Chapter 7
The Notice of Proposed Action

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Section 7.1
Introduction to Administrative Civil Penalties

Introduction

Administrative civil penalties are actions initiated by a government agency in lieu of civil prosecution. In the context of pesticide use enforcement, the Commissioner initiates the action in lieu of civil prosecution in a formal court proceeding brought by DPR or the SPCB.

A pesticide administrative civil penalty is an enforcement action to document, notify, and penalize a violator for an activity not in compliance with applicable pesticide laws or regulations. Unlike compliance actions, enforcement actions are associated with monetary penalties (i.e., a fine) or disciplinary actions (e.g., refuse, suspend, or revoke a county registration) in which a Respondent receives rights of due process. The Enforcement Response to Violations regulation (3 CCR section 6128) specifies a CAC's enforcement response for agricultural or structural use of pesticides, or any use of a fumigant. See Appendix C – History of Administrative Civil Penalties for Pesticide Use Violations in California for additional information.

The administrative civil penalty process requires the violator (Respondent) be notified of the violation and the fine amount, they have the opportunity to be heard in an administrative hearing, and they have the right to appeal the hearing outcome. This information is contained in a Notice of Proposed Action (NOPA), which is written by the CAC and sent to the Respondent.

This chapter introduces the administrative civil penalty principles and the importance of due process, makes distinctions between NOPAs for agricultural versus structural enforcement actions (including templates for both types of NOPAs), provides guidance for how to set a fine amount, describes how to create a complete NOPA package (including Respondent's right to request a hearing or pay the fine), and the requirements for sending the NOPA package to the Respondent.

Purpose

The purpose of administrative civil penalties is to alert the violator and encourage compliance before more serious enforcement actions are necessary, such as formal licensing or court actions.

The purposes of a NOPA are to:

- Provide legal notice and other basic notices or advisories about the Respondent's right to due process BEFORE the fine is levied, and

Continued on next page

Introduction to Administrative Civil Penalties, Continued

Purpose, (continued)

- Inform the Respondent about the facts of the case and proposed fine(s) to allow the Respondent to prepare a defense if a hearing is requested.

While still conforming to certain formal requirements, the CAC civil penalty hearing process is more informal than pursuing an action in court. The goal of a hearing is to facilitate an open dialog between the County and Respondent in front of an impartial Hearing Officer.

Agricultural and Structural Civil Penalties

There are two types of pesticide administrative civil penalties used by CACs, based on statutory authority:

1. Agricultural Civil Penalties (ACPs) for violations of portions of the FAC and 3 CCR Division 6, based on the authority from FAC sections 12999.5, 15204, and 15204.5.
2. Structural Civil Penalties (SCPs) for all general structural pesticide use violations based on the authority from B&PC section 8617, or "serious or moderate" Branch 1 subcontractor violations assessed to the prime contractor under B&PC section 8663.

ACPs and SCPs are further detailed in Section 7.4.

Basic principles of Administrative Civil Penalties

The use of administrative civil penalties can be guided by the following basic principles:

1. Members of the regulated industry in California, regardless of location, are entitled to expect and receive uniform, predictable, and fair enforcement responses that are understandable to the regulated community and to the general public. Uniformity of enforcement is a universally accepted goal of State and county enforcement agencies and is key concept that influences all administrative civil penalty programs.
2. Procedures involved in pursuing an enforcement action via an administrative civil penalty hearing are, while not simple, less complex and time-consuming than court actions. The informal administrative hearing requirements are codified in Chapter 4.5 of the Administrative Procedure Act (beginning at Government Code section 11400).

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Introduction to Administrative Civil Penalties, Continued

Administrative Procedure Act requirements

Chapter 4.5 of the Administrative Procedure Act sets forth basic requirements intended to ensure a fair hearing. These include the requirement to notify the Respondent of the violation, fine, and their right to a hearing and an appeal, which are further discussed in Section 7.11.

Due Process

The Fifth and Fourteenth Amendments to the U.S. Constitution require the federal government and the states shall not "deprive any person of life, liberty, or property, without due process of law." The California Constitution in Article 1, Section 7 has similar requirements. Relative to administrative civil penalties, Respondents have the rights to:

- Reasonable notice of the charges (Notice of Proposed Action)
- Review the evidence (Case File provided by the County)
- An impartial decision maker (Hearing Officer and Commissioner)
- Reasonable opportunity to be heard (Hearing)
- Understand the Hearing procedure (the *Preparing* brochure)
- Appeal the Commissioner's Decision (if the Respondent requested a hearing)

Other relative authorities

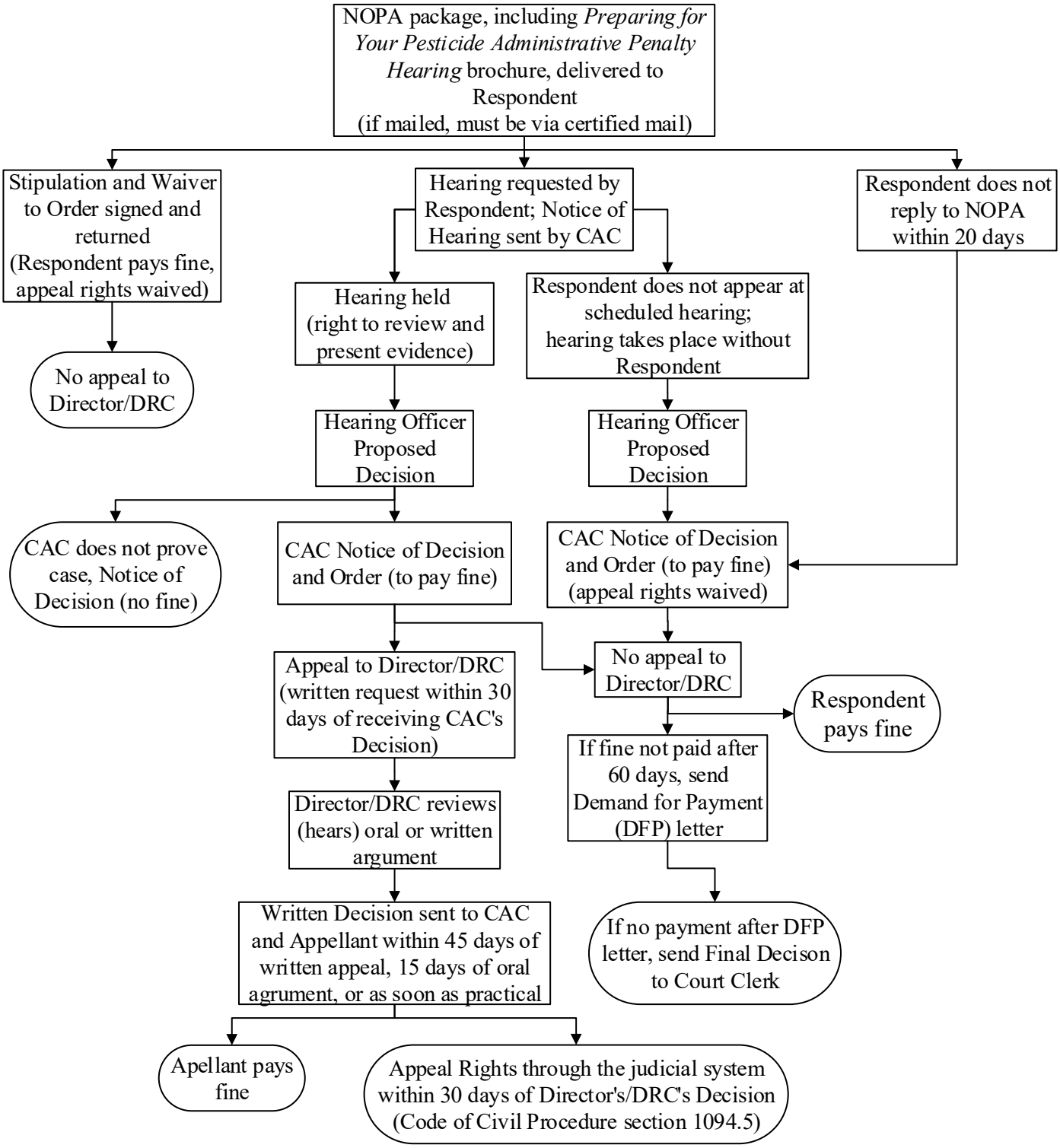
Generally, the penalty pursued by CACs is a monetary penalty (a fine). This chapter and the following chapters are written with that in mind. However, it is important to note CACs also have authority to:

- issue cease and desist orders (see Section 5.5 in this Volume and Compendium Volume 4 Chapter 1);
- request a court prohibit someone from a conducting a pest control activity by the court issuing an injunction (FAC sections 11737.5 and 11895.5);
- suspend, revoke, or deny a county registration (such as a business or a pilot registration), a private applicator certificate, or a restricted materials permit (FAC sections 11512.5 or 14098); or
- pursue certain non-fine options for structural pest control violations under B&PC section 8617(a).

Many of these actions also require the Respondent is ensured rights of due process with a written NOPA.

For more information on registration and permit refusals, revocations, suspensions, and "denials" see Appendix F.

Section 7.2
Administrative Civil Penalty Due Process Flowchart



Section 7.3
Summary of Pesticide Use Enforcement Actions

<table>
<tr><th>Court Actions</th><th colspan="2">Administrative Actions</th></tr>
<tr><td rowspan="2">Attorney General

Brings civil or criminal cases, either independently or cases referred by DPR</td><td>Department of Pesticide Regulation (DPR)
Administrative Civil Penalty Hearings

FAC section 12999.4 (not an exhaustive list):
• Sale of misbranded or unregistered pesticides
• Failure to pay mill assessment
• Pest control dealer purchases, sales, and recordkeeping
• Pack, ship, sell product with illegal residue
• Cheating on or subverting a licensing examination
FAC section 12999.6:
• When the CAC and Department agree it is appropriate
• After consultation with the CAC, for multijurisdictional Reportable Incident investigations or certain violations where the commissioner fails to discharge their duties

Appeals: Director’s Decision appealed to Superior Court under Code of Civil Procedure (CCP) 1094.5.</td><td rowspan="2">Office of Administrative Hearings
Hears licensing actions taken by DPR

Hears licensing or disciplinary actions taken by SPCB</td></tr>
<tr><td>Structural Pest Control Board (SPCB)
Administrative Civil Penalty Hearings
B&PC section 8620: “one or more of the acts or omissions constituting grounds for disciplinary action”. These disciplinary actions include B&PC sections 8636-8654.</td></tr>
<tr><td>District Attorney or Circuit Prosecutor

Brings civil or criminal cases referred by CAC</td><td>County Agricultural Commissioner (CAC)
Administrative Civil Penalty Hearings

FAC sections 12999.5, 15204, and 15204.5
• General pesticide use violations and certain, specific, structural pesticide use violations
Appeals: CAC’s Decision appealed to DPR Director; Director’s Decision appealed to Superior Court under CCP section 1094.5.

B&PC section 8617
• General structural pesticide use violations
B&PC section 8663
• “Serious or moderate” Branch 1 subcontractor violations assessed to the prime contractor
Appeals: CAC’s Decision appealed to DRC</td><td>Disciplinary Review Committee (DRC)

Three members: one each from DPR, SPCB and industry

Hears structural administrative civil penalty appeals from CAC decisions; DRC’s Decision appealed to Superior Court under CCP section 1094.5.</td></tr>
</table>

Section 7.4
Administrative Civil Penalty Process Guide

Introduction

Notices of Proposed Actions (NOPAs) are specifically written to propose either an Agricultural Civil Penalty (ACP) or a Structural Civil Penalty (SCP). This section provides a side-by-side comparison of the administrative civil penalty process for ACPs and SCPs.

Notes:

- Do not combine ACP and SCP actions into one NOPA.
- NOPAs under B&PC section 8663 are not included in this table.
- This guide is a quick-reference tool not specific legal advice.

For more information, consult the referenced codes, reach out to your local County Counsel, or DPR EBL assigned to your county.

Topic	Agricultural Civil Penalty	Structural Civil Penalty
Penalty Authority	This process applies to any person: • FAC section 12999.5 for most actions. • FAC sections 15204 and 15204.5 for actions against structural licensees for violations of those specific sections.	This process applies to SPCB licensees and registered companies, and unlicensed individuals acting as a licensee. • B&PC section 8617

Laws and Regulations relevant to ACP or SCP	This is provided for informational purposes, always consult the Citable Sections Report prior to taking an enforcement action.
	FAC section 12999.5(a):
	• FAC Division 6
	• Parts of FAC Division 7:
	  ○ Chapter 2, Articles 10 and 10.5
	  ○ Section 12995
	  ○ Chapter 3, Article 1
	  ○ Chapters 3.7 and 7.5
	• A regulation adopted pursuant to these FAC provisions
	FAC section 12999.5(e):
	• Parts of LC section 1695(a)
		B&PC section 8617(a):
		• B&P Code Division 3 Chapters 14 and 14.5, or any regulations adopted pursuant to those chapters
		• Parts of FAC Division 7:
		  ○ Chapters 2, 3, 3.5, and 7, or any regulations adopted pursuant to those chapters

Statute of Limitations	CACs: three years from the date of occurrence of the violation. FAC section 13000(a) and (b)	CACs: two years from the date of occurrence of the violation. B&PC section 8617(n)

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Administrative Civil Penalty Process Guide, Continued

Topic	Agricultural Civil Penalty	Structural Civil Penalty
Fines	Penalties up to $15,000 per violation for Class A violations. CACs must follow the ACP fine guidelines in 3 CCR section 6130 to determine the violation class and fine amount	Penalties up to $5,000 per violation, up to three-day suspension; or attend an approved course of instruction. CACs must follow the SCP fine guidelines in 16 CCR section 1922 to determine the violation class and fine amount
Right to review evidence	Evidence for ACPs and SCPs must be available for review at CAC's office during regular business hours, beginning on day the NOPA is mailed via certified mail to Respondent.	
Respondent must request hearing	Within **20** days after receiving the NOPA by certified mail.	
Appealing the CAC's Decision	Respondent must appeal within **30** days of receipt of the CAC's Notice of Decision and Order. Appeal is only available if respondent timely requests and attends hearing. No new facts, issues, or theories on appeal. FAC section 12999.5	Respondent must appeal within **30** days of receipt of the CAC's Notice of Decision and Order. Appeal is only available if respondent timely requests and attends hearing. No new facts, issues, or theories on appeal. B&PC section 8662
Send appeal to:	Director of DPR c/o Chief Counsel - Office of Legal Affairs Department of Pesticide Regulation 1001 I Street, MS4D Sacramento, CA 95814-2828	Disciplinary Review Committee (DRC) of the SPCB c/o Chief Counsel - Office of Legal Affairs Department of Pesticide Regulation 1001 I Street, MS4D Sacramento, CA 95814-2828
Time to issue appeal decision	Director has 45 days after receipt of written appeal, or 15 days after oral arguments or "as soon as practical" to issue Director's decision. FAC section 12999.5	DRC has 45 days after receipt of written appeal, or 15 days after oral arguments or "as soon as practical" to issue DRC's decision. B&PC section 8662

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Administrative Civil Penalty Process Guide, Continued

Topic	Agricultural Civil Penalty	Structural Civil Penalty
Failure to pay fine	CAC can refuse to issue permit or register pest control business; or the CAC may obtain a Superior Court judgment. FAC sections 14008, 11735 and 12999.5(f)	SPCB shall increase the licensee's renewal fee by the fine amount or refuse to sell stamps or renew license. B&PC section 8617(i)-(j)
Check payable to:	CAC or County (per county policy)	Structural Pest Control Education and Enforcement Fund
Key documents in the administrative civil penalty process	• **NOPA** must cite penalty authority; describe violations, discuss fine amount(s), provide hearing request procedures, and notify of right to review evidence before hearing. • Attach the "***Preparing for Your Pesticide Administrative Civil Penalty Hearing***" brochure to every NOPA. Available at https://www.cdpr.ca.gov/wp-content/uploads/2024/08/dpr-enf-086.pdf • **Stipulation and Waiver to Order**. **Order to Pay Fine.** • **Hearing Officer's Proposed Decision** must include findings of fact and validate proposed fine amount. • **CAC's Notice of Decision and Order** adopts, amends (if there is a legal basis to do so), or rejects the Hearing Officer's Proposed Decision (unless the CAC was the Hearing Officer, in which case the Decision must include findings of fact); and includes fine amount, order to pay and applicable appeal rights.	
Appeal Rights	• There are significant differences in appeal procedures for ACP and SCP actions. *See* FAC section 12999.5	• There are significant differences in appeal procedures for SCP and ACP actions. *See* B&PC section 8662

Section 7.5
Statute of Limitations

DPR position

Although the laws discussed below provide maximum time limits for a regulatory agency to pursue enforcement action, DPR recommends that administrative civil penalty actions be taken in as timely a manner after the CAC identifies a violation as possible. Lengthy delays between the identification of a violation and the administrative civil penalty action may have the effect of weakening the Commissioner's case, reduce the effectiveness the action has on the Respondent to change their behavior, or negatively impact the Respondent's ability to develop a defense.

Statute of limitations-actions under FAC section 12999.5

The statute of limitations governing actions under FAC section 12999.5 is FAC section 13000(a). This section requires CAC administrative civil penalty actions be commenced within three years of the date of the violation. That is, the NOPA must be issued within **three years** of the date the violation occurred.

FAC section 13000(b) imposes a shorter time limit on actions taken by the Director or the Attorney General. The Director or Attorney General must commence the action within **one year** from the date the CAC submits a completed investigation to the Director.

Statute of limitations-actions under B&PC section 8617

CACs are authorized to levy structural civil penalties pursuant to B&PC section 8617. B&PC section 8617(n) provides a **two year** limitation from the occurrence of the violation for CAC actions, and the SPCB or Attorney General have **one year** from submission of completed investigation.

There are other statues of limitations in the B&PC, such as section 8621 which prescribes a two-year limitation for filing a complaint with the Structural Pest Control Board. However, this section does not apply to administrative civil penalty actions by the CAC.

Section 7.6
Fine Structure

Flexible fines	The fine structures for pesticide administrative civil penalty actions, found in 3 CCR section 6130(c) and 16 CCR section 1922, were implemented to ensure a uniform and adequate enforcement response while providing the CAC discretion based on the specific facts of each case.
Violation classification	3 CCR section 6130(b) and 16 CCR section 1922 define violation classes for pesticide administrative civil penalty actions. Violation classification is discussed in more detail in Chapter 4.

Section 7.6.1
Multiple Violations Arising from a Single Episode

Introduction

There are generally two ways a NOPA can address multiple violations from a single episode, either:

1. Cite more than one code section (e.g., FAC section 12973 [label rate] and 3 CCR section 6614(b)), or
2. Cite one code section multiple times (e.g., 10 counts of FAC section 12973).

Deciding which violations to charge or how many counts is a fact-specific inquiry. It depends on the facts of the case, on which sections are determined to best fit those facts, and on the strength of the evidence to prove the elements of each violation.

Multiple "counts"

A **count** is a multiplier of a specific violation or code section. For example, there may be 14 counts of 3 CCR section 6768(b) if there were 14 fieldworkers who didn't have access to the required decontamination facility. A count is not for another similar or related code section, it is a specific tally of that one particular code section.

Using the correct terminology is important, as it often has a direct bearing on how the Hearing Officer's Proposed Decision will be structured.

General advice

Do not cite violations or counts in a NOPA in an attempt to arrive at a preconceived penalty amount. Let the facts of the case, the careful selection of the most specific violation(s) that best fit the evidence, FAC section 12996.5 (when applicable), and the fine guidelines (3 CCR section 6130 or 16 CCR section 1922) determine the penalties.

Section 7.6.2
Incidents Involving Multiple Persons

Introduction

This section contains guidance on what to cite when a pesticide incident involves multiple persons.

Multiple counts for each person (employee) affected: FAC section 12985

FAC section 12985 states: "Any person who orders an employee to enter an area posted with a warning sign in violation of any worker safety requirements promulgated pursuant to this article by the director is guilty of a misdemeanor. A violation of this article affecting any worker or workers constitutes a separate offense for each affected worker." For example, if an employer directs five employees to enter a posted field before the expiration of the restricted entry interval, the CAC must charge the employer with five counts of violating 3 CCR section 6770(d), reflecting one count for each employee directed to enter the field.

Multiple counts for each person affected: FAC section 12996.5

FAC section 12996.5(b) states "The exposure of each person to a pesticide resulting from the violation of Section 12972 or 12973, or any regulation adopted pursuant to Section 12976, 12981, or 14005, that causes acute illnesses or injury, shall constitute a separate violation of the statute or regulation." Unlike FAC section 12985, which only applies to employees, this section covers any affected person. The listed laws and applicable regulations pertain to drift prevention; using a pesticide in conflict with the registered labeling or local permit conditions; possession, sale, or use of pesticides; worker safety; and restricted materials.

FAC section 12996.5(a)(6) defines "acute" to mean "a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration."

The determination of whether FAC section 12996.5(b) applies requires a multi-step analysis. First, determine if there is evidence to support a violation of one of the pesticide laws or regulations enumerated in FAC section 12996.5(b). Second, determine if the violation resulted in exposure(s). Third, determine if the exposure(s) caused acute illness(es) or injury(ies).

Obtaining evidence that an individual experienced a medical condition that required prompt medical attention is necessary in determining if the definition of "acute" in FAC section 12996.5(a)(6) has been met. The requirement to

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Incidents Involving Multiple Persons, Continued

Multiple counts for each person affected: FAC section 12996.5, (continued)	charge multiple counts under FAC section 12996.5(b) may apply even where an individual did not receive medical attention provided that the evidentiary burden is met.
Court decision and FAC section 12973	Violations of other sections that address situations where multiple people are affected also provide the possibility to charge one violation for each person affected or contaminated. A court decision (*Phil Schuh vs. DPR*) upheld a CAC's action charging multiple violations of FAC section 12973 for each worker who was "allowed to enter a treated field" in conflict with the labeling. Although the workers were not ordered to enter an area posted with a warning sign, the employer not only failed to notify workers pursuant to 3 CCR section 6618 and failed to post under section 3 CCR section 6676, but had been at the site, personally talked to the farm labor contractor, and failed to tell him not to let the workers enter the treated field. With these specific facts, the court upheld separate FAC section 12973 counts for each worker that entered the field.

Section 7.6.3
Factors to Consider When Setting a Fine Amount

Determining the fine to levy

Once the most specific and appropriate law or regulation section to cite is selected, the CAC reviews the evidence and determines the appropriate fine class and fine amount within the class as set forth in either 3 CCR section 6130 (ACP fine) or 16 CCR section 1922 (SCP fine).

Fine amount within the fine ranges

When determining a penalty amount from within the appropriate class, the CAC should base the fine amount on the nature of the facts of the case (i.e., number of people affected, whether it was a minor and inadvertent mistake or an egregious lack of care, was a repeat violation, etc.).

3 CCR section 6130 and 16 CCR section 1922 do not provide specific fines for specific violations, but rather a fine range for each class of violation. Within the range established for each class, the actual fine amount is left to the CAC who should be familiar with the unique circumstances of each case.

Elevating violations from Class B to Class A

Violations of a law or regulation that mitigates the risk of adverse health property, or environmental effects that are not designated as Class A are, at a minimum, designated as Class B violations. Aggravating circumstances, including the respondent's violation history, failure to cooperate in the investigation of the incident or allow a lawful inspection, or demonstrating a disregard for specific hazards of the pesticide used support elevating these violations to Class A. Factors which may demonstrate a disregard for specific hazards of the pesticide can include label statements warning of danger to workers if the pesticide is inhaled or absorbed through the skin, knowledge of adjacent pesticide applications, the presence of a pesticide odor, and drift of a pesticide on to a person or property. Actual illness or injury is unnecessary to demonstrate disregard for a pesticide hazard.

CalPEATS and compliance history

CalPEATS enables CACs to search closed inspections, investigations, and enforcement responses (including Decision Reports and NOPAs) from CACs statewide.

Under section 6130(d) the CAC can use the Respondent's compliance history in the their county, as well as other counties, in determining where to set the fine within the applicable fine range. See below.

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Factors to Consider When Setting a Fine Amount, Continued

Fine amount supported by evidence

In selecting an appropriate fine amount, the CAC must exercise care to ensure that the fine amount is commensurate with the documented circumstances of the violation.

3 CCR section 6130(d) requires the CAC to document how the available evidence was used to establish an appropriate fine amount. By incorporating these relevant facts into the NOPA, the CAC assures the Respondent that discretion was used fairly and within the bounds of the CAC's authority. This action will also prepare the CAC for a hearing or an appeal to the Director or DRC, should the Respondent request it.

Fine level considerations

There is a thought that if the fine is set at $X the Respondent will ask for a hearing, but if is set at a lower $Y the Respondent will not request a hearing. This mindset is not supported by the Enforcement Response Regulations or the history of DPR/DRC case appeal decisions. Some factors to consider:

1. Respondents who want to request a hearing will request a hearing no matter how small the fine – CACs get hearing requests for $250 fines regularly. Contentious hearings can be held over $50 fines.
2. Keep the overarching goal of the enforcement program in mind. The point of the pesticide administrative civil penalty program is to get the attention of the violator in a manner that will:
   a. Make them take notice of their regulatory responsibilites,
   b. Make them realize the CAC is paying attention to their actions and is serious about the matter (as evidenced by the fine action), and
   c. Get them into a "compliance state of mind" before it is necessary to revoke a permit/registration, or initiate licensing or court action.
3. Look at the violations with a critical eye. Perform the Elements of the Violation analysis. Choose the violation(s) that support the strongest case with the best evidence. Set the fine level for each violation or count at the amount appropriate based on the circumstances. The fine amount can never be increased to more than was set in the initial NOPA.

Section 7.7
Writing the Notice of Proposed Action

Introduction

The NOPA is a formal charging document and proposes a penalty. The requirements of FAC section 12999.5 or B&PC section 8617, and Chapter 4.5 of the Administrative Procedure Act (APA) must be followed to notify the Respondent of their rights and of the procedures in an administrative penalty hearing, ensuring their due process rights to be fairly heard with the potential for an appeal.

It is critical to perform the Elements of a Violation analysis while working through an incident. A properly written investigation summary, the remarks of a violation notice, or other work can serve as the basis for the specific information contained in each NOPA.

Why is it important to ensure a NOPA is well written?

Ensures Due Process:

A well written NOPA provides the alleged violator with NOTICE of the nature of the violation and the proposed penalty and an OPPORTUNITY TO RESPOND to the alleged violation. When reviewing a NOPA, ensure that the recipient of the NOPA will know WHAT specific violations they are being charged with and WHY the CAC believes the recipient violated them (factual evidence).

Stops the Statute of Limitations:

The statute of limitations is three years from the date of occurrence of the violation under FAC 12999.5, or two years under B&PC 8617. The statute of limitations is only stopped on the specific violations listed in the NOPA. Therefore, it is important to make sure the correct laws or regulations are in the NOPA. If the NOPA must be withdrawn and reissued due to errors, it must be reissued within the statute of limitations.

Decreases the Number of CAC Hearings and Appeals:

A violator is less likely to request a hearing after receiving a clearly written NOPA because the violator will understand exactly what law was violated and why the CAC believes the recipient violated the law.

Increases the Possibility of the Enforcement Action Being Upheld on Appeal:

A NOPA that references the specific facts and evidence the CAC is relying on to prove a violation lays the foundation for a successful hearing. This NOPA is also more likely to withstand DPR/DRC and Judicial review under an appeal.

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Writing the Notice of Proposed Action, Continued

Information types

The NOPA contains two basic "types" of information.

Type 1: Standard "Boilerplate" language which is used in every NOPA. This includes the title of the action, date, Respondent's name and address, etc., at the beginning of the NOPA and the standard language at the conclusion of the NOPA (e.g.: description of hearing rights, etc.). To ensure that the case does not get overturned on appeal on the basis that the CAC incorrectly omitted necessary information, DPR strongly recommends that the CAC use the NOPA templates in Sections 7.9 and 7.10 below, which were approved by DPR Legal Counsel.

Note: Agricultural and Structural Civil Penalty authorities are different, and thus a different NOPA template is required for each.

Type 2: Information that is individual to each NOPA. This includes a concise and complete description of the specific acts which constitute each violation, the specific law or regulation violated, the violation classification, amount of the fine, and reasons for choosing the fine amount (e.g., previous violation history, potential/actual hazard).

Guidelines

1. Have a procedure to access an acceptable "template" NOPA for the county which includes all the required standard boilerplate text.
2. Quote the law or regulation verbatim rather than paraphrase it. Paraphrasing may result in the omission of an important factor or some other subtle change in the wording of the section. Also, by quoting the section the essential elements are clearly in mind when the facts that represent the violation are described. This will either reinforce the conclusion that taking the action is appropriate or bring to light any weaknesses in the case.
3. Address how the individual facts support the amount of the fine at this stage in the process serves several purposes. It gives the Respondent complete notice of how and why the fine amount was chosen, encourages stipulations, and helps support the Decision, if appealed. Furthermore, since one of the issues at hearing is the appropriateness of the fine amount, it is useful for the Hearing Officer to be specifically told, through the NOPA, how the Commissioner determined the fine amount.
4. The NOPA should only include facts that are necessary to prove the violation(s) and to provide the required notice. Do not quote the investigation verbatim, raise irrelevant issues, or provide facts which confuse the reader. State relevant facts in a clear sequence of events.

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Writing the Notice of Proposed Action, Continued

Avoid including unnecessary information

- Do not discuss code sections not cited as violations in the NOPA.
- Do not discuss other actions considered before issuing the NOPA (e.g., don't state the CAC's office considered a DR or revoking the permit but ultimately decided on an administrative civil penalty).
- Do not explain your rationale for initiating the action – unless you are required to do so.
- Do not offer defenses for the Respondent's actions.

Common problems in a NOPA

1. The Factual Circumstances section of the NOPA fails to include enough relevant facts and information for the Respondent to know exactly why the CAC is bringing an action.
2. Required enclosures are missing from the NOPA (e.g., "*Preparing For Your Pesticide Administrative Civil Penalty Hearing*" brochure). These are required elements of the Respondent's due process rights.
3. Failing to include the information required by 3 CCR section 6130(d) to justify where the CAC set the fine amount within the fine range.
4. Failing to consider multiple counts per person as allowed by FAC section 12996.5, and if multiple counts are included, failure to include the appropriate language in the NOPA.
5. If odor will be used as a sign of exposure in the NOPA, the NOPA must explicitly state that smelling an odor is a sign of exposure. Avoid the common mistake of stating that workers smelled an odor, without clearly stating that smelling an odor is a sign of exposure.
6. Citing a general code section. Due to how broad they are, it can be difficult to prove a violation of a general code section. The NOPA should always cite the most specific law or regulation available. For example, 3 CCR section 6600(b) requires pest control to be done "in a careful and effective manner." However, there is not a clear standard for what "careful" is. Without testimony at the hearing demonstrating what a reasonable applicator would have done it can be difficult to prove in a hearing or on appeal.
7. Not ensuring the penalty amount listed in the NOPA is the maximum amount the CAC believes is appropriate for the case.
8. Failing to perform the Elements of the Violation analysis.

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Writing the Notice of Proposed Action, Continued

Do not combine multiple code section into one "violation"

Do not combine multiple code sections into a single violation in the NOPA. For example, do not issue the NOPA with one violation of "3 CCR section 6734(a)(b)". From a practical standpoint, separating 6734(a) and 6734(b) into two separate violations will make it easier for the County Advocate to make a case for the two violations in a hearing. Combining the two code sections will complicate the County Advocate's presentation - the County Advocate will have to have ALL the elements of both subsections proven to support this "one violation." It will also make it more difficult for the Hearing Officer to understand the violation and make a finding in the County's favor.

Unlicensed business

Occasionally a NOPA is addressed to an unlicensed business (such as an unlicensed maintenance gardener). For an individual named John Doe running a business called Doe Gardening you may address the NOPA as follows:

John Doe, individually and DBA Doe Gardening

Who can sign the NOPA?

FAC section 12999.5 states that the Commissioner is responsible for levying the proposed penalty and for determining the fine amount as outlined in 3 CCR section 6130. In most cases, the Commissioner reviews and signs ("issues") the NOPA.

Occasionally, the Commissioner is unavailable to issue the NOPA (for example, long-term medical leave). While an Assistant Commissioner, Chief Deputy Agricultural Commissioner, or Deputy Agricultural Commissioner may act in the stead of the Commissioner, in instances where the Commissioner cannot issue the NOPA DPR encourages the Commissioner delegate their authority to county staff in a management position holding a CDFA County Agricultural Commissioner license.

Continued on next page

Writing the Notice of Proposed Action, Continued

SCP options in lieu of fines

For Structural Civil Penalty actions, non-fine options are possible, although rarely used by CACs:

- Proposing a three working days suspension of a registered company or licensee within the County pursuant to B&PC section 8617(a), or
- Attending a board-approved course of instruction in lieu of a fine pursuant to 16 CCR section 1922.3.

If a CAC is interested in adapting the NOPA templates for these purposes, please first contact EBL assigned to the county.

Note about FAC section 15202

FAC section 15202 provides information to Commissioners on their enforcement options. It does not in itself provide authority to pursue administrative civil penalties for structural pest control violations. For ACPs, use FAC section 12999.5 for the authority or for SCPs use B&PC section 8617 as the authority.

Section 7.8
What Constitutes a Complete NOPA?

Background

Before a civil penalty is levied, the person charged with the violation(s) must be given a written NOPA and the pamphlet "Preparing for Your Administrative Pesticide Penalty Hearing" to ensure that due process requirements of the Administrative Procedures Act are met. At the most basic level, this means that the person must be notified of:

- the violation charged,
- the amount of the fine and how it was determined,
- means to review and answer to the evidence,
- how to request a hearing, and
- how to appeal a Commissioner's decision.

NOPA checklist

To meet due process requirements, the **Notice of Proposed Action, Grounds Therefore and Opportunity to be Heard** (the NOPA) includes:

- ✓ Date,
- ✓ File number
- ✓ Title: "Notice of Proposed Action, Grounds Therefore and Opportunity to be Heard"
- ✓ Respondent name and address
- ✓ Amount of the total proposed fine (for the entire NOPA)
- ✓ Specific authority to fine (i.e., ACPs under FAC sections 12999.5, 15204, or 15204.5 or SCPs under B&PC sections 8617 or 8663)
- ✓ Factual Circumstances: A concise and complete description of the specific acts which constitute the violation (usually giving the time, date, place, persons involved, and actions or inactions constituting the violation)
- ✓ Violation: A statement (quote) of the code or regulation section(s) alleged to have been violated
- ✓ Penalty: The classification of the violation and the amount of the proposed penalty (including relevant facts on how the fine amount was determined)
- ✓ Right to review evidence advisory – "You May Review the Evidence Against You"
- ✓ Hearing request advisories – "You May Request a Hearing …" and "How to Request a Hearing – Failure to Request"
- ✓ What to expect at a hearing – the *Preparing for Your Administrative Pesticide Penalty Hearing* brochure

Continued on next page

What Constitutes a Complete NOPA?, Continued

NOPA checklist, (continued)

- ✓ "Appeal Rights After Hearing"
- ✓ Stipulation information – "Stipulation and Waiver to Order"
- ✓ Order to Pay
- ✓ Date and signature of the CAC
- ✓ Other enclosed notices which may apply in certain situations
  - Pesticide Incident Reimbursement Notice
  - Timely Reimbursement – Penalty Offset and Proof Notice
  - Schools Notice
- ✓ Signature and title of the issuing official

NOPA package documents

As a best practice, DPR recommends sending NOPAs via certified mail to the Respondent's last known address, as provided by FAC section 12999.5(c) and B&PC section 8617(d). The complete NOPA package must contain the following documents:

1. **Notice of Proposed Action, Grounds Therefore and Opportunity to be Heard** (the NOPA).
2. **Request for Hearing** form for Respondent to sign and submit to request a hearing if they so desire.
3. **Order** of the Commissioner directing payment of the fine (effective **only** in conjunction with the **Stipulation and Waiver to Order**, described below **or** when the Respondent "waives" their right to a hearing).
4. **Stipulation and Waiver to Order** for the Respondent to sign and submit as an alternative to the Request for Hearing, waiving the right to a hearing and to any appeal from the Order.
5. ***Preparing for Your Administrative Pesticide Penalty Hearing*** **brochure.**
6. Copies of
   a. The text of the law authorizing the action and the appeals process (e.g., FAC section 12999.5, B&PC section 8617, or B&PC sections 8663, 8664, and 8662);
   b. The penalty guideline regulations applicable in the specific case (3 CCR section 6130 or 16 CCR section 1922);
   c. If applicable, 3 CCR section 6131 for a licensed or certified employee failure to wear PPE under 3 CCR section 6702(c); and
   d. Full text of the law or regulation section(s) alleged to have been violated.

Section 7.9
Agricultural Civil Penalty NOPA Template

[*County Letterhead*]

DATE:

FILE NO.:

NOTICE OF PROPOSED ACTION (NOPA), NATURE OF VIOLATION, AND RIGHT TO REQUEST HEARING

TO: Respondent Name
License/Certificate Number
Attn:
Address
City, State, Zip Code

You are hereby notified that the Agricultural Commissioner for the County of _____ proposes to fine you, ____, a _____ civil penalty of $_____ for violating [*California Food and Agricultural Code (FAC) section ____, Labor Code section 1695(a), and/or Title 3 California Code of Regulations) (3 CCR) section _____*] by [*brief recitation of facts*]. The authority for this action is granted to the County Agricultural Commissioner pursuant to the provisions of section 12999.5 of the FAC. [*If appropriate immediately after recitation of violation with multiple counts:* Under the authority of FAC section 12996.5(b), the Commissioner proposes to charge you with ___ counts of violating ___ at $_____ per violation.]

FACTUAL CIRCUMSTANCES

VIOLATION

PENALTY

ENCLOSURE(S)

A copy of the text of FAC section 12999.5, 3 CCR, section 6130, [*and FAC section(s) ____, Labor Code section 1695(a), and/or 3 CCR section(s)*_____] is enclosed for your reference.

Continued on next page

Agricultural Civil Penalty NOPA Template, Continued

You May Review the Evidence Against You
You are entitled to review the Commissioner's evidence supporting these charges during regular business hours at the office of the _____ County Agricultural Commissioner, located at _____ in_____, California. We will provide one copy of the case file.

You May Request a Hearing and Present Evidence at the Hearing
You may request a hearing to review the Commissioner's evidence, and to present any evidence, oral or written, on your behalf. You are not required to be represented by legal counsel at the hearing. Your attorney may accompany you and represent you if you wish. **Please read the enclosure "Preparing for Your Pesticide Administrative Civil Penalty Hearing" for further information.** You will be provided a written decision of the Commissioner's finding. Although not required by the authorizing statute, a tape-recording will be made of the hearing proceedings. If you require a translator at the hearing, you must inform the Commissioner within __ days before the scheduled hearing date.

How to Request a Hearing - Failure to Request – FAC section 12999.5
A hearing in this matter will be scheduled and held at the office of the County Agricultural Commissioner, located at the above noted address, if you request a hearing by signing, dating, and returning the enclosed Hearing Request *(or a hearing request letter)* within 20 days of receipt of this Notice of Proposed Action. Failure to timely request a hearing is a waiver of the right to a hearing and the Commissioner may take the action proposed in this notice without a hearing. Further, failure to request a hearing is a waiver of your right to appeal the Commissioner's decision (see *Appeal Rights After Hearing*).

Stipulation and Waiver to Order – FAC section 12999.5
If you do not wish to request a hearing to contest the charges and proposed action, you may stipulate (agree) to the enclosed Order by dating, signing, and returning the enclosed Stipulation and Waiver to Order within 20 days of receipt of this Notice of Proposed Action.

Appeal Rights After Hearing – FAC section 12999.5
Should you disagree with the Commissioner's Decision, you may request an appeal to the Director of the Department of Pesticide Regulation (DPR) within 30 days of receiving the Commissioner's Decision and Order. However, you waive these appeal rights if you do not request and attend the hearing at the scheduled time and date, or if you fail to request an appeal within the 30-day time frame.

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Agricultural Civil Penalty NOPA Template, Continued

The request for appeal must be mailed to the Director of the Department of Pesticide Regulation (Director), 1001 I Street, MS4D, Sacramento, California 95814-2828.

The request for appeal:

1. Must be signed by you or your authorized agent; and
2. Must state the grounds for the appeal; and
3. Must include a copy of the Commissioner's Decision and Order; and
4. Must be filed or mailed to the Commissioner at the same time you mail it to the Director.

Failure to follow any of the above requirements may affect your right to appeal.

The Director will render a written decision within approximately 45 days after receipt of your appeal, or as soon thereafter as practical.

[*The following three notices may or may not apply to the circumstances of the NOPA – use only those notice(s) that apply to the particular situation:*]

Pesticide Incident Reimbursement Notice - FAC section 12997.5

Any person found in violation of pesticide laws and regulations that resulted in illness or injury requiring emergency medical transport or emergency medical treatment of any individual, in a non-occupational setting, from a pesticide used in the production of an agricultural commodity shall be liable to the individual harmed or to the medical provider for the immediate costs of uncompensated medical care from acute injuries and illnesses of the exposed individual.

Timely Reimbursement - Penalty Offset and Proof Notice – FAC sections 12996.5 and 12997.5

If you offer to reimburse, or have already reimbursed, the immediate medical costs for acute medical illnesses and injury, the Commissioner may reduce the proposed administrative civil penalty by an amount up to fifty percent. <u>You must request a hearing and provide proof at the hearing of immediate reimbursement in order for the Commissioner to consider reducing the penalty</u>.

Schools Notice – FAC section 12999.5(b)

If you receive a civil penalty for pesticide drift in a school area subject to FAC section 11503.5 that results in a Class A violation as defined in 3 CCR section 6130, the Commissioner shall charge a fee, not to exceed fifty dollars ($50), for processing and monitoring each subsequent pesticide application that may pose a risk of drift, until you have completed 24 months without another Class A violation (as defined by 3 CCR section 6130).

Continued on next page

Agricultural Civil Penalty NOPA Template, Continued

Commissioner Signature
Commissioner's Name *Date*
Commissioner's Official Title

Section 7.9.1
Annotated Agricultural Civil Penalty NOPA Guide

[*County Letterhead*]

DATE:

FILE NO.: [*County abbreviation, fiscal year, case number*]

NOTICE OF PROPOSED ACTION (NOPA), NATURE OF VIOLATION, AND RIGHT TO REQUEST HEARING

TO: Respondent Name [*business or individual – <u>one entity per notice</u>*]
License/Certificate Number [*if applicable*]
Attn: [*individual's name if Respondent's name is a business*]
Address
City, State Zip Code

You are hereby notified that the Agricultural Commissioner for the County of [*County name*] proposes to fine you, [*Respondent*], a civil penalty of $[*amount*] [*for X violations of* or *for violating*] [*California Food and Agricultural Code (FAC) section ____, Labor Code section 1695(a), and/or California Code of Regulations (CCR) Title 3 section_____*] by [*state the facts that constitute the elements of the violation charged in one or two sentences for each violation*]. The authority for this action is granted to the County Agricultural Commissioner pursuant to the provisions of section 12999.5 of the Food and Agricultural Code (FAC). [*If appropriate immediately after recitation of violation with multiple counts:* Under the authority of FAC section 12996.5(b), the Commissioner proposes to charge you with [*<u>x</u>*] counts of violating [*the section cited*] at $[*fine amount*] per violation.]

FACTUAL CIRCUMSTANCES

[*In this section, discuss only the relevant facts necessary to prove all elements of the alleged violation(s). The NOPA is the formal charging document giving the Respondent sufficient notice of the charges in order to prepare a defense; it is not a summary of the inspection or investigation. The NOPA should only include facts from the inspection or investigation report that are necessary to prove the violation and to provide this notice. For example, many facts that are necessary to conduct an investigation and complete the report are not necessary to include in the NOPA and may only confuse the reader or raise irrelevant issues. Avoid using unnecessary and equivocal statements such as "the investigation report indicates", etc. Simply state the facts revealed by the inspection or investigation in a linear and well-organized manner. The reader should be able to clearly follow the sequence of events that prove the*

Continued on next page

Annotated Agricultural Civil Penalty NOPA Guide, Continued

violation.

On the other hand, be sure to provide all the specifics relevant to the case. For example, in a drift or off-site movement case: the date and time of the application, who made it, what was applied, the active ingredient, relevant circumstances of the application (may include size, weather conditions before and/or during application, arrival of workers/bystanders, application method, proximity to people, etc.), what happened, when and to whom, and relative evidence (gradient sampled, clothing analyses, PUR for surrounding area at time, etc.).]

EXAMPLE

On March 1, 20XX, Ms. Betty Inspector, a Sunny County Agricultural Inspector/Biologist, conducted a Fieldworker Safety Inspection (103-99-XX-M000-001) on a crew of 15 fieldworkers harvesting head lettuce. The supervisor of the crew identified himself as [*S. Name*] and that he worked for [*Respondent name*]. [*S. Name*] stated the field was owned by [*Respondent name*] and it was called [*field name or site ID*]. During the inspection [*S. Name*] was able to furnish a completed copy of the Hazard Communication Information for Employees Working in Fields, Pesticide Safety Information Series (PSIS) leaflet A-9, from inside a work van parked on the northwest side of the field. As there were more than 11 fieldworkers in the field, Ms. Inspector inspected the mobile decontamination facility on site for the fieldworkers and saw there was no PSIS A-9 leaflet displayed on the decontamination facility.

As a routine part of the Fieldworker Safety Inspection, Ms. Inspector reviewed [*Respondent name*]'s application specific information display, located at [*address*]. The pesticide application completion notices displayed as part of the application specific information confirmed pesticides had been applied to the field in which the fieldworkers were working within the past 30 days. The field was considered a "treated field" under the definition in 3 CCR section 6000 at the time [*Respondent name*]'s employees were working in it. However, in reviewing the information, Ms. Inspector noted the displayed information was missing the required EPA registration numbers for the listed pesticides.

VIOLATION(S)

This section should be organized as follows:

1. *A statement of the law or regulation violated, including any relevant label language if applicable;*
2. *A discussion of how the facts establish each element of the violation as described by the law or regulation; and*
3. *The conclusion that the violation occurred.*

Continued on next page

Annotated Agricultural Civil Penalty NOPA Guide, Continued

The following examples demonstrate a method to organize this section using facts for the two violations described in the Factual Circumstances section:

EXAMPLE 1: 3 CCR section 6761(a)

Violation 1
3 CCR section 6761(a), titled Hazard Communication for Fieldworkers, states in part:

> (a) Whenever employees are working as fieldworkers in a treated field, the employer shall display at the worksite and all permanent decontamination facilities and decontamination facilities servicing 11 or more fieldworkers, a copy of a completed written Hazard Communication Information for Employees Working in Fields (Pesticide Safety Information Series leaflet A-9). …

A copy of the full text of this code section is included with this NOPA.

By failing to display a copy of a completed PSIS A-9 leaflet at the decontamination facility servicing 11 or more [*Respondent name's*] employees working as fieldworkers harvesting head lettuce in a treated field, [*Respondent name*] violated 3 CCR section 6761(a).

EXAMPLE 2: 3 CCR section 6761.1(a)

Violation 2
3 CCR section 6761.1(a)(4), titled Application-Specific Information for Fieldworkers, states:

> (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 fieldworkers are employed to work in treated fields on the operator's property:
> …
> (4) Product name(s), U.S. EPA registration number(s), and active ingredient(s);
> …

A copy of the full text of this code section is included with this NOPA.

The pesticides applied to the agricultural plant commodities on your property are registered with U.S. EPA and the Department of Pesticide Regulation. The display was at a central location accessible to fieldworkers employed to work on treated fields on your property. By failing to display the EPA Registration number of the pesticides applied for the commercial production of agricultural plant commodities on your property, [*Respondent name*] violated 3 CCR section 6761.1(a)(4).

PENALTY

Continued on next page

Annotated Agricultural Civil Penalty NOPA Guide, Continued

This section should be organized as follows:

1. *Set forth the regulation that provides the penalty classification and fine range for the classification of the violation charged.*
2. *State the classification of the violation(s) and fine selected in the appropriate range.*
3. *State the facts that support the classification and fine amount. (3 CCR section 6130(d))*
4. *If appropriate, cite FAC section 12985 (multiple counts for each affected worker) or 12996.5 (multiple counts for acute illness/injury).*

In classifying the violation and setting the fine level consistent 3 CCR section 6130, it is important to include adequate factual support in the NOPA explaining how the Commissioner determined the fine classification and amount within the range. Having this information detailed in the NOPA assures the Respondent the fine was not set in an arbitrary manner. In addition, having the information in the NOPA helps the Respondent and County Advocate prepare for a hearing by outlining the evidence the Commissioner relied on in setting the classification and fine level.

The following are two examples of how to organize this section. The first example uses facts from the Factual Circumstances and Violation 1 sections above:

EXAMPLE 1: 3 CCR section 6761(a)

Title 3, California Code of Regulations (3 CCR) section 6130 sets forth the penalty classifications and fine ranges for county agricultural commissioner administrative civil penalty actions pursuant to FAC section 12999.5. A copy of 3 CCR section 6130 is attached to this NOPA.

The violation you are charged with, 3 CCR section 6761(a), is designated as a Class B violation. Under 3 CCR section 6130(b)(2), a Class B violation is "a violation of a law or regulation that mitigates the risk of adverse health, property, or environmental effects that is not designated as Class A."

The hazard communication requirements of 3 CCR section 6761 were adopted to mitigate the risk of adverse health effects to employees working in fields treated with pesticides. The Department of Pesticide Regulation developed the PSIS A-9 leaflet to provide vital information to fieldworkers on how to protect themselves from pesticides. Displaying a completed copy of this document allows the employer to provide their employees working as fieldworkers in treated fields with immediate access to emergency medical care information, including the name, address, and telephone number of a facility capable of providing care in the case of a pesticide exposure-related emergency. The employer must also provide information about how fieldworkers can access pesticide application information, where to access and review the employee's training records, and how to contract this office to file a pesticide safety complaint.

Continued on next page

Annotated Agricultural Civil Penalty NOPA Guide, Continued

As a result, [*Respondent's*] violation was of a law or regulation that mitigates the risk of adverse health effects.

Under 3 CCR section 6130(c), the fine range for a Class B violation is between $XXX to $XXXX. When determining the amount within a fine range, 3 CCR section 6130(d) requires the Commissioner to use relevant facts, including severity of actual or potential effects and the Respondent's compliance history, and include those relevant facts in the NOPA. In this case, the Commissioner set the fine at $XXX because no injuries or illnesses occurred from these violations and the Respondent's lack of prior violation history supports a fine at this level.

[*To demonstrate multiple counts, this second example is for <u>different</u> incident where five people became acutely ill.*]

EXAMPLE 2: Multiple Counts

PENALTY FOR VIOLATIONS 1-5

Title 3, California Code of Regulations (3 CCR) section 6130 sets forth the penalty classifications and fine ranges for county agricultural commissioner administrative civil penalty actions pursuant to FAC section 12999.5. A copy of 3 CCR section 6130 is attached to this NOPA.

The violation you are charged with, FAC section 12973, is designated as a Class A violation. Under 3 CCR section 6130(b)(1), a Class A violation is a "violation that caused a health, property, or environmental hazard."

Zapofencin, the active ingredient in Nema-b-gone 45, is highly toxic and can cause eye irritation, sore throat, headaches, nausea, vomiting and breathing difficulties. The Nema-b-gone 45 label states "DANGER. Fatal if inhaled, swallowed or absorbed through the skin. Poisonous liquid and vapor. Corrosive. Liquid causes skin burns and irreversible eye damage. Do not get in eyes, on skin or on clothing." The violation placed multiple individuals in a hazardous situation and resulted in five (5) individuals becoming acutely ill and experiencing symptoms consistent with zapofencin exposure.

Under 3 CCR section 6130(c), the fine range for a Class A violation is between $XXX to $XXXX. When determining the amount within a fine range, 3 CCR section 6130(d) requires the Commissioner to use relevant facts, including severity of actual or potential effects and the Respondent's compliance history, and include those relevant facts in the NOPA. In this case, the Commissioner set the fine at $XXXX due to of the toxicity of the pesticide and the number of people who were in a hazardous situation as a result of the violation, and because it resulted

Continued on next page

Annotated Agricultural Civil Penalty NOPA Guide, Continued

in five (5) individuals becoming acutely ill and experiencing symptoms consistent with zapofencin exposure.

Under FAC section 12996.5(b), "[t]he exposure of each person to a pesticide resulting from the violation of Section 12972 or 12973, or any regulation adopted pursuant to Section 12976, 12981, or 14005, that causes acute illnesses or injury, shall constitute a separate violation of the statute or regulation." The Commissioner is therefore charging five (5) separate violations of FAC section 12973, for a total civil penalty of $XX,XXX.

ENCLOSURES

[*List the enclosures of law or regulation code text:*]

A copy of the text of FAC section 12999.5, 3 CCR, section 6130, [*and the code section(s) violated, such as FAC section(s) _____, Labor Code section 1695(a), and/or 3 CCR section(s)* _____] is enclosed for your reference.

[*Again, enclose only those which apply to this case. The most likely code sections you will need to provide are the specific violation code(s), 3 CCR section 6130, and FAC section 12999.5.*

When charging multiple counts, also include a copy of the applicable authorizing code section (FAC section 12985 for each affected worker or FAC section 12996.5 for acute illness/injury). When applicable, also include a copy of FAC section 12997.5 and the DPR flier Reimbursing Medical Costs of Persons Injured in Pesticide Incidents *with the NOPA package enclosures. For more information on non-occupational pesticide injury reimbursement requirements, see Appendix G.*]

You May Review the Evidence Against You
You are entitled to review the Commissioner's evidence supporting these charges during regular business hours at the office of the_____County Agricultural Commissioner, located at ____ in ____, California. We will provide one copy of the case file.

[*Although not required by the statute, it is a good idea to have a separate copy of the case file available for the Respondent to review before the hearing so they have a chance to prepare. This practice is both fair and helpful to ensure due process. If the Respondent requests to see the evidence before the hearing, you must allow them to do so at a reasonable time during regular business hours.]*

A few words to Commissioners about how the Public Records Act <u>may</u> apply to the NOPA or the case file…

Continued on next page

Annotated Agricultural Civil Penalty NOPA Guide, Continued

DPR recommends as a best practice that you provide a free copy of the case file to the Respondent. However, if you do charge for the file, the "per page" copying fee should not exceed those that you would normally charge any other person seeking copies of other public records. For example, DPR charges 35 cents per page for copies of documents released pursuant to Public Records Act requests because that is the Department's cost to copy documents on DPR photocopiers. Pursuant to the statute, staff time to review, retrieve, or prepare the document(s) cannot be charged for Public Records Act requests. In any event, the Respondent must be given adequate time to review the documents to be presented at hearing before it begins.

Once issued, a NOPA is not a pre-decisional document or a protected document under the Public Records Act. The Commissioner acts as an official representative of the people of their county. When a Commissioner issues a NOPA, it has the same effect as filing a complaint against the Respondent at the county courthouse.

Consult your County Counsel if you need advice specific to your county on this matter. For further information about the Public Records Act, you may consult Government Code, section 6250, et seq.

You May Request a Hearing and Present Evidence at the Hearing
You may request a hearing to review the Commissioner's evidence, and to present any evidence, oral or written, on your behalf. You are not required to be represented by legal counsel at the hearing. Your attorney may accompany you and represent you if you wish. **Please read the enclosure "Preparing for Your Pesticide Administrative Civil Penalty Hearing" for further information.** You will be provided a written decision of the Commissioner's finding. Although not required by the authorizing statute, a tape-recording will be made of the hearing proceedings. If you require a translator at the hearing, you must inform the Commissioner within [*x*] days before the scheduled hearing date.

How to Request a Hearing – Failure to Request – FAC section 12999.5
A hearing in this matter will be scheduled and held at the office of the County Agricultural Commissioner, located at the above noted address, if you request a hearing by signing, dating, and returning the enclosed Hearing Request *(or a hearing request letter)* within 20 days of receipt of this Notice of Proposed Action. Failure to timely request a hearing is a waiver of the right to a hearing and the Commissioner may take the action proposed in this notice without a hearing. Further, failure to request a hearing is a waiver of your right to appeal the Commissioner's decision (see *Appeal Rights After Hearing*).

Stipulation and Waiver to Order – FAC section 12999.5
If you do not wish to request a hearing to contest the charges and proposed action, you may

Continued on next page

Annotated Agricultural Civil Penalty NOPA Guide, Continued

stipulate (agree) to the enclosed Order by dating, signing, and returning the enclosed Stipulation and Waiver to Order within 20 days of receipt of this Notice of Proposed Action.

Appeal Rights After Hearing – FAC section 12999.5
Should you disagree with the Commissioner's Decision, you may request an appeal to the Director of DPR within 30 days of receiving the Commissioner's Decision and Order. However, you waive these appeal rights if you do not request and attend the hearing at the scheduled time and date, or if you fail to request an appeal within the 30-day time frame.

The request for appeal must be mailed to the Director of the Department of Pesticide Regulation (Director), 1001 I Street, MS4D, Sacramento, California 95814-2828.

The request for appeal:

1. Must be signed by you or your authorized agent; and
2. Must state the grounds for the appeal; and
3. Must include a copy of the Commissioner's Decision and Order; and
4. Must be filed or mailed to the Commissioner at the same time you mail it to the Director.

Failure to follow any of the above requirements may affect your right to appeal.

The Director will render a written decision within approximately 45 days after receipt of your appeal, or as soon thereafter as practical.

[*The following three notices may or may not apply to the circumstances of the NOPA – use only those notice(s) that apply to the particular situation. For more information on medical reimbursement for bystanders, please refer to Appendix G.*]

Pesticide Incident Reimbursement Notice - FAC section 12997.5
Any person found in violation of pesticide laws and regulations that resulted in illness or injury requiring emergency medical transport or emergency medical treatment of any individual, in a non-occupational setting, from a pesticide used in the production of an agricultural commodity shall be liable to the individual harmed or to the medical provider for the immediate costs of uncompensated medical care from acute injuries and illnesses of the exposed individual.

Timely Reimbursement - Penalty Offset and Proof Notice – FAC sections 12996.5 and 12997.5
If you offer to reimburse, or have already reimbursed, the immediate medical costs for acute medical illnesses and injury, the Commissioner may reduce the proposed administrative civil penalty by an amount up to fifty percent. You must request a hearing and provide proof at the

Continued on next page

Annotated Agricultural Civil Penalty NOPA Guide, Continued

hearing of immediate reimbursement in order for the Commissioner to consider reducing the penalty.

Schools Notice – FAC section 12999.5(b)
If you receive a civil penalty for pesticide drift in a school area subject to FAC section 11503.5 that results in a Class A violation as defined in 3 CCR section 6130, the Commissioner shall charge a fee, not to exceed fifty dollars ($50), for processing and monitoring each subsequent pesticide application that may pose a risk of drift, until you have completed 24 months without another Class A violation (as defined by 3 CCR section 6130).

Commissioner Signature
Commissioner's Name *Date*
Commissioner's Official Title

Section 7.10
Structural Civil Penalty NOPA Template

[*County Letterhead*]

DATE:

FILE NO.

NOTICE OF PROPOSED ACTION (NOPA), NATURE OF VIOLATION, AND RIGHT TO REQUEST HEARING

TO: Respondent Name
Company Registration or Individual License Number [*if applicable*]
Attn:
Address
City, State, Zip Code

You are hereby notified that the Agricultural Commissioner for the County of _____ proposes to fine you, ____, a civil penalty of $_____ for violating [*Business and Professions Code (B&PC), California Food and Agricultural Code (FAC) and/or Title ___ California Code of Regulations) (_ CCR)*] section(s) ___ by [*brief recitation of facts*]. The authority for this action is granted to the County Agricultural Commissioner pursuant to the provisions of section 8617 of the Business and Professions Code (B&PC).

FACTUAL CIRCUMSTANCES

VIOLATION

PENALTY

ENCLOSURE(S)

A copy of the text of B&PC section 8617, 16 CCR section 1922, and [*FAC/B&PC section(s) ____ and/or 3/16 CCR section(s)*_____] is enclosed for your reference.

You May Review the Evidence Against You
You are entitled to review the Commissioner's evidence supporting these charges during regular business hours at the office of the _____ County Agricultural Commissioner, located at

Continued on next page

Structural Civil Penalty NOPA Template, Continued

_____ in _____, California. We will provide one copy of the case file.

You May Request a Hearing and Present Evidence at the Hearing
You may request a hearing to review the Commissioner's evidence, and to present any evidence, oral or written, on your behalf as to why the Commissioner should not take the proposed action. You are not required to be represented by legal counsel at the hearing. Your attorney may accompany you and represent you if you wish. **Please read the enclosure "Preparing for Your Pesticide Administrative Civil Penalty Hearing" for further information.** You will be provided a written decision of the Commissioner's finding. Although not required by the authorizing statute, a tape-recording will be made of the hearing proceedings. If you require a translator at the hearing, you must inform the Commissioner within __ days before the scheduled hearing date.

How to Request a Hearing - Failure to Request – B&PC section 8617
A hearing in this matter will be scheduled and held at the office of the County Agricultural Commissioner, located at the above noted address, if you request a hearing by signing, dating, and returning the enclosed Hearing Request (or a hearing request letter) within 20 days of receipt of this Notice of Proposed Action. Failure to timely request a hearing is a waiver of the right to a hearing and the Commissioner may take the action proposed in this notice without a hearing. Further, failure to request a hearing is a waiver of your right to appeal the Commissioner's decision (see Appeal Rights After Hearing).

Stipulation and Waiver to Order – B&PC section 8617
If you do not wish to request a hearing to contest the charges and proposed action, you may stipulate (agree) to the enclosed Order by dating, signing, and returning the enclosed Stipulation and Waiver to Order within 20 days of receipt of this Notice of Proposed Action.

Appeal Rights After Hearing – B&PC sections 8617 and 8662
Should you disagree with the Commissioner's Decision, you may request an appeal to the Disciplinary Review Committee within 30 days of receiving the Commissioner's Decision and Order. However, you waive these appeal rights if you do not request and attend the hearing at the scheduled time and date, or if you fail to request an appeal within the 30-day time frame.

The request for appeal must be mailed to the Disciplinary Review Committee, 1001 I Street, MS4D, Sacramento, California 95814-2828.

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Structural Civil Penalty NOPA Template, Continued

The request for appeal:

1. Must be signed by you or your authorized agent; and
2. Must state the grounds for the appeal; and
3. Must include a copy of the Commissioner's Decision and Order; and
4. Must be filed or mailed to the Commissioner at the same time you mail it to the Disciplinary Review Committee.

Failure to follow any of the above requirements may affect your right to appeal.

The Disciplinary Review Committee will render a written decision within approximately 45 days after receipt of your appeal, or as soon thereafter as practical.

Commissioner Signature
Commissioner's Name *Date*
Commissioner's Official Title

Section 7.10.1
Annotated Structural Civil Penalty NOPA Guide

[*County Letterhead*]

DATE:

FILE NO. [*County abbreviation, fiscal year, case number*]

NOTICE OF PROPOSED ACTION (NOPA), NATURE OF VIOLATION, AND RIGHT TO REQUEST HEARING

TO: Respondent Name [*business or individual – one entity per notice*]
Company Registration or Individual License Number [*if applicable*]
Attn: [*individual's name if Respondent's Name is a business*]
Address
City, State Zip Code

You are hereby notified that the Agricultural Commissioner for the County of [*County name*] proposes to fine you, [*Respondent*], a civil penalty of $[*amount*] for violating [*Business and Professions Code (B&PC), California Food and Agricultural Code (FAC), and/or Title 3/16 of the California Code of Regulations (_CCR)*] section(s)___ by [*state the facts that constitute the elements of the violation charged in one or two sentences for each violation*]. The authority for this action is granted to the County Agricultural Commissioner pursuant to the provisions of section 8617 of the Business and Professions Code (B&PC).

FACTUAL CIRCUMSTANCES

[*In this section, discuss only the relevant facts necessary to prove all elements of the alleged violation(s). The NOPA is the formal charging document giving the Respondent sufficient notice of the charges in order to prepare a defense; it is not a summary of the inspection or investigation. The NOPA should only include facts from the inspection or investigation report that are necessary to prove the violation and to provide this notice. For example, many facts that are necessary to conduct an investigation and complete the report are not necessary to include in the NOPA and may only confuse the reader or raise irrelevant issues. Avoid using unnecessary and equivocal statements such as "the investigation report indicates," etc. Simply state the facts revealed by the inspection or investigation in a linear and well-organized manner. The reader should be able to clearly follow the sequence of events that prove the violation.*

On the other hand, be sure to provide all the specifics relevant to the case. For example: the location, date and time of the application, who made it, what was applied, relevant

Continued on next page

Annotated Structural Civil Penalty NOPA Guide, Continued

circumstances of the application, what happened, when and to whom, whatever evidence that was obtained (pictures, witness statements, etc.).]

EXAMPLE

On September 1, 20XX, at about 11:00 a.m., Ms. Betty Inspector, a Sunny County Agricultural Inspector/Biologist, arrived at 900 N. Elsewhere Drive in Somewhere, CA to conduct an inspection of a structure fumigated by FumeCo Inc. (PR #99999). The fumigation crew was not present and the tarps were still on the structure. The warning signs on the tarps indicated the structure had been fumigated using Fumex (EPA Registration No. 1234-56-ZZ), a pesticide registered with the California Department of Pesticide Regulation. During the perimeter inspection, Ms. Inspector observed on the east side of the structure there was no seal between the tarp and the ground, measuring approximately 37 inches in length.

The Standard Structural Fumigation Log stated the licensee responsible for preparing the structure for fumigation and for introducing the fumigant into the structure was Field Representative [*Respondent's name*] (FR #88888).

VIOLATION(S)

This section should be organized as follows:

1. *A statement of the law or regulation violated, including any relevant label or California Aeration Plan language as applicable;*
2. *A discussion of how the facts establish each element of the violation as described by the law or regulation; and*
3. *The conclusion that the violation occurred.*

The following example demonstrates a method to organize this section using facts from the Factual Circumstances section:

EXAMPLE: FAC section 12973

Food and Agricultural Code section 12973 states in part:

> "The use of any pesticides shall not conflict with the labeling registered pursuant to this chapter…"

A copy of the full text of this code section is included with this NOPA.

The Fumex labeling directs applicators to "Seal the bottom edges of the tarp to the ground using materials such as soil, sand, or weighted 'snakes'." By failing to seal the bottom edge of the tarp

Continued on next page

Annotated Structural Civil Penalty NOPA Guide, Continued

to the ground as required by the Fumex labeling, [*Respondent's name*] used Fumex in conflict with the registered labeling and violated FAC section 12973.

PENALTY

This section should be organized as follows:

1. *Set forth the regulation that provides the penalty classification and fine range for the classification of the violation charged.*
2. *State the classification of the violation(s) and fine selected in the appropriate range.*
3. *State the facts that support the classification and fine amount.*

In classifying the violation and setting the fine level consistent with 16 CCR section 1922, it is important to include adequate factual support in the NOPA explaining how the Commissioner determined the fine classification and amount within the range. Having this information detailed in the NOPA assures the Respondent the fine was not set in an arbitrary manner. In addition, having the information in the NOPA helps the Respondent and County Advocate prepare for a hearing by outlining the evidence the Commissioner relied on in setting the classification and fine level.

The following example uses facts from the Factual Circumstances and the Violation sections above:

EXAMPLE

Title 16, California Code of Regulations (16 CCR) section 1922 sets forth the penalty classifications and fine ranges for county agricultural commissioner administrative civil penalty actions pursuant to B&PC section 8617. A copy of 16 CCR section 1922 is attached to this NOPA.

The violation you are charged with, FAC section 12973, is classified as a "Moderate violation" under 16 CCR section 1922(a)(1)(B). Moderate violations are violations "which pose a reasonable possibility of creating a health or environmental effect." The Fumex label requires applicators to seal tarps to the ground while performing a tarped structural fumigation in order to protect bystanders from the potential offsite movement of the fumigant. As a result, [*Respondent's*] violation posed a reasonable possibility of creating a health effect caused by exposure to the fumigant.

Under 16 CCR section 1922(a)(1)(B) the fine range for a Moderate violation is between $XXX to $X,XXX. In this case, the fine is set at $XXX because according to the Fumex label exposure to the pesticide can be fatal. While exposure to Fumex may have potentially severe health

Continued on next page

Annotated Structural Civil Penalty NOPA Guide, Continued

effects, the opening in the tarpaulins was located along a side of the structure that was not easily accessible to bystanders. Ms. Inspector documented on the inspection form that the licensee and crew returned to the site promptly to correct the noncompliance, after the licensee was contacted.

ENCLOSURES

[*List the enclosures of law or regulation code text:*]

A copy of the text B&PC section 8617, 16 CCR, section 1922, [*and the code section violated, such as FAC / B&PC section(s) _____ and/or 3/16 CCR section(s) _____*] is enclosed for your reference.

[*Again, enclose only those which apply to this case. The most likely code sections you will need to provide are the specific violation code(s), 16 CCR section 1922, and B&PC section 8617.*]

You May Review the Evidence Against You
You are entitled to review the Commissioner's evidence supporting these charges during regular business hours at the office of the [*county name*] County Agricultural Commissioner, located at [*address*] in [*city*], California. We will provide one copy of the case file.

[*Although not required by the statute, it is a good idea to have a separate copy of the case file available for the Respondent to review before the hearing so they have a chance to prepare. This practice is both fair and helpful to ensure due process. In any case, if the Respondent requests to see the evidence before the hearing, you must allow them to do so at a reasonable time during regular business hours.*]

A few words to Commissioners about how the Public Records Act may apply to the NOPA or the case file…
DPR recommends as a best practice that you provide a free copy of the case file to the Respondent. However, if you do charge for the file, the "per page" copying fee should not exceed those that you would normally charge any other person seeking copies of other public records. For example, DPR charges 35 cents per page for copies of documents released pursuant to Public Records Act requests because that is the Department's cost to copy documents on DPR photocopiers. Pursuant to the statute, staff time to review, retrieve, or prepare the document(s) cannot be charged for Public Records Act requests. In any event, the Respondent must be given adequate time to review the documents to be presented at hearing before it begins.

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Annotated Structural Civil Penalty NOPA Guide, Continued

Once issued, a NOPA is not a pre-decisional document or a protected document under the Public Records Act. The Commissioner acts as an official representative of the people of her or his county. When a Commissioner issues a NOPA, it has the same effect as filing a complaint against the Respondent at the county courthouse.

Consult your County Counsel if you need advice specific to your county on this matter. For further information about the Public Records Act, you may consult Government Code, section 6250, et seq.

You May Request a Hearing and Present Evidence at the Hearing
You may request a hearing to review the Commissioner's evidence, and to present any evidence, oral or written, on your behalf as to why the Commissioner should not take the proposed action. You are not required to be represented by legal counsel at the hearing. Your attorney may accompany you and represent you if you wish. **Please read the enclosure "Preparing for Your Pesticide Administrative Civil Penalty Hearing" for further information.** You will be provided a written decision of the Commissioner's finding. Although not required by the authorizing statute, a tape-recording will be made of the hearing proceedings. If you require a translator at the hearing, you must inform the Commissioner within [*x*] days before the scheduled hearing date.

How to Request a Hearing – Failure to Request – B&PC section 8617
A hearing in this matter will be scheduled and held at the office of the County Agricultural Commissioner, located at the above noted address, if you request a hearing by signing, dating, and returning the enclosed Hearing Request [*or a hearing request letter*] within 20 days of receipt of this Notice of Proposed Action. Failure to timely request a hearing is a waiver of the right to a hearing and the Commissioner may take the action proposed in this notice without a hearing. Further, failure to request a hearing is a waiver of your right to appeal the Commissioner's decision (see *Appeal After Hearing*).

Stipulation and Waiver to Order – B&PC section 8617
If you do not wish to request a hearing to contest the charges and proposed action, you may stipulate (agree) to the enclosed Order by dating, signing, and returning the enclosed Stipulation and Waiver to Order within 20 days of receipt of this Notice of Proposed Action.

Appeal Rights After Hearing – B&PC sections 8617 and 8662
Should you disagree with the Commissioner's Decision, you may request an appeal to the Disciplinary Review Committee within 30 days of receiving the Commissioner's Decision and Order. However, you waive these appeal rights if you do not request and attend the hearing at the scheduled time and date, or if you fail to request an appeal within the 30-day time frame.

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Annotated Structural Civil Penalty NOPA Guide, Continued

The request for appeal must be mailed to the Disciplinary Review Committee, 1001 I Street, MS4D, Sacramento, California 95814-2828.

The request for appeal:

1. Must be signed by you or your authorized agent; and
2. Must state the grounds for the appeal; and
3. Must include a copy of the Commissioner's Decision and Order; and
4. Must be filed or mailed to the Commissioner at the same time you mail it to the Disciplinary Review Committee.

Failure to follow any of the above requirements may affect your right to appeal.

The Disciplinary Review Committee will render a written decision within approximately 45 days after receipt of your appeal, or as soon thereafter as practical.

Commissioner Signature
Commissioner's Name *Date*
Commissioner's Official Title

Section 7.11
Notice Requirements Governing CAC Pesticide Administrative Civil Penalty Hearings

Background

In 2008, DPR received a decision issued by the Fifth Appellate District Court of Appeals (*Patterson Flying Service vs California Department of Pesticide Regulation*) that governs how CACs must prepare for administrative civil penalty hearings to ensure the Respondent's due process rights.

The Court of Appeals upheld the Director's Decision upholding the CAC's penalty. However, the Court also made important rulings about the administrative pesticide penalty hearing process authorized by FAC section 12999.5 (agricultural civil penalties). DPR believes the Court of Appeals decision also extends to pesticide penalty hearings authorized by FAC sections 15204 and 15204.5 (agricultural civil penalties for certain structural activities), and those authorized by B&PC section 8617 (structural civil penalties.) The Court of Appeals found the CAC to be "an agency created or appointed by joint or concerted action of the state and one or more local agencies" under Government Code (GC) section 11410.30(c). This means the pesticide administrative civil penalty hearing process must comply with Chapter 4.5 of the Administrative Procedure Act (APA), beginning at GC section 11400.

APA Chapter 4.5 sets forth certain basic requirements intended to ensure a fair hearing. These requirements are consistent with DPR's guidance regarding CAC pesticide penalty hearings which include directing CACs to attach a copy of the "Preparing for Your Pesticide Administrative Civil Penalty Hearing" brochure to the NOPA.

Attaching a copy of this brochure to the NOPA is to ensure the "notice" requirements are met.

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Notice Requirements Governing CAC Pesticide Administrative Civil Penalty Hearings, Continued

APA requirements – specific to administrative civil penalty hearings

- The CAC must give the Respondent notice and an opportunity to be heard, including the opportunity to present and rebut evidence (GC section 11425.10(a)(1)).
- The CAC must make a copy of the procedure governing the pesticide penalty hearing available to the Respondent and include a statement that the formal hearing provisions of Chapter 5 of the APA do not apply to the proceeding (GC section 11425.10(a)(2)).
- The CAC must send the description of its pesticide penalty hearing procedure to the Respondent with the notice of hearing that conforms to the APA requirements. The CAC must inform the Respondent in the description of the process that the provisions relating to the formal hearings under Chapter 5 of the APA (GC sections 11500-11529) do not apply.
- With limited exceptions, the Hearing Officer must open the hearing to public observation (GC section 11425.10(a)(3)).
- If anyone participating or observing a pesticide penalty hearing disobeys a lawful order from the Hearing Officer not to disrupt or interfere with the hearing, or otherwise engages in disorderly, contemptuous, or insolent behavior toward the Hearing Officer, the Hearing Officer may cite them for contempt (GC sections 11455.10 - 11455.30).
- The CAC must separate the adjudicative function from the investigative, prosecutorial and advocacy functions within the agency (GC section 11425.10(a)(4)).
- The Hearing Officer is subject to disqualification for bias, prejudice, or interest (GC section 11425.10(a)(5)).
- The Hearing Officer's Decision shall be in writing, be based on the record and include a statement of the factual and legal basis of the decision (GC section 11425.10(a)(6)).
- The Hearing Officer and the CAC must not communicate separately with a party, party representative, investigator/witness, or County Advocate about an issue in the case without the other party present (*ex parte* communication). This does not include non-controversial matters of practice or procedure, such as scheduling. If the Hearing Officer does engage in a prohibited *ex parte* communication, the APA provides a procedure to cure the noncompliance (GC sections 11430.10 - 11430.80).

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Notice Requirements Governing CAC Pesticide Administrative Civil Penalty Hearings, Continued

APA requirements – specific to administrative hearings

DPR publishes a brochure describing the pesticide penalty hearing process to ensure CACs meet the requirements of Chapter 4.5 of the APA. CACs may order the pre-published brochure (PR-ENF-086) via the routine forms requisition process.

Provide this information for FAC section 12999.5, 15204, 15204.5 and B&PC section 8617 hearings. If you publish your own hearing brochure, you must work through your EBL to have Enforcement headquarters review the brochure for conformance with APA requirements.

You may wish to consult with the Department of Food and Agriculture about how this information may affect hearing processes (i.e., not pesticide penalty hearings) under their jurisdiction.

Requirement

For every Agricultural or Structural Civil Penalty NOPA issued by a CAC, attach a copy of the *Preparing for Your Pesticide Administrative Civil Penalty Hearing* brochure (DPR-ENF-086) to the NOPA. The most recent version is reproduced below or on the Resources for County Agricultural Commissioners webpage at <https://www.cdpr.ca.gov/enforcement/resources-for-county-agricultural-commissioners/>. Click on or scroll down to "Additional Forms" and look for the brochure title.

Continued on next page

Preparing for Your Pesticide Administrative Civil Penalty Hearing

How an Administrative Hearing Works

An administrative hearing provides you with an opportunity to be heard regarding the violations of the pesticide laws that were described in the Notice of Proposed Action. In advance of the hearing, you may call the County Agricultural Commissioner's Office (Commissioner) to make an appointment to see the County's evidence regarding the alleged violations. At the hearing, you will have an opportunity to present to a Hearing Officer any evidence and testimony that refutes the alleged violation(s). The Hearing Officer will evaluate the testimony and evidence presented at the hearing for its credibility and relevance. The Hearing Officer will prepare a Proposed Decision for the Commissioner based upon evidence and testimony presented at the hearing. Additional evidence and testimony cannot be introduced after the hearing has concluded.

Formal hearing provisions of Administrative Procedure Act, Chapter 5, (Government Code sections 11500 – 11529) do not apply to this hearing process.

Who's Who

The Department of Pesticide Regulation regulates all aspects of pesticide use, sales, and manufacturing in California. The Commissioner is responsible for enforcing all state laws and regulations pertaining to pesticide use within the County. The Respondent is the person and/or business charged with the violation(s). When the Commissioner determines that a fine or penalty action is appropriate for a pesticide use violation, the Commissioner sends the Respondent a Notice of Proposed Action and assigns a County Advocate to present the case on behalf of the Commissioner. The Hearing Officer is a person chosen by the Commissioner to hear the case fairly, impartially, and without bias, and to write a Proposed Decision in the case.

What to Bring To the Hearing

- Bring any evidence you have to support your case. Evidence is testimony of a witness, writings, material objects, or other things that are offered to prove the existence or nonexistence of a fact. Examples of evidence include documents such as pesticide labels, invoices, correspondence, sales records, pesticide use reports, restricted materials permits, laboratory analyses, photographs or diagrams.
- Bring three copies of any document you intend to offer as an exhibit – you'll need one copy each for yourself, the County Advocate and the Hearing Officer.

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Preparing for Your Pesticide Administrative Civil Penalty Hearing

What do I (the Respondent) have the right to do?

- Review and hear the evidence that is the basis for any fine or penalty action.
- Question witnesses on relevant matters.
- Present evidence on your own behalf.
- Receive a full and fair consideration of relevant evidence by an impartial hearing officer.
- Appeal if you participate in the hearing.
- Represent yourself or be represented by an attorney, an employee, another person in a business relationship with you who has a connection to the incident, or a family member.

Purpose of a Pre-hearing Conference

Immediately before the hearing, the County Advocate may request a pre-hearing conference. The purpose of the pre-hearing conference is to obtain stipulations (or agreements) about facts relevant to the case from the parties (the Respondent and the County). These stipulations expedite the hearing process by eliminating the need for anyone to present evidence to prove facts that are not in dispute.

The pre-hearing conference is not a settlement conference. The Commissioner (or County Advocate) is not authorized to negotiate settlements in actions authorized by Food and Agricultural Code (FAC) sections 12999.5, 15204, 15204.5; or Business and Professions Code (BPC) section 8617. For example, the fine classification and amount are not negotiable in the pre-hearing conference.

Pre-Hearing Conference Procedure

Only the parties to the action (the Respondent and the County) may attend the pre-hearing conference. You may bring your representative to the pre-hearing conference and the County Advocate may bring an assistant. This conference is not open to the Hearing Officer, the public, court reporters, or any witnesses who will testify at the hearing. The pre-hearing conference is not recorded and non-essential people are excluded to allow you and the County Advocate an environment which provides an opportunity for candid discussion.

The pre-hearing conference generally will proceed as follows:

- Introductions.
- You, and if applicable, your representative, and the County Advocate, discuss the violations in the Notice of Proposed Action and try to reach agreements, if possible, on the truth of any relevant facts and the authenticity of any item of evidence. These agreements or "stipulations" will become part of the hearing record.
- You can also agree or "stipulate" that the violation(s) occurred. These stipulations can be agreed upon or stipulated to and will be included as part of the hearing record.
- The County Advocate, or their assistant, will record the stipulations in writing and obtain three copies to take into the hearing (one each for Respondent, Hearing Officer, and the County Advocate).

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Preparing for Your Pesticide Administrative Civil Penalty Hearing

The Hearing Begins

The Hearing Officer will open the hearing and turn on the recording device.

- The Hearing Officer will state the date and time.
- All persons present, or those requested by the Hearing Officer, will identify themselves and spell their names for the record.
- If applicable, the Hearing Officer enters any pre-hearing conference stipulations into the official hearing record by stating "Prior to the hearing, a pre-hearing conference was held and the parties stipulated to the following . . . do all parties agree?"

Opening Statement

An opening statement is a summary of what you intend to show or prove. An opening statement is optional. The County Advocate will make their opening statement first, followed by the Respondent.

Evidence and the Hearing Record

During the hearing, testimony and evidence is presented about violations alleged in the Notice of Proposed Action and not stipulated to in the pre-hearing conference. Before presenting their evidence, the Respondent and County must clearly state why the evidence is relevant to the case. The Hearing Officer's recording of the hearing and any documents submitted to the Hearing Officer constitute the official record of the hearing.

Presentation of Testimony and Evidence

Since the County has the burden of proving its case, the County Advocate presents its evidence and calls any witnesses first. The Respondent will be allowed to question the County Advocate's witnesses. After the County Advocate's presentation of evidence and witnesses, you (the Respondent) may present your evidence and witnesses. The County Advocate may question your witnesses. Throughout this process, the Hearing Officer may question any witnesses to clarify points.

Hearing Behavior

If anyone participating or observing a hearing disobeys a lawful order from the Hearing Officer not to disrupt or interfere with the hearing, or otherwise engages in disorderly, contemptuous or insolent behavior toward the Hearing Officer, the Hearing Officer may cite them for contempt. (Government Code sections 11455.10 – 11455.30)

Closing Statements

After all the evidence is presented, both sides may present their closing statements. A closing statement summarizes the evidence presented, and explains how it supports their position. Closing statements should be brief and direct. Tell the Hearing Officer exactly what you assert the evidence shows and the result you are requesting. The County Advocate's statement is heard first, followed by the Respondent's statement. A closing statement is optional.

- continued -

Preparing for Your Pesticide Administrative Civil Penalty Hearing

Notice of Decision
If the Hearing Officer is the Commissioner, they will send you a copy of their Decision. If the Hearing Officer is a person designated by the Commissioner, the Hearing Officer submits a Proposed Decision in writing to the Commissioner and the Commissioner will review and either adopt or not adopt the Proposed Decision. You will receive a copy of the Commissioner's Notice of Decision and Order approximately 45 days after the hearing.

Appeals
If you request a hearing and do not appear, you forfeit your right to an appeal. If you request and appear at the hearing, the Commissioner's Notice of Decision and Order will inform you of appeal procedures.

Hearing Dates and Changes
Call the Commissioner's Office if you have any questions about your hearing date or time. Any changes to your hearing date must be requested in writing and received by the Commissioner's Office five days before your hearing date, except in cases of emergency. Contact information will be included in the Notice of Hearing confirmation.

Accessibility of the Hearing Location
Hearing locations must be accessible to persons with disabilities. If you, your witnesses, or your attorney have special needs that require reasonable accommodation, advise the Commissioner's Office in advance to assure accessibility.

Other Hearing Details
Administrative civil penalty hearings for pesticide use violations are authorized by Food and Agricultural Code sections 12999.5, 15204, and 15204.5, and Business and Professions Code section 8617. The Notice of Proposed Action will identify the authorizing statute for the hearing.

- The hearing will not be transcribed by a court reporter. If you wish, you may make your own arrangements to have a court reporter present at your expense.
- You must notify the Commissioner five days before the hearing if you have arranged for a court reporter.
- The Hearing Officer will administer an oath to all witnesses.
- The Hearing Officer will keep any items submitted as evidence until the case is final and any appeal has been resolved.
- The hearing process is informal and may vary at the Hearing Officer's discretion.

Section 7.12
Example NOPA Transmittal Letter

Background

Depending on a number of factors, some Respondents may have difficulty figuring out what their options are after receiving a NOPA. Some CACs have received feedback that the process for stipulating and paying the fine is not clear and the Respondent thought they needed to attend a hearing to pay the fine.

The purpose of the following optional cover letter is to inform the Respondent on what their next steps are after receiving the NOPA.

Continued on next page

Example NOPA Transmittal Letter, Continued

[*County Letterhead*]

TO: **[***Respondent Name*]
[*License/Certificate Number*]
[*Attn:*]
[*Address*]
[*City, State, Zip Code*]

FILE NO.:

Dear [*Respondent*]:

Enclosed are the required documents for a proposed [*Agricultural* or *Structural*] Civil Penalty action against you alleging one or more violations of California's pesticide laws and regulations. Please carefully review all the enclosed documents.

As stated in the enclosed Notice of Proposed Action, **within 20 days** of receipt you may either:

1. STIPULATE TO (ACCEPT) THE PROPOSED ACTION: If you do not wish to contest the charges and proposed penalty, please sign, date, and return the enclosed Stipulation and Waiver to Order, and pay the fine amount as instructed.

2. CONTEST THE PROPOSED ACTION: If you wish to contest the charges and proposed penalty at a hearing, please sign, date, and return the enclosed Hearing Request form. For more information on this option, please review the enclosed *Preparing for Your Pesticide Administrative Civil Penalty Hearing* brochure.

NOTICE: You are entitled to review the evidence supporting these charges in our office during regular business hours. We will provide you one copy of the case file.

If you fail to request a hearing in a timely manner, your right to a hearing is waived and a Decision and Order to Pay will be issued to you. If you request a hearing and fail to appear, the hearing may still proceed. All evidence submitted at the hearing will be considered by the Hearing Officer, and a Decision and Order will be issued to you.

Please contact our office at [*phone number*] if you have any questions.

Sincerely,

Commissioner Signature
Commissioner's Name and Official Title

Section 7.13
Stipulation and Waiver to Order

Definitions

The following table includes terms and definitions pertinent to this topic:

Term	Definition and Discussion
Stipulation	A stipulation is a voluntary agreement between opposing parties concerning some relevant point. Stipulations with respect to matters of fact, law, or penalty amount make the hearing more expedient for both the County and the Respondent. Matters that are stipulated are no longer in dispute or contested and need not be addressed at the hearing.
Waiver	A waiver is the voluntary relinquishment of a known legal right or advantage. The party "waiving" a right must have both knowledge of the existing right (in this instance, the right to a fair and impartial hearing) and the intention to give up that right.
Order	An order is a command, direction, or instruction of a judge, court, adjudicating officer, or agency. In the context of County pesticide administrative civil penalties, the "Order" is written and is delivered by the County Agricultural Commissioner to the Respondent. FAC section 12999.5 and B&PC section 8617 authorize the Commissioner to levy a fine and "Order" the fine be paid.

What does the "Stipulation and Waiver to Order" include?

When an "offer" to enter into a "Stipulation and Waiver to Order" is attached to a NOPA and mailed to the Respondent, it must consist of three items:

- An **Order** of a CAC stating the amount of the fine.
- A **Stipulation** to be signed by the Respondent agreeing to the NOPA states grounds for a civil penalty action and agreeing to the Order setting the fine.
- A **Waiver to Order** to be signed by the Respondent waiving their right to a hearing before the fine is imposed and all appeals afterwards.

Continued on next page

Stipulation and Waiver to Order, Continued

"What latitude do CACs have with the wording?"

There is not much latitude for making changes to the wording in the Stipulation and Waiver to Order. The purpose is to ensure the Respondent knows they have a right to a hearing and intends to waive the right to a hearing, to any appeals from the order that will ensue, and that the order is based on a valid legal claim supported by the uncontested facts.

DPR strongly discourages any changes to the wording of its examples of "Stipulation and Waiver to Order" unless the proposed changes have been reviewed and approved by your County Counsel.

DPR recommends the following template which combines the "Order" and the "Stipulation and Waiver to Order." This ensures the Respondent is simply and fully advised of their rights.

"Respondent sent check for the fine. Is a signed Waiver to Order required to close a case?"

No. However, if the Respondent sends a check before expiration of the 20-day period to request a hearing, without signing and returning the Stipulation and Waiver to Order, the check should be held until the expiration of the 20-day period. At that time, the check may be cashed and the case closed. A sample letter is included, but it is not required that it be sent to the Respondent to close out the case.

"What if?"

The "Stipulation and Waiver to Order" does not require an admission of guilt. It is the civil equivalent of a "no contest" plea and merely admits that the facts before the CAC (in the NOPA) constitute a violation. They are not admitting to the facts—only that if the facts are true, it is a violation. If they sign it, they cannot say, "even if I did that, it is not a violation."

The NOPA states that if the Respondent does not request a hearing within 20 days, the CAC can take the action proposed without a hearing, and the Respondent has waived their right to a hearing and to appeal the CAC's decision. This is, in practical terms, exactly the same as signing the form waiving the hearing.

So, if the Respondent does not request a hearing, waits until the 20 days has elapsed, and then sends in a check, no matter what is said in a letter or written on the stipulation, the case is settled (closed). If they send it in under protest or without signing the form prior to that time, it is still settled (closed).

Section 7.13.1
Agricultural Civil Penalty Stipulation and Waiver to Order Templates

ACP stipulation template – On County letterhead, remove [*italicized text*]

ORDER

TO: **FILE NO.:**

ORDER: It is hereby ordered [*Respondent name*] is fined ___. The fine is due now and payable.

Commissioner Signature
Commissioner's Official Title

Instructions to Respondent:
If you wish to pay the fine and not request (waive) a hearing, you may sign the Stipulation and Waiver to Order below. By doing so, you also waive your right to a hearing, appeal, or any other review in this matter. If you wish to sign the Stipulation and Waiver to Order, you must submit it, along with the fine payment, to the Agricultural Commissioner within **20** days of receipt of this notice.

STIPULATION AND WAIVER TO ORDER

I hereby stipulate that the Agricultural Commissioner's Notice of Proposed Action in the above-entitled matter states grounds for civil penalty action based on the evidence now before the Commissioner.

Without admitting to the violations alleged in the Notice of Proposed Action, I stipulate to the Commissioner's Order, as set forth above, and I waive all rights to a hearing and appeal or any other review in this matter.

_____ _____
Respondent's Signature Date

Make the check payable to:

Mail the check and this signed and completed **Stipulation and Waiver to Order** to: [*CAC Address*]

Continued on next page

Agricultural Civil Penalty Stipulation and Waiver to Order Templates, Continued

Sample letter to close a case after 20 days when fine is paid without signing the "Stipulation and Waiver to Order"

[*County Letterhead*]

FINAL DISPOSITION

DATE:

TO: **FILE NO.:**

In reference to the above noted file, you have failed to request a hearing within 20 days of the receipt of the Notice of Proposed Action in this case and, therefore, have waived your right to a hearing to contest the charges stated in the Notice of Proposed Action and all rights to appeal this ruling.

You are hereby notified that the _____ County Agricultural Commissioner finds you have violated [*Food and Agricultural Code, Business and Professions Code, and/or Title 3/16 of the California Code of Regulations*] section(s) _____.

As set forth in the Stipulation and Waiver to Order which accompanied the Notice of Proposed Action, I determined the fine for the above-mentioned violation(s) is $ _____and ordered the fine due and payable.

I have received and accept your check in the amount of $ _____in discharge of this obligation. This case is now closed.

Commissioner's Signature
Commissioner's Official Title

Section 7.13.2
Structural Civil Penalty Stipulation and Waiver to Order Template

Stipulation template – On County letterhead, remove [*italicized text*]

ORDER

TO: **FILE NO.:**

ORDER: It is hereby ordered **[*Respondent name*]** is fined $___. The fine is due now and payable.

Commissioner Signature
Commissioner's Official Title *Date*

Instructions to Respondent:
If you wish to pay the fine and not request (waive) a hearing, you may sign the Stipulation and Waiver to Order below. By doing so, you also waive your right to a hearing, appeal, or any other review in this matter. If you wish to sign the Stipulation and Waiver to Order, you must submit it to the Agricultural Commissioner within 20 days of receipt of this notice.

STIPULATION AND WAIVER TO ORDER

I hereby stipulate that the Agricultural Commissioner's Notice of Proposed Action in the above-entitled matter states grounds for civil penalty action based on the evidence now before the Commissioner.

Without admitting to the violations alleged in the Notice of Proposed Action, I stipulate to the Commissioner's Order, as set forth above, and I waive all rights to a hearing and appeal or any other review in this matter.

_____ _____
Respondent's Signature Date

Mail the signed **Stipulation and Waiver to Order** to: [*CAC Address*]

TO PAY THE FINE:
Make the check payable to: Structural Pest Control Board Education and Enforcement Fund **Please note on the check: FILE NO. [*NOPA number*]**

Mail the check to: Structural Pest Control Board, 2005 Evergreen Street Suite 1500, Sacramento CA 95815-3831.

Section 7.14
Hearing Request Template

Template for agricultural or structural civil penalty actions – remove [*italicized text*]

[*Optional - County Letterhead*]

ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF PROPOSED ACTION AND REQUEST FOR HEARING

Important: The Hearing Request must be submitted to the Agricultural Commissioner within **20** days of receipt of the Notice of Proposed Action.

FROM: [*Respondent Name*]
[*License/Certificate Number*]
[*Attn:*]
[*Address*]
[*City, State, Zip Code*]

FILE NO.:

I, the undersigned Respondent in this proceeding, hereby acknowledge receipt of a copy of the Notice of Proposed Action.

I hereby request a hearing to permit me to have an opportunity to present my defense to the violations contained in the Notice of Proposed Action.

_____ _____
Respondent's Signature Date

_____ _____
Respondent's Name (Printed) Telephone Number

Mail this signed and completed form to:
Commissioner's Official Title
Department Name
Address
City, State, Zip Code

Section 7.15
DPR Review of Certain NOPAs Prior to Issuance

Background

3 CCR section 6130 (e) states, "The commissioner shall send a copy of the Notice of Proposed Action to the Director no later than the time the notice is provided to the respondent."

Review requirement

In order to promote consistency and clarity in overall enforcement responses and provide CACs with assistance in difficult or complex enforcement action decisions, since 2013 DPR has required CACs to send to DPR for review certain NOPAs to their Enforcement Branch Regional Office (RO) before sending them to the respondent. As noted below, DPR reviews draft NOPAs for incidents meeting the human health Reportable Incident criteria and any other violations with substantial adverse human health effects. If the CAC has questions regarding whether a draft NOPA meets these criteria, they should consult with their RO.

Note: For a qualifying incident, each NOPA resulting from the investigation must be forwarded to the RO for review before being sent to the Respondent(s). For example, if the CAC is pursuing enforcement actions against multiple parties, (e.g., separate actions for an applicator and two farm labor contractors), all three NOPAs must be forwarded for review prior to issuing the NOPAs to the Respondent(s).

Routing the draft NOPA for DPR review

CACs are required to submit draft NOPAs that meet the following criteria:

a) Human health incidents that meet Reportable Incident criteria as outlined in the Three Party MOU. These include:
   Death, serious injury or illness (any injury or illness requiring hospital admission)
   Any single injury or illness episode involving five (5) or more persons
b) Other violations involving substantial adverse effects to human health (especially incidents involving multiple complainants, media controversy, or repeat or egregious violations). When in doubt about whether a draft NOPA meets the criteria for DPR review, consult with the RO.

When sending a draft NOPA to the RO for review, include a copy of the investigation report, inspection form, or other documentation of the violations identified in the NOPA. Links to *closed* inspections or investigations in CalPEATS are acceptable.

Continued on next page

DPR Review of Certain NOPAs Prior to Issuance, Continued

Enclosures

The notices and enclosures that constitute the complete packet that will be sent to the Respondent must be included with the draft NOPA sent to DPR for review:

- Notices:
  - Right to review evidence
  - Right to request a hearing
  - Failure to request a hearing
- Enclosures:
  - Hearing request form
  - Stipulation and waiver form
  - Copies of relevant laws and regulations
  - *Preparing for Your Administrative Civil Penalty Hearing* brochure

NOPA Review

DPR review will include elements of the violation, and adherence to the Enforcement Response Regulations and guidance, such as this Volume and other Enforcement Letters. DPR will review the draft NOPA and respond within 30 calendar days of receipt.

Typically, DPR will review NOPAs for:

1. Correct format and necessary enclosures
2. Correct violation
3. Correct fine classification
4. Fine amount in light of severity of violation, compliance history, consistency with overall enforcement, etc.

Typically, DPR does not review NOPAs for style.

Choosing the correct violation

The violation alleged in the NOPA must:

- Be a section citable by the CAC.
- Clearly state the specific law or regulation violated.
- Each violation must be established by the "preponderance of the evidence." This means that it is more likely than not that a fact is true, which is the standard used in an administrative civil penalty hearing.
- If charging multiple counts for incidents involving multiple people authorized by FAC section 12996.5(b), additional text must be included in NOPA.

Continued on next page

DPR Review of Certain NOPAs Prior to Issuance, Continued

Choosing the correct fine level

The fine level in the NOPA must:

- Be within the amounts listed in 3 CCR section 6130 or 16 CCR section 1922 for each class.
- For agricultural civil penalties, be supported in the NOPA by relevant facts, including severity of actual or potential effects and the respondent's compliance history, in accordance with 3 CCR section 6130(d).

Section 7.16
Preparing a Case File for the Respondent

Introduction

A complete case file must be ready for the Respondent when the NOPA is mailed. Doing the elements of the violation exercise is a critical step to ensure that there is evidence to support for each element of the violation in the case file.

Best practices

What follows is a set of **best practices** for preparing administrative civil penalty case files. Preparing a case file is not a "one size fits all" situation, rather each case file will be unique to the case. Following these practices can make it easier for the County Advocate to present the County's case.

Organization

When possible, use file folders with prongs or fasteners to allow a 2-hole punch at the top of each exhibit and securely organize the exhibits. A 3-ring binder can be used (and is usually necessary for large cases) but it can be awkward to flip back and forth during the hearing. Suggested organization for a folder is:

Left Side: Laws & Regulations	Right Side: County Exhibits

• Text of the law(s) or regulation(s) cited in the NOPA
• Applicable FAC, B&PC, 3 CCR or 16 CCR definitions
• Applicable dictionary definitions
• Commissioner fine guidelines (3 CCR section 6130 or 16 CCR 1922)
• Law authorizing the fine action (e.g., FAC section 12999.5 or B&PC section 8617)
• Statute of limitations (e.g., FAC section 13000)
	A cover sheet listing the exhibits
	• Investigation or inspection report
	• Other relevant exhibits, such as:
	  ○ Photographs
	  ○ Weather information
	  ○ Sample analysis reports
	  ○ Maps or diagrams
	  ○ Pesticide labeling (relevant pages only for long labels)
	  ○ Relevant restricted material permit or operator ID pages
	  ○ County registration with State license
	  ○ Pesticide use reports, work orders, notices of intent, or recommendations
	  ○ Relevant Enforcement Letters or Compendium Volume guidance
	• NOPA, certified mail receipt, Notice of Hearing

Continued on next page

Preparing a Case File for the Respondent, Continued

Organization, (continued)

Tab the case file for easy reference. Counties can choose to either letter or number the tabs. Generally, it is a good practice for each document to be a separate exhibit with a separate tab. For example, in a hearing for a label violation, on the left side for laws and regulations the first tab could be labeled "FAC 12973", the second tab labeled "3 CCR 6000" (for the definition of "conflict with labeling") and so forth. On the right side with the exhibits, the tabs could be labeled "A – investigation" for the investigation report, "B- photographs" , "C – weather" , etc. Exhibit tab numbering/ lettering in a case file is not required to (and often does not) match up to how exhibits are listed in an investigation or in the Hearing Officer's Proposed Decision.

Ideally, the case file should be organized in such a way to facilitate the County Advocate (through witnesses) to present the County's case and ensure that evidence exists for each element of each violation and the fine classification, including the fine amount and the reasoning for setting the fine amount.

Section 7.17
Respondent Receipt of a NOPA

Best practices

As a best practice, service by certified mail to the Respondent's last known address, as provided by FAC section 12999.5(c) and B&PC section 8617(d), is sufficient. The CAC may take steps beyond that, such as also emailing or faxing the NOPA to the Respondent, if the CAC believes it may help ensure the Respondent receives the NOPA. Document the delivery of the NOPA.

Unclaimed certified mail

If the certified mail is not claimed, the CAC should check that the address is current and, if it is, resend the notice by regular mail, fax, or email. It is important to take reasonable steps to ensure the Respondent receives the NOPA, and to document all of the steps taken.

Hearing request

The Respondent must request a hearing within 20 days of receipt of the NOPA. If the CAC mails the NOPA by way of certified mail and the Respondent does not request a hearing in a timely manner, the CAC may take the proposed action without a hearing.

Refusal of Notice

If the NOPA was mailed by certified mail and is returned to the CAC as undeliverable, the CAC should take other reasonable steps to ensure delivery, including hand delivery (unless the only address available is a P.O. Box), cross referencing other CAC programs for contact information. As a last resort, the CAC can send the NOPA through the regular mail and use a "plain" envelope on which the mailing and return addresses are handwritten instead of typed. If the NOPA is not returned to the CAC, the County can presume it was "accepted" (received) and that the Respondent has notice of the charges.

Hand delivery

Depending on where the Respondent is located, the CAC can consider hand-delivering the NOPA and attachments to the Respondent. If hand-delivered, CACs should consider using an affidavit signed by the person delivering the package to be kept with the CAC's case file (example affidavit on the next page.)

Continued on next page

Respondent Receipt of a NOPA, Continued

Example hand delivery affidavit

[*County Letterhead*]

IN THE MATTER OF THE ACCUSATION AGAINST:

Respondent: **File No.:**
[*Respondent Name*]
[*License/Certificate Number*]
[Attn:]
[*Address*]
[*City, State, Zip Code*]

DECLARATION OF PERSONAL SERVICE

The undersigned declares:

I am a citizen of the United States, over the age of 18 years.

I served the following document: Notice of Proposed Action, Grounds Therefore, and Opportunity to be Heard in the above-entitled proceeding by personally delivering a true copy thereof to [*person's name*], [*role or license type, e.g., FR / QAL / private applicator / owner*] with [company name] at [*place, e.g.: a job site / office*] in [*City*] California.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at [*City*], California, on [Date]

_____
Signature

_____
Printed Name

Section 7.18
Case Contact Record

Introduction

The Case Contact Record is an optional record-keeping tool to maintain a record of contacts that occur before and after the Hearing. The record begins at the time the NOPA is mailed to the Respondent and before any prehearing discussions are held.

This optional tool may be developed by counties to suit their own needs and is not intended to replace or supersede tracking the case in CalPEATS, or any other similar required form.

Sections of the Case Contact Record

Each part will be outlined below

1. Case information
2. Respondent(s) information
3. Section(s) violated
4. Mail and email contacts
5. Contact log
6. Hearing information
7. Decision

1. Case information

Case information includes:

- Name of the case
- Case number
- Penalty information (e.g. code section(s) and fine amount(s))
- Date Record is opened

2. Respondent information

Respondent* information includes:

- Name
- Address
- Telephone number, including home, work, and cellular telephone numbers (if available)
- Email address (if available)

*If more than one respondent, use separate forms

Continued on next page

Case Contact Record, Continued

3. Section(s) violated	Include the: • Section of the law (e.g. FAC, B&PC, or LC) or regulation (e.g. 3/16 CCR) violated, and • date(s), time(s), and location(s) of the alleged violation(s). You may also wish to add any information that is pertinent to the case and your organization.
4. Mail and email contacts	This includes: • To whom you mailed/emailed information • What was mailed/emailed • When the letter or email was sent • Certified mail receipt number. Certified mail provides proof of mailing and delivery of mail. The sender receives a mailing receipt at the time of mailing; the United States Postal Service maintains a record of delivery. For an additional fee, a return receipt can also be purchased to provide the sender with proof of delivery. • Return receipt. You can use a return receipt, the traditional "green post card," and it will be mailed back to you once your letter is delivered.
5. Contact log	For in-person, telephone, email, or other contacts about the case, include the: • Name(s) and occupation of the persons you contacted, • Date and time, • Location (if in person), • Telephone number or email address, and • Details of the topic discussed.
6. Hearing Information-Important dates to include	Include space for the following dates: • Date Respondent requested a hearing • Date Notification of Hearing sent to Respondent • Hearing date/Hearing reschedule date • Date of Hearing Officer's Proposed Decision • Date the Commissioner's Decision and Order is mailed to the Respondent
7. The Decision	Decision and Order information

Section 7.19
Respondent Review of Case File

Case file review

A complete case file must be ready for the Respondent when the NOPA is mailed. The Respondent may review the case file BEFORE the hearing date. Any medical or personal information must be redacted from documents before the Respondent can review the information.

DPR recommends as a best practice that you provide a free copy of the case file and attachments.

Section 7.20
Notice of Hearing Template

Template

[*County Letterhead*]

NOTICE OF HEARING

DATE:

FILE NO.: (County abbreviation, fiscal year, case number)

T**O:** (Respondent's Name)
(Address)

Pursuant to your request for a hearing in the above-noted matter, an administrative civil penalty hearing has been scheduled for [*time*], [*date*] at the office of the [*Name*] County Agricultural Commissioner at [*address*].

Failure to appear at the hearing is a waiver of the right to a hearing and the Commissioner may take the action which has been proposed in this matter without a hearing.

Please refer to the "*Preparing for Your Pesticide Civil Penalty Hearing*" brochure enclosed in the NOPA packet for information about the hearing process.

If you have any questions, please contact our office at (__)_____.

[*Commissioner's Signature*]
[*Commissioner's Official Title*]
[*Address*]
[*Telephone Number*]

Section 7.21
Example Demand for Payment Letter

Introduction

This is an example of a letter the County can use when the Respondent has not paid the fine more than 60 days after receiving the Order, and an appeal to the Director has not been filed. DPR recommends 60 days to allow the CAC to demonstrate the Respondent had ample opportunity to pay the fine.

Template

[*County Letterhead*]

DEMAND FOR PAYMENT OF FINE DUE

DATE:

FILE NO.: *(County abbreviation, fiscal year, case number)*

TO: *(Respondent's Name & Address)*

NOTICE OF $____ FINE
NOW DUE AND PAYABLE

Mr./Ms. Respondent

On [*month, day, year*] you were ordered to pay a $___ fine for violations of pesticide laws and/or regulations.

You are hereby notified that pursuant to the Decision and Order of the Agricultural Commissioner of _____, File Number _____, the total fine assessed ($____) is due and payable upon receipt of this notice.

If payment is not received, other action will be taken against you. If you are a Pesticide Dealer, Pest Control Business, or a Pest Control Adviser, the matter may be referred to the District Attorney to bring criminal charges against you for refusing or neglecting to pay the ordered fine; such refusal or neglect is unlawful under Food and Agricultural Code section 11791. The matter may also be referred to the California Department of Pesticide Regulation for action against your license, which could include revocation. The Commissioner also may take disciplinary action against your registration or refuse your registration for next year.

Commissioner's Signature Date:_____
Commissioner's Official Title