Chapter 3
Glossary

Introduction

The terms in this Glossary are applicable broadly to California's Pesticide Regulatory Program, and often specifically to enforcement response actions by CACs and DPR.

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Glossary, Continued

Locations of legal definitions

Sometimes certain words or terms will be repeated frequently in laws or regulations. These terms have a specific meaning in the regulatory context. For interpreting California laws or regulations, definitions are frequently found in:

- FAC Division 6 (Pest Control Operations) sections 11401-11411
- FAC Division 7 (Agricultural Chemicals, etc.) various sections (e.g. 12752-12759, 12978.7(a), 12996.5, 13190)
- 3 CCR section 6000
- B&PC sections 8501-8512
- 16 CCR Division 19 (Structural Pest Control Board) various sections (e.g., 1902, 1918, 1970.1, 1970.3, 1970.5)

Some of the definitions are reproduced here and the source is noted. Some are reproduced verbatim, some may be modified or supplemented with additional information or guidance. If a word or term is defined in statute or regulation, always defer to that source when taking an enforcement action.

Note: Use caution when reviewing similar terms found on federal pesticide labeling as federal and California regulatory definitions may differ.

Latin Phrases

Latin phrases are included because they sometimes appear in training materials and literature regarding administrative hearings.

As a general rule, Latin phrases should not be used in documents without clarification because their meanings may not be commonly understood.

A

Abuse of Discretion: A standard applied by appellate courts when reviewing the exercise of discretion by trial courts and administrative agencies. An error of judgment by a lower court in making a ruling that is clearly unreasonable, erroneous, or arbitrary and not justified by the facts or the law applicable to the case.

Action: An enforcement activity. The adjective used in front of the word defines the type, e.g., a civil action, a criminal action, etc.

Adjourn: To end a meeting with the intent of resuming it at a different time or place.

Adjudicate: To consider and pass judgment on a disputed matter based upon evidence.

Adjudication: A formal judgment on a disputed matter.

Administrative Law Judge (ALJ): ALJs conduct/preside over judicial, quasi-judicial, and adjudicative hearings for various state and other public agencies in connection with the resolution of disputes as authorized or required by statue, due process, etc. ALJs are not required for Agricultural or Structural administrative civil penalty hearings.

Administrative Procedure Act (APA): A series of California laws found in Title 2, Division 3, Part 1, Chapters 3.5, 4, 4.5 and 5 of the Government Code of California (Government Code section 11340, et seq.). These laws govern the procedures and standards for State agencies to adopt regulations and the conduct of administrative hearings.

Admissible evidence: Relevant information that can be received into court or at a hearing to aid in deciding a case.

Advocate: A person who assists, defends, or pleads a cause or case for another person or entity. See also County Advocate.

Affirmation: When an appellate court rules that a lower court's decision was correct.

Agricultural Civil Penalty (ACP): A penalty levied for certain violations of the Food and Agricultural Code or Title 3 of the California Code of Regulations. This penalty activity is authorized by Food and Agricultural Code sections 12999.5, 15204, and 15204.5.

Agricultural Pest Control Advisory Committee (APCAC): This Committee advises the director in matters concerning the licensing, certification, and regulation of persons and firms licensed or certified pursuant to Division 6 of the Food and Agriculture Code, and shall meet on the call of the director.

Agricultural Use: In addition to pesticides used to produce an agricultural commodity on farms, forests, nurseries, and greenhouses, California's broad legal definition of "agricultural use" in FAC section 11408 includes pesticides used on cemeteries, golf courses, parks, and rights-of-way. For a full discussion of the distinction between agricultural use and non-agricultural use, see Compendium Volume 7, *Interpreting Pesticide Labeling, Laws, and Regulations*, Section 1.1, *Agricultural and Non-Agricultural Pest Control Use*.

Allegation: Assertion of fact not yet proven.

Appeal: A challenge to a previous legal determination, which is directed towards a legal power higher than the power making the challenged determination (e.g., administrative body or trial court).

Appellant: The party who appeals to the Director/DRC or a reviewing court.

Arbitrary: Not according to a fixed standard but resulting from one's opinion or will.

Attest: To declare and affirm as true.

B

Best Evidence Rule: A rule of law which requires that when a written document is introduced into evidence, the original document shall be provided. If the original document is not available, its absence must be reasonably explained. An original case file is "best evidence;" a photocopy of the case file is "secondary evidence."

Bias: A preconceived opinion.

Burden of proof: The standard that a party seeking to prove a fact in a hearing or court must satisfy to have that fact legally established. The duty to demonstrate the required degree of truth of one's claim. In an administrative civil penalty hearing the burden of proof is on the agency. For administrative civil penalty hearings initiated pursuant to FAC sections 12999.5, 15204, or 15204.5, or B&PC section 8617, the burden of proof is "by a preponderance of the evidence."

C

C&T: Certification and Training, a federal standard adopted by U.S. EPA in 40 CFR Part 171, Certification of Pesticide Applicators, to establish Federal standards for the certification and recertification of applicators, certified applicator supervision of noncertified applicators using restricted use pesticides (including training), and requirements for pesticide applicator certification plans administered by State, Tribal, and Federal agencies.

California Agricultural Commissioners and Sealers Association (CACASA): a voluntary organization comprised of County Agricultural Commissioners and County Sealers of Weights and Measures from California's 58 counties.

CalAgPermits: A statewide web-based restricted material permitting and pesticide use reporting information management system. CalAgPermits is used by CAC staff to create and modify Restricted Materials Permits and Operator Identification Numbers; to collect and manage contact information for advisors, businesses, dealers, and others in the county; to accept and process Notices of Intent (NOIs) to apply restricted materials; to accept and validate pesticide use reports (PURs), and perform data analysis and queries on permit and pesticide use data.

California Code of Regulations (CCR): A series of regulations (or rules) that have been formally adopted by state agencies, reviewed, and approved by the Office of Administrative Law, and filed with the Secretary of State.

California Environmental Quality Act (CEQA): California's principal statute mandating environmental impact review of discretionary government decisions to approve projects that have the potential to impact the physical environment. CEQA applies to all state and local agencies who approve permits, licenses, grants, loans or other discretionary activities.

CalPEATS: Acronym for "California Pesticide Enforcement Activity Tracking System". It is a standardized and coordinated system that integrates all CAC and DPR pesticide enforcement records and activities throughout California and makes the information readily available for assessment. CalPEATS is the first mobile software application in use by all 58 counties. Providing CAC and DPR staff access to the same system is expected to increase productivity, enhance the speed and accuracy of communications, and eliminate significant volumes of redundant data entry at the State and local level. CalPEATS interfaces with CalAgPermits, allowing information to be transferred from CalAgPermits to CalPEATS in the field via the mobile application.

Case: Commonly used to describe a suit or action of law.

Causation: The relationship of cause and effect between one event or action and the result, a force that prompts something to happen.

Cease and desist: To stop or discontinue ongoing or periodic activity. A Cease and Desist Order is a mitigation measure to protect the public from known or unknown hazards. It is a type of compliance action. Some agencies refer "cease and desist orders" as "stop work orders".

Certified regulatory program (CRP): Public agencies with regulatory programs may prepare a plan or other written documentation in lieu of an environmental impact report (EIR) or negative declaration once the Secretary for the California Natural Resources Agency certifies the regulatory program. (Public Resources Code section 21080.5(a), 14 CCR sections 15250 and 15251)

Chain of custody: The chronological documentation that records the sequence of custody, control, transfer, analysis, and disposition of materials, including physical or electronic evidence between the commission of the alleged offense and the ultimate disposition of the case. Each transfer of this evidence should be receipted (signature, time, and date of transfer). The chain of custody is sometimes referred to as the "chain of evidence".

Circumstantial evidence: Indirect evidence that does not, on its face, prove a fact in issue but gives rise to a logical inference that the fact exists. Circumstantial evidence requires drawing additional reasonable inferences in order to support the claim.

Claim: A demand; an assertion of a right.

Code: A compilation of laws or regulations.

Code of Federal Regulations (CFR): The general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.

Common Law: Uncodified body of laws that come from court decisions and not from statutes ("codes") or constitutions. (see Statute)

Competent: Qualified or capable of doing a certain act; in a hearing context, legally able to understand and testify capably.

Complaint: The first pleading, filed by the plaintiff (complainant) against the defendant, in a civil action.

Compliance action: As defined in 3 CCR section 6128(b) "an action that documents that certain behavior or an act is in violation of the law or regulations." Compliance actions do not directly impose a monetary penalty and include a violation notice; warning letter; documented compliance interview; or noncompliance noted on an inspection form.

Compliance actions also include public protection actions such as cease and desist orders; seize or hold product or produce orders; and prohibit harvest orders.

Compliance interview: An interview between the County Agricultural Commissioner (or agent) and a person engaged in the business of pesticide use in the county. The compliance interview is informal and undocumented. It is an educational tool and is not considered a Compliance Action or an Enforcement Action (for contrast, see Documented Compliance Interview).

Compromise: Mutual concessions by both parties in order to settle a dispute.

Contempt: A willful disregard or disobedience of a public authority.

Contiguous: A property whose boundary is not broken by public road(s), rights-of-way, or permanent waterways. Each CAC would identify rights of-way and permanent waterways in their respective county. See definition of "site."

Continuance: Postponement of a proceeding.

Controversy: A dispute involving an allegation on one side and a denial on the other.

Core enforcement program: For commissioner work plans, this term encompasses program areas critical to meeting pesticide regulatory program mandates and strategic goals. The core enforcement program consists of: restricted material permitting, compliance monitoring, and enforcement response.

Counsel: An attorney who represents a client.

County Advocate: The person designated by the County Agricultural Commissioner to present evidence of a pesticide use violation on behalf of the County in an administrative civil penalty action.

County Agricultural Commissioner (CAC): A county department head appointed by the county board of supervisors and licensed by the State of California to carry out various county and state agricultural, environmental, pesticide worker safety, and consumer protection programs (including local responsibility for pesticide use enforcement).

Credible: Worthy of belief.

Cross examination: Questioning of a witness by the opposing counsel after questioning by the side who introduced the witness.

Culpable: Deserving of blame; at fault.

Cumulative impacts: As defined in Title 14, California Code of Regulations, section 15355, this refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

(a) The individual effects may be changes resulting from a single project or a number of separate projects.

(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

D

Date of delivery (delivery of notice): Date actually delivered by the post office, as documented on the return receipt.

Date of notice: Date noted on the Notice (e.g., Notice of Proposed Action, Notice of Decision).

***De facto*:** Latin for "in fact" or "in reality". Something that exists in fact but not as a matter of law.

***De juris*:** Latin for "by law". Used to describe a practice that exists according to law. Contrasted with *de facto*.

***De minimis*:** Latin for "of minimum importance". Refers to something or a difference that is so little, small, miniscule or tiny that the law does not refer to it and will not consider it.

Decision Report (DR): As defined in 3 CCR section 6128(b) this is "a written record of the basis for a commissioner's decision not to take an enforcement action."

Decision: A judgment or decree pronounced in settlement of a controversy; and/or, an authoritative answer to the questions raised in an administrative civil penalty hearing.

Default judgment: A ruling against a party due to failure to respond adequately to procedural requirements, such as an order to appear in court.

Demonstrative evidence: Visual aids used to clarify oral testimony on evidence to be entered into the record as facts. Examples of demonstrative evidence include: maps, diagrams, photos, charts, data graphs, and video/audio recordings (see Documentary Evidence).

Detrimental reliance: When one person depends on the actions or promises of another person and takes action based on that trust, which ultimately harms the first person's position.

Direct examination: The first questioning of a witness by the party that called the witness. (see Cross Examination)

Director: Director of the Department of Pesticide Regulation.

Disciplinary Review Committee (DRC): The legislatively mandated Committee which hears appeals of structural administrative civil penalty actions under Business and Professions Code section 8662. The Committee is comprised of three members – a representative

from the Department of Consumer Affairs' Structural Pest Control Board; a representative from the Department of Pesticide Regulation; and a representative from the structural pest control industry.

Discretion: Power or privilege to act unhampered by a legal rule. When applied to public functionaries, it means wise conduct and management.

Dismissal: Termination or cancellation.

Disposition: The final settlement in a dispute.

Documentary evidence: A broad term for paper evidence supplied by writings and documents of every kind, e.g., photographs, diagrams, maps, pesticide labels, forms, etc.

Documented Compliance Interview (DCI): A documented information-gathering office interview between the County Agricultural Commissioner (or agent) and a person engaged in the business of pesticide use in the county about a specific noncompliance(s) found during an investigation or inspection(s). It is used to evaluate and question the responsible person about non-compliances and documents a summary of the incident and the person's proposed corrective action. A DCI is a Compliance Action (contrast with compliance interview).

Double jeopardy: Prohibits anyone from being tried twice for the same crime. Double jeopardy is prohibited by the Fifth Amendment to the U.S. Constitution.

DPR-approved TIF tarpaulins: A DPR-created, California-specific list of totally impermeable films (TIF) that qualify to receive 60% buffer zone reduction credit for soil fumigant products containing chloropicrin. These tarps were tested for permeability under high relative humidity conditions common in California.

Drift: Drift is the off-target deposition of pesticide residues at the time of an application. This can be in the form of mist, particles, or vapor (gas). Drift <u>does not include</u> the movement of pesticide and associated degradation compounds off the target area after the pesticide application, such as by translocation, volatilization, evaporation, or the movement of pesticide dusts or pesticide residues on soil particles that are windblown after the application.

Due care: The degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under the same or similar circumstances. When a person does not exercise due care, they are considered negligent.

Due process of law: A concept first introduced in the Fifth Amendment to the U.S. Constitution that is equated with current attitudes of fairness in the legal process. In its most basic interpretation, "due process" means an orderly proceeding adapted to the nature of the case, a proceeding in which the individual receives adequate notice of a proposed governmental action and has the opportunity to be heard and defend their conduct. In essence, "due process" is fundamental fairness in administrative civil penalty hearings.

Duty: Conduct owed by obligation to another. Legally, a sanctioned obligation which, if breached, makes the offending party liable, regardless of the existence of a contract.

E

Educational and monitoring tools: As used in the 2002 Enforcement Guidelines, an activity or document used to determine or encourage compliance. Examples of educational and monitoring tools are informal compliance interviews, formal presentations by regulators to the regulated industry, and increased inspection activities. Educational and Monitoring Tools are not Compliance Actions.

Effect: The result or consequence of an action.

Effect or impact: Under CEQA, "effect" and "impact" are synonymous and must be related to a physical change. Effects include 1) direct or primary effects which are caused by the project and occur at the same time and place and 2) reasonably foreseeable indirect or secondary effects caused by the project. (14 CCR section 15358)

Elements of the Violation: A basic analytical exercise used by enforcement agencies to confirm sufficient evidence exists in order to prove a violation of a law or regulation occurred. The law or regulation is broken down (simplified) into its individual functional parts, or Elements. Then, each Element is correlated with evidence.

Endangered Species Act (ESA): Depending on context, it means either the federal or California law governing protection of threatened and endangered species. The federal law is designed to protect critically imperiled species from extinction and to recover species to the point where the law's protections are not needed. The purpose of the California law is similar: to conserve, protect, restore, and enhance threatened or endangered native plant and animal species and their habitats.

Enforcement Action: As defined in 3 CCR section 6128(b) "an action with the potential to impose a monetary penalty or loss of a right or privilege initiated by a Notice of Proposed Action." An Enforcement Action must provide the Respondent/violator with notice and an opportunity to be heard before a sanction or penalty is imposed.

Enforcement actions include administrative civil penalties or disciplinary actions (refusal, suspension, or revocation) of a county registration, certificate, or permit.

Examples of more severe Enforcement Actions include: a formal request to the Department of Pesticide Regulation or Structural Pest Control Board to initiate a licensing action; or a formal referral to a District or City Attorney for civil or criminal proceeding.

Public Protection Actions such as a "Cease and Desist Order" or a "Crop Destruct Order" are Compliance Actions, not Enforcement Actions (see Compliance Actions).

Enforcement Branch Liaison (EBL): DPR's Enforcement Regional Offices Branch staff person assigned to a specific county. The EBL is the primary point of contact for the County Agricultural Commissioners concerning the implementation, oversight, and evaluation of the local Pesticide Use Enforcement program.

Enforcement Guidelines: A 1993 DPR-CACASA joint project intended to promote uniformity in State and county enforcement responses to violations of pesticide regulatory requirements. It contained decision trees, a glossary of terms, an example Decision Report form, and a copy of 3 CCR section 6130. Technical and clarifying changes were made in 1997 and 2002. Replaced by the Enforcement Response Policy in 2005 and then the Enforcement Response Regulation in 2006.

Enforcement response: Legal requirement for DPR and the County Agricultural Commissioners to apply enforcement authority fairly, consistently, and swiftly to realize the full benefit of a statewide pesticide regulatory program. There are two types of enforcement responses to pesticide violations: enforcement actions and compliance actions.

Enforcement Response Regulation: 3 CCR section 6128 describes CAC response options to violations of pesticide laws or regulations related to agricultural or structural use of pesticides or any use of a fumigant. The purpose of the regulation is to encourage uniform enforcement responses by Commissioners to create uniform, predictable, and fair enforcement responses which are understandable to the regulated community and the general public.

Environmental effect: Refers to any physical damage, either permanent or temporary, to public or private property; or, to the creation of deleterious effects to air or water quality. Examples of environmental effects include crop damage, loss of use of public or private property, bee incidents, livestock poisoning, residues that affect the marketability of a crop, fish or wildlife incidents, and contamination of land, water, or air.

Environmental Impact Report (EIR): A detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects. (14 CCR section 15362).

Environmental Justice Advisory Committee (EJAC): This advisory committee, established by AB 652 (Chapter 622, Statues of 2023), is tasked with advising DPR on policies and programs that address environmental justice concerns – particularly those of communities living in areas of high pesticide use.

Erroneous: In error, wrong. Deviating from requirements of law.

***Et seq*.:** Latin for "and the following". Used to denote a list of series of items that continue from the item cited just prior to the "*et seq*." abbreviation. For example, "3 CCR section 6700 *et seq*." would mean "3 CCR section 6700 through 6795," or "all of the sections pertaining to worker safety that follow 3 CCR section 6700."

Ethics: The standards of conduct, honesty, and morality expected of those practicing a particular profession.

Evidence: Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact. (Evidence Code section 140)

***Ex parte*:** Latin for "by or for one party". In an administrative civil penalty hearing, *ex parte* communications are conversations among one party and the Hearing Officer without including the other party, and are not allowed. Another example of an *ex parte* communication is if a Commissioner or County Advocate attempted to influence a Hearing Officer's decision after the Respondent had left the hearing site. Essentially, the Respondent is not given the opportunity to respond to the additional information which is a denial of due process.

Expert witness: An expert witness is one who is recognized as having special knowledge, training, experience, skill, or education on the subject the expert witness testifies on. The expert witness is permitted to state their opinion concerning those technical subjects even though they were not present at the time the activity or incident in question took place.

F

Fact: An event deemed proven; anything that has been done or that has existed.

Fair: Equitable; reasonable.

Familiar: Known or no longer novel (see Unfamiliar). Used in the 2002 Enforcement Guidelines decision trees to determine enforcement response for substantive violations

(violations that may threaten health, property or the environment, or violations of key elements of California's pesticide regulatory program).

Farm Labor Contractor (FLC): an entity licensed by the California Department of Industrial Relations and who is required to register with the Commissioner in each county in which they will be offering labor contracting services. Labor Code section 1682 defines an FLC as:

- Any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or
- Who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection one or more of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments.

Fault: The legal responsibility for negligence, error, or defect of judgment.

Feasible: Capable of being accomplished in a successful manner, within a reasonable period of time, taking into account economic, environmental, social, and technological factors. (3 CCR section 6000)

Feasible alternatives: Other chemical or non-chemical procedures which can reasonably accomplish the same pest control function with comparable effectiveness and reliability, taking into account economic, environmental, social, and technological factors and timeliness of control. (3 CCR section 6000)

Feasible mitigation measure: A condition attached to the approval of an activity which, if implemented, would substantially reduce any adverse impact, taking into account economic, environmental, social, and technological factors and timeliness of control. (3 CCR section 6000)

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA): The federal laws which provide for federal regulation of pesticide distribution, sale, and use in the United States.

Final Decision: This refers to a Decision by the County Agricultural Commissioner, Director, or DRC once there is no potential to modify the Decision by another body. This means either no appeal is made to the appropriate body within the time period allowed by statute, or all possible appeals have been taken and decisions rendered on those appeals.

Findings of fact: A component of the Hearing Officer's Proposed Decision, after a review of the evidence, stating that the facts given are found to be true. The findings of fact are used in reaching a Proposed Decision in an administrative civil penalty hearing.

Findings of law: The findings of a judge (or in our case the Hearing Officer, Director, or DRC) on how the law applies to the facts of the case.

Fine guidelines: County Agricultural Commissioners are required to follow the fine guidelines in 3 CCR section 6130 (for Agricultural Civil Penalties) or 16 CCR section 1922 (for Structural Civil Penalties).

Fine: To impose a monetary penalty as a punishment for a violation; a monetary penalty.

Food and Agricultural Code (FAC): A series of California laws enacted "for the purposes of promoting and protecting the agricultural industry of the state and for the protection of the public health, safety, and welfare." (FAC section 3)

Form: A model document with the legally accepted wording required to make the document procedurally correct.

Formal referral: A letter to another agency requesting assistance. A formal referral contains factual information, an analysis of the problem, a summary of actions taken by the initiating agency to date, and a request for assistance.

G

Good cause: Legally sufficient reason for taking some action.

Good faith: Absence of any intent to defraud or take unfair advantage of another; a sincere, honest effort to fulfill an obligation.

Groundwater Protection Area (GWPA): an area of land that has been determined by the Director to be vulnerable to the movement of pesticides to groundwater. The determination is based on factors, such as soil type, climate, and depth to the groundwater, that are characteristic of areas where legally applied pesticides or their breakdown products have been detected and verified in groundwater. (see full definition in 3 CCR section 6000) GWPAs are classified as leaching, runoff or both.

H

Harm: Loss of, or damage to, a person's right, property, or physical or mental well-being.

Harmless error: A minor mistake in a judicial or administrative proceeding which does not justify an appellate body modifying or overturning the decision.

Hazard: A source of danger or a risk. For example, it is not necessary for an actual health or environmental effect to occur to prove that a hazard existed.

Hearing (Administrative): A proceeding before a governmental agency, Administrative Law Judge, or hearing officer, without a jury, in which evidence and/or argument is presented for the purpose of determining some issue of fact or both issues of fact and law. (A 2008 decision by the Fifth Appellate District Court of Appeals determined the CAC pesticide administrative civil penalty hearing process must comply with Chapter 4.5 of the APA, beginning at GC section 11400.)

Hearing Officer: The person designated by the Commissioner to preside at an administrative hearing. Some statutes require use of an Administrative Law Judge for administrative hearings; however, FAC sections 12999.4, 12999.5, and 12999.6 and B&PC section 8617 do not mandate the use of an Administrative Law Judge.

Hearsay: Secondhand statements by a witness that did not see or hear the incident in question but heard about it from someone who was there (an eyewitness not present at the proceeding).

Hearsay evidence: California Evidence Code section 1200(a) defines this as "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated."

Hearsay rule: California Evidence Code section 1200(b) prohibits hearsay (out of court statements offered as proof of that statement) from being admitted as evidence (except as provided by law) because of the inability of the other party to cross-examine the maker of the statement. However, the Administrative Procedures Act (GC section 11513(d)) allows hearsay evidence to be used for the purpose of supplementing or explaining other evidence, but it cannot be used by itself to support a finding of fact.

I

Interregional Research Project No. 4 (IR-4): A USDA program that provides coordination for information on the clearance of minor-use pesticides and generates data to support minor-use registrations (minor-use pesticides are generally those used on most fruit, nut, and vegetable crops).

Immaterial: Without relevance or pertinence to the matter under consideration.

Implied: Not explicitly expressed in writings or words but determined by deduction from known facts or evidence.

Incident: As defined in 3 CCR section 6128(b), this is "an occurrence in which one or more violations are discovered. An incident may be a single inspection or audit, a set of two or more inspections or audits related to the occurrence, or a pesticide episode investigation."

Interrogation: Questioning a person suspected of having committed an offense or questioning a person who is reluctant to disclose information pertinent to the investigation.

Interview: A conversation in which facts or statements are elicited by the interviewer from interviewee.

J

Judgment: The final decision of a court on a matter brought before it.

Jurisdiction: A court or agency's legal authority to hear and determine a case, either by virtue of power over the subject matter of the controversy, or over the parties.

K

Key Elements of California's Pesticide Regulatory Program: As used in the 2002 Enforcement Guidelines, these are requirements of the following programs enforced to protect the health and safety of Californians and their environment: Restricted Materials Permit Program; Licensing and Certification Program; and the Worker Health and Safety Program. Failure to adhere to the requirements of these programs often results in health or environmental hazards or effects, causing a pesticide incident.

L

Law: The body of government-enacted rules of conduct that govern individuals in a society.

Legal: Of, or relating to, the law.

Levy: To impose a tax or a fine.

License: A right or permit granted by a qualified authority that enables someone to do something they could not legally do without permission.

M

Matter of record: Something provable by examining existing papers or documents in the record.

Material: Important or necessary.

Material fact: Information necessary to decide an issue or case.

Material witness: A person who can provide key information in a hearing or trial.

Mitigating circumstances: Factors which may be used to reduce the severity of the punishment or fine.

Mitigation: Reduction or lessening the amount of a penalty or punishment. Can also be the act of lessening an effect of something (as in mitigation measures).

Motive: Cause or reason behind some act; an inducement to commit an act.

N

Nature of the violation: The circumstances of the violation which identify the "who, what, when, where, why, and how."

Negligence: Failure to behave with the level of care that a reasonable person would have exercised under the same circumstances. Either a person's actions or omissions of actions can be found negligent.

Negotiation: The act of settling or arranging the terms and conditions of a transaction; a discussion or conference on the terms of a proposed agreement.

Non-compliance: Failure to comply with any law or regulation. A non-compliance may be documented on forms or letters, or in interview summaries. (Used interchangeably with Violation.)

Notice: An announcement (notification) usually, in writing, to a party subject to a legal proceeding. Notice is required in an administrative civil penalty proceeding to ensure a Respondent's due process rights.

Notice of Intent (NOI): Notification to the commissioner prior to the use of a pesticide pursuant to a permit. (3 CCR section 6000)

Notice of Proposed Action (NOPA): The first step in due process for either a pesticide administrative civil penalty or disciplinary action (i.e., refusal, revoking, or suspending a restricted material permit our county registration). A document which is used to provide notice to the Respondent of the proposed action by the Commissioner and inform the Respondent on their rights, including a right to a hearing on the matter.

Notice of Proposed Rulemaking (NPRM): Term used by federal agencies for an announcement to the regulated public about an agency's rulemaking and an invitation for the public to participate.

Notice of Violation (NOV): See Violation Notice.

O

Oath (or Affirmation): A promise made by a witness to tell the truth.

Official Notice: When the Hearing Officer, upon request, makes a statute, regulation, or official publication part of the hearing record. When this is done, it is not necessary to introduce the text as an exhibit.

Government Code section 11515 defines "official notice" as, "in reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the court of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency."

Operator Identification Number (OIN or OpID): A requirement adopted in 1990 to implement the full use reporting program, OINs were created specifically for management of pesticide use data to identify each unique operation. In general, the operator of the property (or their authorized representative) is required to obtain an OIN from the CAC where pest control work is to be done. The CAC issues the "identification"

number to the operator of the property and it is entered on the property operator's pesticide use reports.

Operator of the property: sometimes called the "property operator," this is a person who owns the property and/or is legally entitled to possess or use the property through terms of a lease, rental contract, trust, or other management arrangement. (3 CCR section 6000)

Order: 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.

Ozone nonattainment area (NAA): Geographical area in the State that does not meet either federal or State ambient air quality standards. See the full definition of in 3 CCR section 6000.

P

Party: A person or organization that takes part, or holds an interest, in any proceeding.

Pest Control Adviser (PCA): Refers to any individual who "offers a recommendation on any agricultural use, who holds himself/herself forth as an authority on any agricultural use, or who solicits services or sales for any agricultural use." (FAC section 11410) With certain exceptions, PCAs must be licensed by DPR. (FAC section 12001)

Pest Control Aircraft Pilot Certificate: Any individual who operates any aircraft (manned or unmanned) for the purpose of pest control must be certified by DPR. (FAC section 11901)

Pest Control Business: With certain exceptions, any person who may "advertise, solicit or operate as a pest control business" must be licensed by DPR. (FAC section 11701)

Pest Control Dealer: Persons who engage in the activities listed in FAC section 11407, such as selling restricted materials or agricultural use and "dual use" pesticides to end users, are considered Pest Control Dealers and must be licensed by DPR.

Pest Management Advisory Committee (PMAC): Assists the Department of Pesticide Regulation in identifying, facilitating, and promoting environmentally sound pest management practices and pest management systems. Pest Management Advisory Committee activities include, but are not limited to, reviewing proposals for pest management research and recommending to the Director which proposals should be funded.

Pending: The status of a case not yet decided.

***Per se*:** Latin for "by itself" or "intrinsically". Example in a sentence: "Exposures not allowed by the label are *per se* evidence of a health hazard."

Personal Protective Equipment (PPE): Protective apparel (such as gloves, rubber boots, coveralls) and devices (such as respirators, safety goggles) worn to minimize human body contact with pesticides or pesticide residues that must be provided by an employer and are separate from, or in addition to, work clothing. (See 3 CCR section 6000)

Pest control: As defined in FAC section 14003, this is the use or application of any pesticide. It also means the use of any substance, method, or device to do any of the following:

(a) Control pests.

(b) Prevent, destroy, repel, mitigate, or correct any pest infestation or disorder of plants.

(c) Inhibit, regulate, stimulate, or otherwise alter plant growth by direct application to plants.

For a more thorough discussion of this definition and its application see Compendium Volume 7, Section 1.1.

Pesticide Illness Surveillance Program (PISP): DPR's unique program whereby all pesticide-related illnesses are investigated, evaluated, and summarized in an annual report.

Pesticide Registration and Evaluation Committee (PREC): Interagency advisory committee DPR consults with on registration decisions. Members include public agencies which have jurisdiction by law over the use of pesticides or over activities or resources which may be affected by the use of pesticides.

Pesticide Safety Information Series (PSIS): A series of leaflets that summarize health and safety aspects of various pesticides and groups of pesticides. (3 CCR section 6000) The leaflets are used to provide required information to employees. California regulations require these documents to be part of annual pesticide handler and field worker employee training. They are available in English, Hmong, Punjabi, and Spanish from DPR at https://www.cdpr.ca.gov/docs/whs/psisenglish.htm.

Pesticide use report (PUR): A written report which details the use of registered pesticides, including spray adjuvants. The persons listed in 3 CCR section 6624(a) must keep records of their pesticide use and submit pesticide use reports to the CAC of the county where the pesticide was applied under either section 6626 or 6627.

For pest control which requires a license from the Structural Pest Control Board, 16 CCR section 1970 contains the pesticide use record keeping requirements and B&PC section 8505.17(c) contains the pesticide use reporting requirement.

Plaintiff: The person who initiates a suit; the party bringing a court or agency action (against a "Defendant" or "Respondent").

Postponement: Delay or adjournment of a proceeding.

Pre-hearing conference: A discussion or conference between the County Advocate and Respondent (and/or agent) before a hearing to attempt to agree on ("stipulate to") certain facts. A pre-hearing conference is not a settlement negotiation. Witnesses, the Hearing Officer, and observers are not allowed in the pre-hearing conference.

Preponderance of the evidence: A type of evidentiary standard and the standard of proof in a pesticide administrative civil penalty hearing. The party with the burden shows that there is a greater than 50% chance that the claim is true or that the version of facts presented is more likely to be true than not. Preponderance of the evidence also can be described as "the greater weight of the evidence" (see Substantial Evidence).

Project: An action which has the potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. (14 CCR section 15378.) A project must receive some discretionary approval from a government agency. Under this broad definition, restricted material permits issued by CACs and certain other pesticide-related activities undertaken by DPR are "projects" under CEQA.

Property operator: See "Operator of the property."

Proof: The establishment of a fact by evidence. There are many "standards of proof" including: preponderance of the evidence, substantial evidence, clear and convincing evidence, and beyond a reasonable doubt.

Proposed Decision: A document created by a Hearing Officer and submitted to the Commissioner following an administrative civil penalty hearing. Based only on the evidence entered into the record at the hearing, the Hearing Officer prepares the Proposed Decision by determining the issues, weighing the evidence entered into the hearing record, making findings of fact, and performing an analysis on whether the evidence supports the violation and fine amount.

Proximate cause: That which produces an event without which the injury would not have occurred.

Public Protection Action: An action initiated for the purpose of immediately protecting public health or safety. Public Protection Actions are not penalties in and of themselves, although they may temporarily have the effect of a penalty. They usually require an additional action to become a permanent punishment. Public Protection Actions include: Cease and Desist Order; Seize/Hold Produce Order; Crop Abatement Order; Crop Seizure; Prohibit Harvest Order; and Pesticide Seizure.

R

Rebuttal evidence: Evidence introduced to counter, disprove, overcome, or dispel previously offered evidence or legal presumptions.

Reregistration Eligibility Decision (RED): U.S. EPA's review of older pesticides (those initially registered before November 1, 1984) to ensure that they met current scientific and regulatory standards. The RED summarize the findings of U.S. EPA's reregistration review process for individual chemical cases, and decisions on risk assessment and risk management for the uses of pesticides. This process was completed in September 2008.

Registration Review: U.S EPA's process to review each registered pesticide at least every 15 years to ensure that each pesticide can carry out its intended function(s) without creating unreasonable adverse effects to human health and the environment.

Regulation: Under the Administrative Procedure Act (APA), a regulation means "every rule, regulation, order, or standard of general application, or the amendment, supplement, revision or any rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Government Code section 11342.600) State agencies in the executive branch of the California State government, such as DPR, may adopt, amend, or repeal regulations. A state agency only has that rulemaking power that has been delegated to it by the Legislature. It is a quasi-legislative function.

Relevant: Describing matters dealing with the pertinent points of a case.

Reliance: Trust, confidence, dependence upon a person (or entity) considered of sufficient trust or authority. (see Detrimental Reliance)

Respondent: The person who is the subject of an action to fine, punitive licensing action, or permit refusal/revocation/suspension action and must respond to the charges. Respondent may also refer to someone who, after having won a case which is then appealed, must respond to that appeal. For example, when a case upheld by the Director or the DRC is appealed to the Superior Court, DPR or the DRC becomes "the Respondent."

Restricted material: Pesticides that, with certain exceptions, must be possessed or used only by or under the supervision of individuals who are licensed or certified. If a restricted material permit is required, the use must be only in accordance with a restricted material permit issued by the County Agricultural Commissioner. California restricted materials

are listed in 3 CCR section 6400. Under FAC section 14004.5, the criteria to designate a pesticide as a California restricted material include hazards to: public health, applicators, farm workers, domestic animals, honeybees, the environment, wildlife, or crops other than those being treated. All federal Restricted Use Pesticides are California restricted materials.

Restricted material permit (RMP): A permit issued by the County Agricultural Commissioner to possess or use a restricted material. Permits must be specific as to site and time of application and are usually issued for a season or year, although some permits are issued for up to a three-year period (See Restricted materials).

Restricted Use Pesticide (RUP): A federal pesticide classification, these pesticides can only be used by or under the supervision of a certified applicator. U.S. EPA determines RUPs have the potential to cause unreasonable adverse effects to the environment and injury to applicators or bystanders without added restrictions. All RUPs are California restricted materials. (3 CCR section 6400(a))

Repeat violation: A prior violation that was in the same class as the currently alleged violation. Under 3 CCR section 6128, this concept is used to determine if a Class B or Moderate violation is eligible for a Decision Report. Under section 6130, this is used to determine if a Class B violation should be elevated to a Class A fine due to a "history of violations." Under 16 CCR section 1622, "Serious" violations can be repeat Moderate violations, and "Moderate" violations can be repeat Minor violations.

Reversible error: An erroneous judgment or ruling by a Hearing Officer or court that substantially affects the appellant's legal rights and would lead, if uncorrected, to a miscarriage of justice (see Harmless Error).

S

Safe Drinking Water Act (SDWA): the federal law to protect persons receiving drinking water from public drinking water systems from harmful contaminants. U.S. EPA sets standards for drinking water quality and oversees the states, localities, and water suppliers.

Safety Data Sheet (SDS): Written information required to be provided upon request by a chemical product supplier. Contains specific information regarding physical/chemical hazards of a chemical, as well as short- and long-term health effects. Formerly Material Safety Data Sheet (MSDS).

Scientific review panel (SRP): a panel of scientists that makes independent recommendations or determinations. For example, SRP formed by AB 1807 reviews DPR reports on toxic air contaminants.

Sensitive site: A location determined by the CAC or Director, based upon an evaluation, to contain elements that could suffer harm or injury from the pesticide in question, such as sites containing people, crops where minor amounts of residue can cause harm, pollinators, wildlife sanctuaries, groundwater, etc.

Settlement: The resolution or disposition of a matter by agreement or compromise prior to a legal proceeding.

Site: An area no larger than the property operator's contiguous property and no smaller than one crop location. Note that if part of the site is within ¼ mile of one or more schoolsites, that portion must be considered a separate site *unless* the entire site complies with the requirements of 3 CCR section 6690-6692.

Site-specific: A pesticide permit that identifies the specific area to be treated, the size of that area, and the commodity(ies) or site(s) on that area to be treated. (3 CCR section 6000)

Statement: A report of facts or opinions. Commonly interchangeable with "narrative."

Statute: A law enacted by a legislature.

Statute of limitations: Time period after an incident occurs during which a lawsuit must be filed regarding the incident.

Statutory: That which is governed by statute (act of legislature) as opposed to common law (see Common Law).

State management plan (SMP): State of California Management Plan for Pesticides and Ground Water Protection. Certain pesticides that U.S. EPA determines will leach into ground water can remain registered only when used under a U.S. EPA-approved Pesticide Specific SMP.

Stipulation: A voluntary agreement between opposing parties concerning some relevant factual or legal point. Stipulations with respect to matters of fact, law, or penalty amount are no longer in dispute or contested and need not be addressed at the hearing.

Structural Civil Penalty (SCP): A penalty levied for certain violations of Chapters 14 and 14.5 of Division 3 of the Business and Professions Code, certain Chapters of Division 7 of the Food and Agricultural Code, and regulations in 3 and 16 CCR adopted pursuant to those provisions.

Structural Pest Control Board (SPCB): The Structural Pest Control Board is responsible for the outreach, education, and regulation of the structural pest management profession, and is under the jurisdiction of the California Department of Consumer Affairs.

Structural Pest Control Business (SPCB): A company registered with the Structural Pest Control Board to control household pests, wood destroying pests, and organisms of structures.

Structural use: A use requiring a license under Chapter 14 (commencing with section 8500), Division 3 of the Business and Professions Code. (3 CCR section 6000)

Subpoena: Latin for "put or call in place." A written order to compel a witness to appear to testify or produce documents or other tangible evidence for use at a hearing or trial. Hearing Officers (unless they are Administrative Law Judges) do not have the authority to issue subpoenas.

Subject: In the investigation sense, the person (witness or suspect) who is being interviewed or interrogated and is not necessarily the subject of the case under investigation. Where the two terms will differ, the distinction will be apparent from the phrasing and the context.

Subsequent Incident: Term used in the 2002 Enforcement Guidelines and decision trees. An incident, that takes place later, and is separate from another incident. Subsequent Incident should not be confused with Repeat Violation, a concept to be considered in determining a fine category.

Substantial drift: Defined in 3 CCR section 6000 as "the quantity of pesticide outside the treated target area is greater than that which would have resulted had the applicator used due care." The definition applies to FAC section 12972 and 3 CCR section 6614.

Substantial evidence: Evidence upon which a reasonable person would rely upon to support a conclusion.

Substantial Evidence Test: This Test requires only enough relevant information and inferences from the information in the record to support a conclusion, even though other conclusions might also have been reached. In other words, the decision rendered by the Hearing

Officer need not be the only possible interpretation of the evidence submitted. The decision must simply be a reasonable interpretation of the evidence presented. The Director and the DRC rely upon the Substantial Evidence Test to make a determination about the Findings in a Hearing Officer's Proposed Decision or a Commissioner's Decision if the matter is forwarded to them for review or appeal.

Suspect: A person whose guilt is considered on reasonable grounds to be a practical possibility.

T

Target area or **target site:** When applying pesticides, the applicator intends to apply the pesticide to a particular target. The target can include things like a field, orchard, water body, flower bed, lawn, an individual plant or animal, and a structure or place within a structure such as a kitchen countertop or baseboards.

Testify: To provide evidence under oath as a witness in a legal proceeding.

Testimony: Oral evidence given by a witness at a hearing or other legal proceeding.

Time specific: A pesticide permit that specifies the date and time the intended application is to commence or a permit with a notice of intent requirement. The pesticide use may commence within four days following such date if delays are caused by uncontrollable conditions such as adverse weather or unavailability of equipment. (3 CCR section 6000)

Trial: A proceeding before a competent tribunal to determine the facts and/or law in a dispute.

U

UAS: Initialism for unmanned aerial system. Used to apply pesticides aerially (also known as unmanned aerial vehicle, UAV, or drone).

United States Environmental Protection Agency (U.S. EPA): U.S. EPA works with state, local, and tribal governments in the region to carry out the nation's environmental laws.

U.S. EPA Region 9: U.S. EPA divided the US states and territories into 10 regions. Each regional office is responsible for the execution of U.S. EPA programs. Region 9 covers the southwestern United States – Arizona, California, Hawaii, Nevada, the Pacific islands subject to U.S. law, and approximately 140 tribal nations.

Unclassified violation: As used in the 2005 Enforcement Response Policy, an unclassified violation does not pose a threat to health, property, or the environment.

Unfamiliar: Not well acquainted with, unknown. Used in the 2002 Enforcement Guidelines decision trees to determine enforcement response for substantive violations. This category is for those who may be unfamiliar with pesticide regulatory requirements because they are in a situation or business which does not traditionally require them to interact with pesticide regulators. Examples included businesses such as restaurants, hospitals, schools, janitorial services, or employees of these groups. Once the party had been the subject of a compliance or enforcement action or otherwise exposed to pesticide regulatory requirements, they were no longer considered unfamiliar (see Familiar).

V

Variance: Special permission granted by a local zoning authority to allow a specific use of property which does not conform to current zoning laws. County Agricultural Commissioners do not have authority to issue a "variance" for pesticide laws or regulations.

Verbal Warning: Oral instructions or warnings that are not documented or filed. A verbal warning is not considered a Compliance Action or an Enforcement Action.

Violation: Failure to comply with any law or regulation. A violation may be documented on forms or letters, or in interview summaries. (Used interchangeably with Non-compliance.)

Violation class: Class A, Class B, or Class C, as defined by 3 CCR section 6130 or Serious, Moderate, and Minor as defined by 16 CCR section 1922.

Violation Notice (VN): A written document which identifies the violator, inspector/biologist citing the violation, location and date of occurrence, and applicable laws or regulations. A violation notice is typically a form (PR-ENF-101 or one of the various inspection forms). A violation notice is a Compliance Action. A violation notice is equivalent to a warning letter (WL) or Documented Compliance Interview (DCI) relative to enforcement response.

Volatile organic compound (VOC): Carbon compound (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) that that participates in atmospheric photochemical reactions, i.e., contributes to the formation of ground-level ozone, which is harmful to human health and vegetation when present at high enough concentrations. See full definition in 3 CCR section 6000.

W

Waiver: The act of voluntarily relinquishing a known legal right or advantage. The party "waiving" a right must have both knowledge of the existing right (for example, the right to a fair and impartial hearing) and communicate the intention to give up that right.

Warning Letter: A "Warning Letter" (WL) or "Warning Notice" (WN) is a written document which identifies the violator, inspector/biologist, location and date of occurrence, and applicable laws or regulations. A warning letter is typically in letter format but may be noted on a form. A warning letter is a Compliance Action and equivalent to a Violation Notice (VN) and a Documented Compliance Interview (DCI) relative to enforcement response.

Warrant: A written order of the court authorizing a certain act, e.g., a search warrant. A written order directing the arrest of an individual, e.g., a bench warrant. Hearing Officers do not have the authority to issue warrants.

Weight of evidence: The relative value of all evidence of one side of a dispute compared with all that on the other.

Withdraw: To remove.

Witness: One who gives evidence through testimony in a case before a Hearing Officer or court.

Work for hire: Work done under contract to an employer, in which the employer is considered the creator and owner of the work. A paper contract does not have to exist for a contract to exist. A contract may be verbal or implied.

Worker Protection Standard (WPS): A federal standard adopted by U.S. EPA in 1992 and updated in 2015 for all workers who may be exposed to agricultural pesticides.