

Chapter 9

Grounds for Refusal, Revocation, and Suspension

Introduction Occasionally, the CAC has valid concerns about a permit application or an existing permit. Those reasons, once articulated, may result in the refusal of a permit application, revocation of an existing permit, or suspension of a permit. “Fundamental fairness” requires the CAC to articulate the reasons for their actions or proposed actions to the permit applicant, permit holder, or other interested persons.

About this chapter This chapter describes the process that occurs after the CAC takes a revocation or suspension action on an existing restricted materials permit, or a person submits an application to obtain a restricted materials permit that must be refused.

CAC determination The CAC is authorized to determine whether a permit will be issued or refused, or, an existing permit revoked or suspended. The CAC must articulate a reason or a basis for refusing, revoking, or suspending a permit, and then provide the NOPA and an opportunity to be heard on the matter. This fundamental fairness or “notice and hearing” process is often referred to as “due process.” The procedural requirements for refusal, revocation, and suspension differ slightly, based upon the grounds (motive or reason) for the action.

Grounds and time frames for immediate suspension Whenever the CAC has reason to believe that continuance of a permit endangers the public health, safety, or the environment, the CAC, without prior notice, may immediately suspend the permit.

1. The CAC shall inform the permittee, in writing, of the suspension as soon as practical, specifying the reason(s) for the immediate suspension.
2. Within seven days of informing the permittee of the immediate suspension, the CAC shall issue a written NOPA.
3. If a hearing is requested, it shall be held no later than seven days from the date the request for the hearing is received by the CAC.
4. The CAC’s decision shall be issued within ten days after the conclusion of the hearing.

(Reference: *FAC section 11512.5*)

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Grounds for Refusal, Revocation, and Suspension, Continued

Grounds based upon violations

Any permit may be refused, revoked, or suspended for:

- Violating any conditions of the permit, a previous permit, or any provision of FAC Division 7 or regulations issued pursuant to it;
- Failing to pay a civil penalty; or
- Failing to comply with any lawful order of the CAC, once that order is final.

These are clearly actions taken in response to prior violations alleged to have been committed by the permit applicant. Due process should parallel that for an administrative civil penalty.

(Reference: *FAC section 14008*)

Grounds based upon permit evaluation

If the CAC determines that a substantial adverse environmental impact will likely occur from the use of the pesticide, the CAC shall determine if there is a feasible mitigation measure or feasible alternative that would substantially reduce the adverse impact. The permit or intended pesticide application shall be conditioned on the utilization of the feasible mitigation measure or be refused. If the feasible alternative is not accepted by the permittee, the permit shall be refused. These actions are based on an evaluation of the permit application itself and the hazards posed by the use of a pesticide at that site.

(Reference: *3 CCR section 6432(a)*)

Grounds based upon FAC §14006.5

Food and Agricultural Code section 14006.5 states, “. . . no permit shall be granted if the commissioner determines that the provisions of subdivision (a), (b), or (c) of section 12825 would be applicable to the proposed use.”

The “grounds” referred to FAC section 12825(a), (b), and (c) are:

- There are demonstrated serious uncontrollable (unmitigated) adverse effects;
- The use is of less public value or greater detriment to the environment than the benefit received by its use; or
- There is a reasonable, effective, and practicable alternative material or procedure that is demonstrably less destructive to the environment.

These grounds are also based on hazards posed by the use of the pesticide at a particular site rather than any alleged violation committed by the applicant.

(Reference: *FAC section 12825*)

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Grounds for Refusal, Revocation, and Suspension, Continued

About 3 CCR §6444

Title 3, California Code of Regulations section 6444, states that if any pesticide residues, symptoms, or health hazards appear generally throughout the area, the Director or CAC may conduct a field inspection. If it appears that a substantial loss, damage, or injury is likely to result from the continued application of a specific pesticide within the area, the Director or CAC may cancel all permits for applications of that pesticide within the affected area and not issue any additional permits.

This section is intended to be used when the Director or CAC makes a finding based upon facts and wants to cancel or refuse restricted materials permits for “generalized effects” **in an area** (such as a county or a portion of a county). Section 6444 is not intended to be used as the grounds for canceling or refusing the permit of an individual.

In addition, DPR recommends that CACs first consult with DPR before attempting to use section 6444 to address “generalized effects” because the matter may actually be of statewide significance.
