

## **Chapter 5**

### **Compliance Actions**

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## Section 5.1 Chapter Overview

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**Introduction** Compliance Actions are official notices or warnings to promote correction; in and of themselves they are not “penalties” (Enforcement Actions with a fine).

“Compliance action” is defined in 3 CCR section 6128(b) as:  
an action that documents that certain behavior or an act is in violation of the law or regulations. The documentation may or may not allege the recipient committed the violation at issue. Compliance actions do not directly impose a monetary penalty. ...

This Chapter includes how to document compliance actions with specific details about violation notices (VNs), warning letters (WLs), documented compliance interviews (DCIs), and cease and desist orders, and how to send a violation notice to structural prime contractors. Documenting non-compliances on inspection forms is addressed in Compendium Volume 4 Chapter 1.

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**Compliance actions** Compliance actions are a tool used to document a violation of pesticide laws or regulations. Whether the compliance action is a non-compliance noted on an inspection form, a VN, a WL, or a DCI, all compliance actions are equal relative to the enforcement response regulations. The party acknowledges receipt of the notice by signing a VN or DCI. Just like non-compliances noted on inspection forms, a VN, WL, or DCI are not an admission of guilt or admission of responsibility the party committed the violation.

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**Due Process is not a factor in compliance actions** In essence, due process is an orderly proceeding adapted to the nature of the case in which an individual receives adequate notice of a proposed governmental action (such as a fine) and has the opportunity to be heard to contest the proposed action before a neutral decision-maker. Due process safeguards fundamental fairness in an administrative civil penalty proceeding. For a more detailed discussion of due process, refer to Chapter 7 page 7-4.

Since compliance actions do not directly impose a monetary penalty (deprive an individual of property) due process does not apply. In other words, there is no proposed governmental action, only a notification that a government entity has, in its opinion, observed a violation.

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## Section 5.2 Compliance Actions

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### Documenting a non-compliance

Compliance actions serve to document a non-compliance. Complete documentation of a non-compliance serves as a record of the incident, both for the issuer (the CAC) and receiver of a compliance action. The recipient is notified what they did wrong and what the law or regulation requires. For example: “On this date, at this time, this incident occurred. This is why the incident is a violation. Here is the quoted code section that was violated.”

Details of the non-compliance are entered in the Remarks section of the various inspection forms. Fully describe your observations in the Remarks section, including:

- Note evidence collected (e.g., photos, documents) during inspection.
- Document information/statements obtained from an employee interview that is relevant to the non-compliance.
- Use the Supplement Form to document additional information gathered at the time, or subsequent to the inspection (i.e., researching PCB licensing or registration status, contact with company manager after inspection).

The overall theme of completely documenting the potential non-compliance is important. The ability to answer the Who? What? Where? When? Why? How? questions the first time is important. Always follow the same procedure in developing your writing will help you to ensure that you are citing the correct code section, and ensure that all the elements are met.

See also Compendium Volume 4 *Inspection Procedures*, Chapter 1 General Inspection Procedures for suggestions on completely documenting violations.

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### Example text in a Violation Notice

The *Violation Notice* form (PR-ENF-101) includes boxes for “Who” “When” and “Where.” However, it is still advisable to:

- Explain what happened and some of the key evidence, and
  - Quote the code section
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## Compliance Actions, Continued

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**Example documentation of a non-compliance**

On Monday, April 17, 2023, between 2-2:15 p.m., Lester Aviation applied On Ice WP (EPA Registration No. 123-00-ZZ) to Coast Range Orchard walnuts on site 4-A. A completion notice provided to Coast Range Orchard confirms that Lester Aviation applied this pesticide.

On April 19, our office received a call from the County Health Department that a car driven by Mr. Harbin Lewis of Oleo, California had been sprayed by a helicopter on April 17 at approximately 2:00 p.m.

On April 20, I contacted Mr. Lewis and arranged an interview. At that time, I saw that his car was covered with specks. Mr. Lewis stated he was traveling west on Barry Creek Road with his windows down and drove past the Coast Range Orchard site 4-A when he saw a helicopter fly out over him. He felt droplets and immediately had burning eyes, headache, and nausea. He stated that he had just washed the car that weekend, and only used it to drive to and from Noneston where he works. I took a swab sample from Mr. Lewis' car and foliage from the treatment site. Both samples came back positive for copper (expressed as copper hydroxide).

By continuing your application when there was a reasonable possibility of contamination of Mr. Lewis, you violated 3 CCR section 6614(b)(1) which states:

- (b) Notwithstanding that substantial drift would be prevented, no pesticide application shall be made or continued when:
  - (1) There is a reasonable possibility of contamination of the bodies or clothing of persons not involved in the application process;

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**How could this be improved?**

This explanation is relatively complete and would likely be acceptable for a violation notice. However, the notice would be stronger if these additional elements were included:

1. While the first paragraph includes identifying information, it does not say that Lester Aviation was using a helicopter when making the described application. That is an important fact in the case.
2. The party notified of this violation (whether it is the business or the pilot) might be confused by the description of the sample results without a

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## Compliance Actions, Continued

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**How could this be improved?**,  
(continued)

- further explanation, i.e., copper hydroxide is the active ingredient in On Ice WP.
3. To complete the description, it would be appropriate to describe why the pilot/business should have known the continued application was creating a reasonable hazard of contamination.
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## Section 5.3 Violation Notices

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### Introduction

A violation notice (VN) is a record that a violation occurred and is either:

1. An inspection form of any type with a violation notice box checked “Yes” and either a county-issued number or the serial number of the inspection form written on the line provided.
  2. A *Violation Notice* form (PR-ENF-101)
- 

### Required information for a complete VN

A complete VN includes:

- all header and general information filled in
  - the applicable law or regulation section(s) identified
  - a violation narrative
  - the violator’s and enforcing officer’s printed name and signature
- 

### Example Violation Notice Narrative – 3 CCR sections 6627(a) and 6622(c)(2)

On July 6, 2024, Abascot Winery submitted monthly summary pesticide use reports for the use of Kilzmor (EPA Registration No. 000-11-ZZ) to fumigate wine barrels for February, March and April 2024. This is a violation of 3 CCR section 6627(a) which requires that a summary of the monthly use of pesticides “be provided to the Commissioner by the 10<sup>th</sup> day of the month following the month in which the work was performed.”

In addition, Abascot Winery’s operator identification number (OIN) expired on December 31, 2023. Kilzmor is a Federal Restricted Use Pesticide and is a California Restricted Material under 3 CCR section 6400(a). The property operator is required to have a valid and current OIN prior to the purchase and use of Kilzmor. Failing to renew your OIN prior to the use of Kilzmor is a violation of 3 CCR section 6622(c)(2) which states:

(c) ...Prior to the purchase and use of pesticides listed below, each operator of the property (or the operator's authorized representative), shall obtain an operator identification number from the commissioner of each county in which the operator intends to perform pest control. The operator of the property is not required to obtain an operator identification number when a person performing pest control for hire purchases and applies these pesticides.

(2) Any pesticide listed in section 6400;

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### Examples

What follows are a blank VN form, then page one of a VN form filled out using the example narrative above (page 2 is the supplement form).

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**VIOLATION NOTICE**

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**A. Person / Firm Information**

FIRM / PERSON INSPECTED Abascot Winery / Virginia Wyman	TELEPHONE NUMBER 999-555-1234	COUNTY NAME Drifty
MAILING ADDRESS 94571 Annette Mill Rd	PERMIT/OPERATOR ID NUMBER 9906578	VIOLATION NOTICE NUMBER 99-24-W000-099
CITY Drifty City	STATE CA	ZIP CODE 99998
		VIOLATION DATE/TIME May 6, 2024, 1600

**B. License Information**

<input type="checkbox"/> Agricultural Pest Control Adviser	<input type="checkbox"/> SPC Business Registration	<input type="checkbox"/> Qualified Applicator License	LICENSE / CERTIFICATE # 999999
<input type="checkbox"/> Pest Control Business	<input type="checkbox"/> Structural Pest Control Operator	<input type="checkbox"/> Maintenance Gardener	
<input type="checkbox"/> Pest Control Aircraft Pilot	<input type="checkbox"/> Field Representative	<input type="checkbox"/> Private Applicator	<input type="checkbox"/> Other _____ <input type="checkbox"/> Unlicensed
<input type="checkbox"/> Pest Control Dealer	<input checked="" type="checkbox"/> Qualified Applicator Certificate	<input type="checkbox"/> Labor Contractor	<input type="checkbox"/> Not Required

**C. Violation Location**

ADDRESS/PROPERTY LOCATION 94571 Annette Mill Rd	CITY Drifty City
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**D. Section(s) Violated**

Food and Agricultural Code (FAC)	
California Code of Regulations (CCR)	6622(c)(2), 6727(a)
Business and Professions Code (BPC)	
Labor Code (LC)	

**E. Violation Narrative - When additional space is required, continue on Inspection Report / VN Supplement, PR-ENF-111.**

On May 6, 2024, Abascot Winery submitted monthly summary pesticide use reports for the use of Kilzmor (EPA Registration No. 000-11-ZZ) to fumigate wine barrels for February, March and April 2024. This is a violation of 3 CCR section 6627(a) which requires that a summary of the monthly use of pesticides "be provided to the Commissioner by the 10th day of the month following the month in which the work was performed."

In addition, Abascot Winery's operator identification number (OIN) expired on December 31, 2023. Kilzmor is a Federal Restricted Use Pesticide and is a California Restricted Material under 3 CCR section 6400(a). The property operator is required to have a valid and current OIN prior to the purchase and use of Kilzmor. Failing to renew your OIN prior to the use of Kilzmor is a violation of 3 CCR section 6622(c)(2) which states:

**F. Cease and Desist Order - When additional space is required, continue on Inspection Report / VN Supplement, PR-ENF-111.**

You are ordered to cease and desist:

N/A

Pursuant to Food and Agricultural Code Section: (Check one box)  11737  11896  11897  13101  13102

**G. Notice**

This information gives notice that a violation of statutes or regulations pertaining to Pesticides and Pest Control Operations or a violation of the Business and Professions Code pertaining to Structural Pest Control or a violation of the Labor Code pertaining to Farm Labor Contractors has occurred. Violations of this nature may subject the violator to further action as prescribed by law.

**H. Notification Information - The "Notified Person's Signature" is not an admission of guilt or a promise to appear (citation).**

NOTIFIED PERSON'S PRINTED NAME Virginia Wyman	TITLE Winemaker	SIGNATURE	DATE 5/7/24
ENFORCING OFFICER'S PRINTED NAME Reggie Capone	TITLE Ag. Insp./Bologist	SIGNATURE	DATE 5/7/24
ISSUING AGENCY Drifty County Agricultural Commissioner's Office			DATE NOTICE ISSUED 5/7/24

NOTICE DELIVERED TO RESPONSIBLE PERSON:  In Person  Fax # \_\_\_\_\_  Certified Mail # \_\_\_\_\_  Regular Mail  Other \_\_\_\_\_ DATE DELIVERED 5/7/24

## **Section 5.3.1**

### **Sending Violation Notices to Structural Prime Contractors**

**Interprets B&PC section 8663**

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**Background** For structural Branch 1 applications, B&PC subsection 8663(b) states:

A copy of a notice of violation issued for any violation committed by a subcontractor shall be sent to the prime contractor responsible for the work by the issuing authority within 30 days from the date the violation was committed or discovered. In circumstances where the violation is classified as serious or moderate, notification shall be performed by certified mail with a return receipt requested.

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**Guidance** The intent of this statute is to provide full and prompt notification to prime contractors of violations incurred by their sub-contractors. B&PC section 8663(c) provides CACs authority, provided the notifications are promptly sent, to fine the prime contractor up to \$5000 if two or more Serious or Moderate violations have been committed by the subcontractor within 12 consecutive months. This serves to discourage prime contractors from continuing to use sub-contractors with a history of such violations and promotes structural fumigator compliance with regulatory requirements.

DPR recommends complying with this requirement by sending a copy of any documentation of a violation (which would include non-compliances noted on inspection forms, VNs, WLs, and DCIs) to the prime contractor. An explanatory cover letter could be included with the copy of the violation, citing the authority of B&PC section 8663(b) and noting B&PC section 8663(c), at the Commissioner's discretion.

Obtaining the identity of the prime contractor is likely to be the primary logistical challenge if the Fumigation Log is not available at the site and there is no "advertising" banner naming the prime contractor posted on the outside the tarps. There may also be instances where the violation was committed in the more distant past and is only discovered by a records inspection or other retrospective means of data collection. In all cases, DPR recommends a policy of complying as best possible given the situation and resources available.

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## Section 5.4 Warning Letters

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**Introduction** A Warning Letter (WL) is an optional way of documenting non-compliances and communicating notice of the violation(s) to the recipient. The first two examples in this section relate to pesticide use report submittals, but this format is versatile and can be adapted to fit nearly any citable section.

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**Required information for a complete WL** WLs are written on County letterhead or on a form to notify a responsible person or business that non-compliances were observed, typically while the County was conducting an inspection or investigation. The WL documents that further action may be initiated if compliance is not obtained.

A complete WL includes the following:

- the violator's name
- date of incident
- all appropriate law/regulation sections violated

As shown in the following examples, a WL can advise the party future violations can result in an administrative civil penalty as a method to encourage the recipient to comply with the requirements. In some situations, a CAC may instead use a modified WL to notify the party of a forthcoming NOPA.

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## Warning Letters, Continued

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**Example:**  
3 CCR section  
6626(a) – late  
production  
agriculture  
PURs

[*County letterhead*]

**DATE:**

### WARNING LETTER

**TO:** [*Property Operator*]  
[*Permit/OIN Number*]  
Attn: [*Permittee/Agent*]  
[*Address*]  
[*City, State, Zip Code*]

**SUBJECT:** Violation of Title 3 California Code of Regulations section 6626

[*Mr./Ms. Permittee/Agent*],

This is to inform you our records indicate the Production Agriculture Monthly Pesticide Use Reports that you turned in on [*Date*] for the month(s) of [*e.g., October, November, and December 2022*] are late. The California Code of Regulations 6626 (a) states (**emphasis added**):

The operator of the property which is producing an agricultural commodity shall report the use of pesticides applied to the crop, commodity, or site to the commissioner of the county in which the pest control was performed. **This report must be submitted by the 10th day of the month following the month in which the work was performed.**

This requirement has been emphasized in our annual permit/operator identification issuance. Please be advised that any further late submissions of Pesticide Use Reports may result in an administrative civil penalty action against you, with fine of up to \$XXX.

If you have any questions regarding this matter, please contact our office.

*Inspector Signature*

*Inspector Printed Name*  
*Inspector title*

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*Continued on next page*

## Warning Letters, Continued

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**Example:**  
**B&PC section**  
**8505.17(c) –**  
**late structural**  
**MSPURs**

[*County letterhead*]

**DATE:**

### WARNING LETTER

**TO:** [*Structural PCB Name*]  
[*Company Registration Number*]  
Attn: [*Owner/Qualifying Manager*]  
[*Address*]  
[*City, State, Zip Code*]

**SUBJECT:** Violation of Business and Professions Code section 8505.17(c)

[*Mr./Ms. Owner/Qualifying Manager*],

This is to inform you our records indicate the Monthly Summary Pesticide Use Reports [*Name of Structural PCB*] submitted on [*Date*] for the months of [*e.g., October, November, and December 2022*] were submitted late. Business and Professions Code section 8505.17(c) states in part (**emphasis added**):

Registered structural pest control companies shall prepare and submit to the county agricultural commissioner a monthly report of all pesticides used in that county. The report shall be on a form approved by the Director of Pesticide Regulation and shall contain the name and registration number of each pesticide and the amount used. **The report shall be submitted to the commissioner by the 10th day of the month following the month of application...**

Please be advised that any further late submissions of Pesticide Use Reports may result in an administrative civil penalty action against you, with fine of up to \$XXX.

If you have any questions regarding this matter, please contact our office.

*Inspector Signature*

*Inspector Printed Name*

*Inspector Title*

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## Warning Letters, Continued

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**Example:  
Inspection**

**[County letterhead]**

**DATE:**

### WARNING LETTER

**TO:** [Property Operator/ DPR/Structural PCB or Licensee]  
[Permit/OIN Number / License or Company Registration Number]  
Attn: [Permittee/Agent / Licensee / Qualifying Manager, etc.]  
[Address]  
[City, State, Zip Code]

**SUBJECT:** Violation of [code section]

[Mr./Ms. Permittee/Agent/QAL/Operator/Qualifying Manager],

This is to inform you of the violation(s) noted during [Inspection number]  
completed on [Date] at [Location] by [Inspector Name].

FACTUAL CIRCUMSTANCES

VIOLATION CITED

CODE SECTION: FULL TITLE & QUOTED TEXT

After considering your compliance history, our office has decided to issue you a warning letter documenting the violation rather than pursue an administrative civil penalty with a fine. This Warning Letter is to inform you that not taking corrective action or continuing to violate California pesticide laws and regulations in the future may result in the imposition of an administrative civil penalty, consisting of a fine of as much as \$XXXX.

If you have any questions regarding this matter, please contact our office.

Inspector Signature

Inspector Printed Name  
Inspector title

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## Section 5.5

### Documented Compliance Interviews

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**Introduction** The Documented Compliance Interview (DCI) is an information-gathering interview to evaluate and question the responsible person(s) about non-compliances found during an investigation or inspection. DCIs require the responsible person(s) to meet with CAC staff and discuss the situation and possible remedies. DCIs are useful as a follow-up tool after non-compliances have been documented via other means (i.e., inspections, investigations, etc.).

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**Required information for a complete DCI** A DCI is prepared on County letterhead or equivalent and provides a summary of the interview and outcome. A complete DCI includes the following:

- date
- time
- location
- parties present
- activity which precipitated the interview
- sections violated
- proposed corrective actions

If there is a need for the Respondent to submit information or for the county to conduct a follow-up inspection in response to the incident, note it in the summary. If the County discussed potential future non-compliances may lead to an administrative civil penalty, note that in the summary as well.

If the DCI is not completed while the Respondent is present, it is typically mailed or emailed to the respondent when completed. In that case, it is a best practice to include the signature, printed name, and title of the preparer after the summary.

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## Documented Compliance Interviews, Continued

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**Example DCI  
summary,  
(continued)**

about two months earlier. He committed to providing additional pesticide handler training to his employees, stressing to his employees what the rules are, how important it is to follow them, and they can be disciplined if they do not follow them. *Agent Name 1* said he would provide those records to our office when completed.

At the closing of the interview, *Inspector Name* noted any future non-compliances may result in an administrative civil penalty, consisting of a fine.

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## Section 5.6 Cease and Desist Order

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### Introduction

The Cease and Desist Order is an immediate public protection action that serves as a directive to stop hazardous or potentially harmful activities leading to irreparable damage. It is also used to prevent further activities of unlicensed/unregistered companies until the required licenses/registrations are in place. A Cease and Desist Order under FAC sections 11737, 11897, or 13102 may be issued by means of one of the following:

1. An inspection form with the Cease and Desist box checked “Yes” and an explanation providing the reason for issuing the Order, and the conditions for resuming activities in the Remarks section of the inspection form. Depending on the section chosen as the basis for the Cease and Desist Order, a Violation Notice or letter on CAC letterhead may also be necessary for clarification.
2. A Violation Notice, PR-ENF-101, with a narrative in Section F “Cease and Desist Order” completed to notify the Firm/Person Inspected the reason for issuing the Order, and the conditions for resuming activities.
3. A Cease and Desist Order written on County letterhead with a narrative of the violation(s), the reason for issuing the Order, and the conditions for resuming activities.

Information about the CAC’s authority and on proper use and documentation of Cease and Desist Orders can be found in Compendium Volume 4, Chapter 1.

A public protection action may seem like an enforcement action since it is stopping the receiver’s ability to operate, but it is not. It is a legal tool to immediately stop an illegal or hazardous act or improper behavior to protect the public, employees, property, or the environment. Information gathered before, during, or after the public protection action may later be used in an enforcement action.

An example Cease and Desist Order is provided on the following page.

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*Continued on next page*

## Cease and Desist Order, Continued

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**Example –  
Cease and  
Desist Order  
template**

*[County letterhead]*

**TO:** *[Property Operator/ DPR or Structural PCB or other Licensee]*  
Attn:  
*[Address]*

On *[Date]* the *[County name]* County Agricultural Commissioner issued a Cease and Desist Order against your operation pursuant to Food and Agricultural Code (FAC) section: *[check one]*

11897 (FAC Division 6)

13102 (FAC Division 7)

The law selected above provides that the County Agricultural Commissioner, upon a finding that the use, handling, delivery or sale of a pesticide in violation of any provision of the above noted division, or any regulation issued pursuant to it, is taking place, or appears imminent, and that activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may issue a Cease and Desist Order to the persons responsible for the activity to cease and desist from further commission of the violation.

The circumstances which led to the issuance of the Cease and Desist Order are:

*[include a description of the immediate or imminent hazard, narrative of the violation(s), the reason for issuing the order (use additional pages if necessary)]*

The conditions for resuming activities are:

*[include a description of the conditions for the CAC to lift the order]*

### NOTICE OF OPPORTUNITY FOR APPEAL

The law selected above also provides that persons aggrieved by the Commissioner's Cease and Desist Order may appeal the Order to the Director of the Department of Pesticide Regulation.

The request for appeal must be mailed to the Director of the Department of Pesticide Regulation (Director), 1001 I Street, MS4D, Sacramento, California 95812-4015.

The Director shall affirm, modify, or rescind the Order. The Order of the Commissioner shall remain in force during the appeal to the Director, and until the Director's Decision has been rendered.

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