



Elements of the Violation

**Department of Pesticide Regulation
Enforcement Branch
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Elements Analysis

The elements of the violation analysis exercise is the basic analytical task that must be performed before taking an enforcement action





Goal of the Exercise

Was there a violation?

1. What are the elements of the requirement?
2. What specific evidence do you have to show the person did not comply with each element of the requirement?



What is the Requirement?

- Each law or regulation is a unique requirement
- Each requirement is made up of elements
- You must identify the elements to be sure you understand the requirement



Definitions of “Element”

1. An “element” is the simplest part that makes up the requirement.
2. An “element” may be a condition that must be present or an action that must have occurred.



Common Elements

Some “elements” are common to many laws and regulations but they have specific definitions different from dictionaries.

For example: 3 CCR 6000

Person - any individual, partnership, association, corporation, business entity or organized group of persons whether incorporated or not



Places to Find Definitions

FAC Division 6, Pest Control Operations

Sections 11401-11411

FAC Division 7, Agricultural Chemicals, etc.

Various Sections

3 CCR

Section 6000

BPC

Section 8501-8512

16 CCR

Section 1902

Let's Do an Elements Exercise

FAC Section 31603 defines “vicious dog.”

(b) Any dog which, when unprovoked,
in an aggressive manner,
inflicts severe injury or kills
a human being.





FAC 31603 - The Elements

Element 1: There was a dog.

Element 2: The dog was not provoked
in an aggressive manner.

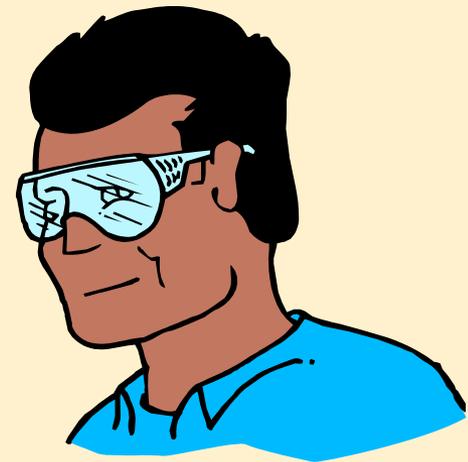
Element 3: The dog inflicted severe
injury or killed
a human being.

Let's Identify Elements

3 CCR 6738(b)(1)(C)

- Select a law, regulation
- Break it into its “elements”

Protective Eyewear for Employees



3 CCR 6738(b)(1)(C) Text

“The employer shall assure that

(1) Employees wear protective eyewear when required by pesticide product labeling (except as expressly provided in this section), **or** when employees are engaged in

(C) Application by hand or using hand held equipment, **except** when”



3 CCR 6738(b)(1)(C)

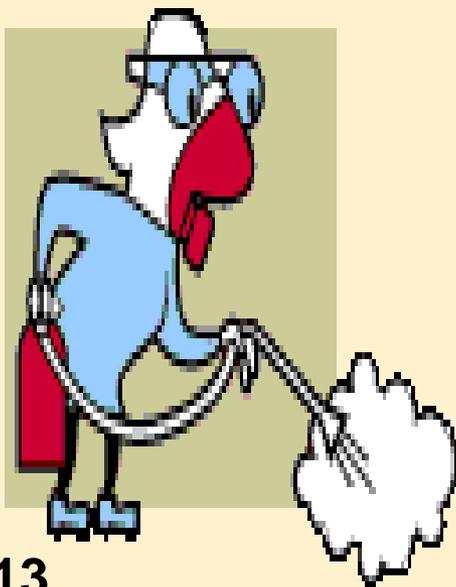
Element 1: There is an employee and employer as defined by 3 CCR, section 6000.

Element 2: There is an employee that handles pesticides as defined by 3 CCR, section 6000.

3 CCR 6738(b)(1)(C)

Element 3:

The employer shall assure that employees wear protective eyewear **when** it is required by the product labeling, **or when** the application is made by hand **or** made using hand held equipment.





Elements of BPC §8538(b)

BPC §8538(b)

Text for Branch 2 & 3 Applications

- Written Notice to Occupant

BPC 8538(b) Text

“(b) In the case of Branch 2 and Branch 3 registered company applications, the notice prescribed by subdivision (a) shall be provided no later than prior to the application. In either case, the notice shall be given to the owner **or** the owner’s agent **and** tenant, if there is a tenant, in at least one of the following ways”



BPC 8538(b)

Element 1:

There is a registered structural pest control company.

Element 2:

The notice (in conformance with subdivision a) must be provided before the application.



BPC 8538(b)

Element 3:

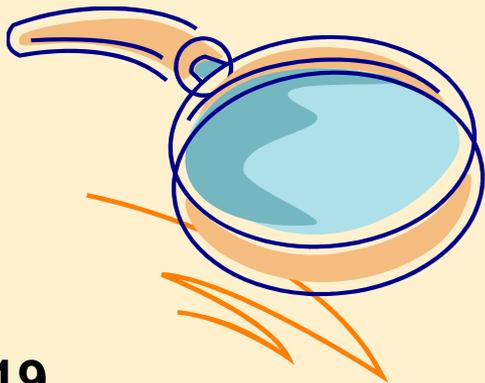
The company must provide
the property owner **or**
the owner's agent, **and**
the tenant of the premises, **with**
the required notice.

Troublesome Words

- **And**
- **Or**
- **When**
- **Except**
- **Other**
- **Notwithstanding**
- **Substantial**
- **Hazard**
- **Immediately**
- **?????**

Element or Not?

**Don't confuse "elements"
with words or phrases that
are clearly "exceptions"
or "clarifiers."**



Evidence Defined

Evidence is a fact of consequence which tends to furnish proof that an element was present or had occurred.

- Each element of a law or regulation must be proven with evidence to establish that a violation occurred

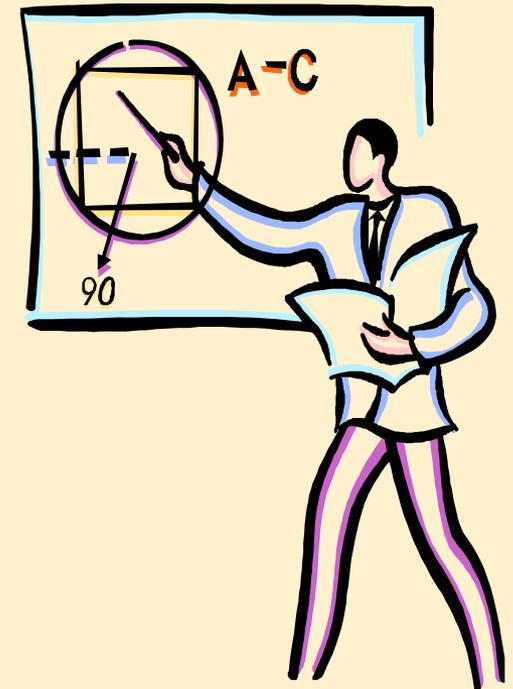


Evidence Needed

- The elements of the law or regulation will determine what kind of evidence is needed to prove a violation
- Evidence must be credible and trustworthy

Examples of Evidence

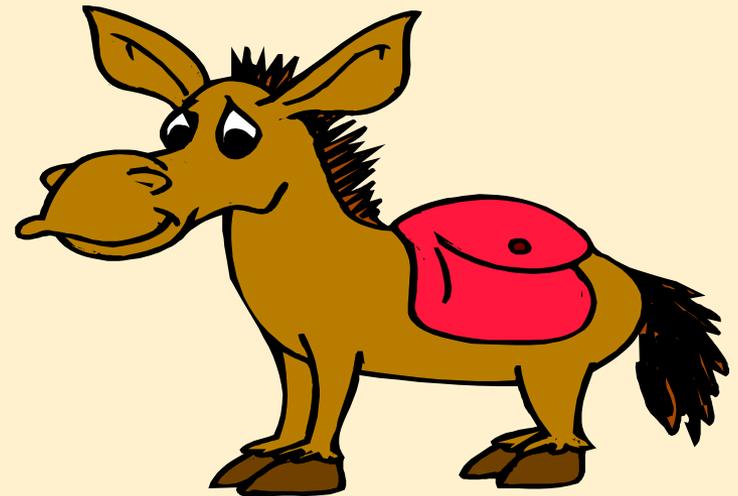
- Witness statements
- Expert testimony
- Photos & diagrams
- Laboratory analyses
- Reports
- Hearsay



What is Our Burden of Proof?

To provide evidence that
the violation is:

- More likely to have occurred
than not to have occurred



Burden of Proof

*“more likely to have occurred
than not to have occurred”*

Often characterized in legal writings as:

**“Preponderance
of the evidence”**



Do the Elements Exercise

- ✓ For every alleged violation on the inspection report!
- ✓ BEFORE the case is written!
- ✓ BEFORE the NOPA is written!
- ✓ BEFORE the NOPA is signed by the Commissioner!

Group Exercises

Small Teams:

- ✓ Choose a scribe
- ✓ Choose a presenter
- ✓ The team will identify and list elements
for the given law or regulation
- ✓ List evidence to prove elements
- ✓ Present team elements analysis to the class



Exercise Checklist

1. What is the requirement?
2. Did the person fail to satisfy the elements of the requirement?
3. What specific evidence do you have to show the person did not comply with each element of the requirement?"



Test Your Elements!

Do your elements answer these questions?

1. What is the requirement?

What has to be done?

2. Who or What needs to be protected?

3. Who is required to perform or complete the requirement?

Other Helpers

Check the Citeable Sections list:

<http://www.cdpr.gov/docs/enforce/admnacts/citsec.pdf>

Enforcement Compendium Volume 4

-- Inspection Procedures

http://www.cdpr.ca.gov/docs/enforce/compend/vol_4/inspect_procedures.htm

Enforcement Compendium Volume 8

-- Guidelines for Interpreting Pesticide Laws, Regulations, and Labeling

http://www.cdpr.ca.gov/docs/enforce/compend/vol_8/pestlaw.htm