

Mariposa County Pesticide Use Enforcement Program

Multi-Year Work Plan for 2013, 2014, and 2015

Mission Statement:

To promote the safe use of pesticides in Mariposa County by regulating their use to protect workers, the public's health and safety, and the environment.

Pesticide Use Enforcement Program Description

PERSONNEL and RESOURCES

- Staffing
 - 1 Agricultural Commissioner/Sealer
 - 1 Agricultural & Standards Program Technician
 - 1 Clerical staff part time (0.5 staff year)
- Full time equivalent (FTE) staff dedicated to Pesticide Use Enforcement (PUE) per year (includes management, supervision, technician, and clerical hours)
 - Historical
 - 1.0 FTE/Year
 - Projections
 - 2013 1.5 FTE/Year
 - 2014 1.0 FTE/Year
 - 2015 1.0 FTE/Year
- Assets
 - All personnel have vehicles available for their use
 - All personnel have a computer workstation at their desk

PERMIT ISSUANCE ANNUAL WORKLOAD ANALYSIS

- Permit Issuance
 - Average number of Restricted Materials Permits (RMP) ~ 19
 - Private applicators certified ~ 3
 - Average number of operator identification numbers (OIDN) ~ 51
 - Notices of intent (NOI) ~ 13 (2 denied)
 - Registrants
 - Pest control advisors (PCA) ~ 14
 - Pest control businesses (PCO) ~ 18
 - Pilots ~ 1
 - Farm labor contractors ~ 1
 - Structural pest control operators ~ 36
- Local Conditions:
 - Significant Crops Grown:
 - Livestock, wine grapes, tree crops (apples & olives), and rangeland
 - Sensitive Sites:
 - Areas adjacent to federal lands (U.S. Forest Service, National Park Service)
 - Locations at the ag/urban interface
 - Waterways (dependent on aquatic toxicity of pesticides)
 - Endangered species habitat

- Workload trends: We expect the workload in permit issuance to remain static or decrease for the following reasons:
 - Decreased use of pesticides, particularly restricted use materials, by agricultural producers
 - Increased regulations for ground and surface water protection, particularly conditional agricultural waivers on irrigated lands.
 - Decreased number of agricultural producers in general due to urbanization of rural areas
 - Increased number of crops grown without pesticides, with reduced pesticide use, or organic/sustainable agriculture

I. RESTRICTED MATERIALS PERMITTING:

A. Current status:

Permit Evaluation:

- Approximately 19 restricted materials permits are issued annually
- Majority of permits are issued for phenoxy herbicides for poison oak/brush control, strychnine for vertebrate pest control, and carbaryl for grasshopper control
- Permits are only approved and issued by licensed and trained staff
- Permittee is required to pass private or qualified applicator certification exam
- County administers private applicator certification or renewal exams on an individual basis by appointment
- Testing takes approximately one and a half hours
- Permit issuance takes approximately two hours
- Permits are entered into the CalAg Permit system and printed out for signature
- Permits are issued to the operator of the property or authorized representative (either an employee, farm management firm, PCO, or PCA)
- Letter of authorization is required for issuance or signature of other than the operator of the property
- Permits are valid for one year, expiring at the end of the calendar year in which they are issued
- All agricultural permits are site specific and all permittees are required to review maps through the CalAg Permit system showing the site locations listed on the permit
- Sites are identified by a 4-digit alpha numeric system, typically the letters identifying permittee(s) and numbers identified with a location on the map
- Site Evaluation Process: Inspectors issuing permits are familiar with local areas and conditions and may visit sites depending on level of pesticide hazard and the sensitivity of the proposed site. This approach allows for consistent customer service, familiarity with potential hazards, and knowledge of established agricultural practices within the county.
- Hazard Evaluation Process: This process involves the review of sensitive sites, endangered species areas (PRESCRIBES – California Department of Pesticide Regulation (CDPR) Endangered Species Project site), use site locations, and the hazard (or potential hazard) identified. Again, the familiarity with the county, local agricultural practices, and the applicators are a major part of the evaluation process.
- Handouts reviewed with permittee at time of issuance:
 - Mariposa County pesticide evaluation, use requirements, and conditions

- Grower Information form
- General Pesticide Use information
- Commodity, Pesticide, and Application specific information requirements
- Personal protective equipment (PPE) requirements
- Respiratory Protection regulations
- Pesticide Safety Information Series (PSIS) Agricultural or Non-Agricultural
- California restricted materials list
- Pesticide Use Compliance Guide for Employers and Businesses
- Employees Handling Pesticides information
- Training Record form
- Endangered Species bulletin information (PRESCRIBE)
- Notice of intent policy, form, and instructions
- Pesticide use report (PUR) form and instructions
- CalAgPermits Electronic Pesticide Use Reporting
- Irrigated lands waiver information if applicable
- Permit/certification renewals usually occur December – March depending on the commodity
- Two continuing education seminars per year are scheduled, with 5 CE hours per seminar, including at least 2 hours of laws and regulations
- For renewals, prior year permit files are reviewed for PURs and inspections to determine any problem areas
- Approximately 13 NOIs are received each year
- 24 hour NOIs are required
- NOIs are accepted by telephone, fax, or in person and are monitored between 8 am – 5 pm, Monday – Friday
- After hours, the NOIs are picked up by voice mail or fax. No NOIs are picked up by staff on the weekend

Site Monitoring Plan Development

- Approximately 185 annual sites
- Majority of NOIs are for the following restricted materials/commodities:
 - Phenoxy herbicides for forest, primarily brush and poison oak control
 - Carbaryl for grasshopper control
 - Aluminum phosphide and strychnine for vertebrate pest control in wine grapes
 - Zythor and Vikane for structural fumigations, less than 2 per year
- NOIs are reviewed by licensed staff -- Agricultural Commissioner
- Sites to be evaluated are based on:
 - Hazard of pesticide use by commodity
 - Aerial applications
 - Applications near roads and residences
 - Environmental conditions
 - Employee handlers
 - Compliance histories
- Pre-application site inspections are performed on at least 5% of NOIs submitted

Strengths

- Staff experience and knowledge of local conditions help to reduce substantial adverse environmental impacts
- Historically there have been few to no instances of permit denials due to potential adverse environmental impacts
- Issuance of annual permits allows for regular review of permits, reducing chances for potential adverse impacts
- Specific permit conditions are required for several types of restricted materials used
- Maps are required for all permits issued through the CalAg Permit system, both RMPs and OIDNs

B. Planned improvement:

- Correct any deficiencies identified in the CDPR Performance Evaluation
- Continuous review of existing sensitive sites and the identification of new sensitive sites
- Ensure that every non-agricultural use permit holder has a site evaluation or a use inspection at least once per year
- Continuous training of staff for efficiencies related to the CalAg Permit system

C. Goals and projected deliverables:

- Ensure that the evaluation process for restricted materials permit applications and NOIs is complete and thorough, taking into consideration all aspects of risk assessment through the use of updates and improvements to permit information necessary to make sound determinations on adverse effects.
- Ensure that site monitoring for restricted material use is effective, preventative, and comprehensive, taking into consideration the following risk factors:
 - Pesticide hazards associated with phenoxy herbicides, aluminum phosphide, strychnine, and carbaryl
 - Local conditions – particularly ag-urban interface areas
 - Compliance histories
- RMPP program was upgraded to the web-based CalAg Permit system in 2011
- All existing restricted material maps have been updated with new field digitized GIS sites in the CalAg Permit system to assist in accuracy when evaluating permits for adverse environmental and health effects.
- Review County GIS parcel data prior to issuing new restricted material permits to assess potential adverse effects.
- Continue to review permits that have restricted materials that have not been used for past 5 years, and work with permittees to eliminate such pesticides. This is an on-going program, which was first implemented in 2007.
- Use the pesticide pre-application site inspection, compliance actions, and NOI denials to increase compliance with 24 hour NOI permit requirement.
- Pre-application site inspections will be performed on a minimum of 5% of the NOIs.
- Correct any deficiencies identified in the CDPR Performance Evaluation

D. Measures of success:

- Continue year end review all restricted material permit files for the following:
 - Site specific maps
 - Elimination of pesticides not used for the last 5 years
- During each year, review the Pesticide Regulatory Activities Monthly Report (PRAMR) to determine if the required 5% pre-application site inspections were performed
- Correct any deficiencies identified in the CDPR Performance Evaluation
- Change in the number of permit and notice of intent denials
- Change in permit issuance business process for efficiencies and permit holder satisfaction

II. COMPLIANCE MONITORING:

A. Current status:

Targeted Field Inspections

- Sensitive and high profile sites
- Applicators with a history of compliance problems
- Government operations & applications
- Structural pest control operators

Comprehensive Inspection Plan

- Inspections are performed by licensed and trained staff:
- Inspections are performed Mondays – Fridays
- Targeted inspections are prioritized by:
 - Applicator compliance history
 - Employee handlers
 - Type of application site and pesticide used
- Majority of application inspections are concentrated on weed control applications, applications on public property, and structural pest control applications.
- 2013 focus to improve monitoring of field activities

Strengths

- The size of the agricultural pesticide application areas, and the experience of the pesticide enforcement staff allows for familiarity with pesticide usage, applicators, and commodity applications in the county.
- A targeted inspection plan that addresses the following components:
 - Violation history
 - Potential for worker health & safety violations
 - Employee handler applications
 - Types of restricted materials applied
- The frequency of headquarters inspections depends on the level of non-compliances. This schedule will allow for effective identification and enforcement action of non-compliances.
- Low level of pesticide related incidents, reducing the need for non-targeted compliance driven

Investigation Response and Reporting

- Continue to investigate all pesticide complaints and prepare a report for the record.
- Continue to maintain a pesticide complaint/investigation log, which is available for review by the enforcement liaison.
- Current Investigation Trends:
 - We have few pesticide complaints or investigations annually, and those generally take place in the agriculture/urban interface or on federal property.
 - Questions regarding right-of-way sprays
 - Odor complaints
- Pesticide-related investigations are conducted by trained staff:
 - Investigations and complaints are received by the pesticide enforcement staff.
 - All complaints or incidents that may be related to pesticides receive a response, and results are documented on complaint forms or investigative reports
 - All investigation and complaint reports are reviewed and approved by the Agricultural Commissioner once complete
 - All investigations are completed in a timely manner, and include all necessary information and supporting documentation.

Strengths

- Routing of the investigation/complaint goes directly to the Agricultural Commissioner. Without any intermediate personnel, the reports are processed in a timely manner
- Low number of investigations and complaints received by the county allows for the ability to respond and complete investigations and reports in a timely manner
- Staff keep current with investigative training
- No areas of investigation response or reporting were identified as needing improvement based on the last two fiscal year CDPR effectiveness evaluations

B. Planned improvement:

- Focus inspection activity in non-compliance areas
- Improve inspection completeness and quality control
- Follow-up any application inspections with a pest control business or grower headquarters inspection
- Correct any deficiencies identified in the CDPR Performance Evaluation

C. Goals and projected deliverables:

- Ensure that compliance monitoring is effective and comprehensive, ensuring the safety of pesticide handlers, fieldworkers, the public, and the environment through the use of an inspection strategy that has a measurable effect on compliance improvement
- Maintain implementation strategy of current investigative response with regard to timely initiation and completion of all priority and non-priority investigations.
- Maintain implementation strategy of current investigative response with regard to use of existing violation analysis and high quality in investigative thoroughness and report accuracy.
- Maintain frequency of inspections for headquarters

- Maintain targeted inspections for situations where violations have occurred in the past or have the potential to occur
- Increase targeted inspections when necessary for repeat violations
- Increase surveillance activity hours as possible
- Ensure timely episode investigation initiation and completion
- Ensure that investigation reports are accurate and complete

D. Measures of success:

- Review of PRAMR to determine if there has been a decrease in the number of pesticide use and records inspections for targeted components
- Review non-compliances resulting from targeted inspections
- Establish baseline of goals and deliverables
- Review the number of returned/incomplete investigation reports
- Review reversed decisions by appeals if any due to lack of supporting information

2013 - 2015 Focus to improve compliance monitoring

- Continue to focus on government and commercial applicators conducting pesticide applications on public lands as well as commercial crops – particularly with regard to the use of PPE and compliance with the label.

III. ENFORCEMENT RESPONSE:

A. Current status:

- Current Year Projections
 - Compliance/ enforcement actions
 - 16 Warning letters & notices of violation (NOV) primarily for late PURS
 - 1 Compliance interview
 - 9 Notices of Proposed Action (NOPA) – Agricultural civil penalties

Enforcement Response Evaluation

- All actions are discussed with the Agricultural Commissioner prior to implementation (with the exception of violation notices checked off at the time of inspections on inspection forms)
- Compliance actions are prepared by licensed staff
- Enforcement actions are prepared by licensed staff
- All actions are reviewed and signed by the Agricultural Commissioner
- Enforcement Response Regulations (CCR 6128) are followed to determine most appropriate action when violations are identified
- Pesticide use report violations receive warning letters, NOVs, and civil penalty actions as warranted.
- For civil penalty actions, the Enforcement Guidelines (CCR 6130) will be followed
- All NOPAs will provide respondents with detailed information on alleged violations, proposed fine level, Preparing for Your Administrative Hearing pamphlet, and their right for an opportunity to be heard
- All civil penalty actions are forwarded to CDPR EBL for review prior to issuance

- Copies of inspection reports and actions are maintained in RMP, OIDN, or business files

Strengths

- Limited chain of command within our office allows for timely review and approval of actions
- Copies of reports and actions maintained within individual files allow for review of violator's history and selection of most appropriate action for the violation
- Use of enforcement actions as tools to improve compliance

B. Planned improvements:

- Arrange for staff to receive CDPR or CAC training related to enforcement and investigations
- Uniform enforcement
- Ensure investigations are complete per CDPR investigation procedures
- Confer with assigned CDPR EBL on cases to assist with achieving appropriate and consistent enforcement response
- Correct any deficiencies identified in the CDPR Performance Evaluation

C. Goals and projected deliverables:

- Provide a swift, consistent, and fair response to non-compliances that results in future compliance by the respondent while working to maintain the respect of the regulated industry as well as maintaining the integrity of our office.
- Immediate notification and coordination with CDPR EBL on all U.S. EPA Region 9 priority cases, sensitive or high level incidents and complaints for guidance on investigation and enforcement response
- Improve completeness of investigations
- Outreach to the regulated community through CE workshop presentations that emphasize repeated violated code sections such as: use in conflict with the pesticide label, pesticide use reporting, CEQA, and pesticide use recommendations

D. Measures of success:

- Review of individual RMP, OIDN, and business files to verify decrease in repeat non-compliances by violators resulting from enforcement response plan
- Review of enforcement response to determine if effort was directed at violations that post the greatest risk to people or the environment
- Improvement in the quality of the investigations and achievement of consistent enforcement response

2013 - 2015 Focus to improve enforcement response

- Continue to consider other enforcement options including denying RMPs, licensee registrations, NOPAs, or involving the county district attorney for the more egregious cases. Historically Mariposa County has had a relatively compliant agricultural industry, and the types of violations have not been of the magnitude reported in other parts of California.

IV. COUNTY PRIORITIES AND OTHER PESTICIDE REGULATORY ACTIVITIES:

- a. Structural inspection activity of Branch 1, 2, and 3 applications:**
 - targeted headquarters inspections as well as site monitoring of structural fumigations as possible
- b. Training of county staff on pesticide laws and regulations, CDPR policy, and compendiums:**
 - continue to evaluate our training process and develop training methods, including PUE core program elements, access to training modules, and CDPR /Structural workshops.
 - staff continues to attend training sessions on structural workshops, Hearing Advocates, Tribal communication and interaction, and Phase II soil fumigant labeling
 - utilize CDPR staff and resources in the staff training process.
- c. Compliance with school pesticide use reporting (FAC 13186 and 3CCR 6625):**
 - outreach annually to all schools in Mariposa County, including charter schools, with respect to School IPM workshops, training, and updates
- d. Regulatory outreach and education:**
 - CE workshop presentations that emphasize repeated violated code sections such as: use in conflict with the pesticide label, pesticide use reporting, CEQA and pesticide use recommendations, and pesticide use enforcement violations in the county
 - two continuing education seminars per year, with 5 CE hours per seminar, including at least 2 hours of laws and regulations
 - recent seminar topics: Forest Pest Management; Invertebrate Pests Identification and Management; Climate Change and the Challenge to Invasive Pest Management; and Challenges for Rangeland Management: Invasive Weeds & Livestock Diseases
 - Target audience: QAL/QAC, PAC, growers, Master Gardeners
- e. Review investigations and cases for possible referral to CDPR for state action (ENF 09-18):**
 - coordination with DPR EBL on all priority cases, sensitive or high level incidents, complaints, or other cases which might have multi-county or statewide applications for guidance on investigation and enforcement response
- f. Ensure compliance with recent U.S. EPA approved rodenticide label changes:**
 - outreach to community, particularly the ranchers, with respect to the change to federally restricted pesticide for rodenticides use (anticoagulants) as well as the agricultural use only label restrictions
 - administration of PAC-R exam during the interim change-over period
 - issue OIDN for all rodenticide applications
- g. Tribal communication training:**
 - participation at CDPR workshop as well as webinar for all licensed staff

h. Licensee registration and notification program:

- outreach to licensed PCOs and SPCOs with regard to fee schedule, NOI form (SPCO), and county expectations with regard to pesticide use reporting, registration, NOIs, and label compliance

i. Pesticide use reporting program outreach:

- training and assistance for public web users for the CalAg Permit system pesticide use reporting program
- Increase the number of web users submitting pesticide use reports through the CalAg Permit system