

March 21, 2022

Chair Bill Quirk, Assembly Environmental Safety and Toxic Materials Committee
Chair Richard Bloom, Assembly Budget Subcommittee #3

Dear Asm Bloom, Asm Quirk and members of the Assembly ESTM and Budget Sub 3 Committees:

Thank you for hosting an informational hearing on March 8 on the California Department of Pesticide Regulation (DPR). We, the undersigned groups focused on environmental justice, environmental protection, public health, and sustainable agriculture, appreciate the attention being given to this matter. We want you to know that there are hundreds of individuals and dozens of groups that have had significant concerns about the Department over a long period of time, and that many of us tried to make public comments on March 8 but were unable to do so because of technical problems with the public participation line.

We look forward to participating in future hearings, and strongly urge the committee to publicly acknowledge and remedy the technology issues that led to an inability for many community members and advocates to make comments remotely. Remote and in person options are critical for all legislative hearings, in order to increase access and equity.

Some of the questions and comments the undersigned groups had planned to raise are contained in this letter. We believe that DPR's presentation left an unduly rosy impression of the Department, which suffers from well-documented systemic flaws and perverse funding incentives. These failures compound in ways that result in severe human and environmental health harms, especially in low-income communities of color.

DPR must live up to its mission and commitment to environmental justice

DPR's mission is to "protect human health and the environment," and the Department's website states: "Fair treatment means that no one group of people, including racial, ethnic, or socioeconomic groups, should be disproportionately impacted by pesticides."

It is plain that DPR's policies do not, in fact, result in fair treatment for all Californians. CalEPA researchers have concluded that pesticides are one of the top two pollutants with the greatest racial disparity in California¹. Analysis of pesticide use by county reveals that the 11 counties with a majority Latinx population have 900% more pesticide use per person and per square mile than the 25 counties with the lowest Latinx population². The two groups of counties are similar in area and total population.

We were extremely disappointed that DPR did not acknowledge the stark fact of this extreme disparity, nor take the opportunity to describe the specific changes to policies and practices they plan to implement for achieving environmental justice and eliminating the racially disparate impact of its policies.

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4605180/>

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<https://www.pesticidereform.org/wp-content/uploads/2022/03/DisproportionatePesticideHazardsLatinx01-21.pdf>

DPR must end prolonged delays in completing pesticide risk assessments and mitigations and address pesticides by class

DPR presented information on their obligation to evaluate pesticides before registering in California and to continue to evaluate thereafter, but again the reality falls far short. In practice, DPR registers an average of 15 new pesticide Active Ingredients *every year*, but has completed just ten risk assessments and three resultant mitigations *in a decade*. Completion of risk assessments and mitigations for pesticides that have been registered for decades fall further behind with each passing year, and reevaluations can take decades. For example, the fumigant chloropicrin and insecticide cyfluthrin have been in reevaluation for 21 years (since 2001) and 24 years (since 1998) respectively.

This excruciatingly slow rate of re-evaluation is in contrast to the increasing body of evidence of the chronic health harms caused by pesticides legally allowed for use in the fields. California's premiere academic institutions publish multiple studies each year documenting increased risk of disease - including, cancer, Parkinson's, respiratory disease, learning disabilities, birth defects, and autism associated with pesticide exposures in California's fields. Yet these chronic health hazards remain and are not routinely assessed.

A stark example of DPR's lack of timely action is evidenced by DPR's slow and woefully incomplete response to the health risks described by Dr. Kim Harley in her testimony in front of the Committee. The first paper from the CHAMACOS study documenting adverse birth outcomes linked to prenatal exposure from organophosphate pesticides was published in 2004. It took 16 years before a single organophosphate, chlorpyrifos, was banned and no other organophosphate used in the Salinas Valley has been re-evaluated by DPR to assess the risk to children from continued use of these pesticides. As Dr. Harley noted, the children in the study are now young adults and multiple generations of children have been exposed due to DPR's lack of action.

Thanks to external pressure³, DPR has now committed to producing a new Risk Assessment prioritization list, and has promised to present it to the Pesticide Registration and Evaluation Committee in May. However, prioritization is not enough. DPR's most recent public prioritization in 2014 listed ten priority active ingredients for prioritization, yet all ten are still in use and all ten are still waiting for DPR to initiate risk assessment⁴. Evaluating and responding to the most up-to-date science on the harms caused by registered pesticides must be a core function of the Department. This should include periodic comprehensive review of the safety of all registered pesticides, proactive adoption of mitigation measures, and a process for initiating review based on emerging science.

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<https://www.pesticidereform.org/wp-content/uploads/2021/07/FINAL-Open-letter-to-PREC-re-Risk-Assessment-July-2021-1.pdf>

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<https://www.pesticidereform.org/wp-content/uploads/2021/07/FINAL-Open-letter-to-PREC-re-Risk-Assessment-July-2021-1.pdf>

DPR must provide oversight and accountability for the performance of County Agricultural Commissioners:

DPR cites the enforcement role of the county agricultural commissioners (CACs) as an important safeguard for community and environmental health. In practice, particularly in the most agricultural counties, communities are often poorly served by county agricultural commissioners. CACs, who are directly hired by County Boards of Supervisors, too often serve the interests of industrial agriculture at the expense of community health and wellbeing. Although DPR's authority to direct CACs is clearly established in statute (Food and Agriculture Code sections 11501.5, 12977, 12982, 14004.5, and 15201 all state that CACs work "under the direction and supervision of the director" of the Department of Pesticide Regulation), DPR has been unwilling to assert that authority, despite open CAC defiance going unchallenged⁵, ongoing violation of language access and CEQA laws⁶, as well as rude, unresponsive and even overtly racist behavior toward community members and farmworkers⁷.

We ask the Department to develop a process for directly addressing concerns from community members and workers when CACs fail to enforce or openly defy lawful requests for investigations of possible pesticide misuse and pesticide use information. The Department must commit to a clear administrative process for holding CACs accountable when it is brought to the department's attention that a CACs is failing to act on its required legal duties.

DPR must provide community protections from pesticide exposure:

Communities across the state have long suffered the consequences of synthetic pesticide exposure from conventional industrial agriculture. Primarily low-income rural communities of

⁵ <https://www.pesticidereform.org/wp-content/uploads/2021/06/Fankhauser-Shafter-Allies-June-2021.pdf>

⁶ <https://newsroom.ucla.edu/releases/california-officials-falling-short-evaluating-agricultural-pesticides>

A recent survey of CAC offices reveals an across-the-board failure to comply with state law requiring them to offer services in languages spoken by people they serve. Many have no process for taking phone inquiries or complaints in Spanish or non-English languages. DPR has resisted requiring CACs to make even the simplest of improvements, such as requiring after-hours voicemail to be in English and Spanish, with just 11 out of 56 CACs currently providing this most basic level of access. Improving language access is not just the law, but is also vital to serve farmworkers and farmworking communities. The lack of adequate non-English language capacity has also led to flawed or seriously biased investigations of potential violations of worker safety laws and regulations. In recent meetings, DPR has said there is no funding to enable CACs to comply with state law, but that they would apply for federal funds. This is unacceptable at a time when DPR is seeking state budget funds for unrelated purposes. No funding is required to record a voicemail in Spanish, as advocates have been demanding for at least five years with little progress to date. DPR must prioritize language access by providing a centralized interpretation service that can meet the needs of all Californians, and by setting minimal language standards for all CAC public-facing communications and platforms.

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https://www.pesticidereform.org/wp-content/uploads/2021/06/CPR-letter-to-DPR-re_-Tulare-Kern-CACs-June-2021.pdf

color and farmworkers—mostly Latinx—continue to be disproportionately burdened by the status quo use of harmful synthetic pesticides that are applied directly in their communities or that drift into their neighborhoods. As the state works to transition the agricultural industry away from synthetic chemical pesticides⁸ that harm human health, ecosystems, and water and air quality, and exacerbate climate change, it is critical that the Department address a path forward – including policy and investments – to directly protect those most impacted by pesticide exposure right now.

Advocates and community residents have expressed many concerns with the impact of pesticides on their health and wellbeing. We continue to raise the need for immediate investment in direct community protections such as expanded and enforceable buffer zones, indoor home air purifiers/filters, tarping, personal protective equipment and other strategies that reduce exposure while we start the necessary transition to more sustainable, health-protective practices. Overall, we strongly believe that the Department needs to examine the lack of current community protections and what significant changes are needed in the regulation of pesticides at the local level.

DPR must commit to a fully public process and rigorous review of the proposed release of GE mosquitoes in California

In March 2022, the U.S. EPA approved the experimental release of up to 2 billion genetically engineered (GE) mosquitoes in 4 counties across California, with no scientific, peer-reviewed public health or environmental impact analysis for the OX5034 version of the GE mosquito and no independent review that earlier experimental releases in Florida and Brazil have reduced the population of *Aedes aegypti*. DPR, under CalEPA, will decide whether or not to approve Oxitec's research authorization for the experimental release of GE mosquitoes in Tulare County, California.

If DPR approves this live experiment, it will be the first time GE insects will be released in California. DPR has still not publicly released key details from Oxitec's application, including how many mosquitoes could be released, but based on the EPA's approval, this could be the largest GE insect release in the U.S. Genetically engineered biopesticides, such as GE mosquitoes, are a novel issue for DPR, and there are no federal or state regulations specific to genetically engineered insects. There are critical public health and environmental risk assessments that were not fully evaluated by the US EPA. The DPR does not have the necessary scientific expertise among DPR staff, nor a process for independently assessing the benefits and dangers of this genetic experiment, nor a robust process for gathering public input that is grounded in access to data and peer-reviewed analyses by independent experts. There is also no process for independent genetic monitoring programs, necessary for tracking whether GE female mosquitoes or its genetic material has survived in the environment. A research authorization for the first genetically engineered insect could set a precedent for future living GE insect and other novel genetically engineered pesticides such as RNAi sprays, regulated as biopesticides, and intended for use in agriculture. DPR must commit to a fully public process and rigorous scientific review of the proposed release of GE mosquitoes in California.

⁸ https://www.cdpr.ca.gov/docs/pestmgt/sustainable_pest_management_workgroup.htm

DPR must assert its authority to regulate pesticides used as seed coatings

In the case of pesticides which are coated on almost all conventional crop seeds before planting, DPR's current policy is that all pesticide-treated seeds fall outside the definition of "pesticide" under California law, and are therefore exempt from all regulatory and tracking requirements. Coated seeds are one of the largest and most widespread uses of pesticides in the state. DPR water testing also reveals that active ingredients applied to seeds commonly appear in California water supplies. For example, DPR will be holding a hearing on Tuesday March 22 regarding frequent detections of the neonicotinoid imidacloprid—often used as an insecticide seed coating—in groundwater.

At a Nov. 2021 workshop on the topic, DPR acknowledged that this regulatory loophole has allowed dozens of products not approved by DPR to be sown directly into California soil. It also estimated that the total use of certain pesticide active ingredients on seeds may dwarf all other known uses of those chemicals in the Pesticide Use Reporting system by 30-fold or more. California law both empowers and requires DPR to close that loophole immediately. DPR must take immediate action to assert and implement their authority to regulate these pesticides.

DPR must provide advance pesticide notification and convenient and timely access to pesticide data:

Environmental justice requires that low-income communities of color most impacted by pesticides be able to review pesticide use data promptly, while the data are most relevant to current conditions. Environmental justice also requires that DPR present its data clearly and conveniently, to help community members find the information they need to help protect their own health. Unfortunately, for too long DPR has not been timely in providing data, and more recently has significantly limited access to key data relevant to people's health.

For three decades, California has been proud to provide to the public a robust pesticide use reporting system not replicated in any other state. However, the use of this information to protect agricultural communities around the state has been significantly limited because the data is not made available to the public until 2-3 years after applications are made. For example, currently 2018 data is the most recent that is available on the DPR website. Similarly, the most recent pesticide poisoning data available on the DPR website is from 2017. To fulfill its mission DPR must make the data available in a timely way.

In recent years, DPR has also reduced its online archives of many critical reports and documents, and switched to the much-less-convenient approach of making them available only via public records request. The hundreds of documents that DPR abruptly removed were not publicly indexed so the public is not even aware of which documents exist for public records request, making them essentially inaccessible. We also note with concern that many types of documents that had previously been routinely posted on-line and would be designed in an accessible format for automated screen readers today are no longer posted on-line. Whether intended or not, these changes significantly hamper public review, thereby impacting environmental justice.⁹

⁹ While our understanding is that this may have been done in order to be compliant with accessibility laws, DPR is under no less of an obligation to have documents that are available for public records request

Finally, for years all Californians have benefitted from on-line, unrestricted access to up-to-date information about threatening circumstances that can affect their health, such as wildfires, smog, smoke, power outages, proximity of convicted sex offenders, and more. Yet critical information about upcoming agricultural pesticide applications has remained hidden from the public. Access to this information has been limited only to farmers and County Agricultural Commissioners, allowing no opportunity for families to take actions to protect their own health, such as by shutting windows, bringing asthmatic children indoors, or bringing laundry drying outside inside. To protect their own health, that of their families and of loved ones wherever they live, it is high time all Californians have access to data across the state that provides critical information¹⁰, in advance, about upcoming agricultural pesticide applications.

The need for this information was made even more obvious after recent release of a report by the Environmental Working Group, which used Ventura County as a case study to see just how much exposure communities on the edge of major ag operations are experiencing¹¹. Using data from DPR, they graphically demonstrate that 70% of Ventura County residents live within 2.5 miles of agricultural pesticide use, the distance linked in recent studies¹² to childhood brain tumors and other cancers. Pesticide use is even higher in nine other counties in California, including all eight San Joaquin Valley counties. Californians must have access to this information so they can protect themselves from these hazards now.

DPR must ensure pesticide regulations are enforced and high penalties for violations issued

designed in a way that makes them accessible, completely eliminating any rationale for not simply having the documents available on their website. At a minimum, we have requested that DPR post at least a list of the documents and data that were removed from its website so the public can access them via public records act requests. Data that are not archived online are effectively invisible to most external stakeholders.

¹⁰ This information must include such critical details as pesticide names and amounts and the acute and chronic health hazards associated with the pesticides being used; the location of the planned applications. The information should include maps and visuals, be in multiple languages and be available on a website accessible to all, with text and email alerts available for those who chose that option. The regulation should apply to at least all restricted and restricted material pesticides (recognized as the most hazardous). At least 72 hours advance notice should be provided, and a permanent committee of community residents should be established to assess and identify future improvements to be made to the system.

¹¹<https://www.ewg.org/research/report-32-million-pounds-toxic-pesticides-sprayed-ventura-county-fields-2015-2020>

¹² Park, A., et al., *International Journal of Hygiene and Environmental Health*, Volume 226, May 2020, 113486, <https://doi.org/10.1016/j.ijheh.2020.113486>

Lombardi, C., et al., *Environmental Research*, Volume 197, June 2021, 111078, <https://doi.org/10.1016/j.envres.2021.111078>

Monitoring must result in action

Although DPR described their pesticide monitoring network in the hearing, they failed to note the pattern of inaction following measured exceedances. To cite just one example, air concentrations of the highly drift-prone carcinogenic fumigant pesticide 1,3-dichloropropene measured in Shafter (Kern) and Parlier (Fresno) on several occasions since 2018 far exceeded the levels that resulted in a 5-year ban in 1990. Most troubling, DPR concluded that one recent exceedance must have originated from an untarped application *more than 7 miles away* from the monitoring station.¹³ To date, no mitigation measures have been implemented in the face of these alarming exceedances, with the explanation that the department is waiting for pilot study results. We think that documented high pesticide air levels should trigger some immediate actions to reduce exposures.

Adopted regulations must be enforceable

We were gratified to hear Assemblymember Smith call out the enforceability issues with the precedent-setting DPR regulation “Pesticide Use Near Schoolsites,” one of DPR’s most significant regulations to protect human health in recent years. DPR is aware that the way pesticide use is reported does not match up to restrictions in the regulation, making it impossible in many cases to know whether an apparent violation was actually prohibited by the regulation. To date DPR has refused to make the regulatory changes needed to ensure this regulation is fully enforceable, instead focusing on educating CACs and growers on voluntary compliance. Voluntary measures are insufficient to protect the efficacy of this critical protection for children at school. DPR must regulate.

Higher penalties needed

We welcomed the news that DPR plans to update its penalty structure because higher penalties are needed to deter violations that put workers, residents, and the environment in peril. This concern is related both to cases of violations leading to reported poisonings –where fines are inadequate but more likely to be assessed and to violations that do not result in poisonings – where it’s more common to see no fines at all, perhaps just a warning, or very small fines. It is critical as a preventative measure that fine levels for training and other work safety violations, such as failure to provide water, soap, and towels for decontamination, be raised substantially.

Rethinking DPR:

Moving pesticide regulation from CDFA to DPR in 1990 was precedent setting, but more than 30 years on, its structural deficiencies, many of which we have outlined above, are evident. In evaluating the Department now, we believe that a radical restructuring of the Department is required, including its name, mission, relationship with CACs, overlapping jurisdictions with other departments and agencies, and funding stream.

A CalEPA department with a human and environmental health mission, which devotes a majority of resources to maintaining registration of pesticides, is an oxymoron. To start, the Department’s professed desire to move to more sustainable pest management practices must

¹³ Public Records Act response from the Department of Pesticide Regulation, October 20, 2021. https://www.pesticidereform.org/wp-content/uploads/2022/03/Shafter_2020_Jan_PRA-Katten_2021_1007.pdf

be reflected in its name (for example, the Department of Sustainable Pest Management), mission and funding structure. As you heard from DPR Deputy Director Karen Morrison, DPR is funded in large part by the pesticide mill fee, a fee that is levied per pound of pesticides sold, and is currently running at a funding deficit that can only be resolved by increasing pesticide use or otherwise restructuring the mill fee. Indeed, the annual poundage of pesticides used in California has remained remarkably constant over three decades of Pesticide Use Reporting, at around 200 million pounds per year. Any significant reduction in pesticide use would further undercut the Department's budget, as currently structured. This must change.

Reporting on the hearing, Agri-Pulse quoted Director Henderson noting that “pesticides linked to cancer and birth defects have decreased 77%.”¹⁴ This is grossly misleading. In addition to overall pesticide use remaining constant for decades, use of carcinogenic pesticides has not declined by poundage and only marginally by acreage, over more than two decades¹⁵:

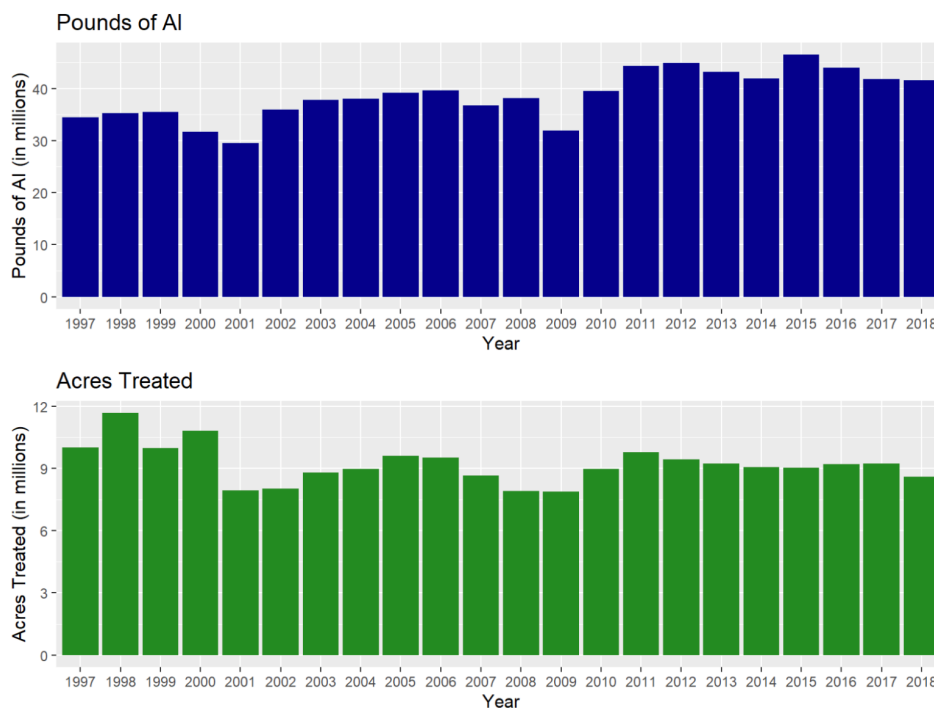


Figure 6: Use trends of pesticides that are listed by U.S. EPA as A or B carcinogens or on the State's Proposition 65 list of chemicals that are "known to cause cancer." Reported pounds of active ingredient (AI) applied include both agricultural and nonagricultural applications. The reported cumulative acres treated include primarily agricultural applications. [Data are available at <https://files.cdpr.ca.gov/pub/outgoing/pur/data/>](https://files.cdpr.ca.gov/pub/outgoing/pur/data/).

We believe that an overhaul of the mill fee is critical to remove the perverse incentives built into the current funding structure, and that the Department's proposal in 2021 to establish a tiered mill fee (higher fees for more hazardous pesticides) does not go far enough in uncoupling the relationship between resources and pesticide use. We believe California should match the bold vision of the European Union in establishing measurable and enforceable targets for pesticide

¹⁴ <https://www.agri-pulse.com/articles/17372-debate-flares-up-in-legislature-over-pesticide-risks> p.39

¹⁵ https://www.cdpr.ca.gov/docs/pur/pur18rep/pur_data_summary_2018.pdf

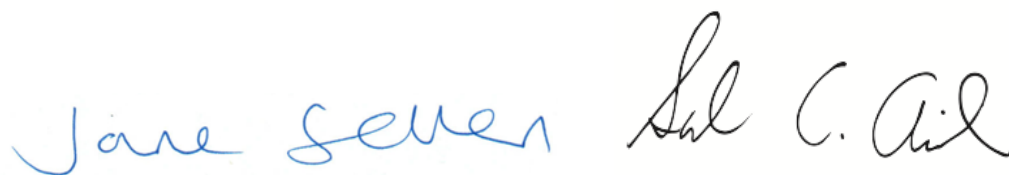
use reduction and organic adoption, and such targets will not be possible as long as the department charged with regulating pesticides is dependent for its fiscal viability on their continued use at current levels or higher.

Moreover, the Department as currently constructed lacks public accountability, such as is offered by the governing board of its sister entity CARB, which at least must hold public meetings and receive regular public input.

And finally, DPR's relationship with other state entities - CARB, OEHHA, SWRCB, DWR, DPH, DOE, DOT, CNR, CDFA and more - must be reimagined so that we no longer find ourselves as a state unable to achieve statewide pollution reduction goals because the entity charged with implementing them lacks specific authority over pesticides. The continued exclusion of pesticides, or any role for DPR, from the new ozone State Implementation Plan, Scoping Plan, AB 617, Water Resilience Portfolio and more, is simply unacceptable, especially in the case of state entities such as CARB that are housed within the same agency.

Thank you for shining a light on this important topic and for inviting public comment. We look forward to continued engagement in the coming months.

Sincerely,

The image shows two handwritten signatures in blue ink. The first signature, on the left, is 'Jane Sellen' and the second signature, on the right, is 'Sarah C. Aird'.

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

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