes of action arising out of or related to the circumstances alleged in the Notice of Intent and the terms of this Stipulation and Final Order.
6. Mr. Gleasman agrees that failure to comply with the conditions set forth in paragraph 2., will vacate this Stipulation and Final Order, and that the Director will issue a Final Order imposing the full extent of the penalty as described in the Notice of Intent.
7. By signing this Stipulation and Final Order Mr. Gleasman hereby waives the right to a hearing on the underlying charges and penalties set forth in the Notice of Intent.
8. If Mr. Gleasman fails to meet the conditions set forth in paragraph 2., the Department may choose to take other actions available under Washington state law including, but not limited to, imposing civil penalties, the suspension or revocation of a pesticide license, the denial of a pesticide license application or referring the matter to a collection agency for collection of civil penalties.

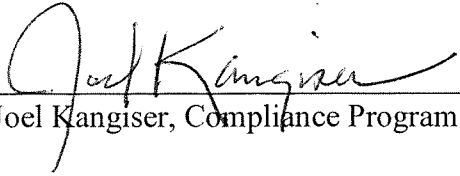
Entered into and stipulated by:

Randall Gleasman
PO Box 2086
Chelan, WA 98816


Randall Gleasman, Owner

Date: 12/24/14

**WASHINGTON STATE DEPARTMENT OF AGRICULTURE
PESTICIDE MANAGEMENT DIVISION**


Joel Kangiser, Compliance Program Manager

Date: January 5, 2015


FINAL ORDER

Having reviewed the above Stipulation, the Director hereby approves the Stipulation and orders that the parties comply with the terms of the Stipulation. Payment shall be made payable to the Washington State Department of Agriculture and sent to:

**Washington State Department of Agriculture
Attention: Fiscal Office
P.O. Box 42591
Olympia, Washington 98504-2591**

Entered into and ordered by:

WASHINGTON STATE DEPARTMENT OF AGRICULTURE


Don R. Hover, Director *Deputy* Date: 1-5-15
Director for:

Attachment: Exhibit A – NOI (PM-14-0009)

cc: Pesticide Management Case File # BAO-0001-14

Exhibit A



STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

FIRST CLASS AND CERTIFIED MAIL: RETURN RECEIPT REQUESTED

December 1, 2014

Randall Gleasman
PO Box 2086
Chelan, WA 98816

Re: Notice of Intent No. PM-14-0009

Dear Mr. Gleasman:

Enclosed is a Notice of Intent to Assess a Civil Penalty and a Notice of Rights and Opportunity for a Hearing No. PM-14-0009. I have also enclosed a copy of the case investigation report for your information. Please read these documents carefully, and note the strict deadline for your response. If you wish to contest the Notice of Intent, your request for hearing must be **POSTMARKED OR RECEIVED** by the Department not later than December 26, 2014.

If you have any questions about these documents please call me at (509) 533-2686.

Sincerely,

Tim W. Schultz, Case Review Officer
Pesticide Management Division

Enclosures

CERTIFICATE OF SERVICE

I certify that I caused to be mailed a copy of these documents to the within-named interested parties via

FIRST CLASS & CERTIFIED MAIL
at their respective addresses, postage prepaid, on

December 1, 2014

Representative,
Washington State Department of Agriculture

cc: Bruce Olson, Compliance Investigator
Elizabeth McNagny, Administrative Regulations
WSDA Case File: BAO-0001-14

91 7108 2133 3939 2035 2056

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF AGRICULTURE OF THE
STATE OF WASHINGTON**

**In the Matter of the
Pesticide Application of:**

Randall Gleasman

PM-14-0009

**NOTICE OF INTENT TO ASSESS A
CIVIL PENALTY AND NOTICE OF
RIGHTS AND OPPORTUNITY FOR
HEARING**

TO: Randall Gleasman
PO Box 2086
Chelan, WA 98816

Section 1: JURISDICTION

1.1 Randall Gleasman, owns and operates an orchard (Manzana Ranch, LLC) located at 3515 Ivan Morse Road, Manson, Washington 98831 (3 miles northeast of Manson, Washington). Mr. Gleasman applies pesticides to the Manzana Ranch orchard and is therefore subject to the jurisdiction of the Department under chapters 15.58 and 17.21 RCW, and chapter 16-228 WAC.

Section 2: LEGAL AUTHORITY

- 2.1** RCW 15.58.260 The Department may impose civil penalty or suspend license for violations of chapter 15.58 RCW.
- 2.2** RCW 15.58.335 The Department may impose civil penalties up to \$7,500 per violation for violations of chapter 15.58 RCW.
- 2.3** RCW 17.21.130 The Department may suspend license for violations of chapter 17.21 RCW.
- 2.4** RCW 17.21.315 The Department may impose civil penalties up to \$7,500 per violation for violations of chapter 17.21 RCW.
- 2.5** WAC 16-228-1130 The Department has adopted rules for determining the amount of penalty in a given case.

Section 3: BACKGROUND

- 3.1 Manzana Ranch, LLC, is owned by Randall Gleasman, 3515 Ivan Morse Road, Manson, Washington 98831, along with his mother, Phyllis Gleasman. Mr. Gleasman is the orchard's manager and performs pesticide applications at the Manzana Ranch orchard.
- 3.2 Sam Keeler lives at 3200 Ivan Morse Road, Manson, Washington 98831.

Section 4: VIOLATION

Allegations

- 4.1 On the morning of April 9, 2014, between 6:00 a.m. and 6:45 a.m., Randall Gleasman made an air-blast pesticide application to 1.2 acres of apples in Block 6 of the Manzana Ranch orchard.
- 4.2 On April 9, 2014, at 12:40 p.m. Sam Keeler contacted Bruce Olson, WSDA Compliance Investigator, via telephone alleging that spraying on the Manzana Ranch orchard was blowing onto his property and person. Mr. Keeler stated that he arrived at his home around 11:45 a.m. and noted it was windy and he smelled a "pepper" odor which caused a burning sensation to his eyes, nose and lungs. Mr. Keeler left his residence around 1:40 p.m. and went to a condominium he has in Manson, Washington, where he took a shower and washed his clothes.
- 4.3 On April 9, 2014, at 4:00 p.m. Bruce Olson arrived at the Keeler property. Mr. Olson stated he did not experience any strong chemical or pepper like odor.

While at the Keeler property, Mr. Olson collected two swab samples for residue analysis. Both samples tested positive for chlorpyrifos, the active ingredient in Lorsban Advanced, which was one of the products applied by Mr. Gleasman.

Sample #001: 9.8 ug of chlorpyrifos was found in a swab sample from an east window on the north side of the Keeler garage.

Sample #002: 17.0 ug of chlorpyrifos was found in a swab sample from a west window on the north side of the Keeler garage.

The Mr. Keeler's garage is located approximately sixty feet south of the Manzana Ranch Block 6 with Keeler house another 260 feet further to the south. The two properties are separated by a paved private driveway.

- 4.4 On April 9, 2014, at 5:40 p.m. Dr. Danielle Saunders, Mr. Keeler's partner, arrived at their Ivan Morse Road residence. She stated to Mr. Olson that she could smell and taste a "pepper" like odor and experienced a burning sensation in her lungs.
- 4.5 Pesticide application records submitted by Mr. Gleasman indicated winds were 5 miles

per hour from the northeast. This would be in the direction of the Keeler property.

4.6 The pesticide tank mix applied by Mr. Gleasman contained the following pesticides:

4.6a Dow AgroSciences Lorsban Advanced Insecticide (EPA Reg. No. 62719-591) contains the active ingredient: chlorpyrifos. The toxicity warning on the label is "Warning" which indicates this product is moderately toxic. The product's label states:

"May be fatal if swallowed. Causes skin irritation. Causes moderate eye irritation. Harmful if inhaled. Prolonged or frequently repeated skin contact may cause allergic reactions in some individuals. Do not get on skin or on clothing. Avoid contact with the eyes and breathing vapor or spray mist...It is a violation of Federal law to use this product in a manner inconsistent with its labeling...Do not allow spray to drift from the application site and contact people, structures people occupy at any time and the associated property..."

4.6b Wilbur-Ellis 440 Superior Spray Oil (Insecticide-Fungicide-Miticide) (EPA Reg. No. 2935-546) contains the active ingredient: mineral oil. The toxicity warning on the label is "Caution" which indicates this product is low in toxicity. The product's label states:

"Harmful if absorbed through skin. Avoid contact with eyes, skin or clothing. Prolonged or frequently repeated skin contact may cause allergic reactions in some individuals...It is a violation of Federal law to use this product in a manner inconsistent with its labeling...Do not apply this product in a way that will contact workers or other persons, either directly or through drift."

4.7 The Washington State Department of Health (DOH Case #140033) confirms the symptoms reported by Mr. Keeler and Dr. Saunders were pesticide-related illnesses.

4.8 Randall Gleasman's April 9, 2014, pesticide application drifted onto the adjacent Keeler property. This off target drift resulted in the exposure reactions by Mr. Keeler and Dr. Saunders. Randall Gleasman is therefore in violation of the following laws and rules:

4.8a RCW 15.58.150(2)(c) prohibits the use of pesticides "contrary to label directions", and WAC 16-228-1500(1)(b) prohibits the use of pesticides "inconsistent with labeling..." which were violated because both pesticide labels had precautions to not allow the products to move off target and expose workers or other persons.

4.8b RCW 17.21.150(4) and WAC 16-228-1500(1)(e) prohibits operation in "a faulty, careless, or negligent manner" which were violated because the application was allowed to move off target, exposing adjacent property and people.

4.8c WAC 16-228-1200(1) prohibits the use of pesticides "in such a manner as to endanger humans and their environment..." which was violated because the pesticide application moved off target onto adjacent residential property.

4.8d WAC 16-228-1220(2) prohibits application of pesticides in a manner that causes injury to humans which was violated because the pesticide application moved off target onto adjacent property, causing exposure reactions by two people.

Section 5: PENALTY

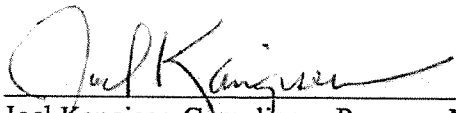
5.1 The Department is issuing this penalty without a prior Notice of Correction under RCW 43.05.110 as the violation had the probability of placing a person(s) in danger of bodily harm. Randall Manzana is not entitled to waiver of the penalty or a period of correction as no correction of the violation is possible, the violation presents a direct danger to public health or poses a potentially significant threat to human health or the environment. [RCW 34.05.110(3) and (4)]

5.2 Under WAC 16-228-1130, first time violations where adverse effects were probable are assessed a civil penalty in the amount of four hundred fifty dollars (\$450) and a suspension of the Private Applicator license for seven (7) days. The Department has determined that, since no pesticide license is required for the farm itself, a licensing action would not serve as an effective deterrent. Therefore, the Department intends to proportionately increase the civil penalty as allowed under WAC 16-228-1120(2)(a) where a first time violation would be assessed a civil penalty in the amount of nine hundred dollars (\$900).

5.3 Due to the exposure of two people from the April 9, 2014, pesticide application, the Department is enhancing the civil penalty based on the seriousness of the violation by applying the aggravating factors in WAC 16-228-1120(3)(b), "the high magnitude of the harm, or potential harm, including quantity and/or degree, to humans, animals, plants, property or the environment caused by the violation(s)". The Department aggravates by multiplying the number of persons exposed (2 people) and therefore intends to assess a civil penalty of one thousand eight hundred dollars (\$1,800).

Section 6: SUMMARY OF INTENDED ACTIONS

6.1 For violations of chapters 15.58 and 17.21 RCW, and chapter 16-228 WAC; the Department intends to assess against Randall Gleasman a civil penalty in the amount of one thousand eight hundred dollars (\$1,800).


Joel Kangiser, Compliance Program Manager
Pesticide Management Division
Washington State Department of Agriculture

Date: December 1, 2014

NOTICE OF RIGHTS AND OPPORTUNITY FOR HEARING

You have the right to request a hearing to determine whether the allegations in this notice are true and whether you should be assessed a civil penalty in the amount of one thousand eight hundred dollars (\$1,800). You may submit the enclosed Request for Hearing form in any of these three ways:

1. Regular mail.
 2. Fax.
 3. E-mail.
1. For regular mail, complete the enclosed Request for Hearing form and return it to:
Tim W. Schultz, Case Review Officer
Pesticide Management Division
Washington State Department of Agriculture
P.O. Box 42589
Olympia, Washington 98504-2589
 2. By fax, complete the enclosed Request for Hearing form and fax it to (360) 902- 2093.
 3. By e-mail, in the body of the e-mail include your responses to Section One, Section Two, and Section Three of the enclosed Request for Hearing form and send to: tschultz@agr.wa.gov.

Your request for a hearing must be postmarked or received by the Department of Agriculture within twenty five (25) days of service of this notice. The date of service of this notice is the date the Department of Agriculture deposited this notice in the mail (date noted on the Certificate of Service). Your 25 day deadline to request a hearing is calculated from this date. **Failure to adhere to these deadlines will constitute a waiver of your right to a hearing.**

If you timely request a hearing, a hearing will be scheduled and you will receive at least seven (7) days advance notice of the date, time and place of hearing. You may be represented by counsel at the hearing if you desire. The hearing will be as informal as is practical within the requirements of the Administrative Procedure Act (APA), chapter 34.05 RCW. The hearing will be recorded. The purpose of the hearing is to determine whether the violations alleged in the Notice of Intent are true and whether the Department should assess a civil penalty. Technical rules of evidence are not binding except for rules of privilege. You have the right to present evidence and witnesses on your behalf and to cross-examine those witnesses presented in support of the Program. You may require the attendance of witnesses by subpoena.

INTERPRETER AVAILABILITY: If you or a witness for you is a person who cannot readily speak, hear, read, understand, or communicate in the English language, a qualified interpreter may be appointed at no cost to you or your witness only for the hearing. You may request a qualified interpreter on the attached Request for Hearing form.

If either you do not request a hearing or if your written hearing request is not postmarked or received within twenty five (25) days of service of this notice, this will constitute a waiver of your right to a hearing and the Director will find that you do not contest the allegations. Upon such a finding by the Director, a default order will be entered assessing a civil penalty in the amount of one thousand eight hundred dollars (\$1,800). In addition, if you request a hearing and fail to appear at the hearing, a default order may be entered against you assessing a civil penalty in the amount of one thousand eight hundred dollars (\$1,800).