

Notice of Exemption**Appendix E**

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: _____

From: (Public Agency): _____

(Address)

Project Title: _____

Project Applicant: _____

Project Location - Specific:

Project Location - City: _____ Project Location - County: _____

Description of Nature, Purpose and Beneficiaries of Project:

Name of Public Agency Approving Project: _____

Name of Person or Agency Carrying Out Project: _____

Exempt Status: **(check one):**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: _____
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:

Lead Agency

Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: Jennifer Teerlink Date: _____ Title: _____

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

March 7, 2024

ATTACHMENT 1 TO NOTICE OF EXEMPTION

Initiation of Reevaluation of Neonicotinoid Products Intended for Use on Nonproduction Outdoor Ornamental Plants, Trees, or Turf – Ministerial Exemption

On March 7, 2024, as mandated by the California Legislature in Food and Agricultural Code section 12838(c), DPR initiated a statewide reevaluation of neonicotinoid products intended for use on nonproduction outdoor ornamental plants, trees, or turf. DPR has determined that because newly adopted Food and Agricultural Code section 12838 requires DPR to initiate this particular reevaluation, it is a ministerial project that is statutorily exempt from environmental review under the California Environmental Quality Act (CEQA).

DPR’s CEQA Certified Regulatory Program for Beginning a Reevaluation

Typically, DPR’s proposed decision to begin a reevaluation is a discretionary “project” under CEQA. (Cal. Code Regs., tit. 3, § 6253.) When a pesticide enters reevaluation, DPR reviews existing data and may require registrants to provide additional data. Prior to initiating the reevaluation, DPR investigates reported episodes and information received that indicate a registered pesticide (which has already undergone environmental review at the time of registration) may have caused, or is likely to cause, a significant adverse impact. (*Id.* at § 6220.) If the Director finds from the investigation that a significant adverse impact has occurred or is likely to occur, the Director proposes to begin a reevaluation. (*Id.*) Proposed decisions to begin a reevaluation are required to include a description of the proposed action, a statement of any significant adverse environmental effects that can reasonably be expected to occur, from implementing the proposal, and a statement of any reasonable mitigation measures or alternatives which would reduce any significant environmental impact. (*Id.* at §§ 6253-6254.) The proposed decision is then subject to public notice, review, and comment, where additional information can be received, and the Director can correspondingly modify the scope of the proposed reevaluation or decide to not initiate a reevaluation. Upon issuing a final decision, the Director must provide a written evaluation of significant adverse environmental points raised during the evaluation process. (*Id.*) The goal of the reevaluation process is to determine, based on the data and information received, if additional restrictions on use are necessary. (*Id.* at § 6224.)

CEQA’s Ministerial Exemption

CEQA statutorily exempts from Division 13 of the Public Resources Code, “[m]inisterial projects proposed to be carried out or approved by public agencies.” (Cal. Pub. Res. Code, § 21080, subd. (b)(1); Cal. Code Regs., tit. 14, § 15268.) “Ministerial projects are those for which ‘the law requires [an] agency to act...in a set way without allowing the agency to use its own judgment...’” (*Protecting Our Waters and Environmental Resources v. County of Stanislaus*

(2020) 10 Cal.5th 479, 489 citing Cal. Code Regs., tit. 14, § 15002, subd. (i)(1).) Ministerial projects involve “little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision.” (*Id.*; Cal. Code Regs., tit. 14, § 15369.) Courts have developed a functional test to refine the distinction between a discretionary and ministerial project. The California Supreme Court held that “[t]he ‘touchstone’ is whether the relevant ‘approval process...allows the government to shape the project in any way [by requiring modifications] which it could respond to any of the concerns which might be identified’ by environmental review.” (*Protecting Our Waters*, 10 Cal.5th at 493.) The Court further detailed that “a decision is ministerial if the agency has no discretionary authority to deny or shape the project.” (*Id.*)

Initiation of Reevaluation Required by Food and Agricultural Code section 12838 is Ministerial

On October 8, 2023, Governor Newsom signed Assembly Bill (AB) 363 (Chapter 520, Statutes of 2023) into law, which amended Food and Agricultural Code section 12838. Specifically, FAC section 12838(c)(3)(B) required: “The department **shall evaluate**, at a minimum, the potential impacts of the neonicotinoid pesticide uses described in paragraph (2) [“any use that is excluded from the definition of ‘agricultural use’ in Section 11408 on nonproduction outdoor ornamental plants, trees or turf”] on pollinating insects, aquatic organisms, and human health, taking into account relevant routes of exposures, as follows: ... (B) On or before July 1, 2024, the **department shall initiate a reevaluation** of neonicotinoid pesticides relative to pollinating insects, aquatic organisms, and human health, taking into account relevant routes of exposure.” (emphasis added) The Legislature also explicitly defined “neonicotinoid pesticide” as meaning a pesticide containing the active ingredients “acetamiprid, clothianidin, dinotefuran, imidacloprid, thiamethoxam.” (Food and Agr. Code, § 12838, subd. (c)(1)(B).)

In contrast to the typical process for initiating a reevaluation where the process is undertaken only after there is investigation of reported evidence that a product may cause a significant adverse impact and DPR issues a proposed decision to initiate the reevaluation subject to review and comment, the new Food and Agricultural Code section 12838(c) requires DPR to initiate a reevaluation of certain neonicotinoid pesticides containing the active ingredients acetamiprid, clothianidin, dinotefuran, imidacloprid, and thiamethoxam intended for use on nonproduction outdoor ornamental plants, trees, or turf by July 1, 2024. As such, the law dictates the specific action required by DPR and the scope of the reevaluation. Regardless of the existence or absence of any environmental concerns that could be identified with the initiation of reevaluation, DPR has no discretion to deny the project (not initiate reevaluation) or require modifications to limit the scope of the reevaluation (active ingredients or types of products). Accordingly, DPR’s initiation of reevaluation of neonicotinoid pesticides intended for use on nonproduction outdoor ornamental plants, trees, or turf is a ministerial project exempt from the requirements of CEQA.