

DA Participation in Enforcement Cases, Continued

**Enforcement
response
regulation**

DPR recommends CACs contact the DA after issuance of the Pesticide Episode Notification Record (DPR-ENF-114) to provide a timely opportunity for the DA to participate in the investigation. Upload a copy of the letter, memo, or email sent to the DA in the “Investigation Notifications” section in CalPEATS.

Information about the incident should be forwarded to the DA with a letter, memo, or email within 10 days after completion of an investigation. Attach a copy of the letter, memo, or email in the Enforcement Module in CalPEATS to document a “DA Referral” and leave the action open until the DA responds. Should the DA not take the case or not respond, note that in the Case Outcome Narrative in CalPEATS. The CACs must then pursue an enforcement response.

The following table summarizes DA participation in the prosecution of pesticide use violations, and is enclosed with the DA referral letter.

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Prosecution of Pesticide Violations Under the Food & Agricultural Code

	CIVIL	CRIMINAL
PROSECUTING AGENCY AUTHORITY For violations of Div. 6 (licensing violations) or Div. 7 (use violations) of Food & Agr. Code or Title 3 regulations issued under those authorities.	<i>FAC §11893 (Div.6) or §12998 (Div.7)</i> – “Any person who violates this division [Division 6 or 7, respectively] relating to pesticides or structural pest control devices, or any regulation issued pursuant to a provision of this division...is liable civilly.”	<i>FAC §11891 (Div.6) or §12996(a) (Div.7) [Misdemeanor]</i> – Every person who violates any provision of this division [Division 6 or 7, respectively] related to pesticides, or any regulation issued pursuant to a provision of this division relating to pesticides, is <u>guilty of a misdemeanor</u>... <i>FAC §12996(b) (Div.7) [Felony]</i>– “if the offense involves an intentional or negligent violation that created or reasonably could have created a hazard to human health or the environment, the convicted person shall be punished by ... or <u>in the state prison</u>...”
FINES & PENALTIES	<i>FAC §11893 (Div.6) or §12998 (Div.7)</i> 1st violation: \$3,000 - \$30,000 <u>Only FAC §12998 (Div.7)</u> 2nd violation is the same or similar to a prior violation OR “<u>intentional</u> violation resulted or reasonably could have resulted in the creation of a hazard to human health or the environment or in the disruption of the market of the crop or commodity involved” \$15,000 - \$75,000. Money recovered paid into the DPR Fund.	<i>FAC §11891 (Div.6)</i> - Fine of \$5,000 - \$50,000; or - Imprisonment of not less than 10 days nor more than 6 months, or - Both fine and imprisonment. <i>FAC §12996(a) (Div.7)</i> - Fine of \$5,000 - \$50,000; or - Imprisonment of not more than 6 months, or - Both fine and imprisonment.” 2nd conviction of the same provision of Div.7: \$10,000 - \$75,000 <i>FAC §12996(b) (Div.7)</i> – “if the offense involves an <u>intentional or negligent</u> violation that created or reasonably could have created a hazard to human health or the environment: - Imprisonment in a county jail not exceeding one year; or in the state prison; or fine of \$15,000 - \$100,000, or both the fine and imprisonment.”
STATUTE OF LIMITATIONS	<i>--FAC §11895 (Div. 6)</i> - “an action brought pursuant to this article shall be commenced by the director, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, <u>within two years of the occurrence of the violation</u>. ...” [Note: Commissioner not listed.] <i>--FAC §13000 (Div. 7)</i> - “an action brought pursuant to this article shall be commenced by the director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, <u>within three years of the occurrence of the violation</u>. ...” *Many DAs prefer to use Bus. & Prof. Code §17200 [unfair competition] for civil cases, which has a <u>four year</u> statute of limitations under Bus. & Prof. Code §17208.	The statute of limitations under FAC §13000 only applies to <i>civil cases</i> taken under the FAC. <i>Criminal prosecutions</i> taken under the FAC are governed by Penal Code §802 (misdemeanor; commenced within 1 year after commission of the offense) or Penal Code §801 (felony; commenced within 3 years after commission of the offense).

DA Participation in Enforcement Cases, Continued

DA investigation participation

The DA cannot direct any action of the CAC unless the DA takes the case or assigns an investigator to the case. Once a DA becomes involved in a case, it is best practice to inform a witness of the DA's involvement and that the person has the right to have an attorney present during the interview.

Statute of limitations

The statute of limitations for misdemeanor violations is one year from the occurrence of the violation. (Penal Code section 802.) Therefore, it is necessary to notify the DA as early as possible if the CAC believes the incident is one that should result in a criminal action by the DA. Under FAC section 13000, the statute of limitations for most civil pesticide use violations is three years from the occurrence of the violation.

If the CAC submits a case to the DA and does not hear back within 30 days, the CAC should assume the DA has opted not to pursue the case, and the CAC must move forward with its own enforcement action.

Templates

DPR has created templates for formal referrals to a DA. The purpose of the templates is to facilitate and encourage statewide consistency when incidents meeting Reportable Incident criteria have been initiated, and to provide for improved investigation tracking by the CAC and communication with their DA.

To familiarize the local DA with their authority under the FAC, include the table entitled "Prosecution of Pesticide Violations Under the Food & Agricultural Code" with the information forwarded to the DA.

CACs may develop their own contact letters or notification systems to accomplish the goal of timely and effective notification to their DA. The CAC should determine the correct person to provide the notice so that the notification is timely and effective.

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DA Participation in Enforcement Cases, Continued

Reportable Incident Investigation Participation Memo Template [County letterhead]

DATE: [Date]
TO: [District Attorney Name]
FROM: [CAC Name]
SUBJECT: Notification of Opportunity for DA Participation in Reportable Incident Investigation [Name of Case, Case Number]

Dear [District Attorney]:

Under Title 3, California Code of Regulations section 6128(e) the Agricultural Commissioner offers you an opportunity to participate in a pesticide episode investigation which meets the “Reportable Incident” criteria outlined in the Three Party Memorandum of Understanding among DPR, U.S. EPA Region IX, and CACASA.

On [date] a pesticide episode occurred near [Name of City]. The facts surrounding the “Reportable Incident,” as we know them at this time, are described in the enclosed Pesticide Episode Notification Record. Our office has already initiated an investigation. If your office would like to participate in the investigation, or would like more information about the incident, please contact [person’s name] of my staff at [phone number] as soon as possible to discuss it.

If we do not hear back from you within [appropriate time, such as “10 days”] we will assume you have no interest in being involved in the investigation.

Should you not wish to be involved at this time, we will also notify your office upon the completion of the investigation and provide your office with an opportunity to accept the case for possible civil or criminal prosecution.

[Insert CAC signature block]

Enclosure:
Pesticide Episode Notification Record for [Name of Case]

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DA Participation in Enforcement Cases, Continued

Reportable Incident Investigation Enforcement Referral Memo Template [County letterhead]

DATE: [Date]

TO: [District Attorney Name]

FROM: [CAC Name]

SUBJECT: Prosecution Opportunity: [Name of Case], [Case Number or other tracking number]

Dear [District Attorney]:

Our office has recently completed an investigation of an incident that occurred on [date] in [Name of County] County. The facts of the case, as we know them at this time, are described in the enclosed report.

This case appears to present violations of [Business and Professions Code (B&PC), California Food and Agricultural Code (FAC) and/or Title ____ California Code of Regulations) (_ CCR)] section(s) _____. We believe this case may be appropriate for either civil or criminal prosecution by your office.

Please check the appropriate box below and send a copy of this letter back as soon as possible. If you have any questions or would like to discuss this case in more detail, please contact [person's name] of my staff at [phone number] as soon as possible to discuss the incident. If we do not hear back from you within [appropriate time, such as "30 days"], we will assume you have no interest in this case and we will pursue it through our processes.

Enclosures:

Investigative Report for [Name of Case]

Prosecution of Pesticide Violations Under the Food & Agricultural Code

TO BE COMPLETED BY THE DISTRICT ATTORNEY'S OFFICE:

Date: _____

- ☐ We will defer to the Agricultural Commissioner for appropriate administrative action.
- ☐ We will accept this case. The Deputy District Attorney assigned to handle this case is:

Contact Name: _____

Phone Number/Email: _____

In the event your office accepts this case and later decides to not prosecute this matter, please inform our office immediately. **Please inform us when charges are filed and/or when the case is resolved.**

Section 3.9

Referring Cases for Statewide Action

Interprets 3 CCR section 6128

Improved compliance is the primary goal

Industry compliance with state and local pesticide use requirements is a primary goal of the pesticide enforcement program. This goal is achieved through outreach, education, training, and a variety of enforcement tools such as:

- administrative civil penalties,
- license, certificate, registration and/or permit suspensions or revocations, and
- cease and desist orders, abatement orders, seizure/hold actions and prohibit harvest orders.

Pesticide administrative civil penalties are intended to get the attention of violators and effect a positive behavior change before higher-level actions and prosecution become necessary.

Use the administrative civil penalty processes

CACs' primary means of addressing violations of laws and regulations is through the administrative civil penalty processes authorized by FAC sections 12999.5, 15204, 15204.5, and B&PC sections 8617 and 8663.

In nearly all cases, the agricultural or structural civil penalty processes and other enforcement options available to the CAC should be used before referring a matter to the Director or the Structural Pest Control Board.

Reasons for referral to DPR or SPCB

The four major reasons for initiating statewide enforcement action are:

- A pattern of violations and enforcement actions that make it apparent that the violator is making no serious or effective compliance effort.
- A pattern of violations resulting in enforcement actions in multiple counties.
- A single violation where the gravity of the violation (see next page) warrants a higher fine level or penalty than usually obtained or available at the county level.
- Failure to comply with terms of license probation or suspension.

Note: For structural violations, consult Appendix I.4 for a list of violations the CAC must forward to the Board prior to taking a civil penalty action.

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