



**California Department of
Pesticide Regulation**

1001 I Street
P.O. Box 4015
Sacramento, CA 95812-4015
916-445-4300

www.cdpr.ca.gov

BRANCHES:

Enforcement

916-324-4100

Northern Regional Office

916-324-4100

Central Regional Office

559-243-8111

Southern Regional Office

714-279-7690

Environmental Monitoring

916-324-4039

Fiscal Operations

916-324-1350

Information Technology

916-445-4110

Medical Toxicology

916-445-4233

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916-445-4159

**Pest Management
and Licensing**

916-445-3914

Licensing/Certification

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Personnel

916-322-4553

Pesticide Registration

916-445-4400

Worker Health and Safety

916-445-4222

WHAT YOU NEED TO KNOW

about

CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION

The permit process for restricted pesticides

The use of all pesticides in California is subject to controls under state and federal rules. Misusing any pesticide violates those laws. California also has an extra set of rules for pesticides classified as *restricted materials*.

WHAT IS A RESTRICTED PESTICIDE?

Certain pesticides can be especially dangerous to human health or the environment if not used correctly. Therefore, California law allows the Department of Pesticide Regulation (DPR) to put special controls on these pesticides, limiting their use to trained individuals and then only at times and places approved by the County Agricultural Commissioners. These pesticides are called "restricted materials." The commissioners evaluate the potential effects an application might have on people and the environment before the pesticide is used.

You can get a list of these California-restricted materials from your County Agricultural Commissioner or from DPR's Web site, www.cdpr.ca.gov, click on "A-Z Index," then on "Permitting." You can link to the list and to a search engine to look up specific products that are restricted materials.

California is the only state with such a pesticide permitting system. In California and other states, users of restricted materials must have certain training. But only California requires users of certain pesticides to get a permit from a local regulatory official.

County Agricultural Commissioners are uniquely positioned to do this, with their extensive

knowledge of both pesticides and local conditions. Requiring a permit allows Commissioners to make sure restricted pesticides users prevent harmful effects or use alternatives to the pesticide.

The purchase or use of most restricted materials in agriculture requires a permit from the County Agricultural Commissioner. Permits are also required to use these pesticides for commodity treatment in fumigation chambers at ports and elsewhere. The major exception to the permit requirement is structural pest control (for example, to get rid of a termite infestation).

HOW DOES SOMEONE GET A RESTRICTED MATERIALS PERMIT?

To get a permit, the property owner or business operator applies to the County Agricultural Commissioner.

Among other things, the application must list the areas to be treated, their location and size, crops or commodities, pest problems, names of restricted pesticides that may be applied and application method. If a permit applicant has several locations in a county (for example, different fields or fumigation facilities), they can all be covered with a single permit as long as each is clearly identified and described.

The permit application must also include a map or description of the surrounding area showing any places that could be harmed by pesticides. These could include rivers, schools, hospitals, labor camps, residential areas, endangered species habitats, and nearby susceptible livestock or crops.

Users of restricted materials must have permits so County Agricultural Commissioners can evaluate the effects an application might have on people and the environment before the pesticide is used.

HOW DOES THE COMMISSIONER DECIDE WHETHER TO ISSUE THE PERMIT?

Regulations require the Commissioner to evaluate each restricted material use application and decide if it will cause substantial harm to people or the surrounding environment. The size of the surrounding environment varies based on the pesticide and how it is applied. For example, a liquid pesticide applied from the air would potentially affect a larger surrounding area than a dry pesticide applied from a tractor and worked into the soil.

If the Commissioner decides that substantial harm is likely, he or she can require the permit applicant to evaluate alternatives (including not using a pesticide at all), or impose extra controls designed to reduce the risk of harm to people or the environment.

A feasible alternative can be another chemical or a method that doesn't use chemicals. The law states that the alternative must be able to control the pest with comparable effectiveness and reliability, considering "economic, environmental, social, and technological factors and timeliness of control." An alternative might work in some situations but not in others. What matters are the specific pest problem and the crop covered by the permit.

If the Commissioner issues the permit, he or she may condition it on the use of certain extra precautions designed to ensure the pesticide can be used safely. These controls are in addition to those already on the pesticide label and in regulation. Commissioners tailor these extra controls—called permit conditions—based on their local knowledge of the application site.

If the Commissioner determines the pesticide cannot be used safely (that is, risk cannot be reduced to the point where safe use is possible), he or she will deny the permit application.

DO ALL COMMISSIONERS USE THE SAME PERMIT CONDITIONS?

Not necessarily. California's unique permitting system gives Commissioners the flexibility to ensure that controls are tailored to the local area, the pesticide, and the application method. Commissioners routinely put extra controls on applications requiring permits.

We at DPR develop recommended permit conditions to help them. Based on our scientific evaluation, our recommendations are measures we consider necessary from a statewide perspective to protect people and the environment. The Commissioners use this information, and their knowledge of local conditions, to develop controls suitable for each site at the time of application. You can ask your Commissioner about both DPR's recommended permit conditions and any added controls he or she may decide to require.

CAN THE COMMISSIONER DENY A REQUEST FOR A PERMIT?

Yes. In fact, the Commissioner must deny a permit application if he or she concludes that use of the pesticide may harm people or the environment and no restrictions are available to mitigate that harm. Because the applicant can appeal the denial, the Commissioner's decision must be well-substantiated and documented.

Even after granting a permit, the Commissioner can cancel it if new information justifies such an action. For example, a housing tract may have been built or an endangered species habitat found since the permit was approved. A Commissioner can also cancel a permit if the permit holder breaks pesticide laws.

WHY DOESN'T THE PERMIT APPLICATION SHOW THE DATE THE PESTICIDE WILL BE USED?

The restricted material permit process involves two steps. The Commissioner must approve both the place and date of pesticide treatment. Because the place doesn't change, it is included in the permit application with the names of the restricted chemicals the permittee may use.

Since permits are typically issued for a year and it is not possible (or desirable) to schedule pesticide treatments months in advance, applicants must let the Commissioner know each time they plan to use any of the restricted materials on their permit. They do this by filing a "Notice of Intent to Apply a Restricted Material," usually referred to as a "Notice of Intent" or "NOI."

The Notice of Intent is the second part of the permit. The applicator or permittee must send the notice to the Commissioner at least 24 hours before the scheduled treatment. The notice must describe the specific site to be treated and the pesticides to be applied. It must also tell the Commissioner if there are any changes since the original permit was issued.

The Notice of Intent gives the Commissioner another chance to review the proposed pesticide use and apply more restrictions, if needed. County staff do pre-application inspections of certain sites where there are concerns. Also, they spot-check about five percent of the sites where restricted materials may be used. These are mainly to make sure information on the permit is accurate (for example, the surrounding area has been described correctly and conditions haven't changed).

Sometimes applications have to be postponed. For example, the weather may be rainy or too windy, or application equipment can break down. The applicator has up to four days after the planned date (the date on the notice) to begin the application,

although only if the delay was unanticipated. If the pesticide application is not started in four days, a new Notice of Intent must be filed.

In cases where pesticide applications are going on regularly—such as in commodity fumigation facilities, plant nurseries, or along roads—applicators may file a pesticide treatment schedule instead of a Notice of Intent. The schedule must be in writing, attached to the permit, and updated when any changes occur.

HOW DO I FIND OUT ABOUT PERMITS ISSUED IN MY AREA?

You can get copies of restricted material permits and Notices of Intent from the local County Agricultural Commissioner's office. Counties have varying procedures for requesting the information, and may charge a fee for copying. If you have trouble understanding a permit, ask someone at the Commissioner's office to explain how the use controls described in the permit were developed and how the restrictions will protect surrounding areas.

Typically, permits are issued at the beginning of the year although they can be issued at any time. They are under the name of the owner or operator of the property. Permits usually list all the restricted pesticides the farmer believes may be needed to handle various pest problems. Since some pest problems may not occur, some listed pesticides may not be used.

We encourage permittees to plan their pesticide needs well in advance and communicate with people who live near application sites before applying for permits. If you are concerned about or interested in pesticide applications in your neighborhood, let your

Agricultural Commissioner and neighboring farmers know. We encourage Commissioners and permittees to respond quickly to these requests and provide information about the pesticides to be applied, the restrictions on their use, and how the use controls will protect people and the environment. Concerns can often be resolved before a permit is issued if people talk to one another. If a permit is later appealed, we will consider whether people in the area had an opportunity to voice their concerns early in the process.

Keep in mind, however, that in a typical year about three-quarters of the pesticides used in agriculture are NOT restricted materials. If a material is not restricted, farmers do not need a permit to use it. Also, no permits are required for pesticides used to manage pests in buildings (for example, termites, even if the pesticides are classified as restricted materials.

WHAT IF I DON'T WANT A RESTRICTED PESTICIDE USED OR I WANT IT USED DIFFERENTLY?

Work with the County Agricultural Commissioner. Ask if the use limits on a permit can be changed. Commissioners want to work with pesticide users and the community to help avoid conflicts. For example, farmers might agree to let neighbors know of upcoming applications or agree on buffer zones around homes or schools where certain pesticides won't be used. Talk to your Commissioner about efforts to develop cooperative solutions.

If talking with the Commissioner's office does not satisfy your concerns, you can appeal the permit through a formal appeal process (defined in Food and Agricultural Code, Section 14009).

WHAT ABOUT NON-RESTRICTED MATERIALS? CAN CONTROLS BE PLACED ON THEIR USE?

On occasion, a County Agricultural Commissioner finds a local problem in using a pesticide not on DPR's restricted material list. The problem might be in a whole county, or just in a particular area, at a particular time.

Under the law, a Commissioner may determine that, under specified conditions, a non-restricted pesticide presents an "undue hazard." In this case, he or she can require a farmer to get a permit to use the pesticide. To make this determination, the Commissioner must describe the unacceptable hazard when the pesticide is used in that particular situation, and how requiring a permit will resolve the situation. The Commissioner can require that every farmer get a permit for that pesticide, or just in parts of the county where the risk is greatest, or only in certain situations (for example, when the pesticide on the permit is used near schools, around beehives, or next to susceptible crops). A permit allows the Commissioner to require certain use practices besides those on the product label. For example, he or she can set a buffer zone around the application (an area where the pesticide cannot be used), or can prohibit applications by air, or limit the amount of acreage treated at any one time.

Making the legal determination that permits are necessary can be a lengthy and difficult process. The Commissioner may have to consult with county counsel and other local officials. Public notice is required, and an opportunity made available for the public to comment. Requiring a permit does not make a pesticide a restricted material. Only DPR can do that, through a statewide regulation.

WHAT STEPS ARE THERE IN FILING AN APPEAL?

You must file your appeal in writing. You will need the following information (much of it found on the permit):

- Location of the property where the pesticide is to be used.
- Name of the pesticide.
- Name and address of the operator of the property.
- Location of people, property or areas that would be affected by the application.
- The reasons you want a review and what actions you want the Commissioner's office to take. What you ask for depends on the situation. You may want the permit denied or canceled. Or you may feel a bigger buffer zone is needed. Do you want to be told in advance of the day and time of any restricted material application to the property? Are you requesting that no aerial applications be done in a certain area? That treatment occurs only when school is not in session? Remember: Typically, you can only ask for extra controls when a restricted material is being used.

Be as factual and specific as possible. If you need help or have questions, ask the Commissioner's office or call DPR's regional office. You can get the phone number of your Commissioner's office by calling toll-free, 187PestLine (1-877-378-5463).

The Commissioner will respond to your appeal in writing within 10 days or as soon as practical. After reviewing your appeal, the Commissioner may decide the application can go on as scheduled, may require more controls, or may cancel the permit.

Any directly affected party including the farmer can appeal the Commissioner's decision to DPR.

IS THE PESTICIDE TREATMENT PUT ON HOLD WHEN I FILE MY APPEAL?

Either the Commissioner or DPR can put a hold on the pesticide use while an appeal is under review. However, the law also requires that permit reviews be done so "needed pest control measures" are not affected. Therefore, pesticide treatment may be allowed if a delay would mean damage to a crop. We will typically consider allowing the treatment if the person filing the appeal knew about the permit well in advance but did not file an appeal until just before the scheduled application.

CAN I APPEAL THE COMMISSIONER'S DECISION?

Under State law, you can appeal a permit decision if you are a "directly affected" person living or

working near the pesticide application site. That person may appeal the Commissioner's decision on use controls or on issuing the permit at all. The directly affected person can also be the grower, who may appeal a canceled permit or permit conditions he or she feels are not justified.

HOW TO APPEAL THE COUNTY COMMISSIONER'S DECISION TO DPR

If you want to challenge the Commissioner's decision on a permit, you must do so in writing. Send the information including your name and contact information to:

Director
California Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, CA 94812
Fax: 916-324-1452

DPR must respond within 10 days of receiving your appeal or as soon as possible after that. We will work with the Commissioner's office to find a suitable place to hold what the law calls a "public review" of your appeal. You will be told of the date, time, and location at least 72 hours before the public review. The review is not a formal hearing, but DPR may ask questions of the person who filed the appeal, the Commissioner, the grower, and others.

Under the law, when DPR reviews an appeal, we can only consider three things about the permit:

1. Whether the proposed use is consistent with pesticide label restrictions and regulations.
2. Whether the Commissioner properly considered the health and environmental impacts on surrounding areas, imposed reasonable mitigation measures, and reviewed feasible alternatives.
3. Whether the Commissioner abused his or her discretion in issuing, refusing, revoking or conditioning the permit.

If you speak at the public review, be as factual as possible. Focus your remarks on the proposed pesticide use on the permit. You may, of course, speak about any issue you feel is relevant. Remember: our review is limited under the law to the three points and to the particular permit being appealed.

Pesticide Complaint?

1-87PestLine
INFORMATION LINE

1-877-378-5463



If you don't want a restricted pesticide used or want it used differently, your first step is to work with the Commissioner's office to see if it is possible to revise the use restrictions on the permit.