



May 7, 2020

EXECUTIVE OFFICE #20-03

TO: County Agricultural Commissioners

SUBJECT: COVID-19 - PESTICIDE USE NEAR/AROUND SCHOOLS AND HOMES

BACKGROUND

As you know, exposure to pesticides can be hazardous to human health and, in particular, to the health of vulnerable individuals. Compared with adults, children – due to a variety of factors – are more susceptible to the effects of pesticide exposure. In 2017, the Department of Pesticide Regulation (DPR) promulgated regulations to protect children from risks associated with pesticide use, while they receive educational instruction within schoolsites. These regulations were designed to limit certain types of applications that could result in the risk of drift or other exposure pathways to school aged children, when they are likely to be present on school grounds. The regulation also enhanced notice requirements for applications taking place within a ¼ mile of schoolsites. The Executive Guidance provided in this letter is intended to continue those protections, in light of Executive Order N-33-20, ordering all individuals in California to stay at home or at their place of residence.

Today, in response to the COVID-19 health emergency, California students are no longer physically attending classes at schoolsites. Instead, they are receiving instruction remotely at their home or place of residence, through “distance learning,” and will continue to do so for the remainder of the 2019/2020 school year. As such, children will now be at home during the normal school day in addition to the weekend and other times.

However, schoolsites remain critical to the daily lives of many Californians. Even with distance learning being implemented across California, students, parents, teachers, and other personnel continue to be present at schoolsites to perform a number of critical school-related functions. Specifically, schools continue to provide on-site meals, homework assignments, other school materials, and related services. All County Agricultural Commissioners (CACs) should be prepared for this situation to potentially continue in some form through the summer and into the 2020/2021 school year.

CACs should also be mindful that health risks and vulnerabilities are heightened, given the growth of the COVID-19 pandemic, and that in response to school closures and stay-at-home orders, children and families are now required to be at their home or place of residence. As such,

apart from times when they are at school to pick up meals, assignments, or for other reasons, children are now generally likely to be at home during the normal school day and potentially through the summer months and into the 2020/2021 school year, until the orders are lifted.

PESTICIDE USE ENFORCEMENT DURING THE COVID-19 EMERGENCY

The March 20, 2020 Department of Pesticide Regulation (DPR) Executive Office Letter #20-01 makes clear that timely compliance with all federal, state, and local pesticide requirements is an essential function. As such, the state pesticide enforcement program must be maintained during the COVID-19 emergency. State law requires CACs to protect students participating in educational instruction at home, along with their families and others providing that educational instruction at home, as well as students, parents, teachers, and other personnel who remain present at school sites during the COVID-19 emergency.

Please note that DPR's schools regulations require annual notification by property operators within ¼ mile of all schoolsites of pesticides that are expected to be used from July 1 of the current year through June 30 of the following year. (Cal. Code Regs., tit. 3, § 6692.) **The notification requirement remains in effect for this coming year. DPR also strongly encourages CACs to have growers provide appropriate notices to nearby residents, to the extent feasible.**

The following DPR Executive Guidance reinforces existing law and encourages compliance with the spirit of the schools regulation, in the absence of on-site instruction. The Guidance states DPR's expectation that all CAC's employ their existing discretionary authority in reviewing permit applications and issuing or denying permits; that they enforce critical pesticide use laws, regulations, and label restrictions; and encourage good-neighbor communication practices to residents, families and schools, during the COVID-19 emergency.

DPR's schools regulations are intended to "apply when children are most likely to be present on school grounds." (Cal. Dept. of Pesticide Regulation, Initial Statement of Reasons No. 16-005, pg. 13.) In view of the documented cases of pesticide drift to schools coupled with the higher health risk of exposure to small children with developing lungs and bodies, and the heightened risks posed by the presence and spread of COVID-19, it is incumbent on CACs to protect children and families from exposure to proposed pesticide applications occurring near schools when there may be people, especially children, on school grounds for any reason, including meal pickup and play/exercise. Likewise, pesticide applicators must work closely with local schools to determine when persons may be present. This is not only consistent with the intent of the schools regulations but is also required by state law. Under DPR regulations, applicators must evaluate surrounding properties prior to applying pesticides and must perform pest control in a careful manner.

a. Guidance Concerning the Application of Critical Health Protective Legal Requirements

Many of the general considerations regarding drift and potential exposures at schoolsites apply to homes as well as schools. Under DPR regulations, applicators must evaluate surrounding properties prior to applying pesticides and must perform pest control in a careful manner. Because school classes have been cancelled, because most children are at home distance learning during most of each day and on weekends, and because of heightened health concerns and vulnerabilities caused by the presence and spread of COVID-19, **all CACs must strictly enforce all applicable health protections around homes and schools during the COVID-19 emergency. Please note that these requirements apply 7-days a week.**

This includes but is not limited to the following legal requirements:

- Pesticide applications *are expressly prohibited* when there is a “reasonable possibility of contamination of the bodies or clothing of persons not involved in the application process.” (Cal. Code Regs., tit. 3, § 6614 (b)(1).)
- A pesticide may not be applied except in a manner that is careful and that prevents drift. (Food & Agr. Code, § 12972; Cal. Code Regs., tit. 3, § 6600.)
- When reviewing an application for a restricted material permit or notice of intent to apply a restricted material, the CAC must ensure protection of schools and homes. Specifically, CACs must impose specific conditions of use or must deny an application based on adverse impacts from the proposed application, including impacts that may result from a reasonable possibility of drift. (Food & Agr. Code, §§ 14000, et seq.; Cal Code Regs., tit. 3, §§ 6400, et seq.)
- Pesticide applicators must follow all label directions, including all requirements to prevent exposure to workers, bystanders, and the environment. (Food & Agr. Code, § 12973.)

b. Guidance concerning penalties

CACs must also take a strict approach to assessing penalties. As discussed above, during the COVID-19 emergency, children and families will now generally be present at home, and will participate in or provide educational instruction there, or at schoolsites to collect meals or other school-related services. As such, **violations that occur near homes or schools during the emergency should be considered “Class A” violations and should carry fines at the top of the range.**

CACs should also continue to charge a separate violation for each person with an acute illness from pesticide exposure caused by the violation. In addition, consistent with the enforcement response regulations, CACs should formally refer violations to the District Attorney, City Attorney, or Circuit Prosecutor where appropriate; for example, in cases involving priority incidents.

DPR OVERSIGHT

Pesticide use enforcement and enhanced transparency concerning pesticide applications that occur near homes and schools is a top priority for the state. DPR will continue to actively perform its statutory responsibility of overseeing the statewide pesticide program and ensuring the effectiveness of local programs. The Department also will continue to provide regular direction and guidance on pesticide use enforcement throughout the COVID-19 emergency. In light of significant budgetary constraints, DPR will also periodically review pesticide program funding levels and will work with CACs to prioritize enforcement of pesticide use restrictions and health goals in order to protect families and children from harmful exposures.

In their enforcement role, CACs must prioritize and complete investigations of reported pesticide violations near homes and schools in a timely and appropriate manner consistent with the enforcement compendium. (See <https://www.cdpr.ca.gov/docs/enforce/compend.htm>, Vol. 5.) If a CAC is unable to do so, the CAC should immediately contact the DPR Enforcement Branch. In such cases, DPR may, as appropriate, elect to become involved and/or take the lead role in the investigation. Where a CAC investigation finds that violations have occurred, notices of proposed action falling under Enforcement Letter 13-11 (<https://www.cdpr.ca.gov/docs/county/cacltrs/penfltrs/penf2013/2013011.htm>) must immediately be routed to DPR for review. At that point, DPR may refer the matter to the Attorney General's Office for prosecution and may initiate a separate statewide licensing action.

DPR will continue its regular performance evaluations of CACs to ensure the county's effectiveness in implementing the state program as described in this guidance. In conducting these evaluations, DPR will take special consideration of pesticide use enforcement near schools and homes. In particular, DPR expects that investigations will be conducted in a rigorous, timely, and appropriately open manner and that the enforcement response will be consistent with the guidance in this letter. DPR also expects CACs to continue to provide consistent communication through monthly reporting requirements and the priority investigation reporting processes under the cooperative agreement, and will work closely with the CACs and CACASA to continue regular communication and check-ins across all counties.

Going forward, DPR will also continue to work with community residents to report pesticide incidents, and will continue to actively engage in issues involving pesticide use near schools and homes. CACs should include regular updates on drift incidents as part of the ongoing DPR -

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CACASA dialogue. In addition, DPR will continue to promote use of the CASPIR (California's System for Pesticide Incident Reporting) mobile application as a free public service to help people report pesticide incidents and concerns in their community quickly and anonymously. Any worker who reports pesticide incidents or concerns through CASPIR or otherwise is protected from being fired, from discrimination, and from any retaliatory action. As a reminder, DPR requires fieldworker training to cover worker rights, including the right to be protected from retaliatory action. (Cal. Code. Regs., tit. 3, § 6764, subd. (b).)

DPR appreciates the ongoing efforts of California's CACs to ensure that children and families at home during the COVID-19 emergency, and participating in and providing educational instruction at home, as well as children and others who continue to be present at school sites, are protected, and that essential public health and environmental protections are not disrupted by the COVID-19 emergency.

If you have any questions, please contact your DPR Enforcement Branch Liaison or Mr. Daniel Rubin, DPR's Chief Counsel, at <daniel.rubin@cdpr.ca.gov> or 916-324-2666.

Sincerely,



Val Dolcini
Director
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cc: Mr. Daniel Rubin
Mr. Joe Marade, DPR County/State Liaison
Enforcement Branch Liaisons