

Section 7.3

Appropriate Violation Class for Violation of 3CCR §6680

Questions posed at the Roundtable

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

- If a container has been significantly altered to measure and load a pesticide into the application rig, is it a violation of Title 3, California Code of Regulations (3CCR) section 6680 (prohibiting the use of pesticides in containers commonly used for food, drink, or household products)?
 - What is the most appropriate violation class for a violation of 3CCR section 6680?
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What constitutes a violation of 3CCR §6680?

Placing any pesticide in any container commonly used for food, drink, or household products is expressly prohibited by 3CCR section 6680.

Per Administrative Docket No. 096, which involved 3CCR section 6680, there is no exemption for altered food, drink, or household product containers and the prohibition of this regulation still applies. A pesticide handler who places a pesticide in a container commonly used to hold a food, drink, or household product, whether altered or not, is in violation of 3CCR section 6680.

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Choosing the appropriate violation class in 3CCR §6130

The appropriate violation class depends on whether harm occurred or was likely as a result of a person's actions and the person's violation history in that county. The following table shows the criteria associated with each violation class:

For violation class . . .	You must prove that the violation . . .
Class A (formerly <i>serious</i>)	<ul style="list-style-type: none"> • Created an actual health or environmental hazard or • Violated a lawful order of the county agricultural commissioner pursuant to Food and Agricultural Code sections 11737, 11737.5, 11896, or 11897 or • Repeated a prior violation in Class B (moderate class)
Class B (formerly <i>moderate</i>)	<ul style="list-style-type: none"> • Posed a reasonable possibility of creating a health or environmental effect or • Repeated of a prior violation in Class C (minor class)
Class C (formerly <i>minor</i>)	<ul style="list-style-type: none"> • Did not create or pose a reasonable possibility of creating a health or environmental effect

Are all violations of 3CCR §6680 considered "serious" or "moderate?"

No. Mitigating circumstances and/or the lack of tangible health or environmental consequences can eliminate or reduce the actual or potential harm that may result from a violation of 3CCR section 6680. If the investigator cannot prove the existence of an actual hazard or infer a reasonable possibility of harm based on the circumstances of the violation, then the most appropriate violation class is "minor."

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Definitions

- **Hazard** - as used in 3CCR section 6130, means “a source of danger” or a “risk¹.”
- **Possible** - as used in 3CCR section 6130, means that the event “may or may not occur” or “may occur given the proper conditions².” However, the degree of likelihood is not implied by this term. “Possible” implies any condition between a “moderate degree of probability” to “the barest change within the limits of the circumstances.”
- **Reasonable** - as used in 3CCR section 6130, means “being in accordance with reason; not extreme or excessive; moderate; fair³.” For the purposes of this discussion, a person with an average capacity for rational thought, inference, and logical thinking is considered to possess “common sense.”

Establishing a reasonable possibility of harm

Determining whether a violation of 3CCR section 6680 poses a reasonable possibility of harm requires the investigator to evaluate all of the circumstances associated with the violation and the relationships between these facts. If the evidence allows an average person to infer that a probable consequence of an unmitigated violation was harm to a person or the environment, then the investigator has established that a reasonable possibility of harm existed.

While there are no strict guidelines for building adequate proof, the investigators should establish, at a minimum, the:

- Amount of control the handler had over the container
- Proximity of non-handlers to the container
- Types of non-handlers present
- Location of the container relative to other food, drink or household product containers
- Appearance of the container
- Toxicity of the pesticide concentrate
- Concentration and amount of pesticide present and
- Appearance of the contents.

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¹ Definition excerpted from Merriam-Webster’s Collegiate® Dictionary, Tenth Edition, p. 533.

² Ibid., p. 907.

³ Ibid., p. 971.

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Example of establishing a reasonable possibility of harm

The following example describes a set of circumstances that, when taken together, would allow an average person to infer that harm to non-handlers was both possible and reasonable.

General	Supporting Observation
Container control	<ul style="list-style-type: none">• The applicator was over 200 yards from the container and facing away.
Proximity and types of non-handlers	<ul style="list-style-type: none">• Several young children were observed near the container without the knowledge of the applicator.
Container location	<ul style="list-style-type: none">• The contaminated beverage container was on a picnic table about 100 feet away from the equipment and pesticide sheds where the employees routinely ate lunch.
Container appearance	<ul style="list-style-type: none">• The beverage container was not altered or marked to indicate its current use or contents and looked exactly like the product available at the local grocery store.
Pesticide toxicity	<ul style="list-style-type: none">• The precautionary statement on the pesticide label required immediate medical attention following accidental ingestion of the concentrate.
Pesticide concentration and quantity	<ul style="list-style-type: none">• The beverage container held approximately 12 ounces of pesticide concentrate.
Contents - appearance	<ul style="list-style-type: none">• The pesticide concentrate appeared substantially similar to the normal contents of the beverage container.

References

- 3CCR section 6130, Civil Penalty Actions by Commissioners
- 3CCR section 6680, Prohibited Containers for Pesticides
- Enforcement Letter 2001-010 (Docket No. 096)