

February 14, 2022

Jennifer Teerlink
1001 I Street, PO Box 4015
Sacramento, CA 95812-4015

Re: "Pesticide-Treated Seeds Questions for Stakeholders"

CDPR should be commended for its relatively new focus on pesticide-treated seeds. And yet, the November workshop and the questions that CDPR has requested information on suggest that the Department continues to skirt the central issue - i.e., that the Department has failed to meet its legal obligation to regulate pesticide-treated seeds as pesticides under California law.

At the November workshop CDPR staff repeatedly restated the Department's position that pesticide-treated seeds do not meet the California definition of a pesticide, i.e., "any substance, or mixture of substances which is intended to be used . . . for preventing, destroying, repelling, or mitigating any pest..." FAC § 12753(b). Also, non-pesticidal items (such as seeds) treated with pesticides are required to be subject to registration and regulation, though CDPR may follow the US EPA's lead in exempting certain pesticides (FAC § 12803). However, the latter requires that CDPR's exemption process be based on a formal evaluation and rulemaking, which CDPR has never undertaken for pesticide-treated seeds. Without complying the legal requirements of the Food and Agricultural Code or the California Administrative Procedure Act, CDPR has considered pesticide-treated seeds to be exempt as "treated articles." To be so considered, pesticides need to be applied "**solely** to protect the article/substance itself" (defined in 40 CFR section 152.25(a), relied upon by CDPR [in its 2015 regulatory guidance](#) to Pesticide Product Registrants and Stakeholders).

However, during the November workshop CDPR staff also clearly demonstrated an awareness that pesticide-seeds are NOT intended "solely to protect the article/substance (i.e., the seed) itself." Slide #8, entitled "Why are pesticide-treated seeds used?" answers its own question with the following bullet points:

- ***Localized plant protection.***
- ***Can protect against soil and aboveground pests.***
- ***Some active ingredients described as systemic pesticides are able to absorb into the plant and distribute throughout its tissues.***

These slide bullet points are consistent with information that has been widely documented regarding the environmental fate of pesticides applied to seeds.

The contradictory positions presented by CDPR staff at the November workshop are not logically reconcilable. **If pesticide-treated seeds are intended to protect anything other than the seeds themselves, they do not fall within the scope of the above-noted definition of treated articles and CDPR should regulate them accordingly.**

The questions that CDPR posed at the workshop are not directly relevant to this core issue. Other commenters may provide some information responsive to CDPR's request, but such voluntary submissions are no substitute for what CDPR would be able to obtain within a regulatory framework for pesticide-treated seeds.

Considering that pesticide-treated seeds may well represent the [largest use category of neonicotinoids in California](#), CDPR's failure to track and regulate them in accordance with its responsibilities under California law should be remedied as soon as possible.

Michael Lipsett, MD (retired)
Former Chief, Environmental Health Investigations Branch
California Department of Public Health