Agricultural Pest Control Advisory Committee Meeting Summary

December 14, 2022

10:00 AM – 12:00 PM

Members Present (6): **Ronald Berg**–Pesticide Dealers, **Glen Foth**–Commercial Applicators, **Dan Gudgel**–Pest Control Aircraft Pilots, **Phil Mullins**–Agricultural Pest Control Businesses, **Jhalendra Rijal**-University of California, **Wayne Steele**–Pesticide Registrants

Department of Pesticide Regulation (DPR) Staff (10): **Josh Ogawa**–Acting Branch Chief Enforcement Headquarters (HQ), **Alicia Scott** –Acting Environmental Program Manager (HQ), **Minh Pham** – Branch Chief Environmental Monitoring (EM), **Maziar Kandelous** – Environmental Program Manager (EM), **Randy Segawa** – Environmental Program Manager (EM), **Aniela Burant** – Senior Environmental Scientist (EM), **Kenneth King**–Associate Governmental Program Analyst (HQ), **Jessica Teague –** Environmental Scientist (HQ), **Stephen Hibel** – Staff Services Manager II (HQ), **Nathan Desjarlais** – Senior Environmental Scientist (HQ)

Guests (1): **Ruthann Anderson**-California Association of Pest Control Advisers

Members Absent (7): **John Erisey** – Agricultural Pest Control Advisers, **Margaret Ellis**–Board of Trustees of the California State University System, **Jeanette Heinrichs**–General Public, **Kenneth Oneto**–Producers, **Timothy Smith**–Board of Governors of the California Community College System, **Matt Scally** – Pest Control Maintenance Gardeners, **Stephen Scheer** – California Agricultural Commissioners and Sealers Association

Summary

I. Welcome – Alicia Scott, Acting Environmental Program Manager, DPR-Licensing and Certification

II. Administrative Topics – Alicia Scott, DPR Licensing and Certification

- Member and guest introductions
- There were no requested revisions to the April 2022 APCAC meeting notes

III. DPR Update – Josh Ogawa, Acting Branch Chief DPR-ENFHQ

- Karen Morrison was appointed as Chief Deputy Director for DPR
- DPR published the 2020 Pesticide Residues in Fresh Produce Report which includes over 2,800 samples, 5% of which tested for illegal residue levels. For California grown produce, 889 samples were collected, 3% had illegal residues. Most illegal residues came from imported produce
- There is currently a second comment period for the Certification and Training rulemaking package, this comment period closes December 19, 2022
- Regulations that have come into effect since we last met include the Carbon Monoxide Pest Control Devices (effective October 1, 2022)

IV. Licensing and Certification Update – Kenneth King, DPR, Licensing and Certification

- 2022 Renewal Year – processing last names and business names that begin with letters A-L
- DPR mailed 10,357 renewal packets to individual license holders (A-L) in August 2022
    - Currently 4,756 have been returned to DPR for processing (46%)
    - Of the 46% currently returned, 41% have been processed
- DPR mailed 2,032 renewal packets to business license holders (A-L) in September 2022
    - Currently 1,179 have been returned to DPR for processing (58%)
    - Of the 58% returned, 44% have been processed
- Currently the processing time for renewals is 4 weeks, but this may hit 8 weeks or more as DPR continues through the renewal season
- DPR encourages applicants to mail in the required renewal paperwork and payment on or before November 1 to guarantee renewal processing by December 31
- DPR encourages businesses and their qualified persons to mail in the required application(s) and payment(s) by October 1 to be able to register with the county before January 1
- DPR processes applications in the order in which they are received. Check DPR's Licensing and Certification web page for information on the current processing of applications received
- The top 5 renewal issues are:

- Renewal form missing
- Renewal form not signed
- Missing CE records
- Proof of financial responsibility missing (for business)
- Incorrect payment amount

- To expedite renewal applications this year, DPR is emailing copies of problem letters to the individual and/or business address on file. It is important to ensure all required documents and information are included in the renewal application packet to prevent processing delays. DPR is unable to accept payment over the phone or online
- Certification and Training (C&T) Update:
  - June 3, 2022 – July 19, 2022 – DPR held a 45-day public comment period for the C&T regulations
  - Present (December 2022) -
    - The C&T regulations are currently published for an additional 15-day public comment period which began December 2, 2022 and will close December 19, 2022
    - Any interested person may present comments in writing about the proposed action to DPR during this time
    - Public comments received will be responded to by DPR and published with the final regulatory changes in 2023

V. An Overview of the Proposed 1,3-Dichloropropene (1,3-D) Regulation – Maziar Kandelous, DPR Environmental Monitoring Branch

- Background
  - The 1,3-D regulations will improve the current management of the health risks associated with 1,3-D. Current requirements for 1,3-D focus on mitigating cancer risk. This proposed regulation will mitigate both cancer risk and acute risk, as well as reduce volatile organic compound (VOC) emissions
  - DPR is also working to accelerate the adoption of safer, more sustainable pest management practices to reduce the use of higher toxicity pesticides and support alternatives to fumigants through the Sustainable Pest Management Workgroup and DPR's grant programs
  - 1,3-D is a fumigant and restricted material that is used to control pests in the soil. As a restricted material, applications of this product require a permit from the county agricultural commissioner (CAC) and must be

conducted or supervised by a certified applicator

    - Since 1990, with the exception of one update in 2015-2016, DPR has used the 'township cap' program for controlling cancer risk

- Current 1,3-D Requirements for Non-Occupational Bystander Risk
    - DPR/Registrant memorandum of understanding (MOU):
        - Limits adjusted total pounds (ATP) per calendar year to 136,000 pounds for each township (i.e., township cap)
        - Registrant tracks proposed and actual use on a real-time basis
        - No more applications within a township are allowed once the cap is reached
    - Product Labels and DPR-recommended permit conditions:
        - No applications are allowed within 100ft of occupied structures (i.e., setback)
        - The maximum application rate is 332 pounds per acre (lbs/acre)
        - Totally impermeable film (TIF) tarps can be cut/removed only 9 days or more after the application
        - Applications in December are prohibited
        - Soil moisture should be at least 25% of field capacity
- Lawsuit
    - Vasquez v. DPR – successfully challenged the township cap program as an underground regulation
    - On November 7, 2022, DPR submitted a notice of proposed regulatory action to the Office of Administrative Law (OAL) pursuant to the court order
- Goals of Proposed 1,3-D Regulation
    - Mitigate acute risk (based on 2021 risk management directive)
        - Target population: non-occupational bystanders (i.e., infants, children)
        - Primary mitigation measures: setbacks and fumigation method restrictions
    - Mitigate cancer risk (based on 2016 risk management directive)

        - Target population: non-occupational bystanders (i.e., infants, children)
        - Primary mitigation measure: setbacks and mitigation method restrictions replace township cap
    - The more stringent setbacks and related requirements proposed in this regulation replace the township cap. An added benefit of this regulation is the potential reductio in VOC emissions to reduce ozone
- Modeling Tools Used to Develop Mitigation Measures
    - HYDRUS
        - Provides a representative estimate of the emission of 1,3-D from application site by use of 1,3-D chemical properties, soil properties, and application method
    - AERMOD
        - Used to develop mitigation measures in proposed regulations
        - Determines the concentration of 1,3-D in the ambient air from emissions at application site, meteorological conditions, and application size and time
- Overview of Proposed 1,3-D Regulation
    - Fumigation methods and restrictions:
        - Specific requirements when TIF tarp is used
        - More stringent soil moisture requirements
        - Specific descriptions and restrictions for the 23 fumigation methods allowed
        - Introduction of new application methods such as 24" deep injection and partial TIF tarping
    - Additional requirements:
        - Extension of seasonal restrictions in November to February
        - More stringent setback and related requirements
        - Requirement for DPR to publish an annual report to evaluate the use and monitoring data and determine if additional restrictions are needed

- Fumigation Methods and Restrictions
    - TIF tarp requirements
        - TIF tarps with Mass Transfer Coefficient ≤0.046 cm/h (I,3-D) are recognized as TIF tarp
        - DPR will maintain a list of TIF tarps that meet permeability and printing requirements
        - TIF tarps can be cut/removed no sooner than 10 days (currently 9 days)
    - Soil moisture should be at least 50% of field capacity (currently between 25% and 50%). There are three options to comply with this requirement:
        - Irrigate with three inches of water 48-72 hours prior to fumigation
        - Determine the soil moisture content using the "Feel and Appearance Method"
        - Determine the soil moisture content using the "Soil Moisture Sensor"
    - Non-TIF tarp applications for trees and grapes are restricted to methods within 24" injection only
    - The regulation provides descriptions and restrictions for 23 allowed fumigation methods (including 5 newly developed methods which were evaluated through the pilot project)
    - New methods based on the pilot project: 24" injection; partial TIF (50%)
        - Nontarpaulin/24 inches deep/broadcast method (1224)
        - Tarpaulin/24 inches deep/broadcast method (1225)
        - Nontarpaulin/24 inches deep/strip method (1226)
        - 50% TIF tarpaulin/18 inches deep/broadcast method (1250)
        - 50% TIF tarpaulin/24 inches deep/broadcast method (1264)
- Pilot Project
    - To assist in developing regulations, DPR conducted a pilot project in 2020-2021 to evaluate the feasibility of new fumigation methods that would achieve emission reductions comparable to TIF tarping. Those studies were conducted in four counties – Kern, Merced, Stanislaus, and Sutter
    - The estimated flux data from the pilot project showed that the newly

developed application methods offer emission reduction potential that is comparable to TIF tarping

- Proposed 1,3-D Setback and Requirements
    - Setback surrounds occupied structures and sites occupied for 72 hours
        - Applications are prohibited with the setback; unless the structure is and remains unoccupied for 7 days after application
        - There must be at least 36 hours of separation between two applications with overlapping setbacks
    - The setback distance varies from 100 to 500 feet depending on:
        - Application rate (maximum 332 lbs/acre)
        - Acreage (maximum 80 acres)
        - Application date: “March-October” or “November-February”
        - Fumigation method
    - For application methods, there are 23 application methods that are allowed under the proposed regulations for 1,3-D application. These application methods were grouped into 8 groups and the proposed regulations provide a detailed setback table for each group
    - Examples of setbacks requirements discussed
- Draft 1,3-D Annual Report Requirements
    - The proposed regulation requires DPR to publish an annual report that includes:
        - Use for each township and evaluation of top 10 townships in different counties
        - Summary of ambient air monitoring data and evaluation of locations with concentrations more than 0.27 ppb for 1 year average or 55 pb for 24 hours
        - Evaluations include estimated peak 24 hour, peak 72 hour, and average 1 year concentrations
        - Determination if additional restrictions are needed
    - Requires DPR to have a public comment period for the draft annual report
- Sufficiency of Acute Measures to Mitigate Cancer Risk

    - Analysis of 1,685 statewide township-year combinations within the historical high 1,3-D use time period (2013-2016) showed that the highest 1 year average 1,3-D concertation is 0.35 ppb
    - This is 63% of the 0.56 ppb regulatory target concentration for non-occupational bystander cancer risk
    - The DPR risk management directive specifies a 70 year average risk for cancer risk to non-occupational bystanders which provides an additional margin of safety
        - The highest 5 year average 1,3-D concentration is about 0.25 ppb
- Economic and Pest Management Evaluation
    - The University of California Davis and the California Department of Food and Agriculture conducted an economic analysis and estimated the impact of the proposed regulations, including setback and fumigation method requirements
    - The estimated costs were based on geographic information system (GIS) analysis of pesticide use report data. The estimated average annual impact of the proposed regulation is about $1,366,000
- Consultation with Other Agencies
    - DPR consulted with the following agencies in developing this regulation:
        - County Agricultural Commissioners (CACs)
        - Air Pollution Control/Management Districts (APCDs)
        - Office of Environmental Health Hazard Assessment (OEHHA)
        - CA Air Resources Board (CARB)
        - CA Department of Food and Agriculture (CDFA)
        - U.S. Environmental Protection Agency (U.S. EPA)
        - Pesticide Registration and Evaluation Committee (PREC)
        - Agricultural Pest Control Advisory Committee (APCAC)
- Estimated Timeline
    - November 2022 – January 2023 – submit proposed rulemaking to OAL by November 9; discuss at PREC and APCAC meetings; conduct hearing
    - February – May 2023 – Respond to comments, consult, and revise proposed

regulation (if necessary or appropriate)

- June 2023 – Second public comment period, if needed
- August 2023 – Review of the final regulation
- January 2024 – Regulation effective

- Summary of Changes to Requirements

Part of Requirements	**Current (Permit Conditions, MOU, Label)**	**Proposed (Regulation)**
Setback from occupied structures		
Setback distance and time	100 feet for 7 days	100 – 500 feet for 7 days
Setback application rate limit	332 lbs/acre	332 lbs/acre
Setback acreage limit	None	80 acre
Seasonal requirements	December prohibited	March – October, November – February
Multiple applications	None	36 hours separation
Fumigation methods requirements		
TIF tarp requirements	None	Permeability and printing
TIF tarp minimum cut time	9 days	10 days
Tree and grape requirement	None	24 inch or TIF tarp
Soil moisture	≥25% field capacity	≥50% field capacity
Cancer risk	Township cap of 136,000 adjusted total pounds	More stringent setbacks & application method restrictions

- Public Comments and Hearing
  - Public comment began on November 18, 2022 and will end on January 18, 2023

- DPR will accept written comments submitted via U.S. mail, via e-mail to dpr22005@cdpr.ca.gov, or by facsimile at 916-324-1491
- DPR will also accept oral and written comments at the public hearing on January 18. The hearing will be held at the Cal/EPA Headquarters Building and virtually at 9:30am
- Details on submitting comments and the hearing are available at DPR's website: www.cdpr.ca.gov

VI. Next Meeting Agenda

Date of next meeting: June 14, 2023 (DPR Enforcement Headquarters)

Time: 10:00 am -12:00 pm

Please direct questions to Alicia Scott at 916-603-7795 or via email at Alicia.Scott@cdpr.ca.gov.