

Chapter 3

Evidence and Case Development

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Section 3.1

What Are the Main Points to Address in an Incident?

Background As defined in 3 CCR section 6128(a), an “incident” is an occurrence in which one or more violations are discovered. An incident may be a single inspection or audit, a set of two or more inspections or audits related to the occurrence, or a pesticide episode investigation. **Every time** a potential violation of pesticide statutes and regulations is found the inspector’s mindset necessarily changes from one of an “inspector” to that of an “investigator.”

Investigation into these incidents is an “art” and not a “science.” It must be discussed in terms of perceptions and advice (art), rather than statutes and rigid theories (science). In order to conduct a successful investigation into an incident, the investigator needs to plan, “operate in harmony with the rules,” and, to the greatest extent possible, follow the plan. Failure can result if unorthodox methods are used or the prescribed procedures are neglected.

DPR guidance For more detailed information, CAC staff should be familiar with other Volumes of the Program Standards Compendium, especially:

- *Inspection Procedures*
- *Investigation Procedures*
- *Interpreting Pesticide Labeling, Laws, and Regulations*

The guidance in these Volumes, in conjunction with the content of this Volume, will help CAC staff “think through” the process, plan for possible enforcement action, and assist staff to use and assemble resources effectively.

The goals Gathering information accomplishes several goals:

- Determine whether a violation occurred,
- Document where the violation occurred,
- Identify and locate the violator(s), and
- Collect physical evidence or witness statements to prove culpability for the violation.

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What Are the Main Points to Address in an Incident, Continued

The duties

Finding the violator of an offense is frequently the simplest part of the incident, whereas obtaining the evidence to support the charge in a hearing is often the most difficult.

Planning the tasks and duties for investigating an incident is a key factor to success or failure. The planning process can assist in outlining the roles of other staff involved, including progress reporting relationships and expectations. Investigators assigned to a case are required to gather various parts of an investigation and form it into one complete “story.”

Investigators must collect evidence from and make observations of the site(s) where the violation(s) occurred; interview witnesses, complainants and alleged suspects; collect, compile, and transmit the evidence; and perform all of the necessary functions of the investigation.

The incident will be a success if the physical evidence is competently handled; witnesses, complainants, and suspects are skillfully interviewed; all leads are properly developed; and all information gathered is clearly and accurately reported. The Hearing Officer’s decision is not the only measure of whether the inspection or investigation was a success or failure.

The three “I’s”

For the sake of simplicity, investigators must practice and follow the three “I’s.” The three “I’s” are:

- Information,
- Interrogation, and
- Instrumentation

Information -- Of the three “I’s,” information is the most important, since it answers the questions: “Who did it?”; “What did they do?”; and “How did they do it?” Information is used to describe the knowledge the investigator obtains from other persons. There are two types of information. The first is information gathered from sources including conscientious citizens, company records and documents, DPR or SPCB licensing information, pesticide labels, etc. The second kind of information is the knowledge the experienced investigator gathers from other sources, such as informants, current and former employees, acquaintances, experts such as Farm Advisors or Board Specialists, etc.

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What Are the Main Points to Address in an Incident, Continued

The three “I’s” (continued)

Interrogation -- This includes the skillful questioning of witnesses, complainants, and suspected violators. Success varies with the skill, craft, logic, and insight the investigator uses when questioning a person who may possess information relevant to the case. A good investigator excels in this skill by being able to establish a rapport with the individual being interviewed. The investigator should look upon a reluctant witness or suspect as a person who will provide the information requested if questioned with skill, persistence, and patience. An investigator who possesses common sense and a capacity for perseverance will become a good investigator if they have insight into personalities and have acquired a sufficient knowledge of psychology by study and observation.

The investigator should record all statements, even if it may be inaccurate or untrue. Such statements can be used to prove the trustworthiness of a respondent or witness in the case. They can be used to force a person to admit one fact vs. another.

Instrumentation - Instrumentation includes the application of instruments, including various types of scientific equipment and methods used in the physical sciences to detect a violation. Instrumentation is most effective in cases where physical evidence is abundant. Instrumentation includes photographing the violation site, using an anemometer to document the wind speed, sending samples of physical evidence (e.g., swab samples, produce samples, pesticide samples, etc.) to the laboratory to identify what pesticides are involved and connect them to the suspected violator, establish the degree of contamination, etc.

The most common use of instrumentation involves analyzing the physical evidence in the case. Investigators must be thoroughly trained in the various types of equipment used in the investigation. Many technical aids are available, but unless the investigator understands how these aids can be used effectively, their full potential will not be adequately realized.

Conclusion

Evidence gathered must support the alleged Elements of the Violation.

The completed incident is the end product of teamwork, from the time the inspection was conducted or investigation initiated until the incident is closed by one or more enforcement responses.

Section 3.2 General and Specific Code Sections

General versus specific provisions

Under a number of cases dating back to the 1800s, the Supreme Court of California has held that:

- A general provision is controlled by specific provisions.
- Specific provisions relating to a particular subject are controlling over a general provision and govern in respect to that subject.

The California Legislature has authorized DPR to adopt specific regulations to effectively implement the Legislature's intent as reflected in certain general provisions of FAC Divisions 6 and 7, *including pesticide worker safety*.

DPR's regulations are specific

DPR's regulations **specifically** outline the responsibilities of employers and employees around pesticide worker safety. FAC section 12973 is a general provision related to the use of pesticides, and therefore, makes no mention of specific pesticide worker safety or employer-employee responsibilities in relation to pesticide worker safety.

Example

As required by FAC section 12781, DPR has adopted pesticide worker safety regulations (3 CCR section 6700-6795) that set forth specific worker safety requirements and specify the responsibilities of employers and employees in meeting those requirements.

Federal pesticide labeling usually includes a reference to the federal Worker Protection Standards (WPS) found in Title 40, Code of Federal Regulations (40 CFR), Part 170. However, 3 CCR section 6701 provides that it is intended for California's pesticide worker safety regulations to be enforced by DPR and CACs within California, rather than the federal WPS. DPR's worker safety regulations directly implement the WPS protections found in 40 CFR Part 170.

Citing 3 CCR versus FAC for worker safety requirements

When initiating an administrative civil penalty action against an employer for matters involving worker (employee) safety, CACs should charge a violation of a specific worker safety regulation or other applicable regulation rather than the general FAC section 12973 provision. For the purposes of this discussion, 3 CCR sections 6700-6795 govern and control FAC section 12973.

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General and Specific Code Sections, Continued

Common legal generalizations to avoid

On occasion, generalizations are made by comparing laws and regulations that may or may not be true in any given situation. These generalizations should not be factors relied upon to determine which code section or regulation to cite when preparing a civil penalty action. Consider these examples:

Generalization	Consideration
<p>“The laws have more authority than the regulations so you should cite them instead, whenever possible.”</p>	<p>Laws come from the Legislature. Regulations come from an administrative agency. The Legislature passes laws granting the administrative agency authority to promulgate the regulations. If the law or regulation is valid, the authority for each ultimately comes from the same source and both may be enforced.</p>
<p>“It is easier to use a law than a regulation because laws are easier to prove.”</p>	<p>This statement may be true in some cases. However, the agency initiating the action has a responsibility to analyze the situation and choose the most appropriate code or regulation section. In most cases, the best code or regulation section to choose is the one whose specific elements most closely match the specific facts of the case.</p>
<p>“That section has been cited before without any problem.”</p>	<p>The text of the law or regulation may stay the same, but the facts of each case are unique. The evidence offered to prove those facts will differ. How the Hearing Officer weighs the credibility of the evidence and witnesses will vary. These variables will affect how the County Advocate presents the case and factor into the Proposed Decision the Hearing Officer makes.</p>

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General and Specific Code Sections, Continued

Cite the most specific section

The FAC and DPR's implementing regulations in 3 CCR Division 6 have equal force of law. CACs should cite the section that is most specific to the particular act, omission, or circumstances of the incident. Where a general and more specific requirement conflict (when applied to the circumstances) the more specific requirement takes precedence. Where a general and specific requirement can be reconciled, both are applicable.

For example, FAC section 12973 requires pesticides not be used in conflict with the registered label or permit conditions. DPR has adopted comprehensive pesticide worker safety regulations (starting at 3 CCR section 6700) encompassing the worker safety requirements on product labels which impose additional and often more specific standards and requirements, including various requirements that employers "make certain" their employees comply with worker safety rules.

DPR's PPE regulations are very specific to worker situations in California. When it is the employee that physically committed the act, the CAC, by citing the employer is really targeting, and enforcing, the employer's responsibility to prevent the violation.

3 CCR section 6131 and B&PC section 8616.9(a) place limitations on when a licensed or certified employee can be cited for PPE violations. For licensed or certified employees, note that CACs have discretion to cite the employee or the employer for the PPE violation. For PPE violations in structural pest control, note that both the employer and employee can be cited in some cases. For more thorough discussion of this topic please refer to Appendix E.

General advice

- Do not rely solely upon sections noted on inspection forms to determine the section to cite in an administrative civil penalty action. Those sections may be cited, but also the section most appropriate to the specific administrative civil penalty action should be cited.
 - Check similar or corresponding laws and regulations for the subject area of the violation to determine if other sections might be more applicable to the situation.
 - Determine the elements of the violation of any section that may be citable in the administrative civil penalty action.
 - Determine which law or regulation violation has specific elements that can be most clearly established and supported by the evidence.
 - Accept that decisions based upon the law may differ from the desired outcome.
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Section 3.3

Citable Sections Report

Introduction The Citable Sections report is a reference tool to consult at each step in the enforcement response process: issuing a violation, before NOPA development, before NOPA issuance, and in hearing preparation.

The report lists sections that can be generally relied upon to identify sections that can be called a “violation” in an Administrative Civil Penalty action and be enforceable in hearings and appeals. It also identifies certain exceptions or advisories to encourage the Commissioner to further investigate before citing a violation. It also notes whether a section can only be cited by the State or a local prosecutor and what type of enforcement option is available to the Commissioner.

The Commissioner should always complete the “Elements of the Violation” analysis for a violation that will be cited in a NOPA. The Citable Sections report does not replace the Commissioner’s responsibility to ensure that there is sufficient evidence to prove a case before issuing a NOPA.

Background Certain laws and regulations assign authorities and roles, provide definitions, provide guidance or information, provide general scope and limitations, describe defenses and exceptions, or address other topics that are not specific obligations on pesticide users (e.g., something the Director or Commissioner must do). Therefore, not all pesticide law or regulation sections can be cited as violations in a pesticide administrative civil penalty action.

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Citable Sections Report, Continued

Citable section analysis

Legal Counsel for DPR performs a comprehensive analysis to determine whether a section can be cited in an Administrative Civil Penalty action. The steps below, provided for informational purposes, illustrate several of the many requirements that must be met for a section to be “citable”:

1. Is the code section authorized by law to be used in an Administrative Civil Penalty action? For example, FAC section 12999.5(a) lists certain Divisions, Chapters, or sections that, when violated are subject to an agricultural civil penalty levied by a CAC. FAC section 11701 is within FAC Division 6 and Division 6 (commencing with section 11401) is specifically listed in FAC section 12999.5(a). A similar process plays out for structural civil penalty actions under B&PC section 8617.
2. Does the section provide a specific requirement that can be “violated”? Definitions, preambles, or discussions that do not list a specific requirement cannot be violated and are thus not “citable”.
3. Is the subject of the requirement a regulated entity? A section that directs an action of the Commissioner, Director, or the SPCB cannot be “violated” by a regulated entity. For example, 3 CCR section 6780(c) provides the Director may accept a Fumigation Safety Program. This regulation does not have an action that can be violated by a regulated entity.
4. Is there an exception, exemption, or extraordinary circumstance? Is there something in the section or a nearby section which would indicate the CAC cannot initiate an Administrative Civil Penalty action? Are there any other code sections referenced?
5. Is this a section better prosecuted by DPR, the Attorney General or District Attorney? Is it too difficult for a person not trained in the law to prosecute this section (e.g., proving fraud or negligence)?

A code section which satisfies these and other legal requirements is added to the Citable Sections list. Code sections that do not satisfy all the requirements are either not included in the citable list, or are noted as “Do Not Cite” in the Citable Sections report.

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Citable Sections Report, Continued

- Citable Sections report details** The Citable Sections report lists sections of the following California codes:
- Title 3, California Code of Regulations (3 CCR),
 - Title 16, California Code of Regulations (16 CCR),
 - Food and Agricultural Code (FAC),
 - Business and Professions Code (B&PC),
 - Labor Code (LC),

The code section is followed by “Descriptions” that concisely summarize the section.

The next column lists the following “Enforcement Option(s)” for each section:

- ACP - Agricultural Civil Penalty
- SCP - Structural Civil Penalty
- Do not cite – not a citable section for ACP or SCP
- State Only - Cannot be used by CAC in an ACP or SCP action
- Cease and Desist – Cease and Desist Order
- Civil/Criminal – Only City/County Attorney, Attorney General, or DPR may initiate a Civil/Criminal Action (as specified). This section is not for use by CACs in ACP or SCP action

The last column contains “Exception, Reference, or Advisory” notations, and references. These are concepts DPR has flagged as potential issues or concerns for the CACs. DPR recommends the items be cross-referenced and considered in their entirety before writing a Notice of Proposed Action. For example, 3 CCR section 6738.1(b) requiring employees wearing chemical resistant gloves as personal protective equipment (PPE) notes as an exception 3 CCR section 6738.4. This section contains many exemptions from PPE requirements found in pesticide labeling and in regulation. CAC staff should thoroughly review these exemptions to make sure there is not a missed exemption before preparing a violation notice or a NOPA.

The Citable Sections report does not replace the CAC's responsibility to do the Elements of the Violation and ensure there is sufficient evidence to prove each element in a case before issuing the NOPA.

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- Current report** The Citable Sections report may be accessed on 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/).
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Section 3.4

Matching Evidence to the Elements of the Violation

Introduction After identifying the elements of the law or regulation in Chapter 2, the next step is to demonstrate the person did not satisfy one or more of the elements to prove there was a violation. The separate pieces of evidence collected are pieces of the puzzle that must fit together to prove the violation.

Definition **Evidence** is a fact of consequence which provides proof that an element of the law or regulation was present or had occurred. A fact can be a statement that can be proven using evidence such as testimony or a tangible item (such as a report, photograph, map, etc.).

Assign evidence to the elements Each element of the law or regulation must be supported with evidence to prove that a violation occurred. If all the elements cannot be supported with evidence, then the violation cannot be proven to have occurred.

The burden of proof for administrative civil penalty hearings is the **preponderance of the evidence** standard, or that a violation is more likely to have occurred than not, equivalent to a probability of greater than 50%.

On review, the Director, the DRC, or the Court will use the **substantial evidence** standard to determine if the agency abused its discretion. Abuse of discretion is established if the findings are not supported by substantial evidence in the light of the whole record.

Evidence credibility 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.

Example To prove that the requirements of 3 CCR section 6738.1(a), which requires employers to ensure employees wear protective eyewear, were not satisfied, the following can be used as evidence for elements of the violation:

1. Employer/employee relationship (picture of company vehicles, training records, employee statement, etc.)
2. Product labeling (e.g., PPE requirement, hazards to humans statements, etc.)

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Matching Evidence to the Elements of the Violation, Continued

Example,
(continued)

3. Testimony of employee
 4. Inspection/investigation report (statements, photos, etc.)
 5. Testimony of CAC staff
-

Evidence types

The evidence must come from a credible (believable) and trustworthy (reliable) source. Examples include:

- **Witness statements** – These are statements from persons who saw the event occur, such as a biologist who conducted a pesticide use monitoring inspection or a fieldworker who saw an aircraft fly overhead and then felt a mist.
- **Expert testimony** – This is a person who may not have witnessed the event, but is an expert on certain aspects of pesticide activity or effects.
- **Photos and diagrams** – These include photos of application equipment, pesticide container, personal protective equipment, or damage allegedly caused by an application; diagrams include a map showing location of the treatment site and the adjacent properties or a map showing sampling locations.
- **Official Records** –
 - Laboratory analyses – detection of pesticide residues on crops/sites/clothing that could have occurred from drift during a pesticide application.
 - Reports – government documents generated during normal work activities (inspection reports, investigation reports).
- **Hearsay** – is evidence in the form of a statement made outside of the hearing or court room. Hearsay is addressed in more detail in Chapter 9. Reports generated from inspections or investigations are considered hearsay evidence that can be submitted in our informal hearings because they are official records (an exception to the hearsay rule) although statements within them may be hearsay. Hearsay evidence needs to be shown as relevant by testimony of the county staff who created the record (i.e., conducted the inspection or investigation).

It is important to note administrative civil penalty hearings for pesticide use violations are not subject to the formal rules of evidence for legal proceedings. Any relevant evidence can be submitted.

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Matching Evidence to the Elements of the Violation, Continued

Direct vs. circumstantial evidence

Direct evidence can prove a fact by itself. For example, if a witness testifies he saw it raining outside before a pesticide application, that testimony is direct evidence that it was raining.

Circumstantial evidence is evidence from which more than one logical conclusion can be reached. Circumstantial evidence may also be called "indirect evidence." Circumstantial evidence does not directly prove the fact to be decided, but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question. For example, if a witness only testifies that a farm field was wet prior to entry to the field, logical conclusions could include the field was irrigated prior to entry.

Circumstantial evidence is not a less valuable form of evidence than other forms of evidence. However, reliance on circumstantial evidence requires the County to show the sum of the circumstances are reliable and credible enough so that an ordinary person can infer the existence or non-existence of a fact.

Evidence for each element is required

Sometimes a violation may seem clear to enforcement personnel. For example, let's say there was a potential PPE violation of 3 CCR section 6738.1 and if there is evidence to demonstrate the individual failed to wear the required PPE, why is evidence also required to prove the other elements of the requirement: that the individual is an employee and is working for a certain employer, and their designated work tasks include handling pesticides?

When a NOPA is issued, the Respondent can request a hearing with the CAC to challenge the violation and proposed penalty. In a hearing, the County Advocate must present at least one piece of evidence for each element. In the hearing, the Respondent, who may have legal representation, will verify if the CAC has been diligent in developing its case and has sufficient evidence to prove each element. If the County Advocate does not present evidence for each element in the hearing, and the Respondent does not stipulate to the information, the Hearing Officer will likely find in favor of the Respondent.

The CAC should make the strongest case possible for the County Advocate to present to the Hearing Officer. This includes evidence to satisfy the burden of proof that the required conditions were/were not present, and/or the required actions had/had not taken place, for each element of the requirement. This will help ensure a solid Proposed Decision in favor of the County.

Section 3.5 Supporting Evidence

Introduction In addition to witness statements, documents are often necessary evidence to support an effective case. The following pages provide brief descriptions of information about statements, photographs, drawings and maps, printed matter, and mechanical recordings in developing cases for an enforcement action.

See also Compendium Volume 5 *Investigation Procedures* Chapter 3 *Evidence Collection* Section B “Documentary Evidence Collection”.

A. Statements

Background Statements may be obtained from people with first-hand knowledge of the facts pertinent to a possible violation. The purpose of obtaining a statement is to record in writing, clearly and concisely, relevant factual information in order to document the alleged violation(s).

Guidelines for statements Statements are not made under oath. However, if a witness completes a Statement Form (PR-ENF-100A) they declare under penalty of perjury that the statement is true and correct. Consider the following:

1. Determine the need for a statement. Will a statement provide useful information? Is the person making the statement qualified to do so because they have personal or firsthand knowledge?
2. Ascertain all the facts and record those which are relevant and which the person can verify at the hearing. Make sure all the information is firsthand and factual. Avoid taking statements that cannot be verified.
3. Use a simple narrative style. Avoid overformal or unnatural language.
4. Narrate the facts in the words of the person making the statement. Use first person singular (“Next I did...”).
5. Present the facts in chronological order unless the situation calls for some other arrangement.
6. Positively identify the person making the statement (name, position, address, etc.).
7. Demonstrate why and how the person is qualified to make the statement.
8. Present all pertinent facts.
9. Read the statement to the person (preferably in the presence of a

Continued on next page

Supporting Evidence, Continued

Guidelines for statements, (continued)

- witness) and make any necessary changes. Initial all corrections or changes.
10. Ask the person making the statement to write a brief conclusion indicating they read and understood the statement. This safeguard may counter a later claim the person did not know what they were signing.
 11. Have the person sign their statement. The inspector must also sign and date the statement. Provide a copy of the statement to the witness.
 12. If they refuse to sign the statement, elicit an acknowledgment that the statement is true and correct, and ask for a statement in their own hand to that effect. "I have read the statement and it is true, but I am not signing the statement because ..."
 13. If the witness does not or refuses to sign the statement, declare at the bottom of the statement that the facts were recorded as revealed and that the person read the statement and avowed it to be true; then sign it yourself.
-

B. Photographs

Background

Photographing critical evidence is important. High quality, documentary photographs can be invaluable. Photographs of relevant subjects, taken in proper lighting and with correct settings may provide an objective record of the conditions at the time of inspection. Poor quality or irrelevant photographs usually just confuse matters and you should avoid using them.

Importance of photography

Photographs can help answer a question of law. Photographs can document the severity and extent of damage that is caused by the negligent activity of a person or company to the personal or real property of another. Photographs are used extensively in criminal, civil and administrative proceedings. A photograph documents the specifics of an inspection or violation contemporaneously as it may be the only permanent record of what the scene looked like at the relevant time. Photographs are useful in cases where the property will be disposed of, repaired, evolve, or otherwise change, so that the extent and severity of the damage can no longer be subjected to the personal observation of the Hearing Officer. Photographs can be used to:

- Recreate a time and place,
 - Orient people who weren't present at the site,
 - Illustrate facts when information can be shown visually, and
 - Answer questions and clarify points long after an event occurs.
-

Continued on next page

Supporting Evidence, Continued

Guidance when taking photographs

As you take photos, best practices include taking notes of equipment used, camera settings, and for each photo the direction faced and a brief description. If needed, make sketches to show the relationships of objects to each other. Use photographs to show the details. The sketches, photographs and notes may be necessary to adequately preserve a scene.

The number of photographs should relate to the seriousness of the violation and how well the circumstances and location can be documented visually.

Photograph transient evidence (such as dust clouds or liquids which may quickly evaporate) first, then focus on documenting more permanent evidence.

See also [CalEPA's Suggested Guidelines for Digital Photos](https://calepa.ca.gov/enforcement/policy/suggested-guidelines-for-digital-photos/) at [<https://calepa.ca.gov/enforcement/policy/suggested-guidelines-for-digital-photos/>](https://calepa.ca.gov/enforcement/policy/suggested-guidelines-for-digital-photos/)

Establishing or context shots

Photographic documentation should tell the story with as little narrative as possible. This can be done by shooting a series of “establishing shots” that show not only the medium or subject, but also one or more permanent landmarks. The purpose of an “establishing shot” is to put the information seen in the photograph into its context. These landmarks can be used for reference to establish the exact location. The medium of subject photographed will emphasize a specific object or event.

It is useful to photograph a subject from a point that will show the location and the direction of the subject. The addition of an object of known size, such as a clipboard or a vehicle, will help indicate the size or scale of the subject.

Three types of photos should be taken:

- Overall photos should be taken further away from the scene. Take several photos documenting the overall area. For indoor photographs, take photos from each corner. For outdoor photos take photos from all directions. Consider taking some photos “outward” as well.
 - Medium range photos show the relationship of evidence to other items in the scene. These allow the viewer to “place” the items in the scene.
 - Close up photographs to show detail, if it is relevant to the case. If size is a factor, take a photo with a ruler or other item of known size next to the object. Make sure the close ups are supported with medium range photos.
-

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Supporting Evidence, Continued

Use of photographs in a case

As with any other evidence, chain-of-custody procedures apply to photos. DPR suggests as best practice to keep all photos (digital or hard copy) in a secure location and do not alter original photos in any way.

The following are minimal requirements for using photographs:

- The subject, scene, or object photographed must pertain to your case;
 - The manner in which the photograph is taken should be as objective as possible, guarding against depicting the evidence in an unduly prejudicial or sympathetic light; and
 - The photograph should not in any way distort the subject, scene, or object it depicts, but should represent a clear and accurate image of the facts.
-

Including photos in an investigation or case file

Volume 5 *Investigation Procedures* states that:

Photographs should be labeled with the date and photographer's ID. A brief description describing the photograph should be added.

This is also true of photographs when preparing a case for a hearing. For example, a photograph could be labeled like this:



Photo Number: 0001684m
Date: July 29, 2020
Place: Somewhere Middle School Playing Field
11050 Arroyo Mojada St,
Somewhere, CA
Photographer: J. Inspector
Comments: Facing northwest looking toward application site
Brightened and note added.

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Supporting Evidence, Continued

Including photos in an investigation or case file,
(continued)

Counties can develop their own photo mount format, the suggested information to include is:

- Photo number
 - Date
 - Place
 - Photographer
 - Direction facing (as appropriate)
 - Description/comments (no opinions)
 - Whether the photo has been altered (such as by adjusting the brightness or cropping and enlarging)
-

Media

Photographs taken on film media that requires developing should have photographs identified and recorded in the inspector's field notes, in the order taken so that the photos can be properly labeled and identified after developing. Once developed, identification marks must be transferred onto the back of the photographs.

Instant photographs must be identified immediately with location, date, inspector's initials, related sample or case number, if applicable, or any other pertinent information.

Digital and video photography is instant and can easily be viewed. Include the date and time when the photographs are taken so that this information is imprinted on each photograph, frame of the film, metadata, etc. Retain and mark the recording media (memory card, etc.) and bring it to the legal proceedings if you intend to use the digital image. The inspector may be questioned in the hearing whether the photographs have been altered in any way.

What to avoid

An inspector needs to use good judgment to avoid difficulties arising from confidential claims surrounding the photographs. It is recommended the subject of the confidential claim be moved before the photographs are taken, if possible.

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Supporting Evidence, Continued

C. Drawings and Maps

Background Schematic drawings, maps, charts, and other graphic representations may be useful in documenting a violation. Various graphics can provide:

- Clarification of site location relative to the facility, spill, or contamination parameters.
 - Relative height and size of the objects.
 - Other information, when combined with samples, photographs, and maps, can produce evidence that is more complete.
-

Requirements

- Drawings and maps should be simple and free of extraneous details.
- Basic measurements must be included to provide scale and interpretation.
- Compass points must be included.
- All drawings, maps, etc., must be identified with the date, inspector's initials, sample or case number, and any other pertinent information.

D. Printed Matter

Written documents Brochures, literature, labels, and other printed matter can provide important information about a firm's operations. These materials may be collected as documentation.

All printed matter must be identified with the date, inspector's initials, sample or case number and any other pertinent information.

Pesticide labeling If one of the elements of the violation relates to is the labeling registered with DPR, it is best practice to obtain a copy of the labeling affixed to the container that was delivered with the pesticide. This may not always be possible. A viable alternative is to procure a copy of the labeling registered with DPR from the Registration Branch.

Supporting Evidence, Continued

Pesticide labeling,
(continued)

Through the [CalPEST Public Search](#) on DPR’s website, labels accepted through CalPEST are immediately available for viewing by CAC staff, other stakeholders, and the public.

Note that since August 2024, DPR-accepted product labels include a detailed acceptance cover sheet as the first page of the label, replacing the physical acceptance stamp. Labels accepted prior to this date will still display the physical acceptance stamp.

To request a currently-accepted product label be made available through the CalPEST Public Search, or to receive previously accepted labels via email, CACs may submit requests to DPR’s Registration Resource Center by emailing labelresourcecenter@cdpr.ca.gov.

For other stakeholders and the public, a Public Records Request can be submitted through [NextRequest](#) for labels to be uploaded for viewing in the CalPEST Public Search.

E. Recordings

Recorded documents

Records produced electronically or by mechanical apparatus can be entered as evidence. Audio and video recordings, compact disks and other media must be treated as documentation, and handled accordingly, e.g., they must be identified with the date, inspector’s initials, sample or case number, and any other pertinent information.

Section 3.6

Citing the Section or Specific Subsection

The most specific citation should be cited

Due process requires the Respondent know the exact law or regulation section they are being charged with violating, so that the Respondent has enough information to be able to prepare for the hearing and prepare a defense. Due process will improve if the specific law or regulation text has been included in the NOPA.

Why the citation should be as specific as possible

Some regulations are straightforward and have few subsections, such as:

- 3 CCR section 6680, pertaining to prohibited containers for pesticides, or
- 3 CCR section 6682(a), pertaining to transportation of pesticides.

Other sections may be lengthy, broken into numerous subsections and to several levels of specificity, and have exemptions, clarifications, or limitations built into them. A good example of this is 3 CCR section 6739 pertaining to respiratory personal protective equipment requirements. This section contains many subsections (a-r), many of which are broken down into great detail, and the entire section has over six thousand words.

In the case of such a lengthy section, a citation which stops at a level before (or above) the specific omission or action constituting the violation is described could have the consequences of:

- failure to meet due process
 - making the preparation and presentation of the case cumbersome, or
 - causing the hearing and hearing record to be unfocused, confused, or unclear.
-

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Citing the Section or Specific Subsection, Continued

Example of how a lengthy section should be cited: 3 CCR section 6723.1

The more specific the code citation, the easier it is for the investigator, Commissioner, County Advocate, Respondent, and Hearing Officer to focus on the elements of the alleged violation.

Example 1: 3 CCR section 6723.1(a)(2) requires that:

- (a) The operator of property used for the commercial or research production of an agricultural plant commodity shall display, at a central location, the following application-specific information while employees are employed to handle pesticides:
 - (2) The date(s) and time(s) the application started and ended;

Assuming the facts of the case are:

- (i) The property is used for the commercial production of an agricultural commodity.
- (ii) There are employees handling pesticides.
- (iii) The property operator displayed application-specific information at a central location accessible to employees.
- (iv) The displayed information was missing the time the application started.

There could be up to three citation options for the investigation, violation, or NOPA. Any one of the following citations are possible:

1. 3 CCR section 6723.1
2. 3 CCR section 6723.1(a)
3. 3 CCR section 6723.1(a)(2)

Due process would be best met by citation 3. This citation with the greatest detail helps the Respondent better understand the allegation, assists the County Advocate in presenting a clearer case, and helps the Hearing Officer write concise findings of fact.

Continued on next page

Citing the Section or Specific Subsection, Continued

**Example of
how a lengthy
section should
be cited: 3 CCR
section 6776**

Example 2: 3 CCR section 6776(b)(4) requires that:

(b) The signs shall be of a size so that the wording specified in (2) and (3) is readable and the skull and crossbones symbol is clearly visible, to a person with normal vision, from a distance of 25 feet. Signs complying with the size requirements of Title 40 Code of Federal Regulations, Part 170.409 are considered to be readable at 25 feet. The signs shall contain the following:

...

(4) Whenever the sign is used to indicate a restricted entry interval of more than 7 days, the following information in the lower portion of the sign:

- (A) The date of unrestricted entry.
- (B) The name of the operator of the property; and
- (C) The field identification, (if any);

Assuming the facts of the case are:

- (i) The field was required to be posted (it did not meet the exemptions listed in 6760 or 6776(a)).
- (ii) The restricted entry interval was greater than seven days.
- (iii) The treated field was posted with signs.
- (iv) The signs did not indicate the date of unrestricted entry.

These citations are possible:

1. 3 CCR section 6776
2. 3 CCR section 6776(b)
3. 3 CCR section 6776(b)(4)
4. 3 CCR section 6776(b)(4)(A)

It is only with citation (4) the specific field posting sign requirement is listed. This citation describes the violation best, would provide better notice to the Respondent, and will help focus the issues in a potential hearing.

Section 3.7

Factors When Determining Which Violations to Cite

Introduction This section provides examples of factors to consider when determining which violations to cite from a single incident.

**Example 1:
gloves &
goggles** Assume an employee failed to wear both gloves and protective eyewear while mixing and loading a pesticide. There was no labeling requirement that an applicator or other handler wear gloves, but the labeling did require handlers mixing or loading the pesticide to wear goggles. 3 CCR section 6738.1(a) and (b) specifically require the employer to assure the employee wears protective eyewear and chemical resistant gloves when mixing or loading pesticides. Further, 3 CCR section 6738.2(b) requires the use of the eyewear specified on the label (in this case, goggles).

Commissioners are encouraged to cite only the most specific section for which there is proof of each element of the violation. In this instance, that would be 3 CCR section 6738.1(b) which specifically requires that the employer assure that their employees wear gloves when mixing and loading pesticides and 3 CCR section 6738.2(b) which requires the labeling-specified protective eyewear (goggles in this case) to be worn.

Since 3 CCR sections 6738.1(b) and 6738.2(b) impose separate requirements on the employer, the employer could be charged with a separate violation of each (i.e., charged with two violations).

**Example 2:
drift** Many drift incidents are a result of one contiguous application. It wouldn't be appropriate to charge two counts of 3 CCR section 6614(b)(1) for the same act or incident simply because the pesticide "drifted" onto two properties.

However, if the drift or application to a nontarget crop was the result of two discrete acts (e.g., the plane set down to reload with pesticides before continuing the application or the plane made a northern directional pass then a western directional pass), a successful argument could be made for two violations of the same section. The facts of the case, the elements of the violation, and the strength of the evidence proving those elements should be the guides.

Continued on next page

Factors When Determining Which Violations to Cite, Continued

**Example 3:
respirators**

Employees of a PCB used a pesticide and the label required handlers to wear a respirator. The employer did not have a written respiratory program, medical evaluations, or fit testing. There is evidence of violations of 3 CCR sections 6739(a)(1), (a)(2), (c), (d), and (e).

Because the employer is completely lacking a written respiratory protection program, charging sections 6739(c) [respirator selection], (d) [medical evaluation], and (e) [fit testing] in the NOPA, while technically accurate, is duplicative of 6739(a)(2) which requires there to be a written program with those elements to be in place. In this case, it may be more appropriate for the CAC look at the entire situation, including the actions the employer took to get into compliance, and to use discretion to consider increasing the fine amount for a violation of section 6739(a)(2) rather than charge multiple violations.

**Example 4: loss
to two apiary
operators**

The Respondent applied a pesticide which is alleged to have killed bees and damaged beehives of two separate apiary operators. The investigation found the applicator violated 3 CCR section 6983 because the apiary operators had requested notification and the applicator failed to notify the apiary operators prior to applying pesticides labeled “toxic to bees” to a blossoming plant. Assembly Bill 1752 (Chapter 854, Statutes of 2023) amended FAC section 12999.5 to allow violations of 3 CCR section 6983 to be cited in a pesticide administrative civil penalty.

In addition, depending on evidence obtained the applicator in this situation may be able to be charged with violating another law or regulation. For example, if the loss of bees was the result of substantial drift where the applicator did not show due care, FAC section 12972 may be appropriate to charge. Otherwise, if there was a reasonable possibility of damage to the bees, 3 CCR section 6614 may be appropriate to charge.

In both instances, the determining factor in deciding whether or not to charge more than one violation (i.e., one count for each beekeeper) is, as described in Example 2 above, whether or not the damage can be seen as the result of one or two distinguishable acts.

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Factors When Determining Which Violations to Cite, Continued

Citing FAC 12973 and 3 CCR 6614

Both pesticide labeling and 3 CCR section 6614 establish a standard of conduct to be followed by pesticide applicators.

By invoking the requirements of the labeling, FAC section 12973 may only generally prohibit the result (contamination or drift) while 3 CCR section 6614 specifically requires the applicator to assess the risks inherent in the specific situation and to specifically consider certain factors when making that assessment. If the situations specified in 6614(b) exist, the application must not start, or, if started must be discontinued.

In the case of a pesticide drift incident, in order to find the Respondent responsible for both offenses, the county must present evidence showing that the Respondent failed to do something specifically required by the label (FAC section 12973) and failed to follow one of the requirements in 3 CCR section 6614(a) or (b). The CAC is encouraged to charge only those sections where the evidence proves the Respondent failed to do something specifically required by the section relied upon as the basis of the charged violation.

Citing 3 CCR 6614 (b) and 6600(e)

- 3 CCR section 6614(b)(3) prohibits the application of a pesticide when “there is a reasonable possibility of contamination of nontarget public or private property ... preventing the normal use of such property. ...”
- 3 CCR section 6600(e) requires a pesticide applicator to “exercise reasonable precautions to avoid contamination of the environment.”

3 CCR section 6600(e) is what is termed a broad “catch-all” provision that requires the exercise of reasonable care to avoid contamination of the environment. 3 CCR section 6614(b)(3) specifically spells out what in the environment the section is designed to protect: contamination which precludes the normal use of the property.

Let the facts of the situation determine which code section(s) to cite. If the Respondent’s actions have actually affected any category specifically spelled out in 3 CCR section 6614(b), it is generally best to cite the appropriate part of 6614(b) rather than 6600(e). There are likely few situations covered by 3 CCR section 6614(b) which also require the separate citation of 3 CCR section 6600, though it can happen. In all cases, exercise caution in citing general violations due to the evidentiary needs associated with standard of care violations.

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Factors When Determining Which Violations to Cite, Continued

Citing 3CCR 6600(c) and 6600(e)

- 3 CCR section 6600(c) requires a pesticide applicator to “use only methods and equipment suitable to insure proper application of pesticides.”
- 3 CCR section 6600(e) requires a pesticide applicator to “exercise reasonable precautions to avoid contamination of the environment.”

As stated above, 3 CCR section 6600(e) is the broad “catch-all” provision. 3 CCR section 6600(c) requires care specifically with regard to methods and equipment. If the failure of the Respondent relates to the use of improper methods or equipment, the more specific section should be cited. If the Respondent’s failure is to exercise reasonable care in the use of such equipment or in the execution of the method, perhaps the general section should be cited instead of the specific section. The appropriate citation can only be made knowing the specifics of the particular incident.

Safety of employed persons

When employees handle antimicrobial agents or pool and spa chemicals, 3 CCR section 6720(c) allows an employer to comply with corresponding regulations in California Code of Regulations Title 8 rather than Title 3. **Section 6720 does not exempt the employer from complying with the label PPE requirements under FAC section 12973.**

Charging an employer with failing to “assure” its employee’s compliance

Various worker safety regulations require an employer to “assure” the behavior of its employees. Using the standard dictionary definition provides clarity and predictability to the CACs enforcement of the worker safety regulations, and acts as an incentive for employers to actively work to achieve the employees’ compliance.

The Merriam-Webster’s definition of “assure” includes the following:

1. to make sure or certain: convince // *glancing back to assure himself no one was following*
3. to make certain the coming or attainment of: guarantee // *worked hard to assure accuracy*

This is similar to the strict liability standards that employers in other industries must follow. For more information, see Appendix E.

Section 3.8

DA Participation in Enforcement Cases

Interprets 3 CCR section 6128(e)

Background

On December 13, 2024, DPR, the California Agricultural Commissioners and Sealers Association (CACASA), and the United States Environmental Protection Agency Region 9 (U.S. EPA) signed a new Three Party Memorandum of Understanding (MOU) which superseded the 2005 Cooperative Agreement between the parties. Relevant here, the MOU replaced the term and definition of “Priority Investigation” and with the new term “Reportable Investigation” and included several changes and additions to the criteria.

3 CCR section 6128(e) requires CACs to offer an opportunity to the District Attorney, City Attorney, or Circuit Prosecutor (hereinafter DA) to both participate in the investigation, and/or to pursue a civil or criminal action against the violator(s) when there is an incident meeting the Priority Incident criteria outlined in the 2005 Cooperative Agreement. Until DPR can promulgate rulemaking to amend section 6128(e) to reflect the Three Party MOU, consistent with the intent of 3 CCR section 6128(e) interpret the phrase “priority investigation, as defined in the 2005 Cooperative Agreement, dated April 2005” in section 6128(e) as instead referring to the Reportable Incident criteria of Appendix A of the Three Party MOU, dated December 2024. Note that this referral requirement does not include cases of intentional ingestion.

DA participation

When there is a Reportable Incident episode the CAC must provide a timely opportunity to the DA to (1) participate in the investigation and/or (2) when an investigation is completed, to pursue a civil or criminal action against the violator(s).

When there is an episode which does not meet Reportable Incident criteria with violation(s) that created an actual health or environmental hazard, DPR recommends CACs consider providing a timely opportunity to their DA to either participate in the investigation and/or, when an investigation is completed, to pursue a civil or criminal action against the violator(s).

Continued on next page

DA Participation in Enforcement Cases, Continued

**Enforcement
response
regulation**

DPR recommends CACs contact the DA after issuance of the Pesticide Episode Notification Record (DPR-ENF-114) to provide a timely opportunity for the DA to participate in the investigation. Upload a copy of the letter, memo, or email sent to the DA in the “Investigation Notifications” section in CalPEATS.

Information about the incident should be forwarded to the DA with a letter, memo, or email within 10 days after completion of an investigation. Attach a copy of the letter, memo, or email in the Enforcement Module in CalPEATS to document a “DA Referral” and leave the action open until the DA responds. Should the DA not take the case or not respond, note that in the Case Outcome Narrative in CalPEATS. The CACs must then pursue an enforcement response.

The following table summarizes DA participation in the prosecution of pesticide use violations, and is enclosed with the DA referral letter.

Continued on next page

District Attorney Prosecution of Pesticide Violations under Food & Agricultural Code

	CIVIL	CRIMINAL
<p>DA AUTHORITY</p> <p>For violations of Div. 6 (licensing violations) or Div. 7 (use violations) of Food & Agr. Code or Title 3 regulations issued under those authorities.</p>	<p><i>FAC §11893 (Div.6) or §12998 (Div.7)</i> – “Any person who violates this division [Division 6 or 7, respectively] relating to pesticides or structural pest control devices, or any regulation issued pursuant to a provision of this division...is liable civilly.”</p>	<p><i>FAC §11891 (Div.6) or §12996(a) (Div.7) [Misdemeanor]</i> – Every person who violates any provision of this division [Division 6 or 7, respectively] related to pesticides, or any regulation issued pursuant to a provision of this division relating to pesticides, is <u>guilty of a misdemeanor</u>...</p> <p><i>FAC §12996(b) (Div.7) [Felony]</i>– “if the offense involves an intentional or negligent violation that created or reasonably could have created a hazard to human health or the environment, the convicted person shall be punished by ... or <u>in the state prison</u>...”</p>
<p>FINES & PENALTIES</p>	<p><i>FAC §11893 (Div.6) or § 12998 (Div.7)</i></p> <ul style="list-style-type: none"> • 1st violation: \$3,000 - \$30,000 <p><u>Only FAC § 12998 (Div.7)</u></p> <ul style="list-style-type: none"> • 2nd violation is the same or similar to a prior violation OR • “<u>intentional</u> violation resulted or reasonably could have resulted in the creation of a hazard to human health or the environment or in the disruption of the market of the crop or commodity involved” <ul style="list-style-type: none"> ○ \$15,000 - \$75,000. <p>Money recovered paid into the DPR Fund.</p>	<p><i>FAC §11891 (Div.6)</i></p> <ul style="list-style-type: none"> • Fine of \$5,000 - \$50,000; or • Imprisonment of not less than 10 days nor more than 6 months, or • Both fine and imprisonment. <p><i>FAC §12996(a) (Div.7)</i></p> <ul style="list-style-type: none"> • Fine of \$5,000 - \$50,000; or • Imprisonment of not more than 6 months, or • Both fine and imprisonment.” • 2nd conviction of the same provision of Div.7: \$10,000 - \$75,000 <p><i>FAC §12996(b) (Div.7)</i> – “if the offense involves an <u>intentional or negligent</u> violation that created or reasonably could have created a hazard to human health or the environment:</p> <ul style="list-style-type: none"> • Imprisonment in a county jail not exceeding one year; or in the state prison; or fine of \$15,000 - \$100,000, or both the fine and imprisonment.”
<p>STATUTE OF LIMITATIONS</p>	<p>--<i>FAC §11895 (Div. 6)</i> - “an action brought pursuant to this article shall be commenced by the director, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, <u>within two years of the occurrence of the violation</u>. ...” [Note: Commissioner not listed.]</p> <p>--<i>FAC §13000 (Div. 7)</i> - “an action brought pursuant to this article shall be commenced by the director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, <u>within two years of the occurrence of the violation</u>. ...”</p> <p>*Many DAs prefer to use Bus. & Prof. Code §17200 [unfair competition] for civil cases, which has a <u>four year</u> statute of limitations under Bus. & Prof. Code §17208.</p>	<p><i>FAC §11895 (Div. 6)FAC §13000 (Div. 7)</i> - “an action brought pursuant to this article shall be commenced by the director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, <u>within two years of the occurrence of the violation</u>. ...”</p> <p>*NOTE: Some DAs are of the opinion that this FAC §13000 only applies to <i>civil cases</i> taken under the FAC, and that <i>criminal prosecutions</i> taken under the FAC are governed by Penal Code §802 (misdemeanor; commenced within 1 year after commission of the offense) or Penal Code §801 (felony; commenced within 3 years after commission of the offense).</p>

DA Participation in Enforcement Cases, Continued

**DA
investigation
participation**

The DA cannot direct any action of the CAC unless the DA takes the case or assigns an investigator to the case. Once a DA becomes involved in a case, it is best practice to inform a witness of the DA's involvement and that the person has the right to have an attorney present during the interview.

**Statute of
limitations**

The statute of limitations for most criminal violations is one year from the occurrence of the violation. Therefore, it is necessary to notify the DA as early as possible if the CAC believes the incident is one that should result in a criminal action by the DA. Under FAC section 13000, the statute of limitations for most civil pesticide use violations is three years from the occurrence of the violation.

If the CAC submits a case to the DA and does not hear back within 30 days, the CAC should assume the DA has opted not to pursue the case, and the CAC must move forward with its own enforcement action.

Templates

DPR has created templates for formal referrals to a DA. The purpose of the templates is to facilitate and encourage statewide consistency when incidents meeting Reportable Incident criteria have been initiated, and to provide for improved investigation tracking by the CAC and communication with their DA.

To familiarize the local DA with their authority under the FAC, include the table entitled "District Attorney Prosecution of Pesticide Violations under Food & Agricultural Code" with the information forwarded to the DA.

CACs may develop their own contact letters or notification systems to accomplish the goal of timely and effective notification to their DA. The CAC should determine the correct person to provide the notice so that the notification is timely and effective.

Continued on next page

DA Participation in Enforcement Cases, Continued

Reportable Incident Investigation Participation Memo Template [County letterhead]

DATE: [Date]
TO: [District Attorney Name]
FROM: [CAC Name]
SUBJECT: Notification of Opportunity for DA Participation in Reportable Incident Investigation [Name of Case, Case Number]

Dear [District Attorney]:

Under Title 3, California Code of Regulations section 6128(e) the Agricultural Commissioner offers you an opportunity to participate in a pesticide episode investigation which meets the “Reportable Incident” criteria outlined in the Three Party Memorandum of Understanding among DPR, U.S. EPA Region IX, and CACASA.

On [date] a pesticide episode occurred near [Name of City]. The facts surrounding the “Reportable Incident,” as we know them at this time, are described in the enclosed Pesticide Episode Notification Record. Our office has already initiated an investigation. If your office would like to participate in the investigation, or would like more information about the incident, please contact [person’s name] of my staff at [phone number] as soon as possible to discuss it.

If we do not hear back from you within [appropriate time, such as “10 days”] we will assume you have no interest in being involved in the investigation.

Should you not wish to be involved at this time, we will also notify your office upon the completion of the investigation and provide your office with an opportunity to accept the case for possible civil or criminal prosecution.

[Insert CAC signature block]

Enclosure:
Pesticide Episode Notification Record for [Name of Case]

Continued on next page

DA Participation in Enforcement Cases, Continued

Reportable Incident Investigation Enforcement Referral Memo Template [County letterhead]

DATE: [Date]
TO: [District Attorney Name]
FROM: [CAC Name]
SUBJECT: Prosecution Opportunity: [Name of Case], [Case Number or other tracking number]

Dear [District Attorney]:

Our office has recently completed an investigation of an incident that occurred on [date] in [Name of County] County. The facts of the case, as we know them at this time, are described in the enclosed report.

This case appears to present violations of [Business and Professions Code (B&PC), California Food and Agricultural Code (FAC) and/or Title ___ California Code of Regulations) (_ CCR)] section(s) ___. We believe this case may be appropriate for either civil or criminal prosecution by your office.

Please check the appropriate box below and send a copy of this letter back as soon as possible. If you have any questions or would like to discuss this case in more detail, please contact [person's name] of my staff at [phone number] as soon as possible to discuss the incident. If we do not hear back from you within [appropriate time, such as "30 days"], we will assume you have no interest in this case and we will pursue it through our processes.

Enclosures:

Investigative Report for [Name of Case]

District Attorney Prosecution of Pesticide Violations under Food & Agricultural Code

TO BE COMPLETED BY THE DISTRICT ATTORNEY'S OFFICE:

Date: _____

- We will defer to the Agricultural Commissioner for appropriate administrative action.
- We will accept this case. The Deputy District Attorney assigned to handle this case is:

Contact Name: _____

Phone Number/Email: _____

In the event your office accepts this case and later decides to not prosecute this matter, please inform our office immediately. **Please inform us when charges are filed and/or when the case is resolved.**

Section 3.9 Referring Cases for Statewide Action

Interprets 3 CCR section 6128

Improved compliance is the primary goal

Industry compliance with state and local pesticide use requirements is a primary goal of the pesticide enforcement program. This goal is achieved through outreach, education, training, and a variety of enforcement tools such as:

- administrative civil penalties,
- license, certificate, registration and/or permit suspensions or revocations, and
- cease and desist orders, abatement orders, seizure/hold actions and prohibit harvest orders.

Pesticide administrative civil penalties are intended to get the attention of violators and effect a positive behavior change before higher-level actions and prosecution become necessary.

Use the administrative civil penalty processes

CACs' primary means of addressing violations of laws and regulations is through the administrative civil penalty processes authorized by FAC sections 12999.5, 15204, 15204.5, and B&PC sections 8617 and 8663.

In nearly all cases, the agricultural or structural civil penalty processes and other enforcement options available to the CAC should be used before referring a matter to the Director or the Structural Pest Control Board.

Reasons for referral to DPR or SPCB

The four major reasons for initiating statewide enforcement action are:

- A pattern of violations and enforcement actions that make it apparent that the violator is making no serious or effective compliance effort.
- A pattern of violations resulting in enforcement actions in multiple counties.
- A single violation where the gravity of the violation (see next page) warrants a higher fine level or penalty than usually obtained or available at the county level.
- Failure to comply with terms of license probation or suspension.

Note: For structural violations, consult Appendix I.4 for a list of violations the CAC must forward to the Board prior to taking a civil penalty action.

Continued on next page

Referring Cases for Statewide Action, Continued

Gravity of the violation

In some cases, the nature or consequences of a single violation may be of such a serious nature as to warrant referral for State action. Situations where the “gravity of the violation” may be a factor in deciding to refer a case to DPR for enforcement action include, but are not limited to:

- Violations which directly or indirectly cause human death, illness or injury of multiple persons, significant public or private property damage, or significant environmental damage (immediate and/or long term).
- Cases of gross negligence, intentional wrongdoing, or general indifference to the consequences of the act.

The type of pesticide(s) involved may also be a pertinent factor in determining the gravity of the violation.

Failure to comply with terms of a license probation or suspension

If the license or certificate is issued by DPR, in some cases the Director may offer a term of probation in lieu of suspension or may offer a temporary suspension in lieu of revocation.

If the person (individual or business) violates the terms of probation or suspension the Director should be notified. The suspension or probation may be withdrawn, additional terms and conditions of probation may be attached, or the certificate or license could be revoked.

Section 3.10

Intent and Pesticide Use Violations

Intent

Unless the law or regulation specifies otherwise, intent is not a required element of pesticide violations. Generally, violations of pesticide regulatory statutes are considered public welfare offenses "...requir[ing] neither guilty knowledge nor intent." (*Aantex Pest Control Co. v. Structural Pest Control Bd.* (1980) 108 Cal.App.3d 696,702.)

**FAC section
12973**

Per FAC section 11501, the stated purpose of the pesticide laws in FAC Division 7, where FAC section 12973 is found, is to protect public health and safety, the environment, people working with pesticides, and to "permit agricultural pest control by competent and responsible licensees and permittees under strict control of the director and commissioners." Thus, FAC section 12973 can be construed as a public safety and welfare statute; it is not necessary to establish the Respondent's knowledge or intent.

Pesticide labeling does not provide an exception for good intentions or reasonable mistakes. Therefore, to demonstrate a violation the County only needs to prove that a violation took place without having to prove that the Respondent acted with any kind of intent or unreasonableness. Mandatory statements on pesticide labeling must be followed exactly, "reasonable" deviation is not permitted.
