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# THE PESTICIDE REVIEW

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## Pesticide Use Near Red-Legged Frog Habitat



*Picture taken from the National Parks Website photo by Paul G. Johnson II  
Excerpts of this article were taken from DPR & EPA's websites*

On October 20, 2006, the Federal District Court for the Northern District of California issued a Stipulated Injunction settling an April 2, 2002 case brought against the Environmental Protection Agency (EPA) by the Center for Biological Diversity (CBD). In their suit, CBD alleged that EPA was in violation of the Endangered Species Act by failing to ensure that EPA's registration of 66 pesticides does not adversely affect the California red-legged frog (a threatened species native to California). The federal government agreed to submit a joint motion to the court, asking the court to issue a Stipulated Injunction (injunction) to resolve the lawsuit.

On October 20, 2006, the U.S. District Court for the Northern District of California imposed no-use buffer

zones around California red-legged frog upland and aquatic habitats for certain pesticides.

This injunction and order will remain in effect for each of the 66 pesticides until EPA goes through formal consultation with the Fish and Wildlife Service (FWS) on each of the 66 active ingredients, and FWS issues a Biological Opinion including a "not likely to adversely affect" statement for the pesticides. Each pesticide, in turn, will be removed from the list as this occurs.

The injunction lists specific buffer zones for ground and aerial applications. Ground applications have a 60 foot no-use buffer zone and aerial applications have a 200 foot buffer zone. These buffer zones start from the edge of four specific kinds California red-legged frog habitat areas: Aquatic Feature, Aquatic Breeding Habitat, Non-Breeding Aquatic Habitat, and Upland Habitat. To see the list of pesticides with buffer zone restrictions and for a PowerPoint presentation defining these habitat areas, visit DPR's website:

[http://www.cdpr.ca.gov/docs/es/rl\\_frog/index.htm](http://www.cdpr.ca.gov/docs/es/rl_frog/index.htm)

An additional resource for habitat information is Fish & Game's website:

[http://www.fws.gov/sacramento/es/animal\\_spp\\_acct/red\\_legged\\_frog.htm](http://www.fws.gov/sacramento/es/animal_spp_acct/red_legged_frog.htm)

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Red-legged frog at Elkhorn Slough.  
Photo by Greg Hofmann

# Interpreting Label Instructions

## *Restrictive vs Permissive language*

Most pesticide labels are straightforward and clearly written; however, some labels can leave an applicator unsure about a use site or use instruction. It is very important that all pesticide users understand and follow all label requirements. If you should come across a label with conflicting information or you are not clear about a use situation, give us a call!

When it comes to reading labels, some areas that sometimes confuse people is the difference between restrictive and permissive statements.

## Restrictive Statements

Restrictive statements are written in imperative or directive sentences such as "Users must...", "Only apply this pesticide to the crops listed on the label", "Apply this product within a 2 foot band around a structure". Some labels will describe exclusive use sites, such as: "Deciduous orchards – Apples and Pears", "Ornamental plants (Rhododendrons, Azaleas)." In these examples, the pesticide is restricted to these specific use sites.

When restrictive words, direct instructions, or specific use sites are listed on a pesticide label, the user must follow these instructions. Failure to follow a direct instruction is a violation of the label.

## Permissive Statements:

Permissive language is written in descriptive or nondirective terms, such as "should", "could", "may", or "recommend". Because these words are permissive, an applicator can choose to follow or not to follow a permissive suggestion found on a label.

When interpreting pesticide use site statements, the opposite of an exclusive use site statement would be something like: "Non-cropland industrial sites" or "Ornamentals". These use site descriptions are open-ended and are not considered exclusive, so you could apply the material on any use site that fits that category.

Examples of permissive use instructions are: "Any tank mix containing this pesticide should be kept agitated and sprayed out immediately", or "Prior to treatment, carpets should be vacuumed." Because these sentences are permissive, an applicator can choose not to follow these label suggestions.

Even though pesticide labels may have a permissive

statement on them, you have to be aware of pesticide laws, which may impose a specific use requirement. For example, if a label has a sentence such as, "applicator should wear eyewear", the applicator must follow any laws that supersede the label suggestion. Even though the label is permissive, worker protection regulations are not.

## Despite Buzz on Bees, Experts Disagree on Seriousness of Problem



*March 13, 2007*

*Monterey Herald*

*Jim Downing*

SACRAMENTO, CA -- Bees are dying by the billions. Nobody knows why. And the crops they pollinate - California almonds especially - are at risk.

Or at least that's been the buzz.

In the past month, the new and mysterious honeybee ailment known as "colony collapse disorder," which seems to cause entire hives of bees to leave home and never return, has made the front page of newspapers from Sacramento to New York. Fox News and National Public Radio aired reports. A "CBS Evening News" crew spent weeks following a bee-disease investigator around the nation. Even Comedy Central's Stephen Colbert took up the issue, urging investors to hoard bees.

But the story says that despite all the attention, there's little solid data on the severity of the problem.

Eric Mussen, a bee specialist with the University of California, Davis, was quoted as saying, "I'm not convinced that it's so much worse than what we saw in 2004 and 2005."

While bees are undoubtedly in trouble this year, Mussen said, there's little evidence so far that it's anything other than the continuation of their long struggle with disease, environmental stress, and the hardship of being hauled cross-country in midwinter to pollinate crops in California.

## From the Question File:

*Questions we have received from pest control companies and permittees...*

**If I have a written recommendation that lists two herbicides to be used in a “tank mix only”; can I apply one of the materials without the other? Do I have to get another written recommendation for the single herbicide?**

This is an interesting question. You have a recommendation that lists the product you want to use, but the problem is the recommendation states it is only to be applied with another material. The answer to this question is you should get a new recommendation that lists the material you want to use separately. Because the pest control advisor conditioned the recommendation as a tank mix only, you will need to get another written recommendation that separates the material you want to use from the tank mix. Deviating from a written recommendation creates the presumption that you are acting in the capacity of a pest control advisor. What if the advisor specified the second material due to the adjuvant in the mixture? What if the material at the rate listed won't work as well if it is not combined with the second material? Be sure your written recommendations cover all the products you wish to use and do not deviate from the label or recommendation!

**With the new Enforcement Response Policy (ERP), what happens when you catch someone not wearing their label required safety gear?**

If you are not wearing label-required personal protective equipment (PPE), we will likely pursue a civil penalty action. The new Enforcement Regulation limits our options and we need a compelling reason to deviate from the policy. In instances where we believe the violation does not warrant a civil penalty, we will prepare a “Decision Report” and submit it to DPR for concurrence. If they don't agree with our decision, we are required to file a civil penalty action.

There are many factors we look at when deciding whether or not to take an action. - Is the applicator licensed? What kind of material were they applying?

How was the material being applied? Was it a mix / load or an application? What kind of application equipment? What PPE was the applicator wearing? Is the employee supervised and does the company have a disciplinary policy?

No two situations are alike, and we look at the circumstances surrounding each violation and determine an appropriate course of action under the statewide enforcement policy.

To make things easy, be sure to wear your PPE every time you handle pesticides!

## Changes to the North County Office

*On the move...*



If you visited our San Jose office to register your business or to pick up your permit in the last few months, you undoubtedly noticed the construction noise in our building. We are happy to report the construction crews are gone and we have moved our office upstairs.

The next time you stop by the office, we are now on the second floor of 1553 Berger Drive.

Our phone numbers and fax number have not changed.

### Question Corner

If you have any questions, comments, or would like to suggest a subject for an article, please drop us a note at:

Santa Clara County Agriculture:  
The Pesticide Review  
1553 Berger Drive  
San Jose, CA 95112

Or e-mail us: [scc.agriculture@aem.sccgov.org](mailto:scc.agriculture@aem.sccgov.org)

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