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Contacts:

Nan Wishner, California Environmental Health Initiative, (530) 467-3069, nan@cal-ehi.org

Greg Loarie, Earthjustice, (415) 217-2000, gloarie@earthjustice.org

Health, Environmental Groups Win Victory in Apple Moth Pesticide Lawsuit
Appeals Court overturns California's approval of spray program

SACRAMENTO -- In a victory for health and environmental groups, an appeals court yesterday threw out California's light brown apple moth pesticide program on the grounds that it violates state environmental laws.

At issue was an ill-conceived California Department of Food and Agriculture (CDFA) statewide pesticide campaign for the light brown apple moth that included plans to aerially spray the San Francisco Bay Area for seven years. The controversial program began by aerially spraying populated areas of Monterey and Santa Cruz counties in 2007, resulting in hundreds of complaints of harm to human health and wildlife.

The Third District Court of Appeal's ruling hinged on the state's last-minute shift in the program's goal from "eradication" to ongoing "control" of the apple moth. The Department of Food and Agriculture made this major change when approving the program but without analyzing the health and environmental impacts of an indefinite control program and without reconsidering less-toxic control strategies that the agency had dismissed out of hand on the grounds that those strategies would not "eradicate" the moth.

The department also failed to study feasible alternatives to its pesticide-based strategy. The court concluded that the state's analysis "was fatally defective in failing to study a range of reasonable alternatives."

The apple moth program has cost \$6 million in federal funds alone during the past two years and targets an insect that to date has done no documented damage to crops or wild plants in California.

"This ruling vindicates our claim that a state agency cannot engage in bait and switch, presenting one program to the public but approving a significantly different program after the public review period ends. The court's decision affirms the California Environmental Quality Act's fundamental requirements for informing the public and decision makers," said **Summer Wynn of Cooley LLP**, the petitioners' attorney.

"This court ruling calls out the Department of Food and Agriculture's bad habit of presenting its pesticide programs as short-term efforts to 'eradicate' pests that then morph into endless 'control' programs without analysis or public disclosure of the long-term harm that these control programs pose to health and the environment," said **Nan Wishner of the California Environmental Health Initiative** (formerly Stop the Spray East Bay).

"This is a victory for all who became ill after the first round of apple moth spraying," said **Debbie Friedman of Moms Advocating Sustainability** (formerly Mothers of Marin Against the Spray). "Although the court's decision cannot restore the health of the 11-month-old who nearly died from respiratory

arrest after the aerial spray, this ruling clearly signals to the state that the risks of these kinds of programs must be disclosed before the chemicals rain down, not after.”

"We congratulate the tireless, well-organized efforts of the individuals and groups whose actions led to a court decision supporting public health and sound science. Eradication of crop pests is almost never a realistic outcome; rather, ecological pest management or control is the safest and most viable approach to controlling pests and ensuring the success of farming in California," said **Dr. Margaret Reeves, senior scientist at Pesticide Action Network**.

“This case is about looking before you leap,” said **Earthjustice attorney Greg Loarie, who assisted with the case**. “The Department of Food and Agriculture tried to impose this spraying program on the public without real environmental review, and the court has rightly called foul.”

Background: The lawsuit was brought by Our Children’s Earth Foundation; the Cities of Albany, Berkeley, and Richmond; Mothers of Marin Against the Spray; Stop the Spray East Bay; Center for Environmental Health; Pesticide Action Network North America; Citizens for East Shore Parks; Californians for Pesticide Reform; Pesticide Watch; and Stop the Spray San Francisco, represented by Cooley LLP and Earthjustice, and by the City and County of San Francisco represented by the City Attorney.

Online release: <http://earthjustice.org/news/press/2015/health-environmental-groups-win-victory-in-apple-moth-pesticide-lawsuit>

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