May 25, 2023

Julie Henderson, Director
California Department of Pesticide Regulation
Via email: ProjectMillStudy@cdpr.ca.gov

Comment on the Crowe Preliminary Recommendations and Implementation Plan for Reform of the Pesticide Mill Fee

Dear Director Henderson,

Thank you for the opportunity to comment on the draft Preliminary Recommendations and Implementation Plan for a revised pesticide mill fee proposal. The undersigned coalition of environmental, environmental justice, biodiversity and health organizations submits these comments for your consideration.

We agree that the Department of Pesticide Regulation (DPR) requires a stable and adequate funding source to support their core mission to protect human and environmental health. We agree with the inclusion throughout the recommendations of implementation of the state’s
Sustainable Pest Management (SPM) Roadmap, as well as the conclusion that activities that incentivize or support safer pest management are central to the core mission of the Department and therefore appropriately funded by the mill fee. Roadmap implementation should be integrated into DPR’s core workload rather than siloed out with a separate mill allocation. As Crowe acknowledges, the proposed mill allocation set-aside for SPM Roadmap implementation is inadequate for the task ahead.

We recommend that DPR adopt a tiered mill fee, with no phase-in period and no statutory ceiling, sufficient to fully fund and achieve the goals of DPR’s SPM Roadmap. We recommend tiering based on higher fees for pesticides known to be highly hazardous or associated with a high workload.

Our coalition is united in opposing Crowe’s recommendation for DPR to adopt a flat fee percentage of pesticide sales with an increase to be phased in over 3-5 years and with a ceiling set in statute.

**Tiered fee structure based on workload**

The recommendations state that, because of the inelasticity of pesticide sales, a tiered fee structure would not influence use, and conclude that this is a primary reason it should therefore not be recommended. This conclusion does not follow. Given Crowe’s finding that a higher mill fee will not suppress or change use, it follows that a tiered mill fee with increased fees for more hazardous pesticides would bring in more revenues and would therefore allow DPR to meet its goal of increasing and stabilizing the Department’s revenues, regardless of whether it also achieves the goal of reducing hazardous pesticide use. The same can be said for a flat rate increase, and is therefore not a basis for rejecting a tiered proposal.

In fact, in Exhibit 42, Crowe acknowledges that tiering would in fact i) encourage safer and sustainable alternatives; ii) better reflect the true cost; iii) support risk reduction goals; and iv) allow for more targeted policy interventions. These are essential outcomes needed to protect the public and ought to be a driving factor in decision-making around funding structures.

- In light of these acknowledged likely outcomes, the coalition strongly supports a tiered mill fee structure.

**A tiered mill fee proposal based on workload should be analyzed and offered**

Crowe suggests that, once DPR has identified Priority Pesticides as part of the SPM Roadmap process, DPR “could consider” a tiered fee for those pesticides. However, because the recommendations fail to offer a tiered proposal, DPR’s consideration will have to be based on a future study. We find this to be a serious omission, given Crowe’s remit to fully analyze a variety of fee structures and make a recommendation from among them. DPR is left with no other proposal to consider, which represents an opportunity wasted in this current fully-funded effort.

To enable the serious consideration and eventual adoption of a tiered mill structure based on priority pesticides, the final recommendations should include an analysis of a tiered fee based on a known category of high risk pesticides, such as: the 61 high-workload pesticides already
identified by Crowe; DPR’s previous mill fee reform proposal to tier chemicals based on US EPA signal words; or the 132 agricultural pesticides identified by OEHHHA’s rigorous selection criteria for inclusion in CalEnviroScreen for their combination of hazard and volatility. Along with a tiered proposal, Crowe’s final recommendations should provide a detailed analysis of the likely revenues and sustainability of such a concept.

In its justification for rejecting a tiered proposal based on workload, the Crowe analysis states that “there is no workload data to transparently and consistently provide the information needed to justify an assessment differential” (p.85). However, relatively straightforward assessments or studies could be conducted to estimate the workload for these AIs.

Additionally, as Crowe acknowledges, workload data does not currently exist to justify a flat fee either: “A flat mill rate does not account for the varying levels of DPR workload or negative externalities associated with different pesticides, potentially underpricing the true cost of more work intensive or hazardous substances” (p.80).

Instead of a detailed tiered proposal and analysis, the recommendations include a table of pros and cons of a fixed versus a tiered mill (pp.80-81), which include unchallenged assumptions, such as noting as an argument against tiering that “[a] commonly cited example is that using more concentrated (and potentially more hazardous) products is beneficial from the lens of reduced material use and reduced fuel required for shipping but problematic from a risk perspective.” This “commonly cited example” should be subjected to a complete and accurate assessment. This and other assumptions should be analyzed by comparing risks, revenues, use type, transportation costs and other factors resulting from a range of fixed and tiered proposals.

It would be instructive, too, to conduct analysis of the contribution to DPR’s budget of sales of specific highly hazardous classes/types of pesticides, such as fumigants, organophosphates, pyrethroids and neonicotinoids. Key questions the analysis could address include: Are these chemicals more or less expensive per pound than others? Is the contribution to DPR’s budget of the extremely heavily used class of fumigant pesticides preventing policy action that might reduce or eliminate them? What is the reason for the enormous spike in pesticide sales shown in Exhibit 12, and why did it have no effect on DPR’s revenue?

Crowe’s recommendation is to phase in a flat fee increase between 2024 and 2027-2029 (3-5 years), with review of the mill fee slated for 2029 and then every 5 years thereafter. We believe a reasonable timeline for DPR’s development of a list of Priority Pesticides is 2 years (by 2025), well within the currently proposed phase-in period for a revised mill fee. We believe it is a mistake to propose a timeline that ignores the concurrent opportunity for a tiered proposal presented by the Priority Pesticide list.

- Our coalition recommends that DPR adopt a tiered mill fee based on AIs already known to be highly hazardous or associated with a higher workload
- Our coalition recommends that DPR commit to completing its list of Priority Pesticides by 2025, which will provide certainty and a fixed timeline for this critical task of SPM Roadmap implementation.
Sustainable Pest Management Roadmap recommendations

We welcome the emphasis in the recommendations on implementation of the Sustainable Pest Management Roadmap, and agree that the state must begin to move down the path charted by the roadmap on an expeditious timeline.

However, the final recommendations must go much further in linking mill fee funding to the Roadmap’s implementation and specifically in accelerating the selection of Priority Pesticides and other critical implementation steps.

Among Crowe’s recommendations is a 2.5 mill increase to support SPM Roadmap implementation, with an acknowledgement that this represents start-up funding, and that “complete implementation of all SPM Roadmap priorities will likely require a more comprehensive funding strategy beyond the mill assessment” (p.47).

The transition to SPM is central to DPR’s mission, and activities that achieve this transition are core activities, not a sideline. The reform of the mill fee and implementation of the SPM Roadmap should be coordinated and mutually supportive. It is disappointing to see a mill fee reform proposal that is acknowledged to be insufficient to achieve full Roadmap implementation.

The report states:

“Given the recency of the release of the SPM Roadmap and future identification of Priority Pesticides, it is premature to change the mill assessment structure from a flat assessment to a tiered assessment. Maintaining a flat assessment in the near-term will be administratively straightforward and will allow time for policy decisions and funding needs for SPM Roadmap activities to be identified.” (p.38)

We disagree. Reform of the mill fee is a once-in-a-generation undertaking, and the opportunity to transition California agriculture toward a more sustainable pest management system may not be repeated. We urge Crowe to match this moment with ambitious recommendations that catalyze and fully support an expedited SPM Roadmap implementation process.

- We recommend that DPR adopt a mill fee that generates sufficient revenue to achieve its SPM implementation goals.

Mill fee ceiling set in statute

The Crowe recommendations include a statutory ceiling on the mill fee, set 10% above the recommended implementation amount. Our recommendation is that the mill fee be reformed in explicit support of DPR’s SPM Roadmap implementation, acknowledging that the hoped-for result of Roadmap implementation is the transition away from harmful chemical pesticide use, with obvious implications for DPR’s future revenue.

We oppose the adoption of a statutory ceiling because of the anticipated transformation of DPR’s responsibilities and workload as the SPM Roadmap is implemented. The recommendations as currently drafted do not meet DPR’s future funding needs. This reality is acknowledged in Crowe’s report, as noted above.
Given the historic rarity both of reforming the mill fee and of planning for a transition to sustainable pest management, we urge Crowe to recommend structural reform of the mill fee that meets this moment.

- Our coalition recommends not including a mill fee ceiling in statute, in order to retain the flexibility to adapt as needed during the roadmap implementation period.

**DPR’s budgetary reliance on pesticide sales**

The report’s discussion of the “Extended Producer Responsibility” (EPR) model, in which regulatory bodies are funded by fees from the entities they regulate, excludes discussion of the perverse incentive inherent in such a model. Although Crowe revisited the advisability of this model (pp.28-29), their analysis omits examination of the structural and existential disincentive for DPR to reduce pesticide use when their funding depends on maintaining or increasing sales. Although stakeholders from our coalition raised this issue repeatedly, our input was ignored in this analysis. This omission should be corrected in the final recommendations.

In practice, DPR’s EPR funding model has tracked with a remarkably consistent level of agricultural pesticide use by pounds of active ingredient over 30+ years since Pesticide Use Reporting began - at roughly 200 million pounds per year.

**Dismissal of General Fund as a funding source**

Crowe’s rejection of the General Fund as a “sustainable or appropriate funding source to support the recommended proposal options” (p.30) warrants further examination. The noted concern regarding “volatility of General Fund allocations” does not suffice as a legitimate reason to dismiss consideration of integrating state resources from the General Fund into mill fee structural reform. With implementation of the SPM Roadmap, a structural reliance on pesticide sales to fund DPR programming will be equally volatile, if not more so. Diversifying DPR’s funding sources with tax-payer dollars is precisely the integrated approach needed to shift DPR away from relying on pesticide sales to fulfill its institutional obligations. Raised mill fee funds could go into the general fund instead of directly into DPR’s budget to be distributed to a range of California agencies and programs, breaking the direct link between pesticide sales and the department’s budget.

The planned transition away from harmful pesticide use, as guided by the SPM Roadmap, challenges the mill fee’s structural dependence on pesticide sales and the predictability of its revenue stream. It is therefore an opportune time to set up safeguards for DPR’s resilience through transformation of its funding structure that ensures adequate and sustainable funding for a planned future free of harmful chemical pesticides, which is the Roadmap’s North Star.

- Our coalition recommends consideration of the General Fund as a complementary funding source along with the mill fee. This approach is reflected in Governor Newsom’s May 2023 Budget Revise, which proposes general fund resources to support activities related to SPM Roadmap implementation.
Crowe’s industry affiliation
As an allied member of the Agricultural Council of California along with pesticide giants Bayer, Corteva and Syngenta, the impartiality of Crowe’s recommendations is compromised by its industry affiliations. Indeed Crowe repeatedly refers to a 5% drop in pesticide sales as a “worst case” scenario without clarifying whether a “better” scenario would be higher or lower pesticide use. For industry and for DPR’s revenue stream, clearly more pesticide use would be better, and we take that to be Crowe’s meaning. For community members and other stakeholders impacted by pesticide use, that inference is disturbing and perhaps revealing of inherent bias.

Conclusion
The signatories to this letter are DPR’s primary stakeholders, given the Department’s mission to protect human and environmental health. We urge you to reconsider Crowe’s key recommendations, and give full consideration to other proposals for structural reform of the mill fee.

Our coalition recommends that DPR adopt a tiered mill fee, with no phase-in period and no statutory ceiling, sufficient to fully achieve the goals of DPR’s SPM Roadmap, with tiering based on higher fees for pesticides known to be highly hazardous or associated with a high workload.

In addition, we request that the discussion of the EPR model include rigorous analysis of how and whether the mill fee incentivizes continued high use of hazardous pesticides. We also urge you to consider a diversified funding stream that ensures Departmental resilience for the planned transition away from harmful pesticide use.

Our coalition is unable to support DPR’s adoption of Crowe’s recommendations as currently drafted.

Sincerely,

Daniel Gluesenkamp, Executive Director, California Institute for Biodiversity
Vanessa Forsythe RN MSN, Leadership Council Member, California Nurses for Environmental Health and Justice
Anne Katten, Pesticide and Work Health and Safety Specialist, California Rural Legal Assistance Foundation
Jane Sellen & Ángel Garcia, Co-Directors, Californians for Pesticide Reform
Jonathan Evans, Environmental Health Legal Director, Center for Biological Diversity
Rebecca Spector, West Coast Director, Center for Food Safety
Grecia Orozco, Staff Attorney, Center on Race, Poverty, and the Environment
Nayamin Martinez, Executive Director, Central California Environmental Justice Network
Laura Deehan, State Director, Environment California
Bill Allayaud, California Director of Government Affairs, Environmental Working Group
Lena Brook, Acting Director - Food and Agriculture, Natural Resources Defense Council
Asha Sharma, Organizing Co-Director, Pesticide Action Network