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# THE PESTICIDE REVIEW

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## Non-Compliances versus Violation Notices

*What is the difference between the two?*

A question that we are often asked is: what is the difference between receiving a non-compliance on an inspection form and receiving a violation notice?

Many people think that receiving a violation notice is worse than getting a non-compliance on an inspection form, but this is not the case. There is actually no difference between the two. A non-compliance on an inspection form is the same as a violation notice. They are just different ways of documenting an incorrect or inappropriate action.

### Why do we issue Violation Notices?

If marking a non-compliance and issuing a violation notice mean the same thing, why use both? Violation notices are usually issued if an inspector

wants to bring special attention to a problem, especially when a repeat of the same action could result in a fine the next time we observe it. We have also found that when we write a violation notice to bring someone's attention to a specific problem, people are more likely to correct inappropriate behavior.

Both inspection forms and violation notices stay on file for a maximum of three years. When reviewing a company's history, whether it is documented as a non-compliance on an inspection form, or a violation notice, a repeat of the same non-compliance could result in an enforcement action (fine).

### Signing Violation Notices

When you sign a violation notice, you are acknowledging that the inspector addressed the issue or problem with you and that you have received a copy of the violation notice. When you sign a violation notice you are not admitting your guilt.

If you refuse to sign a violation notice or inspection form, the inspector will write, "Refused to sign" in the signature box. The form will still be filed and the non-compliance or violation that the forms addressed are treated the same as those recorded on signed forms.

There is no hearing or appeal process associated with the issuance of violation notices. However, if you wish to write a letter explaining why you disagree with a violation notice, you may do so. The letter will be filed along with the violation notice in your file.

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## Pest Control and Public Relations

*Good public relations go a long way.*

With your everyday experiences applying pesticides, you have undoubtedly encountered people upset by the thought of pesticides being applied next to their property. Sometimes educating the person about the chemical you are using, how you will apply it, and addressing any concerns they may have can help ease the tensions not only between your client and their neighbors, but will also help the next time you visit the site. Granted some people will still be upset about the application regardless of what you say, but by taking the high road and taking a short amount of time to explain to people that facts about the chemical you are using can help. We have heard of pest control companies taking a pro-active approach and offering to let a neighbor know when the next application will take place, even though the law does not require it. Such action reflects well on both the company and the entire pest control industry.

## Enforcement Update

*District Attorney actions*

Our June Newsletter had an article discussing cases that our office had sent to the District Attorney office. There were a few cases that were still pending, and the judgments in two of these cases were just handed down. We thought we would share the outcome.

In the first case, a residence had been fumigated for termites and the defendant certified this vacant home for re-entry without using an Interscan. He was fined \$2,800 dollars, sentenced to 20 days in jail and 2-½ years probation.

The second case also involved a fumigated residence and the defendant cleared this home for re-entry when the gas levels in the home were above acceptable levels. This individual was fined \$2,800 dollars, sentenced to 45 days in jail and 3 years probation.

## The Department of Pesticide Regulation & Licensing

*Pesticide license renewal*

Be sure to get your renewal applications in early! DPR processes more than 14,000 applications this time of year. The later you turn in your renewal, the later you get your license.

DPR's projected processing schedule is as follows:

**Application Received by:**      **License mailed by:**

September 30, 2002	November 15, 2002
October 31, 2002	December 16, 2002
November 29, 2002	January 17, 2003
December 31, 2002	February 18, 2003
January 31, 2003	March 14, 2003

Licensees should check their application forms before mailing them to DPR. DPR reports that one in five licensing applications are delayed because they are incomplete. The most common mistakes are missing signatures, incomplete continuing education documentation, and the failure to include the correct payment.

If you do not receive a renewal notice from DPR soon, you can download a copy from their website at: [www.cdpr.ca.gov/docs/license/newapps.htm](http://www.cdpr.ca.gov/docs/license/newapps.htm)

## Oversight Inspections

*State inspectors will be visiting each county*

Supervisors with the California Department of Pesticide Regulation will be performing oversight inspections with county biologists this coming year. Their intent is to watch county biologists and evaluate how we conduct inspections. They are also there to observe industry compliance with pesticide laws and regulations. State inspectors will shadow county inspectors and will observe the inspection process. The inspections shouldn't take any extra time since the State inspector is just there as an observer.

# Bird Protection Laws & Regulations

*What species of birds are protected?*

All birds that are native to California are protected. Native birds are classified in one of three categories, non-game birds, game birds, and migratory birds. Examples of non-game birds would be jays, robins, and woodpeckers. Birds classified as game birds are things such as quail and ducks, and these birds can only be taken in game season with a license. Migratory birds are those that don't live their entire life in one area but instead migrate during certain times of the year. The Bay Area is often a popular "lay over" for several species of migratory birds, such as geese and swallows.

## Migratory Birds: Swallows

Fortunately, few native birds tend to nest in urban dwellings. However there are two native migratory bird species that commonly build nests under the eaves of buildings, Cliff Swallows and Barn Swallows. These migratory species build mud nests in spring and are considered by many to be a problem as they can cause a considerable mess.

Because swallows are migratory birds, the Migratory Bird Treaty Act affords them special protection. This Act implements various treaties and conventions between the U.S., Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under the Act, taking, killing, or possessing migratory birds is unlawful and punishable by a jail sentence, fine, or both.

## How could this affect your business operations?

In the case of Branch I companies, a native bird nesting under the eaves of a home can cause a major inconvenience if the home is scheduled to be fumigated. It is therefore vital that Field Representatives pay attention to such matters when inspecting houses and planning fumigations. Crews should also check as they tarp the structure, particularly in spring and summer.

Branch II companies applying pesticides to the eaves of homes can also be affected by nesting birds. Employees should be aware that they cannot spray eaves or take down active nests of birds that are protected.

## What signs should you check for?

- Nesting materials such as straw on the ground or poking out of crevices
- Bird droppings
- Mud nests under the eaves (see photos below)
- Listen for chirping



**Cliff Swallow Nest**

**Barn Swallow Nest**

Section 3503 of the Fish and Game Code states it is "unlawful to take, possess, or needlessly destroy the nest or eggs of any bird..". Empty bird nests however, can be removed prior to eggs being laid. In fact, repeated destruction of nests in the early stages of building is one way to deter birds from occupying buildings. However, if you miss that window of opportunity, you must wait until the chicks have fledged to remove the nest.

The laws and regulations governing this issue are found in the Fish and Game Code (available online: [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)) and the Migratory Bird Treaty Act. For more information, contact the Department of Fish and Game at (831) 649-2870.

## What about pigeons?

Perhaps the most infamous bird of urban life is the pigeon. As was mentioned in last month's newsletter, a pest control license is required to trap, exclude, or kill pigeons, regardless whether or not a pesticide is used. It is best to discourage these birds from nesting on buildings before they become a problem. A number of devices, such as wire mesh, spikes, and spring wires, can be effective in discouraging roosting and nesting of these nuisance birds when properly installed.