

Stephan C. Volker
Joshua A.H. Harris
Bridget A. Roberts

Law Offices of
STEPHAN C. VOLKER
436 14th Street, Suite 1300
Oakland, California 94612
TEL: 510/496-0600 ♦ FAX: 510/496-1366
e-mail: svolker@volkerlaw.com

10.420.05

PRESS RELEASE

San Francisco

For immediate release, February 9, 2009

For more information:

North Coast Rivers Alliance (NCRA): Frank Egger (415) 456-6356 or (415) 686-7153
Attorney for NCRA: Stephan Volker (510) 496-0600

OBAMA ADMINISTRATION ASKS COURT TO SUPPRESS IDENTITY OF HARMFUL CHEMICALS USED IN APPLE MOTH SPRAY

San Francisco – Environmental leaders from throughout the San Francisco and Monterey Bay areas have asked Federal District Judge Sandra Armstrong to deny the United States Environmental Protection Agency’s motion to block disclosure of the chemicals used in the CheckMate pesticides sprayed on Monterey and Santa Cruz residents as part of the government’s Apple Moth Eradication Program. EPA has requested Judge Armstrong to prevent disclosure of the chemicals in the spray, claiming the manufacturer’s proprietary interest outweighs the public’s right to know. Previously, EPA approved use of these chemicals for continued spraying by the U.S. Department of Agriculture (USDA) and the California Department of Food and Agriculture (CDFA) in Monterey, Santa Cruz, Santa Clara, San Mateo, San Francisco, Marin, Alameda, Contra Costa, and Sonoma counties. Opposing the spray program and seeking disclosure of its chemical ingredients are the lead plaintiff, North Coast Rivers Alliance, Richmond Mayor Gayle McLaughlin, Albany Mayor Robert Lieber, Santa Cruz City Councilman Tony Madrigal, and leaders of the anti-spray movement in each of the affected counties together with victims of the previous apple moth spray debacle in Monterey and Santa Cruz counties.

The basis for the lawsuit is that EPA ignored key public safety protections of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) in granting an exemption from registration for the ingredients of the two apple moth pesticides sprayed in Santa Cruz and Monterey counties by USDA and CDFA. As a result, several hundred citizens were injured and filed reports with CDFA, many documented by physicians. More than 650 seabirds were killed, and hundreds of upland birds, domestic pets, and other animals were poisoned. USDA and CDFA are threatening to spray these unsafe pesticides again in the San Francisco Bay Area even though EPA’s own regulations classify these pesticides as unsafe for spraying over residential and agricultural areas.

Frank Egger, Board member of the lead plaintiff, North Coast Rivers Alliance, stated that “After 8 years of stonewalling by the Bush Administration, we had hoped that under President Obama, the EPA would choose protection of the public’s health over continued secrecy and corporate profit. Sadly, once again EPA

has adopted industry's commercial interests as its own, ignoring its duty to protect the environment. So we have been forced once again to ask the federal court to order EPA to do its job. No governmental agency is above the law."

Stephan Volker, attorney for the plaintiffs, stated that "EPA's attempt to suppress disclosure of the pesticide's inert ingredients is a betrayal of its duty to prevent environmental harm. EPA's job is to protect the public from dangerous pesticides, not protect the pesticides and their manufacturers' profits from the public," explained Mr. Volker. Mr. Volker pointed out that one of the "inert" ingredients in these pesticides, tricapyrylyl methyl ammonium chloride ("TMAC"), is a harmful chemical that EPA never approved for aerial spraying in urban areas. The Material Safety Data Sheet ("MSDS") for TMAC warns that it is "harmful if swallowed or inhaled," and that ingestion can cause "[b]urns to mouth, throat, and stomach." The MSDS also warns that skin and eye contact with TMAC can cause "severe burns" and "damaged skin." "We are asking the Federal Court to hold EPA accountable for its unlawful exemption of these hazardous pesticides from registration in direct violation of federal environmental laws," stated Mr. Volker. A ruling by Judge Armstrong is expected soon.

Copies of the federal court Complaint, EPA's motion to place its Answer partially under seal, EPA's supporting testimony, NCRA's opposition, and NCRA's supporting testimony and exhibit, are attached.