

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Administration		(2) MEETING DATE May 2, 2006		(3) CONTACT/PHONE Vincent Morici, Administrative Analyst (805) 781-5020	
(4) SUBJECT Request to approve recommended responses to findings and recommendations contained in the March Grand Jury report on Pesticide Use at the Agricultural/Urban Interface, and to forward the responses to the Presiding Judge of the Superior Court.					
(5) SUMMARY OF REQUEST The Grand Jury has prepared a report addressing several issues associated with the use of pesticides in areas where agricultural operations are adjacent or near urban uses. The report directs that the Board of Supervisors respond to six of the seven findings and recommendations of the report. The Grand Jury also requires that the County Agricultural Commissioner, the Health Department and the Planning Department respond to specific findings and recommendations. This item includes the departmental responses as well as recommended responses from the Board of Supervisors to the findings and recommendations. Upon approval, the responses will be forwarded to the Presiding Judge.					
(6) RECOMMENDED ACTION It is recommended that your Board approve the attached responses and forward these responses to the Presiding Judge of the Superior Court.					
(7) FUNDING SOURCE(S) N/A		(8) CURRENT YEAR COST N/A		(9) ANNUAL COST N/A	
(10) BUDGETED? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): The County Agricultural Commissioner, the County Department of Public Health and the County Planning department were consulted and participated in the response to this report.					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input checked="" type="checkbox"/> All			(14) LOCATION MAP <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board <input checked="" type="checkbox"/> N/A
(16) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input checked="" type="checkbox"/> N/A		
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(19) BUDGET ADJUSTMENT REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____			(21) W-9 <input type="checkbox"/> No <input type="checkbox"/> Yes		(22) Agenda Item History <input checked="" type="checkbox"/> N/A Date _____
(23) ADMINISTRATIVE OFFICE REVIEW 					

B-9
(5/2/06)

County of San Luis Obispo

COUNTY GOVERNMENT CENTER, RM. 370 • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5011



DAVID EDGE
COUNTY ADMINISTRATOR

TO: Board of Supervisors

FROM: Vincent Morici, Administrative Analyst

DATE: May 2, 2006

SUBJECT: Response to the 2005-2006 Grand Jury Interim Report on Pesticide Use at the Agricultural/Urban Interface

RECOMMENDATION

The Board of Supervisors adopt the attached recommended responses prepared by the Administrative Office (attachment 1), the response by the Agricultural Commissioner (attachment 3), the response by the Public Health Department (attachment 3) and the response by the Planning Department (attachment 4) as the Board's response to the March 2006 Grand Jury Report on Pesticide Use at the Agricultural/Urban Interface. It is further recommended that these be forwarded to the Presiding Judge of the Superior Court.

DISCUSSION

The Grand Jury issued an interim report in March of 2006. The interim report addresses issues involving the use of pesticides in agricultural areas that border residences and schools. The Grand Jury report contains seven findings and seven recommendations.

The Grand Jury requires the following responses to their report.'

1. The Agricultural Commissioner to respond to Findings 2, 3, and 4 and Recommendations 2, 3, and 4.
2. The County Planning Department to respond to Finding 5 and Recommendation 5.
3. The Public Health Department to respond to Findings 6 and Recommendation 6.
4. The Board of Supervisors to respond to Findings 1 through 6 and Recommendations 1 through six.

Attached to this report are the requested responses from the departments. Following an evaluation, the information contained in the Grand Jury Report and researching the issues raised in the report, staff has prepared a recommended response from the Board of Supervisors to this report. The recommended Board of Supervisors response to the Grand Jury Report is contained in Attachment 1.

B-9
B-2

OTHER AGENCY INVOLVEMENT

The Agricultural Commissioner's Office, the Department of Public Health and the Planning Department were contacted as part of the preparation of this report.

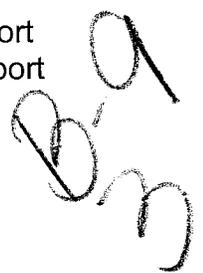
FINANCIAL CONSIDERATIONS

There are no direct financial considerations related to the response to this report.

RESULTS

Adoption of the findings and recommendations will fulfill the County's obligation to respond to Grand Jury reports as specified in Section 933 of the Penal Code

- Attachment 1 - Recommended Board response to the Grand Jury Report
- Attachment 2 – County Agricultural Commissioner's response to the Grand Jury Report
- Attachment 3 – County Department Of Public Health response to the Grand Jury Report
- Attachment 4 – County Department of Planning and Building response to the Grand Jury Report

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County of San Luis Obispo

COUNTY GOVERNMENT CENTER, RM. 370 • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5011



TO: The Honorable Rodger Piquet,
California Superior Court, San Luis Obispo County

DAVID EDGE
COUNTY ADMINISTRATOR

FROM: County of San Luis Obispo Board of Supervisors
Katchik "Katcho" Achadjian, Chairman

DATE May 2, 2006

RE: 2005-2006 Grand Jury Report - Pesticide Use at the Agricultural/Urban Interface

Thank you for the opportunity to respond to the Grand Jury report on the Grand Jury Report related to Pesticide Use at the Agricultural/Urban Interface. This memo is the County Board of Supervisors response to the report. The required response from the County Planning Department, County Department of Public Health and the County Agricultural Commissioner is also attached to this memo.

Grand Jury Finding 1

California grows more than 85% of the nation's strawberries and other methyl-bromide dependent crops. San Luis Obispo County growers planted 800 acres of strawberries in 2004. In 2005, 18 restricted materials permits were issued for the use of methyl bromide. Besides its toxicity, methyl bromide is a significant contributor to the ozone depletion in the atmosphere. The use of this pesticide continues despite the fact that the U.S. has signed the Montreal Protocol treaty, which promised to ban the use of methyl bromide by 2005. Efforts are still in progress on both the federal and the state levels.

Board of Supervisor's Response to Finding 1

The Board of Supervisors agrees with the finding. However, the Board provides a clarification regarding the finding related to the Montreal Protocol treaty. The finding incorrectly implies that the United States continues to use methyl bromide in violation of the Montreal Protocol. In simple terms, the Montreal Protocol is an international treaty that deals with the substances that cause the depletion of the atmospheric ozone layer referred to as Ozone Depleting Substances (ODS). The United States ratified the treaty in 1988.

The Montreal Protocol included the phased reduction, with the intent to eventually eliminate the use chemicals that cause the depletion of the ozone layer. Methyl bromide, a chemical used in agricultural production and as a fumigant for international product shipments was identified as an ODS. The Montreal Protocol initially established a 2010 date for the complete phase out of methyl bromide. This time frame was later

69
4

moved up to 2005 as the date when developed countries should cease use of methyl bromide.

Updates to the Montreal Protocol have occurred since it became operational in 1989. The current standards for the treaty allow for exceptions to the ban for critical uses. The exceptions (known as Critical Use Exemptions or CUEs) may be submitted by nations that are signatories to this international treaty. The United States is one of over a dozen nations that have requested and been granted exemptions.

Requested Critical Uses Exemptions are allowed when the users currently have no safe, effective and economically viable alternatives to methyl bromide use for crops and post-harvest uses. Within the United States, exemptions are first submitted to and reviewed by the U. S. Environmental Protection Agency (EPA). The EPA analyzes the requests using teams of biologists, economists and other experts who evaluate whether or not there is a critical need for methyl bromide, based on the criteria agreed to by the Parties of the Montreal Protocol. The EPA sends the nomination of critical use exemptions to the Ozone Secretariat of the United Nations. The Ozone Secretariat forwards the nomination package to the Methyl Bromide Technical Options Committee (MTOC), an advisory group that provides technical expertise related to methyl bromide on behalf of the member nations. MTOC reviews the nomination requests and makes recommendations to that are reviewed and decided by consensus at meetings of the parties that are signatory to the Montreal Protocol.

Grand Jury Finding 2

Growers are subject to obtaining use permit, being inspected and fined for violations ranging from fifty to many thousands of dollars depending on the nature of the noncompliance.

Board of Supervisor's Response to Finding 2

The Board agrees with this finding.

Grand Jury Finding 3

All schools are considered "sensitive sites". School safety issues that have been addressed include parental information regarding spraying schedules, the creation of buffer zones around schools and childcare centers and mandatory conditions on restricted pesticide application when children are present.

Board of Supervisor's Response to Finding 3

The Board agrees with this finding.

Grand Jury Finding 4

The CAC and Public Health Department have coordinated efforts to update their database of childcare facilities in order to prevent pesticide exposure to this most vulnerable population.

Board of Supervisor's Response to Finding 4

The Board of Supervisors agrees with this finding.

B-9
5

Grand Jury Finding 5

The Environmental Resource Section (land use) of CAC's office is periodically requested by the Planning Department to provide input regarding a suitable location for a new school. This information, which takes into consideration the proximity to existing commercial agriculture, is often disregarded. New schools continue to be placed near large agricultural venues.

Board of Supervisor's Response to Finding 5

The Board of Supervisors partially disagrees with this finding. We agree that the Environmental Resource Section of the Agricultural Commissioner's Office is periodically requested to provide input regarding land use permits involving the development of schools and school sites. We disagree that the information about the proximity of commercial agriculture is disregarded. The Grand Jury states that the information from the Environmental Resources Section is "often disregarded" but provides no support for the statement. As such, the statement appears to be more opinion, than a finding.

The Board considers all of the information presented in land use permits hearings and meetings before making decisions. School districts are generally the entity that selects and recommends the location for school sites.

Grand Jury Finding 6

The Task Force on Health and Pesticide Use recommended that they meet every three years.

Board of Supervisor's Response to Finding 6

The Board agrees with this finding.

Recommendations

Grand Jury Recommendation 1

The Grand Jury strongly recommends that less toxic materials be used to replace methyl bromide and that the Board of Supervisors actively support the Montreal Protocol. (Finding #1)

Board of Supervisor's Response to Recommendation 1

The Board of Supervisors will not implement this recommendation. The Board is in general agreement that use of less toxic materials is desirable. However, the Board also notes that the State of California has passed laws and regulations that govern the use of pesticides, including methyl bromide. California's laws governing pesticide use are some the nation's most stringent.

B-9
6

The nations that are signatory to the Montreal Protocol have developed processes to implement this treaty. The Board acknowledges that the signatories to the Montreal Protocol have considered and approved the temporary and limited continued use of methyl bromide under the existing critical use guidelines of the Montreal Protocol. We acknowledge that under the treaty, member nations can work together to develop and determine the strategies, appropriate time frames and processes to implement the concepts of the treaty.

The Board appreciates and is sensitive to the concerns expressed by the Grand Jury and members of the community. However, we also recognize that San Luis Obispo is an agricultural area, and modern agriculture production uses pesticides, fertilizers and other substances that help increase the productivity of our farm lands. We recognize that the Agricultural Commissioner has the authority to evaluate applications to apply regulated substances as part of the effort to assure the appropriate laws and regulations are followed. The laws and regulations are oriented to promoting the safety of the people who use these substances in agricultural production, as well as those who and live in and around agricultural areas.

Grand Jury Recommendation 2

Fines imposed on growers should be reviewed and made stringent enough to deter infractions of all regulations. (Finding #2)

Board of Supervisor's Response to Recommendation 2

The Board adopts the response by the response by the Agricultural Commissioner in his memo dated April 3, 2006 as the Board of Supervisors Response.

Grand Jury Recommendation 3

Restricted pesticides should be prohibited on school grounds. School officials should adhere to the principles outlined in the Healthy Schools Act of 2000 (AB 2260 and AB 1006) until the long-range effects of pesticides on children's growth patterns can be documented. Buffer zones around schools should be broadened beyond those specified on the manufacturer's label. (Finding #3)

Board of Supervisor's Response to Recommendation 3

The Board adopts the response by the response by the Agricultural Commissioner in his memo dated April 3, 2006 as the Board of Supervisors Response.

Grand Jury Recommendation 4

The annual updating of childcare locations is an important part of protecting children. Mandatory annual updating should be the responsibility of the office of the CAC. (Finding #4)

Board of Supervisor's Response to Recommendation 4

The Board adopts the response by the response by the Agricultural Commissioner in his memo dated April 3, 200 as the Board of Supervisors Response. The Board further

B-9
7

encourages the Public Health Department and the County Agricultural Commission to work together to provide regular updates of childcare and school site locations.

Grand Jury Recommendation 5

Recommendations from Environmental Resource Section should be an essential part of any new school project's planning. (Finding #5)

Board of Supervisor's Response to Recommendation 5

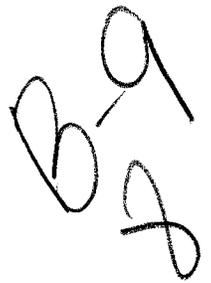
This recommendation has already been implemented. New school sites are proposed by school district officials and undergo a full land use review. The review includes input from the Agricultural Commissioner's Environmental Resource Section, review for compliance with the California Environmental Quality Act and other laws and regulations that govern development. Decisions by school district officials and the Board consider all information relevant to the requested use and are not solely based upon the recommendations of the Agricultural Commissioner's Environmental Resource Section.

Grand Jury Recommendation 6

The Grand Jury recommends that the Task Force on Health and Pesticide Use meet annually for the purpose of review and recommendations. (Finding #6)

Board of Supervisor's Response to Recommendation 6

The Board will not implement this recommendation. The Task Force on Health and Pesticide Use has determined to meet on a three-year basis. The Board of Supervisors respects the decision of the Task Force and acknowledges the following recommendation of the Health Commission made at their April 10, 2006 meeting. "The Pesticide Task Force is comprised of members from agricultural, health, and environmental fields as well as interested citizens and Health Commissioners. In order to perform an in depth review, and maintain participation, the Health Commission Pesticide Task force should hold a series of meetings and report back to the Health Commission and responsible organizations with findings and recommendations every 3 years. Doing this on an annual basis would reduce participation and lead to a superficial review." The Board will not implement the recommendation of the Grand Jury, as it is not warranted for the reasons provided in the Health Commission recommendation above.

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COUNTY OF SAN LUIS OBISPO

Department of Agriculture/Measurement Standards

2156 SIERRA WAY, SUITE A • SAN LUIS OBISPO, CALIFORNIA 93401-4556
ROBERT F. LILLEY (805) 781-5910
AGRICULTURAL COMMISSIONER/SEALER FAX (805) 781-1035

AgCommSLO@co.slo.ca.us

TO: The Honorable Rodger Piquet, Presiding Judge
California superior Court, County of San Luis Obispo

FROM: Robert Lilley, Agricultural Commissioner/Sealer

DATE: April 3, 2006

SUBJECT: Response to Grand Jury Report

This is the San Luis Obispo County Agricultural Commissioner (CAC) required response to the San Luis Obispo County Grand Jury Report Pesticide Use At The Agricultural/Urban Interface "Grassroots Effort Yields Promising Crops" in fiscal year 2005-2006 (pursuant to California Penal Code §933 and §933.5). Department responses are required for Findings 2, 3, & 4 and Recommendations 2, 3, & 4. The associated Grand Jury findings and recommendations are numerically grouped. The groupings are followed by the department's response.

Introduction

Our department welcomes the opportunity to provide information on San Luis Obispo County's Pesticide Use Enforcement Program. The mission of the Pesticide Use Enforcement Program is to protect people, the environment and the food supply by ensuring the safe use of pesticides in San Luis Obispo County. The Grand Jury's attention to this important subject is helping us to continue to identify and be aware of the concerns of the community and to educate the public about protective measures already in place.

Grand Jury Finding – 2

Finding: Growers are subject to obtaining use permit, being inspected and fined for violations ranging from fifty to many thousands of dollars depending on the nature of the noncompliance.

Department Response – Finding – 2

The Department agrees with the finding.

Grand Jury Recommendation – 2

Recommendation: Fines imposed on growers should be reviewed and made stringent enough to deter infractions of all regulations.

Attachment 2 – County Agricultural Commissioner's response to the Grand Jury Report

B-9
9

Department Response Recommendation – 2

The Department is implementing the recommendation in that penalties for violations are applied by the department accordance with the applicable laws and regulations. These penalties are intended to deter infractions of the laws and regulations that govern the use of pesticides.

All violations are reviewed for appropriate enforcement follow up and action is taken with the aim of deterring future non-compliances. The department maintains a no nonsense approach of taking enforcement follow up seriously. It should be noted that the regulated industry in San Luis Obispo County currently has a 96.3% compliance rate and our local enforcement program is rated by the California Department of Pesticide Regulations as one of the best in the state. A high level of compliance is viewed as a primary factor in determining adequate deterrence.

The following outlines how we review and categorize violations and fines, as well as other penalty levels available to us.

Section 6130(a) of the California Code of Regulations (CCR) Title 3 (**Attachment A**) provides the guidelines county agricultural commissioners are required to follow when fining for pesticide violations. Violations are designated as Class A (\$700-\$5,000), Class B (\$250-\$1,000), and Class C (\$50-\$400).

A Class A violation is defined as one which created an actual health or environmental hazard, is a repeat of a Class B, or is a violation of a lawful order of the commissioner to "Cease and Desist" the operation of equipment or a facility which is unsuitable or to prevent the further commission of violations that will present an immediate hazard or cause irreparable damage.

A Class B violation is defined as one, which posed a reasonable possibility of creating a health or environmental effect, or is a repeat of a Class C.

A Class C violation is one not defined in either Class A or Class B. Effectively, they are paperwork and neither creates nor poses the reasonable possibility of creating a health or environmental effect.

A repeat violation is one where a previous fine was levied in the same Class as the proposed fine within two years of the date of the Notice of Proposed Action for the current violation.

B-9
10

The California Department of Pesticide Regulation (DPR), the state agency with authority over the regulation of pesticides, provides guidelines to commissioners on when to fine. DPR annually audits the commissioner's pesticide enforcement program, including their adherence to the fine guidelines, with respect to proposing fines when appropriate and their placement at the correct levels per Section 6130(a) of the CCR.

Our department reviews all violations and follows DPR fine guidelines on when to fine. We perform an internal review to maintain consistency when fining individuals and businesses, determining the fine class, and placing the fine at an appropriate level within each class based on the circumstances of the violation and the violators compliance history.

Violations can be subject to other penalties: (1) violations can be prosecuted criminally as misdemeanors per Section 12996 of the FAC (**Attachment B**) for fines from \$500 to \$5,000 and/or imprisonment for six months, subsequent violations for fines from \$1,000 to \$10,000 and/or imprisonment for six months, with criteria for certain types of violations for fines from \$5,000 to \$50,000 and/or imprisonment for one year. (2) Violations can be prosecuted civilly by DPR and the State Attorney General per Section 12998 of the California Food and Agricultural Code (FAC) (**Attachment C**) in amounts ranging from \$1,000 to \$10,000 with subsequent violations, depending on circumstances, in amounts of \$5,000 to \$25,000 for each violation. (3) Additional administrative actions are available such as suspending, revoking, or denying restricted materials permits by the County Agricultural Commissioner, and suspending, revoking or denying licenses to sell or apply pesticides by DPR.

Our department consults with DPR and the District Attorney to determine when to pursue these alternatives to administrative fines.

Grand Jury Finding - 3

Finding: All schools are considered "sensitive sites". School safety issues that have been addressed include parental information regarding spraying schedules, the creation of buffer zones around schools and childcare centers and mandatory conditions on restricted pesticide application when children are present.

Department Response Finding – 3

The Department agrees with the finding.

Grand Jury Recommendation - 3

Recommendation: Restricted pesticides should be prohibited on school grounds. School officials should adhere to the principles outlined in the Healthy Schools Act of 2000 (AB 2260 and AB 1006) until the long-range effects of pesticides on children's growth patterns can be documented. Buffer zones around schools should be broadened beyond those specified on the manufacturer's label.

Department Response Recommendation – 3

This recommendation will not be implemented for several reasons. First the Department disagrees that there should be a complete prohibition of the use of restricted pesticides on school grounds. The restricted material permit issuance process for the use of restricted pesticides provides necessary authority to approve or deny the use of restricted materials requested by a school on a case by case evaluation.

The Department agrees that School officials should adhere to the principles outlined in the Healthy Schools Act of 2000 (AB 2260 and AB 1006) until the long-range effects of pesticides on children's growth patterns can be documented. However, implementation of this recommendation is not within the authority of the Department but rather its implementation rests with school officials.

The Department will not implement this recommendation as the Department has limited authority to implement the recommendation. The Commissioner has limited authority to further regulate buffer zone distances, beyond what is already required by the pesticide label, including the buffer zones around schools.

The department will address the three recommendation areas separately:

1) Restricted Material Use on School Sites

Our department disagrees with the Grand Jury recommendations that restricted materials should be prohibited from use on school grounds. The restricted material permit issuance process for the use of restricted pesticides provides necessary authority to approve or deny the use of restricted materials requested by a school. A school may have a pest problem that threatens the health or safety of the children where the only reliable method of control is a restricted material (e.g. a rodent borne plague outbreak or poisonous spider infestation). Also, alternative methods of pest control may actually be more hazardous to children than the use of restricted pesticides (e.g. the use of scissor traps for gopher control is potentially more dangerous than underground poisoned bait applications).

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The permit process allows for analysis of the use of restricted rodent pesticides (**Attachment D**), on an individual basis. This process requires an analysis of potential hazards related to sensitive sites including the likelihood of substantial environmental effects. Before a permit can be issued a series of determinations are required regarding the hazards. If the hazards are mitigated, a permit may be issued. If the hazards are not mitigated the permit must be denied.

The permit process provides the ability for any interested person to request the commissioner review their action in issuing or denying a permit and requires a written response by the commissioner affirming, modifying or canceling the permit action. After the written decision a directly affected person may appeal to the director of DPR for a review of the commissioner's action (**Attachment E**).

The use of restricted pesticides on K-12 school grounds is very limited in the county. However, a few school grounds may use restricted pesticides on their grounds in areas such as the sports fields for rodent or weed control, or as a part of the educational process in vocational agricultural programs to provide instruction on how to manage pests at the production agricultural level.

2) Healthy Schools Act of 2000

Pesticide uses on school sites are governed by general California pesticide laws and regulations, enforced by the Agricultural Commissioner, and by specific laws for schools (Healthy Schools Act 2000, AB 2260), enforced by the Department of Education. The Healthy Schools Act goes beyond the scope of general pesticide laws and regulations in the state. The Healthy Schools Act of 2000 (**Attachment F**) covers the use of any pesticide, restricted or non-restricted. Our department agrees with the Grand Jury that school officials should adhere to the principals and requirements of the Healthy Schools Act.

Our department held multiple meetings with all of the school districts in the county prior to and since the adoption of the Healthy Schools Act. The purpose of these meetings was to provide guidance on how to comply with the Healthy Schools Act, and to promote Integrated Pest Management (IPM). In addition, DPR has complied with the Healthy Schools Act, which requires them to provide specific information to schools on IPM. IPM information and complete details of the Healthy Schools Act are posted on DPR's web site (www.cdpr.ca.gov). Additionally, DPR is available to provide additional training to individual school districts to help them comply with the Healthy Schools Act.

In summary, the Healthy Schools Act requires school districts provide annually a list of all pesticides that might be used to parents or guardians, and staff during the school year.

B-9
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Subsequently, recipients of the list may request advance notification of individual pesticide applications. Also, pesticide treated areas are posted for prescribed times prior to and after applications.

The Grand Jury also notes school officials should comply with California AB 1006. AB 1006 was legislation proposed in the 2004-2005 legislative session. This bill addressed the prohibition of the use of certain pesticides on school sites. However, AB 1006 was not chaptered into law. Instead, an alternate bill AB 405 became effective on January 1, 2006 (**Attachment G**). This law is also enforced by the Department of Education.

AB 405 prohibits the use of pesticides that are currently registered for use in California under a conditional registration, an interim registration, or an experimental use permit. The prohibition is based on the fact these types of registrations typically have outstanding data requirements related to toxicity. An exception to the prohibition is made for conditionally registered pesticides with complete health toxicity data. Also, the prohibition does not apply to pesticides used for the protection of public health. DPR will create and maintain a list, on a quarterly basis, of prohibited pesticides (**Attachment H**). None of the prohibited pesticides are restricted materials. We agree that school districts should comply with AB 405.

3) Schools as Sensitive Sites and Buffer Zones for Adjacent Uses of Pesticides

Our department considers all schools as sensitive sites. A database of all public and private K-12 schools and licensed daycare centers is utilized. These schools are a layer in the department's Geographic Information System (GIS) used to map the location of agricultural crops and parks. This layer is used to identify where pesticides might be used adjacent to schools. The GIS is used to identify those schools within 500 feet of agricultural sites. This information is used to identify and make site specific requirements to individual Restricted Material Permits and make site specific recommendations, beyond what is required by the pesticide label and in regulation, to individual Operator Identification Numbers issued for the use of non-restricted pesticides.

San Luis Obispo County mandatory buffer zones exist for the use of restricted materials adjacent to schools. Ground applications are prohibited within 500 feet and aerial applications are prohibited within ½ mile of schools (**Attachment I**). These prohibitions exist while children are present at the school and are issued as a restricted material permit condition to individual restricted material permit holders. These buffer zones exist for all restricted materials using ground or aerial application methods. In addition, some specific restricted materials and application methods have larger mandatory buffer zones for occupied structures, which include schools (e.g. a 1 mile buffer zone for overhead

B9
14

sprinkler applications of metam or potassium sodium – San Luis Obispo County Restricted Material Permit Condition 14 – **Attachment J**). These mandatory buffer zones are larger than any required by manufacturer’s labels.

The commissioner has limited authority to further regulate, beyond what is already required by the label and regulation, the use of non-restricted materials per Section 14006.6(a) of the FAC (**Attachment K**). Additional authority to further regulate non restricted materials only applies if the commissioner determines the use of the non-restricted material will cause an undue hazard under local conditions. Suggested site specific mitigation measures are made to users of non-restricted materials adjacent to sensitive sites, including schools (**Attachment L**). These suggested mitigation measures could include buffer zones. Agricultural users of any pesticides, restricted and non-restricted, with sites within 500 feet of schools are provided specific suggestions for pesticide applications made near homes, schools, and other sensitive sites (**Attachment M**).

AB 947 of 2002 does not provide commissioners with the authority to mandate buffer zones of ½ mile around sensitive sites (i.e. schools and hospitals) as determined by the Grand Jury Report Appendix B “Legislation Governing Pesticide Use in California” under item 3: AB 947, 2002 (**Attachment N**).

AB 947 of 2002 (**Attachment O**) added Section 11503.5 to the FAC. Section 11503.5 of the FAC allows the commissioner to apply Section 11503 of the FAC (**Attachment P**) to adopt regulations applicable to their county with respect to timing, notification, and method of application within ¼ mile of a school for pesticides used for agricultural production. When adopted, these regulations are operative within 30 days of their submission, by the commissioner, to the Director of DPR if they are not specifically disapproved in writing.

The Agricultural Commissioner’s Office has not pursued the local rule making process to require additional restriction on non-restricted pesticides around schools as identified in AB 947 because the current system is providing for a level of protection that mitigates hazards around schools sites.

Grand Jury Finding - 4

Finding: The CAC and the Public Health Department have coordinated efforts to update their database of childcare facilities in order to prevent pesticide exposure to this most vulnerable population.

B-9
151

Department Response Finding – 4

The Department agrees with this finding.

Grand Jury Recommendation - 4

Recommendation: The annual updating of childcare locations is an important part of protecting children. Mandatory annual updating should be the responsibility of the office of the CAC.

Department Response Recommendation – 4

The Department will not implement this recommendation, as the department does not have the authority to require or obtain information pertaining to the locations of childcare facilities. However, we do agree the annual updating of childcare locations is an important part of protecting children.

The Public Health Department and our department are coordinating efforts to map agricultural operations within 500 feet of a schools or licensed childcare facilities. **(Attachment Q).**

The Public Health Department has the responsibility and authority to gather licensed childcare facility information. Our department is committed to working with the Public Health department to utilize licensed childcare facility information in our GIS layer, which also includes public and private schools.

Conclusion

Our department recognizes the value of the Grand Jury work in reviewing how the department regulates the use of pesticides and enforces those regulations through fine actions in San Luis Obispo County. In particular, the department welcomes their interest in the protection of children. Our department takes the protection of public health and the environment seriously and is committed to enforcing state laws and regulations, which are designed to provide protection from pesticides.

Our department will continue to respond to and track citizen concerns and complaints about pesticides use in San Luis Obispo County. Whenever possible we will continue to adopt and adjust our enforcement program to meet the needs of the community within our authority and regulatory mandates.

B-9
16

California Code of Regulations

Title 3. Food and Agriculture

Division 6. Pesticides and Pest Control Operations
Chapter 1. Pesticide Regulatory Program
Subchapter 3. Agricultural Commissioner Penalties
Article 1. Guidelines

6130. Civil Penalty Actions by Commissioners.

(a) When taking civil penalty action pursuant to section 12999.5 of the Food and Agricultural Code, county agricultural commissioners shall use the provisions of this section to determine the violation class and the fine amount.

(1) For purposes of this section, violations shall be designated as "Class A," "Class B," and "Class C."

(A) Class A: Violations which created an actual health or environmental hazard, violations of a lawful order of the commissioner issued pursuant to sections 11737, 11737.5, 11896, or 11897 of the Food and Agricultural Code, or violations that are repeat Class B violations. The fine range for Class A violations is \$700-\$5,000.

(B) Class B: Violations which posed a reasonable possibility of creating a health or environmental effect or violations that are repeat Class C violations. The fine range for Class B violations is \$250-\$1,000.

(C) Class C: Violations that are not defined in either Class A or Class B. The fine range for Class C violations is \$50-\$400.

(2) The currently alleged violation shall be considered a repeat violation if the following criteria are met:

(A) The person against whom the civil penalty action is proposed had a prior violation that was, or would have been, in the same class as the currently alleged violation; and

(B) A civil penalty was levied for the prior violation within two years of the date of the Notice of Proposed Action by the county proposing the current action.

(3) The person charged with a violation(s) shall be notified of the proposed fine action, including the amount of the proposed fine(s). When a penalty is proposed

B-9
17

resulting in a repeat violation, the Notice of Proposed Action shall identify the prior violation and the record of the proceedings shall include a copy of the decision regarding that prior violation. The commissioner shall send a copy of the notice to the department at the same time the notice is provided to the person charged with a violation(s).

(4) If the person against whom the commissioner levied a fine requested and appeared at the hearing offered by the commissioner, the commissioner's decision shall include information concerning the person's right to appeal the commissioner's decision to the Director.

(5) The Department, on at least an annual basis, shall inform commissioners of violations for which fines have been levied.

B-9
18

ATTACHMENT B

California Food and Agricultural Code
Division 7. Agricultural Chemicals, Livestock Remedies, and Commercial
Feeds
Chapter 2. Pesticides
Article 12. Penalties and Injunctive Relief

12996. (a) Every person who violates any provision of this division relating to pesticides, or any regulation issued pursuant to a provision of this division relating to pesticides, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or by imprisonment of not more than six months, or by both fine and imprisonment. Upon a second or subsequent conviction of the same provision of this division relating to pesticides, a person shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or by imprisonment of not more than six months or by both fine and imprisonment. Each violation constitutes a separate offense.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the offense involves an intentional or negligent violation that created or reasonably could have created a hazard to human health or the environment, the convicted person shall be punished by imprisonment in the county jail not exceeding one year or in the state prison or by fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000), or by both the fine and imprisonment.

(c) This section does not apply to violations of Chapter 7.5 (commencing with Section 15300).

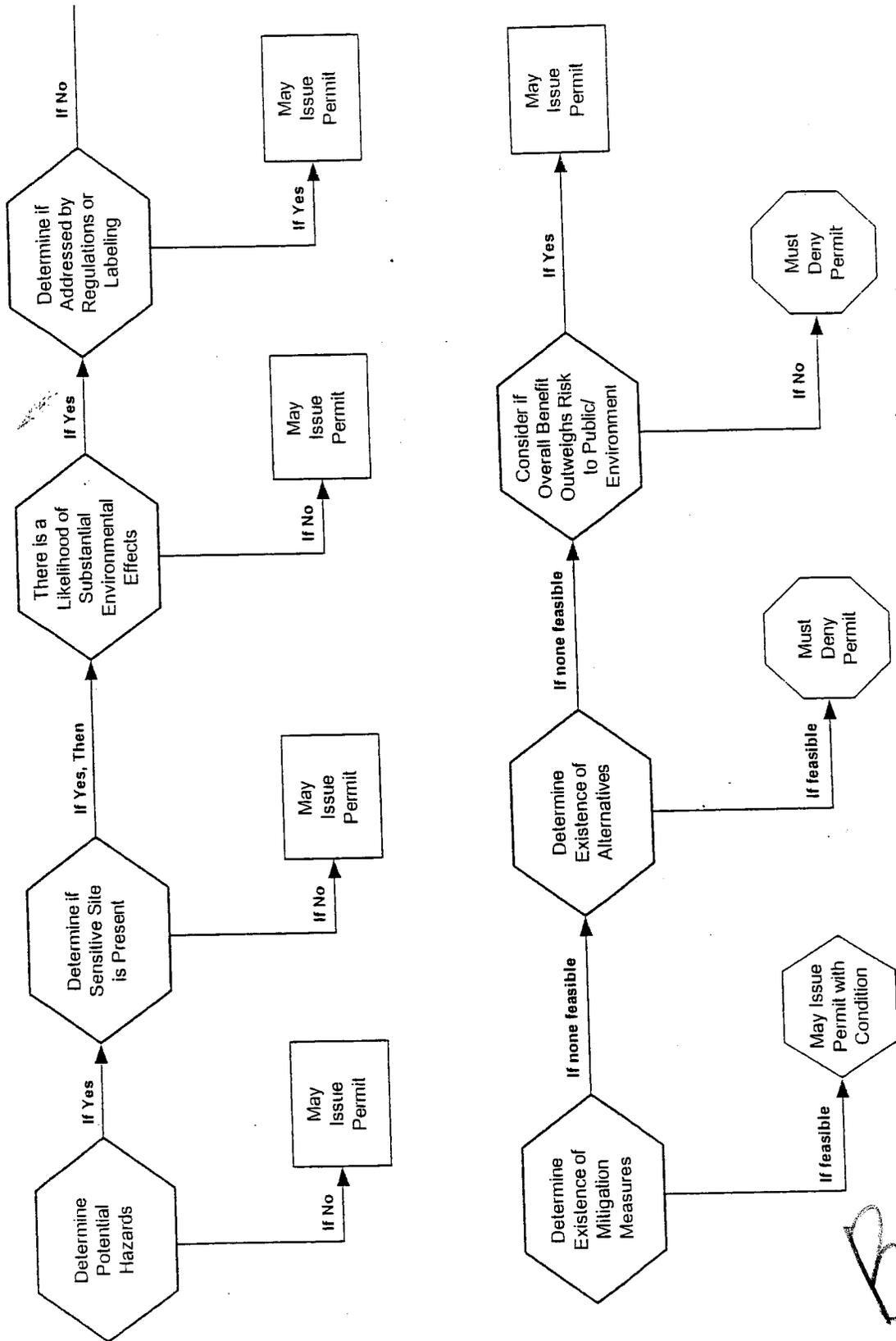
B-9
19

California Food and Agricultural Code
Division 7. Agricultural Chemicals, Livestock Remedies, and Commercial Feeds
Chapter 2. Pesticides
Article 12. Penalties and Injunctive Relief

12998. Any person who violates this division relating to pesticides or structural pest control devices, or any regulation issued pursuant to a provision of this division relating to pesticides or structural pest control devices, is liable civilly in an amount not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) for each violation. Any person who commits a second or subsequent violation that is the same as a prior violation or similar to a prior violation or whose intentional violation resulted or reasonably could have resulted in the creation of a hazard to human health or the environment or in the disruption of the market of the crop or commodity involved, is liable civilly in an amount not less than five thousand dollars (\$5,000) nor more than twenty-five thousand dollars (\$25,000) for each violation. Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department in administering this division, and Division 6 (commencing with Section 11401).

B-9
20

Overview of the Pesticide Permit Consideration Process Under Functional Equivalency Certification



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California Food and Agricultural Code
Division 7. Agricultural Chemicals, Livestock Remedies, and Commercial Feeds
Chapter 3. Restricted Materials
Article 1. Generally

14009. (a) Any interested person may request the commissioner to review his or her action in issuing, refusing, revoking, suspending, or conditioning a permit to use or possess a restricted material. The commissioner shall review the request and issue a written decision in response to the request to review within 10 days of receipt of the request, or as soon as practicable. The commissioner may affirm, modify, or cancel the permit action reviewed. A directly affected person may thereafter appeal to the director to review the commissioner's action.

(b) The commissioner and director shall conduct each review in an expeditious manner so that needed pest control measures are not adversely affected.

(c) Each request for review shall be submitted in writing to the commissioner by the person requesting the review and shall include all of the following:

(1) The location of persons, property, or areas that would be affected and the location of property to be treated.

(2) The name of the restricted material involved.

(3) The name and address of the person in charge of the property to be treated, if different from the person filing the request for review.

(4) Any other information that the person filing the request for review or the commissioner determines to be relevant.

(d) In an appeal of a commissioner's action to the director, the issues are limited to any of the following:

(1) Whether the proposed permit use is consistent with applicable pesticide label restrictions and applicable regulations.

(2) Whether the commissioner properly considered the provisions of Section 14006.5.

(3) Whether the commissioner abused his or her discretion in issuing, refusing, revoking, or conditioning the permit.

(e) The director shall act on these appeals within 10 days of receipt thereof or as soon thereafter as is practicable. The director may stay the operation of a permit until his or her review is complete.

(f) (1) Prior to conducting a public review, the director shall notify directly affected persons at least 72 hours in advance of the location and time of the public review.

(2) Before acting on an appeal, the director shall, in a specified location open to the public, review the information provided to him or her as specified in this section if requested to do so in writing by any interested person.

(3) The director may request additional testimony or other evidence specified in this section at the public review from interested persons.

(g) Judicial review of any decision by the director pursuant to this section shall be pursuant to Section 1094.5 of the Code of Civil Procedure. Review shall be limited to whether the proposed permit use is consistent with applicable pesticide label restrictions and regulations and whether the director abused his or her discretion.

B9
22

Assembly Bill No. 2260

CHAPTER 718

An act to add Section 48980.3 to, and to add Article 4 (commencing with Section 17608) to Chapter 5 of Part 10.5 of, the Education Code, and to add Article 17 (commencing with Section 13180) to Chapter 2 of Division 7 of the Food and Agricultural Code, relating to school safety.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2260, Shelley. School safety.

Under existing law, the Department of Pesticide Regulation has primary responsibility for enforcing pesticide laws and regulations. Existing law establishes and maintains various programs to promote health and prevent disease.

This bill would establish the Healthy Schools Act of 2000. The bill would require that the preferred method of managing pests at schoolsites be effective least toxic pest management practices and would further require that the state take the necessary steps, pursuant to specified provisions, to facilitate the adoption of effective least management practices at schoolsites. The bill would require each schoolsite to maintain records of all pesticide use at the schoolsite for a period of 4 years and make the records available to the public upon request, thus imposing a state-mandated local program. The bill would require that licensed and certified pest control operators include information on any school pesticide application that they perform as part of their otherwise applicable pesticide use reporting requirements.

The bill would require, on an annual basis, the school district designee to provide to all staff and parents or guardians of pupils enrolled at a school written notification addressing, among other things, expected pesticide use, thus imposing a state-mandated local program. The bill would require that the recipients be afforded the opportunity to register with the school district to receive information regarding individual pesticide applications. The bill would require the school district designee to post warning signs prior to application of pesticides at a schoolsite, thus imposing a state-mandated local program.

The bill would require the Department of Pesticide Regulation to promote and facilitate the voluntary adoption of integrated pest management programs as specified, maintain an internet website, and establish an integrated pest management training program. The

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bill would provide definitions of terms for the Healthy Schools Act of 2000.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Article 4 (commencing with Section 17608) is added to Chapter 5 of Part 10.5 of the Education Code, to read:

Article 4. Healthy Schools Act of 2000

17608. This article, Article 17 (commencing with Section 13180) of Chapter 2 of Division 7 of the Food and Agricultural Code, and Article 2 (commencing with Section 105500) of Chapter 76 of Division 103 of the Health and Safety Code, shall be known and cited as the Healthy Schools Act of 2000.

17609. The definitions set forth in this section govern the construction of this article unless the context clearly requires otherwise:

(a) "Antimicrobial" means those pesticides defined by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136(mm)).

(b) "Crack and crevice treatment" means the application of small quantities of a pesticide consistent with labeling instructions in a building into openings such as those commonly found at expansion joints, between levels of construction and between equipment and floors.

(c) "Emergency conditions" means any circumstances in which the school district designee deems that the immediate use of a pesticide is necessary to protect the health and safety of pupils, staff, or other persons, or the schoolsite.

(d) "School district designee" means the individual identified by the school district to carry out the requirements of this article at the schoolsite.

(e) "Schoolsite" means any facility used for public day care, kindergarten, elementary, or secondary school purposes. The term includes the buildings or structures, playgrounds, athletic fields,

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school vehicles, or any other area of school property visited or used by pupils. "Schoolsite" does not include any postsecondary educational facility attended by secondary pupils or private day care or school facilities.

17610. It is the policy of the state that effective least toxic pest management practices should be the preferred method of managing pests at schoolsites and that the state, in order to reduce children's exposure to toxic pesticides, shall take the necessary steps, pursuant to Article 17 (commencing with Section 13180) of Chapter 2 of Division 7 of the Food and Agricultural Code, to facilitate the adoption of effective least toxic pest management practices at schoolsites. It is the intent of the Legislature to encourage appropriate training to be provided to school personnel involved in the application of pesticide at a schoolsite.

17610.5. Sections 17611 and 17612 shall not apply to a pesticide product deployed in the form of a self-contained bait or trap, to gel or paste deployed as a crack and crevice treatment, to any pesticide exempted from regulation by the United States Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 25 (b)), or to antimicrobial pesticides, including sanitizers and disinfectants.

17611. Each schoolsite shall maintain records of all pesticide use at the schoolsite for a period of four years, and shall make this information available to the public, upon request, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). A schoolsite may meet the requirements of this section by retaining a copy of the warning sign posted for each application required pursuant to Section 17612, and recording on that copy the amount of the pesticide used.

17612. (a) The school district designee shall annually provide to all staff and parents or guardians of pupils enrolled at a schoolsite a written notification of the name of all pesticide products expected to be applied at the school facility during the upcoming year. The notification shall identify the active ingredient or ingredients in each pesticide product. The notice shall also contain the Internet address used to access information on pesticides and pesticide use reduction developed by the Department of Pesticide Regulation pursuant to Section 13184 of the Food and Agricultural Code and may contain other information deemed necessary by the school district designee. No other written notification of pesticide applications shall be required by this act except as follows:

(1) In the written notification provided pursuant to this subdivision, the school district designee shall provide the opportunity for recipients to register with the school district if they wish to receive notification of individual pesticide applications at the school facility. Persons who register for such notification shall be notified of

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B-9
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individual pesticide applications at least 72 hours prior to the application. The notice shall include the product name, the active ingredient or ingredients in the product, and the intended date of application.

(2) If a pesticide product not included in the annual notification is subsequently intended for use at the schoolsite, the school district designee shall, consistent with this subdivision and at least 72 hours prior to application, provide written notification of its intended use.

(b) The school designee shall make every effort to meet the requirements of this section in the least costly manner. Annual notification to parents and guardians shall be provided pursuant to Section 48980.3. Any other notification shall, to the extent feasible and consistent with the act adding this article, be included as part of any other written communication provided to individual parents or guardians. Nothing in this section shall require the school district designee to issue the notice through first-class mail, unless he or she determines that no other method is feasible.

(c) Pest control measures taken during an emergency condition as defined in Section 17609 shall not be subject to the requirements of paragraphs (1) and (2) of subdivision (a). However, the school district designee shall make every effort to provide the required notification for an application of a pesticide under emergency conditions.

(d) The school district designee shall post each area of the schoolsite where pesticides will be applied with a warning sign. The warning sign shall prominently display the term "Warning/Pesticide Treated Area" and shall include the product name, manufacturer's name, the United States Environmental Protection Agency's product registration number, intended date and areas of application, and reason for the pesticide application. The warning sign shall be visible to all persons entering the treated area and shall be posted 24 hours prior to the application and remain posted until 72 hours after the application. In case of a pest control emergency, the warning sign shall be posted immediately upon application and shall remain posted until 72 hours after the application.

(e) Subdivisions (a) and (d) shall not apply to schools operated by the California Youth Authority. The school administrator of a school operated by the California Youth Authority shall notify the chief medical officer of that facility at least 72 hours prior to application of pesticides. The chief medical officer shall take any steps necessary to protect the health of pupils in that facility.

(f) This section and Section 17611 shall not apply to activities undertaken at a school by participants in the state program of agricultural vocational education, pursuant to Article 7 (commencing with Section 52450) of Chapter 9 of Part 28, if the activities are necessary to meet the curriculum requirements prescribed in Section 52454. Nothing in this subdivision relieves

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B-9
26

schools participating in the state program of agricultural vocational education of any duties pursuant to this section for activities that are not directly related to the curriculum requirements of Section 52454.

17613. Section 17612 shall not apply to any agency signatory to a cooperative agreement with the State Department of Health Services pursuant to Section 116180 of the Health and Safety Code.

SEC. 2. Section 48980.3 is added to the Education Code, to read:

48980.3. The notification required pursuant to Section 48980 shall include information regarding pesticide products as specified in subdivision (a) of Section 17612.

SEC. 3. Article 17 (commencing with Section 13180) is added to Chapter 2 of Division 7 of the Food and Agricultural Code, to read:

Article 17. Healthy Schools Act of 2000

13180. This article, Article 4 (commencing with Section 17608) of Chapter 5 of Part 10.5 of the Education Code, and Article 2 (commencing with Section 105500) of Chapter 7 of Division 103 of the Health and Safety Code, shall be known and may be cited as the Healthy Schools Act of 2000.

13181. Notwithstanding any other provision of law, for purposes of this article, "integrated pest management" means a pest management strategy that focuses on long-term prevention or suppression of pest problems through a combination of techniques such as monitoring for pest presence and establishing treatment threshold levels, using nonchemical practices to make the habitat less conducive to pest development, improving sanitation, and employing mechanical and physical controls. Pesticides that pose the least possible hazard and are effective in a manner that minimizes risks to people, property, and the environment, are used only after careful monitoring indicates they are needed according to preestablished guidelines and treatment thresholds. This definition shall apply only to integrated pest management at school facilities.

13182. It is the policy of the state that effective least toxic pest management practices should be the preferred method of managing pests at schoolsites and that the state, in order to reduce children's exposure to toxic pesticides, shall take the necessary steps, pursuant to this article, to facilitate the adoption of effective least toxic pest management practices at schoolsites. It is the intent of the Legislature to encourage appropriate training to be provided to school personnel involved in the application of pesticide at a schoolsite.

13183. The Department of Pesticide Regulation shall, by July 1, 2001, promote and facilitate the voluntary adoption of integrated pest management programs for all school districts that voluntarily choose to do so. For these school districts, the department shall do all of the following:

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(a) Establish an integrated pest management program for school districts consistent with Section 13181. In establishing the program, the department shall:

(1) Develop criteria for identifying least-hazardous pest control practices and encourage their adoption as part of an integrated pest management program at each schoolsite.

(2) Develop a model program guidebook that prescribes essential program elements for a school district that has adopted a least-hazardous integrated pest management program. At a minimum, this guidebook shall include guidance on all of the following:

(A) Adopting an IPM policy.

(B) Selecting and training an IPM coordinator.

(C) Identifying and monitoring pest populations and damage.

(D) Establishing a community-based school district advisory committee.

(E) Developing a pest management plan for making least-hazardous pest control choices.

(F) Contracting for integrated pest management services.

(G) Training and licensing opportunities.

(H) Establishing a community-based right-to-know standard for notification and posting of pesticide applications.

(I) Recordkeeping and program review.

(b) Make the model program guidebook available to school districts and establish a process for systematically updating the guidebook and supporting documentation.

13184. (a) In implementing Section 13183, the department shall establish and maintain an Internet website as a comprehensive directory of resources describing and promoting least-hazardous practices at schoolsites. The website shall also make available an electronic copy of the model program guidebook, its updates, and supporting documentation. The department shall also establish and maintain on its website an easily identified link that provides the public with all appropriate information regarding the public health and environmental impacts of pesticide active ingredients and ways to reduce the use of pesticides at school facilities.

(b) It is the intent of the Legislature that the state assist school districts to ensure that compliance with Section 17612 of the Education Code is simple and inexpensive. The department shall include in its website Internet-based links that allow schools to properly identify and list the active ingredients of pesticide products they expect to be applied during the upcoming year. Use of these links by schools is not mandatory but shall be made available to all schools at no cost. The department shall ensure that adequate resources are available to respond to inquiries from school facilities or districts regarding the use of integrated pest management practices.

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13185. (a) The department shall establish an integrated pest management training program in order to facilitate the adoption of a model IPM program and least-hazardous pest control practices by school districts. In establishing the IPM training program, the department shall do all of the following:

(1) Adopt a "train-the-trainer" approach, whenever feasible, to rapidly and broadly disseminate program information.

(2) Develop curricula and promote ongoing training efforts in cooperation with the University of California and the California State University.

(3) Prioritize outreach on a regional basis first and then to school districts.

(b) Nothing in this article shall preclude a school district from adopting stricter pesticide use policies.

13186. (a) The Legislature finds and declares that the Department of Pesticide Regulation, pursuant to Section 12979 of the Food and Agricultural Code and Sections 6624 and 6627 of Title 3 of the California Code of Regulations, requires persons engaged for hire in the business of pest control to maintain records of pesticide use and report a summary of that pesticide use to the county agricultural commissioner or director. The Legislature further finds and declares that it is in the interest of the state, in implementing a school integrated pest management program pursuant to this article, to collect specified information on the use of pesticides at school facilities.

(b) The Department of Pesticide Regulation shall prepare a school pesticide use form to be used by licensed and certified pest control operators when they apply any pesticides at a schoolsite. The form shall include, for each application at a schoolsite, the name and address of the schoolsite, date and location of application, pesticide product name, and the quantity of pesticide used. Nothing in this section shall change any existing applicable pesticide use reporting requirements.

(c) On and after January 1, 2002, persons required to submit pesticide use records to the county agricultural commissioner or director shall complete and submit to the director the school pesticide use forms established pursuant to this section. The forms shall be submitted annually and may be submitted more often at the discretion of the pest control operator maintaining the forms.

13187. Section 13186 shall not apply to any agency signatory to a cooperative agreement with the State Department of Health Services pursuant to Section 116180 of the Health and Safety Code.

13188. The Director of Pesticide Regulation may adopt regulations to implement this article.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local

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agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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Assembly Bill No. 405

CHAPTER 566

An act to add Section 17610.1 to the Education Code, relating to schoolsites.

[Approved by Governor October 6, 2005. Filed with Secretary of State October 6, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 405, Montanez. Schools: pesticide use.

Existing law, the Healthy Schools Act of 2000, provides that effective least toxic pest management practices should be the preferred method of managing pests at schoolsites and requires that the state take the necessary steps, pursuant to specified provisions, to facilitate the adoption of effective pest management practices at schoolsites. The existing act requires each schoolsite to maintain records of all pesticide use at the schoolsite for a period of 4 years and to make the records available to the public upon request. The existing act requires, on an annual basis, the school district designee to provide to all staff and parents or guardians of pupils enrolled at a school written notification addressing, among other things, expected pesticide use. The existing act requires that the recipients be afforded the opportunity to register with the school district to receive information regarding individual pesticide applications. The existing act requires the school district designee to post warning signs prior to application of pesticides at a schoolsite.

This bill would prohibit, in specified circumstances, the use on a schoolsite of specified pesticides that have been granted a conditional registration, an interim registration, or an experimental use permit by the Department of Pesticide Regulation, or a pesticide that is subject to an experimental registration issued by the United States Environmental Protection Agency. The bill would prohibit the use on a schoolsite of a pesticide if the Department of Pesticide Regulation cancels or suspends registration, or requires phaseout of use, of the pesticide. The bill would also prohibit a vendor or manufacturer from making those pesticides available to a school district either by sale or by gift.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

- (a) The maintenance of a safe, clean, healthy environment for pupils is essential to learning and is a goal of the state.
- (b) The use of toxic chemicals to control pests and weeds may itself threaten pupil health and ability.

(c) The National Education Association and numerous other national and local public interest organizations support the reduction or elimination of pesticide use in schools.

(d) Pesticides contain toxic substances, many of which have a detrimental effect on human health and the environment and, in particular, have a developmental effect on children. Children are more susceptible to hazardous impacts from pesticides than are adults.

(e) Information regarding the utilization of pesticides in schools that have a conditional registration or an experimental use permit is not maintained in a manner that is useful to the public, making it difficult to assess and address the potential health and environmental impact of their use in schools.

(f) Historically, pesticide products that have conditional registration or experimental use permits are sold and used for years without completing outstanding data requirements. This significant flaw can allow for chemicals with incomplete databases to be used in schools, increasing undue exposure potential to pupils.

(g) Schools regularly endeavor to control and eliminate recognized and suspected hazards, including nonagricultural pesticides, as an integral part of school safety programs in order to protect the health and well-being of pupils and school staff.

SEC. 2. Section 17610.1 is added to the Education Code, to read:

17610.1. (a) (1) The use of a pesticide on a schoolsite is prohibited if that pesticide is granted a conditional registration, an interim registration, or an experimental use permit by the Department of Pesticide Regulation, or if the pesticide is subject to an experimental registration issued by the United States Environmental Protection Agency, and either of the following is applicable:

(A) The pesticide contains a new active ingredient.

(B) The pesticide is for a new use. This paragraph does not apply to a conditionally registered pesticide that is approved for other uses that has fulfilled all registration requirements that relate to human health, including, but not limited to, the completion of mandatory health effect studies pursuant to the Birth Defect Prevention Act of 1984 (Art. 14 (commencing with Sec. 13121), Ch. 2, Div. 7, F.& A.C.). The requirements of this section are not intended to impose any new labeling requirements.

(2) The use of a pesticide on a schoolsite is prohibited if the Department of Pesticide Regulation cancels or suspends registration, or requires phase out of use, of that pesticide.

(b) Vendors or manufacturers of pesticides that are prohibited for use on a schoolsite pursuant to subdivision (a) are prohibited from furnishing those pesticides to school districts either by sale or by gift.

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(c) This section does not apply to public health pesticides or antimicrobial pesticides registered pursuant to Section 12836 of the Food and Agricultural Code.

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33

ATTACHMENT H

List of Pesticide Products Prohibited from Use In Schools (AB 405, Chapter 566, Statutes of 2005)

Effective January 1, 2006, pursuant to Education Code section 17610.1, the pesticide products listed below are prohibited from use on "schoolsites." The term schoolsite is defined in Education Code section 17609 to mean any facility used for public day care, kindergarten, elementary, or secondary school purposes. The term includes the buildings or structures, playgrounds, athletic fields, school vehicles, or any other area of school property visited or used by pupils. Schoolsites do not include any postsecondary educational facility attended by secondary pupils or private day care or school facilities.

The following pesticide products meet the criteria of Education Code 17610.1(a)¹, and therefore, are prohibited from use on schoolsites:

<u>Product</u>	<u>Registration Number</u>
ACROBAT 50 WP FUNGICIDE	241-410-AA
ABG-3207 PLANT GROWTH REGULATOR	71049-3-AA
ANIMAL REPELLANT GRANULAR	50932-10-AA
CABRIO EG FUNGICIDE	7969-187-AA
CARBOQUAT WP-50	6836-304-AA
CHATEAU HERBICIDE SW	59639-99-AA
DINOTEFURAN 20% TURF AND ORNAMENTAL	33657-16-AA
DRIVE 75 DF HERBICIDE	7969-130-AA
ECOTRU	70791-1-AA
ET HERBICIDE/DEFOLIANT	71711-7-AA
INTREPID 2F	62719-442-AA
KT-30 PLANT GROWTH REGULATOR	71049-1-AA
KT 30 PLANT GROWTH REGULATOR	71049-55002-EX
LPE GROWTH REGULATOR	70515-55001-EX
MITE-AWAY II SINGLE APPLICATION FORMIC ACID PAD	75710-1-AA
NATURE'S GLORY WEED & GRASS KILLER	69836-1-AA
NPI 100 10EC GROWTH REGULATOR	70515-55003-EX
PREMISE PERIMETER 75 TERMITICIDE/INSECTICIDE	432-55007-EX
PRISTINE FUNGICIDE	7969-199-AA
SONATA	69592-13-AA
STABROM 909 BIOCIDES	3377-55-AA
TETRASAN 5 WDG	59639-108-AA
TRILUX PROP & DRIVE 5493A BLACK	2693-199-AA
TRILUX PROP & DRIVE 5498A WHITE	2693-199-ZA
VBC 30001 PLANT GROWTH REGULATOR	70515-55003-EX
ZEAL MITICIDE	59639-123-AA

Any vendor or manufacturer of pesticides is prohibited from making these pesticides available to a school district by sale or gift.

B-9
34

If there are questions about this list, please contact:

Eileen Mahoney, Program Specialist
Department of Pesticide Regulation
Pesticide Registration Branch
Phone: (916) 324-3563
Email: emahoney@cdpr.ca.gov

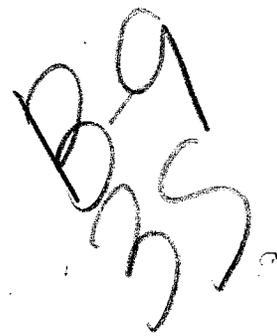
¹These pesticide products are prohibited from use on "schoolsites" in accordance with Education Code section 17610.1(a) because they are registered for use in the State of California either: (1) conditionally^a, (2) as an interim registration^b, or (3) under an experimental use permit (EUP)^c, and contain either a new active ingredient or are intended for a new use. (Note: conditionally registered pesticide products that have fulfilled all registration requirements that relate to human health are exempted.) Also prohibited are all pesticide products that DPR canceled, suspended, or required phaseout of use.

^a California Code of Regulations section 6200 authorizes the Director to waive specific data requirements for pesticide product registration for a limited period of time to allow for generation of missing data. Most conditionally registered pesticide products are registered as such based on missing efficacy or phytotoxicity data.

^b Interim registration is established in Food and Agricultural Code sections 13161-13170. The statute allows an applicant for registration of the first agricultural use of a pesticide active ingredient to defer submission of no more than three efficacy or environmental fate studies (e.g., soil photolysis study, field dissipation study) for a period not to exceed three years, provided certain criteria are met. The product must be a significant component of an integrated pest management system, reduce risk to the public and the environment. In addition, all data submitted to the U.S. Environmental Protection Agency to support federal registration must be submitted to DPR, and the product must not be expected to have a significant adverse effect on public health or the environment, or threaten groundwater.

^c Experimental Use Permits (EUPs) are defined in federal statute (Federal Insecticide, Fungicide, and Rodenticide Act, section 5). U.S. EPA issues EUPs; however, before an EUP pesticide can be sold or used in California it must also be registered with DPR. Restrictions are placed on the use of the pesticide, including an expiration date, limit on total amount of product to be used, limit on total number of acres to be treated, and a requirement for quarterly reports. Once registered with DPR, the product may be sold to specific California researchers to be used in research trials; however, the products are not available to the public.

current as of 12/12/2005, 10:20am





COUNTY OF SAN LUIS OBISPO

Department of Agriculture/Measurement Standards

2156 SIERRA WAY, SUITE A • SAN LUIS OBISPO, CALIFORNIA 93401-4556
ROBERT F. LILLEY (805) 781-5910
AGRICULTURAL COMMISSIONER/SEALER FAX (805) 781-1035

AgCommSLO@co.slo.ca.us

RESTRICTED MATERIALS PERMIT CONDITION NUMBERS 1 - 7

- #1 **COMPLIANCE WITH LAW.** All federal and state laws, regulations, label statements, and San Luis Obispo County conditions shall be complied with.
- #2A **PREVENT DRIFT FROM THE TREATMENT AREA.** No restricted material application shall continue if the material cannot be confined to the target area. Buffer zones shall be used when necessary. The permittee is responsible for utilizing any other mitigation measures necessary to prevent drift or other potential hazards.
- #2B **NO AERIAL APPLICATIONS WITHIN 1/4 MILE OF RESIDENTIAL AREAS.** No aerial applications of restricted materials will be allowed within 1/4 mile of any residential area. A residential area is defined as a group of three or more occupied residences within a contiguous two acre area.
- #3A **RESTRICTED MATERIAL APPLICATIONS ADJACENT TO SCHOOLS.** No restricted material shall be applied within 1/2 mile by air, or 500 feet by ground, of a school while children are present.
- #3B **RESTRICTED MATERIAL APPLICATIONS AT SCHOOL SITES.** A notice of Intent (NOI) shall be submitted at least 24 hours prior to the use of all restricted materials at school sites (see permit condition #11). The applicator must ensure that the notification and posting requirements of the Healthy Schools Act of 2000 have been completed. No restricted material applications may be made while school is in session or when children are present.
- #3C **NON-AG PERMITTEES.** A Notice of Intent (NOI) shall be submitted prior to the use of all restricted materials until the required annual inspection has been performed. The NOI requirement will then be waived for the rest of the calendar year (except at school sites which require a NOI for each application).
- #4 **ACUTE TOXICANTS FOR BIRD CONTROL.** A pre-application inspection shall be made by the Agricultural Commissioner's staff prior to the use of this material.
- #5A **STRYCHNINE FOR GOPHER CONTROL.** Strychnine bait for gopher control shall be used below ground only. It shall not be used for ground squirrel control.
- #5B **ALUMINUM PHOSPHIDE FOR VERTEBRATE CONTROL.** Aluminum phosphide shall not be used in residential areas. A residential area is defined as a group of three or more occupied residences within a contiguous two acre area.
- #5C **MAGNACIDE H NOTIFICATION.** The pesticide label requires the user to notify the State Fish and Game Agency before applying this product.
- #6 **METHYL BROMIDE FIELD FUMIGATION.** Comply with current state regulations. See permit condition:
 - (6) Methyl Bromide/Chloropicrin Fumigation: General Conditions for Field Fumigations
 - (6G) Methyl Bromide/Chloropicrin Soil Fumigation with a Heat Exchanger in Greenhouse Locations
 - (6P) Methyl Bromide/Chloropicrin Fumigation of Tarped Potting Soil
 - (6GC) Methyl Bromide Soil Fumigation/Golf Course
- #7 **FURADAN/GRAPES BY DRIP IRRIGATION.** Comply with current state/county regulations. See EPA Special Local Need #CA-980012.

B-9
30



COUNTY OF SAN LUIS OBISPO

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**RESTRICTED MATERIALS PERMIT CONDITION #14
METAM SODIUM/METAM POTASSIUM**

ALL APPLICATION METHODS

NOTE: The operator of the property is ultimately responsible for the following permit conditions, regardless of the applicator.

1. **Metam Sodium / Metam Potassium Label/Technical Bulletin.** All Metam Sodium / Metam Potassium applications shall comply with the provisions on the pesticide label and the current Technical Information Bulletin (TIB). When the requirements of the product label, including the TIB and these permit conditions differ, the most restrictive shall apply.
2. **A Notice of Intent (NOI) must be submitted and explicitly approved by the Commissioner at least 48 hours prior to the application.** NOIs for applications planned on Sundays and Mondays must be received by the previous Thursday. If multiple applications take place to one block, one NOI with the projected date and time schedule must be submitted.
3. **Metam Sodium / Metam Potassium Certification.** Metam Sodium Task Force Training is required on an annual basis.
 - a. The operator of the property (or authorized representative) shall be certified.
 - b. At least one member of the application crew shall be certified and shall remain on site throughout the application process including sealing.
 - c. The applicator shall ensure that each person involved in applying, sealing, or monitoring an application maintain their card on site and available to the Director, or the County Agricultural Commissioner (CAC) upon request, as proof of training course completion.
4. **Air / Soil Temperature.** Do not apply Metam Sodium/Metam Potassium when ambient air temperature or soil temperature (at a depth of three inches) exceeds 90° F.

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5. **Soil Conditions.** The applicator shall verify that the soil in the treatment area meets the soil moisture requirements as stated on the product label. The location(s) at which moisture is verified shall be representative of the entire application area.

Note: Refer to *Definitions* and *Appendix I* for guidelines on estimating soil moisture by the “feel method”.

6. **Fumigation Summary.** In accordance with the monitoring requirements of the TIB, all applicators shall complete the San Luis Obispo County (SLO Co.) Metam Sodium/Metam Potassium Fumigation Summary, including the Application Summary and Post Application Site Check. The permittee shall maintain fumigation summaries for the duration of the permit or six months, whichever is longer, and shall be maintained at the permittee’s principal place of business and be available upon request by the CAC.

7. **Post Application Monitoring.** In addition to completing the Fumigation Summary, the permittee shall ensure that post application monitoring is conducted and recorded on the Metam Sodium / Metam Potassium Fumigation Summary & Monitoring Record *and* Metam Sodium / Metam Potassium Post Application Monitoring forms for all applications where an occupied structure is **within 1500 feet**, every two hours for a minimum of 12 hours after the application has ceased **and thereafter, every 6 hours for the next 48 hour time period.** This monitoring shall be conducted by a person not involved in the application process so that a “fresh nose” is doing this critical monitoring. The permittee shall maintain monitoring records for the duration of the permit or six months, whichever is longer. These records shall be maintained at the permittee’s principal place of business and be available upon request by the CAC. The following information is required and included on the SLO Co. Metam Sodium / Metam Potassium Post Application Monitoring Form:

- Date of application
- Date and time of the field monitoring
- Wind speed and direction
- Temperature (air and soil)
- Odor (yes or no)
- Application start and stop time
- Method of application
- Grower’s name
- Permit number
- Field location/site number
- Number of acres treated
- Soil moisture (% field capacity) at approximately half of the treatment depth

B-9
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8. **Climate Conditions.** The permittee shall ensure climatic conditions are suitable for commencement and continuation of each application. If applications cannot be completed due to the high temperature or wind speed limitations, metam sodium/potassium shall not be applied until more favorable conditions exist.
9. **Communication in Emergencies.** Applicators shall have a cell phone, radio, or other means of communication in case of an emergency. A 24-hour contact phone number of the foreman or supervisor shall be provided to the CAC on the NOI to allow contact from the field if a problem should arise.
10. In the case of any unforeseen occurrences (eg. spills, equipment failures which lead to product release, worker exposure) an **EMERGENCY RESPONSE PLAN** shall be at the use site in order to assist applicators with contact information and immediate mitigation measures.
11. **On Site Authority.** Applicators on site shall have the authority to shut down applications if conditions warrant.
12. **Mitigation of Odor and Off-Site Movement.**
 - a. During an application or during post application monitoring, if increasingly strong odors are present, apply a water seal to confine the odors to the soil. Do not restart the application until conditions no longer favor odor formation.
 - b. Whenever water-sealing equipment is required, the **equipment shall be in place and functional prior to the commencement of the application.**
 - c. Whenever water-sealing equipment is required and mitigation of off-site movement is necessary, a minimum of ½ inch of water shall be applied starting immediately and completed within four hours.
 - d. Water delivery system capacity shall meet or exceed the specifications of the TIB and the label.
 - e. All water applied to the field must be contained within the treatment area (ie: tail ditches).

SPRINKLER APPLICATIONS

1. There shall be a **1 mile buffer zone** to any occupied structure. The buffer zone can be waived if occupied structures within 1 mile are vacated prior to the start of the application until 48 hours after the application is completed.
2. Metam Sodium/Metam Potassium shall be applied evenly over a minimum of four (4) hours and in a minimum of one (1) inch of water.
3. Immediately after the application is completed, but no later than two hours after, a minimum of ½ inch of clean water shall be applied and completed within four hours.

B-9
29

DRIP IRRIGATION APPLICATIONS

Without Tarpaulin:

1. Functional sprinkler irrigation pipe must be placed in the field prior to the start of all drip applications without a tarp in order to apply post application water seals.
2. There shall be a **300 foot buffer zone** to any occupied structure. The buffer zone can be waived if occupied structures within 300 feet are vacated prior to the start of the application until 48 hours after the application is completed.
3. Immediately after the application is completed, but no later than two hours after, a minimum of ½ inch of clean water shall be applied and completed within four hours.

With Tarpaulin:

4. There shall be a **50 foot buffer zone** around any occupied structure. The buffer zone can be waived if occupied structures within 50 feet are vacated prior to the start of the application until 48 hours after the application is completed.
5. Tarpaulins shall remain in place for at least 48 hours following the end of an application. If the application is within 50 feet of a school, tarpaulins shall not be removed while the school is in session.

FLOOD APPLICATIONS

1. There shall be a **500 foot buffer zone** to any occupied structure. The buffer zone can be waived if occupied structures within 500 feet are vacated prior to the start of the application until 48 hours after the application is completed.
2. Clean flood water shall be available during post application monitoring period in an amount sufficient to provide at least one (1) inch of water over the treated area.

SHANK INJECTION OR ROTARY TILLER APPLICATIONS

1. All application equipment shall meet the following minimum specifications:
 - Dry disconnect fitting (closed system transfer) shall be installed on all tanks and equipment.
 - Each tractor saddle tank shall be equipped with a minimum size #50 mesh screen on both the fill and discharge outlets.
 - Main line shutoff or by-pass valves shall be used to stop flow to the distribution manifold.
 - All systems shall be equipped with an individual shank monitoring system to detect flow problems in each shank.
 - Dual check valves shall be installed on each outlet between the manifold and as

B9
40

- close as possible to the discharge point.
 - All components of the delivery system normally below ground shall be metal and suitable for use as indicated on the product label.
 - The maximum hose size shall be 1/4-inch (inside diameter) from the manifold to the shank inlet.
2. **Functional sprinkler irrigation pipe must be placed in the field prior to the start of all shanked or rotary tiller applications in order to apply post application water seals.**
 3. There shall be a minimum **500 foot buffer zone** to any occupied structure for all applications that *exceed* 64 pounds of active ingredient per acre. The buffer zone can be waived if occupied structures within 500 feet are vacated prior to the start of the application until 48 hours after the application is completed. For applications equal to or less than 64 pounds there is no buffer zone required.
 4. Shank injection applications near occupied structures shall be conducted during daytime conditions. Applications may begin as early as two hours before sunrise, in order to complete the application prior to the temperature or wind limitations being exceeded.
 5. At application sites near any occupied structure(s), when applying to multiple blocks, subsequent applications shall move away from the occupied structure unless expressly allowed by permit.
 6. Application sites shall be limited to 20 acres each 24 hours when applied adjacent to an occupied structure.
 7. Immediately after the application is completed, but no later than two hours after, a minimum of ½ inch of clean water shall be applied and completed within four hours.

B-9
41

DEFINITIONS

OCCUPIED STRUCTURE: A dwelling where someone is living, including but not limited to schools, labor camps, hospitals, convalescent homes, apartment complexes, motels, churches, or businesses and any other sensitive area designated by the Commissioner. This does not include buildings where people may work for limited periods of time, such as barns, equipment sheds, pump houses and workshops. Homes occupied by the property owner or permittee (grower and/or authorized representative) are exempt from buffer zone requirements.

APPLICATION BLOCK: A field or portion of a field treated in a 24-hour period that is typically identified by visible indicators, maps, or other means.

IRRIGATING: Applying additional water to the application block (water sealing or water-capping).

MONITORING: A thorough inspection of the entire treatment area to evaluate following an application.

SOIL MOISTURE FIELD CAPACITY: The amount of water remaining in a soil after the free water has been allowed to drain away after the root zone had been previously saturated; expressed as a percentage.

REPRESENTATIVE SOIL SAMPLE: Three or more points in different areas of a field where soil moisture is estimated. The samples should be taken at points representative of the entire field and be pulled at least two inches from the surface. For fields with more than one soil texture, soil moisture content in the lightest textured (more sandy) areas must comply with the soil moisture requirement.

B-9
42

APPENDIX A

In cases where field instruments for measuring soil moisture are not available, users shall use the “feel” method described below.

GUIDELINES FOR ESTIMATING SOIL MOISTURE BY “THE FEEL” METHOD

% Moisture	Sand	Sandy Loam	Clay Loam	Clay
Close to 0%	Dry, loose, single grained, flows through fingers	Dry, loose, flows through fingers	Dry clods breakdown into powdery condition	Hard, baked cracked surface, loose crumbs on surface
50% or less	Appears dry, will not form ball	Appears dry, will not form ball	Crumbly, holds together with pressure	Pliable, will form ball under pressure
50% - 75%	Same as above	Will form ball, but will not hold together	Forms a ball, slight slick with pressure	Forms a ball, ribbons between fingers
75% to field capacity	Sticks together, forms weak ball	Forms a weak ball, will not become slick	Forms ball, very pliable, readily forms slick feeling	Easily ribbons between fingers
Field capacity	Under pressure, moisture appears on hand	Same as sand	Same as sand	Same as sand

B-9
40

SAN LUIS OBISPO COUNTY
METAM SODIUM / METAM POTASSIUM
FUMIGATION SUMMARY & MONITORING RECORD

FUMIGATION SUMMARY

Application Date _____
 Grower/Company _____ Permit Number _____
 Metam-Certified Person _____
 Applicator / PCO (if other than grower) _____
 Method of Application (i.e.: shank, sprinkler, drip) _____
 Field Location / Site ID No. _____ Acres Treated _____
 Soil Moisture (est. % Field Capacity) _____ Soil Temp. at 3" _____ Water Pressure (psi) _____
 Nozzle Size _____ Irrigation Set No. _____ Irrigation Rate (in./hr.) _____

APPLICATION SUMMARY

	Time	Wind Speed	Wind Direction	Air Temperature
Beginning of Application				
Middle of Application				
End of Application				

POST APPLICATION SITE CHECK

*For applications where an occupied structure is within 1500 feet
use Post Application Monitoring form*

<u>Time After End of Application</u>	<u>Actual Time</u>	<u>Observations / Water Seals (specify amt. of water used and duration of irrigation set)</u>
2.0 hrs		
4.0 hrs		
8.0 hrs		
12.0 hrs		

B9
44

**SAN LUIS OBISPO COUNTY
METAM SODIUM / METAM POTASSIUM
POST APPLICATION MONITORING**

For applications where an occupied structure is within 1500 feet

* = for sprinkler applications only

A separate monitoring form must be completed for each day of an application, even if the application is to the same site ID number.

Appl.Start Date/Time	Time	Wind Speed	Wind Direction	Air Temp	Soil Temp. at 3 in.	Soil Moisture (% F.C.)	Odor? (Yes/No)	* Irrig. Rate (in/hr)	* Water Pressure (psi)	* Nozzle Size	Comments
Appl.End											
Hour 2											
4											
6											
8											
10											
12											
18											
24											
30											
36											
42											
48											
54											
60											

Signature B. J. G. / S Date _____

California Food and Agricultural Code
Division 7. Agricultural Chemicals, Livestock Remedies, and Commercial Feeds
Chapter 3. Restricted Materials
Article 1. Generally

14006.6. (a) A permit shall not be required for the agricultural use of any pesticide not designated as a restricted material unless the commissioner determines that its use will present an undue hazard when used under local conditions.

(b) Permits for the use of pesticides shall not be required of persons found to be qualified by the director who are engaged in experimentation or research on the use of pesticides, where no charge is made to the person in charge of the property treated.

(c) A permit shall not be required for the possession of pesticides by a registrant, as defined in Section 12755, or by a licensed pest control dealer when operating pursuant to the registration or the license; by commercial warehouses storing pesticides; or for the possession and use of these materials when specifically exempted by regulation of the director in cases in which the mitigation measures provided by the permit system are not necessary to avoid injury to the environment or to any person, animal, crop, or property.

(d) Permits for the use of pesticides shall not be required of persons operating pursuant to a license issued under Chapter 14 (commencing with Section 8500) of Division 3 of the Business and Professions Code.

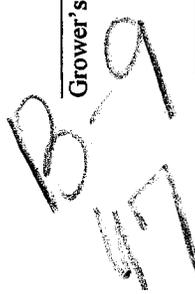
B-9
46

**Non-Restricted Materials
Suggested Mitigation Measures
for Sensitive Sites**

NAME _____ OIN # _____

Site ID No.	Pesticide(s) Used	Reason Site is Sensitive	Suggested Mitigation

I hereby acknowledge receipt of this information regarding the sensitive sites listed.



 _____ Date

Grower's Signature

_____ Date

Inspector's Signature



COUNTY OF SAN LUIS OBISPO

Department of Agriculture/Measurement Standards

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◆ PUBLIC RELATIONS - NEIGHBORS AND SENSITIVE SITES ◆

SUGGESTIONS FOR PESTICIDE APPLICATIONS MADE NEAR HOMES, SCHOOLS, AND OTHER SENSITIVE SITES

Agriculturalists in San Luis Obispo County face many challenges in producing food and horticultural products that benefit everyone. Some of the greatest challenges are land use issues involving urban and rural residents and the farming community. A pesticide application near residents intensifies this challenge and often results in complaints and animosity between neighbors. It is our goal to assist pesticide applicators in developing ways to be sensitive to neighbors' concerns when using pesticides. The intent of these recommendations is to increase awareness and to encourage the safe use of pesticides in all settings.

◆ Suggestions and Possible *Voluntary* Solutions Concerning Pesticide Use in General:

1. Take the first step to talk with neighbors! Explain your agricultural operation: what you do, when you do things and why you do them. Explain the seasonal nature of possible increased traffic, noise, dust and pesticide use. If you use pesticides, *voluntarily* give your neighbors notification of pending applications. Explain that weather conditions usually dictate your schedule and predicting the exact time of a particular application may be difficult. If you make applications at night, notify your neighbors so they don't think you are hiding from them or anyone else. An easy way to provide notification to several neighbors is to help them develop a "phone tree call-down list" which means applicators call one neighbor and that person calls the rest of the neighbors. *Voluntary* notification is intended to keep neighbors informed and may also address the non-pesticide nuisance complaints such as early morning noise. Notification DOES NOT preclude mitigation of off-site drift. Explain to neighbors the reasons applicators wear protective clothing. If you hire applicators keep them informed of any arrangements you have made with neighbors.
2. Some complaints we receive involve odors from pesticide applications. Be aware if your pesticide has an obnoxious chemical odor. Though an odor may not be actual physical drift off your property, the smell can travel a long way, effecting multiple neighbors. Your smelly application at the very least can cause your neighbors to be awakened in the middle of the night or worse to have headaches and other illnesses. It is best to make your applications when there is some wind blowing away from neighbors and other sensitive areas. Be aware of weather conditions creating temperature inversions which restrict vertical air mixing causing both odors and small suspended droplets to remain close to the ground and move laterally off target in a concentrated cloud. We are obligated to respond to all complaints from the public.
3. Consider making applications when neighbors are normally gone for the day. Avoid making applications on weekends, holidays, or adjacent to roads during high traffic periods or during local events or festivals that may bring large numbers of bicyclists or joggers near your property.
4. Establish a relationship with the administrative staff of any nearby schools or other similar institutions. Keeping open communication lines can prevent many problems from occurring.
5. Explore alternative pest control methods that may reduce or eliminate the need for pesticides. Let your neighbors know the positive things you are doing like incorporating Integrated Pest Management strategies.
6. Ask your chemical supplier or PCA about new chemicals or alternative formulations that reduce the potential for off-site drift. For example, switch from a dusting formulation of sulfur to a wettable sulfur.
7. Consider planting a vegetative screen adjacent to neighboring property or leave an unplanted/untreated buffer area. If the topography and culture of the crop allows, change the planting direction of rows: it may be better to have length of rows rather than ends of rows along neighboring property lines.

B-9
48

8. For liquid applications, upgrade your spray equipment with nozzles that are designed to reduce drift. Make applications when airflow is away from neighboring property. Consider the use of hand-held spray equipment as a substitute to power equipment particularly in buffer zones.
10. If you would like some assistance, an Inspector from our office can conduct inspections of your pesticide applications, which may help verify the application was done in a safe and legal manner. Call us to request a "Voluntary Compliance Inspection" which gives you the opportunity to work with an Inspector to verify compliance and to discuss *voluntary* neighbor notification issues.
11. Get involved in land use planning processes that may affect your farming activities.

◆ **Restricted Pesticides:**

The County Agricultural Commissioner has the authority to condition the use of restricted material pesticides. Placing special conditions on Restricted Material Permits does this. In the development of permit conditions, County Ag Inspectors usually visit sites to be treated and work closely with applicators to evaluate and address sensitive sites. The proximity of occupied dwellings, application methods and equipment (aerial versus ground applications for example), alternative methods, topography of the site, and weather conditions are examples of factors evaluated. A "sensitive site" designation by the Ag Inspector indicates a situation exists that may warrant extra precautions such as additional permit conditions. Neighbor notification may be required to inform the public about pesticide applications which are close to occupied dwellings, schools, etc. Applicators or growers, not staff from the Agricultural Commissioner's office, are responsible for neighbor notification.

◆ **Non-Restricted Pesticides:**

The County Agricultural Commissioner does not generally condition the use of non-restricted materials, unless the Commissioner determines that its use will present an undue hazard when used under local conditions. As with any pesticides, applicators are responsible to follow all label requirements and to avoid off-site drift. At times it may be necessary or just a good, neighborly approach for applicators to go beyond normal precautions including notification of neighbors of pending pesticide applications. Growers that have used this approach have had good success. Contact your industry association for linkage to peers that may assist you.

◆ **The California Public Records Act:**

The County Agricultural Commissioner frequently receives requests from the public for information about pesticide applications. Examples of commonly requested documents include copies of growers' Restricted Materials Permits, pending Notices of Intent, Use Reports, records of enforcement action and investigations. These documents, and many others, are considered "public records". The California Public Records Act, (Government Code Section 6250-6268), mandates the Commissioner provide public records upon request. The requests must be made in writing. The cost for completion of these requests is recovered through a fee for computer time and photocopies. (In some situations, the Commissioner may notify you of documents that were released in response to a request).

Please let us know about creative solutions you have developed so we may pass them along to others. For more information contact one of our offices:

Arroyo Grande District Office: 473-7090 ◆ Templeton District Office: 434-5950
San Luis Obispo Main Office: 781-5910

B-9
49

Pesticide Use

Appendix B

Legislation Governing Pesticide Use in California

1. TOXIC AIR CONTAMINANTS LAW, 1984. This law requires DPR to access all pesticides as potential air contaminants and regulate them to protect public health.
2. HEALTHY SCHOOL ACT. This law advocates use of Integrated Pest Management programs to reduce chemical toxins in and around school grounds in order to minimize biological risk to children.
3. ABP 947, 2002. County Agriculture Commissioners may mandate buffer zones of one-half mile around sensitive sites, i.e. schools and hospitals.
4. CALIFORNIA FOOD AND AGRICULTURAL CODE, Section 12972. The code expressly states measures should be taken to prevent substantial drifts to non-targeted areas.

B-9
50

Assembly Bill No. 947

CHAPTER 457

An act to add Section 35294.4 to the Education Code, and to amend Section 12999.5 of, and to add Section 11503.5 to, the Food and Agricultural Code, relating to pesticides.

[Approved by Governor September 11, 2002. Filed with Secretary of State September 11, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 947, Jackson. Pesticides: schoolsites.

(1) Existing law authorizes the levy of civil penalties of not more than \$1,000 for each violation of any provision of a specified body of law relating to pesticides.

This bill would increase this penalty to not more than \$5,000 for each violation determined to be a serious violation. This bill would also authorize a county agricultural commissioner to charge a fee for monitoring subsequent pesticide applications made within 1/4 mile of a school by a person who has received a civil penalty for a specified violation of law relating to pesticides.

(2) Under existing law, the agricultural commissioner of any county may adopt regulations applicable in his or her county that are supplemental to those of the Secretary of Food and Agriculture that govern the conduct of pest control operations and records and reports of those operations.

This bill would authorize the commissioner of any county to apply these regulations to the agricultural use of any pesticide within 1/4 mile of a school, as specified, and would allow the Director of Pesticide Regulation to disapprove the conditions within 30 days of their submission.

(3) Existing law provides that each school district and county office of education is responsible for the overall development of comprehensive school safety plans for its schools.

This bill would provide that the school safety plan may include, at local discretion of the governing board of the school district, procedures for responding to the release of a pesticide or other toxic substance from properties within 1/4 mile of a school. This bill would provide that no funds received from the state may be used for this purpose.

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The people of the State of California do enact as follows:

SECTION 1. Section 35294.4 is added to the Education Code, to read:

35294.4. The comprehensive school safety plan may also include, at local discretion of the governing board of the school district and using local funds, procedures for responding to the release of a pesticide or other toxic substance from properties located within one-quarter mile of a school. No funds received from the state may be used for this purpose.

SEC. 2. Section 11503.5 is added to the Food and Agricultural Code, to read:

11503.5. The county agricultural commissioner may apply Section 11503 to the agricultural use of any pesticide for agricultural production within one-quarter mile of a school with respect to the timing, notification, and method of application. Any regulations adopted pursuant to this section shall become operative unless specifically disapproved in writing by the director within 30 calendar days of their submission by the commissioner.

SEC. 3. Section 12999.5 of the Food and Agricultural Code is amended to read:

12999.5. (a) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, Chapter 7.5 (commencing with Section 15300), or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars (\$1,000) for each violation. Any violation determined by the commissioner to be a serious violation as defined in Section 6130 of the Code of Regulations is subject to a fine of not more than five thousand dollars (\$5,000) for each violation. It is unlawful and grounds for denial of a permit under Section 14008 for any person to refuse or neglect to pay a civil penalty levied pursuant to this section once the order is final.

(b) If a person has received a civil penalty for pesticide drift in a school area subject to Section 11503.5 that results in a serious violation as defined in subdivision (a), the commissioner shall charge a fee, not to exceed fifty dollars (\$50), for processing and monitoring each subsequent pesticide application that may pose a risk of pesticide drift made in a school area subject to Section 11503.5. The Agricultural Commissioner shall continue to impose the fee for each subsequent application that may pose a risk of drift, until the person has completed

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B-9
52

24 months without another serious violation as defined in subdivision (a).

(c) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(d) If the person upon whom the commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the commissioner's decision to the director within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) The appellant and the commissioner may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the director stating grounds for affirming, modifying, or reversing the commissioner's decision.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the director finds substantial evidence in the record to support the commissioner's decision, the director shall affirm the decision.

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(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the director shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (b). A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The commissioner may levy a civil penalty pursuant to subdivisions (a) to (c), inclusive, against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the commissioner, carrying proof of that registration, and filing changes of address with the commissioner.

(f) After the exhaustion of the appeal and review procedures provided in this section, the commissioner or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or his or her authorized representative rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

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ATTACHMENT P

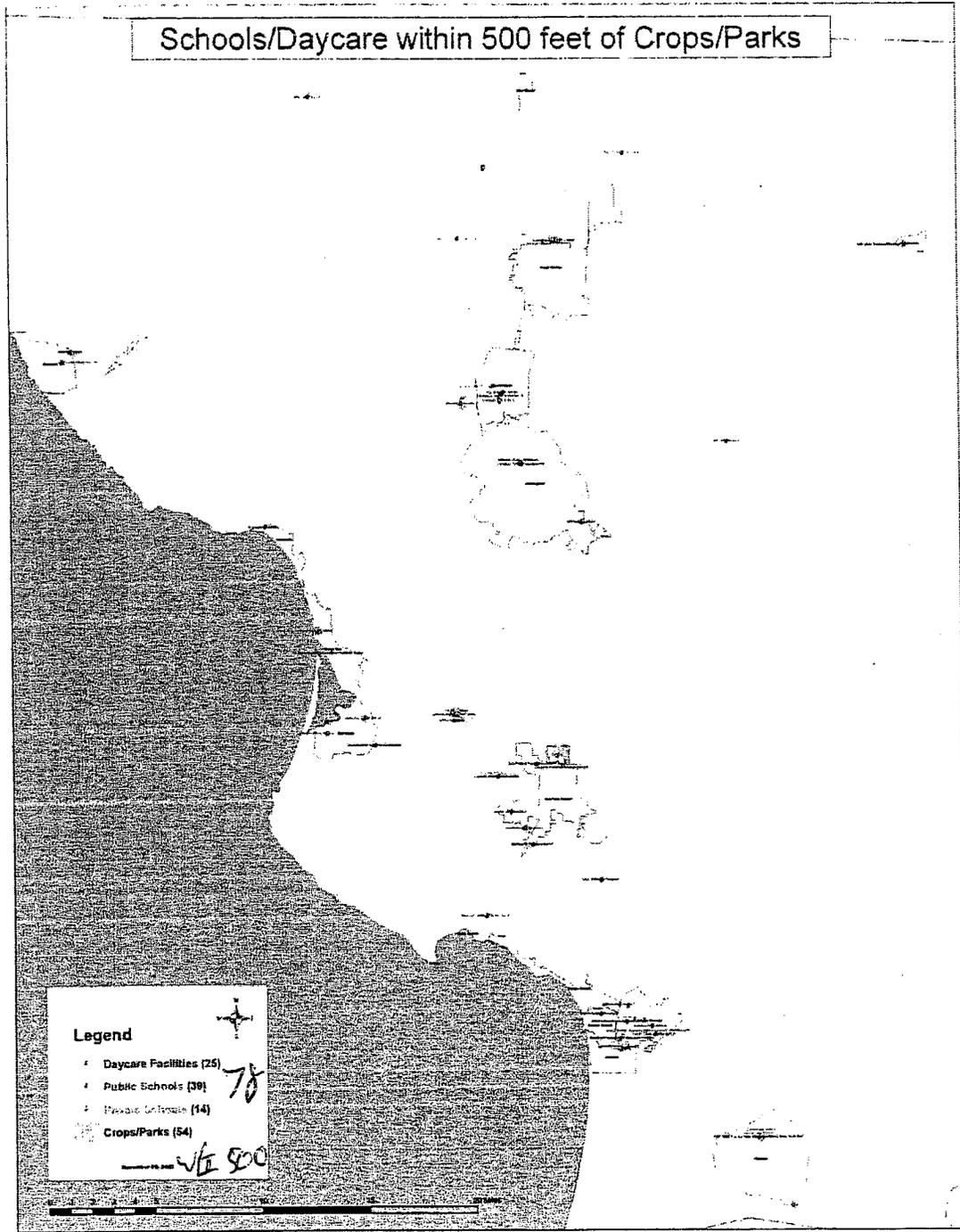
California Food and Agricultural Code
Division 6. Pest Control Operations
Chapter 2. General Provisions

11503. The commissioner of any county may adopt regulations applicable in his or her county which are supplemental to those of the director which govern the conduct of pest control operations and records and reports of those operations. The regulations may include provisions pertaining to any matter related to the accomplishment of the purposes of Section 11737. The provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall be followed insofar as practicable in the adoption of the regulations by the commissioner. The regulations shall be filed with the director who shall compile them.

Each regulation of the commissioner shall be approved by the director before it becomes operative. The director, in his or her review of the commissioner's regulations, shall consider, but not be limited to considering, the necessity, authority, clarity, and consistency of the regulations, as these terms are defined in Section 11349 of the Government Code.

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Appendix A



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County of San Luis Obispo • Public Health Department

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Gregory W. Thomas, M.D., M.P.H.
County Health Officer
Public Health Administrator

April 24, 2006

Honorable Roger T. Piquet
Presiding Judge, Superior Court
1035 Palm Street, Room 385
San Luis Obispo, CA 93408

RE: Response to Grand Jury Report on Pesticide Use at the Agricultural/Urban Interface

Dear Judge Piquet:

The Health Agency has reviewed the 2005-2006 Grand Jury Report pertaining to "***Pesticide Use at the Agricultural/Urban Interface.***" In accordance with Penal Code Section 933, the following is a response on behalf of the Health Agency regarding the findings and recommendation in the Grand Jury Report. The Agency wishes to acknowledge the efforts of the 2005-2006 Grand Jury in pursuing this issue. Responses to the Grand Jury Report are in bold.

Finding (6):

The Task Force on Health and Pesticide Use recommended that they meet every three years.

Response to Finding (6):

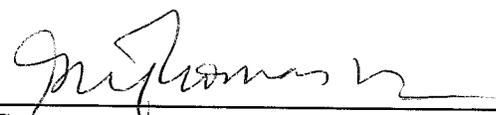
The respondent agrees with the finding.

Recommendation (6):

The Grand Jury recommends that the Task Force on Health and Pesticide Use meet annually for the purpose of review and recommendations.

Response to Recommendation (6):

The Task Force on Health and Pesticide Use is a task force of the San Luis Obispo County Health Commission. The Health Commission met on April 10, 2006 and has received and reviewed this report. The Health Commission and the Health Officer noted that the Task Force is comprised of representatives from the agricultural, environmental and health communities, as well as consumers and County employees. It is felt that meeting once per year would lead to difficulty recruiting representatives from all these areas and would increase the possibility that a review of pesticide issues would be superficial, as opposed to an in-depth review every three years.



Gregory W. Thomas, M.D., M.P.H.
Health Officer/Public Health Administrator

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SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

April 24, 2006

Presiding Judge
San Luis Obispo County Superior Court
County Government Center
San Luis Obispo, CA 93408

Re: Grand Jury Report contained in Pesticide Use at the Agricultural/Urban Interface

Grand Jury Finding #5: *The Environmental Resource Section (land use) of CAC's [County Agriculture Commissioner] office is periodically requested by the Planning Department to provide input regarding a suitable location for a new school. This information, which takes into consideration the proximity to existing commercial agriculture, is often disregarded. New schools continue to be placed near large agriculture venues.*

Planning & Building Department response to Finding #5: The P&BD often requests comments regarding a particular project from several entities. Whenever a request for comments on a particular project (i.e. a school site) is solicited from an office such as the County's CAC those comments are always taken into consideration in preparing the overall environmental analysis contained in a project staff report. The Grand Jury report indicates and infers that the P&BD *often disregards* comments from the CAC relative to school sites. Since the report fails to specify a particular case or situation, the P&BD is unable to provide an adequate response to this inference. It should be noted that initial responsibility of locating a school site lies with the school district who are more often than not aware of adjacent land uses, such as agriculture, when selecting sites.

Grand Jury Recommendations #5: *Recommendations from Environmental Resource Section should be an essential part of any new school project's planning.*

Planning & Building Department response to Recommendations #5: As noted previously, the inference that the P&BD disregards "recommendations" by the CAC has not been substantiated. It is the practice of the P&BD to include all relevant comments on recommendations in preparing a project staff report whether for a school site or any other project. In the final analysis, the ultimate decision made whether by the Planning Commission or the Board of Supervisors will require information and testimony from other sources, and not just from the CAC's office. The P&BD suggests that the Grand Jury include the phrase "by the school district" at the end of Recommendation #5.

Respectfully,

Victor Holanda

Victor Holanda, AICP
Director

Cc: County Administrator

B-9
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Attachment 4 – County Department of Planning and Building response to the Grand Jury Report

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