

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.

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

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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.

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.

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[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. 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