

Enforcement Guidelines

A uniform approach to pesticide use enforcement activities.

A joint project developed by the
Department of Pesticide Regulation
and
California Agricultural Commissioners and Sealers Association
Co-Agency Committee – December 1994.

Technical Revision
December 2002

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www.cdpr.ca.gov	

EXECUTIVE SUMMARY

BACKGROUND

The Enforcement Guidelines are a cooperative project developed by the California Department of Pesticide Regulation (DPR) and the California Agricultural Commissioners and Sealers Association. The intent of the Enforcement Guidelines is to provide uniform, predictable and fair enforcement responses that are understandable to the regulated community and the public.

DPR is responsible for administration, development and oversight of California's unique pesticide regulatory program. The pesticide use enforcement activity is primarily performed and administered by agricultural commissioners and staff of California's 58 counties. Local program administration naturally results in variable enforcement decisions and responses. The Enforcement Guidelines take into consideration diverse geographical and agricultural regions, and local resources, while attempting to provide some uniformity in the responses.

The December 2002 revision is a technical revision of the Enforcement Guidelines. It corrects items that require modification because of law or regulation changes; adds, expands or clarifies definitions; adds a sample Decision Report; updates contact information and reformats pages. The 1994 Summary page has been electronically scanned and left intact for two reasons: 1) There have been no conceptual changes to the Enforcement Guidelines, and 2) To continue recognition of the leaders who succeeded in bringing this guidance into fruition.

Questions about the Enforcement Guidelines may be directed to DPR's Enforcement Branch at (916) 324-4100 or your local County Agricultural Commissioner.

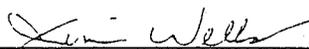
Scott T. Paulsen, Chief
Enforcement Branch
Department of Pesticide Regulation

1994 SUMMARY

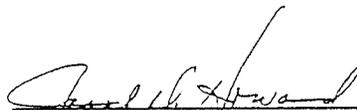
The purpose of the Enforcement Guidelines is to promote uniformity in State and county enforcement responses to violations of pesticide regulatory requirements. The intent of the Enforcement Guidelines is to provide uniform, predictable and fair enforcement responses which are understandable to the regulated community and the general public. The Enforcement Guidelines are a cooperative project developed by the California Department of Pesticide Regulation and the California Agricultural Commissioners and Sealers Association.

California has a unique pesticide regulatory program. The Department of Pesticide Regulation administers a comprehensive pesticide regulatory program at the state level and provides support for administration of many pesticide use enforcement activities at the local level. The local administrator is the County Agricultural Commissioner. The Enforcement Guidelines take into consideration diverse geographical and agricultural regions, and local resources.

Questions about the Enforcement Guidelines may be directed to DPR's Enforcement Branch at (916) _____, or your local County Agricultural Commissioner.



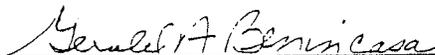
James W. Wells, Director
Department of Pesticide Regulation
Committee Co-Chair



Jearl Howard, Past President
California Agricultural Commissioners and
Sealers Association
Committee Co-Chair



Charles M. Andrews, Chief
Pesticide Enforcement Branch



Gerald A. Benincasa, President
California Agricultural Commissioners and
Sealers Association

12-06-94

ENFORCEMENT GUIDELINES

The Enforcement Guidelines package is divided into several sections. A description of each section follows:

Decision Trees

Decision trees are graphic representations of decision-making processes. The decision trees describe appropriate enforcement responses. When an incident occurs, the violation(s) is categorized into a General or Substantive Violation. After the violation is categorized, it is dropped through the corresponding decision tree category to determine an appropriate response or option. The decision trees also take the violator's compliance history into account. The severity of actions should elevate for second or subsequent violations, e.g., the greater the number of previous violations, the more severe the enforcement response.

To achieve statewide consistency, counties must use these guidelines for each incident, and before determining which type of enforcement response to initiate. If a county's response differs from the guidelines, they must prepare a written decision or "Decision Report" which describes the factors that influenced the outcome of the alternate decision. The Decision Report may be prepared in a variety of formats.

Glossary of Terms

This section describes terms used in the Enforcement Guidelines. The terms are specific to California's pesticide regulatory program.

Citeable Sections

Referencing the "Citeable Sections" is the first step in the Enforcement Guidelines decision-making process. The Citeable Sections are paraphrased for your convenience; however, you should always consult the Food and Agricultural Code, California Code of Regulations, Business and Professions Code, and Labor Code to verify their elements before initiating a fine or licensing action.

Administrative Civil Penalty Fine Guidelines

Agricultural Civil Penalty Fine Guidelines are found in Title 3, California Code of Regulations, Section 6130 (3CCR §6130). Structural Civil Penalty Fine Guidelines are found in Title 16, California Code of Regulations, Section 1922 (16CCR §1922).

The Administrative Civil Penalty Fine Guidelines chart describes the general application of fine guidelines to the Enforcement Guidelines, once it has been determined that an administrative civil penalty action is the most appropriate action. You should always check the violation against 3CCR §6130 or 16CCR §1922, to evaluate the violation and correctly apply the fine, before proposing an administrative civil penalty.

DECISION TREES

Enforcement Guidelines Overview

Violations are divided into two major groups, "General" and "Substantive."

Some laws and regulations may be considered "General" or "Substantive," depending on the circumstances of the violation.

General Violations (G)

"General" violations do not directly threaten health, property or the environment.

"General" violations can be described as true "paperwork oversights."

Substantive Violations (S)

"Substantive" violations may threaten health, property or the environment, or violations of key elements of California's pesticide regulatory program.

"Substantive" violations are further divided into "Possible" and "Actual."

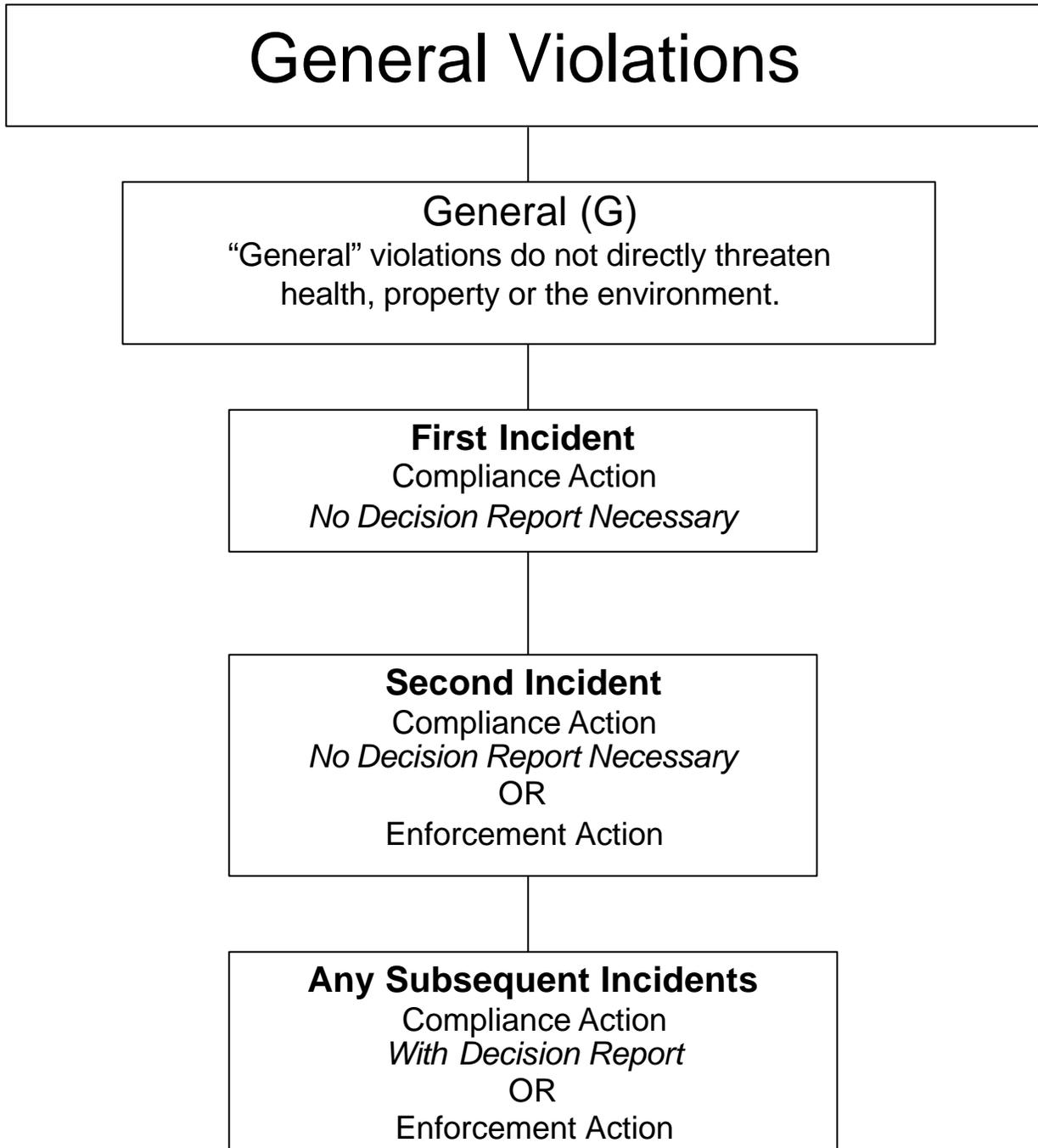
Substantive Possible (P)

"Substantive Possible" violations pose a reasonable possibility of creating a health or environmental hazard or effect.

Substantive Actual (A)

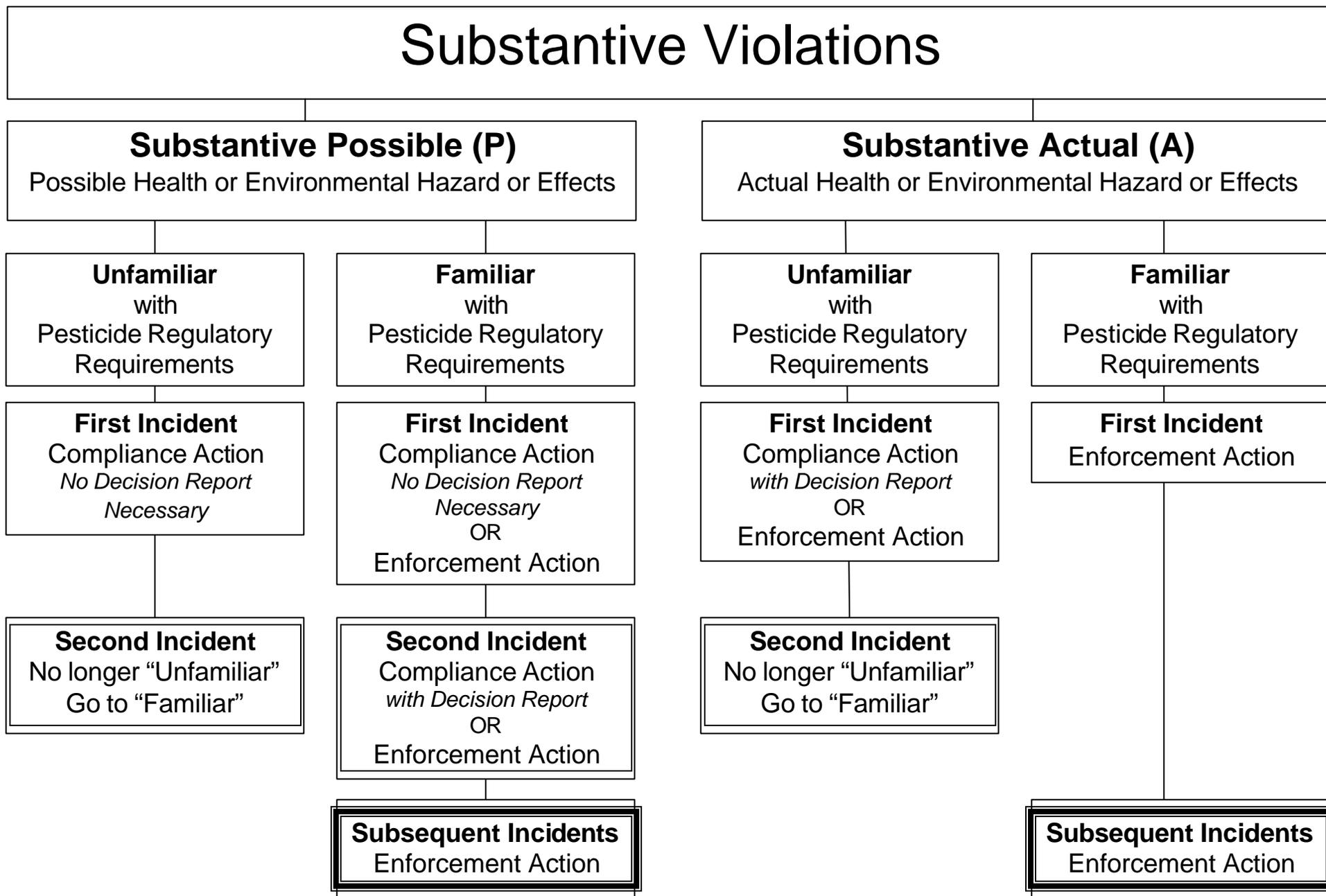
"Substantive Actual" violations create an actual health or environmental hazard or effect.

DECISION TREES



DECISION TREES

Substantive Violations



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GLOSSARY OF TERMS

Compliance Action	An activity to document and notify a person of a noncompliance with applicable laws or regulations. On a statewide basis, compliance actions are weighted equally. Examples of Compliance Actions are: Warning Letters (WL); Violation Notices (VN); inspection forms with one or more non-compliances noted; and Documented Compliance Interviews. "Public Protection Options" are considered Compliance Actions.
Compliance Interview	An interview ("talk") with the County Agricultural Commissioner (or agent). The Compliance Interview is informal and undocumented. A Compliance Interview, while beneficial, is an Educational Tool and is not considered a Compliance Action or an Enforcement Action.
Decision Report	The Decision Report describes the factors of a decision. The Decision Report may be prepared in a variety of formats, including a narrative report, a letter, or an inter-office memorandum. A sample Decision Report form is provided in the Enforcement Guidelines for convenience. The sample form may be utilized, adopted or revised by each county as they wish.
Documented Compliance Interview	An interview to document a discussion interview took place between a person and the County Agricultural Commissioner (or agent) about a specific noncompliance committed by the regulated person. A Documented Compliance Interview typically is held at the Commissioner's office. A Documented Compliance Interview must note the date, time, location, parties present, activity which precipitated the interview, noncompliance or violation, and proposed corrective action(s). A summary of the Documented Compliance Interview is typically mailed to the parties that were present. An interview that does not result in some sort of document summarizing the interview, to be attached to the file or inspection report, would not be considered a Documented Compliance Interview.

GLOSSARY OF TERMS

Educational and Monitoring Tools

An activity or document used to determine or encourage compliance. Educational and Monitoring Tools benefit the public. Informal compliance interviews or formal presentations by regulators to the regulated public and increased inspection activities are examples of Educational or Monitoring Tools. Educational and Monitoring Tools are not compliance actions.

Effect

The result or consequence of an action.

Application of “Effect” in applying Fine

Guidelines: An actual or environmental effect may support a finding that a violation could have created an actual health or environmental effect; however, it is not required that an actual health or environmental effect occur in order for a violation to be classified as moderate or serious. *See Fine Guidelines*

Enforcement Action

An action to document, notify and penalize violator for an activity not in compliance with applicable laws or regulations. An enforcement action must provide the respondent / violator with notice and an opportunity to be heard before a sanction or penalty is enforced. Examples of frequently used Enforcement Actions are: Administrative Civil Penalties, in the form of Agricultural Civil Penalties (ACP) or Structural Civil Penalties (SCP); revocation or suspension of county registration; and refusal, revocation or suspension of a restricted materials permit. Examples of more aggressive enforcement actions are: a formal request to the Department of Pesticide Regulation or Structural Pest Control Board to initiate a licensing action; formal referral to a District or City Attorney for civil or criminal adjudication; or a formal request by the Department of Pesticide Regulation to the Office of the Attorney General.

A Cease and Desist Order or a Crop Destruct Order is not an enforcement action. A Cease and Desist Order is a mitigation measure to protect the public from known or unknown hazards. Cease and Desist Order/Crop Destruction Orders are actions authorized by the Legislature for the purpose of immediately protecting the public health or environment. They can be referred to as Public Protection Options.

GLOSSARY OF TERMS

Enforcement Guidelines	The Enforcement Guidelines concept is a method of describing and categorizing a violation for the purpose of uniform enforcement. Examples of enforcement guideline categories are: General, Substantive Possible and Substantive Actual. Some requirements can be characterized by more than one category; the category could change, depending on the circumstances of the violation.
Environmental Effect	Refers to any damage, either permanent or temporary, to public or private property; or, to the creation of deleterious effects to air or water quality. Examples of environmental effects include: crop damage, loss of use of public or private property, bee kills, livestock poisoning, residues that affect the marketability of a crop, fish or wildlife kills, and contamination of land, water or air. <i>See Effect</i>
Familiar	Known or no longer novel. <i>See Unfamiliar</i>
Formal Referral	A Formal Referral is a letter to another agency requesting assistance. A Formal Referral should contain factual information, an analysis of the problem, a summary of actions taken by the initiating agency to date, and a request for assistance.
General Violation	A General Violation does not pose a direct threat to health, property or the environment. General Violations are true paperwork oversight violations. General Violations usually fall into the minor or moderate fine guideline categories.
Harm	Hurt, damage or injure. Application of Harm in applying Fine Guidelines: Actual health or environmental harm may support a finding that a violation could have created or did create actual health or environmental harm; however, it is not required that actual health or environmental harm occur to prove that a hazard existed, and it is not required that an actual health or environmental harm occur in order for a violation to be classified as moderate or serious. <i>See Fine Guidelines</i>

GLOSSARY OF TERMS

Hazard	<p>A source of danger. Application of Hazard in applying Fine Guidelines: An actual health or environmental effect may support a finding that a violation could have created or did create an actual health or environmental hazard; however, it is not required that an actual health or environmental effect occur to prove that a hazard existed, and it is not required that an actual health or environmental effect occur in order for a violation to be classified as moderate or serious. <i>See Fine Guidelines</i></p>
Incident	<p>An incident is an occurrence when one or more noncompliances are found during an activity such as an inspection, investigation, follow-up, etc. The activity may be limited to a single routine inspection or audit, or it may include several inspections and the collection of evidence, as in the case of a complicated episode investigation.</p> <p>Noncompliances found during the incident are divided into the categories of General, Substantive Possible and Substantive Actual.</p>
Key Elements of California's Pesticide Regulatory Program	<p>Requirements for the following programs are enforced to protect the health and safety of Californians and their environment: Restricted Materials Permit Program; Licensing and Certification Program; and the Worker Health and Safety Program. Failure to adhere to these requirements often results in health or environmental hazards or effects.</p>
Noncompliance	<p>Failure to comply with any law or regulation. A noncompliance may be documented in forms, hearings, interviews or letters. <i>See Violation</i></p>
Oral Warning	<p>Oral instructions or warnings that are not documented or filed. An oral warning, while possibly beneficial, is not considered a Compliance Action or Enforcement Action.</p>

GLOSSARY OF TERMS

Public Protection Option A Public Protection Option is an action initiated for the purpose of immediately protecting public health or safety. Public Protection Options are not penalties in and of themselves, although they may temporarily have the effect of a punishment. They usually require an additional action to become a permanent punishment. Examples of Public Protection Options are: Cease and Desist Orders, Seize/Hold Produce Orders, Crop Abatement Orders, Crop Seizure; Prohibit Harvest Orders, and Pesticide Seizure.

Repeat Violations The currently alleged violation shall be considered a Repeat Violation if the following criteria are met: 1) The person against whom the violation is proposed had a prior violation that was in the same class (minor, moderate, or serious) as the currently alleged violation; AND, 2) A civil penalty was levied for the prior violation within two years of the date of the Notice of Proposed Action by the county proposing the current action.

Repeat Violation ? See Fine Guidelines

Subsequent Incident An incident, that takes place later, and is separate from another incident.

Noncompliances found during the later incident do not have to be violations of the same law or regulation in order for the later incident to be considered "subsequent"; however, a Subsequent Incident would not occur more than two years after the date of the first incident because of the statute of limitations. *Note the timing difference between Subsequent Incident and the requirement for Repeat Violation found in the Fine Guidelines.*

Subsequent Incident is an Enforcement Guidelines concept that should be used to determine what type of action to initiate when a violation occurs. Subsequent Incident should not be confused with Repeat Violation, a concept to be considered in determining a fine category

Subsequent Incident ? See Enforcement Guidelines

Substantive Violation A violation which poses a threat to health, property or the environment. Substantive Violations, by their nature, create unnecessary risks. Substantive Violations usually fall into the moderate or serious Fine Guideline categories.

GLOSSARY OF TERMS

Unfamiliar

There is category of people who may not be Familiar with pesticide regulatory requirements because they are in a situation or business which does not traditionally require them to be familiar with pesticide regulatory requirements. Pesticide Use Enforcement staff must draw upon their own experience and knowledge of pesticide regulatory requirements to determine whether it is reasonable for a violator to be Unfamiliar with pesticide regulatory requirements. Examples of persons who are and persons who are Unfamiliar, are presented below:

- Familiar: A grower with a pesticide user identification number, a restricted materials permit holder, a certificate holder or a licensee is expected to know about pesticide use requirements; also, a person or business which has previously been the subject of a compliance or enforcement action is expected to know about pesticide regulatory requirements pertaining to their activities.
- Unfamiliar : Businesses such as restaurants, hospitals, schools, janitorial services, or employees of these groups (who have not been the subject of a compliance or enforcement action or otherwise exposed to pesticide regulatory requirements) may be considered Unfamiliar.

Violation

Failure to comply with any law or regulation. A violation may be documented by forms, hearings, interviews or letters. *See Noncompliance*

Violation Notice

A Violation Notice (VN), also known as a "Notice of Violation" is a written document which identifies the violator, inspector/biologist, location and date of occurrence, and applicable laws or regulations. A Violation Notice is typically a form, but may be presented in letter format. A Violation Notice is a Compliance Action.

Warning Notice

A Warning Notice (WN), also known as a "Notice of Warning" or "Warning Letter" is a written document which identifies the violator, inspector/biologist, location and date of occurrence, and applicable laws or regulations. A Warning Notice is typically in letter format, but may be noted on a form. A Warning Notice is a Compliance Action.

FINE GUIDELINES

Excerpted from Title 3, California Code of Regulations

Fine Guidelines

Subchapter 3. Agricultural Commissioner Penalties

Article 1. Guidelines

§6130. Civil Penalty Actions by Commissioners.

- (a) When taking civil penalty action pursuant to Section 12999.5 of the Food and Agricultural Code, county agricultural commissioners shall use the provisions of this section to determine the violation class and the fine amount.
 - (1) For purposes of this Section, violation classes shall be designated as "serious," "moderate," and "minor."
 - (A) Serious: Violations that are repeat violations of those in subparagraph (B) or violations which created an actual health or environmental hazard. The fine range for serious violations is \$401-\$1,000.
 - (B) Moderate: Violations that are repeat violations of those in subparagraph (C) or violations which posed a reasonable possibility of creating a health or environmental effect. The fine range for moderate violations is \$151-\$400.
 - (C) Minor: Violations that did not create an actual health or environmental effect or did not pose a reasonable possibility of creating a health or environmental effect. The fine range for minor violations is \$50-\$150.
 - (2) The currently alleged violation shall be considered a repeat violation if the following criteria are met:
 - (A) The person against whom the civil penalty action is proposed had a prior violation that was, or would have been, in the same class as the currently alleged violation; and
 - (B) A civil penalty was levied for the prior violation within two years of the date of the Notice of Proposed Action by the county proposing the current action.
 - (3) The person charged with a violation(s) shall be notified of the proposed fine action, including the amount of the proposed fine(s). When a penalty is proposed resulting in a repeat violation, the Notice of Proposed Action shall identify the prior violation and the record of the proceedings shall include a copy of the decision regarding that prior violation. The commissioner shall send a copy of the notice to the department at the same time the notice is provided to the person charged with a violation(s).
 - (4) If the person against whom the commissioner levied a fine requested and appeared at the hearing offered by the commissioner, the commissioner's decision shall include information concerning the person's right to appeal the commissioner's decision to the Director.
 - (5) The Department, on at least an annual basis, shall inform commissioners of violations for which fines have been levied.

CONTINUED ON NEXT PAGE

FINE GUIDELINES

§6130. Civil Penalty Actions by Commissioners, continued from previous page

- (b) When acting pursuant to Food and Agricultural Code Section 12999.5 or Business and Professions Code Section 8617, an agricultural commissioner may bring an action against an employed person who failed to utilize personal protective equipment or other safety equipment as required by section 6702(c) provided the commissioner determines that all of the following conditions are met:
- (1) The employed person is licensed or certified pursuant to Chapter 14, Division 3, of the Business and Professions Code; Chapters 5 or 8, Division 6, of the Food and Agricultural Code; or Chapters 3.4 or 3.6, Division 7, of the Food and Agricultural Code;
 - (2) The employer provided the equipment to the licensee or certificate holder and the equipment was available at the work site in a condition that would have provided the safety or protection intended by the equipment;
 - (3) The employer, through its written workplace disciplinary action policy, required the licensee or certificate holder to utilize the equipment;
 - (4) The employer has complied with applicable training requirements of this Division prior to the time the licensee or certificate holder failed to utilize the equipment;
 - (5) The employer supervised the licensee or certificate holder to assure that the equipment was properly used by the licensee; and
 - (6) At the time of the licensee's or certificate holder's failure to utilize the equipment, the licensee or certificate holder has knowledge of the discipline that could be imposed under the employer's written workplace disciplinary action policy for failure to utilize the equipment.

NOTE: Authority cited: Sections 12781, 12976, 12981 and 15203, Food and Agricultural Code. Reference: Sections 11892, 12973, 12997, 12999.5 and 15202, Food and Agricultural Code.

Go to: <www.oal.ca.gov> for most recent version and history.

3CCR Section 6130 History

Title 3, California Code of Regulations (3CCR) section 6130, provides fine guidelines for the Agricultural Civil Penalty process. Title 3, California Code of Regulations, Section 6130, was amended in 1996 and 2001. Summary of amendments follows:

- a) Amendment of section heading, section and NOTE (describing the authority cited) filed 12-31-96; operative 1-1-97 pursuant to Government Code Section 11343.4(d) (Register 97, No.1).
- b) Change without regulatory effect amending of subsection (b), adopting new subsection (b) (1), relettering subsections and amending NOTE filed 6-20-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 25).

FINE GUIDELINES

Application of Fine Guidelines for Agricultural and Structural Civil Penalties

Title 3, California Code of Regulations, Section 6130
Title 16, California Code of Regulations, Section 1922

Minor

For purposes of the fine guidelines, Minor violations are violations that are procedural and did not create an actual health or environmental effect or did not pose a reasonable possibility of creating a health or environmental effect.

The fine level range for Minor violations is \$50 - \$150.

“General” (G) incidents usually fall into the Minor fine level range upon the first incident.

“Substantive Possible” (P) incidents occasionally fall into the Minor fine level range.

Moderate

For purposes of the fine guidelines, Moderate violations are repeat violations of Minor violations or violations that posed a reasonable possibility of creating a health or environmental effect.

The fine level range for Moderate violations is \$151 - \$400.

“General” (G) incidents normally do not fall into the Moderate fine level range upon the first incident; but may upon the second incident.

“Substantive Possible” (P) incidents usually fall into the Moderate fine level range upon the first incident.

“Substantive Actual” (A) incidents occasionally fall into the Moderate fine level range upon the first incident.

Serious

For purposes of the fine guidelines, Serious violations are repeat violations of Moderate violations that created an actual health or environmental hazard.

The fine level range for Serious violations is \$401 - \$1000.

“General” (G) incidents rarely fall into the Serious fine level range.

“Substantive Possible” (P) incidents may fall into the serious fine level range upon the first incident; and usually upon subsequent incidents.

“Substantive Actual” (A) incidents usually fall into the Serious fine level range upon the first incident.

(Variable Agency Designation)

DECISION REPORT FORM

PR-ENF-XXX (Temp. 01/03)

COMPANY/PERSON

VIOLATION/EPISODE NUMBER

COUNTY

LICENSE NUMBER

SECTION (VIOLATION)	VIOLATION TYPE	INCIDENTS		
1.		<input type="checkbox"/> 1 st	<input type="checkbox"/> 2 nd	<input type="checkbox"/> Subsequent
2.		<input type="checkbox"/> 1 st	<input type="checkbox"/> 2 nd	<input type="checkbox"/> Subsequent
3.		<input type="checkbox"/> 1 st	<input type="checkbox"/> 2 nd	<input type="checkbox"/> Subsequent
4.		<input type="checkbox"/> 1 st	<input type="checkbox"/> 2 nd	<input type="checkbox"/> Subsequent
5.		<input type="checkbox"/> 1 st	<input type="checkbox"/> 2 nd	<input type="checkbox"/> Subsequent
6.		<input type="checkbox"/> 1 st	<input type="checkbox"/> 2 nd	<input type="checkbox"/> Subsequent
7.		<input type="checkbox"/> 1 st	<input type="checkbox"/> 2 nd	<input type="checkbox"/> Subsequent
8.		<input type="checkbox"/> 1 st	<input type="checkbox"/> 2 nd	<input type="checkbox"/> Subsequent

DECISION FACTOR(S)

Insufficient evidence to prove all elements of violation. Explain below:

Investigation inconclusive due to complainant(s) lack of cooperation.

Company/person "Unfamiliar" with pesticide regulatory requirements as described in Enforcement Guidelines. Note type of business or use: _____

Unable to pursue enforcement action for "General Violations" due to insufficient resources.

Other - Explain below:

REPORT PREPARED BY

DATE SIGNED

REPORT REVIEWED BY

DATE SIGNED

Distribution: Original, Permit, Company or Program File

Copies: Individual / Regional Office/Other Appropriate Files

CITEABLE SECTIONS

Most Citeable Sections contained in the following list may be cited by CACs and DPR to initiate an administrative civil penalty action. However, there are a few Citeable Sections that cannot be used by CACs when initiating an administrative civil penalty action. The Citeable Sections list is a tool that should be referenced whenever an administrative fine, licensing, civil or criminal penalty action is considered.

Each listing in the Citeable Sections is followed by a brief description of the requirement or violation. The descriptions are paraphrased for your convenience. You should always consult the Food and Agricultural Code, California Code of Regulations, Labor Code or Business and Professions Code to verify the elements of the violation before initiating an enforcement action to levy a fine or action against a licensee.

Some listed sections also have a “Possible Exception or Advisory”. A “Yes” in this column indicates that it would be useful to consult various codes to determine whether there is an exception to the requirement or whether there is some other caution to citing the particular section.

The full text of sections with a notation in the “Exception Reference or Advisory” column should be closely reviewed before initiating an enforcement action to levy a fine or action against a licensee. The design of this particular database did not allow notation of a specific code, e.g., FAC, 3CCR, 16CCR, etc., next to the number in this column.

For purposes of this document, code sections with a minimum of five digits, and which begin with 1 are from the Food and Agricultural Code; code sections which begin with a 6 are from Title 3, California Code of Regulations; code sections which begin with 19 are from Title 16, California Code of Regulations; code sections that begin with an 8 are from the Business and Professions Code; and there is only one Labor Code section, section 1695.

All sections note available “Enforcement Options.” “ACP” indicates that a CAC may initiate an Agricultural Civil Penalty action; “SCP” indicates that a CAC can initiate a Structural Civil Penalty action. “State” indicates that the CAC lacks authority to initiate an administrative civil penalty action such as an ACP or SCP; however, most “State” enforcement options that may be initiated as civil or criminal actions by a District or City Attorney, a Circuit Prosecutor, or the Office of the Attorney General. There are a few other Enforcement Options noted at the legend at the bottom of the Citeable Section pages.