

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 320

An Act to amend and reenact §§ 3.2-3943 and 3.2-3946 of the Code of Virginia, relating to the Pesticide Control Act; civil penalties.

[S 348]

Approved March 7, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3943 and 3.2-3946 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-3943. Civil penalties; procedure.

A. ~~Any~~ *The Board may assess against any person violating this chapter or regulations adopted hereunder may be assessed a civil penalty by the Board after providing written notice of the alleged violation. Such notice shall not constitute a case decision as defined in § 2.2-4001. The person so notified shall have 30 days to provide any additional, relevant facts to the Board, including facts that demonstrate a good-faith attempt to achieve compliance.* In determining the amount of any civil penalty, the Board shall give due consideration to: (i) the history of previous violations; (ii) the seriousness of the violation, including any irreparable harm to the environment and any hazards to the health and safety of the public; and (iii) the demonstrated good faith in attempting to achieve compliance ~~with the chapter after notification of the violation.~~

B. ~~The~~ *No sooner than 30 days after providing written notice of the alleged violation pursuant to subsection A, the Board may assess a penalty of not more than \$1,000 for a violation that is less than serious; not more than \$5,000 for a serious violation; and not more than \$20,000 for a repeat or knowing violation. The Board may assess an additional penalty of up to \$100,000 for any violation that causes serious damage to the environment, serious injury to property, or serious injury to or death of any person.*

C. Civil penalties assessed under this section shall be paid into Pesticide Control Fund established in § 3.2-3912. The Commissioner shall prescribe procedures for payment of penalties that are not contested by licensees or persons, including provisions for a person to consent to abatement of the alleged violation and payment of a penalty or negotiated sum in lieu of such penalty without admission of civil liability.

D. The person to whom a civil penalty is issued shall have 15 days to request an informal fact-finding conference, held pursuant to § 2.2-4019, to challenge the fact or amount of the civil penalty. If the civil penalty is upheld, such person shall have 15 days to: (i) pay the proposed penalty in full or contest either the amount of the penalty or the fact of the violation; and (ii) forward the proposed amount to the Commissioner's office for placement in an interest-bearing trust account in the State Treasurer's office. If administrative or judicial review shows no violation or that the amount of penalty should be reduced, the Commissioner shall have 30 days from that showing to remit the appropriate amount to the person, with interest accrued thereon. If the violation is upheld, the amount collected shall be paid into the Pesticide Control Fund.

E. Final orders of the Board may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification by the secretary of the Board. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 3.2-3946. Proceedings in case of violations.

A. If the examination of laboratory results or other evidence collected during an investigation appears to show a violation of this chapter or any of the regulations issued hereunder, the Commissioner may provide notice of the *alleged* violation to the registrant, distributor, possessor, licensee, applicator, or other person from whom such evidence was taken. ~~Any party so notified shall be given an opportunity to be heard in accordance with regulations adopted by the Board. If the hearing appears to show a violation of this chapter or the regulations issued hereunder, the Commissioner may certify the facts to the Board or the proper prosecuting attorney and furnish the Board or that officer with a copy of the results of the investigation.~~ *This notice shall not constitute a case decision as defined in § 2.2-4001.*

B. It shall be the duty of every attorney for the Commonwealth to whom the Commissioner shall report any violation of this chapter to cause proceedings to be prosecuted without delay.

C. Nothing in this chapter shall be construed as requiring the Commissioner to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. Copies of such warnings shall be reported to the Board.