PESTICIDE CONTAMINATION PREVENTION ACT

HEARING PROCEDURES

FOR CERTAIN PRODUCTS CONTAINING THE ACTIVE INGREDIENT: IMIDACLORPID

Please read these hearing procedures carefully. Failure to comply with the deadlines and other requirements contained herein may result in the exclusion of your documents and/or testimony.

Background

The Pesticide Contamination Prevention Act (PCPA) of 1985 (Assembly Bill 2021, Food and Agricultural Code sections 13141 through 13152) requires the Department of Pesticide Regulation (DPR) to monitor and review the use of pesticides designated as having the potential to contaminate groundwater. If DPR detects a pesticide or its degradation product in groundwater, the PCPA requires DPR to determine if the detection resulted from legal agricultural use. (Food & Agr. Code, § 13149.) Once this determination is made, DPR notifies registrants of the opportunity to request a hearing to determine if continued use of the pesticide should be allowed. (*Id.*) If a registrant does not request a hearing or any of the conditions set forth in Food and Agricultural Code section 13150 are not met, that registrant's agricultural use product registration(s) containing the pesticide will be canceled. (*Id.* at § 13151.)

On September 23, 2021, DPR issued a Legal Agricultural Use determination for imidacloprid detections in California and corresponding California Notice 2021-08. On September 23, 2021, DPR informed various imidacloprid registrants of the determination and their opportunity to request a hearing on the matter within 30 days of receiving notice. (Food & Agr. Code, § 13149(c).) Registrants of certain products containing the active ingredient imidacloprid have requested a hearing on the matter.

The PCPA calls for a formal review of evidence by a Subcommittee of DPR's Pesticide Registration and Evaluation Committee (PREC). (*Id.* at § 13150.) The three-member Subcommittee acts in an advisory capacity to DPR's Director and consists of one representative each from DPR, the Office of Environmental Health Hazard Assessment (OEHHA), and the State Water Resources Control Board (SWRCB). (*Id.*) The purpose of the hearing is for the Subcommittee to review documented evidence submitted and presented by the registrant, state scientists, and others, and make findings and recommendations regarding continued agricultural use of the pesticide to the Director within 90 days of the hearing. (*Id.*) Under law, the Director is required to issue a decision regarding the continued agricultural use of the pesticide within 30 days of the submission of the Subcommittee's reported findings and recommendation. (*Id.*)

The Hearing

A hearing open to the public will commence on **Tuesday, March 22, 2022**. Depending on DPR's ability to hold an in-person meeting due to COVID-19, the hearing may be held either virtually, hybrid, or in-person at:

CalEPA Headquarters Building
Coastal Hearing Room
1001 I Street
Sacramento, CA 95814

An agenda for the hearing, including meeting location, will be issued at least ten (10) days before the hearing and posted on DPR's website at <https://www.cdpr.ca.gov/docs/emon/grndwtr/imidacloprid.htm>. Please check DPR's website for the most up-to-date public hearing date and location as they may be subject to change.

At the hearing, Registrant(s)/Representative(s) of Registrant(s) and the public will be given an opportunity to provide written and oral testimony to the Subcommittee for its consideration. Staff from DPR, OEHHA, SWRCB ("State Agencies"), and the California Department of Food and Agriculture (CDFA) or other entities may also provide information for the Subcommittee's consideration. Testimony may be limited to ensure that every commenter has an equal opportunity to speak. DPR will distribute a separate public notice regarding the hearing at least 45 days prior to the hearing.

Objections to Hearing Procedures

Unless otherwise provided, the hearing required by Food and Agricultural Code section 13150 will be conducted in accordance with these Hearing Procedures. Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing. Objections about the matters contained in these Hearing Procedures will not be entertained at the hearing. In the event the procedures and important dates in this document are amended, notice will be provided to all Hearing Participants.

Separation of Investigative and Adjudicative Functions

For purposes of this groundwater protection hearing and to ensure the fairness and impartiality of the proceeding, DPR separates investigative and adjudicative functions. Those who will present evidence on behalf of the State Agencies ("Investigative Team") for consideration by the Subcommittee are separate from those who will provide legal and technical advice to the Subcommittee and Director ("Advisory Team").

Any members of the Subcommittee or Advisory Team who normally supervise any members of the Investigative Team will not act as their supervisors in this proceeding, and vice versa. With respect to this matter, members of the Subcommittee or Advisory Team have not and will not exercise any authority over or provide advice to, members of the Investigative Team, or vice versa. Members of the Investigative Team have not had any substantive *ex parte* communications with the Subcommittee members, the Director, or the Advisory Team regarding this proceeding.

Prohibition on *Ex Parte* Communications

While this proceeding is pending, the California Government Code prohibits the Registrant(s)/Representative(s) for Registrants, members of the Investigative Team, or other interested persons from engaging in *ex parte* communications regarding this matter with any Subcommittee member, the Director, or the Advisory Team.

An *ex parte* communication is a written or verbal communication, either direct or indirect, during the pendency of a proceeding regarding any issue in the proceeding, to the presiding officer from an employee or representative of any agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication. (Gov. Code, §§ 11430.10-11430.80.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an *ex parte* communication. As a result, any written communication to any Subcommittee member, the Director, or the Advisory Team before the hearing must also be copied to all other Hearing Participants. Communications regarding non-controversial procedural matters, including a request for a continuance, are permissible *ex parte* communications and are not restricted. (Gov. Code, § 11430.20, subd. (b).)

DPR Hearing Coordinator

KARA JAMES, PESTICIDE REGISTRATION BRANCH
Department of Pesticide Regulation
1001 I Street
Sacramento, CA 95814-4015
Email: <Kara.James@cdpr.ca.gov>

Hearing Participants

Hearing Participants in this proceeding are Registrant(s)/Representative(s) of Registrant(s) of products containing the active ingredient imidacloprid that are subject to the PCPA groundwater hearing; members of the State Agency Investigative Team(s) (e.g., DPR, OEHHA, SWRCB); and representatives from CDFA (collectively referred to as “Hearing Participants”).

Public Comments

The public is invited to submit written comments prior to the public hearing regarding the potential to pollute groundwater from the continued agricultural use of imidacloprid. Written public comments should be submitted thirty (30) days before the first day of Phase 1 of the hearing, by e-mail to <PCPA@cdpr.ca.gov> or mailed to the address below, to ensure circulation to Hearing Participants and the Subcommittee members prior to the hearing:

PCPA Imidacloprid Comments
Attn: Kara James
Pesticide Registration Branch
1001 I Street
Sacramento, CA 95814-4015

The Hearing Coordinator will provide written public comments received by the deadline above to all Hearing Participants prior to the hearing. Providing a written comment by the deadline above is not a prerequisite to providing oral or written testimony during the hearing. Members of the public may provide written comments or oral testimony during the hearing, relevant to the matter in this proceeding. Members of the public are encouraged to sign-up to speak at the hearing in advance. The Hearing Officer may limit individual times for oral testimony to ensure that every commenter has an opportunity to speak in the allotted time for the hearing. The hearing will be transcribed by a court reporter and the transcript, along with any written comments submitted during the hearing, will be added to the record.

Public comments not relevant to matters related to the proceeding will not be considered by the Subcommittee. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments.

Submission of Evidence for the Hearing

Submission of Digitally Accessible Documents

DPR intends to post all reports and documents submitted to DPR on its website. DPR requests that all reports and documents submitted to DPR are self-certified that they are in compliance with Web Content Accessibility Guidelines (WCAG) 2.1, or a subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium (W3C) at a minimum Level AA success criteria.

Registrant's Submission of Report and Documented Evidence

In accordance with Food and Agricultural Code section 13150(a), the registrant is required to submit, or join in the submission of, a report and documented evidence that demonstrate both of the following:

1. That the presence in the soil of any active ingredient, other specified ingredient, or degradation product does not threaten to pollute[1] the groundwater of the state in any region within the state in which the pesticide may be used according to the terms under which it is registered; and
2. That any active ingredient, other specified ingredient, or degradation product that has been found in groundwater has not polluted, and does not threaten to pollute, the groundwater of the state in any region within the state in which the pesticide may be used according to the terms under which it is registered.

In accordance with Food and Agricultural Code section 13151, a registrant who fails to submit the required report and documented evidence, or fails to join in a submitted report, shall have their relevant product(s) canceled.

In order to allow time for the Subcommittee and Hearing Participants to consider the submitted report and documented evidence, DPR requests registrants to submit their report and documented evidence required under Food and Agricultural Code section 13150(a) to the Hearing Coordinator no later than thirty (30) days before the first day of Phase 1 of the hearing, as listed under "Important Dates" below.

DPR also requests that registrants submit to the Hearing Coordinator the name of each presenter and subject of their presentation, no later than fourteen (14) days before the first day of Phase 1 of the hearing.

At the hearing, the Subcommittee will review the report and documented evidence submitted by the Registrant(s) and any other information or data that the Subcommittee determines is necessary to make a finding. Registrant(s)/Designated Representative(s) may, and are encouraged to, make joint presentations at the hearing. Submitted reports and documented evidence received before the hearing will be given equal weight to oral testimony and written evidence presented at the hearing. The Registrant(s)/Designated Representative(s), will be given time at the hearing to provide written and oral testimony and answer the Subcommittee's questions about the Registrant(s)' report and any other material that the Registrant(s) submits to the Hearing Coordinator.

Submission of Evidence by Hearing Participants

DPR requests Registrant(s); Investigative Team(s) from the State Agencies; and presenters from CDFA or the University of California intending to present at the hearing to submit the following information to the Hearing Coordinator no later than thirty (30) days before the first day of Phase 1 of the hearing, as listed under "Important Dates" below:

[1] "Pollute" as defined in Food and Agricultural Code section 13142(j) means "to introduce a pesticide product into the groundwaters of the state resulting in an active ingredient, other specified ingredient, or a degradation product of a pesticide above a level that does not cause adverse health effects, accounting for an adequate margin of safety."

1. Evidence to be presented at the hearing for consideration by the Subcommittee and Director. Evidence and exhibits already in the public files of DPR/OEHHA/SWRCB that are relevant to the subject of the hearing may be submitted by reference, as long as the exhibits and their location are clearly identified.

DPR also requests that other Hearing Participants submit to the Hearing Coordinator the name of each presenter and subject of their presentation, no later than fourteen (14) days before the first day of Phase 1 of the hearing.

As described in more detail in the Hearing Time Limits section below, Hearing Participants will be given time at the hearing to provide written and oral testimony and answer the Subcommittee's questions.

Distribution of Evidence Prior to Hearing

The Hearing Coordinator will distribute all submitted evidence to Hearing Participants and the Subcommittee Members prior to each phase of the hearing.

PowerPoint Presentations at the Hearing

PowerPoint and other visual presentations may be used at the hearing, but should be provided to the Hearing Coordinator at or before the hearing in electronic format and in hard copy, if requested by the Hearing Coordinator, so that it can be included in the administrative record for this proceeding.

Rebuttal Evidence

DPR requests that all Hearing Participants submit to the Hearing Coordinator the name of each presenter and subject of their presentation, no later than fourteen (14) days before the first day of Phase 2 of the hearing. DPR requests that Hearing Participants submit rebuttal evidence to the Hearing Coordinator no later than five (5) days before the first day of Phase 2 of the hearing, as listed under “Important Dates” below. “Rebuttal” means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal evidence shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

The Hearing Coordinator will distribute all submitted rebuttal evidence to the Subcommittee and Hearing Participants prior to the second phase of the hearing.

General Hearing Schedule

A detailed hearing agenda will be posted on DPR’s website at <https://www.cdpr.ca.gov/docs/emon/grndwtr/imidacloprid.htm> at least ten (10) days before each phase of the hearing.

At the Subcommittee Chairperson's discretion, hearing dates may be extended to allow for adequate time for presentations, rebuttals, public comments, and Subcommittee deliberations. Hearing Participants may make presentations and present rebuttal evidence at the hearing. Registrants are encouraged to coordinate with one another and make joint presentations, when appropriate. Public comments will also be taken at the hearing. "Evidence" includes testimony, documents, and tangible objects that tend to prove or disprove the existence of any alleged fact. At the hearing, the Subcommittee may ask presenters questions.

Phase 1 of the Hearing (2-3 days)

1. Opening Remarks
2. Presentation by State Agencies
3. Presentation by Imidacloprid Registrant(s)/Representative(s) of Registrant(s)
4. Public Comments – time allotments determined by the Hearing Officer
5. Questions from Subcommittee Members
6. Concluding Remarks

After Phase 1 of the hearing is complete, the hearing will resume approximately 3 weeks later, as Phase 2 of the hearing. The purpose of Phase 2 of the hearing is limited to receiving rebuttal evidence, public comments, and allowing the Subcommittee to deliberate in an optional closed session.

Phase 2 of the Hearing (1-2 days)

1. Opening Remarks
2. Rebuttals from Registrant(s) and State Agencies (optional)
3. Public Comments – time allotments will be determined by the Hearing Officer
4. Questions from Subcommittee Members
5. Subcommittee Deliberations (Optional Closed Session)
6. Concluding Remarks

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits will apply:

1. Phase 1 of Hearing
    a. State Agencies will have a combined time of: up to 1 day to provide oral and written testimony to the Subcommittee. State Agencies are encouraged to coordinate on the appropriate use of this time.
    b. The Registrant(s) or their designated representative(s) will have a combined time of: 1-2 days to provide oral and written testimony to the Subcommittee. Registrants are encouraged to coordinate on the appropriate use of this time and may make joint presentations.
2. Phase 2 of Hearing: Time limits will be determined by the Subcommittee Chairperson/Hearing Officer.
3. Each member of the public wishing to provide oral testimony may present comments regarding matters related to the proceeding. Only public comments relevant to matters related to the proceeding will be considered by the Subcommittee. In order to allow adequate opportunity for public comment, time limits may be imposed at the discretion of the hearing officer.

Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments.

Optional Closed Session Deliberations

The Subcommittee may meet in closed session, authorized by Government Code section 11126 subdivision (c)(3), in order to deliberate and consider the evidence in the record and make a recommendation to the Director. Closed sessions are not open to the public, but decisions reached in closed session will be communicated to the public through a subsequent written ruling or alternative method of communication.

Administrative Record and Availability of Documents

The Legal Agricultural Use determination and evidentiary documents submitted in accordance with these Hearing Procedures shall be considered part of the official administrative record for this matter. Other submissions received for this proceeding will be added to the administrative record absent a contrary ruling by the Subcommittee Chairperson. Written transcriptions of oral testimony or comments that are made at the hearing will be included in the administrative record.

Administrative record documents may be inspected and copied between the hours of 8:00 a.m. and 5:00 p.m. at DPR's office located at 1001 I Street, Sacramento, California 95814.

Arrangements for document review and/or obtaining copies of the documents may be made by contacting the Hearing Coordinator above. Appointments are encouraged so that documents can be readily available upon arrival. Electronic copies of documents may also be requested by contacting the Hearing Coordinator.

Special Assistance or Language Needs

If you require special assistance or language needs to participate in this hearing, please notify DPR's Reasonable Accommodation and Hearing Coordinator at <PCPA@cdpr.ca.gov> at least fifteen (15) business days in advance of the hearing date.

Important Dates

All submissions must be received by the Hearing Coordinator, Kara James, at <PCPA@cdpr.ca.gov> by 5:00 p.m. on the respective due date.

Important Date	Description of Documents, Deadline, or Hearing Phase
September 23, 2021	1. Legal Agricultural Use Determination for Imidacloprid Detections in California Groundwater Issued 2. California Notice 2021-08: Notice of Imidacloprid Residue Detections in California Groundwater and the Pesticide Contamination Prevention Act (PCPA Review Process 3. Letters to Registrants - Notice of DPR's Determination of Imidacloprid Detections in California Groundwater; Opportunity to Request a Hearing
September 29, 2021	California Notice 2021-09: Notice of Hearing Request Received for the Pesticide Contamination Prevention Act (PCPA) Review Process of Imidacloprid
On or before October 25, 2021	Deadline for Registrant(s) to Request Hearing
October 28, 2021	1. Confirmation of Hearing Letter Sent to Registrant(s) 2. Hearing Procedures issued
By November 29, 2021	Objections to Hearing Procedures due
By December 29, 2021	Advisory Team transmits Decision on any Objections to Hearing Procedures

Important Date	Description of Documents, Deadline, or Hearing Phase
January 21, 2022 [60 days before 1st day of Phase 1 of the hearing]	California Notice: Notice of Hearing Pertaining to Imidacloprid Product Residue Detections in Groundwater
February 18, 2022 [30 days before 1st day of Phase 1 of the hearing]	Submission of Self-Certified WCAG 2.1 AA Compliant Documents 1. Requested deadline for Registrant to submit report and documented evidence required by Food and Agricultural Code section 13150(a) 2. Requested deadline for State Agencies to submit materials for hearing 3. Requested deadline for Written Public Comments
March 1, 2022 [15 business days before the 1st day of Phase 1 of the hearing]	Deadline to notify DPR's Reasonable Accommodation and Hearing Coordinator of Special Assistance or Language Needs
March 8, 2022 [14 days before 1st day of Phase 1 of the hearing]	Requested deadline to provide Hearing Coordinator the name of each presenter for Phase 1 of Hearing
March 11, 2022 [at least 10 days before 1st day of Phase 1 of the hearing]	Agenda posted on DPR's website for Phase 1 of Hearing.
March 22-24, 2022	Phase 1 of Hearing 1. Opening Remarks 2. State Agency Presentations 3. Registrant(s) Presentation(s) 4. Public Comments 5. Questions from Subcommittee 6. Closing Remarks
14 days before Phase 2 of the hearing	Requested deadline to provide Hearing Coordinator the name of each presenter for Phase 2 of Hearing
At least 10 days before Phase 2 of the hearing	Agenda posted on DPR's website for Phase 2 of Hearing

Important Date	Description of Documents, Deadline, or Hearing Phase
5 days before Phase 2 of the hearing	Submission of Self-Certified WCAG 2.1 AA Compliant Documents • Requested deadline for Hearing Participants to Submit any Rebuttal Evidence for Phase 2 of Hearing
Phase 2 of the hearing [~3 weeks after Phase 1 of the hearing (1-2 days)]	Phase 2 of Hearing 1. Opening Remarks 2. Rebuttals by Registrant(s) and State Agencies 3. Public Comments 4. Questions from Subcommittee 5. Subcommittee Deliberations (Optional Closed Session) 6. Closing Remarks
[90 days after the conclusion of Phase 2 of the hearing]	Deadline for PREC Subcommittee to issue Findings and Recommendations to Director
[30 days after Subcommittee issues findings and recommendations]	1. Deadline for Director to Issue Decision 2. California Notice: Notice of Decision Pertaining to Imidacloprid Detections in Groundwater

Questions

Procedural questions concerning this proceeding may be addressed to DPR Hearing Coordinator, Kara James (contact information above).