

District Attorney Prosecution of Pesticide Violations under Food & Agricultural Code

	CIVIL	CRIMINAL
<p>DA AUTHORITY</p> <p>For violations of Div. 6 (licensing violations) or Div. 7 (use violations) of Food & Agr. Code or Title 3 regulations issued under those authorities.</p>	<p><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.”</p>	<p><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>...</p> <p><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>...”</p>
<p>FINES & PENALTIES</p>	<p><i>FAC §11893 (Div.6) or § 12998 (Div.7)</i></p> <ul style="list-style-type: none"> • 1st violation: \$3,000 - \$30,000 <p><u>Only FAC § 12998 (Div.7)</u></p> <ul style="list-style-type: none"> • 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” <ul style="list-style-type: none"> ○ \$15,000 - \$75,000. <p>Money recovered paid into the DPR Fund.</p>	<p><i>FAC §11891 (Div.6)</i></p> <ul style="list-style-type: none"> • Fine of \$5,000 - \$50,000; or • Imprisonment of not less than 10 days nor more than 6 months, or • Both fine and imprisonment. <p><i>FAC §12996(a) (Div.7)</i></p> <ul style="list-style-type: none"> • 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 <p><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:</p> <ul style="list-style-type: none"> • 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.”
<p>STATUTE OF LIMITATIONS</p>	<p><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.]</p> <p><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>. ...”</p> <p>*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.</p>	<p><i>FAC §11895 (Div. 6)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 two years of the occurrence of the violation</u>. ...”</p> <p>*NOTE: Some DAs are of the opinion that this FAC §13000 only applies to <i>civil cases</i> taken under the FAC, and that <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).</p>