

Pesticide Regulation: Enforcement Response Regulations (ERR)

**2009 California
Forest Pest Council**

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Enforcement Response Regulations (ERR)

- **It re-crafted the original Enforcement Guidelines Document to improve consistent responses.**
- **Sets forth an enforcement response system for penalties that escalates for recurrent violations.**
- **Still allows discretion by CAC in classifying violations. However, responses to violations will now be standardized.**



Enforcement Response - History

Together, DPR and CACs developed the Enforcement Response Policy (ERP) – ENF 2005-25

- **Inconsistent enforcement from county to county**
- **High profile cases of exposure**
- **Attention of law makers – SB455 didn't pass, but had strong message from governor.**



Why Create a New Policy?

- **Statewide consensus – need more or higher level penalties for flagrant or repeat violators**
- **Improve statewide consistency and enforcement integrity**
- **Provide guidance on how to**
 1. **Classify the type of violation and**
 2. **Consistently determine the appropriate action and use progressive enforcement response.**



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County Agricultural Commissioner Implementation Options

- **Consider administrative civil penalty actions for violations some CACs have not historically taken enforcement action.**
 - **Is there a reasonable possibility of creating a health or environmental effect?**



County Agricultural Commissioner Implementation Options

- **Health hazard and environmental effects violations (Ag and Structural) such as:**
 - **Personal protective equipment**
 - **Early re-entry into treated areas**
 - **Back flow prevention**
 - **Conflict with label or permit conditions**
 - **Non-target or off site contamination**
 - **Unregistered use**
 - **Unlicensed**
 - **Similar violations**



Examples of Health and Environmental Effects

- **PPE**
- **Closed System**
- **Posting**
- **Drift**
- **No Notice of Intent Submitted**



Enforcement Response: What's New?

- **Fewer chances before fining**
 - **Fine on first offense for all “possible” health or environmental effects**
 - **The County Agricultural Commissioner must justify for not fining (Decision Report)**
 - **DPR will review the CACs’ programs for consistency with the regulation**
 - **3 CCR Section 6128**



Enforcement Response: What's New?

- **Mandatory increased penalties for “Repeat” violations**
 - **Multiple incidents within two years**
 - **All incidents of violations that have a possibility of creating a health or an environmental effect are considered**



Enforcement Response: What's The Same?

- **Repeat Violations are grouped broadly**
 - **Looking back two years**
 - **Any incident of violation or non-compliance that could have resulted in a possible or actual health or environmental effect**
 - **Same Class of violation**



What Can We Expect?

- **For Multiple incidents within a two-year period:**
 - **County Agricultural Commissioner must fine or take other significant enforcement action on A/Serious & B/Moderate classes**
 - **Increased penalties, more and higher fines**



Enforcement Response: What Else?

- **Other penalties will be considered for the most flagrant violators:**
 - **Criminal prosecution**
 - **Denial, suspension or revocation of permits or registration**
 - **Referral to DPR or Structural Board for licensing or other action**



Enforcement Response Regs

Enforcement Responses

- Class C / **Minor** Fines
- **No threat to health, property or the environment**
- **Violations not included in Class A or B**
- **Fine Range**
 - **\$50-\$400**



Enforcement Response Regs

Enforcement Responses

- Class B / Moderate Fines
- Reasonable possibility of creating a health or environmental effect
- Repeat Violations of Class C violations
- **Fine Range**
 - **\$250-\$1000**

Note: These criteria may be changed to consider the hazard class of the pesticide involved when determining the fine amount (e.g. DANGER, or from 6400 list - RM).



Enforcement Response Regs

Enforcement Responses

- Class A / **Serious** fines
- **Actual health or environmental hazard**
- **Violations of a lawful order of the CAC**
- **Repeat violations of Class B violations**
- **Fine Range**
 - **\$700-\$5,000**

Note: These criteria may be changed to consider the hazard class of the pesticide involved when determining the fine amount (e.g. DANGER, or from 6400 list - RM).



Decision Report

- **No Prior Violations**
- **Complete Description of Incident**
- **Class of Violation**
- **Time Tables**
- **Ensure Consistency**
- **Concurrence by Director**

An Employee May Be Fined for Not Wearing PPE When:

- The person is licensed or certified (QL/QC or PAC)
- Employer provided equipment & it is available at site
- The employer, through its written workplace disciplinary action policy, required the licensee or certificate holder to utilize the equipment
- Employer properly supervises employee
- Employee has knowledge of the discipline that could be imposed under the employer's written workplace disciplinary action policy

Getting the Job Done

- **Goal is to have clear, consistent Enforcement from County to County**
- **The Department will be tracking actions taken since the ERRs implemented**
- **Any inconsistencies will be documented and corrections put in County Work Plans**

For more information

- **Your County Agricultural Commissioner**
- **www.cdpr.ca.gov**
- **Contact your DPR Regional Office**

Thanks to Ralph Shields, CDPR (Retired)

Any Questions?

Thanks!

