



September 1, 2020

Secretary Jared Blumenfeld
California Environmental Protection Agency
Via email: jared.blumenfeld@calepa.ca.gov

Re: Juana Vasquez et al. vs. California Department of Pesticide Regulation, Alameda County Case No. RG-17847563

Dear Secretary Blumenfeld,

We wrote to you on May 15, 2020 to express our concern about DPR's failure to involve OEHHA in rulemaking for the carcinogenic fumigant pesticide 1,3-dichloropropene (Telone) as required by law and as ordered by the judge in the Vasquez case. In the letter, which is included below, we urged you to use your authority to intervene to ensure the integrity of the rulemaking process for Telone.

In seeking a response to our letter, we have had several conversations with CalEPA Deputy Secretary Julie Henderson and one with OEHHA Director Lauren Zeiss and OEHHA attorney Carol Monahan-Cummings. These discussions have only intensified our concern. **We reiterate our urgent request for CalEPA to intervene to ensure that DPR works in concert with OEHHA on Telone rulemaking.**

Based on our conversations, we now understand CalEPA and OEHHA's position to be that they are unable to comment on matters relating to the pending appeal in the Vasquez case, a particularly problematic stance for OEHHA since they are not a party to the litigation. OEHHA added that they "can't make" DPR work with them on the Telone regulation while the Vasquez case is under appeal. Conversely we would argue that, pending appeal, DPR can't sideline OEHHA. In the case of a dispute between two sister departments, we trust that their mutual boss CalEPA would step in to adjudicate.

We also now understand DPR's position to be that they accept the first of the two rulings in the Vasquez case, which requires them to take up Telone rulemaking but, pending the result of their appeal, they reject the second ruling which requires them to involve OEHHA.

The problem with this slice-and-dice approach to the Vasquez ruling is that DPR's refusal to include OEHHA will significantly impact the quality of the regulation DPR produces. As we know, DPR has already selected a portal of entry potency factor to justify a fourfold increase in the allowable lifetime cancer risk level (0.56 ppb) over the strenuous objections of OEHHA, who recommended the far more

health protective level of 0.14 ppb for adults and 0.1 ppb for children. DPR then used this relaxed level to justify a 50% increase in the township use cap. A regulation designed to reduce exposures only to the extent needed to fall below DPR's lifetime cancer risk level will fall far short of the protection needed.

Furthermore, if (as we expect) Dow AgroSciences fails in its appeal and DPR is in fact required to work in concert with OEHHA, any regulation created without OEHHA's input will be immediately invalid. In this case, DPR will be required to rewrite the regulation, more years will go by without relief for agricultural communities impacted by Telone, and valuable time and resources will have been expended in needless defiance of a court order.

We ask you: Is DPR's time and money best spent battling us in court on the side of the polluters? Is environmental justice best served by refusing comment on a matter of urgent concern while hiding behind pending litigation? Is it acceptable that multiple spikes in Telone air levels recorded in the San Joaquin Valley since January 2018, including levels of 4 ppb and 20 ppb in Shafter in January 2020, have gone entirely unmitigated? Or that DPR continues to be in what OEHHA has characterized as "pre-rulemaking" two and a half years after the Vasquez decision?

As an urgent environmental justice matter, we again ask you to:

- i) Order DPR and OEHHA to end this needless stonewalling and communicate with us in good faith about Telone rulemaking;
- ii) Reinstate the previous township cap while rulemaking proceeds, since the revised township cap was premised on a calculation that was emphatically rejected by OEHHA;
- iii) Order DPR and OEHHA to work in concert on Telone rulemaking;
- iv) Require DPR to provide evidence of their collaboration with OEHHA; and
- v) Require DPR to obtain OEHHA's concurrence before any regulation is officially proposed.

Sincerely,

Handwritten signatures of Jane Sellen and Sarah C. Aird in blue ink.

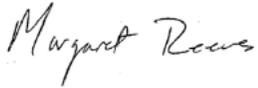
Jane Sellen & Sarah Aird, Co-Directors, Californians for Pesticide Reform

Handwritten signature of Caroline Cox in black ink.

Caroline Cox, Research Director, Center for Environmental Health



Anne Katten, Director of the Pesticide & Worker Safety Program, California Rural Legal Assistance Foundation



Margaret Reeves, Senior Scientist, Pesticide Action Network

Cc: Julie Henderson, Deputy Secretary for Health and Public Policy, CalEPA

Val Dolcini, Director, Department of Pesticide Regulation

Jeremy Brown, Assistant General Counsel, CalEPA

Lauren Zeiss, Director, OEHHA

Carol Monahan-Cummings, Chief Counsel, OEHHA

Christine Hironaka, Office of the Governor

Yana Garcia, CalEPA