

Pesticide Regulation: Enforcement Response Policy ERP

**Department of
Pesticide Regulation**

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DPR's Programs

- Product Registration
- Environmental monitoring
- Licensing and permitting
- Workplace safety
- Residue testing
- Use enforcement



DPR Enforcement Program

- Enforcement Branch:
 - Help develop regulations and policies in response to needs
 - Provide guidance and direction to the County Agricultural Commissioners CAC local pesticide enforcement
 - Review CACs' Enforcement Program

Enforcement Staff

- 53 Enforcement Staff
 - 31 Field Staff
 - 3 Regional Offices and 2 satellite offices
- Oversee 58 counties; 55 CAC
 - 325 Agricultural Biologists/Inspectors

State Product Compliance Inspections

- Under U.S. EPA
 - Producer Establishment Inspections
 - Market Surveillance Inspections (State and Fed.)
- Under USDA
 - Pesticide Data Program
 - Microbiological Data Program
- State Pesticide Residue

County-Based Field Enforcement

- County Agricultural Commissioner CAC
- Restricted materials permits / Operator ID
- Inspections – use/records
- Episode investigations
- Enforcement response



CAC Inspections

- County Inspections – 04/05
 - Use Monitoring Inspections
(Property Operators, PCB's, Structural)
 - Fumigation - 3809
 - Non Fumigation – 13,725
 - Audits/Records Inspections – 6249
(Property Operators, PCBs, PCAs, PCDs)

CAC Enforcement Options

Examples of County Agricultural Commissioner Action:

- Compliance (NOVs, Warning Letters)
- Enforcement (ACP/SCP, Registration, RMP)
- Referrals (DPR, County District Attorney)

Enforcement Response - History

- Inconsistent enforcement from county to county
- High profile cases of exposure
- Attention of law makers – SB455 didn't pass, but had strong message from governor.

Together, DPR and CACs developed the Enforcement Response Policy ERP

Why create a new policy?

- Statewide consensus – need more or higher level penalties for flagrant or repeat violators
- Improve statewide consistency and enforcement integrity
- Provide guidance on how to
 1. Classify the type of violation and
 2. Consistently determine the appropriate action and use progressive enforcement response.

Enforcement Response Policy ERP

- Enforcement Response Policy ERP was issued August 2005 in letter Enf 2005-25, available on DPR website.
- Emphasizes prompt investigation of pesticide use or misuse.
- Sets forth a violation classification system for penalties that escalates for recurrent violations, repeat violators.
- Still allows some discretion by CAC, but proposed regulations will not.

County Agricultural Commissioner Implementation Options

- Health and environmental violations
 - Personal protective equipment
 - Early re-entry into treated areas
 - Back flow prevention
 - Conflict with label or permit conditions
 - Non-target or off site contamination
 - Unregistered use
 - Unlicensed
 - Similar violations

County Agricultural Commissioner Implementation Options

- Consider administrative civil penalty actions “fine” for violations CACs have not historically taken action on.
 - Is there a reasonable possibility of creating a health or environmental effect?

Enforcement Response Policy: What's New?

- Fewer chances before fining
 - Fine on first offense for all “possible” health or environmental effects
 - The County Agricultural Commissioner must justify for not fining (Decision Report)
 - DPR will review the CACs' programs for compliance with the new policy

Enforcement Response Policy: What's New?

- Mandatory increased penalties for “Repeat” violations
 - Multiple incidents within two years
 - **All incidents** of violations that have a possibility of creating a health or an environmental effect are considered

Enforcement Response Policy: What's The Same?

- Repeat Violations are grouped broadly
 - Looking back two years
 - Any incident of violation or non-compliance that could have resulted in a possible or actual health or environmental effect
 - Violations do not need to be in the same area of the law or regulation to be considered

What can you expect?

- For Multiple incidents within a two year period
 - County Agricultural Commissioner must fine or take other significant enforcement action
 - Increased penalties, such as more and higher fines

Enforcement Response Policy: What Else?

- Other penalties will be considered for the most flagrant violators
 - Criminal Prosecution
 - Denial, suspension or revocation of permits or registration
 - Referral to DPR for licensing or other action

New Enforcement Response Policy

Enforcement Responses

- Hazard or Effect Violations (HEV) - actual
- **Class A (serious) fines**
- Violations of a lawful order of the CAC
- Repeat violations of Class B violations
- **Fine Range**
 - **\$700-\$5000**

New Enforcement Response Policy

Enforcement Responses

- Hazard or Effect Violations (HEV) - possible
- **Class B (moderate) Fines**
- Repeat Violations of Class C violations
- **Fine Range**
 - **\$250-\$1000**

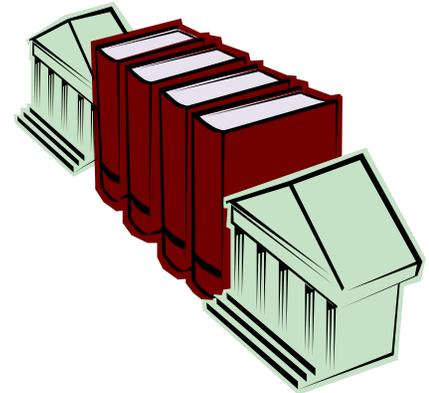
New Enforcement Response Policy

Enforcement Responses

- Unclassified Violations (UV)
- **Class C (minor) Fines**
- No threat to health, property, or the environment
- Violations not included in Class A or B
- **Fine Range**
 - **\$50-\$400**

Proposed Regulations in 2006

- DPR has proposed regulations based on ERP
- Proposed regulations are posted on DPR website at www.cdpr.ca.gov
Comment period ends in March.
- A hearing is scheduled.



Getting the Job Done

- Must have clear, consistent expectations
 - Enforcement must also be consistent
- Industry expectations and follow-through



For more information



- www.cdpr.ca.gov
- Contact the CAC Office nearest you