

California Court Halts State Pesticide Spray Programs

STATE FAILS TO CONDUCT ENVIRONMENTAL IMPACT ANALYSES



An agriculture aide for the state of California sprays citrus trees to fight Asian citrus psyllids.

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A California court in January halted a state program that mandated pesticide spraying and other applications for invasive species at schools, organic farms, and backyards across the state. The court found that the state had inadequate environmental assessments and public disclosure of adverse effects for the pesticides used. The California Department of Food and Agriculture's (CDFA) Statewide Plant Pest Prevention and Management Program required no site-specific analysis of hazards before the application of 79 pesticides, including some known to cause cancer and birth defects and highly toxic to bees, butterflies, fish and birds.

This action came in response to a lawsuit filed by the City of Berkeley and 11 public health, environmental, conservation, citizen and food safety groups, including Beyond Pesticides, which argued that CDFA has failed in its duty to protect human health, the environment, and the state's organic agriculture. CDFA's lack of compliance with California's Environmental Quality Act (CEQA) resulted in the court's suspension of "all chemical activities undertaken... to control or eradicate pests," "unless and until" the agency corrects violations.

The court injunction follows an earlier court ruling in January annulling CDFA's Program Environmental Impact Report (PEIR), due to numerous state environmental law violations. Under CEQA, agencies must produce an Environmental Impact Report (EIR—the California state equivalent of a federal Environmental Impact Statement) for any project with potentially

significant environmental impacts. Unlike the National Environmental Policy Act (NEPA), it also requires the state to prevent or mitigate negative impacts. Agencies may avoid conducting an EIR for each action by conducting a programmatic EIR (PEIR) for their programs.

COURT FINDINGS

In its implementation outline for the program, the PEIR gave CDFA carte blanche to use more pesticides in a state already over-burdened with pesticides in the environment. The court labeled as "woefully deficient" CDFA's analysis of the cumulative impacts of adding pesticides to the state's already hefty environmental burden of over 150 million pounds released annually. It cited "unsupported assumptions and speculations" contained in the PEIR as a basis for concluding that pesticides would not contaminate waterbodies. Potentially significant pollinator impacts were also "improperly ignored." The court further concluded that in the PEIR document CDFA had granted itself authority "to implement a broad range of practices without evaluating the site-specific conditions" as a basis for determining their impacts.

FUTURE OF STATE PROGRAM IN QUESTION

This nearly unprecedented court decision has put the future of the statewide "invasive" pest control and management program in indefinite limbo. Despite years of contestations from public and environmental organizations, CDFA has continued a pattern of managing pests by invoking emergency provisions in California's Food and Agriculture Code. The emergency declarations exempt CDFA from requirements to analyze the health and environmental impacts of its pesticide applications

and to provide notice and comment opportunities for public input into decisions that could threaten the welfare of their communities. This cloak of secrecy has angered local residents who have been exposed to an array of toxic and carcinogenic pesticides without advanced knowledge or consent in the name of "emergency pest eradication."

ASSESSMENT OF ENVIRONMENTAL IMPACT REQUIRED

CDFA describes its Statewide Plant Pest Prevention and Management Program as an "effort by CDFA to protect California's agriculture from damage caused by invasive plant pests." Not too long ago, CDFA instituted an aerial spray program to attempt to eradicate the light brown apple moth (LBAM). Communities were bombarded by synthetic pheromones of an undisclosed composition sprayed from airplanes flying in grid patterns over houses, schools, workplaces, and parks. Intensive public outcry in northern California forced the agency to abruptly cancel its aerial strategy, an action that had little impact on the overall spread of the moth. In fact, to this day, CDFA has not documented any damage whatsoever that it can attribute to the LBAM.

The PEIR was produced in part as response to the LBAM debacle under a 2008 bill, AB 2763, introduced by then Assembly Member John Laird of Santa Cruz County. The law's primary purpose was to require the state to compile a comprehensive list of potential future invasive species and outline a range of approaches for dealing with them. While the bill did not require a PEIR to be written, CDFA seized the opportunity to draft the PEIR and include in it a large number of possible pesticide programs that would not require any further CEQA review. In this way, the PEIR allowed CDFA to avoid writing additional EIRs, which are intended to examine site-specific impacts of pesticide applications and the unique conditions inherent in individual communities and ecosystems around the state. The PEIR also eliminated the mandate to solicit public input on individual pest programs.

NON-PESTICIDE APPROACHES MUST BE CONSIDERED

The ruling does not completely paralyze CDFA. It still allows the agency to perform a full range of non-pesticide related activities, including pest identification, site inspections, and the imposition of quarantines, among others. The agency can still use pesticides associated with its other programs, although such uses are likely limited to just two that were identified in the PEIR as having prior CEQA approval, according to Nan Wishner of California Environmental Health Initiative, a lead plaintiff organization in the lawsuit. The decision also does not limit the individual choice of farmers, other institutions, companies, or residents from spraying pesticides on their land. Even with these exceptions, this court ruling still represents a big victory for those working to curtail pesticide use in California and for those advocating for a more ecologically based approach to managing pests and invasive species.

Importantly, the court decision does not prevent CDFA from producing specific EIRs relating to individual projects. The use of individual EIRs allows for better public comment opportunities that can suggest effective non-pesticidal remedies. It remains to be seen whether CDFA will produce specific EIRs and public input opportunities.

Since the onset of CDFA's 2014 pest program, more than 1,000 pesticide treatments were carried out. The program allowed fumigation, ground and aerial spray, and other application methods on public lands, schools, parks, and in residential neighborhoods. The 79 chemicals approved in the PEIR include: bee-toxic neonicotinoids; the chemical warfare gas chloropicrin, which is banned in Europe; methyl bromide, an ozone depleter with five times the global warming potential of carbon dioxide; and, chlorpyrifos, which threatens 97 percent of endangered wildlife.

This latest court decision falls on the heels of new California regulations that restrict the use of certain pesticides near schools and daycare centers. As of January 2018, farmers are prohibited from spraying certain pesticides during school days, between 6am and 6pm, and within a quarter of a mile from K-12 public schools and licensed daycare centers. The first of their kind, the new statewide regulations require farmers to annually report the pesticides they plan to use near schools to their county agricultural commissioner. After more than 50 people on school campuses became ill due to pesticide drift, these regulations are designed to better protect the health of children, teachers, and school staff.

CONCLUSION AND ACTION

CDFA's culture of emergency spraying needs to change in order for the agency to fully embrace its responsibility to protect human health, the environment, and the economic welfare of the people it serves. With a heightened public awareness and concern about the threats posed by rampant pesticide use, it is incumbent upon CDFA to change not only its pest management strategies and practices, but also its mindset going forward. Instead of spraying first and asking questions later, as was the case with LBAM, CDFA must initiate pest programs that advance sound ecosystem management, in transparent consultation with the constituents it represents.

In California and across the nation, it is critically important that agencies deliberately seek out advisors and hire staff with knowledge and hands-on expertise in sustainable and organic agriculture and land management to assist in moving the state away from pesticide-intensive methods. State agencies authorized to use or require the use of pesticides must actively engage the public as partners and work closely with them to devise robust programs that respond to the public's desire to expand ecologically sustainable and organic agricultural policies and practices that protect human health and the environment.