



Department of Pesticide Regulation



Brian R. Leahy
Director

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Governor

July 14, 2015

ENF 15-11

TO: County Agricultural Commissioners

SUBJECT: CARBON MONOXIDE FOR BURROWING RODENT CONTROL –
NEW LAW and UPDATED QUESTIONS AND ANSWERS

Two laws now allow for the use of carbon monoxide devices for control of burrowing rodents: Food and Agriculture Code (FAC) section 6025.4 (effective 2012), and, more recently, Senate Bill SB 1332 which amended FAC 12999.5 and added FAC 14160-14161.

This letter supersedes ENF 12-19 issued October 2012, by adding information from SB 1332 (effective January 1, 2015) and revising the guidance on where carbon monoxide delivery devices can be used, pending rulemaking.

In 2011, the Legislature passed AB 634 (effective January 1, 2012) allowing for the use of carbon monoxide delivery devices. That law, effective until January 1, 2018, adopted Food and Agricultural Code (FAC) section 6025.4 stating that carbon monoxide may be used for the control of burrowing rodent pests, provided the carbon monoxide delivery device is permanently affixed with a warning label in plain view of the operator that includes, at a minimum, the statement "*DANGER: Carbon monoxide is a poisonous gas that is odorless and colorless. Exposure to carbon monoxide can kill within minutes. Never use in structures inhabited by humans or livestock. The device must be used in accordance with all existing laws and regulations including Chapter 1.5 (commencing with Section 2050) of Division 3, known as the California Endangered Species Act, and Sections 4002 and 4003 of the Fish and Game Code.*" In addition, this use of carbon monoxide is subject to the requirements of Division 6 (commencing with FAC section 11401) and Division 7 (commencing with FAC section 12500).

Effective January 1, 2015, SB 1332 amended FAC 12999.5 and added FAC 14160-14161 to require the Director of the Department of Pesticide Regulation (DPR) to regulate the use of carbon monoxide pest control devices and adopt and enforce regulations to ensure that these devices are used in a safe and effective manner. DPR will be developing rulemaking to implement this new law.

Until rulemaking can occur, the following are updated questions and answers about carbon monoxide delivery devices:

Q: Is carbon monoxide a pesticide or a pest control device?

A: U.S. EPA and DPR have determined that carbon monoxide delivery devices will be regulated as pest control devices, not as pesticides.



Q: Since it is a pest control device, does it have to be registered?

A: No. At this time, DPR does not require registration of carbon monoxide delivery devices. The only devices DPR currently registers are structural pest control devices for control of wood-destroying pests.

Q: Does the use of such a device constitute "pest control?"

A: Yes. Even though the carbon monoxide device is not considered a pesticide, DPR considers it a form of pest control. Therefore, only laws and regulations pertaining to pest control, not to pesticide products, are applicable. A business doing pest control for hire must be licensed.

Q: Are there any label requirements for carbon monoxide delivery devices?

A: Yes. This device must have a warning label in plain view of the operator incorporating the specific text contained in FAC section 6025.4(a)(1) [see above]. In addition, U.S. EPA requires that the device be labeled with the EPA Establishment Number of the establishment in which the device was manufactured.

Q: Does the law allow the use of tubing from the exhaust pipe of an automotive vehicle?

A: FAC 6025.4 is silent on this issue. However, DPR does not recommend this, as it would be difficult to maintain compliance with the labeling and EPA Establishment Number portions of the law.

Q: Is the use of a carbon monoxide device for the purpose of pest control required to be reported under Pesticide Use Reporting (PUR)?

A: No. Pesticide Use Reporting is required for the use of pesticide products, not for the use of a device.

Q: Where can these devices be used?

A: FAC section 6025.4 states that carbon monoxide must never be used in "structures inhabited by humans or livestock." However, these devices can be used in other agricultural and non-agricultural settings. Carbon monoxide is colorless, odorless, and toxic and there may be bystander and applicator hazards associated with the use of carbon monoxide. DPR recommends that these devices not be used within 100 feet of occupied structures. When applications are made next to unoccupied structures, DPR recommends aerating the structures before reentry.

Q: Who can use carbon monoxide delivery devices?

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A: The law does not limit who can make applications. Persons performing pest control for hire must be licensed by DPR and registered in each county where they perform pest control.

Q: How do the latest amendments affect carbon monoxide delivery devices?

A: Previously, DPR and county agricultural commissioners (CACs) did not have specific authority to regulate carbon monoxide delivery devices. The new law enacted through SB 1332, grants DPR and CACs authority to regulate the use of carbon monoxide devices. DPR plans to promulgate regulations in the next rulemaking cycle.

Q: Should CACs conduct inspections of applications?

A: It is the responsibility of the CACs to conduct inspections of pest control applications and pest control businesses. Inspector biologists may periodically come across carbon monoxide applications. In such cases, DPR leaves the decision to conduct an inspection to the discretion of the CACs. Currently there are no specific inspection forms for carbon monoxide device pest control inspections. However, a partial inspection (e.g. PR-ENF-104) may be conducted to assess licensing, standard of care, device establishment number, etc. If a complaint or episode results from the use of a carbon monoxide pest control device, the CACs should respond as they would to a complaint or episode from any other pest control device.

If you have any further questions regarding this subject, please contact the Enforcement Branch Liaison assigned to your county.

Sincerely,

Original Signature by:

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cc: Mr. Joe Marade, DPR Agricultural Commissioner Liaison
Enforcement Branch Liaisons