

Appendix B

Unfairness Allegations

Question posed at the Roundtable

This document provides guidance on the following question posed at the Hearing Officer Roundtable:

- What is the most appropriate response to the Respondent’s argument that the “county is picking on them?”

The Department of Pesticide Regulation will also address another “unfair” allegation, i.e., “the Hearing Officer is biased” in this document. This document will not go into significant detail because these are “common sense” issues.

Uniform enforcement is a goal of enforcement agencies

Members of the regulated public are entitled to expect and receive equal treatment by those enforcing the laws and regulations. Uniformity of enforcement is a universally accepted goal of enforcement agencies and is a key concept that influences all administrative civil penalty programs.

The Hearing Officer

Hearing Officers at all levels of government are commonly employed by the agency that is bringing the penalty action against the person or business. A Hearing Officer who, in a particular case, believes that he or she cannot be fair and impartial should not serve as the Hearing Officer in that case; however, the mere fact that a Hearing Officer is employed by the agency bringing the action does not mean that the Hearing Officer cannot be fair and impartial in making his or her findings and decisions.

Respondent’s burden to produce facts when making an allegation of Hearing Officer bias

Under California law, it is a well-settled principle that due process in the case of an administrative hearing requires only a reasonably impartial, noninvolved reviewer, McIntyre v. Santa Barbara County Employee’s Retirement System, 91 Cal.App. 4th 730 (2001); Linney v. Turpin, 42 Cal.App. 4th 763 (1996). Also, the mere fact that the decision maker or his/her staff is a more active participant in the fact-finding process will not render the administrative procedure unconstitutional, Howitt v. Superior Court, County of Imperial, 3 Cal.App. 4th 1575 (1992).

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Unfairness Allegations, Continued

**Respondent's
burden to
produce facts
when making
an allegation of
Hearing Officer
bias (continued)**

If the Respondent were to take legal action to overturn a decision, he/she would assume the burden to produce facts to show that the Hearing Officer was biased against the Respondent and that he/she was not treated the same as others in similar situations.

References

- Enforcement Guidelines, Technical Revision, December 2002
 - Enforcement Letter 2002-18 (Docket No. 106) and Enforcement Letter 2002-02 (Docket No. 104)
 - Hearing Officer Sourcebook, Second Edition, May 1995
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