



DEPARTMENT OF AGRICULTURE AND MEASUREMENT STANDARDS

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Mr. Val Dolcini
Director
California Department of Pesticide Regulation
1001 I Street
P.O. Box 4015
Sacramento, CA 95812-4015

Subject: Shafter Community Pesticide Notification Pilot

Dear Mr. Dolcini,

Val

The purpose of this letter is to respond to the directive to implement a pilot notification system for pesticides in and around the city of Shafter. I agree with your characterization of the long-standing beneficial relationship between county agricultural commissioners and the Department of Pesticide Regulation (DPR) in being partners in protecting the general public from exposure to harmful pesticides. To that end, I feel that the work we do in cooperation with DPR in enforcing the current strict and rigorous requirements that are scientifically based directly results in a public that is more protected than in any other state. As I'm sure you are well aware, DPR has multiple ongoing air monitoring stations in addition to many other studies which serve the overall purpose of continual research. Any time that unusual readings occur, DPR reacts by adjusting their regulations and/or suggested permit conditions to ensure safety to the highest extent possible. I applaud these studies which serve to provide data driven justification for regulations rather than those that are based on reactionary public opinion.

Related to the rubric of Assembly Bill 617 (AB617) which you have referenced, as I have mentioned several times, the goal of AB617 and the Community Emissions Reduction Plan (CERP) is to reduce toxic emissions into the atmosphere near and around selected communities. Indeed, the title of the document prepared by the Community Steering Committee (CSC) and approved by the California Air Resources Board (CARB) contains the words "emissions reduction." Regardless of a community notification program being included in the CERP, notification of residents does not reduce emissions but only provides notification and thus is clearly not within the scope of AB617.

Nonetheless, in the interest of cooperation, transparency, and the desire to provide residents of Kern with useful information, I agreed to engage in continuing discussions with CARB, DPR, members of the CSC, as well as with representatives of the Kern County Farm Bureau to develop a reasonable and workable notification pilot that would provide the residents with the information they desired.

When these discussions reached an impasse, I welcomed the leadership and participation of former Senator Dean Florez because of his past experience in being instrumental in the development of our grower notification system, but primarily because of his family connection and having grown up in Shafter. He truly wished to see a program developed that would benefit these residents. His participation was both a laudable and heartfelt desire to aid the Shafter populace. However, Senator Florez cancelled a second planned meeting when it became clear that some stakeholders in the process were not negotiating in good faith. While continuing to participate in discussions, they were at the same time preparing and sending letters complaining of my absence at the negotiating table without acknowledgement of their rejection of two iterations of a program that I proposed that specifically addressed their purported concerns.

I believe it became clear to Senator Florez that there was an overarching agenda of the statewide activists that was more important than actually addressing the needs of Shafter residents. I also mirror

this experience in the fact that I, as well as my predecessor, have been asked for many years by these groups to provide resident/public notification. This is why I believe that the idea for notification did not develop organically within the process of the AB617 Shafter CSC meetings, but was rather improperly seeded by the activist groups in furtherance of a long-held agenda. An example in support of this is the fact that one of the requests of the CSC was to provide online posting of rejected Notice of Intents (NOIs) as well as those that were approved. What possible useful information would be provided by letting residents know about pesticide applications which would NOT occur?

Accordingly, I'm sure you can understand my confusion at the implication that DPR must now require my compliance with its directive because I have been unwilling to implement a notification program. Such could not be further from the truth. I have offered two different workable notification programs that have fallen on deaf ears. Neither CARB, DPR, nor the activist representatives have wavered nor compromised on their initial requirements as to exactly what a Kern notification system must entail.

You have cited the collaboration of other valley commissioners, industry, and DPR in developing a pilot program to analyze different application methods for 1,3-D with the goal of reducing emissions by developing new permit conditions. You also reference that this is a good model of cooperation between government and private industry. I am therefore also confused as to why this collaboration was not extended in the case of public notification. The Kern County Farm Bureau, in addition to my office, offered a form of notification in addition to offering to host several informative public meetings in Shafter to educate residents on pesticide applications and regulations. These efforts were likewise disregarded. Instead, now DPR feels that the best collaboration with industry and other regulators is forced compliance utilizing questionable authority. Has DPR now abandoned cooperative measures?

The letter mentions several times how community notification will improve enforcement of pesticide requirements. Yet, none of the cited benefits improve enforcement in any way. Can you explain how increasing general awareness of pesticide use, allowing the public to take precautions, ensuring first responder access to information about pesticide applications, and/or increased transparency and communication improve *enforcement*? I fail to see how any of these measures will either increase compliance with regulations or increase my office's rate of inspection on these applications. Although I have mentioned before the programs that my department engages in to actually address these issues, perhaps now is a good time to reiterate them.

First, in the interest of protecting farmworkers, and by extension the general public, since 2008, Kern continues to be the ONLY county in the country that provides restricted material application information to neighboring growers. While this began as a pilot project in only ¼ of Kern's agricultural area, in 2018 I expanded it county-wide in full cooperation with all growers in Kern. As a result, we are also the only county in the country that requires a minimum of 48 hour NOIs for ALL restricted materials. Second, to ensure that first responders have access to the information they need to best respond to pesticide incidents, since 2010, we have hosted a proprietary website which is accessible to first responders in real time in the field. This site is called KernRED (Kern Rural Emergency Database) and provides Geographic Information System (GIS) location and contact information for growers and applicators so that emergency responders can immediately contact responsible parties, as well as provide them a link to the Safety Data Sheets (SDS) of the most commonly used pesticides particular to the registered crop at that site. This information is updated by my office to be seasonally specific. Again, we are the only county in the country that currently provides either of these services.

In terms of another 'pilot project' in Kern County, I question the necessity of such a project. DPR should require no additional data to determine the feasibility of public notification. As has been mentioned, since 2008, Kern has had grower to grower notification and has recently contracted with a company to rewrite the programming for our system. Therefore, programming exists for a statewide program without the need for an additional Kern pilot.

Second, Monterey County is in its second year of a pilot community notification program for fumigants. Feedback on both of these programs, collectively making up 13+ years of data should provide more than enough experience for DPR to determine how to proceed with statewide notification should it see fit.

Accordingly, it would seem that the two authorities in the state regarding notification would be the commissioners of Kern and Monterey counties. Accordingly, I find it confusing that none of the concerns of either of us are being listened to as DPR attempts to enforce new 'pilots.' Because these issues have been ignored, let me restate them:

- 1) NOIs have a "proposed" start time. Understandably, this time is flexible to allow for changes in conditions in the field. Current regulations allow for restricted material applications to begin as many as 96 hours (four days) after the proposed start time. Combined with the various restricted entry interval (REI) requirements, this would result in an unreasonable window for residents to supposedly change their behavior. For example, the 2003 chloropicrin incident (which you cite as the impetus for our notification pilot project, although it was only one of several incidents, the totality of which resulted in the pilot) occurred after the application but during the REI. The REI for chloropicrin at that time was 48 hours. In this instance, this would have amounted to a 6 day window during which notified residents would have needed to change their behavior to protect themselves from 'possible' exposure to toxic air contaminants (TACs). Is this likely and/or reasonable? Further, REI information is not included currently on an NOI and would require additional action on the part of a resident to determine a material's REI and change their behavior for the additional time frame. Also unlikely.
- 2) Online and/or opt-in email type notification results in notification to a large segment of the population which could never potentially be affected by a specific pesticide application. Data collected by Monterey County revealed that the vast majority of individuals that signed up for notification did not even live in Monterey County and 2,661 of the 4,778 users (56%) that signed up for notification were from out of state. What possible use could notification of a fumigant application in Monterey be to a resident of another state?
- 3) There is currently neither a fee for submitting an NOI, nor is there a fine for submitting a 'false' NOI. What this means is that a grower could conceivably submit NOIs for the same location every two days, essentially resulting in their ability to apply the material at any time that suits them, 24/7, 365 days a year. This would render the information useless to the person being informed, and would also negate the purpose of the notification. Indeed, this has occurred with one grower in Kern who wants to have this flexibility in their treatment schedule. Thankfully, this is not widespread, but I fear that forcing a public notification on the growers might make this the norm instead.
- 4) The general public does not differentiate among restricted, non-restricted pesticide use or fertilizer applications. For the few people who will be aware of this program, it is highly likely that they will see a pesticide application in the area, realize they weren't notified, and will contact my office to complain that they didn't receive such. My biologists will have to investigate, contact growers, applicators, etc., then contact the complainant to tell them that notification wasn't necessary for whatever reason. This will take away valuable man hours from our pesticide surveillance/compliance inspections and possibly put the public at greater risk as a result due to reduced oversight.
- 5) Due to fumigant application block size restrictions, often an application to one site can continue across a field over several days. This information would not be conveyed to the person being notified and could lead to confusion when they see the applications occurring on succeeding days and wonder why they didn't receive notice for each day.

Two of the additional reasons given for requiring this program are Kern's existing infrastructure for notification and to also encourage local communication between the public and growers. However, neither of these are components of the proposed pilot. Our current notification programming will not be used, nor will grower contact information be given to notified individuals. You have conversely not given a reason such as an unusual number of fumigation pesticide investigations/violations or toxic air readings as a direct result of specific applications, nor have you stated that my department is failing to enforce

certain regulations which would necessitate these special "reports" – something which one would assume to be the impetus for such an unprecedented directive from DPR.

I believe this would be a good time to bring up the pilot project which I have previously offered but has been ignored. My project addresses not only the concerns of CARB, DPR, the Shafter CSC, and the statewide groups, but also the concerns of Kern County growers and the Kern and Monterey county agricultural commissioners. I have proposed written notification to residents within 200 feet (double the current buffer) of proposed applications of 1, 3-D. This is modeled on our grower notification by ensuring that ONLY potentially affected individuals are notified. (Our system only notifies adjacent growers permitted by our office. This notification does not go to all growers in the county, nor does it go to a grower in south Texas who asks to be notified.) Also, because this is a physical notification, it better increases communication between residents and growers because it puts them in direct contact when the notification is made. The first proposal which fell on deaf ears involved notification within the same four townships that were to be used in the emissions mitigation pilot project. Subsequent to feedback from members of the Shafter CSC, I amended my proposal to the same 7 mile diameter area of influence outlined in AB 617 which encompassed a larger geographic area, resulting in a second iteration of a proposed pilot.

I apologize for the length of this letter, but it is a result of my frustration at having my concerns both dismissed and ignored. Among other issues I have with the Food and Ag Code Sections that you have cited, I disagree with both your interpretation of your authority to require this pilot project from my office and of the overly broad definition as to what constitutes a report, something of which I am sure you are aware because of the careful usage of this term as it relates to my office providing you with the NOIs. However, to be clear, technical legal disagreements over authority have little to do with my decision not to supply DPR with the requested "reports." I believe that my reasoning should have been apparent in the previous points which I outlined.

The safe application of pesticides in Kern County is one of my most primary concerns. The health of the residents of Shafter is of utmost importance. Were I to believe that there was any type of useful information that could be provided through these NOIs to the residents of Shafter, I would gladly comply. Further, there are no unique conditions, situations, or episodes that warrant this special reporting within the area of Shafter or within any other portion of Kern and certainly not to the extent that Kern should be singled out from the rest of the state in being the only county that should be required to provide NOIs to DPR. If I am wrong in this, please let me know. If this is a 'right-to-know' issue, then that issue exists statewide, not just 7 miles from the center of Shafter.

Pesticide regulations and rules must have a basis in science in order to engender compliance. This is what regulatory agencies should continually strive for. Arbitrary requirements which single out particular areas and/or industries without data to back them up have the potential to backfire. Therefore, my great fear is that by complying with this requirement I would actually be putting more of the public at risk because it would result in my office being flooded with NOIs which the growers have no intention of following through on. This would immediately render useless our current grower-to-grower notification because nobody would actually be able to tell when an application might occur, thus putting thousands of farmworkers in Kern at risk of being drifted upon. I humbly urge you to take into account the aforementioned unintended consequences and reconsider your directive.

Sincerely,



Glenn Fankhauser
Agricultural Commissioner/Sealer

I look forward to the uniform exercise of your authority statewide for the benefit of all Californians.