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Director

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California Notice 2018-26

TO: Pesticide Product Registrants and Other Stakeholders

SUBJECT: CHANGES TO NOTICE OF DECISION AND PUBLIC REPORT DOCUMENTATION, EFFECTIVE MAY 1, 2019

Pursuant to the California Environmental Quality Act (CEQA) and the implementing regulations set forth in Title 3, California Code of Regulations (3 CCR) sections 6254 and 6255, the Department of Pesticide Regulation (DPR) issues a weekly Notice of Proposed Decisions to Register Pesticide Products and Public Report, listing each proposed decision to register and amend pesticide products for a 30-day public comment period. **Effective May 1, 2019**, DPR will be changing its Notice of Decision (NOD) and public report documentation for proposed registration decisions to ensure continued compliance with its certified regulatory program obligations under CEQA.

## BACKGROUND

In 1970, the California Legislature enacted CEQA to ensure projects permitted by public agencies consider the long-term protection of the environment. CEQA requires state and local agencies to develop an environmental impact report (EIR) for any proposed or approved project that may have a significant effect on the environment (including human health) or a negative declaration if there is substantial evidence of no significant impacts. The purpose of the EIR is to provide public agencies and the public with detailed information about a proposed project's significant effects on the environment, describe ways these effects can be minimized, and indicate alternatives to the proposed project.

In 1978, the Legislature amended CEQA to allow for an abbreviated environmental review for certain agencies certified by the California Natural Resources Agency. In 1979, DPR became a certified regulatory program based on the components of its regulatory program and supporting environmental review documentation, including the NOD and public report. As a certified regulatory program, DPR is exempt from certain procedural requirements of CEQA, including the requirement to prepare an EIR or negative declaration. However, DPR must still comply with other substantive requirements of CEQA. <sup>1</sup>

In 2014, the Pesticide Action Network North America et al. challenged DPR's acceptance of label amendments for two previously registered dinotefuran pesticide products. The lawsuit alleged that DPR violated CEQA by accepting these label amendments without sufficient environmental review. In 2017, the First District Court of Appeal found DPR's NODs and public

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<sup>1</sup> It is worth noting that the U.S. Environmental Protection Agency's (U.S. EPA's) pesticide program is exempt from the National Environmental Policy Act, the federal counterpart to CEQA.

reports deficient under CEQA. Specifically, the Court stated that DPR failed to include a checklist or other documentation with meaningful analysis explaining how DPR reached its conclusion that the approval of the proposed label changes would not cause a significant adverse impact to human health, flora, fauna, water, and air. In addition, the Court found DPR's discussion of alternatives and cumulative impacts inadequate.

### **CHANGES TO THE NOD AND PUBLIC REPORT DOCUMENTATION IN SUPPORT OF EACH DECISION**

To address concerns raised by the Court and to protect its certified program status, DPR issued California Notice 2018-01, limiting the expansion of uses of products under reevaluation, and will be changing the documentation associated with its environmental analysis in the NODs and public reports. Specifically, the revised NODs and public reports will address the following areas for each pesticide product noticed for registration:

- Discussion of DPR's certified program under CEQA
- Relevant DPR regulations for the proposed decision and public report
- Detailed description of the project
- Overview of the registration program, scientific evaluation process, and continuous evaluation
- Environmental and human health factors examined (i.e., checklist containing the following CEQA areas: human health, flora, fauna, water, and air)
- Discussion of feasible alternatives and mitigation
- Discussion of existing environmental conditions and cumulative impacts
- Conclusion explaining DPR's analysis of potential significant adverse impacts to human health, flora, fauna, water, and air

In addition, each public report will include the proposed label. For label amendments, DPR will include both the proposed label and currently accepted label.

### **IMPACTS TO STAKEHOLDERS AND TIMELINES**

Effective May 1, 2019, DPR will no longer post new products and label amendments exiting the formal evaluation process as proposed to register for the 30-day public comment period until DPR completes a public report explaining why the new product or label amendment is not reasonably expected to cause a significant adverse impact to human health, flora, fauna, water, and air. New products and label amendments that exit the formal evaluation process prior to May 1, 2019, will be posted for the 30-day public comment period using the current NOD documentation.

In many cases, the CEQA checklist areas (i.e., human health, flora, fauna, water, and air) may not be associated with a current data requirement to register or amend the product. If current evaluation reports are not available for each CEQA checklist area, DPR staff may need to review prior evaluation reports, documentation in product files, U.S. EPA risk assessments, and other available information to develop the public report. For some products, DPR may have relied on evaluations of previously submitted data to register or amend the product and additional research may be required. If DPR does not have adequate information to address each CEQA checklist area, the product may need to reenter DPR's formal evaluation process. Ultimately, the amount of time to complete each public report will vary depending on the amount of research required to support a decision under each CEQA checklist area for the particular proposed registration and if additional evaluation of the product and/or data are necessary to complete the public report.

#### **NEXT STEPS**

DPR is currently reviewing its internal processes and procedures and hiring additional staff to accommodate changes in workload as a result of the NOD and public report documentation changes. DPR is also updating the Pesticide Registration Data Management System (PRDMS) to account for these changes.

Please address all questions and comments regarding this notice to Ms. Ann Hanger, Environmental Program Manager I, at 916-324-3535 or by e-mail to <ann.hanger@cdpr.ca.gov>.

*Original signed by Ann Hanger  
for Ann M. Prichard*

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Ann M. Prichard, Chief  
Pesticide Registration Branch  
916-324-3931

*December 28, 2018*

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Date

cc: Ms. Ann Hanger, DPR Environmental Program Manager I