
THE PESTICIDE REVIEW

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Santa Clara County Division of Agriculture

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New Respiratory Regulations

Big Changes to the Regulations!



Gone are the days of a simple medical condition statement on a training form and using your respirator's instruction manual as a respiratory program outline. The new respirator changes have been finalized and go into effect this January. If your company uses materials that require the use of a respirator, or if you have employees that voluntarily use respirators, there are a number of changes you must implement to remain in compliance.

We will outline some of the major changes, but it is impossible to relay all of the changes in a newsletter article. You should visit this website and read the new code section. When you visit this website, type in "3" for the Title, and 6739 for the Section. When it brings up the code section, you will have to click on the "1" to read the text of the regulation.

<http://government.westlaw.com/linkedslice/search/default.asp?tempinfo=find&RS=GVT1.0&VR=2.0&SP=CCR-1000>

Title 3, California Code of Regulations Changes:

There have been a few section updates that correspond with the new respirator code changes. Section 6000 has several new definitions, Section 6720 has been updated, Section 6738(h) has been re-written, and the new respiratory code section can be found in Section 6739.

Written Respirator Protection Program

Employers must have a written respiratory program if their employees wear a respirator required by regulation, label, or restricted material permit condition. You cannot just use the pamphlet that comes with the respirator as your program! Your program must address very specific topics outlined in the code. For your convenience, we have posted a PDF file of a written respirator protection program on our website under the page "Pesticide Training". (In order to protect the document, we cannot post WORD documents on our website.)

Medical Evaluations

Another change with the new respirator regulations is the need for employees to fill out a medical questionnaire and to have this questionnaire evaluated by a medical professional. This questionnaire is found in Section 6739(q). (There is a user-friendly version of this questionnaire with the respiratory document on our website under "Pesticide Training".) This questionnaire must be administered confidentially during the employee's normal working hours or at a time convenient for the employee.

You have the option of mailing the questionnaire form to have it evaluated by a licensed health care professional or you can send the employee for a medical examination that obtains the same information as the medical questionnaire.

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Information Required to be Given to the Evaluating Medical Professional

Before an employee is evaluated, the employer must provide the following information to the evaluating medical professional:

- 1) A copy of your written respiratory protection program and a copy of Section 6739.
- 2) The type and weight of the respirator to be worn by the employee
- 3) The duration and frequency of respirator use
- 4) Expected physical work effort
- 5) Additional protective clothing and equipment to be worn
- 6) Temperature and humidity extremes that may be encountered.

The employer must obtain a written medical recommendation from the medical professional regarding the employee's ability to use the respirator. The medical recommendation form is found in Section 6739(s). – (Appendix 3 in the respiratory document we have posted on our website.)

Voluntary Respirator Use

If employees choose to wear a respirator, or if the company supplies respirators when they are not required by regulation or label requirements, employers must have a written respiratory protection program that covers the provisions necessary to ensure the employee is medically able to wear a respirator and how to clean, store, and maintain the respirator. Employers are also required to post 6739(r). (See Appendix 4 in the respiratory document we have posted on our website.)

There is a provision in the new regulation that exempts employers from creating a written respiratory protection program if the only use of respirators involves the voluntary use of filtering facepieces (dust masks).



Branch 1 Companies:

6739(j)(A)(3): SCBA air cylinders have to be recharged when the pressure falls to 80% of the manufacturer's recommended pressure level by the end of any workday. This means that if we perform an inspection of one of your crews at the beginning of the workday, two SCBA cylinders must be at least 80% full. If we should come across one of your crews at the end of the workday, we would not expect your cylinders to be this

full. – However, we still expect you to have enough air to safely complete your workload for the day!

The new code section also outlines specific filling requirements for SCBA's. Be sure to review Section 6739(k) for compressor and air quality standards.

Where to Find an Updated Pesticide Training Form, Written Respiratory Protection Program and Medical Questionnaire?

We have updated the pesticide training form and have an outline for a written respirator program and medical questionnaire on our website. Our website address is: <http://sccagriculture.org>

Once you're at our website, click on "Pesticide Safety, Forms & Education". You then click on the second article: "Pesticide Training Forms, Use Reports,..."

If you would like a WORD version of the written respirator protection program so you can easily type in your company's information, contact your district biologist and they can e-mail a copy to you. Another option is to e-mail our website e-mail account at: scc.agriculture@aem.sccgov.org and request a copy of the respiratory protection program.

The Pesticide Review

Due to budget constraints, we will be reducing the number of newsletters we will publish next year. If you are currently receiving this newsletter, we will roll your information forward to our 2008 distribution list and will be sure to send you future editions.

If you are not currently on our distribution list and would like to receive this newsletter, we have three options for you:

1. You can receive an e-mail alert letting you know to check our website for the latest edition.
2. If you don't have easy access to the Internet, we can send you a PDF attachment via e-mail, or
3. We can mail you a hard copy of the newsletter by US Mail.

Talk to your agricultural biologist, or e-mail us at: scc.agriculture@aem.sccgov.org

Pesticide Violations

Citing an Employee versus Employer for Violations

When a county biologist finds an employee not wearing safety gear or applying pesticides inappropriately, the biologist will investigate the incident and look closely at the circumstances of the violation to determine who is at fault.

What can the employer do to make their employees more accountable?

First and foremost -- have a good training and supervision program! Make sure you detail your pesticide training so if it should come into question, you can clearly show what information was conveyed to your employee. Employers are also required to supervise employees to assure they are complying with pesticide laws and regulations. There is nothing in the code that dictates how to supervise employees or what a supervision program should entail. Lawmakers have left this detail to each company to devise a program that makes sense for your particular pesticide-use situation.

What does the County consider to be a good supervision program?

1. Perform “ride-a-longs” with your employees to assure they are applying pesticides properly.
2. Perform periodic undisclosed oversight inspections of your employees and their equipment.
3. Keep records of your inspections and keep them with your employee training records. (You can keep it simple and write your observations on a notepad.)
4. Have a written disciplinary program and follow it.
5. Clearly document all efforts taken to correct unacceptable employee actions. (Be sure to note good behavior when you observe it too!)

Civil Penalty Actions for Pesticide Infractions

Most pesticide violations fall within two categories, personal protective gear and application violations. The type of violation plays a big part in whether a county opts to take an action against an employer or an employee. Every investigative case is different and

we look at many factors when deciding whether it is appropriate to take an action.

Safety Gear Violations

Within the realm of safety gear violations, there are worker protection code sections that require a minimum level of safety gear and then there is label required safety gear.

Worker Protection Violations

If a pesticide label does not require safety gear and an employee is found not wearing safety glasses or gloves when handling a pesticide; the violation falls within the scope of worker protection. A county can take an action against a licensed employee; however, counties will typically review the employer’s program in these situations. These code sections are in place to protect the employee and the State has said that it is “rarely appropriate to fine employees for violations of worker safety regulations because they are the intended beneficiaries of the law.” That being said, what if the employer has a good compliance history, an excellent training and supervision program, and has disciplined the employee for the violation? If the company can clearly show they are in compliance with all of these aspects of the law; the county can explain these circumstances in a Decision Report and choose to not take an enforcement action.

In the instance the company cannot show they have “assured” their employees would follow company policy, or if a company has had other episodes within the prior two years when employees did not wear the required safety gear, it may be appropriate for the county to pursue a civil penalty against the employer.

Label-Required Safety Gear

If a county finds a licensed employee not wearing their label-required safety gear, the county will look closely at both the employer and employee. (A licensed employee is any DPR, or Structural Board licensee, including structural applicators.) The county holds licensees at a higher standard and expects they will follow all label requirements, especially those designed to protect the applicator.

Again, the biologist will review the employer’s training and supervision program. If the company is in compliance, and if the employee is a licensee; the county can choose to take an action against the employee for a safety gear violation.

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Inappropriate Pesticide Applications

If a pesticide is applied inappropriately and the violation is serious enough for the county to propose a civil penalty action, we look at all the circumstances of the violation and will look closely at the employer's pesticide program. If the employer is in compliance, we then look to the employee.

We will place more weight upon an employee if the employee is a certified commercial applicator. It's important to note that a county can take action against non-licensed individuals for these kinds of violations. However, the level of documentation to show the non-licensed employee was knowledgeable about the use situation can be very difficult to establish. As an employer, you must be certain you have fulfilled your requirements for training, safety gear, and supervision as discussed earlier in this article.

Certified Commercial Applicators

To ensure employees are more accountable for their actions, some employers require their applicators to become certified commercial applicators. According to 3CCR Section 6724(d), commercial applicators are considered trained. "Commercial applicators" are those individuals that have a QAL, QAC, OP, or FR license. It is important to note that structural licensed applicators are not considered to be a commercial applicator. However, by virtue of their license, counties can take an action for safety gear violations. Because structural applicators are not considered "trained", the employer must show their structural applicator was knowledgeable about the safety gear requirement or use situation. The same level of scrutiny is placed on employers for non-licensed agricultural applicators when they are found applying pesticides inappropriately. The burden of proof of training is placed upon the employer that their employee was knowledgeable and their actions were in direct violation of their training.

If you have structural applicators, you may wish to encourage them to become field representatives. Agricultural pest control companies may want to encourage their employees to become a QAL or QAC. By employing certified commercial applicators, you can augment your training and place more responsibility upon your employees.

Structural Registration

AB 1717

There are some major changes for structural companies beginning January 1, 2008. The annual structural notice of intent no longer exists for structural pest control companies. Structural companies will now have to register with each County.

County Registration

Please be advised that registration fees may vary county by county. Santa Clara County intends to send a letter to each structural pest control company describing the registration process and fees. You may wish to call other counties in which your business operates to determine their registration process and fees for 2008.

Branch 2 & 3 Companies

Each Branch will have to register and have a qualifying manager at each branch location. The fee for registration in Santa Clara County for Branch 2 and 3 companies is \$10. If the qualifying manager changes in mid-year, a new registration form with the new qualifying manager must be submitted with a \$10 re-submission fee.

Branch 1 Companies & Field Representatives

Branch 1 companies must register and pay a \$25 fee. The company must also submit a list of Field Representatives working with the company and update this list with the County as it changes. (There will be a \$10 fee for updating this list after registration.)



Exotic Pests Finding Their Way to Santa Clara County

Unprecedented number of exotic pests in 2007

Spring 2007 began with the detection of the Light Brown Apple Moth in the northern portion of Santa Clara County. In August, two Oriental Fruit Flies (OFF) in Cupertino prompted an eradication project. A second OFF outbreak in Gilroy in September necessitated yet another eradication project. In October, State trappers found seven Mediterranean Fruit Flies in San Jose prompting a quarantine and a massive eradication project.

How are these pests finding their way to this County? California has many points of entry – highways, airports, seaports, post office, and commercial carriers. Inspections are conducted at these locations, but it's particularly difficult to intercept shipments of miss-manifested or contraband plants, fruits, or vegetables.

The State operates border stations to inspect car and truck shipments as they enter California. However, budget reductions have affected inspections at these facilities in recent years and attention is now focused on commercial shipments. Has the scaling back of personal vehicle inspections rippled down to our recent exotic pest problems? It's tough to say. The border inspections of personal vehicles have definitely shown their value in the past. In fact, the State conducted a pilot program to run the Needles Inspection Station at full staff and when the inspectors stopped personal vehicles the amount of serious pests intercepted were astounding. From 7-5-2006 to 4-30-2007, the Needles Inspection Station stopped just over 1 million private vehicles. 167,132 vehicles were inspected and inspectors found 2,218 pests! 77 pests were A-rated, 21 were B-rated, 403 were Q-rated, and there were 57 animals rejected. These inspection findings definitely lend credence to the value of quarantine inspections.

The recent pest outbreaks in Santa Clara County could be a result of a commercial fruit smuggler, or residents unwittingly transporting pests into California with the fruits and plants brought back from their travels. In any case, we hope the recent outbreaks will serve to educate the public on the importance of complying with quarantine restrictions and the need to exclude non-native invasive pests from California.

If you should have any clients with questions regarding any of these exotic pests, you can direct them to our website for information. We have information about these infestations and maps showing the treatment and quarantine boundaries.

From the Question File

Questions from Industry...

I'm a dual-licensed company – can my employees with Field Representative licenses apply Fumitoxin to control gophers?

Field Representative cannot apply Fumitoxin for gopher control without a Qualified Applicator Licensee or Qualified Applicator Certificate holder present at the use site with the appropriate category.

The Fumitoxin label specifically states that the product can only be applied by appropriately licensed certified applicators or by persons under their direct supervision:

“For use by Certified Applicators or persons under their direct supervision, and only for those uses covered by the Certified Applicator’s certification. Refer to the directions in this applicator manual for requirements of the physical presence of a Certified Applicator.”

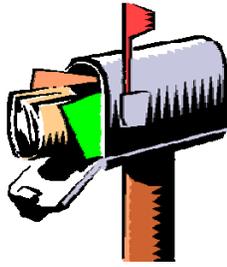
Structural Licenses do not cover agricultural uses. Gopher control with Fumitoxin therefore cannot be done with a structural license.

I have clients asking me to spray their olive trees for the olive fruit fly. What materials are available to control this pest?

GF-120 NF Naturallyte Fruit Fly Bait by Dow AgroSciences is labeled for tephritid fruit fly control and is a product with a low mammalian toxicity. We don't recommend one pesticide product over another, but we are not aware of any other product labeled for home-use settings that targets olive fruit fly. GF-120, EPA Reg. No. 62719-498, has a supplemental label that allows the product to be used in non-crop settings and on “any tree”.

Since the olive fruit fly has two generations in this area, you may want to deploy yellow sticky traps and monitor for the presence of this pest so you can time your applications appropriately.

Are you tired of paying
for postage to mail
your use reports every
month to the
Commissioner's office?



Well, we have a solution for you!

Santa Clara County Agriculture
Introduces:

On-Line Pesticide Use Reporting

Do away with postage and running
out to the post office by the 10th of
every month. Just log on to our
website and electronically post your
use report!

It's FAST

It's EASY

AND, We will personally help you
set up your on-line reporting!

Call today to set up your FREE
appointment with our On-Line Use
Reporting expert.

We will set you up with a log in
name, password, and details of how
to submit your monthly use reports.

For information about On-Line Use
Reporting, Please contact Kristian
Barbeau at (408) 465-2910

or E-mail:

Kristian.Barbeau@aem.sccgov.org

Continuing Education Seminar

When: December 11, 2007

Where: San Martin Lions Club
12415 Murphy Avenue
San Martin

Time: 8:00 a.m. – 12:00 noon

C.E. : 2 Hours for Certified Private
Applicators, QAL, QAC, PCA
(1 hour of "Laws and Regs." and
1 hour of "Other")

RSVP: Please call (408) 465-2900 to
reserve your seat today!

Agenda: To see a copy of the agenda,
you can visit our website and
click on: "Pesticide Safety,
Forms & Education"

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

This newsletter and all previous editions
are available on our website at:

<http://www.sccagriculture.org>