

I. GENERAL INFORMATION

A. Legal Authority

Federal Authority. Under title 7, United States Code section 136, et seq., the United States Environmental Protection Agency (US EPA) is responsible for administering and enforcing the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Section 26 of FIFRA specifies that for the purposes of this Act, a state shall have primary enforcement responsibility for pesticide use violations.

State Authority. The purpose of California's pesticide laws and regulations is to ensure proper, safe, and efficient use of pesticides and to protect public health and safety (California Food and Agricultural Code (FAC) section 11501). Sections 11501.5, 12977, 12982, 14004, and 15201 of the FAC authorize DPR and the County Agricultural Commissioners (CAC) under the direction and supervision of DPR to enforce California's pesticide laws and regulations. Title 3, California Code of Regulations (3 CCR) section 6140, authorizes DPR or the CACs to enter, inspect and/or take a sample to determine whether a business complied with California's pesticide law. In addition, 3 CCR section 6141 authorizes DPR or the CACs to interview an employee when investigating an illness or injury suspected of having been caused by a pesticide or a pesticide use violation.

For additional definitions on Federal and State Regulatory Authority, see Compendium Volume 1: General Administration of the Pesticide Use Enforcement Program

<https://www.cdpr.ca.gov/enforcement/resources-for-county-agricultural-commissioners/general-administration-of-the-pesticide-use-enforcement-program/>

Regulatory websites:

FAC:

<https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=FAC&tocTitle=+Food+and+Agricultural+Code+-+FAC>

3CCR:

<https://www.cdpr.ca.gov/laws-and-regulations/california-code-of-regulations-title-3-food-and-agriculture-division-6-pesticides-and-pest-control-operations/>

B. Responsibility

DPR and the CACs are jointly responsible for investigating potential or actual human illnesses or injuries caused by or suspected to be caused by a pesticide or pesticide use violation (3 CCR section 6141). Pursuant to FAC section 2281, the local CAC usually conducts these investigations. Contact the Enforcement Regional Office Branch for assistance in determining the appropriate investigative agency when there are: (1) Incidents involving more than one county; or (2) Conflict of interest issues such as illness of CAC staff or a complaint of county operations.

Upon request, DPR staff will provide guidance to the CAC during an investigation. DPR may also choose to be actively involved in order to evaluate the human health aspects of some

incidents. Complete, well-documented investigations form the basis for taking proper enforcement actions and making regulatory decisions. DPR reviews the quality of investigations to evaluate the effectiveness of the compliance monitoring aspect of a CAC's core enforcement program.

DPR relies upon the CAC to provide sound, factual information in the investigative report. DPR uses investigative reports to evaluate pesticide use and illness patterns and to identify broader statewide or national issues. These investigative reports receive close review and scrutiny from the Legislature, US EPA, other government agencies, and the public.

C. Pesticide Episode/Complaint Tracking Log

Pesticide investigation records provide an important source of information, and access to this information is often critical to the support of the program at all levels. DPR assigns, numbers, and tracks all alleged pesticide related incidents that meet, or appear to meet, one or more of the Reportable Incident Criteria and all reported human effects (illness). CACs also conduct, track, and file investigation reports of other kinds (non-reportable investigations) of pesticide incidents not tracked by DPR. CACs are to prepare and maintain a log of all pesticide related incidents/complaints. The format for the log is flexible (either a spreadsheet or separate pages) as long as the following information is included:

- Date opened (uncovered or reported)
- Unique identification (number or name)
- Type of Incident (for consistency please use effects categories similar to those used for Reportable Investigations, use a word or two on cause or identification of property impacted if necessary, such as drift, offsite movement, spill, grapes, water, etc.)
- Pesticide(s) involved
- Location
- Violations (if any)
- Date closed

The need for investigation data by DPR, other agencies, outside organizations, the Legislature, or the media is unpredictable in terms of scope and frequency. DPR and CACs can spend large amounts of time searching individual files in an attempt to determine if investigations were conducted that involve certain pesticides, exposure scenarios, environmental effects, or situations. Enforcement Branch Liaisons (EBLs) have been requested to monitor these logs to check for regional issues that may indicate emerging issues that require DPR action.

D. Pesticide Incidents

Notification of pesticide incidents may be received from any of the following sources: Pesticide Illness Report (PIR); Doctor's First Report of Occupational Injury or Illness (DFROII); Citizen or Employee Complaint of Human Exposure or Unsafe Condition, either oral or written (form PR-ENF-074); other government agency referrals; notification from pest control businesses (PCB), growers, or labor contractors; Report of Loss, Nonperformance or Damage (form PR-ENF-008); a news media account; or by observation.

For human health incidents, the Health and Safety Code section 105200 (see website: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=105200&lawCode=HSC) requires a physician to report pesticide illnesses to the local health officer within 24 hours. The local health officer must immediately notify the CAC of each reported illness. The CAC should establish contact with the local health department to ensure prompt receipt of these reports. The CAC inform the EBL and the Worker Health and Safety Branch (WH&S) if the CAC receives information related to pesticides and human health effects from sources other than DPR.

DPR routinely forwards incident reports to the CAC for investigation. If the report alleges any type of pesticide illness or exposure, the investigation needs to document and determine the circumstances that most likely caused the human health effects (see section E-1).

Any person alleging property loss, nonperformance or other damage as a result of a pesticide application should file a Report of Loss, Nonperformance or Damage (form PR-ENF-008) with the CAC within 30 days of the occurrence or discovery of the loss (FAC sections 11761 through 11764).

E. Jurisdiction

1. Human Health Effects

California law requires physicians to report any known or suspected illness caused by a pesticide exposure. DPR is responsible for collecting human health effects information resulting from all pesticide exposures in **all situations**. Use pattern (such as structural, institutional, industrial, home, or agricultural), or the kind of pesticide (fungicide, antimicrobial, insecticide, or herbicide) does not affect investigative responsibility. However, in certain situations, CAC/DPR does not have jurisdiction and may have to work with other agencies to collect information related to the exposure.

Examples of other agencies' jurisdiction include pesticide manufacturing, formulating and packaging, commercial transportation and storage, emergency response situations such as fires and spills, disposal facilities, etc. These exposures come under the jurisdiction of the Department of Industrial Relations (DIR) as agreed upon in the DIR/DPR/CACASA

“Memorandum of Understanding (MOU) For Employee Protection at the Pesticide Workplace.” DPR/CAC involvement may be requested due to our general knowledge about pesticide hazards and overall lead agency responsibility for pesticide regulation.

DIR has jurisdiction for exposures involving:

1. Ethylene oxide uses;
2. Inorganic arsenic used as a wood treatment;
3. Formaldehyde in packinghouses and poultry confinement buildings; and
4. Ethylene glycol monomethyl ether uses.

DPR's WH&S forwards reports of illness or injury that appear to be pesticide-related to the CAC for investigation of the circumstances of exposure. Reports involving pesticides that are specifically addressed by the DIR/DPR/CACASA MOU (e.g., inorganic arsenic wood treatments, ethylene oxide and ethylene glycol monomethyl ether) are excluded. **For an incident referred to a CAC and was later determined not to be within DPR/CAC jurisdiction, the CAC must still file a Pesticide Episode Investigation Report (PEIR) with DPR.** The CAC should refer these incidents to the proper agency for potential enforcement.

2. Non-Human Effects Incidents

Illegal Residues: DPR and the CAC hold joint responsibility for investigating pesticide residues on produce. DPR focuses on the produce in the channels of trade while the CAC focuses on how the illegal residue occurred. See page 20 for additional information on illegal residues.

Property Damage or Loss: The CAC is responsible for investigating property damage or loss resulting from the use of a pesticide or pesticide device. If the loss or damage is determined to be the result of contaminated or mislabeled pesticides/pesticide devices or pesticides that contain concentrations of an active ingredient(s) that is not accurately represented by the labeling, the investigation will be conducted by DPR.

Fish and Wildlife Incidents: through an MOU, DPR, CACASA, and the Department of Fish and Wildlife (DFW) outline notification and coordination procedures to fulfill their shared responsibilities relating to the protection of fish and wildlife resources from the potentially adverse effects of pesticides.

Emergency Hazardous Materials (Pesticides) Incidents: These incidents often involve a multi-agency response. The CAC should contact the lead agency for hazardous materials within the county for direction. Although the CAC may not have any jurisdiction, the county emergency response plan may involve the CAC in assisting other agencies in a coordinated response.

3. Federal Facilities

Presidential Executive Order 12088 requires federal employees performing pest control on federal facilities to comply with federal, state, and local pollution control standards established pursuant to FIFRA. Federal employees must demonstrate applicator certification prior to the purchase and use of restricted use pesticides. Certification may be by the federal agency pursuant to a U.S. EPA approved program. Federal agencies must also comply with requirements on the registered pesticide label.

DPR and CACs cannot assess penalties against federal agencies or their employees for violations of state or federal law on federal facilities. Executive Order 12088 provides that U.S. EPA is responsible for dispute resolution between a federal facility and a federal, state, or local regulatory agency. The CAC should inform DPR when they find that a federal agency violated a pollution control standard (pesticide law or regulation) and failed to cooperate in the investigation or correct the problem. DPR will work with the CAC and the federal agency to resolve the problem or will forward the information to U.S. EPA for resolution.

However, State laws and regulations (including licensing) do apply to persons who are NOT federal employees and who are hired by or under contract to a federal agency to perform pest control on a federal facility and private persons who lease or contract for the use of federal land or facilities for private activities. DPR and CACs can take action for violations of state laws against these private persons. See Compendium Volume 1 for a more in-depth discussion of authority on federal land and facilities.

4. Tribal Land

While federal and state courts have declined to allow states to assert civil regulatory jurisdiction in a variety of areas, there is no direct case law addressing whether DPR would have jurisdiction to enforce pesticide laws on land recognized by the Bureau of Indian Affairs. For this reason, historically the department has not attempted to enforce pesticide laws with regard to tribal activity. See Compendium Volume 1 for a more in-depth discussion of authority and jurisdiction on tribal land.

5. Cross-Jurisdictional Incidents

When the cause (application) and the effects (exposure, illness, or damage) occur in different jurisdictions (state, country, or tribal land), follow these guidelines during the investigation as each jurisdiction has partial investigative responsibility:

- The jurisdiction suffering the effects is responsible for documenting the extent and seriousness of the effects and transmitting that information to the jurisdiction where the application originated.
- The jurisdiction where the cause originated is responsible for investigating the

circumstances of the application to determine if any laws or regulations were violated and for taking appropriate enforcement action.

Communication and cooperation between the two jurisdictions is critical. DPR and US EPA should be involved whenever appropriate. Consult with your EBL whenever there is a cross jurisdictional incident.

7. Incident Complaint about the CAC

If the complaint is about the CAC or CAC employees, contact your EBL prior to investigating the incident to avoid a conflict of interest. For more information, refer to Chapter 2 of this Volume under Employee/Citizen Complaints.

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