



December 17, 2020

Sent via email to fankhauserg@kerncounty.com

Mr. Glenn Fankhauser
Agricultural Commissioner
Kern County Department of Agriculture
1001 S. Mount Vernon Avenue
Bakersfield, California 93307

Subject: Shafter Community Pesticide Notification Pilot

Dear Mr. Fankhauser:

Glenn

The purpose of California's pesticide regulatory program is to protect public health and safety, ensure growers use pesticides properly and safely, and encourage the development and implementation of integrated pest management systems. The Department of Pesticide Regulation (DPR) and county agricultural commissioners (CACs) have a longstanding history of working cooperatively to support this statutory purpose. Together, DPR and CACs are responsible for enforcing pesticide laws and regulations—including requirements applicable to restricted material pesticides that are toxic air contaminants (TACs)—to minimize any potential adverse effects on the communities and environments in which they are used.

Implementation of community notification of hazardous pesticide applications as a pilot project in Shafter, and on a statewide scale, will work to improve the enforcement of pesticide requirements that protect public health and safety and to enhance public transparency. DPR, the California Air Resources Board (CARB), and the San Joaquin Valley Air Pollution Control District (Air District) have engaged since February 2020 with you and the Shafter Community Steering Committee to help develop a Shafter community notification pilot. Those efforts include CARB Member Dean Florez's meeting with you and the Shafter Community Steering Committee to discuss development of a pilot.

Despite these efforts, agreement has not been reached on an appropriate community notification pilot for Shafter. As a result, DPR is requiring you to submit regular reports of approved Notices of Intent (NOIs) for the use of pesticide products containing 1,3-dichloropropene (1,3-D), chloropicrin, or methyl isothiocyanate (MITC) in and within seven miles of Shafter to DPR so that DPR can provide notice to the community for the pilot project. This requirement is detailed further below.

I want to recognize the recent contributions and assistance that you and others provided in evaluating new application methods to reduce emissions from 1,3-D. This iterative process resulted in a more refined proposal that incorporated helpful input from local CACs and pesticide

applicators and met DPR's objective of identifying practical application methods with emissions reduction potential that may inform future statewide mitigation. I believe this is a good model of collaboration between government and private industry.

I. Public Notification Improves Enforcement of Public Health and Safety Protections and Enhances Public Transparency

Public notification improves enforcement of state and local public health and safety protections and enhances public transparency in the following ways: increasing general awareness of pesticide use in the community; allowing the public to take precautions to avoid potential exposure; ensuring first responders have access to information about nearby pesticide applications; increasing transparency of the restricted materials process by providing regular notification of upcoming applications; and encouraging local communication between the public and growers. These are important and necessary public policy goals.

While NOIs are public documents, the public does not currently receive notification of upcoming pesticide applications in their area. To provide this public notification, we would like to model the Shafter community notification pilot on the grower notification program that your office implemented successfully in Kern County. I believe that the elements of your grower notification program—growers' submission of NOIs to your office at least 48 hours before application; your review and approval of the NOI; and your office's email notice to growers surrounding the area to be treated—provide a strong foundation for a community notification pilot project.

Further, the goal of the grower notification program—protecting persons working in neighboring fields from potential pesticide exposure—naturally extends to broader community notification. In fact, the event underlying the implementation of grower notification—a major 2003 chloropicrin incident near Arvin, California—resulted in illnesses to both workers and nearby residents. And we understand that you identified community notification as a potential future feature of the grower notification program.

In 2019, the Shafter Community Steering Committee prepared a Community Emissions Reduction Program (CERP) under the rubric of Assembly Bill 617 legislation identifying strategies for reducing potential exposure to TACs in the San Joaquin Valley. The CERP, which CARB approved on February 13, 2020, incorporates complementary pesticide measures in the community, including a public notification system to be developed in coordination with your office. CARB and the Air District have committed funds toward this public notification system. Unfortunately, as noted above, repeated attempts to reach a voluntary arrangement to provide the community with the notification contemplated by the CERP have failed.

Based on the commitment under the CERP, existing infrastructure in Kern County for notification, and the public health and safety, enforcement, and transparency benefits public

notification can provide, DPR is requiring you, as indicated above, to submit regular reports of approved NOIs for the use of pesticide products containing 1,3-D, chloropicrin, or MITC in and within seven miles of Shafter to DPR so DPR can provide notice to the community.

II. Community Notification Pilot Project in Kern County

Under Food and Agricultural Code sections 11455, 2272, 2281, and 14004, you have a legal duty to submit reports required by DPR. Pursuant to its authority, DPR instructs and requires you to submit to DPR regular reports containing any approved NOIs for the use of pesticide products containing 1,3-D, chloropicrin, or MITC in and within seven miles of Shafter. These reports must be provided to DPR at least 24 hours before the intended pesticide application. In the spirit of cooperation and collaboration on this community notification pilot project, DPR will then post information from those NOIs on its own website and provide email or other electronic notification to anyone who requests notice. The pilot project will run for two years. DPR will work directly with you to address the logistics of sending these NOIs to DPR in a timely fashion.

DPR will include at least the following elements in the pilot project:

- **Location:** Applications occurring in and within a seven-mile radius around Shafter in Kern County.
- **Duration:** Two-year pilot.
- **Pesticides:** 1,3-dichloropropene, chloropicrin, and MITC.
- **Information provided in the public notice:**
 - The coordinates or address of the area to be treated,
 - The pesticide(s) to be applied,
 - The date the intended application is to commence, and
 - The contact information for your office.
- **Form:** The public notice will be provided electronically by posting the information on a publicly accessible website and by providing email or other electronic notification of the information to anyone who requests notice.
- **Timing:** Notice will be provided before the intended application.

DPR estimates that the costs of providing the required reports to DPR will be minimal. To the extent this results in increased costs, DPR encourages you to provide any relevant information to DPR for additional analysis and to utilize the funding identified by CARB and the Air District.

III. Next Steps

DPR is fully committed to taking steps necessary for implementation of this community notification pilot project to improve enforcement of public health and safety protections and

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enhance public transparency in Kern County. DPR requests your written confirmation that you will comply with this directive by January 8, 2021. DPR will then schedule a meeting with you to discuss next steps. In the meantime, if you have any questions, you may contact me, or Mr. Daniel Rubin, DPR's Chief Counsel, at <daniel.rubin@cdpr.ca.gov> or 916-324-2666.

Sincerely,



Val Dolcini
Director
916-445-4000

*I look forward to working
with you on behalf of
the residents of Shafter
and greater Kern County.*

cc: Mr. Daniel Rubin
Ms. Donna Marciano, Enforcement Regional Branch Chief
Mr. Joseph Damiano, Enforcement Headquarters Branch Chief
Mr. Joe Marade, DPR County/State Liaison