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Cities and Citizen Groups Sue over Apple Moth Program
Suit charges environmental analysis fundamentally flawed

Oakland -- A coalition of cities and health, environmental and mothers' groups filed suit Thursday challenging the California Department of Food and Agriculture's (CDFA) light brown apple moth eradication program. The suit is a culmination of nearly three years of public outcry over state-sponsored pesticide spraying for a moth experts say has been here for decades without damaging crops. Central Coast counties were sprayed from the air in 2007 in an attempt to eradicate the moth. Bay Area counties, including the highly populated urban core, were next on the list until public opposition forced a temporary halt to aerial spraying of cities. CDFA maintains it has no current plans to use further aerial spray for the moth, but plans ground spraying in communities across the state.

The coalition of groups filing 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, and the cities of Berkeley, Albany, and Richmond. The coalition is represented by Kathleen Goodhart and Summer Wynn of Cooley, and Deborah Reames of Earthjustice.

The apple moth program began in 2007 with a controversial "emergency" aerial spraying of an untested pesticide in Monterey and Santa Cruz counties, after which hundreds of people reported illnesses. CDFA proposed to begin spraying Bay Area cities in 2008. The announcement was followed by an unprecedented public outcry and rulings by both the Santa Cruz and Monterey superior courts ordering CDFA to comply with the California Environmental Quality Act (CEQA) before conducting additional spraying in those counties. CDFA was compelled to prepare an environmental impact report (EIR) on its overall eradication program for the apple moth. That EIR was finalized last month. In the meantime, CDFA put urban spraying on hold.

The lawsuit filed in Alameda County Superior Court today – the 40th anniversary of the first Earth Day – charges that the EIR is not based on sound science, and is invalidated by a last-minute change in the objective of the program from eradicating to merely controlling the moth, a change CDFA made after the EIR was finished. As a result, the EIR does not examine a reasonable range of alternatives as required by law, including a "no-action" alternative as well as minimally toxic or non-toxic methods targeted as control and not eradication treatments, which were suggested by the public and other agencies.

"Even CDFA has acknowledged that its plan to use heavy spraying of pesticides to eradicate the apple moth was a terrible idea, as was the goal of eradication," said Deborah Reames of Earthjustice. "It isn't safe, it won't work, and it isn't necessary. Fortunately, the public outcry against CDFA's zealous campaign has been and continues to be just as forceful. We are particularly impressed that it includes so many who raised their voices for the first time ever for an environmental cause."

"We are honestly stunned that the state continues to waste our tax dollars as it moves ahead with an ill-conceived program that puts kids at risk – all for a moth that has not caused damage in the state," states Debbie Friedman, Chairperson for MOMAS. "Pediatricians and other experts have not minced words: kids who are exposed to even parts per billion of certain pesticides can be impacted with lifelong very serious health issues, like asthma, cancer and fertility problems in adulthood. The chronic exposure to unknown and untested chemicals as outlined in the apple moth EIR – whether by ground sprays, "twist ties" or other pesticide treatments – is unacceptable considering the scientific knowledge that is available to us in this day and age."

"Forty years ago, California's lawmakers passed CEQA to maintain a quality environment for the people of the

state,” said Kathleen Goodhart, an attorney with Cooley. "CEQA requires full disclosure of a program's environmental and health impacts and meaningful consideration of less harmful alternatives, all supported by credible evidence. CDFA's EIR for apple moth eradication does not satisfy CEQA's mandates."

CDFA currently plans treatments across the state ranging from ground spraying of pesticides and use of chemical "twist tie" diffusers to mass releases of irradiated moths and predatory wasps. In fact, the area CDFA describes as "needing treatment" has expanded from Bay Area counties to most of the state, including the Central Valley, where experts say temperature extremes would prevent the moth from gaining a foothold. CDFA says that aerial spraying will not be used against the moth "at this time." However, the EIR includes large aerial spray areas in 11 counties, and provides for possible aerial spray in any area where the population is less than 100 people per square mile. This would include most of Monterey County and large areas of 11 other counties – including the East Bay Regional Parks, Mt. Tamalpais State Park, watershed lands used to collect and store drinking water, and other treasured open spaces. The EIR includes provisions for spraying of schools and parks, and makes clear that CDFA is prepared to use warrants and law enforcement to force pesticide spraying of private property if owners refuse.

The apple moth program has come under fire from independent experts since the outset. The National Academy of Sciences in 2009 issued a devastating critique of the program's lack of sound scientific justification. A number of scientists and growers criticized the program and called for its end at a state Senate Agriculture Committee hearing on the program last month. A study published in January by scientists from UC Davis and New Zealand, where the moth has been established for more than 100 years, confirmed what the coalition filing today's lawsuit has been saying for three years: that the apple moth is not a serious pest and can be easily controlled, if control is necessary, primarily by natural insect predators.

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