

## Section 4.4

### Consolidated Hearings

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**Question posed  
at the  
Roundtable**

This document provides guidance on the following question posed at the Hearing Officer Roundtable:

- If a decision is made to propose an action against the employer and an employee, are there any ethical problems with concurrent (or consolidated) hearings?
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**Consolidated  
hearings**

Occasionally, multiple parties may be responsible for violations pertaining to the same incident or pesticide episode (though, the violations do not need to be the same). The most likely scenario for this type of situation is one in which a grower and a certified or licensed applicator, labor contractor, or supervisor (who is also a certificate or license holder) were involved in an incident. A consolidated hearing may be convenient and expeditious for all parties.

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**Separate  
NOPAs and  
Decisions**

Notices of Proposed Action (NOPA) cannot be consolidated. To ensure proper “notice,” there must be a separate NOPA for each separate Respondent. There also must be a separate Decision and Order for each Respondent.

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**Hearing Officer  
decides, but...  
communication  
with the  
commissioner is  
encouraged**

It is important for the county agricultural commissioner (CAC) and the Hearing Officer to communicate about the possibility of scheduling consolidated hearings (for one incident or episode) before the NOPAs are mailed to Respondents. Even if the CAC wants to schedule consolidated hearings, the Hearing Officer may prefer to hold separate hearings. The Hearing Officer has the final say in the decision of whether to hold a consolidated hearing.

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# Consolidated Hearings, Continued

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**Avoiding consolidated hearings**

Some Hearing Officers may not wish to hold consolidated hearings because of:

- Perceived or real complexity of issues. However, despite the complexity of issues, having everyone present may help sort out complex issues and give everyone an opportunity to be heard.
- Concerns that employee testimony may be tainted by concerns about retaliation.
- Concerns that employees may feel unnecessarily intimidated.
- Scheduling difficulties arising from the need for a large block of time for one consolidated hearing versus two or three shorter hearings.

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**DPR’s advice**

According to California law, the consolidation of hearings falls within the discretion of the agency and the Hearing Officer. Although the Hearing Officer has the final say in the matter, the Department of Pesticide Regulation (DPR) strongly recommends granting a Respondent’s request for a separate hearing. If you consolidate hearings, it might be a good idea to let the Respondent know they can request a separate hearing. Denial of a Respondent’s request for a separate hearing is likely to result in an appeal to the director.

Because of the difficulty in managing multiple cases at one time, DPR suggests that consolidated hearings be left to experienced Hearing Officers and Advocates. In all cases, it is the CAC’s responsibility to ensure that all Respondents in administrative civil penalty actions have proper notice, an opportunity to be heard, and are treated fairly.

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**Employer’s responsibilities may militate against citing employees**

This guidance is not an “approval” to issue NOPAs against employees when other circumstances militate against it, that is, when an action against the employer alone is more appropriate/recommended /required. For example, the employer cannot fulfill the requirements of the independent employee action defense or the employer is responsible for the violation because of the employer’s failure to meet his/her responsibilities described in Title 3, California Code of Regulations (3CCR) section 6702 or other conditions described in 3CCR section 6130.

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## Consolidated Hearings, Continued

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### References

- 3CCR section 6130, Civil Penalty Actions by Commissioners
  - 3CCR section 6702, Employer-Employee Responsibilities
  - California Administrative Hearing Practice, Second Edition, April 2002 update
  - Enforcement Letter 2001-055, Civil Penalty Actions Against Employers or Employees for Matters Involving Pesticide Worker Safety
  - Government Code sections 11507.3(a), 11507.3(b), and 11512(b)
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