

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA**

In the Matter of the Decision of
the Agricultural Commissioner of
the County of San Diego
(County File No. 032-ACP-SD-02/03)

Administrative Docket No. 120

DECISION

**THE BEJOCA COMPANY
P.O. Box 2168
Fallbrook, California 92088-**

Appellant /

Procedural Background

Under Food and Agricultural Code (FAC) section 12999.5 and section 6130 of Title 3, California Code of Regulations (3 CCR), county agricultural commissioners may levy a civil penalty up to \$1,000 for certain violations of California's pesticide laws and regulations.

After giving notice of the proposed action and providing a hearing, the San Diego County Agricultural Commissioner (CAC) found that the appellant, the Bejoca Company, violated three of the State's pesticide regulations, specifically 3 CCR sections 6602, 6726(b), and 6738(c). The commissioner imposed a total penalty of \$352 for the violations.

The Bejoca Company appealed from the commissioner's civil penalty decision to the Director of the Department of Pesticide Regulation. The Director has jurisdiction in the appeal under FAC section 12999.5.

Standard of Review

The Director decides the appeal on the record before the Hearing Officer. In reviewing the commissioner's decision, the Director looks to see if there was substantial evidence, contradicted or uncontradicted, before the Hearing Officer to support the Hearing Officer's findings and the commissioner's decision. The Director notes that witnesses sometimes present contradictory testimony and information; however, issues of witness credibility are the province of the Hearing Officer.

The substantial evidence test requires only enough relevant information and inferences from that information to support a conclusion, even though other conclusions might also have been reached. In making the substantial evidence determination, the Director draws all reasonable inferences from the information in the record to support the findings, and reviews the record in the light most favorable to the commissioner's decision. If the Director finds substantial evidence in the record to support the commissioner's decision, the Director affirms the decision.

Facts

During the hearing, the appellant stipulated (agreed) to the facts as follows:

While driving in the area on June 10, 2002, a San Diego county agricultural inspector observed a person spraying liquid from a backpack sprayer near the intersection of Alvarado and Vine Streets in Fallbrook, California, and this person was not wearing protective gloves. The agricultural inspector pulled her vehicle over, identified herself, and subsequently conducted a Pesticide Use Monitoring Inspection.

During the inspection, the inspector learned that this person, employed by the Bejoca Company (Bejoca), was spraying Turflon Ester (E.P.A. No. 17545-8). The Turflon Ester container bears the statement:

“See Attached Labeling Precautionary Statements and Directions For Use.”

The above-referenced supplemental label was not attached to the container, nor was it present at the use site. The inspector also discovered that no emergency medical information was posted inside the work vehicle.

3 CCR sections 6602, 6726(b), and 6738(c)

During the hearing, the Appellant stipulated to violating the following sections of 3 CCR: section 6602 (*Availability of Labeling*), section 6726(b) (*Emergency Medical Care*), and section 6738(c) (*Personal Protective Equipment Gloves- When Required by Pesticide Product Labeling*). In his written appeal, the Appellant does not contest having violated these sections, but instead, raises various allegations, which will be summarized and analyzed below.

Appellant’s Allegations

- The Appellant alleged that he “was denied a speedy resolution of an administrative action.”

FAC section 13000 provides that a county agricultural commissioner must commence an administrative civil penalty action within two years of the occurrence of the violation.

The record indicates that the inspector originally issued the Notice of Violation on June 10, 2002, but that Bejoca’s employee refused to sign it. On June 27, 2002, after reviewing the complete Turflon Ester label with the Appellant, the inspector issued an amended Notice of Violation. The Notice of Proposed Action was dated on April 21, 2003, signed by the commissioner on April 22, 2003, postmarked on May 1, 2003, and received by Bejoca on May 5, 2003. Thus, the CAC commenced the administrative penalty action well within

the two-year statute of limitations. Additionally, although not required by FAC section 13000, both the administrative civil penalty hearing and the proposed decision were completed within the two-year statute of limitations, since the hearing was conducted on March 30, 2004, and the proposed decision was issued on April 14, 2004. Therefore, this allegation is without merit.

- The Appellant alleged that the levying of fines is a subjective process, and that a fine was levied against him because he is a licensed applicator. The Appellant contends that he was treated prejudicially because, in his opinion, non-licensed applicators are treated more leniently than licensed applicators.

FAC section 12999.5 authorizes the commissioner to levy fines for violations of certain State pesticide laws and regulations. Section 12999.5 authorizes a fine up to \$1,000 for each violation.

When levying these fines, the commissioner must follow the fine guidelines outlined in 3 CCR section 6130. Under section 6130, a minor violation is one that did not create an actual health or environmental effect or did not pose a reasonable possibility of creating a health or environmental effect, and the fine range is \$50 to \$150 per violation; a moderate violation is a repeat of a minor violation or one that posed a reasonable possibility of creating a health or environmental effect, and the fine range is \$151 to \$400 per violation; and a serious violation is a repeat of a moderate violation or one that created an actual health or environmental hazard, and the fine range is \$401 to \$1,000 per violation.

The CAC assessed each of the fines at the lowest possible fine amount within each violation classification, after carefully reviewing evidence, and considering various factors, such as Bejoca's violation history and the potential for harm caused by the violations. Section 6602 was classified as a minor violation and the fine was assessed at \$50, because Bejoca's failure to provide a copy of the registered labeling did not create or pose a reasonable possibility of creating a health or environmental effect. Section 6726(b) was classified as a moderate violation and the fine was assessed at \$151. A reasonable possibility of a health effect was created, because failure to post emergency medical care information in a work vehicle may delay medical attention in the event of a pesticide exposure. Finally, section 6738(c) was classified as a moderate violation with a fine of \$151. The violation of section 6738(c) posed a reasonable possibility of creating a health effect, since the registered label for Turflon Ester states: "CAUTION Harmful if . . . absorbed through skin. Avoid contact with . . . skin." For these reasons, the CAC properly classified each of the violations, assessed the fines in a manner consistent with 3 CCR section 6130, and did not treat the Appellant in a prejudicial manner.

Regarding the Appellant's contention that non-licensees are treated more leniently than licensed applicators, pest control licensees are held to a higher standard than an ordinary person since they are trained in the handling and use of pesticides. The business of pest control is a highly regulated industry; pest control licensees are expected to know and to comply at all times with the State's pesticide laws and regulations. For these reasons, this allegation is without merit.

- The Appellant also contests that the fines were levied solely for statistical purposes, and that worker safety is not improved by Bejoca paying the fine. The Appellant did not offer any facts or evidence to support this allegation.

A paramount goal of California's pesticide regulatory program is to provide for the safe working conditions for farmworkers, pest control applicators, or other persons handling, storing, or applying pesticides, or those working in and around pesticide-treated areas. In furtherance of this goal, CACs issue administrative civil penalties for violations listed in FAC section 12999.5 in a manner consistent with 3 CCR section 6130, when violations are found. The intent of the administrative civil penalty process is to deter future violations, and to ensure compliance with the State's pesticide laws and regulations. Therefore, this allegation is also without merit.

Conclusion

The record shows the commissioner's decision is supported by substantial evidence and there is no cause to reverse or modify the decision.

Disposition

The commissioner's decision is affirmed. The commissioner shall notify the appellant how and when to pay the \$352 fine.

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Judicial Review

Under FAC section 12999.5, the appellant may seek court review of the Director's decision within 30 days of the date of the decision. The appellant must file a petition for writ of mandate with the court and bring the action under Code of Civil Procedure section 1094.5.

**STATE OF CALIFORNIA
DEPARTMENT OF PESTICIDE REGULATION**

By: original signed by _____ Dated: August 19, 2004 _____
Paul Gosselin
Acting Director