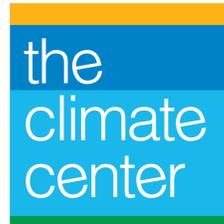






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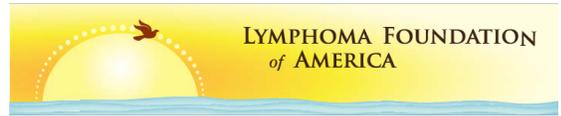


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January 18, 2023

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California Department of Pesticide Regulation

Via email: dpr22005@cdpr.ca.gov

RE: Comments on proposed regulation #22-005 for 1,3 dichloropropene soil fumigation

Dear Director Henderson, Dr. Pham and Ms. Otani,

Thank you for the opportunity to comment on the California Department of Pesticide Regulation's (DPR's) proposed regulation for the soil fumigant 1,3-dichloropropene (1,3-D). The undersigned 126 signatories, representing a broad coalition of environmental, EJ and

sustainable agriculture groups, community-based organizations and unions, submit these comments for your consideration.

Tighter restrictions on use and emissions of the pesticide 1,3 dichloropropene (1,3-D) are urgently needed because this cancer-causing soil fumigant is highly drift prone, with long-term air levels greatly exceeding the Proposition 65 Safe Harbor level at all of DPR's air monitoring network sites and short-term spikes in air levels posing risk to infants and the elderly.

1,3-D is the third most heavily used pesticide in California with over 12 million pounds of use reported annually. It is used as a pre-plant soil fumigant mainly for berry crops along the central coast; almonds, sweet potatoes, tree fruit, grapes and nursery crops in the San Joaquin valley; and carrots in Imperial County. 1,3-D has been banned in 34 other countries. California should be working towards rapidly reducing and eliminating use, and accelerating the research and adoption of alternative practices.

We have grave concerns that these regulations, as proposed, will fall far short of protecting fieldworkers and other rural residents from harmful levels of exposure to this cancer-causing and highly drift prone soil fumigant because:

- 1) The rule is not designed to control 1,3-D use and emissions to the level recommended by the Office of Environmental Health Hazard Assessment (OEHHA) for cancer risk control;
- 2) Farmworkers and other outdoor workers are left unprotected and are allowed to work at the very edge of fumigated fields;
- 3) The proposed emissions reduction measures will be difficult to enforce;
- 4) The use cap, and the requirement to keep a running total of 1,3-D use and prohibit further applications when the use cap has been reached, have been eliminated;
- 5) There is no required timeline for completion of an annual report on 1,3-D use, air monitoring levels and potential need for increased mitigations.

The regulation must be redesigned to control 1,3-D exposures to the Proposition 65 Safe Harbor Level

To be health protective, the regulation needs to be redesigned to control maximum average annual air levels to the Proposition 65 No Significant Risk Level (NSRL) set by the Office of Environmental Health Hazard Assessment (OEHHA), which is 3.7 micrograms per day, equivalent to an average annual air concentration of 185 ng/m³ or 0.04 ppb. This level is being exceeded from 2.5 to 29-fold at the Department's six air monitoring stations.

Currently the regulation is only designed to reduce annual air levels to 0.56 ppb, a level 14 times higher than the Prop 65 NSRL. In setting the NSRL, OEHHA obtained and reviewed additional data that led them to revise their 2015 recommendation of 0.1 ppb. DPR must follow the latest science to ensure that farmworkers are fully protected.

Farmworkers must not be excluded from this pesticide regulation

Proposing a pesticide regulation that is expressly designed to protect residential bystanders only, and which excludes from its scope low-income Latinx people who work around treated fields, is an outrageous environmental injustice that must be corrected. In *Vasquez vs DPR and Dow*, the court ordered DPR to develop a regulation that protects farmworkers (occupational bystanders) and to work in concert with OEHHA on development of pesticide worker protection regulations in accordance with Food and Agriculture Code sections 12980 and 12981.

DPR's draft regulation is designed to reduce peak 1,3-D air levels by reducing maximum application plot size, a change that may reduce peak acute exposures but will result in a greater number of applications to smaller field areas. In turn, this can be expected to increase the number of days of possible work adjacent or very close to recently fumigated fields for fieldworkers, tractor drivers and irrigators preparing other field sections for fumigation, and other outdoor workers. By excluding worker bystanders from this regulation, the Department is callously ignoring their exposures to 1,3-D.

There is no legitimate basis for DPR to adopt setbacks between treated fields and occupied structures (except structures like barns that are agricultural workplaces) while at the same time allowing farmworkers and dairy workers to work for full days, even multiple workdays, up to the very edge of the treated field immediately after and even during the fumigation. DPR is willfully omitting farmworkers in the draft regulation in order to enable continued high levels of 1,3-D use.

Setbacks or buffer zones between treated fields and nearby fields where work could be taking place should be included in the regulation.

The requirements for keeping a running tally of 1,3-D applications at the local township level and enforcing a township cap must be taken over by the Department

In the face of the uncertainties in modeling and in extrapolating from results of small-scale studies of new application methods, the proposal to eliminate the use cap and the requirement for a running tally of 1,3-D applications is reckless.

The Department should take over the duty for maintaining this real-time 1,3-D use inventory and enforcing a health protective use cap by reviewing all 1,3-D Notices of Intent to determine whether or not they should be granted. 1,3-D use reports should then be required to be submitted to both counties and DPR on the date of fumigant application.

Any business with the technical expertise to conduct fumigations is clearly capable of submitting both Notices of Intent and pesticide use reports online. DPR can then use spreadsheets to keep a running tally of adjusted total pounds and total pounds used per township and hot spots within townships.

The township cap must be retained but reduced to a 1,3-D use level designed to protect to the Proposition 65 No Significant Risk Level (NSRL).

The draft regulation eliminates the township cap on 1,3-D use entirely, leaving no mechanism to prevent increased use. Instead, the township cap must be retained and reduced to a level designed to reduce average annual levels below the Proposition 65 NSRL of 0.04 ppb.

Enforcement Concerns

How will 50% moisture and 24" injection depth be monitored and enforced across large fumigation plots, especially given the scarcity of water and the presence of rocks and tree roots impeding 24" injection? How has the reliability of the three proposed methods for checking soil moisture been evaluated? How will injection depth be verified in inspections and investigations?

It is concerning that in 2020, according to DPR Enforcement Profile statistics, in the high use San Joaquin valley counties of Fresno, Kern, Merced and Stanislaus, an average of only 18 soil fumigations were inspected. Only 7 fumigation inspections were conducted in Kern County where some of the highest recent 1,3-D exceedances were measured.

We are also concerned rather than reassured to note that no violations were found in 98.7% of soil fumigation use inspections statewide. Such a high rate of compliance suggests that inspections may not be thorough enough and it stands in stark contrast to the poor enforcement record for TriCal, the state's largest fumigant application company. TriCal is facing licensing action by DPR due to past violations resulting in a total of 40 incidents in multiple counties and characterized by DPR Enforcement Deputy Ken Everett as "an unacceptable pattern of egregious and dangerous actions that place workers and the public in danger".

Annual report requirement must include a due date

Requiring an annual report with a public comment period and including the fumigation method in pesticide use reporting will improve transparency but the regulation also needs to include a timeline or deadline for annual report release. We propose June 1st of the subsequent year as an appropriate deadline for issuing the Annual Report. The scope of the report also needs to be expanded beyond the 10 highest-use townships in the state. At minimum it must include all high use townships in each county and those spanning multiple counties. The regulation also needs to include clear requirements for timely tightening of use restrictions if 1,3-D levels documented in air monitoring or predicted by modeling exceed action levels, rather than the vague obligation to "determine if additional restrictions are needed" in the proposed regulation. Clear regulatory triggers have precedence in the field fumigation VOC emission limits (CCRT3 section 6452.2).

Conclusion

As currently drafted, this proposed regulation falls far short of protecting farmworkers and other rural bystander workers and residents from health-harming levels of exposure to 1,3-dichloropropene. We urge you to carefully consider our recommendations for strengthening this regulation and to establish clear and enforceable reduction targets for 1,3-D use and emissions.

Sincerely,

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