

Appendix C

History of Administrative Civil Penalties for Pesticide Use Violations in California

Pesticide-related administrative civil processes history

1972:

- Authority to initiate penalties is limited to a District or City Attorney or the Office of Attorney General. Ability to charge multiple counts for multiple persons affected is arguably implied in formal criminal or civil proceedings, but not specifically stated, in the FAC.
- The Legislature, recognizing it is necessary to provide for the safe use of pesticides and for safe working conditions for farm workers, pesticide applicators, and other persons handling, storing, or applying pesticides, or working in or about pesticide-treated areas, enacts FAC sections 12980, 12981 and 12982.

1984:

- The Legislature enacts B&PC section 8617 authorizing CACs to assess “Structural Civil Penalties” (SCPs) for misuse of pesticides in a structural pest control setting. Maximum penalty - \$500 per violation.

1985:

- Legislature enacts FAC section 12999.5 authorizing CACs to assess “Agricultural Civil Penalties” (ACPs) for misuse of pesticides in agricultural or other settings. Maximum penalty - \$500 per violation. Legislature instructs the California Department of Food and Agriculture (CDFA) to develop regulations pertaining to fine guidelines before commencement of civil penalty actions by CACs. Fine guideline rulemaking process initiated.

1986:

- Legislature enacts FAC section 12985 – violations of worker safety reentry requirements: “Any person who orders an employee to enter an area posted with a warning sign in violation of any worker safety reentry requirements promulgated pursuant to this article by the director is guilty of a misdemeanor. A violation of this article affecting any worker or workers constitutes a separate offense for each affected worker.”
- CDFA promulgates fine regulations for ACPs in 3 CCR section 6130. Fines are segregated into three classes: “Minor” (\$50-\$150); “Moderate” (\$150-\$300); and “Serious” (\$300-\$500).

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History of Administrative Civil Penalties for Pesticide Use Violations in California, Continued

Pesticide-related administrative civil processes history, (continued)

- 1989:**
- Legislature enacts FAC section 12999.4 authorizing the Director to initiate administrative civil penalty actions for sales and distribution of unregistered pesticides. Maximum penalty \$5,000 per violation.
- 1990:**
- As part of the Governor’s reorganization plan, pesticide regulatory authority is moved out of CDFA and into the newly formed Cal/EPA and the Department of Pesticide Regulation (DPR) is formed.
- 1992:**
- Co-Agency Committee – DPR and CACASA begin to discuss “uniformity of enforcement” concept for a discussion document called “Uniformity Standards.” The document evolves into the “Enforcement Guidelines” policy the following year.
 - The first edition of the “Hearing Officer Sourcebook” published.
- 1993:**
- First jointly approved (DPR and CACASA) edition of the “Enforcement Guidelines.” Technical and clarifying changes are made to the Enforcement Guidelines in 1997 and 2002.
- 1997:**
- The maximum penalty for SCPs increased to \$1,000 per violation.
- 1998:**
- Before 1998, CACs rarely cited FAC section 12985 to increase fines for multiple exposed workers. In 1998, the Fresno CAC cited a grower for 32 counts in violation of FAC section 12973, because 32 workers were affected in an incident. After a hearing, the Fresno CAC assessed a fine for 32 counts. The Respondent appealed to the Director and the case was upheld. The Appellant appealed to the Fresno County Superior Court and the case was upheld. The matter then went to the Court of Appeals. The Appellant later withdrew the appeal and paid the fine. For a complete discussion of the facts and legal issues in this case, please refer to Exec letters 00-01 and 00-06.
- 2001-2002:**
- The Hearing Officer Roundtable Project meets to discuss issues related to CAC implementation of the ACP program. The project was published in 2004.
 - The maximum penalty for ACPs increased to \$5,000 per violation. Fine classes change from “Minor,” “Moderate,” “Serious” to “Class C,” “Class B,” and “Class A.” Penalty ranges now overlap within the

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History of Administrative Civil Penalties for Pesticide Use Violations in California, Continued

Pesticide-related administrative civil processes history, (continued)

- classes for greater discretion and to encourage more consistent initiation of civil penalty actions for serious violations.
- 2005:**
- In January, FAC section 12996.5 went into effect (non-occupational exposure).
 - In May, the revised edition of the “Hearing Officer Sourcebook” was published, incorporating topics brought up in the Hearing Officer Roundtable Project.
 - In August, DPR and CACASA significantly strengthened the former Enforcement Guidelines, renaming it the “Enforcement Response Policy” (ERP), with a plan to begin a rulemaking to incorporate the policy into a new regulation.
 - In October, Governor Schwarzenegger vetoed SB 455 (Escutia). Among other issues, this bill would have required DPR to put the ERP into regulation. In the Governor’s veto message he directed DPR to put the ERP into regulation.
- 2007:**
- The Enforcement Response Regulation (3 CCR section 6128) went into effect on January 1, 2007. This mandated that all CACs use the regulation when classifying violations and required DPR to review all Decision Reports written by the CACs. Fines for repeat violations were required to be bumped up to the next class (so a repeat Class B violation automatically became a Class A fine).
 - The SPCB promulgates regulations to increase the maximum penalty for structural civil penalty to \$5,000 per violation. The regulations are similar to 3 CCR section 6130.
- 2011:**
- The Enforcement Response Regulations in 3 CCR 6128-6131 were amended to narrow the scope to agricultural, structural, or fumigation pesticide uses. Among other changes, the amendments no longer required Decision Reports for Class C violations and allowed the CAC flexibility to increase fines within the same class fine range rather than increase to the next class.
- 2016-17:**
- The CalPEATS initiative was rolled out to all CACs and DPR to improve violation tracking, investigations, and enforcement actions and increase statewide consistency.
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History of Administrative Civil Penalties for Pesticide Use Violations in California, Continued

Pesticide-related administrative civil processes history, (continued)

2022:

- AB 211 increased pesticide civil liabilities in FAC Divisions 6 and 7. As part of the bill, the maximum penalty for ACPs increased to \$15,000 per violation. 3 CCR 6130 must be amended for CACs to use the new maximum fine amount.
- Effective January 1, 2023, Director gains pesticide use administrative civil penalty authority, in certain situations (FAC section 12999.6).

2024:

- In May, DPR completed rulemaking to amend 3 CCR section 6130(c) to increase the maximum fine amounts for Class A and B fines to \$15,000 and \$3,000, respectively.
- In July, FAC section 12999.4 was amended to provide DPR authority to take civil penalty actions for dealer licensing, supervision, and record keeping requirements. In addition, the statute of limitations for CAC pesticide civil penalty actions under section 12999.5 was increased from two to three years.

Agricultural Civil Penalty (ACP) fine level history

Year	Penalty Structure
1986	Maximum \$500 per violation Minor \$50 - \$100 Moderate \$100 - \$300 Serious \$300 - \$500
1989	Maximum \$1,000 per violation Minor \$50 - \$150 Moderate \$150 - \$400 Serious \$400 - \$1,000
1997	Maximum \$1,000 per violation Minor \$50 - \$150 Moderate \$151 - \$400 Serious \$401 - \$1,000
2002	Maximum \$5,000 per violation Class C \$50 - \$400 Class B \$250 - \$1,000 Class A \$700 - \$5,000
2024	Maximum \$15,000 per violation Class C \$50 - \$400 Class B \$250 - \$3,000 Class A \$700 - \$15,000

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History of Administrative Civil Penalties for Pesticide Use Violations in California, Continued

**Structural Civil
 Penalty (SCP)
 fine level
 history**

Year	Penalty Structure
1984	Maximum \$500 per violation Minor \$50 - \$100 Moderate \$100 - \$300 Serious \$300 - \$500
1996	Maximum \$1,000 per violation Minor \$50 - \$150 Moderate \$151 - \$400 Serious \$401 - \$1,000
2007	Maximum \$5,000 per violation Minor \$50 - \$400 Moderate \$250 - \$1,000 Serious \$700 - \$5,000

**SCP program
 authorities**

Assembly Bill (AB) 294 (Statutes of 1984)
 Activity Authorization: B&PC sections 8616 and 8617
 Appeal Process: B&PC section 8662
 Fine Amounts/Guidelines: 16 CCR section 1922

**ACP program
 authorities**

AB 1614 (Statutes of 1985)
 Activity Authorization: FAC section 12999.5(a)
 Appeal Process: FAC section 12999.5(b)
 Fine Amounts/Guidelines: 3 CCR section 6130

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