

Routing Administrative Civil Penalty and Formal Referral Documents to DPR

Date 21 May 2013

Enclosure to Enforcement Letter Enclosure to Enforcement Letter ENF 13-11

Background Several Enforcement Letters have previously been issued explaining the need to collect information related to enforcement actions and directing County Agricultural Commissioners (CACs) to forward the following documents:

- 1) Notice of Proposed Action (NOPA)
- 2) Administrative civil penalty closing documents (for example, Stipulation and Waiver to Order)
- 3) Enforcement/Compliance Action Summary form (DPR-ENF-046)

Collection of information about enforcement actions assists the Department of Pesticide Regulation (DPR) in tracking overall enforcement trends and allows DPR to provide more accurate and complete information about statewide enforcement activities.

DPR review of certain NOPAs and hearings decisions is expected to increase enforcement consistency and clarity.

Routing the draft NOPA CACs must submit certain draft NOPAs to the appropriate DPR regional office for review, before sending the NOPA to the respondent. CACs only need to submit draft NOPAs that meet either of the following criteria:

- a) Human health incidents that meet Priority Episode criteria as outlined in Investigative Procedures, Volume 5 of the Pesticide Use Enforcement Program Standards Compendium
< http://www.cdpr.ca.gov/docs/enforce/compend/vol_5/invstprc.htm >
or
- b) Other violations involving substantial adverse effects to human health (especially incidents involving multiple complainants, media controversy, or repeat or egregious violations.) When in doubt about whether a draft NOPA meets the criteria for DPR review, consult with your DPR regional office.

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Routing Administrative Civil Penalty and Formal Referral Documents to DPR, Continued

Routing the draft NOPA (continued)

When sending a draft NOPA to a DPR regional office for review, please include a copy of the investigation report, inspection form, or other CAC documentation of the violations identified in the NOPA.

DPR review will include elements of the violation and adherence to NOPA guidance, such as in DPR Enforcement letters ENF 06-02, 06-34, and 07-10.

DPR will review the draft NOPA and respond to the CAC within 30 calendar days of receipt of the NOPA.

Routing the Notice of Proposed Action

A copy of every NOPA must also be sent to the DPR at the same time it is mailed to the respondent. This requirement is found in Title 3, California Code of Regulations (3 CCR) section 6130(e).

Send a copy of NOPAs to the appropriate DPR Regional Office.

Hearing Decision Review

A respondent who receives a NOPA for a pesticide violation is granted a hearing, if requested by the respondent. After the hearing, the hearing officer prepares a proposed decision for the CAC, who then may adopt, modify, or reject the hearing officer's proposed decision.

For hearings that involve a human health Priority Episode or other substantial adverse effect to human health, before issuing a decision to the respondent, the CAC must first send the hearing officer's proposed decision to the appropriate DPR regional office for review, if either of the following conditions is met:

- the hearing officer's proposed decision modifies or overturns the action that the CAC proposed in the NOPA, or

- the hearing officer's proposed decision upholds the action proposed in the NOPA, but the CAC plans to modify or reject the hearing officer's proposed decision.

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Hearing Decision Review (continued)

When sending a hearing officer's proposed decision to a DPR regional office for review, please include:

- 1) A draft of the decision that the CAC plans to issue to the respondent. Indicate whether the CAC plans to:
adopt the hearing officer's proposed decision, or
modify or reject the hearing officer's proposed decision.

- 2) A copy of the investigation report, inspection form, or other CAC documentation of the violations identified in the NOPA.

DPR will consult with the CAC regarding these types of decisions within 30 calendar days of DPR's receipt of the hearing officer's decision.

If a CAC wants guidance on his or her options regarding a hearing officer's proposed Decision, DPR's regional office will contact DPR headquarters to make a DPR staff counsel available.

Routing the Closing Document

A copy of every closing document must be sent to the relevant DPR regional office.

Administrative civil penalty cases provide a person due process, for which several options are available. A respondent may decide to accept the enforcement action (e.g., pay the fine, serve the suspension, or attend an approved course); or the respondent may choose to request a hearing. Therefore, the type of "closing document" for a specific NOPA will vary based upon the option chosen by the respondent.

Types of closing documents are listed below. Only one document is needed to close a case.

- 1) Stipulation and Waiver to Order - signed by respondent and sent to CAC.
 - 2) Letter acknowledging receipt of payment - sent by CAC to respondent when payment is received, but Stipulation and Waiver to Order is not signed (or a hearing is not requested).
 - 3) Notice of Decision and Order to Pay - sent by CAC to respondent when a hearing is requested, but respondent does not attend; or hearing is not requested timely (and no signed Stipulation and Waiver to Order is submitted).
 - 4) Notice of Final Decision - sent by CAC to respondent after the hearing.
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Routing Administrative Civil Penalty and Formal Referral Documents to DPR, Continued

Routing the Closing Document (continued)

When the closing document is a Stipulation and Waiver to Order, send a copy of the signed document to the appropriate DPR regional office immediately after the CAC receives it from the respondent. For other types of closing documents, send a copy to the appropriate DPR regional office at the same time the closing document is sent by the CAC to the respondent.

Structural Civil Penalty Cases

The CAC should also send a copy of the NOPA and appropriate closing document for structural civil penalty cases to the Structural Pest Control Board (SPCB) within the Department of Consumer Affairs. Mail to the following address, or fax to (916) 263-2469:

Structural Pest Control Board
2005 Evergreen Street, Suite 1500
Sacramento, CA 95815

Routing the Formal Referral Document

A copy of any document by which the CAC formally refers a case to a City Attorney, District Attorney, Circuit Prosecutor, or Attorney General must be sent to DPR.

Send a copy of the formal referral document to the appropriate DPR Regional Office.

Enforcement/Compliance Action Summary Form

The CAC must complete the Enforcement/Compliance Action Summary form (DPR-ENF-046) for each closed enforcement action or formal referral and attach it to the Pesticide Regulatory Activities Monthly Report (PRAMR).
