



# Department of Pesticide Regulation



Mary-Ann Warmerdam  
Director

Arnold Schwarzenegger  
Governor

January 13, 2009

To: Interested Parties

Subject: REQUEST FOR COMMENTS ON DRAFT COMPLAINT  
RESPONSE PROTOCOL

The California Environmental Protection Agency (Cal/EPA) has requested that each board, department, or office within Cal/EPA develop a protocol for handling environmental complaints. Cited as an example is the protocol signed by the Air Resources Board and the California Air Pollution Control Officers Association. Its stated goal is “to ensure timely and effective resolution of air pollution complaints and to inform the public of the process,” and covers respective roles and responsibilities under state law and how agencies respond to complaints.

In 2008, DPR published its *Community Guide to Recognizing and Reporting Pesticide Problems*, designed to make it easier for people to get help in a pesticide emergency and resolve pesticide use complaints and concerns. The booklet, available in English and Spanish, describes how to file a complaint about pesticide incidents and illnesses, and how complaints are investigated by commissioners’ offices and DPR. Developing a brief, formal complaint response protocol as a follow-up to the *Community Guide* has been a priority of DPR Director Mary-Ann Warmerdam. While DPR originally intended to form a workgroup of external stakeholders to meet and draft a complaint response protocol, budget constraints have made that impossible. Instead, DPR and the County Agricultural Commissioners worked together to take the first steps in crafting a draft protocol. Now we are looking for outside input, sending the draft out on our environmental justice list-server and posting it online for comment.

This complaint response protocol is not intended to mandate specific procedures in each county. CAC offices are units of county government. Each works under procedures dictated by its own unique circumstances. DPR’s role is to provide oversight, guidance, training and coordination. DPR is charged with setting expectations for performance, with each county deciding how they shall be met. (*Note: DPR’s own policies and procedures for handling complaints are detailed in Volume 8 of the “Pesticide Use Enforcement Standards Compendium,” Chapter 1, Section 1.3, [http://www.cdpr.ca.gov/docs/enforce/compend/vol\\_8/chapter1.pdf](http://www.cdpr.ca.gov/docs/enforce/compend/vol_8/chapter1.pdf).*)

Public comments on the attached draft protocol are due by March 4, 2010. After changes are made based on this input, the revised draft will be reviewed at meetings of the five CAC area



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groups in late March and April. The final version will be voted on by the California Agricultural Commissioners and Sealers Association at its spring conference in May and finalized by DPR before June 30, 2010, the end of the 2009-10 fiscal year.

Please contact me if you have any questions, or wish to submit comments.

Sincerely,

*Original signed by*

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Attachment: Draft of complaint response protocol

## ***Draft Complaint Response Protocol***

### *Purpose*

The intent of this Complaint Response Protocol is to ensure a timely and effective response to pesticide-related complaints and to inform the public of the basic complaint process. This protocol specifically applies to the Department of Pesticide Regulation (DPR) and the County Agricultural Commissioners (CACs). The protocol outlines how a complaint related to pesticide use can be filed by the public and how DPR and the CACs handle complaints, guides impacted parties on how to provide information to DPR and/or the CAC, and assures feedback to the complainant when requested. More information is available in DPR's publication, "A Community Guide to Recognizing and Reporting Pesticide Problems," and in the "Pesticide Use Enforcement Program Standards Compendium." The compendium addresses laws and regulations, restricted materials and permitting, inspection and investigative procedures, and guidelines for interpreting pesticide laws, regulations and labeling. The Community Guide and the Compendium are available on DPR's Web site ([www.cdpr.ca.gov/docs/dept/comguide/index.htm](http://www.cdpr.ca.gov/docs/dept/comguide/index.htm) and [www.cdpr.ca.gov/docs/enforce/compend.htm](http://www.cdpr.ca.gov/docs/enforce/compend.htm), respectively).

### *General Roles and Responsibilities*

DPR's goal is to protect California's citizens and the environment through enforcement of existing laws. DPR has the responsibility to ensure that pesticide products are registered before use in California, and that applications are made according to label directions and other applicable laws and regulations.

Food and Agricultural Code section 2281 states "...the commissioner shall be responsible for local administration of the enforcement program. The director shall be responsible for overall statewide enforcement and shall issue instructions and make recommendations to the commissioner."

FAC section 2281 further states that DPR "... shall furnish assistance in planning and otherwise developing an adequate county enforcement program, including uniformity, coordination, training, special services, special equipment and forms, statewide publicity, statewide planning, and emergency assistance."

DPR's Enforcement Branch is responsible for the oversight of all pesticide use enforcement activities of the CACs and their staffs of county agricultural inspector/biologists. The branch provides training, coordination, and technical and legal support to county agricultural inspector/biologists involved in local pesticide enforcement programs. The Enforcement Branch also has oversight responsibility for pesticide incident investigations, manages the nation's largest state monitoring program for pesticide residues on fresh produce, and inspects for compliance with pesticide product registration and labeling requirements.

DPR's Enforcement Branch has three regional offices located in Anaheim, Fresno, and West Sacramento. Regional office staffs work with the CACs in developing work plans that detail

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each county's priorities in improving enforcement, compliance, and permitting. The work plans have clearly stated goals and performance measures, balancing DPR's statewide enforcement priorities with local conditions unique to each county. DPR and the CACs work diligently to evaluate and carry out an effective pesticide use enforcement program at the local, regional, and statewide levels.

California's pesticide enforcement program stands apart from those of the other states in that it has County Agricultural Commissioners that oversee pesticide use in all 58 counties. Other states have comparatively small staffs of inspectors who are employed by that state's lead pesticide agency and conduct pesticide use inspections statewide. DPR works closely with the CACs who are the primary local enforcement agents for pesticide laws and regulations.

Among other duties, CACs are responsible for issuing the site- and time-specific permits required of those who wish to use restricted pesticides in agriculture. (Restricted materials are those pesticides that have a higher potential to have an adverse impact on health or the environment.) No other state has a permitting system for use of highly hazardous pesticides. The CACs evaluate a proposed application of these restricted pesticides to determine if the product can be used safely, particularly in sensitive areas, such as near wetlands, residential neighborhoods, and schools.

State law further requires commissioners to ensure that applicators of all types of pesticides take precautions to protect people and the environment, and CACs regulate pesticide use to prevent misapplication or drift. CAC staffs inspect the operations and records of growers, pest control applicators, pest control dealers, and agricultural pest control advisers. They also certify private applicators and as mentioned above, issue restricted material permits.

Because local Agricultural Commissioners have responsibility for regulating and permitting pesticide use in their counties, they are the primary and appropriate agencies to contact regarding complaints. When DPR receives a local complaint about pesticide use, the first step is to refer the complaint to the DPR regional office. The DPR regional office staff then refers it to the local county for investigation and follow-up.

*Training and Community Outreach*

- DPR's Enforcement Branch is responsible for training Enforcement and CAC staff on complaint handling procedures and investigations. DPR has published the "Pesticide Use Enforcement Program Standards Compendium", a series of eight manuals of enforcement standard operating procedures. They include laws and regulations, restricted materials and permitting, inspection and investigative procedures, and guidelines for interpreting pesticide laws, regulations and labeling. The manuals are available online at <http://www.cdpr.ca.gov/docs/enforce/compend.htm>.
- DPR publishes various pesticide safety information sheets in English, Spanish and Punjabi.
- DPR staff provides training and outreach on pesticide safety to the regulated community including growers and farm workers.

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- DPR publishes a “Community Guide to Recognizing and Reporting Pesticide Problems” in both English and Spanish, available free of charge by request to DPR.
- DPR has developed wallet-sized cards in Spanish and English for distribution to field workers with information about what to do in the case of a pesticide illness.
- CACs provide training to growers, property operators, pesticide applicators, and others in the agricultural community through continuing education classes and presentations.

*Filing a Complaint*

- Call your County Agricultural Commissioner. The phone number is available in the government section of local telephone books and on DPR’s Web site ([www.cdpr.ca.gov](http://www.cdpr.ca.gov), click on the red “Ag commissioners” link). Or you can call DPR’s toll-free number, 1-877-378-5463 (1-87PestLine) to get the number and be connected directly if you wish.
- You can visit to the County Agricultural Commissioner’s Office, or write or e-mail them. Address and other information are available on DPR’s Web site ([www.cdpr.ca.gov](http://www.cdpr.ca.gov), click on the red “Ag commissioners” link).
- Use the Cal/EPA Environmental Complaint Form, online at [http://www.dtsc.ca.gov/database/CalEPA\\_Complaint/index.cfm](http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm).
- Telephone DPR, 916-324-4100 or e-mail to [cdprweb@cdpr.ca.gov](mailto:cdprweb@cdpr.ca.gov).

*DPR Responsibilities*

- Receive and log complaints that come into DPR.
- Refer complaint to appropriate agency or CAC office.
- Notify complainant that complaint has been received and the agency to which it was referred.

*CAC Responsibilities*

- Receive, log and follow guidance as outlined in the “Pesticide Enforcement Standards Compendium, Volume 5, Investigations,” and county complaint response procedures.
- Contact complainant to get more information, if needed.
- Evaluate the merits of the complaint.
- Respond to complainant; and provide the complainant a written report if requested.

*Complainant Rights and Responsibilities*

- Right to file a complaint anonymously, or to keep name and identifying information confidential.
- Provide as much detailed information as possible to the CAC or DPR on the specific complaint.
- Right to be notified of the outcome of the complaint.
- Right to request additional review if dissatisfied with an outcome.

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*Confidentiality of Complainant*

It is DPR's position that under the balancing test required by the Public Records Act the public interest served by keeping the identity of a complainant from disclosure far outweighs the public's interest in disclosure.

An employee has the right to file a confidential complaint alleging unsafe working conditions. According to Labor Code sections 6309 and 6310, the employee's legal rights must be protected at all times during the investigation of a complaint. The name of the complainant must be kept confidential unless that person specifically requests otherwise. The employee has the right to protection against retaliation by the employer when an employee files a complaint (3CCR Section 6704).

*More Information*

The "Community Guide to Recognizing and Reporting Pesticide Problems" discusses at length many of the issues addressed in this protocol. Chapters in the Guide include:

- What to do in a pesticide emergency, and potential health effects of pesticides.
- About pesticides and pesticide use in California. Why "the label is the law." How to read a pesticide label. What constitutes illegal pesticide use.
- Pesticide drift—what it is, whose responsibility it is to prevent drift, and the roles of DPR and the CACs regarding drift.
- Pesticide odor—how to recognize problems and who to call.
- How to report pesticide incidents and illnesses, information you will be asked for (including a two-page form to record notes about a pesticide incident), what happens when a complaint is filed, the penalties for violating pesticide laws, and what to do if you are not satisfied with the outcome of your complaint.

The Guide (in English and Spanish) can be downloaded from DPR's Web site, <http://www.cdpr.ca.gov/docs/dept/comguide/index.htm>. Free copies are available by request to [cdprweb@cdpr.ca.gov](mailto:cdprweb@cdpr.ca.gov).