

# Annotated Agricultural Civil Penalty Written Notice of Proposed Action 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*]  
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 [ x ] 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 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

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*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.*

*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

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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**

*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*

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*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 contact this office to file a pesticide safety complaint. 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 different incident where five people became acutely ill.]*

## *EXAMPLE 2: Multiple Counts*

### **PENALTY FOR VIOLATIONS 1-5**

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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 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).*

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*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.]*

## **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. 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.]*

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## ***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.*

*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.*

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## **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.

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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 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, P.O. Box 4015, Sacramento, California 95812-4015.

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

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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 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*  
*Commissioner's Official Title*

*Date*