

NOTICE OF VIOLATION

TDA Incident No. 02414-00006891

June 6, 2012

Texas Department of Agriculture
Enforcement Division
P.O. Box 12847
Austin, Texas 78711-2847

tel (512) 463-7558 • fax (800) 909-8520

For the hearing impaired:

Via CM RRR # 91 7199 9991 7030 2632 4593 voice (800) 735-2988 • TDD (800) 735-2989

www.TexasAgriculture.gov

Mr. Kyle Traweck
Texas Wildlife Services Program
1005 Indian Creek Drive
Brownwood, Texas 76801



Dear Mr. Traweck:

The Texas Department of Agriculture (Department) has determined that you, as a noncommercial political applicator, license #0496019, violated one or more provisions of Chapter 76, Texas Agriculture Code (Code) and Title 4, Texas Administrative Code, Chapter 7 (TAC). The summary of the violations below indicates which Code or TAC sections were violated, the facts that show a violation occurred, the amount of the penalty assessed for the violation, and other important information.

The violation described below is based on information obtained during the Department's investigation. If you have additional information you believe shows compliance with the law or extenuating circumstances, please mail that information, with a written explanation, to: Texas Department of Agriculture, Enforcement Division, Attention: Additional Info-2414-00006891, P.O. Box 12847, Austin, Texas 78711. A written response will be sent to you prior to any further legal action.

SUMMARY OF THE VIOLATIONS

Violation 1: Used or caused to be used a pesticide in a manner inconsistent with its label or labeling by using M-44 Cyanide Capsule (EPA Registration Number: 56228-15) in areas frequented by humans or domestic dogs and where exposure to the public and family pets is probable.

Penalty: \$800.00

Statement of Facts: The M-44 Cyanide Capsule (EPA Registration Number 56228-15) label states, "Do not use in areas frequented by humans or domestic dogs." The label also references M-44 Use Restrictions: "Before handling or placing M-44 Cyanide Capsules or M-44 ejector devices, consult the Use Restriction Bulletin for specific use directions, additional precautions, information on endangered species, warning signs and antidotal

measures.” Use Restriction #8 prohibits the use of M-44 devices in areas where exposure to the public and family and pets is probable.

On February 18, 2011, Kyle Traweek placed M-44 devices on ranch lands surrounding Ms. Angel Walker’s, the complainant’s, residence. Based on the GPS coordinates, the M-44 device locations were all less than six-tenths of a mile from Ms. Walker’s house near roadways that Ms. Walker, her family, and the family’s dog frequently traveled.

Code section(s): 76.201(e)(4), 76.201(b)(3)

TAC section(s): 7.71

Violation 2: Used or caused to be used a pesticide in a manner inconsistent with its label or labeling by failing to keep records dealing with the placement of the M-44 device and the results of each placement as required by M-44 Use Restriction #26.

Penalty: \$800.00

Statement of Facts: The M-44 Cyanide Capsule (EPA Registration Number 56228-15) label states, “Before handling or placing M-44 Cyanide Capsules or M-44 ejector devices, consult the Use Restriction Bulletin for specific use directions, additional precautions, information on endangered species, warning signs and antidotal measures.” Use Restriction #26 requires each authorized M-44 applicator to keep records dealing with the placement of the device and the results of each placement. Use Restriction #26 states that such records shall include but need not be limited to: (1) the number of devices placed; (2) the location of each device placed; (3) the date of each placement, as well as the date of each inspection; (4) the number and location of devices which have been discharged and the apparent reason for each discharge; (5) species of animals taken; and (6) all accidents or injuries to humans or domestic animals.

Mr. Traweek’s records did not include the date of each M-44 removal, the location of each M-44 device that had been discharged, the apparent reason for each discharge (specifically which device caused the coyote and dog kill), and all accidents or injuries involving domestic animals.

Code section(s): 76.201(e)(4), 76.114(b)(3)

TAC section(s): 7.71

Violation 3: Used or caused to be used a pesticide in a manner inconsistent with its label or labeling by applying a pesticide against any target pest not

specified on the label or labeling if the application is to the crop, animal, or site specified on the labeling, unless the Department or EPA has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling after the Department or EPA has determined that the use of the pesticide against other pests would cause an unreasonable, adverse effect on the environment.

Penalty: \$800.00

Statement of Facts: The M-44 Cyanide Capsules (EPA Registration Number 56228-15) label states the pesticide is for use in the M-44 ejector device to control coyotes (*Canis latrans*), red fox (*Vulpes vulpes*), gray fox (*Urocyon cinereoargenteus*) and wild dogs which are suspected of preying upon livestock and poultry. The label also includes the following language: "Before handling or placing M-44 Cyanide Capsules or M-44 ejector devices, consult the Use Restriction Bulletin for specific use directions, additional precautions, information on endangered species, warning signs and antidotal measures." Use Restriction #5 limits M-44 device usage to take wild canids suspected of preying on livestock or poultry.

Mr. Traweek claimed he confirmed livestock losses due to predation on the ranch land leased by his father. Mr. Traweek observed the Walker's dog cornering a cow and calf in the pasture. Mr. Traweek's father requested the lease owner to ask that the Walkers keep their dog in their fence. Mr. Traweek then placed the M-44 devices around the Walker's residence on February 18, 2011. According to Mr. Traweek's documentation, the M-44 device targeted a free-ranging dog, which is not specified on the label, and categorized the kill as an intentional target.

Code section(s): 76.201(e)(4), 76.201(b)(3)

TAC section(s): 7.71

TOTAL PENALTY: \$2,400.00

What You Must Do In Response To This Notice

You must take action to correct the violations described above, if the violations have not been corrected and correction is still possible. You must avoid repeated violations of the laws described above. You must continue to comply with all other pesticide laws.

We encourage you to obtain and read the text of each rule or statutory provision described above and to familiarize yourself with the substance of all pesticide laws in order to avoid future violations. Links to the state's pesticide laws can be found on the Department's website: www.TexasAgriculture.gov. Repeated or subsequent violations of these laws may result in higher penalty amounts, suspension or revocation of your license or licenses, referral for criminal prosecution, or any combination of these enforcement response options.

With regard to the assessed penalties described in this notice, you may either (1) accept the Department's determination by paying the recommended penalty, or (2) contest the occurrence of the violation, the recommended penalty amount, or both the occurrence of the violation and the recommended penalty amount, by requesting a hearing.

If you choose to accept the Department's determination, you must sign and return the enclosed Stipulation and Waiver of Hearing with your personal or business check, a cashier's check, or a money order in the amount of \$2,400.00 made payable to the Texas Department of Agriculture. Mail your payment and stipulation to: Texas Department of Agriculture, Enforcement Division, Attention: Penalty Payment-2414-00006891, P.O. Box 12847, Austin, Texas 78711. **IMPORTANT!** Write the case number, 2414-00006891, on the face of the check or money order. Failure to write the case number on the check or money order may cause a delay in resolving this matter.

In certain circumstances, licensed applicators may satisfy a portion of the penalty through additional continuing education units (CEUs). For non-licensed persons, other options may be available. To determine if you qualify for any of the available options, you must contact the attorney signing this Notice of Violation. The attorney will explain the availability and requirements of any options at that time.

If you choose to contest the Department's determination, you should do so in writing within twenty days after the date you receive this Notice. Please state whether you are contesting the occurrence of the violation, the amount of the penalty, or both. Mail your written request for a hearing to: Texas Department of Agriculture, Enforcement Division, Attention: Hearing Request-2414-00006891, P.O. Box 12847, Austin, Texas 78711.

The hearing will be held in Austin, Texas, before an administrative law judge from the State Office of Administrative Hearings (SOAH). The judge will submit a recommended decision to the Commissioner regarding whether the violation occurred and, if so, the amount of the penalty that should be assessed. The Commissioner will make the final decision by written order, a copy of which will be sent to you.

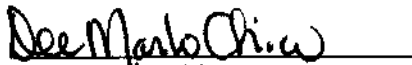
The Department will provide you with written notice of the scheduled date, time, and place for the hearing. Department hearings conducted by SOAH are governed by the rules of procedure found in: Title 1, Texas Administrative Code, Chapter 155 and Title 4, Texas Administrative Code, Chapter 1. You may present evidence and question witnesses at the hearing. You may retain the services of an attorney to represent you or provide legal counsel during the hearing.

RESULT OF FAILURE TO RESPOND

If you fail to respond to this Notice within twenty days after the date you receive this letter, we will assume you wish to contest this matter and the case will be set for a hearing. The same notifications and procedures specified above for a requested hearing will apply.

FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU AS CONTAINED IN THIS NOTICE BEING ADMITTED AS TRUE, REGARDLESS WHETHER ADDITIONAL PROOF IS SUBMITTED.

If you have any questions regarding this matter, please call Amanda Fowler, Case Preparation Officer, at (512) 936-9820. The Department attorney responsible for this case is:



Dee Marlo Chico

Assistant General Counsel

DMC/af

Enclosure

cc: Angel Walker, Complainant

INCIDENT NO. 02414-00006891

TEXAS DEP'T OF AGRICULTURE, Complainant § BEFORE THE COMM'R OF AGRICULTURE
v. §
KYLE TRAWEEK, Respondent § STATE OF TEXAS

STIPULATION AND WAIVER OF HEARING

Any modification or alteration of the terms and conditions of this Stipulation and Waiver of Hearing shall render it null and void.

Now comes Kyle Traweek, Respondent herein, and files this Stipulation and Waiver of Hearing and would show the Honorable Commissioner the following:

I.

Respondent received the Department's Notice of Violation (NOV) regarding incident number 02414-00006891 and fully understands the Department's findings in this matter as set forth therein.

II.

Respondent understands that by signing this document, Respondent gives up the right to an administrative hearing, stipulates to the Department's findings set forth in the NOV, and elects to pay to the Department the recommended administrative penalty for each violation alleged in the NOV.

III.

Respondent further understands that, *subject to the approval of the Commissioner*, if this signed document and a check in the amount of \$2,400.00 is returned to the Department within twenty days after its receipt, this matter will be considered closed by the Department.

IV.

Respondent hereby waives the right to an administrative hearing, stipulates to the Department's findings set forth in the NOV, and elects to pay the recommended administrative penalty for each violation alleged in the NOV. Respondent or any person who is a duly authorized agent for the Respondent may execute this document. The person executing this document represents to the Department that she or he is authorized to do so for the Respondent.

Respectfully submitted,

Printed Name: _____
Title: _____
Date: _____