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Re: Public Comment regarding DPR's Draft Evaluation of Chlorpyrifos as a Toxic Air Contaminant

Introduction

The California Environmental Protection Agency's Department of Pesticide Regulation has created heightened protections for farmworkers from particularly harmful pesticides in the past. However, its newly proposed "Draft Evaluation of Chlorpyrifos as a Toxic Air Contaminant" ("Draft Evaluation") sharply departs from DPR's record of protecting workers from chemical exposure and health risks against certain pesticides. Despite frequent, well-documented problems with agricultural employers misusing chlorpyrifos, leaving farmworkers and their families repeatedly poisoned on the job, the Draft Evaluation does not evaluate health impacts or contemplate enhanced legal protections for farmworkers. Worse yet, DPR has placed no mandatory temporary protections in place during this newly proposed, lengthy risk characterization process.

The ACLU has a substantial interest in the safety of farmworkers regarding pesticide application and drift because of the impact that pesticide use has on the health and safety of Central Valley residents, and on low-income immigrant and Latino residents in particular. Farmworkers and community-based organizations have informed the ACLU that, because many farmworkers speak little to no English (and in the case of indigenous farmworker communities, not even much Spanish), county agricultural commissioners and, ultimately, DPR routinely fail to provide adequate follow-up on workers' exposure incidents, inquiries, and complaints. This broadens the information gap for DPR when assessing the impact of dangerous pesticides like chlorpyrifos on farmworkers. DPR has been on notice of the dangers of pesticide drift, of chlorpyrifos, and of unsafe working environments for farmworkers for many years. In 2009, the ACLU filed *Bautista v. State of California* along with several local and state organizations to ensure better protections for farmworkers regarding heat safety provisions, and is working to do

the same for pesticide protections in agricultural employment at present. Further, the ACLU wrote to DPR in 2016 regarding the disparate impact of the lack of pesticide exposure protections for school children and inadequate pesticide regulations.

Martinez, Aguila-socho & Lynch, APLC (“MAL”) is a California law firm specializing in labor and employment law, and provides legal representation to United Farm Workers of America (“UFW”) and United Farmworkers of America Foundation (“UFWF”), among other clients. Because of the years of service that UFW, UFWF, and MAL have already invested in advancing farmworkers’ rights in the workplace and in their communities, dating back to UFW’s founder Cesar Chavez, UFW, UFWF, and MAL have a substantial interest in protecting farmworkers and their families from the health risks of pesticide exposure on the jobs. UFW and UFWF’s advocacy in the field of pesticide protections for California Farm Workers extends back over the past half century of California history.

For more than four decades, California law has recognized the critical need to “provide for the safe use of pesticides and for safe working conditions for farmworkers....” *Fernandez v. California Dept. of Pesticide Regulation* (2008) 164 Cal.App.4th 1214, 1221. The DPR director is charged with adopting regulations to fulfill this mandate. FAC §§ 12980-81.

A DPR risk assessment process is designed to assess Californians’ exposure, health risks, and response under various conditions to estimate the probability of harm. DPR cannot assess exposure and response to farmworkers’ occupational trauma from chlorpyrifos if the impacted group—agricultural workers—is not even included in the risk assessment. In its past treatment of potentially dangerous pesticides, DPR has analyzed worker protections along with general public needs. For example, back in 2002, DPR issued a methyl bromide risk assessment document that focused on subchronic exposure to methyl bromide for the general public *and* adult workers. During that process, DPR drafted emergency regulations to protect the public, as well as workers, while the assessment process ran its course. But in the current chlorpyrifos risk assessment process, of which the Draft Evaluation is the core document, DPR has chosen to turn a blind eye to farmworker needs, protections, and analysis, and has put no emergency protection measures in place.

Factual Background

Over a million pounds of the pesticide chlorpyrifos are used in California each year, primarily in the agricultural production of almonds, walnuts, oranges and lemons.¹ Farm workers routinely risk exposure and/or actually experience exposure to dangerous levels of chlorpyrifos during the course of their regular job activities.² Federal government estimates indicate that

¹ *Farmworker Communities Call on California to Ban Brain-Harming Pesticide Chlorpyrifos*, Californians for Pesticide Reform (Jul. 7, 2017), <http://www.pesticidereform.org/2017/07/14/farmworker-communities-call-on-california-to-ban-brain-harming-pesticide-chlorpyrifos/>.

² *Citing Harms to Kids, Leading Scientists and Healthcare Professionals Call for Ban on Dangerous Pesticide*, National Resource Defense Council, Expert Blog of Veena Singla (Jan. 5, 2017),

10,000 – 20,000 farmworkers are poisoned on the job each year by pesticide exposure of some kind.³

Chlorpyrifos effects the lives of farmworkers, their families, and their communities around the state and country. The ACLU, United Farm Workers of America, United Farm Workers of America Foundation, and Martinez, Aguila-socho & Lynch, APLC interviewed workers who, along with almost 50 of their coworkers, had been exposed to a chlorpyrifos drift incident in San Joaquin Valley lettuce and cabbage fields in late spring 2017.⁴ The workers reported that, prior to, during, and after their exposure, none of them were wearing any protective gear provided by their employer that could have mitigated their exposure risk. A few wore kerchiefs brought from home that they had tied over their faces to keep off the dust and sun.

One spring 2017 morning, there were 50 crewmembers who simultaneously became violently ill. The exposure to pesticide drift from the neighboring farm's spraying of chlorpyrifos caused this reaction. Indeed, the workers had been working in the fields for a couple of hours without any idea of this dangerous situation. The farmers did not warn the workers that this pesticide application would occur as required by DPR's worker protection standards. *See generally* CCR §§ 6723-24. The workers felt abrupt nausea, extreme thirst, dry and tingling mouths and noses, and some workers were vomiting and had difficulty breathing. Some workers became so ill that they requested to be brought to the hospital immediately. The farmers finally told the crew to stop working for the rest of the day. This request led to only a half day off of work that they were forced to take *unpaid*.

Several hours after the chlorpyrifos drift caused the farmworkers to become violently ill, first responders reported to the scene. The only response that the workers received from anyone after they were asked to stop work was an instruction from first responders to rinse off their hands and face with water with hose water wielded by a fireman. Neither the farmers nor the first responders provided soap or cleanser to the ill farmworkers. Other than this cursory hose rinse,

<https://www.nrdc.org/experts/veena-singla/citing-harms-kids-leading-scientists-and-healthcare-professionals-call-ban>; *Pesticide Safety*, Farmworker Justice (viewed Sep. 21, 2017), <http://www.farmworkerjustice.org/content/pesticide-safety>.

³ *Pesticides: the Workplace Hazard the EPA is Ignoring*, EarthJustice (viewed Sep. 21, 2017), <https://earthjustice.org/features/pesticides-the-workplace-hazard-the-epa-is-ignoring>; *Pesticide Safety*, Farmworker Justice (viewed Sep. 21, 2017), <http://www.farmworkerjustice.org/content/pesticide-safety>.

⁴ Interview notes from these worker interviews, conducted by attorney Abre Conner, Staff Attorney, ACLU of Fresno, CA, and attorney Margaret Serrano, Staff Attorney, Aguila-socho & Lynch, APLC, are on file with these attorneys' offices.

Identifying information of the workers' interviewed is omitted from this document (although some of the workers interviewed had previously spoken with DPR representatives about the pesticide exposure incident described herein), due to workers' fear of workplace retaliation, and due to the commonplace nature of workplace retaliation in the agricultural industry against farmworkers when their employers find out that they have spoken with attorneys to seek protection of their own workplace rights. Although such retaliation is unlawful, legal action to seek remedy for such retaliation often takes months or years to produce results, by which time workers' support for any legal action that might have been in process at the time of the retaliation has usually dried up.

no decontamination measures were implemented by the workers' employer or by anyone else.⁵ The farmers failed to give the farmworkers any required worker protection instructions regarding the cleaning or disposal of their contaminated clothing or on any measures to avoid contaminating their families with the pesticide upon returning home. *See* CCR §§ 6723-24, 6734. Indeed, many of the farmworkers had no idea what to do with their contaminated clothing and expressed during interviews that farmers never made this information available to them.

The very next morning, the farmers summoned workers to work at the same work site where the exposure occurred the previous day, with no waiting period for reentry. Additionally, farmers never advised farmworkers that they could file a complaint about the exposure. Many of the workers reported tingling and dry mouths, burning lungs, and stomach upset for days, weeks, and months after the exposure. None of them were offered any compensation, explanation, updated safety training, or even apology for having suffered this exposure, despite the formally filed investigative report that DPR also has access to review.

Federal and State History of Chlorpyrifos Analysis and Assessments

A widely recognized body of scientific evidence demonstrates that chlorpyrifos exposure causes irreversible neurological and respiratory damage, developmental delays, increased incidence of autism spectrum disorders, and IQ loss.⁶ In 2000, the EPA banned chlorpyrifos for most residential uses.⁷ In late 2016, the EPA released a new chlorpyrifos target risk level, or level which chlorpyrifos residues on fruits and vegetables consumed by women and children should not exceed, and the EPA's own analysis showed that these safe exposure levels are exceeded by up to 14,000% in fruits in vegetables that reach consumers, even if the fruits and vegetables are eaten after being washed and peeled.⁸ Following over a decade of study and

⁵ CCR § 6734 requires that employees know where employers placed decontamination facilities. None of the interviewed farmworkers had knowledge of a decontamination facility at fields where they work.

⁶ *See e.g. Neurodevelopmental Disorders and Prenatal Residential Proximity to Agricultural Pesticides: The CHARGE Study*, Shelton, et al. Vol. 122, No. 10 Environmental Health Perspectives (Oct. 2014), <https://ehp.niehs.nih.gov/wp-content/uploads/122/10/ehp.1307044.alt.pdf>; *Prenatal Exposure to Insecticide Chlorpyrifos Linked to Alterations in Brain Structure and Cognition*, Columbia University Mailman School of Public Health (Apr. 30, 2012), <https://www.mailman.columbia.edu/public-health-now/news/prenatal-exposure-insecticide-chlorpyrifos-linked-alterations-brain-structure>; *Prenatal pesticide exposure tied to lower IQ in children*, University of California at Berkeley (Apr. 20, 2011), <http://news.berkeley.edu/2011/04/20/prenatal-pesticide-exposure-lower-iq/>; *see also Learning Disability Association of America Says EPA Decision Not to Ban Dangerous Pesticide Ignores Established Science and Puts Children at Greater Risk for Learning, Attention, and Behavior Disorders*, Learning Disability Association of America (March 30, 2017), <https://ldaamerica.org/lda-epa-decision/>.

⁷ *Chlorpyrifos*, United States Environmental Protection Agency (viewed Sept. 19, 2017), <https://www.epa.gov/ingredients-used-pesticide-products/chlorpyrifos>.

⁸ *Chlorpyrifos: Revised Human Health Risk Assessment for Registration Review*, United States Environmental Protection Agency (Nov. 3, 2016), <https://www.regulations.gov/document?D=EPA-HQ-OPP-2015-0653-0454>; *see also EPA: Toxic Pesticide on Fruits, Veggies Puts Kids at Risk*, National Resource Defense Council, Expert Blog of Miriam Rotkin-Ellman and Veena Singla (Jan. 6, 2017), <https://www.nrdc.org/experts/miriam-rotkin-ellman/epa-toxic-pesticide-fruitsveggies-puts-kids-risk>.

gradually increasing restrictions on chlorpyrifos,⁹ in late 2015 the EPA proposed a total federal ban on all uses of chlorpyrifos, which was slated to go into effect in early 2017.¹⁰

Despite these alarming findings, the new presidential administration reversed the EPA's 2016 decision allowing chlorpyrifos to continue in use until its next statutorily required registration review comes due in late 2022. California Attorney General Xavier Becerra and Attorneys General of six other states have filed a legal challenge against the EPA's failure to go forward with the chlorpyrifos ban.¹¹ United States Senator Kamala Harris has co-sponsored a bill that would ban chlorpyrifos nationwide.¹² The American Academy of Pediatrics issued a statement that chlorpyrifos' "risk to infant and children's health and development is unambiguous," and that "[t]he evidence is particularly strong linking [chlorpyrifos] exposure with pediatric cancers and neurological damage."¹³

DPR's Current Draft Evaluation Process

On August 18, 2017, DPR released the revised Draft Evaluation that is currently open for public comment through October 2, 2017, and to which the instant comment letter responds.¹⁴ Concurrently, as part of the same risk assessment process, DPR released interim safety measures ("Interim Measures") that set forth the restrictions on chlorpyrifos to be in place while the proposed Draft Evaluation runs its course.¹⁵ Shockingly, neither the Draft Evaluation nor the Interim Measures address in any way the prior federal EPA research findings that had led the federal government to propose a total nationwide ban on chlorpyrifos in late 2015.

At the end of this comment period, if the proposed Draft Evaluation goes forward as currently proposed by DPR, no new restrictions on chlorpyrifos use will be decided on—much

⁹ *Id.*

¹⁰ *Proposal to Revoke Chlorpyrifos Food Residue Tolerances*, United States Environmental Protection Agency (viewed Sept. 19, 2017), <https://archive.epa.gov/epa/ingredients-used-pesticide-products/proposal-revoke-chlorpyrifos-food-residue-tolerances.html>.

¹¹ *Trump's EPA Not Above the Law, Must Cure Any Conflicts of Interest*, State of California Department of Justice, Xavier Becerra, Attorney General (Aug. 11, 2017), <https://oag.ca.gov/news/press-releases/trumps-epa-not-above-law-must-cure-any-conflicts-interest>.

¹² *Sen. Udall Offers Bill to Ban Pesticide Known to Harm Kids' Brains*, Environmental Working Group (Jul. 25, 2017), <http://www.ewg.org/release/sen-udall-offers-bill-ban-pesticide-known-harm-kids-brains#.WcGkp9VSztQ>.

¹³ *Nation's Pediatricians, EWG Urge EPA to Ban Pesticide that Harms Kids' Brains*, Environmental Working Group (June 27, 2017), <http://www.ewg.org/testimony-official-correspondence/nation-s-pediatricians-ewg-urge-epa-ban-pesticide-harms-kids#.WcGhQtVSztS>.

¹⁴ *Draft Evaluation of Chlorpyrifos as a Toxic Air Contaminant: Risk Characterization of Spray Drift, Dietary, and Aggregate Exposures to Residential Bystanders*, California Department of Environmental Protection, Department of Pesticide Regulation (Aug. 18, 2017), http://www.cdpr.ca.gov/docs/risk/rcd/chlorpyrifos_draft_evaluation_2017.pdf.

¹⁵ *Directive for Interim Mitigation Measures to Address Health Risk from Chlorpyrifos*, California Department of Environmental Protection, Department of Pesticide Regulation (Aug. 18, 2017), http://www.cdpr.ca.gov/docs/whs/pdf/chlorpyrifos_interim_directive.pdf.

less implemented—until at least December 2018.¹⁶ As such, while DPR announced the Draft Evaluation and Interim Measures as “health protections” at the time of their release, in reality, they would more accurately be described as a *delay of protections*, the need for which has already been resoundingly established for years.¹⁷

During the duration of the proposed Draft Evaluation, the Interim Measures that would be in place impose *no binding protections* for Californians against chlorpyrifos exposure (they only outline certain recommended but unenforceable guidelines).¹⁸ Even once the Draft Evaluations lengthy and cumbersome process concludes at the end of 2018, there is little indication that it will result in adequate protections for agricultural workers, given that the Draft Evaluation focuses only on chlorpyrifos’ non-occupational risks, despite the clearly established urgency of the enormous health risk that chlorpyrifos poses to farmworkers.¹⁹

DPR already has legal and regulatory frameworks for implementing tighter regulation of other agriculture-use chemical products, which it could easily adapt for chlorpyrifos to protect farmworkers, their families, and communities from risk of direct contact and drift. Specifically, the California Food and Agricultural Code, Divisions 6 and 7, govern pesticide regulation in the state. While these provisions confer DPR the regulatory authority for increased worker protections for restricted chemical products such as methyl bromide and chlorpicrin, DPR has not enacted any such heightened protections for chlorpyrifos; this is despite its well-documented dangers.²⁰ Thus, California continues to neglect the adequate regulation of chlorpyrifos’ occupational uses that expose farmworkers and their communities to grave health risks, ignoring the state and nationwide advocacy efforts of organizations and coalitions such as Californians for Pesticide Reform, United Farm Workers of America, PAN North America, Farmworker Justice, and many more.

¹⁶ *California Pursues New Health Protections on Chlorpyrifos*, California Department of Environmental Protection (Aug. 18, 2017). Available at <https://calepa.ca.gov/newsroom/pressroom/news-release-california-pursues-new-health-protections-on-chlorpyrifos-2/>.

¹⁷ *California Pursues New Health Protections on Chlorpyrifos*, California Department of Environmental Protection (Aug. 18, 2017), <https://calepa.ca.gov/newsroom/pressroom/news-release-california-pursues-new-health-protections-on-chlorpyrifos-2/>.

¹⁸ *Directive for Interim Mitigation Measures to Address Health Risk from Chlorpyrifos*, California Department of Environmental Protection, Department of Pesticide Regulation (Aug. 18, 2017), http://www.cdpr.ca.gov/docs/whs/pdf/chlorpyrifos_interim_directive.pdf.

¹⁹ *Directive for Interim Mitigation Measures to Address Health Risk from Chlorpyrifos*, California Department of Environmental Protection, Department of Pesticide Regulation (Aug. 18, 2017), http://www.cdpr.ca.gov/docs/whs/pdf/chlorpyrifos_interim_directive.pdf.

²⁰ Cal. Food & Ag. Code, Div. 7, Ch. 3.; *Nation’s Pediatricians, EWG Urge EPA to Ban Pesticide that Harms Kids’ Brains*, Environmental Working Group (June 27, 2017), <http://www.ewg.org/testimony-official-correspondence/nation-s-pediatricians-ewg-urge-epa-ban-pesticide-harms-kids#.WcGhQtVSztS>.

The Draft Evaluation Fails to Comply with the Food and Agricultural Code's Mandate to Protect Agricultural Worker's Occupational Health and Safety

DPR must adopt regulations that ensure a safe working environment for farmworkers, in particular, and remove harmful pesticides to farmworkers. *See generally* FAC §§ 12980-81. DPR's current Draft Evaluation falls short of this goal. This is unacceptable given the ongoing frequency of farmworkers' exposure to chlorpyrifos on the job, such as the late spring 2017 incident, described above, when a chlorpyrifos drift exposure incident harmed almost 50 farmworkers. This is not to mention all of their family members, to whose homes they brought back severely contaminated work clothing, as the workers received no instruction on how to clean or dispose of the clothes they had been wearing during the incident. To fulfill DPR's direct mandate to protect farmworkers, DPR must include farmworkers and occupational uses of chlorpyrifos in any risk assessment process for chlorpyrifos.

The National Research Council explained that to properly perform a risk assessment, the hazards posed by the agent must be assessed in terms of the adverse health effects it can cause, along with frequency and duration of exposure.²¹ In 2002, when DPR recognized the need to protect the public and farmworkers, from methyl bromide, DPR's risk assessment conducted an explicit analysis for farmworkers. The ensuing regulations addressed subchronic exposure to the general public, as well as distinct regulations and analysis for field fumigant uses of methyl bromide that would protect farmworkers. Here, DPR's Draft Evaluation states the four groups of the general population assessed are infants, children 1-2 years, children 6-12 years, and women of childbearing age—without mentioning farmworkers at all. While DPR should absolutely should be working to ensure the safety of the general population, DPR cannot fail to provide protections for the Californians who are on the front lines of chlorpyrifos use, California's agricultural workers.

This erasure of farmworker stories in the currently proposed Draft Evaluation flies in the face of DPR's own records on chlorpyrifos exposure linked illnesses, which demonstrate that occupational chlorpyrifos use and exposure account for the vast majority of all reported chlorpyrifos-related illness.²² It also follows that farmworkers will almost certainly have different exposure levels and frequency than that of the general population. This understanding was reflected in the United States Environmental Protection Agency's ("EPA") November 2016 risk assessment on chlorpyrifos, in which the agency affirmatively analyzed both occupational and non-occupational impacts of chlorpyrifos.

Farmworker exposure to pesticides presents a variety of differences from exposure of the general population, differences which DPR ignores in its currently proposed Draft Evaluation. For example, the currently proposed Draft Evaluation will not adequately address the impact of

²¹ *Methyl Bromide Risk Assessment in California*, National Research Council (2000), <https://www.ncbi.nlm.nih.gov/books/NBK225619/>.

²² *Table 1. Chlorpyrifos Illnesses According to Exposure and Activity-All Use, 2004-2014*, DPR Memo re cases reported to the pesticide illness surveillance program (Aug 2, 2017).

chlorpyrifos due to spills, direct contact with pesticide residue, and defective, missing, or ineffective protective equipment. Even though each of these areas are within the scope of California's worker protection safety standards and regulated by DPR. Without a distinct focus on occupational exposure and on farmworker exposure, DPR cannot fulfill its statutory mandate to protect farmworkers occupational health and safety.

DPR Cannot Accurately Balance Chlorpyrifos' Risks and Benefits if it Ignores Chlorpyrifos' Effects on Farmworkers

DPR has a duty to assess whether chlorpyrifos should be used at all. FAC §§ 12824-25. The Food and Agricultural Code directs the DPR director to "give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of usage of the pesticide in California, persistence in the atmosphere, and ambient concentrations in the community." FAC § 14022(e). Any pesticide risk assessment process must determine any additional regulations or measures that must be taken to protect individuals at risk of exposure.

By failing to provide any analysis of farmworker exposure and occupational uses of chlorpyrifos in the instant Draft Evaluation, DPR cannot adequately assess the public health effects of chlorpyrifos on California's affected communities. Consequently, any mitigation efforts that DPR might implement as a result of this process will fall short of their legally mandated purposes. DPR's currently proposed Draft Evaluation and Interim Measures must be modified and improved to address these obvious shortcomings.

California regulations and California courts make clear that DPR must consider *all* available scientific data when conducting a risk assessment. *See* FAC § 14022(c); *Californians for Pesticide Reform v. California Dept. of Pesticide Regulation* (2010) 184 Cal.App.4th 887, 894. Numerous scientific research studies (as detailed above) demonstrate that any use of chlorpyrifos will impact brain development in vulnerable populations, and that chlorpyrifos use is not safe in any amount.²³ Nonetheless, DPR, in the current Draft Evaluation, has chosen to ignore its responsibility to *all* Californians—including farmworkers, their families, and their communities—to analyze all available scientific data in developing and implementing both temporary and permanent protections against dangerous chemical exposure.

In considering whether DPR should ban or more strictly regulate chlorpyrifos, DPR must investigate episodes and information that chlorpyrifos likely caused an adverse environmental impact. FAC § 14022(a). The Draft Evaluation does not adequately analyze occupational uses, despite the fact that many of the incidents happen in occupational spaces. It also does not include

²³ Melissa Phillips, *Children's Centers Study Kids and Chemicals*, Environmental Health Perspectives (Oct. 2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1281306/> (Three different studies documented the impact of pesticide exposure including how chlorpyrifos impacted individuals).

United States EPA studies demonstrating the pesticide is not safe, particularly in the frequent contact on farms and in agricultural occupational spaces.²⁴

Beyond this, DPR has the authority to and must investigate all incidents that indicate that a pesticide is unsafe, and worker health hazards mandate DPR reevaluation of a pesticide. 3 CCR §§ 6220-21. DPR has not used the currently proposed Draft Evaluation and Interim Measures in a way that will account for and provide appropriate responses to chlorpyrifos' health hazards for workers, despite the direct mandate in the California Code of Regulations to do just that. *See* CCR §§ 6221(a) and (j). DPR is also on notice of the multiple farmworker chlorpyrifos exposure incidents (some of which are detailed above). Because of this, it is clear that DPR must revise the currently proposed Draft Evaluation and Interim Measures to specifically address chlorpyrifos' occupational uses and the particular risks that chlorpyrifos poses to California's agricultural workers.

DPR has the Authority to Enact an Outright Ban of Chlorpyrifos Immediately, but if it does not, at the Very Least, DPR Must Issue Binding Temporary Regulations to Protect Workers During the Draft Evaluation Process

The dangers posed to farmworkers by exposure to chlorpyrifos are too severe for DPR to wait any longer to protect them from it. DPR must act immediately to implement full, mandatory, and effective protections for farmworkers against chlorpyrifos, rather than letting more years slip by while farmworkers, their families, and their communities continue to be poisoned by chlorpyrifos at work and at home. DPR can and should look to past pesticide bans for a model on how it can act—and as has acted in the past—to protect Californians from harmful pesticide products in a more-timely and effective manner.

DPR clearly has the authority to ban chlorpyrifos outright without having to go through the protracted (at least 18 month) waiting time that the recently proposed Draft Evaluation's risk assessment period will entail, and it should do so. 3 CCR §§ 6220-21, 6224; *see e.g.* 3 CCR §§ 6350-6362. However, even if DPR continues its proposed process, during the pendency of the currently proposed Chlorpyrifos Draft Evaluation, DPR has the authority to promulgate emergency regulations to avoid serious harm to the public peace, health, safety, or general welfare. *See* FAC § 11511. Because the Draft Evaluation's risk assessment process could take several years—and is slated to take one and a half years, at minimum— and considering that California has publicly stated a desire to defend environmental regulations from federal rollbacks,²⁵ DPR should immediately promulgate binding interim regulations to protect workers from chlorpyrifos while DPR proceeds with the proposed Draft Evaluation.

²⁴ *Chlorpyrifos: Revised Human Health Risk Assessment for Registration Review*, US EPA Memo (Nov. 3, 2016), <https://www.regulations.gov/document?D=EPA-HQ-OPP-2015-0653-0454>.

²⁵ *Trump's EPA Not Above the Law, Must Cure Any Conflicts of Interest*, State of California Department of Justice, Xavier Becerra, Attorney General (Aug. 11, 2017), <https://oag.ca.gov/news/press-releases/trumps-epa-not-above-law-must-cure-any-conflicts-interest> (CA sued EPA Administrator Pruitt based on likelihood of impropriety in the agency; *see also* Flitter, E. "U.S. state prosecutors join push to ban pesticide chlorpyrifos" Reuters, July 6, 2017,

It is important to consider that, if DPR performs a field inspection and finds the continued use of the specific pesticide will result in injury, DPR has the authority to cancel existing and additional permits for application of the pesticide. 3 CCR §§ 6220-21, 6224; FAC §§ 12824-25; *see e.g.* 3 CCR §§ 6350-6362.

Conclusion

In pesticide drift cases, the California Court of Appeal reasoned “when human life is at stake, the rule of due care and diligence requires that, without regard to difficulties or expense, every precaution be taken reasonably to assure the safety and security of persons lawfully coming into the immediate proximity of the dangerous agency or device which is a peril to others.” *Holt v. Cal. Dep’t. of Food & Agric.* 171 Cal. App. 3d 427, 435-36 (1985). DPR has the authority to issue emergency regulations while conducting a risk assessment to exercise due care and diligence to protect farmworkers, and it should exercise that authority at this time for chlorpyrifos and California’s vulnerable farmworkers. Indeed, DPR issued emergency regulations for methyl bromide back in 2002. Here, with chlorpyrifos, although DPR is already on clear notice of the numerous occupational exposure cases involving chlorpyrifos in the State in recent years and months, DPR has failed Californians by not implementing any binding interim protections.

DPR’s responsibility is to the public and farmworkers, and to value the lives, health and safety of all Californians—including Californian’s whose jobs put them at risk of pesticide exposure—over the convenience of the agricultural industry. As detailed herein, numerous state, federal, and academic studies, together with incident reports from farmworkers, have put DPR on notice that California farmworkers continue working in the fields and being exposed to, or put at great risk for exposure to dangerous pesticides, including chlorpyrifos on a daily basis. When these farmworkers do suffer exposure, many of them do not receive proper decontamination, or safety instruction on pesticides in the workplace.

This Draft Evaluation, and the implementation of *binding* interim emergency regulations, present a key opportunity for DPR to protect a vulnerable group of individuals—farmworkers—by taking steps to end their continued overexposure to chlorpyrifos. We urge DPR to accept this opportunity, by enacting an immediate ban on all chlorpyrifos in California, based on the overwhelming weight of the existing science on chlorpyrifos that already resoundingly demonstrates the necessity of such regulatory action. In the meantime, DPR must act immediately to tightly restrict chlorpyrifos’ use during the pendency of this proposed Draft Evaluation’s risk assessment process, such that farmworkers will not be continued to be poisoned at work during for the foreseeable future.

<https://www.reuters.com/article/us-usa-environment-lawsuit-pesticide/u-s-state-prosecutors-join-push-to-ban-pesticide-chlorpyrifos-idUSKBN19R2P4>. (CA joined other state attorney generals to challenge US EPA’s decision not to ban chlorpyrifos in foods).

Signed,



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