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California Court Approves Statewide Pesticide Plan to Control Harmless Apple Moth

Judge restricts aerial spraying and orders environmental review in five years

SAN FRANCISCO—A state court has removed aerial spraying from a controversial statewide plan to apply harmful and untested pesticides to control the light brown apple moth, a minor agricultural pest that has not been proven to harm crops in California. The court let stand the rest of the large-scale plan implemented by the California Department of Food and Agriculture (CDFA) but limited its duration, requiring a review of the environmental effects if the state proposes to continue the Light Brown Apple Moth (LBAM) Program beyond 2017.

In a ruling released late Wednesday, Sacramento Superior Court Judge Lloyd Connelly referred to “the experimental nature of the LBAM Program,” observing “There is no evidence that the Department has been able to identify with any certainty the effectiveness of particular strategies in containing, controlling, suppressing or eradicating LBAM.” The Judge also ruled that, without additional evaluation under California environmental laws, CDFA’s approval of the environmental document would “foreclose the Department from reinstating the aerial releases to the LBAM Plan.”

The court rejected a broader claim by a coalition of health and environmental organizations, who challenged CDFA’s failure to disclose or accurately describe all the harms caused by applying hazardous pesticides throughout the state. Concerns about health and environmental impacts of the program were elevated after hundreds of people reported illnesses in the wake of 2007 “emergency” spraying to eradicate the moth.

CDFA justified its wide-reaching pesticide plan based on its unsubstantiated claims that the apple moth, which scientists say has been in California for decades, has to be controlled because it will harm crops and native plants and cause financial losses for the agriculture industry, even though the Environmental Impact Report (EIR) admits the moth has done no damage. The apple moth program allows the state to apply pesticides anywhere in the state, any time, with no notice to affected communities.

“The LBAM program’s reliance on slow-release pesticide treatments such as twist ties and chemical-infused flakes intended to create persistent clouds of toxins -- and thus

long-term exposure -- is especially dangerous for children's health," said Debbie Friedman, Co-chair of MOMS Advocating Sustainability (MOMAS) (formerly Mothers of Marin Against the Spray). "Pesticides are linked to a profound array of chronic health disorders, and even small amounts can be very dangerous. Children are particularly affected because their unique physiology and behavior mean that the amount of pesticide they absorb is much greater, pound for pound, than adults," Friedman added.

"I'm disappointed and troubled that the court's narrow interpretation of environmental protection laws could leave millions of Californians in the dark about risks associated with the application of pesticides potentially anywhere in the state," said San Francisco City Attorney Dennis Herrera. "I'm convinced that the state agency pushing this controversial pesticide program has a legal and moral duty to explore cleaner, safer alternatives."

CDFA's apple moth treatments began when CDFA aeriually sprayed communities in Monterey and Santa Cruz counties in 2007 with an untested pesticide to purportedly eradicate the non-native moth. Even though evidence showed it had been in the state for a decade or more, the agency claimed the moth's presence was an "emergency" and sprayed without performing legally required health and environmental assessments. After the spraying, hundreds of people reported illnesses. In late 2007, CDFA revealed plans to expand the spraying to the Bay Area. Following an unprecedented public outcry, and rulings by both the Santa Cruz and Monterey superior courts requiring CDFA to comply with the California Environmental Quality Act (CEQA), CDFA halted its spraying activities and prepared an EIR, which was published in March 2010. A month later several environmental and civic organizations challenged the pesticide program and EIR in court.

"Among the most stunning statements in this ruling is that CDFA is not 'able or required by CEQA to evaluate any environmental program impacts' because the department does not know where LBAM will be found or what treatments will work to control the insect. Even if we set aside the absurdity of pursuing a program of pesticide treatments for an insect that has done no damage, this conclusion undermines the fundamental tenet of California environmental law, which is that the purpose of an EIR is to inform the public of the impacts of a program *before* the program takes place," said Nan Wishner of the California Environmental Health Initiative (formerly Stop the Spray East Bay). "If an agency does not know what the risks are, common sense says the program should not be allowed to proceed."

"CDFA's plans to apply pesticides in communities throughout California to control a moth that has little to no impact on agriculture are misguided at best," said Erin Tobin, an attorney with the public interest law firm Earthjustice representing the groups in court. "Unfortunately, the burden is now on the public to protect themselves from chemicals that CDFA has not shown are necessary or even effective."

The coalition that filed suit includes Our Children's Earth Foundation, Mothers of Marin Against the Spray (MOMAS), Stop the Spray East Bay, Californians for Pesticide Reform, Stop the Spray San Francisco, Pesticide Watch, Pesticide Action Network, the

Center for Environmental Health, Citizens for East Shore Parks, the cities of Berkeley, Albany, and Richmond, and the City and County of San Francisco. The coalition is considering an appeal of the court's decision.

The groups are represented by attorneys with Earthjustice, Cooley LLP, and the San Francisco City Attorney's Office.

Read the court decision:

<http://earthjustice.org/documents/legal-document/pdf/apple-moth-decision>

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