

# Board of Forestry Meeting

## January 2015

**CAL FIRE FOREST PRACTICE  
ADMINISTRATIVE CIVIL PENALTY PROGRAM  
PRESENTED BY CARY JAPP, CAL FIRE**



### Outline:

- Forest Practice LE Positions
- Review Enforcement Objectives
- Determining a Violation
- Review of Enforcement Options
- Forest Practice Administrative Civil Penalty Process
- Process for Determining the Civil Penalty

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**

## **Forest Practice Law Enforcement Group:**

Staff Chief Forest Practice

**VACANT**, Forester III, State Forest Practice Law Enforcement Specialist

Two Forester II, Region Forest Practice Law Enforcement Specialist (North Region)

Southern Region has a Forester II, Region Forest Practice Law Enforcement Specialist that has other duties as well

# CAL FIRE Forest Practice Administrative Civil Penalty Program



## Enforcement Policy HB§5501

The Director has determined that it is the department's policy to pursue vigorously the prompt and positive enforcement of the Forest Practice Act, the forest practice rules, related laws and regulations, and environmental protection measures applying to timber operations on the non-federally owned lands of the state. This enforcement policy is directed primarily at preventing and deterring forest practice violations, and secondarily at prompt and adequate correction of violations when they occur.

# CAL FIRE Forest Practice Administrative Civil Penalty Program



## PRIMARY ENFORCEMENT OBJECTIVES (HB§5501.1)

- Conserve and maintain the productivity of the timberlands while preventing or mitigating damage to associated resources.
- Administer enforcement so as to achieve the best possible compliance, using available department resources and making full use of the applicable laws and regulations.
- Aggressive and prompt enforcement action is expected to prevent proliferated and aggravated problems and to develop public confidence in the forest and fire laws and the department's administration of them. When substantial violations are found, positive enforcement measures will be initiated promptly and penalties sought.

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **SECONDARY ENFORCEMENT OBJECTIVES HB§5501.2**

- ✓ Inform each timber owner and each operator before he/she harvests a timber crop of the forest law requirements applicable to them individually, to the timberland, and to any parties to whom the timber owner may sell his/her crop.
- ✓ Inform each timber owner and each operator before he/she harvests a timber crop of the fire risks and hazards directly associated with timber operations, particularly emphasizing fire hazard reduction requirements, and all applicable fire laws.
- ✓ Inform the timber owners and timber operators that they may be jointly and severally liable for correction of forest and fire law violations on the timberlands from which the timber is being harvested.

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **SECONDARY ENFORCEMENT OBJECTIVES HB§5501. (continued)**

- ✓ Inform all currently licensed timber operators conducting timber operations of the forest and fire law requirements that apply to their timber operations. At least one forest practice inspection of each timber operation will be made with the timber operator or his/her designated agent.
- ✓ Make a preharvest inspection on each timber operation, if needed, followed by at least three additional inspections, including one inspection after completion of the operation. Provide prompt notification of forest and fire law violations.
- ✓ Require reasonable and prompt compliance with the forest and fire laws.
- ✓ Use procedures for enforcement of the forest and fire laws that will best prevent further violations or repetition of violations while ensuring due process.

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **Determining a Violation:**

A CAL FIRE Forester may administratively review the document and determine a violation has occurred without a field inspection. This could be from an RPF providing inaccurate, incomplete or incorrect information. An operational violation will result from the field inspector taking the operational document (i.e.: THP, NTMP or Exemption) and the Forest Practice Rules and compare the requirements to what has occurred on the ground through a field inspection. If all the elements of the violation are present, then enforcement action will be taken. If one of the elements of the violation could not be determined then a violation has not occurred.

# CAL FIRE Forest Practice Administrative Civil Penalty Program



## Determining a Violation (continued):

Elements of the Violation are the basic facts that must be proven by the prosecution to sustain a conviction. If any element is missing, that particular crime is not complete.

The Who, What, Where, When and Why

Level of proof for Criminal prosecution requires beyond a reasonable doubt

Level of proof for Administrative Civil Penalties requires preponderance of the evidence

# CAL FIRE Forest Practice Administrative Civil Penalty Program



**Example:** Violation of PRC§4621(a) Application for Conversion; Any person who owns timberland which are to be devoted to uses other than the growing of timber shall file an application for a conversion with the board.

1. The person owned timberland
2. The person devoted the timberland to a use other than the growing of timber
3. The person did not obtain an application for conversion

If any one of these 3 elements is missing, then the inspector does not have a violation

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **Determining a Violation (continued):**

It should be noted that each specific act that results in a violation of this chapter or a rule or regulation adopted pursuant to this chapter, including an act that is repeated on separate days, shall be considered a separate violation or a separate count of the violation (PRC§4601.1(b)).

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



After a violation is determined by the CAL FIRE Forester, he or she chooses an Enforcement Option based on the primary enforcement objectives

**Prevent and Deter Violations**

**Prompt and Adequate Correction of Violations**

**There are 7 enforcement options:**

Administrative Action(lowest level)

Criminal Action (infraction or misdemeanor)

Administrative Civil Penalty

Licensing Action against LTO

Disciplinary Action against an RPF

Board of Forestry Notice to take Corrective Action

Preliminary Injunction

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **Administrative Civil Penalties as an enforcement option:**

The director may issue a complaint and proposed order to any person who intentionally, knowingly or negligently violates this chapter or rule and regulation. The penalty amount for each violation/count may not exceed \$10,000.00. The money recovered by the department pursuant to this section will be deposited into the General Fund.

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **Administrative Civil Penalties Process:**

- After a violation has been determined, the CAL FIRE Forest Practice Forester chooses administrative civil penalties as the enforcement option
- CAL FIRE Forest Practice Forester submits a Case report (LE-80) to the region LE Specialist for review.
- Regional LE Specialist develops a draft complaint and proposed order (CPO), this includes developing a draft penalty amount. The facts reported by the case officer and identified in the case report will be used to develop the CPO.
- CPO and associated documents are submitted to the State LE Specialist in Sacramento and Department Legal Office for review.

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **Administrative Civil Penalties Process (continued):**

- CPO, associated documents, and penalty are finalized by the State LE Specialist and sent to the Deputy Director of Resource Management for review and signature
- CPO packet is served on the respondent
- After it is served the respondent has 10 days to request a hearing or pay the penalty.
- At any point after the CPO has been served, the respondent and the department can enter into a settlement agreement
- If the respondent does not respond, then he or she is in default and a decision and final order is requested
- If the request for hearing is received within 10 days, then a hearing is scheduled either before the Board and Administrative Law Judge within 180 days from the date the respondent was served.

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **Administrative Civil Penalties Process (continued):**

- A hearing is held and the board or judge may adopt the proposed order without revision.
- The proposed order is served on the respondent, and time period identified for which payment is to be made.
- Respondent may obtain a review of the order in superior court by filing a writ of mandate within 30 days of the date the order was served

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **Administrative Civil Penalty Determination :**

The factors used in determining penalties are not limited to the circumstances identified in PRC§4601.2(b) and listed below:

- Extent of harm caused by the violation
- The nature, persistence, circumstances
- Extent and gravity of the violation
- The length of time over which the violation occurred
- Whether any substantial damage caused by the violation is susceptible to corrective action
- Whether the violation was willful or caused by negligence, and, with respect to the violator
- Respondent's ability to pay
- The effect on ability to continue in business
- The corrective action, if any, taken by the violator
- Whether the violator has any prior history of violations and the degree of culpability
- Economic savings, if any, resulting from the violation

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **Administrative Civil Penalty Determination (continued) :**

The maximum administrative civil penalty of \$10,000 per violation or per count.

In a violation where several trees were cut without a harvest document (PRC§4581 Necessity of a Timber Harvest Plan) Each tree cut would be a separate count or violation of PRC§4581, each with a potential penalty of \$10,000.00.

It should be noted that CAL FIRE Inspectors do not always identify all of the counts, whether it be the total number of the trees cut, or the number of days operations occurred.

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **Administrative Civil Penalty Determination (continued) :**

The State LE Specialist will consider all of the circumstances identified in PRC§4601.2(b) and any other factors that may be relevant

Determining the penalty amount is the most difficult part of the process. Because most of the items are subjective, the final penalty is subjective and the judge or the Board may not agree with final penalty amount determined by the State LE Specialist.

A great deal of effort is spent at the hearing explaining the process of how the penalty was determined and the factors that went into the determination. This requires the person who determined the penalty be available to testify at the hearing.

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



## **Administrative Civil Penalty Determination (continued) :**

The state or regional LE specialist goes through an exercise or investigative process of their own determining and documenting the factors specific to the respondent and the case. These factors are then used to determine the penalty. The LE specialist also attempts to determine the counts per violation, if it was not provided in the original notice of violation or case report.

The process is subjective so the testimony will not document how the exact penalty amount was determined; it will only show the factors identified that went into the determination. The ultimate decision for the penalty falls on the judge or the board.

# **CAL FIRE Forest Practice Administrative Civil Penalty Program**



**Any Questions?**