

Enforcement Action in the State of California

COOPERATIVE AGREEMENT BETWEEN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IX, THE CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION, AND THE CALIFORNIA AGRICULTURAL COMMISSIONERS AND SEALERS ASSOCIATION

The U. S. Environmental Protection Agency, Region IX, Pesticide Office (hereinafter U.S. EPA), The California Environmental Protection Agency, Department of Pesticide Regulation (hereinafter DPR), and The California Agricultural Commissioners and Sealers Association (hereinafter CACASA), in order to ensure a unified and coordinated program of pesticide episode reporting, investigation, and enforcement action in the State of California, hereby enter into this cooperative agreement.

I. DEFINITIONS

- A. "Episode" means any event, which appears to involve a violation of the pesticide use provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (hereinafter FIFRA), or potential or actual illness, damage, harm, loss, or contamination where there is a reasonable possibility that the event could have resulted from the use or presence of a pesticide.
- B. "Priority Investigation" means the investigation of an episode that appears to meet one or more of the effects criteria listed in Appendix A of this agreement.

II. LEGAL AUTHORITY

- A. U.S. EPA is responsible for administering and enforcing FIFRA, as amended (7 U. S. C. Section 136 et seq.)

FIFRA section 26 specifies that for the purposes of this Act, a State shall have primary enforcement responsibility for pesticide use violations (primacy) when the State has adopted and is implementing adequate use regulations or has entered into a cooperative agreement with U.S. EPA specific to pesticide enforcement.

FIFRA section 27 addresses failure of a State to assume enforcement of State pesticide regulations and authorizes U.S. EPA to override or rescind a grant of primacy in certain

situations.

Appendix B, the Section 26/27 Final Interpretive Rule (published in the Federal Register on January 5, 1983), clarifies U. S. EPA's interpretation of FIFRA section 26 and FIFRA section 27 regarding procedures for issuing, overseeing, and rescinding a State's primacy over pesticide use violations. The rule outlines under what conditions U. S. EPA may act upon pesticide use complaints.

FIFRA section 12(a)(2)(G) sets forth as an unlawful act the use of any federally registered pesticide in a manner inconsistent with its labeling.

FIFRA section 9(c)(3) and FIFRA section 14 provide for written warnings, and for civil and criminal penalties for violations of FIFRA provisions.

FIFRA section 23(a)(1) empowers the Administrator of U.S. EPA to "enter into cooperative agreements with States... to cooperate in the enforcement of this Act." The authority to enter into such agreements has been delegated to the Regional Administrators of U.S. EPA.

DPR and County Agricultural Commissioners (hereinafter CACs), are responsible for administering and enforcing the provisions of Division 6 and Division 7, of the California Food and Agricultural Code (hereinafter FAC) (FAC section 1 et seq.).

FAC section 12973 provides that "the use of any pesticide shall not conflict with labeling... which is delivered with the pesticide."

FAC section 12931 provides the Director of DPR shall make such investigations as are necessary for the full enforcement of Division 7, Chapter 2.

FAC section 11737 empowers the CACs to determine whether any person is operating any equipment or facility in violation of Division 7 of the FAC.

FAC section 482 empowers the Director of DPR to enter into cooperative agreements with CACASA for the purpose of enforcing Divisions 6 and 7.

Business and Professions Code (hereinafter B&P Code) sections 8616, 8616.4, and 8616.5 designates DPR and CACs as the lead in the investigation of the structural use of pesticides.

Health and Safety Code (hereinafter H&S Code) section 105200 authorizes the CAC to be involved in the investigation of illnesses suspected of being caused by pesticides.

III. COORDINATION

A. Each party in this agreement will designate an individual whose function shall be to coordinate the activities set forth in this cooperative agreement.

B. Any party to this agreement may request a meeting for purposes of consulting by contacting the other parties to the agreement.

IV. EPISODE REFERRAL

U.S. EPA, DPR, and CACASA, by signing this document, each agree to promptly report, as outlined below, all episodes meeting or appearing to meet one or more of the priority investigation effects criteria listed in Appendix A.

<u>Identifying Party</u>	<u>Will Notify</u>
U.S. EPA	DPR who will notify CAC
DPR	CAC and U.S. EPA
CAC	DPR who will notify U.S. EPA

V. INVESTIGATIONS

A. The party normally responsible for the investigation of an episode shall be the CAC where the event occurred. For episodes that involve more than one county, or where it is not appropriate for the CAC of occurrence to investigate, DPR will designate the agency that will conduct the investigation.

B. DPR will advise the CAC in the investigation upon request from the CAC. DPR may elect to become involved and/or take the lead role in an investigation after consulting with the CAC.

C. The U.S. EPA will assist, advise, or conduct investigations or inspections only after consulting with DPR and the involved

CAC.

- D. Priority investigations, will commence immediately, whenever possible, but in no event will the investigation commence later than three working days from the referral to the CAC.
- E. The U.S. EPA may participate in at least one priority investigation per year in cooperation with DPR and CAC.

VI. INVESTIGATION REPORTS

- A. The CAC conducting the field investigation will keep DPR apprised of the major developments in all priority investigations. DPR will, in turn, keep U.S. EPA apprised of the major developments in all priority investigations.
- B. The reports and summaries, and any enforcement action resulting from any priority investigations, will be promptly filed with DPR, and the U.S. EPA upon conclusion of the investigation. The investigative reports will contain all available evidence to support state and federal enforcement action when violations are indicated.
- C. DPR will provide the U.S. EPA with a summary report for each episode that resulted in a priority investigation. The manner in which the DPR will track and report on priority investigations is outlined in Section VIII - Implementation Plan.

VII. ENFORCEMENT

- A. Nothing in this agreement will preclude DPR and/or the CAC from undertaking any enforcement action with respect to any act that constitutes a violation of State law. Nothing in this agreement will preclude the U.S. EPA from undertaking any enforcement action with respect to any act that constitutes a violation of FIFRA
- B. The U.S. EPA will discuss with DPR and the CAC involved the appropriateness of initiating federal enforcement action against pesticide users alleged to be in violation of FIFRA section 12(a)(2)(G). Any enforcement action that may be taken by the U.S. EPA will conform to the guidance of the Final Interpretive Rule pertaining to State primacy for use enforcement responsibility.

VIII. IMPLEMENTATION PLAN

- A. When DPR learns of an episode that appears to meet one or more of the priority investigation effects criteria, it will complete the Pesticide Episode Notification Record (Appendix C) and send it to the U.S. EPA, the CAC, and other agencies as appropriate as soon as possible.
- B. Within 15 days of receipt of the Pesticide Episode Notification Record, DPR will prepare an updated report of the CAC's preliminary findings and forward it to U.S. EPA. This report should include an update of the initial information reported, the CAC's projected completion date of the investigation, any suspected violations that contributed to the episode, and any contemplated enforcement action.
- C. U.S. EPA will notify DPR of episodes for which additional status updates are desired. DPR, in cooperation with the CACs, will provide either oral or written updates of the investigation findings, suspected violations, and contemplated enforcement actions, including penalty amounts under consideration. The frequency of the additional updates will be mutually agreed upon by U.S. EPA, DPR, and CAC on a case-by-case basis and will depend, in part, upon how the investigation is proceeding.
- D. The CAC shall submit the completed investigation report; including all supporting documents, to DPR within 45 days of completion of the investigation. DPR will provide a final Pesticide Episode Investigation Report summarizing the CAC's findings and enforcement action to the U.S. EPA within 30 days of receipt of the completed investigation. The report form may be submitted indicating pending enforcement action.

IX. DISPUTE AND CONFLICT RESOLUTION

It is the desire of all parties to establish a speedy, efficient, and informal method for the resolution of conflicts. In the event of a disagreement about the interpretation or implementation of any section of this agreement, that cannot be resolved informally, a joint meeting of the Manager of the Pesticides Office of U.S. EPA Region 9, the DPR Enforcement Branch Chief and the CAC involved, will be convened to resolve the conflict. If the conflict is not resolved at this level, the issue will be elevated to the next level of management at U.S. EPA and DPR.

X. TERMS

This cooperative agreement, when accepted by all parties, will be valid until modified or terminated. This cooperative agreement may be modified, at any time, by the mutual written consent of all parties, or terminated by any party upon a 30-day advance written notice to the other parties. Any party may initiate a review of the agreement, for the purpose of modification, at any time,

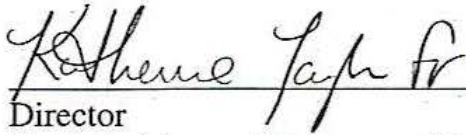
XI. PROGRAM EVALUATION

The U.S. EPA and DPR will review Pesticide Episode Notification Records, 15-day Reports, Final Pesticide Investigation Reports and other available summary information periodically through the year. The focus of this evaluation will be on investigative techniques and resultant enforcement action to assure U.S. EPA that the State is meeting the requirements of Section 26 of FIRFA. The U. S. EPA may request a copy of the complete investigation and/or inspection file for any episode. U. S. EPA may also review DPR county oversight activities when appropriate.


XII. REVIEW

Annually, DPR will initiate a meeting of U.S. EPA, DPR, and CACASA to review the performance of all parties to the agreement and discuss issues pertaining to the agreement and any desired modifications.

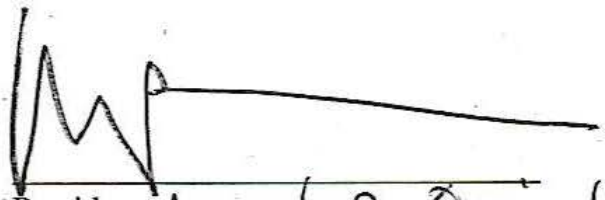
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 04/12/05 Approved: 
Director
Communities and Ecosystems Division

FOR THE CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION

Date: 04/25/05 Approved: 
Director

FOR THE CALIFORNIA AGRICULTURAL COMMISSIONERS AND DEALERS ASSOCIATION

Date: April 22, 2005 Approved: 
President Mark P. Quisenberry

Appendix A
PRIORITY INVESTIGATION EFFECTS CRITERIA

HUMAN EFFECTS Death, serious injury or illness (any injury or illness requiring hospital admission as 'inpatient status") or any single injury or illness episode involving five or more persons. Investigations of suicides and suicide attempts shall follow procedures outlined in the DPR Investigation Procedures Manual.

ENVIRONMENTAL EFFECTS

Water Contamination of drinking water supply affecting 10 or more households.

Air Contamination of air resulting in issuance of a recommendation by a representative of a legally authorized agency to evacuate five or more persons.

Land Contamination of land or soil resulting in one-half (1/2) acre or more not usable for intended purposes for one year or more.

Animals and

Wildlife Any episode with an associated level of mortality, estimated by an appropriate agency or official, that exceeds the following:

Non-target birds - 50

Non-target fish - 500

Listed endangered or threatened species - 1

(to be determined on a case by case basis as described under the SPECIAL INCIDENTS section of this document.)

Domesticated, game, or other non-target animals - 5

ECONOMIC LOSS Damage to any property, equipment, or livestock (including bees) that is estimated to represent a \$20,000 loss, or 20% crop yield loss (whichever is appropriate).

SPECIAL INCIDENTS

Episodes occurring within Oregon, Nevada, Arizona, or tribal land that have effects in California that meet priority criteria. Episodes occurring within California that have effects in Oregon, Nevada, Arizona, or tribal land that meet applicable priority criteria. The appropriate agency to investigate these special incidents shall be determined pursuant to Section V, INVESTIGATIONS, paragraph A of this agreement. Investigations of these special incidents shall

follow procedures outlined in the DPR Investigation Procedures Manual.

Any pest control equipment accidents that occur while handling pesticides and result in serious injury or illness, death, environmental effects, or economic loss (not including the involved equipment) exceeding the amounts shown above. Investigation of accidents shall follow procedures outlined in the DPR Investigation Procedures Manual.

Any episode, including those involving endangered species, which through discussion between the three parties of this agreement is determined to be of high priority.