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**DEPARTMENT OF AGRICULTURE**

**MELISSA CREGAN**  
AGRICULTURAL COMMISSIONER/  
SEALER OF WEIGHTS AND MEASURES

**Fresno County Pesticide Use Enforcement Program Work Plan  
2021-2022**

**Vision**

Promoting agriculture and a fair marketplace through equal enforcement of laws for the protection of society and the environment.

**Mission**

We are committed to:

- Promoting Fresno County agriculture
- Fostering public confidence by assuring a fair and equitable marketplace
- Protecting environmental quality through the sound application of pesticide and worker safety regulations
- Preserving agricultural land use for future generations
- Minimizing the pest risk pathways of exotic and harmful pests

**Values**

In fulfilling our mission, we will use:

- Individual and collective responsibility, integrity, and accountability in our actions
- Good sense and sound judgement
- Collaboration and teamwork by encouraging and supporting innovation
- Respect, consistency, and fairness

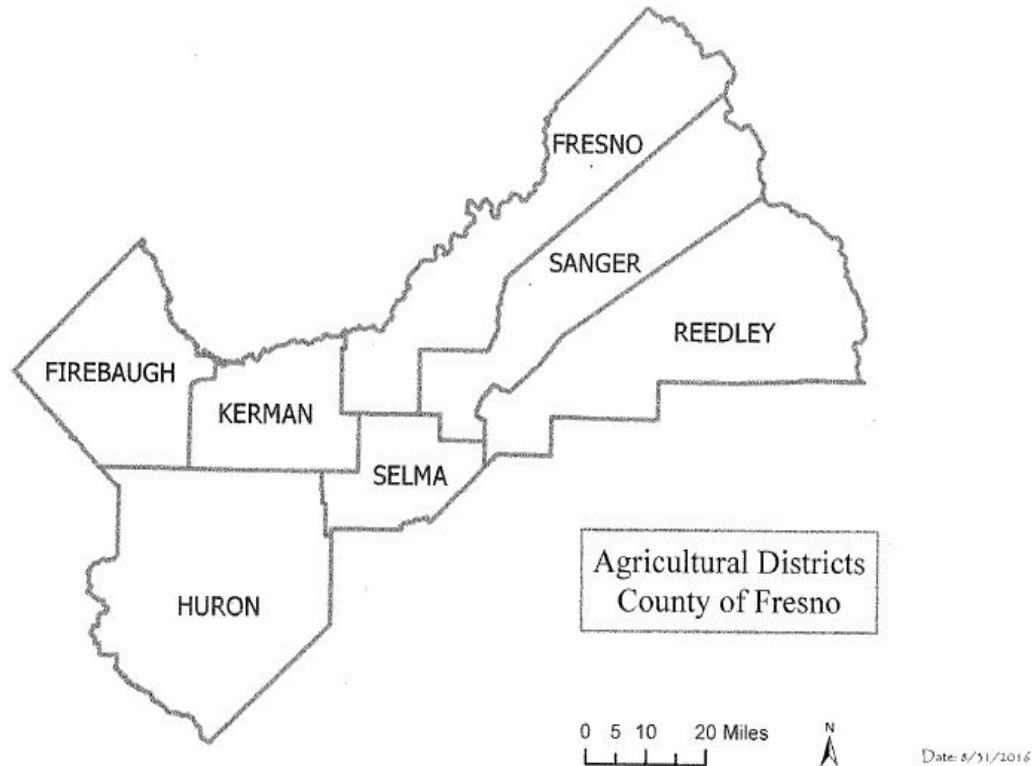
**Code of Ethics**

In the performance of our daily duties:

- We shall regard our office as a public trust and always bear such in mind
- We shall be courteous and helpful in our contacts with the public, punctual in our engagements and prompt in the dispatch of our official business
- We shall maintain our independence of action by not accepting gratuities or favors from those with whom we have official dealings
- We shall utilize our time so that a maximum amount of service, is rendered
- We shall maintain high ethical ideals toward our associates
- We shall, while serving as an official and enforcing the agricultural statutes, regulations, and ordinances, refrain from engaging in any enterprise, which may give an unfair advantage over a competitor or lead to criticism by others engaged in similar or related work
- We shall avail ourselves of all opportunities to broaden our knowledge, realizing the continued advancements, made in agricultural science and public administration
- We shall take pride in our work, realizing the great amount of public good our positions enable us to perform

## RESOURCES

One Deputy Agricultural Commissioner/Sealer supervises the pesticide use enforcement (PUE) program in Fresno County. Geographic area determines PUE staff distribution. One Supervising Inspector/Biologist supervises each of the seven separate district offices located in the cities of Firebaugh, Huron, Kerman, Selma, Reedley, Sanger, and Fresno. Currently there are 28 Inspector/Biologists assigned to work in the seven districts. Staff assigned in the district offices (except Fresno district) work phytosanitary export certification, PUE, nursery and seed inspection, pest exclusion, fruit and vegetable standardization, and other Departmental programs.



The main PUE office of the Agricultural Commissioner is in the city of Fresno and, and is designed to be staffed by six full-time and one trainee Inspector/Biologist working under one Supervisor. Staff in the main office work primarily with assisting customers, issuing permits, reviewing pesticide use reports, disseminating regulatory information to industry and the public, following up on complaints, and processing license registrations. Fresno area assigned PUE staff also conduct agricultural, structural and maintenance gardener inspections within and surrounding the cities of Fresno and Clovis. Fresno district/division Inspector/Biologists conduct Worker Health and Safety (WHS) investigations. They frequently help in other departmental programs, and in every district, as needed.

Each district Inspector/Biologist utilizes an Apple iPad to conduct inspection activities using the California Pesticide Enforcement Activities Tracking System (CalPEATS). CalPEATS is a single statewide system designed to manage, track, and report pesticide enforcement activities in each county. PUE Inspector/Biologists utilize a county vehicle, a desktop computer, and a desk phone. Each Inspector/Biologist has a cell phone, personal protective equipment, a wind gauge, shovel, and thermometer. 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.

The Enforcement Response Team (ERT) currently consists of two Investigators and one dedicated Inspector/Biologist. In the future, we hope to add another dedicated Inspector/Biologist to assist the ERT. The investigators work out of the main office and prepare 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. They train staff on how to complete investigations and provide resources to staff. They assist in tracking, editing, and reviewing pesticide inspections and investigations. The investigators assist with other penalty actions in other Departmental programs and coordinate formal referrals to the District Attorney.

**Pesticide Use Enforcement Program Staff Experience**

Licensed Staff

Staff turnover within the Department continues to present challenges. Recent changes continue at all staffing levels. In 2019, the Board of Supervisors appointed a new commissioner. In 2020, the commissioner appointed a new deputy and opened recruitment for a new assistant commissioner, which remains unfilled. Currently, fifty percent of the Department’s PUE staff have less than five years’ experience. Agricultural/Standards Specialist Trainees, who have limited environmental protection knowledge, are hired on a provisional basis, and are required to obtain 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.

Currently, there are 95 allocated full-time positions department wide. There are between two and four vacant positions at any given time. Of the filled positions, thirty-nine Inspector/Biologists conduct PUE activities. Eleven licensed Inspector/Biologists within the Department have 20 or more years of PUE experience. Thirty-five Inspector/Biologists working in the PUE program now 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.

Business Systems Analyst: coordinates department computer support with the Information Technology Department (ITD).

Account Clerks (2): provides staff support managing financial transactions.

Program Technicians (2): 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

	<b>2019</b>	<b>2020</b>
Licensed Hours	43,725	44,055
Support Hours	4,194	4,555

## **Program Evaluation and Changes**

Continue to standardize operating practices across the district boundaries through more training, and by adjusting staff activities.

Provide more training to ensure consistent actions among staff and continue to stress the importance of documenting the nature and circumstances of non-compliances during inspections and investigations.

Continue to review the accuracy of our Pesticide Regulatory Activities Monthly Report (PRAMR).

Train staff on the significance of regulating pesticide use by properly implementing the restricted materials permit system, by properly documenting conversations with permittees about reduced-risk pesticide use, and by properly following through with training permittees on how the safer and more conscientious use of pesticides benefits workers, people, and the environment.

Dedicate even more staff resources to improve the timeliness of our enforcement responses.

## **2021-2022 CORE PROGRAM AREAS**

### **I. Restricted Materials Permitting**

#### **Current Status**

We currently use the web based CalAgPermits System (CAPS) to issue permits. The CAPS allow Inspector/Biologists to perform permit site edits on multiple sites at once, allows for more thorough and accurate validation of pesticide use reports, and allows the ability to flag pre-plant applications where pesticides are applied before the commodity listed on a site is in the ground. These features allow for greater user productivity and more effectively model the regulatory framework.

Currently, Inspector/Biologists issue Restricted Materials Permits (RMPs) and Operator Identification Numbers (OINs) for one-year. Inspector/Biologists issue a multi-year permit or multi-year OIN to applicants with perennial agricultural planting sites, non-production agricultural sites, and non-agricultural sites. Several factors, including compliance history, certified applicator license duration, toxicity of pesticides, and site proximity to sensitive areas affect the decision to issue multi-year RMPs and OINs. RMPs and OINs expire on December 31.

Inspector/Biologists issue permits for non-agricultural use to both the property operator and the Pest Control Business (PCB) to ensure permit conditions are noticed and followed. Staff verifies that the qualifying individual for a non-agricultural permit possesses either a Qualified Applicator License or Qualified Applicator Certificate

The number of Restricted Materials Permits issued dropped from 2019 to 2020, while the number of less-toxic non-restricted use, Operator Identification Numbers increased.

The number of Notices of Intent (NOI) for proposed applications of restricted materials dropped considerably from 2019 to 2020.

<b>Permit Year</b>	<b>2019</b>	<b>2020</b>
Restricted Materials Permits	3,225	2,927
Operator Identification Numbers	806	1,559
Notices of Intent (NOI)	10,154	8,643

When updated, staff utilizes DPR manuals comprising the *Pesticide Use Enforcement Program Standards Compendium (Compendium)* for guidance with PUE directives, interpretations, recommendations, and expectations.

Regarding permit issuance, Inspector/Biologists follow 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 met. Staff place emphasis on determining potential hazards to using materials and then decide whether the hazards present a likelihood of substantial environmental effects. In addition, staff must determine if a feasible alternative (other chemical or non-chemical procedures which can reasonably accomplish the same pest control function with comparable effectiveness and reliability) to using restricted pesticides exists. When no feasible alternative exists, Inspector/Biologists issue the permit based on utilization of identified measures that significantly reduce the risks.

New staff trains to complete permit applications under the direct supervision of licensed Supervising Inspector/Biologists, but only qualified Inspector/Biologists possessing a CDFA-issued license in either Pesticide Regulation or Investigation and Environmental Monitoring evaluate and issue permits.

Staff interviews each Restricted Materials Permit applicant to determine if they are the operator of the property, an authorized representative of the permittee, or a licensed pest control advisor (PCA). A Letter of Authorization signed by the permittee is required for any person acting as a representative on behalf of the permittee. Inspector/Biologists also explain to the permittee or representative that the permittee is responsible for compliance with all permit conditions.

During the permit process, staff verifies proper submittal of pesticide use reports, both with the permittee and through a search of the CAPS database.

Current Private Applicator Certificate (PAC) holders must complete the DPR approved renewal form. 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 Inspector/Biologists will complete and sign the PAC renewal application for the applicant's specified valid time-period. Staff determines 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. Authorized, licensed staff proctor the PAC examination. Applicants must present a photo ID prior to taking the exam. We accept examination walk-ins throughout the year, however most schedule an appointment.

We adopted new proximity to school's application notification regulations. We will continue to provide input to DPR as they continue to evaluate and consider changes to the current rules and policies that apply to the agricultural use of pesticides on land adjacent to schools.

To reduce the risk of harm to people or the environment, the Department adopts Suggested Permit Conditions (as outlined by DPR in the *Compendium* Appendices of Volume 3, Restricted Materials and Permitting) when appropriate. These permit conditions are in addition to those already listed on pesticide labels and in regulation, and they are changed as new information and labels are updated.

Staff discuss with growers who have property located in Ground Water Protection Areas (GWPA's) that certain pesticide materials are restricted when used within the one-square mile section of land that is sensitive to the movement of pesticides. Inspector/Biologists provide guidance concerning the differences between leaching and runoff area regulations and management practices.

The Department evaluate all proposed field fumigations to ensure the more detailed safety measures for workers and bystanders are followed. Inspector/Biologists focus on determining whether appropriate methods, emergency preparedness, and response measures are used; appropriate buffer zones are calculated; additional training is received by supervising certified applicators; and sensitive locations are identified on the map, such as: schools, day care facilities, and difficult to evacuate sites. Staff check Fumigant Management Plans (FMPs) prior to the application to determine label compliance and make sure procedures are defined in

case of accidents or unforeseen events. Inspector/Biologists verify the accuracy of the Post Application Summary (PAS), note deviations from the FMP, and any changes in weather conditions. They also check with the applicator to make sure they gave the grower a copy of the completed FMP and PAS.

We receive NOIs by email, fax, personal delivery, and drop box. The Department continues to encourage growers to utilize CAPS for Notices of Intent submittals. Licensed Inspector/Biologists review NOIs to determine if they are complete and consistent with the permit. Staff check for surrounding sensitive sites; certain climatic conditions; compliance with permit conditions, label precautionary statements, and worksite plans, if applicable; and identify potential hazards. We correct simple errors found on NOIs by contacting the grower, PCA, or PCB. The reviewing Inspector/Biologist documents on the NOI and supporting documents all serious errors, omissions, and needed corrections. When the NOI is denied 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 assuring due process.

Also discussed with RMP and OIN applicants are Volatile Organic Compounds (VOCs). These VOC regulations affect four active ingredients (AI) when applied for agriculture use in the San Joaquin Valley: chlorpyrifos, abamectin, gibberellins, and oxyfluorfen. When selling high-VOC products containing these AIs, we verify pesticide dealers are providing information to growers. We remind growers of the prohibition from applying any of these high-VOC designated products during May 1 through October 31. Staff continuously work with dealers, pest control advisors, and growers to ensure understanding and implementation of the VOC regulations.

Dusting sulfur use in Fresno County continues to be a focus for staff. We continue to provide outreach to applicators to highlight factors such as correct timing of applications, use location, distance from schools/residences, proper weather conditions, and frequency of use to minimize risk. All mitigating measures are considered when we look at allowing the continued use of dusting sulfur. Extra surveillance and focus are given in areas where there may be risk to children and people.

Inspector/Biologists work with non-agricultural users of Second-Generation Anticoagulant Rodenticides (SGARs) to ensure compliance with regulations limiting SGAR use due to adverse effects on wildlife. As designated California restricted materials, SGARs require a permit for their use.

Chlorpyrifos is a California restricted material used in Fresno County on almonds, alfalfa, cotton, citrus, grapes, and pistachios. As Chlorpyrifos use is discontinued, staff will work with growers to return unused product or dispose of product at an appropriate hazardous waste facility.

The Department has Herbicide Application Conditions requiring a permit for use of certain contact herbicides applied between February 1 and April 30 each year to sites (commonly known as Drift Mitigation Zones or DMZs) located west of the Fresno Slough.

Staff monitors Research Authorization NOIs to make sure we receive adequate notification time. We work with researchers to achieve the shortest time-period necessary when evaluating the intended application while still maintaining measures that protect human health and the environment.

## **Restricted Materials Permitting—Improvement Maintenance, Goals and Projected Deliverables:**

- Continue to assess, monitor, and evaluate the permit issuance process, and immediately prioritize improvements needed and implement corrective actions.
- 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.
- Require staff to maintain documentation of NOI denials and provide adequate explanation of the reasons for denial as well as information to the permittee of their due process rights, by mail or in-person (we keep copies of denials on file in the main office for two years).
- Document discussions involving mitigation measures and less-toxic alternative material uses.
- Continue to provide excellent customer service. Keep licensed staff available to issue and renew permits throughout the day.
- Develop the most up to date continuing education courses as new regulations change. As regulations change, and more organizations begin offering on-line course options, we believe the best way to help growers and industry is to conduct more in-person continuing education classes. This will allow for discussions of a broader range of issues and local condition changes.

## **Deliverables and Measures of Success**

We will upgrade our Department Webpage as part of our technology upgrade.

We continue to eliminate all identified errors with CAPS permits, CAPS sites, and GIS; this includes

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, polygons without CAPS entry

Polygons with either no assigned commodity or multiple commodities listed

Individually mapped sites over 5 acres

Missing or wrong identified GWPAs and DMZs

Carriage returns within the Location Narrative

Adding grower email address for future mailings of educational material, regulation changes, crop statistics, and commodity group information

We condition each non-agricultural restricted material use permit to require NOI submittals for restricted material use to ensure the department conducts inspections at least once a year.

Staff continues to receive training 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.

We continue to use CalPEATS for PUE. Staff use iPads to enter inspection and investigation data through web and mobile applications. Utilizing CalPEATS allows for improved data access, better system workflow processes, and provides cradle to grave violation tracking.

Inspector/Biologists more thoroughly review adjacent and surrounding properties. Improved discussion with applicants about feasible alternative measures to control pests; education about the Pesticide Regulation’s Endangered Species Custom Realtime Internet Bulletin Engine (PRESCRIBE); and increased communication about use limitations applicable to the pesticide product(s) they intend to use has occurred.

## **II. Compliance Monitoring**

### **Current Status**

Historically, Fresno County conducted more unannounced application inspections. Recently, that number has dropped, but the quality of the inspection reports has dramatically improved. Staff spend more time accurate inspection reports that contain detailed information, documentation reasons for the need for a follow-up inspection, and better notations of existing environmental conditions. Inspections are completed and turned in with all non-compliances noted. We examine non-compliances to establish if compliance is a standard practice or if what the Inspector/Biologist is witnessing is simply a window of negligence. We use the documented nature and circumstances found during inspections as evidence to initiate enforcement responses.

Staff use accurate PUE program policies and procedures such as: interview and investigative techniques; document “as found” conditions at the use site; proper resource utilization and targeting strategies; consistent inspection criteria; quicker communication with management; and meet 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 Inspector/Biologists. They verify each report for completeness and accuracy. Supervisors assure staff they supervise follow correct procedures and use immediate feedback for training purposes. Each Inspector/Biologist is responsible to track and follow-up on their own inspections.

We give a higher priority 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 we mail 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. We provide outreach documents regarding their liability to civil penalties to the responsible person. Included is a copy of DPR’s outreach document, *Pesticide Safety: It’s The Law - To: Employer of Pesticide Handlers and/or Field Workers.*

When we note violations on inspection reports, and those violations not corrected by the user at the time of the inspection, we conduct a separate follow-up inspection. We state violations must be corrected “immediately” when the violation represents any potential safety hazard.

We give priority to improving Inspector/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.

Water quality regulations to reduce potential runoff of surface water contamination from non-agricultural applications of pyrethroid insecticides, and monitoring of outdoor applications made to structural, residential, industrial, and institutional sites is a focused activity.

Per regulation, Inspector/Biologists conduct pre-application site evaluations as part of our permit monitoring process. More frequent monitoring occurs of individuals and businesses with past non-compliances, locations within proximity to sensitive sites and schools, and soil fumigations. Staff monitor and evaluate proposed applications of California restricted pesticides for agricultural use at a rate no less than five percent of the total Notices of Intent submitted.

Closed mixing system regulations were redefined to mitigate dermal exposure risks to pesticide handlers in production agriculture. Staff work with growers and businesses explaining the tiered mitigation scheme and proper PPE requirements relating to these regulations.



Staff address all observations and violations found during their inspection activities. They are not limited to “checking off” the requirements listed on the inspection report form they are using at the time. For example, Inspector/Biologists must document compliance with any regulation they address during an inspection by utilizing the “Remarks” section of the report and supplemental forms. Inspector/Biologists describe in the “Remarks” the nature and circumstances of activities they observe and include any corrective measures taken immediately by the person inspected.

### **Compliance Monitoring---Improvement Maintenance, Goals and Projected Deliverables:**

- Send more staff to the Basic Level Structural Regulatory Training provided by DPR. Perform more structural fumigation use and structural use monitoring inspections. Complete more structural pest control business headquarter inspections. Provide more outreach to Operators and Field Representatives to assure all possible hazards to people, non-target animals and property are fully mitigated.
- Send new staff to the Basic Inspector Academy when classes are offered in the valley.
- Make pre-site inspections adjacent to or in-close proximity to sensitive sites a high priority inspection. The commissioner designates sensitive sites as those defined on the label in use and those defined in 3CCR section 6428(c).
- Monitor all field fumigations for correctly calculated buffer zone distances, adequate pre-application soil moisture, and certified applicator presence throughout the application process.
- Emphasize targeting strategies for inspections in areas of historical non-compliance.
- Maintain accurate documentation of non-compliances based on initial observations.
- Keep staff accountable to stop hazardous situations when they create imminent hazards to workers, the public, or the environment. Issue a Cease-and-Desist order when necessary.
- Continue supervisory ride-along inspections with Inspector/Biologists to observe accurate non-compliance notations on inspection reports. Compare the number of oversight inspection reports with non-compliances noted to non-oversight inspections for consistency. The presence of an Enforcement Branch Liaison (EBL) should not be the only time an Inspector/Biologist documents a non-compliance or violation on an inspection report.
- Maintain public health, worker, bystander, and property safety protection. Continue to protect the environment from unacceptable pesticide risks by maintaining a visible presence in the field.
- Inspections stand alone when determining whether a violation occurred.

### **Deliverables and Measures of Success**

- Staff participates in all in-house training. Staff attends all available trainings. More training resources were developed. Require staff to repeat training if inconsistencies in performance are observed.
- Focused surveillance monitoring on problematic methods of applications, soil fumigations, and applications adjacent to school properties was completed and remains a priority.
- Continue and repeat training and repetition of learned knowledge to improve staff abilities and confidence in enforcing pesticide laws, policies, and regulations.
- Increase our pesticide use monitoring inspections on property operators using employee handlers.
- Consistent use of the “Remarks” section on inspection reports to describe the exact nature of the situation and conditions found upon arrival at the inspection site, along with more consistent use of supplemental forms to further explain non-compliances found and the immediate corrective measures taken.
- Inspector/Biologists must recognize, properly describe, and stop activities that present an “immediate hazard”.
- Staff continue to improve their individual writing skills.
- We will be successful if we assess our inspection situations consistently to affect a consistent enforcement response action as a result.
- We will see real-time downward trends in the types of and numbers of pesticide misuse occurrences.

### **III. Investigation Response and Reporting**

#### **Current Status**

Increasing city growth into what was traditionally agricultural land has contributed to a greater number of pesticide-related complaints at the agricultural/urban interface. We believe the public's immediate access to social media and website hotlines to report possible pesticide misuse is helping capture misuse complaints that previously went unreported. Pesticide illness incidents received by the Department from DPR, the Poison Control Center, U.S. EPA, and other local agencies continues to increase. During our previous PUE Program self-evaluation, 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 the safe use of pesticides. We improved the way we document and investigate complaints and incidents. We improved our investigative reports and now provide DPR accurate data to evaluate safe pesticide workplace practices.

Fresno County CAC staff respond to complaints and investigations immediately. We continue to see priority investigations. Criteria for determining whether an incident is a priority episode, is contained in the US EPA/DPR/CACASA Cooperative Agreement. According to the Cooperative Agreement, a priority episode investigation must commence immediately whenever possible, but no later than 3 working days from referral to the Commissioner. We initiate our investigations immediately and conduct a full investigation on all pesticide use related episodes within our jurisdiction. 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 to proceed with an enforcement action. We triage our investigation notifications and referrals.

Fresno County is notified of illnesses involving pesticides usually through email. We upload completed investigations into CalPEATS.

#### **Investigation Response and Reporting---Improvement Maintenance, Goals and Projected Deliverables:**

- We continue to increase the percentage of pesticide illness and complaint investigative reports completed within the established timeframe between DPR and the department.
- We utilize the "Pesticide Illness Investigation Request for Time Extension" form PR-ENF-097 when we determine illness investigations will go past 120 days.
- We've trained 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.
- We have an extensive review process for reviewing investigation reports prior to review by the deputy or either investigator. The review process has encouraged discussion on more than one perspective on how to analyze a specific code section or requirement. We put investigation details in chronological order as we present the facts and events. We ask, can the reader easily follow the report, are the elements of the violation addressed properly, 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?
- We inform staff of the operational and administrative uses of departmental investigation reports.
- We prepared specific investigative training, guidance, and standard operating procedures for staff.
- We utilize published textbooks regarding investigative report writing.
- When violations are presented, we train and require staff to provide clear, understandable, uncomplicated descriptions of the nature and circumstances of the evidence found during investigations.
- Staff is required to write well-written, accurate, objective, brief, and complete reports.
- We use two Phantom 4 drones to effectively photograph and record pesticide drift damage from elevations and perspectives that are difficult to document from ground level.

## **Deliverables and Measures of Success**

- The detail of the information documented in reports and investigations is excellent.
- Consistent established processes for report progress and tracking are in place.
- Meet timelines for submitting, referring, and notifying DPR.
- Investigations identify violations and hazards not adequately addressed by regulations.
- Evidence gathered establishes the essential elements of the violations alleged.
- Improved response time with our enforcement responses to reported incidents and keep our finding's objective.

## **IV. Enforcement Response**

### **Current Status**

The primary goal of the pesticide enforcement program is industry compliance with state and local pesticide use requirements. We achieve our goal by using a wide variety of regulatory enforcement tools. Enforcement Actions document, notify, and impose penalties for violations of 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 look at the compliance history of the person inspected when non-compliances are documented. We follow 3CCR sections 6128-6130; Agricultural Commissioner Penalty Guidelines, when determining fine levels.

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.

Below are three Program questions which we continue to positively address and develop.

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

### **1. What is an appropriate and timely enforcement response?**

Deciding on the best response to an "unlawful act" depends on categorizing many factors. When we determine violation(s) as a Class A or Serious Violation, a Class B or Moderate Violation, or a Class C or Minor violation we document and verify the specific circumstances. We determine if there was the potential for or actual harm to people, the environment, or property; establish whether the violator holds a private or commercial license; verify whether the pesticide(s) used were restricted or non-restricted materials; and look at previous similar violations within the last two years. Before proceeding with any action, we evaluate the quality of our evidence, determine if imposing a monetary penalty will be the best course of action, and achieve the desired outcome of sustained behavior change.

### **2. Where do we improve in correcting our identified enforcement response weaknesses?**

We started by correcting inadequate and/or incorrect documentation of violations by staff on both inspection and investigation reports. We sent appropriate staff to DPR provided trainings. We began in-depth internal training of staff specifically in good report writing, why it is important, and what are the Commissioner's expectations when completing and turning in quality, accurate work. We dedicated more staff to review

investigations, track non-compliances, draft decision reports, and produce NOPA's. We continue to work on these weaknesses and make improvements as we retire staff and hire new personnel.

### **3. How do we get to a place where our enforcement response is consistent, and compliance sustained?**

Continued and focused training, and promoting "doing the right thing, even when no one is watching" mentality is key to consistent enforcement.

To improve compliance, we ask the following questions. First, did we correctly document violations? Second, did we look for a pattern to the violations? Third, did we appropriately document the violations and give the respondent notice? Fourth, did we assure the respondent had the opportunity to respond to the violations, to understand the violations, and to correct the violations to prevent future similar violations? Fifth, did we issue a violation notice, warning letter, conduct a documented compliance interview, or establish an agreement outlining future mitigation measures? We've been able to improve our positive answer rate to these questions which improves our sustained compliance.

#### **Enforcement Response---Improvement Maintenance, Goals and Projected Deliverables:**

- Maintain training programs for staff that define the differences between compliance and enforcement actions and explain the advantages of penalty guidelines.
- Reiterate to staff that the Commissioner has only two years from the occurrence of a violation to initiate an Agricultural or Structural Civil Penalty Action, and if she chooses not to take an enforcement action, she has sixty days to submit a Decision Report to DPR stating why.
- Build staff understanding about how due process relates to their daily work activities. Teach staff that the essence of due process is fundamental fairness.
- Continue utilizing Voluntary Compliance Strategies to extend our reach to more employers who use pesticides, to employ our resources most effectively, and to provide incentives to encourage sustained compliance.
- Promote a more educational and preemptive approach to improving employee worker safety by providing more outreach to employers, more guidance on proper training and documentation, more help in understanding compliance with laws and regulations and providing more avenues for workers to ask questions and get answers to their workplace concerns. We continue to make sure our enforcement response actions result from properly identified violations.

#### **Deliverables and Measures of Success**

- Require all staff to participate in and complete the enforcement process.
- Demonstrate the success and value in the preventative, corrective, and punitive outcomes resulting from our enforcement actions.
- Maintain factual, clear, and easily understood NOPAs.
- Place value on continuous streamlining of internal business procedures.
- 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.
- Eliminate recidivism of violators by improving our enforcement response time.
- Track results and look for changes in trends (either environmental or programmatic) over time.
- Keep compliance at high levels because positive changes in behavior have occurred.
- Continue consistent accelerated levels 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. We continue to hire new staff who are inexperienced with little field experience. We remain committed to developing an experienced, professional, engaged workforce that is capable of training, mentoring, and coaching the next generation of Inspector/Biologists.

### **Other Pesticide Regulatory Activities**

- Implementation and utilization of BeeWhere: a real-time GIS mapping system that allows users to mark hive locations and growers and applicators to view these locations to help make appropriate pesticide application decisions. BeeWhere is designed to facilitate communication using modern technology.
- Respond to and investigate CASPIR (California's System for Pesticide Incident Reporting) incidents: a mobile App that provides a quick and easy way to report on-going incidents using smart phones and tablets.
- The Department employs bilingual staff who can provide translation in Spanish, Hmong, and Punjab assuring inspections and investigation requirements are effectively communicated.
- 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 continues to collaborate with the local Air Resources Board, District Attorney, and County Health/Safety Departments.
- The PUE Deputy is a member of the Deputy Advisory Committee (DAC).
- Drift mitigation regulations exist for west side growers.
- The Commissioner actively participates with the Central California Environmental Justice Network meetings.
- The Department participates in California Association of Pest Control Advisors (CAPCA) meetings.
- Staff enforce SJV Non-Attainment status for non-fumigant VOC's regulations.
- The Department gives presentations about departmental duties and responsibilities to students at California State University, Fresno.
- The Department conducts outreach activities with employers who routinely use phosphine gas generating products. Respiratory requirements are discussed, and information is provided about canister respirators, SCBA and when to implement the use of personal monitoring devices.
- The Department provides updates and training to our industry partners: Helena Chemical, Wilber-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), Nutrien, Five Points, and Nisei Farmers League.
- Continuing Education class titles include: Top 10 violation review, Drift prevention, Pesticide label requirements, BeeWhere protection regulations, headquarter inspections, Rodent management regulations, Aluminum Phosphide stockpile fumigations, Agricultural Commissioner Duties and Responsibilities, Personal Protection Equipment (PPE), Handler training, Fieldworker training, N95 Respirator use and regulations, New and recently enacted laws, and regulations review.
- The Department continues to provide in-person continuing education classes.