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*Assembly
California Legislature*

**ASSEMBLY COMMITTEE ON
ENVIRONMENTAL SAFETY
AND TOXIC MATERIALS**

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AGENDA

Tuesday, January 9, 2018
1:30 p.m. -- State Capitol, Room 444

AB 1419 Quirk

Pesticides: penalties for violations: civil penalty.



Date of Hearing: January 9, 2018

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bill Quirk, Chair
AB 1419 (Quirk) – As Amended September 13, 2017

SUBJECT: Pesticides: penalties for violations: civil penalty

SUMMARY: Authorizes the Department of Pesticide Regulation (DPR) to initiate and maintain enforcement actions and to levy civil penalties for specified pesticide use violations.

Specifically, **this bill:**

- 1) Authorizes the director of DPR (director) to initiate and maintain enforcement actions for pesticide use violations specified in this bill and to levy the civil penalty described in this bill, or to refer any of those violations to the proper enforcement agency, including to the district attorney of the county in which the violations occurred or to the Attorney General.
- 2) Authorizes the director to initiate and maintain enforcement actions and to levy civil penalties, including referral to the proper enforcement agencies, if she or he determines that any of the following conditions apply to violations of specified pesticide use statutes and implementing regulations:
 - a) The violation was committed in multiple jurisdictions;
 - b) The violation was not an appropriate matter to be enforced by a County Agricultural Commissioner (CAC); or,
 - c) The violation involved a priority investigation involving human or environmental health effects, as defined in the 2005 Cooperative Agreement, or subsequent modifications to that agreement, among DPR, the California Agricultural Commissioners and Sealers Association, and the United States Environmental Protection Agency (USEPA), Region 9.
- 3) Authorizes the director to levy a civil penalty of not more than \$25,000 for each violation.
- 4) Authorizes DPR to adopt regulations to enforce the provisions of this bill.
- 5) Provides that before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and that person shall have the right to request a hearing within 20 days after receiving notice of the proposed action.
- 6) Provides that a notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address.
- 7) Provides that, if a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing.

- 8) Provides that before the hearing, the person shall be given an opportunity to review the director's evidence.
- 9) Provides that at the hearing, the person shall be given the opportunity to present evidence on his or her own behalf.
- 10) Provides that if a hearing is not timely requested, the director may take the action proposed without a hearing.
- 11) Provides that if the person against whom the director levied a civil penalty requested and appeared at a hearing, the person may seek judicial review, as specified, of the director's decision within 30 days of the date of the decision.
- 12) Authorizes the director, or his or her representative, after exhaustion of the review procedure provided in this bill, to file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for writ of administrative mandamus, with the clerk of the superior court of any county.
- 13) Provides that judgment shall be entered immediately by the clerk in conformity with the decision or order.
- 14) Prohibits fees from being charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this bill.
- 15) Requires that any money recovered under the provisions of this bill be paid to the investigating CAC to reimburse the cost of the investigation with the remainder going into the Department of Pesticide Regulation Fund for use by DPR, upon appropriation, to administer agricultural chemicals, livestock remedies, and commercial feeds (pesticides) law and pest control operations law.
- 16) Specifies that the provisions of this bill shall apply only to violations that occur on or after January 1, 2019.
- 17) Makes other conforming changes.

EXISTING LAW:

- 1) Provides that in all cases where provisions of the Food and Agriculture Code (FAC) place joint responsibility for the enforcement of laws and regulations on the director and the CAC, the CAC shall be responsible for local administration of the [pesticide] enforcement program. Provides that the director shall be responsible for overall statewide enforcement and shall issue instructions and make recommendations to the CAC. (FAC § 2281)
- 2) Provides that every person who violates any provision of the pesticides division of the FAC relating to pesticides, with a few exceptions, or any regulation issued pursuant to those provisions, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$500 nor more than \$5,000, or by imprisonment of not more than six months, or by both the fine and imprisonment. Provides that upon a second or subsequent conviction of the same violation, a person shall be punished by a fine of not less than \$1,000 nor more than

- \$10,000, or by imprisonment of not more than six months, or by both the fine and imprisonment. Provides that each violation constitutes a separate offense. (FAC § 12996 (a))
- 3) Provides that if the offense referenced above 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 imprisonment in a county jail not exceeding one year or in the state prison or by a fine of not less than \$5,000 nor more than \$50,000, or by both the fine and imprisonment. (FAC § 12996 (b))
 - 4) Provides that any person who is found in violation of any provision of the pesticides division of the FAC or any regulation related to pesticides that results in illness or injury requiring emergency medical transport or immediate medical treatment of any individual in a nonoccupational setting from any pesticide used in the production of an agricultural commodity, shall be liable to the individual harmed or to the medical provider for the immediate costs of uncompensated medical care from acute injuries and illnesses of the exposed individual. (FAC § 12997.5)
 - 5) Provides that any person who violates the pesticides division of the FAC relating to pesticides or structural pest control devices, or any regulation issued pursuant to those provisions, is liable civilly in an amount not less than \$1,000 nor more than \$10,000 for each violation. Provides that any person who commits a second or subsequent violation that is the same as or similar to a prior violation, or whose intentional 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, is liable civilly in an amount not less than \$5,000 nor more than \$25,000 for each violation. (FAC § 12998)
 - 6) Authorizes the director of DPR, in lieu of civil prosecution, to levy a civil penalty of not more than \$5,000 for each violation against a person who violates specified sections of the FAC relating to, among other things, the Healthy Schools Act, structural pest control, pesticide sales, pesticide licensing fraud, and, pesticide registration. (FAC § 12999.4(a))
 - 7) Authorizes the CAC, in lieu of civil prosecution by the director, to levy a civil penalty of not more than \$1,000 against a person violating specified provisions of law or regulations relating to, among other things, pest control operations, pesticides and worker safety, use of restricted materials, pesticide recommendations and usage requirements, carbon monoxide pest control devices, or structural pest control devices. (FAC § 12999.5 (a))
 - 8) Provides that any violation of the above specified statutes and regulations determined by the CAC to be a Class A violation as defined in the California Code of Regulations (i.e. a serious violation that caused a health, property, or environmental hazard) is subject to a fine of not more than \$5,000 for each violation. (FAC § 12999.5 (a))
 - 9) Sets up a process of notice, hearing, and appeal that CACs must follow when levying a civil penalty against a person violating pesticide use law. (FAC § 12999.5 (b- f))
 - 10) Defines a Class A violation as one of the following: a violation that caused a health, property, or environmental hazard; a violation of a law or regulation that mitigates the risk of adverse health, property, or environmental effects, and the CAC determines specified aggravating

circumstances support elevation to Class A; or, a violation of a lawful order of the CAC issued pursuant to specified sections of law. (3 Cal Code of Regulations 6130 (b)(1))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "When pesticides are improperly applied, they can cause significant harm to people and the environment. Over the last several years, illegal uses of pesticides have caused numerous pesticide illnesses in farmworkers (working in adjacent fields), children (chlorine poisoning from swimming pool), and residents (multi-unit housing pest treatment). Current penalty amounts for these serious violations are not adequate and warrant higher fines. In addition, cases involving serious violations are first argued at county administrative hearings and then frequently appealed to the Department of Pesticide Regulation (DPR) Director, and subsequently to the Superior Court. In each hearing, staff biologists with the County Agricultural Commission (CAC) argue the case. DPR, who has knowledgeable attorneys on staff, is not statutorily authorized to argue the case. DPR attorneys can only provide advice to the staff biologist handling the case. Lastly, when there is an incident that spans over multiple counties, the CACs ability to act may be limited. In these cases, it would be appropriate for DPR to intervene on behalf of the CACs."

Pesticide use enforcement authority: Pesticide use in California is controlled by federal, state, and local governmental entities. The USEPA sets minimum pesticide use standards and delegates pesticide enforcement regulatory authority to the states. State law designates DPR as the agency responsible for delivering an effective statewide pesticide regulatory program in California. The Legislature has also delegated local pesticide use enforcement to County Agricultural Commissioners (CACs). DPR describes that it works in partnership with the CACs by planning and developing adequate county programs; evaluating the effectiveness of the local programs; and, ensuring that corrective actions are taken in areas needing improvement. CACs enforce state pesticide laws and regulations in agricultural, structural, and nonagricultural use settings in all 58 counties.

DPR maintains that while it currently has the authority to administratively enforce violations related to pesticide registration, sale, illegal residue, and licensing fraud, the local CACs maintain the statutory authority to administratively enforce pesticide use violations.

This bill will additionally authorize DPR to initiate and maintain enforcement actions, in accordance with specified procedural and other requirements, for specified pesticide use violations. These violations include those that are committed in multiple jurisdictions; that are not an appropriate matter to be enforced by a CAC; or, that involve a priority investigation involving human or environmental health effects, as defined in the 2005 Cooperative Agreement among DPR, the California Agricultural Commissioners and Sealers Association, and USEPA. Priority investigations include serious pesticide incidents, such as those causing death, serious injury, or illness, or any single injury or illness episode involving five or more persons; contamination of a drinking water supply affecting 10 or more households; contamination of land or soil resulting in 1/2 acre or more not usable for intended purposes for one year or more; non-target animal and wildlife mortality that exceeds specified levels; or, damage to any property, equipment, or livestock (including bees) that is estimated to represent a \$20,000 loss, or 20% crop yield loss.

Civil pesticide use violation penalty authority: Since the mid-1980s, CACs have held the statutory authority to levy civil penalties, with a \$500 cap, against a person violating pesticide use provisions of the FAC. In 1989, the Legislature raised the maximum civil penalty amount that a CAC could levy for pesticide use violations to \$1,000. Then in 2000, SB 1970 (Costa, Chapter 806, Statutes of 2000) authorized DPR to administratively enforce specified, more serious pesticide use violations with a penalty of up to \$5,000 per violation. The \$5,000 penalty cap was a five-fold increase over the penalty amount CACs could levy at the time. In 2002, the Governor signed AB 947 (Jackson, Chapter 457, Statutes of 2002) into law to raise the maximum civil penalty per violation that a CAC could levy for a pesticide use violation to \$5,000, which created an equal penalty limit to that granted to DPR for more serious violations. It appears that because the CACs and DPR could, at the time, levy equal penalties for pesticide use violations, the Legislature allowed the FAC provisions that authorized DPR to levy civil penalties for pesticide use violations to sunset.

This bill would reinstate the sunsetted FAC provisions that granted DPR discretionary authority to administratively enforce specified, typically serious pesticide use violations, but with a penalty cap higher than those authorized by SB 1970 (Costa, Chapter 806, Statutes of 2000). This bill sets the maximum penalty per violation that DPR can levy for specified violations at \$25,000, which is, as it was in SB 1970, five times the penalty that CACs can levy.

Criminal prosecution for pesticide use violations: Statute delineates penalty amounts and terms of imprisonment for criminal violations of pesticide law. For example, for an offense that involves an intentional or negligent violation that created or reasonably could have created a hazard to human health or the environment, the convicted person may be punished by imprisonment in a county jail not exceeding one year or in the state prison or by a fine of not less than \$5,000 nor more than \$50,000, or by both the fine and imprisonment. The CACs and DPR do not have the authority to bring criminal actions. Criminal prosecution requires referral to the Attorney General or district attorney, and requires substantial staff time and financial resources. The Attorney General or district attorney may decline to take the case. While this bill does not impact current statute regarding criminal prosecution, it would authorize DPR to directly levy civil penalties of up to \$25,000 in specific, mainly serious, pesticide use violation cases.

Recent priority investigations: As mentioned above, priority investigations, as defined in the 2005 Cooperative Agreement, include serious pesticide incidents that cause impacts such as death, serious injury, or illness; contamination of drinking water supplies, air, or land; non-target animal and wildlife mortality; or property damage. This bill authorizes DPR to impose a civil penalty for pesticide use violations that involve a priority investigation involving human health or environmental health effects.

DPR compiled the following table of priority investigations from 2012-2017, which helps provide a better understanding of the potential scope of the bill.

Year	Human (accidental exposures)	Human (self harm, intentional ingestion)	Other (report of loss, wildlife, environmental)	Total	Total resulting in enforcement actions
2012	49	20	8	77	21
2013	40	15	8	63	21
2014	72	39	14	125	26
2015	63	15	11	89	18*
2016	60	6	15	81	9*
2017	50	10	18	78	1*

* Includes investigations with pending enforcement actions. Because the 2 year statute of limitation for many of these cases has not expired, more enforcement actions may ultimately be taken for violations occurring in 2015 – 2017.

DPR reports that from 2012-2017, there were 513 priority investigations reported. Ninety six of those investigations resulted in an enforcement action. Based on the average number of priority investigations resulting in an enforcement action from 2012-14, DPR anticipates that, should this bill be enacted, it could be involved in roughly 10-23 reported priority investigations per year.

Arguments in support: DPR writes, "This bill is intended to strengthen the State's pesticide enforcement program in order to better protect the public and the environment... DPR works in partnership with the county agricultural commissioners (CACs) who carry out and enforce federal and state pesticide laws and regulations at the local level. CACs issue site-specific local permits for the use of restricted materials, conduct on-site application inspections, administer full pesticide use reporting, conduct worker safety inspections, and investigate pesticide incidents. Currently, the maximum fine that can be levied against pesticide use violations is \$5,000 per incident. Pesticide use enforcement is a critical part of DPR's regulatory program. For incidents that result in human illness or significant environmental damage, the \$5,000 maximum fine is not always adequate, and a higher maximum fine would be more appropriate... Assembly Bill 1419 would allow DPR the authority to work with the CAC to take appropriate enforcement action against individuals or companies who violate pesticide use laws. By increasing the maximum penalty amount to \$25,000 per violation, we will be able to better assure Californians that the pesticide applications made in California are being done in a safe and responsible manner."

Breast Cancer Prevention Partners, Environmental Working Group, and Pesticide Action Network North America write in support, "The problems of pesticide drift affecting California communities are ongoing, real and preventable. At least four significant, documented pesticide drift incidents this past summer affected over 100 farmworkers, with pesticides traveling over 1/2 mile in one case. This legislation will deter future violations by giving DPR stronger and more comprehensive enforcement authority."

Arguments in opposition: The opponents write in a joint letter, "We understand that Section 2 [of the bill] was previously in statute that expired January 2006. While we support reinstating the law as previously written, there are two changes we cannot support as written and would like to offer alternative language... The first change would be to remove the comma after the word jurisdictions in line 2 of (b)... There was no comma in the original statute and the addition of the

comma creates a greatly expanded authority for the DPR Director to choose when they believe it is appropriate to usurp the local agricultural commissioner on a vast array of pesticide decisions... Reinserting the comma would limit the director's authority to violations committed in multiple jurisdictions which would conform to original intent of the law. The second change would be to restore the civil penalty authority that was in the original statute, which was \$5,000... There were 4 priority agricultural violations in 2016 and 1 in 2017. While no violation is the goal, it is important to keep in mind that millions of individual applications occur each year. Additionally, we believe the current enforcement response structure which is applied statewide and was carefully reviewed before being put into regulation in 2010 gives wide latitude to impose penalties commensurate with the classification and intent. Under current law, the authority exists to pursue both criminal and civil penalties."

Committee amendments: The Committee may wish to consider amending the bill as follows:

- 1) Make technical changes to ensure statutory consistency. Therefore, amend the bill as follows:

FAC § 12999.6 (e) After exhaustion of the review procedure provided in this section, the director, or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. ~~No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.~~ Pursuant to Section 6103 of the Government Code, the clerk of the superior court shall not charge a fee for the performance of any official service required in connection with the entry of judgment pursuant to this section.

- 2) Include the new provisions in the bill in existing statute related to medical transport or medical treatment as a result of pesticide illness or injury. Therefore, amend the bill as follows:

FAC § 12997.5 (a) In addition to any penalties paid in connection with an enforcement action taken pursuant to Sections 12996, 12997, 12999, and 12999.5 and 12999.6, any person who is found in violation of any provision of this division related to pesticides or any regulation related to pesticides adopted pursuant to this division that results in illness or injury requiring emergency medical transport or immediate medical treatment of any individual in a nonoccupational setting from any pesticide used in the production of an agricultural commodity, shall be liable to the individual harmed or to the medical provider for the immediate costs of uncompensated medical care from acute injuries and illnesses of the exposed individual.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Pesticide Regulation (sponsor)
Breast Cancer Prevention Partners
California Rural Legal Assistance Foundation (CRLAF)

Environmental Working Group
Pesticide Action Network (PAN) North America

Opposition

Agricultural Council of California
California Farm Bureau Federation
Western Growers Association
Western Plant Health Association

Analysis Prepared by: Shannon McKinney / E.S. & T.M. /