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January 12, 2020

Val Dolcini, Director
California Department of Pesticide Regulation
1001 I Street
Sacramento, CA 95814

Re: Shafter Community Pesticide Notification Pilot Correspondence

Dear Director Dolcini:

This letter is provided in response to the correspondence dated December 17th, 2020 from the Department of Pesticide Regulation (DPR) to the Kern County Agricultural Commissioner's Office regarding the proposed 1,3-D Pesticide Notification Pilot Program currently under negotiation in accordance with the AB 617 Community Emission Reduction Program for the community of Shafter. The agricultural industries identified above represent the interests of farmers, ranchers, dairymen and women across the State and the broader agricultural community, including but not limited to farm managers, farm employees, pesticide applicators, crop consultants and agriculturally dependent businesses and individuals.

This coalition of agricultural representatives strive to protect and improve the ability of farmers and ranchers to provide a reliable supply of food and fiber through stewardship of California's resources, including exercising judicious and appropriate use of pesticidal materials to manage the State's significant pest and disease pressures. The coalition shares DPR's mission to protect public health and safety through science-based and field-tested pest management systems

governed by the lawful use of all varieties of pest management tools. In this vein, we are confident that the laws and regulations implemented by DPR currently, are indicative of the foremost pesticide use enforcement system in the Nation.

This monumental task cannot be completed without coordination with County Agricultural Commissioners (CAC), whom both operate as the “boots on the ground” for the State under delegated authority from DPR, but also operate autonomously, as local County officials. DPR and CACs have a long-standing history of working in tandem to both enforce pesticide use laws and California’s agriculture and the public. For these reasons, it is concerning that the letter in reference abandons this history of symbiosis with the Kern County Agricultural Commissioner’s Office and replaces it with directives. This is also done so without appropriate authority, is contrary to the spirit of the Community Emission Reduction Program, and without a discernable, tangible public benefit. Therefore, the following groups object to this directive to the Commissioner Glenn Fankhauser and request DPR reconsider its current and future actions in this regard.

This coalition of agricultural representatives’ challenges DPR’s authority, as stated in the correspondence to direct the Commissioner to produce such stated information in this manner. Not only do Food and Agricultural Code (FAC) Sections referenced in letter not exist (i.e. FAC Section 11455), but several of the notations are reflective of authority provided to the Secretary of the California Department of Food and Agriculture (CDFA), not DPR. Short of the provisions in Division 6 and 7 of the FAC, as referenced in FAC Section 50,

“... Whenever the term “director,” “secretary,” “Director of Agriculture,” or “Secretary of Agriculture” appears in any law, it means the “Secretary of Food and Agriculture” ...”

The reference to FAC Section 2272 is also inappropriate considering that the remainder of the provision references actions of CACs related to organic farming methods, biotechnology, and pest eradication and control, none of which are within the auspices of DPR and are definitively programs and functions of CDFA. To continue, beyond the authorities for CDFA referenced in Section 2281 of FAC, even if this Section were interpreted as a grant of authority to DPR to “issue instructions and make recommendations to the commissioner,” such actions in this context have not been complemented by a cost analysis, as required, developed jointly with the Commissioner, and is not related to an enforcement program or activity, given this pilot is not in response to any pesticide use violation on record. Finally, Section 14004, the one section agreeably referencing DPR, charges DPR and CACs to enforce the FAC and subsequent regulations. However, the notification protocol directed in the correspondence to Kern County is neither in statute or regulation, explicitly or implicitly. Such mandate, without being offered the privilege of public transparency through the formal rulemaking process, usurps local control in violation of Article XI of the California State Constitution.

Beyond the questionable authority for DPR to enact such an edict on the Kern County Agricultural Commissioner, this directive is an unnecessary intrusion of the State into local activities and contrary to the spirit of AB 617. In addition to charging the California Air Resources Board to develop a statewide air quality monitoring plan through enhanced technologies, AB 617 aims to establish new *community-scale* emissions abatement programs, which are consistent with the statewide strategy but are locally driven and enacted. Negotiations

in earnest between the Community Steering Committee, growers, County officials, residents and activists on what may constitute an appropriate 1,3-D notification system have been taking place since early 2020. While this may seem to be a slow process, it is a deliberative one, aimed to produce practical, meaningful results. As said by a Kern County farmer of the process: “This temporary outcome is not a sign of obstinance or failure to reason, but rather of the arduous path required to eventually achieve compromise.” This process becomes even more arduous when sides become entrenched and statewide political goals supersede the interest of the local community. Moreover, DPR’s directive that the Kern Commissioner provide Notices of Intent (NOIs) for MITC and Chloropicrin, in addition to 1,3-D, is beyond the scope contemplated by the community stakeholders.

Then there is also the question of applicability of the AB 617 process to agricultural chemicals. AB 617 amended several sections of the Health and Safety Code related to air pollutants, including those classified as Toxic Air Contaminants (TACs).¹ However, the Health and Safety Code itself in Section 39655, as well as FAC Code Section 14022, exempt agricultural pesticides designated as TACs from regulation by the California Air Resources Board and rather, governed by DPR. The former section states:

“‘Toxic air contaminant’ means an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)) is a toxic air contaminant. A toxic air contaminant which is a pesticide shall be regulated in its pesticidal use by the Department of Pesticide Regulation pursuant to Article 1.5 (commencing with Section 14021) of Chapter 3 of Division 7 of the Food and Agricultural Code.

Though there has been an attempt to obfuscate the Kern County directive’s historical relationship to the AB 617 process, it is clear that it was an outgrowth of the Shafter Community’s insistence on prior notification on 1,3-Dichloropropene (Telone) applications. We don’t support this erosion of DPR’s authority, nor the inappropriate application of this statute to pesticides. Those involved in the negotiations during the passage of AB 617 recall a clear understanding that CARB was not going to use this new statute to intrude on DPR’s primacy in pesticide regulation. Therefore, we are surprised and disheartened that DPR is allowing this “mission creep” to take place.

Additionally, the agricultural organizations herein disagree that a notification system contemplated and governed by DPR will achieve the public policy goals of improving enforcement of pesticide use laws and regulations. It will not provide any further authority or resources for State or local officials to monitor applications nor will it empower responsible parties to take an enforcement against a violation.

Furthermore, this notification system will not greatly improve public health and safety. Crop protection materials are already subject to a rigorous product review process (including efficacy studies, ongoing monitoring and re-evaluation) and application requirements. DPR and CACs also ensure only licensed applicators, in accordance with the product labels, use such products and are required to conform with workplace safety requirements, prohibited reentry periods, and

¹ Health and Safety Codes Sections 39606.1, 40920.8, 42411, 42705.5, 44391.2, and 40920.6

mitigations. Through Commissioner Fankhauser, Kern County has implemented additional fail safes to protect the public's health, including providing access to information to first responders, should the questions of an exposure incident be considered as the basis for illness. Providing residents notification of an impending application will not direct them to take actions that could make them *any safer* than they already are, if the product is applied correctly. If applied incorrectly, willful, negligent or harmful pesticide use violations are and should be met with severe consequences, as they are today. Notification of future applications will also fracture communication between Kern County growers and community members, especially if facilitated by a Sacramento-based agency rather than the local, trusted CAC. Finally, notification will not reduce emissions related to Toxic Air Contaminants (as is the intent of AB 617 and the Community Emission Reduction Plan). DPR's 2018 Pesticide Use Report highlights the actions farmers have taken to date to reduce the application of Toxic Air Contaminants, including 1,3-D, by 2.8 million pounds in one year. Additionally, DPR is already moving forward with separate pilot program on 1,3-D fumigations with proposed mitigations. Should these mitigations, through the regulatory process, become applicable across the State, but not through notification.

Moreover, DPR's proposed notification program will suffer from serious practical issues. Many of these issues are the same as those articulated during discussions with community representatives, facilitated by Commissioner Fankhauser. To assume that statewide control of the project will abate them is inaccurate. As proposed in the correspondence, DPR will post received NOIs online and allow for an opt-in email notification. Since the advent of the AB 617 discussion, Kern community activists argued that an online system with email notification will not provide proper notice to those residents with language or accessibility barriers and will not overcome the distrust of community residents in sharing personal contact information with State officials. Moreover, given that this data will be hosted by a state Department with much greater reach and exposure, it will likely serve the interest of statewide activists, not Kern or Shafter residents. As was the case in the Monterey County notification system, known as Farming Safely Near Schools which began in 2016, a system accessible without resident verification has not serviced the immediate local public. Based on the CAC's report to the Monterey County Board of Supervisors, of the 4,778 users accessing the website, less than half were from California and among those users who did frequent the site from California, their I.P. addresses originated from the following top four counties: San Francisco, Monterey, Sacramento, and Santa Cruz. In the case of Monterey County, preemptive notifications on applications were also met with appeals (curiously supported by statewide activist groups) to DPR, requiring considerable resources and legal expertise to uphold the Commissioner's approval, while threatening the timeliness of applications to protect agricultural commodities. We can expect this waste of local and State officials' limited time and resources on frivolous appeals to be the case under this directive.

Finally, and most importantly, notification of residents of applications within a 7-mile radius without context will lead to greater community confusion. Notification will not alert residents to when an application is happening and for how long, nor will it lead to any discernable and sustainable behavioral changes of residents to make them safer. It will, however, lead to an increased volume of service calls to the Commissioner's Office to investigate unwarranted and unrelated pesticide applications. At a time when local governments, especially Kern County, are struggling to make ends meet and Agricultural Commissioners are charged to "do more with less," not recognizing the realities of this case is unwise. Barring any other benefit, if this pilot

proposal is about providing the broader public with a “right to know,” we encourage DPR to consider the following questions: (1) Who *needs* to know? and (2) How will knowing make them *safer*? It’s undeniable that these are the difficult questions the stakeholders in Shafter have contemplated over this last year.

Therefore, given the lack of clear authority, inability to achieve public policy goals, inconsistencies with the intent of AB 617, and the practical problems that will only be exacerbated under a state-facilitated notification system, as proposed, we respectfully request DPR reconsider the directive to Commissioner Fankhauser. In doing so, DPR can allow local negotiations to continue and provide due consideration to the proposal presented by Commissioner Fankhauser to satisfy the will of Shafter residents. As was the basis for the Shafter Community Emission Reduction Plan, it is critical this project be guided by the interests of Kern County residents and officials, not statewide motivations. On behalf of California’s agricultural industry, thank you for the opportunity to share our position on this matter. Please feel free to reach out to any signatory listed, as needed.

Sincerely,

African American Farmers of California
Agricultural Council of California
California Aircraft Association
California Association of Pest Control Advisers
California Association of Winegrape Growers
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Fresh Fruit Association
Californians for Smart Pesticide Policy
Kern County Farm Bureau
Nisei Farmers League
Sacramento Valley Landowners Association
Western Agricultural Processors Association
Western Plant Health Association

cc: Glenn Fankhauser, Agricultural Commissioner and Sealer, Kern County
Josh Huntsinger, President, California Agricultural Commissioners and Sealers Association
Jesse Cuevas, Chief Deputy Director, Department of Pesticide Regulation