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SIDEBAR

Environmental Bounty Hunters, on Trail of Cash, Are in California Official's Sights

By [ADAM LIPTAK](#)

In the great traditions of the Old West, [California](#) deputizes bounty hunters to help enforce its environmental laws.

But these deputies, who get to keep a quarter of any penalties they recover for the state, carry briefcases rather than pistols, and their critics say their tactics amount to legalized extortion. All it takes to win a settlement from a private company is a little research — to identify even a trace amount of a toxin in, say, office supplies or a parking lot — and some threatening legal boilerplate. Extracting settlements in these cases, an appeals court judge wrote last year, is “absurdly easy.” Jerry Brown, the state’s former governor and now its attorney general, intends to bring some order to the situation. He started by picking a fight last month with the state’s leading bounty hunter, Clifford A. Chanler.

“He takes advantage of small companies,” Edward G. Weil, a lawyer in Mr. Brown’s office, said of Mr. Chanler. “He pummels small, basically defenseless companies for small amounts of money individually for cases that should not have been brought in the first place.”

In the past seven years, Mr. Chanler has sent over 600 notices and filed more than 200 lawsuits on behalf of a few clients, none of whom even claimed to have been injured, and collected \$15 million in settlements in return.

Over coffee the other day, Mr. Chanler said he did not much care for the term bounty hunter.

“I prefer to use the phrase of ‘citizen enforcer,’ ” he said. “But I don’t shy away from the fact that there is a civil bounty incentive structure built into the statute.”

Mr. Chanler made a persuasive case that he is doing precisely what the law means for him to do, working relatively efficiently on authentic public health issues, notably that of lead in and on glasses, mugs and bottles.

But that leaves the question of why California has chosen to outsource the regulation of public safety.

In 1986, California voters passed the Safe Drinking Water and Toxic Enforcement Act, usually referred to as Proposition 65. Its goal could hardly be less objectionable: the law requires manufacturers, retailers and others to tell people when they are exposed to certain carcinogens.

A state agency publishes the list, which now contains over 600 substances, many quite common. Failure to warn consumers about the presence of those substances can result in penalties of \$2,500 a day.

The law encourages private lawyers to jump into the enforcement game by offering their clients a quarter of any penalty, plus their legal fees. Some lawyers have responded by blanketing small businesses with notices of violations and extracting quick settlements. It is a good business.

The law generates 100 to 150 settlements for a total of about \$10 million every year, Mr. Weil said. “There is a group of about a dozen law firms out there who do nearly all of the private litigation,” he said.

The lawyers visit stores and do research on the Internet, matching products to substances on the list. “Even a few molecules will do,” the frustrated appeals court judge, Presiding Justice David G. Sills of the California Court of Appeal in Santa Ana, wrote last year in rejecting a proposed settlement, one not involving Mr. Chanler.

The products need not be exotic. “Dried paint,” Justice Sills wrote. “Furniture. Parking lots. Wiring. Really.”

The public often gains almost nothing from such litigations. The businesses that settle are required to post notices, as the quotable Justice Sills put it, “telling people that things like dried paint may be slowly emitting lead molecules or that parking lots are places where there might be auto exhaust.”

Mr. Weil said the suits sometimes resulted in silly warnings. “Spray paint has 10 warnings on it,” he said. “Is an 11th warning going to make a difference?”

“If you’re talking about food and personal care items,” he added, “it might make a difference.”

Mr. Chanler said his efforts had led to the reformulation of products and meaningful warnings. “Civil enforcement should not be left to public officials,” he said, “because of the influence of money on politics and just the resource level available to the government.”

Just last week, a state court judge in Oakland approved the settlement of a case Mr. Chanler had brought against the restaurant chain Fuddruckers, which agreed to pay \$160,000 in penalties and to stop using glass soda bottles with artwork or designs containing lead. The state will get \$120,000 of that. Fuddruckers, which denied wrongdoing, will also pay \$890,000 for Mr. Chanler’s firm’s fees and expenses.

In a critical letter to Mr. Chanler last month, the attorney general conceded that lead on the outside of glassware could represent a real hazard and crowed about his own similar suits. But he criticized Mr. Chanler's approach, saying it "does not appear to be in the public interest." Mr. Brown said Mr. Chanler's clients "have collected significant sums of money from businesses that have little or no liability for past violations, and an amount of attorney fees that appears to exceed a reasonable amount."

But the fault does not seem to lie with the entrepreneurial Mr. Chanler. If you deputize bounty hunters, you should not be surprised when they go out and hunt.

Online: Court documents and an archive of Adam Liptak's articles and columns are at nytimes.com/adamliptak.

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