



November 26, 2024

## **OPEN LETTER TO THE DPR PESTICIDE REGISTRATION AND EVALUATION COMMITTEE (PREC)**

Re: Draft regulation of 1,3-dichloropropene for occupational bystanders

To the 15 members of the PREC and their alternates:

We are writing to urge you to take the opportunity in the upcoming December 6 PREC meeting to raise questions in a public setting about the draft regulation of the carcinogenic fumigant pesticide 1,3-dichloropropene (1,3-D). We thank Director Julie Henderson for extending this additional opportunity for the public to comment and for the PREC to ask questions on this important issue.

### **Unique role of the PREC:**

The PREC is currently **the only regularly scheduled public forum** to question or comment on DPR's decision-making processes. In a [letter](#) to our coalition dated September 13, 2024, Deputy Director of Registration and Evaluation described the role of the PREC thus: "The PREC provides advice, consultation and insight to DPR on our work to evaluate and mitigate pesticide risks to protect people and the environment through our registration and evaluation processes."

DPR and OEHHA have previously provided opportunities for stakeholders, including the CPR coalition, to ask questions about the development of the regulation before the draft was released, but only in non-public meetings behind closed doors. Since the public comment period for 1,3-D began on Friday November 15, the public is no longer permitted to ask questions or receive answers from the Department.

Members of the PREC are therefore **the only people in the state** with the ability to ask these questions in public and receive responses on the record. Unfortunately, at the November 15 PREC meeting, members of the PREC were given the instruction that they could ask only technical or clarifying questions. **This is an unacceptable limitation placed on a committee tasked with advising, consulting and providing insight.** At the November 15 meeting, only one question was asked by the PREC and no public comment was permitted, despite intense interest from the public and several people waiting in the queue with their hands raised. This was a missed opportunity for public transparency and basic good governance.

We appreciate that DPR has scheduled an additional public PREC meeting for public comment, and we urge you to review our concerns, outlined below, and to raise them at the meeting on behalf of the public.

### **Two-tier regulations of 1,3-D:**

Our primary concern remains the decision by the Department to proceed with two different regulatory targets for cancer risk: one for worker bystanders who have exposure from working near fumigated fields, and another, much higher one for children and other residents of farmworker communities. This decision will leave residents of these majority Latino and Indigenous communities insufficiently protected from cancer for their lifetimes. Knowingly leaving vulnerable populations exposed in this way cannot be justified scientifically or morally.

To briefly recap, in 2016 DPR set a target exposure level of 50 micrograms per day, which is equivalent to a lifetime cancer risk level of 0.56ppb (daily exposure for a 70 year lifespan). This was a large increase from DPR's previous level of 0.16 ppb and was used to justify a 50% increase in the township cap (the annual amount allowed for all growers in each 6x6 mile township), from 90,250 pounds to 136,000 pounds.

In 2022, OEHHA established a No Significant Risk Level (NSRL) for all Californians of 3.7 micrograms per day, equivalent to a lifetime cancer risk level of 0.04ppb - 14 times less than DPR allows.

On January 1, 2024, DPR implemented a regulation for *residential bystanders* that disregards the OEHHA NSRL and instead uses the target of 0.56ppb. This was the first of two regulations planned for 1,3-D.

The second regulation that was released last week in draft form, and for which we are now in a public comment period, is for *occupational bystanders* and was developed jointly and mutually with OEHHA. The regulation uses the OEHHA NSRL of 3.7 micrograms per day, which translates to a cancer risk level of 0.21ppb for a working life of 40 hours per week for 40 years. This level is 5.25 times higher than the level considered safe for a lifetime of exposure. OEHHA estimates that more than 90% of farmworkers are also residents of farmworker communities, but their exposure outside of their 40 hour workweek is not considered.

In determining the methods for achieving a level of 0.21ppb, DPR modeled exposure close to fumigated fields based on an 8am-4pm workday for occupational bystanders. 1,3-D emissions drop off dramatically during the day, but more than 90% of farmworkers begin work before 8am and are therefore exposed to the much higher levels that occur at night and in the early morning hours. OEHHA received data on typical workday start times but so far no adjustment has been made to the modeling. This casts serious doubt on the adequacy of mitigations proposed (100 foot buffer for 48 hours) under the draft regulation, because modeling shows much higher night time and early morning exposures, when many workers are already in the field.

The proposed mitigation of 100 foot buffers enforced for 48 hours around only some fumigations does not factor in protection from general ambient work-time exposure to 1,3-D in high use areas because DPR and OEHHA don't yet have a method for modeling near-field and general ambient exposure together. This is another reason that a single regulation designed to protect all bystanders, both residents and workers, to the 0.04 ppb level would make more sense. We are also concerned to learn that DPR's proposed regulation does not require posting of buffer zone perimeters.

Overall, this draft regulation, like the recently finalized residential bystander regulation, relies on unproven methods for containing emissions instead of use reductions or adoption of alternatives. These methods include TIF tarps, which can rip or blow off, and deeper injection and increased soil moisture which are very hard to monitor and enforce across large application sites, and face real world complications such as rocky ground, lack of water, and lack of accountability for accurately measuring soil moisture content.

The two-track regulations will also eliminate the township use cap, potentially leading to even more use. The proposed requirement to evaluate the adequacy of the regulation by reviewing 1,3 D air level modeling and monitoring data to determine if annual air concentrations exceed 0.21 ppb in any township is a good concept, but in order to be health protective, it needs to look at annual average data rather than wait for 3 to 5 year averages. Likewise, exposures at night and in the early morning should be modeled routinely, rather than only if the predicted air concentration during 8 am to 4 pm workshifts exceed 0.21 ppb. The regulation should also include deadlines for adopting mitigations and they should remain in place as long as air level modeling and monitoring indicate they are needed. As PREC member Garrett Keating noted, more targeted air monitoring will be needed for meaningful evaluation.

DPR maintains four pesticide monitors at schools in the Central Coast and San Joaquin Valley, plus two more that measure only 1,3-D. The average concentration of 1,3-D at all six monitors exceeds the OEHHA NSRL. Because DPR uses a level that is 14 times higher than OEHHA's, the claim in the 2023 Air Monitoring Network report that air levels monitored are "unlikely to be harmful to human health" is unfounded - especially given that DPR's own draft regulation for worker bystanders employs OEHHA's NSRL, which is exceeded at all monitors.

### **DPR should address these contradictions on the record**

Only the PREC can ask DPR to publicly explain the reasoning behind:

- Adopting a two-tier regulatory framework with one cancer level for workers and a much less protective level for residents, including children;
- Disregarding OEHHA's NSRL for children and other residents;
- Disregarding the additional lifetime exposure experienced by most farmworkers;
- Eliminating the township use cap;
- Relying on unproven and hard-to-verify emissions reduction methods instead of use reduction;
- Relying on a false assumption about work times that will leave workers vulnerable to high emissions at night and in the early morning

- Failing to require posting of the 100' buffer zones perimeters in the proposed regulation.

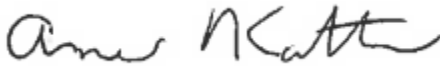
**As members of the PREC you are in a unique position to ask questions that no one else in the state is permitted to ask publicly.** We urge you to review the information about this hazardous chemical and take seriously your responsibility to the public to provide “advice, consultation and insight.” While California has vowed to “Trump-proof” our laws, continued unfettered use of 1,3-D (banned in 34 countries but the third most used pesticide in California) is a stain on our state’s reputation as a leader on environmental and public health.

We implore you to use your position to speak up for all Californians.

Sincerely,



Jane Sellen and Angel Garcia, Co-Directors  
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