

Kathleen Kilpatrick

NOI Comments, 8/1/24

Over the last eight or nine years, I've lost count of how many meetings I've attended, and how many oral and written comments I've submitted on sequential developments in DPR's sharing of pesticide use data. The school notification program was an important step, yet its limitations revealed the inadequacy of focusing so narrowly. We expanded our efforts to include communities surrounding both the schools and the agricultural fields that are too often adjacent to both the school and community. Yes, this notification program is novel, perhaps the first of its kind in the world. But does it meet the needs of communities such as mine? Residents and workers see themselves as unjustly exposed to the potentially toxic effects of the many synthetic chemicals used in modern agriculture. DPR's stated intention for providing NOIs is "transparency and equitable access". These are worthy goals, but DPR is also tasked with overseeing the work of the County Agricultural Commissioners (CACs), Pest Control Advisors (PCAs), and applicators. Protecting public health is also a stated part of DPR's mission.

We are that public, "stakeholders" living near fields where pesticides are applied. We don't just want transparent information, we want accountability. The irony is that, in making the information provided palatable to growers, applicators, and the ag industry in general, it becomes less transparent and undercuts accountability.

Location

Since location is the current focus of SASS and CPR, two of the organizations I work with, let's start with that. After the pilot project in our Watsonville senior neighborhood, I provided a long, detailed narrative describing why the one mile radius did not work and was not useful. You've heard the same from residents of other agricultural communities. What's troublesome is the fact that the information we're asking for is included in the permit requirements, but excluded from the notification.

DPR claims that one reason for this is the lack of a uniform reporting system. Yet DPR has been developing just such a system for years. The state's online reporting system is used by CACs in multiple counties. In some of these counties, information on exact location is provided to other growers. It is provided under some circumstances to beekeepers, and it is (supposed to be) provided to schools. In Monterey and Santa Cruz counties, we can request and obtain maps of the fields within a quarter mile of schools, with the list of proposed pesticides for the following year and names and contact information for growers. Under the school notification project in Monterey County, that same information is also available to people who sign up for school NOIs.

Yes, there is a single legal challenge in progress, but agriculture has not been stopped; in fact, fumigation appears to continue unabated. Yet the hypothetical concerns of the ag industry appear to outweigh the lived experiences of community members concerned about pesticide drift encroaching in their schools, their homes, and in the fields where they are working.

What's in a name?

DPR added specification that besides the product brand name, the active ingredient will be identified. However, recipients of notification will still have to look it up and decipher information in highly technical form and/or specialized format, often incomprehensible even to those with a science background. DPR appears only willing to provide generic information on safety measures and on reporting possible exposure. Missing is information about acute symptoms, potential

long-term effects, and cumulative and combined impacts of exposure to multiple chemicals, including adjuvants, which are not required to be named by the manufacturer. And this is just for a very truncated list of only the chemicals currently identified as restricted based on their risks to human and environmental health. There remain many other highly hazardous chemicals in wide use in California which are not reportable under the current system.

Loopholes and Paradoxes

As stated in my January 2024 comments, the language of the regulation appears fraught with potential loopholes, manifest in fudge phrases like “undue hardship“ and “as soon as practicable”. These loopholes portend a lack of timeliness in reporting, and also to the prejudicial use of discretionary authority of the CACS, a topic of on-going concern. Both timeliness and discretionary authority are germane to what I’ll title the Paradox of the 24 hour rule.

As I understand it, a NOI paperwork must be submitted at least 24 hours before the intended pesticide application, 48 for fumigants. Per the regulation, that form must be reviewed and approved by the CAC, and submitted electronically by either the permittee or the CAC (insert both fudge phrases here). It is then posted to the notification system also electronically, in truncated form, by DPR. Is there a time machine involved? How can all three operations happen simultaneously? Where is the time allotted for the CAC to evaluate whether there are less toxic options available, and weigh the many variables (weather, wind speed, workers in neighboring fields, etc) that influence the likelihood of adverse events?

Checking Our Work or the Devil in the Details

DPR’s willingness to expand the evaluation process is appreciated. The two bodies tasked with assisting in evaluation, CDFA’s board and the EJAC, have potential to present a spectrum of interests. The list of stakeholders which DPR includes in describing changes to the regulation is refreshingly inclusive. CDFA appears well-positioned to represent the interests of growers, especially the larger ones, and is a body of long-standing, preceding the existence of DPR, and even CalEPA. DPR’s EJAC has yet to be formed, with the funding, timing process and composition as yet uncertain. As a newly constituted committee, the EJAC will have a big job mustering a perhaps more diverse group of stakeholders to participate in the notification project, provide reviews, and give suggestions for improvement, while simultaneously developing a working process and sense of cohesion. And as the recent hearing has demonstrated, it’s not a matter of one person, one vote. Those who want more complete information have to lobby much harder than those who want to withhold it.

Common ground on pesticide use can be hard to find. California’s governor and a former CalEPA head expressed the intent of addressing our agricultural system’s chemical dependency problem. Consumers and workers want this as well. It’s not a matter of “Just tell us what poisons you’re applying next to us!” Transparency must nurture accountability. We can only hope evaluation will be both informative and formative, because to build a useful notification system, we still have a ways to go.

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