

The 2022-23 Budget: Pesticide Enforcement

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Summary. In this post, we assess the Governor’s 2022-23 budget proposals to: (1) provide the Department of Pesticide Regulation (DPR) with administrative penalty authority to enforce pesticide use violations, (2) increase several existing pesticide use penalties, (3) enhance DPR’s pesticide residue enforcement and penalty authority, (4) increase several existing administrative penalties for pesticide sales and licensing violations, (5) provide funding to DPR for positions to investigate and pursue pesticide use and residue enforcement cases, and (6) provide funding to DPR for the Attorney General’s Office to represent the department in civil and criminal pesticide use enforcement actions. Overall, we find merit in increasing DPR’s statutory authority to enforce pesticide use and residue violations, as well as providing funding to support these efforts. We recommend the Legislature increase pesticide-related penalties to levels it thinks will effectively deter violations—either by adopting the Governor’s proposed penalty levels or through somewhat comparable increases.

Background

DPR Is Responsible for Regulating Pesticides. While pesticides can protect people and agricultural products from pests, their improper use can be hazardous. DPR is charged with protecting public health and the environment by regulating pesticide sales and use. The department is responsible for evaluating and registering pesticide products at the state level, assessing the health and environmental impacts of pesticides, and encouraging alternative pest management practices through grants and incentives. DPR is responsible for licensing individuals and businesses that sell, consult on, or apply pesticides. The department may levy administrative penalties of up to \$5,000 on those who violate sales and

licensing laws and regulations. The department also oversees local enforcement of pesticide use laws and regulations by County Agricultural Commissioners (CACs) and tests pesticide residues of fresh produce—both of which we discuss in more detail below.

Most Pesticide Use Enforcement Is Conducted by CACs. Currently, most of the responsibility for enforcing the lawful use of pesticides lies with CACs. Specifically, state statute tasks CACs with being the primary enforcement agencies for pesticide use laws and regulations, such as illegal application, worker protections, and pesticide drift. (Drift is the movement of pesticide dust or droplets through the air at the time of application or soon after to any site other than the area intended.) DPR uses its statewide authority to oversee, evaluate, and improve local pesticide use enforcement by CACs.

CACs Have Statutory Authority to Levy Administrative Penalties for Pesticide Use Violations. CACs have the sole authority to administratively enforce pesticide use violations. (DPR previously was able to levy penalties for certain pesticide use violations, however, that statutory authority expired in 2006.) CACs may levy administrative penalties of up to \$5,000 for each violation. The administrative penalties levied by CACs are governed by DPR regulations that categorize violations according to level of severity. For instance, penalties for serious (Class A) violations—those that cause health, property, or environmental hazards—can reach \$5,000, whereas penalties for moderate (Class B) violations—those that violate laws or regulations—are capped at \$1,000.

Pesticide Use Violations Also Subject to State Civil and Criminal Penalties and Federal Penalties. Pesticide users who violate state laws can also face civil and criminal enforcement actions.

Civil and criminal cases can be filed by a county district attorney at the request of a CAC or by the state Attorney General's Office at the request of DPR. Civil and criminal proceedings are considered for repetitive, negligent, or intentional violations that have created a hazard to human health or the environment. Civil penalties range from \$1,000 to \$25,000 for each violation, while criminal penalties range from \$500 to \$50,000 per violation, along with potential imprisonment. Additionally, the United States Environmental Protection Agency (U.S. EPA) may independently bring pesticide use enforcement cases upon referral. U.S. EPA can levy penalties of roughly \$9,000 for violations of federal pesticide use requirements, but for serious violations, penalties can be as high as \$50,000 along with potential imprisonment.

DPR Is Responsible for Pesticide Residue Monitoring. DPR administers a statewide monitoring program that samples and analyzes domestic and imported fresh produce for pesticide residues. DPR collects samples from various locations such as packing sites, wholesale and retail markets, and farmers markets. Residue monitoring is based on enforcing U.S. EPA tolerances—the maximum amount of a pesticide allowed to remain in or on a food. If illegal residues are found, DPR quarantines and removes the illegal produce from sale. The department can levy administrative penalties of up to \$5,000 for certain pesticide residue violations, such as for selling produce that carries pesticide residue in excess of the permissible tolerance levels.

Governor's Proposals

As part of the budget for 2022-23, the Governor proposes to (1) provide DPR with administrative penalty authority to enforce pesticide use violations, (2) increase several existing pesticide use penalties, (3) enhance DPR's pesticide residue enforcement and penalty authority, (4) increase several existing administrative penalties for pesticide sales and licensing violations, (5) provide

funding for DPR positions to investigate and pursue pesticide use and residue enforcement cases, and (6) provide funding for DPR to retain the Attorney General's Office to represent the department in civil and criminal pesticide use enforcement actions.

Figure 1 provides an overview of the Governor's proposed changes to pesticide use, residue, and licensing and sales penalties, which we describe in more detail below. The Governor also proposes statutory language that would authorize the Director of DPR to adjust the new administrative and civil penalty levels for inflation in future years.

Authorizes DPR to Enforce Administrative Penalties for Serious Pesticide Use Violations.

The Governor proposes budget trailer legislation to provide DPR with the authority to levy administrative penalties of up to \$20,000 for pesticide use violations. The proposal would change state law to allow DPR—instead of a CAC—to levy administrative penalties for multi-jurisdictional pesticide use violations that have serious human or environmental health impacts. This authority would apply specifically for “priority investigations” that involve multiple counties or a person who is the subject of an investigation in multiple counties. Priority investigations include pesticide incidents that cause serious impacts such as death or illness; contamination of drinking water, air, or land; animal and wildlife mortality; or property damage.

Figure 1

Governor's Proposed Changes to State Pesticide Penalties

Penalty Type	Existing	Proposed ^a
Pesticide Use		
DPR administrative	None	Up to \$20,000
CAC administrative	Up to \$5,000	Up to \$15,000
Civil	\$1,000 to \$25,000	\$3,000 to \$75,000
Criminal	\$500 to \$50,000	\$5,000 to \$100,000
Residue		
DPR administrative	Up to \$5,000	Up to \$15,000 ^b
Licensing and Sales		
DPR administrative	Up to \$5,000	Up to \$15,000

^a The proposed statute would authorize the Director of DPR to adjust administrative and civil penalty levels for inflation in future years.

^b Adds new penalties for (1) failing to provide produce sale and distribution information when requested by DPR and (2) distributing/moving quarantined produce.

DPR = Department of Pesticide Regulation and CAC = County Agricultural Commissioner.

DPR also would be able to levy administrative penalties if a CAC and the Director of DPR agree that enforcement by the department would be more appropriate, or if the Director finds that a CAC failed to discharge their duties. Because serious pesticide use violations are relatively rare, the department estimates that its use of this new authority likely would be somewhat infrequent. Specifically, DPR estimates it might levy one administrative penalty every two years.

Increases Several Existing Pesticide Use Penalties. As shown in Figure 1, the Governor's proposed budget trailer legislation also would make several changes to existing pesticide use penalties. First, the proposed legislation would increase CAC administrative penalties to up to \$15,000 for each violation. (Class A violations could result in a fine of up to \$15,000, while lower-level violation penalties would be capped at \$3,000.) Second, the legislation would increase civil penalties to a minimum of \$3,000 and a maximum of \$75,000 for each violation, while criminal penalties would increase to a minimum of \$5,000 and a maximum of \$100,000 per violation. (The Governor does not propose any adjustments to minimum and maximum prison sentences for criminal penalties.)

Expands DPR Pesticide Residue Enforcement and Penalty Authority. The Governor's proposed budget trailer legislation also authorizes DPR to request sales and distribution records for produce grown, processed, shipped, and sold in the state. The legislation would allow DPR to levy new administrative penalties of up to \$15,000 for entities who do not provide this information within 48 hours after being requested. DPR indicates that this information would only be requested after the department identifies that a particular lot of produce carries illegal pesticide residues. Additionally, the proposed legislation would authorize DPR to levy new administrative penalties of up to \$15,000 for entities that distribute and/or move quarantined produce. Lastly, the Governor proposes to increase existing residue penalties—such as for selling produce that carries pesticide residue in excess of allowable tolerance levels—to up to \$15,000.

Increases Existing Pesticide Sales and Licensing Penalties. The Governor also proposes to increase several existing DPR administrative penalties for pesticide sales and licensing violations. These include violations such as selling pesticides not registered in the state and acting as a pesticide advisor without a license. Specifically, the Governor proposes to increase these current penalties from a maximum of \$5,000 to up to \$15,000.

Provides Funding for Positions to Investigate and Pursue Pesticide Use and Residue Enforcement Cases. The Governor's budget includes \$582,000 from the DPR Fund (the department's primary fund source, largely supported by a fee on pesticide sales and other regulatory fees) in 2022-23 and ongoing to support three new enforcement staff positions that would investigate and pursue pesticide use and residue enforcement cases. This workload would include levying DPR administrative penalties and coordinating referrals to the Attorney General's Office and U.S. EPA. The positions also would be responsible for conducting oversight and supporting CACs, such as through trainings and providing guidance and support on local enforcement cases.

Provides Funding for DPR to Hire Attorney General's Office for Civil and Criminal Enforcement Cases. The Governor's budget proposes \$300,000 annually from the DPR Fund over the next three years for the department to hire the Attorney General's Office to represent DPR in civil and criminal pesticide use enforcement actions. The department estimates that it will refer about one pesticide use enforcement case every two years. DPR indicates that hiring the Attorney General's Office to pursue pesticide use violations would be a new activity, so the department is viewing this initiative as a pilot to determine the appropriate level of ongoing resources to request in the future.

Assessment

Providing DPR With Authority to Levy Pesticide Use Penalties Is Important Step in Enhancing Statewide Enforcement Efforts.

Given its important role in protecting public health and the environment, the state should have multiple enforcement tools available to ensure statewide compliance of pesticide use laws and regulations. Misapplication of pesticides can result in acute impacts on human health (such as rashes, nausea, and dizziness), as well as negative impacts to the environment (such as air and water contamination and impacted ecosystems). Additionally, some research suggests that some pesticides could be related to chronic health impacts such as cancer and reproductive harm. While serious pesticide use violations do not occur with great frequency, enhancing the state's ability to deter and correct for serious incidents is worthwhile, given the hazards that can result. We therefore find that providing DPR with the authority to levy administrative penalties would further advance its ability to meet its mission, while at the same time preserving the state's current structure of having CACs serve as the primary local enforcement agencies. The Governor's proposed approach would allow the state to serve as a "backstop" to local enforcement when merited, such as for cases that represent severe violations that stretch across multiple jurisdictions and when a CAC and DPR agree that enforcement by the department would be more appropriate.

Increased State-Level Enforcement Authority Has Precedent.

Providing DPR with additional pesticide use enforcement authority would not be a unique approach for the state. First, DPR had similar authority from 2000 to 2006 under Chapter 806 of 2000 (SB 1970, Costa), which authorized the department to levy administrative penalties of up to \$5,000 for serious pesticide use violations. (Based on our conversations with the department and stakeholders, it appears that this authority was allowed to sunset due to CAC administrative penalties being increased to up to \$5,000 under Chapter 457 of 2002 [AB 947, Jackson].) Second, other state environmental regulatory departments possess some level of overarching enforcement authority even when

local agencies are tasked with being the primary enforcement entities. For instance, the Department of Toxic Substances Control may take enforcement actions against hazardous waste generators that violate state laws and regulations, even though state statute delegates most first-level enforcement responsibilities to local Certified Unified Program Agencies.

Increasing Pesticide Use Penalties and Adjusting for Inflation Is Reasonable...

The goal of the state's pesticide use penalties should be to deter individuals and businesses from violating state laws and regulations. Successful deterrence is important because it protects public health and the environment by dissuading businesses and individuals from committing violations and persuading violators to take precautions against falling into noncompliance again. Overall, we find it reasonable to provide some level of increase to existing pesticide use penalties given that many have not been increased in decades—roughly 20 years for CAC administrative penalties and 30 years for most civil and criminal penalties. This means that penalties have not kept pace with inflation and thus have lost some of their relative power to deter violations over time. Statewide data has not shown a significant increase in violations over the past several years—collectively, the CACs have averaged about 600 enforcement actions per year from 2012 through 2019, with the majority being more minor Class B and Class C violations. However, the department indicates that there have been situations where the same violators have been levied penalties on multiple occasions for pesticide drift and worker protection violations, which could indicate that current penalty levels do not fully compel compliance. Increasing maximum penalties could help reduce existing rates of violations and/or prevent future incidents. Additionally, authorizing the Director of DPR to adjust penalty levels for inflation has merit since it would allow penalties to maintain their relative deterrent effects over time.

...However, Difficult to Determine What Amount of Increase Is Most Appropriate.

The level at which penalties would serve as an effective deterrent for pesticide violations but do not present an excessive burden for violators—

particularly for more minor offenses—is not clear cut. If trued up for inflation, CAC administrative penalties and civil and criminal penalties would be roughly 1.5 and 2 times higher than their current levels, respectively. The Governor, however, proposes to increase penalties above the inflation adjustments—3 times their current levels in most cases. According to the department, this is to further deter the most egregious pesticide use violations. For example, this could include cases where improper application leads to pesticide drift causing skin and eye irritations in surrounding communities. We find this argument to be somewhat compelling, and the levels the Governor proposes seem reasonable. However, moderately lower or higher levels could also achieve the same goal without being ineffective or excessive. Additionally, we find that the Governor’s proposal to set the maximum DPR administrative penalty higher than the maximum CAC administrative penalty makes sense, given these would be applied to the most serious, multijurisdictional pesticide use violations.

Increasing DPR Pesticide Residue Enforcement and Penalty Authority Could Improve Produce Safety. The state has a vested interest in ensuring that fresh produce in the state maintains safe levels of pesticide residues and that contaminated produce is properly quarantined and removed from sale when identified. Data from DPR indicate multiple cases in recent years where regulated entities did not provide requested sale and distribution information for contaminated produce in a timely manner (roughly 45 cases annually over the past five years) and where regulated entities distributed and/or moved quarantined produce (roughly three cases annually over the past five years). Currently, the department does not have the authority to enforce these actions other than through resource-intensive court proceedings. Accordingly, we find it reasonable to provide DPR with the authority to (1) require entities to provide sale and distribution information, (2) levy administrative penalties for failing to produce such records, and (3) levy administrative penalties for distributing and/or moving quarantined produce.

Additionally, we find it reasonable to increase existing residue penalties given that penalties have not been increased in roughly 30 years. These changes could better enable the state to prevent contaminated produce from reaching consumers.

The Governor’s approach of setting the new administrative penalties for residue violations at comparable levels to those that CACs levy for pesticide use makes sense. However, as with the proposed increases to pesticide use penalties, while we find the Governor’s proposed levels for new pesticide residue penalties to be reasonable, moderately lower or higher levels could also be adequate to the degree they still serve as an effective deterrent. Regardless of where the Legislature ultimately decides to set penalty levels, authorizing the Director of DPR to adjust penalty levels for inflation—as proposed by the Governor—has merit since it would allow penalties to maintain their relative influence in the coming years.

Increasing Existing Administrative Penalties for Pesticide Sales and Licensing Violations Would Provide Parity in Penalty Levels. We find it reasonable to provide some level of increase to the existing pesticide penalties for sales and licensing violations, given that they have not been increased in roughly 30 years. Additionally, it makes sense to maintain relative comparability across most of DPR’s administrative penalties. Similar to earlier discussion, we find that (1) the Governor’s proposed increases to sales and licensing violation penalties are reasonable but moderately lower or higher levels could also be adequate to the degree they still serve as effective deterrents, and (2) authorizing the Director of DPR to adjust penalty levels for inflation has merit.

Funding for Positions and Representation From Attorney General’s Office Would Further Support Statewide Enforcement. We find that the proposed funding for DPR state operations would further support statewide enforcement of pesticide use and residue laws and regulations. In particular, funding for additional enforcement positions would provide the staff needed to support the workload associated with the proposed increase in enforcement and penalty authority. This includes investigating and pursuing cases to levy administrative penalties and coordinating referrals to the Attorney General’s Office or U.S. EPA.

The positions also would further support local enforcement actions by providing additional assistance to CACs.

Additionally, funding for DPR to hire the Attorney General's Office would provide the department with the resources needed to ensure that egregious violations are appropriately referred for civil and criminal enforcement. We find the Governor's proposal to provide this funding over a three-year period to be reasonable. This would allow the department to pilot these efforts and report back to the Legislature on outcomes during future budget hearings. This information could then be used to guide whether (and at what level) to continue funding these efforts.

Recommendations

Approve DPR Authority to Enforce Administrative Penalties for Pesticide Use Violations. We recommend the Legislature approve the Governor's proposal to provide DPR with the authority to levy administrative penalties for serious pesticide use violations. Providing additional enforcement authority to DPR would further enhance the state's ability to ensure statewide compliance of pesticide use laws and regulations, while still maintaining CACs as the primary local enforcement agencies. The additional enforcement authority would allow the state to serve as a backstop to local enforcement when merited. Furthermore, it would reestablish similar authority that the department previously held and establish a somewhat comparable enforcement structure to some other state environmental regulatory departments.

Increase Pesticide Use Penalties at Levels That Will Help Deter Violations. We recommend the Legislature increase pesticide use penalties and authorize the Director of DPR to adjust penalty levels for inflation in future years. In deciding appropriate increases for the various penalties (including the new DPR administrative penalty), the Legislature will want to consider how increases would further deter individuals and businesses from violating state laws and regulations. This could include approving the Governor's proposed penalty levels—which increase penalties above an inflationary adjustment—or setting penalty levels somewhat higher or lower based on what the Legislature deems appropriate to achieve its goals.

Approve Expansion of DPR's Pesticide Residue Enforcement and Penalty Authority.

We recommend the Legislature approve the Governor's proposal to provide DPR with the authority to (1) require entities to provide sale and distribution information, (2) levy administrative penalties for failing to produce such records, (3) levy administrative penalties for distributing and/or moving quarantined produce, and (4) increase existing residue penalties. These changes could better enable the state to prevent contaminated produce from reaching consumers. We recommend the Legislature set the new administrative penalties for pesticide residue violations at levels that mirror whatever new thresholds it sets for CAC administrative pesticide use penalties and authorize the Director of DPR to adjust penalty levels for inflation.

Increase Existing Administrative Penalties for Pesticide Sales and Licensing Violations.

We recommend the Legislature increase existing administrative penalties for pesticide sales and licensing violations and authorize the Director of DPR to adjust penalty levels for inflation in future years. Penalty levels have not been increased in roughly 30 years and thus have lost some of their relative power to deter violations. To maintain parity, we recommend the Legislature set the new maximum penalties at a comparable level to those it establishes for other DPR administrative penalties. This could include approving the Governor's proposed penalty levels or establishing somewhat higher or lower thresholds.

Approve Funding for Positions to Investigate and Pursue Pesticide Residue and Use Enforcement Cases.

We recommend the Legislature approve the \$582,000 from the DPR Fund in 2022-23 and ongoing to support three new enforcement staff positions that would investigate and pursue pesticide residue and use enforcement cases. The additional positions would enable the department to conduct the workload associated with the proposed additional enforcement and penalty authority, as well as further support local enforcement efforts by CACs.

Approve Funding for DPR to Hire Attorney General's Office for Civil and Criminal Enforcement Cases. We recommend the Legislature approve the Governor's proposal to provide \$300,000 annually from the DPR Fund over the next three years to hire the Attorney General's Office to represent the department in civil and criminal pesticide use enforcement actions.

The funding would allow the department to appropriately refer egregious violations for civil and criminal enforcement and gather data regarding what level of funding might be appropriate in future years. The Legislature may want to consider specifying which metrics the department should track and present to inform these future decisions.

LAO PUBLICATIONS

This post was prepared by Frank Jimenez, and reviewed by Rachel Ehlers and Anthony Simbol. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.