

AGREEMENT  
between the  
CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION  
and the  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JURISDICTION

1. This Agreement is entered into by the California Department of Pesticide Regulation (CDPR) and the United States Environmental Protection Agency (U.S. EPA) Office of Civil Rights (OCR) (jointly, the Parties).
2. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and U.S. EPA's Title VI regulations prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. CDPR is a recipient of financial assistance from the U.S. EPA and is subject to the provisions of Title VI and U. S. EPA regulations at 40 C.F.R. Part 7.
3. This Agreement is entered into pursuant to the authority granted U.S. EPA, under Title VI, and U.S. EPA regulations at 40 C.F.R. Part 7, to investigate complaints alleging discrimination by the recipients of financial assistance from U.S. EPA and to resolve such complaints using voluntary, non-adversarial means.

PURPOSE

4. This Agreement resolves issues raised in a complaint investigation conducted by U.S. EPA under Title VI and U.S. EPA's implementing regulations at 40 C.F.R. Part 7. On June 30, 1999, a complaint was filed with U.S. EPA alleging violations of Title VI. U.S. EPA acknowledged receipt of the complaint on July 16, 1999, and accepted the complaint for investigation on December 11, 2001, as File No. 16R-99-R9. This complaint alleged that CDPR discriminated against Latino children by renewing the registration for methyl bromide in January 1999, without taking into consideration the health impacts that this pesticide would have on children attending schools that were within a 1.5 mile radius of the areas in which methyl bromide was applied. The complaint also alleged that greater amounts of methyl bromide were applied in areas surrounding schools with high percentages of Latino schoolchildren (in comparison to areas surrounding schools with lower percentages of Latino schoolchildren). The complaint largely relied on an analysis of 1995 pesticide use data.
5. OCR has conducted an investigation into the allegations raised in the complaint that included an analysis of pesticide use from 1995 to 2001. Based upon this analysis, OCR preliminarily found a *prima facie* violation of Title VI as a result of an unintentional adverse disparate impact upon Latino schoolchildren. On

April 22, 2011, OCR informed CDPR of these results and entered into discussions to resolve the complaint. This Agreement concludes OCR's investigation and resolves OCR File No. 16R-99-R9. It is understood that this Agreement does not constitute a determination of noncompliance with Title VI or 40 C.F.R. Part 7 by U.S. EPA pursuant to 40 C.F.R. § 7.115(d).

6. During the discussions to resolve the complaint, CDPR raised significant questions about the methodology and assumptions underlying OCR's preliminary analysis and disputed that there were adverse or disparate impacts on Latino children during the time period examined. However, CDPR has agreed to voluntarily resolve this case as set forth in this agreement in light of the actions taken by CDPR since 2001 to reduce the impact on bystanders from methyl bromide use, its declining use and scheduled phase-out under the Montreal Protocol, and the resources that would be required to conduct an alternative analysis. It is understood that this Agreement does not constitute an admission by CDPR of any violation(s) of Title VI or 40 C.F.R. Part 7 alleged in the complaint described in Paragraph 4.
7. CDPR is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and U.S. EPA regulations at 40 C.F.R. Part 7. The activities detailed in Paragraphs 15 and 16 of this Agreement, which CDPR has voluntarily agreed to undertake and implement, are in furtherance of this commitment.

## BACKGROUND

8. In the more than 10 years since the filing of the complaint, CDPR's monitoring, analysis, and mitigation of the potential adverse impact to workers and bystanders from methyl bromide use have significantly progressed. The following regulatory actions have been taken by CDPR:
  - In January 2001, CDPR adopted new regulations that placed restrictions on fumigators and property operators using methyl bromide to mitigate the risk of acute (short-term) exposure to workers and bystanders (non-occupational) beyond the requirements of the federal label. The regulations included the requirement to submit a worksite plan for evaluation by the County Agricultural Commissioner as part of the permit process, to notify neighboring property operators prior to fumigation, to maintain specified minimum buffer zones, to limit application methods to those specified in the regulations, and to prohibit the fumigation of a property if a school is within 300 feet of an outer buffer zone unless the fumigation was completed no less than 36 hours prior to the start of the application.
  - In November 2004, the 2001 regulations that had focused on mitigating the risk of acute exposure were amended and expanded to address subchronic (seasonal) exposure to both bystanders and workers. This regulatory action

followed the completion of CDPR's risk assessment and completion of monitoring studies. These regulations required the County Agricultural Commissioner to limit bystander exposure to CDPR's target level of nine parts per billion (ppb) in any calendar month by capping the pounds of methyl bromide used in any township during the month. The amendments also sought to clarify buffer zone requirements and to assure the intended mitigation of acute bystander exposure.

- In January 2008, additional restrictions were added to the methyl bromide regulations to limit volatile organic compound (VOC) emissions that contribute to the creation of ground level ozone (smog). These regulations limited the use of methyl bromide to certain low-emission methods in three areas not meeting federal air quality standards for ozone. These method restrictions are largely responsible for a 30% reduction in VOC emissions in the San Joaquin Valley over 1990 levels as reflected in an emission inventory recently released by CDPR. Other provisions of these regulations are a major reason why methyl bromide use in Ventura County decreased by 43% from the two year period (2006-2007) prior to their implementation to the two year period (2008-2009) immediately following their implementation.
  - In October 2010, CDPR adopted additional amendments to its methyl bromide regulations to further mitigate the risk of subchronic exposure to both bystanders and workers and acute exposure to workers by requiring township caps to reduce exposure to under CDPR's revised target level of five part per billion (ppb) in any calendar month.
9. In 2010, CDPR initiated an air monitoring network to analyze exposure to methyl bromide and other pesticides to ascertain if further mitigation is needed. The purpose of the monitoring is collection of long-term exposure data to improve the estimation of chronic exposure over a lifetime. Sampling occurs one day each week for 34 pesticides, including methyl bromide, in three communities: Ripon, Salinas, and Shafter. Salinas is a high-use area for methyl bromide. Sampling began in February 2011. In addition, at CDPR's request, the California Air Resources Board (ARB) is sampling one day each week for several fumigant pesticides, including methyl bromide, in the Oxnard area and Santa Maria. These are also high-use areas for methyl bromide.
10. In recognition of the fact that the Latino population of California is heavily represented in the agricultural workforce and lives in the communities surrounding the state's key agricultural areas where the pesticides are used, CDPR has taken the following actions:
- CDPR has conducted significant outreach and education in the Latino community concerning pesticide use, identifying and reporting pesticide exposure, and seeking medical advice and care through participation in events primarily organized for or by the Latino community, as well as

through public service announcements on Spanish language radio stations. Since 2008, CDPR has participated in an average of 12 such events each year.

- CDPR has prepared, translated into Spanish, and distributed the publication *Community Guide to Recognizing & Reporting Pesticide Problems* as part of its outreach to the Latino community.
- CDPR has entered into a \$850,000 contract with the California Poison Control System of the University of California San Francisco. The goal of the contract is to develop tools and deliver training to Promotoras (Latino community members who serve as liaisons between their community and health, human and social service organizations) and community workers on how to recognize symptoms of pesticide exposure, the importance of reporting suspected exposure, and where to refer exposed persons to obtain advice, and or medical care.

#### COMPUTATION OF TIME AND NOTICE

11. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
12. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
13. Documents submitted by CDPR to U.S. EPA shall be sent to the Director, U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
14. Documents submitted by U.S. EPA to CDPR shall be sent to the Director, California Department of Pesticide Regulation, 1001 I Street, P.O. Box 4015, Sacramento, CA 95812-4015 (Delivery Address: California Department of Pesticide Regulation, 1001 I Street, Sacramento, CA 95814).

#### SPECIFIC COMMITMENTS

15. CDPR agrees to carry out its air monitoring network as planned in Salinas (Monterey County) through at least December 31, 2013, as described in Paragraph 9. CDPR also agrees to continue to request ARB to monitor for methyl bromide in the Oxnard (Ventura County) and Santa Maria sites through December 31, 2013, as described in Paragraph 9. The current Oxnard site has to be relocated in October of 2011, because permission to use the current site expires at that time; however, this relocation does not affect the commitment to conduct monitoring at

one location within Oxnard generally through December 31, 2013. In addition, CDPR will request ARB to conduct additional monitoring beginning in January 2012 and through December 31, 2013, at a site in the Watsonville area. CDPR will locate this additional site in township 12S 2E, the highest methyl bromide use township based upon 2009 use reports. The specific location and sampling frequency of the monitor within township 12S 2E will be mutually agreed upon and memorialized by the Director of CDPR and the Director of OCR within ninety (90) days of the effective date of this Agreement. An annual report of the air monitoring results will be posted on CDPR's Web site and notification will be sent to all interested parties who have asked to be on CDPR's Environmental Justice listserv and Air Monitoring Network listserv, both of which include groups that represent Latino workers and their families or the Latino community in general. CDPR agrees to assure that the Center for Race, Poverty & the Environment, California Rural Legal Assistance, Inc., and Farmworker Justice Fund, Inc. receive the notice. CDPR also agrees to send the annual air monitoring results to the Director of OCR and the Office of Pesticide Programs (OPP), as soon as practicable, on or about July 1<sup>st</sup>, but no later than each October 1<sup>st</sup> subsequent to the calendar year for which the documentation is being submitted. U.S. EPA will notify CDPR within ninety (90) days of receipt of any such documentation if the documentation meets all terms or conditions of this Agreement.

16. CDPR will continue its education and outreach efforts to the Latino community, and agrees to participate in at least three outreach events each year through December 31, 2013, within the five counties of the state with the highest methyl bromide use as determined by the most recently available methyl bromide use data. At these events, CDPR will distribute handouts in both English and Spanish on what to do in the case of an accidental exposure to a pesticide, how to report complaints about pesticide use, general information on CDPR's monitoring for pesticides in the environment, and information directed toward parents on how to protect against the potential exposure of children to agricultural pesticides. In planning the three yearly outreach events, CDPR will, as appropriate, and as opportunities arise, contact appropriate non-governmental organizations involved in pesticide outreach and educational activities and explore opportunities for cooperation. In addition to participating in at least three outreach events each year, CDPR agrees to send a sufficient number of copies of its publication *Community Guide to Recognizing & Reporting Pesticide Problems* in both the English and Spanish language versions to school districts in the five counties of highest methyl bromide use to distribute to the schools in those districts. This publication can be made available to both teachers and parents. CDPR also agrees to develop one public service announcement and pay to have it run on Spanish language radio stations that broadcast in the five counties of highest methyl bromide use to educate parents on how to protect their children from exposure to agricultural pesticides. CDPR agrees to provide documentation of the actions described in this Paragraph 16 to U.S. EPA on an annual basis, due no later than each March 1<sup>st</sup> subsequent to the calendar year for which the documentation is

being submitted. U.S. EPA will notify CDPR within ninety (90) days of receipt of any such documentation if the documentation meets all terms or conditions of this Agreement.

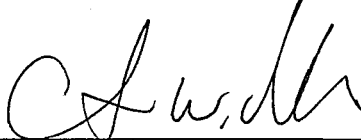
17. If U.S. EPA determines that any documentation that CDPR submits pursuant to Paragraphs 15 and 16 has not satisfied a term or condition of this Agreement, or if a submission provided by CDPR lacks sufficient detail for OCR to make that determination, U.S. EPA shall notify CDPR of that determination in writing. The U.S. EPA written notice to CDPR shall be made within ninety (90) days of receipt of CDPR's submission and shall include a statement of the facts and circumstances upon which U.S. EPA relied in making its determination.
18. Subject to Paragraph 19, CDPR must submit additional documentation to address U.S. EPA's determination under Paragraph 17 within thirty (30) days of receipt of U.S. EPA's notice of its determination.
19. If CDPR disagrees with any U.S. EPA determination made pursuant to Paragraph 17, U.S. EPA shall provide an opportunity to resolve any disputed issue(s) by informal means. U.S. EPA and CDPR will have sixty (60) days from the date U.S. EPA provides notice to CDPR pursuant to Paragraph 17 to resolve and memorialize any disputed issue(s) by informal means. If the Parties are able to reach a mutually agreeable resolution to the disputed issue(s), such resolution shall be memorialized in writing and signed by both the Director of OCR and the Director of CDPR. If the Parties are unable to reach a mutually agreeable resolution to the disputed issue(s) within 60 days, U.S. EPA may terminate this Agreement and reopen the investigation of the complaint described in Paragraph 4 and use any other means authorized by law to assure compliance with Title VI.
20. Once CDPR believes it has satisfied all terms and conditions of this Agreement and has submitted all required documentation, it shall submit a letter to the Director of OCR so stating. U.S. EPA shall provide, within ninety (90) days of receipt of CDPR's letter, written notice to CDPR of whether it has or has not satisfied all terms and conditions of this Agreement. This Agreement shall be considered complete upon U.S. EPA's written notice to CDPR that all terms and conditions of this Agreement have been satisfied.

#### EFFECT OF AGREEMENT

21. It is understood that this Agreement does not constitute an admission by CDPR or a finding by U.S. EPA of any violations of 40 C.F.R. Part 7 in connection with the renewal of the registration of methyl bromide during the 1995-2001 time period.
22. In consideration of CDPR's actions described in Paragraphs 8, 9, and 10 and implementation of the provisions described in Paragraphs 15 and 16, OCR will administratively close the complaint accepted for investigation as File No. 16R-99-R9.

23. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to CDPR's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement by the Director of CDPR and the Director of OCR.
24. This Agreement constitutes the entire Agreement between CDPR and U.S. EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by CDPR and U.S. EPA in accordance with the provisions of Paragraph 23.
25. This Agreement does not affect CDPR's continuing responsibility to comply with Title VI and U.S. EPA's implementing regulations, nor does it affect U.S. EPA's investigation of any allegations of Title VI complaints other than those identified in Paragraph 4, or address any other matter not covered by this Agreement.
26. This Agreement is a public document. A copy of this Agreement and any information contained in it may be made available to any person by CDPR or U.S. EPA on request under the Freedom of Information Act or otherwise.
27. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Chief Deputy Director, in his capacity as an official of CDPR, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of OCR has the authority to enter into this Agreement.

On behalf of the California Department of Pesticide Regulation,



\_\_\_\_\_  
Christopher Reardon  
Chief Deputy Director

8/27/11  
\_\_\_\_\_  
Date

On behalf of the U.S. Environmental Protection Agency,

\_\_\_\_\_  
Rafael DeLeon  
Director, Office of Civil Rights

\_\_\_\_\_  
Date

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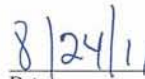
On behalf of the California Department of Pesticide Regulation,

\_\_\_\_\_  
Christopher Reardon  
Chief Deputy Director

\_\_\_\_\_  
Date

On behalf of the U.S. Environmental Protection Agency,

  
\_\_\_\_\_  
Rafael DeLeon  
Director, Office of Civil Rights

  
\_\_\_\_\_  
Date