

Chapter 2

County Pesticide Use Enforcement Work Plans and Performance Evaluations

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Section 1 Introduction

Background

An effective statewide pesticide use enforcement program is designed to protect workers, the environment, the public, our food supply, and ensures regulatory compliance.

Chapter contents

The effectiveness of California's pesticide regulatory enforcement program is mutually dependent on both the DPR and the CAC.

- Sections 2 and 3 provide background on how the CACs activities fit into DPR's Strategic Plan.
 - Sections 4 provide CACs with guidance in the development of the county's pesticide use enforcement (PUE) work plan (WP).
 - Section 5 explains DPR's continuous evaluation of the CAC's enforcement program.
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Section 2

DPR's Strategic Plan Goals

Background

Strategic planning is critical to making state government programs and operations more efficient and effective. The strategic planning process produces fundamental decisions and actions that shape and guide what an organization is, what it does, and why it does it. A key byproduct of this planning is the strategic plan--a blueprint for future programmatic direction.

The CACs local PUE programs are instrumental to meeting the vision and mission in DPR's Strategic Plan.

DPR's Strategic Plan is located on our website at <http://www.cdpr.ca.gov/docs/dept/planning/stratmenu.htm>

Strategic Plan goals guide program planning

DPR's 2013 Strategic Plan is designed to help DPR meet regulatory obligations as described by the Legislature. The enforcement program priorities outlined in this document were chosen as those best suited to achieving statewide strategic goals through local enforcement activities.

DPR Vision and Mission

- Vision: A California where pest management is fundamental to a healthy environment.
 - Mission: To protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management.
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Strategic Plan goal: Enforce and achieve compliance

The DPR Strategic Plan includes goals to protect people and the environment, enforce and achieve compliance, and ensure environmental justice. This is achieved by:

- Identifying and improving areas of greatest non-compliance;
 - Ensuring that regulatory requirements are practical and enforceable;
 - Ensuring appropriate enforcement actions are taken;
 - Enhancing the effectiveness of inspections and investigations; and
 - Enhancing efforts to improve compliance.
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Section 3

Roles and Responsibilities – CAC and DPR

Purpose of the Pesticide Use Enforcement program

The primary purpose of California’s pesticide regulatory program is to regulate, restrict, or ensure proper stewardship of registered pesticides for:

- Environmental and human health protection;
- A safe workplace for pesticide handlers and for agricultural workers;
- Pest control licensee competency and responsibility; and
- The ongoing availability of pesticides essential to the production of food and fiber and the protection of health.

DPR responsibility for statewide program

California law designates DPR as the agency responsible for delivering an effective statewide pesticide regulatory program. DPR directly regulates most aspects of this program; however, the Legislature delegated local administration of pesticide use enforcement to the CACs. The success of the statewide use enforcement program, therefore, depends on the collective enforcement achievements at the local level. To assure successful and consistent local pesticide use enforcement programs, DPR uses its statewide regulatory authority to oversee, evaluate, and improve the CACs’ PUE programs (FAC section 2281).

State law also requires DPR to provide CACs with guidance in the form of instructions and recommendations, assistance to CACs in the planning and development of adequate county programs, evaluation of local program effectiveness, and assurance that CACs take corrective actions in areas needing improvement.

CACs responsible for local use enforcement

Whenever California law places joint enforcement responsibilities on the Director and the CACs, CACs are responsible for the administration of the local program, with few exceptions. The FAC and 3 CCR describe the CAC’s enforcement authority, activities they must, or may, conduct to properly administer this program, the requirement to implement the local programs according to state-issued guidance, and their obligations to work cooperatively with DPR in the improvement of their programs.

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Roles and Responsibilities - CAC and DPR, Continued

CAC discretion While the FAC and 3 CCR clearly establish DPR's oversight role, they also grant broad discretion to the CACs in the daily administration of their local PUE programs. The variety of pesticide use in California precludes an effective "one size fits most" enforcement program. DPR cannot provide guidance for every potential contingency. Therefore, the success of our collective program depends on the CACs' ability to make sound decisions and take independent, appropriate, and consistent actions whenever necessary.

DPR will support the decisions made and actions taken by CACs provided they result in fair and effective local PUE programs.

Role of DPR written guidance DPR provides written guidance to assist CACs and their licensed staff in making sound decisions and taking appropriate actions. This guidance also serves to promote statewide uniformity, fairness, and consistency to the extent possible.

Our written guidance does not have the force of law. It may sometimes be inappropriate for a given situation. DPR expects CACs and their staff, as persons licensed to conduct PUE activities, to obtain, analyze, and apply all relevant information in the course of responding to any given situation. This expectation is at the core of DPR and the Legislature's willingness to grant local authority and discretion to the CACs.

Role of Enforcement Branch Liaisons DPR's Enforcement Branch Liaisons (EBLs) and supervisors are the Director's designated representatives in the field. As such, they are the CACs' primary points of contact concerning the implementation and evaluation of the local PUE program. EBLs are subject matter experts in the areas of pesticide use enforcement and response, episode investigation, and local program evaluation. The EBL's knowledge of local issues and their authority to guide local program improvement foster the consistent and fair implementation of regulatory requirements among independent local programs. The EBL's actions and assistance, on behalf of the Director, promote an effective statewide use enforcement program.

Section 4

Enforcement Work Plans for CAC PUE Programs

Work plans (WP) Each CAC must develop a pesticide use enforcement (PUE) work plan (WP) for approval by DPR. The WP must contain the “**core enforcement program**” areas and other components outlined below.

WP performance evaluation frequency The CAC develops a WP that covers one, two, or three years. The CAC, along with their EBL, should determine the WP frequency that best fits the complexity of their program. During the course of a multi-year WP, the CAC should amend their WP if faced with unanticipated priorities or emergency projects that affect their ability to carry out core program functions.

The WP should include a commitment to continually assess, monitor, and evaluate the core program areas in their PUE program and implement program improvements where needed. For example, if during the course of the WP cycle, an evaluation indicates a significant lack of program effectiveness, the CAC should take immediate corrective action. If this requires resource redirection, the CAC should contact their EBL as soon as possible.

The EBL’s observations and county visits are part of continuous evaluation of the CACs pesticide regulatory program. The EBL will inform the commissioner when a deficiency is observed. The EBL will work with the CAC to determine the frequency of the DPR Performance Evaluation required by Title 3, California Code of Regulations (3 CCR) section 6394(a). A CAC may request annual evaluations even though it has a multi-year WP.

WP negotiation and approval DPR will approve CAC WPs that have clear goals and deliverables and are focused on core program implementation and any DPR-identified priorities. DPR will not approve WPs where CAC-proposed activities detract from the CAC’s ability to implement their core program responsibilities. EBLs will assist the CAC in identifying the desirable activities with their core program responsibilities.

Once approved, CAC WPs are publically available on our website at <http://apps.cdpr.ca.gov/docs/county/workplan/index.cfm>

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Enforcement Work Plans for CAC PUE Programs, Continued

WP Components DPR wants enforcement WPs to be simple to prepare, negotiate, understand, implement, and evaluate. WPs should contain the following components:

Component	Function
County Program	<ul style="list-style-type: none"> • A general description of CAC enforcement program components. • Describe program highlights or accomplishments that the county will continue to build on during the next WP cycle. • Describe expected program changes in general terms (for example, a 25 percent reduction in structural pest control inspections, no outreach events for applicators, increased fieldworker inspections).
County Resources	<ul style="list-style-type: none"> • A description of resources for the implementation of your WP. • Describe normal or expected workload for each core enforcement program area (for example, total restricted materials permits issued and Notices of Intent [NOI] approved), DPR priorities, local program issues, and staff and resources required for implementation (for example, the number of full-time staff needed for normal or expected workload).
Corrective Actions	<ul style="list-style-type: none"> • A description of completed corrective actions, if prior DPR evaluation(s) contain agreed-upon corrective actions. • Describe future corrective actions and the measure(s) to be taken.
Core Enforcement Program	<ul style="list-style-type: none"> • A listing of core enforcement program areas and CAC’s activities. Address each DPR core enforcement program area listed starting on page 7 or explain why it does not apply to your county program. See specific core enforcement program WP guidance on the following pages. Make sure WP commitments are commensurate with expected workload and can be met.
DPR-Requested Activities	<ul style="list-style-type: none"> • A listing of priority and other activities identified by DPR in the most recent enforcement letter on Priorities and Other Pesticide Regulatory Activities, which are in addition to the core enforcement program areas. Address each activity or describe why it does not apply to your county program.
Additional CAC Activities	<ul style="list-style-type: none"> • A listing and description of expected outreach presentations or activities. • A description of related pest control enforcement activities (for example, pest quarantine/exclusion, public health pest control, special projects) • Other desirable CAC-proposed activities are optional. Workload for desirable activities depends on CAC resource availability. If the CAC adds activities, the WP must describe the planned activities, estimated resources, and expected program benefit.

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Enforcement Work Plans for CAC PUE Programs, Continued

A. Core Enforcement Program

Core enforcement program

The “**core enforcement program**” encompasses program areas critical to meeting pesticide regulatory program mandates and strategic goals. The core enforcement program consists of the following:

- Restricted materials permitting;
 - Compliance monitoring; and
 - Enforcement response.
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Restricted Materials Permitting

Restricted materials permitting - Purpose

DPR and the CACs must assure that the RMP system protects people and the environment while allowing for effective pest management. To assure effective implementation of the permit system, CACs must:

- Continuously evaluate hazards posed by proposed applications
- Familiarize themselves with the Pesticide Use Enforcement Program Standards Compendium, Volume 3 *Restricted Materials and Permitting*

Generally, applications of California restricted materials may occur only under a permit issued by the CAC. The CAC must evaluate each proposed application before it occurs and document their determination that the application posed no unacceptable risks or that the RMP was conditioned to mitigate identified hazards. Per 3 CCR section 6436, CACs also conduct a pre-application site evaluation when they determine that only an on-site evaluation will allow an appropriate assessment of risk.

DPR’s evaluation of the CAC’s permit system focuses on business process evaluation and improvement to assure the most efficient use of available resources. The following provides guidance for incorporating restricted materials permitting program priorities into the CAC’s WP.

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Enforcement Work Plans for CAC PUE Programs, Continued

**Restricted
Materials
Permitting -
Process**

The restricted materials permitting portion of the WP should briefly describe the current procedures or business process, findings from previous evaluations, and any planned improvements. The CAC should document all program changes resulting from their ongoing assessment. This allows DPR and the CAC to review needs and to adjust or redirect workload to match resource availability.

The CAC's procedures should focus on the following:

- Identification and evaluation of all sensitive sites including residential areas, schools, crops, wetlands, waterways, and critical habitats of rare, endangered, or threatened species and livestock;
 - Mitigation alternatives and site specific use practices;
 - Review and evaluation of Notices of Intent (NOIs) to ensure environmental and human health conditions have not changed since the permit was issued; and
 - Certification of private applicators.
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**Restricted
Material
Permitting -
Site evaluation**

The Site Evaluation (Pesticide pre-application site evaluation (PR-ENF-102)) should utilize the CAC's knowledge of pesticide hazards, local conditions, cropping, and fieldwork patterns, as well as handler, permittee, and adviser compliance histories to address local, multi-county, and/or regional issues. Specifically, the evaluation should address:

1. High priority situations and proposed level of monitoring:
 - Pesticide by crop/chemical (fumigant), environmental conditions, proximity to sensitive sites, etc.
 - As resources allow, certain on-site pre-application inspections.
 2. The percent of total approved NOIs to be site evaluated. CACs should not limit themselves to evaluating five percent of approved NOIs if resources allow and local situations require more. Pre-application site evaluation can prevent adverse episodes from occurring and is critical to the restricted materials permit program effectiveness.
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Enforcement Work Plans for CAC PUE Programs, Continued

Compliance Monitoring

Compliance Monitoring - Purpose

DPR's goal to reduce pesticide risks to people and the environment depends on an effective and comprehensive compliance monitoring program. Conducting Inspections and Investigations allows CACs to identify and respond to potential hazards to workers, the public, and the environment.

Effective and comprehensive compliance monitoring is essential to assure the safety of pesticide handlers, fieldworkers, the public, and the environment. Compliance monitoring includes pesticide use and records inspections, episode and complaint investigations, and surveillance.

To assure an effective compliance monitoring program, CACs must:

- Conduct broad-based and comprehensive Inspection types;
- Identify the number and types of inspections necessary to maintain an enforcement presence effective at deterring violators;
- Follow the Pesticide Use Enforcement Program Standards Compendium Volume 4, *Inspection Procedures*;
- Assure thorough and timely Investigations; and
- Familiarize themselves with the Pesticide Use Enforcement Program Standards Compendium Volume 5, *Investigation Procedures*.

The EBL will work with the CAC to schedule the DPR oversight inspections required to meet the joint U.S. EPA/DPR/CAC agreement goals.

Compliance Monitoring - Inspections

As with site monitoring plans, inspection strategies developed by CACs, either individually or regionally, can be more effective and comprehensive than a plan developed by DPR. An effective inspection strategy encompasses a broad spectrum of pesticide handling situations and responds quickly to local issues. Specifically, the WP should focus on the following:

1. A balance between planned and spontaneous inspections:
 - Targeted: specific crop, application method, grower vs. business; and
 - Random inspections.
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Enforcement Work Plans for CAC PUE Programs, Continued

**Compliance
Monitoring -
Inspections**
(continued)

2. Prioritize inspections based on situation and risk. Consider:
 - Violation history and/or pesticide episode occurrence;
 - Local and/or state priorities; and
 3. Effectiveness in terms of:
 - Response to changes; and
 - Improvements in overall compliance rates.
-

**Compliance
Monitoring -
Investigations**

DPR and the CACs have responsibility to investigate episodes that may involve potential or actual human illness or injury, property damage, loss, or contamination, and environmental effects alleged to be the result of the use or presence of a pesticide, in a timely and thorough manner. The WP should focus on the following:

- Timely initiation and completion of all non-priority investigations. Reducing initiation and completion times will result in improved evidence gathering;
 - Timely Priority Episode investigation initiation and reporting. CACs must initiate priority episode investigations immediately, but in no event will the investigation commence later than three working days, submit an initial notification to DPR, and submit a preliminary update within 15 days;
 - Development and use of investigation plans. CACs should develop investigation plans and use the “elements of the violation analysis” technique to reduce time needed to obtain key evidence and complete the investigation report. Please review the *Investigation Procedures* manual (Volume 5 of the Pesticide Use Enforcement Program Standards Compendium) Investigative Plan; and
 - Thorough report preparation. Complete investigation reports include a discussion of all suspected and causal violations discovered during the investigation. Incomplete reports will be returned to the CACs for additional information.
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Enforcement Work Plans for CAC PUE Programs, Continued

Enforcement Response

**Enforcement
Response -
Purpose**

To realize the full benefits of a comprehensive and effective statewide pesticide regulatory program, DPR and the CACs must apply enforcement authority fairly, consistently, and timely. Achieving compliance is a top priority for both CACs and DPR. The enforcement response regulations provide the tools to help CACs choose the best enforcement option. Our joint enforcement response should emphasize worker and environmental safety by:

- Creating a climate that compels all pesticide users to comply with state laws and regulations through a progressive discipline approach
- Ensuring that compliance, once achieved, is sustainable
- Helping CACs balance the level of enforcement response with their staffing resources
- Improving enforcement response guidance

The following provides guidance for incorporating enforcement response into CAC WP.

**Enforcement
Response -
Implementation**

Emphasis should be placed on detecting and deterring “repeat” violators through compliance monitoring and enforcement response. The following actions should be taken:

- Consider all appropriate enforcement options before taking action. If available options will not result in sustained compliance, refer it to the State for enforcement action, when appropriate;
 - Assure timely responses to ensure against lost or compromised evidence;
 - Respond to all violations with compliance or enforcement action.
 - Choose the response most likely to result in sustained compliance with the most efficient use of resources; and
 - In cases of staffing shortages, the greatest effort should be directed at violations that pose the highest risk to people and the environment, and focus on preventing health and safety violations.
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Enforcement Work Plans for CAC PUE Programs, Continued

B. Additional DPR Priority Program Areas

This includes any additional program priority areas DPR expects to be addressed in the CAC's WP.

For example, the following list was issued by DPR for FY 17-18. For each priority or activity the CAC describes in the WP how these issues are being addressed, if applicable.

- A. Soil fumigant use compliance (including chloropicrin mitigation measures and approved soil fumigant tarps), labels, regulations and permits
- B. Bee pollinator protection incident reporting to DPR, including complaints or reports of loss associated with pesticide applications
- C. Compliance with DPR regulations regarding pesticide use around Schools
- D. Structural fumigation use compliance.
- E. Implementation of new laws and regulations such as fumigant notification regulations, closed system regulations, worker protection standard (WPS) revised regulations, and personal protective equipment (PPE) regulations.
- F. Implementation of medical marijuana pesticide policies and regulations
- G. Implementation of 1,3-d use limitations.
- H. Collaboration with the State Regional Water Quality Board and DPR Environmental Monitoring Branch to protect water bodies, including ground water regulations, surface water regulations, and assisting DPR with surface water studies.
- I. Training county staff on pesticide laws and regulations, including DPR policies and Compendium guidance manuals.
- J. Regulatory outreach and education. Describe subject(s) and audience, including pollinator protection, closed systems, worker protection standard (WPS) revisions Certification and Training updates, pesticides around schools regulations, and PP regulations.
- K. Focused inspections on employers with employees under pesticide medical supervision, 3CCR 6728.
- L. Collaboration with DPR in addressing U.S. EPA activities or requests
- M. Other special projects or significant activities identified by the county agricultural commissioner.

These priority program areas are periodically updated in an Enforcement Letter to all CACs.

Section 5

CAC Performance Evaluation by DPR

Purpose DPR evaluates the county’s pesticide regulatory program at least once every three years in accordance with Title 3 California Code of Regulations, section 6394 (Performance Evaluation). After consulting with the Enforcement Branch Regional Office Manager, the EBL informs the CAC of the frequency of the performance evaluation report and identifies the calendar year(s) to be evaluated. A CAC may request an annual performance evaluation report. If this is the case, please consult the EBL serving your county.

Process and Timelines The performance evaluation process is continuous with a focus on DPR’s Core Enforcement Program. It is based on field observations, oversight inspections, the WP, review of county records, and an evaluation of pesticide use inspections, illness investigations and enforcement response. It includes meetings and discussions with the CAC to discuss the county’s overall performance and any program deficiencies and suggested corrective actions. When program deficiencies are identified, the EBL is required to notify the CAC formally with an Issue Review form immediately to determine corrective measures.

The draft Performance Evaluation Report is discussed with the CAC prior to finalization. The Regional Office manager then determines when the Performance Evaluation Report will be finalized and submitted to the CAC.

Availability Once the evaluation is approved, evaluations are publically available on our website at <http://apps.cdpr.ca.gov/docs/county/evaluations/index.cfm>

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CAC Performance Evaluation by DPR, Continued

**Program
evaluations**

The following is an overview of what EBLs and the Regional Offices may consider when evaluating the CAC's PUE program.

**Restricted
materials
permitting –
program
evaluation**

Effectiveness based on:

- Program procedures and process
 - Occurrence of adverse incidents where CAC had a high degree of control
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**Compliance
monitoring –
program
evaluation**

Effectiveness based on:

- Comprehensiveness of the Inspection program
 - Completeness, accuracy, and timeliness of Investigations
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**Enforcement
response –
program
evaluation**

Effectiveness based on:

- Appropriateness and timeliness of enforcement response
 - Progressiveness of response for repeat violators
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