

Section 7.10

Actions Against Home Gardeners

Questions posed at the Roundtable

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

- Are administrative civil penalty actions appropriate for “homeowner” violations?
 - If not, what can be done if the homeowner’s violation caused illness to a family member, guest, or neighbor?
-

Original intent of ACP actions and/or fines

Typically, when the Legislature passes a law, it is attempting to solve a problem. In 1984, the Legislature passed Food and Agricultural Code (FAC) section 12999.5, authorizing county agricultural commissioners (CACs) to levy fines as a method of encouraging the regulated industry to immediately correct misbehaviors before they escalate to the point where a licensing action or court action is necessary.

FAC section 12999.5 is a means for the CACs to get the attention of individuals and the regulated industry as a whole, before licenses or businesses are jeopardized or the CAC’s resources drained, by potentially expensive licensing or court actions.

Definition

Industry - refers collectively to persons or businesses engaged in a distinct branch of trade or manufacture. Generally speaking, persons who are part of the pesticide-regulated industry includes, but is not limited to: persons licensed or certificated by the Department of Pesticide Regulation (DPR); growers, producers and sellers of agricultural commodities; manufacturers and sellers of pesticides; and farm labor contractors.

Home gardener actions were not targeted by the Legislature

The Legislature intended to authorize ACP actions against the pesticide-regulated industry. However, there is no provision in the law exempting the application of FAC section 12999.5 to other persons; CACs may levy a civil penalty against *any person* violating specified pesticide laws and regulations.

Continued on next page

Actions Against Home Gardeners, Continued

Home gardens Home gardens (and ranchettes) are places where pesticides are sometimes used by persons typically producing commodities for their own personal consumption only. The home garden use of a pesticide, when applied to commodities intended for personal consumption only, including pasture uses for production of livestock for personal consumption only, are not “agricultural uses” of a pesticide. Persons who apply pesticides in a home garden situation in these circumstances typically are not considered part of the regulated “industry” targeted by the Code sections DPR and the CACs enforce that require the application of pesticides in a professional, safe, and effective manner.

Home gardens, which produce commodities for sale, fall under the definition of agricultural use and are subject to the state’s pesticide regulatory requirements, regardless of the size of the production area.

DPR’s thoughts on the matter DPR does not generally advise the use of ACP actions against home gardeners producing commodities for their personal use only, as this was not the original intent of the Legislature. However, this is a conservative interpretation and individual CACs may have valid reasons to go forward with an ACP action against a home gardener who is producing commodities for personal use only.

What if the home gardener’s action is egregious? There may be other options available to CACs when a home gardener who is producing for personal consumption commits a violation that is so egregious that it is perceived as deserving some sort of “action.” For example, the City Attorney or District Attorney may want to file other civil or criminal charges.

However... For a variety of reasons, a City Attorney or District Attorney may be unable or unwilling to file against a home gardener for a home-use violation of a pesticide law or regulation. There may be times when the CAC may believe an ACP action is the only feasible and meaningful method to redress or correct action by a home gardener.

Continued on next page

Actions Against Home Gardeners, Continued

Illness occurs The Enforcement Guidelines outline the criteria in cases when an illness occurs. It is likely the violation would result in a Class A (formerly *serious*) fine action in accordance with 3CCR section 6130 (Civil Penalty Actions by Commissioners).

It's the CAC's decision Before initiating an administrative civil penalty action against a home gardener producing commodities only for personal consumption, the CAC must weigh the need to take action to stop or redress the offending behavior.

References

- 3CCR section 6130, Civil Penalty Actions by Commissioners
- 3CCR section 6301, Unregistered Products (Products used by home gardener producing only for personal consumption exempt from registration requirements)
- Enforcement Guidelines, Technical Revision, December 2002
- FAC section 12999.5
