

Department of Pesticide Regulation

2015 SLAA REPORT

December 31, 2015

Matthew Rodriquez, Secretary
California Environmental Protection Agency
1001 I Street
Sacramento, CA 95814

Dear Mr. Rodriquez,

In accordance with the State Leadership Accountability Act (SLAA), the Department of Pesticide Regulation submits this report on the review of our systems of internal control and monitoring processes for the biennial period ended December 31, 2015.

Should you have any questions please contact Anise Severns, Assistant Director, at (916) 650-6957, anise.severns@cdpr.ca.gov.

BACKGROUND

California has regulated pesticides for a century. Its citizens, through their Legislature, have established a comprehensive body of laws to control every aspect of pesticide sales and use, and to assure that the state's pesticide regulators also have the tools to assess the impact of that use. The first pesticide-related law was passed in this state in 1901 and, since the 1960s, a whole body of modern and increasingly science-based pesticide law and regulation has come into being.

DPR protects human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management. DPR's strict oversight begins with product evaluation and registration, and continues through statewide licensing of commercial applicators, dealers, and consultants; environmental monitoring; and residue testing of fresh produce. In 2015, DPR had an annual budget of approximately \$90.9 million, with staff of approximately 391, including scientists from many disciplines. Their work is augmented by approximately 250 biologists working for county agricultural commissioners (CACs) in all 58 counties on local pesticide enforcement.

The department's mission is to protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management. Major goals of the department are to:

Protect people and the environment:

- Assure California's environment is not adversely affected by pesticides and that all people are protected from unacceptable pesticide risks.

Advance reduced-risk pest management systems:

- Advance the research, development, and adoption of effective pest management systems that reduce risks to people and the environment.

Enforce and achieve compliance:

- Maintain and continuously improve strong and equitable compliance and enforcement programs to ensure people and the environment are not exposed to unacceptable pesticide risks.

Ensure environmental justice:

- Protect all people in California, regardless of race, age, culture, income, or geographic location, from adverse environmental and health effects of pesticides.

Continuously improve performance, accountability, and organizational effectiveness:

- Efficiently deliver our programs by attracting and retaining a competent workforce, employing effective business processes, and leveraging current technology.

Communication and outreach:

- Promote an understanding and awareness of DPR programs, priorities, initiatives, and accomplishments through effective external communications, outreach, and public education.

RISK ASSESSMENT PROCESS

DPR conducted the following tasks to complete its risk assessment:

- Assembled and deployed a SLAA team of DPR's executives and the Fiscal Services and Business Operations Branch Chief. DPR briefed each team member on SLAA requirements and required each to review State Administrative Manual SLAA requirements, including the outline and contents of the required biennial SLAA report.
- Defined primary DPR business processes.
- Assessed initial, potential vulnerabilities and risk areas that could adversely impact the DPR's ability to achieve its mission. The DPR SLAA team explored broad vulnerabilities, including program, financial, and administrative risks.
- Conducted facilitated work sessions with the SLAA team to further evaluate and define vulnerabilities within each DPR branch. During these sessions, meeting participants assessed the probability of each identified risk of occurring, and came to an agreement on the potential impact on DPR, stakeholders, and constituents if the risk occurred.
- Defined each risk that could most adversely impact the DPR, which are those most likely to occur, and which would have the greatest impact if the risk did occur. For each of these more critical risks, the team developed a corrective action plan to mitigate the risk.
- Identified corresponding existing controls that provide reasonable assurance that potential risks, including less critical risks, would be mitigated.
- Continued implementing a process to continuously assess and evaluate DPR's control structure.

Review Focus

The risk assessment did not focus in one specific area, but examined all operating programs for potential areas of risk.

Audits Performed

DPR was audited twice during the biennial year ending December 31, 2015. The first audit was conducted by the Department of General Services' (DGS) Office of Audit Services and was conducted from September 2014 through March 2015. As a condition of DPR's exemption from DGS's approval of contracts under \$150,000, two audits are required to be performed of the department's contracting program during the exemption period. The objective of the audit was to determine if DPR maintains an adequate and effective system of internal control over contracting and if that system is sufficient to ensure compliance with California's contracting laws, policies, and procedures. DGS concluded that DPR's contracting policies and procedures are sufficient to provide reasonable assurance of compliance with the State's contracting laws, policies, and procedures.

The second audit was conducted by the State Personnel Board (SPB), Compliance Review Unit. The audit was a routine compliance review of DPR's examinations, appointments, Equal Employment Opportunity (EEO), and personal services contracts programs. The primary objective of the review was to determine if DPR's personnel practices, policies, and procedures complied with state civil service laws and SPB regulations, and to recommend corrective action where deficiencies were identified. The audit resulted in one finding in the examinations area, three findings in the appointments area, and no findings in the EEO and personal services contracts areas.

EVALUATION OF RISKS AND CONTROLS

Operations- External- Funding—Sources, Levels

Long-Term Funding

The vast majority of DPR employees are in bargaining unit 10, represented by the California Association of Professional Scientists (CAPS). CAPS is pursuing large salary increases that, if received and implemented, would put significant pressure on DPR's main funding source in outyears. DPR's main funding source, the DPR Fund, is funded mainly from the mill assessment, which is already at its statutory cap of 21 mills (one mill equals 0.1 cent of each dollar of pesticide sales). DPR has the authority to increase or decrease the mill rate by regulation only up to the statutory maximum of 21 mills.

DPR's budget office will monitor the condition of the DPR Fund and the fiscal impact negotiated pay increases will have on long-term stability of the fund. The DPR executive management team receives quarterly briefings on the condition of the DPR Fund and has the opportunity to plan based on projections. This is an existing control that serves to keep the executive management informed of the condition of the department's main funding source.

Compliance- Internal- Priorities Conflicting with Laws or Regulations

Marijuana Regulation – Conflicting Priorities and Unknown Workload

The Medical Marijuana Regulation and Safety Act (Act) assigns specific statutory mandates and responsibilities to DPR. Specifically, the Act directs DPR to develop guidelines for the use of pesticides in the cultivation of cannabis and for residue levels in harvested cannabis. The startup of a new regulatory program creates significant workload on key DPR personnel already engaged in other mission-critical tasks.

There are also conflicts with the enabling statutes that authorize DPR to regulate pesticides. First, DPR is preempted by federal law from registering a pesticide for sale and use that is not first registered by the United States Environmental Protection Agency (USEPA); federal law also prohibits DPR from establishing maximum pesticide tolerances for any cannabis that is used in food. Furthermore, under federal law, it is unlawful for any person to manufacture, distribute, dispense, or possess marijuana. The legal conflicts only make the tasks of providing guidance, setting standards, and promulgating regulations more challenging.

There are still many unknowns in the nascent regulation of medical marijuana with many shifting factors, like follow-up legislation or a voter initiative that may further amend California's marijuana laws. As such, DPR will proceed cautiously with work that will help with understanding the medical marijuana cultivation industry, work that will most likely still be required even if the laws surrounding marijuana changes.

Operations- Internal- FI\$Cal Conversion

DPR was originally scheduled for a "Wave 4" FI\$Cal implementation, with a "Go-Live" date of July 1, 2017. However, in November 2015, FI\$Cal and DPR made the decision to move DPR's implementation date up one year earlier to July 1, 2016. As a result, implementation activities that typically occur over 18 months (January 1, 2016 – July 1, 2017) have been compacted into seven months (December 1, 2015 to July 1, 2016). DPR is a small department with limited resources to cover the accounting, budgeting, and procurement functions and implement the FI\$Cal project. With limited staffing and resources, DPR will have a difficult time carrying out the day-to-day administrative functions and implementing FI\$Cal.

DPR is exploring avenues to hire temporary staff and help.

Compliance- Internal- Resource Limitations

Mitigation Workload

DPR has a commitment to complete five (5) comprehensive risk assessments each calendar year. A risk assessment is a process designed to answer questions about how toxic a chemical is, what exposure results from its various uses, what is the probability that use will cause harm, and how to characterize that risk. With the completion of five risk assessments per year, developing mitigation measures to address the risks identified by the risk assessment is critical. In 2014, 4 of the 5 risk assessments needed further evaluation for mitigation. Mitigation involves a team of scientists whose task includes multiple discussions with all stakeholders (pesticide product registrants, growers, pesticide users, NGOs) to analyze the current uses of the pesticide's active ingredient that needs to be mitigated. After discussions, the team writes up a scoping document that includes a detailed assessment of the currently approved labels and compares those approved use scenarios with the scenarios evaluated in the comprehensive risk assessments. If there are any scenarios that were not addressed, the team consults with exposure assessors to complete the assessment.

With current resources, mitigating for the five risk assessments to be completed each year will be a challenge and completing mitigation may be delayed, which may impact public health and safety.

Development of mitigation measures for the recently completed risk assessments is done by existing staff. DPR continues to monitor this issue to ensure that mitigation is prioritized for the active ingredient with greatest potential for adverse effects to public health and the environment. DPR is also monitoring workload levels for each mitigation measure to see if additional resources will need to be added.

Operations- Internal- Staff—Key Person Dependence, Succession Planning

Workforce Retirements

As of July 2015, 35 percent of the DPR workforce is eligible to retire now. In addition, another 10 percent of the DPR workforce will be eligible for retirement in five years. In total, 45 percent of DPR's current workforce will be eligible for retirement within five years. The loss of institutional knowledge and the need for extensive training of new staff may erode DPR's ability to deliver mandated programs. Furthermore, the "Like-Work for Like-Pay" salary increases will be fully vested on June 30, 2017, at which time, most of DPR's senior employees and managers will be in a better position to retire.

DPR is working on formal succession plans that identify key individuals or key roles that may retire and creating plans on how to mitigate the knowledge loss. DPR also has a robust training and development program for its professional and supervisory and managerial employees.

Compliance- Internal- Resource Limitations

Pollinator Protection Workload

Pollinators contribute substantially to California's agricultural economy and are essential to the production of fruits, nuts, and vegetables. However, the number of managed honey bee colonies has been on a steady decline; beekeepers are reporting losses of 30% of bee colonies each winter. In response to the declining health of pollinators, the United States Environmental Protection Agency (U.S. EPA) has developed guidance on the conduct of exposure and effect studies used to characterize the potential risk of pesticides to bees and other pollinators. As a result, more studies from the makers of these pesticides being targeted for review are required to assess the potential for acute and chronic toxicity to pollinators. By regulation, DPR adopts U.S. EPA's data requirements.

This increase in data review requirements will severely impact DPR's workload in registering and reviewing pesticide products. Prior to the new guidance, DPR had to review, at a minimum, three pollinator studies; after the new guidance, DPR will have to review, at a minimum, eight pollinator studies. DPR has 3,000 pesticide products meeting the new guidance criteria.

DPR will monitor the workload as pesticide products are reviewed under the new guidance criteria. DPR will redirect work as needed, where possible, and continue working with U.S. EPA to coordinate review and sharing of data to facilitate the reviews. DPR will also explore avenues to add resources.

Operations- Internal- New System Implementation (Other Than FI\$Cal)

Changing IT Project Requirements

The Legislature approved DPR's Pesticide Regulation Data Management System (PRDMS) in the 2015-16 Budget. At the same time, the California Department of Technology instituted its new Stage/Gate model for project approval. PRDMS was approved under the previous project approval process and DPR fears that there will be increased workload under the Stage/Gate model that DPR did not plan for, which could create delays in the successful implementation of the PRDMS

DPR management receives periodic updates on the PRDMS schedule and will redirect resources, where possible, and explore options to add more resources to the project if needed.

Operations- External- Staff—Recruitment, Retention, Staffing Levels

Recruiting Scientific and Information Technology Employees

Various challenges make it difficult to recruit employees for scientific and technology positions. The inability to recruit and retain medical toxicologists, research scientists, and associate programmer analysts puts at risk DPR's ability to deliver mandated programs. Recruiting constraints include positions requiring advanced degrees, but offering non-competitive salaries (e.g. not as high compared to private industry, U.S. EPA, local governments, and comparable State engineering classifications, where employees can perform similar work, but receive higher pay).

DPR will continue its aggressive recruiting campaign that has been in place over the last few years. In addition, DPR has enrolled in CalHR's statewide exam list for several of its hard-to-fill classifications. Since the factors contributing to the risk are mostly external, this is a risk DPR accepts.

ONGOING MONITORING

Through our ongoing monitoring processes, the Department of Pesticide Regulation reviews, evaluates, and improves our systems of internal controls and monitoring processes. The Department of Pesticide Regulation is in the process of formalizing and documenting our ongoing monitoring and as such, we have determined we partially comply with California Government Code sections 13400-13407.

Roles and Responsibilities

As the head of Department of Pesticide Regulation, Brian R. Leahy, Director, is responsible for the overall establishment and maintenance of the internal control system. We have identified Chris Reardon, Chief Deputy Director, as our designated agency monitor(s).

Frequency of Monitoring Activities

DPR holds weekly executive management team meetings. Meeting topics include discussion of current and potential internal control issues that need to be addressed. These meetings allow management to discuss issues they have been made aware of and what steps are needed to mitigate the issues. DPR branch chiefs meet every two weeks to share information and update each other on changes or problems that are occurring or may occur. DPR also holds quarterly manager and supervisors meetings where participants are encouraged to bring up any issues or risks that may impact operations, compliance, or reporting. In addition, there are other cohort-specific meetings that occur where participants meet to share information and experiences.

DPR also holds an annual strategic planning meeting where the management team comes together to review the prior year's project plans and plan for next year's priorities and projects. The creation of specific project plans with specific subtasks, schedules, and responsible parties helps DPR monitor activities for these high-profile and priority projects.

Reporting and Documenting Monitoring Activities

DPR requires reports from each unit on a weekly basis. These reports inform management of the monitoring practices being conducted, improvements needed, and the overall monitoring successor weakness within each unit. This information is summarized and reported to the DPR Director and sent out to all staff the following week. DPR employees are encouraged to read the weekly reports to gain information about changes or issues throughout the department.

DPR ensures all staff receives information vital to the effectiveness and efficiency of controls by requiring

management to update their teams at least monthly. DPR encourages staff to speak with their supervisor if they discover an issue that should be addressed to better assist DPR with fulfilling its mission, goals, and objectives.

Procedure for Addressing Identified Internal Control Deficiencies

Any deficiencies noted in prior meetings or reports are reviewed at the next meeting to ensure follow-up by the appropriate individual(s). DPR's executive management team encourages the sharing of information and experiences so issues and deficiencies can be resolved quickly and at the lowest levels possible. All levels of employees within DPR are encouraged to share experiences to further assist each other in addressing issues that arise.

CONCLUSION

The Department of Pesticide Regulation strives to reduce the risks inherent in our work through ongoing monitoring. The Department of Pesticide Regulation accepts the responsibility to continuously improve by addressing newly recognized risks and revising risk mitigation strategies. I certify our systems of internal control and monitoring processes are adequate to identify and address material inadequacies or material weaknesses facing the organization.

Brian R. Leahy, Director
Department of Pesticide Regulation

cc: Department of Finance
Legislature
State Auditor
State Library
State Controller
Secretary of Government Operations