County of Fresno

DEPARTMENT OF AGRICULTURE

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AGRICULTURAL COMMISSIONER/
SEALER OF WEIGHTS AND MEASURES

Fresno County Pesticide Use Enforcement Program Work Plan 2015-2016

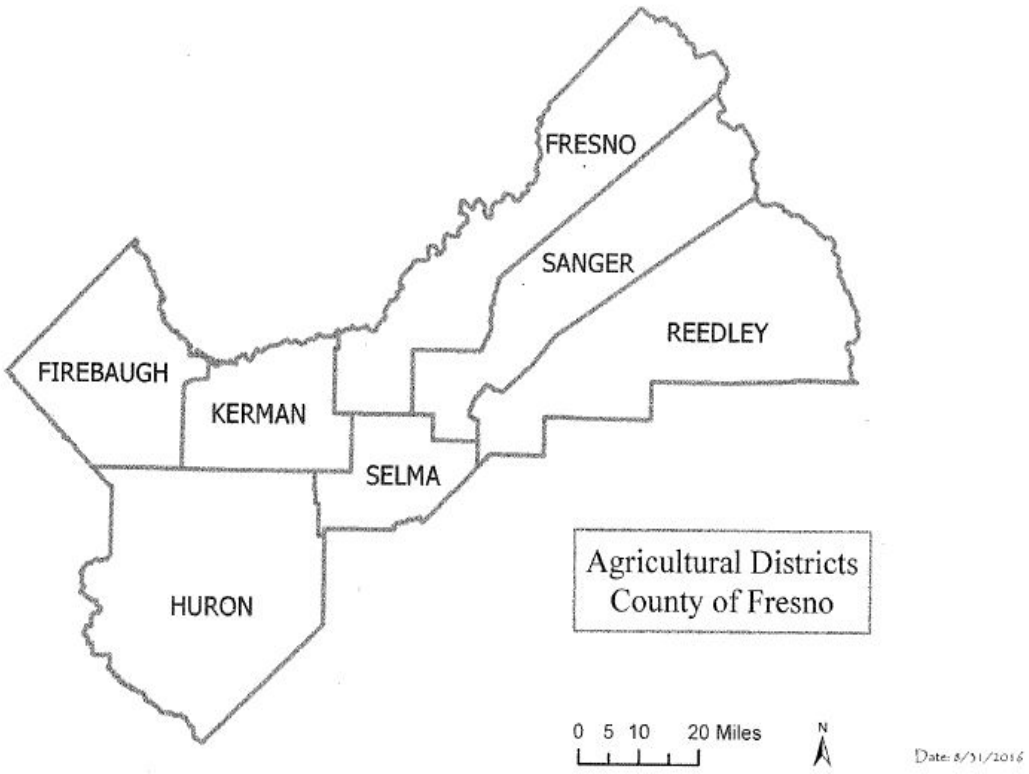
INTRODUCTION

Fresno County's economic base has historically been and continues to be agriculture.

- The county covers 6,011 square miles or about 3.84 million acres in the San Joaquin Valley with 1.88 million acres involved in agricultural operations.
- The Mediterranean climate allows for a diversity of growing regions within the county allowing nearly 400 commodities to be grown, from citrus along the eastside to cantaloupes and canning tomatoes on the west side.
- Fresno County's number one crop is Almonds. Pollination of almonds requires two beehives per acre.
- 37,165 acres were dedicated to organic production in 2012. That number jumped to 99,632 acres in 2013.
- Fresno County produces 99 percent of the nation's raisins. Mechanically harvested raisin grapes comprise 33,746 acres, which still only represents 28 percent of the total raisin grape acreage.
- Every $1 produced on the farm generates more than $3.50 in the local and regional economy.
- Water reliability remains the biggest challenge facing farmers in the San Joaquin Valley counties, as well as California as a whole. 2014 was the third drought year in a row, and as a result 212,000 acres of farmland in Fresno County were fallowed.
- Fresno County tree nut and stone fruit growers utilize environmentally responsible pest management programs that rely upon regular field monitoring for key pests; pheromone-mating disruption; use of biological agents; and target-sensing sprayers to reduce the need for broad-spectrum pesticide use.
- IPM tactics and strategies used by farmers and ranchers as feasible alternatives to pesticide use, substantially lessen the human health and environmental effects. In particular, using economic thresholds to initiate control action decisions and keep field pest populations in check is one example of the widespread adoption of pest management systems that combine biological and cultural pest control techniques.
- Ensuring safe pesticide use, through proper restricted materials permitting, effective compliance monitoring, and uniform enforcement response are the key program elements of the Fresno County Pesticide Use Enforcement Program.

RESOURCES

The pesticide use enforcement (PUE) program in Fresno County is currently supervised under one Deputy Agricultural Commissioner/Sealer. PUE staff is distributed primarily by geographic area. Six separate districts offices are each managed by a Supervising Agricultural/Standards Biologist and are located in the cities of Firebaugh, Huron, Kerman, Selma, Reedley, and Sanger. Currently 25 Inspector/Biologists are assigned to work in the six districts. Staff assigned in the district offices work phytosanitary export certification, PUE, nursery and seed inspection, pest exclusion, fruit and vegetable standardization, and other Departmental programs outside of PUE.



The main PUE office of the Agricultural Commissioner located in the city of Fresno is designed to be staffed by four full-time, two part-time, and one trainee Inspector/Biologists working under one Supervisor. Since 2014, we have not been able to keep all these positions filled. Staff in the main office work primarily with assisting customers, issuing permits, reviewing pesticide use reports, disseminating regulatory information to industry and the general public, following up on complaints, and processing license registrations. Main office PUE staff frequently helps in other departmental programs.

One Supervising Biologist and two Inspector/Biologists work in the Fresno district and are primarily assigned to conduct structural and maintenance gardener inspections within and surrounding the cities of Fresno and Clovis. Fresno district biologists are also responsible for the Apiary Enforcement Program.

PUE inspector/biologists are assigned a county vehicle, a desktop computer, and a desk phone. Each inspector/biologist is issued a cell phone, personal protective equipment, a wind gauge, shovel, thermometer, and a Kindle. Each district office has an investigative sampling kit, range finder, 100-foot measuring tape, digital camera, and combination fax/printer/copier. Staff trained in apiary enforcement have bee protection suits and hive kits. For the PUE program, district personnel work on specific programmatic functions. All inspector/biologists perform agricultural, non-agricultural, and structural regulatory activities.

As a result of an increase in worker and public complaints, in late 2013 one Inspector/Biologist was promoted to Investigator, increasing the Department's number of Investigators to two. The investigators work out of the main office and write legal documents associated with civil penalty actions, decision reports, compliance actions, and enforcement response actions. The deputy and investigators are responsible for advocating at civil penalty hearings; and training, tracking, editing, and reviewing pesticide investigations. The investigators assist with other penalty actions in other Departmental programs and coordinate formal referral of Serious and Moderate Violation incidents with the District Attorney.

In 2014, PUE program staff assigned to the Fresno main office moved to their new and current location; a building within the same county-owned complex previously occupied by the U.C. Cooperative Extension. The move occurred over several months, required staff reassignment, and disrupted PUE work activities.

Pesticide Use Enforcement Program Staff Experience

Licensed Staff

Between 2012-2014, staff turnover within the Department was close to forty percent. Changes occurred at all levels; from the commissioner and deputies, to supervisors and inspector/biologists. The PUE program deputy changed five times between 2010-2014. In addition, 27 experienced staff left the Department and many were replaced by Agricultural/Standards Specialist Trainees, who had limited environmental protection knowledge. Trainees are hired on a provisional basis and are required to attain at least one license issued by the California Department of Food and Agriculture (CDFA) relating to agricultural and/or weights and measures inspections, within one year.

In 2014, department-wide there were 93 available full-time positions. In 2015, we anticipate only 85 full-time positions available. Only eight licensed staff biologists within the Department have 20 or more years of PUE experience. Twenty-two inspector/biologists working in the PUE program hold valid CDFA issued County Agricultural Inspector/Biologist licenses in both Pesticide Regulation and Investigation & Environmental Monitoring.

Unlicensed and Support staff

Agricultural Business Manager: supervises annual and monthly financial reporting.
Information Technology Analyst: coordinates department computer support with the Information Technology Department (ITD).
Account Clerk: provides staff support managing financial transactions.
Program Technicians (3): provide part-time clerical support.
Office Assistants (4): provide part-time data entry, filing, copying, mailing and exam scheduling.

Pesticide Use Enforcement Program Time Comparison

	2012	**2013**	**2014**
Licensed Hours	32,535	35,632	40,725
Support Hours	5,553	4,976	3,865

INTERNAL PROGRAM EVALUATION and DETERMINATIONS

Program Evaluation

In early 2013, the Fresno County Agricultural Commissioner, PUE program Deputy, and Investigator conducted an internal evaluation of the overall effectiveness of the pesticide enforcement program. In particular, questions were raised in all core program areas, including the following:

- Was the current PUE work plan effective in communicating the complexity and purpose of meeting the core program area components to staff?

- Did staff know the significance of regulating pesticide use by properly implementing the permit system as a way to reduce the risks to people and the environment?

- Did the PUE program deputy, supervisors, and experienced biologists train staff to take appropriate, consistent actions and to document the nature and circumstances of non-compliances when conducting inspections and investigations? Did inspector/biologists understand their field enforcement responsibilities?

- How can we improve the accuracy of our Pesticide Regulatory Activities Monthly Report (PRAMR)? Each county must submit a monthly report supporting the administration and enforcement of their pesticide regulatory program to the Department of Pesticide Regulation (DPR).

- When program deficiencies are identified, are there processes in place to implement improvements?

Program Determinations

We determined management needed to provide a new frame of reference for the PUE program.

We determined that in order for staff to prioritize PUE program activities, we needed to establish uniform business practices across the district boundaries by adjusting staff activities and/or dedicating and hiring more biologists.

We determined staff needed more training and understanding of their responsibilities in order to provide sound, factual information in an inspection or investigative report.

We determined the PUE program needed to deliver a more consistent enforcement response, and significantly reduce the time between violation discovery and enforcement response.

We determined our PRAMR numbers were inaccurate. Under statute and regulation, DPR distributes mill assessment to the counties as partial reimbursement for their cost of carrying out the pesticide enforcement program. Food and Agriculture Code (FAC) section 12844 specifies the criteria to be used in allocating the mill assessment funds to the counties must be based upon four factors----each county's pest control activities, costs, workload, and performance.

We determined the need to use updated technology to improve real-time tracking.

We determined the biggest obstacles to changing the existing culture were two-fold: how do we gain staff acceptance for needed program changes; and how best to prioritize which PUE program areas to improve first (Sustained changes take time to realize and time to measure positive results).

2015-2016 CORE PROGRAM AREAS

I. Restricted Materials Permitting

Current and Future Status

We have been using the web based CalAgPermit System (CAPS) since November 2011. The CalAgPermits pesticide permitting and use reporting system allows biologists to perform permit site edits on multiple sites at once; perform more thorough and accurate validation of pesticide use reports; and gives staff the ability to flag pre-plant applications where pesticides are applied before the commodity listed on a site is actually in the ground. All of these features allow for greater user productivity and more effectively model the regulatory framework.

Currently, Restricted Materials Permits (RMPs) and Operator Identification Numbers (OINs) are issued for a period of one year. Multi-year permits and OINs are issued up to three years for perennial agricultural plantings and non-production agricultural sites. Permits and OINs expire on December 31.

While the number of RMPs remain constant, the number of permits with sites containing designated restricted materials is declining.

Permit Year	**2012**	**2013**	**2014**
Restricted Materials Permits	3,039	3,038	3,021
Sites	23,369	21,998	21,561

Staff utilize the eight manuals comprising the *Pesticide Use Enforcement Program Standards Compendium (Compendium)* for guidance with PUE directives, interpretations, recommendations, and expectations.

Regarding permit issuance, inspector/biologists use the eight step overview outlined on page 7-7 of Volume 3 of the *Compendium* to ensure that during the permit consideration process all functional equivalency evaluation requirements of the California Environmental Quality Act (CEQA) are followed. Emphasis is placed on determining potential hazards to using restricted pesticides and whether the hazards present a likelihood of substantial environmental effects. In addition, biologists must determine if a feasible alternative exists to using restricted pesticides and if none exists, decide if the permit can be issued based on utilization of identified measures that significantly reduce the risks.

New staff members are thoroughly trained, and under the direct supervision of a licensed Supervising Inspector/Biologist, prior to issuing restricted material permits and private applicator certificates.

Each applicant for a restricted materials permit is interviewed in order to determine if the permittee is the operator of the property, an authorized representative of the permittee, or a licensed pest control advisor (PCA). Letters of Authorization from the permittee is required for persons acting as a representative on behalf of the permittee. Biologists also explain to the permittee or representative that the permittee is responsible for compliance with all permit conditions.

During the permit process, staff verify through a search of the CAPS database that pesticide use reports are submitted and in a manner required by regulation (3CCR sections 6624 and 6626).

Applicants for a Private Applicator Certificate (PAC) must complete DPR form (PR-PML-045). Licensed biologists determine if new applicants are eligible to take the examination by verifying the individual meets the

definition of a private applicator as defined in 3CCR section 6000. The PAC examination is proctored and administered only by authorized, licensed staff. Applicants are asked to present a photo ID prior to taking the exam. Examination walk-ins are accepted throughout the year; however, January through March an appointment is required.

Existing PACs must present valid documentation showing completion of six hours of DPR-approved continuing education within the last three years, including at least two hours of laws and regulations. Licensed biologists will complete and sign the PAC renewal application for the applicant's specified valid time period.

For statewide uniformity, we modified our school proximity conditions in order to more align with other counties' school buffer zone conditions. We look forward to providing input and working with DPR as they evaluate and consider changes to the current rules and policies that apply to the agricultural use of pesticides on land adjacent to schools.

Suggested Permit Conditions as outlined by DPR in the *Compendium* Appendices of Volume 3, Restricted Materials and Permitting, are followed when appropriate and changed as new information and labels are updated.

Biologists discuss with growers who have property located in Ground Water Protection Areas (GWPAs) that certain pesticide materials are restricted when used within designated one-square mile sections of land that are sensitive to the movement of GWPA pesticides. Guidance concerning the differences between leaching and runoff area regulations and management practices is provided.

In 2012, in response to Phase 2 soil fumigant label changes, staff received training and began evaluating field fumigations for compliance with more detailed safety measures for workers and bystanders. Biologists focused on determining whether appropriate methods, emergency preparedness, and response measures are used; buffer zones posted; additional training for supervising certified applicators is received; and locations of difficult to evacuate sites are identified on the site map. Staff check Fumigant Management Plans (FMP) prior to application to determine label compliance and make sure procedures are defined in-case of accidents or unforeseen events. The Post Application Summary (PAS) is verified to be accurate, any deviations from the FMP are noted, and weather conditions are recorded. Biologists also check to see if the grower is given a copy of the completed FMP and PAS to keep with their records for two years.

We receive NOIs by email, fax, personal delivery, and drop box. The Department eliminated the majority of drop boxes in early 2013 in order to encourage the use of more reliable notification methods.

Licensed biologists review Notice of Intents (NOI) to determine if they are complete and consistent with the permit. Biologists check for surrounding sensitive sites; climatic conditions; compliance with permit conditions, label precautionary statements and worksite plans, if applicable; and if potential hazards have been identified. Simple errors found on NOIs are corrected by contacting the grower, PCA, or PCB. Serious NOI errors or omissions are denied by the reviewing biologist and documented on the NOI. The Department uses the *Permit Refusal Based on Evaluation of the Application/Notice of Intent* form to provide written notice to the responsible party about the grounds for the denial and their legal rights to appeal as per FAC 14006.5 and 11512.5 thereby assure due process.

Biologists discuss Volatile Organic Compounds (VOCs) with permit applicants. VOCs are found in certain pesticides and contribute to ozone (smog) production. Under the U. S. Clean Air Act, California must meet federal air quality standards for ozone. Five non-attainment areas (NAA) identified not to meet the standards for ozone were designated in California; Fresno County is part of the San Joaquin Valley (SJV) NAA. DPR designed additional regulations to limit VOC emissions from high-VOC non-fumigant applications when certain criteria are met. In both 2015 and 2016, the criteria were met triggering additional regulations limiting emissions from high-VOC designated non-fumigant products. These VOC regulations affected four active ingredients (AI) when applied for agriculture use in the San Joaquin Valley. They are chlorpyrifos, abamectin, gibberellins, and oxyfluorfen. When selling high-VOC products containing these AIs, pesticide dealers must provide information to growers. Growers are prohibited from applying any of these high-VOC designated

products during May 1 through October 31. Staff will work with dealers, pest control advisors, and growers to ensure understanding and implementation of these regulations.

New regulations that went into effect on July 1, 2014, restrict the sales of Second Generation Anticoagulant Rodenticides (SGARs). Due to adverse effects on non-target wildlife, the SGARs were designated as California restricted materials which require a permit for their use. Staff will continue to work with users to ensure they are in compliance with the new regulations.

Chlorpyrifos will change from a federally restricted material to a California restricted material in 2015 and require a permit when labeled for use in production agriculture. Fresno County growers have previously reported chlorpyrifos use on almonds, alfalfa, cotton, citrus, grapes, and pistachios. As a California restricted material, products containing chlorpyrifos can only be sold to, purchased by, or possessed by a person who holds a restricted materials permit. These applications will now require a 24 hour NOI. Because we will be notified prior to the use of materials containing chlorpyrifos, we will use this opportunity to thoroughly evaluate each proposed use. We anticipate our notice of intent numbers to increase as a result.

In 2014, the Department re-evaluated its Herbicide Application Conditions requiring a permit for use of certain contact herbicides applied between February 1 and April 30 to sites (commonly known as Drift Mitigation Zones or DMZs) located west of the Fresno Slough. Due to a reduction in the number of reports of loss from pesticide drift in recent years, drought conditions, and changes in cropping patterns, the conditions were modified. Many herbicide labels now state requirements similar to our Fresno County herbicide application conditions. The requirement for a grower to submit a NOI when making a ground application to his own property was removed unless a sensitive crop (as defined on the label) borders the proposed application site. Email addresses for the Department's west side districts were established in order to receive the appropriate documents electronically and reduce the amount of paper generated. 1428 NOIs were submitted in 2012. This number dropped significantly to 780 in 2014.

New Research Authorization regulations will take effect on January 1, 2016. Information required on a research application and reporting form will be clarified and the notification to county agricultural commissioners (CACs) of application time will be changed from 24 to 72 hours. We will work with researchers to require the shortest time period to adequately evaluate the intended application while still maintaining measures that protect human health and the environment.

Restricted Materials Permitting--Planned Improvements:

- Continuously assess, monitor, and evaluate the permit issuance process, and immediately prioritize improvements needed and implement corrective actions
- Switch the Department computer operating system to Windows 10 as part of our technology upgrade
- Eliminate errors with CAPS permits, CAPS sites, and GIS by correcting all:
  - Permits marked "In progress"
  - Permits without certified applicator, mailing address, or conditions
  - Sites crossing section lines
  - Commodities marked "Inactive" or "Blank"
  - CAPS entries without corresponding polygons, and polygons without CAPS entry
  - Polygons with either no assigned commodity or multiple commodities listed
  - Individually mapped sites over 5 acres
  - Identification of GWPAs and DMZs
  - Carriage returns within the Location Narrative
  - Missing grower email address for future mailings of educational material, regulation changes, crop statistics, and commodity group information

- Consistently condition each non-agricultural restricted material use permit to require NOI submittals for restricted material use in order to ensure the Department conducts inspections at least once a year
- Train staff on Integrated Pest Management (IPM) principles such as: pest prevention strategies, correct pest identification, monitoring pest economic threshold levels, habitat modification, pest

exclusion, different cultural controls, getting rid of pest attractants before using pesticides, and the importance of using only reduced-risk pesticides when necessary

Goals and Projected Deliverables

Improve Site Evaluation

Biologists will more thoroughly review adjacent and surrounding properties; improve discussion with the applicant about feasible alternative measures to control pests; educate growers about the Pesticide Regulation's Endangered Species Custom Realtime Internet Bulletin Engine (PRESCRIBE), the online database designed to help applicators find out if they have any endangered species in the vicinity of their application site; and the use limitations applicable to the pesticide product(s) they intend to use. The Department will elevate staff's local field knowledge, and enhance Graphical Information System (GIS) layers. The current GIS school layer shows the school layer as pinpointing school location only. To improve the accuracy of school site locations, polygons will be drawn around the entire school property. Waterways, ponding basins, and canals will be identified more accurately. GWPAs and DMZs will continue to be identified and the corresponding regulations discussed with growers during the permitting process. In future CAPS enhancements, we will identify and designate more sensitive sites. West side herbicide application conditions will continue to be evaluated and modified as needed.

Implement CalPeats

California Pesticide Enforcement Activities Tracking System (CalPeats) is a single statewide system designed to manage, track, and report pesticide enforcement activities in each county. We will participate in the CalPeats acceptance testing phase of the program development in early 2016. We have volunteered to participate in the pilot deployment phase and asked to be one of the first counties to implement the system. The system will be particularly helpful in Fresno County to record, track, retrieve, and analyze our inspection, investigation, and enforcement response activities. This will help meet one of the identified corrective actions stated in our most recent DPR performance evaluation report.

Reorganize Department Continuing Education Courses

Until mid-2013, continuing education courses were offered by Fresno County through on-line course modules. As regulations changed, staffing resources declined, and more organizations began offering courses, we pulled these course modules off-line. The intent was to refurbish their look, add recently adopted regulations and add more updated versions on-line. Instead we decided that the best way of communicating the most current information about regulatory changes to growers and industry was to revert back to in-person continuing education classes. This would allow for a broader range of issues to be covered and local condition changes to be discussed.

Measures of Success

We will continue to encourage grower awareness and positive attitudes toward the use of reduced-risk pest management strategies and IPM principles, thereby reducing the use of California restricted materials.

Fresno County has seen an increase in the number of documented NOI denials. Staff has been trained to record restricted materials permit and NOI denials on the form suggested by DPR. We will continue to require staff to provide an adequate explanation of the reasons for the denial and inform the permittee of their due process rights, either in person or by mail. Copies of denials are now kept on file in the main office for two years.

Continue to provide excellent customer service and adequate hours of operation by keeping our 8 am to 5 pm office hours in the main office with licensed staff available to issue and renew permits.

II. Compliance Monitoring

Current and Future Status

Historically, Fresno County conducts over 1400 yearly inspections. Prior to mid-2013, inspections were performed to reach a pre-determined number. By interviewing staff and reviewing inspection reports, our internal evaluation determined that many biologists were merely going through the inspection process until the numbers were reached. Inspection reports were turned in missing information; turned in without noting the need for a follow-up inspection; turned in with inadequate or improperly documented environmental conditions; and many were turned in without any non-compliances noted. The most egregious finding was that inspection reports were turned in without noting enough information about the nature and circumstances found during the inspection to use as evidence in order to initiate an appropriate enforcement response.

In addition, violations found and documented during oversight inspections far outnumbered those found without the DPR Enforcement Branch Liaison (EBL) present. Immediately, we began re-training PUE program biologists in policies; procedures; interview and investigative techniques; accurate documentation as to the "as found" conditions at the use site; resource utilization; targeting strategies; individual inspection criteria; communication with management; and commissioner expectations regarding consistency and uniform application of the PUE laws and regulations.

PUE district and division supervisors conduct quality control reviews of all inspection reports completed by their assigned biologists. By verifying report completeness, accuracy, and correct procedures are followed, inspections reports are used for feedback and training purposes. Each biologist is responsible to track and follow-up on their own inspections.

Criteria for targeting strategies and prioritization of inspections was re-evaluated and discussed with our EBL in early 2014. Higher priority is now given to inspections based on the hazards of the proposed pesticide use. In particular: the pesticide toxicity, formulation, and method of application; proximity to sensitive sites; businesses and individuals with a history of non-compliance; and those with a higher number of handlers and/or fieldworkers engaged in pesticide work activities.

Staff notifies the responsible person of any violation(s) found during an inspection. Methods used by the Department to notify the responsible party if they are not on site during our inspection include email, fax, hand delivery, or mailing a copy of the completed inspection report. We document the method of delivery at the bottom of the inspection report. When we determine there may be mitigation measures needed to prevent future violations we make personal contact with the responsible person. Outreach documents regarding their liability to civil penalties, including a copy of DPR's outreach document *Pesticide Safety: It's The Law - To: Employer of Pesticide Handlers and/or Field Workers,* are provided to the responsible person.

A follow-up inspection is made when violations are noted on inspection reports and not corrected during the inspection by the person inspected. We perform follow-up inspections to verify that violations are corrected so that growers and businesses will operate in a safe manner.

Non-compliances noted in 2014 indicated more focus needed to be placed on improving biologist alertness in observing violations with respect to: following label and permit conditions; proper use of Personal Protective Equipment (PPE) and respiratory protection; handler training; knowledge of pesticide poisoning symptoms; and how/where/when to obtain emergency medical care.

In 2012, the Department began enforcing regulations adopted by DPR to improve water quality by reducing potential runoff of surface water contamination from non-agricultural applications of 17 pyrethroid insecticides. Outdoor applications made to structural, residential, industrial, and institutional sites were affected. Staff were trained to document compliance with the new regulations.

Per regulation, biologists conduct pre-application site evaluations as part of our permit monitoring process. Individuals with past non-compliances, locations within close proximity to sensitive sites and schools, and both

commodity and soil fumigations are more closely monitored. Proposed applications of California restricted pesticides for an agricultural use are monitored and evaluated at a rate no less than five percent of the total NOIs submitted.

The Department will begin notifying end users of the PPE, rinsing, and written operating requirements for closed mixing systems. The rulemaking process has begun to clarify closed mixing system requirements when used in production agriculture as an engineering control to mitigate risks involved in dermal exposure to pesticide handlers. The required use of a closed mixing system will now be based on “Human Hazard and Precautionary Statements” on the label stating fatal or may be fatal if absorbed through skin. The new tiered mitigation scheme will take effect in early 2016.

Staff is trained to address all observations and violations found during their inspection activities. They are not limited only to “checking off” the requirements listed on the particular inspection report form they are using at the time. For example, when regulation changes are made to PPE and closed system requirements, we will require biologists to document compliance with these new regulations by utilizing the “Remarks” section of the report forms and supplemental forms. Supplemental forms are required in order to accurately describe the nature and circumstances of the inspected activity and to include any corrective measures taken by the person inspected.

Compliance Monitoring--Planned Improvements:

- Providing in-house training; sending staff to all available trainings; developing more training resources; and requiring staff to repeat training if inconsistencies in performance continue
- Focusing surveillance monitoring on problematic methods of applications, soil fumigations, and applications adjacent to school properties
- Training and repetition of learned knowledge to improve a biologist’s abilities and confidence in enforcing pesticide laws, policies, and regulations
- Directing our pesticide use monitoring inspections to property operators with employee handler applications; and areas of highest non-compliance rates once more precise baselines are established
- Consistently using the “Remarks” section of inspection reports to describe the exact nature of the situation and conditions found upon arrival at the inspection site
- Requiring the consistent use of supplemental forms to further explain non-compliances found and the immediate corrective measures taken
- Recognizing what defines an “immediate hazard”; under what circumstances the activity must be stopped; and how to properly describe the hazard or why the hazard appeared imminent

Goals and Projected Deliverables--we will continue to:

- Make pre-site inspections of proposed restricted material use applications adjacent to, or in close proximity of, sensitive sites. The commissioner designates sensitive sites as those defined on the label in use and those defined in 3CCR section 6428(c), which are all known areas that could be adversely impacted by the use of the proposed restricted material.
- Monitor field fumigations for adequate pre-application soil moisture. As a result of the drought conditions, we began checking 100% of the proposed field fumigations for compliance with label stated soil moisture levels. Fumigations are delayed until sufficient moisture is present in the soil.
- Train staff on targeting strategies for inspections on areas of historical non-compliance.
- Require staff to improve documentation of non-compliances based on their initial observations.
- Require staff to be accountable for situations where activities are not stopped when they create imminent hazards to workers, the public, or the environment.
- Monitor the number of biologists’ reports with non-compliances noted, and compare to the number of oversight inspection reports with non-compliances noted. The presence of an EBL should not be the only time a biologist documents a non-compliance or violation on an inspection report.

Measures of Success

- Maintain a visible presence in the field to improve and protect public health, property, worker and bystander safety, and the environment from unacceptable pesticide risk
- Maintain procedures which document the nature and circumstances of the inspection situation in the "as found condition"
- Improve staff inspection report documentation by improving their individual writing skills
- Assess inspection situations accurately in order to affect a consistent enforcement response action
- Track real-time trends as staff begins accurately evaluating and documenting violations discovered during inspections
- Inspections can stand alone when determining whether a violation occurred

III. Investigation Response and Reporting

Current and Future Status

Increasing city growth into what was traditionally agricultural land has contributed to a greater number of pesticide-related complaints at the ag/urban interface. We believe part of our increase in complaints can be contributed in part to the public's immediate access to social media and website hotlines to report possible pesticide misuse, whereas before the possible misuse went unreported. Pesticide illness incidents received by the Department from DPR, the Poison Control Center, U.S. EPA, and other local agencies has steadily increased over the past several years. Only a small percentage of these are related to pesticide injuries associated with antimicrobial use in homes and businesses. Between 2008 and 2013 the Department investigated six incidents that met priority criteria status, but in 2014 we began 19 priority investigations.

Fresno County has been using DPR Worker Safety and Information Technology Branches' Secure Access Website (SAW) process since 2013. We protect confidential medical information while speeding up the file exchange process.

We initiate all investigations immediately. We investigate to evaluate and gather data about pesticide use patterns, determine emerging risks, and verify the effectiveness of label directions, regulations, policies, and procedures. Our primary objectives when initiating an investigation are: to determine and document the circumstances surrounding the incident and to identify and stop continuing hazards/violations. In addition, it is important to gather evidence to support a regulation change if mitigating measures are unsuccessful; and in order to proceed with an enforcement action.

During the Department's self-evaluation of our PUE Program, we determined documentation of complaints and documentation of reported pesticide-related illness incidents did not fully meet the intent of, or standards established by, DPR. Our job is to ensure pesticides are used safely. Because complaints and incidents were not documented correctly, they were not investigated thoroughly, and DPR was not provided accurate data to evaluate safe pesticide workplace practices.

Investigation Response and Reporting--Planned Improvements:

- Increase the percentage of pesticide illness and complaint investigative reports completed within the established timeframe between DPR and the Department
- Use the "Pesticide Illness Investigation Request for Time Extension" form PR-ENF-097 on a more consistent basis when determining illness investigations may not be completed within 120 days
- Train staff to develop an investigative plan, think through the process to visualize the bigger picture, and provide documented, relevant evidence to pursue an appropriate enforcement response
- Institute a peer review process for reviewing investigation reports prior to review by the biologists' supervisor or either investigator (The review process will encourage more than one perspective on how to analyze a specific code section or requirement. Emphasis will be placed on chronological presentation of the facts and events; whether the report can be easily followed; are the elements of the

violation addressed; do the findings reached by the writer reach a conclusion of what is more likely to have occurred; and is the "preponderance of evidence" burden met to continue with any potential civil penalty actions.)

Goals and Projected Deliverables

- Inform staff of the operational and administrative uses of Departmental investigation reports
- Prepare specific investigative training, guidance, and standard operating procedures for staff
- Utilize published textbooks regarding investigative report writing
- Train and require staff to provide clear, understandable, uncomplicated descriptions of the nature and circumstances of the evidence found during investigations when violations are presented
- Require staff to write well-written, accurate, objective, brief, and complete reports

Measures of Success

- When improvements are seen in the detail of the information documented in reports and investigations
- Established processes for report progress and tracking are consistently maintained
- Timelines for submitting, referring, and notifying DPR are met
- Investigations identify violations and hazards not adequately addressed by regulations
- Evidence gathered establishes the essential elements of the violations alleged
- Maintaining our immediate response to reported incidents and objectively documenting our findings

IV. Enforcement Response

The primary goal of the pesticide enforcement program is industry compliance with state and local pesticide use requirements. This goal is achieved through the use of a wide variety of regulatory enforcement tools. Depending on the specific circumstances or consequences of the violation, our enforcement response can be designed so as to "more likely than not" result in achieving sustained compliance. An Enforcement Action is an action to document, notify, and penalize a violator for an activity not in compliance with applicable laws or regulations. On inspections and investigations, proper documentation is critical in pursuing a more complex and time-consuming enforcement response. We also look at the compliance history of the person inspected when violations are noted, and follow 3CCR sections 6128 and 6130 when determining fine levels in our enforcement actions. In 2014, 494 non-compliances were recorded on inspection reports.

Enforcement Response Actions include: Administrative Civil penalties (both Agricultural and Structural); revocation or suspension of county registration, refusal, revocation, or suspension of a restricted materials permit; formal requests to DPR or SPCB to initiate an action; and formal referral to a District or City Attorney for civil or criminal prosecution.

Current and Future Status

A performance evaluation report of the 2012-2014 Fresno County Pesticide Regulatory Program (PRP) provided by DPR on March 24, 2016, stated the enforcement response program element was found not to meet DPR standards and CAC work plan goals. In particular, the report stated the Commissioner does not initiate appropriate action when violations are identified.

The enforcement response program element goal stated was "to help ensure a comprehensive and effective statewide pesticide regulatory program by applying the department's enforcement authority fairly, consistently, and swiftly…through a program of progressive discipline."

The lone resource devoted to enforcement response stated in the 2012-2014 work plan was listed as one full-time Investigator whose responsibility was to identify non-compliances found during inspections and investigations. Also stated was that the investigator, evaluate, review, categorize, and analyze all non-

compliances identified by staff, and prepare decision reports, draft Notice of Proposed Actions (NOPAs), initially determine fine amounts, and act as the Commissioner's advocate while presenting cases. Moving forward, one investigator was an inadequate resource to meet and exceed the enforcement response program goal.

As previously stated within this work plan, significant changes within the Department have occurred. Forty percent staff turnover, leaves of absence of existing personnel, limited agricultural knowledge of new hires, increases in complaints and pesticide-related incidents, corrections to the documentation of non-compliances upon discovery, and regulatory, program, and Departmental culture changes all have created a "bottleneck" scenario for the Department to rely on one investigator to meet the stated business processes outlined in the last work plan. Below is our plan moving forward.

We started with three questions.

1. What is an appropriate and timely enforcement response?
2. Where do we start in prioritizing our identified enforcement response weaknesses?
3. How do we get to a place where our enforcement response is routine and compliance is sustained?

1. What is an appropriate and timely enforcement response?

Deciding on the best response to an "unlawful act" depends on categorizing many factors. Is the violation(s) a Class A or Serious Violation, A Class B or Moderate Violation, or a Class C or Minor Violation? We follow 3CCR sections 6128 and 6130 when determining the appropriate enforcement response as well as the appropriate violation class and fine amount. We look at and ask:

- What are the specific circumstances?
- Was there the potential for or actual harm to people, the environment, or property?
- What is the compliance history of the violator?
- Does the violator hold a private or commercial license to supervise restricted material use?
- Is the quality of our evidence substantial?
- Will the desired outcome of sustained behavior change prevent real or potential harm?
- Is punishment by imposing a monetary penalty the best course of action?

How do we establish what the appropriate amount of time is required to respond to a violation in order to achieve compliance? To answer this, we must adhere to the statute time frame when completing our enforcement response actions.

2. Where do we start in prioritizing our identified enforcement response weaknesses?

The major enforcement response deficiencies we identified include: incorrect and inadequate documentation of violations by staff on reports; lack of recognition and acceptance by staff of the necessity to record ALL non-compliances on reports; no real-time tracking capabilities for non-compliances; insufficient staff trained in various enforcement response preparation; staff lacking basic skills for investigative report writing; and we have a greater number of inexperienced staff compared to experienced staff.

In order to develop an improvement plan, we consulted with our EBL. We started with the basics including the following: what is good report writing; why is it important; and what training resources do we need to use to train staff?

We quickly realized we did not have enough experienced staff to prepare, create, and complete enforcement response documents such as Decision Reports and NOPAs that were close enough to the time of the incident to provide an effective and relevant reminder of the consequences of the violation(s).

In response to this, the Department:

- Hired a second investigator
- Dedicated an experienced biologist to review inspections and draft Decision Reports
- Conducts continuous one-on-one training between the deputy and investigators with experienced biologists to develop more knowledgeable staff able to produce more enforcement response actions, in particular, NOPAs
- Dedicated one staff member to track all non-compliance inspections and enforcement response actions
- Reviews and prioritizes cases based on non-compliances found
- Refers cases to the District Attorney (DA) which have been assigned a priority number and have non-compliances documented
- Provides continuous feedback to staff on proper documentation of non-compliances
- Requires investigation plans from staff when assigned a new investigation
- Allows no delay in starting investigations
- Works closely with inexperienced staff
- Provides training for all staff on new regulations
- Develops and provides written training materials for all staff
- Reviews all cases at various levels to ensure quality

3. How do we get to a place where our enforcement response is routine and compliance is sustained?

We look at multiple factors when determining how best to bring repeat offenders into compliance. The following procedure must be in place prior to accelerating punishment for frequent, habitual, or repeat offenders. First, we must have documented violations. Second, we look for a pattern to the violations. Third, we determine if the violations have been documented appropriately and the respondent has been given notice. Fourth, we determine if the respondent had the opportunity to respond to or defend against a similar previous enforcement action. And fifth, we determine if a warning letter has been issued or if the Department conducted a documented educational compliance interview.

The enforcement response focus for Fresno County in 2015-2016 is to track and complete enforcement actions in a way that improves and sustains compliance using all the enforcement tools available to us and implemented without delay.

Enforcement Response--Planned Improvements:

- Develop training programs for staff to define the differences between compliance and enforcement actions and explain the advantages of penalty guidelines
- Make staff more aware that the commissioner has only two years from the occurrence of a violation to initiate an Agricultural or Structural Civil Penalty Action, and if he chooses not to take an enforcement action, he has only sixty days to write a Decision Report stating why
- Build staff understanding about how due process relates to their daily work activities, and teach staff that the essence of due process is fundamental fairness
- Utilize Voluntary Compliance Strategies to extend our reach to more employers; to employ our resources most effectively; and to provide incentives to encourage sustained compliance
- Promote a more systematic approach to improving employee worker safety by ensuring our enforcement response actions resulting from employer confirmed violations are classified properly
- Train staff on Public Protection Compliance Options, such as Cease and Desist or Crop Destruct Orders in order to provide immediate protection for public health or environment

Goals and Projected Deliverables

- Create incentives for all staff to participate in and complete the enforcement process
- Demonstrate that there is success and value in the preventative, corrective, and punitive outcomes resulting from our enforcement actions
- Maintain factual, clear, concise NOPAs that are easily understood by respondents
- Improve the percentage of NOPAs which are processed and issued within 60 days of the completion of the investigative report
- All NOPAs will be written such that they will be upheld in hearing decisions and appeals
- Continue to refine and streamline internal business procedures for processing enforcement response actions
- Facilitate DPR review of NOPAs resulting from investigations of incidents that meet the Human Health Priority Episode criteria and those with any substantial adverse effects to human health prior to sending NOPAs to the respondent
- Notify DPR of any case referrals to the DA or other enforcement agencies

Measures of Success

- Eliminate recidivism of violators by improving our enforcement response time
- Formal referrals to the DA, City Attorney, Circuit Prosecutor, or the Director or Structural Pest Control Board Registrar will be accepted in order to pursue a civil or criminal action when a violation may have occurred
- Enhance compliance by creating deterrence among regulated entities
- Track our results by looking for trends and changes in conditions (either environmental or programmatic) over time
- More experienced staff biologists will learn and participate in the enforcement response process from beginning to end, including drafting and reviewing DRs and NOPAs
- Compliance levels will be sustained because positive changes in behavior have occurred, in part from our consistent and timely enforcement responses
- Demonstrate a more consistent, accelerated level of enforcement when applying penalties for similar violations, especially those violators with frequent or severe violations

V. Priorities and Other Pesticide Regulatory Activities

Priority--Enforcement Staff Training

Fresno County recognizes the importance of employing a highly knowledgeable, trained, and experienced staff. Currently we have more inexperienced than experienced biologists. Our goal is to develop an experienced, professional, engaged workforce that is capable of training, mentoring, and coaching the next crop of biologists.

Department, in-house training is provided on: investigative report writing; accurate inspection completion and compliance monitoring; enforcement response; restricted materials permit issuance; and heat-illness. Training is performed continuously and at every level. In addition, the deputy, investigators, supervisors, biologists, and trainees attend DPR provided training when offered and available.

In 2014 staff attended CalEPA Basic Inspector Academy Training; Apiary Inspection; Field Fumigation Training; Breaking Barriers trainings; Structural Training; Antimicrobial Investigative Training; and Restricted Materials Permitting.

In 2015 staff attended Investigative Sampling Training; Fieldworker Inspection Training, Hearing Officer Training; Advocacy Training; and Elements of a Violation Training.

In 2016 staff will attend Investigative Report Writing; Enforcement Sampling/Planning; and Enforcement Response Training.

Other Pesticide Regulatory Activities

- The Department employees bilingual staff in Spanish, Hmong, Punjab, and Lao assuring effectual inspections and investigations.
- The Department has expanded its outreach and educational, in-person, training sessions with industry.
- Fresno County is one of three counties with citrus/bee protection areas established by regulations (3CCR section 6656) and conducts regulatory activities to assure compliance.
- The Department has improved collaboration with the local Air Resources Board, DA, and County Health/Safety Departments.
- The PUE Deputy is a member of the newly formed Deputy Advisory Committee (DAC).
- Drift mitigation regulations exist for the county's west side growers.
- On-line Pesticide Use Report data numbers continue to improve.
- Residual Mill proposal ideas are in discussion.
- The Department is engaged in monthly participation with the Fresno Environmental Reporting Network (FERN).
- The Department participates in California Association of Pest Control Advisors (CAPCA) meetings.
- SJV Non-Attainment status for non-fumigant VOC's regulations are enforced by staff.
- The Department gives presentations about departmental duties and responsibilities to students at California State University, Fresno.
- The Department conducts outreach activities regarding phosphine respiratory canister and personal monitoring requirement implementation.
- The Department jointly conducted Headquarters Inspections with their EBL with a focus on employers with employees under medical supervision (3CCR 6728).
- The Department has provided updates and training to the following partners: Helena Chemical, Wilbur-Ellis, Target Specialties, CCGGA, CAPCA, Sun Maid, Fresno State, Lost Hills College, Boghosian Raisin, San Joaquin Wine Growers, Britz Ranch, Kerman Lion's Club (Kerman Ag Expo), Almond Symposium, James Irrigation District, Dried Fruit Association, Ag pilots (CAAA), and Nisei Farmers League.