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11 **BEFORE THE**
12 **CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

DPR Case No. R-19-003

15 **CALIFORNIA CITRUS QUALITY**
16 **COUNCIL**

A C C U S A T I O N

17 853 Lincoln Way, Suite 206
Auburn, CA 95603
18 CA registration number SLN # CA-100013

19 Respondent.

20
21 Acting Director of the California Department of Pesticide Regulation, Val Dolcini,
22 (“Complainant”) alleges:

23 **PARTIES**

24 1. Complainant brings this Accusation solely in his official capacity as the Acting
25 Director of the California Department of Pesticide Regulation (the “Department”).

26 2. Respondent California Citrus Quality Council (“CCQC”) is a California non-profit
27 corporation with its principal place of business in Auburn, California.

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1 **REGISTRATIONS**

2 3. On or about September 21, 2010, the Department issued a registration for a special
3 local need under United States Code, title 7, section 136v(c) to CCQC for a pesticide product
4 containing chlorpyrifos called “Lorsban Advanced” for “Only for Use on Citrus Fruit (including
5 calamondin, chironja, citrus citron, citrus hybrids, grapefruit, kumquat, lemon, lime, mandarin
6 (tangerine), pummelo, Satsuma mandarin, sour orange, sweet orange, tangelo, tangor) within the
7 Eradication Program in Riverside County” to address the target pest California Red Scale. This
8 registration has a California registration number of SLN # CA-100013. This registration remains
9 in effect today.

10 **JURISDICTION**

11 4. Food and Agricultural Code section 12825 provides that the Department may cancel
12 the registration of any pesticide product for specified grounds after a hearing.

13 **STATUTORY AND REGULATORY PROVISIONS**

14 *Registration*

15 5. “Every manufacturer of, importer of, or dealer in any pesticide, except a person that
16 sells any raw material to a manufacturer of any pesticide or a dealer or agent that sells any
17 pesticide that has been registered by the manufacturer or wholesaler, shall obtain a certificate of
18 registration from the department before the pesticide is offered for sale.” (Food & Agr. Code, §
19 12811.)

20 6. “A State may provide registration for additional uses of federally registered pesticides
21 formulated for distribution and use within that State to meet special local needs in accord with the
22 purposes of this subchapter and if registration for such use has not previously been denied,
23 disapproved, or canceled by the Administrator. Such registration shall be deemed registration
24 under section 136a of this title for all purposes of this subchapter, but shall authorize distribution
25 and use only within such State.” (7 U.S.C. § 136v(c)(1).)

26 *Continuous Evaluation*

27 7. “The director shall endeavor to eliminate from use in the state any pesticide that
28 endangers the agricultural or nonagricultural environment, is not beneficial for the purposes for

1 which it is sold, or is misrepresented. In carrying out this responsibility, the director shall
2 develop an orderly program for the continuous evaluation of all pesticides actually registered. [¶]
3 Before a substance is registered as a pesticide for the first time, there shall be a thorough and
4 timely evaluation in accordance with this section. Appropriate restrictions may be placed upon its
5 use including, but not limited to, limitations on quantity, area, and manner of application. All
6 pesticides for which renewal of registration is sought also shall be evaluated in accordance with
7 this section. [¶] The director may establish specific criteria to evaluate a pesticide with regard to
8 the factors listed in Section 12825. The department may establish performance standards and
9 tests that are to be conducted or financed, or both conducted and financed, by the registrants,
10 applicants for registration, or parties interested in the registration of those pesticides.” (Food &
11 Agr. Code, § 12824.)

12 *Cancellation*

13 8. “Pursuant to Section 12824, the director, after hearing, may cancel the registration of,
14 or refuse to register, any pesticide:

- 15 (a) That has demonstrated serious uncontrollable adverse effects either within or
16 outside the agricultural environment.
- 17 (b) The use of which is of less public value or greater detriment to the environment
18 than the benefit received by its use.
- 19 (c) For which there is a reasonable, effective, and practicable alternate material or
20 procedure that is demonstrably less destructive to the environment.
- 21 (d) That, when properly used, is detrimental to vegetation, except weeds, to domestic
22 animals, or to the public health and safety.
- 23 (e) That is of little or no value for the purpose for which it is intended.
- 24 (f) Concerning which any false or misleading statement is made or implied by the
25 registrant or his or her agent, either verbally or in writing, or in the form of any
26 advertising literature.
- 27 (g) For which the director determines the registrant has failed to report an adverse
28 effect or risk as required by Section 12825.5.

1 (h) If the director determines that the registrant has failed to comply with the
2 requirements of a reevaluation or to submit the data required as part of the
3 reevaluation of the registrant's product.

4 (i) That is required to be registered pursuant to the federal Insecticide, Fungicide, and
5 Rodenticide Act (7 U.S.C. Sec. 136 et seq.) and that is not so registered.

6 In making a determination pursuant to this section, the director may require those practical
7 demonstrations that are necessary to determine the facts.” (Food & Agr. Code, § 12825.)

8 9. “If the director has reason to believe that any of the conditions stated in Section
9 12825 are applicable to any registered pesticide and that the use or continued use of that pesticide
10 constitutes an immediate substantial danger to persons or to the environment, the director, after
11 notice to the registrant, may suspend the registration of that pesticide pending a hearing and final
12 decision. If an accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of
13 Division 3 of Title 2 of the Government Code is not filed within 10 days from the date of the
14 notice, the suspension shall be terminated.” (Food & Agr. Code, § 12826.)

15 10. “The director may cancel a certificate of registration, or, refuse to issue certification
16 to any manufacturer, importer, or dealer in any pesticide that repeatedly violates any of the
17 provisions of this chapter or the regulations of the director. [¶] The proceedings shall be
18 conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division
19 3 of Title 2 of the Government Code. The director has all the powers that are granted therein.”
20 (Food & Agr. Code, § 12827.)

21 *Restricted Materials*

22 11. “The director shall, by regulation, designate and establish as necessary to carry out
23 the purposes of this division, a list of restricted materials based upon, but not limited to, any of
24 the following criteria:

- 25 (a) Danger of impairment of public health.
26 (b) Hazards to applicators and farmworkers.
27 (c) Hazards to domestic animals, including honeybees, or to crops from direct
28 application or drift.

1 (d) Hazard to the environment from drift onto streams, lakes, and wildlife sanctuaries.

2 (e) Hazards related to persistent residues in the soil resulting ultimately in
3 contamination of the air, waterways, estuaries or lakes, with consequent damage to
4 fish, wild birds, and other wildlife.

5 (f) Hazards to subsequent crops through persistent soil residues.” (Food & Agr.
6 Code, § 14004.5.)

7 12. Chlorpyrifos, when labeled for the production of an agricultural commodity, is
8 designated as a restricted material. (Cal. Code Regs., tit. 3, § 6400, subd. (e).)

9 13. A restricted material may only be used by or under the supervision of a certified
10 applicator and under a permit issued by a County Agricultural Commissioner. (Food & Agr.
11 Code, §§ 14006.5, 14015; see also Cal Code Regs., tit. 3, §§ 6400-44 [limitations and permit
12 system for restricted materials].)

13 *Toxic Air Contaminant*

14 14. “For purposes of this article, ‘toxic air contaminant’ means an air pollutant that may
15 cause or contribute to an increase in mortality or an increase in serious illness, or which may pose
16 a present or potential hazard to human health.” (Food & Agr. Code, § 14021, subd. (b).)

17 15. “A pesticide shall be identified as a toxic air contaminant if its concentrations in
18 ambient air are greater than the following levels (for the purposes of this Section, a threshold is
19 defined as the dose of a chemical below which no adverse effect occurs): [¶] (a) For pesticides
20 which have thresholds for adverse health effects, this level shall be ten-fold below the air
21 concentration which has been determined by the director to be adequately protective of human
22 health. [¶] (b) For pesticides which do not have thresholds for adverse health effects, this level
23 shall be equivalent to the air concentration which would result in a ten-fold lower risk than that
24 which has been determined by the director to be a negligible risk.” (Cal. Code Regs., tit. 3, §
25 6864.)

26 16. After review by the Office of Environmental Human Health Assessment
27 (“OEHHA”), the California Air Resources Board (“ARB”), and the independent Scientific
28 Review Panel, followed by notice and comment rulemaking, and pursuant to Food and

1 Agricultural Code sections 14022 and 14023, the Department listed chlorpyrifos as a toxic air
2 contaminant effective April 1, 2019. (Cal. Code Regs., tit. 3, § 6860, subd. (a).)

3 17. “For those pesticides for which a need for control measures has been determined
4 pursuant to subdivision (e) or (f) of Section 14023 and pursuant to provisions of this code, the
5 director, in consultation with the agricultural commissioners, air pollution control districts, and air
6 quality management districts in the affected counties, shall develop control measures designed to
7 reduce emissions sufficiently so that the source will not expose the public to the levels of
8 exposure that may cause or contribute to significant adverse health effects.” (Food & Agr. Code,
9 § 14024, subd. (a).) These control measures may include cancellation of registrations. (*Id.*, §
10 14024, subd. (b)(6).) The Department “shall adopt control measures to protect human health”
11 within two years. (*Id.*, § 14024, subd. (c)(1).)

12 **CAUSE FOR CANCELLATION**

13 18. Chlorpyrifos (*O,O*-diethyl-*O*-3,5,6-trichloro-2-pyridyl phosphorothioate) is a broad-
14 spectrum, chlorinated organophosphate pesticide. Chlorpyrifos operates by inhibiting the
15 functions of the nervous system. This is how it kills insects. Acute exposure can have similar
16 effects on humans, resulting in symptoms such as sweating, salivation, vomiting, diarrhea, low
17 blood pressure and heart rate, seizures, and death. These effects are caused by the inhibition of an
18 important enzyme in both insects and mammals called acetylcholinesterase.

19 19. Historically, the Department has analyzed and mitigated the human health effects of
20 chlorpyrifos by focusing and relying on data relating to acetylcholinesterase inhibition caused by
21 chlorpyrifos exposure.

22 20. Recent research has shown that chlorpyrifos also causes development neurotoxicity in
23 children and sensitive populations at exposure levels substantially lower than those that induce
24 overt toxicity or inhibit acetylcholinesterase activity. Developmental neurotoxicity effects
25 include adverse effects on cognition, attention span, motor control, anxiety, and the structure of
26 the brain.

27 21. In 2016, 2017, and 2018, five in vivo animal studies were published in peer-reviewed
28 journals that analyzed the developmental neurotoxicity effects of chlorpyrifos. The lowest

1 observed effect levels (the lowest dose at which there is an observed toxic effect) or no observed
2 effect levels (the highest dose at which there is not an observable toxic effect) of these studies
3 were much lower – up to ten times lower – than those in studies focused only on
4 acetylcholinesterase inhibition effects. These recent in vivo animal studies, along with
5 epidemiological studies, formed the basis for the Department’s evaluation of chlorpyrifos as a
6 toxic air contaminant – which was conducted in consultation with OEHHA and ARB, and was
7 reviewed by the Scientific Review Panel – and for the establishment of developmental
8 neurotoxicity as the critical endpoint for chlorpyrifos.

9 22. In 2017, the Developmental and Reproductive Toxicant Identification Committee, a
10 group of expert scientists appointed by the Governor under Proposition 65, independently
11 reviewed whether or not chlorpyrifos has been clearly shown by scientifically valid testing
12 according to generally accepted principles to cause developmental toxicity and thus should be
13 listed under Proposition 65. Their unanimous decision was to list chlorpyrifos as a chemical
14 known to the State of California to cause developmental toxicity.

15 23. In June 2018, the Department submitted and presented its toxic air contaminant
16 evaluation findings for chlorpyrifos to California’s Scientific Review Panel. OEHHA also
17 prepared and submitted findings to the Scientific Review Panel, which supported identifying
18 chlorpyrifos as a toxic air contaminant and establishing developmental neurotoxicity as the
19 critical endpoint for chlorpyrifos. The Scientific Review Panel held public meetings to consider
20 the information on December 13, 2017, January 23, 2018, March 2, 2018, June 12, 2018, and July
21 30, 2018.

22 24. The Department issued its “Final Toxic Air Contaminant Evaluation of Chlorpyrifos
23 and Risk Characterization of Spray Drift, Dietary, and Aggregate Exposures to Residential
24 Bystanders” (“Risk Characterization Document”) in July 2018. The Department thoroughly
25 evaluated the developmental neurotoxicity effects of chlorpyrifos in the Risk Characterization
26 Document.

27 25. The Scientific Review Panel provided its formal findings to the Department after its
28 July 30, 2018 meeting. Those findings included that “[t]he estimated bystander exposures to

1 Chlorpyrifos are at levels that cause concern about the associated health risks.” The Scientific
2 Review Panel concluded that the Department’s assessment of developmental neurotoxicity risks
3 from chlorpyrifos was “based on sound scientific knowledge, and represents a balanced
4 assessment of our current scientific understanding.” The Scientific Review Panel recommended
5 that chlorpyrifos be listed as a toxic air contaminant based on the Department’s assessment of
6 developmental neurotoxicity risks.

7 26. In November 2018, the Department released revised interim recommended permit
8 conditions for chlorpyrifos to County Agricultural Commissioners. Those recommendations
9 became effective January 1, 2019 and include prohibiting aerial applications, limiting uses to
10 critical uses, and requiring buffer zones of one quarter mile. Buffer zones are the area that
11 surrounds a pesticide application block in which certain activities are restricted for a specified
12 period of time.

13 27. On May 28, 2019, after consultation with OEHHA, ARB, the California Department
14 of Food and Agriculture, and local air pollution control districts and air quality management
15 districts, the Department issued a Risk Management Directive for chlorpyrifos, based on its July
16 2018 Risk Characterization Document for chlorpyrifos and the Scientific Review Panel’s review
17 of the 2018 Risk Characterization Document and findings. The Risk Management Directive set
18 the reference concentration and reference dose for chlorpyrifos, which define the levels at or
19 below which exposure to chlorpyrifos would have negligible risk to human health.

20 28. The Department calculated a reference concentration of 4.05 micrograms per cubic
21 meter for inhalation exposure to chlorpyrifos and a reference dose for aggregate exposure of
22 0.0001 milligrams per kilogram per day for dietary exposure to chlorpyrifos based on
23 developmental neurotoxicity risks, taking into account uncertainties about translating these
24 animal effects to human effects as well as uncertainties about heightened effects on children and
25 other sensitive populations through the use of standard uncertainty factors.

26 29. One human health risk is due to inhalation, incidental hand-to-mouth, and dermal
27 exposures to chlorpyrifos when it is applied by way of ground application (that is, “drift”). At the
28 reference concentration calculated by the Department, the inhalation risks from drift caused by

1 the vast majority of chlorpyrifos applications can only be minimized to an acceptable level using
2 buffer zones greater than a quarter mile, distances which are not required by the product labels or
3 recommended by the Department's interim recommended permit conditions. Aerial applications
4 of chlorpyrifos would also result in unacceptable exposure from drift, but are should not occur
5 under the Department's interim recommended permit conditions.

6 30. Because of these inhalation risks, the use of the pesticide product with a special local
7 needs registration for Lorsban Advanced registered by CCQC for "Only for Use on Citrus Fruit
8 (including calamondin, chironja, citrus citron, citrus hybrids, grapefruit, kumquat, lemon, line,
9 mandarin (tangerine), pummelo, Satsuma mandarin, sour orange, sweet orange, tangelo, tangor)
10 within the Eradication Program in Riverside County" is detrimental to public health, and
11 cancellation of this registration is appropriate under Food and Agricultural Code section 12825,
12 subdivision (d).

13 31. Another human health risk is due to dietary ingestion of chlorpyrifos that remains on
14 agricultural produce as a residue after application of chlorpyrifos products. The amount of
15 residue that remains on some commonly consumed agricultural produce after application of
16 chlorpyrifos is well above the reference dose calculated by the Department when taking into
17 account consumption of the produce.

18 32. Because of these dietary risks (separate or together from the inhalation risks), the use
19 of the pesticide product with a special local needs registration for Lorsban Advanced registered
20 by CCQC for "Only for Use on Citrus Fruit (including calamondin, chironja, citrus citron, citrus
21 hybrids, grapefruit, kumquat, lemon, line, mandarin (tangerine), pummelo, Satsuma mandarin,
22 sour orange, sweet orange, tangelo, tangor) within the Eradication Program in Riverside County"
23 is detrimental to public health, and cancellation of this registration is appropriate under Food and
24 Agricultural Code section 12825, subdivision (d).


25 **PRAYER**

26 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged
27 and that, following the hearing, the California Department of Pesticide Regulation issue a
28 decision:

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1. Cancelling the following registration, effective immediately:
 - the special local needs registration for Lorsban Advanced registered by CCQC for “Only for Use on Citrus Fruit (including calamondin, chironja, citrus citron, citrus hybrids, grapefruit, kumquat, lemon, lime, mandarin (tangerine), pummelo, Satsuma mandarin, sour orange, sweet orange, tangelo, tangor) within the Eradication Program in Riverside County” (CA SLN # CA-100013);
2. Taking such other and further action as deemed necessary and proper.

Dated: August 14, 2019



VAL DOLCINI
Acting Director
California Department of Pesticide
Regulation
State of California
Complainant

OK2019900180