

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NO SPRAY COALITION, INC., NATIONAL COALITION
AGAINST THE MISUSE OF PESTICIDES, INC., DISABLED IN
ACTION, INC., SAVE ORGANIC STANDARDS NEW YORK
BY ITS PRESIDENT HOWARD BRANDSTEIN, VALERIE
SHEPPARD, MITCHEL COHEN, ROBERT LEDERMAN, AND
EVA YAA ASANTEWAA,

**STIPULATION OF
AGREEMENT AND
ORDER**

00 Civ. 5395 (GBD)
(RLE)

Plaintiffs,

-against-

THE CITY OF NEW YORK, RUDOLPH GIULIANI, as MAYOR
OF THE CITY OF NEW YORK, THE DEPARTMENT OF
HEALTH OF THE CITY OF NEW YORK, NEAL COHEN,
COMMISSIONER OF THE DEPARTMENT OF HEALTH OF
THE CITY OF NEW YORK, THE OFFICE OF EMERGENCY
MANAGEMENT OF THE CITY OF NEW YORK, AND
RICHARD SHEIRER, COMMISSIONER OF THE OFFICE OF
EMERGENCY MANAGEMENT FOR THE CITY OF NEW
YORK,

Defendants.

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WHEREAS, Plaintiffs No Spray Coalition, National Coalition Against the
Misuse of Pesticides, Disabled in Action, Save Organic Standards New York, Mitchel Cohen,
Valerie Sheppard, Robert Lederman and Eva Yaa Asantewaa (collectively, the “Plaintiffs”),
commenced this action in 2000 alleging violations of the Clean Water Act (“CWA”), Resource

Conservation and Recovery Act (“RCRA”), and the State and City Environmental Quality Review Acts (“SEQRA” and “CEQR”) regarding the application of chemical adulticides in or near wetlands and waterways by the City of New York; and

WHEREAS, Plaintiffs’ RCRA, SEQRA and CEQR claims were dismissed in a decision dated September 25, 2000, *No Spray Coalition v. City of New York*, No. 00 Civ. 5395, 2000 U.S. Dist. LEXIS 13919 (S.D.N.Y. Sept. 25, 2000), as affirmed in a decision dated June 5, 2001, *No Spray Coalition v. City of New York*, 252 F. 3d 148 (2d Cir. 2001).

WHEREAS, in consultation with the United States Environmental Protection Agency (“EPA”) and the New York State Department of Environmental Conservation (“NYSDEC”), and in response to public comments received from Plaintiffs and others, the New York City Department of Health and Mental Hygiene (“NYCDOHMH”) has developed an Integrated Pest Management Program to control mosquitoes that includes, among other things, surveillance, education, and adherence to regulations intended to minimize the spread of West Nile virus and reduce the application of chemical adulticides; and

WHEREAS, Plaintiffs do not concede that they condone NYCDOHMH’s Integrated Pest Management Program and continue to request a complete ban on the use of toxic pesticides in New York City; and

WHEREAS, NYCDOHMH, as an agency of defendant City of New York (“City”), acknowledges that chemical adulticides may remain in the environment beyond their intended purpose and may cause certain adverse health effects and are not presently approved for direct application to waterways, and it has sought to address these issues as part of its Integrated Pest Management Program; and

WHEREAS, the NYCDOHMH acknowledges that it has received and responded to comments made by Plaintiffs and others regarding their detailed health and environmental concerns regarding the application of chemical adulticides, as expressed at, among other places, the public hearings on comments in the Final Environmental Impact Statement for NYCDOHMH's proposed *Adult Mosquito Control Programs*; and

WHEREAS, NYCDOHMH recognizes that the public health, and fish and other aquatic life in wetlands and waterways, including some natural mosquito predators, may be adversely affected when chemical adulticides are sprayed over or adjacent to waterways or not in accordance with label instructions and Federal, state, and local regulations; and

WHEREAS, NYCDOHMH recognizes that the resistance of mosquitoes to chemical adulticides has been found to increase with the number of applications and size of area sprayed, and with the repeated use of the same pesticide to control both larvae and adults (*Florida Coordinating Council on Mosquito Control. 1998*), and has sought to address these concerns as part of its Integrated Pest Management Program; and

WHEREAS, as part of its Integrated Pest Management Program, NYCDOHMH regularly analyzes the efficacy of its program including, among other things, its use of chemical adulticides; and

WHEREAS, the NYCDOHMH has reassessed the spraying of malathion and pyrethroid pesticides that it conducted in 1999 and 2000 and has reconsidered its procedures and approach since that time, and continues to do so; and

WHEREAS, NYCDOHMH recognizes that in 2005 the City Council passed and the Mayor approved Local Law 37, which is intended to reduce the amount of pesticides used by

City agencies, and provide new requirements for pesticide applicators and remedies for the misuse of pesticides, and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel on behalf of the respective parties, and Ordered by the Court as follows:

1. Within 90 days of the entry of this order, the City of New York agrees to fund \$80,000 in environmental projects for the purposes of: (1) educating and training New York City residents in restoring natural habitat and wildlife; preserving biodiversity, and protecting New York City's waterways and watershed, which includes monitoring and surveillance for dissolved oxygen, pH, macroinvertebrate diversity, physical habitat, and pesticides; and (2) reducing mosquito-breeding habitats and repelling mosquitoes in New York City. All of the below recipients of such funds are not-for-profit organizations and shall not use such funds for any purpose other than those discussed above. The sum of \$80,000 will be divided as follows:

- a) \$13,000 to the Catskill Center for Conservation and development (dir., Tom Allworth),
- b) \$20,000 to Staten Island Wildlife Refuge (dir. Bob Zink),
- c) \$13,000 to Rocking the Boat (dir. Adam Green, Bronx),
- d) \$20,000 to Friends of Brook Park (dir. Harry Bubbins), and
- e) \$14,000 to Natural Resources Protective Association (dir., Jim Scarcella and Ida Sanoff); and

2. This action is dismissed with prejudice, and without costs or expenses by or to any party except as specifically provided herein; and

3. Notwithstanding paragraph 2 hereof, Defendants agree to pay Plaintiffs' reasonable attorneys' fees, costs, and expert witness fees ("fees and expenses") in connection with the Clean Water Act claims asserted in the complaint. Plaintiffs shall provide Defendants an itemization of such fees and expenses within thirty (30) days of the entry of this stipulation and order by the Court; and Defendants shall provide Plaintiffs with any objection to Plaintiffs' claim of fees and expenses within forty-five (45) days of receipt of Plaintiffs' itemization. In the event that Defendants provide objections to the amount of Plaintiffs' claim of fees and expenses, the parties shall have thirty (30) days within which to resolve their disagreement without court intervention. If the parties are unable to agree to an amount for Plaintiffs' fees and expenses, Plaintiffs shall petition the court for such fees and expenses within forty-five (45) days of the date that Plaintiffs received Defendants' objections. Defendants shall have thirty (30) days from the date that they are served with plaintiffs' Petition to serve and file a response. Defendants shall pay Plaintiffs' fees within ninety (90) days of a final determination of the amount of Plaintiffs' fees, whether by agreement or by the Court. In the event that Defendants fail to object to Plaintiffs' itemization, Defendants shall pay Plaintiffs' claimed fees and expenses within ninety (90) days of Plaintiffs' submission of their itemized claim; and

4. The City of New York and NYCDOHMH agree to meet with the Plaintiffs for two 3-hour sessions to discuss in good faith Plaintiffs' proposals as set forth in their September 25, 2006 letter from No Spray Coalition to the Office of the Corporation Counsel titled "Health and Environmental Concerns Pertaining to New York City's Application of Pesticides, and

Proposals for Alternative and Non-Toxic Approaches," which can be found at www.nospray.org. The Plaintiffs will invite the New York State Department of Environmental Conservation, the U.S. Occupational Health & Safety Administration and the United States Environmental Protection Agency to participate in those meetings; and

5. This order and agreement shall terminate when the City has made full payment as set forth in paragraph numbers 1 and 3 above and has met with the Plaintiffs as set forth in paragraph 4 above; and

6. This agreement may not be used by any person as evidence in any proceeding, except for a proceeding to enforce the terms thereof.

IT IS HEREBY FURTHER STIPULATED AND AGREED, that pursuant to 33 U.S.C. § 1365(a)(3), this settlement may not be entered by the Court until forty-five (45) days have passed from its receipt by the Attorney General and the EPA Administrator.

Dated: New York, New York

April 12, 2007

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SO ORDERED:

George B. Daniels, U.S.D.J.