Preparing for Your Administrative Pesticide Penalty Hearing

How an Administrative Hearing Works

An administrative hearing provides you with an opportunity to be heard regarding the violations of the laws that regulate pesticides that were described in the Notice of Proposed Action. In advance of the hearing, you may call the County Agricultural Commissioner's Office (Commissioner) to make an appointment to see the County's evidence regarding the alleged violations. At the hearing, you will have an opportunity to present to a Hearing Officer any evidence and testimony that refutes the alleged violation(s). The Hearing Officer will evaluate the testimony and evidence presented at the hearing for its credibility and relevance. The Hearing Officer will make a decision based upon evidence and testimony presented at the hearing. Additional evidence and testimony cannot be introduced after the hearing has concluded.

Formal hearing provisions of Administrative Procedure Act, Chapter 5, (Government Code sections 11500 – 11529) do not apply to this hearing process.

Who's Who

The Department of Pesticide Regulation regulates all aspects of pesticide use, sales and manufacturing in California. The Commissioner is responsible for enforcing all state laws and regulations pertaining to pesticide use within the County. The Respondent is the person and/or business charged with the violation(s). When the Commissioner determines that a fine action is appropriate, the Commissioner sends the Respondent a Notice of Proposed Action and assigns an Advocate to present the case on behalf of the Commissioner. The Hearing Officer is a person chosen by the Commissioner to hear the case fairly, impartially, and without bias, and to write a proposed decision in the case.

What to Bring To the Hearing

- Bring any evidence you have to support your case. Evidence is testimony of a witness, writings, material objects, or other things that are offered to prove the existence or nonexistence of a fact. Examples of evidence include documents such as pesticide labels, invoices, correspondence, sales records, pesticide use reports, restricted materials permits, laboratory analyses, photographs or diagrams.
- Bring three copies of any document you intend to offer as an exhibit – you'll need one copy each for yourself, the County Advocate and the Hearing Officer.

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What do I have the right to do?

- Review and hear the evidence that is the basis for any fine or penalty action.
- Question witnesses on relevant matters.
- Present evidence on your own behalf.
- Receive a full and fair consideration of relevant evidence by an impartial hearing officer.
- Appeal if you participate in the hearing.
- Represent yourself or be represented by an attorney, an employee, another person in a business relationship with the respondent who has a connection to the incident, or a family member.

Purpose of a Pre-hearing Conference

Immediately before the hearing, the County Advocate may request a pre-hearing conference. The purpose of the pre-hearing conference is to obtain stipulations (or agreements) about facts relevant to the case from the parties (the Respondent and the County). These stipulations expedite the hearing process by eliminating the need for anyone to present evidence to prove facts that are not in dispute.

The pre-hearing conference is not a settlement conference. The Hearing Officer and/or the Commissioner (or Advocate) is not authorized to negotiate settlements in actions authorized by Food and Agricultural Code (FAC) sections 12999.5, 15204, 15204.5; or Business and Professions Code (BPC) section 8617.

Pre-Hearing Conference Procedure

Only the parties to the action (the Respondent and the County) may attend the pre-hearing conference. You may bring your representative to the pre-hearing conference and the County Advocate may bring an assistant. This conference is not open to the Hearing Officer, the public and non-parties, court reporters; or, any witnesses who will testify at the hearing. The pre-hearing conference is not recorded and non-essential people are excluded to allow you and the County Advocate an environment which provides an opportunity for candid discussion.

The pre-hearing conference generally will proceed as follows:

- Introductions.
- You, and if applicable, your representative, and the County Advocate, discuss the violations in the Notice of Proposed Action and try to reach agreements, if possible, on the truth of any relevant facts and the authenticity of any item of evidence. These agreements or “stipulations” will become part of the hearing record.
- You can also agree or “stipulate” that the violations occurred. These stipulations can be agreed upon or stipulated to and will be included as part of the hearing record.
- The County Advocate, or his/her assistant, will record the stipulations in writing and obtain three copies to take into the hearing (one each for Respondent, Hearing Officer and the County Advocate).

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The Hearing Begins

The Hearing Officer will open the hearing and turn on the recording device.

- The Hearing Officer will state the date and time.
- All persons present, or those requested by the Hearing Officer, will identify themselves and spell their names for the record.
- If applicable, the Hearing Officer enters any pre-hearing conference stipulations into the official hearing record by stating "Prior to the hearing, a pre-hearing conference was held and the parties stipulated to the following . . . do all parties agree?"

Opening Statement

An opening statement is a summary of what you intend to show or prove. An opening statement is optional. The County Advocate will make his or her opening statement first, followed by the Respondent.

Evidence and the Hearing Record

During the hearing, testimony and evidence is presented about violations alleged in the NOPA and not admitted in the pre-hearing conference. Before presenting their evidence, the Respondent and County must clearly state why the evidence is relevant to the case. The Hearing Officer's recording of the hearing and any documents submitted to the Hearing Officer constitute the official record of the hearing.

Presentation of Testimony and Evidence

Since the County has the burden of proving its case, the County Advocate presents its evidence and calls any witnesses first. The Respondent will be allowed to question the County Advocate's witnesses. After the County Advocate's presentation of evidence and witnesses, you may present your evidence and witnesses. The County Advocate may question the Respondent's witnesses. Throughout this process, the Hearing Officer may question any witnesses to clarify points.

Hearing Behavior

If anyone participating or observing a hearing disobeys a lawful order from the Hearing Officer not to disrupt or interfere with the hearing, or otherwise engages in disorderly, contemptuous or insolent behavior toward the Hearing Officer, the Hearing Officer may cite them for contempt. (Government Code sections 11455.10 – 11455.30)

Closing Statements

After all the evidence is presented, both sides may present their closing statements. A closing statement summarizes the evidence presented, and explains how it supports their position. Closing statements should be brief and direct. Tell the Hearing Officer exactly what you assert the evidence shows and the result you are requesting. The County Advocate's statement is heard first, followed by the Respondent's statement. A closing statement is optional.

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Notice of Decision

If the Hearing Officer is the Commissioner, he or she will send you a copy of his or her decision. If the Hearing Officer is a person designated by the Commissioner, the Hearing Officer submits a Proposed Decision in writing to the Commissioner and the Commissioner will review and either adopt or not adopt the Proposed Decision. You will receive a copy of the Commissioner's Notice of Decision and Order approximately 45 days after the hearing.

Appeals

If you request a hearing and do not appear, you will forfeit your right to an appeal. If you request and appear at the hearing, the Commissioner's Notice of Decision and Order will inform you of appeal procedures.

Hearing Dates and Changes

Call the Commissioner's Office if you have any questions about your hearing date or time. Any changes to your hearing date must be requested in writing and received by the Commissioner's Office five days before your hearing date, except in cases of emergency.

Accessibility of the Hearing Location

Hearing locations must be accessible to persons with disabilities. If you, your witnesses or your attorney have special needs that require reasonable accommodation, advise the Commissioner's Office in advance to assure accessibility.

Other Hearing Details

Administrative pesticide penalty hearings are authorized by Food and Agricultural Code sections 12999.5, 15204, and 15204.5, and Business and Professions Code section 8617. The Notice of Proposed Action will identify the authorizing statute for the hearing.

- The hearing will not be transcribed by a court reporter. If you wish, you may make your own arrangements to have a court reporter present at your expense.
- You must notify the Commissioner five days before the hearing if you have arranged for a court reporter.
- The Hearing Officer will administer an oath to all witnesses.
- The Hearing Officer will keep any items submitted as evidence until the case is final and any appeal has been resolved.
- The hearing process is informal and may vary at the Hearing Officer's discretion.

The "Preparing for Your Administrative Pesticide Penalty Hearing" brochure is prepared by the California Department of Pesticide Regulation. This brochure is available for download at http://www.cdpr.ca.gov/docs/enforce/prenffrm/dpr-enf086.pdf.