



## DEPARTMENT OF FORESTRY AND FIRE PROTECTION

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BOARD OF FORESTRY AND FIRE PROTECTION

March 2, 2017

Dr. Keith Gilless, Chairman  
State Board of Forestry and Fire Protection  
P. O. Box 944246  
Sacramento, CA 94244-2460

Re: Forest Practice Enforcement Summary

Dear Chairman Gilless:

The California Department of Forestry and Fire Protection (CAL FIRE) has been closely engaged in discussions with the Forest Practice Committee (FPC), Associated California Loggers (ACL) and California Licensed Foresters Association (CLFA) on issues related to the enforcement of the Forest Practice Rules (FPRs) and Act. During the committee meeting held on January 24, 2017, the FPC requested that CAL FIRE present a summary of information provided to Forest Practice Inspectors for determining whether a violation of the FPRs has been committed and for choosing an enforcement option. The information provided in Attachment A clearly outlines our direction to inspectors regarding criteria for issuing a violation or taking enforcement action.

Thank you for providing the Department continuing opportunities to bring forward information related to this important topic. A representative from CAL FIRE will be at the FPC meeting should any questions arise related to the attached summary.

Sincerely,

DENNIS O. HALL  
Assistant Deputy Director  
Forest Practice

Attachment

## **CAL FIRE Summary of Information Provided at Training for Determining a Violation and Choosing an Enforcement Option:**

This summary describes what is provided to staff in formal training.

The criteria for issuing a violation or taking enforcement action begins with our primary enforcement objective which is directed primarily at preventing and deterring forest practice violations, and secondarily prompt and adequate correction of violations when they occur. Keeping that primary objective in mind, the inspector will evaluate the requirements of the harvest document and the rules and/or evaluate the conditions observed on the ground in relation to the letter of the law and the spirit of the law. Each code section or Rule has elements that establish a violation. The elements of the violation are the basic facts that must be proven by the Department to sustain a conviction or establish civil liability. All these elements must be proven either beyond a reasonable doubt for criminal action or by the preponderance of the evidence for civil action. If any one element is missing, a violation has not been established.

Once the violated code section has been determined, the inspector must satisfy the elements by answering 6 core question:

1. "Who" is responsible for the violation, bearing in mind that certain violations may only be committed by parties specified in the code?
2. "What" happened? What act, omission, or condition is inconsistent with a legal requirement imposed by the code?
3. "Where" did the violation occur?
4. "When" did the act or acts occur or when was action required?
5. "How" did the violation occur?
6. "Why" has the violation occurred and why is it important? While the level of culpability or intent to violate the law is not a factor in determining whether a violation has occurred, intent is a factor in determining additional enforcement action. If there is no evidence that the violation was willfully committed, then criminal action cannot be pursued (PRC 4601), but a civil action may be maintained if the violation was committed negligently, knowingly, or intentionally (PRC 4601.1.).

### **Example of Elements for 14 CCR § 917.2**

**§ 917.2 Treatment of [Logging] Slash to Reduce Fire Hazard [All Districts]:**  
Slash to be treated by piling and burning shall be treated not later than April 1 of the year following its creation, or within 30 days following climatic access, or as justified in the plan.

Who: Licensed Timber Operator (responsible for operation)  
What: treatment of slash  
Where: plan area  
When: by April 1 (or as justified in the plan)  
How: piling and burning  
Why: public safety, resource protection

**Violation Statement:** Slash within the plan area had been piled for burning. The slash was created on October 1 and has not been treated as of April 15. There are no other provisions in the plan providing an exception to this Rule. The LTO is in violation of 14 CCR § 917.2 for failing to treat the slash by April 1 of the year following its creation.

A Notice of Violation documents the elements of a violation and alleges the facts establishing that a violation has occurred. Once an inspector determines that a violation has occurred, the inspector must use his or her training, experience, and discretion in determining what enforcement option is utilized. The inspector will need to determine if the violation is minor or substantial in nature. If an inspector uses his or her discretion on a violation that is considered minor in nature and only issues a verbal warning, then there is no record of that violation. A series of minor violations may cumulatively be a substantial series of violations. HB § 5507.4.2, paragraph 9 states that "Inspectors do not have the authority to overlook a delinquency or call a violation," and "The inspector is responsible for determining whether a violation of law has occurred and will report his/her findings." Violations should be documented. Verbal warnings in the absences of documentation are lost. Documentation in the form of Notices of Violation are available, and can be easily obtained by either the subject inspector, the neighboring inspector, successors, the violator, and the public.

Factors used in determining whether a violation is substantial include actual or potential environmental damage, threats to public safety, pattern of practice, timing, extent and amount of mitigation needed, or operations without a harvest document or a license. (HB § 5502.1) The primary goal is preventing and deterring a violation from happening again and to affect a positive change in the behavior or conduct of the violator. Information provided in department training is used to guide Forest Practice Inspectors in the consistent application of judgement and discretion, while enforcing the Forest Practice Rules. Department staff at all levels understand that training is just one component and it must be accompanied by proper supervision and communication.