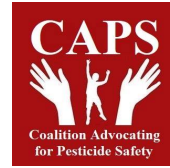




Californians For
Pesticide Reform





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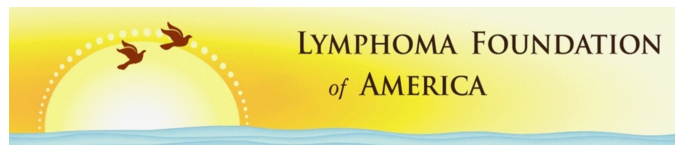
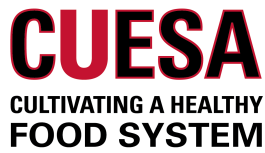


CENTER FOR
FOOD SAFETY



CENTRAL VALLEY
AIR QUALITY COALITION





December 6, 2021

California Department of Pesticide Regulation
Via email: ProjectNotify@cdpr.ca.gov

Comment letter: Development of a statewide pesticide notification system

Dear Director Henderson,

Thank you for the opportunity to comment on the development of a statewide pesticide notification system. The undersigned one hundred four (104) signatories, representing a broad coalition of environmental, EJ and sustainable agriculture groups, community-based organizations, businesses, farmers, unions, and individual physicians and professors, submit these comments for your consideration.

We fully support the state's effort to develop a pesticide notification system, and applaud Governor Newsom for allocating funding for a notification regulation. For many years, communities throughout California's agricultural regions have called for the basic right to know about planned applications of hazardous pesticides before they occur.

Agricultural pesticides are linked to a wide range of human and environmental health impacts, and many are known to drift far from their intended target. Despite the state's extensive regulatory, enforcement and reporting apparatus, residents of communities on the frontlines of agricultural pesticide use - overwhelmingly low income and people of color - are routinely exposed to a dangerous mixture of toxic chemicals, leading to well-documented acute and chronic health effects. Although pesticides are regulated individually by the Department of Pesticide Regulation (DPR), in reality communities are exposed to an entirely unregulated mixture of dangerous and drift-prone chemicals, including a number that are known carcinogens.

As a matter of environmental justice and the basic human right to information about health hazards in our midst, we call on DPR to immediately require fully public notice of Restricted Material pesticide use, and to develop a comprehensive notification regulation that goes much further than that baseline.

I. Notification must be fully public.

We urge DPR to establish a fully transparent, web-based system of advance notification for pesticide applications, starting with immediately web-posting all Notices of Intent (NOIs) to use pesticides that are classified as Restricted Materials. This first step can take place now, with no need for a regulation. DPR's regulatory process should expand and improve upon this baseline.

In a letter dated December 17, 2020, ordering the Kern County Agricultural Commissioner to provide NOIs for four specific pesticides, DPR affirmed the Department's statutory right to receive and disseminate this information in advance without the need for a regulation:

*"DPR is requiring you... to submit regular reports of approved NOIs for the use of [specified pesticides] in and within seven miles of Shafter to DPR so DPR can provide notice to the community... Under Food and Agricultural Codes sections 11455, 2272, 2281, and 14004, you have a legal duty to submit reports required by DPR."*ⁱ

We concur with DPR's assertion of their statutory authority to request NOIs in advance and to web-post them for the general public. This should be the basis of California's pesticide notification program, and it should be implemented immediately throughout the state.

II. We need notification now, not years from now.

The timeline proposed by DPR for the notification regulation, with an implementation date of 2024, is unacceptable. As noted above, notification of Restricted Material pesticide use can and should begin immediately, and the regulation should expand and improve upon this baseline.

III. Pesticide application information must be available to all, regardless of location

There are many reasons for establishing a notification system that is public, web posted, and available to all regardless of location, not least of which is the great distance pesticide drift is known to travel. Two recent spike air measurements of the carcinogenic fumigant pesticide 1,3-dichloropropene detected at the Shafter pesticide air monitoring station likely originated from applications that were more than three and seven miles away from the air monitor. Clearly, determining which residents are potentially directly impacted by pesticide exposure must take into account the reality that pesticides drift for many miles, and that limiting notice to immediate neighbors is insufficient.

Two recent studies by UCLA and their research partners^{ii,iii} confirmed that the impacts of pesticide exposure reach far beyond the treated field. The studies established a link to certain childhood cancers and prenatal residence within 2.5 miles of use of certain pesticides - a distance far beyond the scope of existing restrictions on pesticide use within a quarter mile of schools and daycares during school hours.^{iv}

Furthermore, efforts to limit notification to those living near a proposed application would not meet the need for notice for a broad array of stakeholders - including relatives and caregivers of people living near treated fields; health professionals, whose ability to diagnose the symptoms of pesticide exposure may depend on knowing what their patients were exposed to; scientists wishing to monitor the impact of pesticides on air quality; data scientists developing visualization tools to model exposure in real time; teachers, coaches and school administrators planning outdoor activities - to name just a few.

Any requirement that community members register for notification and prove their location would also be a significant barrier to participation for the highly vulnerable population most in

need of notification, some of whom may be unwilling or afraid to give identifying information to a government entity.

IV. A system of alerts should be developed in addition to fully public web posted information

DPR's notification regulation should establish a system to alert any interested party about planned pesticide use. However, alerts by themselves are not enough and should be in addition to fully public web-posted information. The concerns expressed by some growers in the DPR English-language webinar, that "notification fatigue" might limit the effectiveness of the program, are valid, and serve to highlight the need for fully public information as a baseline, with alerts being an addition for those who wish to receive them.

Alerts should be provided at least 72 hours in advance of the planned application, in appropriate languages (English and Spanish at a minimum) and using culturally appropriate dissemination methods to reach those most impacted. Door hangers are insufficient and infeasible for this task, and would be exceedingly onerous on growers given how far pesticides drift and how many sensitive sites would have to be contacted. Alerts should include health information as well as maps and other graphics aimed at simplifying and facilitating communication of complex information.

V. DPR must establish a permanent steering committee of community members

Because of their lived experience, those on the frontlines of pesticide exposure have unique expertise on how a notification program should function so that it results in actual improvement to their lives and health.

As DPR noted in their Roadmap for Integrated Pest Management^v:

"Building trust requires a commitment to talk and listen with the people who have concerns or needs and understand their fears and aspirations. There is no shortcut to creating these relationships and without them we are often condemned to being locked in perpetual conflict. Stronger relationships lead to deeper understanding of needs and interests and to creative solutions."

Community residents must be meaningfully included in all stages of planning, implementing and adjusting the notification program. We urge DPR to establish a permanent steering committee comprised of impacted community residents, to oversee the program in its development stage and into the future.

VI. Amendments to DPR's draft Guiding Principles

DPR requested specific feedback on the set of Guiding Principles announced in the November 2-3 webinars. We offer the following comments:

1. Public Health. *Provide timely information about pesticide applications to enable health-protective actions*

We agree that information about pesticide applications must be timely. The proposed timeline for the development of the notification regulation, however, must adhere to the same guiding principle. We therefore recommend that Guiding Principle #1 be amended to include a timely process. The proposed three year timeline leaves Californians without any information, timely or otherwise, about hundreds of thousands of pesticide applications that will take place between now and DPR's proposed implementation date. NOIs can be made public right now. We urge DPR to take this intermediate step immediately, to ensure that communities are protected while the regulatory process unfolds.

2. Improves Equity and Transparency. Provide equitable access to communities about the pesticides use around them.

DPR should remove the phrase "around them", because proximity to pesticide applications is an incomplete metric for capturing those impacted by pesticide use. Inclusion of this phrase in the guiding principles has a limiting effect on the potential scope of the regulation. We emphatically reject any notification system that is limited by residential proximity, and refuse to participate in DPR's proposed debate about who should be told and how close they must live. Pesticide exposure is a public health threat, and notification about this threat should emulate that provided to Californians about other health threats, such as wildfires or particle pollution: a combination of fully public information accessible to all online, and opt-in alerts at the scale and to the extent of the participant's choosing.

3. Complements Existing Regulations. Complement regulations that govern the safe, legal application of pesticides.

We ask that you amend Guiding Principle #3 to include existing statute as well as regulations, and to proactively affirm that DPR has the authority to direct County Agricultural Commissioners to provide reports on demand, pursuant to Food and Agricultural Code sections 11455, 2272, 2281, and 14004 as noted above.

4. Prioritize by Health Impact. Prioritize pesticide applications that have greater potential to cause health impacts.

Principle #4 should be amended to state that prioritization by health impacts is based on the most current science. Designations such as "Restricted Material" are a regulatory determination and do not reflect the most current science on health harms.

For example, of the 13 pesticides linked to childhood cancer in the UCLA exposure studies, only four are classified as Restricted, while just one is no longer registered for use in California. That leaves 8 unrestricted childhood cancer-causing pesticides, available for use in California agriculture in any amount and without a permit.

Notification should also be provided for all chemicals listed under Prop. 65, a "Right to Know" designation determined by DPR's sister agency the Office of Environmental Health Hazard Assessment. Pesticides listed under Prop. 65 undergo extensive scientific evaluation, but most are not Restricted Materials. Five of the 8 pesticides not classified as Restricted and linked in the UCLA studies to childhood cancers are Prop. 65-listed.

5. Encourages Communication. *Encourage regular communication between growers, pesticide applicators, local government, and nearby communities.*

Principle #5 should be amended to capture community engagement. Communication without meaningful community engagement is insufficient, and contravenes the equity goal of Principle #2. In addition, DPR and CalEPA should be added to the list of entities engaged in multilateral communications.

VII. DPR's public engagement process must reflect a commitment to equity.

Public confidence in DPR's process for developing an equitable, transparent and health-protective regulation has been strained by glaring inequities in the initial stages of the public engagement process. We appreciate that the November 3 Spanish-language webinar held in the evening allowed many working people and non-English speaking people to participate, but the changes to the format made after the English language webinar the previous morning had the effect of silencing non-English voices and curtailing their participation:

- The opportunity in the English-language webinar to ask live questions about the presentation was scrapped in the Spanish-language webinar, removing the only opportunity afforded the public to ask questions and have them answered by senior DPR leadership in real time.
- Comments in the Spanish-language webinar were strictly limited to just one minute. One minute was insufficient. In contrast, no time limit was placed on comments during the English language webinar until the very end when time had run out.
- In both webinars, there was a lack of transparency about who or even how many were participating and what questions were being raised. In the Spanish-language webinar, the organizers also removed the ability to see other questions posed in the Q&A (as had been possible in the English-language webinar), leaving participants to feel even more isolated and alone.

We recognize how difficult the pandemic has made it to engage the public in workshops and public hearings. However, DPR must do better at allowing for a shared experience by making comments in the chat and Q&A visible, and at least, should adhere to the same set of conditions for English- and Spanish-speaking participants.

Thank you for the opportunity to comment.

Sincerely,

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ⁱ Letter from DPR Director Val Dolcini to Kern County Agricultural Commissioner Glenn Fankhauser, December 17, 2020

ⁱⁱ *International Journal of Hygiene and Environmental Health*, Volume 226, May 2020, 113486, <https://doi.org/10.1016/j.ijheh.2020.113486>

ⁱⁱⁱ Lead authors Christina Lombardi and Shiraya Thompson, were joined by three co-authors from the previous study, Professors Ritz, Cockburn, and Heck. *Environmental Research*, Volume 197, June 2021, 111078, <https://doi.org/10.1016/j.envres.2021.111078>

^{iv} https://www.cdpr.ca.gov/docs/enforce/pesticide_applications_near_schoolsites.htm

^v https://www.cdpr.ca.gov/docs/pestmgt/ipm_roadmap.pdf