October 2, 2013

Linda Irokawa-Otani
Regulations Coordinator
California Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, CA 95812-4015

Re: CDPR Ban on Consumer/Small Business Use of Rodent Control Products

Dear Ms. Irokawa-Otani:

The California Retailers Association wishes to address the Department’s proposal to effectively ban the sale of d-Con second generation anticoagulant rodenticides to tenants, homeowners, and small businesses by classifying these products as “restricted materials”. If you proceed with the adoption of the proposed regulation, it will pose a particular problem for retailers and their distributors.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, fast food restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA works on behalf of California’s retail industry, which currently operates over 164,200 stores with sales in excess of $571 billion annually and employing 2,776,000 people—nearly one fifth of California’s total employment. The retail industry in California represents one in every four jobs in the State, a total of nearly 5 million jobs (2009), and accounts for 17.8% of the State’s GDP.

Nothing in these comments should be construed to infer that CRA accepts the premise of the regulation, or that the Department has established necessity for the regulation, that the regulation is consistent with the Department’s statutory obligations, or that the regulation is authorized by law. Nevertheless, if the Department does ban unlicensed consumer use of these products, it must allow retailers and their distributors to continue to display and sell the d-Con products that were placed into the stream of commerce prior to any ban.

CRA requests that DPR provide in the regulation for the sell-through of d-Con products in the stream of commerce when the final regulation is made effective. DPR’s Initial Statement of Reasons states, “DPR anticipates delaying the effective date of this regulation by as much as six months to ensure there is adequate time for entities impacted by these regulations to comply with the new certification requirements.” However, this statement does not address the Department’s position on the legal status and potential disposition of existing stocks of SGARs that might remain in the hands of distributors and retail dealers following the effective date of the proposed regulation. This is especially important for companies involved in the distribution and sale of consumer products which,
unlike farm markets and similar outlets, are not likely to hold licenses for distribution of restricted materials.

Thus, even if the Department proceeds with the proposed rule to reclassify SGARs as restricted materials, at a minimum DPR should: (1) clarify that it intends to allow two years from the anticipated “delayed effective date” for sell through of existing stocks for such stocks to clear the channels of trade; (2) reassure distributors and retail dealers that they will not be subject to enforcement actions alleging the unlawful distribution of restricted materials during that period of time; and (3) provide that consumers and other users of consumer-sized SGAR-containing products purchased lawfully prior to and during the sell-through period may continue to use such products until quantities in their possession are depleted.

This sell-through period is consistent with CDPR regulations and past practices, sell-through provisions authorized when pesticide product label changes are authorized through amendments, and with precedents established by other California regulatory agencies, such as practices followed by the California Air Resources Board with respect to certain products subject to Volatile Organic Compound limits and the Office of Environmental Health Hazard Assessment when a substance is newly-listed pursuant to Proposition 65 requirements.

Establishing a two-year sell-through period following the effective date of a final rule has a number of benefits. A two-year sell through period will avoid unnecessary, adverse impacts on retailers and users who have lawfully distributed and used such products prior to the effective date of the ban, and it will help ensure a smoother transition. Consumers and the environment are better served by DPR permitting use of small quantity packages of SGAR products rather than by requiring the disposal of SGARs that are in retailer and consumer possession. The quantities of consumer use SGAR-containing rodenticide products in the channels of trade would be limited, and their use until such stocks are depleted would not cause any increase above current levels in consumer use or in exposures to non-target wildlife. Moreover, such levels would be expected to decline as existing stocks of consumer use products are depleted over time, and will avoid retailers having to ship product somewhere for disposal – which could create further wildlife exposure issues.

Again, CRA is opposed to this regulation and questions its necessity and legality. However, if the DPR proceeds to adopt it despite the substantial concerns raised by the many commenters, a two-year sell-through period is essential to a fair implementation of the regulation.

Thank you for your consideration of this request. Please feel free to contact me at MLee@calretailers.com or 916-443-1975 if you have any questions.

Sincerely,

Mandy Lee
Director, Government Affairs