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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

PESTICIDE ACTION NETWORK NORTH AMERICA, UNITED FARM WORKERS, CALIFORNIANS FOR PESTICIDE REFORM, PESTICIDE WATCH EDUCATION FUND, COMMUNITY AND CHILDREN'S ADVOCATES AGAINST PESTICIDE POISONING, WORKSAFE, INC, organizations; and JOSÉ HIDALGO RAMÓN, ZEFERINO ESTRADA, individuals, Petitioners and plaintiffs, vs. CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION, a state agency; MARY ANN WARMERDAM, in her official capacity as Director of Pesticide Regulation; and DOES 1 through 10, Respondents and Defendants. and ARYSTA LIFESCIENCE NORTH AMERICA, LLC; and DOES 11 through 20, Real Parties in Interest.	Case No.: **RG10553804** PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This lawsuit challenges a decision by the California Department of Pesticide Regulation ("DPR") to register for agricultural use a suite of new pesticides that contain methyl iodide. The lawsuit also challenges an unlawful emergency regulation promulgated by DPR to facilitate its registration decision.

2. DPR's approval of methyl iodide is irresponsible and illegal. There is no question that the chemical is highly toxic. Breathing even small amounts causes slurred speech, vomiting, fetal miscarriage, and permanent damage to the lungs, liver, kidneys, and central nervous system. Direct skin exposure causes burns. And methyl iodide causes cancer: it is designated as a known carcinogen by the State of California, a hazardous air pollutant by the United States Environmental Protection Agency, and a toxic air contaminant by DPR itself.

3. After extensive study, DPR's staff scientists concluded that 8-hour exposure to over 0.8 parts per billion of methyl iodide, or 24-hour exposure to over just 0.3 parts per billion, would cause significant adverse health effects. Because DPR scientists found that agricultural use of methyl iodide would result in exposures well above these amounts, they concluded that "the application of methyl iodide in field fumigation . . . could result in significant health risks for workers and the general public."

4. A panel of independent experts convened by DPR to review the risk assessment prepared by agency staff reached a similar conclusion. In its February 5, 2010 final report to DPR, the panel wrote:

> Based on the data available, we know that methyl iodide is a highly toxic chemical and we expect that any anticipated scenario for the agricultural . . . use of this agent would result in exposures to a large number of the public and thus would have a significant adverse impact on the public health. Due to the potent toxicity of methyl iodide, its transport in and ultimate fate in the environment, adequate control of human exposure would be difficult, if not impossible.

5. Despite the overwhelming scientific consensus – both inside and outside of the agency – that agricultural use of methyl iodide would result in human poisonings, DPR management proposed on April 30, 2010 to register the chemical. Without explanation, DPR management announced that allowing methyl iodide exposure up to 96 parts per billion averaged over eight hours

would be sufficient to protect workers, and allowing exposure up to 32 parts per billion averaged over 24 hours would protect communities. These numbers are *over 100 times* the levels deemed safe by DPR's own scientists.

6. DPR received a record 53,000 comments in response to its proposed registration decision, almost all of which strongly opposed the proposal. Despite this outpouring, DPR announced its final decision to register methyl iodide on December 1, 2010. In a feeble and belated effort to protect the public, DPR made its final approval contingent on the promulgation of a regulation that would, among other things, require applicators to obtain a permit from the county agricultural commissioner prior to using methyl iodide. To ensure that this key mitigation measure – and, therefore, the final registration decision – would be in place before the Governor-elect takes office, DPR declared that its own decision to approve methyl iodide amounted to an "emergency" that justified an expedited rulemaking process. After a public comment period of only five days, DPR adopted its "emergency" regulation on December 20, 2010.

7. As set forth below, DPR's decision to register methyl iodide, and its related emergency regulation, violate California laws enacted to protect human health and the environment and to ensure transparency and public participation in agency decision making. Petitioners and plaintiffs Pesticide Action Network North America, United Farm Workers, Californians for Pesticide Reform, Pesticide Watch Education Fund, Community and Children's Advocates Against Pesticide Poisoning, Worksafe Inc., José Hidalgo Ramón and Zeferino Estrada (collectively "Petitioners") ask this Court to invalidate DPR's registration decision and related emergency rulemaking and to prohibit the use of pesticide products containing methyl iodide pending compliance with all applicable laws.

JURISDICTION AND VENUE

8. This Court has jurisdiction to review DPR's decision to register pesticide products containing methyl iodide under Code of Civil Procedure sections 1085, 1087 and/or 1094.5 and Public Resources Code section 21080.5, subdivision (g). The Court has jurisdiction to review DPR's related emergency regulation under Government Code section 11350 and Code of Civil Procedure sections 1085, 1087 and/or 1094.5. The Court has jurisdiction to issue declaratory relief

under Code of Civil Procedure section 1060 and injunctive relief under Code of Civil Procedure section 525 *et seq*.

9. Venue is proper in this Court under Code of Civil Procedure section 395, subdivision (a), and section 401, subdivision (1), because DPR is a state agency based in Sacramento County and the California Attorney General has an office in Alameda County.

10. Pursuant to Public Resources Code section 21080.5, subdivision (g), Petitioners filed this action within 30 days after DPR filed its Notice of Final Decision to Register Pesticide Products Containing Methyl Iodide with the Secretary of Resources.

11. Petitioners have provided DPR with written notice of their intention to file this petition and complaint.

12. Petitioners have served the Attorney General with a copy of this petition and complaint, together with a notice of its filing.

13. Petitioners are filing concurrently with this petition and complaint a request that DPR prepare the record of administrative proceedings relating to the agency's Notice of Final Decision to Register Pesticide Products Containing Methyl Iodide.

14. Petitioners participated in the administrative processes that culminated in DPR's decision to register pesticide products containing methyl iodide and related emergency regulation. Petitioners exhausted all of their administrative remedies prior to filing this action.

15. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law. Petitioners will suffer irreparable harm unless the Court grants the relief requested herein.

PARTIES

16. Petitioner and plaintiff PESTICIDE ACTION NETWORK NORTH AMERICA ("PANNA") is a San Francisco-based non-profit organization that serves as an independent regional center for Pesticide Action Network International, a coalition of over 600 public interest organizations in more than 90 countries. For over 20 years, PANNA has worked to replace hazardous and unnecessary pesticides with ecologically sound pest management across North America. PANNA provides scientific expertise, public education, access to pesticide data and analysis, policy development and other support to its 225 member organizations. PANNA has

approximately 2,700 individual members nationwide and approximately 90 organizational members in California alone.

17. Petitioner and plaintiff UNITED FARM WORKERS ("UFW") is the nation's oldest and largest farm worker membership organization. UFW is headquartered in California and serves farm workers in offices all across the country including offices in Salinas and Santa Rosa, California. UFW has represented farm workers for more than 40 years and currently has more than 27,000 members, many of whom are migrant and seasonal farm workers. UFW's mission is to protect and expand farm workers' labor rights, including rights pertaining to health and safety issues. UFW works to protect the health and safety of farm workers from occupational injuries, including injuries caused by exposure to pesticides.

18. Petitioner and plaintiff CALIFORNIANS FOR PESTICIDE REFORM ("CPR") is a statewide coalition of over 185 public interest groups dedicated to protecting public health and the environment from the dangers of pesticide use. Founded in 1996, CPR aims to ban the most hazardous pesticides, reduce the use of the rest, protect the public's right to know about pesticide use, and support sustainable pest control solutions in farms, communities, forests, homes and yards across the state. Many CPR member organizations are based in rural areas close to agricultural operations, where communities are at risk of pesticide exposure from air and water contamination.

19. Petitioner and plaintiff PESTICIDE WATCH EDUCATION FUND ("Pesticide Watch") is a Sacramento-based non-profit organization strives to prevent pesticide exposure, promote local farming, and build healthier communities. Since 1991, Pesticide Watch has provided community-based groups with organizing assistance, detailed pesticide information and research, a broad network of experts, and conferences and trainings to achieve healthy pest management. With offices in Sacramento, San Francisco, and Modesto, Pesticide Watch annually provides in-depth support for over 30 community-based organizations across the state, while serving over 1,500 dues-paying members.

20. Petitioner and plaintiff COMMUNITY AND CHILDREN'S ADVOCATES AGAINST PESTICIDE POISONING ("CCAAPP") is a volunteer, non-profit community action group, dedicated to educating communities and schools about the dangers of pesticide drift and how

to protect residents and children from harmful pesticide exposure. CCAAPP was founded in 1996 following a methyl bromide drift incident that sickened dozens of people in a Ventura neighborhood. CCAAPP gives presentations to classes and organizations, provides information to pesticide-exposed individuals who need help navigating the bureaucracy of pesticide regulation, and works to prevent future pesticide exposures in Ventura County. CCAAPP collaborates with local, state and national groups, regulators, school boards, media and the agricultural community to prevent pesticide drift and exposure, with a focus on protecting children.

21. Petitioner and plaintiff WORKSAFE, INC. is a California-based non-profit organization dedicated to promoting occupational safety and health through education, training, and advocacy. Worksafe advocates for improved protective worker health and safety laws and effective remedies for injured workers through the legislature, administrative agencies, and the courts. Worksafe is also a Legal Support Center funded by the State Bar Legal Services Trust Fund Program to provide advocacy, technical and legal assistance, and training to the legal services projects throughout California that directly serve California's most vulnerable low-wage workers. Worksafe advocates for standards that set protective exposure limits to toxic chemicals or, where there are no safe exposure limits, transition from toxic to safer chemicals.

22. Petitioner and plaintiff JOSÉ HIDALGO RAMÓN is a thirty-three year old farm worker who lives in Santa Cruz County and works in Santa Cruz and Monterey counties, California. Mr. Hidalgo Ramón picks strawberries. To support himself and his family, Mr. Hidalgo Ramón works ten to twelve hours per day and six days per week during the strawberry season, which runs from approximately March into November each year. Mr. Hidalgo Ramón's health and safety are adversely affected by DPR's decisions to adopt an unlawful emergency regulation and to register methyl iodide. Mr. Hidalgo Ramón and his family live in an area where strawberries are grown and potential airborne exposure to methyl iodide is likely, and where its use poses a potential threat to the local groundwater supply. Mr. Hidalgo Ramón and his family have a genuine interest in protecting themselves from harmful exposure to methyl iodide in their workplaces, homes and schools. Mr. Hidalgo Ramón has paid, in the year preceding the filing of this action, and does pay sales taxes in Santa Cruz County in the State of California.

23. Petitioner and plaintiff ZEFERINO ESTRADA is a fifty-two year old farm worker who lives and works in Monterey County, California. Mr. Estrada currently works as an irrigator of strawberry fields. His duties include irrigating, applying pesticides and fertilizers through the irrigation system, and assisting in the laying down of tarps during the fumigant application process. To support his family, Mr. Estrada works twelve to thirteen hours per day and six or seven days per week during the strawberry season. Mr. Estrada picked strawberries for several years prior to becoming an irrigator. Mr. Estrada's health and safety are adversely affected by DPR's decisions to adopt an unlawful emergency regulation and to register methyl iodide. Mr. Estrada and his family live in an area where strawberries are grown and potential airborne exposure to methyl iodide is likely, and where its use poses a potential threat to the local groundwater supply. Mr. Estrada and his family have a genuine interest in protecting themselves from harmful exposure to methyl iodide in their workplaces, homes and schools. Mr. Estrada has paid, in the year preceding the filing of this action, and does pay sales taxes in Monterey County in the State of California.

24. Petitioners have an interest in assuring that DPR complies with all legal requirements in making pesticide registration decisions and promulgating regulations and that valuable resources are not wasted enforcing pesticide registration decisions and regulations that are illegal. As a result of DPR's failures to comply with its legal obligations, Petitioners and the public at large will suffer injury and will continue to be prejudiced by DPR's unlawful actions until and unless this Court provides the relief requested herein.

25. Respondent and defendant CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION is a department within the California Environmental Protection Agency. DPR is charged with enforcing state and federal laws regulating pesticide use in California. DPR is responsible for registering pesticides and made the decisions challenged by this lawsuit.

26. Respondent and defendant MARY ANN WARMERDAM is the Director of Pesticide Regulation at DPR. Ms. Warmerdam signed DPR's Notice of Final Decision to Register Pesticide Products Containing Methyl Iodide on December 1, 2010.

27. The true names and capacities of respondent and defendant DOES 1 through 10 are not presently known to Petitioners. Petitioners may amend this petition and complaint to add the true names and capacities of respondent and defendant Does at such time as they are discovered.

28. Real party in interest ARYSTA LIFESCIENCE NORTH AMERICA, LLC (formally called Arvesta Corporation) is a subsidiary of Arysta Lifescience Corporation, a global pesticide manufacturer headquartered in Tokyo, Japan. Arysta Lifescience North America applied to DPR to register the pesticide products containing methyl iodide at issue in this case.

29. The true names and capacities of real party DOES 11 through 20 are not presently known to Petitioners. Petitioners may amend this petition and complaint to add the true names and capacities of real party Does at such time as they are discovered.

FACTUAL BACKGROUND

30. In 2002, Arysta Lifescience North America applied to DPR to register a suite of new fumigants that contain methyl iodide. Fumigants are gaseous pesticides used in agriculture to sterilize the soil prior to planting. Methyl iodide-based fumigants would be marketed for use on a variety of crops, including strawberries, tomatoes, peppers, fruit and nut trees, grape vines, and ornamentals. California is anticipated to be one of the country's largest users of methyl iodide-based fumigants, with use concentrated in the agricultural regions of the Central Valley and Central Coast, including Ventura, Monterey, and Santa Cruz Counties.

31. Methyl iodide – also called iodomethane and commonly abbreviated "MeI" – is a colorless liquid with the chemical formula CH_3I. Methyl iodide is highly volatile, meaning that it readily forms a gas at ambient temperatures. It is soluble in water and degrades over time in the environment to form methanol and iodide ions.

32. Methyl iodide is extremely toxic. Breathing the chemical causes nausea, slurred speech and vomiting; permanent damage to the lungs, liver, kidneys and central nervous system; and fetal miscarriage. Direct contact with skin causes burns. Methyl iodide also causes cancer, and it is listed as a known carcinogen under California's Safe Drinking Water and Toxic Enforcement Act (better known as Proposition 65). Methyl iodide is categorized as a hazardous air pollutant by the U.S. Environmental Protection Agency and a toxic air contaminant by DPR.

33. Because fumigants either exist as gases (*e.g*. methyl bromide) or are readily transformed into gases (*e.g*., methyl iodide, chloropicrin, metam sodium and 1,3-dichloropropene), they are notoriously difficult to control. Fumigants are typically injected into the ground, which is then covered immediately with plastic tarps to slow the rate at which the chemical can escape into the atmosphere. After a period of days, the tarps are removed, and the residual fumigant in the soil is allowed to dissipate prior to planting the crop.

34. Different tarps have differing permeability to fumigants. In laboratory experiments, "virtually impermeable film" tarps are the most effective in trapping fumigants in the soil. In the field, however, fumigants leak primarily from tarp edges, rather than through the tarp itself, because edges are "sealed" only with a loose packing of shoveled soil. Bedded fields, such as those commonly used in strawberry production, have many edges, since each narrow bed is tarped separately. Experiments demonstrate that in a typical tarped fumigation, more than 65% of the fumigant escapes to the atmosphere, depending on the fumigant, soil type, tarp type, application method, and soil temperature. Release into the atmosphere during fumigations is thus inevitable, resulting in exposure to farm workers in neighboring fields and residents in nearby communities.

35. Because methyl iodide is soluble in water, methyl iodide-based fumigants also pose a significant risk to groundwater supplies. Studies indicate that methyl iodide moves downward through the soil column, with greater downward movement observed when the soil is tarped. Irrigation or rainfall soon after tarp removal can cause further downward movement of methyl iodide into groundwater aquifers. Methyl iodide can degrade in the soil to form iodide, which is stable and very mobile in soils. Iodide is of particular concern, since consumption of excess iodide causes thyroid disruption.

STATUTORY BACKGROUND

Division 7 of the Food & Agriculture Code

36. The California Food and Agriculture Code, Division 7, establishes a comprehensive regulatory framework designed "(a) to provide for the proper, safe, and efficient use of pesticides essential for production of food and fiber and 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," and "(c) to assure the agricultural and pest control workers of safe working conditions where pesticides are present." (Food & Agr. Code § 11501.)

The Registration Process

37. Article 4 of Division 7 requires "[e]very manufacturer of, importer of, or dealer in any pesticide" to obtain a certificate of registration from DPR before the pesticide is offered for sale. (Food & Agr. Code § 12811.) The term "pesticide" is defined as "[a]ny substance or mix of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest." (Food & Agr. Code § 12753, subd. (a).)

38. DPR must conduct a "thorough and timely evaluation" of any pesticide proposed for registration. (Food & Agr. Code § 12824.) As part of its evaluation, DPR "shall conduct pesticide risk assessments as appropriate." (Food & Agr. Code §§ 11454, 11454.1.) The law specifies that the Office of Environmental Health Hazard Assessment ("OEHHA") "shall provide scientific peer review of risk assessments conducted by the DPR" during the registration process. (Food & Agr. Code § 11454.1, Health & Safety Code § 59004.)

39. Article 4 provides that DPR "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." (Food and Agr. Code § 12824.) When necessary to fulfill this duty, the statute specifically provides that the director of DPR may refuse to register any pesticide:

> (a) That has demonstrated serious uncontrollable adverse effects either within or outside the agricultural environment.
>
> (b) The use of which is of less public value or greater detriment to the environment than the benefit received by its use.
>
> (c) For which there is a reasonable, effective, and practicable alternate material or procedure that is demonstrably less destructive to the environment.
>
> (d) That, when properly used, is detrimental to vegetation, except weeds, to domestic animals, or to the public health and safety.
>
> (e) That is of little or no value for the purpose for which it is intended.
>
> (f) 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.
>
> (g) For which the director determines the registrant has failed to report an adverse effect or risk . . . .

(h) 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.

(i) That is required to be registered pursuant to the federal Insecticide, Fungicide and Rodenticide Act . . . and that is not so registered.

(Food & Agr. Code § 12825.)

40. During its evaluation of a pesticide proposed for registration, DPR's implementing regulations direct the agency to give "special attention" to the statutory criteria listed above, as well as the following factors:

(a) Acute health effects, such as oral toxicity, dermal toxicity, inhalation toxicity, acute eye and skin damage potential, or sensitization potential.

(b) Evidence of chronic health effects such as carcinogenicity, teratogenicity, mutagenicity, fetal toxicity, and delayed neurotoxicity.

(c) Potential for environmental damage, including interference with the attainment of applicable environmental standards.

(d) Toxicity to aquatic biota or wildlife.

(e) Method of medical management of poisoning or other injuries.

(f) Analytical methods.

(g) The availability of feasible alternatives.

(h) Efficacy.

(Cal. Code Regs., tit. 3, § 6158.)

41. If any of the foregoing statutory or regulatory factors indicate that registration is "anticipated to result in significant adverse impacts which cannot be avoided or adequately mitigated," DPR's regulations provide that "registration will not be granted unless the director makes a written finding that the anticipated benefits of registration clearly outweigh the risks." (Cal. Code Regs., tit. 3, § 6158.)

The Birth Defect Prevention Act

42. The Legislature enacted Article 14 of Division 7, also known of the Birth Defect Prevention Act, in an effort "to prevent pesticide induced abortions, birth defects, and infertility." (Food & Agr. Code § 13122.)

43. The statute provides that "[n]o new active pesticide ingredient shall be conditionally registered or licensed when any . . . mandatory health effects stud[y] . . . is missing, incomplete, or of questionable validity unless the registration is based on previous consultation with the Director of

Environmental Health Hazard Assessment and the Director of Industrial Relations." (Food & Agr. Code § 13126.)

44. "Mandatory health effects study means adverse reproductive effect, chronic toxicity, mutagenicity, neurotoxicity, oncogenicity and teratogenicity studies required for full registration or licensing of pesticides in California." (Food & Agr. Code § 13123, subd. (c).)

45. "To the extent feasible," the Birth Defect Prevention Act specifies that "health effect studies shall be conducted in accordance with standards and protocols established pursuant to the Federal Insecticide, Fungicide and Rodenticide Act." (Food & Agr. Code § 13123.5.)

The Pesticide Contamination Prevention Act

46. "Due to the potential widespread exposure to public drinking water supplies from pesticide applications to the land and the resultant risk to public health and welfare," Article 15 of Division 7, also known as the Pesticide Contamination Prevention Act, mandates that "the potential for pollution of groundwater due to pesticide use must be considered in the registration . . . process." (Food & Agr. Code § 13141, subd. (f).)

47. The statute requires the registrant of a pesticide to provide DPR with information regarding all of the following topics:

(1) Water solubility.
(2) Vapor pressure.
(3) Octanol-water partition coefficient.
(4) The soil adsorption coefficient.
(5) Henry's Law constant.
(6) Dissipation studies . . .
(7) Any additional information that the director determines is necessary.

(Food & Agr. Code § 13143, subd. (a).)

48. DPR " shall not register or renew the registration of a pesticide intended to be applied or injected into the ground" if any of the foregoing studies is missing or if DPR is unable to determine that each study is "valid, complete, and adequate." (Food & Agr. Code §§ 13142, subd. (f), 13146.)

Pesticides and Worker Safety

49. Article 10.5 of Division 7 is intended "to provide for the safe use of pesticides and for safe working conditions for farmworkers, pest control applicators, and other persons handling, storing, or applying pesticides, or working in pesticide-treated areas." (Food & Agr. Code § 12980.)

50. Article 10.5 provides that "the development of regulations relating to pesticides and worker safety should be the joint and mutual responsibility of [DPR] and [OEHHA]." (Food & Agr. Code § 12980.)

51. The statute directs DPR to promulgate worker safety regulations that address the following subjects:

(a) Restricting worker reentry into areas treated with pesticides determined by the director to be hazardous to worker safety . . .

(b) Handling of pesticides.

(c) Hand washing facilities.

(d) Farm storage.

(e) Protective devices, including, but not limited to, respirators and eyeglasses.

(f) Posting, in English and Spanish, of fields, areas, adjacent areas or fields, or storage areas.

(Food & Agr. Code § 12981.)

52. Article 10.5 provides that OEHHA "shall participate in the development" of the regulations specified above. (Food & Agr. Code § 12981.) Moreover, "[t]hose regulations that relate to health effects shall be based upon the recommendations of [OEHHA]." (*Ibid*.)

The California Environmental Quality Act

53. The California Environmental Quality Act, Public Resources Code §§ 21000-21177, is a comprehensive statute designed to provide long-term protection to the environment. In enacting CEQA, the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties. (Pub. Res. Code § 21000, subd. (g).)

54. Guidelines adopted by the California Resources Agency for implementing CEQA explain that "[t]he basic purposes of CEQA are to:

(1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.

(2) Identify the ways that environmental damage can be avoided or significantly reduced.

(3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.

(4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

(Cal. Code Regs., tit. 14, § 15002.) To these ends, CEQA directs state agencies to prepare a detailed environmental impact report ("EIR") for "any project which they propose to carry out or approve that may have a significant effect on the environment." (Pub. Res. Code § 21100, subd. (a).)

55. If the Secretary of Resources certifies that a regulatory program administered by a State agency meets certain criteria and already requires documentation of environmental effects, CEQA allows the agency to submit that documentation in lieu of an EIR. (Pub. Res. Code § 21080.5(a).) Among other things, the agency's documentation must "include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity." (Pub. Res. Code § 21080.5, subd. (d)(3)(A).) In addition, the rules governing the regulatory program must "require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures that would substantially lessen a significant adverse effect that the activity may have on the environment." (Pub. Res. Code § 21080.5, subd. (d)(2)(A).)

56. The Secretary of Resources has certified the pesticide registration program administered by DPR as meeting the requirements of CEQA described above. (See Cal. Code Regs., tit. 14, § 15251, subd. (i)(1).) Consistent with CEQA, the regulations governing the pesticide registration program require DPR to prepare a public report prior to registering a pesticide. (Cal. Code Regs., tit. 3, § 6253, subd. (a).) Public reports "shall include a description of the proposed action, a statement of any significant environmental effect that can reasonably be expected to occur, directly or indirectly, from implementing the proposal, and a statement of reasonable mitigation measures that are available to minimize significant adverse environmental impact." (Cal. Code Regs., tit. 3, § 6254.) Public reports "shall also contain a statement and discussion of reasonable alternatives which would reduce any significant environmental impact." (*Ibid.*)

57. As required by CEQA, the regulations governing DPR's pesticide registration program provide that DPR "shall not approve an activity which would cause a significant adverse environmental impact if there is a feasible alternative or feasible mitigation measure available which would substantially lessen any significant adverse impact which implementation of the proposal may reasonably be expected to have on the environment." (Cal. Code Regs., tit. 3, § 6254, subd. (a).) The regulations provide further that "[t]he final action taken in regard to a decision [to register a pesticide] in which a significant adverse environmental point is raised during the evaluation process shall include a written evaluation of such points approved by the director." (Cal. Code Regs., tit. 3, § 6254, subd. (b).)

PROCEDURAL BACKGROUND

The Draft Risk Assessment

58. DPR's consideration of the application filed by Arysta Lifescience North America to register pesticides containing methyl iodide began with the preparation of a risk assessment, the purpose of which was to evaluate the likelihood that agricultural use of the chemical would result in significant adverse effects to human health and the environment. The analysis in DPR's draft risk assessment, completed in 2009, involved five distinct steps.

59. First, DPR sought to establish the lowest concentration at which exposure to methyl iodide would be expected to result in an adverse human health effect – the "no observed effect level." To do so, DPR reviewed studies involving animals and then applied a formula intended to convert the results to "human equivalent concentrations." For example, DPR concluded that acute exposure to 2 parts per million ("ppm") of methyl iodide did not cause a statistically significant increase in fetal death in pregnant rabbits relative to a control group. DPR converted this animal dosage into a human equivalent concentration of 0.22 ppm averaged over 24 hours.

60. Second, DPR estimated the level of methyl iodide exposure that workers, bystanders and other groups would likely experience if the pesticide were used in agriculture. DPR's exposure estimates were based on numerous significant assumptions. For example, DPR assumed that

workers applying methyl iodide would spend no more than eight hours in the field and that wearing respirators would reduce their exposures by 90 percent.

61. Third, DPR established "uncertainty factors" designed to address gaps and limitations in the information regarding methyl iodide's toxicity and the potential for exposure. When human equivalent concentrations are used to estimate toxicity, DPR's standard practice is to apply an uncertainty factor of 30 to account for experimental uncertainties in the toxicological studies. However, in the draft risk assessment, DPR toxicologists determined that the uncertainty factor for methyl iodide should be increased from 30 to 300, incorporating an additional uncertainty factor of 10 due to the complete lack of developmental neurotoxicity data for the new pesticide.

62. Fourth, DPR divided the human equivalent concentrations by the uncertainty factor of 300 to calculate "reference concentrations" for several adverse health effects. Applying this methodology, DPR determined that the reference concentration for prevention of human fetal death was 1 part per billion ("ppb"). One part per billion is equal to 0.001 parts per million. DPR assumed that exposures at or below the reference concentration would not cause the adverse effect at issue in humans.

63. Finally, DPR compared the reference concentrations to the estimated exposure levels. Because DPR found that many of the estimated exposure levels were significantly greater than the reference concentrations, DPR concluded that "the application of MeI in field fumigation under the conditions evaluated would result in significant health risks for workers and the general population."

Peer Review by OEHHA

64. Pursuant to Food and Agriculture Code section 11454.1, OEHHA scientists conducted a peer review of DPR's draft risk assessment during the spring of 2009.

65. OEHHA's review found that DPR's draft risk assessment underestimated significantly the extent to which agricultural use of methyl iodide would result in exposures to farm workers and the general public. For example, OEHHA advised DPR that it was unrealistic to assume that respirators would reduce worker exposure levels by 90 percent.

66. OEHHA found that the draft risk assessment also failed to evaluate thoroughly methyl iodide's toxicity. In particular, OEHHA advised DPR that the model it used to assess

carcinogenicity was inadequate and underestimated the cancer risks from exposure to methyl iodide. OEHHA also noted that DPR failed to fully consider methyl iodide's potential to contaminate groundwater.

67. Given methyl iodide's extreme toxicity and the lack of a developmental neurotoxicity study, OEHHA agreed that any risk assessment should at a minimum include an uncertainty factor of 300, rather than the default uncertainty factor of 30. OEHHA also urged DPR to use a "benchmark dose" approach to more accurately determine the no observed effect level, since studies show that just 2 ppm of methyl iodide can cause fetal death.

External Review by the Scientific Review Committee

68. In May 2009, DPR convened a scientific review committee ("SRC") composed of eight independent scientists to conduct an external peer review of its draft risk assessment. The final report of the SRC, released in early February 2010, expressed great concern about the toxicity of methyl iodide as well as the significant gaps in DPR's risk assessment data.

69. As an initial matter, the SRC advised DPR that "[t]he palpable lack of sufficient data raises serious doubts about the adequacy of any risk assessment to fully estimate the risks that would be associated with the introduction of methyl iodide into the general environment." Like OEHHA, the SRC strongly supported inclusion of the extra 10-fold uncertainty factor, because of lack of a developmental neurotoxicity study and the magnitude of the risk involved, and urged DPR to utilize the benchmark dose approach to more accurately determine methyl iodide's no observed effect level.

70. Like OEHHA, the SRC also disputed many of the assumptions inherent to DPR's assessment of exposure levels. For example, the SRC advised DPR that attributing 90 percent protection to respirators "is not an accurate reflection of protection levels likely to be achieved in practice in California agriculture . . . A default value of 50% would be more reasonable, although in some scenarios this may be even less." Along the same lines, the SRC rejected DPR's use of an 8-hour work day to calculate exposure levels. "Given that overtime pay does not begin until 10 hours," the SRC advised DPR that "this is a common minimal shift, with even longer work days likely to apply." The SRC also noted that the exposure assessment used a breathing rate for a

sedentary person, rather than an active worker, resulting in another underestimation of the actual dose received by workers.

71. The SRC also faulted DPR for failing to require the manufacturer to submit a developmental neurotoxicity study and a more robust basic neurotoxicity study, as this prevented thorough analysis of methyl iodide's neurotoxicity. The SRC was "convinced that methyl iodide, were it to be studied appropriately, would prove to be a potent developmental neurotoxicant."

72. Finally, the SRC advised DPR that agricultural use of methyl iodide could allow "unacceptably high levels of iodide to accumulate in water supplies." The SRC found it "alarming that there were no reliable data on the potential of methyl iodide to contaminate groundwater" in DPR's draft risk assessment.

73. The SRC's final report to DPR offered the following summary: "Based on the data available, we know that methyl iodide is a highly toxic chemical and we expect that any anticipated scenario for the agricultural or structural fumigation use of this agent would result in exposures to a large number of the public and thus would have a significant adverse impact on the public health. Due to the potent toxicity of methyl iodide, its transport in and ultimate fate in the environment, adequate control of human exposure would be difficult, if not impossible."

The Final Risk Assessment

74. DPR released its final risk assessment less than one week after the SRC issued its final peer review report.

75. The final risk assessment retains an uncertainty factor of 300 to account for "the serious and irreversible nature of neurodevelopmental effects that have not been studied, the post-natal mortality from excess iodide that needs further study . . . and the level of excess iodide being added to the background iodide intake."

76. The final risk assessment fails, however, to address numerous concerns raised by OEHHA and the SRC. It maintains that respirator use will reduce worker exposure by 90 percent, it assumes that workers will spend no more than 8 hours per day in the field, and uses the breathing rate of a sedentary person to estimate worker exposure.

77. The final risk assessment establishes reference concentrations for cancer of 1.7 ppb for workers and 0.04 ppb for the general population, averaged over a lifetime. Reference concentrations for prevention of fetal death were 0.8 ppb for women of childbearing age in the workplace, averaged over 8 hours and 0.3 ppb for women of child-bearing age in the general public, averaged over 24 hours. These reference concentrations were calculated using the benchmark dose approach, which resulted in a lower no observed effect level for fetal death of 0.5 ppm in rabbits, compared to the initial value of 2 ppm calculated in the draft risk assessment.

78. The final risk assessment confirms that agricultural use of methyl iodide would result in exposures well above the reference concentrations for many adverse health effects. Like the draft risk assessment, the final assessment therefore concludes that "the application of MeI in field fumigation under the conditions evaluated could result in significant health risks for workers and the general population."

The Proposed Registration Decision and Public Report

79. Despite the findings of OEHHA, the SRC, and its own staff toxicologists in the final risk assessment, DPR proposed on April 30, 2010 to register methyl iodide for use in California. The public report prepared by DPR for its proposed decision totals just six pages.

80. The public report provides that "DPR would establish a regulatory target level of 32 parts per billion (ppb) averaged over a 24-hour period for bystanders, and 96 ppb averaged over an 8-hour period for workers." These proposed regulatory target levels are more than 100 times greater than many of the reference concentrations established in the final risk assessment, including the reference concentrations for fetal death. According to SRC member Dr. Ronald Melnick, "Exposure to methyl iodide at 32 ppb for only one month per year would still far exceed California's no significant risk level (for cancer)."

81. The regulatory target levels set forth in DPR's proposed registration decision reflect, among other things, the agency's decision to delete the uncertainty factor of 10 used in both draft and final risk assessments to account for data gaps and apply an uncertainty factor of only 30, in contrast to the uncertainty factor of 300 supported by OEHHA, the SRC, and DPR's own staff in its final risk assessment.

82. To ensure that the proposed regulatory target levels would not be exceeded, the public report states that DPR will rely on several mitigation strategies. For example, the report provides that DPR will designate buffer zones around wellheads and fumigated areas and require farmers to use virtually impermeable film tarps and to wait 14 days before tarps are removed. DPR did not involve OEHHA in the development of these mitigation measures. Instead, DPR plans to work with the registrant to adopt these mitigation measures through label changes specific for use in California. The public report did not estimate acute or single-day exposure to workers applying methyl iodide, bystander workers, or the general public in light of the proposed mitigation measures, either from single-field fumigations or from season-long exposure to multiple, small acreage fumigations.

83. The public report also provides that DPR will adopt a regulation designating methyl iodide as a "restricted material." With certain exceptions, "no person shall use or possess any pesticide designated as a restricted material for any agricultural use except under a written permit of the [agricultural] commissioner." (Food & Agr. Code § 14006.5.) The public report states that this permit requirement "will add an additional level of compliance oversight and protection to assure safe use under specific local conditions for each application site."

84. Based on the revised regulatory target levels and proposed mitigation measures set forth in its public report, DPR found that "no direct or indirect significant adverse environmental impact is anticipated from the registration of [methyl iodide]." DPR therefore made no finding that that the anticipated benefits of registration clearly outweigh the risks, and it concluded that "[a]n alternatives analysis . . . is beyond the scope of this process."

The Final Registration Decision

85. DPR received a record 53,000 comments in response to its proposed decision to register methyl iodide, the vast majority of which opposed DPR's proposal. The comments provided specific and reliable factual and scientific data demonstrating that DPR's finding of no significant adverse impacts was unsupportable. For example, the Central Coast Regional Water Quality Control Board advised DPR the proposed mitigation measures would be inadequate to prevent methyl iodide from contaminating the groundwater. Detailed comments submitted by petitioners and plaintiffs

demonstrated that DPR had overestimated substantially the efficacy of its proposed mitigation measures. Petitioners also alerted DPR to the numerous violations of law alleged herein.

86. Despite this outpouring of opposition, DPR issued its final decision to register pesticide products containing methyl iodide on December 1, 2010. DPR's response to public comments on the proposed registration decision was wholly inadequate and failed to address many of the points raised.

87. DPR provided that its final registration decision would be effective on December 20, 2010, only after the adoption of implementing emergency regulations and just 11 days before the new Governor was to take office.

The Emergency Rulemaking

88. On the same day that DPR announced its final decision to register methyl iodide, DPR proposed to adopt an emergency regulation that would designate the pesticide as a restricted material and also require persons using methyl iodide in certain areas to report the method of application to DPR.

89. Findings adopted by DPR in support of its proposed emergency rulemaking assert that "the unrestricted use of methyl iodide could pose unacceptable risks to human health." The findings conclude that emergency regulation is necessary, "[b]ecause DPR expects to register methyl iodide on December 20, 2010." In addition, DPR found that methyl iodide use reporting is "critical in [sic] DPR's ability to meeting its obligations to achieve and maintain federal ambient air quality standards for ozone."

90. The Office of Administrative Law approved DPR's emergency rulemaking on December 20, 2010.

FIRST CAUSE OF ACTION

(Violation of the Administrative Procedure Act: Unlawful Finding of Emergency)

91. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

92. The California Administrative Procedure Act ("APA"), Government Code §§ 11340 to 11365, establishes basic minimum requirements for the adoption of administrative regulations by State agencies. "[I]f a state agency makes a finding that the adoption of a regulation . . . is necessary to address an emergency," the APA provides that the regulation "may be adopted as an emergency regulation." (Gov't Code § 11346.1, subd. (b)(1).) "Emergency" is defined as "a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." (Gov't Code § 11342.545.)

93. "Any finding of an emergency shall include . . . a description of the specific facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency." (Gov't Code § 11346.1, subd. (b)(2).) "A finding of emergency based only on expediency, convenience, best interest, general public need, or speculation shall not be adequate to demonstrate the existence of an emergency. If the situation identified in the finding of emergency was known by the agency adopting the emergency regulation in sufficient time to have been addressed through nonemergency regulations adopted in accordance with the provisions . . . the finding of emergency shall include facts explaining the failure to address the situation through nonemergency regulations." (Gov't Code § 11346.1, subd. (b)(2).)

94. DPR was at all times under a clear and present mandatory duty to comply with the requirements of APA.

95. The facts recited in DPR's finding of emergency do not constitute an emergency within the provisions of Government Code section 11346.1. DPR cites to only two documents relied upon by the agency in making its finding of emergency – DPR's April 30, 2010 Notice of Proposed Decision to Register Pesticide Products Containing Methyl Iodide, and DPR's December 1, 2010 Notice of Final Decision to Register Pesticide Products Containing Methyl Iodide. Neither document contains facts or other information that demonstrate the existence of an emergency as defined by the APA to justify an emergency regulation.

96. DPR's stated rationale for its finding of an emergency is exclusively based on "expedience" or "convenience" of the agency, in contradiction to the statutes. If methyl iodide is to be registered for use in California, there is no dispute that regulations to allow the imposition of protective mitigation measures and to track emissions of volatile organic compounds are needed. But DPR's own action of unilaterally setting a date for its planned decision to register methyl iodide is the only cause of the purported "emergency." If DPR changed the date of its registration decision, there would be no "emergency." DPR offers no explanation as to why the date of the registration decision could not be changed. The creation of the "emergency" is based solely on the convenience and political expedience of the agency's self-selected registration date.

97. Additionally, DPR's intent to register methyl iodide on December 20, 2010 was certainly known in advance by the agency, yet DPR completely failed to explain in its finding of emergency why its decision to register the fumigant and adopt protective regulations could not be accomplished through nonemergency regulations.

98. For all these reasons, DPR's emergency regulation is contrary to the APA.

SECOND CAUSE OF ACTION

(Violation of Food & Agriculture Code, Division 7, Article 4: Failure to Avoid or Mitigate Significant Adverse Impacts)

99. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

100. The Food and Agriculture Code provides that DPR "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." (Food & Agr. Code § 12824.) To this end, both the Food and Agriculture Code and DPR's implementing regulations set forth a number of factors that the agency must analyze prior to registering a pesticide. (See Food & Agr. Code § 12825; Cal. Code Regs., tit. 3, § 6158.) If any of these factors are "anticipated to result in significant adverse impacts which cannot be avoided or adequately mitigated, registration will not be granted unless the director makes a written finding that the anticipated benefits of registration clearly outweigh the risks." (Cal. Code Regs., tit. 3, § 6158.)

101. DPR was at all times under a clear and present mandatory duty to comply with the requirements of Division 7 of the Food and Agriculture Code.

102. DPR did not make a written finding that the anticipated benefits of registering methyl iodide clearly outweigh the health and environmental risks. Instead, DPR found that registering methyl iodide would result in "no direct or indirect significant adverse environmental impact."

103. DPR's conclusion that registering methyl iodide will result in "no direct or indirect significant adverse environmental impact" is arbitrary, capricious and lacking in evidentiary support. In reaching that conclusion, DPR failed to consider all relevant factors, failed to demonstrate a rational connection between the facts found, the choice made, and the purposes of the enabling statute, and otherwise prejudicially abused its discretion.

104. DPR's abuses include, but are not limited to: failing to protect pregnant women and fetuses by selecting a reference concentration for fetal death that is over 100 times higher than that selected by DPR's own scientists and without substantial evidence for the decision; failing to protect humans working, living and traveling near methyl iodide applications by selecting regulatory target levels that will result in increased cancer risks for those exposed; and failing to protect farm workers by establishing exposure limits that are not based on substantial evidence. For example, DPR established exposure limits for farm workers based on an eight hour workday and a forty hour workweek, when most farm workers in areas affected by methyl iodide, such as petitioner and plaintiff Hidalgo Ramón, typically work sixty to seventy hours per week, and irrigators, such as petitioner and plaintiff Estrada, typically work eighty to ninety hours per week.

105. DPR's actions violate its mandate to avoid or mitigate significant adverse impacts.

THIRD CAUSE OF ACTION

(Violation of the Birth Defects Prevention Act: Inadequate Mandatory Health Effects Studies)

106. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

107. The Birth Defect Prevention Act prohibits DPR from registering a new pesticide if any mandatory health effects study is "missing, incomplete, or of questionable validity." (Food &

Agr. Code § 13126.) To the extent feasible, mandatory health effects studies "shall be conducted in accordance with standards and protocols established pursuant to the Federal Insecticide, Fungicide and Rodenticide Act." (Food & Agr. Code § 13123.5.)

108. Contrary to the Birth Defects Prevention Act, mandatory health effects studies for methyl iodide are missing, incomplete, and of questionable validity. For example, the SRC advised DPR that "studies labeled as 'neurotoxicity' were nothing of the sort" and that "no robust studies of neurotoxicity [were] actually conducted."

109. In addition, mandatory health effects studies were not conducted in accordance with protocols established by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act. Among other provisions, federal protocols require a developmental neurotoxicity study whenever certain criteria are met. (See 40 C.F.R. § 158.500, subd. (d), (e)(28).) Methyl iodide meets each of the specified criteria. Indeed, the SRC advised DPR that it was "convinced that methyl iodide, were it to be studied appropriately, would prove to be a potent developmental neurotoxicant." DPR nevertheless registered methyl iodide without information regarding developmental neurotoxicity, in violation of the Birth Defects Prevention Act.

FOURTH CAUSE OF ACTION

(Violation of the Pesticide Contamination Prevention Act: Inadequate Groundwater Studies)

110. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

111. The Pesticide Contamination Prevention Act prohibits DPR from registering a pesticide intended to be applied to or injected into the ground if certain specified information is missing or otherwise invalid, incomplete, or inadequate. (See Food & Agr. Code §§ 13142, subd. (f), 13143, subd. (a), 13146.)

112. The methyl iodide based pesticides at issue herein are intended to be applied to or injected into the ground.

113. DPR lacked information required by the Pesticide Contamination Prevention Act when it registered methyl iodide. For example, DPR acknowledged that it lacked adequate field

dissipation and soil adsorption data. DPR's decision to register methyl iodide in the absence of this and other required information violates the Pesticide Contamination Prevention Act.

FIFTH CAUSE OF ACTION

(Violation of Food & Agriculture Code, Division 7, Article 10.5: Failure to Involve OEHHA)

114. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

115. The Food and Agriculture Code provides that OEHHA "shall participate" in the development of regulations promulgated by DPR that relate to pesticides and worker safety. (Food & Agr. Code §§ 12980, 12981.) The statute identifies regulations that restrict "worker reentry into areas treated with pesticides" regulations that mandate "posting, in English and Spanish, of fields, areas, adjacent areas or fields, or storage areas," as examples of worker safety regulations that must be promulgated jointly by DPR and OEHHA. (Food & Agr. Code § 12981.) Such regulations "shall be based upon the recommendations of [OEHHA]." (*Ibid*.)

116. To mitigate significant adverse impacts associated with registering methyl iodide, DPR developed a number of regulations that relate to worker safety. For example, DPR developed restrictions on reentry into fumigated fields and requirements for field posting.

117. In violation of the Food and Agriculture Code, DPR failed to involve OEHHA in the development of worker safety regulations for methyl iodide and failed to base such regulations on the recommendations of OEHHA.

SIXTH CAUSE OF ACTION

(Violation of CEQA: Failure to Analyze and Disclose Significant Adverse Effects)

118. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

119. In a certified regulatory program, CEQA requires the environmental documentation submitted in lieu of an EIR to analyze and disclose "any significant adverse effect on the environment." (Pub. Res. Code § 21080.5, subd. (d)(3)(A).) To this end, DPR's regulations provide that "[e]ach public report shall include a description of the proposed action [and] a statement of any

significant environmental effect that can reasonably be expected to occur, directly or indirectly, from implementing the proposal." (Cal. Code Regs., tit. 3, § 6254.)

120. DPR was at all times under a clear and present mandatory duty to comply with the requirements of CEQA.

121. The environmental documentation prepared by DPR in connection with its decision to register methyl iodide fails to analyze and disclose significant direct, indirect and cumulative environmental effects that can reasonably be expected to occur. Instead, DPR asserts without evidentiary support that registering methyl iodide will result in "no direct or indirect significant adverse environmental impact."

122. DPR's failure to analyze adequately and disclose to the public the significant environmental effects associated with registering methyl iodide violated CEQA.

SEVENTH CAUSE OF ACTION

**(Violation of CEQA:
Failure to Analyze and Disclose Reasonable Alternatives)**

123. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

124. In a certified regulatory program, CEQA requires the environmental documentation submitted in lieu of an EIR to "include a description of the proposed activity *with alternatives to the activity*." (Pub. Res. Code § 21080.5, subd. (d)(3)(A), emphasis added.) To this end, DPR's regulations provide that "[e]ach public report shall . . . contain a statement and discussion of reasonable alternatives which would reduce any significant environmental impact." (Cal. Code Regs., tit. 3, § 6254.).

125. The public report prepared by DPR fails to discuss any analyze alternatives to registering methyl iodide. Instead, the public report asserts incorrectly that "[a]n alternatives analysis . . . is beyond the scope of this process."

126. DPR's failure to analyze any alternative to registering methyl iodide, including, but not limited to, the alternative of conditional or more limited registration, violates CEQA.

EIGHTH CAUSE OF ACTION

**(Violation of CEQA:
Inadequate Mitigation Measures)**

127. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

128. CEQA provides that the rules governing an agency's certified regulatory program must "require that an activity will not be approved or adopted as proposed if there are . . . feasible mitigation measures that would substantially lessen a significant adverse effect that the activity may have on the environment." (Pub. Res. Code § 21080.5, subd. (d)(2)(A).) Consistent with CEQA, the regulations governing DPR's pesticide registration program provide that DPR "shall not approve an activity which would cause a significant adverse environmental impact if there is a . . . feasible mitigation measure available which would substantially lessen any significant adverse impact which implementation of the proposal may reasonably be expected to have on the environment." (Cal. Code Regs., tit. 3, § 6254, subd. (a).)

129. In violation of CEQA, the mitigation measures adopted by DPR in its final decision registering methyl iodide are inadequate and/or unlawfully deferred and will not substantially lessen significant adverse impacts to the environment. For example, there is no evidence that virtually impermeable film tarps can be relied upon to reduce methyl iodide emissions, because all three studies submitted by Arysta Lifescience regarding the efficacy of such tarps were deemed "too flawed to use" by DPR scientists.

130. DPR's failure to set forth and adopt adequate mitigation measures violates CEQA.

NINTH CAUSE OF ACTION

**(Violation of CEQA:
Inadequate Response to Comments)**

131. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

132. CEQA provides that the rules governing an agency's certified regulatory program must "require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process." (Pub. Res. Code

§ 21080.5, subd. (d)(2)(D).) Consistent with CEQA, the regulations governing DPR's pesticide registration program provide that "[t]he final action taken in regard to a decision [to register a pesticide] in which a significant adverse environmental point is raised during the evaluation process shall include a written evaluation of such points approved by the director." (Cal. Code Regs., tit. 3, § 6254, subd. (b).)

133. In violation of CEQA, DPR failed to provide an adequate response to significant environmental points raised during the evaluation of methyl iodide. For example, DPR's response asserts that its final risk assessment supports the conclusion that registering methyl iodide will have "no direct or indirect significant adverse environmental impact," when in fact that assessment supplied numerous examples of excessive risk for workers, bystanders and groundwater.

TENTH CAUSE OF ACTION

(Declaratory Relief)

134. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

135. Petitioners contend that DPR's decision to register methyl iodide and its related emergency regulation were unlawful. DPR disputes these contentions.

136. An actual controversy has arisen and now exists between Petitioners and DPR regarding their respective rights and duties. A judicial determination and declaration of the parties' respective rights and duties, including a declaration of whether DPR's decisions violate the law, is necessary and appropriate.

ELEVENTH CAUSE OF ACTION

(Injunctive Relief)

137. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

138. Unless Petitioners are granted injunctive relief, they will suffer irreparable harm, in that the implementation of DPR's decisions challenged herein will result in severe adverse impacts to the health of Petitioners and to the environment.

139. Petitioners lack an adequate remedy at law because monetary damages cannot be ascertained and Petitioners and their members and supporters cannot be compensated for the environmental and health degradation caused by the actions of DPR complained of herein.

REQUEST FOR RELIEF

Wherefore, Petitioners respectfully request relief as follows:

1. For a stay of DPR's Final Notice of Decision Registering Pesticide Products Containing Methyl Iodide;

2. For a temporary restraining order and preliminary injunction prohibiting DPR from registering pesticide products containing methyl iodide or otherwise authorizing the use of such pesticides in California pending trial;

3. For an alternative and/or peremptory writ of mandate, directing DPR to vacate and set aside its Final Notice of Decision Registering Pesticide Products Containing Methyl Iodide and related emergency regulation;

4. For a declaration that DPR's decision to register pesticide products containing methyl iodide is contrary to law, including Division 7 of the Food and Agriculture Code and CEQA, and that DPR violated the APA in promulgating the related emergency regulation;

5. For permanent injunctive relief prohibiting DPR from registering pesticide products containing methyl iodide or otherwise authorizing the use of such pesticides in California pending compliance with all applicable laws and regulations;

6. For costs incurred herein, including attorneys' fees; and

7. For all such other equitable or legal relief that the Court considers just and proper.

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Respectfully submitted,

DEBORAH S. REAMES, State Bar No. 117257

Dated: December 30, 2010

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VERIFICATION

I, Susan Kegley, hereby declare:

I am a consulting scientist for petitioner and plaintiff Pesticide Action Network North America. The facts alleged in the above Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief are true to my personal knowledge and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification is executed on this 30 day of December, 2010 at Berkeley, California.

Susan Kegley, Ph.D.