

Chapter 6

Permit Requirements

Overview

Introduction This chapter discusses general permit requirements, as well as the different requirements for agricultural and non-agricultural use restricted materials permits. This chapter also discusses requests for permit amendments.

Definitions The following terms are used in this chapter:

- **Contiguous:** A property whose boundary is not broken by public road(s), rights-of-way, or permanent waterways. Each CAC would identify rights-of-way and permanent waterways in his/her respective county.
- **Site:** An area no larger than the property operator's contiguous property and no smaller than one crop location.

In this chapter This chapter contains the following topics:

| Topic | See Section... |
|---|----------------|
| General Permit Requirements | 6.1 |
| Agricultural Use Restricted Materials Permit Requirements | 6.2 |
| Non-Agricultural Use Restricted Materials Permit Requirements | 6.3 |
| Issuing and Amending the Restricted Materials Permit | 6.4 |

Section 6.1

General Permit Requirements

**Permit
required**

Generally, any person that plans to use or possess a restricted material must first obtain a written permit from the CAC. For more information on who needs a permit, including exemptions, see Chapter 5, *Permits and Exceptions*.

**Permit
application
process**

The process to obtain a permit begins with the permit application. The application becomes a permit when it is signed by an authorized person (see page 6-3, *Who is qualified to issue permits*).
(Reference: *FAC section 14006.5*)

Only one permit is required for each operation, regardless of the number of sites involved. However, CACs may choose to issue separate agricultural use and non-agricultural use permits for the same operation.

**Permit forms
and software**

Each application and permit to use or possess a restricted material must be on a form approved by DPR. All information required for a written NOI must also be on forms approved by DPR.
(Reference: *3 CCR section 6424*)

CalAgPermits system, a web-based, statewide permitting and pesticide use reporting system, is approved by DPR and meets the requirements of 3 CCR section 6424.

DPR-approved forms for permit applications and NOIs are available on the DPR web site. See *Inspection and other forms used by County Agricultural Commissioners* at:
<http://www.cdpr.ca.gov/docs/enfcmpli/prenffrm/prenfmnu.htm>. At the bottom of the CAC forms page is a link to the *Pesticide use reporting forms* web page.

Continued on next page

General Permit Requirements, Continued

Permit duration

The CAC may issue any permit for a one-year period, sometimes called a “seasonal” permit. The CAC may issue a permit for up to three years for the following sites:

- Perennial agricultural plantings;
- Non-production agricultural sites;
- Non-agricultural sites.

At the request of the applicant (permittee) or at the CAC’s discretion, the CAC may issue a permit for shorter duration of one application or a short series of applications. This is sometimes called a “job” permit.

(Reference: *3 CCR section 6422*)

Who is qualified to issue permits

While anyone may complete the permit application, only qualified CAC personnel may evaluate the application and issue permits. Qualified personnel are those who possess one of the following licenses issued by the California Department of Food and Agriculture:

- County Agricultural Inspector/Biologist in the category of:
 - Pesticide Regulation; or
 - Investigation and Environmental Monitoring;
- Deputy County Agricultural Commissioner; or
- County Agricultural Commissioner.

(Reference: *FAC section 12844(d)*)

To whom can permits be issued

An agricultural use permit may only be issued to a property operator.

A non-agricultural use permit may be issued to either a property operator, pest control business, or both. It is the CAC’s option to determine which or if both parties are required to obtain a non-agricultural use permit. (See Sections 6.2 and 6.3 for details on the permit differences.)

(Reference: *3 CCR section 6420*)

Except as noted on the following page for mandated governmental programs, there should generally be only one person or firm identified as the operator of each property.

Continued on next page

General Permit Requirements, Continued

Permit for mandated government program

In cases where a government agency is making applications on an individual's property under a mandated program, the agency is considered to be the operator of the property for that limited purpose, and the permit can be issued to that agency. A responsible person from that agency may sign the permit as their authorized representative.

Who may sign the permit?

A permit issued to a property operator must be signed by one of the following:

- Permittee (property operator); or
- Authorized representative.

A non-agricultural use permit issued to a pest control business must be signed by one of the following:

- Pest control business owner; or
- Qualified applicator licensee or certificate holder responsible to supervise the operations of the pest control business.

(Reference: *3 CCR section 6420*)

Documentation required for an authorized representative

The property operator's authorized representative, such as an employee or a licensed agricultural pest control adviser, may sign the permit. The authorized representative must provide the CAC with written documentation from the property operator to act on his/her behalf. The CAC must maintain a copy of the documentation with the permit.

CAC discretion

The CAC has the discretion not to accept a person as an authorized representative. It is up to the CAC to determine the circumstances of when a permit may not be signed by a particular authorized representative or by authorized representatives in general.

Continued on next page

General Permit Requirements, Continued

Enforcement strategy for alternative signatures

Occasionally, a permittee will argue that they did not sign a permit, therefore, they are not responsible for violations resulting from failure to adhere to the conditions of a particular permit. Regulations make the permittee responsible for all permit conditions (*3 CCR section 6420*).

The CAC may hold any or all appropriate parties responsible, depending on evidence they have collected, relative to the violation. It is important to remember three things in respect to permits that are signed by an authorized representative:

1. The permittee (property operator) is responsible for compliance with all permit conditions. *3 CCR section 6420(c)*; AND
2. The permittee may allow or authorize someone else to sign the permit on his or her behalf. *3 CCR section 6420(a) and (b)*; AND
3. The person, who is not the property operator, when signing a permit in the name of the property operator, must provide written documentation from the permittee to act on his or her behalf. *3 CCR sections 6420(a) and (b)*.

Responsibility requirements do not negate the need for the CAC to establish a connection between the permittee (property operator or pest control business) and the person (authorized representative or business representative) allowed to sign the permit when the CAC decides to initiate an enforcement action against the permit or permittee. The CAC must maintain evidence of a connection between the permittee and the person who signed the permit on behalf of the permittee.

What if the signatory leaves employment?

The permit remains valid through the date specified on the permit, unless otherwise revoked, even though the person signing the permit on behalf of the permittee is no longer employed by the permittee. However, if the signatory who left employment of the permittee was the certified applicator identified on the permit, the permittee must identify another certified applicator who will supervise the use of the restricted material before any further use of a restricted material. The permittee may identify the certified applicator, which could be a pest control business, either by requesting a permit amendment or by identifying the person at the time of the NOI.

Section 6.2

Agricultural Use Restricted Materials Permit Requirements

Introduction Permits for the agricultural use of restricted material pesticides may be issued only to the operator of the property to be treated. The permittee (property operator) is responsible for compliance with all permit conditions, regardless of who signs the permit on their behalf.
(Reference: 3 CCR section 6420)

“Agricultural use” defined “Agricultural use” is defined in FAC section 11408. For a full discussion of the distinction between agricultural use and non-agricultural use, see Compendium Volume 8, *Guidelines for Interpreting Pesticide Laws, Regulations, and Labeling*, Section 1.1, *Agricultural and Non-Agricultural Pest Control Use*.

Restricted materials permit application requirements The permit application for the agricultural use of a restricted pesticide must include the information required by 3 CCR section 6428. With the exception of the map and the identification of the certified applicator as discussed below, the restricted materials permit application form and permit software have fill-in-the-blank sections for all the requirements of section 6428. All sections, except the “justification for non-ag use,” must be filled out.

One of the items required is the identification of all known areas that could be adversely impacted by the use of the pesticide(s). This includes areas such as hospitals, schools, playgrounds, residential areas, labor camps, parks, lakes, waterways, wildlife management areas, livestock, or crops. An attached map or aerial photograph is generally used for designating such areas.

Another requirement is to include specific information about the certified applicator responsible for supervising the possession or use of the restricted material(s). The name of the pest control operator, if any, and the certified private or commercial applicator’s name, business address, and license or certificate number with expiration date must be included on the permit application, or be provided at the time of the NOI. If the permit program in use does not have a specific section to include this information, it may be entered in the “contacts” section or a copy of the certification may be attached to the permit.

Continued on next page

Agricultural Use Restricted Materials Permit Requirements,

Continued

Agricultural use permits are time and site specific

It is necessary to make the permit time specific and site specific in order to assess the effects of restricted use pesticides on the environment. Accordingly, the permittee is responsible to ensure that the CAC is notified at least 24 hours prior to commencing the use of a restricted material (NOI). This is a CEQA requirement. "Time specific" and "site specific" are defined in 3 CCR section 6000.
(Reference: 3 CCR sections 6422 and 6434)

Adjustment to the 24 hours notice

The CAC may allow less than the required 24 hours notice for the NOI only when it is determined that:

- 24 hours will interfere with effective pest control; and/or
- 24 hours are not necessary to adequately evaluate the application.

Less than 24 hours notice should be the exception, not the rule. It is intended to address emergency situations; it is not intended to facilitate poor planning.
(Reference: 3 CCR section 6434)

The CAC is authorized to require more than 24 hours for the NOI by permit condition.

Emergency provision

The pesticide use may be delayed for up to four days without refileing an NOI **only if delays are caused by uncontrollable conditions**, such as adverse weather or unavailability of equipment. This is strictly an emergency provision and should not be viewed as a convenience. See previous block.
(Reference: 3 CCR section 6000)

Pest control businesses required to have a recommendation

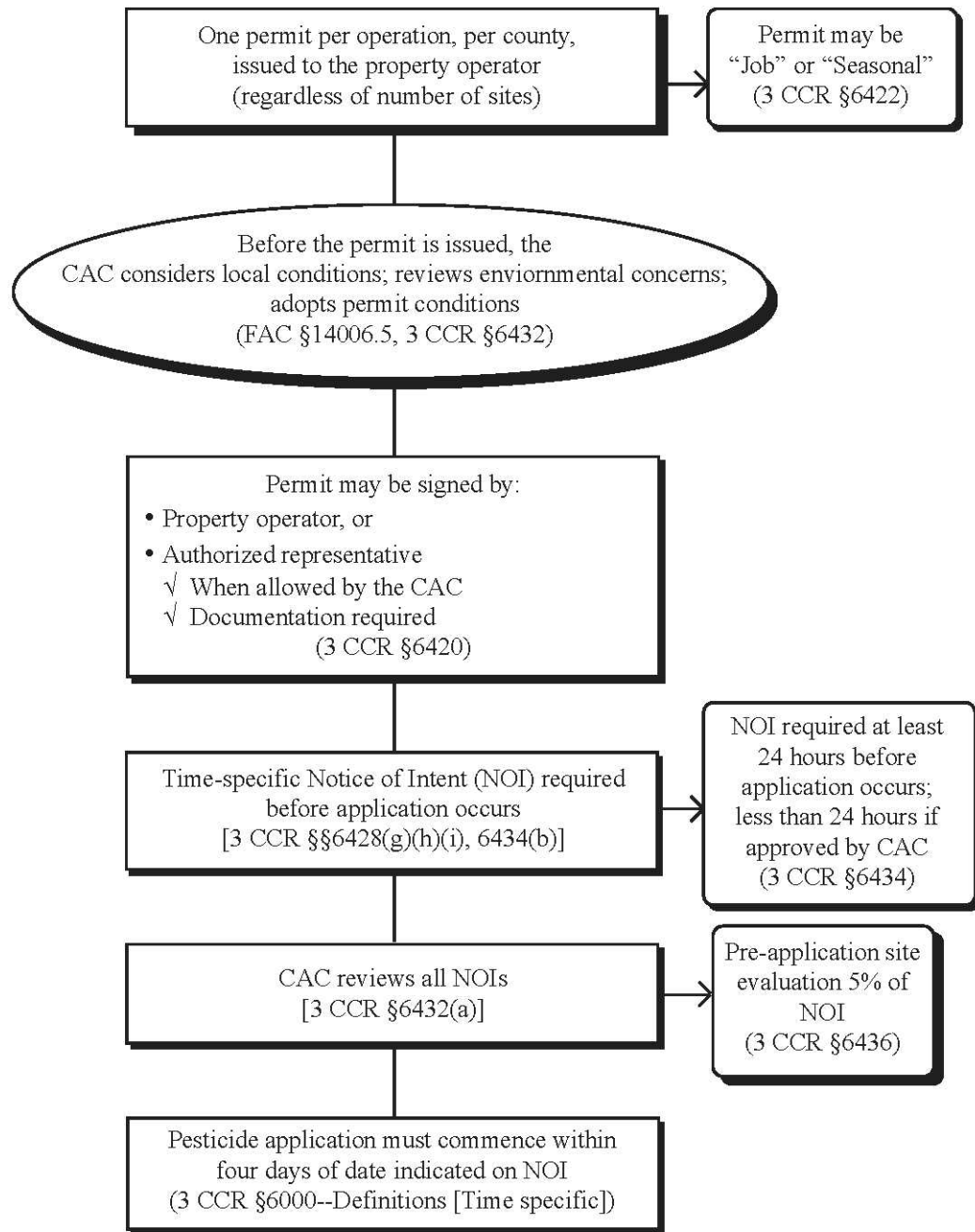
3 CCR section 6426(b) requires a pest control business performing an agricultural use restricted materials application to have a recommendation from either a licensed PCA or the operator of the property. If the recommendation is by the operator of the property, it must be in writing and comply with the requirements of section 6556 et seq. The operator of the property does not have to be a licensed PCA.
(Reference: 3 CCR section 6426)

Continued on next page

Agricultural Use Restricted Materials Permit Requirements, Continued

Agricultural use flow chart

The flow chart below summarizes the steps involved in issuing permits for agricultural use (3 CCR section 6428).



Section 6.3

Non-Agricultural Use Restricted Materials Permit Requirements

Introduction

Permits for non-agricultural use may be issued to the operator of the property to be treated, the pest control business licensee, or both. DPR and the CAC decide who is required to obtain the permit. The permittee is responsible for compliance with all permit conditions.

“Non-agricultural use” defined

There are a number of exclusions within the definition of agricultural use in FAC section 11408. By default, those exclusions define non-agricultural use. For a full discussion of the distinction between agricultural use and non-agricultural use, see Compendium Volume 8, *Guidelines for Interpreting Pesticide Laws, Regulations, and Labeling*, Section 1.1, *Agricultural and Non-Agricultural Pest Control Use*.

Restricted materials permit application requirements

The permit application for the non-agricultural use of a restricted pesticide must include the information required by 3 CCR section 6430. There are a number of important differences between the information required for a non-agricultural use of a restricted material and the agricultural use of a restricted material.

One of the differences is that a non-agricultural permit application must identify the criteria used for determining the need for a restricted pesticide application. Another difference is that, except for a householder using restricted pesticides outside their residence, the qualifying individual for a non-agricultural permit needs to have a Qualified Applicator License or Certificate. (See the definition of private applicator in Chapter 4, *Private Applicator Certification*.)

Commodity fumigations

DPR recommends that all permits for commodity fumigations at fixed facilities be issued to the facility operator to properly evaluate potential impacts on the surrounding environment and the need for adequate mitigation measures.

When the treatment is done by a pest control business, either agricultural or structural, that business needs to be covered by permit conditions, either directly or through conditions on the facility operator’s permit.

Continued on next page

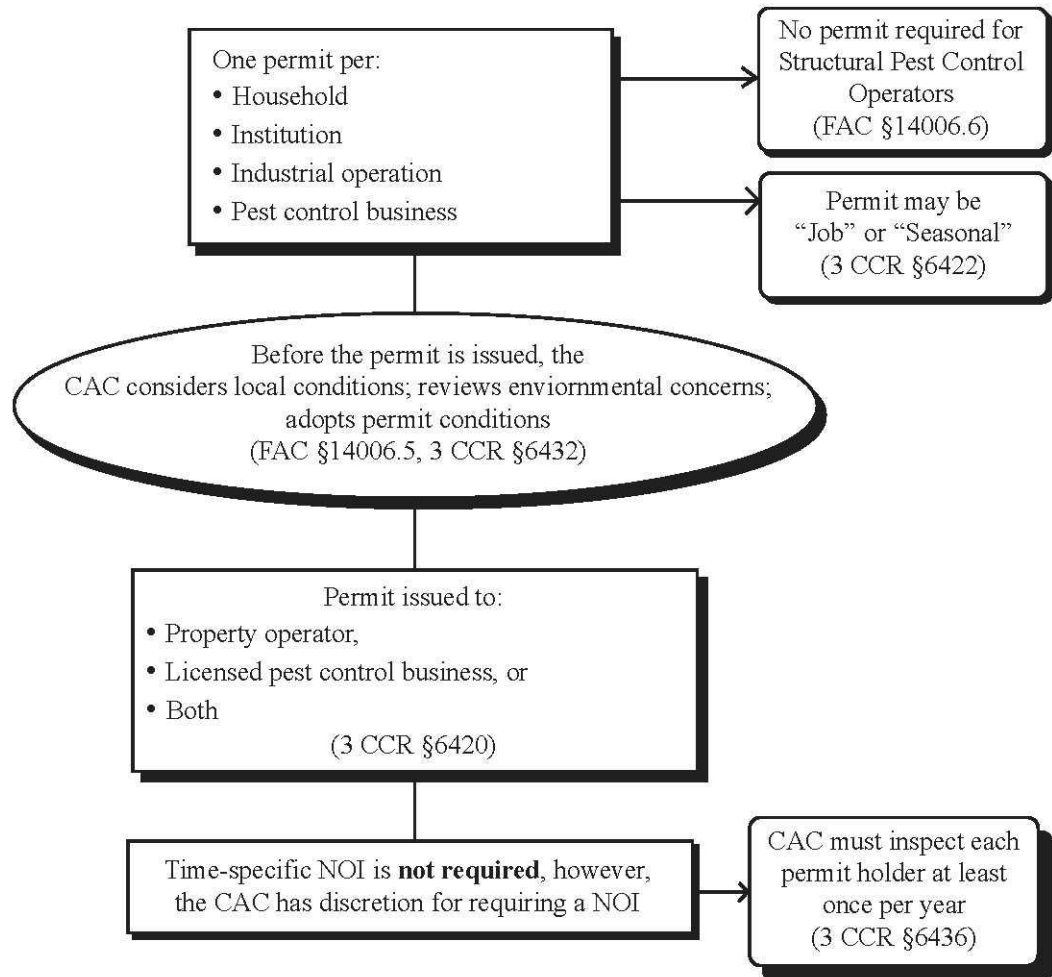
Non-Agricultural Use Restricted Materials Permit Requirements, Continued

NOIs for non-agricultural permits

The pesticide use of each non-agricultural permit holder must be inspected at least once per year regardless of the duration of the permit. Either a site evaluation or a use inspection may be conducted to meet this requirement. An NOI is not required by regulation for non-agricultural permits; however, a CAC has discretion to require an NOI as a permit condition. Requiring an NOI may be useful to facilitate inspections. (Reference: 3 CCR section 6436)

Non-agricultural use flow chart

The flow chart below summarizes the steps involved in issuing permits for non-agricultural use (3 CCR section 6430).



Section 6.4

Issuing and Amending the Restricted Materials Permit

Initial issuance A person who applies for an initial restricted material permit is required to physically go to the CAC's office to submit the permit application, which includes all the requirements listed in section 3 CCR section 6428 or 6430. Consistent with 3CCR section 6420, the operator of the property (permittee), authorized representative, or QAL of the pest control business (for non-agricultural permits) must sign the permit application. The CAC will evaluate the application following the guidance in Chapter 7 and the requirements of 3 CCR section 6432. If the CAC determines the permit may be issued, the original completed permit with the applicant's and CAC's signatures must remain in the CAC's office, and be available for public review upon request.

Purchase of restricted materials In CalAgPermits, after the permit is issued the Permit Signature Status field can be set to "Signed". When this happens, an electronic version of the permit is then available to CalAgPermits Webusers without an "unofficial copy" watermark. Under these conditions, an unsigned copy of the permit printed directly from the CalAgPermits website is acceptable, including for purchase of a restricted material from a pesticide dealer.

If a permittee or authorized representative provides a dealer an unsigned copy without a watermark, it is recommended that the pesticide dealer access the CalAgPermits website to verify the unsigned copy is a true copy from the website. The dealer is still accountable if that dealer sells a restricted material to a person who does not possess a current and valid restricted materials permit for that pesticide. If the dealer does not have web access to the CalAgPermits website, they can call the CAC.

Permit amendment request If a permittee (or authorized representative) wishes to add a pesticide, commodity, or site to a restricted materials permit, he or she must submit an amendment request to the CAC. The amendment request may be in-person, fax, drop box, mail or other CAC-approved method, including by phone call or email.

CAC discretion The CAC must exercise discretion regarding the types of permit amendment requests they accept. This discretion must not impede fulfillment of the requirements of the permit program.

Continued on next page

Issuing and Amending the Restricted Materials Permit, Continued

CAC approval When considering an amendment request, the CAC must ensure that the requirements in 3 CCR, Division 6, Chapter 2, Subchapter 4 (Restricted Materials), Articles 2 and 3 are met. When a permittee (or authorized representative) requests a change to their permit, even if by a phone call, the CAC must review the request and, if acceptable, make appropriate changes to the permit in CalAgPermits. If the CAC does not obtain the permittee's signature on the amendment, DPR recommends that the CAC document the call and all relevant information from the call and keep those notes in the event of a question or concern about the permit. CACs can use the "Version Notes" field CalAgPermits to fulfill this purpose.

Minor permit changes Minor permit changes, such as adding or deleting a pest, correcting the address, or adding or deleting a pest control business, may be amended by a telephone call.
