



Californians For  
Pesticide Reform

March 9, 2021

Director Val Dolcini  
Department of Pesticide Regulation  
Via email [val.dolcini@cdpr.ca.gov](mailto:val.dolcini@cdpr.ca.gov)

**Re: Enforceability of Schools Regulation**

Dear Director Dolcini,

We wish to notify you of significant practical concerns that have come to light in the three years since DPR's regulation Pesticide Use Near Schoolsites took effect on January 1, 2018. Our efforts to groundtruth compliance with the regulation have highlighted serious flaws that underscore the need to improve enforceability of this important protection for the next generation of Californians.

Although the public process that led to the regulation occurred before you took office, you are likely familiar with the many years of hard work that went into developing this nationally precedent-setting rule. DPR was rightly proud of establishing basic protections from drift for children at schools and daycares and, we trust, is committed to ensuring that the rule is working as intended to protect children from pesticide harm. This regulation is particularly important in rural California counties, where students most exposed to pesticides are disproportionately Latinx. Given DPR's commitment to this regulation and the high stakes for low-income communities of color across the state, we ask you to undertake an urgent review of the regulation and take steps to close the loopholes that appear to be a barrier to enforcement.

**THE PROBLEM**

**Application method is not specified in PUR data for ground applications**

The regulation Pesticide Use Near Schoolsites (3 CCR 6690 through 6692) restricts specific pesticide application methods, those most associated with drift, within a quarter mile of public schools and daycares from 6am to 6pm Monday to Friday, with additional restrictions on fumigant pesticide use. Because the regulation restricts application methods and not specific pesticides or classes of pesticides, enforcement depends on the ability to identify the application method. For pesticides not classified as restricted materials, information is confined to the Pesticide Use Reporting data submitted to DPR after the fact (3 CCR 6624(c)). PUR reporting provides broad information about application method ("ground," "air," "fumigation," or "other"). However, 3 CCR 6691 requires a ¼ mile buffer only for some, and not all, types of ground applications and a 25 foot buffer for some additional types of ground applications, as detailed in Appendix 1 below. Without requirements to report specific information that directly aligns with

the language in 3 CCR 6691, it is extremely challenging for County Agricultural Commissioner staff to confirm with certainty whether a particular application was in fact a violation.

**For fields that cross the buffer zone, application location is not verifiable**

For applications that take place on fields that lie partly inside the school buffer zone and partly outside, it is extremely difficult to confirm the exact location of an application, even if the application method is known. For an application on a field that crosses the buffer zone that began before 6am and continued into the school day, it is usually impossible to know where spraying occurred and when, and therefore whether a violation occurred. One option for improving enforceability would be a requirement to divide such fields into two site identification numbers: one for the portion located inside the buffer zone, and the other for the portion outside the buffer zone. Each site would require independent Notices of Intent and pesticide use reports.

**GROUND TRUTHING**

In 2020, CPR ally organization California Rural Legal Assistance, Inc. undertook an analysis of PUR data for 2018-19 for fields within a quarter mile of public schools in 5 counties (Fresno, Kern, Tulare, Ventura and Sonoma) as well as NOVs issued for violations of section 6691 of the regulation. The analysis examined all applications within the school buffer zones that took place during the restricted time period on schooldays or within 36 hours for fumigations. Since, as noted above, the PURs do not provide detailed information on application method, the analysis involved some educated guesswork. We also considered the percentage of the field that was treated, in an effort to identify those most likely to be buffer zone violations. The full analysis is provided in Appendix 2, below.

Restricting the search to 4-6 schoolsites per county and to fields that were 100% treated with the classes of pesticide that are most likely to be restricted under 3 CCR § 6691 (fumigants, aerial applications, ground applications of fungicide, spreader-stickers, or insecticides), we found a large number of potential violations: 97 in Fresno, 99 in Kern, 25 in Sonoma, and 89 each in Tulare and Ventura. In terms of actual NOVs or NOPAs issued in each county in the same time frame, there were just 2 each in Fresno and Sonoma, 1 each in Kern and Ventura, and none at all in Tulare.

What's troubling about this extraordinarily low confirmed violation rate is that it is extremely difficult to verify. The data available in PURs, NOIs and other records are not sufficient to confirm whether a prohibited application method was used, or whether the application was inside the buffer zone during school hours for fields that cross the line. When we have asked CACs to verify what appear to be violations, we've received confounding responses:

- One staffer in the Fresno CAC office told us that they have no way of knowing unless there was an inspector on site.
- The Monterey CAC told us that an application listed in PUR data as occurring at 6am actually took place at night and ended at 6 am, stating "We questioned the grower in question and determined that the applications started at night when school was not in session."

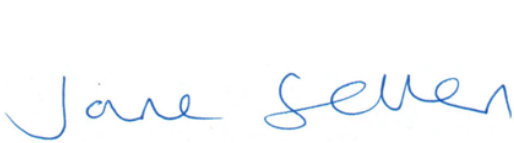
- The Monterey CAC stated he used NOI information to determine that some apparent violations actually occurred in the part of the field that is outside of the buffer zone. However, even if this was actually verifiable in this case, NOIs do not necessarily include this information, and no NOIs are provided for pesticides that are not Restricted Materials.

## **SOLUTION**

As noted at the outset, we have every confidence that DPR joins us in wanting the schools regulation to effectively prevent drift-prone pesticide applications during the schoolday, as intended. We want to work with you on improving the enforceability of the regulation, and would very much like to hear your thoughts on a possible solution. It appears to us that, at a minimum, modifications to PUR reporting requirements (3 CCR 6624) are needed for fields that fall within the buffer zone, in whole or in part, so that the relevant information needed for enforcement is gathered.

**We therefore request that you provide a proposal for addressing the enforceability issues outlined in the letter, and schedule a meeting to discuss the matter at your convenience.** We feel confident that a solution exists, and we thank you for your attention to this matter.

Sincerely,



Jane Sellen & Sarah Aird, Co-Directors

CC:

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# Appendix 1

## **¼ mile distance restriction for these application methods not documented on use reports:**

1. Airblast sprayer or other ground application equipment, including backpack sprayers, with a pump that delivers spray into an air stream created by a fan
2. Sprinkler chemigation equipment.
3. Dust or powder application except if applied using field injection equipment

## **There must be a minimum 25 foot distance restriction when using these methods not documented on use reports:**

Ground-rig sprayer. However, if this type of equipment is used to apply a dust, powder, or fumigant, the ¼ mile distance restriction above applies.

Field soil injection equipment. However, if used to apply a dust or powder, there is no minimum distance restriction.

Other application equipment not identified in this section, such as drip or flood chemigation equipment. However, if this type of equipment is used to apply dust, powder, or fumigant, the ¼ mile distance restriction applies.

## **No distance restriction for the following application types not documented on use reports:**

Applications within enclosed spaces, except fumigants.

Applications using a backpack sprayer, except when it has an air-blast mechanism or is used to apply a dust or powder.

# Appendix 2

## School Pesticide Ground-Truthing – Summary of PUR Data

County/School	Total Applications from August 2018 – June 2019	Total Applications 6am – 6pm School Day	Total Applications of Likely Prohibited Methods	Potential Violations – At least 70% of Field Treated	Potential Violations – At least 90% of Field Treated	Potential Violations – 100% of Field Treated
<b>Fresno</b>	<b>574</b>	<b>163</b>	<b>122</b>	<b>121</b>	<b>104</b>	<b>97</b>
A.L. Conner Elementary	4	0	0	0	0	0
Cantua Elementary	90	0	0	0	0	0
Del Rey Elementary	134	46	29	29	12	5
Raisin City Elementary	316	117	93	92	92	92
San Joaquin Elementary	30	0	0	0	0	0
<b>Kern</b>	<b>580</b>	<b>165</b>	<b>118</b>	<b>99</b>	<b>99</b>	<b>99</b>
Bear Mountain Elementary	36	3	1	1	1	1
El Camino Real	12	3	9	0	0	0
Mountain View Middle Sch.	12	4	4	4	4	4
Sequoia Elementary Sch.	91	13	6	5	5	5
Sunset Daycare	194	Need Calendar	-	-	-	-
Vineland Elementary Sch.	235	142	98	89	89	89
<b>Sonoma</b>	<b>364</b>	<b>119</b>	<b>88</b>	<b>51</b>	<b>39</b>	<b>25</b>
Apple Blossom/Orchard View	150	27	23	6	2	0
Forestville Elementary	47	15	12	7	7	4
Guerneville Sch.	30	12	9	8	8	0
Reach Charter Sch.	No Fields w/in Buffer	-	-	-	-	-
Twin Hills Sch.	137	65	44	30	22	21
<b>Tulare</b>	<b>591</b>	<b>150</b>	<b>91</b>	<b>91</b>	<b>91</b>	<b>89</b>
Carl F. Smith Middle Sch.	47	4	1	1	1	1
El Monte Middle Sch.	101	33	23	23	23	23
Lindsay High School	198	47	34	34	34	32
Sunnyside Union Elementary	196	36	23	23	23	23
Woodville Elementary Sch.	49	30	18	10	10	10
<b>Ventura</b>	<b>1871</b>	<b>211</b>	<b>337</b>	<b>115</b>	<b>109</b>	<b>89</b>
ACE Charter Sch.	52	Need Calendar	-	-	-	-
Briggs Elementary	1272	365 (w/o greenhouse)	135	14	14	14
Juan Lagunas Soria Elem.	No Fields w/in Buffer	-	-	-	-	-
Rio Del Valle	340	99	94	6	6	6
Tierra Vista Elementary	207	112	108	95	89	69