



May 22, 2026

California Air Resources Board
1001 I Street
Sacramento, CA 95814

**RE: CARB SHOULD INCLUDE STRONG, ENFORCEABLE PESTICIDE
EMISSION REDUCTION MEASURES IN THE 2026 SIP REVISIONS
FOR CALIFORNIA'S EXTREME OZONE NONATTAINMENT AREAS**

Dear Chair and Board Members:

CARB's proposed 2026 revisions to the 2022 State Implementation Plan acknowledge that the federal government's unlawful revocation of California's mobile source emissions waivers has created major shortfalls in the emissions reductions underlying the state's attainment strategy, which still awaits U.S. EPA approval.

We are deeply concerned that rather than adopting strong new enforceable measures to reduce Reactive Organic Gases (ROGs) in the San Joaquin Valley and other severely polluted air basins, CARB is considering reliance on the speculative "black box" provisions of Section 182(e)(5) of the federal Clean Air Act to achieve the state's attainment goals — effectively assuming unidentified future technologies will somehow fill major emissions reduction gaps.

We urge, instead, aggressive reductions in ROG emissions from stationary and area sources, including from industrial agriculture. For too long, industrial agriculture — despite contributing substantially to ozone formation and regional air pollution — has remained comparatively underregulated as a source of ozone precursor emissions. Specifically, we urge CARB to adopt strong regulations to reduce the ozone-producing emissions from agricultural pesticides.

Pesticide ROG/VOC emissions continue to receive far less regulatory attention than other major industrial pollution sectors. According to DPR's most recent annual 2025 VOC report, agricultural pesticides applied in the San Joaquin Valley emitted approximately 14.8 tons of VOCs per day in 2023¹ — a level higher than VOC emissions from other major industrial sectors

¹ Table 1, Page 10 of DPR's report page for *Annual Report on Volatile Organic Compound Emissions from Pesticides: Emissions for 1990–2023*. https://www.DPR.ca.gov/wp-content/uploads/2025/04/annual_report_voc_emissions_from_pesticides_emissions_1990-2023.pdf

in the region, including light duty passenger, oil and gas production, food and agriculture and off-road equipment².

California has addressed pesticide VOC emissions in SIP commitments since 1994, but DPR's core pesticide VOC reduction framework remains tied to outdated SIP targets that do not reflect today's substantially more stringent ozone attainment obligations. Since 1994, the federal ozone NAAQS has progressively tightened from the 1-hour 80 ppb to the 70 ppb 8-hour ozone standard adopted in 2015, with California's extreme ozone nonattainment areas now required to attain that standard by 2037. Yet the San Joaquin Valley remains in severe/extreme ozone nonattainment and pesticides continue to represent a significant source of ozone-forming VOC/ROG emissions.

I. CALIFORNIA'S CURRENT OZONE ATTAINMENT STRATEGY FAILS TO ADEQUATELY ADDRESS PESTICIDE VOC/ROG EMISSIONS

This regulatory stagnation is especially troubling because some of the highest concentrations of air pollution in California coincide with regions of the most intensive industrial agricultural pesticide use. Communities in the San Joaquin Valley and other high pesticide use agricultural regions experience disproportionate burdens of asthma, respiratory illness, adverse birth outcomes, cumulative environmental exposures and pesticide-related health risks, including evidence linking agricultural pesticide exposure to certain cancers.³

In addition to their contributions to ozone, many VOC-emitting pesticides used in California agriculture are associated with serious health and environmental harms, including carcinogenicity, reproductive and developmental toxicity, neurotoxicity, endocrine disruption, respiratory impacts, and ecological toxicity affecting pollinators and broader ecosystem

² U.S. Environmental Protection Agency, *Approval of Clean Air Plans; San Joaquin Valley, California; Contingency Measures for the 1997 Ozone Standards*, 90 Fed. Reg. 51029 (Nov. 14, 2025). <https://www.federalregister.gov/documents/2025/11/14/2025-19884/approval-of-clean-air-plans-san-joaquin-valley-california-contingency-measures-for-1997-ozone>

³ California Office of Environmental Health Hazard Assessment (OEHHA). *CalEnviroScreen 4.0 Report*. October 2021. <https://oehha.ca.gov/sites/default/files/media/downloads/calenviroscreen/report/calenviroscreen40reportf2021.pdf>
Meng, Y.Y., Rull, R.P., Wilhelm, M., Lombardi, C., Balmes, J., & Ritz, B. "Outdoor Air Pollution and Uncontrolled Asthma in the San Joaquin Valley, California." *Journal of Epidemiology and Community Health* 64, no. 2 (2010): 142–147. <https://healthpolicy.ucla.edu/our-work/publications/outdoor-air-pollution-and-uncontrolled-asthma-san-joaquin-valley-california-journal-epidemiology-and>
Larsen, Ashley E., Gaines, Steven D., & Deschênes, Olivier. "Agricultural Pesticide Use and Adverse Birth Outcomes in the San Joaquin Valley of California." *Nature Communications* 8, Article 302 (2017). <https://www.nature.com/articles/s41467-017-00349-2>
Park, A.S., Ritz, B., Yu, F., Cockburn, M., & Heck, J.E. "Prenatal pesticide exposure and childhood leukemia — A California statewide case-control study." *International Journal of Hygiene and Environmental Health* 226 (2020): 113486. <https://pmc.ncbi.nlm.nih.gov/articles/PMC7174091/>

function.⁴ Numerous VOC-emitting pesticides are also Toxic Air Contaminants or restricted materials subject to heightened regulatory concern.

Pesticides are also a profound environmental justice issue. CalEPA researchers found that pesticide use is among the environmental pollution indicators with the greatest racial and ethnic disparities in California.⁵ Farmworker communities and low-income rural communities of color disproportionately bear the cumulative burden of pesticide exposure alongside ozone and particulate pollution.

The need for stronger pesticide VOC regulations is also consistent with the vision of the 2023 Sustainable Pest Management Roadmap⁶ released by DPR, CDFG, and CalEPA, which calls for reducing reliance on the most hazardous pesticides and advancing safer, more sustainable pest management approaches in California agriculture. Strengthening pesticide VOC controls can help reduce both ozone-forming emissions and reliance on higher-risk pesticide products while supporting the state's broader transition toward sustainable pest management.

Reducing pesticide ROG/VOC emissions is therefore fully consistent with — and necessary to achieve — California's existing climate, environmental justice, sustainable agriculture, and public health commitments.

II. DPR'S PESTICIDE VOC/ROG REDUCTION STANDARDS ARE OUTDATED

In 1994, California committed to reducing VOC-emitting pesticide emissions 20% below 1990 levels in most major air basins, except for the San Joaquin Valley, where it committed only to a 12% reduction target from 1990 levels.⁷ Since the U.S. EPA adopted the 70 ppb 8-hour ozone standard in 2015, DPR has not adopted a comprehensive new pesticide VOC/ROG reduction program for fumigant and nonfumigant pesticides in the San Joaquin Valley, nor has it updated the Valley's core pesticide VOC benchmark beyond the outdated 12% reduction from 1990 levels.

⁴ For example, 1,3-dichloropropene has been classified as a carcinogenic concern; chloropicrin is associated with acute respiratory irritation; methyl bromide is associated with neurotoxicity and developmental-neurotoxicity concerns; oxyfluorfen has been classified by EPA as a possible human carcinogen and presents ecological risks; and abamectin raises ecological risks to terrestrial invertebrates, including pollinator-relevant concerns.

⁵ Cushing, L., Morello-Frosch, R., Wander, M., Pastor, M., Sadd, J., Zhu, A., & Morello-Frosch, R. "Racial/Ethnic Disparities in Cumulative Environmental Health Impacts in California: Evidence From a Statewide Environmental Justice Screening Tool (CalEnviroScreen 1.1)." *American Journal of Public Health* 105, no. 11 (2015): 2341–2348., <https://pmc.ncbi.nlm.nih.gov/articles/PMC4605180/>

⁶ California Department of Pesticide Regulation, California Department of Food and Agriculture, and California Environmental Protection Agency, *Sustainable Pest Management Roadmap for California* (2023). https://www.cdpr.ca.gov/wp-content/uploads/2024/10/spm_roadmap.pdf

⁷ U.S. EPA, *Proposed Approval of California Fumigant Regulations* (Apr. 13, 2012), stating that California committed to reduce pesticide VOC emissions "by an amount equivalent to 12 percent (from 1990 levels) in the San Joaquin Valley" and "by 20 percent in the South Coast, Southeast Desert, Ventura and Sacramento areas." <https://19january2017snapshot.epa.gov/www3/region9/air/actions/pdf/ca/CaPesticideFactSheetApr13-2012.pdf>

The only recent pesticide VOC measure reflected in CARB’s 2022 State SIP Strategy aggregate reduction commitment is the 1,3-D rule, estimated to reduce SJV VOC emissions by just 0.4 tpd ROG by 2037. CARB noted that this reduction was not included in the modeled attainment inventory because it was quantified after the attainment modeling was completed. Unfortunately, this estimated emission reduction has not been groundtruthed by air monitoring, and of greater concern, use of 1,3-D actually increased 1 million pounds between 2024 and 2025, with an estimated 20% increase of 1,3-D emissions statewide and increased use concentrated in Kern and San Joaquin counties.⁸ See below chart, taken from data presented in DPR’s Quarterly Use Report: <https://www.cdpr.ca.gov/environmental-monitoring/air-monitoring/#13-Dichloropropene-Quarterly-Use-Summary>.

1,3-D Use 2023-2025

1,3-D Use	2023	2024	2025	Increase 2024-2025 (lbs)	Increase 2024-2025 (%)
Total lbs	7,015,253	7,008,972	8,006,694	997,722	14%
Adj Total lbs	6,500,952	4,053,244	4,856,667	803,423	20%
Est emissions	1,822,908	1,296,684			

See Attachment 1 for Breakout of 1,3-D Use by County and Year

There is no defensible policy reason for the San Joaquin Valley — one of the nation’s most persistent and severe ozone nonattainment regions — to remain subject to a weaker pesticide VOC benchmark than other California nonattainment areas. CARB should require DPR to update the outdated 12%/20% VOC benchmarks and adopt substantially more meaningful reduction targets, particularly for severe and extreme ozone nonattainment areas such as the San Joaquin Valley.

III. DPR HAS NOT ADDRESSED MANY VOC-EMITTING PESTICIDES

DPR’s current pesticide VOC control rules focus on a narrow set of pesticides: field fumigation requirements for seven fumigants – methyl bromide, 1,3-dichloropropene, chloropicrin, metam sodium, metam potassium, dazomet, and sodium tetrathiocarbonate – and restrictions on high-VOC nonfumigant products containing abamectin, chlorpyrifos, gibberellins, or oxyfluorfen when used in the San Joaquin Valley during ozone season on seven specified crops (alfalfa, almonds, citrus, cotton, grapes, pistachios, or walnuts).⁹ Yet DPR’s own inventory framework

⁸ California Department of Pesticide Regulation, *1,3-Dichloropropene Quarterly Use Summary*, <https://www.cdpr.ca.gov/environmental-monitoring/air-monitoring/#13-Dichloropropene-Quarterly-Use-Summary>

⁹ California Department of Pesticide Regulation. *Reducing Smog-Producing Emissions from Nonfumigant Pesticides in the San Joaquin Valley*. https://www.cdpr.ca.gov/wp-content/uploads/2024/11/factsheet_voc_overview.pdf
California Department of Pesticide Regulation. *Annual Report on Volatile Organic Compound Emissions from Pesticides: Emissions 1990–2023*. April 2025. https://www.cdpr.ca.gov/wp-content/uploads/2025/04/annual_report_voc_emissions_from_pesticides_emissions_1990-2023.pdf

has identified hundreds of VOC-emitting nonfumigant products¹⁰, including additional active ingredients associated with significant VOC-emitting products, such as glyphosate and bifenthrin.¹¹

IV. CARB SHOULD STRENGTHEN SIP-ENFORCEABLE STANDARDS FOR NONFUMIGANT VOC-EMITTING PESTICIDES

DPR’s current nonfumigant VOC framework focuses narrowly on restricting certain “high-VOC” pesticide products containing four primary active ingredients (AIs) — abamectin, chlorpyrifos, gibberellins, and oxyfluorfen — when used on seven specified crops in the San Joaquin Valley during ozone season (May 1–October 31). Products classified by DPR as “low-VOC” or “excluded” are not subject to these restrictions.¹²

Yet DPR’s own data show that the current nonfumigant VOC framework is too narrow in at least two ways: 1) it does not include other high-emitting nonfumigant active ingredients, some of which have even higher VOC emissions than the currently-regulated four nonfumigant pesticides, and 2) even with respect to those four regulated active ingredients, DPR’s own emissions analyses show that products with those AIs that are classified as “low-VOC” have frequently accounted for the majority of actual estimated VOC emissions more than the regulated “high-VOC” products.

This is evident from data pulled from Appendix 2 to DPR’s *Annual Report on Volatile Organic Compound from Emissions from Pesticides for 1990-2023*. Table A2-2-7 (“Top 10 Nonfumigant Primary AI Emissions in the San Joaquin Valley NAA”),¹³ which shows that several non-regulated nonfumigant active ingredients are associated with higher estimated VOC emissions than some of DPR’s currently regulated nonfumigant active ingredients. In fact, only two of DPR’s four currently regulated nonfumigant active ingredients — oxyfluorfen and abamectin — appear among the top 10 nonfumigant VOC-emitting active ingredients in the San Joaquin Valley in 2023, and both ranked below five non-regulated active ingredients that have even higher estimated VOC emissions.

Primary AI	Emissions (tpd)
Glufosinate-ammonium	1.211 tpd

¹⁰ DPR’s 2012 Notice of Proposed Regulatory Action for DPR Regulation No. 12-001: Volatile Organic Compounds in the San Joaquin Valley Ozone Nonattainment Area, <https://cdn.cocodoc.com/cocodoc-form-pdf/pdf/22567649--Notice-of-Proposed-Regulatory-Action-DPR-12-001-Notice-of-Proposed-Regulatory-Action-and-Notice-of-Public-Hearing-cdpr-ca-.pdf>

¹¹ California Department of Pesticide Regulation, Appendix 2 to *Annual Report on Volatile Organic Compound Emissions from Pesticides: Emissions for 1990–2023*, Table A2-2-7, San Joaquin Valley NAA, p. 19 (2025), https://www.cdpr.ca.gov/wp-content/uploads/2025/04/appendix-2_voc_emissions_from_pesticides_emissions_1990-2023.pdf

¹² California Department of Pesticide Regulation, *Volatile Organic Compounds Nonfumigant Regulations – Fact Sheets*, available at: [DPR VOC Nonfumigant Regulations Fact Sheets](#)

¹³ California Department of Pesticide Regulation, *Appendix 2 to Annual Report on Volatile Organic Compound Emissions from Pesticides: Emissions for 1990–2023* (Report Air 24-03, 2024), Table A2-2-7, “Top 10 Nonfumigant Primary AI Emissions in the San Joaquin Valley NAA,” p. 19. https://www.cdpr.ca.gov/wp-content/uploads/2025/04/appendix-2_voc_emissions_from_pesticides_emissions_1990-2023.pdf

Glyphosate IPA salt	0.935 tpd
Bifenthrin	0.746 tpd
Etoxazole	0.588 tpd
Glyphosate potassium salt	0.575 tpd
Mineral Oil	0.548 tpd
Oxyfluorfen*	0.498 tpd
Abamectin*	0.435 tpd
Clethodim	0.429 tpd
Hexythiazox	0.339 tpd

* Indicates one of DPR’s four currently regulated nonfumigant VOC active ingredients.

DPR’s own emissions analyses¹⁴ also show that even *within* the current four-AI nonfumigant VOC framework (abamectin, chlorpyrifos, gibberellins, oxyfluorfen), products containing these AIs that DPR classifies as “low-VOC” and does not regulate under the current framework have frequently accounted for the majority of actual estimated emissions because overall use volume significantly affects total emissions.

In 2023, DPR estimated that unregulated low-VOC products accounted for 0.522 tpd or 52% of emissions from the four regulated nonfumigant active ingredients compared with 0.473 tpd or 48% from the regulated high-VOC products associated with these active ingredients. Low-VOC products similarly accounted for the majority of emissions in each year from 2019–2023: in 2019 64%, in 2020 64%, in 2021 63%, in 2022 56%.

In light of these regulatory gaps, CARB should work with DPR to adopt more stringent new regulations for VOC-emitting nonfumigants that take these and other gaps into account in order to help achieve the 70 ppb 8-hour attainment goal.

V. **CARB SHOULD STRENGTHEN SIP-ENFORCEABLE STANDARDS FOR FUMIGANT VOC-EMITTING PESTICIDES**

CARB should require DPR strengthen fumigant VOC controls by adopting SIP-enforceable limits that phase down high-emission fumigant uses, require the lowest-emission feasible application methods, and establish declining seasonal ROG caps for fumigant emissions in the San Joaquin Valley. At minimum, CARB should make the claimed 0.4 tpd 1,3-D ROG reduction directly enforceable, rather than treating it as an expected co-benefit of a separate DPR health-risk rule. And CARB should track actual 1,3-D air monitoring results and compare them with the

¹⁴ California DPR, *Appendix 3: Low-VOC, High-VOC, and Total Hypothetical Emissions*, Table A3-2, attached to *Annual Report on Volatile Organic Compound Emissions from Pesticides: Emissions for 1990–2023*. https://www.cdpr.ca.gov/wp-content/uploads/2025/04/appendix_3_voc_emissions_from_pesticides_emissions_1990-2023.pdf?utm_source=chatgpt.com

reductions predicted as a result of recent 1,3-d regulations. As described DPR's most recent air monitoring results have indicated higher 1,3-D emission levels than projected.

VI. ENSURE TRANSPARENT, INDEPENDENT, VERIFIABLE AND SCIENTIFICALLY-ROBUST VOC/ROG EMISSIONS CALCULATIONS

CARB should require DPR to strengthen the accuracy, transparency, and enforceability of pesticide VOC/ROG inventories used to support SIP commitments by requiring independent verification of Thermogravimetric Analysis (TGA) emissions data, greater transparency regarding Application Method Adjustment Factor (AMAF) methodologies, and more rigorous treatment of missing or invalid Fumigation Method (FFM) codes rather than simply assigning new default Emissions Ratings (ERs) or FFM codes. Because SIP reductions must be quantifiable and enforceable under the Clean Air Act, CARB should also require DPR to evaluate whether modeled pesticide emissions reductions are consistent with real-world air monitoring data, particularly in light of recent increases in ambient 1,3-D concentrations at multiple California monitoring sites.

VII. CARB HAS AUTHORITY TO TAKE THESE STEPS AND MUST CLARIFY THAT AUTHORITY IN WRITING

CARB should correct the statement in the first paragraph on page 10 of the 2022 State SIP Strategy that states, "The California Department of Pesticide Regulation (DPR) is the State agency responsible for controlling pesticide emissions."

While DPR regulates pesticide registration and use, CARB also possesses significant authority and responsibility with respect to ozone-forming pesticide emissions and pesticide Toxic Air Contaminant (TAC) emissions, particularly after pesticidal use. As discussed in the attached legal memorandum, California statutes and case law recognize CARB's primary authority over emissions of TAC pesticides after application. Many TAC pesticides are fumigants, which are among the most significant pesticide contributors to ROG emissions.

CARB's SIP materials are internally inconsistent regarding responsibility for pesticide ROG reductions. The State SIP Strategy broadly assigns pesticide-emissions control responsibility to DPR, while the SJV staff report separately acknowledges CARB's authority with respect to emissions from pesticide TACs.

VIII. CONCLUSION

CARB cannot reasonably rely on speculative future technologies while continuing to leave major existing industrial sources of ozone precursor emissions inadequately controlled. The state already possesses both the authority and the technical basis to pursue meaningful reductions from pesticide ROG/VOC emissions through reformulation, use reduction, integrated pest management, lower-emission technologies, transition assistance, and stronger regulatory controls. California cannot achieve its ozone attainment, environmental justice, and public health goals while continuing to underregulate one of the state's major sources of VOC and ROG emissions.

Thank you for your consideration, and please see attachments.

Sincerely,

A handwritten signature in black ink that reads "Sarah C. Aird". The signature is written in a cursive style with a large initial 'S' and a distinct 'C' and 'A'.

Sarah C. Aird
Policy Director
Californians for Pesticide Reform

Attachment 1: 1,3-D County and Year

COUNTY	YEAR	POUNDS OF 13D (Sum)	ATP_13D (Sum)
Butte	2024	45,868	21,691
	2025	194,626	104,018
	2026	3,867	1,856
Butte		244,361	127,565
Del Norte	2024	45,353	27,665
	2025	33,980	20,728
Del Norte		79,332	48,393
Fresno	2024	813,834	653,482
	2025	839,764	660,022
	2026	61,902	51,576
Fresno		1,715,500	1,365,081
Glenn	2024	207,506	98,973
	2025	62,160	44,841
Glenn		269,666	143,814
Imperial	2024	227,981	251,675
	2025	175,609	195,744
Imperial		403,589	447,419
Kern	2024	682,081	407,851
	2025	1,144,658	810,726
	2026	512,018	445,240
Kern		2,338,757	1,663,817
Kings	2024	124,050	85,076
	2025	92,873	52,715
	2026	2,672	2,672
Kings		219,595	140,463
Madera	2024	110,721	72,791
	2025	160,429	131,330
	2026	59,919	59,919
Madera		331,068	264,039
Merced	2024	974,856	565,688
	2025	1,126,149	703,694
	2026	595,915	387,436
Merced		2,696,920	1,656,818
Monterey	2024	822,187	285,349
	2025	969,260	312,587
Monterey		1,791,447	597,936
Napa	2024	862	414
	2025	829	398
Napa		1,691	812
Orange	2024	17,949	4,308

	2025	19,150	4,621
Orange		37,099	8,929
Placer	2024	2,127	447
	2025	10,725	5,148
Placer		12,852	5,595
Riverside	2024	16,450	20,962
	2025	62,067	53,651
Riverside		78,517	74,613
Sacramento	2024	52,739	25,315
	2025	8,248	3,959
Sacramento		60,987	29,274
San Benito	2024	1,203	473
	2025	2,267	1,727
San Benito		3,470	2,200
San Diego	2024	5,830	2,090
	2025	65,262	41,388
San Diego		71,091	43,478
San Joaquin	2024	232,209	149,810
	2025	431,503	295,551
	2026	61,108	61,108
San Joaquin		724,820	506,468
San Luis Obispo	2024	211,770	140,955
	2025	213,584	123,993
	2026	39,702	20,163
San Luis Obispo		465,056	285,110
Santa Barbara	2024	382,449	167,856
	2025	419,016	176,391
	2026	39,820	20,914
Santa Barbara		841,285	365,161
Santa Clara	2024	29,409	41,135
	2025	33,923	40,259
Santa Clara		63,332	81,394
Santa Cruz	2024	235,394	96,089
	2025	228,528	92,220
Santa Cruz		463,922	188,309
Solano	2024	1,084	228
	2025	22,819	9,445
Solano		23,903	9,673
Sonoma	2024	1,591	971
	2025	1,193	728
Sonoma		2,785	1,699
Stanislaus	2024	611,299	345,767
	2025	507,099	305,447

	2026	70,473	70,473
Stanislaus		1,188,871	721,687
Sutter	2024	34,751	30,842
	2025	65,936	55,481
	2026	10,594	10,594
Sutter		111,281	96,918
Tehama	2024	303,040	146,652
	2025	112,920	52,967
Tehama		415,960	199,619
Tulare	2024	445,211	295,351
	2025	579,657	395,288
	2026	109,540	88,836
Tulare		1,134,408	779,475
Ventura	2024	363,502	107,802
	2025	390,464	104,004
	2026	4,120	989
Ventura		758,086	212,795
Yolo	2024	165	35
	2025	3,080	2,849
Yolo		3,245	2,884
Yuba	2024	16,278	16,278
	2025	73,352	69,015
Yuba		89,630	85,293
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Grand Total		16,642,527	10,156,728



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March 20, 2019

Yana Garcia
California Environmental Protection Agency
1001 I Street
Sacramento, CA 95812-2815

RE: California Air Resources Board's and Air Pollution Control Districts' Authority Over Pesticide Toxic Air Contaminants

Air Resources Board's and the Air Districts' Authority to Regulate Pesticide TACs

The Air Resources Board (“ARB”) and Air Pollution Control Districts (“APCDs”) have jurisdiction to regulate toxic air contaminants (“TACs”) in the ambient air that originate as pesticides. The California Health and Safety Code mandates that ARB cede authority to the Department of Pesticide Regulation (“DPR”) in regulating pesticides as TACs but only when in their *pesticidal use*.¹

In 1983, the California legislature addressed TACs by adding chapter 3.5 to the Health and Safety code, which states that the Department of Food and Agriculture (“DFA”) has jurisdiction over pesticides generally.² Further, chapter 3.5 states that a pesticide that is also a toxic air contaminant “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”.³

In *Harbor Fumigation, Inc. v. County of San Diego Air Pollution Control District*, the Court of Appeal ruled that the statutory language in chapter 3.5, while giving DPR jurisdiction to regulate pesticides that are TACs, did not divest ARB and the local APCD of their regulatory authority to maintain jurisdiction of pesticides as TACs once they enter the ambient air.⁴ In *Harbor Fumigation*, a pesticide company challenged the local APCD’s authority to regulate methyl bromide, a TAC and a pesticide.⁵ The court determined that the Health and Safety Code is ambiguous where it says DPR has jurisdiction “in its pesticidal use” but found that through agency action and a 1989 inter-agency memorandum, ARB and DFA demonstrated an understanding that ARB has jurisdiction to regulate

¹ Health and Safety Code 39655(a), 39660(a).

² Health and Safety Code 39650(g)

³ Health and Safety Code 39655(a).

⁴ *Harbor Fumigation, Inc. v. County of San Diego Air Pollution Control Dist.* (1996) 43 Cal. App. 4th 854, 870, 50 Cal. Rptr. 2d.

⁵ *Id.* at 858.

pesticides as TACs once they volatilize into the air.⁶ The court stated that “[the 1989] memorandum clearly indicates that DFA interpreted the [Health and Safety Code] as giving ARB (and presumably Districts) authority to regulate emissions from facilities in which pesticides. . . are used.”⁷ Further, the court pointed to declarations from the general counsel of ARB indicating that the ARB and APCDs maintain authority to regulate pesticides once they have volatilized into the air *after* their pesticidal use – a point concurred to by DFA.⁸ The following declaration from *Harbor Fumigation* is particularly useful for the purpose of distinguishing the line between ARB’s/APCD’s and DPR’s jurisdiction:

“5. The [DPR] . . . is required to identify and control toxic air contaminants which are pesticides in their pesticidal use. Once a pesticide has performed its fumigation role and is vented from the chamber into the ambient air, however, it has become a waste gas and is no longer engaged in a 'pesticidal use.' At this point, an air pollution control district [e.g., APCD] may legitimately regulate emission of methyl bromide from the chamber.”⁹

In applying the traditional tools of statutory construction, the *Harbor Fumigation* court reasoned that the ARB and APCDs have primary jurisdiction to regulate emissions in the ambient air of TACs that originate from a pesticide, while DPR has exclusive jurisdiction over pesticide TACs only while in their use as a pesticide.¹⁰ The court held that once use of the pesticide was complete and the waste gas entered the ambient air, the APCD had jurisdiction to regulate the methyl bromide emissions.¹¹

ARB’s and the Air Districts’ Authority to Regulate Pesticide TACs is Not Confined to Emissions from Facilities

The Fourth District’s reasoning in *Harbor Fumigation* finding ARB’s/APCD’s authority over pesticides that are also TACs makes evident that this authority is not limited to emissions from facilities. The court ruled:

“ . . . DPR’s exclusive jurisdiction to regulate a pesticide/TAC ‘in its pesticidal use’ as being limited to its actual application or use, and after such use DPR has, at best, concurrent jurisdiction over emission of the pesticide/TAC. (§ 39655, subd. (a).) It is DPR’s primary purpose to regulate the use of pesticides in a manner safe to human beings and the environment, while it is a primary purpose of ARB and Districts to regulate emissions of TAC’s, including pesticides, into the ambient air to protect human beings and the environment.”¹²

The Fourth District’s opinion discussed a specific facility, *Harbor Fumigation*; however, the court’s reasoning would be rendered meaningless if it were to be construed to limit ARB’s and the APCD’s

⁶ *Id.* at 864-65. DFA’s interpretation of the 1989 memorandum is binding upon the Department of Pesticide Regulation, which, in 1992, “became DFA’s statutory successor in the regulation of pesticide use.” *Id.*

⁷ *Id.* at 865.

⁸ *Id.*

⁹ *Id.* at 866.

¹⁰ *Id.* at 870.

¹¹ *Id.* at 868.

¹² *Id.* at 870.

jurisdiction to emissions only from facilities.¹³ Further, such a narrow reading would also be inconsistent with statute.¹⁴ ARB's and APCD's authority hinges on whether the pesticide has become a waste gas and is no longer engaged in a pesticidal use. Absent any evidence to the contrary, ARB's and APCD's authority should be construed broadly.

Conclusion: While DPR has exclusive authority to regulate pesticide TACs “in their pesticidal use,” DPR has, at best, concurrent jurisdiction over emissions of pesticide TACs after such pesticidal use. ARB and APCDs have primary authority to regulate TAC emissions originating from pesticides after their pesticidal use (i.e. once the pesticide TACs have become waste gases and entered the ambient air).

If you have any questions about this memorandum, please feel free to contact Paulina Torres at ptorres@crpe-ej.org or Sarah Aird at sarah@pesticidereform.org.

Sincerely,



Paulina Torres
Sarah Aird

¹³ There is no significant difference between emissions from fields and the emissions at issue in *Harbor Fumigation*. Harbor initially sought permits for “proposed uncontrolled emissions of methyl bromide from the Facility, which were deemed by APCD to pose an unacceptable health risk to the community surrounding the Facility.” Harbor unsuccessfully challenged the APCD’s authority to regulate emissions from the facility into the ambient air. Post-application emissions from the use of pesticide TACs on fields, including methyl bromide, can also put at risk the health of nearby community members. For example, in 2018, state air monitors found levels of the carcinogenic pesticide TAC 1,3-dichloropropene at the highest levels ever measured in the communities of Shafter in Kern County and Parlier in Fresno County.

¹⁴ Health and Safety Code 39660 (a) describes ARB’s process for identifying a toxic air contaminant, making no reference or limitation to emissions only from facilities: “Upon the request of the state board, the office, in consultation with and with the participation of the state board, shall evaluate the health effects of and prepare recommendations regarding substances, other than pesticides *in their pesticidal use*, which may be or are emitted into the ambient air of California and that may be determined to be toxic air contaminants.” Italics added. Health and Safety Code 39655 similarly states: “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.” Italics added. Language in Health and Safety Code 39660 (b) also indicates ARB’s and Districts’ authority over pesticide TACs once they enter the ambient air, stating, in part: “In conducting this evaluation, the office shall consider all scientific data, including, but not limited to, relevant data provided by . . . the Department of Pesticide Regulation.” Again, Section 39660 (b) is not limited in any way to emissions from facilities.