

AMENDED IN ASSEMBLY APRIL 12, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1176

**Introduced by Assembly Member Williams
(Coauthor: Assembly Member Monning)**

February 18, 2011

An act to amend Sections ~~14023~~ 14022, 14023, and 14024 of the Food and Agricultural Code, relating to pesticides.

LEGISLATIVE COUNSEL'S DIGEST

AB 1176, as amended, Williams. Pesticides: toxic air contaminant.

Under existing law, the Director of Pesticide Regulation, upon completion of an evaluation of a pesticide, is required to prepare a report on the health effects of any pesticide determined to be a toxic air contaminant which poses a present or potential hazard to human health due to airborne emission from its use, as specified. This report is required to be made available to the public, as specified. The director is also required to determine, in consultation with specified entities, the need for and appropriate degree of control measures for each pesticide listed as a toxic air contaminant.

This bill would require that the report on the health effects of a pesticide be completed within 180 days after the director's receipt of the evaluation. This bill would further require that the director's written determination regarding control measures for each pesticide be completed within 180 days after the listing of the pesticide as a toxic air contaminant and shall be made available to the public.

Existing law provides that, for those pesticides for which a need for control measures has been determined, the director, in consultation with specified entities, is required to develop control measures designed to

reduce emissions sufficiently so that the source will not expose the public to the levels of exposure which may cause or contribute to significant adverse health effects. Existing law provides that, after a public hearing, the director shall adopt, by regulation, control measures, including application of the best practicable control techniques for those pesticides for which a need has been determined.

This bill would include pesticides identified by the director as toxic air contaminants within the list of pesticides for which the director is required to develop control measures, as specified above. The bill would specify that the director shall develop the control measures within 180 days after the completion of the director’s written determination of the need for, and appropriate degree of, control measures for each pesticide listed as a toxic air contaminant.

~~This bill would further provide that if it is determined that there is no need for control measures to protect human health from airborne emission of a pesticide identified by the director as a toxic air contaminant, the director shall follow specified consultation procedures and shall each year adopt, by regulation, control measures to protect human health with respect to at least 2 pesticides meeting the definition of toxic air contaminant, as specified. Moreover, the bill would provide that the director shall adopt control measures *by regulation* no later than 180 days after development of the control measures, *as specified. The Department of Pesticide Regulation would have no obligation to adopt control measures for specified pesticides if the director, the State Air Resources Board, and the Office of Environmental Health Hazard Assessment concur in writing that there is no need for control measures to protect human health from airborne emission of that specific pesticide.*~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 14022 of the Food and Agricultural Code
- 2 is amended to read:
- 3 14022. (a) In consultation with the ~~State Department of Health~~
- 4 ~~Services~~ Office of Environmental Health Hazard Assessment and
- 5 the State Air Resources Board, the director shall evaluate the health
- 6 effects of pesticides which may be or are emitted into the ambient
- 7 air of California and which may be determined to be a toxic air

1 contaminant which poses a present or potential hazard to human
2 health. Upon request of the State Air Resources Board, the director
3 shall include a pesticide for evaluation.

4 (b) The director shall complete the evaluation of a pesticide
5 within 90 days after receiving the scientific data specified in
6 subdivision (c) from the ~~State Department of Health Services~~ *Office*
7 *of Environmental Health Hazard Assessment* and the State Air
8 Resources Board. The director may extend the 90-day deadline
9 for a period not to exceed 30 days if the director transmits to the
10 Assembly Committee on Rules and the Senate Committee on
11 Rules, for transmittal to the appropriate standing, select, or joint
12 committee of the Legislature, a statement of reasons for extension
13 of the deadline.

14 (c) In conducting this evaluation, the director shall consider all
15 available scientific data, including, but not limited to, relevant data
16 provided by the ~~State Department of Health Services~~ *Office of*
17 *Environmental Health Hazard Assessment*, the Occupational Safety
18 and Health Division of the Department of Industrial Relations,
19 international and federal health agencies, private industry, academic
20 researchers, and public health and environmental organizations.
21 At the request of the director, the State Air Resources Board shall
22 document the level of airborne emissions and the ~~State Department~~
23 ~~of Health Services~~ *Office of Environmental Health Hazard*
24 *Assessment* shall provide an assessment of related health effects
25 of pesticides which may be determined to pose a present or
26 potential hazard and each agency shall provide technical assistance
27 to the department as it conducts its evaluation.

28 (d) The director may request, and any person shall provide,
29 information on any substance which is or may be under evaluation
30 and which is manufactured, distributed, or used by the person to
31 whom the request is made, in order to carry out his or her
32 responsibilities pursuant to this chapter. Any person providing
33 information pursuant to this subdivision shall, at the request of the
34 director, identify that portion of the information submitted to the
35 department which is a trade secret and, upon the request of the
36 director, shall provide documentation to support the claim of the
37 trade secret. Information supplied which is a trade secret, as
38 specified in Section 6254.7 of the Government Code, and which
39 is so marked at the time of submission shall not be released to the
40 public by the director, except in accordance with Section 1060 of

1 the Evidence Code and Section 21160 of the Public Resources
2 Code.

3 (e) The director shall give priority to the *data requests and the*
4 *evaluation and regulation of substances based on factors related*
5 *to the risk of harm to public health, amount or potential amount*
6 *of emissions, manner of usage of the pesticide in California,*
7 *persistence in the atmosphere, and ambient concentrations in the*
8 *community.*

9 **SECTION 1.**

10 *SEC. 2.* Section 14023 of the Food and Agricultural Code is
11 amended to read:

12 14023. (a) Upon completion of the evaluation conducted
13 pursuant to Section 14022, the director shall, in consultation and
14 with the participation of the ~~State Department of Public Health~~
15 *Office of Environmental Health Hazard Assessment*, prepare a
16 report on the health effects of the pesticide which may be
17 determined to be a toxic air contaminant which poses a present or
18 potential hazard to human health due to airborne emission from
19 its use. The report shall assess the availability and quality of data
20 on health effects, including potency, mode of action, and other
21 relevant biological factors, of the substance. The report shall also
22 contain an estimate of the levels of exposure which may cause or
23 contribute to adverse health effects and, in the case where there is
24 no threshold of significant adverse health effects, the range of risk
25 to humans, resulting from current or anticipated exposure. The
26 report shall include the findings of the ~~State Department of Public~~
27 *Health Office of Environmental Health Hazard Assessment*. The
28 report shall be completed within 180 days after the director's
29 ~~receipt~~ *completion* of the evaluation conducted pursuant to Section
30 14022 and shall be made available to the public, subject to
31 subdivision (d) of Section 14022.

32 (b) The report prepared pursuant to subdivision (a) shall be
33 formally reviewed by the scientific review panel established
34 according to Section 39670 of the Health and Safety Code. The
35 director shall also make available the data deemed necessary to
36 the scientific review panel, according to departmental procedures
37 established to ensure confidentiality of proprietary information.
38 The panel shall review, as appropriate, the scientific data on which
39 the report is based, the scientific procedures and methods used to
40 support the data, and the conclusions and assessments on which

1 the report is based. The panel shall submit its written findings to
2 the director within 45 days after receiving the report, but it may
3 petition the director for an extension of the deadline, which may
4 not exceed 15 working days.

5 (c) If the scientific review panel determines that the health
6 effects report is seriously deficient, the report shall be returned to
7 the director who shall revise and resubmit the report, within 30
8 days following receipt of the panel's determination, to the panel
9 prior to development of emission control measures.

10 (d) Within 10 working days following receipt of the findings
11 of the scientific review panel pursuant to subdivision (b), the
12 director shall prepare a hearing notice and a proposed regulation
13 which shall include the proposed determination as to whether a
14 pesticide is a toxic air contaminant. After conducting a public
15 hearing pursuant to Chapter 3.5 (commencing with Section 11340)
16 of Part 1 of Division 3 of Title 2 of the Government Code, the
17 director shall list, by regulation, pesticides determined to be toxic
18 air contaminants.

19 (e) The director shall determine, in consultation with the ~~State~~
20 ~~Department of Public Health~~ *Office of Environmental Health*
21 *Hazard Assessment*, the State Air Resources Board, and the air
22 pollution control districts or air quality management districts in
23 the affected counties, the need for and appropriate degree of control
24 measures for each pesticide listed as a toxic air contaminant
25 pursuant to subdivision (d). Any person may submit written
26 information for consideration by the director in making
27 determinations on control measures. The director's written
28 determination shall be completed within 180 days after listing a
29 pesticide as a toxic air contaminant and that written determination
30 *and all findings made by the consulting agencies* shall be made
31 available to the public.

32 SEC. 2. Section 14024 of the Food and Agricultural Code is
33 amended to read:

34 14024. (a) For pesticides identified by the director as toxic air
35 contaminants described in subdivision (b) of Section 14021 and
36 for those pesticides for which a need for control measures has been
37 determined pursuant to subdivision (e) of Section 14023 and
38 pursuant to provisions of this code, the director, in consultation
39 with the ~~agricultural commissioners and~~ *Office of Environmental*
40 *Health Hazard Assessment, the agricultural commissioners, air*

1 pollution control districts, and air quality management districts in
2 the affected counties, shall develop, within 180 days after the
3 completion of the director's written determination pursuant to
4 subdivision (e) of Section 14023, control measures designed to
5 reduce emissions sufficiently so that the source will not expose
6 the public to the levels of exposure which may cause or contribute
7 to significant adverse health effects. *It is presumed that exposures*
8 *above Reference Concentrations established in a report completed*
9 *pursuant to subdivisions (a) to (c), inclusive, of Section 14023 may*
10 *cause or contribute to significant adverse health effects. Where*
11 *no demonstrable safe level or threshold of significant adverse*
12 *health effects has been established by the director, the control*
13 *measures shall be designed to adequately prevent an endangerment*
14 *of public health through the application of best practicable control*
15 *techniques.*

16 (b) Best practicable control techniques may include, but are not
17 limited to, the following:

- 18 (1) Label amendments.
- 19 (2) Applicator training.
- 20 (3) Restrictions on use patterns or locations.
- 21 (4) Changes in application procedures.
- 22 (5) Reclassification as a restricted material.
- 23 (6) Cancellation.

24 ~~(e) Unless the director, the State Air Resources Board, and the~~
25 ~~Office of Environmental Health Hazard Assessment concur in~~
26 ~~writing that there is no need for control measures to protect human~~
27 ~~health from airborne emission of a pesticide identified by the~~
28 ~~director as a toxic air contaminant, as described in subdivision (b)~~
29 ~~of Section 14021, the director shall follow the consultation~~

30 (c) *The director shall follow the consultation* procedures set
31 forth in subdivision (a) and shall each year adopt, by regulation,
32 control measures to protect human health with respect to at least
33 two pesticides meeting the definition of a toxic air contaminant,
34 as described in subdivision (b) of Section 14021. The director shall
35 give priority to the regulation of a pesticide meeting the definition
36 of a toxic air contaminant, as described in subdivision (b) of
37 Section 14021, based on the pesticide's risk of harm to the public
38 health, the amount or potential amount of emissions of the pesticide
39 in any community or statewide, the manner and quantity of usage
40 of the pesticide in any community or statewide, and the ambient

1 concentrations of the pesticide in any community or statewide.
2 *The department has no obligation to adopt control measures for*
3 *any specific pesticide described in subdivision (b) of Section 14021*
4 *if the director, the State Air Resources Board, and the Office of*
5 *Environmental Health Hazard Assessment concur in writing that*
6 *there is no need for control measures to protect human health from*
7 *airborne emission of that specific pesticide.*

8 (d) After conducting a public hearing pursuant to Chapter 3.5
9 (commencing with Section 11340) of Part 1 of Division 3 of Title
10 2 of the Government Code, and no later than 180 days after the
11 development of control measures required by subdivision (a), the
12 director shall, *notwithstanding any timelines imposed by Chapter*
13 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
14 *Title 2 of the Government Code*, adopt, by regulation, control
15 measures, including application of the best practicable control
16 techniques enumerated in subdivision (b) or any other best
17 applicable control technique, for those pesticides for which a need
18 has been determined.