California Counties Priority Episode Audit

U.S. Environmental Protection Agency, Region 9

San Francisco, CA

Final Report

February 8, 2023

Executive Summary

EPA Region 9 conducted an in-depth review of California's County Agriculture Agricultural Commissioner (CAC) offices' most significant investigations involving pesticide exposure of farmworkers and community members. Eleven CAC pesticide exposure investigations, from six different counties, were audited. These investigations had all been formally referred to the California Department of Pesticide Regulation by EPA Region 9 under FIFRA Section 27(a), 7 U.S.C. § 136w–2(a) between June 1, 2019 and September 30, 2020.

For each case file EPA Region 9's Enforcement and Compliance Assurance Division (ECAD) staff did the following:

a) Reviewed the entire investigation report to assess the adequacy of the investigation. The review included how evidence was collected in order to document violations, and timeliness of initiating and completing the investigation and taking enforcement actions.

b) Reviewed the adequacy and appropriateness of the citation of violations relative to the DPR's pesticide laws and regulations.

c) Reviewed the adequacy and appropriateness of enforcement actions relative to DPR's regulations at California Code of Regulations (CCR) 6128 to CCR 6130.

d) Held Microsoft Teams meetings with DPR and CAC staff from the relevant counties to ask questions about the investigations or enforcement actions.

e) Conferred with DPR staff to ask questions about DPR's pesticide laws, regulations, and investigation procedures when EPA Region 9 needed clarification about how they are implemented.

EPA Region 9 made the assessments to items a), b), and c) by answering numerous questions in section II. Evaluation. Any concerns identified in section II were further addressed as follow-up questions during meetings attended by EPA Region 9, DPR, and the six CACs, which were held between September 12, 2022 – September 16, 2022. The follow-up questions asked by EPA Region 9 and responses from DPR, CACASA, and the CACs can be found in section III. Follow-Up Questions. The responses from DPR, CACASA, and the CACs were included throughout the report to provide additional insights and context into how California's pesticide use laws and regulations are being implemented and enforced by CACs.

Findings and recommendations made by EPA Region 9 related to identified concerns can be found in section IV. Findings and Recommendations. In this section, EPA Region 9 commended the CACs for meeting or exceeding expectations in a number of areas. CACs responded quickly to pesticide exposure incidents, followed up on all leads, interviewed all witnesses involved,

routinely collected samples in attempts to prove pesticide drift, and consistently checked the training records of applicators and workers.

However, in section IV, EPA Region 9 also identified six areas for improvement. Interviews of applicators often lacked sufficient detail about how applications were conducted; inspection photos were not always included with all investigation reports; the responsible party's compliance history was most often not documented in the penalty document; the class of violation identified for violations of CCR 6766(c) was inconsistent among CACs; penalty amounts issued for pesticide drift related violations were inconsistent among CACs and there was insufficient detail in the penalty document to determine how the penalty amount was chosen; and there appeared to be discrepancies in how penalties were assessed to applicators and employers/farm labor contractors when sample analyses proved pesticide drift.

DPR and CACASA provided responses to the findings and recommendations in section IV. Although areas of improvement were identified, both DPR and CACASA felt that CAC investigations were thorough, meeting overall expectations, and being conducted according to current regulations, guidance, and procedures. DPR expressed the agency's commitment to continue working with EPA Region 9 and the CACs to address EPA Region 9's findings and recommendations and improving California's pesticide use enforcement program. CACASA looked forward to continue engaging in this process going forward.

I. Introduction

One of the United States Environmental Protection Agency (EPA)'s main priorities is to decrease pesticide exposure to farmworkers and communities and ensure compliance with pesticide laws and regulations. EPA is committed to working with and overseeing our state, tribal and territorial government partners to ensure enforcement of the pesticide laws including worker protection standards. EPA Region 9 expanded the tracking of pesticide exposures involving five or more people in June 2019 as part of our oversight responsibility of California's implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This audit was designed to conduct an in-depth review of California's County Agriculture Commissioner (CAC) offices' most significant investigations involving pesticide exposure of farmworkers and community members. EPA Region 9 audited eleven CAC pesticide exposure investigations.

Section 26, 7 U.S.C. §136w-1, of FIFRA grants primary enforcement responsibility for pesticide use violations to states. In California, the lead state agency is the California Environmental Protection Agency's (CalEPA) Department of Pesticide Regulation (DPR). Unique to California, DPR further delegates pesticide use enforcement to the 55 CAC offices across the state. Under FIFRA Section 27(a), 7 U.S.C. § 136w–2(a), the EPA can refer alleged significant pesticide use violations to the States for investigation. In California, DPR further delegates these referrals to the CACs for investigation.

The 1983 Final Interpretive Rule on State Primacy[1] required EPA and the States to determine the types of pesticide use violations that are significant enough to warrant formal referral and tracking. In California, this was accomplished in an April 2005 three-way Cooperative Agreement[2] between EPA Region 9, DPR, and the California Agricultural Commissioners and Sealers Association (CACASA), an organization which represents all CAC offices. The Cooperative Agreement formally defined significant pesticide use investigations as "priority investigations". Informally, EPA Region 9 and DPR commonly refer to these priority investigations as "priority episodes" or "priority incidents". For consistency, this report uses the term "priority episode". Appendix A of the Cooperative Agreement lists the various types of priority episodes that EPA may formally refer to DPR under FIFRA Section 27(a), 7 U.S.C. § 136w–2(a).

A. Overview

In this report, EPA Region 9 audited the case files of eleven priority episodes investigated by CACs, formally referred by EPA Region 9 under FIFRA Section 27(a), 7 U.S.C. § 136w–2(a) between June 1, 2019 and September 30, 2020. During this period EPA Region 9 only referred priority episodes where five or more people were made ill due to an alleged pesticide misuse.

[1] Final Interpretive Rule on State Primacy, January 5, 1983. https://www.epa.gov/compliance/fifra-state-primacy-enforcement-responsibilities-final-interpretive-rule.
[2] Cooperative Agreement Between EPA, DPR, and CACASA, April 2005. https://www.cdpr.ca.gov/docs/county/cacltrs/penfltrs/penf2005/2005019.htm.

The cases that were included in this audit were fully investigated and closed at the time the audit was performed. EPA Region 9 did not include cases that had been accepted by a county District Attorney office and were still under investigation. EPA Region 9 also did not include cases that had not been settled (e.g. the penalty had not been paid or there were pending court hearings).

The following eleven priority episodes, from six different counties, met the above criteria when EPA Region 9 initiated the audit. These eleven cases had been fully investigated, closed, and settled:

1. 32-TUL-19 (Tulare CAC)
2. 39-KIN-19 (Kings CAC)
3. 44-KIN-19 (Kings CAC)
4. 48-KER-19 (Kern CAC)
5. 58-SCR-19 (Santa Cruz CAC)
6. 60-KER-19 (Kern CAC)
7. 67-STA-19 (Stanislaus CAC)
8. 08-SB-20 (Santa Barbara CAC)
9. 41-KER-20 (Kern CAC)
10. 45-KER-20 (Kern CAC)
11. 51-TUL-20 (Tulare CAC)

B. Review Process

For each case file EPA Region 9's Enforcement and Compliance Assurance Division (ECAD) staff did the following:

a) Reviewed the entire investigation report to assess the adequacy of the investigation. The review included how evidence was collected in order to document violations, and timeliness of initiating and completing the investigation and taking enforcement actions.

b) Reviewed the adequacy and appropriateness of the citation of violations relative to the DPR's pesticide laws and regulations.

c) Reviewed the adequacy and appropriateness of enforcement actions relative to DPR's regulations at California Code of Regulations (CCR) 6128 to CCR 6130.

d) Held Microsoft Teams meetings with DPR and CAC staff from the relevant counties to ask questions about the investigations or enforcement actions.

e) Conferred with DPR staff to ask questions about DPR's pesticide laws, regulations, and investigation procedures when EPA Region 9 needed clarification about how they are implemented.

C. Key Dates

- November 18, 2021 – Kick off letters sent to DPR and CACs in Tulare, Stanislaus, Santa Cruz, Santa Barbara, Kern, and Kings counties.
- December 6, 2021 – EPA Region 9 initiated review of the case files.
- June 3, 2022 – EPA Region 9 completed review of the case files.
- August 15, 2022 – EPA Region 9 drafted a report detailing our findings and recommendations.
- September 6, 2022 – Draft report submitted to DPR and CACs for review and comment.
- September 12, 2022 – September, 16, 2022 – Microsoft Teams meetings held with DPR and CACs in Tulare, Stanislaus, Santa Cruz, Santa Barbara, Kern, and Kings counties to ask follow-up questions about the investigations and enforcement actions.
- September 13, 2022 – Draft report submitted to CACASA for review and comment on findings and recommendations.
- October 7, 2022 – Draft report comments from DPR, CACASA, and the CACs submitted to EPA Region 9.
- December 21, 2022 – Draft report updated and recirculated to DPR, CACASA, and CACs for review and comment.
- January 20, 2023 – Updated draft report comments from DPR, CACASA, and the CACs submitted to EPA Region 9.
- February 8, 2023 – Final report completed.

D. EPA Region 9, DPR, CAC, and CACASA Participants

EPA Region 9, ECAD

- Timothy Hyles, Inspector, Toxics Section
- Julie Jordan, Management Analyst, Immediate Office
- Marangely Alvarado-Rivera, Inspector, Toxics Section
- Ejan Petrie, Inspector, Toxics Section
- Maureen Munoz, Inspector, Drinking Water Section
- Matt Salazar, Manager, Toxics Section
- Kaoru Morimoto, Assistant Director, Air Hazardous Waste and Toxics Branch
- Amy C. Miller, Division Director
- Grant Scavello, Senior Policy Analyst

- Patti Tenbrook, Manager, Pesticides Section
- Bill Lee, Project Officer, Pesticides Section
- Susan Morales, Project Officer, Pesticides Section
- Katy Wilcoxen, Worker Safety Program Manager, Pesticides Section

DPR

- Julie Henderson, Director
- Ken Everett, Assistant Director
- Donna Marciano, Enforcement Branch Chief, Regional Offices
- Joe Damiano, Enforcement Branch Chief, Headquarters
- Brandi Martin, Environmental Program Manager, Central Regional Office
- Jose Bueno, Senior Environmental Scientist (Supervisory), Central Regional Office
- Jahan Motakef, Environmental Program Manager, Southern Regional Office
- Catherine Yee, Senior Environmental Scientist (Supervisory), Southern Regional Office
- Fidel Perez, Environmental Program Manager, Northern Regional Office
- Sidney Bastura, Senior Environmental Scientist (Supervisory), Northern Regional Office

CalEPA

- Linda Lye, Deputy Secretary for Law Enforcement and General Counsel
- Clare Mendelsohn, Deputy Secretary for Public Policy

CACASA

- Lindsey Carter, Executive Director

Tulare CAC

- Tom Tucker, Agricultural Commissioner/Sealer
- Christopher Greer, Assistant Commissioner/Sealer
- Marianna Gentert, Deputy Agricultural Commissioner/Sealer
- Samuel Conant, Deputy Agricultural Commissioner/Sealer
- Daniel Rios-Romo, Ag & Standards Inspector IV

Stanislaus CAC

- Kamal Bagri, Agricultural Commissioner/Sealer
- Judith Arroyo, Deputy Agricultural Commissioner/Sealer

Santa Cruz CAC

- Juan Hidalgo, Agricultural Commissioner/Sealer
- David Sanford, Deputy Agricultural Commissioner/Sealer

Santa Barbara CAC

- Cathy Fisher, Agricultural Commissioner/Sealer
- Rudy Martel, Assistant Agricultural Commissioner/Sealer
- Lottie Martin, Deputy Agricultural Commissioner/Sealer
- Stephanie Stark, Deputy Agricultural Commissioner/Sealer
- Noah Beyeler, Agricultural/Weights & Measures Inspector, Supervising
- Ryan Casey, Agricultural/Weights & Measures Inspector, Supervising

Kern CAC

- Glenn Fankhauser, Agricultural Commissioner/Sealer
- Brian Gatza, Deputy Agricultural Commissioner/Sealer

Kings CAC

- Jimmy Hook, Agricultural Commissioner/Sealer
- Janet Eckles, Deputy Agricultural Commissioner/Sealer
- Mario Gutierrez, Deputy Agricultural Commissioner/Sealer

II. Evaluation

Preliminary Questions for DPR

Prior to beginning the priority episode case file reviews, EPA Region 9 asked DPR the following three questions to better understand DPR and District Attorney's role in enforcement and how CACs and DPR address companies that have violations in multiple counties. The responses from DPR are included.

1. **Under what circumstances does DPR decide to take the lead in a pesticide use enforcement actions?**

Response from DPR

On September 27, 2022, AB 211 was signed into law giving DPR authority to take enforcement actions on multi-jurisdictional priority episodes in collaboration with the CACs (FAC 12999.6). This law also increases penalty amounts for civil and criminal pesticide use violations. DPR will be updating the Enforcement Response Regulations (3 CCR 6128/6130) as well as establishing procedures and regulations to implement this new authority. DPR is also increasing its licensing enforcement actions against certified applicators with repeated violations. DPR looks forward to discussing these changes to our enforcement authority and our increased licensing enforcement focus with EPA Region 9.

2. **What will happen to a potential pesticide use case if a county District Attorney waits to decline interest on a CAC referral until the CAC's 2-year statute of limitations expires? Is the chance to take enforcement action lost or can DPR take over the case and pursue enforcement action?**

For background, CACs routinely give a county District Attorney (DA) the chance to take the case when serious violations are identified. If the DA does not accept the case, then the CAC can proceed with their own administrative enforcement action. If the DA does accept the case, then the DA will pursue their own enforcement action and the CAC will assist if asked.

Response from DPR

DPR explained that approaching the two-year statute of limitations due to delayed response by the DA happens rarely. Usually, the CACs are in communication with the DA and have a good understanding about the DA's interest in taking a case. CACs commonly start drafting their own enforcement action in anticipation of the DA not taking the case. This is done so that they can quickly issue an enforcement action before the two-year statute of limitations expires if the DA

does not take the case. A case may take longer than two years if the DA's use other regulations that have a statute of limitations that exceeds two years.

3. **How does DPR and CACs handle cases where violations are committed by the same company in multiple counties? Are CACs sharing this type of compliance information with each other or taking it into consideration when enforcement actions are taken?**

Response from DPR

DPR explained that sometimes a CAC will let DPR know of a company with egregious and/or multiple violations. If DPR is aware of egregious and/or multiple violations by a pesticide applicator, it considers whether a pesticide licensing enforcement action is appropriate. DPR considers input from CACs in evaluating whether a pesticide licensing enforcement action is warranted. DPR's management and legal department will then make a determination as to whether a licensing enforcement action is warranted.

CACs also have the option, but are not required by current regulations, to share information from open cases with other CACs in California Pesticide Enforcement Activity Tracking System (CalPEATS). Otherwise, the case can only be viewed by other CACs after the investigation is closed in CalPEATS. EPA Region 9 asked DPR a follow-up question about whether CACs routinely check CalPEATS to verify a company's statewide compliance history, rather than limiting the search to their own county, for consideration in the enforcement response. DPR responded that current regulations do not require CACs to check CalPEATS for a company's statewide compliance history. A CAC can reference what other counties have cited a company for, but generally rely on their own compliance databases for the enforcement response. DPR also gave an example where multiple CACs coordinated on an enforcement response after DPR forwarded a case that involved violations by a company operating in multiple counties.

Priority Episode Case File Review

EPA Region 9 used a set of identical questions while reviewing each priority episode case file to ensure consistency in how case files were reviewed. EPA Region 9 also provided DPR and the six CACs involved in the audit time to review and provide feedback to ensure factual accuracy. This section lists those questions and the summarized responses from EPA Region 9. DPR also provided responses to a couple questions. Any concerns identified in this section were further addressed as follow-up questions during meetings attended by EPA Region 9, DPR, and the six CACs, which were held between September 12, 2022 – September 16, 2022. The meeting questions and responses can be found in section III. Follow-Up Questions. Findings and recommendations made by EPA Region 9 related to identified concerns can be found in section IV. Findings and Recommendations.

A. Timeliness of Investigations and Enforcement Actions

When reviewing priority episode case files, EPA started by evaluating the timeliness of the investigations and issuance of enforcement actions. We asked the following question:

4. Are investigations and enforcement actions being carried out in a timely and effective manner?

To answer this question, EPA gathered important case date milestones including the date of incident occurrence, date EPA formally referred the case to DPR under FIFRA Section 27(a), 7 U.S.C. § 136w–2(a), date CAC first received notification of the incident, date investigation was initiated, date investigation was closed, and date the Notice of Proposed Action (NOPA) was issued (Table 1). A NOPA is a type of civil enforcement action where a monetary penalty is issued to the respondent (i.e. the company or person determined to be responsible for a violation).

Table 1. Important case dates.

Priority Episode Number	Date of Occurrence	Date EPA Referred to DPR	Date CAC was Notified of Incident	Date CAC Investigation Initiated	Date CAC Investigation Closed	Date Notice of Proposed Action (NOPA) Issued
32-TUL-19	6/18/2019	6/25/2019	6/18/2019	6/18/2019	2/10/2020	1. Grapeman Farm Labor, 10/4/2019. 2. Rojim Inc., 10/4/2019. 3. Peters Fruit Farm, 11/14/2019.
39-KIN-19	6/27/2019	7/1/2019	6/27/2019	6/27/2019	2/6/2020	1. A. Flores Farm Labor, Inc., 6/4/2021. 2. Moonlight Packing, 6/4/2021.
44-KIN-19	7/3/2019	7/15/2019	7/3/2019	7/3/2019	6/21/2021	**1.** Fruity Ag Inc., 6/10/2021. **2.** J.V. Farm Labor Services, Inc., 6/10/2021. **3.** JM Traver Farms LP, 6/10/2021. **4.** Trinkle Ag Flying Service, 6/11/2021.
48-KER-19	7/18/2019	7/22/2019	7/18/2019	7/18/2019	2/6/2020	1. Giumarra Vineyards & Farms, 12/4/2019.

Priority Episode Number	Date of Occurrence	Date EPA Referred to DPR	Date CAC was Notified of Incident	Date CAC Investigation Initiated	Date CAC Investigation Closed	Date Notice of Proposed Action (NOPA) Issued
58-SCR-19	8/8/2019	8/26/2019	8/14/2019	8/14/2019	12/12/2019	1. Chapala Berry Farms, Inc., 7/23/2020.
60-KER-19	9/13/2019	9/16/2019	9/13/2019	9/14/2019	2/7/2020	1. S&S Sprayers LLC, 12/4/2019.
67-STA-19	8/31/2019	10/10/2019	9/6/2019	9/6/2019	7/15/2021	1. Rolling Hills Nut Company, 8/24/2021.
08-SB-20	2/20/2020	2/26/2020	2/21/2020	2/21/2020	11/17/2020	N/A
41-KER-20	7/14/2020	7/16/2020	7/15/2020	7/15/2020	12/17/2020	1. Kirschenmann Farms, 11/19/2020.
45-KER-20	7/18/2020	7/22/2020	7/18/2020	7/18/2020	12/14/2020	1. D&J Farm Management, 11/10/2020.
51-TUL-20	8/6/2020	8/10/2020	8/6/2020	8/6/2020	11/1/2021	N/A

Table 2 lists the number of days that passed from when the CAC received notification of the incident to begin the investigation, close the investigation, and issue the final enforcement action. The date of the final issued enforcement action was used for cases where enforcement actions were taken against multiple respondents as can be seen in Table 1 above.

Table 2. Number of days from CAC receiving notice of the incident to important case steps.

Priority Episode Number	Began Investigation	Closed Investigation	Final Issued Enforcement Action
32-TUL-19	0	232	146
39-KIN-19	0	219	707
44-KIN-19	0	718	708
48-KER-19	0	198	106
58-SCR-19	0	112	333
60-KER-19	1	205	82
67-STA-19	0	619	711
08-SB-20	0	266	N/A
41-KER-20	0	147	123
45-KER-20	0	146	112
51-TUL-20	0	450	N/A

The Cooperative Agreement between EPA Region 9, DPR, and CACASA states that CACs should begin their investigation within three days of receiving the referral from DPR. In all cases CACs began their investigation before EPA Region 9 formally referred the investigation to DPR

under FIFRA Section 27(a), 7 U.S.C. § 136w–2. In all cases CACs began their investigation either the same day or the next day after being notified of the incident. In the one case where a CAC began investigating the next day (60-KER-19), the CAC did not receive notification until 11:00pm the night before and began the investigation promptly the next morning.

CACs have a two-year (730-day) statute of limitations from the date of violation occurrence to commence a civil penalty enforcement action. EPA Region 9 used dates listed on the Closing Reports to determine when investigations were closed, and used dates listed on NOPAs to determine when enforcement actions were issued. CACs took between 112 and 718 days to close investigations, and the average number of days to close an investigation was about 286 days. CACs took between 82 and 711 days to issue an enforcement action in the cases where penalty actions were taken, and the average number of days to issue the final enforcement action was about 336 days. CACs were able to complete their investigations and issue an enforcement action within the 2-year statute of limitations in all cases examined.

B. Adequacy of the Investigation and Appropriateness of Violations and Enforcement Actions

EPA Region 9 asked eleven questions related to the adequacy of priority episode investigations, appropriateness of violations identified, and appropriateness of enforcement actions taken by the CACs. These questions and responses follow.

5. Was the investigation adequate, complete, and accurate? Did the CAC follow the State's procedures for investigating incidents? If not, describe the inadequacies or failure to follow procedures.

EPA Region 9 found significant concerns with the documentation of relevant facts for the applicators in four of the eleven incidents. Regarding adequacy, the 1983 Final Interpretive Rule on State Primacy defines an "adequate investigation" with the following paragraph:

> *"An investigation will be considered "adequate" if the State has (1) followed proper sampling and other evidence-gathering techniques, (2) responded expeditiously to the referral, so that evidence is preserved to the extent possible, and (3) documented all inculpatory or exculpatory events or information."*

EPA Region 9 assessed each item in this definition separately.

(1) Followed proper sampling and other evidence-gathering techniques

The standard operating procedures (SOPs) documented in the Pesticide Use Enforcement Program Standards Compendium did not appear to be followed for a number of the cases. The

Pesticide Use Enforcement Program Standards Compendium[3], Volume 5, Investigation Procedures, Chapter 2 – Investigation Objectives and Procedures requires counties to:

> *"Describe how the pesticide(s) was applied or going to be applied. What type of equipment (be specific) was used? Note items such as air or ground equipment, boom placement on the spray rig, type and effectiveness of closed system used, type of cab on the tractor, air conditioning or filtering system in use on enclosed cabs, type of hand-held application device, use of electrostatic spray equipment, etc. Was the equipment well-maintained and had it been calibrated? What is the size of the nozzle orifice? Evaluation of drift and residue (field and structural) incidents especially benefit from this type of information."*

And

> *"Describe how the chemical was used and where (application site) or how it was intended to be used. Was the chemical properly used (i.e., according to label directions)? Was it a restricted material? Was anything different in the pattern of usage (i.e., first time use on a particular crop, different timing or method than in the past)? <u>Accurately</u> record all information."*

Four investigation case files (44-KIN-19, 08-SB-20, 48-KER-19, and 60-KER-19) failed to document important facts about the application of the pesticides. Many of the questions listed in the SOPs were not documented in the case files for these incidents. These incidents did not provide sufficient information to determine if the applicator read, understood, or followed the label directions. It is integral to provide this information in order to determine if the investigation was complete, violations were appropriately identified, and the penalties assessed were adequate.

In all reviewed cases it appeared that proper sampling techniques were followed. Statements were collected from individuals involved in the incident, and samples were taken when possible. Medical and training records were collected when applicable. In some cases, follow-up inspections were carried out at the company headquarters.

In a few cases, EPA Region 9 asked why all active ingredients or adjuvants (substances added to pesticide spray to enhance the pesticide's performance) involved in the incidents were not tested by the California Department of Food and Agriculture (CDFA) lab when samples were submitted by the CACs. More details about this particular question can be found in Section V. Area for Attention.

[3] Pesticide Use Enforcement Program Standards Compendium. https://www.cdpr.ca.gov/docs/enforce/compend.htm.

(2) Responded expeditiously to the referral, so that evidence is preserved to the extent possible

Based on Table 2 above, it appeared that CACs responded expeditiously to the referrals from EPA Region 9. In all cases CACs began their investigation before EPA Region 9 formally referred the investigation to DPR, and in all cases CACs began investigating within a day of being notified of an incident. EPA Region 9 did not note any cases where evidence was not preserved to the extent possible.

(3) Documented all inculpatory or exculpatory events or information

In most cases it seemed that CACs were thorough in documenting evidence during the investigations. However, EPA Region 9 noted that interviews of applicators were not as thorough and may have left out pertinent details about how the application was conducted that could potentially document Food and Agricultural Code (FAC) 12973 violations (i.e. pesticide use in conflict with the labeling). There was not enough detail in the investigation reports to determine if inspectors were asking questions about the application equipment, such as calibration, nozzle size, nozzle direction, nozzle pressure, mixing/dilution ratios, etc. Pesticide labels and county general use permits have specific requirements that should be verified to determine compliance with FAC 12973. EPA Region 9 noted this concern in priority episodes cases 44-KIN-19, 08-SB-20, 48-KER-19, and 60-KER-19.

6. Was evidence (including samples, if applicable) properly collected, preserved, and included in the investigation report? If not, describe the inadequacies.

In all cases, evidence appeared to have been properly collected, preserved, and included in the investigation report. Wipe, foliage, and/or clothing samples were routinely collected and submitted to the CDFA lab for analysis to document whether pesticide drift occurred. Witness statements were routinely taken and documented in the investigation report.

However, EPA Region 9 noted that inspection photos were not always included with all investigation reports. This was noticed with 51-TUL-20, 32-TUL-19, 39-KIN-19, and 44-KIN-19. EPA Region 9 could not say for certain whether this is because there were no relevant photos to include or if photos were simply omitted.

7. Were witnesses (e.g. people harmed, employers, property owners, supervisors, applicators, first responders, etc.) interviewed? If not, explain why.

In all cases, it appeared that inspectors attempted to interview all individuals involved, including in the Spanish language when necessary. The interviews were documented in the investigation report.

8. Did the CAC follow up on all leads? If not, describe how the CAC failed to follow up on leads.

In the majority of cases, it appeared that CAC inspectors followed up on leads. However, in 41-KER-20, a rate of application of 200ppm was utilized for the product Seaco Seachlor 120 (EPA Reg. No. 10897-26-67799), which wasn't specifically listed on the label's directions for use on potatoes. The inspector noticed the discrepancy, but was unclear in the investigation report if any follow-up occurred.

9. What violations (if any) did the CAC find? List the regulatory citation and description of the violation.

EPA Region 9 identified violations from the Notice(s) of Violation provided with the case files (Table 3). A Notice of Violation was not provided with 67-STA-19, so the Closing Report was used instead.

Table 3. Violations identified.

Priority Episode Number	Violation Codes and Type
32-TUL-19	**Peters Fruit Farm**: FAC 12973 – use in conflict with labeling; California Code of Regulations (CCR) 6614 – protection of persons, animals, and property; CCR 6674 – posting of pesticide storage areas. **Grapeman Farm Labor**: CCR 6764 – fieldworker training; CCR 6766 – emergency medical care. **Rojim Inc.**: CCR 6764 – fieldworker training; CCR 6766 – emergency medical care.
39-KIN-19	**Flores Farm Labor, Inc.**: CCR 6766(c) – emergency medical care. **Moonlight Packing**: FAC 12973 – use in conflict with labeling; CCR 6614(b)(1) – protection of persons, animals, and property.
44-KIN-19	**Trinkle Ag Flying Service**: CCR 6614(b)(1) – protection of persons, animals, and property. **Fruity Ag Inc.**: CCR 6766(c) – emergency medical care; CCR 6764(a) – fieldworker training. **JM Traver Farms LP**: CCR 6766(c) – emergency medical care.

Priority Episode Number	Violation Codes and Type
	J.V. Farm Labor Services, Inc.: CCR 6766(c) – emergency medical care.
48-KER-19	**Giumarra Vineyards & Farms**: CCR 6600(b) – perform pest control in careful and effective manner; CCR 6614(b)(3) – protection of persons, animals, and property.
58-SCR-19	**Chapala Berry Farms, Inc.**: CCR 6761(a) – hazard communication for fieldworkers; CCR 6766(c) – emergency medical care; CCR 6764(e) – fieldworker training; CCR 6626(a) – pesticide use reports for production agriculture.
60-KER-19	**S&S Sprayers LLC**: FAC 12973 – use in conflict with labeling; CCR 6600(b) – perform pest control in careful and effective manner; CCR 6614(b)(3) – protection of persons, animals, and property.
67-STA-19	**Rolling Hills Nut Company**: FAC 12973 – use in conflict with labeling; CCR 6726(c) – emergency medical care.
08-SB-20	No violations were documented. Samples did not show evidence of pesticide drift.
41-KER-20	**Kirschenmann Farms**: FAC 12973 – use in conflict with labeling; CCR 6724 – handler training; CCR 6624 – pesticide use records; CCR 6627 – monthly summary pesticide use records.
45-KER-20	**D&J Farm Management**: FAC 12973 – use in conflict with labeling; CCR 6724(f) – handler training; CCR 6600(b) – perform pest control in careful and effective manner; CCR 6614(b) – protection of persons, animals, and property.
51-TUL-20	**GM Contracting, Inc.**: CCR 6761.1 – application-specific information for fieldworkers. **Ward Stringham**: CCR 6764 – fieldworker training; CCR 6724(a) – handler training; CCR 6761 – hazard communication for fieldworkers; CCR 6723 – hazard communication for pesticide handlers; CCR 6739(e),(p) – respiratory protection; CCR 6739(d) – respiratory protection; CCR 6739(b)(2) – respiratory protection; CCR 6739(a),(p) – respiratory protection; CCR 6724(b-e) – handler protection. Samples did not show evidence of pesticide drift, therefore no violations related to drift were identified.

10. Did the CAC consistently and appropriately identify violations? If not, describe any violations that the CAC failed to properly identify. Compare violations to DPR's laws and regulations.

In most cases, analysis showed that CACs consistently and appropriately identified violations. However, EPA Region 9 noted that interviews of applicators were not as detailed and the case files lacked some pertinent details about how the application was conducted that could potentially document FAC 12973 violations (i.e. pesticide use in conflict with the labeling). There was not enough detail in the investigation reports to determine if inspectors were asking questions about the application equipment, such as calibration, nozzle size, nozzle direction, nozzle pressure, mixing/dilution ratios, etc. Pesticide labels and county general use permits have specific requirements that should be verified to determine compliance with FAC 12973. EPA Region 9 noted this concern with 44-KIN-19, 08-SB-20, 48-KER-19, and 60-KER-19.

11. What enforcement action (if any) did the CAC take?

EPA Region 9 identified the enforcement actions taken by reviewing the Notice(s) of Proposed Action (NOPA) provided with the case files (Table 4).

Table 4. Enforcement actions issued.

Priority Episode Number	Penalty Amounts Assessed
32-TUL-19	**Peters Fruit Farm**: NOPA for 11 violations of FAC 12973 (Class A) assessed at $5,000 per violation. Hearing Officer dismissed 2 violations, reducing total penalty from $55,000 to $45,000. **Grapeman Farm Labor**: NOPA for 1 violation of CCR 6764(e) (Class B) assessed at $500 and 1 violation of CCR 6766(c) (Class B) assessed at $500. Total penalty of $1,000. **Rojim Inc.**: NOPA for 1 violation of CCR 6764(e) (Class B) assessed at $500 and 1 violation of CCR 6766(c) (Class B) assessed at $500. Total penalty of $1,000.
39-KIN-19	**Flores Farm Labor, Inc.**: NOPA for 1 violation of CCR 6766(c) (Class B) assessed at $500. Total penalty of $500. **Moonlight Packing**: NOPA for 7 violations of CCR 6614(b)(1) (Class A) assessed at $3,500 per violation. Total penalty of $24,500.
44-KIN-19	**Trinkle Ag Flying Service**: NOPA for 5 violations of CCR 6614(b)(1) (Class A) assessed at $2,000 per violation. Total penalty of $10,000.

Priority Episode Number	Penalty Amounts Assessed
	Fruity Ag Inc.: NOPA for 1 violation of CCR 6766(c) (Class B) assessed at $500 and 1 violation of CCR 6764(a) (Class B) assessed at $500. Total penalty of $1,000. **JM Traver Farms LP**: NOPA for 1 violation of CCR 6766(c) (Class B) assessed at $500. Total penalty of $500. **J.V. Farm Labor Services, Inc.**: NOPA for 1 violation of CCR 6766(c) (Class B) assessed at $500. Total penalty of $500.
48-KER-19	**Giumarra Vineyards & Farms**: NOPA for 10 violations of CCR 6600(b) (Class A) assessed at $3,000 per violation. Total penalty of $30,000.
58-SCR-19	**Chapala Berry Farms, Inc.**: NOPA for 1 violation of CCR 6766(c) (Class A) assessed at $5,000 and 1 violation of CCR 6764(e) (Class B) assessed at $1,000. Total penalty of $6,000.
60-KER-19	**S&S Sprayers LLC**: NOPA for 1 violation CCR 6600(b) (Class A) assessed at $3,000. Total penalty of $3,000.
67-STA-19	**Rolling Hills Nut Company**: NOPA for 2 violations of FAC 12973 (Class A) assessed at $700 per violation and 2 violations of CCR 6726(c) (Class A) assessed at $1,000 per violation. Total penalty of $3,400.
08-SB-20	N/A, no violations were documented.
41-KER-20	**Kirschenmann Farms**: NOPA for 1 violation of FAC 12793 (Class B) assessed at $1,000, 1 violation of CCR 6724 (Class B) assessed at $350, 1 violation of CCR 6624 (Class C) assessed at $50, and 1 violation of CCR 6627 (Class C) assessed at $50. Total penalty of $1,450.
45-KER-20	**D&J Farm Management**: NOPA for 5 violations of FAC 12973 (Class A) assessed at $3,000 per violation and 1 violation of CCR 6724(f) (Class B) assessed at $1,000. Hearing Officer dismissed 1 violation of FAC 12973 reducing penalty from $16,000 to $13,000.
51-TUL-20	N/A, enforcement discretion was used and penalties were not pursued for the violations documented against GM Contracting, Inc. and Ward Stringham. This was documented in separate Decision Reports. A Decision Report is a written record of the basis for an Agricultural Commissioner's decision not to take an enforcement action.

12. Did the CAC take into account factors such as the characteristics (e.g. toxicity) of the pesticide(s) involved, gravity of the violation, category of violator (i.e. commercial vs non-commercial/private), size of business, and prior compliance history when determining the enforcement action? If not, describe the deficiency.

The 1983 Final Interpretive Rule on State Primacy discusses factors that EPA believes should be taken into account in determining an "appropriate enforcement action". What is "appropriate" is "*relative to the remedies available to the State under its pesticide control legislation.*" Factors to be considered include the gravity of the violation, category of applicator (i.e. commercial applicator vs non-commercial/private applicator), size of business, and history of prior violations. The "gravity" of the violation is "*dependent upon the risk the violation poses to human health and the environment*" and includes the circumstances surrounding the violative action and the risks associated with the pesticide used.

DPR's regulations at CCR 6130(d) state: "*When determining the fine amount within the fine range, the Commissioner shall use relevant facts, including severity of actual or potential effects and the respondent's compliance history, and include those relevant facts in the notice of proposed action.*"

DPR's regulations (CCR 6128 to CCR 6130) inherently consider gravity by the way violations are categorized into three separate classes.

- Class A: A serious violation that "*caused a health, property, or environmental hazard*".
- Class B: A moderate violation "*that mitigates the risk of adverse health, property, or environmental effects that is not designated as Class A*".
- Class C: A minor violation "*that does not mitigate the risk of an adverse health, property, or environmental effect . . .*"

The CACs follow these regulations in determining enforcement actions. Although the regulations at CCR 6128 to CCR 6130 specify three separate classes of violations, the specific text of any violation listed in the CCR, FAC, and other pesticide regulations do not specify which violation should fall into which class. CACs have the discretion to determine the appropriate class. Certain aggravating circumstances can also support elevation of a Class B violation to a Class A violation. The aggravating circumstances are:

1) A history of violations

2) Failure to cooperate in the investigation of the incident or allow a lawful inspection, or,

3) Demonstrating a disregard for specific hazards of the pesticide used.

None of the case files documented consideration of the category of violator (i.e. commercial vs non-commercial/private) or size of business when determining the enforcement action. These factors are not written into the regulations at CCR 6128 to CCR 6130.

EPA Region 9 found that in most cases a respondent's compliance history was not specifically mentioned in the NOPA. Only three of the cases (41-KER-20, 67-STA-19, and 45-KER-20) specifically mentioned the lack of compliance history as factors considered when determining the NOPA penalty amount. There was not enough information in the NOPAs for the other eight cases to determine if compliance history was verified. Some cases quoted the above regulations at CCR 6130(d), but did not mention any specifics about the respondent's compliance history.

Response from DPR

DPR explained that CACs are required to verify a respondent's compliance history, but they are not required to document the process in the NOPA.

13. Did the CAC consider criminal enforcement action if there was evidence that the entity knowingly violated a pesticide law or regulation? If not, explain.

The 1983 Final Interpretive Rule on State Primacy describes criminal enforcement action to be appropriate in cases where a respondent knowingly violated a pesticide law or regulation. In the eleven cases reviewed, criminal enforcement considerations did not appear to be relevant. There did not appear to be evidence that entities knowingly committed any violations.

14. Were the enforcement actions consistent and appropriate? If not, describe how the CAC failed to take appropriate enforcement action. Compare enforcement actions to the CAC Enforcement Response Regulations at CCR Sections 6128 to 6130.

As mentioned previously, the 1983 Final Interpretive Rule on State Primacy describes what constitutes an "appropriate enforcement action". "Appropriate" is relative to the remedies available to the State under its pesticide control legislation. EPA interprets the modifier "appropriate" to "*require that the severity of the proposed enforcement action correlate to the gravity of the violation*". Further, the 1983 Final Interpretive Rule on State Primacy states: *"An appropriate enforcement response may consist of requiring training in proper pesticide use, issuance of a warning letter, assessment of an administrative civil penalty, referral of the case to a pesticide control board or the State's Attorney for action, or other similar enforcement remedy available under State law."*

DPR's regulations at CCR 6128 to CCR 6130 describe various enforcement responses available to address violations. Relevant to this review, an "enforcement action" is *"an action with the potential to impose a monetary penalty or loss of a right or privilege initiated by a Notice of Proposed Action. Enforcement actions include administrative civil penalty; or disciplinary action (refuse, suspend, or revoke) against a county registration, certificate, or permit."* Fine ranges for civil penalties are listed at CCR 6130(c):

1) Class A: $700 to $5,000

2) Class B: $250 to $1,000

3) Class C: $50 to $400

Assessing whether the enforcement actions were "appropriate" was difficult to determine. In all but one case (51-TUL-20), penalties were assessed for the violations identified against individual respondents. However, in six cases (32-TUL-19, 45-KER-20, 48-KER-19, 60-KER-19, 58-SCR-19, 39-KIN-19) EPA Region 9 noticed that not all violations identified in the Violation Notices were pursued in the NOPAs. There was not enough detail in the case files to determine why all violations were not pursued.

CACs generally penalized for violations related to pesticide drift when sample analyses supported the violation and there were medical records for the people who were transported for medical care. CACs typically penalized for violations of CCR 6766(c) when employers/Farm Labor Contractors (FLCs) failed to transport all workers experiencing symptoms of pesticide exposure for medical care.

However, EPA Region 9 did notice inconsistencies in how violations of CCR 6766(c) and CCR 6726(c) were being classified as Class A or B violations. The regulatory language in both sections states: "*When there is/are reasonable grounds to suspect that an employee has a pesticide illness, or when an exposure to a pesticide has occurred that might reasonably be expected to lead to an employee's illness, the employer shall ensure that the employee is taken to a physician immediately*." Table 5 shows the violation class assigned in the cases where CCR 6766(c) and 6726(c) violations were identified.

Table 5. Classification of CCR 6766(c)/6726(c) violations.

Priority Episode Number	Classification of CCR 6766(c)/6726(c) Violation
67-STA-19	Class A
58-SCR-19	Class A
32-TUL-19	Class B
39-KIN-19	Class B

44-KIN-19	Class B

The violations of 6766(c) and 6726(c) were all issued for the same reason (i.e. not all employees potentially exposed to pesticides were transported for medical care) yet some CACs interpreted the violation to be Class B, while others interpreted the violation to be Class A. The two classes have significantly different penalty ranges, and it appeared that the lack of specificity in classification may have caused a difference in interpretation. EPA Region 9 believes that this difference in interpretation is inconsistent and deserves further scrutiny by DPR.

Penalties were often in the mid or low ranges within all violation classes. In many cases there was insufficient detail in the NOPA to determine how a CAC decided to choose a penalty at the low, middle, or high end of the penalty range within a violation class. To highlight an example, CACs commonly penalized companies for pesticide drift violations under one of three sections: FAC 12973, CCR 6614(b)(1), or CCR 6600(b). These were always penalized as Class A violations. Table 6 shows the penalty amounts assessed for the cases assessing pesticide drift violations under these codes along with the number of people who experienced symptoms of pesticide exposure in each case.

Response from DPR

DPR explained that current regulations do not require CACs to justify how they arrived at the penalty amount within a violation class, and that CACs have enforcement discretion.

Table 6. Enforcement actions issued and number of people experiencing pesticide exposure symptoms.

Priority Episode Number	Penalty Amounts Assessed	Number of People Experiencing Symptoms
32-TUL-19	**Peters Fruit Farm**: NOPA for 11 violations of FAC 12973 (Class A) assessed at $5,000 per violation.	25
39-KIN-19	**Moonlight Packing**: NOPA for 7 violations of CCR 6614(b)(1) (Class A) assessed at $3,500 per violation.	15
44-KIN-19	**Trinkle Ag Flying Service**: NOPA for 5 violations of CCR 6614(b)(1) (Class A) assessed at $2,000 per violation.	63
48-KER-19	**Giumarra Vineyards & Farms**: NOPA for 10 violations of CCR 6600(b) (Class A) assessed at $3,000 per violation.	47
60-KER-19	**S&S Sprayers LLC**: NOPA for 1 violation CCR 6600(b) (Class A) assessed at $3,000 per violation.	10

45-KER-20	**D&J Farm Management**: NOPA for 5 violations of FAC 12973 (Class A) assessed at $3,000 per violation.	5

In three of the six cases (48-KER-19, 60-KER-19, and 45-KER-19) CACs penalized the drift violations at $3,000 per violation and a fourth (39-KIN-19) at $3,500 per violation. One case (44-KIN-19) penalized the drift violations at $2,000 per violation. Only one case (32-TUL-19) penalized the drift violations at the top of the penalty range at $5,000 per violation. There was insufficient detail in the NOPAs to provide justification as to why the penalties should not be in the top range of the violation class. Overall, among CACs, the penalty amounts for pesticide drift violations were inconsistent. Furthermore, there was insufficient detail in the NOPAs to determine how the CACs chose the penalty amount that they chose. All of the NOPAs in Table 6 defined what constitutes a Class A violation (i.e. causing a health, property, or environmental hazard) and five of the six cases specifically mentioned that the applicator caused an "acute illness" in the affected individuals. However, none provided any substantive detail about how that influenced the decision to choose the specific penalty amount within the available Class A range.

The penalty amount of $2,000 per violation assessed in 44-KIN-19 was particularly concerning because this incident involved the highest number of people (63) experiencing pesticide exposure symptoms, and was assessed both the smallest number of pesticide drift violations (five violations) and the smallest penalty amount per violation.

15. Are CACs considering all available enforcement options available in their Enforcement Response Regulations?

EPA Region 9 did not have enough information to determine how CACs were arriving at the penalty amount within the available range for a violation class (A, B, or C), and in some instances how they decided whether a violation was Class A versus Class B. However, civil penalties were assessed against individual respondents in all but one case (51-TUL-20) and violations were assessed penalties in all violation Classes (A, B, and C). In 51-TUL-20, Decision Reports were issued to the two respondents after the violations were corrected. Notices of Violation were generally always issued to document the various violations encountered.

III. Follow-Up Questions

EPA Region 9 asked a number of follow-up questions to the CACs after completing the case file reviews to further address concerns noticed during the case file reviews in the previous section. Some questions were general in nature and were asked to everyone, while others were specific to a particular priority episode and only asked to the relevant CAC. These questions were provided to the six CACs involved in the audit. Responses were received in writing and verbally during meetings held via Microsoft Teams. Meetings were held between September 12, 2022 – September 16, 2022 and were attended by EPA Region 9, DPR, and the six CACs. CACASA also requested a chance to provide responses to the general questions as these questions were applicable to the work being done by all CACs statewide. CACASA provided responses in writing. The questions and responses are included here. Findings and recommendations made by EPA Region 9 related to identified concerns can be found in Section IV. Findings and Recommendations.

A. General Questions

16. Does your CAC follow up with workers or people exposed to pesticides to let them know the final results of the investigation?

Response from CACASA

It is not part of standard procedure to follow-up with all workers or people exposed to pesticides in every case. CACs provide follow-up information, when requested, at the conclusion of the investigation.

Response from Santa Cruz CAC

Usually only if a copy of the report is requested by a complainant/witness or representative of a complainant/witness.

Response from Santa Barbara CAC

The CAC does follow up with complainants orally and will provide a copy of the investigation report if requested.

Response from Stanislaus CAC

Workers and people exposed to pesticides are interviewed and provided business cards with the CAC Office's contact information during the initial meeting with the person and instructed to

contact the CAC Office if they have any further questions or would like to obtain a copy of the final investigation report.

Response from Kern CAC

Only if witnesses ask to be contacted at the time of the interviews.

Response from Kings CAC

Yes, if requested by a complainant/witness or if there's a request submitted through the public information request process.

Response from Tulare CAC

Only if witnesses ask to be contacted at the time of the interviews. We do follow-up with the outcome to the actual complainant.

17. Does your CAC issue press releases to highlight the results of the investigation and make the investigation report available to the public?

Response from CACASA

It is not part of standard procedure to issue press releases on investigations. Issuance of press releases can be considered by CACs on a case by case basis and considering other factors which may warrant this action. Additionally, if press coverage is included in a particular investigation, CACs always follow up on those media related questions and provide information as it is available. However, limited information is available when items are alleged non-compliances and investigations are on-going.

As with all CAC reports, once they are completed, they are freely available to the public for review and/or can be requested via a Public Records Request.

Response from Santa Cruz CAC

Not usually, but may issue a press release to explain the findings if the case had media attention or inquiry.

Response from Santa Barbara CAC

The CAC does not issue press releases. The county DA might issue press releases if they become involved. The public can request a copy of the investigation report through a Public Records Request. The CAC does coordinate with DPR when DPR plans to issue a press release.

Response from Stanislaus CAC

Press releases are not regularly released for each investigation but may be issued at the Agricultural Commissioner's discretion when an incident relates to a topic of interest to the public or there is media inquiry. Once the reports are finalized, they are available for public review through a Public Records Request.

Response from Kern CAC

We do not issue press releases unless there has been prior press coverage of the episode and reporters have specifically asked to be informed. As with all of our reports, once they are completed, they are freely available to the public for review through a Public Records Request.

Response from Kings CAC

Not normally, but will if there is a media request. Sensitive information would need to be redacted.

Response from Tulare CAC

We do not issue press releases unless there has been prior press coverage of the episode and reporters have specifically asked to be informed. If we receive questions from media, we always follow-up on the questions. Limited information is available when items are just alleged non-compliances and investigations are on-going.

As with all of our reports, once they are completed, they are freely available to the public for review and/or can be requested by a Public Data Request.

18. How would an inspector determine if language barriers might have caused misunderstanding of the label's directions for use and led to pesticide misuse?

Response from CACASA

During the course of investigation, Inspectors engage with employers to understand their procedures for reviewing and understanding label requirements. It is the responsibility of the employer to ensure that all label requirements are understood by workers regardless of the native

language. Many inspectors are bilingual and are readily available to assist with investigations or for communication needs.

During investigations or inspections, CACs or inspectors interview the applicators in their native language to understand if they have been trained or if there was some type of misunderstanding. Most incidents have occurred by accident or negligence and not related to the label instructions.

Response from Santa Cruz CAC

Inspectors aren't specifically looking for language barriers, but the questions asked by inspectors to pesticide handlers will sometimes highlight misunderstandings that could be the result of language barriers.

Response from Santa Barbara CAC

This would mainly be discovered through interviews with handlers and applicators. The CAC has bilingual inspectors who can conduct interviews in Spanish. DPR would be contacted for translation assistance if the witness speaks a different language besides English or Spanish.

Response from Stanislaus CAC

Upon initial assessment of an incident, Inspectors interview persons involved, identify products used and evaluate the circumstances that occurred to determine if language barriers may have been a factor resulting in the misuse of a pesticide. It is the responsibility of the employer or other responsible party to ensure that all label requirements are understood by workers regardless of native language. Inspectors check that training requirements were met and that the training was provided in the appropriate language.

Response from Kern CAC

This is out of the scope of our responsibilities. All labels are in English and are required to be read and understood by all applicators. Many labels now have an alternative Spanish version available. It is the responsibility of the employer or other responsible party to ensure that all label requirements are understood by workers regardless of native language. Our department has several inspectors who are fluent in Spanish and are readily available to assist with pesticide related episodes.

Response from Kings CAC

There is not specific regulation requiring looking for language barriers. Inspectors do check that training requirements were met and review training documentation. The county has not found language barriers to be an issue. Issues are often found to be application errors committed by applicators on accident.

Response from Tulare CAC

It is the responsibility of the employer to ensure that all label requirements are understood by workers regardless of the native language. Most of our Pesticide Use Enforcement inspectors are bilingual and are readily available to assist with pesticide related episodes or communication needed. We also offer Continuing Education in other languages for those individuals who may need more training.

During investigations or inspections, we interview the applicators in their native language to understand if they have been trained or if there was some type of misunderstanding. Most incidents have occurred by accident or negligence and not related to the label instructions.

19. What do inspectors do if a label is encountered with vague language that seems unenforceable? Is there anyone your CAC reaches out to for guidance or to make a referral if such a situation is encountered?

Response from CACASA

Federal/State Agencies approve labels; therefore, this should not present an issue as it has been properly reviewed before that approval. However, should a vague label make it through this process, inspectors would confer with their colleagues, supervisor and/or Agricultural Commissioner for guidance or clarification. Additionally, a Supervisor and/or Agricultural Commissioner would refer questions or seek guidance or an interpretation from our DPR Enforcement Branch Liaison and await their response. If needed, it can be submitted to DPR for label interpretation. Further, the issue would be addressed at various regional or statewide meetings to confer with other Agricultural Commissioners or staff to receive additional input. In nearly all cases, CACs will accept the guidance/interpretation that is received from DPR. In cases where label language seems unenforceable, it may be beneficial to evaluate other applicable code sections that may be more appropriate for the situation.

Response from DPR

The Program Manager from the Southern Regional Office relayed that if DPR regional branches become aware of vague or unenforceable label issues, then the regional offices will follow up with DPR headquarters and also EPA for label interpretation or to see if the label is misbranded.

Response from Santa Cruz CAC

The lead investigator can reach out to other colleagues, the Deputy Agricultural Commissioner, or Agricultural Commissioner. The CAC will also reach out to the DPR Enforcement Branch Liaison when necessary for further review and guidance.

Response from Santa Barbara CAC

The inspector can discuss the label with their supervisor and then the Deputy Agricultural Commissioner if necessary. They may also reach out to their DPR Enforcement Branch Liaison or at times the registrant themselves.

Response from Stanislaus CAC

When vague language is encountered on a label or seems unenforceable, we begin with an in-house discussion and if needed, we reach out to the DPR Enforcement Branch Liaison for further guidance and clarification. May consult other CACs and raise the issue at Pesticide Use Enforcement meetings which are attended by Deputy Agricultural Commissioners of multiple CACs. Different counties may have seen similar issues.

Response from Kern CAC

As always, members of our staff confer with one another, sometimes culminating in a discussion with the Agricultural Commissioner. Generally, subsequent to these discussions we ask for an interpretation from our DPR Enforcement Branch Liaison and await their response. In nearly all cases, we will accept the guidance/interpretation we receive back from DPR. In cases where label language seems unenforceable, it may be beneficial to evaluate other applicable code sections that may be more appropriate for the situation.

Response from Kings CAC

Inspectors can talk to their supervisor or management for guidance. The CAC may talk to their DPR Enforcement Branch Liaison or even raise the issue at a CACASA meeting.

Response from Tulare CAC

As always, members of our staff confer with one another, sometimes culminating in a discussion with the Agricultural Commissioner. Generally, subsequent to these discussions, we ask for an interpretation from our DPR Enforcement Branch Liaison (Central Regional Office) and await their response. If needed, it is escalated to the state's label interpreter. We also bring labels that

may cause confusion to our area Deputy group meetings to share what was determined. In nearly all cases, we will accept the guidance/interpretation we receive back from DPR. In cases where label language seems unenforceable, it may be beneficial to evaluate other applicable code sections that may be more appropriate for the situation. We pick codes that meet all the elements of the violation and that can be enforced if it goes to a hearing.

20. Do inspectors routinely ask applicators detailed questions about how they conducted the application to verify pesticide use was consistent with the labeling and general use permit conditions? For example, do they routinely verify that the correct directions for use about the application equipment, such as calibration, nozzle size, nozzle direction, nozzle pressure, mixing/dilution ratios, etc., are being followed?

Response from CACASA

Yes, CACs routinely make sure that inspectors ask applicators detailed questions to make sure they are following the label and their permit conditions. Additionally, CAC staff will review the permit conditions and the label to assess compliance. Some labels will state what type of equipment is to be used, boom height, direction of nozzles, and spray volume per acre. Inspectors are not required to have the technical expertise to judge if calibration or nozzle sizing is correct. In an Administrative Hearing, CAC staff must prove inspectors' qualifications to be able to make those findings. Typically, applicators can readily respond to questions related to Good Management Practices (i.e., turning off nozzles on one side when performing skirting applications, turning off nozzles when exiting rows in an orchard, or adjusting spray volumes, etc.)

Response from Santa Cruz CAC

Yes, inspectors generally ask application related questions, but are not expected to be technical experts on every aspect, such as nozzle size.

Response from Santa Barbara CAC

Inspectors make an effort to interview everyone involved with the pesticide application. Questions from the DPR Investigation Compendium are utilized. Follow up questions are asked including questions about applicator training. The inspector will attempt to view the application equipment. This information is used to determine if the pesticide was used in accordance with the label. Not all details of the interviews will make it into the investigation report if not relevant to the investigation and did not prove that a violation had occurred. A point by point list detailing that all parts of the label were followed would not be included in an investigation report because it wouldn't be relevant.

Response from Stanislaus CAC

All Inspectors receive training on inspection and investigation procedures both through formal instruction and in the field. Inspectors are also regularly evaluated during oversight inspections with the DPR Enforcement Branch Liaison, who provide guidance during an inspection. Additionally, a Deputy Agricultural Commissioner is always available to guide staff throughout the course of the investigation. Inspectors are also trained and required to refer to DPR's Pesticide Use Enforcement Standard Compendium, Volume 5, concerning Investigation Procedures during an investigation. Evaluation of pesticide labeling and general use permit conditions during an investigation is a standard part of evaluating how the pesticide use was conducted.

Any time equipment is used to apply pesticides, Inspectors request basic information about calibration procedures and verify information such as nozzle size and type and compare that the basics are in accordance with any label requirements and related regulations. Our staff are not technical experts on equipment calibration but do ask questions about basic Good Management Practices.

Response from Kern CAC

This is situational. Generally, inspectors do what they can to verify label requirements and permit conditions and question applicators appropriately. However, specific application suggestions/recommendations of the label are irrelevant to the overall requirement of making a safe application. Our inspectors neither have nor are required to have the technical expertise to make these types of calls. If we started to do such, in a hearing situation we would open ourselves up to being disqualified by any experts that were brought in by the respondent. From our experience in interviewing a diverse group of applicators, most applicators do not know the most technical of equipment specifications. The manufacturer, pest control advisor, and/or other technically trained personnel perform most calibrations. Typically, applicators can readily respond to questions related to Good Management Practices (i.e. turning off nozzles on one side when performing skirting applications, turning off nozzles when exiting rows in an orchard, etc.).

Inspectors don't have the expertise to determine if the correct calibration of application equipment was used. Applicators often don't know the exact calibration because they didn't do the calibration. There's no requirement to list the calibrations on any documents. However, the general assumption is that the applicator would be held liable if the calibration was found to be incorrect. A company headquarters inspection may be able to determine calibration issues. Pest control advisors, manufacturers, or other technically trained person who performed the calibration could potentially be interviewed as well.

Response from Kings CAC

Inspectors typically verify the label and directions. They evaluate metrics in their areas of expertise. Inspectors don't have training in the more technical aspects of labels, such as application equipment. They likely wouldn't do well on the more technical aspects if challenged by a subject matter expert in a court hearing.

Response from Tulare CAC

Yes, we routinely make sure that inspectors ask applicators detailed questions to make sure they are following the label and their permit conditions.

We review the permit conditions and the label to make sure they are complying. Some labels will state what type of equipment is to be used, boom height, direction of nozzles, and spray volume per acre. Our inspectors are not required to have the technical expertise to judge if calibration or nozzle sizing is correct. In a hearing we must prove inspectors' qualifications to be able to make those opinions. Typically, applicators can readily respond to questions related to Good Management Practices (i.e., turning off nozzles on one side when performing skirting applications, turning off nozzles when exiting rows in an orchard, or adjusting spray volumes, etc.).

21. Do inspectors routinely check for prior compliance history? What's the process for checking? Do inspectors check compliance only within your county or statewide?

Response from CACASA

Yes, inspectors routinely check for prior compliance history during investigations and/or when evaluating potential enforcement actions based on cited violations. Inspectors use CalPEATS to check a grower's history of compliance. Inspectors review compliance history for their respective County, not statewide.

Inspection staff have knowledge of growers and businesses within the County and their compliance history. Businesses and growers with poor compliance are often discussed at regional Pesticide Deputy meetings. If an issue exists in multiple counties, Agricultural Commissioners are notified for further discussion and elevation to DPR for potential licensing action.

All counties have the ability to review closed investigations however they do not have access to on-going investigations through the CalPEATS system.

Response from Santa Cruz CAC

Inspectors routinely check for compliance history for the past couple years using CalPEATS. Compliance history outside of the county is not checked.

Response from Santa Barbara CAC

Inspectors check compliance history prior to taking enforcement action using CalPEATS. Only compliance within their county is checked. Sometimes the CAC may consult with other counties or DPR if violations cross county lines. There are also Pesticide Use Enforcement quarterly meetings where Deputy Agricultural Commissioners from different counties meet to discuss various issues. The compliance history of a given company are sometimes discussed at these meetings.

Response from Stanislaus CAC

Yes, Inspectors are required to check compliance history going two years back, which is available through DPR's CalPEATS system and CalAgPermits system. Compliance history is typically reviewed for violations that have occurred within the County but may be further evaluated for compliance history Statewide by the Deputy Agricultural Commissioner or Inspectors depending on the circumstances involved in the investigation and proximity of the case to other Counties and/or where the respondent is headquartered. If growers operate in other counties, then the CAC may communicate with those neighboring CACs, especially for repeat violators, and request the neighboring CAC to conduct a headquarters inspection of the grower.

Response from Kern CAC

We always check prior history. We do not check compliance history for operators who may operate in other counties due to the complex nature of business structure. Many companies operate under D.B.A.'s (Doing Business As) and have multiple permits with multiple business names where the parent company is not always clear. In our experience, these separate permits or independent D.B.A.'s are independent of one another both in form and in function, and usually utilize different administrative staff, supervisors, applicators, etc. For entities that operate in Kern County, our staff is aware of local operators' compliance history from routine meetings and discussions.

When companies operate under D.B.A.'s as separate entities in other counties it becomes difficult to know if their compliance history is relevant to the Kern County case. Companies operating in other counties might be discussed at area Pesticide Use Enforcement meetings with

Deputy Agricultural Commissioners. CalPEATS is used to check a company's compliance history.

Response from Kings CAC

The CAC is aware of county level compliance history and uses CalPEATS. It is more difficult to determine statewide compliance history.

Response from Tulare CAC

We always check their compliance history once we stop to do the inspection. We find inspections randomly by driving around the county. Once we find someone spraying, we will check when past inspections were completed on them, were there non-compliances, and was there any enforcement action taken against this business.

If a business is a repeat offender of non-compliances, then we often take them to our area Deputy group to see if these people are also offenders in their counties. If they are an area wide problem, then we have asked DPR to take licensing action against them.

Because we talk about our inspections as a group, a lot of the time inspectors are also aware of past non-compliance with growers from memory as well.

22. What is the process your CAC uses to determine the penalty amount within a violation Class (A, B, or C) when issuing a NOPA? What factors are being considered?

Response from CACASA

Several factors are taken into consideration when determining penalty amounts. Some of these factors include the merits of the incident, the creation of an illness, pesticide toxicity category, personal protective equipment usage, number of people involved, and type of property involved. Additionally, intent is reviewed to determine whether this was accidental or if this was an intentional or reckless disregard of safety measures. Compliance history of the operator found to be in violation is also evaluated and taken into account.

The penalty amounts for violations that are deemed accidental, with no intent and no prior history of violation begin towards the lower end of the scale and those that show more reckless disregard for safety, have repeat history of violations or increased severity of the incident, are towards higher on the scale.

Along with consultation with DPR, CACs enforce California Code Regulations Title 3, § 6130 for determination of penalties. Discretionary fine placement allows for fair and equitable response and the ability for progressive enforcement to be included in the structure.

Response from Santa Cruz CAC

The guidelines at CCR Section 6130 are checked. Factors in determining the penalty amount include the circumstances leading to the violation, products applied, injuries caused to property and individuals, and toxicity of pesticides. There is not a written protocol for where the penalty should start within the available range. The Agricultural Commissioner and Deputy Agricultural Commissioner hold meetings to discuss the priority episodes and the appropriateness of the penalty relative to the case-specific factors. May confer with DPR if necessary.

Response from Santa Barbara CAC

Multiple factors are considered. Some of these include violation history, cooperation, the pesticides involved and their hazards, the number of people impacted, specifics of the violation, and negligence. Penalties usually start at the low end of a penalty range. The various case specific factors may be used to increase the penalty amount within the range or possibly to elevate the penalty class (e.g. from Class B to A). An attempt is made to keep penalties consistent from business to business. The penalty recommendation is made by the case team to the Agricultural Commissioner who makes the final decision.

Response from Stanislaus CAC

The County reviews 3 CCR 6130 to evaluate the class of violation based on definitions and to determine the fine range in relation to the severity of the violation involved, risk level, history, and the number of persons affected. FAC 12996.5(b) may also be utilized to take multiple counts of a violation if appropriate. Similar cases are reviewed to help ensure consistent penalty amounts are assessed. Through referral the county DA is also given a chance to accept the case.

Response from Kern CAC

Notwithstanding extenuating circumstances (such as intentional or reckless disregard of safety measures), fine levels are ALWAYS placed at the lowest end of the scale for respondents with no prior history. This starting placement at the bottom of the fine range (for those with no violation history) is significant as it allows our county to create a progressive disciplinary structure, providing a mechanism for us to respond with a consistent tiered approach for future fines levied as a result of repeat violations. If respondent has history, it is taken into account and would most likely be doubled/tripled, etc. for repeat violations. A couple of exceptions to this would be a minimum of $1,000 for any drift offsite onto non-target property and $3,000 for incidents involving victims who sought medical attention. This discretionary placement of a fine creates a fair and equitable response regardless of operator size.

Outside of what is in the CCR 6130 regulations there is no written policy in setting the penalty amounts. If there is prior compliance history within the county, then the CAC can reference this documentation. The penalty amount can be elevated based on egregiousness and prior compliance history. If the fine starts at the top of the penalty range, then there is no room for progressive disciplinary action for repeat violators.

Response from Kings CAC

The CAC consults with DPR and relies on the regulations at CCR 6130. This makes the fine placement equitable and allows for progressive discipline if it's a repeat violator. The CAC looks at the ability of the violative act to have caused injury or harm. There is no formal guidance document outside of CCR 6130 to determine where to place the fine within the penalty range of a given violation class.

Response from Tulare CAC

We do not start at the bottom of the fine level because we want to gain compliance; and we feel some ranges seem too low to get that point across.

Several factors we take into consideration:

1. Did an illness occur?
2. Category of pesticide involved
3. Violator was a repeat offender
4. Could it have been prevented?
5. Was proper PPE worn and/or provided?
6. Accidental vs intentional (intent)
7. How many people were involved?
8. Priority investigation?
9. Property damaged – permanently or for a short period of time?

If they are repeat offenders, then we use progressive disciplinary structure and increase the fines from the previous Enforcement Response.

B. Case Specific Questions

58-SCR-19 (Santa Cruz CAC)

23. Why weren't CCR 6761(a) and CCR 6626(a) included in the NOPA issued to Chapala Berry Farms, Inc.? These were listed on the Notice of Violation (NOV), but only CCR 6766(c) and CCR 6764(e) were included in the NOPA. Could small Class C penalties have been assessed for the CCR 6761(a) and CCR 6626(a) violations?

Response from Santa Cruz CAC

The CAC could potentially issue penalties for all violations, but often only pursues the most significant and egregious violations. Enforcement action isn't always pursued for less significant violations.

24. How did you decide to assess a penalty against Chapala Berry Farms, Inc. for 1 violation of 6766(c) as a Class A violation and not a Class B violation?

Response from Santa Cruz CAC

The Agricultural Commissioner and Deputy Agricultural Commissioner had extensive conversations about this incident. It was a unique situation and there wasn't evidence of pesticide drift. It was not possible to determine if pesticide exposure or odor caused the symptoms experienced by the workers. However, there were workers that complained of an odor and of becoming sick after a pesticide application. There was actual harm to the workers and they were not all brought for medical care as required.

25. Do you pass along issues noticed with particular pesticides, such as sickness due to odor, to the registrants or DPR?

Response from Santa Cruz CAC

This is not done routinely and could be something to work more closely on with DPR or EPA. The CAC will raise the issue if a pattern is noticed. Sometimes it's not the active ingredient in the pesticide that makes people sick. It could be an inactive ingredient, which is causing the odor and making people sick. The CAC receives odor complaints fairly regularly. Odors can linger and represent a gray area because it does not necessarily indicate pesticide drift or pesticide misuse. The CAC asks growers to communicate with their neighbors to help prevent these types of odor complaints.

Response from DPR

If DPR staff have concerns with a particular pesticide, then they will raise the issue with EPA headquarters.

32-TUL-19 (Tulare CAC)

26. Peters Fruit Farm was penalized for eleven violations of FAC 12973 assessed at $5,000 per violation (before the Hearing Officer dismissed two violations). This was at the top of the Class A penalty range. The NOPA documented 25 people experiencing pesticide exposure symptoms, with eleven people being transported for medical care. Could this evidence have justified penalizing Peters Fruit Farm for a higher number of FAC 12973 violations given the number of people sickened?

Response from Tulare CAC

We fined the 11 that went to the doctor's office, and we had medical records for proof to say that they were ill from a pesticide. We can prove these 11 needed medical attention after being decontaminated by fire personal and evaluated by first responders and released. We consulted also with DPR to pick this fine range and number of individuals.

We are letting first responders be the subject matter experts to make these decisions for us. A solid case can be made for these 11 individuals for if and when it goes to a hearing. And even in the hearing process, two of these individuals were denied by the hearing officer as not having enough substantial evidence.

27. Why weren't CCR 6614 and CCR 6674 included in the NOPA issued to Peters Fruit Farm? These were listed in the NOV, but only FAC 12973 was included in the NOPA.

Response from Tulare CAC

We chose to use 12973 because not following the label is what caused the illness. Labels always say, "Do not apply this product in a manner that results in spray drift that harms people or any other non-target organisms or sites." The drift that occurred did go off target and cause harm.

6674 does not have a direct correlation to the investigation. It is not why an illness occurred. It was a noted non-compliance, but it was irrelevant to the complaint.

6614 has been a code in the past for which all elements are difficult to prove in a hearing when the inspector was not physically present the entire application. We cannot always say that the applicator did/or did not do all of these things.

28. How did you decide to assess the penalty against Peters Fruit Farm for 11 violations of FAC 12973 (Class A) at $5,000 per violation when there is a possible range of $700 to $5,000?

Response from Tulare CAC

We consulted with DPR, reviewed the elements of violations, checked past history, and noted that amount of people involved and suspected to have been exposed to pesticides. (60 plus people). This was also a priority investigation because more than 5 people had symptoms from this incident. The event also involved a few other first responders and required in field decontamination of all the employees. This was a situation on the more extreme end of investigations we get. So, we thought it warranted a strong enforcement response.

29. How did you decide to assess the penalties against Grapeman Farm Labor and Rojim Inc. for violations of 6766(c) as a Class B violation and not a Class A violation?

Response from Tulare CAC

The Class is based on what caused "the illness" and this code was not the reason what made the outcome. The FLCs were not the reason this situation happened. A Class A violation is one of the following:

(A) A violation that caused a health, property, or environmental hazard.

(B) A violation of a law or regulation that mitigates the risk of adverse health, property, or environmental effects, and the Agricultural Commissioner determines that one of the aggravating circumstances support elevation to Class A.

Not taking them immediately to seek care at the time crew members first complained was not the reason an illness occurred. At the time crew members complained there was no reason to believe a drift had occurred. It is allowed and legal to spray adjacent to field crews. The FLCs did not witness mist or spray drift move off site so at the time the crew bosses could have believed they were just sick.

51-TUL-20 (Tulare CAC)

30. It appeared that the applicator knew the workers were present as he asked them to move their cars. However, it was not possible to tell from the map just how close the workers were to the application. Could this have been an additional violation, specifically of CCR 6614(b)(1)? Did the inspector conduct an analysis to determine if CCR 6614(b)(1) was violated?

Response from Tulare CAC

Ward went out the day before and asked the FLC crew boss if they would be done Wednesday and they said yes. He told them he would be spraying the next day, when he arrived at the field, he asked the FLC employees to move their cars out of his field when he saw they were still harvesting grapes. The employees were working 92 feet at the closest point to the field. He stayed and watched the first few passes as a spotter to make sure it was safe to continue spraying. Once the FLC crew asked the employee to stop spraying he called the owner, and he moved his sprayer to the field to the west of the current application site. The samples confirmed that even though the field was sprayed, no drift occurred. To the investigator, it was determined that Ward Stringham was following 6614 because he was scouting the field the day before, told crews about his plans, was told they would not be there and when they still were he spotted the application to make sure it was safely being done. He also has his employee move as soon as he was asked to by the crew boss even though it was not required of him.

31. There were 9 violations identified during the HQ inspection of Ward Stringham. Three violations were corrected during the inspection and the other 6 were to be corrected within 30 days of the inspection and to be verified with a follow-up inspection. Did the follow-up inspection ever happen and what were the results?

Response from Tulare CAC

Tulare CAC provided an inspection report showing that the follow-up inspection occurred on November 23, 2020. The other six violations had been corrected within 30 days.

32. How was it decided to issue a Violation Notice for the 9 violations and not a Warning Letter against Ward Stringham?

Response from Tulare CAC

Notices of Violation and Warning Letters are both the same level of enforcement responses and both are "compliance actions" under CCR 6128. We always issue Notice of Violations, (customary in the area group/ consistency of the SJVA). This record follows the business and if there have been prior non-compliances it requires us to take an Administrative Civil Penalty on repeat violations. To us this action is more stringent than using a Warning Letter.

39-KIN-19 (Kings CAC)

33. The Envidor 2 SC Miticide (EPA Reg. No. 264-831) label requires that, when applying by airblast sprayer, the applicator shut off the sprayer when turning at end rows and to only spray inward when applying to outside rows. Based on interviews this requirement seemed to have been violated. Could a violation of FAC 12973 been documented and assessed in the NOPA for this use in conflict with the labeling? Did the inspector check that this label requirement was being followed?

Response from Kings CAC

The inspector checked the label requirements and did not find any violations. The label appeared to have been followed. There was also conflicting witness statements about whether the applicator shut off the sprayer at end rows. Conflicting statements won't stand up in court so the evidence was not strong enough to consider this a violation of FAC 12973.

34. Moonlight Packing was penalized for seven violations of CCR 6614(b)(1) assessed at $3,500 per violation. This was in the middle of the Class A penalty range. The NOPA documented fifteen fieldworkers experiencing pesticide exposure symptoms, with seven of those fieldworkers being transported for medical care. The pesticide drifted over 1,200 feet from the treated site. Could this evidence have justified penalizing Moonlight

Packing for a higher number of CCR 6614(b)(1) violations and/or at a higher value within the Class A penalty range given the number of people sickened?

Response from Kings CAC

No because inspectors are not medical professionals. The CAC relies on medical professionals to determine the number of pesticide exposure. At hearings judges will dismiss counts for lack of evidence when there aren't medical records to support the number pesticide exposures assessed in the enforcement action. The CAC believes a weather event contributed to the incident and that it was not due to negligence.

35. Why wasn't FAC 12973 included in the NOPA issued to Moonlight Packing? This was listed in the NOV, but only 6614(b)(1) was included in the NOPA. Could a violation of CCR 6600(b) also have been pursued or would this have been duplicative of 6614(b)(1)? Could the inspector have pursued CCR 6614(a) as a violation?

Response from Kings CAC

Enforcement actions were taken in consultation with DPR after looking at the evidence collected during the investigation. Some sections of the pesticide regulations are redundant and duplicative. Duplicative violations are not pursued in enforcement actions. Sometimes the specific criteria was not met to allege a particular violation. The violations supported by the best evidence are pursued.

36. How did you decide to assess the penalty against Moonlight Packing NOPA for 7 violations of CCR 6614(b)(1) (Class A) at $3,500 per violation when there is a possible range of $700 to $5,000?

Response from Kings CAC

The CAC looks at all aspects of the incident and chooses a fine amount that allows for progressive discipline with a goal of being fair and equitable in the enforcement response.

37. How did you decide to assess the penalty against Flores Farm Labor, Inc. for violations of 6766(c) as a Class B violation and not a Class A violation?

Response from Kings CAC

This was based on the regulations. The criteria to elevate to a Class A violation was not there. The FLCs were not the cause of the incident.

44-KIN-19 (Kings CAC)

38. Trinkle Ag Flying Service was penalized for five violations of CCR 6614(b)(1) assessed at $2,000 per violation. This was in the middle of the Class A penalty range. The NOPA documented 63 people experiencing pesticide exposure symptoms, with five of those people being transported for medical care. Could this evidence have justified penalizing Trinkle Ag Flying Service for a much higher number of CCR 6614(b)(1) violations and/or a higher value within the Class A penalty range given the number of people sickened?

Response from Kings CAC

Similar to the response to question 34, the CAC is not qualified to make a determination of "sickened". The CAC relies on medical professionals and medical documentation as evidence to substantiate the number of pesticide exposures.

39. Are there additional notes available for the interview held with the applicator? If so, can you please provide them to EPA Region 9?

Response from Kings CAC

There are no additional inspection notes available.

40. How did you decide to assess the penalty against Trinkle Ag Flying Service for 5 violations of CCR 6614(b)(1) (Class A) at $2,000 per violation when there is a possible range of $700 to $5,000?

Response from Kings CAC

The CAC looked at the regulations and case specific factors. The CAC may at times, on a case by case basis, confer with other counties to try maintaining consistency.

41. How did you decide to assess the penalties against Fruity Ag Inc., JM Traver Farms LP, and J.V. Farm Labor Services, Inc. for violations of 6766(c) as a Class B violation and not a Class A violation?

Response from Kings CAC

Based on the regulations the criteria to elevate to a Class A violation was not there. The FLCs were not the cause of the incident.

08-SB-20 (Santa Barbara CAC)

42. Was the complete label for the 25(b) product VEG'LYS collected by the inspector? If so, can you please provide it to EPA Region 9? The label in the investigation report did not show the directions for use or other information that should have been present.

Response from Santa Barbara CAC

The entire VEG'LYS label was provided by the CAC to EPA Region 9. The label contained all required information.

67-STA-19 (Stanislaus CAC)

43. In some of the interview transcripts workers mentioned that they were not provided with PPE and also mentioned that some of the workers did have it but weren't using it correctly. Could violations of CCR 6738(a)(1) and/or 6738(a)(3) been documented and assessed in the NOPA?

Response from Stanislaus CAC

Based on the interviews of Rolling Hills management, the sorters and the forklift drivers who were working in the adjacent warehouses, (Warehouse 4 and Warehouse 7) within the same building, were not identified as early entry workers or handlers. Applications had already been completed by the time the workers' shifts began. The workers were not directly involved in the applications so the above violation codes wouldn't apply.

44. The Closing Report (a NOV was not provided to EPA Region 9) identified a violation of CCR 6739(1)(A), which is a respiratory protection violation, but this was not included in the NOPA to Rolling Hills Nut Company. Could a violation of CCR 6739(1)(A) been assessed in the NOPA?

Response from Stanislaus CAC

The Closing Report was issued by DPR on April 27, 2021. An amended investigation report was finalized on July 7, 2021, and a NOPA was provided to DPR legal for review prior to issuance mid-July 2021. The CAC received the review back from DPR on August 3, 2021. The NOPA was issued on August 24, 2021. The comments under the Administrative Civil Penalty Details of the Closing Report were premature as no NOPA had been issued at that time. The revised investigation report did not include the violation of CCR 6739(1)(A) because there was not enough evidence to prove noncompliance with this regulation.

Note: The revised investigation report and a revised Closing Report was provided by the CAC and DPR, respectively, to EPA Region 9. The reference to CCR 6739(1)(A) had been removed. The latest updates were reflected in Table 3 of this report.

45. Why wasn't CCR 6614(b)(1) included in the NOPA issued to Rolling Hills Nut Company? This was listed in the Closing Report (a NOV was not provided to EPA Region 9), but only FAC 12973 and 6726(c) were included in the NOPA.

Response from Stanislaus CAC

See response to question 44. The revised investigation report and a revised Closing Report was provided by the CAC and DPR, respectively, to EPA Region 9. The reference to CCR 6614(b)(1) was not included in the revised investigation report or Closing Report. The latest updates were reflected in Table 3 of this report.

46. How did you decide to assess the penalty against Rolling Hills Nut Company for 2 violations of CCR 6726(c) as a Class A violation and not a Class B violation?

Response from Stanislaus CAC

The symptoms of the two employees, who had to seek medical treatment on their own, were severe enough that they were therefore compelled to seek assistance on their own terms in the absence of this being offered, as required, by their employer. Their symptoms persisted over several days. A Class A Violation is a violation that caused a health, property, or environmental hazard. By not providing emergency medical care at the time of the incident, the respondent allowed the employees symptoms (health hazard) to persist for multiple days and added to the severity.

41-KER-20 (Kern CAC)

47. A rate of application of 200ppm was utilized for the product Seaco Seachlor 120 (EPA Reg. No. 10897-26-67799), which wasn't specifically listed on the label's directions for use on potatoes. The investigation report didn't clearly explain why 200ppm was being applied. The inspector noticed the discrepancy. Did any follow-up occur to determine why 200ppm was being applied? If so, what was the result of the follow-up?

Response from Kern CAC

The specific use was identified in the investigation. On Page 18 of the investigation, the investigator asked what the Seaco Seachlor 120 was being used for. In response, they stated that it was being used for potato sanitization. Seaco Seachlor® 120 registered label does allow potato sanitizing, at a maximum rate of 500 ppm. The equipment used to apply the product was a Decay Control Spray Bar System. The most important variable in this instance is "use." The registered Seaco Seachlor® 120 label states that when it is being used as a Post-Harvest Potato Protection treatment, the rate can be up to 125ppm. This "use" is to provide general protection from decay, and is not the same as sanitizing. Both Post-Harvest Protection and Sanitizing sprays would be

applied using the same spray equipment, but when the intended use is for Sanitization, the rate must not exceed 500ppm. Therefore, in this investigation, since it was established that the potatoes were being sanitized at a rate less than 500ppm (200ppm), it was a legal application for its intended use of potato sanitizing as per the registered label.

The CAC consulted with DPR to get clarity on interpreting the label. It was unclear how the company decided to apply at 200ppm, but it was clear that the application didn't exceed the allowable sanitization rate of 500ppm.

45-KER-20 (Kern CAC)

48. Why weren't CCR 6614(b) and CCR 6600(b) included in the NOPA issued to D&J Farm Management? These were listed in the NOV, but only FAC 12973 was included in the NOPA.

Response from Kern CAC

For code sections that are essentially redundant, we ALWAYS choose to go forward with only the code section we feel is best defended in a hearing. To charge a respondent with 2 or more code sections for the same violation (i.e. drift), we feel it is tantamount to double-jeopardy and is unfair/unethical. Further, it could place the entire case in peril of being thrown out in a hearing if one of the charges for the same violation is shown to be not valid. Furthermore, by pursuing a NOPA on FAC 12973, we can treat each acute illness or injury that resulted from a pesticide exposure resulting in a violation of FAC (Pursuant to FAC 12996.5) separately. When levying fines above the $5,000 Class A fine range, it is important to pursue each as separate violation due to there being multiple people ill and seeking medical attention.

49. How did you decide to assess the penalty against D&J Farm Management for 5 violations of FAC 12973 (Class A) at $3,000 per violation when there is a possible range of $700 to $5,000?

Response from Kern CAC

With no prior history and as previously stated, a standard minimum amount of $3,000 for victims who sought medical attention, 5 X $3,000 = $15,000. The range at our discretion is there specifically to penalize egregious violations or repeat offenders. If the violation in our determination is not egregious or intentional, placing fine levels at the maximum allowable does not allow either room for progressive discipline nor is it defensible in a hearing.

Progressive discipline is a policy that CACs decided to adopt that isn't written into the pesticide regulations. It is a way to use enforcement discretion to determine penalty amounts within a given violation class penalty range.

48-KER-19 (Kern CAC)

50. Giumarra Vineyards & Farms was penalized for ten violations of CCR 6600(b) assessed at $3,000 per violation. This was in the middle of the Class A penalty range. The NOPA documented 47 people experiencing pesticide exposure symptoms, with ten of those people being transported for medical care. The pesticide drifted over 1,320 feet (¼ mile) from the treated site. Could this evidence have justified penalizing Giumarra Vineyards & Farms for a much higher number of CCR 6600(b) violations and/or a higher value within the Class A penalty range given the number of people sickened?

Response from Kern CAC

The number of people sickened does not necessarily confer a more egregious/negligent error on the part of the respondent. In our opinion, there should be some type of objective determination of what you term 'sickened.' Our department has decided that the most logical place to make this determination would be a medical professional such as a doctor to make that 3rd party decision. Therefore, we only go forward if the complainant and/or their employer has made the decision to have them evaluated by a doctor. Taking the victim's statement at face value is not in the best interest of justice. Also, please reference the answers from Kern CAC to questions #22 and #49 above. Furthermore, current pesticide laws and regulations do not take into consideration the distance that a pesticide may have traveled because of drift. A pesticide drift, either big or small, will result in a drift violation being given utilizing the same discretionary range described previously.

51. Why wasn't CCR 6614(b)(3) included in the NOPA issued to Giumarra Vineyards & Farms? This was listed in the NOV, but only CCR 6600(b) was included in the NOPA.

Response from Kern CAC

Please see answer to question #48 above.

52. How did you decide to assess the penalty against Giumarra Vineyards & Farms for 10 violations of CCR 6600(b) (Class A) at $3,000 per violation when there is a possible range of $700 to $5,000?

Response from Kern CAC

Please see answers to both questions #49 and #50 above.

60-KER-19 (Kern CAC)

53. It appeared that the applicator may have violated the Kern County General Use Permit by not employing a buffer zone between the pesticide application and the highway

where the school bus was drifted on. Could this have been an additional violation of FAC 12973?

Response from Kern CAC

We have no such general permit condition that necessarily defines a roadway as a sensitive site. The very nature of a roadway as a transit corridor and not a permanent occupied structure necessitates this definition. Roadways are not buffered sensitive areas. Per our general permit conditions, no aerial applications of restricted materials are to be made within ¼ mile of a sensitive site. Air blast equipment would not fall under this condition. Also, as stated previously, we would not issue multiple counts nor duplicative counts unless there were multiple victims with acute illness or injury. Therefore, we would not have added an additional duplicative count of FAC 12973 in this case.

54. If the Application Exclusion Zone applies, was there also a violation of 6762(c)(1)(A)? Based on the map it would seem like the highway was within 100 feet horizontally from the application area and, therefore, within the application exclusion zone.

Response from Kern CAC

The Application Exclusion Zone only applies to persons who will remain within the zone, not those transiting the zone. Therefore, this would not apply. Furthermore, this code section is a 3CCR 6700 violation. The 3CCR 6700 violations relate to pesticide worker safety and would not apply in this particular case as the school bus was not directed to enter the field and were not under the employ of S&S Sprayers. Hypothetically, if this code was applicable to this case, there is no verifiable evidence available to confirm the exact location of the application equipment at the time of the incident and whether or not the school bus was in the application exclusion zone at the time the incident occurred.

55. Why weren't CCR 6614(b)(3) and FAC 12973 included in the NOPA issued to S&S Sprayers LLC? These were listed on the NOV, but only CCR 6600(b) was included in the NOPA.

Response from Kern CAC

Please see answer to question #48 above.

56. How did you decide to assess the penalty against S&S Sprayers LLC for 1 violation CCR 6600(b) (Class A) at $3,000 per violation when there is a possible range of $700 to $5,000?

Response from Kern CAC

Please see answers to both questions #49 and #50 above.

IV. Findings and Recommendations

This section details EPA Region 9's overall findings and recommendations. Findings were categorized into two performance levels:

Meets or Exceeds Expectations: No concerns were identified with the implementation of laws, regulations, or policies. Performance met or exceeded expectations.

Area for Improvement: Concerns were identified with the implementation of laws, regulations, or policies. A Recommendation for Corrective Action follows whenever an Area of Improvement is identified.

To ensure factual accuracy, DPR and the six individual CACs involved in the audit were provided an opportunity to review a draft of this report and submit comments and feedback in writing and during Microsoft Teams meetings regarding the findings and recommendations. Meetings were held between September 12, 2022 – September 16, 2022 and were attended by EPA Region 9, DPR, and the six CACs. In addition, CACASA requested a chance to provide comments and feedback to the overall findings and recommendations because these findings would impact all CACs statewide. CACASA provided feedback in writing. The responses from DPR, the six CACs, and CACASA are included.

A. Investigations

Finding 1 – Meets or Exceeds Expectations

EPA Region 9 commends the CACs for responding quickly to pesticide exposure incidents, always beginning their investigation within a day of receiving notification of the incident, and for following up on all leads. All witnesses involved were interviewed (when necessary, in Spanish) and had statements taken, or attempts were made to interview them. Samples were routinely collected in attempts to prove pesticide drift. CACs consistently checked for the training records of applicators and workers.

Finding 2 – Area for Improvement

Interviews of applicators often lacked sufficient detail about how the application was conducted that could potentially document FAC 12973 violations (i.e. pesticide use in conflict with the labeling). These details are integral to drift investigations and part of SOPs in the Pesticide Use Enforcement Program Standards Compendium, Volume 5, Investigation Procedures.

Recommendation for Corrective Action

Ensure that applicators are asked detailed questions about how they conducted the application to verify pesticide use was consistent with the labeling and general use permit conditions and

document the responses. Ensure that these details are included in the investigation reports. EPA Region 9 is concerned that inspectors may not be verifying that the correct directions for use about the application equipment, such as calibration, nozzle size, nozzle direction, nozzle pressure, mixing/dilution ratios, etc., are being followed in order to determine compliance with FAC 12973 and avoid future pesticide drift.

Response from DPR

As your audit found, the investigations were thorough; and they were conducted according to DPR procedures. DPR agrees that the reports could have included more information so external readers could better understand the circumstances of the incident and have confidence that the investigations were conducted correctly. The reports support the violations that were found during the investigations, but they lacked broad overviews of the incidents and the steps counties took while investigating the incidents. While DPR's current procedures do not require documentation of all aspects of an investigation in an investigation report, DPR will evaluate appropriate adjustments to its investigation procedures to ensure that applicators are asked detailed questions about how they conducted the application to verify pesticide use was consistent with the labeling and general use permit conditions and that they document the responses and include these details in the investigation reports. DPR will also add these procedures to its training program.

Response from CACASA

While we acknowledge that areas of improvement can be found throughout any process or individual investigation, overall, our county staff was extremely responsive and diligent in their investigations and proposed appropriate violations and penalties. While investigations included in the audit appear to have adhered to current guidance and procedure, we have taken into account the recommendations for more thorough questions during the investigations and including applicable photos, when necessary, and will relay those recommendations to our field staff.

Finding 3 – Area for Improvement

Inspection photos were not always included with all investigation reports. It was not clear whether this is because there were no relevant photos to include or if photos were simply omitted.

Recommendation for Corrective Action

Ensure that all relevant photos taken during an investigation are included in the investigation report.

Response from DPR

DPR agrees that photos are an important piece of evidence and should be included in the investigation report. DPR does train CAC staff on the importance of taking photos and including them in a report. DPR will continue to emphasize this in future trainings and add additional guidance to including relevant photos in investigation reports.

Response from CACASA

See CACASA response to Finding 2 above.

B. Enforcement Actions

Finding 4 – Area for Improvement

In most cases, a respondent's (i.e. the company or person determined to be responsible for a violation) compliance history was not documented in the NOPA.

Recommendation for Corrective Action

EPA Region 9 recommends that DPR require CACs to always check the statewide compliance history of a company in CalPEATS and consider any existing history in their enforcement actions. EPA Region 9's reviews found that in most cases a respondent's compliance history was not specifically mentioned in the NOPA. The compliance history search should not be limited to within the county where the violation occurred because the DPR's FAC, CCR, and other pesticide regulations apply statewide. In addition, for those respondents that work in other states, EPA Region 9 can assist by checking with other regions and states if requested. If not already possible, EPA Region 9 would recommend allowing the CACs to search for ongoing (open) cases against a particular company in CalPEATS. By allowing this, different CACs with cases against the same company can communicate with one another and let DPR know of larger problems with the same companies. Currently, CACs can only learn about open (unsettled) cases in CalPEATS in a different county if one CAC chooses to voluntarily share that information with the other. An August 31, 2001 report by EPA Region 9 titled "*Worker Protection Standard Assessment California Program Report*" (see Appendix A) expressed the same concern that a lack of information sharing between CACs may limit detection of repeat violators operating in multiple counties.

EPA Region 9 commends specific incidents where multiple CACs coordinate their enforcement response when forwarded a case by DPR (a top-down sharing of information) that involves violations by a company operating in multiple counties. However, CACs should also easily have the ability to identify problematic companies operating in multiple counties amongst each other and then notify DPR (a bottom-up sharing of information) of patterns of violations.

Response from DPR

Counties are required to review and consider compliance history per the Enforcement Response Regulations. However, there is not a requirement that CACs document this in their NOPAs. We agree that statewide compliance history is an important consideration in enforcement actions and look forward to discussing with EPA Region 9 and CACs potential changes to the Enforcement Response Regulations.

Response from CACASA

Inspectors routinely check for prior compliance history during investigations and/or when evaluating potential enforcement actions based on cited violations. Inspectors use CalPEATS to check a grower's history of compliance. Inspectors review compliance history for their respective county, not statewide. The Deputies over the Pesticide Use Enforcement program meet regionally and share cases within their county to determine if it is a regional problem versus a single county problem. Additionally, if it is determined to be a regional problem, staff works with their Agricultural Commissioners to initiate contact with DPR to pursue potential licensing action. Counties may have the ability to check closed investigations but do not have access to on-going investigations through the CalPEATS system. Communication between counties, especially within the same region, occurs frequently, at all levels within the system from the Agricultural Commissioner level to the Inspector level.

Finding 5 – Area for Improvement

CACs penalized violations of CCR 6766(c) when employers/FLCs failed to transport all workers experiencing symptoms of pesticide exposure for medical care, but the class of violation identified was inconsistent. In section II. Evaluation, EPA Region 9 presented an example where some CACs penalized CCR 6766(c) as Class A and some as Class B even though the violation was evidently issued for the exact same reason in all cases.

Recommendation for Corrective Action

EPA Region 9 recommends specifying which violations fall into Class A, B, and C. The current FAC and CCR regulations are not specific. An August 31, 2001 report by EPA Region 9 titled "*Worker Protection Standard Assessment California Program Report*" (see Appendix A) noted the same concern. This lack of specificity can allow for inconsistencies in how different CACs interpret the severity of the same violation. EPA Region 9 commends DPR that the regulations allow a Class B violation to be elevated to a Class A violation in certain aggravating circumstances.

Response from DPR

DPR looks forward to further discussing these recommendations with EPA Region 9 and the CACs.

Response from CACASA

Title 3 of the California Code of Regulations (3CCR 6130) provides CACs with the discretion to determine violation categories and penalty amounts.

Response from Santa Cruz CAC

The CAC disagrees that violations should be specifically assigned to Class A, B, or C outside of what the regulations already require because the circumstances surrounding the violations are not always black and white.

Finding 6 – Area for Improvement

CACs penalized violations for pesticide drift when sample analyses supported the violation and there were medical records for the people who were transported for medical care. However, the penalty amounts within the Class A range was inconsistent among CACs. In section II. Evaluation, an example was provided for how different CACs assessed drift violations at inconsistent penalty amounts within the Class A range without any substantive indication of how they decided to choose that amount.

During the Microsoft Teams meetings, it became clear that CAC penalty decisions are partly influenced by an unwritten policy termed "progressive discipline". Progressive discipline means that CACs generally start at the bottom of the penalty range for a Class A, B, or C violation for the first incident (absent other case specific factors, such as egregiousness/severity that support starting at a higher amount) and then steadily increase the penalty amount for repeat violators. This allows CACs to be fair, consistent, and equitable with penalty assessment.

Recommendation for Corrective Action

First, consider using gravity adjustments to help promote more consistency in the penalty amounts issued by CACs within a violation class for the same violations. An example can be found in Appendix B of EPA's FIFRA Enforcement Response Policy[4]. The penalty ranges at CCR 6130 are broad, and the NOPAs do not contain enough information to determine how a

[4] FIFRA Enforcement Response Policy, December 2009. https://www.epa.gov/enforcement/fifra-enforcement-response-policy.

CAC arrived at the low, middle, or upper end of a class penalty range. Including more detail in the NOPAs about how CACs make this decision would provide more transparency.

Second, consider codifying the currently unwritten policy of progressive discipline into CCR 6128 to CCR 6130 or ensuring it is formally written into policy. This progressive discipline policy is an important piece in explaining how penalty amounts are currently chosen within an available penalty range.

Third, the size of business should be a factor when determining the penalty amount issued. An example can be found in EPA's FIFRA Enforcement Response Policy (see footnote 4 above).

Response from DPR

DPR looks forward to further discussing these recommendations potential changes with EPA Region 9 and the CACs.

Response from CACASA

See CACASA response to Finding 5 above.

Finding 7 – Area for Improvement

There appeared to be discrepancies in how penalties were assessed to applicators and employers/farm labor contractors when sample analyses proved pesticide drift. Violations against applicators for exposing workers or residents to pesticide drift (e.g. FAC 12973, CCR 6614(b)(1), and CCR 6600(b)) appeared to only be pursued in the NOPA when a person was transported for medical care (either by their employer or by their own means) and there were relevant medical records. The number of violations penalized was limited to the number of people transported even if it was clearly documented in the NOPA that many more people were exposed to pesticide drift than went for medical care. Often during the same cases employers/FLCs were penalized for not bringing all potentially exposed workers for medical care (a violation of CCR 6766(c)). The way drift violations are implemented appears to be effectively determined by whether employers/FLCs, workers, and residents themselves (i.e. the victims of pesticide drift) sought medical care.

Recommendation for Corrective Action

DPR should evaluate and modify their enforcement procedures and guidance to address these discrepancies.

Response from DPR

DPR agrees that identifying ways to consider, document and support drift exposure in the absence of medical records is critical and looks forward to further discussing these recommendations with EPA Region 9 and the CACs.

Response from CACASA

This finding and recommendation is irrelevant to a report that focuses on the appropriateness of CACs conducting and investigating priority episodes. While this finding and recommendation may have value, it should be provided to DPR and/or CACs outside of this report.

V. Area for Attention

The following trend was noticed by EPA Region 9 during the case file reviews, but was arguably outside of the scope of the audit. Nevertheless, EPA Region 9 would like to raise this observation for the awareness and consideration of DPR and the CACs. This observation is described here as an Area of Attention. A Recommendation for Consideration follows the Area of Attention.

Area for Attention 1

Adjuvants and certain active ingredients could not be sampled due to lab analysis limitations.

Recommendation for Consideration

EPA Region 9 supports efforts by DPR or the California Department of Food and Agriculture (CDFA) lab to increase lab analysis capabilities to detect adjuvants and other active ingredients to allow for CACs to complete thorough investigations. While adjuvants are not pesticides under Federal law, they can be used to prove pesticide drift because they are used with pesticides.

Response from DPR

DPR contracts with the CDFA's laboratory to analyze investigation samples. The laboratory can currently analyze up to 520 Active Ingredients (AIs). When samples are taken, DPR staff determine which AI the lab should analyze by determining the AI (with the highest probability of a detection) based on environmental fate data. For example, DPR would not recommend testing for an active ingredient with a short half-life (e.g., hours) because it would be unlikely to be detected following sample collection and transportation to the lab. Also, analyzing adjuvants is difficult and generally not relied on because the principal functioning agent does not have a laboratory standard or because the principal functioning agent is commonly found in other products making it difficult to affirmatively link to a pesticide application.

Response from CACASA

CACs cannot control the pesticides the CDFA lab is able to test for. Decisions on which active ingredients to test for is in consultation and under guidance from DPR taking into account the capabilities of the lab and nature of the materials. This recommendation should be provided to DPR outside of this report.

Appendix A

Continue to the next page for the August 31, 2001 report by EPA Region 9 titled “Worker Protection Standard Assessment California Program Report”.

U.S. EPA Region 9
Worker Protection Standard Assessment
California Program Report

August 31, 2001

Prepared by the EPA Region 9 Cross Media Division
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Region 9 WPS Assessment

Region 9 WPS Assessment

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Attachment B: EPA-DPR-CACASA Cooperative Agreement (2001)

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Attachment E: Annual Prioritization Plan (June 2000)

PART I: INTRODUCTION, ASSESSMENT SUMMARY AND RECOMMENDATIONS

A. Introduction and Purpose

The year 2000 marked the fifth year anniversary of the full implementation of the Federal Worker Protection Standard (WPS). At the same time, a number of worker advocacy groups and the Children's Health Protection Advisory Committee and the U.S. Government Accounting Office (GAO) all presented the United States Environmental Protection Agency (EPA) with recommendations to review the implementation and enforcement of this regulation.

In response, EPA began a nationwide review of the Federal Worker Protection Standard. EPA's Office of Pesticide Programs (OPP) initiated a series of public meetings to examine current federal and state programs as well as the effectiveness of the regulation. Simultaneously, EPA's Office of Enforcement and Compliance Assurance (OECA) began a more specific review of EPA and state implementation of the enforcement and compliance components of the Worker Protection Standard. OECA and each Regional office identified one sample state to review and established minimum guidelines for information to be gathered. This report for California fulfills Region 9's commitment to the OECA review.

That same year, the Region 9 Pesticide Program began planning a related assessment of implementation of the Worker Protection Standard by each state and tribal authority in this region. Thus, this California report, along with similar reports for Nevada, Arizona, Hawaii and Tribes with pesticide programs, will also serve as the basis for a regionwide assessment of WPS implementation that is expected to continue in 2002.

Collectively, these national and regional assessments will provide feedback for EPA on implementation of the WPS, with the goal of lowering the risk of pesticide exposure among agricultural field workers and pesticide handlers.

B. Conducting the California Assessment

EPA Region 9 coordinated and planned the California Assessment with input from the California Department of Pesticide Regulation (DPR) and the County Agricultural Commissioners. We established the protocol based on the needs of the OECA and Region 9 WPS assessments and on the structure of the pesticide program in California.

The assessment of implementation of the WPS in California is based on a review of relevant program documents, conversations with state and county staff, and field observations of representative pesticide inspections. In Spring 2001, the Region 9 Assessment Team (the Team) spent three weeks observing field inspections conducted by staff of County Agricultural Commissioners (CACs) in three counties. The counties were chosen because they are

representative of activity in the larger agricultural regions of the central valley, the central coast and the desert/border region. Region 9 understands the difficulty of assessing the status of WPS implementation in a state as large and varied as California and recognizes that we could not see the full range of activities by observing inspections in three counties. However, visiting these particular counties did allow the Team to observe procedures for a variety of inspections that monitor compliance with various components of the WPS program.

The EPA Region 9 Assessment Team includes the WPS Coordinator and two Enforcement Officers, working closely with the EPA Project Officer for California. Over the course of three weeks (one week in each county), the Team observed 38 inspections conducted by 14 different Agricultural Biologists (county inspectors) with overview by three DPR Senior Pesticide Use Specialist (DPR inspectors). The Team discussed details of inspection and enforcement programs with DPR Headquarters and field office staff and managers, county inspectors, and County Agricultural Commissioners and Deputy Commissioners. The Team members also reviewed 140 randomly selected routine county agricultural use inspection files, 42 enforcement files with agricultural civil penalties related to the Worker Protection Standard, and 18 complaint investigation files related to agricultural workers.

This report is not intended to be a comprehensive evaluation of the State of California's entire pesticide program. Rather, the assessment process has focused on providing EPA with a clear understanding of the State's program to protect agricultural workers from pesticide exposure and, more specifically, about how compliance with the regulations is monitored and enforced. EPA Region 9 has also developed some recommendations for further strengthening the state program.

C. The Context of California Agriculture

California is the top-ranking agricultural producing and exporting state in the U.S., with cash farm receipts in 1999 totaling over $26 billion dollars (CDFA, Statistics, 2000). Eight of the nation's top 10 agricultural counties are located in California, all eight exceeding the 1 billion-dollar production mark (1997 Census of Agriculture).

California agriculture is the most diversified in the nation, producing over 350 crops and livestock commodities. No one single crop dominates another. Although California's 89,000 farms represent 4 percent of the nation's farms, they produce over 55 percent of the its fruits, nuts, and vegetables. Of these, California produces over 99% of the nations almonds, artichokes, dates, figs, kiwi fruit, olives, persimmons, pistachios, prunes, raisins and walnuts. Other important crops grown almost exclusively in California include apricots, avocados, broccoli, lima beans, garlic, leaf lettuce, nectarines, persimmons, plums, strawberries, table grapes, processing tomatoes, and wine and juice grapes (CDFA, Statistics, 2000).

California also has the largest number of hired farm workers in the country with estimates close to 550,000, over twice as many as the second largest farm labor state. The second and third ranking agricultural producing states (Texas and Iowa) rank 3rd and 9th in hired farm labor.

(USDA, NASS, 1997 Census of Agriculture. Vol. 1: part 51, Chapter 2: U.S. State-Level Data, Table 5).[1]

D. WPS Assessment Summary[2]

The strong regulatory program in California provides an opportunity to ensure high levels of compliance with the WPS and safe working environments for the state's farmworkers and pesticide handlers. For example, the state and county cooperative program has:

- **Over 400 county field inspectors operating statewide;**
- **Prioritized hiring Spanish speaking inspectors.** In each of the three counties assessed the majority of fieldworker safety and pesticide use monitoring inspections were conducted in Spanish;
- **Conducted all Use Monitoring and Field Worker inspections while pesticide handlers or workers in treated fields** can be directly observed;
- **Established regulations stronger than the Federal standard** on restricted entry intervals, protective equipment, and medical monitoring for pesticide handlers;
- **Conducted over 20,000 inspections** (either Field Worker Safety, Pesticide Use Monitoring, or Records inspections) in each of the last two years **that monitor compliance with parts of the worker protection regulation;**
- **Encouraged counties to increase the number of Field Worker Safety inspections conducted statewide;**
- **Increased the State budget** dedicated to worker protection over the last three years;
- **Increased the number of overview inspections monitoring the federal Worker Protection regulation in the last three years;**
- **Facilitated meetings focusing on the State's worker safety regulations.** Representatives of nonprofit farmworker

[1] Census respondents reported the number of paid farm or ranch workers doing agricultural labor, including paid family members, workers such as hired office workers, maintenance workers, etc. if their work was primarily associated with agricultural production on the establishment. They did not include contract labor. The Census question was: "*Were any HIRED WORKERS, including paid family members, doing agricultural labor on this place in 1997? (DO NOT include contract labor).*"

[2] The bullets for this summary were compiled from the body of the report. Refer to Part II for more complete information.

and labor organizations, industry representatives and CACs have participated in these meetings to discuss worker safety issues, barriers to implementation, and general enforcement activities;

Obtained authority to take administrative penalty actions in misuse cases where there are multiple jurisdictions, high level/priority investigation, or inappropriate action by the county. Prior to the legislation all misuse civil penalty actions were taken by the counties and the state could only take cases through the District Attorney or Attorney General offices.

Based on conversation with staff, field observations and review of documents between January and June 2001, the Assessment Team observed the following areas of concern with implementation and monitoring of the WPS:

Lack of consistent verification of compliance with particular areas of the Worker Protection Standard, including pesticide application-specific information, oral notification to workers of pesticide applications when required, pesticide safety training, and worker's rights or potential retaliation;

Inconsistent reporting to EPA of WPS overview inspections conducted by DPR;

DPR provides only limited information to EPA on the inspection, enforcement and compliance assistance occurring statewide. While allowable under the EPA guidance, reporting only federally funded activities does not communicate the scope and breadth of the California regulatory program;

Reluctance of County inspectors to document noncompliance in certain situations;

Limited targeting tools for systematically identifying establishments for activity based inspections;

Enforcement guidelines allow for **significant flexibility in determination of the severity of a violation and penalty assessed from county to county;**

County jurisdictions and lack of shared information may limit detection of potential violators or repeat violators operating in multiple counties.

E. California's Compliance Assessment Report

Between June 1997 and March 2001, the California Department of Pesticide Regulation evaluated the agricultural industry's compliance with the state's worker safety regulations in 20 out of 58 counties through the Compliance Assessment Program. The resulting Compliance Assessment Report provides a thorough evaluation of the effectiveness of the statewide enforcement program and includes short and long-term strategies to improve compliance. This report is in draft form and will be submitted to EPA Region 9 and available when it is finalized this fall.

According to the draft report, "DPR's survey of agricultural pesticide handlers and field workers revealed low compliance with regulatory requirements designed to mitigate agricultural workers' exposure to pesticides and pesticide residues." Significant findings highlighted in the draft Executive Summary include:

Growers had significantly lower compliance with the pesticide handler safety requirements than licensed pest control businesses;

Pesticide handlers, especially growers, had low compliance with the provision and use of personal protective

equipment, closed pesticide handling systems, the requirement to post emergency medical care information, the provision of adequate decontamination facilities, and the posting of treated fields;

- The field worker safety survey showed no significant differences between grower and farm labor contractor compliance;
- This survey revealed very low operator compliance with the hazard communication posting requirements and with providing workers unimpeded access to accurate pesticide application information.

Region 9 commends the Department for establishing new strategies to improve compliance in response to their findings.

F. Region 9 Recommendations

The following recommendations are based on EPA's observed areas of concern identified above. While the Region 9 Assessment was not intended to evaluate compliance of the regulated community in California, DPR's findings of low compliance identified in their Compliance Assessment Report appear consistent with the Assessment Team teams' observations on how certain elements of the WPS are monitored. Many of Region 9's recommendations are similar to, or supportive of, the strategies to improve compliance or consistency of enforcement outlined in DPR's Compliance Assessment Report.

California has an exceptional worker safety program in place – the number of inspections conducted, the recognized value of bilingual inspectors, the more stringent regulations, and numerous other structural elements puts California's program among the strongest in the nation. These recommendations are intended to further strengthen the monitoring of the federal Worker Protection Standard in the State of California. Refer to Part II of this report for documentation on the current program and more details on the following areas.

1. <u>Establish clear reporting procedures for those inspections that monitor compliance with the Worker Protection Standard.</u>

- DPR has reported a variety of different types of overview inspections as WPS inspections to EPA (on the federal 5700 form) over the last few years. Based on conversations with DPR staff and managers it appears that DPR field staff decide which overview inspections to report to DPR as monitoring WPS and it has not been consistent from year to year. Some staff reported all Fieldworker Safety Inspections, Pesticide Use Monitoring Inspections, and Pest Control Records Inspections as WPS inspections (see page 16 for descriptions of what each type monitors). Other staff reported Pest Control Records Inspections or just Fieldworker Safety Inspections. Additionally, because California also has worker protection rules for structural pesticide applicators, there is a chance that some structural inspections were mistakenly reported as WPS under the agricultural use category on the federal form (though Region 9 does not expect that these numbers were significant).

- As agreed in the fiscal year 2002 grant negotiations, DPR Enforcement Branch will adapt their overview inspection

and reporting procedures as necessary to ensure all WPS elements are monitored as outlined in the EPA WPS Inspection Guidance. (Although this is identified as a reporting issue, we recognize, and have discussed with DPR, the impact it will have on how inspections are conducted).

The 2002 Enforcement Branch workplan also includes a commitment to determine how, in the long-term, DPR can provide Region 9 with a 5700 form for state funded WPS inspections performed by the 54 County Agricultural Commissioner's staff.

These reports and proposed changes will provide EPA with clarity on what is monitored and reported as a WPS and (along with more comprehensive information from the Worker Health and Safety Branch) more accurate information on the scope of national compliance monitoring with the WPS.

2. Include verification of compliance with oral notification requirements during Field Worker Safety inspections when adjacent fields are owned by the same grower[3].

The method of notifying agricultural workers of pesticide applications when required (oral notification) is only monitored during pesticide control records inspections. Inspectors do not ask agricultural workers directly about whether they were notified of pesticide applications and it is not an element on the Field Worker Safety inspection checklist.

[3]DPR plans to review and revise the Pesticide Use Monitoring and Field Worker Safety inspection procedures and forms by January 2002. In particular they plan to focus on (1) incorporating US EPA's WPS monitoring requirements into DPR's inspection procedures; and (2) evaluating the effectiveness of the current field Worker Safety Inspection with respect to information display requirements (which supports EPA recommendation #3).

3. Include follow up at the central posting location to verify pesticide application-specific information in fieldworker safety and pesticide use monitoring inspections.

- The posting of pesticide application-specific information for handlers and field workers is routinely monitored only during a Pest Control Records Inspection. Inspectors are looking for the central posting location (that it is accessible and that workers have unimpeded access to it) and that the information posted contains the required data (location description, time and date of application, active ingredients, REI, EPA Reg. No. and product name). Inspectors do not routinely verify the existence of the posted information within the required timeframe in association with a Fieldworker Safety Inspection or Pesticide Use Monitoring Inspection and may be missing noncompliance with this requirement which could result in limited incentive for compliance with the required regulations. When the Assessment Team did check for specific field related data a lack of compliance was observed. In addition, DPR highlighted a number of compliance issues with posting of application-specific information (both accessibility and adequacy of information) in the draft Compliance Assessment Report.

- Real-time monitoring has the potential to increase the low compliance rates with this requirement. EPA supports DPR's proposal to evaluate the effectiveness of the current field Worker Safety Inspection with respect to information display requirements (see footnote #2).

4. Establish consistent statewide documentation of compliance with fieldworker pesticide safety training requirements.

- The California Compliance Assessment documented over 90% compliance with training requirement for fieldworkers. However, during our county visits, a common problem identified by field inspectors is that verifying compliance with the training requirements is extremely difficult to establish. The Assessment Team observed a wide variation in the way this element was monitored by county inspectors. In some instances inspectors interviewed several workers, asking if they had training cards or asking questions about symptoms of pesticide poisoning or what was covered in training classes they attended. On other inspections, only one of the workers was interviewed or the inspector verified that the foreman (but not necessarily the fieldworkers) had been trained. This is an area where increased consistency among state and county inspectors may confirm high compliance rates or reveal a different compliance picture.

5. Amend procedures to document if workers are aware of their legal rights under the regulations and monitor for potential retaliation.

- Potential retaliation is not identified as a required or separate element on any of the inspection checklists, leaving routine documentation of this specific area sporadic and vague. Covering the content of the A-9 Pesticide Safety Series Hazard Communication posting (which includes a section on worker's rights) is required as part of the pesticide safety training. Verification of the existence of the A-9 is the usual method through which inspectors tangentially addresses this issue. Inspectors may also document that an employee knows there is an A-9 available, however questions specific to retaliation or worker's rights were rarely observed. Inspectors did state that retaliation would usually be covered as part of an investigation (or 'follow up' in federal terminology).

The importance of worker's knowing their legal rights to protection under federal and state pesticide regulations, strengthening monitoring of potential retaliation, and preventing potential retaliation cases have been prominent themes in the National Worker Protection Assessment meetings. The workgroups have identified many approaches to these issues and will continue to refine ideas at the upcoming assessment meetings. Region 9 encourages California to seek opportunities within the pesticide program to inform workers about their legal rights.

6. Ensure implementation of the State Prioritization Plan results in enhanced targeting of activity based inspections.

Pesticide use monitoring inspections are selected from Notices of Intent (NOIs) submitted to the county office or by surveying a given district in the vehicle until an application is spotted. Field Worker Safety inspections are conducted in a similar fashion in that the inspector looks for field activity. CAC biologists are familiar with grower habits, cropping patterns, pest problems and pest control activities in their area and they combine this knowledge with information from Operator Identification and Permit documents, NOIs and Pesticide Use Report information. Inspections are conducted this way because it would be difficult to track down and observe whether a particular farmer, applicator, or farm labor contractor was actually conducting activities that would need to be inspected at a specific time.

This targeting approach for activity based inspections results in larger operations being inspected much more often than smaller operations in the county. Large growers may apply more restricted materials or have more fieldworkers than small growers and thus often warrant a greater inspection frequency. However, some CACs acknowledged that this targeting approach, in combination with the enforcement response policy which does not consider frequency of inspection, can discourage inspectors from documenting noncompliance and instead allow on-the-spot compliance. Further, this method of targeting appears to result in certain growers and smaller establishments being inspected less frequently and possibly not even within any two-year period. The low compliance documented by DPR among growers may be related to inconsistent targeting within a county and statewide.

EPA supports DPR's strategy outlined in the draft Compliance Assessment Report of encouraging the counties to increase the number of fieldworker safety inspections conducted and increasing the number of grower handler use monitoring and headquarter inspections relative to the number of licensed pest control business in counties where grower compliance is low. In addition to increasing the number of these types of inspections, EPA encourages development of workplans that include more specific approaches to targeting of activity based inspections. For example, negotiated workplans could include prioritization of establishments not inspected in the last two year.

Since 1995 DPR and the CACs have used the statewide Prioritization Plan to address inspection targeting as part of the county negotiated work plan process (see Attachment E). Oversight by DPR of implementation of the Prioritization Plan may help achieve more balanced monitoring statewide and address inspection and compliance issues identified by all the involved agencies.

7. Review Enforcement Guidelines

DPR'S Enforcement Guidelines (a policy document) allow the CACs to adjust the severity of the penalty to meet the seriousness of the violation. However, the Guidelines do not clearly specify whether a violation is a general or substantive violation or what is considered a subsequent violation, which can result in different interpretations in each county. Region 9 supports DPR's strategies outlined in the Compliance Assessment Report to ensure consistent and adequate penalties statewide. In particular, the Enforcement Branch will review the Enforcement Guidelines to determine the effectiveness of this policy and to propose improvements where needed. DPR will also work with the CACs to prioritize appropriate enforcement and compliance actions and provide refresher training on using the guidelines to ensure consistent statewide implementation.

8. Continue to support the system of state overview of county inspection programs

The inspection overview process is one critical method the State uses to ensure consistent inspection and enforcement among the various county inspectors. (State WPS training for county inspectors, the informal mentor program, and review of statewide penalty actions are others). The inspection oversight process allows for discussion of on-the-spot compliance, inconsistency in documenting compliance with certain worker safety regulations, identification of repeat violators in multiple counties and other issues with inspectors and Agricultural Commissioners.

As agreed to in the 2002 workplan, DPR will increase the number of agricultural use overview inspections, including those that monitor WPS.

G. Next Steps

The Region 9 Assessment Team gained a better understanding and insight into California's compliance monitoring of the Worker Protection Standard. This information will contribute to the national Assessment of the standard as well as ongoing regional WPS program management.

One outstanding issue is the status of the state's regulatory equivalency with the Federal WPS regulation. In 1995 EPA granted interim equivalency to all sections of the California state regulation. Final equivalency was granted in 1998 with all areas of the Federal WPS except the timing of when specific information about pesticide applications must be displayed. This one area remains under interim equivalency. Under this interim equivalency, California monitors compliance with the state code which requires display within 24 hours of completing of an application, not with the Federal requirement to display the information prior to the beginning of the application (see page 10 for further discussion). Through the National Assessment of the WPS, Region 9 will encourage the Office of Pesticide Programs (OPP) to examine the field level effectiveness of the current federal posting requirement and the Office of Enforcement and Compliance Assurance (OECA) to examine national compliance rates with this part of the regulation. In addition, DPR's fiscal year 2002 workplan includes a commitment to evaluate

WPS requirements related to notification, hazard communication and pesticide application-specific information and provide recommendations for changes to address noncompliance. The evaluation will include consultation with worker advocates and other stakeholders. The final report will be presented to USEPA in support of the National Assessment of the Worker Protection Program.

DPR and EPA Region 9 have already begun to follow up on findings and recommendations from this assessment through commitments in the cooperative agreement work plan for the current fiscal year as well as commitments that extend beyond this year. We expect to continue working together on strengthening the Worker Protection Standard over the next several years.

PART II: PROGRAM DOCUMENTATION

A. Comparison of State and Federal WPS Regulations

Equivalency of the state and federal regulations

The State of California had existing regulations under the California Code of Regulations (CCR) related to agricultural worker safety before the Federal Worker Protection Standard was published in 1992. After the Federal WPS rule was published in 1992, DPR began a process of revising the existing state regulations to reconcile them with the new Federal Standard. In 1995, after amendments to the U.S. EPA's rule were finalized, the regulation went into effect. In 1997 DPRs revised worker protection standards became effective, though there was a continuing process to determine if the state regulation was equivalent to the final Federal WPS.

EPA and DPR went through a multi-year process of determining regulatory equivalency and reached agreement on a variety of issues. In 1995 EPA granted interim equivalency to all sections of the California state regulation. In September 1998, Region 9 granted final approval for equivalency of the California regulation with the Federal WPS on three of four outstanding issues: (1) posted pesticide safety information; (2) ventilation criteria for greenhouse use; and (3) notice of pesticide application. EPA did not grant final equivalency on (4) providing specific information about pesticide applications (40 CFR 170.122 versus CCR 6761.1). This one area remains under interim equivalency. In the California code, pesticide specific information must be displayed at a central location within 24 hours of completion of an application, whereas the Federal WPS requires the employer to display specific information about pesticide application prior to beginning the application. (Under an equivalent section, when required, field warning signs do need to be posted before the application begins). Under this interim equivalency, California monitors compliance with the state code which requires display within 24 hours of completing of an application, not with the Federal requirement to display the information prior to the beginning of the application (see page 10 for further discussion).

California's perspective is that under CCR 6618 Notice of Application, workers are verbally warned to stay away from and out of fields that are scheduled to be treated. In addition the State feels that the federal regulation does not account for the reality of ever changing pesticide application decisions. The state asserts that requiring display of pesticide specific information before an application adds little protection while doubling the required paperwork. Their position is that few workers are likely to seek the information in that 24-hour period and continually updating the data on applications will cause confusion and lack of confidence in the system.

Through the National Assessment of the WPS, Region 9 encourages the Office of Pesticide Programs (OPP) to examine the field level effectiveness of the current federal posting requirement in protecting workers and handlers from pesticide exposures. In addition, we urge

the Office of Enforcement and Compliance Assurance (OECA) to examine national compliance rates with this part of the regulation.

California's regulations provide stronger protection for agricultural workers than the Federal standard:

Longer restricted entry intervals, additional personal protective equipment, medical monitoring, and additional safety requirements for fumigations are some of the areas where California's system is more stringent than the federal WPS regulation (see Appendix A). Specifically, increased protections include (but are not limited to):

Longer restricted entry intervals (REIs)

- Longer REIs are established for particular pesticides under certain conditions through regulatory mandate rather than simply through the manufacturers label (CCR 6772).
- Whenever mixtures of two or more organophosphate pesticides are applied, the REI is the longest interval plus half of the second longest interval, while the federal requirement adopts the longest REI (CCR 6774).

More personal protective equipment (PPE)

- Employees are required to wear coveralls during applications of pesticide products with the signal work 'DANGER' or 'WARNING' (with certain exceptions), rather than the federal requirement to follow label PPE requirements (CCR 6736).
- Eye protection is required for most pesticide handling activities regardless of label PPE. DPR used their illness reporting data which showed a significant numbers of eye injuries to support his regulatory change prior to protective eyewear becoming standard PPE on labels as it is today (CCR 6738).
- Closed systems are required for mixing and loading liquid pesticides with the signal word 'DANGER' (CCR 6746,6793).
- Particular application procedures, including additional PPE and decontamination facilities are required for certain pesticides with the signal word 'DANGER' (Bromoxynil [Buctril, Bronate], Folpet, Oxydemeton-methyl [Metasystox-R], Propargite [Omite, Omite CR, Comite]) (CCR 6790 to 6795).

Required medical supervision

- All employees who regularly handle certain pesticides must be under medical supervision, which includes baseline cholinesterase testing prior to work and every two years and regular cholinesterase blood tests (CCR 6728).
- People applying pesticides with the signal word 'DANGER' cannot work alone unless personal, radio or phone contact is made to a responsible adult at least every two hours during the day and every hour at night (CCR 6730).

Protections during fumigations

- Additional safe-use requirements for fumigations (with specific regulations for Methyl Bromide) include buffer zones and limited hours for workers (CCR 6780-6784).

More frequent safety training

- Employers must train handlers in pesticide safety every year and keep training records which are signed and dated by the handler and the trainer for two years. Employers must also have a written training program available for inspection and keep signed respirator medical authorizations for all handlers required to use respirators. (3CCR 6724) (3CCR 6738(h), while the Federal WPS requires training every five years.

California also has a number of regulations or established systems not specific to Worker Protection but that provide greater protection than the federal WPS:

- Through local ordinances, individual counties can enact stronger pesticide regulations. Monterey County, for example, requires fields be posted after any application of a product with an REI of 24 hours or more.

- Identification numbers: Prior to the purchase and use of pesticides for the production of an agricultural commodity, the operator of a property must obtain an operator identification number and a site identification number from the County Agricultural Commissioner where pest control work will be performed. These numbers are used for general pesticide use tracking, investigations, and, if relevant, as part of the restricted materials permit (CCR 6622, 6623).

- The restricted materials program requires permits for applications of products listed as restricted use pesticides (RUPs) in California. Growers who apply California RUPs must submit a Notice of Intent (NOIs) to apply pesticides to the County Agricultural Commissioner's office 24 hours in advance. In 1999-2000, county inspectors conducted over 13,000 preapplication inspections based on these permits and the NOIs.

- Pesticide use reporting: Applications of all agricultural use pesticides must be reported to the County Agricultural Commissioner either by the operator or the pest control business hired to do the application by the 10th day of the month following the month in which the work was done. Pest control businesses must report within 7 days of application (CCR 6626).

- Pesticide illness reporting: State law requires physicians to directly report any suspected or confirmed pesticide illness to the local health officer by telephone within 24-hours of the discovery. The County Health Office will then notify the

local Agricultural Commissioner's office. All cases are investigated for pesticide use violations by the Counties and for potential health effects by the Department of Health.

B. Regulatory Structure: The State Department of Pesticide Regulation and the County Agricultural Commissioners

Implementation of the Worker Protection Standard in California is shared by DPR and 54 County Agricultural Commissioners (CAC). DPR, the California Agricultural Commissioners and Sealers Association, and the USEPA Region 9 have signed a cooperative agreement to ensure a unified and coordinated program of pesticide episode reporting, investigation, and enforcement action (see Attachment B). California's county framework for pesticide regulation existed prior to the enactment of primacy provisions in FIFRA. When EPA began the process of granting primacy to each state, California's county systems were grand fathered as proscribed in FIFRA.

The Department of Pesticide Regulation (DPR) is based in Sacramento and is under the umbrella of California Environmental Protection Agency. DPR has field offices in Anaheim, Fresno, Sacramento, Bakersfield, Ventura, and Watsonville. Responsibility for WPS implementation is split primarily between DPR's Enforcement Branch and Worker Health & Safety Branch.

Enforcement activities are largely carried out in California's 58 counties by the 54 County Agricultural Commissioners (CACs) and their staffs, many of which also have regional offices within the county (Fresno County, for example, has eight district offices). The statewide total number of county inspectors is approximately 400. DPR's Enforcement Branch negotiates cooperative agreements with each of the CACs that include annual inspection and enforcement projections. DPR headquarters staff and its 32 field inspectors provide training, coordination, and technical and legal support to the counties. DPRs field staff conduct overview inspections with the county inspectors and special requests forwarded by EPA. DPR's Pesticide Enforcement Branch also has overall responsibility for pesticide incident investigations, administering the state pesticide residue monitoring program, monitoring pesticide product quality and coordinating pesticide use reporting.

DPR's Worker Health and Safety Branch evaluates illness investigations, designs and conducts field studies to better evaluate exposure to pesticides, and develops risk reduction mechanisms when needed. Branch scientists analyze county investigations of pesticide related illnesses and investigate unsafe work conditions. The Pest Management and Licensing Branch administers the Department's Licensing and Certification Program.

C. Resource Allocation

Federal and State cooperative agreement budget

In 1999-2000 DPR operated with an overall budget of $52.2 million and had 338 employees (see Attachment C). Federal funds, including USDA, FDA and EPA combined, represent approximately 4%, or 2 million, of the annual budget. The level of federal funding for FIFRA provided by EPA to the state has remained relatively stable over the last three years at approximately $1,585,000 (fiscal year 1999 appears low because the budget and project period was three quarters instead of four to shift to the state fiscal year July - June schedule).

The chart below reflects DPR's Enforcement Branch and Worker Protection Branch activities funded through the annual federal cooperative agreement only. The numbers reflect initial award amounts which may vary from actual final spending. This budget does not include the state contribution to other DPR Worker Protection activities. This budget also does not reflect the budgets for the County Agricultural Commissioner's offices where the majority of Worker Protection inspections are completed.

See chart on page 16

Cooperative Agreement	FY99[4]	FY00 final award	FY01 final award	FY02 offered [5]
Overall Pesticide Program Federal	711,745	1,243,642	1,219,103	1,171,850
State	249,131 (26% match)	340,702 (21% match)	365,194 (23% match)	N/A
Total	**$960,876**	**$1,584,344**	**$1,584,297**	N/A
Enforcement Activities Federal	473,995	870,830	765,499	682,500
State	107,900 (18% match)	110,206 (11% match)	115,500 (15% match)	115,500
Total	**$581,894** (60% of overall)	**$981,036** (62% of overall)	**$802,941** (50% of overall)	N/A
Worker Protection Implementation (Worker Health and Safety Branch) Federal	35,250	47,000	69,350[6]	N/A
State	7,895 (18% match)	8,294 (15% match)	12,238 (15% match)	N/A
Total	**$43,145** (4% of overall)	**$55,294** (3.5% of overall)	**$81,588** (5% of overall)	N/A

Distribution of funds

Federal funding supports DPR's overview of the CAC inspection and enforcement programs; the CAC's do not receive any direct or pass-through Federal Funding. The CAC offices receive funding from DPR, the Mill Tax disbursement (tax

[4]The budget and project period was three quarters instead of four to shift to the state fiscal year schedule (July - June).

[5]DPR grant application amount exceeds offer amount.

[6]This includes $20,000 towards a special project related to WPS.

collected from the sale of pesticides in the State), civil penalties collected, and general county disbursements and thus the budgets vary considerable from county to county. The Mill tax distribution is based on a number of factors including work hours expended by the CAC, total pounds of pesticides and restricted materials reported used and other criterial (outlined in: Title 3, CCR, Division 6, Section 6393).

A total of approximately 16.2 FTE were supported by federal pesticide program funding in fiscal year 2000. As noted in that end of year report, in contrast to fiscal year 1999, personnel assignments at DPR pertaining to the cooperative agreement work were fairly stable, except for reassignment of the WPS program manager to other duties and no back-filling of that role. The position remains unfilled.

The DPR budget for overall FIFRA implementation and enforcement activities conducted through the cooperative agreement has remained stable over the last three years, while the budget for the Worker Protection activities has increased by approximately $20,000 each year. This is partly a result of using enforcement funding for WPS enforcement support done by the Worker Health and Safety Branch

The state contribution to the overall FIFRA activities funded through the cooperative agreement has ranged from 21% to 26%, while the recommended state match is 15%. Each year approximately 50 to 60% of the overall budget went towards enforcement (including WPS inspections) and 5 to 8% went towards WPS program development.

EPA federal funding is a small portion of DPR's overall budget. Federal funding has not increased significantly over the years to accommodate inflation or expanding programs.

D. Inspection procedures

Based on interviews and observations, the State has developed an Inspection Procedures Manual (updated May 2000) which describes the purpose and scope of each type of inspection, including those that cover WPS. The manual describes in detail which requirements are covered under the various inspections. In some instances the manual provides guidance on what questions should be asked or what specific things an inspector should look for when documenting compliance during an inspection. The Counties are expected to use this document as a guideline for the conducting of inspections. Our field observations indicate that inspectors follow these procedures in documenting compliance.

Bilingual inspections

The Counties and DPR have made it a priority to hire Spanish speaking inspectors. In each of the three counties we visited the majority of Fieldworker Safety and Pesticide Use Monitoring Inspections we observed were conducted in Spanish. Most of the inspectors we accompanied were either bilingual or spoke enough Spanish to effectively conduct interviews with Spanish speaking agricultural workers. In districts where there were both Spanish speaking and non-Spanish speaking inspectors, bilingual inspectors are sometimes relied upon to conduct the inspections likely to involve interviewing non-English speaking individuals. Whereas not being able to speak Spanish fluently did not prohibit individual inspectors from being able to complete an inspection, most bilingual inspectors were better able to document certain WPS requirements, such as training.

DPR overview procedures

DPR Senior Pesticide Use Specialist (DPR inspectors) conduct routine "oversight inspections" as the county inspectors conduct their inspections. These oversight inspections are part of the State program for monitoring the quality of inspection procedures. Inspectors record their observations independently and compare and discuss their findings with the county inspector. During our site visits, where discrepancies were noted, the DPR inspector also discussed these with the Deputy Agricultural Commissioner. This process is one critical method the State uses to ensure consistent inspection and enforcement among the various county inspectors. (State WPS Training for county inspectors, the informal mentor program, and review of statewide penalty actions are among others). The inspection oversight process allows for discussion of on-the-spot compliance, inconsistency in documenting compliance with certain worker safety regulations, identification of repeat violators in multiple counties and other issues with inspectors and Agricultural Commissioners.

Types of inspections that monitor WPS

The Federal Worker Protection Standard has eight key elements as described in the Revised Worker Protection Field Inspection Pocket Guide. Each of these elements is to be covered when doing a Federal WPS Inspection (per 1994 Inspection Guidance). County inspectors (and DPR during overview inspections) are inspecting for compliance with the State of California Worker Health and Safety regulations. No single inspection in California covers all eight of the federally required elements. Instead, the WPS is covered primarily in three different types of inspections: (1) Fieldworker Safety Inspections; (2) Pesticide/Fumigation Use Monitoring Inspections, and (3) Pest Control Records Inspections. Separate checklist (see Attachment D) have been developed for each type of inspection and all state and county inspectors use these forms when conducting WPS related inspections. Each of these inspections covers certain parts of the WPS but not necessarily the majority of the WPS elements.

This presents a unique problem in determining the implementation of federal WPS regulations at the county level. Our observations of the inspection process concentrated on those elements of a federal WPS inspection covered by the three types of California inspections.

1) Fieldworker Safety Inspection -A Fieldworker Safety Inspection (FSI) is conducted "to determine what kind of procedures or plan the employer has instituted to assure the safety of field workers." The county is only credited with a FSI when the inspection was done while employees are working in a "treated field"(the Federal and state definition for a treated field is the same). Therefore, inspections reported by a county and State as a FSI are consistent with the timing of an inspection as described in the Draft Definition of WPS Inspection (restricted entry interval plus 30 days).

The Fieldworker Safety Inspection checklist covers 10 requirements. Those that pertain to WPS fall into the categories of pesticide safety information, pesticide safety training, decontamination, application and entry restrictions and notice of applications (field posting). Posting of application-specific information for workers, oral notification of pesticide applications, and retaliation are not covered in this type of inspection.

2) Pesticide Use Monitoring Inspection - A Pesticide Use Monitoring Inspection is conducted to "document whethereee or not the handler and employer are complying with any applicable use conditions, pesticide labeling requirements,eee training, worker safety and other regulatory requirements." These inspections can have three different parts oreee "sub- inspections" on the same checklist, an Application Inspection, a Mix and Load Inspection and an Equipmenteee Inspection. The Pesticide Use Monitoring Inspections cover 30 requirements. Among those that pertain to WPSeee are decontamination, personal protective equipment, handler training, equipment safety, emergency medicaleee assistance and emergency medical posting. Application-specific information for handlers, oral notification ofeee pesticide applications, and hazard communication is not covered in this type of inspection.eee

3)ePest Control Records Inspection - A Pest Control Records Inspection is conducted to determine the licensing andeee registration status, record keeping conformity and proper supervision of application by a qualified person. The parteee of a Records Inspection that pertains to the WPS is a Headquarters and Employee Safety Inspection for either aeee licensed pest control business or a grower and qualified applicator. The checklist for Pest Control Recordseee Inspection covers 26 requirements. Those which cover WPS fall into the general categories of pesticide safetyeee information, posting of pesticide applications, personal protective equipment, oral notification and postingeee requirements of pesticide applications. The requirement for documenting compliance with decontaminationeee facilities is not covered during this type of inspection but is typically covered during either a fieldworker safetyeee inspection or a pesticide use monitoring inspections. Retaliation is also not directly addressed during thiseee inspection.eee

Verification of compliance with WPS requirements

California covers all of the Federally required WPS elements (either expressly by citing codes on the checklist, or as in the case of retaliation, indirectly through verification of training and posting of hazard communications requirements) when all three types of inspections checklists are used at the same establishment. In addition, the review team did observe procedures which could result in county inspectors missing noncompliance with the State and Federal WPS.

1.eeePosting of pesticide application-specific information: One area where the review team perceived difficulty ineee documenting noncompliance was central posting of pesticide application-specific information. The posting ofeee pesticide application-specific information for handlers and field workers is routinely monitored only during a Pesteee Control Records Inspection. Inspectors are looking for the central posting location (that it is accessible and thateee workers have unimpeded access to it) and that the information posted contains the required data (locationeee description, time and date of application, active ingredients, REI, EPA Reg. No. and product name). Inspectors doeee not routinely verify the existence of the posted information within the required timeframe in association with aeee Fieldworker Safety Inspection or Pesticide Use Monitoring Inspection and may be missing noncompliance with thiseee requirement which could result in limited incentive for compliance with the required regulations. When theeee Assessment Team did check for specific field related data a lack of compliance was observed. In addition, DPReee highlighted a number of compliance issues with posting of application-specific information (both accessibility andeee adequacy of information) in the draft Compliance Assessment Report.eee

2.eeeOral notification of pesticide applications: Similarly, notice of application (40 CFR 170.120 or California Codeeee Section 6618), which requires agricultural employers to notify workers of any pesticide application on the farm viaeee

oral or posting notification, is monitored during Pest Control Records Inspections. Inspectors will check that a grower has developed a plan to notify workers. However, verification that workers received oral notification of applications is not monitored during Fieldworker Safety Inspections when field workers are working in adjacent fields owned by the same grower. Oral notification is not identified on the fieldworker safety checklist to document compliance/noncompliance. The Assessment Team acknowledges the complexities and difficulties of the farm systems within the State where adjacent field may or may not be owned by the same grower. However, when a contiguous piece of land is owned by a single grower consisting of several blocks or fields, compliance with oral notification was not routinely documented.

3. Pesticide safety training requirements: The California Compliance Assessment documented over 90% compliance with training requirement for field workers. However, during our county visits, a common problem identified by field inspectors was that verifying compliance with the training requirements is extremely difficult to establish. The Assessment Team observed large variation in the way this element was monitored by county inspectors. In some instances inspectors interviewed several workers, asking questions about symptoms of pesticide poisoning or what was covered in training classes they may have attended. On other inspections, only one of the workers was interviewed or the inspector verified that the foreman (but not necessarily the field workers) had been trained. This appears to be an area where increased consistency among state and county inspectors may confirm compliance or reveal a different compliance picture.

In addition, when inspecting pesticide applications or mix and load operations, county inspectors document handler training. Training is to include the format and meaning of information, such as precautionary statements about human health hazards, contained in pesticide product labeling. The content of the California training requirement is similar to the Federal standard but handler training is required every year. The California standard requires handler employers to provide training on labels for each pesticide *or chemically similar group of pesticides* and the employee must sign and date a document which verifies the extent of the training provided. The Team observed a need to clarify the meaning of 'chemically similar groups of pesticides'. In some instances the meaning of this may be more broadly interpreted than intended by the regulation.

4. Retaliation: Potential retaliation is not identified as a required or separate element on any of the inspection checklists, leaving routine documentation of this specific area vague. Covering the content of the A-9 Pesticide Safety Series Hazard Communication posting (which includes a section on worker's rights) is required as part of the pesticide safety training. Verification of the existence of the A-9 is the usual method through which inspectors tangentially addresses this issue. An inspector may also document that an employee knows there is an A-9 available, however questions specific to retaliation or worker's rights were never observed. Inspectors did state that retaliation would usually be covered as part of an investigation (or 'follow up' in federal terminology).

Documenting compliance and noncompliance

On more than a few occasions it was noted that some county inspectors are reluctant to mark noncompliance on the inspection checklist, especially if a requirement could be immediately corrected at the time of the inspection. An example of this would be if an inspector noted that the A8 or A9 (California's pesticide safety series) was not properly filled out as is required under California Law (if it was missing the location of the central posting of application-specific information or, in

newer revised versions, the location of the emergency medical facility). This information assures compliance with two key Federal provisions and the lack of this information would be considered a violation. The inspectors marked the individual in compliance and noted in the discussion section that they were not actually in compliance. Although the state inspectors seemed consistent in considering this a violation and marking it as a noncompliance, county inspectors were inconsistent in marking this as a noncompliance. When such a discrepancy occurs, the state inspector discussed this with the Deputy Agricultural Commissioner. This particular example demonstrates how the state oversight program provides consistency among the 400 inspectors and between the 58 counties.

E. Program Documents and Reporting

Documents

The State Implementation Strategy, Enforcement Guidelines, Inspection Procedures Manual and annual cooperative agreement workplans outline commitments and activities necessary to implement the WPS. DPR's Neutral Inspection Scheme does not provide guidance to the counties on targeting WPS inspections (see page 23 for further discussion). Instead, since 1995 DPR and the CACs have used the statewide Prioritization Plan as part of the county negotiated work plan process (see Attachment E). The Prioritization Plan provides the Commissioners with information on state-wide priorities and the activities DPR intends to carry out in relation to these priorities. The top two compliance priorities in the most recent Prioritization Plan direct the counties to strength compliance with the WPS.

Cooperative Agreement commitments

The annual EPA-DPR cooperative agreement work plan outlines commitments and activities necessary to implement the WPS. The Enforcement Branch work plan includes projections for the number of all types of inspections, including agricultural use. In fiscal year 2001, the work plan included what subset of these agricultural use inspections would cover the WPS elements. DPR also developed and implemented a multi-branch work plan (Enforcement and Worker Health & Safety) in order to work more collaboratively and better address compliance issues with worker advocates and growers. In addition, EPA and DPR recognized the need to include activities related to health care providers in the workplan even though federal funding was not provided for all of these activities.

As noted in the FY2000 end of year evaluation report, DPR has not always met work plan commitments or provided deliverables identified in the work plan, including reports (see below). Many times it appears that the commitment, or comparable work, was in fact completed but without communicating this to the EPA project officer either before, for approval and to amend the work plan, or after in reports. In particular, Region 9 has asked DPR to address the need for stewardship of the WPS program in the Enforcement Branch. We recognize that with a new Branch Chief and significant staff shortages that need to be filled (23 out of 80 positions are vacant) DPR's Enforcement Branch has been and will continue to be in transition this year. In the meantime, in the 2000 end of year report Region 9 has requested that DPR provide a designated contact person for the WPS program activities in the Enforcement branch.

Cooperative agreement reporting

As allowable under the national EPA guidance, DPR's mid and end-of-year reports (both narrative and 5700 reports) submitted to Region 9 only cover DPR projects that are supported in part or in full with Federal funding. Region 9 is thus not able to report to EPA Headquarters or Congress on the full range of enforcement and program activity that DPR is engaged in that are related to the Worker Protection Standard.

Timeliness of reporting has been poor for both DPR and Region 9 over the last few years. Late reporting compromises Region 9's ability to communicate the State's accomplishments at the national level, where such information is used to determine and justify funding allocations. End-of-year evaluations for 1999 and 2000 included an EPA recommendation to DPR to ensure that middle and end of year reporting for both the Enforcement and Worker Protection programs is timely and follows cooperative agreement reporting guidance.

In addition, fiscal year 2002 grant negotiations (for July 2001 to June 2002) focused on clarifying the WPS narrative reporting requirements and coming to clear agreement on what information is valuable to the national program and reasonably accessible to DPR. The Worker Health and Safety Program work plan includes more specific reporting on outreach and compliance assistance activities and agreement to report on activities which may be outside the scope of the cooperative agreement, such as examples of outreach or compliance assistance conducted by DPR or the counties.

State reporting of WPS inspections

DPR regional staff report overview inspections they conduct with County Agricultural Commissioner's staff on the 5700 form. Beginning in 1998, DPR only reported overview inspections that were conducted within 30 days after the end of a restricted entry interval.
Over the last few years, DPR has reported approximately 135 agricultural use inspections of which between 50 and 100 were reported as WPS (see Appendix B). The number of WPS overview inspections has increased each year, which also represents an increasing percentage of all overview inspections that are reported as WPS.

DPR has reported a variety of different types of overview inspections as WPS inspections on the 5700 form over the last few years. Based on conversations with DPR staff and managers it appears that DPR field staff decide which overview inspections to report to DPR as monitoring WPS and it has not been consistent from year to year. Some staff reported all Fieldworker Safety Inspections, Pesticide Use Monitoring Inspections, and Pest Control Records Inspections as WPS inspections (see page 16 for descriptions of what each type monitors). Other staff only reported Pest Control Records Inspections or just Fieldworker Safety Inspections. Additionally, because California also has worker protection rules for structural pesticide applicators, there is a chance that some structural inspections were mistakenly reported as WPS under the agricultural use category on the federal form. Though Region 9 does not expect that these numbers were significant, the extent of the problem is not known.

County reporting

Inspections conducted by the County Agricultural Commissioners staff are not paid for with federal funds or reported to EPA under the cooperative agreement terms. The counties submit detailed Monthly Activity Reports to DPR that itemize the number of inspections, investigations, compliance actions, and enforcement actions taken as well as other activities

conducted at the county level. For the purposes of the National Assessment, Region 9 compiled county inspection data from the Pesticide Regulatory Activities Summary (Report 5) (for complete data see Appendix B). In state fiscal year 1999/2000 county inspectors reported:

13,964	Pesticide Use Monitoring Inspections, with 4,921 noncompliances detected;
5,628	Pest Control Records Inspections, with 3,107 noncompliance detected;
2,105	Field Worker Safety Inspections, with 544 noncompliance detected;
4,670	Warning letters or violation notices (non-penalty actions) issued;
194	Cease and desist orders;
688	Penalties.

These county inspection and enforcement numbers highlight the scale of activity occurring in the state.

Clarifying State WPS reporting

The fiscal year 2002 DPR Enforcement Branch work plan includes a commitment to update WPS inspection and reporting procedures as necessary to ensure all WPS elements are monitored as outlined in the EPA WPS Inspection Guidance. DPR will adapt their overview inspection procedures as necessary for those inspections that get reported to EPA as WPS inspections on the 5700 form. Specifically, we propose that DPR verify pesticide application-specific information and oral notice of application in conjunction with Field Worker Safety or Mix/load (either PCO or Property operator) inspections. The work plan also includes a commitment to determine how, in the long-term, DPR can provide Region 9 with a 5700 form for state funded WPS inspections performed by the 54 County Agricultural Commissioner's staff. The proposed changes will provide EPA with clarity on what is monitored and reported as a WPS inspection.

EPA recognizes that this is not just a change in reporting procedures but will require a change in overview inspection procedures and could require changes in how at least some county inspections are conducted. The changes will improve verification of compliance with pesticide specific information, oral notification, and training.

These reports and proposed changes will provide EPA with clarity on what is monitored and reported as a WPS and (along with more comprehensive information from the Worker Health and Safety Branch) provide more accurate information on the scope of national compliance monitoring with the WPS.

F. Enforcement Program

Inspection authority and credentials

California's inspection and enforcement authorities for FIFRA meet the minimum requirements for delegation of authority. The State's authority to conduct inspections is set forth in Title 3 CCR Division 6 § 6140 and in §11456(b) of the California Food and Agriculture Code. This authority enables state and county inspectors to conduct inspections in a variety of locations including fields, greenhouses, areas where pesticides are used, stored or handled, and change areas or other facilities used by employees. It also authorizes access to records on pesticide use, training and medical monitoring. The state also has the ability under case law to obtain a search warrant if entry or inspection is denied. During the county visits the Team observed no entry problems onto

establishments, nor did we hear from the inspectors of any difficulties with access.

California State inspectors have federal credentials, but they are not issued State credentials other than their identification card. This identification card is used only during state product inspections, but is not used during WPS inspections. California county inspectors do not have a credential similar to what is shown during a federal inspection. On occasions the county inspector gives out his/her business cards before beginning their inspection. The Assessment Team observed that inspectors verbally identify themselves and their employer.

Inspector's knowledge of WPS

Based on our observations and interviews, DPR and CAC inspectors are knowledgeable about the state Worker Health and Safety regulations. DPR conducts annual training for inspectors which has included inspection procedures for worker safety regulations. In addition, county inspectors are required to complete specific training on various types of agricultural inspections prior to conducting the inspections.

DPR managers and DPR inspectors have also participated in EPA training courses over the last five years, as instructors as well as attendees. In the past, County inspectors would attend EPA training but have not over the last few years. Some county inspectors conduct train-the-trainer sessions as well as pesticide safety for handlers and field workers that would meet the state and federal training requirements.

Targeting inspections

DPR provides the counties with inspection targeting guidance in the development of neutral inspection schemes for all facility based inspections (e.g. Employer/Employee Headquarter Safety inspections and Pesticide Dealer, Agricultural Pest Control Adviser, and Pest Control Business record audits). The state does not provide the counties with guidance in the development of neutral inspection schemes for targeting activity-based inspections.

Instead, since 1995 DPR and the CACs have used the statewide Prioritization Plan to address inspection targeting as part of the county negotiated work plan process (see Attachment E). The Prioritization Plan provides the Commissioners with information on state-wide priorities and the activities DPR intends to carry out in relation to these priorities. For example, the Plan identifies DPR inspection priorities (such as focusing overview inspections of field worker safety inspections) and directs specific counties to focus inspections on particular activities (such as field Worker Outreach or compliance in the green house industry). In addition, the top two compliance priorities in the most recent Prioritization Plan direct the counties to strength compliance with the WPS.

Neutral inspection schemes are difficult to implement for activity-based inspections. In California an inspection of handling requirements dictates that the inspector observe pesticides being mixed and/or applied and field worker requirements can only be inspected while workers are engaged in worker activity in a treated field. While this does make it more difficult to do inspections in a uniform manner it can provide a higher level of accuracy than an after the fact interview and potentially allow more effective enforcement of violations.

During the county visits the pesticide use monitoring inspections were selected from Notices of Intent (NOIs)

submitted to the county office or by surveying a given district in the vehicle until an application is spotted. Field Worker Safety inspections are conducted in a similar fashion in that the inspector looks for field activity. CAC biologists are familiar with grower habits, cropping patterns, pest problems and pest control activities in their area and they combine this knowledge with information from Operator Identification and Permit documents, NOIs and Pesticide Use Report information. Inspections are conducted using the surveillance method because it would be difficult to track down and observe whether a particular farmer, applicator, or farm labor contractor was actually conducting activities that would need to be inspected at a specific time.

The activity based targeting approach for agricultural use inspections results in larger operations being inspected much more often than smaller operations in the county. A pattern where some growers were inspected over fifty times since 1997 while other growers were not inspected at all in the last two years was also observed repeatedly in random file reviews in each county. Large growers may apply more restricted materials or have more fieldworkers than small growers and thus often warrant a greater inspection frequency. However, some CACs acknowledged that this targeting approach, in combination with the enforcement response policy which does not consider frequency of inspection, can discourage inspectors from documenting noncompliance and instead allow on-the-spot compliance. As suggested in comments by one Agricultural Commissioners, an enforcement letter (a policy statement to the counties) from DPR discouraging on-the-spot compliance is one strategy that could help make documenting of noncompliance by CACs more uniform.

County inspection data (Report 5 from 1998/1999, 1999/2000)) also shows variation in the numbers and types of inspections reported from county to county. For example, some of the top agricultural counties in the state conducted 50 Field Worker Safety inspections in one year while counties in the same area with similar agriculture and pesticide use (or even urban counties) conducted well over 100 Field Worker Safety inspections. The team observed that while a certain portion of the growers were selected for records inspections each year in all of the counties there was no apparent selection procedure in place. However, in some counties all of the pest control businesses are scheduled for pest control record inspections each year whereas growers may be inspected only every three years, which is beyond the two year enforcement time frame. In addition, of the random files we reviewed, few of the overall inspections conducted were pesticide records inspections of grower headquarters, resulting in less monitoring of the availability and accuracy of pesticide application-specific information. For example, at the grower establishments mentioned above which were inspected fifty three and thirty six times, in each case only one of these was a grower record audit. While the county data documents that more pesticide records inspections of growers are conducted statewide than fieldworker safety inspections, some counties did more fieldworker safety inspections than grower record audits.

This method of targeting establishments for pesticide use inspections appears to result in certain growers and smaller establishments being inspected less frequently and possibly not even within any two-year period. These establishments are more likely to do their own applications rather than hire licensed pest control businesses. The low compliance documented by DPR among growers may be related to inconsistent targeting within a county and statewide.

Significant variation from county to county in the number and type of inspections conducted and the size of establishments monitored appears to depend not on the agricultural activity, pesticide use, or guidance from the state but more on policies of the local Agricultural Commissioner's office, possible inconsistent reporting, and this observational targeting system. EPA supports DPR's strategy outlined in the draft Compliance Assessment Report of encouraging the counties to increase the number of fieldworker inspections conducted and increasing the number of grower handler use monitoring and headquarter inspections relative to the number of licensed pest control business in counties where grower compliance is low. In addition to increasing the number of these types of inspections, EPA encourages development of workplans that include more specific

approaches to targeting of activity based inspections. For example, negotiated workplans could include prioritization of establishments not inspected in the last two year. EPA also encourages oversight by DPR of county implementation of the Prioritization Plan to help achieve more balanced monitoring statewide and address inspection and compliance issues identified by all the involved agencies.

Enforcement Guidelines

California has developed Enforcement Guidelines (Dated: December 1994) in conjunction with the California Agricultural Commissioners and Sealers Association (the organization that represents the County Agriculture Commissioners, similar to the State FIFRA Issues Research and Evaluation Group, SFIREG). These guidelines set forth an enforcement and penalty scheme that is different from the FIFRA Enforcement Response Policy, which makes it difficult to compare the approaches for assessing penalties.

Violations are divided into two categories: (1.) General Violations: Those violations that do not directly threaten health, property, or the environment and can be described a true "paperwork oversights." (2.) Substantive Violations: Those violations that may threaten health, property, or the environment or violations of key elements of California's pesticide regulatory program. This category is further divided into those violations which created an actual health or environmental hazard or effect and those violations which pose a reasonable possibility of creating a health or environmental hazard or effect.

The Enforcement Guidelines has a decision tree to help determine the appropriate enforcement action for each category described above. For general violations a county can take a compliance action and not issue a penalty as long as a decision report is attached. The decision tree gives some flexibility to the counties for first and second time offenses of substantive possible violations. The choice of action for first or second substantive possible violations is either a compliance action or an enforcement action. A compliance action notifies the person of a noncompliance through a warning letter, a violation notice, inspection forms with one or more noncompliance noted, or a documented compliance interview. An enforcement action would be a civil penalty action. The third violation of a substantive possible violation will automatically result in a civil penalty (enforcement action). Substantive actual violations also require a civil penalty by the second violation.

The determination of what constitutes a subsequent violation (a second violation) appears to be interpreted differently among counties. One county stated that they interpret subsequent violation to be a violation within the same section and not the specific subsection. For example, a decontamination violation followed by a violation of personal protective equipment requirements would be considered a subsequent violation. Another county stated that a subsequent violation of a different section may not be considered a subsequent violation.

Penalty structure

The statutory requirements of FIFRA provides for penalties of up to $5,500 for commercial applicators. Under FIFRA private applicators or other individuals must receive a notice of warning for first time violations, regardless of the severity of the violation; subsequent violations can be assessed a penalty of up to $1,100. California's Code of Regulation (CCR) Chapter 3, Section 6130 provides for penalties up to $1,000 which can be assessed on any individual and for their first violation.

When a county proceeds with an enforcement action, agriculture civil penalties are divided into the following three categories: minor ($50-150), moderate ($151-400) and serious ($401-$1000). General violations usually fall under minor, whereas substantive possible (for example, not wearing proper gloves) could be minor, but more likely would be moderate or

serious. Substantive actual violation can only be assessed fines at the moderate or serious range. Within each penalty range the counties have the flexibility of determining the amount of penalty.

The counties have other enforcement tools available for immediate action. Inspectors can issue "Cease and Desist Order" under Section 13102 or "Stop Work Order" under Section 11737. A Cease and Desist Order is used to stop an application or action that can cause environmental or harm to human health. A Stop Work Order is used when there is a dangerous or unsafe work environment. We observed a Stop Work Order during one of the County inspections. Counties reported a total of 194 Cease and Desist orders in 1999/2000.

Region 9 review of enforcement response

The system in California that delegates most of the use inspection responsibility to County Agricultural Commissioners results in a unique challenge to EPA's ability to evaluate appropriateness of enforcement action in support of the State's primacy under Section 26 of FIFRA. EPA can not always know the enforcement disposition of inspections and sometimes it is not evident how the Department has assessed the County's response. EPA's ability to review use inspections is hindered without the ability to look at county inspections or to determine if a facility has prior violations, which is currently available only at the county level. The county visits were thus critical to directly review enforcement files.

The Assessment Team reviewed enforcement files related to violations of the worker safety regulations in the three counties. All of 42 cases with agricultural civil penalties related to violations of the worker safety regulations that the team reviewed were assessed penalties in the moderate ($151-$400) or serious ($401-$1000) range. None of the cases were determined to be minor violations (that is, categorized as 'general' paperwork violations or violations that pose no health or environmental hazard). While the flexibility of the Enforcement Guidelines could potentially result in violations of hazard communication and posting requirements being treated as minor paperwork violations (the guidelines do not specifically identify which violations are general or substantive and leaves interpretation to the county) this was not observed. In addition, the counties we evaluated utilized the full range of penalties available within each category. Of these 42 penalty cases reviewed, some were assessed penalties at the high end of the range and others were at the low range.

One limitation with the county-based enforcement system is that to take an enforcement action (issue a fine), the three violations must be within the same county even though the individual or company may be operating in multiple counties. This is another area where DPR's overview system is critical to an effective enforcement response. DPR uses the statewide Agricultural Civil Penalty report which lists violations by code and establishment to identify repeat violators. Cases involving repeat violators that are known to the County Agricultural Commissioner but are not responsive to fines, can be forwarded to DPR for licensing action. Recently the state of California obtained authority to take civil penalty actions in misuse cases where there are multiple jurisdictions, high level/priority investigation, or inappropriate action by the county. Prior to the legislation all misuse civil penalty actions were taken by the counties and the state could only take cases through the District Attorney or Attorney General offices. (The state has always had the ability to take a licensing action against certified applicators, who have a long history of noncompliance.)

Region 9 cannot evaluate the overall adequacy of the counties enforcement response without more thorough analysis of statewide data. (The last available Agricultural Civil Penalty Report with statewide data by county and code is from 1996/1997. The Agricultural Civil Penalty Report for fiscal year 1999-2000 is expected in the coming months.)

Region 9 supports DPR's strategies outlined in the Compliance Assessment Report to ensure consistent and adequate penalties statewide. In particular, the Enforcement Branch will review the Enforcement Guidelines to determine the effectiveness of this policy and to propose improvements where needed. DPR will also work with the CACs to prioritize appropriate enforcement and compliance actions and provide refresher training on using the guidelines to assure consistent statewide implementation. Finally, Region 9 also expects that the enforcement tracking system that will unite inspection data with enforcement data will dramatically improve access to information.

G. Complaints and Pesticide Illness Reporting

The state of California has procedures for receiving, tracking, responding, and analyzing pesticide complaints and illnesses related to pesticide exposure.

Procedures for handling general complaints

The County Agricultural Commissioners have primary responsibility for investigating complaints related to pesticide exposure, however complaints from the general public or agricultural workers do come in to DPR field offices, to DPR Headquarters and to EPA Region 9 Pesticide Program staff. If a complaint is made to Region 9 or DPR, staff use DPRs Complaint Referral form to communicate the complaint back to DPR who in turn refers it back to the county for investigation.

California's Pesticide Safety Information Series (Hazard Communication for Employees working in Agricultural fields) A-8 (for handlers) and A-9 (for field workers) include sections on 'Your Rights'. This section outlines worker's legal rights to file complaints about dangers at work without being punished or fired and states that their boss will not be told who filed the complaint. Communicating the content of the A-8 and A-9 are part of the required pesticide training program. The A-9 directs workers to the CAC, local legal aid, worker's rights office, union or DPR. The Commissioner's have been directed to ensure anonymity of complainants in investigating reports.

DPR established a system for each county to track complaints using a state form. Some of the county district offices use the form and provide this information to the HQ county office on a monthly basis. We reviewed the complaints in three counties and found some variation in procedures for tracking complaints. Some of the counties used the state form and maintained a log of each complaint received, though not all of the counties had an official log. One county, for example, maintained a separate file drawer for open compliant investigations. These different systems did not appear to make a difference in the response and investigation of complaints.

The Assessment Team reviewed two year's worth of complaint investigation files and observed that a relatively small number of complaints (18 out of 44) were related to worker protection regulations. In addition, few complaints came directly from agricultural workers, though we did see complaints from residents, advocacy groups, or medical care facilities on behalf of workers. A review of the 18 complaint investigation files involving agricultural workers in three different counties revealed consistency in compliant investigation reports. In each county the complaints were all investigated and well documented in written reports with transcriptions of interviews and narrative explanations of findings. DPR tracks these complaints and will provide Region 9 with sufficient information about actions taken in response to a particular complaint upon request.

Priority/High level episodes

The Interpretive Rule for Section 26 and 27 (48 F.R. 3, 405- January 5, 1983) sets forth the requirements for determining what is a significant violation. This definition is important because significant violations are those cases which EPA must refer to the state and also they are those cases where EPA may bring its own action. The Interpretive Rule states: *"To determine which alleged violations are sufficiently significant to warrant formal referral and tracking, ... the regions, in consultation with each State, will identify priority areas for referral."* Region 9 has met this obligation by negotiating the criteria with each State[7].

In fiscal year 2001, the definition of 'priority' for referral in California was reestablished through the three-way Cooperative Agreement between EPA, DPR and the Counties. A priority investigation (or high level episode) having a human health effect is defined in California as:

> "*Death, serious illness (any pesticide illness requiring hospital admission as 'in patient' status) or any injury or illness involving five or more persons which may have resulted from a single pesticide episode*" (See Attachment B).

Prior to this adjustment, for an episode to be considered 'priority' it had to involve 24-hour hospitalization for treatment and recovery, not just in-patient status or observation. The Cooperative Agreement includes a commitment to review this new criteria after one year to determine the impact on the reporting and response systems.

If a complaint is related to an episode that meets certain criteria, EPA is notified and also informed about the ultimate enforcement action that is taken. All Region 9 States report high level episodes (defined by criteria related to human, animal or environmental effects and economic loss) to the EPA Project Officer as part of the Cooperative Agreement. California sends a fax to EPA 24 hours after the county notifies DPR of a pending priority investigation. After the investigation is complete and all enforcement actions are taken, a close out report is sent to EPA.

California's overall number of priority pesticide episodes is high relative to other states. This fact is attributable to the significantly larger agricultural industry in California and the more developed regulatory infrastructure that includes mandatory reporting by medical professionals of pesticide related illnesses. For fiscal year 2000, California reported 59 high level episodes. 26 high level episodes, or 45% of the total, were actual suicides. Agricultural workers were involved in 13 of the high level episodes. All high level episode reports are reviewed by the EPA Project Officer and Enforcement Liaison.

Mandatory pesticide illness reporting - the Pesticide Illness Surveillance Program (PISP)

State law (California Health and Safety Code, section 105200) requires physicians to directly report any suspected or confirmed pesticide illness to the local health officer by telephone within 24-hours of the discovery. The County Health Office will then notify the local Agricultural Commissioner's office.

15-30% of cases in the Pesticide Illness Surveillance Program (the case tracking system managed by DPR) are reported directly by physicians through this established reporting system. The other 70-85% of cases are added after the fact from

[7] In the other Region 9 states and tribal areas any confirmed pesticide illness requiring medical treatment (but not hospital admission as 'in patient' status) is considered a 'High Level Episode' and reported to the Regional office for tracking as part of the cooperative agreement.

pesticide related cases reported to the Department of Industrial Relations by doctors submitting reimbursement for worker's compensation claims. DPR also has a contract with the poison control center to receive reports of potential pesticide poisoning cases. All cases are investigated for pesticide use violations by the Counties and for potential health effects by the Department of Health.

The Pesticide Illness Surveillance Program (PISP) data is compiled into an annual summary report available on DPR's Web site. The last compilation of data available to the public is from 1999. Confirmed cases of pesticide poisoning range from 1,593 in 1997 to 1,201 in 1999.

Region 9 recognizes that analysis of the PISP data is complex and beyond the scope of our program at this time. As part of the Cooperative Agreement activities in fiscal year 2001, DPR's Worker Health and Safety Branch (WH & S) committed to three projects related to the PISP data. One project focuses on improving pesticide episode investigation reports. For this project, WH&S scientists evaluated 376 investigative reports to determine the adequacy of the information provided and to evaluate the investigator's interview methods and the time between the exposure and notification of the investigators. This project will continue through 2002 with training for the county inspectors on conducting investigations. A second project focused on evaluating PISP data related specifically to field-posting regulations. This project was initiated, in part, to evaluate whether any pesticides had reduced protection in California after the full implementation of the federal WPS. For the third project, WH&S analyzed pesticide-related illnesses of select mixer/loader/applicators received by the PISP in 1994 and 1998. They looked at cases that were categorized as 'Definitely, Probably or Possibly Attributed to Exposure to Pesticides used for agricultural purposes'. Draft reports for all three projects have been submitted to Region 9 and are currently undergoing peer review. Final reports will be available for each project in the Fall of 2001.

H. WPS Compliance Assistance, Outreach and Training

Compliance Assistance to the regulated community

Staff from DPRs Enforcement Branch and Worker Health and Safety Branch conduct outreach and compliance assistance activities on an ongoing basis. In fiscal year 1999/2000 DPR staff conducted 29 compliance assistance activities (including meetings with grower organizations, Spanish radio presentations, local farm worker committees and public agencies), all of which included information on the Worker Protection Standard. They also held five regional meetings with County Agricultural Commissioners and industry representatives that focused on concerns of farm worker advocates in particular. In fiscal year 2000/2001, DPR conducted education programs in three counties for growers and CACs on regulations and new technology related to personal protective equipment and designed a training manual to provide more guidance to industry on establishing pesticide handler training programs as required under state regulation.

The Worker Health & Safety Branch produces and updates the Pesticide Safety Information Series outlining safety requirements for pesticide handlers and workers in agricultural settings and develops general fact sheets and updates on the worker safety regulations. The DPR Home page includes most of these materials and other information on compliance with the worker protection and other pesticide regulations.

In response to the findings in DPR's Compliance Assessment Report which documented low compliance with worker safety regulations, both branches will focus on improving compliance with pesticide safety requirements. The report specifically recommends presentations to agricultural employers on fieldworker safety and pesticide handler safety requirements.

Many counties have offered free training to growers/operators on how to comply with various elements of the pesticide regulations, including the worker safety regulations. Each county has developed their own training and outreach programs and report monthly activity to DPR (see Appendix B). For example, some counties have developed Best Management Practices and training for particular pesticides, such as sulfur. Fresno County has translated educational materials on complying with the pesticide regulations into Hmong in response to the growing community of minority growers and farm workers. Since 1975, more than 110,000 Hmong refugees from Southeast Asia have settled in the United States and the largest number are in California.

Pesticide Safety Training Programs

DPR's Licensing and Certification Program is responsible for examining and licensing pest control operators, aircraft pilots, pest control dealers and brokers, and pest control advisors; and for certifying pesticide applicators who use or supervise the use of restricted pesticides.

The state has a signed an agreement with EPA to participate in the training verification program for field workers but they do not participate in the handler card verification program because of more extensive state regulations. DPR has issued 785,436 worker training verification cards since the program was initiated in 1995. These cards are issued by qualified instructors to workers that they have trained. According the DPR, approximately 33% of the field worker operations observed during the recent compliance assessment used the U.S. EPA training cards.

The state has approved nine instructor-training programs to qualify trainers of pesticide handlers and field workers. These programs are in Winters/Davis (University IPM program), Fresno (Cooperative Extension Service, University of California), Oxnard (State Compensation Insurance Fund), Ventura (County Agricultural Association Insurance Services, Inc.), Stockton (Daugherty & Company), Salinas (Monterey County Agricultural Commissioner's office and D'Arrigo Brothers). While trainers from these programs are authorized to operate anywhere in the state, there are not many instructor trainer programs offered north of Sacramento. Instead, field worker and handler pesticide safety training is conducted, as allowable, by owner-operators currently certified as applicators of restricted use pesticides or otherwise qualified to conduct training. At the end of 2000, there were 27,561 certified private applicators and 29,345 certified commercial applicators who are qualified to train workers and pesticide handlers.

Outreach to the farm worker community and health care providers.

In response to *Field's of Poison*, a report published in 1999 by a number of advocacy organizations critical of the state program, DPR has increased contact with worker advocacy groups. In 2000, DPR held two meetings with worker advocates to discuss pesticide enforcement and health and safety issues impacting farm workers. The 2002 cooperative agreement work plan includes a commitment to meet at least twice with worker advocates to discuss worker protection issues.

DPR is also involved in a number of projects to strengthen the link between people involved in pesticide regulation, health care providers who see potential cases of pesticide exposure, and farmworkers and their families. At a local level, the San

Diego County Agricultural Commissioner sponsors a monthly meeting on farmworker health issues. Regular participants include representatives from county health centers, the Farm Bureau and other growers associations, County Health and Human Services, and DPR. The primary objective of the group is to identify methods to communicate with physicians and health care providers, growers and farm workers about pesticide illnesses. In another local example, DPR received a grant from Region 9 to coordinate a focus group in Watsonville (Monterey County, California) to address farmworker and pesticide issues. Salud Para La Gente, a local rural health clinic, coordinates participation in the series of meetings to prioritize pesticide safety issues of concern and develop educational materials in a medium and education level. These meetings will continue into Fall 2001.

DPR's WH&S has a contract with the University of California, Davis, for a medical consultant who responds to approximately 125 calls per year from the public and health care providers about pesticide-related illnesses and injuries or other health related pesticide issues statewide. The consultant also review reports of pesticide illnesses and injuries, makes recommendations on pesticide worker safety regulations, assists in investigations related to pesticide exposure and provides training and presentations to other health care providers, growers' professional associations and other relevant conferences. Another example of cross-agency cooperation is DPRs participation in regular meetings with the Occupational Health Branch of the California Department of Health Services about the Sentinel Event Notification System (SENSOR) funded through NIOSH. The meetings focus on working efficiently together on pesticide illness surveillance.

APPENDIX A: COMPARISON OF FEDERAL WORKER PROTECTION STANDARD REGULATION AND CALIFORNIA WORKER HEALTH AND SAFETY REGULATION

1. **Notification and Posting of Pesticide Application** -
40 CFR Sections 170.120 Notice of application (fieldworkers); 170.124 Notice of application to handler employees; 170.232(b) Knowledge of labeling and **site-specific information**; and 170.224 Notice of applications to agricultural employers.
California Code Title 3 Division 6 Sections 6618 Notice of Applications and 6776 Field Postings

2. **Emergency Medical Assistance** -
40 CFR Sections 170.160 Emergency assistance (workers) and 170.260 Emergency assistance (handlers)
California Code Title 3 Division 6 Sections 6766 Emergency Medical Care (**emergency assistance**/medical care facility knowledge for fieldworkers) and 6726 Emergency Medical Care (**emergency assistance**/posting of medical care facility for handlers)

3. **Application and Entry Restrictions** -
40 CFR Sections 170.112 Entry restrictions; 170.110 Restrictions associated with pesticide applications (workers); and 170.210 Restrictions during application (handlers)
California Code Title 3 Division 6 Sections 6762 Field Work During Pesticide Application;6772 Restricted Entry Interval; 6770 Field Reentry After pesticide Application; and 6774 Restricted Entry Interval Adjustments (6772 & 6774 strengthen federal requirements).

- **Personal Protective Equipment** -
40 CFR Sections 170.112 Entry restrictions and 170.240 Personal protective equipment
California Code Title 3 Division 6 Sections 6732 Change Area; 6738 Personal Protective Equipment; 6771 Requirement for Early Entry Fieldworkers; and 6736 Coveralls (California requirement for employees to wear coveralls for all "danger" or "warning" pesticides)

- **Decontamination** -
40 CFR Sections 170.150 Decontamination (workers) and 170.250 Decontamination (handlers)
California Code Title 3 Division 6 Sections 6734 Handler decontamination facilities and 6768 Fieldworker decontamination facilities

- **Pesticide Safety Information** -
40 CFR Sections 170.122 Providing specific information about applications; 170.135 Posted pesticide safety information (posting/workers); and 170.235 Posted pesticide safety information (posting/handlers).
California Code Title 3 Division 6 Sections 6761 Hazard Communication for Field Workers (Pesticide Safety Information Series leaflet A-9) (general safety information); 6761.1 Application-specific Information for Field Workers (central posting of pesticide specific information); 6766 Emergency Medical Care (emergency assistance/**medical care facility *knowledge*** for fieldworkers); 6723 Hazard Communication for Pesticide Handlers (Pesticide Safety Information Series leaflet A-8) (general safety information); 6723.1 Application-specific Information for Handlers (central posting of pesticide specific information); and 6726 Emergency Medical Care (emergency assistance/***posting*** **of medical care facility** for handlers)

- **Pesticide Safety Training** -
40 CFR Sections 170.130 Pesticide safety training for workers ;170.230 Pesticide Safety Training for handlers; and 170.232 **Knowledge of labeling and site-specific information** (No corresponding CA code for 170.232(a)). *California Code Title 3 Division 6 Sections* 6764 Fieldworker Training and 6724 Handler training.

- **Retaliation** -
40 CFR Section 170.7 General duties and prohibited actions

California Code Title 3 Division 6 Section 6704 Application of Labor Code

APPENDIX B: INSPECTION, ENFORCEMENT, AND COMPLIANCE ASSISTANCE ACTIVITIES

Overview inspections conducted by DPR

Source: FTTS: Enforcement projections and accomplishments, 5700 forms.

	1998/1999 Oct. 98-Sept 99	1999/2000* 3/4 year	2000/2001 July 00-July 01
Total pesticide related inspections	525	396	516
Agricultural use (includes WPS)	138	114	136
Ag use follow up (includes WPS)	22	15	4
WPS inspections	55 = 10% of total = 40% of ag. use	64 = 16% of total = 56% of ag use	100 = 19% of total = 7% of ag use
High Level/Priority Episodes		53 (49 with human effects)	59 (13 ag worker)

* FY99 totals are for 3/4 of the year due to transition to state fiscal year schedule (July - June).

Worker safety inspections conducted by County Agricultural Commissioners

Source: 1998/1999 and 1999/2000 Pesticide Regulatory Activities Summary (Report 5)

	1998/1999	1999/2000	2000/2001 not yet available
TOTAL NUMBER OF INSPECTIONS THAT MONITORED WPS ELEMENTS	**22,271**	**21,697**	
	Inspections /noncompliance	Inspections /noncompliance	Inspections /noncompliance
PESTICIDE USE MONITORING INSPECTIONS (not including preapplication, equipment or inspections identified as 'other')	**14,219 / 5,001**	**13,964 / 4,921**	
Applications (fumigation and nonfumigation, not including commodity)	10,140 / 4,118	9,952 / 3,952	
Mix/Load Property Operator Pest Control Businesses	4,079 / 883 (2,315 / 635) (1,764 / 248)	4,012 / 969 (2,130 / 680) (1,882 / 289)	
PEST CONTROL RECORDS INSPECTIONS	**5,674 / 3002**	**5,628 / 3,017**	
Business Records Business/Hqtr./Emp. Safety Grower/QAC/Hqtr./Safety	1,138 / 526 944 / 310 3,592 / 2,166	1,051 / 272 980 / 265 3,597 / 2,480	
FIELD WORKER SAFETY INSPECTIONS	**2,324 / 528**	**2,105 / 544**	

ENFORCEMENT ACTIONS			
Agricultural Civil Penalties	653	688	
Referrals to DPR	2	1	

Other activities conducted by County Agricultural Commissioners

Source: 1998/1999 Pesticide Regulatory Activities Summary (Report 5)

	1998/1999	1999/2000	2000/2001 not available
COMPLIANCE ACTIONS			
Warning letters	4,268	4,670	
Cease and Desist Orders		194	
Documented Compliance interviews	164	108	
RESTRICTED MATERIALS PROGRAM Ag. Permits Issued			
Total Number			
Number of Denials	45,231	39,382	
		620	
	836		
Notice of Intents Reviewed	213,330	194,398	
Number of Denials	1,791	1,510	
Private Applicators Certified	16,145	10,215	
Number of Denials		408	
	360		
LICENSE/CERTIFICATE/REGISTRATION/ I.D. NUMBERS			
Pest Control Aircraft Pilot	1,480	1,460	
Farm Labor Contractor	1,769	1,724	
Operator Identification (I.D.) Numbers	10,690	10,975	
TRAINING AND OUTREACH			
Licensees			
Total Sessions		294	
Total Persons Attending	343	12,224	
Growers/Operators	13,469		
Total Sessions		562	
Total Persons Attending		13,770	
Public Education	626		
Total Sessions	14,316	157	
Total Persons Attending		3,642	
Other (Identify in "Remarks")			
Total Sessions	144	215	
Total Persons Attending	4,504	2,975	
Totals			
Total Number of Sessions		1,227	
Total Persons Attending	176	32,611	
	3,534		

	1,289 35,823		

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