



Utah Department of  
Agriculture and Food

Leonard M. Blackham  
*Commissioner*

Kyle R. Stephens  
*Deputy Commissioner*

Kathleen Clarke  
*Deputy Commissioner*

GARY R. HERBERT  
*Governor*

GREGORY S. BELL  
*Lieutenant Governor*

# Agriculture & Food News

Contact: Larry Lewis (801) 538-7104

Cell (801) 514-2152

April 28, 2010

## **Plant Industry Files Notice of Violation and Hearing Against Pesticide Applicator and Company for Misapplying Fumitoxin**

Layton, Utah -- The Utah Department of Agriculture and Food's (UDAF) Division of Plant Industry has filed multiple charges of violations of the Utah Pesticide Control Act against Bugman Pest and Lawn, Inc. of Bountiful, Utah, and employee Cole Nocks associated with the February 5, 2010 application of the pesticide Fumitoxin at the residence of Nathan and Brenda Toone of Layton, Utah. In addition to the Layton incident, investigators discovered additional violations of the Pesticide Act by the company and other employees.

The UDAF seeks to revoke Mr. Nocks's applicator license and issued him a \$27,000 fine. The Department seeks to fine Bugman Pest and Lawn, Inc. \$32,000. Under law, the UDAF is only allowed to file civil penalties.

### **Charges against applicator, Cole Nocks for Layton incident:**

Investigators determined that on February 5, 2010 applicator Cole Nocks operated in a faulty, careless or negligent manner by misapplying the highly toxic and restricted use pesticide, Fumitoxin.

Mr. Nocks's improper application allowed the pesticide to runoff or drift from the target area causing human harm, as high levels of phosphine gas were detected in the Toone residence.

He failed to follow label directions and federal law by applying large amounts of Fumitoxin pellets in several locations that were within a required 15-foot buffer zone of the residence.

He did not have a Fumigation Management Plan which would have required him to provide the Toones with label information, an MSDS (materials safety data sheet) and require him to return in one or two days to re-inspect the fumigated area.

At the time of the application, Fumitoxin was restricted from use within 15 feet of any residence.

The Utah Medical Examiner's Office determined that two children who died at the Toone residence had elevated levels of phosphorous and lung damage associated with inhaling a harmful substance which appears consistent with the above information.

### **Specific charges:**

1. "Operated in a faulty, careless or negligent manner;"
2. "Refused or neglected to keep and maintain records or make reports as required;"
3. "Used, or caused to be used, any pesticide in a manner inconsistent with its labeling or rules;"
4. "To allow an application of pesticide to run off, or drift from the target area to cause plant, animal, human or property damage."

The charges in the Layton case carry a maximum fine of \$22,000. Plant Industry seeks to revoke Mr. Nocks's applicator license. Mr. Nocks is required to attend an administrative hearing at the Utah Department of Agriculture and Food in June to answer the charges.

**Charges against Bugman Pest and Lawn, Inc. for Layton incident:**

1. Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules.
2. Applying Fumitoxin without the required Fumigation Management Plan.

“This is a tragic and unfortunate event for the Toone family,” said Pesticide Program Manager, Clark Burgess. “I believe this investigation will help other pesticide companies, as well as Utah consumers, understand the importance of reading and following the warnings and instructions on pesticide labels. We believe this tragedy could have been prevented if the company and applicator in this case understood this important concept,” Burgess added.

**ADDITIONAL CHARGES**

In the course of the Layton investigation, Plant Industry investigators discovered numerous additional violations of The Utah Pesticide Control Act by Bugman Pest and Lawn, Inc., and several of its employees dating back to April of 2009. The following charges include the Layton incident as well as several hundred other pesticide applications at locations throughout the Wasatch Front.

**Bugman Pest and Lawn, Inc.**

1. “Neglecting or, after notice, refusing to comply with the provision of the Pesticide Act.”
2. “Refusing or neglected to keep and maintain required records.”
3. “Used, or caused to be used any pesticide in a manner inconsistent with its labeling.”

Investigators found the following:

- More than 3,000 records violations ranging from failing to identify product used, not documenting the rate or amount of product applied. Most of the violations were non-health threatening.
- No Fumigant Management Plan created for any of the 53 applications of Fumitoxin by five different employees.
- Numerous ineffective applications of termiticide.
- Mis-application of Fumitoxin, termiticide and Ramik Brown.
- Company failed to properly placard its storage area where Fumitoxin was stored.

The total monetary fine for Bugman Pest & Lawn, Inc. is \$ 32,000.

Fumitoxin is a restricted use pesticide that requires applicators undergo specific training regarding its use.

Utah code requires commercial pesticide applicators undergo testing and certification on a regular basis and that commercial pesticide companies employ trained applicators when working with all pesticides. The Utah Department of Agriculture and Food conducts regular training and certification courses to help applicators meet State certification requirements.

As a result of the Layton, Utah case, the U.S. Environmental Protection Agency (EPA) on April 7, 2010 banned the use of aluminum and magnesium phosphide products (Fumitoxin) in residential areas, increased buffer zones to 100 feet for treatment around non-residential buildings that could be occupied by people or animals, and require more protective product labeling. The UDAF encourages anyone in possession of Fumitoxin to contact their distributor to obtain an up-to-date product label that includes the new restrictions.

The EPA is also funding, in partnership with the UDAF, a program to educate the public about the dangers of fumigant pesticides and to increase enforcement of other fumigant pesticides in Utah.

For more information about the UDAF’s pesticide safety program, visit: <http://ag.utah.gov>.