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Permits for Agricultural Use of Pesticides that are Not Restricted Materials --

2, 4-Dichlorophenoxyacetic Acid (2,4-D)

Date	June 18, 2001
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Enforcement letter	ENF 01-30
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Distribution	County Agricultural Commissioners
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Referral	If you have any questions, please contact your Senior Pesticide Use Specialist liaison.
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Approval	<i>Original signed by...</i>
	Scott Paulsen, Chief Enforcement Branch (916) 324-4100
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Background	This information has been prepared at the request of the County Agricultural Commissioners (CACs) to address issues raised by the alleged marketing of one-gallon containers of 2, 4- Dichlorophenoxyacetic (2, 4-D) in a manner which may circumvent existing regulations. This information is specific to liquid formulations of 2, 4-D in one-gallon containers; it is not specific to any particular 2, 4-D product or manufacturer.

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Restricted materials list

Title 3, California Code of Regulations (3CCR) section 6400, lists 2, 4-D as a restricted material.

Is 2, 4-D always a restricted material?

2, 4-D is a “phenoxy” herbicide. It may or may not be restricted depending on specific exceptions given in 3CCR section 6400 (e) for 2,4-D. In this particular case, this discussion deals with exception number 2 which is described below. In addition, 3CCR section 6464 provides additional requirements pertaining specifically to phenoxy and certain other herbicides.

2, 4-D is a restricted material when:	2, 4-D is <u>not</u> a restricted material when:
<ul style="list-style-type: none"> • The 2,4-D is a liquid formulation containing more than 15 percent 2, 4-D; or • The product is packaged in a container of more than one gallon. <p>A person is required to obtain a “restricted materials permit” to purchase or use the restricted material prior to the actual purchase or use of the material <u>for all uses</u>.</p>	<ul style="list-style-type: none"> • The 2,4-D is a liquid formulation containing 15 percent or less 2, 4-D; and • The product is packaged in a container of one gallon or less. <p>However, a CAC may place restrictions on the agricultural use of pesticides, in the form of a permit (though not a “restricted materials permit”), when the CAC determines that its use will present an undue hazard when used under local conditions.</p>

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Discussion Arguably, 3CCR section 6464, “phenoxy and certain other herbicides” applies whenever phenoxy and certain other herbicides are applied regardless of the size of the container, formulation or concentration. However, even if a court were to find that 3CCR section 6464 did not apply to phenoxy and other specified herbicides that are not designated restricted materials, the CAC could still require a permit for agricultural use of a pesticide, by requiring a permit and issuing conditions, under the authority granted to them by Food and Agricultural Code section 14006.6, which states in pertinent part, “A permit shall not be required for the agricultural use of any pesticide not designated as a restricted material unless the commissioner determines that its use will present an undue hazard when used under local conditions.”

CACs may require other permits In other words, CACs have full authority to require permits for the agricultural use of “nonrestricted” pesticides and may issue permit conditions, providing they first make a determination that the use of the nonrestricted pesticide would present an undue hazard when used under local conditions. The CAC’s undue hazard determination could apply to the entire county, a particular portion of the county, or even a particular intended use site. For example, a CAC could determine that the potential for damage that can be caused by phenoxy herbicides to transplants and emerging new plantings in the county presents an undue hazard during certain periods of the year, and require a permit for the agricultural use of nonrestricted phenoxy herbicides in the county during specified periods of time. In essence, the pesticides are treated like restricted pesticides at the county level although they are not. The law only indicates that a permit be required.

Notify the Director The CAC should inform the Director of DPR of his/her determination, in writing, when requiring a permit for the agricultural use of a nonrestricted pesticide.

Notify other appropriate parties CACs who make a determination that a permit is required for a nonrestricted pesticide should also inform their pest control dealers that a permit is required.

cc: Mr. Daniel J. Merkley, County Agricultural Commissioner Liaison