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Assembly California Legislature

JOHN LAIRD

ASSEMBLYMEMBER, TWENTY SEVENTH DISTRICT

COMMITTEES
Chair, BUDGET
JUDICIARY
LABOR & EMPLOYMENT
NATURAL RESOURCES

September 24, 2007

A. G. Kawamura
Secretary
Department of Food and Agriculture
1220 N Street, Room A-400
Sacramento, California 95814

Dear Secretary Kawamura:

I appreciated our latest conversation regarding the aerial spraying for eradication of the Light Brown Apple Moth (LBAM) in Monterey County. In that conversation, I indicated that with the marathon last weeks of the legislative session now over, I would again review the latest developments on this issue with my staff members. It is clear from the constituent contacts with my local office – by phone, e-mail, letter and office visits – that the public process surrounding this issue was sorely lacking. I know you demonstrated your personal concern by being present for the spraying, which is admirable, and that you want a better process going forward – in both continued efforts in Monterey County and the coming eradication effort in Santa Cruz County. I wanted to use this letter to set out in a clear manner my advice to the Department as you continue to grapple with this issue.

I remain concerned that not everyone within California Department of Food and Agriculture (CDFA) has fully grasped the breadth of the Department's failure to address public concerns or how contentious aerial spraying is in Monterey County and will be in Santa Cruz County.

While some residents adamantly oppose aerial spraying in principle, the vast majority of residents who oppose the spraying in Monterey County do so because they are sincerely concerned about their health and the health of their loved ones. They have reasonable questions about the science that have not been answered thoroughly or in a manner they understand. They remain unconvinced that aquatic invertebrates in the Monterey Bay National Marine Sanctuary will not be impacted, and believe CDFA overlooked the Sanctuary's concerns. CDFA's handling of the process has fueled residents' anxieties and suspicions to such an extent that many residents believe CDFA is willing to move ahead regardless of whether concerns about their own health have been adequately addressed.

I cannot overstate that merely fine-tuning messaging or hosting a few more open house events a week or so before aerial spraying is scheduled will be woefully inadequate to relieve public concern. It is critically important CDFA take immediate and meaningful action to ensure there is a good public process based on sound science going forward, even if it means delaying further aerial spraying.

Public Process Concerns

The manner in which the Monterey area spraying was begun led to public concern that CDFA is not being expeditious or entirely forthright in providing information about its plans. While CDFA is apparently planning a second application in Monterey County on or around October 8, the Department still has given no indication whether it intends to have further public consultation beforehand. On September 19, staff from the US Department of Agriculture (USDA) and CDFA stated the 2007 eradication activities would need to be completed by mid-November. Meanwhile, we are told concrete plans have not been developed in Santa Cruz County, but some sort of public process is planned for mid-October. How the Department decides further public process proceeds will strongly influence how the public receives any future Department actions.

As you know, the two open house events in Seaside and Monterey left many residents extremely frustrated. A forum was organized only after the City of Monterey called on the CDFA to postpone their plans until the public's concerns had been addressed. The forum was intended to give residents an opportunity to ask questions and express their concerns. However, according to my staff, many residents who submitted questions or spoke felt strongly they were not receiving forthright responses to some key questions. I appreciate CDFA's responsiveness to the City of Monterey's request, as well as the fact you personally attended the forum. However, I expect CDFA to reflect on this event to ensure future forums are more productive.

The notification process has also been highly unsatisfactory. The CDFA's website states "residents in the affected area will be notified in writing at least 72 hours prior to the aerial application of the pheromone." While residents received notification in English and in Spanish well in advance of the September 5-7 dates, notification postcards for the September 9-11 spraying started arriving 48 hours in advance and were only in English. When my office brought this to the Department's attention, CDFA staff stated the Department is only legally required to provide notification 24 hours in advance, because the eradication program is being done on an emergency basis. Resorting to this purely legalistic interpretation might well cover the Department on a legal basis, but was a public relations disaster that only served to fuel suspicions that spraying was being unnecessarily rushed. Moreover, my office has received dozens of complaints from residents in the eradication zone claiming they never received notification in the mail.

Since the spraying took place, my office has been forwarded nearly 80 emails from residents who report they or their family members are experiencing health problems. Residents are being advised to go to their physician who can then submit a report to

officials. The standard of proof to demonstrate a causal relationship between spraying and many of the symptoms described in the attached emails is extraordinarily high and perhaps impossible. Given the fact aerial spraying of the CheckMate products has never occurred over an urban area, I strongly encourage you to create a dedicated LBAM health hotline to record residents' complaints. I believe it is vitally important this information is compiled and analyzed, particularly given the fact there is no existing data on the potential human health impacts of aerially spraying the CheckMate products.

Unanswered Questions

One key question in particular has not been answered to the public's satisfaction. Residents are dismayed when they discover the inert ingredients in the CheckMate products are a trade secret. Describing the nature of the inert ingredients as an "organic polymer" or "urea" has not allayed their concerns. I therefore believe this information should be disclosed. By providing this information in a way that does not disclose Suterra's specific, protected formulation, the CDFA could make significant strides in reducing the public's health fears.

In addition, many residents are not convinced the pheromones in the CheckMate products are safe for humans based on animal studies of other pheromones. You have stated on several occasions that "pheromones are among the most environmentally friendly treatments ever used to eradicate a pest infestation in California." Unfortunately, CDFA's credibility among the public has now been severely strained. I strongly encourage you to arrange a third-party literature review of all relevant scientific studies on the human health and environmental safety of pheromones. The conclusions of this review should be presented in a non-scientific format in advance of any future spraying.

Aerial Spraying Process

In the public forum on August 29, it was stated more than once that the California Department of Pesticide Regulation (DPR) would be monitoring the spraying. However, a DPR memorandum dated August 27 from Jay Schreider, Primary State Toxicologist, and David Kim, Environmental Scientist, states, "no environmental monitoring is needed for any of the application methods described on the labels." It would be helpful to public concern to explain this apparent discrepancy as well as whether DPR conducted environmental monitoring in Monterey County on September 9-12.

In addition, we received numerous complaints about CDFA's change of plans each night when the spraying was happening. Residents who had cleaned their outside furniture, for example, found it frustrating to learn their neighborhood had not been sprayed, but would be the following evening. Several residents who do not live in proximity of the airport report they heard and/or saw the planes fly back and forth over the same area multiple times throughout the night. A number of residents are resolute their neighborhoods were sprayed more than once.

One resident from Pacific Grove reported he sat outside for an hour and a half and watched one plane make 10 round trips over the same track. His concern is not with the aerial spraying per se, but rather if it has to be done, it should be done effectively.

While these concerns are beyond my personal ability to verify, the frequency with which my office heard these types of complaints demonstrates that the CDFA needs to establish procedures for public notification before, during and after eradication activities. The public is entitled to the most up-to-date information on all aspects of the CDFA's eradication program.

Eradication Plan

An additional major public relations problem is that CDFA cannot be more specific about when the LBAM eradication plan and associated environmental assessment (EA) will be available.¹ I am also concerned CDFA could be considering the use of ground-based application of insecticides for high-infestation areas.

Presently, CDFA is exempt from conducting a CEQA review of its eradication activities. An environmental impact statement will not be required for aerial spraying of the CheckMate products at any point, and a Section 18 exemption has been granted for these products until 2010 (when normally they are only granted annually). But according to the environmental assessment for the Seaside Area, "An eradication plan is in development and, if implemented, will likely call for the use of pheromone treatments alone or in conjunction with *other chemical treatments* (emphasis added)." I am deeply concerned that CDFA may adopt the use of insecticides for dealing with high infestations in heavily populated areas when emergency exemptions are in place. I cannot understate the gravity of such a decision and the public health and public process issues that would come from it.

Along similar lines, several nursery owners in my district have contacted my office to express their concerns about the blanket spraying of chlorpyrifos in the nursery setting. The nursery industry believes the same control can be achieved within a bona fide Integrated Pest Management (IPM) program by spot treatment with chlorpyrifos and the use of less toxic compounds applied to the remaining nursery stock. I strongly encourage the CDFA to work quickly toward a more sustainable alternative that would reduce the use of harmful chemicals, thereby reducing the potential of chlorpyrifos reaching sensitive environmental ecosystems, including the Sanctuary. If you would like a meeting with these nursery owners, I would be happy to set it up on an expedited basis.

¹ The EA for the "Seaside Area in California" and the "Finding of No Significant Environmental Impact" (FONSI) both state an eradication plan is being developed. The FONSI also states an EA will be completed on the eradication plan when it is finalized.

Research

Going forward, I would like CDFA to provide more information about ongoing research activities to deal with LBAM, particularly findings that led the CDFA to conclude pheromone mating disruption would be successful and feasible in California. The University of California's IPM program has published two versions of "Light Brown Apple Moth in California: Quarantine, Management and Potential Impacts" on July 17 and September 12, 2007. On Page 10, the July version states, "Research is needed to determine if LBAM mating disruption would be successful and feasible in California." This sentence has been deleted in the September version, which now states, "Mating disruption currently is the primary tool being used by the CDFA for the eradication effort in California."² I would appreciate knowing the details of research that has been completed between July and September leading to this new conclusion. Additionally, I request a written status report on what research is being conducted, including studies on sterile moth technology, and estimated dates of completion.

As I have previously stated, I believe third-party review based on sound science is a critical element in the public review process. When the public did not feel adequately served by CDFA's process in Monterey after it decided to move forward quickly with the aerial spraying, I undertook to ask the questions the public was asking about the science and views of various interested parties.

I followed up with 20 government agencies and nongovernmental organizations, asking them to provide their expert opinion on whether CDFA's plans for multiple aerial spraying could negatively affect public health and the environment. The Natural Resources Defense Council and the Pesticide Action Network North America have responded and expressed their support for the type of Integrated Pest Management the CDFA is undertaking. The American Cancer Society responded, "Members of our team reviewed state and federal information on these pheromone products and concluded that this is outside our purview in that there isn't evidence of risk associated with cancer due to exposure to these products."

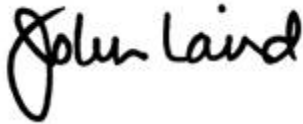
While these responses support CDFA's contention that pheromones are a safe and effective way of dealing with invasive species like LBAM, I would like to see more concerted efforts by the Department to carry out a third-party review. I am still pursuing answers from the additional organizations and agencies that I contacted.

As you know, I was disappointed CDFA moved ahead with the first round of spraying in Monterey County despite clear opposition from a number of local elected officials and

² UC report comparison Page 10: Mating disruption is commonly used in California fruit orchards for peach twig borer, oriental fruit moth, and codling moth. Mating disruption has not worked well with various leafroller species. However, in Australia LBAM has been managed in citrus, grapes, and other crop systems using mating disruption. **Mating disruption currently is the primary tool being used by the CDFA for the eradication effort in California.** ~~Research is needed to determine if LBAM mating disruption would be successful and feasible in California. Currently, novel strategies to employ synthetic pheromones for LBAM suppression are being investigated in Australia and New Zealand, and these may be available in the future for California.~~

my call for a delay. However, after our conversation earlier this week and knowing that, as an organic farmer, you are committed to protecting human health and the environment, I am confident you will give my requests and recommendations your full attention. I stand ready to meet with you, and assist in arranging meetings with any of my constituents, local agencies, or local elected officials that you may find desirable.

Sincerely,

A handwritten signature in black ink that reads "John Laird". The signature is written in a cursive, slightly slanted style.

JOHN LAIRD, Assemblymember
27th District

JL:cf

Attachment: Compilation of citizens' health complaints (*sent to CDFA only*)

Cc: Governor Arnold Schwarzenegger
Senator Barbara Boxer
Senator Dianne Feinstein
Congressmember Anna Eshoo
Congressmember Sam Farr
State Senator Jeff Denham
State Senator Abel Maldonado
State Senator Joe Simitian
Superintendent Paul Michel, Monterey Bay National Marine Sanctuary
Lawrence Hawkins, United States Department of Agriculture
Helene Wright, United States Department of Agriculture
Mary-Ann Warmerdam, Director, California Department of Pesticide Regulation
Monterey County Board of Supervisors
Santa Cruz County Board of Supervisors
Mayor Dene Bustichi, City of Scotts Valley
Mayor Dan Cort, City of Pacific Grove
Mayor Chuck Della Sala, City of Monterey
Mayor Sue McCloud, City of Carmel
Mayor Mettee-McCutchon, City of Marina

Mayor David Pendergrass, City of Sand City
Mayor Emily Reilly, City of Santa Cruz
Mayor Ralph Rubio, City of Seaside
Mayor Manuel Quintero Bersamin, City of Watsonville
Mayor Joseph Russell, City of Del Ray Oaks
Mayor Michael Termini, City of Capitola
Ken Corbishley, Agricultural Commissioner, Santa Cruz County
Eric Lauritzen, Agricultural Commissioner, Monterey County
Bill Hammond, Monterey County Farm Bureau
Bob Perkins, Monterey County Farm Bureau
Steve Bontadelli, Santa Cruz County Farm Bureau
Dave Cavanaugh, Santa Cruz County Farm Bureau
Sharen Muraoka, American Cancer Society
Gina Soloman, Natural Resources Defense Council
Dr. Marcia Ishii-Eiteman, Pesticide Action Network North America