

Appendix J

Selected Director/DRC CAC Appeal Decisions

Background After a hearing, the Respondent has the right to appeal the Commissioner's Decision to the Director (for ACPs) or the DRC (for SCPs). A synopsis of the subjects of selected appeals from 2005 through 2022 follows.

For additional details, see the Decision attached to the Enforcement Letter. Note that for many older Letters, the Decision no longer available on DPR's website.

- ENF 2022-04 – *Docket Number 226*: An acknowledgement signature is not required on an inspection report. However, the inspected person must be requested to sign. For unsigned reports, provide an explanation.
- ENF 2021-15 – *Docket Number 223*: Allegations of a conflict of interest must be substantiated by evidentiary support.
- ENF 2021-14 – *Docket Number 225*: It is the applicator's responsibility to apply a pesticide in a way that it does not contact other persons. That responsibility cannot be transferred to the application equipment or complainants. The fact that complainants were wearing some personal protective equipment when drifted on does not outweigh the evidence in the record finding violation of FAC section 12973.
- ENF 2021-10 – *Docket Number 221*: An employer can be held responsible for the action(s) or negligence of an individual they hired, if the individual is acting within the scope of the individual's employment. Information supplied by an employee on behalf of the employer is evidence that may persuade a decision.
- ENF 2021-09 – *Docket Number 220*: When approved by a county and signed by a permit applicant, supplemental permit conditions become enforceable requirements with the force and effect of state law. An individual PCA is liable for failure to understand and comply with all permit conditions, including site-specific and supplemental permit conditions, for a pesticide application where the PCA has written the recommendation.
- ENF 2021-02 – *Docket Number 219*: Crop damage is not necessary for a violation of 3 CCR section 6614(a). Compliance with 3 CCR section 6614(a) during a previous application inspection does not demonstrate compliance during subsequent pesticide applications.
- ENF 2019-07 – *Docket Number S- 036*: Label requirement for weighted snakes indicates that water snakes must be filled to serve the purpose as a weight. FAC section 12973 does not require proof that a pesticide actually escaped, only that the use of the pesticide was in conflict with label instructions.
- ENF 2019-05 – *Docket Number S- 035*: While label does not specify the weight to be used for a snake, nearly empty non-weighted water snakes do not satisfy the purpose or requirements of the label and is insufficient under the label as a weighted item strong enough to hold the tarpaulin in place during adverse environmental conditions such as

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- strong wind. Such faulty equipment created a reasonable possibility of a health or environmental effect.
- ENF 2018-17 – *Docket Number 213*: The "including" language in section 6614(b)(3) does not limit that section to only drift onto public or private property that causes a health hazard preventing normal use of the property. The section is meant to prevent all contamination of non-target public or private property.
 - ENF 2018-03 – *Docket Number 210*: FAC section 12973 does not conflict with 22 CCR section 65529. The user can comply with the directions on the label and section 65529 concurrently. There are many instances where an individual, business, or other entity must comply with more than one set of laws and regulations, and more than one jurisdiction of authority. But unless there is a statement of exclusivity in the applicable Code then we are left to assume the legislative intent is for them all to apply simultaneously.
 - ENF 2017-13 - *Docket Number S- 029*: The CAC has the legal authority to charge either the licensee or the company and had the discretion to levy a penalty against the company.
 - ENF 2017-11 – *Docket Number S- 030*: 3 CCR section 6780(c) authorizes the Director to review and accept a Fumigation Safety Plan but does not require employers to follow the Plan. Correct section to cite would be 6780(b).
 - ENF 2017-07 – *Docket Number 206*: Laboratory analytical results are not the only type of evidence necessary to demonstrate drift. The detection of pesticides offsite, and not necessarily the amount, may be sufficient evidence to support a violation.
 - ENF 2016–17 – *Docket Number 202C*: Mandatory label statements (i.e. statements written in imperative or directive sentences) must be followed regardless of shifting “industry standards.”
 - ENF 2016–16 – *Docket Number 202B*: It can be unreasonable to fine for both not having a respiratory program and not having the elements in place that make up the program.
 - ENF 2016–15 – *Docket Number 202A*: When terms are not explicitly defined by statute or regulation, “courts generally extend considerable deference to an administrative agency’s interpretation of its own regulations or the regulatory scheme which the agency implements or enforces”.
 - ENF 2016–13 – *Docket Number 204*: FAC section 12973 is a law intended to mitigate risks to health, property and the environment. This includes label-required buffer zone agreements for fumigants.
 - ENF 2016–09 – *Docket Number 203*: Aggravating circumstances, including demonstrating disregard for the specific hazards of a pesticide, support elevating Class B violations to Class A. Actual illness or injury is unnecessary.
 - ENF 2015-18 – *Docket Number 201*: Under 6720(c), an employer is exempt from complying with 6738 through 6738.4 if the employer is complying with all the listed sections in 8 CCR.
 - ENF 2014-16 – *Docket Number 200*: It is faulty, careless, or negligent for a Pest Control Adviser to write a pest control recommendation for a site without first inspecting the site.

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- ENF 2014-06 – *Docket Number 198*: Failure to provide accurate information in a label-required document is tantamount to not providing the information at all.
- ENF 2014-05 – *Docket Number 197*: 3 CCR section 6614(b)(1) applies broadly to all persons, including employers of applicators and operators of property on which applications occur. An employer is ordinarily liable for the employee’s actions during the course of the employee’s normal employment.
- ENF 2014-04 – *Docket Number 196*: Most reports prepared by a public employee within the scope of their duty are admissible as evidence in administrative civil penalty hearings. Hearsay evidence is admissible provided that it is used to supplement or explain other evidence presented. “Contamination” can include a relatively small amount of drift or a relatively low-toxicity pesticide.
- ENF 2013-17 – *Docket Number 191*: Applicators must perform pest control in a “careful” manner as required by 3 CCR 6600(b), which in some instances means going beyond the minimum requirements set forth in specific laws and regulations.
- ENF 2013-14 – *Docket Number 192*: FAC section 12973 is a strict liability statute, and a violation can be confirmed without any need to prove the appellant acted with any intent or unreasonableness. The applicator is responsible for ensuring that the pesticide labeling permits the application to the crop being treated.
- ENF 2013-13 – *Docket Number 190*: The PCA is responsible for identifying the crop to be treated when making their recommendation.
- ENF 2013-12 – *Docket Number 189*: An incomplete Fumigation Management Plan is sufficient to show that label directions were not followed. The onus is placed on the certified applicator performing the application to pass along critical safety information contained in the label to handlers working with the fumigant. This can also include information contained in and California’s regulations or restricted material permit conditions. Merely providing written materials (including an English-only label) may not be sufficient to comply with this communication requirement.
- ENF 2012-07 – *Docket Number S-023*: The OFN must be at the site prior to the fumigation. The CAC has the obligation to enforce the pesticide laws and regulations, as written, and does not have the legal authority to waive any provision of the law or regulation.
- ENF 2012-01 – *Docket Number 167*:
 - For a Class A violation, a health hazard is not necessarily a serious or an acute illness; it is also the risk of an adverse health effect.
 - 3 CCR section 6766(c) requires employers to take employees, suspected of having a pesticide-related illness or injury, immediately to a physician.
 - The time frame for an “immediate” action occurs when the employer has reasonable grounds to suspect an employee has a pesticide-related illness or injury. At that point, transporting the employee to a physician is the next required action.

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- The requirement to take an employee immediately to a physician is a requirement the employer must comply with and is not a decision that can be delegated to the employee. 3 CCR, section 6766(c), is not limited to workers who enter treated fields. In this case, the Director determined that it also applied to employees working adjacent to a treated area.
- ENF 2011-12 – *Docket Number S-021*: Circumstantial evidence can be sufficient to establish a credible fact pattern. The responsibility for complying with pesticide laws cannot be transferred from a licensee to others, such as an apartment or property manager. “Due diligence” is not an element of FAC section 12973.
- ENF 2011-05 – *Docket Number 176*: Use of information outside the record. The hearing officer is not required to discuss all the possible conclusions that can be drawn from the facts. Introduction of evidence over objection during a hearing.
- ENF 2011-04 – *Docket Number 174*: Relative to DPR’s Worker Safety Regulations, FAC section 12980 states the legislative intent is to “provide for the safe use of pesticides and for safe working conditions for farm workers, pest control applicators, and other persons handling, storing or applying pesticides, or working in and about pesticide treated areas.” There is no reference to “treated fields” in 3 CCR section 6766(c), thus it applies to all fieldworkers.
- ENF 2009-11 – *Docket Number 163*: 3 CCR section 6140(a) does not set forth a violation and is not a citable section. The CAC’s decision was based on a new determination of the facts. The Director found that the Hearing Officer’s determination of the facts controls as long as it is supported by sufficient evidence in the record.
- ENF 2009-10 – *Docket Number 162*: The disposal of empty pesticide bags falls under the definition of pesticide “handler”, the PPE required by the label is also required to dispose of the empty bags.
- ENF 2009-04 – *Docket Number 159*: Individuals who operate businesses are required to thoroughly investigate all laws, regulations, and requirements relating to the business, and comply with those requirements.
- ENF 2008-35 – *Docket Number 158*: Permit conditions can place obligations on both the property operator and the pest control business to share responsibilities for compliance with the permit conditions.
- ENF 2008-34 – *Docket Number 157*: PCB cannot be held vicariously liable for the actions of the owner of the property to refuse to wear label-required PPE. A more proper violation could have been 6600(b), but that was not charged by the NOPA.
- ENF 2008-30 – *Docket Number 156*: Lack of laboratory tests is insufficient to overturn a CAC decision where witness testimony and medical records can show a hazard was created.

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- ENF 2008-010 – *Docket Number 130 and New Requirements Governing CAC Hearings*: The Director’s Decision was appealed to Superior Court and the Fifth Appellate District Court of Appeals. The Court found that CAC hearings must comply with Chapter 4.5 of the APA (beginning at GC section 11400). The substantial change is that NOPAs must now also include the “Preparing for Your Administrative Pesticide Penalty Hearing” brochure. Director Affirmed CAC Decision as did Superior Court and Fifth Appellate Court of Appeals.
 - ENF 2008-004 – *Docket Number 150*: Intent is not an element of pesticide violations.
 - ENF 2007-022 – *Docket Number 144*: California’s pesticide regulations do not create exceptions to label requirements. Ignorance of the regulations is not a defense.
 - ENF 2007-014 – *Docket Number 142*: Two recommendations for two separate applications to two adjacent fields can be used to support the existence of two violations of 3 CCR 6614.
 - ENF 2007-006 – *Docket Number S-013*: Hearing Officer rulings in administrative hearings. Secondary lock requirements.
 - ENF 2007-005 – *Docket Number 136*: Translator discussing questions not asked by the parties, and not translating those questions into English for the record. Chain of custody and possible contamination of clothes from other sources.
 - ENF 2006-041 – *Docket Number 138*: To establish a violation of 6614(b)(1), it is not necessary to demonstrate that contamination occurred, only that a reasonable possibility of contamination was created.
 - ENF 2006-040 – *Docket Number 137*: Failure of the CAC to provide the Director the tape or transcript of the hearing record on appeal forces the CAC to withdraw the Order.
 - ENF 2006-039 – *Docket Number 133*: The Director cannot re-classify a violation or increase the fine on appeal.
 - ENF 2005-012 – *Docket Number 121*: The permit to possess a restricted material must be provided to the dealer “on the date the restricted material is delivered” (FAC 14010). If money changes hands, but the material is not delivered because no permit has been provided, there is no violation. This is also true of non-restricted pesticides and operator IDs under 6568(c).
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