

PROCESS FOR RESPONDING TO THE PRESENCE OF PESTICIDES IN SURFACE WATER

This process describes how the Department of Pesticide Regulation (DPR), the State Water Resources Control Board (State Board), and the California Regional Water Quality Control Boards (Regional Boards) will cooperatively respond to the presence of pesticides in surface water.

I. When Water Quality Objectives Are Violated

A. Determination of Violations

1. Regional Boards determine when water quality objectives are violated. A Regional Board's executive officer will transmit to DPR the determination when the objective is exceeded for reasons related to currently registered pesticides.
2. The State Water Resources Control Board (State Board) will coordinate such transmittals from the Regional Boards to DPR. If necessary, DPR will request that the State Board prioritize its concerns.
3. The Regional Board should, to the extent the information is available, provide DPR with:
 - a. The specific water body(ies) affected.
 - b. The reach of the waterway in which the objective applies.
 - c. Data indicating that pesticide concentrations in surface water exceed those that cause adverse effects on beneficial uses including habitat for sensitive aquatic organisms.
 - d. Toxicity identification evaluation data implicating the pesticide with toxic conditions.
 - e. Findings and other information that support the determination.

B. Response

1. If DPR and the Regional Board can collaboratively identify the pesticide(s) or use practice that is responsible for the violation of the water quality objective, they will implement a program in accordance with this process. When possible, programs will support regulatory incentives as a means for attaining acceptable compliance with water quality objectives. If the regulatory incentives do not succeed, the following process is implemented:

- a. The Regional Board will determine acceptable compliance criteria for the water quality objective that was violated, including frequency, magnitude, and duration of exceedences of the objective.
- b. DPR and the Regional Board staff will evaluate measures, described below, for attaining acceptable compliance with water quality objectives and develop recommendations.
 - (1) DPR and the Regional Board staff will jointly evaluate regulatory incentives to promote self-determined management practices as a means to attain water quality objectives.
 - (2) DPR and the Regional Board staff will jointly evaluate the regulatory options for addressing the violation of the water quality objective, including the practicality of the regulatory option, enforceability, and likelihood of success.
 - (a) The options to be considered by staff that involve DPR authorities include:
 - i. Require pesticide registrants to submit additional data through DPR's reevaluation process. (3 CCR 6220)
 - ii. Direct the registrant(s) to mitigate the problem or face action on the registration. (FAC 12824 and 12825, 3 CCR 6220)
 - iii. Add the pesticide to the list of restricted materials (FAC 14001 and 3 CCR 6400), requiring a county agricultural commissioner to issue a permit based on recommended conditions that will help attain the water quality objective.
 - iv. Adopt use requirements via regulation that are designed to bring pesticide concentrations into compliance with the objective. (FAC 12781)
 - v. Refuse to register the pesticide. (FAC 12816)
 - vi. Cancel the registration of the pesticide. (FAC 12825)
 - (b) The options to be considered by staff that involve State and Regional Board's authorities include:
 - i. Issue Waste Discharge Requirements (WDRs). (California Water Code [CWC] 13260-13274, 13376-13384)

- ii. Issue Conditional Waivers for WDRs. (CWC 13260,13269)
 - iii. Take informal enforcement action by communicating the details of a specific violation to the discharger either orally or through various written forms. (*Water Quality Enforcement Policy*, SWRCB, February 2002, page 16)
 - iv. Issue a Notice to Comply with minor violations. (CWC 13399)
 - v. Issue a Cleanup and Abatement Order (CAO) for more serious violations. (SWC 13304)
 - vi. When a CAO is violated, issue a Time Schedule Order (TSO) and prescribe an Administrative Civil Liability (ACL) if compliance is not achieved in accordance with the TSO. (CWC 13308)
 - vii. Refer violations to the State Attorney General for the appropriate county district attorney whereby a superior court judge will be asked to impose civil or criminal penalties. (*Water Quality Enforcement Policy*, SWRCB, February 2002, page 24)
 - viii. Rescind an applicable WDR. (*Water Quality Enforcement Policy*, SWRCB, February 2002)
 - ix. Include the water body on the list of water quality limited segments and develop Total Maximum Daily Loads. (Clean Water Act 303[d])
- c. A summary of the water quality violation, staff evaluations, and recommendations will be forwarded to the Director and Executive Officer for a decision.
 - d. The Director and the Executive Officer will prepare a joint response regarding the actions that each will take.
 - e. The Director and the Executive Officers will coordinate execution of the joint implementation.
2. If DPR and the Regional Board cannot determine the pesticide or use practice that is responsible for the violation of the water quality objective, DPR and the Regional Board determine what additional information is needed, how and

when it will be developed, and who will be responsible for gathering it. When making their determinations, they will:

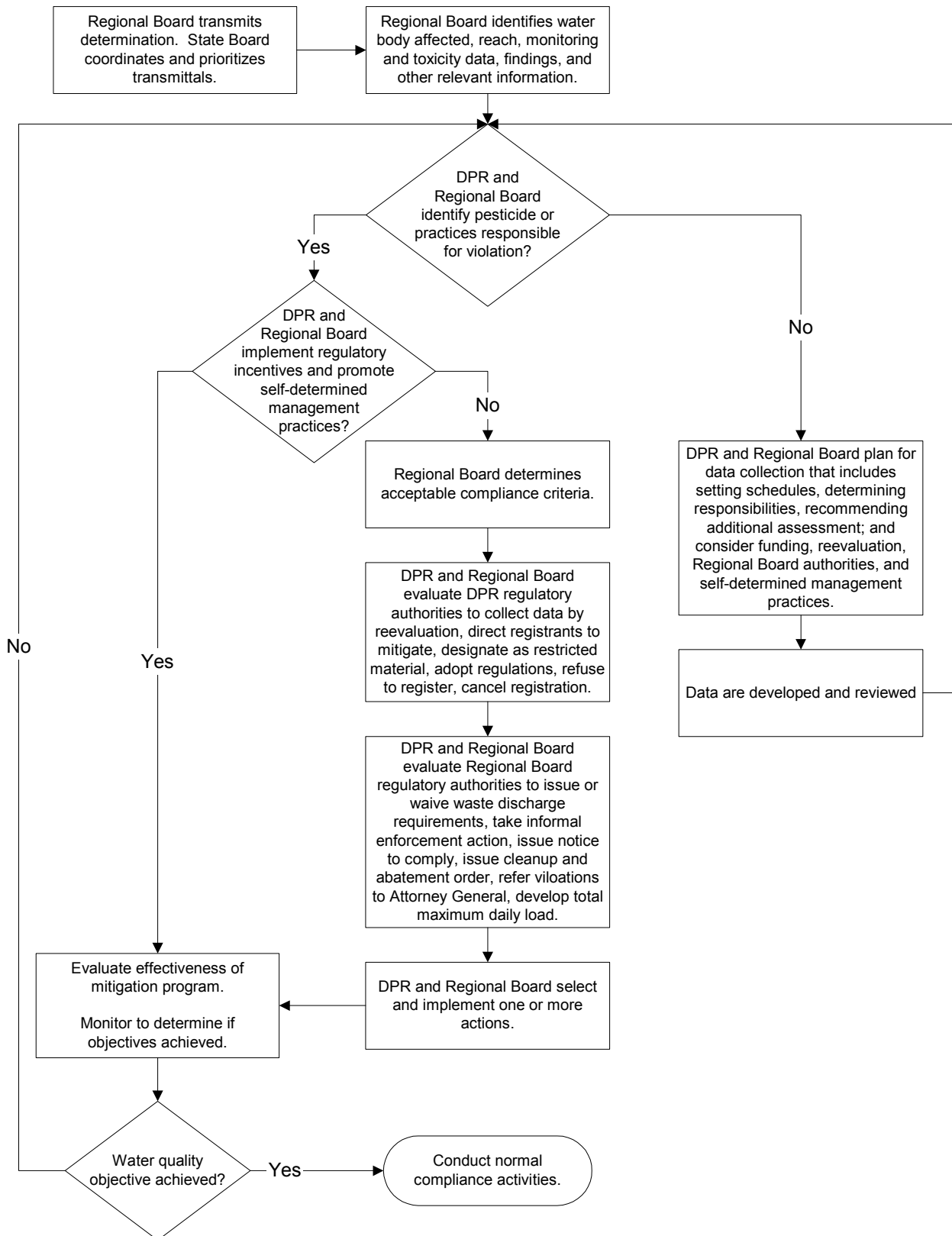
- a. Recommend additional assessment and research that will support the response from DPR and the Regional Board as described in I.B.1.d. above.
 - b. Consider funding opportunities, including DPR funds, Proposition 13, CALFED, etc., that may address data gaps and research needs.
 - c. Consider the use of DPR's reevaluation process as a means to obtain additional data from pesticide registrants.
 - d. Consider the Regional Board's authorities as a means to obtain additional data from dischargers.
 - e. Consider promotion of self-determined management practices as a means to attain water quality objectives.
3. DPR and the Regional Board will jointly evaluate the effectiveness of measures in achieving compliance with water quality objectives. Water quality monitoring will help demonstrate effectiveness.

II. When Water Quality Objectives Are Not Violated

- A. DPR will review monitoring data included in its surface water database.
- B. DPR will compare detections and data from concomitant toxicity tests, if available, with toxicologically significant values.
- C. DPR will determine which pesticides warrant additional evaluation. If additional evaluation is necessary, DPR will:
 1. Rank priorities for proceeding to the next investigative steps.
 2. Coordinate activities with stakeholders, including Regional Boards.
 3. Characterize sources using the pesticide use database, if the detections were the result of legal uses. Monitoring will confirm the sources, if necessary.
 4. Consider reevaluation as a means to obtain additional information.

- D. DPR will determine if there is sufficient information for it to proceed with mitigation.
 - 1. DPR will evaluate regulatory incentives to promote self-determined management practices as a means to improve water quality.
 - 2. If conditions warrant regulatory action, DPR will select the appropriate control strategy. Such actions may include:
 - a. Direct the registrant(s) to mitigate the problem or face action on the registration.
 - b. Add the pesticide to the list of restricted materials, and:
 - (1) Direct county agricultural commissioners to issue permit conditions designed to bring pesticide concentrations into compliance with the objective, or
 - (2) Adopt use requirements that are designed to bring pesticide concentrations into compliance with the objective.
 - c. Refuse to register the pesticide.
 - d. Cancel the registration of the pesticide.
 - 3. If conditions do not warrant regulatory action, DPR will:
 - a. Review potential management practices for applicability in reducing the presence of the pesticide in surface waters. Evidence to support the effectiveness of the practices will be supplemented by additional research, if necessary, by DPR or by pesticide registrants. DPR will consider using its authorities under reevaluation provisions to collect data from registrants.
 - b. Seek collaboration with private and public entities on outreach activities to promote voluntary implementation of effective management practices.
- E. DPR will evaluate the effectiveness of mitigation measures following their implementation. Water quality monitoring will help demonstrate effectiveness.
- F. Mitigation measures will be adjusted as necessary in order to achieve DPR's water quality goals.

**PROCESS DESCRIBING HOW THE DEPARTMENT OF PESTICIDE REGULATION (DPR) WILL
RESPOND TO THE PRESENCE OF PESTICIDES IN SURFACE WATER
I. WATER QUALITY OBJECTIVES ARE VIOLATED**



**PROCESS DESCRIBING HOW THE DEPARTMENT OF PESTICIDE REGULATION (DPR) WILL
RESPOND TO THE PRESENCE OF PESTICIDES IN SURFACE WATER
II. WATER QUALITY OBJECTIVES ARE NOT VIOLATED**

