

BRANCHING OUT

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Santa Clara County Division of Agriculture

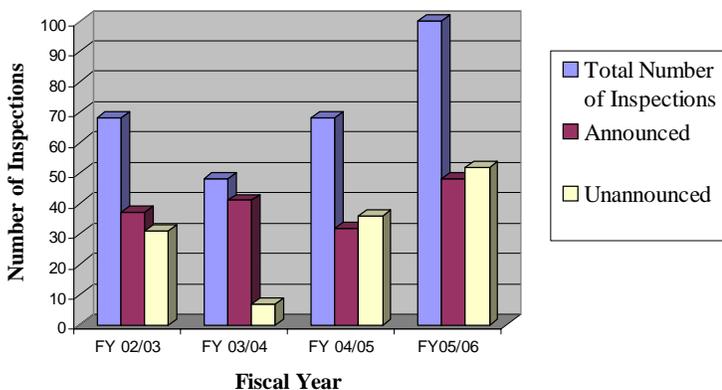
November 2006

Fumigation Inspections

History of Branch 1 Inspections

Last fiscal year, Santa Clara County Division of Agriculture performed 100 fumigation inspections; 48 inspections were "announced" and 52 were "unannounced". Fumigation crews are aware of the biologist's presence during announced inspections and are unaware we are observing them during unannounced inspections.

Breakdown of Inspections



Number of Fumigations in Santa Clara County

Fiscal Year	Number of Applications	Number of Inspections
05-06	8092	100
04-05	8987	68
03-04	9294	48
02-03	8068	68
01-02	7409	139
00-01	6166	101
99-00	8344	103
98-99	7951	103

Industry Compliance

Fiscal year 2005-2006

We saw an increase in compliance with both announced and unannounced inspections in fiscal year 2005/2006.

Announced Inspections

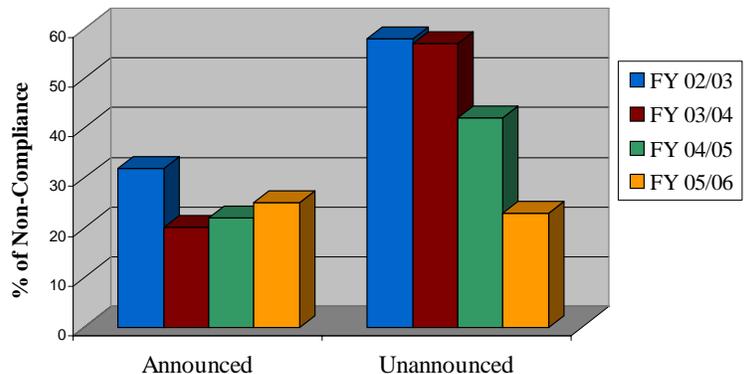
Out of the 48 announced inspections, 36 inspections were in full compliance! The remaining 12 announced inspections resulted in several Notices of Violation, 1 Compliance Hearing, and 1 Civil Penalty Action.

Unannounced Inspections

We saw a sharp increase in compliance found during unannounced inspections. Out of 52 unannounced inspections, 40 inspections had no non-compliances!! This is the highest compliance rate we've seen with unannounced inspections!

The remaining 12 unannounced inspections resulted in several Notices of Violation, 3 Compliance Hearings, and 2 Civil Penalty Actions.

Percentage of Non-Compliance Found During Announced & Unannounced Inspections



Industry Compliance

Civil penalties and compliance actions

Out of the 100 fumigation inspections performed in our county, there were 24 inspections that had one or more non-compliances. As a result of some of these non-compliances, we issued 8 Notices of Violation (NOV), 3 Notices of Proposed Action (NOPA), and held 4 Compliance Hearings. The following table lists the code sections and corresponding actions:

Code	Type of Violation	NOV	NOPA	Compliance Hearing
8538	Written Notice	4		
12973	Label-Site/Rate/Other	2	1	1
12973	Label-Bagging, Pets Removed, etc		1	
6614	Protection of Persons, Animals...			1
8505.7	Secondary Locks		1	2
8505.10	Required info on warning signs	1		
1970	Records	1		

In some instances, our office holds compliance hearings with companies or licensees if we believe it is appropriate given the circumstances of the case. However, the Department of Pesticide Regulation's new enforcement response policy went into effect in August 2005, and will transition into regulation this Fall. When the regulation becomes effective, agricultural commissioners will have limited flexibility when dealing with certain violations.

In some situations, when a Class B or Class C violation occurs and our office believes compliance can be achieved without imposing a fine, we can request to limit the response to a compliance action. (Compliance actions include notices of violation and formal compliance hearings.) In these situations, our office will have to submit a Decision Report to the Director of DPR for concurrence within 30 days of the date of the compliance action. These reports allow DPR to monitor county enforcement response and help ensure violations are treated the same in each county. If the Director does not agree with our decision, we have no choice but to pursue an enforcement action.

It's important to remember that our choices will be limited when determining the appropriate enforcement response to a pesticide violation. If you received a violation notice or a fine within the last two years, it is

important you realize our response to future violations is extremely limited. DPR will not give us a choice for a Compliance Hearing or Violation Notice the next time we find you in non-compliance. In fact, a minor non-compliance can now escalate to a fine if you have previous violations in the same classification.

Outdoor Utility Doors

When are you required to lock and secure utility doors?

We recently received several inquires from licensees concerning outdoor utility doors. Specifically, when is it required to secure these doors with secondary locks?

Both the Vikane label and Business and Professions Code reference the need to lock, barricade, or secure all entrances to the fumigated space.

The key to this requirement is "enter" a fumigated space. If the utility door is for a small closet that someone cannot enter into the fumigated space, then you don't have to worry about locking it. However, if it is a large utility closet where someone can easily step inside, then you must secure the door to prevent someone from entering.

Porches and Carports

When is an SCBA required?



We have recently been asked:

“When is it safe to enter a porch or a carport after a fumigation?”

Our answer depends upon the circumstances of the structure. It's difficult to say that in all instances you must wear a SCBA. In some cases, such as a carport with 3 completely open sides, a SCBA may not be needed. However, many porches and carports use construction materials and design configurations that can limit airflow and gas dispersment. The bottom line is that the Vikane label and Regulations require employees to wear a SCBA whenever the employee may be exposed to 5ppm or more of Vikane. If you are in a situation where you are not sure about the concentration of Vikane, stay clear of the carport or porch and treat it as an extension of the structure.

Interscan, Miran, and Spectros Gas Analyzers

When are these instruments required to be on site?

Title 16, California Code of Regulations, Section 1971(a)(2) states:

“All fumigation crews shall be provided with and shall have in their possession on the job: (2) Proper testing equipment as required by the manufacturer’s label instructions and all applicable laws and regulations.”

During the Introduction:

A gas analyzer is not required to be at the site at the time the fumigant is released into a structure because the licensee would have no need for the gas analyzer. Further, there is no label requirement or regulation that requires one to be on site at this time.

Once the gas has been introduced into the structure, no one is allowed into the structure without a SCBA.

During an Aeration:

A gas analyzer does not necessarily need to be on site during an aeration. As long as the licensee or trained employee wears an SCBA each time they enter an unknown atmosphere, there would be no need for a gas analyzer.

We don’t recommend this practice for the safety of the employee and to prevent potential damage to an Interscan device. – However, if the licensee chooses to go into the structure after the 1-hour active aeration without an SCBA to secure the structure, they must have a gas analyzer with them at all times to monitor the levels of the unknown atmosphere. If the atmosphere is above 5ppm, they have to immediately leave the structure and wear a SCBA to re-enter.

Clearing the Structure:

The Vikane label requires a fumigator to clear a structure with an approved gas analyzing device; so naturally, a calibrated gas analyzer would be required to be at the job site at this time.

As a side note - When you perform a certification of a structure, be sure to exercise proper protocol. Don’t zero out the Interscan while standing inside the structure; you will not get an accurate reading! Walk outside to zero out an Interscan.

Off-Gassing Vikane Cylinders

Waiting for the last few pounds to expel from a cylinder...

Our office received a question about off-gassing Vikane cylinders:

“Can we leave a cylinder with approximately 6 pounds left inside to off-gas inside a secured fumigated structure?”

Our office can understand the appeal to leave a cylinder with just a few pounds left to off-gas inside a structure. These cylinders take a considerable amount of time to empty the last remaining pounds of material. To remain consistent with the rest of the State, we consulted Dow AgroSciences and DPR for their opinions and we were told this practice is not acceptable. DPR’s legal department forwarded a response from Dow AgroSciences to our office. The following is an excerpt from the correspondence:

“Dow AgroSciences does not approve of routinely leaving partially full Vikane cylinders inside fumigated structures for the purpose of saving the time it takes to release the Vikane gas from outside of the structure.”

Further, we asked DPR for a clarification of the definition of “released”. The Business and Professions Code Section 8505.3 states that “the licensee exercising such supervision shall be present at the site of the fumigation during the entire time the fumigants are being released...” DPR stated the term “released” means the time the valve is turned on to the time it is shut off.

Pesticide Registration

Vikane entering into the label evaluation process

On September 6, 2006, the DPR Registration Branch listed Vikane as one of the pesticides under review for a label change. The following is a copy from the review announcement:

“Type: Section 3 Label Amendment – To revise the precautionary statements and general instructions, to add instructions for fumigation of multi-unit and connected structures, and to reduce the aeration and reentry levels from 5 parts per million to 1 part per million.”

Environmental Groups Petition EPA to Retract Fluoride Pesticide Tolerances on Food

March 6, 2006

Fluoride Action Network

<http://www.newstarget.com/019186.html>

Two national environmental organizations, Environmental Working Group and Beyond Pesticides, joined today with the Fluoride Action Network in challenging the safety of new food tolerances issued by the EPA for the fluoride based pesticide, sulfuryl fluoride. This action marks growing concern among mainstream scientists and environmental organizations that total exposure to fluoride, from water, food, and dental uses like toothpaste and rinses, is not safe for vulnerable populations, particularly young children.

The challenge was directed at the maximum legal limits for the fluoride-based pesticide in foods, which have been set at levels that dwarf the amount allowed in tap water. In just one case, the EPA is allowing 900 parts per million (ppm) of fluoride in dried eggs, as opposed to the maximum 4 ppm allowed in tap water. One third of the nation's eggs are sold and consumed in dried, reconstituted form.

The groups noted that 900 ppm set for dried eggs is extremely close to the amount used in toothpaste (1,000 ppm), a level that is considered toxic if consumed in greater than pea sized portions. "How can the EPA consider 900 ppm in eggs safe, while the Food and Drug Administration directs parents to call poison control centers if their children consume more than a pea sized portion of toothpaste with fluoride at 1,000 ppm?" asked Paul Connett, PhD, Executive Director of FAN. "Unlike toothpaste, eggs are meant to be eaten, not spit out."

The precise FDA required label on toothpastes with fluoride levels of 1000 ppm is:

"WARNING: Do not swallow. Use only a pea-sized amount for children under six... If you accidentally swallow more than used for brushing, seek professional help or contact a poison control center immediately."

The EPA has set fluoride tolerances for over 200 foodstuffs ranging from 5 ppm in cheese all the way up to 900 ppm in powdered eggs. The groups warn that at the maximum level of fluoride a serving of scrambled eggs made with as few as two egg equivalents could make a child vomit and a four egg omelet could have the same effect on an adult.

The tolerances were requested by Dow AgroSciences, which is expanding its use of the pesticide sulfuryl fluoride (trade named ProFume) to fumigate food processing facilities and storage areas. Dow has never conducted crucial safety tests on fluoride residues yet scientific studies point to serious health risks from ingesting even small amounts. A wealth of independent, peer reviewed studies have found adverse effects on children's developing brains, the male reproductive system, kidneys, and bones.

According to Fluoride Action Network (FAN) researcher Chris Neurath, "It isn't just powdered eggs that will have dangerous levels of fluoride allowed. All processed foods will be allowed 70 ppm fluoride residues. That includes everything from breakfast cereal to hamburger helper to cake mix. Wheat flour is allowed up to 125 ppm. For comparison, the maximum level of fluoride allowed in drinking water is 4 ppm and the natural level of fluoride in mothers' milk is approximately 0.008 ppm. The EPA argues that most fumigated foods won't contain the highest allowed levels so there is no need to worry. Yet the USDA's surveillance program for pesticide residues on foods routinely finds samples bought at stores that exceed the EPA tolerances. The potential for a significant number of acute poisoning cases every year is very real."

"We are very concerned that total fluoride exposure is not safe for children," said Richard Wiles, Senior Vice-President of Environmental Working Group (EWG). "EPA is relying on outdated science to support this increase in fluoride exposure, and in our view has not discharged its legal duty to thoroughly consider the effects of fluoride on infants and children, from all routes of exposure, based on a thorough review of the most recent peer-reviewed science."

Jay Feldman of Beyond Pesticides adds, "This is yet another example of the EPA pesticide division protecting the bottom line of Dow AgroSciences rather than the health of the American public."

According to Connett, "It is ironic that, while 11 EPA Unions, representing over 7000 professionals, are calling for a moratorium on water fluoridation because of its likely role in causing osteosarcoma in young males, the EPA's pesticide division has approved the highest fluoride tolerances in US history. With the Centers for Disease Control admitting that 1 in 3 American children have dental fluorosis [the telltale sign of overexposure to fluoride during early childhood] now is not the time to be adding more fluoride to the nation's food supply."

Toxic Gas Ordinance

Storing sulfuryl fluoride

We have heard that DPR may register the product Zythor in the near future. Our County and others across the State are concerned about the lack of a Stewardship Program with this product and have written to DPR expressing our concern. We are not sure when this product will be available, but it appears as though a generic form of sulfuryl fluoride may be coming soon.

We have heard that the product Zythor will only be sold by the pallet. Which means a company will have to purchase 12 cylinders of sulfuryl fluoride at a time. If your company is interested in purchasing this product, we wanted to let you know that if you can't properly store 12 cylinders on your vehicles, you will need to call your local fire department before you plan on storing any sulfuryl fluoride at your business.

Most counties and cities have a toxic gas ordinance, which requires a company to comply with specific requirements when they store a poisonous gas. Santa Clara County and the City of San Jose both have toxic gas ordinances. (If a city has an ordinance, follow their requirements.) Since all of the fumigation companies based in Santa Clara County have offices in the City of San Jose, fumigators will have to call the City of San Jose Fire Department.

To contact City of San Jose Fire call: (408) 277-4659

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

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

Fumigation Logs

How many logs does it take?

We had an interesting question come up recently...

“If you have multiple structures on a property, how many fumigation logs should you have to properly document the fumigation job?”

Well, it turns out there is an interesting answer to this question. We called Los Angeles County and learned they allow the practice of grouping a house and a detached garage together as one figure on a fumigation log. They stated the code states a company must maintain a log for each fumigation job. If the fumigation will take place on one property with one address, they allow a grouping of the figures.

This is a case where one county has a different interpretation than another. It may be that Los Angeles has a number of homes with slab foundations and the factors used to calculate the amount of fumigant would be the same for both a house and a detached garage. It is our County's opinion that this practice does not accurately describe the fumigation job taking place on the property and we don't want to see companies grouping these figures together. Further, the majority of homes in our county have a raised foundation or a combination of both. Detached garages however, will be on a slab. Because the majority of properties in our County will require a fumigator to calculate each structure separately in a Fumiguide, our County expects companies to reflect this fact in your records.

We have seen companies split one fumigation log for a property with a house and a detached garage. As long as your records are clear as to which factors were used for each structure and how much material was used for each; we don't have a problem with a company using one log. Our interpretation of “maintain a log of each fumigation job”, means the records you keep must be up-to-date and accurate.

We contacted our liaison with the Structural Pest Control Board about this issue. He stated the fumigation log should describe the fumigation factors, building materials, temperature, size, and amount of gas and chloropicrin used for each structure. He said that if there are two structures on a property, separating them on one log would be fine, or a licensee can generate a log for each. He does not want to see companies combining factors for two structures on one log.

Santa Clara County Division of Agriculture
1553 Berger Drive
San Jose, CA 95112
<http://www.sccagriculture.org>