

Chapter 1

Introduction to Enforcement Response to Pesticide Use Violations

Table of Contents

Section 1.1 Overview of Enforcement Response	1-2
Section 1.2 Introduction to Pesticide Use Violations	1-4
Section 1.3 Web Resources.....	1-6

Section 1.1 Overview of This Volume

Objective

The objective of this Volume is to provide general information on the appropriate enforcement responses by staff of the Department of Pesticide Regulation (DPR) and the County Agricultural Commissioners (CACs). This Volume does not establish any enforceable policy or procedure, does not replace or supersede any statutes or regulations, and is subject to change. The regulatory authority and enforcement responsibilities are complex due to the array of laws, regulations, and administrative codes that govern and guide the process, and to the fact that DPR and CACs have both individual and sometimes overlapping roles and responsibilities for pesticide use enforcement in California. For details on the regulatory authorities and jurisdiction of DPR and CACs, see Compendium Volume 1 *General Administration of the Pesticide Use Enforcement Program*.

Volume overview

Chapters 2-6 pertain to breaking down potential pesticide use violations, determining enforcement response, and developing a case. Generally, most violations are found during pesticide use monitoring inspections (such as on a pesticide use inspection report form) or investigations into potential pesticide use violations (such as pesticide use reporting, worker protection, or pesticide drift regulations).

Chapter 2 discusses how to read and understand sections of laws and regulations, and the importance and method of establishing the Elements of the Violation for evidence development in support of proving a violation “more likely than not” occurred. Chapter 3 presents issues related to developing a case: assistance in determining what section or subsection to site, what factors to consider, and when to refer cases to other enforcement agencies.

Once a potential violation of a pesticide law or regulation is identified, various enforcement and compliance options are available to CACs to address an agricultural, structural, or fumigant use violation depending upon how it is classified (Chapter 4). Compliance Actions are covered in Chapter 5. Chapter 6 contains information about Decision Reports.

The subsequent chapters pertain to issuing an enforcement action and participation in administrative hearings. Chapter 7 describes pesticide Administrative Civil Penalties and addresses enforcement responses for moderate and severe violations that trigger an enforcement action. The entity or person (the Respondent) subject to the charge must know the nature of the

Continued on next page

Overview of This Volume, Continued

Volume overview, (continued)

violation(s), fine amount(s), be given the choice to contest the charge(s) in a hearing, and be notified of the right to appeal the findings of a hearing. This process is described in development of the Notice of Proposed Action (NOPA).

The Administrative Civil Penalty Hearing (Chapter 8) is a quasi-judicial proceeding. It is less formal than a civil proceeding, though subject to certain requirements of the Administrative Procedures Act to ensure fairness and due process for the respondent, two of the main roles of the presiding Hearing Officer (Chapter 9).

The CAC initiates the proceeding through a NOPA, but in the hearing the County's case against the Respondent is presented by a County Advocate. The role and responsibilities of the County Advocate are discussed in detail in Chapter 10, including how to prepare for the hearing, manage the case file, facilitate stipulations ahead of the hearing, and understand the processes of presenting evidence and eliciting testimony.

The Hearing Officer evaluates the testimony and evidence entered in the administrative record to write the Proposed Decision which is submitted to the CAC (Chapter 11). In most cases, the CAC agrees with the Proposed Decision and adopts it as the Commissioner's Decision. The CAC may also revise or reject the Proposed Decision in certain situations. The CAC then issues a Notice of Decision and Order to the Respondent, usually indicating that the fine must be paid or an **appeal** must be filed with the Director of DPR (agricultural) or the Disciplinary Review Committee (structural). The decisions of these entities may also be further appealed through the judicial system.

To support statewide consistency of the enforcement response to pesticide violations, this volume contains recommended templates for many of the needed documents, ensuring that DPR staff, CACs and their staff, the Hearing Officer, and the County Advocate clearly understand the required elements.

Core enforcement program

The Department's core enforcement program encompasses program areas critical to meet pesticide regulatory program mandates and strategic goals. The core enforcement program consists of the following:

- Restricted material permitting;
- Compliance monitoring; and
- Enforcement response.

For more information, see Compendium Volume 1 Section 2.4.

Section 1.2

Introduction to Pesticide Use Violations

Background

Food and Agricultural Code (FAC) sections 11891 (Division 6) and 12996 (Division 7) make *any* violation of the respective Division and implementing regulations a crime (misdemeanor). Similarly, Business and Professions Code (B&PC) section 8553 makes *any* violation of Chapter 14 (Structural Pest Control Operations) a crime (misdemeanor). Therefore, a CAC may refer pesticide use violations to a District Attorney for criminal prosecution in a court of law. However, as an alternative, the Legislature provided CACs authority to pursue Administrative Civil Penalties for pesticide use violations, accompanied by an Administrative Civil Penalty Hearing, as a substitute for formal court proceedings. This system provides a more expeditious and less costly legal alternative to trying each individual case in a courtroom. See Appendix A for background on the history and process of Administrative Civil Penalties.

Pesticide use violations are “classified” according to Title 3, California Code of Regulations (3 CCR) section 6130 for agricultural and other pesticide use violations, and Title 16, California Code of Regulations (16 CCR) section 1922 for most structural use violations. The gravity of the enforcement response is commensurate with the severity of the violation and whether there is a repeating pattern of non-compliance with pesticide use laws and regulations.

Broadly speaking, 3 CCR section 6128, Enforcement Response to Violations, directs CACs to consider two categories of enforcement response options:

- A **compliance action** which documents a certain behavior or an act is in violation of pesticide laws or regulations, but does not directly impose a monetary penalty.
- An **enforcement action** which is a mechanism to impose a monetary penalty (fine), initiate a disciplinary action (refuse, suspend, revoke a County registration, certificate, or permit), initiate a civil or criminal action through the District Attorney, or initiate a licensing action through DPR or the Structural Pest Control Board (SPCB).

An enforcement action consisting of a fine or disciplinary action is initiated by a NOPA addressed to the alleged violator (Respondent). The NOPA is the first step to ensure the due process rights of the Respondent (individual or business) are met. Chapter 7 contains more information on NOPAs and due process rights. The Respondent has the right to request an Administrative

Continued on next page

Introduction to Pesticide Use Violations, Continued

Background,
(continued)

Civil Penalty Hearing to contest the charge(s) and fine(s). The CAC's Notice of Decision is subject to appeal.

Any inspection or investigation may result in an enforcement action and NOPA with the potential for a hearing and appeal. Therefore, CACs and staff should approach each inspection or investigation with scrupulous attention to procedure, highly professional conduct, detailed documentation of evidence, and judicious interpretation of regulations that classify and set the fine ranges for violations.

Section 1.3 Web Resources

Introduction The following web sites contain additional information on topics that may be helpful to you. Select the Web address to reach the specific web site.

- Resources**
- The [Resources for County Agricultural Commissioners](https://www.cdpr.ca.gov/enforcement/resources-for-county-agricultural-commissioners/) page at [<https://www.cdpr.ca.gov/enforcement/resources-for-county-agricultural-commissioners/>](https://www.cdpr.ca.gov/enforcement/resources-for-county-agricultural-commissioners/) contains links to:
 - Letters to CACs
 - The current Citable Sections Report
 - The Pesticide Use Enforcement Program Standards Compendium
 - Volume 1: General Administration of the Program
 - Volume 2: Laws and Regulations
 - Volume 3: Restricted Materials and Permitting
 - Volume 4: Inspection Procedures
 - Volume 5: Investigation Procedures
 - Volume 7: Interpreting Pesticide Labeling, Laws, and Regulations
 - CAC training information, inspection and additional forms
 - The [Laws and Regulations](https://www.cdpr.ca.gov/laws-and-regulations/) page at [<https://www.cdpr.ca.gov/laws-and-regulations/>](https://www.cdpr.ca.gov/laws-and-regulations/) contains links to:
 - The FAC, 3 CCR, and 16 CCR;
 - DPR's proposed and recently adopted regulations, and
 - DPR's current rulemaking calendar.
 - Selected DPR Databases and Related Information:
 - [Pesticide Use in California](https://www.cdpr.ca.gov/pesticide-use-in-california/) [<https://www.cdpr.ca.gov/pesticide-use-in-california/>](https://www.cdpr.ca.gov/pesticide-use-in-california/)
 - [California Product/Label Database Application](https://apps.cdpr.ca.gov/docs/label/labelque.cfm) [<https://apps.cdpr.ca.gov/docs/label/labelque.cfm>](https://apps.cdpr.ca.gov/docs/label/labelque.cfm)
 - [Endangered Species](https://www.cdpr.ca.gov/endangered-species/) [<https://www.cdpr.ca.gov/endangered-species/>](https://www.cdpr.ca.gov/endangered-species/)
 - [DPR Licensees](https://apps.cdpr.ca.gov/docs/license/currlic.cfm) [<https://apps.cdpr.ca.gov/docs/license/currlic.cfm>](https://apps.cdpr.ca.gov/docs/license/currlic.cfm)
-