

SCP NOPA Template Guide

County Letterhead

Date:

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

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

TO: Respondent Name (*business or individual – one entity per notice*)
License Number (*if applicable*)
Attn: (*individual's name if first line 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 [total] civil penalty of \$[amount] for [] violation(s) of [BPC, FAC, or 3/16CCR] 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 (BPC).

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 intended to give the respondent sufficient notice of what is being charged 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/investigation report that are necessary to prove the violation and to provide this notice. Many facts that are necessary to develop and conduct a complete inspection or investigation as reflected in 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/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 circumstances of the application, what happened, when and to whom, whatever evidence that was obtained (pictures, witness statements, etc.).

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EXAMPLE

At 8:00 a.m. on September 1, 2017, [*Respondent*] commenced aeration of a residential structure located at 123 City Road (“fumigation site”) after fumigating the site using Fumex (EPA Registration No. 1234-56-AA). At 4:00 p.m. on September 1, 2017, County Inspector Smith performed an aeration inspection of the fumigation site and observed that the seam between two adjacent tarpaulins positioned on the north edge of the structure was not completely sealed, resulting in an opening that measured approximately 30 inches.

VIOLATION

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;*
- 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 is an example of how to organize this section using facts from the Factual Circumstances section:

The Food and Agricultural Code section 12973 states:

“The use of any pesticides shall not conflict with the labeling registered pursuant to this chapter...”

On page 12 of the Fumex labeling, the “Structure Fumigation Using a Tarpaulin” section directs users to:

“Seal all seams between adjacent tarpaulins.”

[*Respondent name*] performed a tarped structural fumigation using the DPR-registered pesticide Fumex. County Inspector Smith performed an aeration inspection of the fumigation site and observed that the seam between two adjacent tarpaulins was not properly sealed. The Fumex labeling directs applicators to seal all seams between adjacent tarpaulins when performing tarped structural fumigations. By failing to do so, [*Respondent’s name*] used Fumex in conflict with the registered labeling and violated FAC section 12973.

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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 selected.*

EXAMPLE

Under Title 16 of the California Code of Regulations section 1922, a “Moderate” violation is a violation that poses a reasonable possibility of creating a health effect.

[Respondent] failed to seal the seam between two adjacent tarpaulins at the fumigation site. The Fumex label requires applicators to seal these seams in order to protect bystanders from the potential offsite movement of the fumigant pesticide. [Respondent’s] violation of FAC section 12973 is classified as a “Moderate” violation because it posed a reasonable possibility of creating a health effect caused by fumigant pesticide exposure.

The fine range for a “Moderate” violation is set by regulation as between \$250 to \$1,000. According to the Fumex label, exposure to the pesticide can be fatal. While exposure to Fumex may have potentially severe health effects, the opening in the tarpaulins was located along a side of the structure that was not easily accessible to bystanders. Inspector Smith documented on the inspection form that the licensee and crew returned to the site promptly to correct the noncompliance, after the licensee was contacted by Inspector Smith. Based on these facts, and [Respondent’s] previous compliance history, the CAC proposes a civil penalty at the low end of the permissible fine range for the violation: \$300.

ENCLOSURE(S)

List the enclosures of code text:

A copy of the text of 16 CCR, section 1922, and/or FAC / BPC section(s) _____ and/or 3/16 CCR section(s) _____ is enclosed for your convenience, (*again, enclose only those which apply to this case*).

The most likely code sections you will need to provide are the specific violation codes, 16 CCR section 1922, and BPC section 8617.

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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 available to you free of charge. We may charge you reasonable costs for additional copies.

Although not required by the statute, it is a good idea to have a separate copy of the case file available for respondents 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 respondents request 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. . . .

You do not have to 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 25 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.

It is DPR's opinion that a NOPA is not a pre-decisional document or 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. 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.

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How to Request a Hearing - Failure to Request – B&P 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. 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&P 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.

Appeal Rights After Hearing – B&P 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, 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 Disciplinary Review Committee.

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

If the Disciplinary Review Committee grants an appeal, you will receive the written decision approximately 45 days after receipt of your appeal, or as soon thereafter as practical.

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ORDER

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

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

ORDER: It is hereby ordered (*name*) is fined (*total amount of fine for this action*). The fine is due now and payable.

Commissioner's Signature
Commissioner's Official Title
Address

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: _____

Make the check payable to: "Structural Pest Control Board Education and Enforcement Fund"

Mail the check and the signed **Stipulation and Waiver to Order** to:

Department Name or Commissioner's Office
Address

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HEARING REQUEST

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

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

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

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

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 violation(s) contained in the Notice of Proposed Action.

Respondent's Signature

Date

Respondent's Name (printed)
Telephone: (____)

Mail this form to:

Commissioner's Official Title
Department Name
Address

If you have any questions regarding this matter, please contact ____ at (____).
[This person should not be the Hearing Officer.]

Commissioner's Signature
Commissioner's Official Title
Address
Telephone Number