EAST BAY PESTICIDE ALERT
Don't Spray California
2399 E. 14th Street #24 San Leandro, CA 94577 (510) 895-2312 beneficialbug@netzero.net

September 28, 2009

Jim Rains, Staff Environmental Scientist
California Department of Food and Agriculture
jrains@cdfa.ca.gov, LBAM_EIR@cdfa.ca.gov

The Draft Programmatic Environmental Impact Report for the Light Brown Apple Moth (LBAM) Program by ENTRIX, contracted by the California Department of Food and Agriculture (http://www.cdfa.ca.gov/phpps/PDEP/lbam/envimpactrpt.html), does not answer all of the questions asked during the public comment periods held in 2008, and leaves many serious concerns unaddressed.

To assure that specific questions are easily distinguishable from our comments, questions we expect to have answered in the Final EIR are indented and in bold in the comments below.

Our previous questions, most of which were not addressed in the LBAM-DPEIR, pertain to a wide variety of aspects of this program, as well as to the process of how this program is connected to related programs, and are also attached (and available online at http://dontspraycalifornia.org/PEIR%20comments.pdf).

THE LBAM "EMERGENCY":

The LBAM-DPEIR continues to perpetuate the myth that the LBAM is a pest likely to devastate the agricultural industry, as well as the natural environment.

Many scientists have evaluated the LBAM program and found it to be lacking sound science, including most recently a National Academy of Sciences committee, contracted by the United States Department of Agriculture, the agency overseeing the LBAM program. Even Dr. Robert Venette, whose "Mini Risk Assessment" for LBAM has been used by the USDA and CDFA to justify the LBAM program in California, was among the committee members, who reportedly were unanimous in their concern over the lack of scientific rigor of the USDA's reasoning to deny reclassification of the LBAM to a non-actionable pest (http://nap.edu/catalog/12762.html).

This EIR process has been specifically ordered by two California courts as a challenge to the unsubstantiated claims of LBAM damage, and now the LBAM-DPEIR itself confirms that "no direct crop damages have been experienced to date in areas subject to existing infestation" (Chapter 3, page 20).

This fact alone makes the LBAM program completely unnecessary.

IDENTIFICATION:

In spite of the admission that no crop damage has occurred, the preparers of the LBAM-DPEIR contradict themselves with the vague claim that "Recent LBAM infestations in organic berries have caused up to 20 percent crop loss" (Summary, page 3). This statement is likely to mislead many to believe that 20 percent of ALL organic berries have been lost to LBAM, when in fact the recent claim of LBAM larvae damage in ONE berry field cannot even be verified.

USDA documents clearly state that "Positive identification of LBAM can be made with certainty **only** by examining an adult" (http://www.aphis.usda.gov/plant_health/cphst/downloads/newsletterfall2007.pdf, page 2), and "Absolute certainty is not possible because there are still many California tortricids whose DNA has not been sequenced so the reference database is incomplete" (http://www.aphis.usda.gov/plant_health/plant_pest_info/lba_moth/downloads/LBAM_IPM_UCDavis.pdf, page 8). In fact, according to CDFA's annual Report to the Legislature, the USDA continues to fund CDFA research to improve the reliability of identifying LBAM (see http://www.cdfa.ca.gov/phpps/PDEP/lbam/pdfs/Reports/2008LBAMLegRep.pdf, page 12).

RISK OF INCREASED PRIVATE PESTICIDE USE:

With such misleading statements about alleged crop loss, the prediction of private pesticide use if the LBAM program does not continue, is likely to become a self-fulfilling prophesy among growers and gardeners who trust CDFA and the EIR process, who suffer the consequences of inspections and quarantines imposed on them as a result of the LBAM program, or who may simply be frightened by the hyperbole of USDA's current "HungryPests" advertising campaign (http://hungrypests.org).

We believe that these statements and actions by CDFA and USDA, the lead agencies involved in the LBAM program, in fact provide the most likely reasoning for increased private pesticide use. Since LBAM is not doing any damage, the moths themselves would not prompt increased private pesticide use at all. In any case, attempting to prevent potential pesticide use through actual pesticide use is just plain irrational.

- **Since LBAM is doing no actual damage, on what evidence do you base your prediction that private pesticide use would increase, if we do not allow you to apply pesticides yourselves?**

- **What is your responsibility for preventing such increase in private pesticide use?**

- **Is the "HungryPests" advertising campaign by the USDA, the federal agency overseeing this program, more likely to encourage or discourage increased pesticide use?**

- **How many farmers and growers have been required to either destroy their crops or apply pesticides for LBAM, who would not have used pesticides otherwise?**

TRADE AGREEMENTS:

Farmers and growers have been complaining about damage done to their crops and livelihoods by inspections and quarantines. No one has had any reason to complain about LBAM since it has done no damage. Even the Sonoma and Napa "stakeholders" who urged action to eradicate LBAM in an apparent fit of panic, clearly expressed that their main concern are the impacts of the quarantines (http://lbamspray.com/00_Documents/2009/20090511SonomaBoardLetter%20toCDFA.pdf).

- **Isn't it the NAFTA trade agreement which forces quarantines and trade limits on both sides of the U.S. border, because of LBAM and other organisms?**

- **What are the rights of farmers and growers in deciding whether they want to cater to a trade agreement, which has as part of its goal the spread of a larger pesticide industry?** (See NAFTA's own pesticide labels to ease trade of pesticides http://www.epa.gov/oppfead1/international/naftatwg/labels/implem-labels.htm)

- **What is the economic impact of the LBAM program on organic and biodynamic, small scale farms, both from USDA/CDFA requirements to quarantine, overhandle crops in search of LBAM, and apply pesticides or destroy crops, as well as from organics consumers' shift away from locally grown crops no longer considered organic by them?**

- **Wouldn't reclassification of the LBAM to a Class C or non-actionable pest solve quarantine issues?**

AGRICULTURAL PRACTICES:

In our previous comments we asked you to assess how current agricultural practices, particularly monocropping and dependence on chemicals, have contributed to the vulnerability of conventional farms to "pests" such as the LBAM, and to compare how organic, ecological agricultural practices that nurture and mimic natural ecosystems perceive and manage such "pests".

Many of the insects we are told to fear, including LBAM, have natural cycles, during which their populations ebb and flow, and which do not operate according to industry's annual fiscal cycles. Eradication and control programs interfere with these cycles and with nature's ability to adapt to change.

The industry's unwillingness to share some of the abundance of the harvest with the surrounding ecosystem, and the insistence that everything grown in a field must go to market, is not only unrealistic, but a policy that does more damage to a natural, healthy ecology than any insect ever could.

Like most of our concerns, these were not addressed.

- **Whose responsibility is it when monocropping and chemical use cause the vulnerabilities that invite so-called pests to flourish in modern agriculture?**

- **How much crop loss is incorporated into your expectation of marketable harvest, and how much of the crop is expected to feed the surrounding ecosystem?**

TARGET LOCATIONS OF AERIAL APPLICATIONS:

In 2000, we were told by the Sonoma County Tax Assessor that only 5% of Sonoma County is considered "urban". Californians are proud of our green space, and many live in or near forested areas.

- **What precise locations are categorized as "agricultural" or "forested" areas to be aerially sprayed or SPLATed in each county?**

- **For instance, would the East Bay Hills and the East Bay Regional Park District lands fall under the jurisdiction of the LBAM program for aerial applications?**

- **How about Albany Hill?**

- **How many residents live in or near each of the areas targeted?**

TRAPPING PROGRAM:

Eradication programs are being justified with trap finds, which trigger quarantines, harassment of organic growers especially, and forced pesticide applications. But increased numbers of finds do not reflect that numbers of traps also increased, and consistent finds in massive trapping programs is statistically expected in any naturalized population of insects.

- **How do traps determine whether what is found in them is doing any damage, is likely to do future damage, or whether it is in balance with the local ecology?**

- **Why does CDFA continue the trapping program, which uses the same chemical that injured hundreds to thousands in Monterey and Santa Cruz, even though the rest of the pesticide program has supposedly been suspended, pending this EIR process?**

CHEMICAL INGREDIENTS AND INTERACTION:

- **What are the exact chemical ingredients, including so-called "inerts", carriers, adhesives, insect dyes, or other additives, for every part of the LBAM program?**

- **What are the cummulative and synergistic effects between each chemical, each product, and any previous chemical used in each of the locations of the LBAM program?**

"ORGANIC" PRODUCTS:

One common safety claim for two of the pesticides in this program, Btk and spinosad, is that they are "approved" for use in organic agriculture, but according to the Organic Materials Review Institute (OMRI) there are restrictions and concerns with both.

The status of the OMRI Organic Certificate of DiPel, the Btk product used in the LBAM program, is "Restricted" (http://www.valent.com/Data/Labels/DiPel%20PRO%20DF%20OMRI%203-1-10.pdf). According to the OMRI certificate, the product "May be used as a pesticide if the requirements of 205 206(e) are met, which requires the use of preventative, mechanical, physical, and other pest, weed, and disease management practices" and permits use of this product only, "Provided, That, the conditions for using the substance are documented in the organic system plan." (http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=4163ddc3518c1ffdc539675aed8efe33;region=DIV1;q1=national%20organic%20program;rgn=div5;view=text;idno=7;node=7%3A3.1.1.9.31#7:3.1.1.9.31.3.342.7).

While we do not want to suggest that Btk products are in fact organic, or acceptable for use in any setting, and we believe that the USDA National Organic Program has actively diluted organic standards, from a legal standpoint the use of DiPel in neigborhoods does not constitute organic use even by the USDA-NOP's own misguided allowances of these products. The prior required management practices have not been met, nor is there an Organic System Plan in place for California neighborhoods, at least not by the agencies perpetrating the forcible spraying. Many residents are however observing their own, much more stringent organic standards than those of the USDA, and their food crops are at risk of being decimated by this program.

OMRI also states that "Spinosad, while an improvement over some materials, is still fairly broad spectrum and not representative of an ecological approach" (http://www.omri.org/spinosad_final.pdf). Spinosad is very toxic to honeybees, oysters and other marine mollusks, and somewhat toxic to birds, fish, and aquatic invertebrates. Ironically it is also harmful to the Trichogramma wasp, another part of the LBAM eradication program.

Spinosad requires microbial activity for breakdown, and if applied where herbicides have been used, build-up in soil is expected. In any neighborhood where residents, gardeners, landscapers, municipal agencies apply herbicides, persistence in soil is a by-product and would be expected to become a danger to humans and honeybees through contact with residues left on site, drift of residues, as well as drift at the time of application. While Spinosad is "approved" for limited use in organic production, it is only considered because of the rich microbial activity found on organic farms. It is not intended for use in city parks where herbicides have been used, nor is it intended for wholesale distribution into neighborhoods where usage of herbicides is not known.

- **What are the rights of farmers and residents, who are observing strict organic standards for health or religious reasons, to protect their food crops from chemical contamination?**

- **How do you propose to mitigate the possibility of spinosad build-up in soils which may lack adequate microbial activity due to previous herbicide applications?**

- **How do you propose to mitigate the impact of spinosad toxicity on honeybees especially, which are in a global crisis in part due to pesticide exposure?**

ENVIRONMENTAL HEALTH:

Over the course of around 1,500 pages, at no time does the LBAM-DPEIR even make mention of the dye to be used for the sterilized LBAM releases, and its potential impacts. A manufacturer's Material Safety Data Sheet of Calco Oil Red N-1700, the dye specified in the USDA's

Environmental Assessment for that portion of the LBAM program (http://www.aphis.usda.gov/plant_health/ea/downloads/lbam-sit-ea.pdf), indicates that the dye may be mixed with mineral spirits (http://www.vwrsp.com/msds/10/820/82021-206.pdf). The MSDS for the dye lists no ingredients, but seems to indicate that toxic metals could be present. These substances may include endocrine disrupters and other public health and environmental hazards, which are not in any way acknowledged.

- **How can you be sure that chemically treated and irradiated insect releases will not upset the balance soil organisms need to maintain soil and overall ecological health, which organic gardens in the area, as well as the surrounding natural ecology, rely on for survival?**

- **Since pet food treated with gamma radiation killed so many cats recently, what evidence do you have that LBAM treated with the same type of radiation will not wreak havock on other insects and soil organisms for which LBAM are food?**

- **How will the release of millions upon millions of LBAM and wasps impact the foraging resources of other insects, especially of other pollinators, particularly the increasingly endangered bee population?**

HUMAN HEALTH:

While the public's concern about the safety of chemically sensitive people is mentioned in the LBAM-DPEIR in passing, it does not actually discuss how the LBAM program would impact, and has already impacted, this population. Instead children are singled out as representing the sensitive, without differentiating between the vulnerabilities of healthy children who tend to be more resilient, and those already injured and struggling with cancer, MCS, AIDS, MS, thyroid disorders, arthritis, or other immune compromising health or living condition.

None of the hundreds who reported being injured by the LBAM program already were contacted, nor were their doctors.

Also not taken into account was the emerging body of research on chemical poisoning, including body burden studies, synergism, bioaccumulation of and sensitization to synthetic chemicals, and the long list of historical claims of safety by the pesticide industry, eventually revealed to be false by an even longer list of associated injuries and deaths.

- **Are any of the ingredients in any of the products to be used in the LBAM program, including so-called "inerts", carriers, adhesives, insect dyes, and other additives, endocrine disrupters or other chemicals which provoke a nonmonotonic dose response, where damage increases as the chemical exposure decreases?**

- **Which products contain chemicals that have not been fully tested for whether they cause cancer, endocrine disruption, or other health concerns?**

- **On precisely what evidence do you base your predictions of "no significant impact" from products of which not all ingredients are being disclosed, nor have been tested for all health concerns?**

RISK ASSESSMENT:

Environmental reviews should be based on the precautionary principle, which in a nut shell states "better safe than sorry", with a particular view towards protecting vulnerable species and populations, and not on a theoretical risk assessment approach, which determines how much risk to the lives of others is acceptable to those who theorize about the potential impact of an action.

- **In your risk assessment process, where do you draw the line between "acceptable" and "significant" risk?**

- **Specifically, how do you quantify the value of a person's health?**

- **Is it an acceptable risk if 15% of the population is at risk of negative health impact?** (According to the National Academy of Sciences 15% of the population is chemically sensitive to varying degrees.)

- **How about 1 in 8 children? Is that an acceptable risk?** (That's how many kids are vulnerable to chemical exposure because they have asthma.)

HUMAN RIGHTS:

In our previous comments we asked you, again to no avail, to detail the rights of the public to informed consent in regards to their health and safety, and enjoyment of privacy, home, and free movement, and how the LBAM program may impact each of these rights. We asked you to detail how the constant saturation of a neighborhood with pesticides impacts these rights, and who is financially responsible for the cost of medical care and relocation for anyone who may be injured by the LBAM program, or relocates to prevent such injury. None of these issues have been addressed.

- **What are the implications of saturating entire cities with pesticide fumes designed to be present in the environment constantly and indefinitely, on the Americans with Disabilities Act, which requires public access and free movement to all, including infants, elders, immune-compromised, and other sensitive populations?**

PUBLIC ACCESS TO DECISION-MAKING PROCESS:

Though CDFA says it invites public participation, records requests we submitted have been repeatedly ignored, denying us the information to which the public is entitled. During a casual survey of the community opposing the LBAM program we found that most listed in the LBAM-DPEIR (Chapter 1, page 9) as having been notified of the availability of the DPEIR for public comment had not, in fact, received notification, including members of our own collective. Many who had submitted previous comments were not listed at all. Whether the deceased man listed received proper notification remains a mystery to all.

- **How was the distribution list of individuals and organizations in Chapter 1 of the LBAM-DPEIR compiled?**

- **How much was spent on notifying the public of the availability of the LBAM-DPEIR for public comment, compared to how much was spent on the USDA's "HungryPests" advertising campaign?**

The LBAM program has met with resistance from its beginnings. Over the last couple of years thousands have signed petitions; scientists, legislators, municipal bodies, and courts have spoken out in opposition; the public has taken to the streets in protest, organized across regional boundaries, and in some cases prepared for civil disobedience; and the international media took notice. Yet CDFA and USDA insist on continuing this program, in spite of vast sociopolitical opposition, as well as solid scientific reasoning to end this sham.

Perhaps the most important question for which we expect an answer, is this one:

- **Referring to page 91 of the USDA Emergency Programs Manual** (http://www.lbamspray.com/00_USDA/EmergencyProgramsManual%20.pdf)**, how do you define "sociopolitical opposition" that will prevent this program from going forward?**

East Bay Pesticide Alert, also known as Don't Spray California when working on statewide issues, is a collective of individuals, most of whom are disabled by pesticide poisoning, who live in the LBAM quarantine zone and as such are direcly and negatively impacted by the continuation of this program.

We are opposed to the LBAM eradication program in its entirety, and demand an immediate end to all pesticide applications, including traps.

Maxina Ventura
Chronic Effects Researcher
beneficialbug@netzero.net

Isis Feral
Disabled Access Advocate
isisferal@yahoo.com

CC:
EIR@lbamspray.com
www.dontspraycalifornia.org