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The Truth (and Consequences) of the CDFA'S Pest PEIR

The below article was submitted by the California Health Initiative and does not necessarily reflect the opinions of NAEP or its members. NAEP welcomes an open and civil discourse on all environmental issues. We welcome any comments on the below article.

In 2016, NAEP presented a NEPA excellence award to the California Department of Food and Agriculture (CDFA) for its Statewide Plant Pest Programmatic Environmental Impact Report (Pest PEIR), lauding the document for “comprehensive” health and environmental analysis and an “innovative CEQA tiering strategy.” CalAEP also gave an award to CDFA for its Pest PEIR, characterizing the PEIR as an “Outstanding Environmental Analysis Document.” In addition, CalAEP praised CDFA for its “unique CEQA tiering strategy” and its “extensive statewide public outreach” involved in preparing the document.

As California residents who have been involved with state agricultural pest policy for a decade and who participated in every step of the Pest PEIR public comment process, we were invited by NAEP officials to submit this article, to explain the outcome of the lawsuit we filed to prevent the implementation of the Pest PEIR, and to share our experience of the document’s conception, preparation, and approval.

The Pest PEIR gave CDFA broad authority to spray 79 pesticides anywhere in the state at any time into the indefinite future with no site-specific analysis of local health or environmental impacts and no opportunity for affected communities to have a voice in treatments carried out within their jurisdictions. The program allowed pesticide spraying near schools and in residential yards, and provided for mandatory application of non-organic pesticides on organic farms. Many of the pesticides are highly toxic to bees,

butterflies, fish and birds. Once the Pest PEIR was approved, CDFA was under no legal obligation to review the evolving science concerning the impacts of these chemicals or their less toxic alternatives.

CDFA certified its Pest PEIR on Christmas Eve, 2014. In January 2015, CEHI joined 10 other organizations and the City of Berkeley in a lawsuit challenging the PEIR for numerous violations of the California Environmental Quality Act (CEQA). A separate lawsuit was also filed that January by North Coast Rivers Alliance and 4 co-plaintiffs.

In February 2018, a Sacramento Superior court ruled that key portions of the Pest PEIR’s environmental analysis were “woefully deficient” and based on “unsupported assumptions and speculation.” The court also concluded that the tiering strategy cited in NAEP’s award violated the state’s environmental laws.

To understand why the Pest PEIR received tens of thousands of public comment letters urging the state to devise a less toxic approach to pest management rather than cementing into place CDFA’s outdated, pesticide-centered strategy, we must step back in time to consider a major pest eradication campaign that CDFA undertook in 2007. For that program, CDFA authorized aerial spraying over populated areas of two Central California coastal counties, Monterey and Santa Cruz, using an untested pesticide that targeted the light brown apple moth. CDFA planned to extend the program to the densely populated San Francisco Bay Area, aerially spraying monthly for at least seven years. However, lawsuits filed after several hundred people reported health effects in the wake of the Central Coast spraying halted the program before it could be expanded.

The courts in those cases ruled that CDFA could not continue aerially

spraying for the apple moth without first preparing an environmental impact analysis as required by state law. CDFA prepared the environmental study, which was challenged in two lawsuits. The courts ultimately overturned CDFA’s analysis, effectively ending the program (although quarantines for the moth continue under the PEIR). Meanwhile, there still have been no documented instances of damage to crops or wildland plants from the moth that was the program’s target despite the dire predictions of crop loss that CDFA used to justify the spray campaign.

The state’s decision to spray from airplanes, a controversial tactic that CDFA had employed 30 years earlier for another pest, the medfly, energized cities, environmental and health organizations, and thousands of citizens. It became the catalyst for our organization’s efforts to encourage the state to begin exploring a modern approach to pest management that reduced the need for the application of harmful pesticides. Unfortunately, citizen engagement was also the catalyst for CDFA to devise a strategy that would insulate it from having to conduct environmental review in the future or from being stopped by legal action and to protect the agency from having to engage in a meaningful way with public input about its pest programs.

That strategy took the form of the Pest PEIR.

When our organization, the California Environmental Health Initiative (CEHI), learned in 2011 that CDFA was planning to prepare a blanket environmental document to give the agency authority to spray statewide, we met with the CDFA secretary and her staff, the State Board of Agriculture, and legislators, and communicated with numerous other state agencies. We explained why CDFA’s approach

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CDFA's Pest PEIR

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was too broad to be feasible, would prevent communities who likely did not even know the document was being prepared from having any say about pesticide treatments that might come to their neighborhoods many years into the future, and that it violated state environmental laws. We urged the state to partner with the public and engage in a new, more effective, less expensive, less toxic approach to invasive species management based on the most current science and technologies.

In June 2011, we submitted a letter, signed by 92 organizations, to Governor Jerry Brown and CDFA's secretary, opposing preparation of the Pest PEIR as conceived and requesting a modernized, less toxic approach to pest management. The letter included the following reasons:

- **Cost:** the PEIR ultimately cost \$4.5 million to prepare, not including costs of litigation;
- **Limits on Stakeholder Input:** once approved, the Pest PEIR would end the public's ability to have meaningful input on the agency's pest treatments;
- **An Overly Broad Scope:** several attorneys advised that it would be impossible for the state to adequately analyze all impacts of its pest treatments in all ecosystems and bio-regions of the state and on all sensitive and endangered species and environments.

Signatories included physician organizations, cities and city councilmembers, breast cancer and other health groups, religious organizations, and diverse environmental organizations from throughout the state. CDFA never responded. The PEIR continued to move forward.

On multiple occasions, CDFA publicly stated its intent to do no additional environmental review of future pest programs or put itself under any obligation to public input once the PEIR was approved. CDFA's acting general counsel stated the follow-



A CDFA contract employee broadcast sprays cyfluthrin in 2015 in a residential neighborhood as part of the agency's Japanese beetle chemical treatment program

ing in a May 20, 2011 meeting at the Sacramento office of then-Assembly Member William Monning:

1. "The intent of the PEIR is that we do such a thorough analysis that we don't need additional environmental review when a particular pest is detected."
2. "If CDFA knew that project-specific, tiered EIRs would be required after the PEIR, the agency would not do the PEIR because it would be a waste of time and taxpayer monies."
3. "The intent of a public hearing prior to [a pesticide] application but after the PEIR is approved is to *inform* the public; we *could* change our program but *we are not*

required to change our program at that time." [emphasis added]

CDFA's outreach efforts for the Pest PEIR (recognized by CalAEP in its April 2016 award) severely and successfully limited public input. After launching the Pest PEIR on June 23, 2011, CDFA fast-tracked 5 public meetings, starting them only two weeks later and scheduling them immediately after the July 4th holiday. As a result, a total of only 52 non-CDFA employees attended the 5 public meetings, and only 21 of those attendees actively participated by providing oral comments. For such statewide program of high public interest and impact, the expectation

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CDFA's Pest PEIR

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for attendance would be significantly higher. The oral testimony at those meetings was not recorded or transcribed. The time period allotted for public comment period for the more than 3,500-page draft document that was ultimately released was initially limited to the minimum required by law: 45 days. However, after receiving multiple requests, including from CEHI, the agency extended the comment window to 90 days.

On February 22, 2018, a California Superior Court issued a final ruling in favor of the plaintiffs in the lawsuits challenging the agency's approval of the PEIR. The ruling found that the agency's environmental document violates CEQA in numerous ways. The court also issued an injunction prohibiting CDFA from carrying out chemical pesticide treatments that were described in the PEIR (unless other CEQA compliance existed for those treatments). CDFA has appealed the court's ruling.

During the 3 years between the filing of the lawsuits challenging the Pest PEIR and the first court hearing in the case, CDFA conducted more than 1,000 pesticide treatments under the authority of the PEIR, according to the Attorney General representing CDFA in the lawsuits.

Our organization's mission is to ensure that up-to-date science concerning health and environmental impacts is taken meaningfully into account in decision-making that affects agriculture and food production. We have lobbied CDFA extensively to focus funds and attention on developing sustainable alternatives to regulatory pesticide use and providing ways to incentivize farmers to shift to more sustainable practices that protect human and environmental health.

We advocate a shift to ecological-agriculture practices (also called regenerative agriculture, conservation agriculture, and agroecology, among other terms) that foster functioning agricultural ecosystems that are self-regulating and sustaining and require minimal external inputs. Among our

activities is a research project documenting the pest management benefits of these practices as well as their "ancillary" benefits for human health, water quality, and climate change mitigation. NAEP officials have invited us to submit a separate article on our research in this area to the organization's peer-reviewed journal, *Environmental Practice*.

In our efforts to foster ecological agriculture in California and to elicit support from CDFA for a shift to these sustainable practices, we not only participated at every stage of the official Pest PEIR public comment process, we also made multiple attempts from 2011-2014 to communicate with both state and federal officials regarding the dangers and legal problems of CDFA's program. These aspects of the program were what the court ultimately determined to be unlawful. Our activities included, in addition to the meetings mentioned above, communications with the heads of relevant state agencies and staff in the governor's office. Subsequent to the Pest PEIR's approval, we continued to meet with California legislators and agency heads regarding the CDFA's unyielding, heavy-handed conduct of the program, which has included forced spraying of residential backyards, a failure to provide adequate information and safety protections for residents, insufficient effort to explore less toxic alternatives, and displays of intolerance for community feedback.

Among the treatments covered in the Pest PEIR are those for the Japanese beetle. In treatments in Carmichael in 2015, CDFA and contract staff misrepresented to local residents the availability and effectiveness of less toxic products and approaches as well as the effectiveness of the agency's own chemical drift management (residents filmed pervasive pesticide drift in their yards). CDFA staff also misrepresented its use of bee safety protocols (none were used), covered up the elimination of a documented neighborhood frog colony, jeopardized the safety of their own contract personnel who did not wear sufficient protective clothing, and exaggerated the safety of neonicotinoid pesticides that are increasingly restricted worldwide. The residential

spray program with its countless defects had no meaningful oversight by third-party public health or environmental experts. Even when parents in that neighborhood reported that a child had experienced an adverse reaction after waiting three times longer than CDFA recommended before entering a yard that had been sprayed, CDFA refused to warn other parents. The conduct of the Japanese beetle spray program is just one example of how the Pest PEIR resulted in adverse consequences for state residents and the environment, and of the atmosphere of disregard for the public at CDFA.

Another example of a culture of disregard for the public at CDFA was an event where senior managers ridiculed Carmichael residents whose properties were sprayed. In October 2016 a male CDFA Plant Health Division Program Manager, who remains in his position today, dressed up as one of the concerned female residents in the Japanese beetle spray zone, mocking and disparaging her in a skit held at a holiday luncheon at CDFA headquarters in Sacramento. This event was captured on camera by a CDFA staff member and the video provided to the residents.

From our experience with the Pest PEIR, we believe that planners and planning firms can have a profound impact on the direction of projects that propose to use pesticides (herbicides, insecticides, fungicides, rodenticides). Providing clients with documented information about environmentally preferable alternatives and promoting local regulations and codes that encourage or require alternatives to the use of toxic chemicals would go a long way toward protecting our shared environment and access to a healthy food supply.

We hope that our potential future publication in *Environmental Practice* detailing the ecological-agriculture approach and its potential for successfully managing pests as well as providing other health and environmental benefits will aid the environmental planning community in contributing in this way.

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