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In the Matter of Alleged Violations of Article 33 (Pesticides) of the New York State Environmental Conservation Law ("ECL") and Part 325 (Application of Pesticides) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR")

**Ruling on Motion  
for a  
More Definite  
Statement**

(July 31, 2008)

-by-

Satur Farms, LLC,

DEC Case No.  
CO 1-20031229-415

Respondent.

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**Proceedings**

On September 13, 2006, this matter was assigned to the undersigned Administrative Law Judge ("ALJ") for hearing. The procedural history of this case is set forth in two previous rulings, Ruling on Motion for a More Definite Statement (September 22, 2006) and Ruling on Motion to Amend Complaint (June 10, 2008).

With the June 10, 2008 ruling, I granted Department Staff's motion to amend the Complaint a second time (the "Second Amended Complaint"). Department Staff then filed the Second Amended Complaint, dated June 11, 2008.

By Notice of Motion and Affirmation of Respondent's attorney, Eric J. Bressler, both dated June 25, 2008, Respondent moved for a more definite statement as to the third cause of action contained in the Second Amended Complaint, pursuant to 6 NYCRR 622.4(e) and 622.6(e). The motion was sent by e-mail on June 25, 2008 and the hardcopy was received by the Office of Hearings and Mediation Services ("OHMS") on June 27, 2008.

Pursuant to 6 NYCRR 622.6(c)(3), a motion is answerable in five business days (plus five days for mailing [622.6(b)]). Department Staff filed an Affirmation in Response to Motion for a More Definite Statement, dated July 2, 2008. The timely response was sent by e-mail on July 2, 2008 and the hardcopy was received by OHMS on July 7, 2008.

Pursuant to 6 NYCRR 622.4(e), "[t]he respondent may move for a more definite statement of the complaint within 10 days of completion of service on the grounds that the complaint is so vague or ambiguous that respondent cannot reasonably be required to frame an answer. . . . If the motion is denied, respondent must answer within 10 days of receipt of notice that the motion is denied. . . . If the motion is granted, the department staff must serve an amended complaint within 15 days of receipt of notice that the motion is granted and respondent must serve an answer within 20 days of the receipt of the amended complaint."

Department Staff alleges in its third cause of action that "[o]n or about July 19, 2001, in Cutchogue, Town of Southold, Suffolk County, New York, Respondent failed to use pesticides in accordance with label directions in violation of 6 NYCRR 325.2(b); the label directions on AQ10 Biofungicide (EPA Reg. No.: 55638-16) require, and Respondent failed to provide, implementation of the Worker Protection Standard to protect agricultural workers on farms by providing, among other things: pesticide safety poster, specific information about pesticide applications, and pesticide safety training for workers."

Respondent contends that the third cause of action is vague and open-ended, and does not put Respondent on notice of the true nature of the charges. Specifically, Respondent asserts that the phrase "among other things" occurring in the third cause of action leaves open the question of exactly what alleged failures Department Staff is attributing to Respondent.

As a preliminary matter, Department Staff acknowledges that Respondent's motion, received by Department Staff on June 27, 2008, was timely served. Affirmation of Alyce M. Gilbert, Esq., (dated July 2, 2008) Paragraph 14 (the "Gilbert Affirmation"). Department Staff contends that the phrase "among other things" was intended to convey that requirements of the Worker Protection Standard ("WPS") are broader than the specifically identified omissions alleged in the third cause of action. Gilbert Affirmation, Paragraphs 15, 18, 19, and 20. By the Gilbert Affirmation, Department Staff clarifies that Respondent's alleged omissions asserted in the Second Amended Complaint, third cause of action, are limited to implementation of the Worker Protection Standard to protect agricultural workers on farms by providing a

pesticide safety poster, specific information about pesticide applications, and pesticide safety training for workers. Gilbert Affirmation, Paragraphs 16, 17 and 21.

**Ruling:** Respondent's motion for a more definite statement is denied. Department Staff has stated that the contested phrase, "among other things", occurring in the third cause of action, is not intended to expand the alleged violation beyond the specifically identified WPS requirements identified in the pleading. At hearing, regarding the third cause of action, Department Staff is limited to the alleged violation of failure to comply with the WPS requirements specifically identified in the pleading: providing a pesticide safety poster, specific information about pesticide applications, and pesticide safety training for workers. Respondent must answer the Second Amended Complaint consistent with the provisions of 6 NYCRR 622.4(e).



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Kevin J. Casutto  
Administrative Law Judge

Dated: July 31, 2008  
Albany, New York

To: Distribution List (Dated November 1, 2007)