



May 31, 2023

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Lauren Otani, Senior Environmental Scientist
California Department of Pesticide Regulation

Via email: dpr22005@cdpr.ca.gov

RE: Comments on modifications of proposed regulation #22-005 for 1,3-dichloropropene soil fumigation

Dear Director Henderson, Dr. Pham and Ms. Otani,

Thank you for the opportunity to comment on the proposed modifications to California Department of Pesticide Regulation's (DPR's) proposed regulation for the soil fumigant 1,3-dichloropropene (1,3-D). The statewide coalition Californians for Pesticide Reform and farmworker advocacy organization California Rural Legal Assistance Foundation submit these comments for your consideration.

The proposed regulation continues to fall far short of being health protective and disproportionately impacts disadvantaged Latinx communities

Our first comment concerns a crucial issue not addressed in the proposed modifications. 1,3-D, as you are well aware, is one of California's most heavily used pesticides. Health risks caused by use of 1,3-D have been a concern of your department for decades. 1,3-D's use primarily impacts communities that have been identified as disadvantaged because of their cumulative pollution burden and low income. Many of these communities are Latinx or other communities of color. Given those realities, it is crucial that DPR make decisions that are health protective. In the case of 1,3-D, DPR has chosen a regulatory target for cancer risk that is more than an order of magnitude higher than the No Significant Risk Level set by OEHHA. The proposed modifications do not address this issue, but must do so immediately.

Modifications to setbacks and acreage limits

We appreciate that further evaluation of wind conditions led to proposing somewhat stricter acreage limits in Coastal counties. Given that detailed local wind records are not available for most locations where 1,3-D is applied and that modeling utilizing Parlier weather data still underpredicts 50% of peak emission events recorded at air monitoring network stations¹, we request that the Coastal acreage limits be applied statewide.

However, we are deeply concerned about other modifications to the proposed regulations that will increase the limits on the amount of acreage that can be treated by 1,3-D near where people live. (We refer here to the tables of setbacks and acreage limits given in the document titled *1,3-Dichloropropene Field Fumigation Requirements*.) The modification which adds 300 and 400 foot setbacks will increase acreage limits because fumigations within those categories would previously have had to comply with the 200 foot setback limits.

For example, a fumigation with a rate of 130 lbs per acre done in Coastal counties with FFM 1206 would previously have had an acreage limit of 30 if the nearest occupied structures were 400 feet away. Under the proposed modifications, this limit would be doubled to 60 acres. In other cases, the acreage limits are increased without much explanation. For example, again with FFM 1206, in Inland counties during March through October the acreage limit within 100 feet of occupied structures increases from 25 to 30 for applications of 150 pounds per acre.

For fumigation with a high rate of 300 lbs per acre in inland counties with FFMs 1224-1226 (24" deep untarped and tarped) from March-October, there was a previous acreage limit of 50 acres if the nearest occupied structure was between 200 feet and 500 feet away. Now the acreage limit is increased 25% to 75 acres at 300 feet.

Neither Dow's January public comment letter requesting the addition of 300 and 400 foot setbacks nor anything contained in DPR's Notice of Modifications documents contradicts our point in this comment letter that the change would result in higher levels of exposure to residential bystanders compared to the originally proposed regulation. DPR has not modeled how many applications will fall into the new setback categories or how this will affect emissions. This unnecessary and harmful step backwards made to "allow greater flexibility for growers" (and to allow Dow to sell those growers more 1,3-D) should not be included in the final regulation.

Reduced tarp coverage requirements

We oppose the reduction in tarp coverage from 50% to 40% for deep/broadcast applications (methods 1250 and 1264). Fumigated strips can still be aligned with tree rows with some additional tarp strips used to bring the tarp coverage to at least 50%. As we stated earlier, the goal should be to make the regulations truly health protective. This change, which was requested by TriCal, does the opposite. DPR estimates that the revision increased maximum 72-hour emissions by approximately 15% and cumulative 21-day emissions by approximately 10% for

¹ See Table 4 pg 12 in https://www.cdpr.ca.gov/docs/legbills/rulepkgs/22-005/2023/6e_luoanduyeda2023_hdmodeling.pdf

the 21-soil mean (Table 1)² relative to the original estimates for FFM 1250 and 1264. This unnecessary and harmful step backwards should not be included in the final regulation.

Timelines for release of annual report and posting of quarterly summary

In the earlier stages of this regulatory process, we asked that a firm timeline be set for the public release of annual reports of 1,3-D use and that the report be comprehensive rather than limited to the top 10 townships in the 10 counties of highest use. The current modifications state only that the reports will be released “as soon as reasonably practicable.” A firm date is necessary so that changes in 1,3-D use levels can be monitored. In the concerning situation where 1,3-D use increases, people living near 1,3-D applications need this information promptly. We recommend a firm date of July 1st for draft report release for comment. This allows 6 months for preparation of the report. This is a reasonable timeline for even a comprehensive report given that all use reports will be submitted electronically and that fewer than 3,000 applications are made each year, with use concentrated in about 20 counties.³ DPR’s failure to enact a firm timeline for the public release of annual reports of 1,3-D use would make the regulation unlawfully vague.

It is a positive change to require posting of a quarterly summary of 1,3 D use report data on the DPR website, although we think that monthly posting of this data is both feasible and needed for keeping residents informed of use patterns. We support including county, township, month, crop and fumigation method in the summary data posted along with pounds of use and acres treated. The regulation needs to specify when the data must be posted, otherwise the regulation will be unlawfully vague. We recommend requiring posting 2 weeks after the end of the prior quarter or month. This is a reasonable timeline given that an average of around 200 fumigations are completed per month.

Electronic submission of use reports

We support requiring electronic submission of all 1,3 D use reports but request that all submissions be completed directly to the counties through the restricted materials permitting system. The permitting system provides stability and consistent procedures, whereas the system currently run by the registrant could end at any time.

Modelling underlying this regulation

Throughout the development of this regulation, DPR has made use of the AERFUM model to determine if the procedures specified in the regulation will be adequate to protect public health. We have had consistent concerns about the modeling since there is validation of soil flux and other parameters on only a small number of sites. The newest modeling provided with the modifications improves on earlier models, but still substantially underpredicts half of the peak emission events modeled regionally. The uncertainty in the modeling is another argument for a more health protective regulation.

² https://www.cdpr.ca.gov/docs/legbills/rulepkgs/22-005/2023/6a_brown2023_one3d_4060_tif.pdf

³ 2021 PUR: 2807 applications of 1,3 D reported in 28 counties with fewer than 10 applications in 8 of these counties.

Conclusion

We continue to have grave concerns that DPR is taking steps backwards with proposed revisions that add 300 and 400 foot setbacks and reduce tarp coverage requirements. This regulation continues to fall far short of protecting rural residents from harmful levels of exposure to this cancer-causing and highly volatile, drift prone fumigant. Methods for testing moisture level may not be reliable and weak enforcement of the moisture and other requirements will undermine implementation. We stand by the more detailed comments we submitted in January and incorporate [here](#)⁴ by reference.

Sincerely,



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⁴ <https://www.pesticidereform.org/wp-content/uploads/2023/01/13-D-CRLAF-CPR-comment-letter-1.18.23.pdf>