

OVERVIEW AND RECOMMENDATIONS



LETTER FROM PAUL E. HELLIKER DIRECTOR, DEPARTMENT OF PESTICIDE REGULATION

This report culminates a major undertaking by the Department of Pesticide Regulation (DPR) that began in 2001 at the direction of the Legislature and Governor Davis. Chapter 523 of 2001 (Assembly Bill 780, Thompson) required DPR to report to the Legislature on the appropriate, long-term funding sources and levels needed to support California's nationally known pesticide regulatory program.

AB 780 also continued DPR's mill assessment – a levy on wholesale pesticide sales – at a level initially set in 1997. That mill rate (17.5 mills, or \$0.0175 per dollar of sales) deliberately underfunded DPR operations to expend a temporary fund surplus. In anticipation of a DPR funding shortfall in fiscal year 2002-03, legislators then earmarked \$7 million for DPR from the General Fund. Their intent was to fully support DPR programs, pending approval of a long-term funding plan. Soon thereafter, Governor Davis was compelled to strike the appropriation and other General Fund spending to help counteract a looming state budget deficit. As a result, DPR has made more than \$7 million in actual program cutbacks for fiscal year 2002-03.

One year ago, in accordance with AB 780, I convened a subcommittee of DPR's Pest Management Advisory Committee to consult with DPR on its preparation of this report. The subcommittee represented a broad range of stakeholders in agriculture, industry, and environmental advocacy, as well as the Legislature and local government. (*Members are listed on page 6.*) DPR gratefully recognizes their contributions in time and effort during numerous meetings and hours of discussion that helped to shape this document.

In substantial detail, this report provides a perspective necessary to understand DPR's long-term funding needs. The report includes a review of the history and structure of California's pesticide regulatory program. It describes DPR's roles

and responsibilities, and its working relationships with county agricultural commissioners, other state agencies, and federal pesticide regulators. The report details DPR initiatives to enhance its programs, and to make its operations more efficient and effective. Finally, the report analyzes the history, sources, and actual costs of DPR operations, and assesses DPR's future needs in light of the state budget deficit and reductions in General Fund support. *(More topics may be found in the Table of Contents and in topical summaries preceding each section and chapter.)*

While the report includes the opinions of subcommittee members on various funding options, as well as perspectives by the Legislative Analyst, the following recommendations are those of DPR. AB 780 directed DPR to respond to four specific questions. They are addressed individually, as follows:

What are the ongoing funding needs that will allow the Department to carry out its responsibilities under state statutes and regulations?

We believe that DPR's appropriate funding needs were met in fiscal year 2001-02, when our budget was \$63 million. Approximately \$50 million was devoted to programs administered by DPR, with an additional \$13 million pass-through funding for local pesticide programs. DPR adequately performed its enforcement, licensing, and local oversight functions during fiscal year 2001-02. DPR conducted the investigations necessary to assess worker safety and illness incidents. We met our obligations for ground water contamination assessment and air toxics management, and we initiated a program to assess and eliminate surface water contamination by pesticides. DPR also found the resources to make expeditious decisions on pesticides proposed for registration in California, while implementing critical e-government projects that provided better information and services to customers.

DPR's local partners, the county agricultural commissioners, also conducted their overall regulatory programs adequately, although they relied upon other funding sources (county general funds and unclaimed fuel taxes) in addition to the General Fund and mill assessment dollars provided through DPR's budget.

Due to declining revenues in the state General Fund, and a revenue shortfall from the mill assessment, DPR's fiscal year 2002-03 budget was reduced to about \$54 million. As a result, grants promoting alternative pest management strategies were eliminated; pesticide registration activities were reduced by 15 percent; risk assessment activities were cut back by one-third; food residue sampling was reduced by 35 percent, and e-government initiatives were scaled back. Monitoring of air, ground water and surface water was scaled back by 60 percent, 45 percent, and 50 percent, respectively. Where possible, DPR shifted responsibility for environmental monitoring to pesticide users or manufacturers. County pesticide regulatory program activities were not affected by DPR budget cuts, but the revenues they received from other sources declined from previous years.

During the AB 780 legislative debate, and subsequent meetings of the advisory panel, most stakeholders agreed that DPR should be funded to maintain activities comparable to those conducted in fiscal year 2001-02. After a detailed

review of DPR activities and associated costs, there was no consensus among stakeholders on specific program cuts. Environmental and public health advocates recommended increased funding to support expanded or additional activities. As the state budget crisis deepened during 2002, stakeholder meetings produced no agreement on how to address DPR's funding crisis. Given the disparate interests of DPR stakeholders, this is not surprising. In any case, AB 780 directed DPR to formulate its own recommendations after receiving input from the subcommittee.

What is the appropriate mix of general funds and special funds, including the pesticide mill assessment, to support the Department's activities?

As the chart in Chapter 9 shows (page 54), General Fund support for DPR programs has fluctuated over time, driven by the mandates of new legislation and changing economic conditions. DPR's mix of General Fund monies has ranged from 24 percent (fiscal year 1996-97) to 67 percent (1987-88 and 1988-89). For fiscal year 2003-04, we propose to shift the source of DPR's funding from the General Fund to the mill assessment and other DPR fees. Due to the state's fiscal crisis, we cannot justify funding the pesticide regulatory program from the General Fund.

There is strong state and national precedent for supporting environmental regulatory activities with special fees assessed on parties whose activities require enforcement, monitoring, and remediation. For example, both the California Air Resources Board and State Water Resources Control Board impose special fees on "responsible parties" to fund regulatory activities. In addition to providing incentives for business to minimize their environmental impact, such special funding also fosters regulatory continuity and consistency.

DPR also proposes to increase fees to cover most regulatory costs of corresponding program activities. The current mill assessment cap of 17.5 mills (\$0.0175) would be increased to a 27-mill cap. The actual mill rate would be set annually, based on DPR program needs, through legislative deliberations on the state Budget.

At the rate of 27 mills, DPR could fund its state operations at the current level of \$41 million, plus a prudent reserve. Since state agencies are currently operating under a hiring freeze, and most have implemented program reductions, DPR expects its operating budget to fall below \$41 million. On that basis, the mill rate could be set to reflect actual budget needs. For fiscal year 2003-04, DPR would require a rate of 25 mills to fund its state operations of about \$39 million, as proposed in the Governor's Budget.

It is important to note how an increase in the mill would affect California's agricultural industry. A 1997 report from the University of California Environmental Health Policy Program that analyzed the mill's economic impact concluded that "any feasible rate increase is likely to have only a small impact on overall agricultural costs." The report noted that farm expenditures on pesticides (excluding application costs) range between four and five percent of total production costs. "Even if California's mill assessment rate were increased

fivefold to more than 10 percent of the cost of pesticides, total production costs would increase only several tenths of one percent,” according to the UC report.

Several months ago, DPR began discussing some findings of its own in meetings with stakeholders and legislative staffers. DPR analyzed overall operating costs in 2001 for the state’s agricultural industry and calculated the percentage of costs represented by the mill assessment. DPR found that the mill represented less than one-tenth of one percent (between 0.06 and 0.08 percent) of total input costs. If the current mill assessment were increased by 50 percent, it would still represent only a small fraction of one percent (between 0.09 and 0.12 percent) of total inputs.

This is not surprising, since the mill assessment represents a small fraction of overall business costs for research, development, registration, and marketing of pesticide products in California. The mill assessment’s impact on the regulated community has been the subject of vigorous debate for years, but there is no substantial evidence that indicates the mill assessment represents a significant industry cost. To the contrary, DPR’s investigation and some other studies indicate that the mill assessment has a negligible fiscal impact on industry and consumers.

As part of its proposal to eliminate reliance on the General Fund, DPR also seeks authority to adjust examination and licensing fees for pesticide business activities, such as pest control companies, maintenance gardeners, qualified applicators, and pest control advisers. DPR conducts about 9,000 examinations annually and issues or renews about 15,000 licenses, which are valid for two years.

Set by statute, annual fees range from \$15 to \$100. Most fees have not been increased since the mid 1980s. An independent business consultant retained by DPR in 2001 calculated the cost of licensing-related activities at \$1.7 million against actual revenues of about \$1 million. Examination fees, which range from \$5 to \$15, raise about \$59,000 annually, versus actual costs of about \$425,000. DPR has encountered significant delays in processing licensing and renewal applications due to this funding shortfall. DPR proposes to give the Director authority in regulation to set fee rates annually, at a rate calculated to cover program costs.

What is the appropriate rate of mill assessment on pesticide products that are used primarily in agricultural production and the appropriate rate for all other pesticide products?

DPR proposes a uniform rate of mill assessment for all pesticide products. It is true that some programs (such as use reporting, restricted material permits, and enforcement) pertain primarily to products used for agricultural production. However, other programs (such as illness tracking and investigations) are weighted toward nonagricultural products. An attempt to apportion these activities on an industry-by-industry or sector-by-sector basis could complicate mill collection activities and significantly increase administrative costs, while potentially creating friction within the regulated community.

However, should the Legislature entertain the prospect of a differential rate of mill assessments, a specifically differential mill assessment for restricted materials would offer the most feasible prospects for implementation. Due to their potential hazards, these pesticide products are tracked throughout the pesticide regulatory process, from initial registration to permitting, enforcement, and use reporting. Restricted materials are also the primary products regulated by the county agricultural commissioners. (The AB 780 subcommittee engaged in extensive discussions on a differential for restricted materials; *see Chapter 11.*)

On a related note, DPR will establish a new branch within its Division of Administrative Services in 2003 to assume responsibility for all mill assessment activities. The branch will consolidate mill assessment collections, field investigations of unregistered product sales, and auditing activities. Our intent is to develop a more predictive model for mill revenues, ensure mill payments are timely and equitable, and take swift enforcement action against unregistered products to protect the public and law-abiding registrants.

What are potential improvements in the efficiency of DPR's operations, including mechanisms to share pesticide registration workload with the U.S. Environmental Protection Agency (U.S. EPA)?

As the Davis Administration's DPR Director, my commitment has been to make DPR programs and processes open and transparent so that customers can easily access the information and services they need. Despite financial restraints, we have moved quickly to implement Governor Davis' vision of providing more government services via the Internet to conduct our activities as efficiently as possible. We also established performance metrics that are easily tracked and understood so that the Legislature, industry, environmental groups, labor organizations, and other stakeholders have the ability to evaluate the performance of every critical DPR function on an ongoing basis.

Chapter 12 of this report (*beginning on page 79*) details the major operational improvements we have been implementing at DPR during the past few years. These include:

- * Collaborating with U.S. EPA to jointly plan registration reviews for new active ingredients.
- * Receiving a national award from U.S. EPA for our joint efforts with the federal agency to establish new tolerances for pesticides and crops critical to California growers.
- * Implementing new e-government systems that allow registrants immediate access to the status of their registration requests.
- * Providing access to pesticide use data via the Internet, both for data entry and report generation.
- * Establishing new county performance targets and program effectiveness evaluation processes.
- * Conducting assessments of industry compliance with pesticide program requirements.

- * Improving the accuracy and completeness of the pesticide illness tracking system, and using the data to improve worker protection programs, among other improvements.

This completes DPR's response to the four questions raised in AB 780. Our recommendations also fulfill a final request from the Legislature. DPR was asked to provide “a funding solution for the Department that will eliminate the need to reauthorize the mill assessment on pesticide and consumer product sales every five years and that will preserve the accountability of the department to the entities contributing to the financing of the Department.”

Reauthorization or “sunset” of the mill assessment prompted extensive discussions with our AB 780 subcommittee (*see Chapter 13*). Industry representatives supported a continuation of the sunset, arguing it is needed to control costs imposed on their constituencies. DPR employee representatives oppose the sunset because it may adversely impact programs and employee morale. Public interest advocates were essentially neutral.

For many years, arguments on reauthorizing the mill assessment focused on who should pay, and how much. That often-heated rhetoric excluded any serious discussions about pesticides and regulatory policies. Meanwhile, other environmental programs saw their fees set in regulation, sometimes with statutory caps, as DPR now proposes for itself. We believe that DPR’s funding recommendations will fully address the issues of review and accountability. The legislative budget process is the most appropriate forum to determine pesticide regulatory funding in California. It will ensure a public process, provide accountability to all stakeholders on an annual basis, and stabilize regulatory program funding.

In conclusion, DPR’s regulatory programs are critical for directing the safe use of pesticides in a state that leads the nation as both agricultural producer and urban center. As communities and farms grow closer together, our mandate to protect the public, workers, and the environment will grow even more challenging.

In the immediate future, DPR will play an integral role in countering threats such as West Nile virus and Sudden Oak Death Disease, and exotic pests such as the Mexican fruit fly. We have demonstrated an ability to expedite least-toxic, highly effective pest management tools when new pest emergencies arise. Taking a longer view, DPR grant programs have helped growers and others prevent further water and air contamination. These and other DPR activities are jeopardized by a lack of stable, long-term funding.

In addition to protecting public health and the environment, DPR provides a variety of programs that assist the regulated community, while keeping pesticide uses safe and viable for agriculture. It is both reasonable and logical that regulated industry should fund a regulatory program, especially since there is no demonstrated hardship to industry.

We thank the Legislature and the Governor for the opportunity to explore these issues and present recommendations to guide DPR into the future.

A handwritten signature in black ink that reads "Paul Helliker". The signature is written in a cursive style with a prominent dot over the 'i' in Helliker.

Paul E. Helliker
Director
California Department of Pesticide Regulation