Pesticide Use Enforcement Program Planning Guidance and Evaluation

Purpose

To provide guidance in the development of county pesticide enforcement work plans and to articulate the criteria necessary to evaluate the effectiveness of the county enforcement programs.

Topics

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Topic 1: Enforcement Work Plans – General Guidance

Work plans

Each County Agricultural Commissioner (CAC) must develop a pesticide use enforcement work plan for approval by the Department of Pesticide Regulation (DPR). The work plan must contain the "**core enforcement program**" elements.

"Core" enforcement program

The "**core enforcement program**" encompasses related program areas critical to meeting pesticide regulatory program mandates and strategic goals. The core enforcement program covers the following elements:

- Restricted materials permitting.
- Compliance monitoring.
- Enforcement response.

Continuation of "core elements"

The "core elements" from previous planning cycles have been retained. Both DPR and the CACs spent considerable time during the last two years evaluating their programs, identifying areas for improvement, and developing their work plans to address those areas. This guidance should build upon the progress made over the course of the past two years.

The CAC work plans should include a commitment to continually assess, monitor, and evaluate the core program elements in their enforcement program and implement program improvements where needed. For example, if during the course of the work plan cycle, an evaluation indicates significant threats to the program effectiveness, the CAC should take immediate corrective action. If this requires resource redirection, the CAC should contact their Enforcement Branch Liaison (EBL) as soon as possible.

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Topic 1: Enforcement Work Plans – General Guidance,
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Planning and evaluation frequency

CACs may develop a work plan that covers one, two or three years. CACs should determine the planning and performance evaluation frequency that best fits the complexity of their program.

During the course of a multi-year work plan, CACs should amend their work plan if faced with unanticipated priorities or emergency projects that affect their ability to carry out core program functions.

EBLs will work with the CACs to determine the frequency of county performance evaluations in accordance with Title 3, California Code of Regulations (3 CCR) section 6394(a), Performance Evaluation. A CAC may request annual evaluations even though it has a multi-year work plan.

Work plan approval

DPR will approve county enforcement work plans that have clear goals and deliverables and are focused on core program implementation. DPR will not approve work plans where desirable activities detract from the CAC's ability to implement their core program responsibilities. EBLs will assist the CAC in identifying innovative ways to combine the desirable activities with their core program responsibilities.

Time lines

DPR distributes county statistical data to EBLs and CACs	August 15
EBLs to prepare, discuss, and finalize CAC evaluations	October 1
CACs prepare and submit draft work plans	November 15
CACs finalize and submit final work plans	January 15
DPR approves CAC work plans	January 31
DPR posts data, evaluations, and work plans to the web	March 1

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Topic 1: Enforcement Work Plans – General Guidance,
Continued

Required work plan components

DPR wants enforcement work plans to be simple to prepare, negotiate, understand, implement, and evaluate. Work plans should contain the following components:

Component	Function
County Program	• A general description of the county enforcement program components. • Describe program highlights or accomplishments that the county will continue to build on during the next work plan cycle. • Describe expected program changes in general terms (for example, 25 percent reduction in structural pest control inspections, no annual training or outreach).
County Resources	• A description of resources for the implementation of your work plan. • Describe normal or expected workload for each priority area (i.e., total permits issued and Notices of Intent (NOI) approved), local program issues, and level-of-effort required for implementation (i.e., number of full-time staff needed for normal or expected workload).
Corrective Actions	• Required if prior evaluation(s) contain agreed-upon corrective actions. • Discuss current corrective actions and the measure(s) that will be taken to address pertinent issues.
Core Program Priorities	• A listing of core program priorities is required. Address each DPR core program priority listed on page two or explain why the specific priority does not apply to your county program. See specific core program work plan guidance on the following pages. Make sure work plan commitments are commensurate with expected workload.
Desirable Activities	• Other desirable activities are optional. Workload for desirable activities depends on CAC resource availability. If the CAC elects to conduct desirable activities, the work plan must describe the planned activities, estimated resources, and expected program benefit.

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Topic 2: Core Enforcement Program

Core enforcement program

The "**core enforcement program**" elements are restricted materials permitting, compliance monitoring, and enforcement response.

Restricted Materials Permitting

Restricted materials permitting

DPR and the CACs must assure that our restricted materials permit system protects people and the environment while allowing for effective pest management. To assure effective implementation of the permit system, CACs must:

- Continuously evaluate hazards posed by proposed applications
- Familiarize themselves with the Pesticide Use Enforcement Program Standards Compendium, Volume 3 – *Restricted Materials and Permitting*

Generally, applications of California restricted materials may occur only under a permit issued by the CAC. Despite declining resources, CACs must evaluate each proposed application before it occurs and document their determination that the application posed no unacceptable risks or that the permit was conditioned to mitigate identified hazards. Per 3 CCR section 6436, CACs also conduct a pre-application site evaluation when they determine that only an on-site evaluation will allow for an appropriate assessment of risk.

Permit system workload cannot be controlled by the CACs or by DPR, yet DPR is required to provide an effective program. DPR's permit system priorities focus on business process evaluation and improvement to assure the most efficient use of available resources. The following provides guidance for incorporating permit program priorities into CAC work plans.

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Permitting work plan guidance

The restricted materials permitting work plan should describe the current business process, any findings from previous evaluations, and planned improvements. The CAC should document all program changes resulting from their ongoing assessment. This will allow DPR and the CAC to review needs and to adjust or redirect workload to match resource availability.

Specifically, the work plan should focus on the following:

- Identification and evaluation of all sensitive sites including residential areas, schools, crops, wetlands, waterways, and critical habitats of rare, endangered, or threatened species and livestock.
- Mitigation alternatives and site specific use practices.
- Review and evaluation of NOIs to ensure environmental and human health conditions have not changed since the permit was issued.
- Certification of private applicators.

Site evaluation work plan guidance

The site evaluation work plan should utilize the CAC's knowledge of pesticide hazards, local conditions, cropping, and fieldwork patterns, as well as handler, permittee, and adviser compliance histories to address local, multi-county, and/or regional issues. Specifically, the plan should address:

1. High priority situations and proposed level of monitoring:
    - Pesticide by crop/chemical (fumigant), environmental conditions, proximity to sensitive sites, etc.
    - As resources allow, certain on-site pre-application inspections (100 percent monitoring)
2. Assessment schedule and success criteria to help determine plan adjustments.
3. The percent of total NOIs approved to be evaluated. CACs should not limit themselves to evaluating five percent of approved NOIs if resources allow and local situations require more. Pre-application site evaluating can prevent adverse episodes from occurring and is critical to permit program effectiveness.

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Topic 2: Core Enforcement Program, Continued

Restricted material program evaluation

The table below shows the criteria DPR will consider when evaluating the effectiveness of the Restricted Material core program element.

Effectiveness Based On:	Suggested Questions to Ask….
• Occurrence of adverse incidents where CAC had a high degree of control (actual risk): • Program administration (potential risks):	1. Does the CAC evaluate all required permit information before the application takes place? a) If yes: ▪ Was it effective? Did any adverse effects still occur? ▪ What were the costs of a full evaluation to the CACs program? Did they give up other activities? b) If no: ▪ Why? Resource limitations? Poor business process? ▪ What are the potential risks to the effectiveness of the program? ▪ What can be done to reduce risks and improve business process? 2. Did the CAC implement a site-evaluation program? a) If yes: ▪ Was it responsive to program needs/changes? ▪ Was it effective? Was it preventative? ▪ Was it comprehensive? Were all sectors or risk factors covered? ▪ Did the CAC develop effective approaches that could be shared with other CACs? b) If no: ▪ Why? ▪ What are the potential or actual risks to the effectiveness of the permit program? ▪ What improvements can be made? 3. Are there risks that DPR needs to address to better support the CAC's permit program?

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Compliance Monitoring

Compliance monitoring priorities

DPR's strategic goal to reduce risks to people and the environment depends on an effective and comprehensive compliance monitoring program. Inspections and investigations allow CACs to identify and respond to potential hazards to workers, the public, and the environment.

To assure an effective compliance monitoring program, CACs must:

- Assure broad-based and comprehensive inspection types.
- Identify the number of inspections necessary to maintain an enforcement presence effective at deterring violators.
- Assure thorough and timely investigations.
- Familiarize themselves with the Pesticide Use Enforcement Program Standards Compendium – Volume 5, *Investigation Procedures*.

DPR's Pesticide Use Enforcement Program Standards Compendium, Volume 4, *Inspection Procedures*, discusses the components of an effective, broad-based, and comprehensive inspection program. The EBLs are committed to working with each CAC during negotiations to develop and implement a work plan that addresses DPR's strategic goals within the CAC's resources. In addition, the EBLs will work with the CAC to address oversight inspections required to meet joint U.S. EPA/DPR/CAC goals.

Effective and comprehensive compliance monitoring is essential to assuring the safety of pesticide handlers, fieldworkers, the public, and the environment. Compliance monitoring includes pesticide use and records inspections, episode and complaint investigations, and surveillance. The following provides guidance for incorporating compliance monitoring priorities into CAC work plans.

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Inspection work plan guidance

As with site monitoring plans, inspection strategies developed by CACs, either individually or regionally, can be more effective and comprehensive than a plan developed by DPR. An effective inspection strategy encompasses a broad spectrum of pesticide handling situations and responds quickly to local issues. Specifically, the work plan should focus on the following:

1. A balance between planned and spontaneous inspections:
   - Targeted: specific crop, application method, grower vs. business
   - Random inspections
2. Broad coverage of handling situations, commensurate with risk:
   - Violation history and/or pesticide episode occurrence
   - Local and/or state priorities
   - Pesticide use activities, etc.
3. Effectiveness in terms of:
   - Management involvement
   - Response to changes
   - Measurable improvements in overall compliance rates

Investigation work plan guidance

DPR and the CACs have responsibility to investigate episodes that may involve potential or actual human illness or injury, property damage, loss or contamination, and environmental effects alleged to be the result of the use or presence of a pesticide in a timely and thorough manner. The work plan should continue to focus on the following:

- Timely initiation and completion of all non-priority investigations. Reducing initiation and completion times will result in improved evidence gathering.
- Timely priority episode initiation and reporting. Following initial notification from DPR, CACs must initiate priority episode investigations immediately, but in no event will the investigation commence later than three working days, and submit a preliminary report within 15 days.
- Development and use of investigation plans. CACs should develop investigation plans and use the "elements of the violation analysis" technique to reduce time needed to obtain key evidence and complete the investigation report. Please review the *Investigation Procedures* manual (Volume 5 of the Pesticide Use Enforcement Program Standards Compendium) section 1, subsection F: Investigative Plan.

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Investigation work plan guidance (continued)

- Thorough report preparation. Complete investigation reports include a discussion of all suspected and causal violations discovered during the investigation. Incomplete reports will be returned to the CACs for additional information.

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Compliance monitoring program evaluation

The table below shows the criteria DPR will consider when evaluating the effectiveness of the compliance monitoring core program element.

Effectiveness Based On:	Suggested Questions to Ask…
• Comprehensiveness of the inspection program • Completeness, accuracy, and timeliness of investigations	1. Did the CAC implement a comprehensive compliance monitoring program? (See second item under the restricted materials permit program area for similar questions). 2. Does the CAC conduct surveillance? a) What percent is planned? What percent is random? b) Is it effective? • Did they find new violators or repeat violators? • Did it help the CAC improve the compliance monitoring program? c) Is it an appropriate resource use? d) Can improvements be made? 3. Are the CAC investigations complete and timely? a) If not, why? What caused these problems? • How many were sent back for additional information? What was the nature of the information needed? • How many were not completed in a timely manner? b) What risks do these problems present to the program? c) What improvements can be made? 4. Are the CAC investigations effective? a) Do they clearly explain how or why the event occurred? b) Did their investigation allow them to take appropriate enforcement action when causal violations were discovered? c) Did the investigation and follow up activities allow the CAC to implement preventative measures? At the applicator or business level? Within the local program?

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Enforcement Response

Enforcement response priorities

To realize the full benefits of a comprehensive and effective statewide pesticide regulatory program, DPR and the CACs must apply our enforcement authority fairly, consistently, and swiftly. Our joint enforcement response should emphasize worker and environmental safety and enhance deterrence by:

- Creating a climate that compels all pesticide users to comply with state laws and regulations through a program of progressive discipline
- Ensuring that compliance, once achieved, is sustainable
- Helping CACs balance the level of enforcement response with their staffing resources
- Improving enforcement response guidance

Achieving sustainable compliance is a top priority for both CACs and DPR. The Enforcement Response Regulations (ERR) provide the tools to help CACs choose the best enforcement option. The following provides guidance for incorporating enforcement response priorities into CAC work plans.

Enforcement response work plan guidance

Special emphasis should be placed on the ability to detect and deter "repeat" violators through both compliance monitoring and enforcement responses.

- Consider all appropriate enforcement options before taking action. If available options will not result in sustained compliance, refer to the State for enforcement action, when appropriate.
- Assure timely responses to ensure against lost or compromised evidence.
- Respond to all violations whether by compliance or enforcement action. This will help create a climate that compels compliance.
- Choose the response that is most likely to result in sustained compliance with the most efficient use of resources.
- In cases of extreme staffing shortages, the greatest effort should be directed at violations that pose the highest risk to people and the environment. DPR expects CACs to focus their resources on preventing health and safety violations.

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Topic 2: Core Enforcement Program, Continued

Enforcement response program evaluation

The table below shows the criteria DPR will consider when evaluating the effectiveness of the Enforcement Response core program element.

Effectiveness Based On:	Suggested Questions to Ask…
• Appropriateness and timeliness of enforcement response • Progressiveness of response for repeat violators	1. Are enforcement responses appropriate? a) Do compliance and enforcement actions fit the situations to which they are applied? Are the choices effective? Does the CAC follow the ERR? b) Does it seem that the similar types of compliance or enforcement actions are applied in a routine manner? c) Are enforcement actions classified correctly? d) Do certain industry segments receive treatment that is out-of-balance with the gravity of their violation? 2. Are enforcement actions timely? a) Are enforcement actions done close enough to the time of the incident to provide an effective and relevant reminder of the consequences of the violation? b) Are enforcement actions done close enough to the time of the incident to provide credible and reliable evidence? c) Are enforcement actions done in a manner so that case file preparation is not being driven solely by an impending statute of limitations? 3. Are enforcement actions for "repeat" violators progressive? a) Are "repeat" actions and penalties (if levied) more severe? b) Is there any timely follow-up inspection activity for persons or businesses with previous non-compliances or violations? c) If not, why not?

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Appendix A

Strategic Goals

Strategic goals guide program planning

DPR's 2008 Strategic Plan is designed to help us meet our regulatory obligations as described by the Legislature. The enforcement program priorities outlined in this document were chosen as those best suited to achieving statewide strategic goals through local enforcement activities. The CACs pesticide use enforcement programs are instrumental to meeting the vision and mission articulated in the Strategic Plan.

Strategic Vision and Mission

- Vision: California, where pest management is safe, effective, and contributes to a clean, healthy, sustainable environment.
- Mission: To protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management.

Strategic goal: strong enforcement reduces risk

DPR will assure that no socioeconomic group of Californians is disproportionately impacted by the use of pesticides by:

- Identifying and improving areas of greatest non-compliance.
- Ensuring that regulatory requirements are practical and enforceable.
- Ensuring appropriate enforcement actions are taken.
- Enhancing the effectiveness of inspections and investigations.
- Enhancing efforts to improve compliance.

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Appendix B

Roles and Responsibilities

Purpose of the Pesticide Use Enforcement Program

The primary purpose of California's pesticide regulatory program is to regulate, prohibit, or ensure proper stewardship of pesticides registered for use to assure:

- Environmental protection
- A safe workplace for all pesticide handlers and agricultural workers
- Pest control licensee competency and responsibility
- The ongoing availability of pesticides essential to the production of food and fiber and the protection of health

DPR responsible for statewide program

California law designates DPR as the agency responsible for delivering an effective statewide pesticide regulatory program. DPR directly regulates most aspects of this program, however, the Legislature delegated local administration of pesticide use enforcement to the CACs. The success of the statewide use enforcement program, therefore, depends on the collective enforcement achievements at the local level. To assure successful local programs, DPR uses its statewide regulatory authority to oversee, evaluate, and improve the CACs' use enforcement programs (Food and Agricultural Code [FAC] section 2281). State law also requires DPR to provide CACs with guidance, in the form of instructions and recommendations, assist CACs in the planning and development of adequate county programs, evaluate effectiveness of the local programs, and assure that CACs take corrective actions in areas needing improvement.

CACs responsible for local use enforcement

Whenever California law places joint enforcement responsibilities on the Director and the CACs, CACs are responsible for the administration of the local program, with few exceptions. The FAC and 3 CCR describe the CAC's enforcement authority, activities they must, or may, conduct to properly administer this program, the requirement to implement the local programs according to state issued guidance, and their obligations to work cooperatively with DPR in the improvement of their programs.

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Roles and Responsibilities, Continued

CAC Discretion

While the FAC and 3 CCR clearly establish DPR's oversight role, they also grant broad discretion to the CACs in the daily administration of their local pesticide use enforcement programs. The variety of pesticide use in California precludes an effective "one size fits most" enforcement program. DPR will never be able to provide guidance for every potential contingency. Therefore, the success of our collective program depends on the CACs' ability to make sound decisions and take independent, appropriate, and consistent actions whenever necessary. DPR will support the decisions made and actions taken by CACs provided they result in fair and effective local pesticide use enforcement programs.

Role of DPR Written Guidance

DPR provides written guidance to assist CACs and their licensed staff in making sound decisions and taking appropriate actions. This guidance also serves to promote statewide uniformity and fairness to the extent possible.

Our written guidance does not have the force of law. It may also be inappropriate for a given situation, regardless of the age of the document. DPR expects CACs and their staff, as persons licensed to conduct pesticide use enforcement activities, to be able to obtain, analyze, and apply all relevant information in the course of responding to any given situation. This expectation is at the core of DPR and the Legislature's willingness to grant local authority and discretion to the CACs.

Role of Enforcement Branch Liaisons

DPR's EBLs and supervisors are the Director's designated representatives in the field. As such, they are the CACs' primary points of contact concerning the implementation and evaluation of the local pesticide use enforcement program. EBLs are subject matter experts in the areas of pesticide use enforcement and response, episode investigation, and local program evaluation. The EBL's knowledge of local issues and their authority to guide local program improvement foster the consistent and fair implementation of regulatory requirements among independent local programs. The EBL's actions and interventions, on behalf of the Director, promote an effective statewide use enforcement program.