

People's Tribunal on Pesticide Use and Civil Rights in California

Advisory Opinion

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Introduction

By any measure, from lack of occupational safeguards to residential- and school-based exposure to acute and chronic health outcomes, farmworkers and agricultural communities are among the least protected, least visible, and most vulnerable populations in the United States. In California, 97% of farmworkers are Latino/a and 90.8% are immigrants. Latino/a children in California are 91% more likely than white children to attend school with the highest levels of hazardous pesticide use nearby.¹ The first preliminary finding of a violation of Title VI of the Civil Rights Act of 1964 by the U.S. Environmental Protection Agency (EPA) was made regarding pesticide use in California in a case known as *Angelita C.*² An administrative complaint was filed in 1999 on behalf of children in California who attended schools within 1.5 miles of areas in which methyl bromide was applied. EPA's investigation into the complaint, which concerned the lives of thousands of students, took over a decade to complete.

Angelita C. and other attempts to show that agencies charged with protecting the public from pesticide use, oil and gas production, and other practices violate state and federal civil rights laws³ tend to rely on complex pesticide use, epidemiological, geospatial, and other data to show patterns of exposure and disparate impact. However, the farmworkers with whom we work continue to report another set of dynamics that similarly result in violations of their civil rights. Specifically, they point to practices that not only subject members of protected classes (such as race, national origin, and ethnic group identification) to discrimination in the form of greater exposure to one or more active ingredients or their cumulative impact, but also impair or defeat the state-operated and -funded programs that are designed to regulate pesticide use to ensure public health and safety.

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¹ Letter from Jane Sellen and Sarah C. Aird, Co-Directors, Californians for Pesticide Reform to California Air Resources Board re: Pesticides must be included in the 2022 Scoping Plan Update (Aug. 3, 2021).

² Letter from Rafael DeLeon, Environmental Protection Agency to Christopher Reardon, California Department of Pesticide Regulation re: Preliminary Finding, *Angelita C. et al. v. California Department of Pesticide Regulation* (Apr. 22, 2011).

³ See, e.g., *Romo v. Newsom*, 2019 WL 5280967 (unpublished opinion, Oct. 16, 2019).

To document this distinct yet equally relevant series of dynamics, on September 12, 2023, farmworkers, farmworker families, and community-based organizations from across California's San Joaquin Valley and Central Coast held a *People's Tribunal on Pesticide Use and Civil Rights* in Lindsay, California. We presided over the Tribunal, which centered on community testimony and covered several subjects including: (1) generations of work to address farmworker and school exposure to pesticide use and regulatory gaps in California; (2) scientific research to understand harms that result from residential and farmworker exposure to pesticide use in California; (3) local non-profit coalition testimony from across the San Joaquin Valley, with a focus on community experience, awareness of harms, and pressing concerns; (4) Indigenous perspectives, with a focus on the difficulty accessing enforcement and other services for those who speak transnational Indigenous languages; and (5) state responsibility for pesticide use regulation including civil rights laws and potential civil rights violations in the context of pesticide use in California. Well over 100 individuals, including farmworkers and their families, attended the Tribunal in person.⁴

The Tribunal was made possible by a generous grant from the Robert Wood Johnson Foundation as well as support from the Newkirk Center for Science and Society at the University of California, Irvine. It featured research by UC Irvine's Center for Land, Environment, and Natural Resources, in collaboration with Californians for Pesticide Reform. Research to inform the Tribunal included interviews with individuals in the scientific community who focus on pesticide use, exposure, and impacts as well as current and former pesticide regulators

(n=21). In addition, UC Irvine conducted focus groups in Spanish and English with farmworkers (n=34) who reside in three regions within the state of California (Monterey/Santa Cruz, Ventura, and Fresno/Tulare/Kern Counties). This Advisory Opinion was written having considered detailed accounts provided during interview, focus group, and Tribunal community testimony. The accounts are representative of the shared experience of workers, co-workers, and families of those who agreed to provide testimony, with informed consent, under strict privacy and confidentiality protocols. Through their accounts, we identified patterns and practices that continue to impact, on an ongoing basis, hundreds if not thousands of people in the San Joaquin Valley, Central Coast, and elsewhere in the state. The authors of this Advisory Opinion are available to provide additional information with appropriate civil rights enforcement staff at agencies such as EPA and the California Department of Justice.

Question Presented

Community testimony alleges that the California Department of Pesticide Regulation's (DPR) regulatory and enforcement programs discriminate against Latino/a residents in the state. Community testimony further alleges that DPR and County Agricultural Commissioner (CAC) practices violate California Government Code § 11135. Specifically, community testimony alleges that DPR has abdicated its responsibilities to oversee CAC administration, implementation, and enforcement programs related to pesticides, leading to significant failures in protection of predominantly Latino/a workers, residents, and communities within areas of high pesticide use in the state.

⁴ *People's Tribunal on Pesticide Use and Civil Rights in California*, Lindsay CA (Oct. 13, 2023), <https://www.youtube.com/watch?v=YUYeZVwFTq4>. Tribunal speakers included residents of six counties – Kern, Tulare, Fresno, Ventura, Santa Cruz, and Monterey – as well as members of the scientific and legal community, including: Dr. Caroline Cox, Senior Scientist, Center for Environmental Health (retired); Dr. Irva Hertz-Picciotto, Professor, Department of Public Health Sciences and Chief, Division of Environmental and Occupational Health, UC Davis School of Medicine; Bianca Lopez, Co-Founder and Project Director, Valley Improvement Projects; Timothy Malloy, Professor of Law, UCLA School of Law; Dr. Gregg Macey, Director, Center for Land, Environment, and Natural Resources, UC Irvine School of Law; Nayamin Martinez, Executive Director, Central California Environmental Justice Network; Dr. Sarait Martinez, Executive Director, Centro Binacional para el Desarrollo Indígena Oaxaqueño; Asha Sharma, Organizing Co-Director, Pesticide Action Network North America; and Dr. Alexis Temkin, Senior Toxicologist, Environmental Working Group.

California Government Code § 11135 was enacted in 1977 by the California State Legislature as an analog to Title VI of the Civil Rights Act of 1964.⁵ The statute and its implementing regulations (Cal. Code of Regs. tit. 2, § 11140 *et seq.*) prohibit discrimination – intentional as well as unintentional – by state-funded agencies and programs.⁶ In relevant part, § 11135 provides that:

- (a) No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.⁷

Given parallel language between federal law and § 11135, “federal law provides important guidance in analyzing state disparate impact claims.”⁸ As such, courts look to federal disparate impact claims in their interpretation of § 11135 claims. Under federal law, “a plaintiff establishes a *prima facie* case if the defendant’s facially neutral practice causes a disproportionate adverse impact on a protected class.”⁹ “Facially neutral practice” under § 11135

is considered a program or activity that is state-operated or -funded. To establish a *prima facie* case under § 11135 and its implementing regulations, plaintiffs must show that there is 1) a program or activity 2) operated or funded by the state 3) that results in a *disparate impact* to a protected class.

Context: Farmworker Community Health

Generations of organizing, resistance, and meaningful but limited attention by regulatory agencies have yet to fundamentally alter a single truth: farmworkers and their families remain one of the most disadvantaged and underserved populations in the United States. Farmworkers have the highest rate of chemical-related occupational illness in the country.¹⁰ The Environmental Protection Agency (EPA), Government Accountability Office, and other agencies and organizations have for some time operated with the knowledge that among the over 1.4 million farmworkers nationwide, hundreds of thousands are poisoned annually by pesticides when accounting for unreported and misdiagnosed cases.¹¹

Around 200 million pounds of pesticides are applied annually in California. Approximately one fifth by volume are carcinogenic.¹² People who live, work, and attend school near agricultural sites face an elevated risk of exposure to pesticides, which farmworkers commonly experience during “routine work – not applying

⁵ Danfeng Soto-Vigil Koon, *Cal. Gov’t Code § 11135: A Challenge to Contemporary State-Funded Discrimination*, 7 STAN. J. CIV. RTS. & CIV. LIBERTIES 239, 250 (2011).

⁶ *Id.*

⁷ Cal. Gov. Code § 11135. Our analysis, including the relationship between regulatory agencies involved in programs and activities (DPR and CACs), builds upon the Court’s analysis in *Comunidad en Accion v. Los Angeles City Council* 219 Cal.App.4th 1116 (2nd Dist., 2013).

⁸ *Darensburg v. Metropolitan Transp. Comm’n*, 636 F.3d 511, 519 (2011).

⁹ *Darensburg*, 636 F.3d at 519.

¹⁰ Keith Cunningham-Parmeter, *A Poisoned Field: Farmworkers, Pesticide Exposure, and Tort Recovery in an Era of Regulatory Failure*, 28 N.Y.U. REV. L. & SOC. CHANGE 431, 504 (2004).

¹¹ See U.S. GEN. ACCOUNTING OFFICE, Pub. No. GAO/HRD-92-46, *Hired Farmworkers: Health and Well-Being at Risk* 13 (1992), available at <http://archive.gao.gov/t2pbat7/145941.pdf>. See also Margot J. Pollans, *Eaters, Powerless by Design*, 120 MICH. L. REV. 643 (2022).

¹² Letter from Jane Sellen and Sarah C. Aird, Co-Directors, Californians for Pesticide Reform to Chair Bill Quirk, Assembly Environmental Safety and Toxic Materials Committee and Chair Richard Bloom, Assembly Budget Subcommittee #3 (March 21, 2022).

pesticides.”¹³ On fields and farms, pesticides move beyond areas of application as dust or droplets – they persist in the immediate environment and can drift for miles.¹⁴ What this means for a given community can be devastating. For example, if an active ingredient such as the fumigant 1,3-dichloropropene (1,3-D) can drift for up to several miles, this means that *entire* communities such as Watsonville, CA are potentially exposed to the compound, in addition to living proximal to fields where glyphosate, the active ingredient in Round-Up, continues to be applied, and other carcinogens and toxic air contaminants such as Chloropicrin are applied and can vaporize from soil.¹⁵ Farmworker and agricultural communities experience acute and chronic effects of exposure to pesticides.¹⁶ Long-term exposure is inevitable for workers and for families who live or attend school nearby.

Agricultural pesticide use is, by nature of growing practices and land use patterns, concentrated in certain geographic regions of the state. But there are also well-documented demographic elements to pesticide use in California. For example, 11 majority Latino/a counties experience 900% more pesticide use

per person and per square mile than the 25 counties with the lowest Latino/a populations. Use of the so-called “toxic 13” active ingredients is similarly concentrated according to protected classes under state civil rights law such as race and national origin. In Fresno County, there is 17.8 times more pesticide use per person than in the 25 counties with the lowest Latino/a populations. Kern and Tulare Counties experience similar pesticide use patterns (12.1 and 6.9 times more pesticide use per person versus the 25 counties with the lowest Latino/a populations in California, respectively).¹⁷

Regulation of pesticide use in the United States follows a model of “agricultural exceptionalism,”¹⁸ which was first noted in the context of the exclusion of farmworkers and domestic workers from New Deal legislation such as the National Labor Relations Act and Fair Labor Standards Act.¹⁹ The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its implementing regulations, which grant EPA authority to regulate the sale, use, and distribution of pesticides to preserve the environment and protect human health, favors broad approval of pesticides over protection of human health and grants primacy to consumers

¹³ Elizabeth Lincoln, *Accountability for Pesticide Poisoning of Undocumented Farmworkers*, 24 HASTINGS ENVTL. L.J. 383, 389 (2018). See, e.g., Andrew Park, Beate Ritz, Fei Yu, Myles Cockburn, & Julia E. Heck, *Prenatal Pesticide Exposure and Childhood Leukemia – A California Statewide Case-Control Study* 226 INT’L J. OF HYGIENE & ENVTL. HEALTH 113486 (2021); Christina Lombardi, Shiraya Thompson, Beate Ritz, Myles Cockburn, & Julia E. Heck, *Residential Proximity to Pesticide Application as a Risk Factor for Childhood Central Nervous System Tumors*, 197 ENVTL. RES. 111078 (2021).

¹⁴ ENVTL. PROT. AGENCY, *Introduction to Pesticide Drift*, <https://www.epa.gov/reducing-pesticidedrift/introduction-pesticide-drift>.

¹⁵ UC Irvine Center for Land, Environment, and Natural Resources Interview data (Spring – Summer 2023).

¹⁶ Adriane J. Busby & Gabriel Eckstein, *Organophosphates, Friend and Foe: The Promise of Medical Monitoring for Farm Workers and their Families*, 27 UCLA J. ENVTL. L. & POL’Y 39, 46 (2009).

¹⁷ Lara Cushing et al., *Racial/Ethnic Disparities in Cumulative Environmental Health Impacts in California: Evidence from a Statewide Environmental Justice Screening Tool*, 105(11) AMER. J. OF PUB. HEALTH 2341, 2345 (2015); See also Letter from Jane Sellen and Sarah C. Aird, Co-Directors, Californians for Pesticide Reform to Chair Bill Quirk, Assembly Environmental Safety and Toxic Materials Committee and Chair Richard Bloom, Assembly Budget Subcommittee #3 (March 21, 2022); Letter from Jane Sellen and Sarah C. Aird, Co-Directors, Californians for Pesticide Reform to California Natural Resources Agency re: Draft Pathways to 30x30 California (Feb. 15, 2022); Letter from Jane Sellen and Sarah C. Aird, Co-Directors, Californians for Pesticide Reform to Sustainable Pest Management Workgroup members re: Strategies for moving agriculture in California toward agroecological practices (Nov. 12, 2021); Letter from Jane Sellen and Sarah C. Aird, Co-Directors, Californians for Pesticide Reform to California Air Resources Board re: Pesticides must be included in the 2022 Scoping Plan Update (Aug. 3, 2021); Lombardi et al., *supra* note 13; Park et al., *supra* note 13; CALIFORNIANS FOR PESTICIDE REFORM, *There’s Something in the Air, and it Causes Childhood Cancers* 8 (Dec. 2021), <https://www.pesticidereform.org/wp-content/uploads/2021/12/FINAL-202111-CPR-Childhood-Cancer-v4.pdf>; CENTER FOR BIOLOGICAL DIVERSITY, *Lost in the Mist* (2015), https://www.biologicaldiversity.org/campaigns/pesticides_reduction/pdfs/LostInTheMist.pdf.

¹⁸ Sarah O. Rodman et al., *Agricultural Exceptionalism at the State Level: Characterization of Wage and Hour Laws for U.S. Farmworkers*, 6 J. AGRIC. FOOD SYS. & CMTY. DEV. 89, 90-91 (2015); Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL’Y REV. 935, 935-36 (2010).

¹⁹ Luca Greco, *An Environmental Justice Analysis of the Exclusion of Farmworkers from the National Labor Relations Act*, 47 HARV. ENVTL. L. REV. 309 (2023).

over workers or communities. FIFRA is the rare environmental statute that, as enacted, did not include a private citizen suit provision. Historically, it was plagued by slow rulemakings and notable, longstanding failures to regulate certain active ingredients such as methyl bromide.²⁰ FIFRA's foundational tools such as risk assessment and reentry intervals – and their failure to consider and protect vulnerable subpopulations – are well-known.²¹ For example, farmworker reentry intervals were initially determined based on a 154-pound adult male without preexisting health conditions exposed to a single pesticide and no synergistic effects of combinations of active and inert ingredients.²²

FIFRA grants primary authority to enforce pesticide-related regulations to the states. In California, farmworkers could not organize and were excluded from fair labor standards until the

late 1960s. Agencies such as DPR carry out limited monitoring. And there is a near-complete absence of public health surveillance,²³ or the ability to track the extent to which pesticides enter and persist within environments where disadvantaged communities live, work, and attend school.²⁴ In other words, we continue to note a surprisingly limited attempt within the regulatory community to gauge the air that people breathe near agricultural sites.²⁵ At the same time, pesticide regulators in California make repeated reference to the “world class” data by which they monitor pesticide use and community health. Occasionally, those data are used. The California Department of Public Health issued one such study in 2014.²⁶ An earlier analysis of blood and urine was carried out for residents near citrus orchards in Lindsay, California in 2008. On these rare occasions, regulators take pains to acquire more precise location data, or ground-truthed data, or data

²⁰ Luthien L. Niland, *The Cost of the Bright Red Strawberry: The Dangerous Failure of Pesticide Regulations to Account for Child Farmworkers*, 4 GOLDEN GATE U. ENVTL. L.J. 363, 371-382 (2011).

²¹ Christina Libre, “Stranded Pesticides”: U.S. Agricultural Worker Vulnerability in the Wake of the 2021 Chlorpyrifos Food Ban, 49 ECOLOGY L.Q. 471 (2022); Committee to Review California’s Risk-Assessment Process for Pesticides, Board on Environmental Studies and Toxicology, Div. on Earth and Life Studies, National Research Council, Review of California’s Risk-Assessment Process for Pesticides (Mar. 13, 2015), <https://nap.nationalacademies.org/read/21664/chapter/1#v>; CAL. DEPT. OF PESTICIDE REGULATION, *Actively Registered Active Ingredients (AI) by Common Name*, <https://www.cdpr.ca.gov/docs/label/actai.htm>; Final notice on active ingredients prioritized for risk assessment initiation, interested parties memorandum, CAL. DEPT. OF PESTICIDE REGULATION (September 12, 2014); John Froines, Susan Kegley, Timothy Malloy, & Sarah Kobylewski, Risk and Decision: Evaluating Pesticide Approval in California (2013); Prioritization and status of active ingredients for risk characterization: Report #52, Memorandum from Gary Patterson, Chief, Medical Toxicology Branch to Pesticide Registration and Evaluation Committee (PREC) (July 15, 2011).

²² U.S. GEN. ACCOUNTING OFFICE, Pub. No. GAO/RCED-00-40, Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and Their Children 17-18 (2000).

²³ DPR claims to engage in “continuous monitoring and surveillance” to “determine the fate of pesticides in the environment, detect and address unforeseen effects on human health and find ways to prevent pesticide contamination.” Factors that may trigger reevaluation include “public or worker health hazard; environmental contamination; unwanted damage to plants; inadequate labeling; lack of efficacy; disruption of pest management; availability of an effective and feasible alternative material or procedure which is demonstrably less destructive to the environment; discovery that data on which DPR relied to register a product is false, misleading or incomplete; or other information suggesting a significant adverse risk.” CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 39 (2017), <https://www.cdpr.ca.gov/docs/pressrls/dprguide.htm>.

²⁴ For example, “California has adopted regulations that address agricultural pesticide applications near public K-12 schools and licensed child day care centers (collectively referred to as schoolsites). These regulations provide minimum distance standards for certain agricultural pesticide applications near schoolsites and require annual notifications to schoolsites...The Department of Pesticide Regulation (DPR) has a separate School and Childcare IPM Program to address pesticide applications at schoolsites.” CAL. DEPT. OF PESTICIDE REGULATION, *Addressing Pesticide Applications Near Schools and Childcare Facilities*, https://www.cdpr.ca.gov/docs/enforce/pesticide_applications_near_schoolsites.htm. Californians for Pesticide Reform examined Pesticide Use Reports (PURs) for select schools in five counties to identify potential violations that DPR did not address. Letter from Jane Sellen, CPR Co-Director, Margaret Reeves, PAN Senior Scientist, & Anne Katten, CRLAF Pesticide and Work Health and Safety Specialist, to Julissa de Gonzalez, Director of Legislation and Policy, California Department of Pesticide Regulation (Feb. 4, 2022).

²⁵ UC Irvine Center for Land, Environment, and Natural Resources Interview data (Spring – Summer 2023).

²⁶ CAL. ENVTL. HEALTH TRACKING PROG., *Agricultural Pesticide Use Near Public Schools in California* (Apr. 2014), <https://www.phi.org/wp-content/uploads/migration/uploads/application/files/m0lvrkvtqh6897fl65fyegso0p8qqqudkrto9v13d6uicq0r.pdf>.

that were not available to the general public. The authors of these occasional reports make aspirational claims such as, “We hope the study will be used by school officials, agricultural commissioners, regulators...to inform policies.”²⁷

But the logical next steps hinted at in agency reports – go to the worst sites, take samples, carry out biomonitoring where levels of concern are found – are not taken. Residents are unaware of more recent attempts to carry out similar analyses. Results of the rare workplace exposure field study – such as one started years ago within DPR that focused on soil fumigants and sampling the breathing zone of fumigant handlers – are not published or shared with the public.²⁸ All the while, wealth generation by the agricultural industry at the expense of human beings continues. Given the prevailing structure of pesticide regulation in the United States generally and California in particular, it is not surprising that, historically, counties with the most pesticide use issued few fines for pesticide misuse or failure to adequately protect workers or the public.²⁹ By some accounts, the average life expectancy of a migrant farmworker in the United States is 49.³⁰

Pesticide Regulation: State and Local Authority and Responsibility

In California, environmental justice is defined as the “fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”³¹ Through research and program administration, the California Environmental Protection Agency has identified areas of the state “that disproportionately experience pollution” burdens, including pesticide exposure.³²

Twenty years ago, DPR agreed that that it should resolve the sources of ambiguity over its role vis-à-vis CACs to better prevent disproportionate exposure. Specifically, DPR made clear that it needed to design and implement performance standards – written, up-to-date, uniform guidelines for CACs to follow, in addition to better protection of farmworkers via outreach and education, enhanced illness reporting, and improved incident investigation.³³ Today, DPR remains the “agency responsible for delivering an effective statewide pesticide regulatory program.”³⁴ Its regulations are designed “to assure agricultural and pest control workers of safe working conditions.”³⁵ DPR states that it achieves “strict control” through evaluation of health effects including estimates of levels of exposure that may cause or contribute to adverse health effects,³⁶ as well as through registration, licensing, reevaluation,³⁷

²⁷ *Id.*

²⁸ UC Irvine Center for Land, Environment, and Natural Resources Interview data (Spring – Summer 2023).

²⁹ Eileen Gauna, *Farmworkers as an Environmental Justice Issue: Similarities and Differences*, 25 ENVIRONS ENVTL. L. & POL’Y J. 67 (2001).

³⁰ Matthew Webster, “Jobs Americans Won’t Do”: *Our Farming Heritage, Hazardous Harvests, and a Legislative Fix*, 29 L. & INEQ. 249, 258 (2011).

³¹ Cal. Gov. Code § 65040.12(e)(1).

³² Cal. Env’tl. Prot. Agency, Env’tl. Justice Compliance & Enforcement Working Grp., Fresno Initiative Report (2015), <https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/Enforcement-Publications-2015yr-FresnoReport.pdf>.

³³ Victoria Clark, *Enforcement of Pesticide Regulation in California: A Case Study of the Experience with Methyl Bromide*, 31 GOLDEN GATE U. L. REV. 465, 482-483 (2001).

³⁴ CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 13 (2017), <https://www.cdpr.ca.gov/docs/pressrls/dprguide.htm>.

³⁵ Cal. Food & Agric. Code § 11501.

³⁶ CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 1 (2017).

³⁷ Cal. Food & Agric. Code § 12824 (“The director shall endeavor to eliminate from use in the state any pesticide that endangers the agricultural or nonagricultural environment, is not beneficial for the purposes for which it is sold, or is misrepresented. In

canceling registrations,³⁸ illness surveillance and risk assessment, environmental monitoring, preventing drift, and field enforcement.³⁹

Program or activity

For § 11135 to apply, a challenged activity must be a “program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”⁴⁰ As defined in California Code of Regulations § 11150, “program or activity” means:

any project, action or procedure undertaken directly by recipients of State support or indirectly by recipients through others by contracts, arrangements or agreements, with respect to the public generally or with respect to any private or public entity.⁴¹

California Government Code Section § 11135 claims are limited to “programs or activities” operated or funded by the state because “the apparent legislative purpose and intent in enacting Government Code section 11135 et seq. was to prohibit discriminatory treatment of any person on the basis of categories described in section 11135 only by those charged with effectuating programs or activities which receive directly or indirectly state support.”⁴²

California Department of Pesticide Regulation (DPR)

California Food and Agricultural Code describes the purpose of the state’s pest control program as:

- (a) To provide for the proper, safe, and efficient use of pesticides essential for production of food and fiber and

carrying out this responsibility, the director shall develop an orderly program for the continuous evaluation of all pesticides actually registered.”). The law requires DPR to have “an orderly program for the continuous evaluation” of pesticides after registration. “If DPR has reason to believe that a pesticide may cause unreasonable adverse effects to human health or the environment, DPR must formally reevaluate the pesticide to decide whether it should remain registered, and, if so, whether changes in use practices are necessary. When a pesticide enters reevaluation, DPR reviews existing data and may require registrants to provide more data.” CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 40 (2017).

³⁸ Cal. Food & Agric. Code § 12825 (“[T]he director, after hearing, may cancel the registration of, or refuse to register, any pesticide that has demonstrated serious uncontrollable adverse effects either within or outside the agricultural environment; the use of which is of less public value or greater detriment to the environment than the benefit received by its use; for which there is a reasonable, effective, and practicable alternate material or procedure that is demonstrably less destructive to the environment; that, when properly used, is detrimental to vegetation, except weeds, to domestic animals, or to the public health and safety; that is of little or no value for the purpose for which it is intended; concerning which any false or misleading statement is made or implied by the registrant or his or her agent, either verbally or in writing, or in the form of any advertising literature; for which the director determines the registrant has failed to report an adverse effect or risk as required by Section 12825.5; if the director determines that the registrant has failed to comply with the requirements of a reevaluation or to submit the data required as part of the reevaluation of the registrant’s product; that is required to be registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.) and that is not so registered.”).

³⁹ DPR’s authority reaches broadly, as “DPR’s strict oversight begins with pesticide product evaluation and registration and continues through statewide licensing of commercial applicators, dealers, consultants, and other pesticide professionals; evaluation of health impacts of pesticides through illness surveillance and risk assessment; environmental monitoring of air, water and soil; field enforcement (with county agricultural commissioners) of laws regulating pesticide use; residue testing of fresh produce; and encouraging development and adoption of least-toxic pest management practices through incentives and grants.” CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 1 (2017).

⁴⁰ Cal. Gov. Code § 11135(a).

⁴¹ Cal. Code of Regs. tit. 2, § 11150. Section 11150 explains that “Such programs or activities include, but are not limited to, the provision of employment or goods; the procurement of goods or services; the provision of education, training, health, welfare, rehabilitation, housing, or other services; the provision of cash or loan assistance; or the provision of facilities for furnishing services, financial aid or other benefits. The services, financial aid or other benefits provided under such programs or activities shall be deemed to include: (1) any services, financial aid or other benefits provided with the aid of State support, or with the aid of other funds or resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order for the recipients to receive the State support; or (2) any service, financial aid or other benefit provided in or through a facility which is or was provided with the aid of State support or other funds or resources.”

⁴² *People v. Levinson*, 155 Cal.App.3d Supp. 13, 18 (1984).

- for protection of the public health and safety.
- (b) To protect the environment from environmentally harmful pesticides by prohibiting, regulating, or ensuring proper stewardship of those pesticides.
 - (c) To assure the agricultural and pest control workers of safe working conditions where pesticides are present.
 - (d) To permit agricultural pest control by competent and responsible licensees and permittees under strict control of the director and commissioners.
 - (e) To assure consumers and users that pesticides are properly labeled and are appropriate for the use designated by the label and that state or local governmental dissemination of information on pesticidal uses of any registered pesticide product is consistent with the uses for which the product is registered.
 - (f) To encourage the development and implementation of pest management systems, stressing application of biological and cultural pest control techniques with selective pesticides when necessary to achieve acceptable levels of control with the least possible harm to nontarget organisms and the environment.⁴³

State law assures that agricultural workers, consumers, and the environment are protected

from pesticides,⁶ that pesticide use is regulated, and that pesticide use results in the “least harm possible” to people and the environment. It is clear from People’s Tribunal community testimony that these requirements are not met. For example, as noted above, farmworkers commonly experience pesticide exposure during “routine work – not applying pesticides,” and “the 11 majority Latino/a counties experience 900% more pesticide use per person and per square mile than the 25 counties with the lowest Latino/a populations.”⁴⁴

California DPR’s website states that the agency “regulates pesticides under a comprehensive program that encompasses enforcement of pesticide use in agriculture and urban environments.”⁴⁵ EPA vested “primary responsibility” to DPR to enforce federal pesticide laws in California.⁴⁶ For example, DPR has a duty to investigate all reports of potentially significant adverse effects,⁴⁷ to reevaluate pesticides,⁴⁸ to monitor pesticide exposure, to collect data on potential exposure patterns, to assess the effectiveness of existing controls,⁴⁹ and to conduct inspections to prevent misapplication or drift and possible contamination of workers or the public.⁵⁰ DPR in turn directs and oversees CACs “who carry out and enforce pesticide and environmental laws and regulations locally.”⁵¹

As part of its oversight role, DPR provides guidance to CACs. For example, in 2020, DPR sent a letter to CACs regarding how CACs should more effectively serve their constituents

⁴³ Cal. Food & Agric. Code § 11501.

⁴⁴ *Supra* note 13; *supra* note 17.

⁴⁵ CAL. DEPT. OF PESTICIDE REGULATION, *Pesticide Use Enforcement*, https://www.cdpr.ca.gov/docs/enforce/pest_enf.htm.

⁴⁶ *Id.*

⁴⁷ Cal. Code of Reg. tit. 2, § 6220.

⁴⁸ Cal. Food & Agric. Code § 12824.

⁴⁹ DPR and CACs share responsibility for monitoring the use of pesticides. DPR must monitor pesticide exposure, including exposure and residue studies to collect data on potential exposure patterns and to assess the effectiveness of existing controls. CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 39 (2017).

⁵⁰ CAC staff conduct inspections to prevent misapplication or drift and possible contamination of workers, the public, and the environment. CACs are responsible for investigating pesticide illnesses and injuries. All reported pesticide-related illnesses and injuries are investigated by the commissioner in the county in which the illness occurred. CAC biologists interview injured parties, other witnesses, and employers if the illness occurred at work. If the agricultural commissioner determines a violation occurred and the law was broken, the commissioner takes a compliance or enforcement action. CAL. DEPT. OF PESTICIDE REGULATION, *County Agricultural Commissioner Resources*, <https://www.cdpr.ca.gov/docs/county/comenu.htm>; CAL. DEPT. OF PESTICIDE REGULATION, *County Plays Key Role in Regulating Pesticides*, <https://www.cdpr.ca.gov/docs/dept/factshts/cac.pdf>.

⁵¹ *Id.*

in compliance with state law regarding language access.⁵² CACs who serve a “substantial number of persons with limited English proficiency (LEP)” are responsible for ensuring that those individuals have adequate access to services and information.⁵³ In these situations, CACs must employ a “sufficient number of qualified bilingual persons” to provide both oral interpretation and written translations promptly.⁵⁴ This includes the ability of LEP populations to notify commissioners of pesticide-related incidents. The letter further clarifies that CACs are responsible for assessing and determining the language needs of their constituents.⁵⁵ A certified interpreter must be provided at any hearing on a pesticide-related enforcement action if requested by a witness or party to the proceeding.⁵⁶ For oral communications other than hearings, CACs must provide qualified interpreters during business hours for meetings in person or over the phone.⁵⁷ Any materials explaining services to the public and notices of availability must also be translated accordingly.⁵⁸

During the COVID-19 emergency in 2020, DPR sent a letter to CACs stating: “State law requires CACs to protect students participating in educational instruction at home, along with their families and others providing that educational instruction at home, as well as students, parents, teachers, and other personnel who remain present at school sites during the COVID-19 emergency.”⁵⁹ The letter added that all CACs must “strictly enforce all applicable

health protections.”⁶⁰ Further, CACs must “take a strict approach to assessing penalties.”⁶¹ In the letter, DPR clearly asserts its oversight role, alerting CACs that:

DPR will continue to actively perform its statutory responsibility of overseeing the statewide pesticide program and ensuring the effectiveness of local programs. The Department also will continue to provide regular direction and guidance on pesticide use enforcement throughout the COVID-19 emergency.⁶²

In addition, DPR directs CACs to prioritize and complete investigations of reported pesticide violations in a timely and appropriate manner.⁶³ If unable to do so, a CAC must immediately notify the DPR Enforcement Branch.⁶⁴ If a CAC investigation finds that a violation occurred, notices of proposed action must be routed to DPR immediately for review.⁶⁵

DPR also reviews and approves CAC work plans. In 2022, DPR sent a letter to CACs regarding county pesticide use enforcement program work plans, guidance, and updated department priorities.⁶⁶ DPR states that “an effective statewide pesticide use enforcement program is designed to protect workers, the environment, the public, our food supply and ensure regulatory compliance,” and that DPR and CAC teamwork produces the “most comprehensive and recognized pesticide

⁵² California Department of Pesticide Regulation Letter to County Agricultural Commissioners re: Language Access (March 3, 2020), https://www.cdpr.ca.gov/docs/county/cacltrs/exec/2020/exec_20-02.pdf.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ California Department of Pesticide Regulation Letter to County Agricultural Commissioners re: COVID-19 Pesticide Use Near/Around Schools and Homes (May 7, 2020), https://www.cdpr.ca.gov/docs/county/cacltrs/exec/2020/exec_20-03.pdf.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ California Department of Pesticide Regulation Letter to County Agricultural Commissioners re: County Pesticide Use Enforcement Program Work Plans, Guidance, and Updated Department Priorities (March 1, 2022), <https://www.cdpr.ca.gov/docs/county/cacltrs/penfltrs/penf2022/202202.htm>.

regulatory system in the nation.”⁶⁷ The CAC work plan provides DPR and the public with the goals, deliverables, and priorities of the CAC, and must be submitted to the DPR Enforcement Branch Liaison for approval.⁶⁸ The primary focus of the work plan includes three core program areas: restricted materials, compliance monitoring, and enforcement response.⁶⁹

In 2022, DPR also requested that work plans identify “DPR specific priorities and other county specific activities either anticipated or underway.”⁷⁰ In the letter, DPR outlines a list of specific activities to be considered in the work plans, such as monitoring for new or revised laws and regulations to ensure enforcement of any changes and environmental justice initiatives.⁷¹ The letter further clarifies that DPR is responsible for evaluating a county’s pesticide program at least once every three years per Title 3 California Code of Regulations, section 6394.⁷² The DPR performance evaluation process includes meetings and discussions with the CAC regarding the county’s overall performance, any program deficiencies, and suggested corrective actions.⁷³ When program deficiencies are identified, the DPR Enforcement Branch Liaison must notify the CAC immediately for corrective measures.⁷⁴ DPR also oversees inspections as required under the federal EPA Region 9 Cooperative Agreement.⁷⁵ DPR also oversees, tracks, and publishes CAC enforcement actions on DPR’s website,⁷⁶ although the reports provide incomplete

information (an Excel document with a list of enforcement actions by county and another that details type of violation but does not contain county information).

While DPR frequently diminishes its responsibility for pesticide program implementation and enforcement, it does recognize and assert its oversight authority regarding CACs and is responsible for CAC compliance with pesticide law and civil rights protections.

County Agricultural Commissioners (CACs)

State law requires that county boards of supervisors appoint their county’s agricultural commissioner.⁷⁷ California’s agricultural commissioners are charged with protecting the state’s agriculture, environment, and the public’s health and safety.⁷⁸ CACs accomplish these goals through a combination of public outreach, industry education, and enforcement actions.⁷⁹ Per the Cooperative Agreement between EPA Region 9, DPR, and the California Agricultural Commissioners and Sealers Association (CACASA), CACs are responsible for field investigations of violations and initiation of enforcement actions.⁸⁰

On the California Department of Food and Agriculture’s website, CAC responsibilities and duties are listed by legal mandate.⁸¹ According

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ CAL. DEPT. OF PESTICIDE REGULATION, *County Administrative Penalty Actions*, <https://www.cdpr.ca.gov/docs/enforce/admnacts/cvlpnlty.htm>.

⁷⁷ Cal. Food & Agric. Code § 2121.

⁷⁸ CAL. DEPT. OF FOOD AND AGRIC., *California’s Agricultural Commissioners*, <https://www.cdafa.ca.gov/exec/county/Commissioner.html>.

⁷⁹ *Id.*

⁸⁰ Cooperative Agreement Between the United States Environmental Protection Agency, Region IX, the California Department of Pesticide Regulation and the California Agricultural Commissioners and Sealers Association, http://www.cdafa.ca.gov/exec/county/documents/Enforcement_Action_in_the_State_of_California.pdf.

⁸¹ *Supra* note 78.

to the California Food and Agricultural Code, the Commissioner collects reports on “loss, non-performance, or damage” from pesticide use.⁸² The CAC ensures pilots and pest control advisors are registered and have their contact information on file.⁸³ CACs in cooperation with DPR and advised by local health agencies are also responsible for enforcement of pesticide regulations.⁸⁴ For example, there is a duty of CACs to condition the use of a restricted pesticide when measures to mitigate the chemical’s impact are available. CACs have a duty to know local conditions (such as susceptibility to harm because of age, pre-existing health conditions, and ethnic practices) and use such knowledge in making determinations.⁸⁵ DPR designed the restricted material permit program to allow further restrictions to protect people and the environment in light of local conditions. This is part of DPR’s regulatory program that supports certification as a functional equivalent to an environmental impact report under the California Environmental Quality Act.⁸⁶

As stated above, DPR also oversees, tracks, and publishes CAC enforcement actions on DPR’s website.⁸⁷ The reports are presented in two lists. One is an Excel document with a list of enforcement actions by county and another

provides detail on the type of violation but does not contain county information. A user must work with both documents and file a California Public Records Act request to receive comprehensive information regarding enforcement action by type of violation by county. However, there are several references to DPR consultation, referral, and approval in the documents. The most common penalties are administrative civil penalties, but there are no details on the amount of the fines. There are repeat offenders and often inspections reveal multiple violations.

DPR and CACs are responsible for implementation and enforcement of the pesticide program in California. The roles and responsibilities are outlined in the Cooperative Agreement with EPA, the state’s Food and Agricultural code, and the Health and Safety Code. DPR provides oversight, guidance, review, and approval to CACs and thus is responsible for the action and inaction of CACs.

The range of authorities and responsibilities shared among DPR and CACs in California to protect farmworkers and their families from threats to health and safety is vast. The law states that it is the duty of growers to notify employees – to provide on-site notice of

⁸² Cal. Food & Agric. Code § 11761.

⁸³ Cal. Food & Agric. Code §§ 11920, 12031.

⁸⁴ Cal. Food & Agric. Code § 12982.

⁸⁵ Restricted materials require a permit from the CAC, who has discretion to impose site-specific control measures based on local conditions. DPR recommends conditions to be included in the permits. CACs must deny the use of a restricted pesticide when feasible safer alternative pesticides – as well as measures such as using tarps or creating pesticide “buffer zones” that could mitigate their impact – are available. Where feasible alternatives or mitigation measures are available, the CAC must deny the application or condition approval on use of the mitigation measure. Each commissioner is responsible for knowing local conditions and utilizing such knowledge in making these determinations. CACs’ limited commitment to alternatives analysis, lack of consideration of cumulative impact (e.g., relying upon unrealistic assumptions in estimating worker exposure to fumigant emissions), and lack of consideration of local conditions lead to adverse health impacts for agricultural workers and majority-Latino/a communities. Local condition information such as susceptibility to harm because of age, genetics, pre-existing health conditions, and/or ethnic practices are necessary factors for CACs to consider for restricted permits. Timothy Malloy, John Froines, Andrea Hricko, Karla Vasquez, & Mason Gamble, *Governance on the Ground: Evaluating the Role of County Agricultural Commissioners in Reducing Toxic Pesticide Exposures* (Mar. 20, 2019).

⁸⁶ For many California-restricted materials, DPR develops recommended permit conditions for CACs, based on the department’s scientific evaluations of potential health and environmental impacts. DPR’s recommended permit conditions reflect the minimum measures necessary to protect people and the environment. CACs use DPR’s information and their own evaluations of, and experiences with, local conditions to develop controls specific to each application site. To preserve the functional equivalency under CEQA of restricted materials permitting with environmental impact reports, CACs must have flexibility to restrict pesticide use permits based on local conditions at the time of the application. Therefore, CACs may follow DPR’s recommended permit conditions or structure their own conditions that are equally protective or more stringent. See Cal. Food & Agric. Code § 2281. CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 81 (2017).

⁸⁷ *Supra* note 76.

pesticide applications and related hazard information⁸⁸ that must include dates, start times, estimated end times of scheduled applications, the location and description of the field to be treated, pesticide product names, active ingredients, and applicable restricted entry intervals.⁸⁹ To provide decontamination supplies.⁹⁰ To not allow workers to enter recently sprayed fields during prohibited reentry intervals.⁹¹ To provide specific instruction to workers who actively apply pesticides.⁹² To provide sufficient personal protective equipment.⁹³ To refrain from retaliation against workers.⁹⁴ To not take any actions that prevent or discourage workers from complying with the law. To provide training that includes information about protecting yourself from pesticide exposure.⁹⁵ To not spray pesticides while workers are in the fields. To post mandatory information and warnings. To inform growers of the location where pesticides are applied. To provide information on pesticide-related illnesses. To give prompt transportation to appropriate emergency medical facilities.⁹⁶ To inform medical personnel as to the type of pesticide involved and circumstances of exposures.⁹⁷ To not knowingly and intentionally expose any individual to a chemical known by the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual.⁹⁸ And, due to health hazards, the necessity for quick response in case of

exposure, and the importance of directions for safe handling, to provide training for all workers “in a manner that the worker can understand”⁹⁹ – a right based not only on pesticide law but other laws as well, such as the Migrant and Seasonal Agricultural Worker Protection Act, Proposition 65, and the California Translation Act.¹⁰⁰

How does DPR represent its responsibility to ensure compliance with these requirements to the public? DPR states that the California legislature “delegated local administration of pesticide use enforcement to County Agricultural Commissioners.” CACs are the ones with “on the ground implementation of pesticide regulations.”¹⁰¹ DPR states that CACs “serve as the primary enforcement agents for State pesticide laws and regulations,”¹⁰² that “among a CAC’s most important responsibilities is investigating illness and injuries.”¹⁰³ DPR states that “[a]ll reported pesticide related illnesses and injuries are investigated by the Commissioner.”¹⁰⁴ DPR states that “if the law was broken and people made ill, the Commissioner takes enforcement action.”¹⁰⁵ DPR states that CACs must investigate, ensure compliance with label directions, conduct inspections of both operations and records, oversee use reporting, promote best management practices, and monitor applications in the field. When permitting, CACs must determine whether feasible mitigation measures

⁸⁸ 40 C.F.R. §§ 170.120-.122, .222.

⁸⁹ Cal. Code. Reg. tit. 3, §§ 6618, 6761.1.

⁹⁰ 40 C.F.R. §§ 170.150, .250.

⁹¹ 40 C.F.R. §§ 170.112, .210.

⁹² 40 C.F.R. §§ 170.230-.234.

⁹³ 40 C.F.R. §§ 170.240-.250.

⁹⁴ 40 C.F.R. § 170.7(b).

⁹⁵ 40 C.F.R. §§ 170.130, .230.

⁹⁶ 40 C.F.R. § 170.160.

⁹⁷ 40 C.F.R. § 170.260.

⁹⁸ Cal. Health & Safety Code § 25249.5 (except as provided in § 25249.9).

⁹⁹ Cal. Code of Reg. tit. 3, § 6618.

¹⁰⁰ Jennifer Nguyen-Bui, *Monolingual Spanish Farmworkers Exposed to “Economic Poison” with Little Protection*, 26 SAN JOAQUIN AGRIC. L. REV. 197 (2017).

¹⁰¹ Malloy, *supra* note 85, at 1.

¹⁰² CAL. DEPT. OF PESTICIDE REGULATION, *County Agricultural Commissioner Resources*, <https://www.cdpr.ca.gov/docs/county/comenu.htm>.

¹⁰³ CAL. DEPT. OF PESTICIDE REGULATION, *County Plays Key Role in Regulating Pesticides*, <https://www.cdpr.ca.gov/docs/dept/factshts/cac.pdf>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

would substantially reduce an adverse impact. CACs must condition approval on the use of mitigation measures where they exist. DPR states that when growers file a Notice of Intent with a Commissioner at least 24 hours prior to scheduled application, the Commissioner can disallow a proposed application if extra controls are necessary. DPR also states that when satisfactory evidence is provided to DPR that a CAC is guilty of neglect of duty, incompetence, or misconduct, a trial board must be selected to hold a removal hearing. DPR may also withhold funds from CACs when they do not perform their duties properly. For example, DPR withheld \$11,000 from the Ventura County Agricultural Commissioner from the mill fee in 1994 due to weaknesses in their enforcement program.¹⁰⁶

State operation or funding

For § 11135 to apply, a plaintiff must also show that discrimination occurs under a program or activity that is “conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”¹⁰⁷ “State agency” is defined as “an administrative subdivision or instrumentality of State government, including, but not limited to agencies, departments, offices, commissions, boards, bureaus and divisions, which has the statutory or constitutional authority to provide State support to any person.”¹⁰⁸ “Funded directly by the State” means “any payment, transfer, or allocation of State funds to any recipient.”¹⁰⁹

“Recipient” is defined as:

any contractor, local agency, or person, who regularly employs five or more persons and who receives State support, as defined in this Section, in an amount

in excess of \$10,000 in the aggregate per State fiscal year or in an amount in excess of \$1000 per transaction, by grant, contract or otherwise, directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the State support. “Recipient” does not include State agencies.¹¹⁰

“State financial assistance” is defined as:

any grant, entitlement, loan, cooperative agreement, contract or any other arrangement by which a State agency provides or otherwise makes available aid to recipients in the form of:

- (1) funds;
- (2) services of State personnel; or
- (3) real or personal property or any interest in or use of such property, including:
 - (A) transfers or leases of property for less than fair market value or for reduced consideration; or
 - (B) proceeds from a subsequent transfer or lease of property if the State share of its fair market value is not returned to the State.¹¹¹

CACs receive funding for pesticide enforcement from DPR and their own county government. CACs also receive funding from fees, fines, grants, and the California Department of Food and Agriculture.¹¹² DPR receives funding from EPA as part of the Cooperative Agreement on Pesticides Enforcement.¹¹³ In 2019, EPA provided DPR with \$5.8 million in total funding through 2022 as part of a Cooperative

¹⁰⁶ Cal. Food & Agric. Code § 2181. See also Clark, *supra* note 33, at 488 n. 115; MARGARET REEVES, FIELDS OF POISON: CALIFORNIA FARMWORKERS AND PESTICIDES 33 (1999).

¹⁰⁷ Cal. Gov. Code § 11135(a).

¹⁰⁸ Cal. Code of Regs. tit. 2, § 11150.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Cal. Code of Regs. tit. 2, §11150.

¹¹² CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 13 (2017).

¹¹³ *Id.* at 108.

Agreement and program to strengthen partnerships between EPA and DPR. The grant included funds for compliance and field programs administered locally by CACs.¹¹⁴ It is likely that CACs receive a portion of this federal funding. DPR also provides funding to CACs through the mill fee, equal to 7.6 mills (\$0.0076) per dollar of sales. These funds constitute reimbursement for enforcement costs.¹¹⁵ Given review of the California Budget, DPR's budget, and EPA funding per the Cooperative Agreement, it is likely that DPR and the CACs that are the focus of this Advisory Opinion receive more than \$10,000 in state funding. In addition, the civil rights violations outlined in this opinion occur under state-operated and -administered programs and activities.

Disparate impact

California Code of Regulations § 11154 defines discriminatory practices as applicable to § 11135. In relevant part, it provides that it is a discriminatory practice:

- (i) to utilize criteria or methods of administration that:
 - (1) have the purpose or effect of subjecting a person to discrimination on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability;
 - (2) have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient's program with respect to a person of a particular ethnic group

identification, religion, age, sex, color, or with a physical or mental disability; or

- (3) perpetuate discrimination by another recipient on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability.¹¹⁶

However, “the mere fact that each person affected by a practice or policy is also a member of a protected group does not establish a disparate impact.”¹¹⁷ Instead, plaintiffs must establish the appropriate comparison groups to show disproportionate adverse impact. “The basis for a successful disparate impact claim involves a comparison between two groups – those affected and those unaffected by the facially neutral policy.’ An appropriate statistical measure must therefore take into account the correct population base and its [protected class] makeup.”¹¹⁸ “Correct population base” is not considered to be the general population, but rather the group of people affected by a challenged practice.¹¹⁹ As such, in a disparate impact analysis, courts “must analyze the impact of the [challenged action] on minorities in the population base ‘affected ... by the facially neutral policy.’”¹²⁰

Plaintiffs may rely on statistical evidence to establish disproportionate impact. “[S]tatistical disparities alone may constitute prima facie proof of discrimination.”¹²¹ However, a court “may not find the existence of disparate impact ‘on the sole basis of [a statistic] unless it reasonably [finds] that [the statistic] would be a

¹¹⁴ USASPENDING.GOV, *Award Summary*, https://www.usaspending.gov/award/ASST_NON_00T11420_6800.

¹¹⁵ CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 113 (2017).

¹¹⁶ Cal. Code of Regs. tit. 2, § 11154.

¹¹⁷ *Villafana v. Cnty. of San Diego*, 57 Cal.App.5th 1012, 1017-1018 (2020) (citing *Carter v. CB Richard Ellis, Inc.* 122 Cal.App.4th 1313, 1324 (2004)).

¹¹⁸ *Darensburg*, 636 F.3d at 519-20 (citing *Tsombanidis v. W. Haven Fire Dept.*, 352 F.3d 565, 575 (2d Cir. 2003)).

¹¹⁹ See *Robinson v. Adams*, 847 F.2d 1315, 1318 (1987); *Moore v. Hughes Helicopters, Inc.*, 708 F.2d 475 (9th Cir. 1983) (“The best evidence of discriminatory impact is proof that an employment practice selects members of a protected class in a proportion smaller than their percentage in the pool of actual applicants, or, in promotion and benefit cases, in a proportion smaller than in the actual pool of eligible employees.” *Id.* at 482.).

¹²⁰ *Darensburg*, 636 F.3d at 520 (citing *Tsombanidis*, 352 F.3d at 575).

¹²¹ *City and County of San Francisco v. Fair Employment & Housing Com.*, 191 Cal.App.3d 976, 987 (1987) (citing *New York Transit Authority v. Beazer*, 440 U.S. 568, 584 (1979); *Hazelwood School District v. United States*, 433 U.S. 299, 307-308 (1977)).

reliable indicator of a disparate impact.”¹²² “As a general rule, if the difference between expected value (if a race-neutral selection device was used) and the actual value is greater than two or three standard deviations, the deviation can be regarded as caused by some factor other than chance.”¹²³

For DPR, agency programs have a population base that includes, depending on the program, residents, workers, and/or students impacted by a program or policy related to agricultural application of pesticides statewide. For County Agricultural Commissioners, agency programs have a population base that includes, depending on the program, residents, workers, and/or students impacted by a program or policy related to agricultural application of pesticides within a given county. While CACs are county-wide offices and DPR has statewide jurisdiction, they tend to interact with areas zoned for agriculture or mixed zoned for residential and agricultural use when exercising their regulatory responsibilities with regards to agricultural application of pesticides. It is within these zones that the practices outlined in this opinion have the effect of substantially impairing or defeating the accomplishment of the objectives of multiple DPR and CAC programs with respect to members of protected classes, including Latino/a and transnational Indigenous farmworkers, their families, and their children.

Evidence from the People’s Tribunal in Lindsay, California (Sept. 12, 2023)

The arc of community organizing and policy reform over decades – from boycotts to buffer zones to bans of a limited number of active ingredients to notification campaigns to challenges to rulemakings such as for the continued application of 1,3-D – has done little to alter the dynamics that contribute to the ongoing reality of thousands of people. At the Tribunal, three distinct themes emerged from farmworkers and their families who had the courage to attend. In the face of substantial, pervasive, and ongoing gaps in the administration of pesticide laws, rules, and requirements, farmworkers and their families are told to “endure,” to “protect yourself,” and, when they speak out about a specific risk, hazard, or harm, to “prove it.” We provide examples for each theme in the words of Tribunal speakers on September 12, 2023, as well as interview and focus group participants who provided community testimony in Spring and Summer 2023. The language below is quoted from community testimony. All efforts are made to protect the identity and location of each farmworker.

The first message conveyed to farmworkers and their families is: **Endure**.¹²⁴

¹²² *Darensburg*, 636 F.3d at 519 (citing *N.Y. Urban League v. State of N.Y.*, 71 F.3d 1021, 1038 (2d Cir. 1995)).

¹²³ *City and County of San Francisco*, 191 Cal.App.3d at 987.

¹²⁴ Tribunal speakers on September 12, 2023, as well as interview and focus group participants who provided community testimony in Spring and Summer 2023. See People’s Tribunal community testimony, *supra* note 4, at 31:25 – 52:50 (Monterey and Santa Cruz Counties), 53:00 – 1:11:45 (Ventura County), 1:26:48 – 1:58:20 (Kern, Tulare, and Fresno Counties); People’s Tribunal scientific testimony, *supra* note 4, at 24:30 – 30:35 (“The Department of Pesticide Regulation has failed to take advantage of California’s scientific expertise about pesticides”) (referencing UC Berkeley CHAMACOS “community studies” in California and related publications, such as Brenda Eskenazi et al., *Association of Lifetime Exposure to Glyphosate and Aminomethylphosphonic Acid (AMPA) with Liver Inflammation and Metabolic Syndrome at Young Adulthood: Findings from the CHAMACOS Study*, 131 ENVTL. HEALTH PERSPECT. 037001 (2023) (higher exposures to glyphosate during childhood linked to metabolic syndrome, increased risk for diabetes in children); Sharon K. Sagiv et al., *Prenatal Exposure to Organophosphate Pesticides and Functional Neuroimaging in Adolescents Living in Proximity to Pesticide Application*, 116 PROC. OF THE NATIONAL ACAD. OF SCI. 18347 (2019) (higher exposure to organophosphates during pregnancy linked to changes in teen brain activity); and Sharon K. Sagiv et al., *Gestational Exposure to Organophosphate Pesticides and Longitudinally Assessed Behaviors Related to Attention-Deficit/Hyperactivity Disorder and Executive Function*, 190 AMER. J. OF EPIDEMIOLOGY. 2420 (2021) (higher exposure to insecticides during pregnancy linked to ADHD behaviors in pre-teens) as well as studies conducted by UCLA’s Fielding School of Public Health that utilize California state data and cooperation with patient groups (Negar Omidakhsh et al., *Thyroid Cancer and Pesticide Use in a Central California Agricultural Area: A Case Control Study*, 107 J. OF CLINICAL ENDOCRINOLOGY & METABOLISM e3574 (2022) (living near applications of ten pesticides in Tulare, Kern, and Fresno Counties linked to higher risk of thyroid cancer); Shihwen Li et al., *Proximity to Residential and Workplace Pesticide Application and the Risk of Progression of Parkinson’s Diseases in Central California*, 864 SCI. OF THE TOTAL ENVTL. 160851 (2023) (living near farms that use any of ten pesticides linked to faster progression

Especially in unincorporated communities, smaller school districts, and communities located on the periphery of towns and adjacent to fields – where the most prevalent and detailed accounts were provided – farmworkers, their families, and their children at nearby schools are told to simply endure exposure to pesticides. At home and at school, they hear the air blasters. They see them at a distance. They feel the pesticides making their way to their front yard, backyard, and inside their homes. They are “surrounded.” They are “invaded.” “Pesticides are sprayed with no warning near our schools.” Many are unaware that they have legal protections. They have a close family member or co-worker, or their own examples of retaliation when they speak out. They are unwilling to speak out. “We are afraid.” “What would it mean for me and my family if I did [speak out]?” The crew leader does not call them back to work. They present multiple examples of working in fields that were recently sprayed. The foreman ignores when they fumigate and has people work immediately adjacent to it. “They’re spraying while we’re picking.” “We’re out where the tractors are spraying.” “They spray without warning.” It’s “without warning.” “It burns the eyes, throat, and stomach.” “We get allergies, skin allergies, itching and rashes all over the body.” Farmworkers use the word “inside.” A company leaves after spraying and the workers go right back “inside.” “If you complain, next year you won’t get work. They note your name. You are ‘marked.’” “The companies know each other.” “The stewards know each other.” “They form a chain.” “We must come

silently to work and not speak about anything.” Residents and farmworkers don’t know what questions to ask, what they are exposed to, or what protections they should take. They can’t choose to stop working. They “endure” the day. Many are in the fields their entire lives.

A second message conveyed to farmworkers and their families is: **Protect yourself.**¹²⁵

Farmworkers often do not know what is being sprayed. The applicators don’t know what they are mixing into the air blast sprayers. They work in fields with posted signs that the stewards “don’t respect.” The stewards don’t pass along reports to the supervisors. What happens after you report? “Nothing.” “They don’t tell you anything about pesticides.” “A class for one’s safety, there isn’t any.” “They don’t give us any notice.” “They don’t provide information to us.” At the same time, “Everyone sees it. Everyone knows that the pesticides are there.” There’s dust that remains in the trees, in the soil, on the crops, and when they harvest or prune or remove tarps, their eyes burn. They continue to work. They work through pregnancy. “They bring us in there until 7 or 8 months.” They feel droplets and don’t know where to go, who to call. They don’t know what questions to ask. They are told to go sit down. “It’s allergies.” “You’re the only one who got sick.” “You’re too delicate.” “You’re always behind.” “Sign this acknowledgment of training so you can work.” “We already talked about those things.” “If you’re sick, go home.” Many farmworkers don’t know that it is not okay to be sprayed upon. Many do not wear personal protective equipment so that

of Parkinson’s disease); and *Id.* (pregnant mothers living near farms that use any of nine pesticides linked to higher risk of their children developing brain tumors)). See also People’s Tribunal scientific testimony, *supra* note 4, at 1:18:30 – 1:26:30 (summarizing the results of thirty studies which detailed the impacts of pesticide exposure to neurodevelopment and brain-based outcomes, including cognition, memory, learning, executive function impairments, and behavioral change) (“Compelling evidence [from 27 studies] indicates that prenatal exposure [to organophosphates during pregnancy as well as childhood] at low levels is putting children at risk for cognitive and behavioral deficits and for neurodevelopmental disorders”).

¹²⁵ Tribunal speakers on September 12, 2023, as well as interview and focus group participants who provided community testimony in Spring and Summer 2023.

crops such as strawberries will “yield more.” Their hands “break out all over.” The only way to speak out is as a group. “We all have to speak up to not lose our job.” Most of the time, they don’t. “For every 100 cases that warrant a complaint, one may be filed.” The response is a letter in English. “You don’t know what to do anymore.” The vast majority of farmworkers do not speak English fluently. Often, Spanish is not well-understood either. There is a strong transnational Indigenous presence in several regions of the state. Many speak one of over 20 Indigenous languages and dialects. There is no training in those languages.¹²⁶ Often, the children of farmworkers serve as their early warning system. The children have a sense of smell that has not degraded. They develop allergies at school. They come home with bumps on their hands and feet. They require stronger inhalers when the fall growing season begins. Sometimes, the majority of the students who attend a particular school leave with eye allergies, skin allergies, vomiting, and fever. But their parents are afraid to ask the teachers about it. Farmworkers do not know where to change before picking up their children from daycare. “We bring the sickness to our children.” They fear hugging their kids.

A third message conveyed to farmworkers and their families when they speak out about a risk, hazard, or harm is: **Prove it.**¹²⁷

What happens when you report? “There’s hardly any reporting.” Farmworkers almost never report when they want to. They fear doing so. Many are undocumented. They work through it. “We can’t complain – we don’t speak the language.” On rare occasions when they report at work, to teachers, or even to

their agricultural commissioner, they are told that “smell is not exposure.” The farmer is “within his right.” They have a “right to farm.” They are told that what they experienced is “water.” That it is “not a restricted material.” Often agricultural commissioners do not have someone to address concerns brought to their office, “even when the concerns are brought in Spanish.” “What’s the name of the company near that field?” “Give me the exact location.” “You are asked many questions you don’t know.” “And that’s when you know English.” “Sometimes the agricultural commissioner doesn’t receive you.” Or “they never call.” “We come with real cases, evidence of what’s happening to us, because we all bring examples, testimony.” “We’re ignored.” “You do your best to show them and you show them your skin. You show them you have rashes, your red face, your eyes are crying.” At the same time, local coalitions and non-profits spend hundreds of hours trying to do a small portion of the state’s job. But “the best data are in the hands of the growers, commissioners, and the state.” “They have real-time grower-to-grower notification data among growers and commissioners.” “They have exact locations.” “They have shapefiles that identify fields with permit numbers.” “They know where risk assessments found unacceptable risk and where mitigations have yet to be put in place.” They have access to crop by crop, pest by pest alternatives ranked from least to most toxic that UC Integrated Pest Management provides online. By comparison, for the community, 1 x 1 square mile, years-old pesticide use reporting data or air monitoring at a few locations statewide or underreported illness data do not tell the individual, household, or community how to protect

¹²⁶ Tribunal speakers on September 12, 2023, as well as interview and focus group participants who provided community testimony in Spring and Summer 2023.

¹²⁷ Tribunal speakers on September 12, 2023, as well as interview and focus group participants who provided community testimony in Spring and Summer 2023.

themselves now, tomorrow, next week, or as growing cycles and seasons shift.¹²⁸

Conclusion: Ongoing Civil Rights Violations in California Agricultural Communities

Based on community testimony from Tribunal, interview, and focus group participants, a central flaw in California's pesticide use and regulatory system emerged. The abdication of investigation and enforcement responsibilities to County Agricultural Commissioners by DPR results in weak, inconsistent, and even absent protections. In this regime, it is imperative for farmworkers and their families to protect themselves. This is difficult, if not impossible, for those with limited

English proficiency, who speak Spanish, or who speak transnational Indigenous languages. Community testimony alone revealed dozens of claims that CACs and DPR should investigate or that should have triggered existing regulatory duties. But given community testimony, it is clear that:

- County Agricultural Commissioners and the Department of Pesticide Regulation do not receive the vast majority of reports¹²⁹ or complaints that they would otherwise receive from the Latino/a and transnational Indigenous communities they serve, as their services are limited to the English language,¹³⁰ and, in limited ways, Spanish and other select languages.¹³¹

¹²⁸ Tribunal speakers on September 12, 2023, as well as interview and focus group participants who provided community testimony in Spring and Summer 2023.

¹²⁹ Adverse effects reports are an important supplement to the data generated by registrants in support of registration. If a registrant has additional information on an adverse effect or risk of a pesticide to human health or the environment during the registration process or at any time after, the registrant must immediately report that to DPR. This information may come in the form of studies that the registrant undertakes or learns about, or reports of incidents of adverse effects resulting from the use of pesticide products. Adverse effects may include product defects, lack of product efficacy, or exposure incidents where individuals become ill or die from pesticide exposure. Thus, this reporting requirement provides an after-the-fact check on registration decisions. No proof of a cause-and-effect relationship is required for an incident to be reportable because EPA and DPR primarily use the reports to look for patterns of concern. Adverse effects information may lead DPR to request additional information from registrants and, in some cases, reevaluate uses of a pesticide. As a result, DPR may impose additional restrictions or even cancel registration of the pesticide. CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 29 (2017).

¹³⁰ For example, on DPR's website, there is a page dedicated to "Reporting Pesticide Problems." CAL. DEPT. OF PESTICIDE REGULATION, *Reporting Pesticide Problems*, <https://www.cdpr.ca.gov/docs/dept/quicklinks/report.htm#:~:text=Complaints%20about%20unregistered%20or%20misbranded,%40cdpr.ca.gov>. This page can be translated into Spanish. The page provides a variety of complaints that a person could make (e.g., complaints about pesticide use/illegal application, illness, licenses, unregistered or misbranded pesticide products), and there is an option to file a complaint with CalEPA. There is also a short YouTube video that illustrates what a person should do if they decide to file a report or if they experience a pesticide-related issue. This video and transcript of the video are available in English and Spanish. However, the form that DPR provides to report pesticide incidents appears in English on this page. CAL. DEPT. OF PESTICIDE REGULATION, *How to Report Pesticide Incidents*, https://www.cdpr.ca.gov/docs/dept/factshts/how_to_report_pesticide_incidents.pdf. Regarding exposure to pesticides at work, the YouTube video encourages people to ask their employer to take them to the doctor. CAL. DEPT. OF PESTICIDE REGULATION, *See a Pesticide Incident? Report It*, https://www.cdpr.ca.gov/docs/dept/quicklinks/reporting_pesticide_illness_transcript.pdf. With regards to CACs, Kern County, for example, does not provide information in a language other than English. COUNTY OF KERN, *Agriculture and Measurements Standards*, <http://www.kernag.com/>.

¹³¹ CAL. DEPT. OF PESTICIDE REGULATION, *Reporting Pesticide Problems* <https://www.cdpr.ca.gov/docs/dept/quicklinks/report.htm#:~:text=Complaints%20about%20unregistered%20or%20misbranded,%40cdpr.ca.gov> ("If you suspect a pesticide is being used improperly, notify your county agricultural commissioner's office as soon as possible. (You can find the phone number in the county government section of your phone book white pages or call toll-free 1-877PestLine to get the number and be connected.)"). A recent survey of CAC offices in California revealed an across-the-board failure to comply with state law that requires them to offer services in languages spoken by the people they serve. Many have no process for taking phone inquiries or complaints in Spanish or non-English languages. Letter from Jane Sellen and Sarah C. Aird, Co-Directors, Californians for Pesticide Reform to Chair Bill Quirk, Assembly Environmental Safety and Toxic Materials Committee and Chair Richard Bloom, Assembly Budget Subcommittee #3 (March 21, 2022). Additionally, DPR has instructed CACs that if they "serve a substantial number of [limited English proficiency] people, [they] must employ a sufficient number of qualified bilingual persons to provide oral interpretation and written translations to LEP persons in a timely manner to ensure that they have equivalent access to the services and information that [it] provide, and including the *ability to notify you of pesticide-related incidents*." CACs "are responsible for assessing and determining the language needs of your constituents, including both permanent residents and businesses as well as seasonal

- County Agricultural Commissioners and the Department of Pesticide Regulation miss multiple opportunities to find that health hazards appear generally throughout an area, triggering a field inspection and potentially canceling permits or specifying that no additional permits be issued. For example, this was done in 1990 when air concentrations of Telone II were found at 885 times state safety standards near a junior high school.¹³²
- In California, warnings, trainings, and other essential protections for farmworkers are not equally available to those with limited English proficiency, or to those who speak Spanish, transnational Indigenous, and other languages aside from English.¹³³
- The Department of Pesticide Regulation has not enforced the requirement that a restricted material be used only where it is reasonably certain that no injury will result or where unrestricted materials or procedures are not equally effective and practical. County Agricultural Commissioners do not adequately evaluate this, and it is difficult to see how DPR would enforce this requirement if Pest Control Advisors merely check a box that alternatives were considered without providing other information or analysis – and DPR reviews these recommendations through record review.¹³⁴ The same is true for Notices of

Intent, where limited information provided on forms is insufficient to ensure that CACs follow the law or make an informed decision to approve a request. Often, approvals are issued within minutes.¹³⁵

- There is scant evidence that permit approval gives adequate attention to local conditions including vicinity to neighboring communities and the effects that pesticides will have on those communities.¹³⁶ Most permits are issued with standard conditions.¹³⁷ There is scant evidence that CACs include conditions to protect neighbors from health and physical impacts of pesticide use.¹³⁸

Without adequate notification, reporting, or complaint processing due to language and other barriers, including fear, isolation, misinformation, intimidation, and retaliation, the Department of Pesticide Regulation fails to implement statutory mandates including reevaluation¹³⁹ of pesticides and whether use practices must change when it has reason to believe that they may cause unreasonable adverse effects to people or environment. DPR also fails to investigate all reports of potentially significant adverse effects. DPR also fails to adequately assess the effectiveness of existing controls. DPR also fails to ensure that County Agricultural Commissioners conduct inspections to prevent misapplication or drift and possible contamination of workers or the public. DPR also fails to ensure that County Agricultural

workers.” California Department of Pesticide Regulation Letter to County Agricultural Commissioners re: Language Access (Mar. 3, 2020), https://www.cdpr.ca.gov/docs/county/cacltrs/exec/2020/exec_20-02.pdf (emphasis added).

¹³² ZEV ROSS & JONATHAN KAPLAN, POISONING THE AIR: AIRBORNE PESTICIDES IN CALIFORNIA 20 (1998).

¹³³ People’s Tribunal community testimony, *supra* note 4, at 2:01:33 – 2:15:30 (summarizing transnational Indigenous farmworker populations in California).

¹³⁴ Cal. Food & Agric. Code § 14006; Cal. Code Regs. tit. 3, § 6556.

¹³⁵ UC Irvine Center for Land, Environment, and Natural Resources Interview data (Spring – Summer 2023).

¹³⁶ Cal. Food & Agric. Code § 14006.5(a – f); Cal. Code Regs. tit. 3, § 6428(c).

¹³⁷ One exception involved the San Luis Obispo CAC denying a methyl bromide permit because its use would be too close to residences. Clark, *supra* note 33, at 492 n. 137.

¹³⁸ *Id.* at 491-492.

¹³⁹ Specific factors that may trigger reevaluation include public or worker health hazard; environmental contamination; unwanted damage to plants; inadequate labeling; lack of efficacy; disruption of pest management; availability of an effective and feasible alternative material or procedure which is demonstrably less destructive to the environment; discovery that data on which DPR relied to register a product is false, misleading or incomplete; or other information suggesting a significant adverse risk. CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 39 (2017).

Commissioners adequately investigate pesticide illnesses and injuries, revise their understanding of local conditions, or condition approval of restricted materials permits¹⁴⁰ on appropriate mitigation measures. DPR also fails to ensure that County Agricultural Commissioners enforce worker protection standards – the primary means to reduce farmworker exposure.

In California, California Government Code § 11135 provides that “No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”¹⁴¹ This means that state-operated or -funded programs or activities cannot utilize criteria or methods of administration which have the purpose or effect of subjecting members of a protected class to discrimination or defeating or substantially impairing a program with respect to members of

a *protected class*. These programs or activities include state operations such as DPR programs related to pesticide use regulation and enforcement, as well as recipients of state funds such as County Departments of Agriculture, which function as state regulatory bodies and receive enforcement funding from DPR (likely in excess of \$10,000 per state fiscal year).¹⁴²

While there are dozens of measures of historical and persistent racial and other disparities related to agricultural pesticide applications and toxicity in California – anyone who has studied the geographic distribution of pesticide use or the demographic composition of agricultural communities and farmworkers in California knows this – civil rights claims are stronger the more they are tailored. That is why the Tribunal was an important, but only a first step. Community testimony points to strong, *statewide* as well as *county-specific* claims of adverse and disproportionate impacts on members of protected classes by state operations as well as state-funded operations. This begins with DPR’s Restricted Materials Permitting, Pesticide Illness Surveillance, Pesticide Notification, Worker Health and Communication, and Registration and Reevaluation programs,¹⁴³ where the breakdown of notification, reporting, and

¹⁴⁰ DPR registers pesticide products while CACs issue permits for the use of “restricted” pesticides – those that present significant human health or environmental concerns. DPR must ensure that a pesticide will not harm human health or the environment. DPR must evaluate whether a pesticide demonstrates “serious uncontrollable adverse effects either within or outside the agricultural environment.” Cal. Food & Agric. Code § 12825(a). In practice, DPR registers an average of 15 new pesticide Active Ingredients every year but has completed just ten risk assessments and three resultant mitigations in a decade. Completion of risk assessments and mitigations for pesticides that have been registered for decades fall further behind with each passing year, and reevaluations can take decades. For example, the fumigant chloropicrin and insecticide cyfluthrin were each in reevaluation for over 20 years. DPR has recently responded to two UCLA studies which named fifteen pesticides pending evaluation by stating that fourteen pesticides have been reviewed by either DPR or EPA. CAL. DEPT. OF PESTICIDE REGULATION, *Review and Actions Taken to Regulate Pesticides Named in Recent UCLA Studies* (March 2022), <https://www.pesticidereform.org/wp-content/uploads/2022/07/CPR-response-to-DPR-re-UCLA-studies-July-2022.pdf>. DPR’s response listed the fourteen pesticides and detailed which agency – DPR or EPA – was reviewing each, but did not indicate whether an evaluation, reevaluation, or risk assessment was conducted.

¹⁴¹ Cal. Gov’t Code § 11135.

¹⁴² DPR is the primary state agency for pesticide regulation. California Food and Agricultural Code sections 11501.5, 12977, 12982, 14004.5, and 15201 state that CACs work “under the direction and supervision of the director” of the Department of Pesticide Regulation. Every year, DPR distributes “the required proportion of mill assessment revenue to the county agricultural commissioners (CACs) to support local pesticide use enforcement.” “Among other duties, CACs are charged with local enforcement of pesticide laws.” “Local pesticide enforcement comes from four sources: the mill assessment, local fees and penalties, county general funds and unclaimed gas tax.” “Food and Agricultural Code Section 224 identifies how these funds are to be expended, with \$9 million each year going to CACs for pesticide use enforcement.” CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 13 (2017).

¹⁴³ DPR regulatory activities are conducted by seven Pesticide Program Division branches: Pesticide Registration, Human Health Assessment, Worker Health and Safety, Enforcement, Environmental Monitoring, Product Compliance, and Pest Management and Licensing. This integrated network carries out a wide range of activities, such as evaluation of health impacts of pesticides

complaint processing due to language and other barriers, including fear, isolation, misinformation, intimidation, and retaliation, unlawfully denies full and equal access to the benefits of those programs and activities, and unlawfully subjects California’s farmworkers, their families, and their children who live near agricultural pesticide use, to discrimination.

These civil rights violations are ongoing, severe, and demand immediate attention. While community testimony outlined violations of state civil rights law in six counties, the dynamics that result in substantial impairment or defeat of multiple state programs designed to protect the public (including members of protected classes such as according to race, national origin, and ethnic group identification) from pesticide use are likely pervasive in other counties within the state of California.





This **Advisory Opinion** should be followed by:

- (1) **Immediate investigation** of the evidence presented in this Advisory Opinion by the California Department of Justice Office of the Attorney General’s Bureau of Environmental Justice to ensure adequate enforcement of California Government Code § 11135 and its implementing regulations, first by holding administrative hearings to determine compliance of certain County Departments of Agriculture with state civil rights law, starting with

Kern, Tulare, Fresno, Ventura, Santa Cruz, and Monterey Counties;

- (2) **Immediate consideration** of evidence presented in this opinion by the California State Legislature to correct for ongoing violations of civil rights by, among other reforms, requiring that DPR enact an *affirmative* civil rights compliance program similar to one recently implemented by EPA’s Office of Environmental Justice and External Civil Rights; and
- (3) **Immediate and further development of evidence** presented in this opinion by EPA to ensure DPR compliance – as a recipient of federal funds and whose practices continue to result in adverse, disparate impacts to protected classes – with federal civil rights law, including Title VI of the Civil Rights Act of 1964.

It is so ordered.

 Robert Chacanaca	 Caroline Farrell
 Ann López	 Gregg Macey

February 15, 2024
Watsonville, California

through risk assessment and illness surveillance, where all reported pesticide-related illnesses are investigated and DPR uses these data to evaluate its regulatory program and to fine-tune safety rules. With regard to CACs, DPR has primary responsibility for pesticide use enforcement in California. A cooperative agreement extends to agricultural commissioners for local enforcement. Three DPR branches – enforcement, worker health and safety, and pest management and licensing – work closely with CACs to enforce state pesticide laws and regulations in the field. The Enforcement Branch provides statewide training of CAC staff, guidance on enforceable standards for pesticide use, technical support, incident investigation support, and oversight and evaluation of CAC enforcement. The Worker Health and Safety Branch is responsible for worker and public safety during and after pesticide use. The Pest Management and Licensing Branch manages licensing and certification of pest control advisors, applicators, aircraft pilots, businesses, and pesticide dealers and brokers. Enforcement Branch staff conduct regular effectiveness evaluations of all CAC offices and staff. These evaluations are required once every three years, or sooner if requested by the CAC or Regional Office. DPR uses inspection reports to document compliance rates and annual reports sent by CACs to document workload and hours, and enforcement actions. DPR staff evaluate major elements of the county’s program, describe successful program aspects, and follow up with CACs on needed improvements. The evaluations consider the number, type, and quality of inspections; restricted material permit accuracy; quality, thoroughness, and timeliness of investigations; appropriateness of enforcement actions and adherence to enforcement guidelines; business registration and license records; and financial reports. In 2015, DPR and CACs began working on a consolidated inspection and enforcement action database (CalPEATS Project) to streamline reporting. CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 2-4, 15-18 (2017).