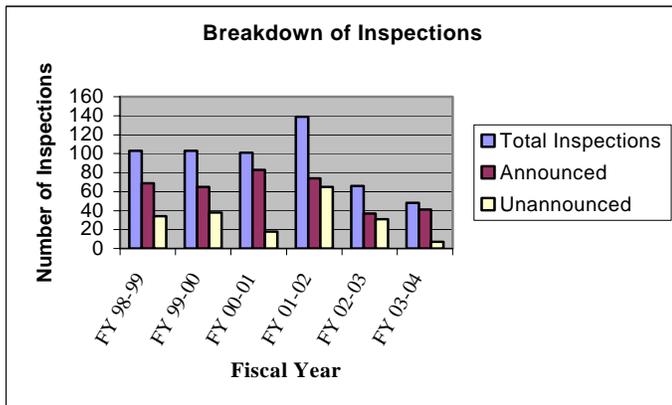


# BRANCHING OUT

## Fumigation Inspections

### History of Branch 1 Inspections

In the last fiscal year, Santa Clara County Division of Agriculture performed 48 fumigations inspections; 41 inspections were "announced" and 7 were "unannounced". Fumigation crews are aware of our presence during announced inspections and are unaware we are observing them during unannounced inspections.



This last fiscal year we saw an increase in the number of fumigations taking place in Santa Clara County. There were more fumigations in fiscal year 2003-2004 than in any of the past six years!

Fiscal Year	Total Applications	Total Number of Inspections	Application Inspection Rate
<b>03-04</b>	<b>9294</b>	<b>48</b>	<b>.5%</b>
02-03	8068	68	.8%
01-02	7409	139	1.88%
00-01	6166	101	1.65%
99-00	8344	103	1.23%
98-99	7951	103	1.30%

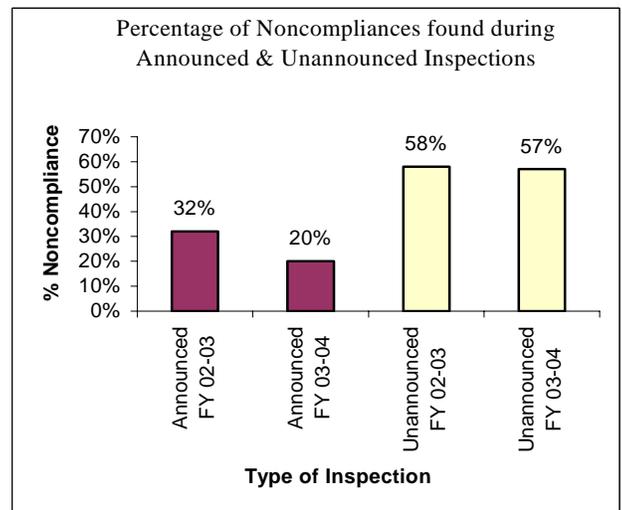
## Industry Compliance

### Fiscal year 2003-2004

We saw an increase in compliance with announced inspections this past fiscal year. Out of 41 announced inspections, there were 33 inspections that were in full compliance! The remaining 8 inspections had minor noncompliances, none of which resulted in civil penalty actions.

The 7 unannounced inspections had 3 inspections with 4 non-compliances and, unfortunately, there were 3 civil penalty actions.

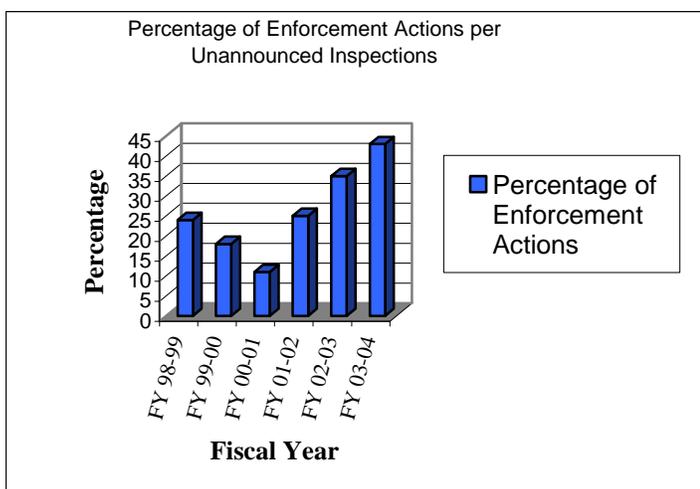
Because the percentage of noncompliance has remained high with unannounced inspections, our department is seeking to secure resources to increase the number of fumigation inspections. We hope to increase the number of inspections to over 150 the coming fiscal year with an emphasis on unannounced inspections.



## Industry Compliance

Over the past six years, we have consistently found a higher noncompliance rate with unannounced inspections. On average, one civil penalty action results from every four unannounced inspections. Unfortunately, this last fiscal year we saw an increase in this percentage. Out of seven unannounced inspections, we had three civil penalty actions.

The graph below shows the increase in the percentage of enforcement actions per unannounced inspection.



## Secondary Locks

### *Securing against re-entry*

The three civil penalties levied last fiscal year were all due to improperly secured structures. This trend seems to be a continuation of last year's 10 civil penalties for secondary locks. It was disappointing to find so many unlocked or improperly installed secondary locks the past two years. Be sure to double-check the structure to assure all entrances have been secured before leaving the site!

## Items That Must Be Removed From a Fumigated Structure

### *Enforcement Letter 05-05*

The Department of Pesticide Regulation recently issued an interpretation regarding the removal or double bagging of certain items prior to the fumigation of a structure. DPR's interpretation now includes items long believed acceptable to leave inside during a fumigation.

It has been a long-standing policy that our County and others across the State did not consider toothpaste or mouthwash an ingestible drug or medicinal. However, DPR's new interpretation changes this practice.

### WHAT MUST BE REMOVED:

1. Toothpaste
2. Mouthwash
3. Dental Hygiene Products such as:
  - a. Adhesives
  - b. Teeth Whitening Products

The Enforcement Letter stated the following:

*"The Department of Pesticide Regulation considers any drug or medicinal type items that enter the mouth to be ingested, either in whole or part. Since, the product manufacturer intended the label language to apply to items being ingested, you should therefore, for enforcement purposes, consider any dental hygiene or similar product entering the mouth to be handled as a drug or medicinal.*

*This would apply to toothpaste, mouthwash, and other dental hygiene products, such as teeth whiteners, dental adhesives, etc."*

To read this enforcement letter, you can visit this link:

<http://www.cdpr.ca.gov/docs/enfcmpli/penfltrs/penf2005/2005atch/attach0501.pdf>

# Dow AgroSciences

*James Fung, Account Representative Dow AgroSciences  
contributed to this article*

Fumigators adhere to a number of strict guidelines as outlined in the Business and Professions Code, Food and Agricultural Code, Title 3 and Title 16 of the California Code of Regulations, and the Vikane® gas fumigant use label. That's a long-winded way of saying there are a lot of legal requirements fumigators must follow!

To ensure fumigators follow the law, the State employs the help of the offices of the county agricultural commissioners. As you well know, county inspectors perform a number of application inspections to ensure compliance with the law. When a county inspector observes a noncompliance, a number of things could happen. If the noncompliance is minor, the inspector will document the noncompliance on an inspection form and may issue a Notice of Violation. If the noncompliance is serious, it can result in a monetary fine or licensing action by the Structural Pest Control Board. For egregious violations such as clearing structures without an Interscan or repeated serious violations, the case may be forwarded to the District Attorney's Office for civil or criminal prosecution.

In addition to county agricultural commissioner's oversight of the fumigation industry, Dow AgroSciences has taken a proactive approach to the use of Vikane. To ensure Vikane is used properly, Dow AgroSciences employs a Vikane Stewardship Policy. The objective of this policy is to promote Product Stewardship and educate distributors and fumigators on the continued safe use of Vikane gas fumigant in accordance with all label directions, as well as Dow AgroSciences requirements.

As part of the Stewardship Program, Dow AgroSciences also performs Quality Assurance Reviews or (QARs). These reviews involve visits to the county agricultural commissioner's offices to review their files and inspection records. Another aspect of the QAR is performing inspections on companies in the field. QAR

inspections are similar to county inspections in so far as some are announced and some are performed without the fumigator's knowledge. Unlike county inspections, QAR observations cannot result in a monetary fine, nor can they be forwarded to a county agricultural commissioner for action. Dow AgroSciences uses the information acquired during QAR inspections, and their review of the agricultural commissioner's files to limit or discontinue the sale of Vikane to fumigators who flagrantly violate the law or Vikane label requirements.

Dow AgroSciences is committed to ensuring the proper and safe use of Vikane. Fumigators, county agricultural commissioners, the Structural Pest Control Board, and Dow AgroSciences must continue their efforts to make sure every fumigation is performed properly.

## Field Representatives

*Santa Clara County Inspection Records*

In addition to company files, our county maintains a file for each field representative. We found field representatives sometimes move back and forth between companies and we wanted to be able to track compliance for these individuals. If you are considering hiring a field representative and would like to know their compliance history, you can call our office and ask to review their file.

## Fumigation Notice of Intent

*Submitting your 24 hour NOI's*

If you choose to fax your fumigation notice of intent (NOI), please use this fax number: (408) 298-8397. If this line should go down for some reason, please call us. We will fix the problem immediately and give you an alternate fax number in the interim. This fax line feeds directly into a special computer instead of a fax machine.

Thank you!

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# Fumigations and Cats

*Making sure the house is clear!*



Cats are unique in that they are one of the few pets with a propensity to come and go as they please. Another curious aspect about cats is their reaction to stress. Many cats hide in a familiar place when something has changed in their environment or when a stranger enters their territory. Their instinct to "stay put" can be so strong they will ignore outside stresses, sometimes to their peril. The unfortunate combination of these characteristics can be deadly when it comes to home fumigations as evidenced by recent incidents where cats belonging to neighboring residents crawled under homes prior to fumigation.

The Vikane label states: "Remove from the structure to be fumigated all persons, domestic animals, pets, including fish, and desirable growing plants." The fumigator is bound by the requirements of pesticide labels. As such, he or she can be found in violation of the pesticide label if a cat is left inside a structure during a fumigation.

When a county is tasked with investigating a cat death as a result of a home fumigation, a number of factors must be considered. We initially consider the location of the animal. Was the cat found in an inaccessible crawl space or in a bedroom? Does the structure have obvious gaps in the screens or walls where an animal could easily gain access to the area? Was the owner of the home given proper notification about the need to remove their pet cat? These questions and others are used to evaluate each case because no two situations are alike.

Due to the attention given to several cat deaths in recent months, the Structural Board is currently pursuing an amendment to the Occupants Fumigation Notice and Pesticide Disclosure Form (OFN). The proposed changes will include language asking occupants to notify neighbors of the pending fumigation and to close off openings to spaces to exclude domestic animals.

Because cats pose such a unique problem with fumigations, something that may prove helpful is to create your own notice to include with your OFN packet. An additional notice won't alleviate your liability, but it could go a long way to avoid the heartache of killing someone's pet.

An option you may want to consider is to include a brief written description about the problem with cats and fumigations. Most homeowners have no idea cats are capable of ignoring extreme physical distress such as chloropicrin exposure. You can then have the homeowner check and initial a box stating they do or don't own a cat. In the event they do own a cat, have them initial another box saying the cat will be in their possession the day of the fumigation, or the cat will be boarded in a kennel. Taking a proactive approach to this problem can be a positive step in avoiding future cat deaths and taking these extra steps can show due diligence on behalf of your company.

To read DPR's recent enforcement letter on this subject, you can visit the following link:

<http://www.cdpr.ca.gov/docs/enfcmpli/penfltrs/penf2005/2005atch/attach0301.pdf>

Do you have any questions or comments about Branching Out? Please feel free to write to:

Santa Clara County Division of Agriculture  
Branching Out  
1553 Berger Drive  
San Jose, CA 95112

Or, you can e-mail us:

[sccagriculture@era.co.scl.ca.us](mailto:sccagriculture@era.co.scl.ca.us)

\* This newsletter is available electronically on our website: <http://sccagriculture.org>