

## Anti-Drift Labeling Requirements

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A significant event in the history of the Department of Pesticide Regulation (DPR) occurred on September 25, 2000. On that day DPR stated in Enforcement Branch letter 2000-34 ([www.cdpr.ca.gov/docs/enfcmpli/penfltrs/penf2000/2000034.pdf](http://www.cdpr.ca.gov/docs/enfcmpli/penfltrs/penf2000/2000034.pdf)) "Some pesticide drift is expected from aerial and other above ground pesticide applications". In other words, drift, like life and other stuff, happens, routinely, like always. Drift per se is not a violation. However, substantial drift is a violation of Food and Agricultural Code (FAC) section 12972 and must be prevented. When does drift become substantial you ask? The shade tree lawyers in the audience will understand when I say that illegal drift is based on a negligence standard rather than a strict liability standard. In other words, substantial drift occurs not when a specific amount is found off target but when the amount found off target is greater than what would have occurred had the applicator used due care.

There are two groups of things that an applicator must consider. First there are controllable things like selection of equipment for optimal droplet size. Nozzle type, size, orientation, pressure, buffer zones, height, things like that.

The other group (no surprise) is composed of uncontrollable factors like weather, (inversions, wind, humidity, temperature, fog) and sites surrounding the treatment area.

The drift section in law is not the only requirement impacting what must be considered. There are sections in Title 3, California Code of Regulations (3CCR) also.

Some of these are general provisions that are used if something goes wrong and it can't be tied to another specific section. But others are more specific.

One of the most commonly used sections of the regulations is 6614. It is in between the general and specific. Basically, section 6614 is a recognition that failure to use due care can be mental as well as physical. It requires that thought be given to three specific areas. Contaminating people will not be tolerated. Damaging off-target property must be avoided. Contaminating off-target property to the extent that it cannot be used for its normal purpose must also be avoided. These three things must be avoided at all costs. Even if it means that you do not make the application! This is as close as we come to a strict liability standard when it comes to drift.

The most specific drift requirements are in the restricted materials regulations. They apply to certain herbicides and cotton harvest aids. These requirements have been in place with only minor changes since 1950. They are prescriptive standards as opposed to performance standards. Prescriptive standards describe the equipment or procedures that must be used. Performance standards describe the outcome desired and leave it up to the person how to achieve that result. About three years ago, DPR decided it was time for an update of the drift regulations in 3CCR.

Issuing the revised drift investigation policy in September 2000 was the first step. The plan also included regulation changes based on the following:

- Rely, to the extent possible, on the data developed by the Spray Drift Task Force.
- Move the drift regulations from the restricted materials portion of the regulations to a more general area so they would apply to both restricted and non-restricted pesticides.
- Limit application of the nozzle specifications to herbicides and cotton harvest aids for the time being. Later we will develop more appropriate specifications for other kinds of pesticides.
- Clean up some of the other sections that use these basic drift control provisions to avoid duplication.

What's the hold-up you ask? Why haven't these changes been made? Well, the USEPA has also embarked on a comprehensive project to issue standards for how pesticide labeling addresses drift. There is a much more comprehensive project, so, to avoid being caught going in the wrong direction, DPR decided to put our project on hold until USEPA played their hand. This is consistent with most regulatory actions. DPR's strong preference is for pesticide labeling to contain instructions and precautions necessary to use the pesticide. When labeling is deficient and does not address all of our concerns, regulations are adopted to fill the gaps, so to speak. That is what we are waiting to do here.

The U.S. EPA draft Pesticide Registration Notice generated a modest amount of comment, to say the least. The comment period was extended a couple of times. USEPA is still working on review of the comments received. We understand that the re-registration process is forcing their hand and we expect some indication shortly.