



January 18, 2023

Lauren Otani, Senior Environmental Scientist
Department of Pesticide Regulation
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Sacramento, CA 95814
dpr22005@cdpr.ca.gov

Re: 1,3-Dichloropropene Field Fumigation Requirements, Est. January 1, 2024

Dear Ms. Otani:

On behalf of the Western Plant Health Association (WPH), I am submitting these comments regarding the proposed regulatory action related to 1,3-Dichloropropene (1,3-D). WPH appreciates the opportunity to provide comments on this proposal and would like to acknowledge the collaborative process that DPR utilized in its development. WPH represents the manufacturers of pesticides and fertilizers, agricultural biotechnology providers, and agricultural retailers in California, Arizona, and Hawaii.

The use of soil fumigants is an important part of many farming operations in order to protect fields from soil borne pests and diseases. By protecting soils from pests and diseases, fumigants like 1,3-D allow crops to get a healthier start, thereby reducing the need for other pesticidal products during that crops life. Fumigants including 1,3-D are already labeled as a Restricted Use Product (RUP) so is highly regulated at the federal, state, and local level and may only be utilized by certified applicators, after being permitted by County Agricultural Commissioners who oversee the applications.

WPH does question the need for new mitigations for the use of 1,3-D. DPR's assessment of 1,3-D is not consistent with recent regulatory assessments conducted by USEPA's Office of Pesticide Programs and other international regulatory bodies. However, while we may disagree with the need for new mitigations, we thank DPR for not taking a "one size fits all" approach on how to achieve the endpoints identified in the proposed regulation. Proposed mitigations include additional setbacks, use of totally impermeable film (TIF) tarpaulins or tarps, soil moisture requirements, and new product injection levels.

Setbacks

WPH appreciates DPR providing improved language to define occupied and non-occupied agricultural structures. We believe it will help reduce confusion for county enforcement purposes. We support DPR's recommendation that applications be allowed during December, but are concerned that the additional setbacks that are required based on applications made during the November – February winter season may need greater refinement. Increasingly, this period is when natural rainfall events are taking place, so farmers may be able to utilize naturally occurring increased soil moisture levels during this period, making the additional mandated setback unnecessary. We ask that DPR consider a January – December calendar where farmers can better evaluate and utilize tools available at that time to meet mitigation requirements. This could be particularly practical and beneficial with changing climate conditions.

The new 50% soil moisture content requirements could require hundreds of millions of additional gallons of water each year. If farmers can effectively utilize natural rainfall events during the November – February period as part of their mitigation strategies without the penalty of additional setbacks, it could reduce the use of irrigation waters during the drought, saving the state much needed natural resources and farmer's economic costs. As farmers must provide detailed plans to County Agricultural Commissioners in advance of an application, the suspension of the "automatic" setback based on soil moisture content rather than on time of year can be verified prior to an application.

WPH is concerned about the implementation of additional setbacks, particularly when farmers utilize multiple suppression mitigations or where application blocks overlap. While we appreciate that DPR is looking to apply a precautionary safety threshold, we are concerned that the actual implementation will result in unnecessary application prohibitions. The use of these excessively conservative or worst-case assumptions will most often result in the maximum 500' setback distance or impose use prohibitions for all affected application blocks. We request the Department reconsider this section of the proposed regulation and apply the same methodology it proposes for determining setbacks from single application blocks to establish setbacks from applications utilizing multiple application suppression systems or overlapping application blocks.

Use of TIF Tarps

WPH supports DPR's establishing the utilization of TIF tarps in multiple use scenarios to provide the protection levels reflected in the proposed regulations. We would ask that DPR consider further modifications to the language, especially in the use of TIF tarps in orchard settings where strip tarping is needed. It may be very difficult for farmers to achieve the reduction levels identified in the regulations using only strip tarps in these settings. We would ask that DPR consider allowing farmers to utilize multiple systems, or combining mitigation processes like TIF strip tarps and water applications, to meet the requirements. Allowing the use

of multiple systems may be more economically feasible and may even be required to allow farmers to protect their crops from disease or pests.

Soil Moisture Content

DPR is recommending a minimum soil moisture content of 50% of field capacity of three to nine inches below the surface when an application occurs. As a technical correction, we recommend that DPR use “available water capacity” rather than “field capacity” so it is consistent with other agencies like USDA and USEPA in terminology. We would also request that DPR recommend a process where rather than establishing a mandatory application of three inches of water be applied, that the farmers be allowed to utilize an irrigation or soil specialist to determine how many inches of water should be applied to meet the 50% soil moisture content requirement. DPR’s three inch water application may be an appropriate guideline, but there may be soil conditions where more, or less, water applied may be appropriate to meet the 50% moisture content. Allowing farmers to utilize experts with written verification could allow for even more heightened mitigation performance.

Injection Requirements

Under DPR’s new proposal, farmers will have multiple options to determine injection levels from 12 to 24 inches, depending on the type of crop being fumigated. WPH supports the farmers being able to consider various injection options to meet fumigation and regulatory requirements, but we recommend DPR give further consideration to whether basing injection levels based on crop type is appropriate. Factors like setback distances and application timing may be more appropriate factors in determining injection depth rather than crop type.

Conclusion

While WPH questions the need for additional mitigations to safely apply 1,3-D, we thank DPR for engaging in a thoughtful, scientific, and collaborative process that allowed all stakeholders to participate. We support DPR’s willingness to allow the utilization of multiple types of mitigations to achieve regulatory endpoints identified in the proposed regulations. We also support inclusion in the regulation that the Director may approve additional application methods beyond what is included in these regulations if those methods meet the safety requirements established through this regulation.

While we support the inclusion of multiple mitigation measures as outlined in the proposed regulation, we ask that DPR consider the addition of the mitigations outlined in our comments. Since 1,3-D is a RUP, any additional mitigations can be required to be verified in writing to meet the proposed regulatory safety requirements for human health or efficacy prior to their use. WPH believes these further mitigations will better allow farmers to more effectively utilize the product while assuring the additional safeguards these regulations are intended to create. We thank you

for your consideration of our comments, and if you have any questions please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Renee Pinel', with a stylized flourish at the end.

Renee Pinel