



Florida Department of Agriculture and Consumer Services
CHARLES H. BRONSON, Commissioner
The Capitol • Tallahassee, FL 32399-0800

Please Respond to:

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July 18, 2005

Honorable Ann Cole, Clerk
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Re: DACS vs. Killingsworth Environmental, Inc.
DOAH# 04-3052
Agency Complaint No.: A32176

Dear Ms. Cole:

Please find enclosed for filing the final order entered by the Commissioner of Agriculture in the above matter. We are also providing the respondent's attorney, Robert Beasley, with a copy of the final order.

Sincerely,

A handwritten signature in cursive script that reads "David W. Young".

David W. Young
Senior Attorney

cc: Robert Beasley
DWY: bc



Florida Agriculture and Forest Products
\$53 Billion for Florida's Economy

**STATE OF FLORIDA, DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES**

**FLORIDA DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,**

Petitioner,

v.

CASE NO. A 32175

**ENVIRONMENTAL SECURITY OF OKALOOSA,
INC. and CLINTON KILLINGSWORTH,
Certified Operator In Charge**

Respondents.

FINAL ORDER

THIS CAUSE arising under the Structural Fumigation Act, Chapter 482, Florida Statutes, came before the Commissioner of Agriculture of the State of Florida for consideration and final agency action. The Commissioner of Agriculture, as head of the Department of Agriculture and Consumer Services, has jurisdiction over the subject matter and the parties thereto.

I. BACKGROUND

The State of Florida, Department of Agriculture and Consumer Services ("Department") served an Administrative Complaint and Proposed Settlement ("Complaint") dated July 7, 2004, upon the Respondents which informed the Respondents of their violations of Chapter 482, Florida Statutes and Section 5E-14, Florida Administrative Code. Respondents requested a formal hearing in this matter. The case was referred to the Division of Administrative Hearings and a hearing was held before Barbara Staros, the Administrative Law Judge (ALJ) on January 13 and 14, 2005. ALJ Staros issued a recommended order to the Commissioner of Agriculture on May 25, 2005, copy of which is attached hereto and incorporated by reference herein. The

Respondents filed exceptions to the ALJ's Recommended Order. The record consists of the pleadings, motions, discovery requests, discovery responses, depositions, and orders filed in the Division of Administrative Hearings, the exhibits admitted into evidence by the administrative law judge the transcript of the January 13 and 14 formal hearing before the administrative law judge and the exceptions filed by the Respondents.

II. FINDINGS OF FACT

The Commissioner of Agriculture adopts the findings of fact set forth in the attached recommended order of the Administrative Law Judge (ALJ)

III. CONCLUSIONS OF LAW

The Respondents filed exceptions to the Recommended Order asserting:

"The ALJ incorrectly determined that the Department met its burden of proving that a violation of Rule 5E-14.142 (5) (f) and (g) occurred in that 'Environmental Security of Okaloosa, Inc. routinely parked trucks with chemicals inside at 1830 Galvez Drive, which address was not referenced on Environmental Security of Okaloosa's application For license.'"

The Respondents assert that it is not a violation of any pest control regulation to have pesticides on a locked vehicle. Respondents further argue that taken to its logical conclusion, a licensee would be in violation of the rules anytime chemicals are kept in a locked truck, even when in the field or on a job site. Finally, the Respondents assert that the ALJ failed to consider that at the time of the inspection, no chemicals were found on the premises, there was no mixing or loading of pesticides conducted on the premises, and on the day of the inspection the inspectors found no violations at the Galvez location.

As the ALJ noted in her findings of fact, the property at 1830 Galvez Drive is surrounded by a fence. The gate was locked on the date of the inspection. A telephone line for a facsimile machine was located in a trailer at the Galvez Drive location for employees to receive daily

schedule assignments. Company trucks parked at the location overnight and pesticides were in the locked trucks. The findings of fact made by the ALJ reveal that the trucks parked at 1830 Galvez Drive were not in the "field" or "job site", but rather were at a location used by the Respondents for business purposes. The ALJ also noted in paragraph 15 of the Recommended Order as a finding of fact that the Department's inspectors found unmixed chemicals in the trucks at 1830 Galvez Road on the date of the inspection.

The ALJ stated in paragraph 30 of the Recommended Order under Conclusions of Law:

"As to Count 5, the Department met its burden of proving that a violation of Florida Administrative Code Rule 5E-14.142 (5) (f) and (g) occurred in that Environmental Security of Okaloosa, Inc., routinely parked trucks with chemicals inside at 1830 Galvez Drive, which address was not referenced on Environmental Security of Okaloosa's application for license."

Rule 5E-14.142 (5) (f) and (g), Florida Administrative Code states:

"(5) Business license application: In accordance with Section 482.071 (1), F.S., the following information shall be submitted on, attached to and made a part of the Department's pest control business license application form, DACS 13605, Rev. 3/02, incorporated by reference . . .

(f) The exact location address where the licensee's records, including contracts, for pest control work are kept and the exact location address of storage of chemicals.

(g) A statement signed by the certified operator (s) in charge that all information given in the Department business license application is true and correct and that he will promptly notify the Department in writing of any subsequent changes thereof, except change of home address and primary duty of identification card holders other than certified operators."

The ALJ's conclusion that the Respondents violated Rule 5E-14.142 (5) (f) and (g), Florida Administrative Code is supported by competent, substantial evidence and meets the essential requirements of the law. Respondents were not charged with having pesticides in an unlocked vehicle. Even if there was not any mixing or loading at the site and the inspectors

noted no violations at the time of inspection, the conclusion of law made by the ALJ that a violation of Rule 5E-14.142 (5) (f) and (g), Florida Administrative Code occurred would still be supported by competent, substantial evidence.

The Commissioner of Agriculture has determined that the exceptions asserted by the Respondents are without merit and the Commissioner of Agriculture adopts the Conclusions of Law made by the ALJ in her Recommended Order attached hereto.

ORDERED AND ADJUDGED:

The Commissioner of Agriculture adopts the recommendations of the ALJ set forth in her recommended order attached hereto:

1. Respondents, Environmental Security of Okaloosa, Inc and Clinton Killingsworth, Certified Operator in Charge have violated Rule 5E-14.142 (5) (f) and (g), Florida Administrative Code and shall pay an administrative fine in the amount of \$2,500.00.

2. Respondent, Environmental Security of Okaloosa, Inc has violated Rule 5E-14.142 (3) (b), Florida Administrative Code and shall, in addition to the fine set forth in paragraph (1) above, pay an administrative fine in the amount of \$100.00

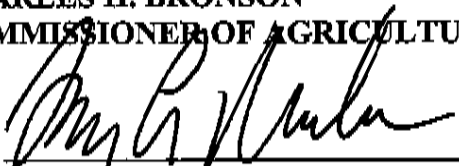
NOTICE OF RIGHT TO APPEAL

Any party to these proceedings adversely affected by this Final Order is entitled to seek review of this order pursuant to Section 120.68, Fla. Stat. (2002), and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be initiated by filing a petition for review or notice of appeal with the Agency Clerk of the Florida Department of Agriculture, Room 509 Mayo Building, Tallahassee, Florida 32399-0800. A copy of the petition for review or notice of appeal, accompanied by the filing fees prescribed by law must also be filed with the appropriate

District Court of Appeal within thirty (30) days of the date this Order was filed with the Agency Clerk.

DONE AND ORDERED this 14th day of July, 2005.

CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE

BY: 
Terry L. Rhodes, Assistant Commissioner
Florida Department of Agriculture
and Consumer Services

Filed with the Agency Clerk this 14th day of July, 2005.


Agency Clerk

Copies to: Respondents, Environmental Security of Okaloosa, Inc.
and Clinton Killingsworth, Certified Operator in Charge;
State of Florida, Division of Administrative Hearings