

# No Spray Coalition

2652 Cropsey Avenue, #7H Brooklyn, NY 11214 [www.nospray.org](http://www.nospray.org)

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To: Judge George B. Daniels  
United State District Court  
Southern District of New York  
Courtroom 21D  
500 Pearl Street  
NY, NY 10007-1312  
(212) 805-6735

CC: Dr. Thomas Farley, Commissioner  
NYC Department of Health and Mental Hygiene

Re: 00 Civ. 5395 (GBD) (RLE)  
No Spray, et al v. City of New York

August 22, 2011

Dear Judge Daniels,

I am writing to you as coordinator of the No Spray Coalition, which was the lead Plaintiff in *No Spray et al. v City of New York*, 00 Civ. 5395 (GBD) (RLE), and which was filed in July 2000 in the U.S. District Court of New York. In that case the No Spray Coalition, Beyond Pesticides and other grassroots environmental organizations and individuals sued the city over its unlawful discharge of toxic chemicals into and over air, land and waters in violation of the Clean Water Act, the Resource Conservation and Recovery Act, and the Federal Insecticide, Fungicide and Rodenticide Act. Several court decisions whittled down the lawsuit to just the Clean Water Act. In 2005, this Court issued a ruling agreeing with the No Spray Coalition's interpretation of the law. The parties then reached a Settlement Agreement on the substance of the case in April 2007 [appended as **Exhibit A**].

I write this letter to call to your attention New York City's violation of the terms of the Settlement Agreement that New York City signed with the No Spray Coalition, et al., in April, 2007 in which you were (and remain) the presiding Judge, and to seek judicial intervention to remedy that situation.

The parties stipulated to certain admissions based on the latest studies militating against pesticides spraying. These include admissions that pesticides:

- may remain in the environment beyond their intended purpose
- cause adverse health effects
- kill mosquitoes' natural predators (such as dragonflies, bats, frogs and birds)
- increase mosquitoes' resistance to the sprays, and
- are not presently approved for direct application to waterways.

Each of these admissions presents an advance in knowledge over what had been the City's position prior to signing the Settlement Agreement. Together, they constitute a significant conceptual hurdle that the City would have difficulty leaping over should it ever again contemplate setting loose the spray trucks on the streets of New York City.

The Settlement Agreement also acknowledges Local Law 37, which the New York City Council unanimously voted into law in 2005 and by which the City announced its intention to reduce the amount of pesticides used on public land by City agencies. Local Law 37 provided new requirements for pesticide applicators, penalties for the misuse of pesticides and a significant burden to be met by city agencies applying for waivers.

Yet today -- in August 2011 -- the NYC Department of Health is directing the spraying of toxic pesticides into the air from spray trucks driven by NYC DOH employees to kill mosquitoes,

as though the Settlement Agreement and Local Law 37 are merely paper tigers to be ignored at will. There is no evidence that the admissions stipulated in the Settlement Agreement nor Local Law 37's four requirements for issuance of waivers were seriously considered by the Department of Health before it granted itself waivers from the prohibitions against pesticides spraying and launched its current spray campaign. Indeed, they appear to have been either ignored or given short shrift in the City's last known comprehensive mosquito plan written by that agency in 2010 [Exhibit J] without the commissioning of an Environmental Impact Study on the spraying of pesticides or the holding of public hearings. I will show in this letter that the City's current spray campaign is taking place in violation of the notification, health and environmental obligations under Local Law 37 and other terms of the Settlement Agreement, and in wanton disregard of the health and safety of the people of New York, their pets, wildlife and the natural environment.

**CIRCUMVENTING LOCAL LAW 37's PROTECTIONS AGAINST  
THE HEALTH & ENVIRONMENTAL DANGERS FROM PESTICIDES**

Local Law 37 states that no city agency or contractor shall apply to any property owned or leased by the city any pesticide classified as Toxicity Category I by the United States environmental protection agency [*§17-1203 (a)*]; a human carcinogen, likely to be carcinogenic to humans, a known/likely carcinogen, a probable human carcinogen, or a possible human carcinogen by the office of pesticide programs of the United States environmental protection agency [*§17-203 (b)*]; or by the California office of environmental health hazard assessment as a developmental toxin [*§17-203 (c)*]. [NYC Department of Health's summary of Local Law 37 is appended as **Exhibit C.**]

Piperonyl Butoxide (PBO), a synergist used in Anvil 10+10, is classified as a possible hu-

man carcinogen by the United States Environmental Protection Agency. Anvil 10+10 is the pesticide currently being widely sprayed over large populated areas of New York City to kill mosquitoes. A synergist is a chemical added to a pesticide to increase the potency and enhance its mode of action. The addition of synergists causes the pesticide to be more toxic to insects and potentially to mammals (including humans) as well. [Berger-Preiss, E., *et. al.*, "The Behavior of Pyrethroids Indoors: A Model Study." *Indoor Air.*, 7: 248-261, (1997)] PBO tends to have a long residual effect due to its oil-like solubility, and it has been found on surfaces months to years after application. [Dr. Robert K. Simon, "*Pyrethrins and Pyrethroids*," appended as **Exhibit I.**] In addition to Piperonyl Butoxide, MGK-264 is another synergist of concern commonly added to pyrethroid formulations such as Anvil 10+10, which also contains the synthetic chemical Sumithrin as the "active ingredient," and benzene compounds labeled as "inert ingredients"

Pyrethroids act as endocrine disruptors; they mimic hormones such as estrogen, and may cause breast cancer, prostate cancer, erectile dysfunction, miscarriages and asthma, and drastically lower sperm counts. Pyrethroids have a mode of action similar to chlorinated pesticides such as cyclodienes (chlordane, aldrin, etc) and which were banned in the United States in the 1980s due to their dangerous impact on human health and the environment. In addition, over the last decade, pesticides have contributed to the collapse of bee colonies in New York and throughout the United States, and spray drift has forced reclassification of produce from now-ruined organic farms. Local Law 37, the Settlement Agreement, and the Plaintiffs' letter to New York City that was appended to and made part of the Settlement Agreement (hereafter, "Letter") propose alternatives for protecting human health and the natural environment, and expose the City's "cure" for adult mosquitoes as far worse than the disease. [See "*Health and Environmental Concerns Per-*

*taining to New York City's Application of Pesticides and Proposals for Alternative and Non-Toxic Approaches,*” also known as “*Plaintiffs’ Letter to NYC Department of Health,*” August 2006, appended here as **Exhibit B.**]

Local Law 37 authorizes the commissioner of the Department of Health the power to grant city agencies a temporary waiver of the law’s prohibitions only after consideration of whether the prohibitions, in the absence of the waiver, would be unreasonable with respect to (i) the magnitude of the infestation, (ii) the threat to public health, (iii) the availability of effective alternatives, and (iv) the likelihood of exposure of humans to the pesticide. [See §17-1206. Local Law 37 is appended here as **Exhibit D.**]

The NYC Department of Health has tried to do an end run around Local Law 37 by authorizing to itself *pro forma* waivers of that law’s prohibitions against broadcast spraying of the pesticide Anvil 10+10, even though it acknowledges that at least one of the chemicals it seeks to spray (and indeed, it has already begun widespread spraying) is categorized by the U.S. Environment Protection Agency as a possible carcinogen. The DOH also fails to establish the magnitude of infestation and the threat to public health; it fails to investigate the availability of effective alternatives or consider as significant the prodigious evidence disputing the City’s minimizing of the likelihood of human exposure to the pesticide, all of which are required by law. The issuance of waivers in such circumstances undermines Local Law 37’s protection *from the dangers of pesticides* to public health and the environment.

The NYC DOH makes two claims for why it approved waivers in 2011. These are: 1) the desire to gain “control of adult mosquitoes in the Rockaways where the severity of infestation has created a public health nuisance. In these communities adjacent to the Jamaica Bay, mosqui-

toes force residents indoors during the summer months, negatively affecting the residents' quality of life and reducing healthy outdoor activity. The spraying of adulticide provides a knockdown of the populations in the area and gives the residents a reprieve from the nuisance of these mosquitoes"; ["Decision on Local Law 37 Waiver Number DOH11-0002," May 18, 2011, appended as **Exhibit E.**] In other words, the required establishment of a "threat to public health" is glossed over and turned into "reducing healthy outdoor activity". And, 2) the Deputy Commissioner affirms -- without any proof, substantiation or further documentation -- that Anvil 10+10 is "approved for the control of adult mosquitoes in areas where monitoring has indicated a risk to the public of West Nile Virus transmission." [*Decision on Local Law 37 Waiver Number DOH11-000*, May 18, 2011, appended as **Exhibit F.**] No substantiation is offered as to what constitutes an "indicated risk to the public of West Nile Virus transmission," nor are there any concerns expressed over the pesticides' effects on human health or of alternatives to spraying carcinogenic pesticides, as required under Local Law 37. Consequently, neither of the rationales presented by the NYC DOH meets Local Law 37's four criteria for approval and receipt of a waiver. In granting both waivers to itself, the NYC Department of Health stands in violation of Local Law 37 for failing to even address -- let alone substantiate -- any of the requirements and concerns explicitly listed in Local Law 37 for the granting of waivers.

### **THE CITY'S PATTERN OF MISUSE OF WAIVERS**

Local Law 37 outlines the process whereby a city agency may request a waiver of the restrictions established pursuant to §17-1203, and limits such waiver to be in effect for no longer than one year. The provisions in Local Law 37 went into full effect in 2006. Since that time, the Health Department has granted to itself a waiver for adulticide spraying for mosquitoes **every**

**single year**, like clockwork. Each individual waiver, taken by itself, provides four or five months of “temporary” relief from the prohibitions of Local 37. But as part of a larger pattern, the steady string of waivers for application of Anvil 10+10 between 2006 and 2011 has meant that Local Law 37 has *never* provided any protection from the admittedly carcinogenic chemical included in this pesticide. **The Health Department’s authority to grant *temporary* waivers to City agencies was not intended as an ongoing or permanent mechanism and must not be permitted to become a vehicle for circumventing prohibition of the *seasonal* use of prohibited, carcinogenic pesticides in perpetuity.**

For five years now, the Health Department has explained its waiver decisions with rote recitations of the continuing need for adulticide use in wide areas of Brooklyn, Queens, Staten Island and the Bronx, but without any indication of when, if ever, the prohibitions in Local Law 37 might actually be given their intended effect. [“Anvil 10+10 Waiver Decision Letters 2006–2011,” appended as **Exhibit G**] Consequently, New York City is in violation of the intent and letter of Local Law 37 and of the Settlement Agreement, and is endangering the public health and the natural environment by its broadcast aerial (into the air) spraying from spray trucks.

**NYC DOH’S FAILURE TO ABIDE BY ITS OWN ADMISSIONS, REVIEW THE LATEST SCIENTIFIC RESEARCH, AND PARTICIPATE IN DISCUSSIONS WITH NO SPRAY ET AL. IN GOOD FAITH**

On May 25, 2010 the NY City DOH held its first of two mandated meetings with the Plaintiffs. (The second meeting has not yet taken place.) In a wide-ranging discussion based on the Plaintiffs’ Letter, all parties agreed to several procedures including the need for proper notification of the public and medical personnel if further spraying was ordered (even though the participants from the No Spray Coalition maintained our objections to widespread pesticides spraying

altogether). But the City's abrogation of even *that* common sense consensus in its current pesticides spraying campaign leads to the unfortunate conclusion that the City was not taking seriously its commitments to our discussions and thus had not entered the stipulated discussion in good faith, which violates the terms of the Settlement Agreement and does not bode well for future meetings mandated in the Agreement.

Similar concerns arise over the City's continued recommendations of the application of DEET to repel mosquitoes. DEET is a neurotoxin that is suspected of distorting brain development, especially in young children.<sup>1</sup> Companies that manufactured insect repellents (such as "OFF!") that contained the chemical "DEET" are today advertising new products containing safer alternatives. In the one meeting held between the Department of Health and the Plaintiffs as per the Settlement Agreement, NYC Health officials last year agreed to stop recommending DEET. But despite the consensus reached by all parties, the City continues to recommend application of DEET.

The City claims that it "will use a very low rate of Anvil 10+10 containing pyrethroid, piperonyl butoxide for its adult mosquito control efforts. Thorough environmental review and epidemiologic analyses conducted subsequent to spray events have shown that the public in general is not expected to experience symptoms given the low level of exposure that may occur during the spraying events" ["2011 Health Advisory #17: Pesticide Spraying No-

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1 The Agency for Toxic Substances and Disease Registry reports that DEET can be toxic to [birds, fish, and aquatic invertebrates](#). [Moodiness, impaired cognitive function, and insomnia](#) have also been reported with long-term use of DEET. In animal studies by Duke University Professor Dr. Mohammed Abou-Donia, Abou-Donia found that DEET caused diffuse brain cell death and behavioral changes in rats after frequent and prolonged use, and says that children are at particular risk for subtle brain changes caused by chemicals in the environment, because their skin more readily absorbs them, and chemicals may affect their developing nervous systems. Combined exposure to permethrin (a Pyrethroid) and DEET produced greater biochemical, behavioral, and metabolic alterations in animals compared to the effects of each compound separately. Exposure to real-life doses of malathion, DEET, and permethrin, alone or in combination, produce no overt signs of neurotoxicity but induce significant neurobehavioral deficits and neuronal degeneration in brain.

tification to Reduce Mosquito Activity and Control West Nile Virus in Queens,” August 19, 2011. Appended as **Exhibit K**]. However, the City provides no evidence whatsoever to support such claims, and ignores numerous reports of people who *have* gotten sick from ultra low volume (ULV) mosquito sprays. In 2003, the Centers for Disease Control reviewed poisoning reports due to WNV spraying from the only nine states in the country that collected such data at the time and which sprayed for West Nile-carrying mosquitoes. The CDC found 262 cases. The majority of cases resulted in respiratory (66%) and neurological (61%) reactions [CDC. 2003. “Surveillance for Acute Insecticide-Related Illness Associated with Mosquito-Control Efforts - Nine States, 1999-2002.” [www.cdc.gov/mmwr/preview/mmwrhtml/mm5227a1.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5227a1.htm)].

Beyond Pesticides – a national organization headquartered in Washington D.C. (formerly known as the National Coalition Against the Misuse of Pesticides) and a co-Plaintiff in the No Spray, et al. lawsuit – reviewed a federal General Accounting Office report that examined claims relating to the reported incidence of illnesses due to pesticide exposure, and concluded:

Pesticide poisonings in the U.S. are not well tracked and are commonly misdiagnosed, unreported, and severely underestimated. Physicians receive little training on identifying poisonings and even when correctly diagnosed, rarely are they reported to authorities. EPA recognizes that poisonings are underreported and that the lack of national data on the extent of pesticide illnesses is a problem. It is therefore wholly imprudent for public officials to dismiss the hazards of broadcast spraying and the need for safer practices simply because pesticide poisonings are not making headlines. [GAO. 2001. *Information on Pesticide Ill-*

*ness and Reporting Systems. GAO-01-501T.]*

And Beyond Pesticides reports studies that link pyrethroids to chronic illnesses such as endocrine disruption, cancer and birth defects. Unfortunately, the EPA does not currently assess endocrine disruption potential of chemicals, although required to by law. So what studies is the NYCDOH referring to when it writes that it has performed “thorough environmental review and epidemiologic analyses” in determining the numbers and effects of pesticides exposure in New York City from the spraying?

In fact, studies show the opposite of the City’s claims: Endocrine disruptors, even in very small doses (such as those in ultra low volume (ULV) Pyrethroids), can cause neurological, developmental and reproductive health problems in both humans and animals. [Vera Go, J., et al. 1999. “Estrogenic Potential of Certain Pyrethroid Compounds in the MCF-7 Human Breast Carcinoma Cell Line.” *Enviro. Health Perspectives* 107(3); Alavanja, M.C.R., et al. 2003. “Use of agricultural pesticides and prostate cancer risk in the agricultural health study cohort.” *Am. J of Epidemiology* 157: 800-814.] These studies rule out the City’s “dose makes the poison” argument for the safety of ULV pesticides, and warrants greater precautionary approaches. But the City ignored this data in making its sweeping and false claims about the pesticides’ effects. It appears that the City made unsubstantiated assertions so that it could claim to have met the criteria for granting itself a waiver, and hoped that no one actually checked and exposed the fraudulent basis for its claims.

The No Spray Coalition’s Letter to NYC goes into even more detail in contradicting the City’s unsubstantiated assertions; it cites numerous studies that have shown the terrible developmental consequences to children, especially – but also to the rest of us -- who have been exposed

to pesticides, and reveals the City's reckless disregard of scientific studies that run counter to the drumbeat for its spray campaign. These included:

- **A major CDC study** that found that all residents of the United States, including residents of New York City and State, now carry dangerously high levels of pesticides and their residues in our bodies, which may have onerous effects on our health. (*Third National Report on Human Exposure to Environmental Chemicals*, Centers for Disease Control, 2005);
- **A U.S. Geological Study** showing that a large percentage of waterways and streams throughout the United States, including those in New York City and State, has been found to contain environmentally destructive pesticides that may severely impact on animal and aquatic life. (U.S. Geological Survey: *The Quality of Our Nation's Waters, Pesticides in the Nation's Streams and Ground Water*, 1992-2001, <http://pubs.usgs.gov/circ/2005/1291/>);
- **Studies confirming that pesticides are both a trigger for asthma attacks and a root cause of asthma** (Salam, et al: *Early-life environmental risk factors for asthma findings from the children's health study*. Environmental Health Perspectives 112(6):760-765), and that asthma is epidemic throughout New York City;
- **Cicero Swamp Study, showing that pesticides killed off the natural predators of mosquitoes and that mosquitoes came back much strong-**

**er after the spraying**, because many of their natural predators (which have longer reproductive cycles) were dead. These studies were done in New York state for mosquitoes carrying Eastern Equine Encephalitis, and found a 15-fold increase in mosquitoes after repeated spraying, and that virtually all of the new generations of mosquitoes were pesticide-resistant. (Journal of the Am Mosquito Control Assoc, Dec; 13(4):315-25, 1997 Howard JJ, Oliver New York State Department of Health, SUNY-College ESF, Syracuse 13210, USA);

- **Studies that show that pesticides have cumulative, multigenerational, degenerative impacts on human health, especially on the development of children** which may not be evident immediately and may only appear years or even decades later (*The Multigenerational, Cumulative and Destructive Impacts of Pesticides on Human Health, Especially on the Physical, Emotional and Mental Development of Children and Future Generations. A Submission to The House of Commons Standing Committee on Environment and Sustainable Development*, by Physicians and Scientists for a Healthy World, February 2000; Guillette, Elizabeth, et al: *Anthropological Approach to the Evaluation of Pre-school Children Exposed to Pesticides in Mexico*. Environmental Health Perspective, Vol. 106, No.6, June 1998; Kaplan, Jonathan et al. *Failing Health. Pesticides Use in California Schools. Report by Californians for Pesticide Reform, 2002*, American Academy of Pediatrics, Committee on Environmental Health; *Ambi-*

*ent Air Pollution: Respiratory Hazards to Children, Pediatrics* 91, 1993);

- **Studies that show that pesticides make it easier for mosquitoes and other organisms to get and transmit West Nile Virus** due to damage to their stomach lining. (Haas, George. *West Nile virus, spraying pesticides the wrong response*. American Bird Conservancy, October 23, 2000); and,
- **Studies that show that pyrethroid spraying is ineffective in reducing the number of the next generation of mosquitoes.** (*Efficacy of Resmethrin Aerosols Applied from the Road for Suppressing Culex Vectors of West Nile Virus*, Michael R. Reddy, Department of Immunology and Infectious Diseases, Harvard School of Public Health, Boston, Massachusetts, et. al., *Vector-Borne and Zoonotic Diseases*, Volume 6, Number 2, June 2006)

The City has failed to treat seriously the evidence raised in these studies which were referenced in both the Settlement Agreement and the No Spray Coalition’s Letter. The NYC DOH has merely given lip-service to the extensive scientific studies that challenge the City’s claims, so as to be able to claim formal compliance with the terms of the Settlement Agreement while ignoring the research of experts such as Cornell University professor David Pimentel, who argues that “ground spraying in general is a waste of money. Most ground spraying is political and has very little to do with effective mosquito control.” And Jay Feldman, executive director of Beyond Pesticides, writes: “We have asked the EPA for the data on pesticide product effectiveness (efficacy) for public health mosquito control and have been told that there is none.” [*Beyond Pesticides*,

“Daily News archive,” August 31, 2005.]

Clearly, the City was not being truthful when it claimed that it performed a “thorough environmental review and epidemiologic analyses ... showing that the public in general is not expected to experience symptoms given the low level of exposure that may occur during the spraying events.” Such claims fly in the face of a great deal of scientific and health-related research, and here are being misused to justify the NYC DOH’s granting to itself waivers of Local Law 37’s prohibitions vis á vis pesticides spraying. I ask the Court to void the 2011 waivers, and to not only mandate another meeting between NYC and the Plaintiffs as per the Settlement Agreement, **but to provide oversight to future meetings between the Parties to ensure that the scientific studies in the proposals outlined in the Letter to NYC and included in the Settlement Agreement are seriously considered and that agreements reached between the parties are put into practice and not reneged on**, as seems to be the case today.

**FAILURE TO EVALUATE THE PUBLIC HEALTH “THREAT” OF WEST NILE AND PESTICIDE SPRAYING, AND TO UPDATE MOSQUITO CONTROL PLANS**

Local Law 37 directs the formation of a *new* interagency pest management committee, composed of (but not necessarily limited to) the commissioners of Sanitation, Environmental Protection, citywide administrative services, Parks and Recreation, the chair of the New York City Housing Authority and the chancellor of Education, or their designees, to meet twice a year and to be headed by the commissioner of the Department of Health and Mental Hygiene. Local Law 37 charges this interagency pest management committee with developing a plan “to further reduce pesticide use by city agencies, including initiatives to implement integrated pest management, giving preference to employing physical, mechanical, cultural, biological and educational

tactics to prevent conditions that promote pest infestations, which **shall be updated on an annual basis**, as necessary. The plan, and any updates of such plan, shall be submitted to the mayor and the speaker of the council within thirty days of issuance.” [§ 17-1204 *Interagency pest management committee*. (a) and (b).] Yet there is no mention of any of these updates and required submissions that supposedly went into preparing the 2010 Comprehensive Mosquito Surveillance and Control Plan, nor any updates since. In fact, there is no plan, period, that I could find for 2011, and no Environmental Impact Statement since 2001. How far, really, has the City come in developing a more sophisticated and careful approach to mosquito control since former Mayor Rudy Giuliani infamously rejected the hazards of spraying, saying, “There’s no point in not spraying, because there’s no harm in spraying. So even if we’re overdoing it, there’s no risk to anyone in overdoing it?” Despite the important information that relatively few people died in New York City from mosquito-borne West Nile viral encephalitis over the last 11 years (the 2010 Comprehensive Mosquito Surveillance and Control Plan puts the total deaths in New York City at 26, for 1999-2009 (chart on page 16 of **Exhibit J**) out of a total of 198 people who contracted the disease. Compared to the 2,600 who die *each year* in New York City from the flu (!) or the hundreds of thousands who suffer from asthma, can we really say that West Nile Virus, but not these other truly epidemic illnesses, constitutes a “public health threat” that warrants such toxic emergency measures?); and despite advanced scientific studies and observations in the last decade concerning the dangers of pesticides on human beings and the environment (including the collapse of bee colonies across the country, in which pesticides are thought to have played a primary role); and despite new laws and regulations designed to limit the application of pesticides in New York City, the City’s use of toxic pesticides to kill mosquitoes said to be carrying West Nile

Virus scandalously remains much the same as it was in 2001, there have been no Environmental Impact Studies, honest assessments of what constitutes a “public health threat,” or public hearings on the City’s spraying of pesticides since that time.

Another avenue of challenge to the spraying of pesticides that has recently had some success in the Courts and that would be of consequence to any new plans, updates, reviews and Environmental Impact Studies is the categorization of pesticide sprays drifting over privately owned property as a form of “trespass” and thus illegal. In a recent court case in Minnesota, that state’s Court of Appeals reversed the judgment of a lower court and ruled that pesticide overspray could qualify as an unlawful entry onto the plaintiffs’ land – that is, it may qualify legally as a trespass. [*Johnson, et al., v. Paynesville Farmers Union Cooperative Oil Co.*, No. A10-1596, A10-2135 (July 25, 2011).] The ruling by the Minnesota Court of Appeals allows neighboring property owners to pursue trespass claims against spray applicators for any damages the neighbor believes a spray product caused. Clearly, the principle established in the No Spray case over which you presided with regard to the Clean Water Act, in which this Court ruled that the spray becomes a chemical waste product emitted from a point source when applied over water without a permit and contrary to the uses stated on the label, is now being extended by farmers and property owners beyond the CWA to apply to land-based pesticides drift. Yet updates that take these recent developments and the latest cutting edge research into consideration have not been issued, even though Local Law 37 requires regular updates.

### **FAILURE TO PROPERLY NOTIFY THE PUBLIC**

Local Law 37 states that any city agency or contractor applying pesticides on property owned or leased by the city shall post a notice at publicly accessible locations on the sites to be sprayed

at least twenty-four hours prior to any such application and keep those notices in place for at least 3 days after the spraying, but this has not been done.

Failure to properly notify the public in areas of impending pesticide spraying is especially egregious, as children -- as well as the elderly and those who are immune compromised -- are placed into significant danger by the widespread broadcast aerial spraying of adulticides from spray trucks. Many immune compromised individuals need time to find new places to sleep and to shop for food. Wheelchairs, bicycles and baby carriages kick up pesticides into one's face and track pesticide residues into living spaces. Avoiding the spraying altogether is the only safe recourse for many, and to avoid it requires prior knowledge of when and where the spraying would take place as well as the chemicals used. **Proper notification prior to the spraying must legally include the posting of signs and advertisements throughout the neighborhoods being sprayed**, but even *that* is not being done. In addition, proper notification should also include:

- Notification of school principals, so that they could instruct the children on proper precautions and notify parents on how to protect themselves and their children as well;
- sending sound cars through the to-be-sprayed neighborhoods warning residents and visitors of the impending spraying at least 72 hours before the spraying begins, and repeated 12 hours prior to the spraying;
- Providing medical professionals and hospitals with fact sheets on the specific pesticides to be sprayed, notification of how to treat pesticide exposure and poisoning, and dissemination of procedures

required for submission of data on those affected;

- Notification to public agencies including police, local health departments, water departments, etc. providing information about “what to do” in the event that people are exposed to pesticides, or when spray drifts over waterways or large crowds such as in public parks, stadiums, and the like;
- Notification to the public of names and contact information of subcontractors, and of places to call in case of a pesticides emergency. Requesting detailed information from the 311 operators has not shown to be productive;
- Notification to spraytruck drivers of the safety equipment they are required to wear, and enforcement of those regulations.

Brooklyn resident Jean Shaffer notes that at the beginning of August she was sprayed without warning by a City spray truck on 39 St & 5 Ave. in Sunset Park, Brooklyn. The spray truck was following immediately behind a police car which, in this case, was announcing “everybody get inside” but which left no time for those being sprayed to do that. Shaffer filed a formal complaint #C1-1-675179197 with the 311 City information service, earmarked to the Department of Health. In fact, many people who were on the streets in Brooklyn and Queens on the evenings of August 4 and August 5, 2011 (and subsequently) were unconscionably sprayed with pesticides, without notice. Brooklyn resident Edna Hoover wrote, “None of the 100 families residing in 10-16 Ocean Parkway, right in the center of the spraying area, have been warned or notified in advance of this new spraying campaign. ... The City must take adequate measures to insure the

safety of all residents & their pets including immune-compromised or sick people in danger of respiratory failure.” The No Spray Coalition has received numerous similar complaints from New York City residents.

On August 19, 2011, the NYC Department of Health and Mental Hygiene posted a Notice to its website (but not in the neighborhoods) announcing that “the Health Department will spray pesticide from trucks in parts of Queens” a few days later. Until that time there had been no human cases of West Nile virus, but here “the Health Department confirmed the season’s first human case of West Nile virus in a 64-year-old Manhattan woman. ... It is unclear where she was exposed; she had recently travelled within and also outside of New York City.” She was in the hospital and expected to recover. [“Health Department Will Spray Pesticide to Reduce Adult Mosquito Populations,” NYC Department of Health and Mental Hygiene, August 19, 2011. Appended as **Exhibit L.**]

What is peculiar about this website notice – and this calls into question, again, the City’s twisting of the criteria for claiming the existence of a public health threat -- is its use of this Manhattan woman’s plight to rationalize spraying in Queens and Brooklyn – not Manhattan! -- implying a geographic connection between these events when there is none. The subhead reads: *“First human case of West Nile Virus confirmed; Spraying scheduled for parts of Queens to help prevent West Nile Virus.”* Once again the City seems to be attempting to orchestrate an emotional response to disconnected events to create the false impression of a public health threat or emergency so that it could justify its issuance of a waiver (to itself) to Local Law 37, allowing the NYC DOH to spray pesticides that would otherwise be prohibited.

Indeed, that same day that the Manhattan resident was hospitalized, the City issued a “Pub-

lic Health Advisory” pertaining to West Nile (see **Exhibit K**, cited earlier) -- not an “Alert”. An “Advisory” reflects a much lower level of concern in the hierarchy of health warnings. Faced with this first human instance of West Nile disease this year in NYC, members of the No Spray Coalition made calls to doctors and medical professionals around the City to find out if the DOH had done the necessary outreach to medical personnel informing them of the specific pesticides being sprayed, how to treat pesticides exposure and poisoning, and the procedures for submission of pesticide poisoning data. Not a single doctor reported any contact of the sort from the Department of Health. Additionally, no sound cars were sent out to provide sufficient notice to New Yorkers and visitors about impending spraying in the areas being sprayed. No school principals or public institutions were notified. No flyers were posted in the affected neighborhoods. All of these indicate the **lack of** perception of a public health threat or emergency on the part of the City and present a strong argument against the DOH’s granting to itself of a waiver from Local Law 37’s prohibitions concerning pesticide spraying unless a public health threat can be demonstrated.

Of course in a real public health threat the measures listed above would be basic common sense. They were indicated in the Letter by Plaintiffs to NYC that is explicitly referenced in the Settlement Agreement as the basis for formal discussion at meetings between the City and the Plaintiffs, and in fact were generally agreed to at the one meeting Plaintiffs did have with the Department of Health. The fact that all of these were ignored by the City in making its decision to spray point to, among other things, the lack of good faith on the part of the City in its meeting with the former Plaintiffs.

#### **FAILURE TO EMPLOY SAFER ALTERNATIVES TO PESTICIDE SPRAYING**

Many communities across the country are not spraying pesticides for West Nile virus. In-

stead, they are adopting preventive strategies that manage mosquito breeding areas and educate people on how to reduce their risk of the virus, and provide information on non-toxic mosquito repellents. Scientific studies link the pesticides used to combat adult mosquitoes to effects on the central nervous, cardiovascular and respiratory systems and long-term health effects like cancer and disruption of the endocrine (hormonal) system **even at very low doses.**

“When we find West Nile present in mosquito pools here in Washington, D.C.,” said Peggy Keller, Chief of the Bureau of Community Hygiene and Animal Disease Prevention in the D.C. Department of Health, “we don't spray. We've learned that the best way to protect the public from both the virus and the pesticides is to intensify our larval program and distribute outreach and education information that emphasizes prevention and protection techniques to the public in the surrounding area.”

While New York City officials has written favorably about the need to remove standing water in which mosquitoes breed and has embarked on helicopter applications of less harmful larvicides to kill mosquito larvae before they grow into adults, they have not organized that as an alternative but to *supplement* the pesticides spraying. Local officials in Washington D.C., on the other hand, believe that larviciding and eliminating standing water is far healthier for the populace than spraying pesticides. Unlike New York's officials, they refuse to start out on that slippery slope towards extermination of mosquitoes through pesticide spraying. In its official Arbovirus Surveillance and Response Plan, Washington's local leadership reports that

the Centers for Disease Control ... recommends larvicidal applications rather than spraying for both efficacy in reducing mosquito populations, environmental factors and cost effectiveness. Best practices also indicate that

preparation and enforcement of nuisance legislation contributes to mosquito elimination. DOH staff shall apply larvicide to catch basins and standing water. Adulticiding only kills mosquitoes that are flying and remains effective for only a few hours. The efficacy of adulticiding is open for debate and is not considered an effective tool for mosquito management or control through only one application, or, over time, as shown through scientific research. Reapplications of adulticide may compound negative health effects of pesticide usage. [District of Columbia Department of Health, Health Regulation and Licensing Administration, Bureau of Community Hygiene Animal Disease Prevention Division: “Arbovirus Surveillance and Response Plan,” May 2009. [www.beyondpesticides.org/mosquito/documents/wnv\\_2009\\_2\\_plan.pdf](http://www.beyondpesticides.org/mosquito/documents/wnv_2009_2_plan.pdf)]

After carefully reviewing the potential effectiveness of spraying as well as the risks of the virus with the risks of pesticide exposure, the City of Lyndhurst, Ohio (a suburb of Cleveland), passed an ordinance prohibiting the spraying of pesticides to control the spread of WNV. Several large-population municipalities also follow a no-spray approach to mosquito management including Ft. Worth, Texas; Cheyenne, Wyoming; Charlotte, North Carolina; Cincinnati, Ohio and others. Contrary to the claims of the NYCDOH, preliminary comparison data show no significant difference in the human rates of WNV in communities that spray adulticides compared to those that use other methods of mosquito control. Other areas also use bio-predators of mosquitoes – dragonflies and bats – to control mosquito infestations, with very successful results..

Those alternatives are some of what the sponsors of Local Law 37 envisioned for New York

City. Pesticide spraying of adult mosquitoes is known to be the least effective method of mosquito management, according to guidelines provided by the Centers for Disease Control and Prevention (CDC). According to experts, the threat of WNV is best managed through an integrated program that does not expose vulnerable populations of the society to pesticides, including children, pregnant women, the elderly and people with compromised immune systems. The most effective program to protect the public from WNV focuses funds and resources on removing breeding areas, killing mosquitoes that carry the virus before they start flying, and mass public education on prevention and precaution.

“The risk of getting sick from West Nile does not even compare with the risks of getting other illnesses such as influenza, respiratory disease, or cancer,” said Eileen Gunn, special projects director with Beyond Pesticides. “Meanwhile, **spraying the public with pesticides may in fact contribute to these and other unfortunately common illnesses as well as our susceptibility to getting the virus.**” [*Beyond Pesticides*: Daily News archive: “Group Calls For Health-Based Approach to West Nile Virus, Widescale Spraying of Mosquito Pesticides Called Into Question.” August 31, 2005.]

### **FAILURE OF NYC DOH TO RESPOND IN A TIMELY FASHION**

A letter by NY State Assemblyman William Colton (47<sup>th</sup> Assembly District, Brooklyn) faxed to the NYC Department of Health on August 4, 2011 asks a number of pertinent questions about these very subjects. [See Colton letter to NYC DOH, **Exhibit H**]. In specific, Colton asks:

“Are there any precautions being taken to protect children and senior citizens? Are there any precautions being taken to protect the waters in Gravesend Bay and the backyards of residents, especially those who own

swimming pools?”

Colton continues the queries:

“Is there any evidence that the pesticides being sprayed in New York City may cause asthma to develop or trigger asthma attacks? Are there any reports that the pesticides have caused irritation and tearing of the eyes, respiratory irritation or stomach irritation, including nausea, cramps, or vomiting? Is there any evidence that the pesticides being sprayed in New York City may cause cumulative, multigenerational, or degenerative impacts on human health, especially the development of children? Is the Department of Health recommending that people should stay inside, turn off their air conditioners, and bring backyard equipment inside during the spraying?”

One would think that a responsible Department of Health that had recently signed a settlement agreement addressing those very concerns would respond immediately, especially to an elected government official such as a NY State Assembly member. But more than 18 days after having received Colton’s letter, the Department of Health has not deigned to respond. Colton also asked about the efficacy of the spraying and the possibility that the City’s spraying was counterproductive to its own professed goals:

After previous spraying of pesticides in New York City, have the newer generations of mosquitoes been more immune to the pesticide spraying? Is there any evidence that the spraying has killed off the natural predators of mosquitoes? Is there any evidence that the pesticide spraying is ineffective in reducing the number of the next generation of mosquitoes? Is there any

evidence that the pesticides being sprayed make it easier for organisms to contract or transmit West Nile Virus?

Colton concluded his letter with a statement of his general concerns about the spraying and requested that the City respond in a timely manner. But the NYC DOH did not even have the decency to acknowledge receipt of Colton's letter, let alone respond in thoughtful detail to Colton's questions, ignoring all the questions and concerns raised. It has gone about spraying the people of Brooklyn and Queens with toxins in contempt of its signed agreement and the law. Currently, the City is continuing its spray operation even in the absence of an Environmental Impact Statement, public comment and review of a Comprehensive Plan for 2011. It is also likely that the City will be spraying in my own Brooklyn neighborhood shortly – Colton's Assembly District -- which is located at the intersection of Gravesend, Bensonhurst and Coney Island and contains numerous care facilities for the elderly and immune compromised, and for developmentally disabled children who will undoubtedly be horribly impacted by the aerial spraying.

Unfortunately, the Department of Health has placed itself in an adversarial position against the health and safety of the people and the environment, as well as the law and the terms of the Settlement Agreement administered by this Court.

### **CONCLUSION AND ACTION REQUESTED**

On behalf of the former Plaintiffs in this matter, **I am asking the Court to immediately void the DOH's 2011 issuance of waivers to the prohibitions in Local Law 37, and halt all adulticide spraying into the air for 2011.**

I am also asking the Court to review the DOH's failure to provide sufficient public notice before spraying; to review the lack of substantiated evidence for the granting of the waivers in

2011; and to require NYCDOH to hold the second meeting as stipulated in the Agreement prior to November 1, 2011, and to require NYCDOH to formally accept two permanent NO Spray representatives chosen by the No Spray Coalition and a permanent NO Spray legal representative to attend all future meetings of NYCDOH that discuss waivers to Local Law 37 and/or any future use of adulticides for adult mosquito spraying.

Given the aforementioned, NYCDOH must stop its 2011 spraying immediately. Furthermore, I am requesting that the Court appoint independent monitors for all future NYCDOH adulticide sprayings (if they exist at all), and any and all other protections and relief that the Court finds just and proper.

Sincerely,

Mitchel Cohen  
as an individual Plaintiff, and as  
Coordinator, No Spray Coalition

cc: Dept. of Health & Mental Hygiene  
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