[CHAPTER 15]

Funding and Accountability

The Department of Pesticide Regulation (DPR) is funded by regulatory fees, penalties and a small amount of federal funds. The largest revenue source is the mill assessment, a fee levied on pesticide sales at the point of first sale into the state. Other revenue sources are:

- Pesticide product registration and renewal fees.
- Fees from pesticide-related licenses issued to people and businesses that sell, apply or recommend the use of pesticides.
- Structural pest control activity fees.
- Civil penalties (for example, selling unregistered or misbranded pesticide products).
- Miscellaneous fees and various reimbursements.
- Funds from the U.S. Environmental Protection Agency (U.S. EPA) and U.S. Department of Agriculture (USDA). Federal funding supports DPR activities performed jointly or for these federal agencies. For example, under a cooperative agreement, U.S. EPA transfers funds to DPR to conduct pesticide enforcement and program development, including worker safety and endangered species protection. (The grant covers a small portion of enforcement costs in DPR's wide-ranging program.)

All revenues except for structural pest control fees are deposited in the DPR Fund.

In 2011, the mill assessment was at the statutory maximum of 21 mills, that is, 2.1 cents per dollar of sales of registered pesticide products sold in California. (A *mill* is equal to one-tenth of a cent.) Exempt from the mill assessment are products registered for manufacturing use, that is, sold to other firms that repackage it as their own product or use it to manufacture other pesticide products. The company that repackages or uses the pesticide to make another product must register the product and pay the mill assessment on its California sales.

An extra three-fourths mill is assessed on agricultural and dual-use products (pesticides labeled for both agricultural and nonagricultural use). These funds are transferred to the California Department of Food and Agriculture (CDFA) to support its pesticide consultation unit.

Even when the mill rate stays the same, the revenue collected from the mill assessment varies depending on the total dollar sales of pesticides in California. In the 25 years ending in 2011, yearly mill revenue had increased all but three years, with the increase ranging from 0.3 to 11 percent, averaging about 4 to 5 percent. In 2010-11, mill revenue was $56.1 million.

The mill assessment is self-reported and the law requires those subject to the assessment to keep records and be subject to audit by DPR. The Product Compliance Branch audits pesticide registrants, dealers and brokers to find out if pesticides are registered, to verify sales and to document that mill assessments were paid. If investigators find sales of unregistered products or unpaid mill assessments, the sellers must pay any money owed and a 10 percent late penalty. They are also subject to civil penalties. The branch is also responsible for annually distributing the required proportion of mill assessment revenue to the county agricultural commissioners (CACs) to support local pesticide use enforcement.

Most funding for the Structural Pest Control Board (SPCB) comes from fees. Structural Pest Control Fund revenue comes from the wood-destroying organism

Whether a substance is a pesticide and under the jurisdiction of that law depends not only upon the nature of the substance and the information on the label, but also upon intended uses and upon printed, written, or oral claims. For example, petroleum oil sold for use solely as a fuel or lubricant is not a pesticide, but the same material is a pesticide when sold or intended for application to plants to control scale insects, or as a spray to control weeds, or for application to ponds to control mosquitoes.

— 1944 department annual report

inspection/completion activity fee, licensing fees for individuals and businesses performing structural pest control work, fines and other minor sources. The funds are used for SPCB's core programs, including licensing, enforcement, disciplinary actions and consumer protection.

- Structural Pest Control Education and Enforcement Fund revenue comes from a portion of the structural PUR filing fee and some fines. The funds are used to train CAC staff and others involved in structural pesticide use enforcement, to repay counties for specified investigations and to coordinate appeals of disciplinary actions related to structural pest control.
- Structural Pest Control Research Fund revenue also comes from a portion of the structural PUR filing fee and can only be used for research on control of structural pests.

History of Pesticide Regulatory Program Funding

Pesticide and pest control legislation in the early part of the 20th century was sponsored by the regulated industry and focused on preventing fraudulent practices and unfair competition. Activities clearly related to registration and product quality were fully funded by industry fees, which were increased as necessary to keep the programs self-supporting.

Public health protection became part of the regulatory program mission with the passage of the Chemical Spray Residue Act of 1927 and the initiation of residue testing of fresh produce. With this, General Funds began supporting some of the pesticide regulatory program although the mix between this and special funds varied over the years.

In 1971, a mill assessment on pesticide sales was passed (Chapter 1367, SB 825). The law set the rate at 8 mills ($0.008), with the counties receiving 62.5 percent of these funds for local pesticide enforcement.

The mill assessment did not change until the 1989 passage of the Food Safety Act (Chapter 1200, AB 2161), which increased the assessment to 9 mills. The bill sanctioned full pesticide use reporting and increased produce monitoring among other food safety measures. Five-eighths of the extra 1.0 mill went to CACs to cover costs of the new programs.

In 1990, DPR's General Fund support was reduced as part of the state's effort to address a statewide budget crisis. To compensate, the mill assessment was increased from 9 to 18 mills (Chapter 1679, Statutes of 1990, AB 2419), with CACs receiving 31.25 percent of the mill revenues to keep funding consistent with the amount they had been receiving previously. The bill also required that the department "conduct a study to evaluate the pesticide regulatory programs funded with the (mill) assessment … to determine which program components can be modified or eliminated in order to avoid duplication of any other state or federal requirements." DPR submitted the report to the Legislature in May 1991.

The 1990 legislation included a new sunset on the mill assessment, which was scheduled to revert to 9 mills on July 1, 1992. In September 1992, the Legislature again reduced General Fund support and increased the mill assessment (Chapter 706, SB 1850) to 22 mills, with a new sunset of July 1, 1997. (Because SB 1850 was enacted with the urgency clause and went into effect before the July - September 1992 assessment was due, the mill rate did not revert to 9 mills.)

Twenty-one mills were divided between DPR and the counties. Revenue from the 22nd mill was divided between CDFA and the counties. The counties received 32.5 percent of the extra mill to defray costs associated with collection of pesticide use data. CDFA received 67.5 percent of one mill (later increased to three-fourths mill), which under the law could only be used to fund its pesticide consultation unit. A later

It remains to be seen whether or not the income derived from licenses required by the Economic Poison Law will be sufficient for its full enforcement. It is probably that some support by State appropriation will be needed if the law is to be made effective ....

— 1921 department annual report

amendment (Chapter 695[1], Statutes of 1997, SB 1161) prohibited CDFA from using the funds for pesticide risks assessment.

As required by SB 1850, DPR must consult with CDFA on Section 18 and Section 24(c) special local need registrations, denial of new active ingredient registrations, suspension or cancellation of pesticide registrations or uses, and "other measures adopted to mitigate unacceptable adverse pesticidal effects." In 1992, DPR and CDFA signed an agreement to detail their consultative relationship and "ensure that CDFA is provided an opportunity to submit information to DPR, including, but not limited to, the impacts on agriculture resulting from the specified actions, benefits derived from the use of a pesticide, and any recommended alternative action."

In 1993, legislation (Chapter 1176, AB 770) closed a loophole in collecting the mill assessment by identifying the person who first sold the pesticide into or within the state, whether the registrant, a pesticide broker or a pesticide dealer, as the responsible party for paying the assessment.

In 1997, legislation (Chapter 695, SB 1161) reauthorized the mill assessment, capping the mill at 15.15 from January 1998 through March 1999, then raising it to a maximum of 17.5 mills through December 2002 when, without subsequent legislation, it would have reverted to 9 mills. The Legislature set the 17.5-mill maximum artificially low to allow the department to spend down a large reserve in the DPR Fund. The bill increased the assessment that funded CDFA's pesticide consultation to three-quarters of a mill and changed it to apply only on agricultural and dual-use products. The law requires CDFA to decide each year "the necessity of this additional assessment" and it may choose not to have it collected in any given year.

The 1997 mill reauthorization legislation also changed the funding formula for CACs so beginning on July 1, 1998, the counties were to receive the revenue from 6 mills. The funds are distributed based on each county's pesticide control activities, costs, workload and performance.

Another pending sunset to 9 mills prompted the 2001 passage of AB 780 (Chapter 523). The bill provided for a continuation of the mill assessment rate at 17.5 mills plus the extra three-fourths mill on agricultural and dual-use products. The law extended the mill assessment sunset to June 30, 2004, when it would revert to 9 mills.

AB 780 required DPR to form a subcommittee of stakeholders to help the department prepare a report to the Legislature to recommend "a funding solution … that would eliminate the need to reauthorize the mill assessment … every five years and that would preserve the accountability of the department to the entities contributing to the financing of the department." *(See sidebar on development of DPR's new cost-accounting method.)* The report was also to analyze ongoing funding needs and potential business process improvement measures. DPR submitted the report to the Legislature in January 2003.

AB 780 also clarified the law to make explicit it that products bought over the Internet or by telephone and sent from out of state were subject to the mill assessment.

SB 1049 (Chapter 741, Statutes of 2003) was a budget trailer bill that provided for new and increased fees for natural resources and environmental protection agencies. It put into place the most significant changes in DPR funding in more than two decades: removing all General Funds and making the department a fee-based agency. The legislation capped the mill assessment at 21 mills and preserved DPR's authority to adjust the mill fee under that cap. It also removed the mill assessment sunset and made permanent DPR's authorization to collect the extra three-quarter mill on agricultural and dual-use products to support CDFA's pesticide consultation, unless requested not to do so by CDFA.

SB 1049 required DPR to make its product registration and professional licensing programs self-supporting and gave the department authority to adjust fees to support

Registrants of good products are encouraged to take pride in them and to help lead law enforcement against unfair competitors. It is plain stupidity when one tries to beat the law or to make a stake and leave California. In the end, he will likely suffer more than a customer to whom he makes an illegal sale.

— 1944 department annual report

[1] Appendix A lists this and other statutes noted in this chapter and shows the related code section it amended or added. Statutes and related code sections deleted or superseded by later legislation have been omitted.

Developing a New Cost-Accounting Methodology

California state government agencies typically use a financial accounting system designed to track or report costs by organizational units, that is, by divisions and branches. However, the Department of Pesticide Regulation (DPR) wanted its accounting to more accurately capture and track functional costs and program management responsibilities across organizational units. To do so, DPR undertook a function-based costing initiative to identify and assign the department's costs to specific activities. A function is a set of activities that produces a key service to meet program mandates. If budgeting is based on organizational units, it is difficult to know the costs associated with each function or its resulting service. Most DPR functions are handled by more than one of its branches.

Function-based costing allows DPR to see more clearly how it uses funds because the system is based on services provided. Instead of assigning costs to a specific product, the goal is to estimate the cost of providing a service. For DPR, the service might be processing a registration application, conducting an environmental assessment or managing a grant program. The allocation provides important information to management and to stakeholders about how DPR uses its funds and what the costs are of providing various services. Knowing what it costs to run a particular branch or division is not as helpful in evaluating programs as knowing how much it costs to process a new product registration package or collect pesticide use reporting data. Since most processes and activities within government agencies change only gradually, function-based costing provides DPR with a tool to monitor costs over fiscal years.

Eleven operational functions were identified:

- Product registration
- Human health and environmental assessments
- Licensing and certification
- Permitting and pesticide use reporting
- Monitoring/surveillance
- Mitigation of human health risks
- Mitigation of environmental hazards
- Pest management
- Use enforcement and compliance
- Product compliance and mill assessment
- Distributed program/executive management and administration

(Note: In 2010, "structural pest control" was added as a business function when the Structural Pest Control Board was transferred to DPR.)

The functions and their supporting activities represent what DPR does to produce specific services, not how the department is organized. For example, the pesticide registration function contains everything DPR does to register a product. This function includes intake of the application and its technical evaluation, a scientific evaluation of the product and other activities. However, they do not all occur in the Pesticide Registration Branch. For example, health evaluation of a product involves staff from the Worker Health and Safety and Medical Toxicology branches, and for environmental effects, the Environmental Monitoring Branch.

DPR adopted function-based accounting in 2004. The information provided by functional accounting allows DPR to refine its budget and fees to accurately recover costs associated with specific services. In each year's State Budget, funding is appropriated to DPR based not on its programmatic divisions (such as branches), but on its business functions.

Function-based accounting is linked to DPR's operational plan, which describes what DPR plans to accomplish during the fiscal year, with performance measures for each function. DPR's operational plans and performance measures are posted each year on the department's Web site, as are the functional accounting year-end reports and detailed descriptions of activities within each function. This allows stakeholders to review specific goals, costs associated with them and clearly see whether goals are being met.

spending in each program. Fees had previously been set in statute and could only be changed by the Legislature. Before the 2003 passage of SB 1049, the last fee adjustment had been in the 1980s. As program costs increased, fees no longer covered costs. Because fees were set in statute, the department could not adjust them or institute added fees for services that created significant workload. SB 1049 gave DPR authority to use rulemaking to set registration and licensing fees. The legislation also allowed the department to charge separate fees for various activities related to its licensing program. For example, separate fees could be levied for conducting examinations, approving continuing education courses and issuing duplicate licensing cards. It also allowed the department to charge fees for amendments to pesticide registrations.

In late 2003, DPR adopted regulations to increase licensing and registration fees and raise the mill assessment from 17.5 to 21 mills, plus three-quarters mill on agricultural and dual-use products. (*See below for more information on licensing and registration fees.)* These changes became effective in January 2004.

AB 1011 (Chapter 612, Statutes of 2005) expanded broker licensing requirements to close loopholes in previous laws that allowed some pesticide sellers to avoid paying the mill assessment. Internet sales of pesticides and industrial, institutional and consumer-use pesticide sales by intermediate brokers and through the distribution centers of nationwide retailers were often not held accountable to report and pay mill fees. Before AB 1011 passed, only sellers of agricultural-use pesticides had to be licensed by DPR. The legislation expanded broker licensing to encompass all those who first sell or distribute any pesticides into California, whether agricultural or nonagricultural products.

Number of pesticide products registered in California:

- 1913: "well toward 10,000"
- 1935: 3,500
- 1945: 7,136
- 1950: 9,070
- 1956: 11,904
- 2011: about 13,000

Product Registration Fees

Each year, manufacturers, importers or dealers who wish to label and sell a pesticide product for use in California must get certificates of product registration from DPR. The certificates expire December 31 of each year.

Until 2003, registration fees were set in statute. In 1986, the Legislature approved an increase in product registration fees from $40 to $200, even though that did not cover program costs at the time. With the 2003 passage of SB 1049, DPR was given authority and required to increase fees to cover program costs.

In 2003, DPR adopted regulations to raise to $750 the fee for each pesticide product submitted for registration or renewal, effective January 2004. Late penalties were increased to $150. The department also established a $100 fee for each application to amend a pesticide product registration. Some minor amendments were exempted.

The fees were set at a level to generate about $9 million a year. This was the estimated cost of the registration program in 2000-01. In that fiscal year, the $200 registration fee charged for 12,000 new and renewed product registrations generated around $2.4 million. At the time, there was no charge for label amendments; in 2000-01, the department processed about 2,200 label amendments, about 20 percent of which required scientific evaluation.

No fees are charged for applications for Section 18 emergency exemptions from registration, Section 24(c) special local need registrations, and research authorizations.

Licensing and Certification Fees

(For information on structural pest control licensing, see the section on the Structural Pest Control Board, below.)

DPR's Licensing and Certification Program examines and licenses qualified applicators, aircraft pilots, pest control dealer designated agents and agricultural pest control advisers; and certifies pesticide applicators who use or supervise the use of restricted pesticides. It also licenses businesses that sell or apply pesticides or use pest control methods or devices for hire (that is, pest control businesses, maintenance gardener pest control businesses, pest control dealers and pesticide brokers).

Major exemptions from licensing requirements include individuals and businesses performing preservative treatment of fabrics or structural materials; household or industrial sanitation services; treatment of seed when this activity is incidental to the person's regular business; and removal of pests without the use of pesticides.

DPR conducts about 9,000 examinations yearly and issues or renews about 16,000 licenses and certificates each year. Licenses are issued for two years. DPR also accredits more than 1,600 continuing education courses.

Before 2003, licensing fees were last adjusted in the mid-1980s, set in statute at $15 to $100, a level designed to cover program costs at the time. DPR estimated that in 2000-01, licensing-related costs were $1.7 million, with fee revenue covering about half. With new authority from SB 1049 to set its own fees, the department raised licensing fees and instituted new charges for services that required significant staff time. The new fees, ranging from $25 to $160, went into effect in January 2004.

Structural Pest Control Licensing Fees

The SPCB licenses individuals and businesses that do structural pest control. All structural pest control licensees must meet state licensing requirements in at least one of the three branches of pest control work: Branch 1, fumigation; Branch 2, general household pests; Branch 3, termites and other wood-destroying pests and organisms, and wood-roof cleaning and treatment. Each category requires a different examination and a licensee may hold a license in more than one category.

There are about 20,400 individual SPCB licensees and 3,000 principal and branch business registrations. Licenses are renewed every three years and registrations yearly. The board charges $10 to $120 for applications, registrations, examinations and renewals. Licensees that are required to file pesticide use reports with CACs must also buy $6 SPCB stamps to affix to each monthly report. Two-thirds of this revenue is deposited in the board's Education and Enforcement Fund and the balance in the Structural Pest Control Research Fund.

Branch 3 companies must pay a $2.50 fee for each inspection they conduct for wood-destroying organisms. There are about 1,400 Branch 3 companies, which conduct about 1.5 million inspections a year.

In the early years, a farmer applied pest control materials himself, but now, in order to secure adequate control of pests, he often finds that it is necessary to hire a specialist to apply these materials, particularly when special techniques or equipment are needed.

— Department special report to the Legislature on pesticide enforcement (1953)

Local Assistance

Among other duties, CACs are charged with local enforcement of pesticide laws and regulations, working under supervision of and contract with DPR. Funding for local pesticide enforcement comes from four sources: the mill assessment, local fees and penalties, county general funds and unclaimed gas tax. (State law requires that fuel taxes attributable to the use of off-highway agricultural vehicles be transferred to CDFA. Food and Agricultural Code Section 224 identifies how these funds are to be expended, with $9 million each year going to CACs for pesticide use enforcement.)

The 2004 passage of SB 1107 (Chapter 230) changed how funds were divided among the counties. Among other requirements that had been imposed by the 1978 passage of AB 3765 (which set up the functional equivalency program for pesticide regulation), CACs carry out the restricted materials permit program. They issue site- and time-specific permits for the use of restricted pesticides, review notices of intended applications and perform pre-application site inspections to a minimum of 5 percent of application sites.

In 1980, CDFA (which then managed the pesticide program) contracted with the counties for the state to reimburse the costs of this new mandated workload, drawing from a $2.88 million General Fund appropriation. The amount remained the same (although its source shifted between the General Fund and the DPR Fund) until the 2004-05 fiscal year. SB 1107, a budget trailer bill, consolidated funding to CACs for restricted material permits with DPR's other CAC funding. Instead of a fixed dollar amount, the appropriation to counties to manage their restricted material permit programs was converted to an extra 1.6 mill, increasing the total CAC share to 7.6

mills. That same legislation also ended the distribution to the counties of 50 percent of pesticide dealer license fees collected by DPR.

DPR disburses to the counties the revenue from 7.6 mills of mill assessment as partial reimbursement for their costs in carrying out pesticide use enforcement. In addition, the law allows DPR to disburse up to 0.5 mill out of existing fees for local assistance to counties in an ozone nonattainment area affected by a fumigant emissions limit. (*See Chapter 12 for more information on the volatile organic compound program.*) As of 2011, only Ventura County was eligible for this funding.

Under contract with DPR, CACs are also reimbursed for electronically entering PUR data. In July 2012, the individual contracts for PUR data entry are scheduled for conversion to a single contract with the California Agricultural Commissioners and Sealers Association (CACASA).

By law, pest control advisers (PCAs) and pest control businesses must register with the agricultural commissioner in each county where they plan to conduct business. Most of the state's 58 counties charge fees for these registrations. Counties use this revenue for pesticide use enforcement.

Appendices

A: Code sections enacted or amended by referenced legislation 129

B: Acronyms and abbreviations 131

C: Glossary 133