Tulare County Agricultural Commissioner/Sealer

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Tulare County Pesticide Use Enforcement Workplan

2014-2016

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Pesticide Use Enforcement Resources and Workload

Personnel

- 8 full-time licensed PUE Inspectors
- 1 Supervising Inspector
- 1 Deputy Agricultural Commissioner/Sealer
- 2 full-time equivalent clerical/data entry positions

Equipment/Facilities

- The Tulare office is equipped with 16 computer stations used for permit issuance, Notice of Intent review, report writing, data-entry, etc.
- 5 District offices are equipped with computer stations and maintain scheduled office hours for use including pesticide permit issuance.
- All staff have GroupWise e-mail and internet capability
- PUE Inspectors are provided sampling supplies, access to all available Compendiums, and a vehicle for work use.

Responsibilities

- To maintain approximately 2,675 Restricted Materials permits of which approximately 2,380 are multi-year permits
- To maintain approximately 750 Operator Identification numbers
- To keep data for approximately 1,500 certified Private Applicators
- To review more than 8,700 Notices of Intent annually
- To register more than 250 Pest Control Businesses annually
- To register more than 295 Pest Control Advisors annually
- To register more than 475 Farm Labor Contractors annually
- To register more than 100 structural pest control businesses annually
- To enter and maintain approx.225,000 lines of pesticide use data
- To regulate pesticide use in more than 600 defined Groundwater Protection Areas

(Note: By regulation Tulare County is designated a Citrus Bee Protection Area)

A. Restricted Materials Permitting

Permit Evaluation

Licensed inspectors issue permits for restricted pesticides to the operator of a property or to a designated representative (such as a certified employee or pest control business verified with a letter of authorization). Permits are site and pesticide specific and can be issued for multiple years assuming the operator and situation meet specific criteria. Permit maps, certification and related documents are dropped off at the main office or one of the district offices to begin the renewal process. Private Applicator cards are renewed after verification of the required continued education hours or passing of the re-certification exam. Private applicator exams are proctored only at the main office in Tulare. The information is then entered into the CalAgPermits system. The agent is then called to make an appointment to obtain the renewed permit. Copies of the validated permit are provided to the applicant for distribution to chemical dealerships, pest control advisors, and commercial applicators. Specific information may be electronically queried using CalAgPermits.

The Tulare office is staffed weekdays from 8:00 a.m. to 5:00 p.m. with a licensed inspector capable and qualified to conduct permit issuance and Notice of Intent (NOI) review. Weekend NOI review is scheduled for Saturday afternoons on a rotating basis. The department receives NOI's primarily by fax but also accepts submission in person, over the web and via a drop box that is located at the Tulare office. NOI's are date-stamped upon receipt then checked for accuracy and validity using CalAgPermits. The applicator is contacted immediately if problems are discovered and a denial form is completed to document any irregularity. District offices are staffed with licensed inspectors during scheduled office hours. These licensed inspectors are capable of issuing permits and permit supplements. Permits for field and commodity fumigations are issued out of the Tulare Office.

All permits, private applicator certificates, maps and related documents provided by the applicant are reviewed for errors and omissions by experienced Pesticide Use Enforcement (PUE) staff in the Tulare office. This activity is completed in a timely manner and any corrections are documented in writing.

Goals and Objectives

- To ensure that the restricted materials permit system protects both people and the environment while allowing for effective pest control

- To keep CAC staff current and knowledgeable with respect to laws, regulations, and pesticide product labels using in house knowledge and Department of Pesticide Regulation /Structural Pest Control Board trainings

Deliverables

- To evaluate and regularly update Tulare County permit conditions relative to adverse environmental effects

- To deliver PUE traffic from district offices to the Tulare office in a timely manner

- To conduct Monday morning meetings frequently with PUE staff to discuss areas of concern and to exchange important information

- To conduct periodic district office visits by the PUE Staff in order to keep district inspectors current with respect to permit requirements, product registrations, and laws and regulations

- To identify errors or omissions in the permit issuance process and correct them through individual inspector and staff training

Site Monitoring Plan

The department is committed to activities ensuring site monitoring plans which consider permit maps, pesticide hazards, immediate surroundings, local conditions, fieldwork and cropping patterns, and permittee/licensee compliance history. All pre-application site inspections are documented on the proper form (PR-ENF-102) and signed by a licensed inspector. Site monitoring includes evaluation of pesticide toxicity and environmental concerns such as residences, any nearby sensitive crops and endangered species.

The department will continue to focus monitoring sites specifically targeting field fumigation activities. Distance-measuring wheels will be used at field

locations in order to verify that any buffer zones or distances required by Phase II labels, regulations or specific permit conditions are met.

Any permitted sites associated with previous problems such as pesticide drift or beekill incidents will receive additional focus/inspection from the inspector familiar with the details of the situation. All bee kills will be reported to the DPR if it is believed that pesticides are involved with the incident. At a minimum this will provide increased visibility and awareness. The objective of this plan is to increase compliance and to reduce problems pro-actively. A decrease in the total number of violations may be an indicator of success assuming all other factors are equal. The plan to monitor sites may be amended as needed if existing pesticide laws or regulations are changed.

Goals and Objectives

- To ensure a site monitoring plan which considers pesticide hazards, application methods, sensitive sites, local conditions and cropping patterns, fieldworker safety, and compliance history

- To continue to improve site accuracy for NOI's, recommendations, and pesticide use reports generated by private and commercial applicators and pest control advisors

Deliverables

- CAC will arrange for and complete an application inspection for all chloropicrin field fumigations and for a majority of other restricted use soil fumigant applications

- Pre-application site inspections will be conducted for all chloropicrin field fumigations and a majority of other field fumigations with particular emphasis on any nearby sensitive sites

- Educate and enforce the new Volatile Organic Compound Regulations that pertain specifically to the San Joaquin Valley region

- To emphasize pesticide use reporting requirements (including required fumigation code information) during continuing education classes in the fall

- To use CalAgPermits data to identify those permittees for which no use reports have been submitted

- Submit all complaints or Report of Loss involving bee kills to DPR

B. Compliance Monitoring

Comprehensive Inspection Plan

The Tulare CAC Personnel believe that effective and comprehensive compliance monitoring is essential to ensuring the safety of pesticide handlers, fieldworkers, the public, and the environment. Compliance monitoring will include both agricultural and structural pesticide use as well as records inspections. The most current revised forms will be used to document all inspections. The department is committed to a fair and consistent inspection policy with regard to both pesticide label compliance and worker safety requirements. DPR ride-along oversight inspections will be offered with CAC inspectors and will reflect the various handling and inspection opportunities available within the county. It should be noted that the department employs two licensed pesticide inspectors who are certified bilingual English-Spanish speakers in order to better serve those who may not be fluent in English or who may be more comfortable speaking in their native language. The CAC will participate in the Pilot Fieldworker Inspection Training Program provided by DPR. The program will provide training, guidance and assistance to develop the proficiency of CAC staff in the performance of Field Worker Inspections to enable CAC inspectors to increase the number and quality of Field Worker Safety Inspections.

Targeted inspection levels are a critical component of compliance monitoring that will be continued during the life of the workplan. It should be noted that a reduction in the number of various inspections is due to the demands of preparing investigative reports and because of the number of less-experienced licensed personnel. The goals are quantified on the first three areas found on a Pesticide Regulatory Activities Monthly Report (PR-ENF-046): Use Monitoring Inspections, Pest Control Records Inspections, and Structural Pest Control Inspections. Our inspection numbers will grow along with inspector experience. Based on the entire PUE program and our available resources, the following annual inspection targets are reasonable and deliverable for 2014-2016:

Use Monitoring Inspections:

Pre-application: a minimum of 5% of submitted NOI's

Application/Property Operator: 35

Application/Pest Control Business: 20

Field Fumigation: 20

Commodity Fumigation: 15

Field Worker Safety: 30

Mix-Load/Property Operator: 20

Mix-Load/Pest Control Business: 15

Pest Control Records Inspections:

Business Records: 10

Employee Safety/Business: 10

Dealer Records: 10

Advisor Records: 20

Employee Safety/Grower: 20

Structural Pest Control Inspections:

Fumigation (Branch 1): 10

Application/Mix-Load (Branch 2&3): 20

Business Records: 5

Employee Safety/Business: 5

Tulare CAC inspectors realize the importance of immediate correction and employer responsibilities when non-compliances exist for pesticide handlers' employees. Headquarter and Employee Safety inspections will be performed in a timely manner when employee pesticide handlers are found to be in violation of worker safety regulations. This follow-up will result in improved pesticide-handler training and increased supervision by employers.

Tulare CAC performs inspections on a fair basis that adequately represents both agricultural and structural operations. This cycle, the PUE workplan will continue targets to provide increased inspection of Structural Pest Control activities. The department will continue to enforce the recently enacted Surface Water regulation when completing structural use monitoring inspections.

Compliance actions may reasonably be expected as a result of field and records inspections (including inspections of pesticide use reports) and will be issued as noncompliances are discovered. Using proper inspection procedures and pursuing the targets will create a measurable means to monitor overall compliance.

The department will enforce the provisions of the Citrus/Bee Protection Area regulations. This includes the registration of beekeepers within one mile of commercial citrus planting during the citrus bloom period.

Goals and Objectives

- To continue to improve worker safety follow-up resulting from monitoring inspections in both ag and non-ag settings

- To reduce erroneous and/or incomplete recommendations from licensed Pest Control Advisors

- Department staff, particularly those fluent in Spanish, will continue to participate in scheduled educational or outreach events relative to farmworker health and safety. These outreach efforts are supported by the Tulare County Board of Supervisors and may increase over time.

Deliverables

- To complete Employee Safety/Headquarters Records inspections resulting from violations involving worker safety regulations when such inspection has not occurred in the previous 24 months

- To complete Pest Control Advisors records inspections as described in this workplan

- To complete use monitoring inspections during the citrus bloom period which includes early morning and night surveillance in order to enforce Citrus/Bee regulations

- To complete a survey of the county in order to document the beekeeper compliance with the registration requirements of the Citrus /Bee regulation

Investigation Response and Reporting Improvement

Tulare County has experienced a variable pattern of both documented complaint calls and illness investigations. A single incident or episode may seriously impact the workload of the PUE staff that must be prepared for such an event. By working together, the Agricultural Commissioner's office and the DPR attempt to prevent such incidents by conducting high-quality continuing education and public outreach efforts. The department is committed to evaluating our investigation response and reporting, the use of proper techniques for interviews and evidence collection, and documenting relevant findings.

The Tulare CAC considers prompt, fair, and thorough investigation of complaints a critically important duty. Standard practice is to document information from the initiation of the contact and to immediately assign an inspector to respond. The entire interview and evidence collection process is critical to the investigation but many times is a challenging task. Field inspectors maintain digital cameras, sampling supplies and equipment, and have appropriate current forms available for immediate use. PUE inspectors will follow the parameters provided in DPR training. Tulare County is committed to delivering rapid and unbiased investigation response to all

incidents. The CAC will respond to complaint calls in a fair, thorough, and professional manner. The department will promptly initiate, and work for timely completion of, all investigations, whether arising from public complaint or medical report. This effort will result in improved information gathering and consistency. Factors such as the availability and cooperation of witnesses and involved individuals as well as timely and accurate laboratory analysis are critical for success. Communication, information sharing, and clarification with the Enforcement Branch Liaison (EBL) are key components of investigation response and reporting. Consistent effort will be made to deliver current reports for documentation. Special emphasis will be placed on the completeness and accuracy of written reports. These reports will contain all information relative to the parties involved, location of the site or property, dates of occurrence, and will contain a complete and accurate description of the incident or episode. Supporting evidence including but not limited to statements, reports of loss, laboratory results, and photographs will be attached and referenced. The written report will be fact based and will withstand critical review. Reports that meet these criteria provide a valuable tool for compliance history assessment.

Goals and Objectives

- To document investigations with a complete and accurate Pesticide Episode Investigation Report made available to DPR for review

- To improve the reporting of pesticide drift or misuse by increasing public outreach efforts (both English and Spanish) in order to reduce adverse pesticide incidents to both people and the environment

Deliverables

- To complete non-priority investigations promptly but in no case more than 120 days

- To initiate priority episode investigations within two working days and to submit a preliminary update to DPR within 15 days

- To attend DPR trainings as they become available

- To participate in both English and Spanish outreach opportunities such as health fairs, farmworker conferences or events and media interviews

- Submit all appropriate reports to the state using the Secure Access Website(SAW)
- Complete approximately six DPR approved continuing education classes each fall
- Maintain a Tulare County Agricultural Commissioner's web site and Facebook page to foster compliance by the regulated community

C. Enforcement Response

Enforcement Response Evaluation

A sound regulatory program differentiates between a willful or negligent violator and those making a good-faith effort to comply with the complex body of laws and regulations. In order to fully realize the benefits of the regulatory program enforcement authority must be utilized both fairly and consistently. Based on a review of trends for the past three years, it can reasonably be expected that 15 or more Administrative Civil Penalty actions may be undertaken annually. These actions are the punitive result of violations. Experienced district inspectors are typically responsible for actions involving drift and human exposure violations. All licensed inspectors are responsible for actions involving problems such as worker safety, pest control business registration and use reporting violations. PUE inspectors understand the difference between compliance actions and enforcement actions.

Tulare County will deliver a fair inspection program that includes compliance/enforcement action when appropriate. The principle that the penalty should fit the non-compliance is important. The concept of progressive enforcement will be followed. Special emphasis will be placed on the ability to detect repeat violators through both compliance monitoring and enforcement response. Inspectors will review the documented history available for the violator and present that for the previous 24 month period to the Supervisor and/or Deputy for direction. All Violation Notices generated by use monitoring inspections will be mailed or delivered in person depending on the severity of the noncompliance. A prepared inspector's narrative with attached supporting documents will be mandatory for complaint calls that generate Administrative Civil Penalties and for all illness investigations. Enforcement Response Regulations (ERR) and any revisions will be reviewed and will be followed for all noncompliances.

The Tulare County staff will remain professional and unbiased when completing and delivering enforcement actions to agricultural and structural operators. When appropriate, DPR will be consulted for clarification, direction, and assistance. For serious violations or repeat offenders, Tulare County will work with our EBL to identify and discuss enforcement options such as licensing action or referral to the District Attorney.

In summarizing the overall enforcement response, the goal is a consistent and appropriate response to confirmed violations. Through the entire process, communication, credibility, resource allocation, and prioritization are essential. Balancing the workload equitably between PUE inspectors and maintaining a team approach to complete the work are critical. Fair and consistent implementation of this workplan is mandatory for regulatory personnel and agencies. Maintaining credibility and respect with regulated individuals and businesses while ensuring compliance with pesticide laws and regulations will result in safe and appropriate pesticide use in Tulare County.

Goals and Objectives

- To improve compliance with pesticide labels, laws, and regulations
- To take appropriate compliance or enforcement action based on specific criteria of the Enforcement Response Regulations and any revisions
- To be consistent, predictable, firm and fair in the enforcement of pesticide laws and regulations

Deliverables

- To follow the Enforcement Response Regulations to improve uniformity in the enforcement of pesticide laws and regulations
- To thoroughly review a violator's compliance history when determining appropriate enforcement action
- To take compliance or enforcement actions whenever appropriate
- To communicate with DPR when it is appropriate to consider licensing action or referral to the District Attorney based on the specifics of an incident

Priorities and Other Pesticide Regulatory Activities

The CAC has incorporated the following priorities and activities requested by DPR into our workplan:

- Non-fumigant VOC Regulation Compliance
- Compliance with Soil Fumigant Phase II Labeling
- Chloropicrin mitigation measures
- Structural inspection activity of Branch 1, 2 and 3 applications
- Training of county staff on pesticide law and regulation, DPR policy and compendiums
- Participate in SAW website for illness investigation reporting
- Compliance with Ground Water Regulations
- Regulatory outreach and education
- Review investigations and cases for possible referral to DPR for state action (ENF 09-18)
- Compliance with Non-Ag Surface Water Regulations
- Ensure compliance with recent U.S. EPA approved rodenticide label changes
- Focused inspections on employers with employees under medical supervision (3CCR 6728)
- Reporting to DPR, complaints or report of loss related to bee kills associated with an alleged pesticide application