

No Spray Coalition

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To: Bill de Blasio
Public Advocate
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Dear Bill de Blasio,

August 20, 2011

I am writing to you as a fellow Brooklynite and 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), in which federal District Court judge George B. Daniels issued an initial decision in 2005 in No Spray's favor and in which the parties then reached a Settlement Agreement on the remainder of the case in April 2007. This letter is to call to your attention to New York City's violations of the terms of the Settlement Agreement with regard to pesticide spraying that the City signed with the No Spray Coalition, et al., in April, 2007 (appended as **Exhibit A**), and its violation of the terms of New York City Local Law 37, included here as **Exhibit D**.

Committee Coordinators

Jim West, *Research*
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In Loving Memory

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Valerie Sheppard (founding member & co-Treasurer)
Connie Holland
Bryna Eill
Frieda Zames
Grandpa Al Lewis
Ralph Klaber
Mike Pahios
Brad Will
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Maria Kuriloff
Daniel Simidor

In the Settlement Agreement, New York City explicitly referenced a number of facts to be considered prior to any widespread campaign to spray pesticides into the air and acknowledged therein the passage of Local Law 37, which is a law 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. Yet today -- in August 2011 -- the City is conducting an ongoing campaign in which Department of Health employees are spraying pesticides into the air to kill mosquitoes, 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 and its natural environment.

**CIRCUMVENTING LOCAL LAW 37's ATTEMPT TO PROTECT AGAINST
HEALTH & ENVIRONMENTAL DANGERS**

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 human 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 included in the Settlement Agreement 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 Pertaining 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**.]

Knowing this, the NYC Department of Health has tried to do an end run around Local Law 37’s requirements and prohibitions by authorizing *to itself* a temporary waiver of the prohibitions

of that law. The waivers effectively undermine Local Law 37's protections, and disregard the pesticide sprayings' endangerment of the public health and natural environment.

Local Law 37 authorizes the commissioner of the Department of Health the power to grant city agencies a temporary waiver of the prohibitions of Local Law 37 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.] However, despite NYC Department of Health's acknowledgment that the chemicals it seeks to spray (and indeed, it has, as you know, already begun widespread spraying) is categorized by the EPA as a possible carcinogen; and despite its failure to document the magnitude of infestation, the threat to public health, the availability of effective alternatives, and the likelihood of exposure of humans to the pesticide, it has gone ahead and issued to itself a waiver from Local 37's prohibitions regarding the broadcast spraying of the pesticide Anvil 10+10.

The only claims made for why NYC DOH approved two waivers in 2011 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, mosquitoes 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 considerations presented of alternatives to spraying of carcinogenic pesticides or concerns over the pesticides’ effects on human health, as required under Local Law 37. In granting both waivers to itself, the NYC Department of Health stands in violation of Local Law 37 for failing to address *any* of the requirements and concerns explicitly listed in Local Law 37 for the granting of waivers.

THE CITY’S MISUSE OF WAIVERS

Local Law 37 outlines the process whereby a city agency may request a waiver of the restrictions established pursuant to section 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 means that Local Law 37 has *never* provided any protection from this admittedly carcinogenic pesticide. **The Health Department’s authority to grant *temporary* waivers to City agencies must not be permitted to become a vehicle for circumventing prohibition of the *seasonal* use of prohibited, carcinogenic pesticides in perpetuity – a prohibition that Local Law 37 clearly intends.**

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 ENTER DISCUSSIONS
WITH NO SPRAY ET AL. IN GOOD FAITH**

In 2010 the NY City DOH held the first of its meetings with the Plaintiffs that were mandated in the 2007 Settlement Agreement. While a number of productive points were shared, almost all of those points have been abrogated in the City's current pesticides spraying campaign. This leads to the unfortunate conclusion that the City has not entered the stipulated discussions (only one of which has been held) in good faith, which violates the terms of the Settlement Agreement.

In that Agreement, the City made certain admissions that leverage against pesticides spraying and point to substantive scientific studies that the City must override -- and justify why it is doing so -- before it may commence its spray operation. These include admission 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 of and by itself must be addressed by the City before it sprays, and cause it to reconsider its overall plan. Together, they represent damning admissions that should strongly warn against the broadcast application of pesticides in New York City. But these admissions were apparently not seriously considered by the City in its current pesticides spraying campaign, and are ignored in its last known comprehensive mosquito plan written in 2010. [**Exhibit J**]

Similar concerns arise over the City's continued recommendations for the application of DEET to repel mosquitoes. DEET is suspected in numerous infant deaths and should NEVER be used, especially on children. 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, 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 – while providing no evidence whatsoever -- that "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 Notification to Reduce Mowquito Activity and Control West Nile Virus in Queens," August 19, 2011. Appended as **Exhibit K**]. However, the No Spray Coalition's Letter to NYC that was appended to and made part of the Settlement Agreement contradicts the City's bald assertions, and presents 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:

- **A major CDC study** 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**, which shows 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 stronger after the spraying**, because many of their natural predators (which have a longer reproductive cycle) 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; *Ambient 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 and published in both the Settlement Agreement and the Letter to New York City. It has merely given them lip-service so as to be able to claim formal compliance with the terms of the Settlement Agreement. I am hoping that there will be another meeting shortly between NYC and the No Spray Coalition as per the Settlement Agreement, and **I'm asking the Public Advocate to be present there, which would help to ensure that the proposals outlined in the Letter to NYC attached to 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 AND UPDATE THE CITY'S COMPREHENSIVE
MOSQUITO SURVEILLANCE AND CONTROL PLAN**

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, 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 in the 2010 Comprehensive Mosquito Surveillance and Control Plan. In fact, there is no plan, period, that I could find for 2011, no Environmental Impact Statement since 2001 despite the many changes that have occurred (including the collapse of bee colonies across the country, in which pesticides have been thought to play a primary role), and no public comment.

Another concern that has recently come under review in the Courts that would be of consequence to any new plans, updates, reviews and Environmental Impact Studies is **the challenge to pesticide sprays drifting over privately owned property**. 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 with regard to the Clean Water Act, in which federal Judge George B. Daniels ruled that the spray becomes a waste product emitted from a point source, 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 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 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 have 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 re-

quires prior knowledge of when and where the spraying would take place as well as the chemicals used. In my view, proper notification prior to the spraying should include:

- posting of signs and advertisements throughout the neighborhoods being sprayed (even *that* is not being done);
- 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;
- Providing medical professionals and hospitals with fact sheets on the specific pesticides to be sprayed and notification of how to treat pesticides exposure and poisoning, and on requirements 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 of exposed persons, incidents of spray drift over waterways, incidents of spraying over 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 shown to be not productive;

- Notification to spraytruck drivers of the safety equipment they are required to wear, and enforcement of those requirements.

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. We need a lawyer to stop them from spraying by getting a judge to issue an injunction until they can show that they have taken 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.

Calls made by members of the No Spray Coalition in August 2011 to doctors and medical professionals around the City indicate that no outreach had been done by the City to inform the medical personnel of the specific pesticides being sprayed nor of how to treat pesticides exposure and poisoning, nor of requirements for submission of data on those affected. No sound cars have gone out and provided sufficient notice to New Yorkers and visitors about impending spraying in that area. No school principals have been notified. Nor have public institutions been properly no-

tified. All of these items are common sense, 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, all of which point to the lack of good faith on the part of the City in entering and following-up upon those mandated discussions.

FAILURE OF NYC DOH TO RESPOND IN A TIMELY FASHION

A letter by NY State Assemblyman William Colton (47th Assembly District, Brooklyn) to the NYC Department of Health sent prior to this round of massive spraying, asks several 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 16 days after having received Colton’s letter, the Department of Health has not deigned to respond. It has ignored all the questions and concerns raised, and has gone about its indiscriminate and reckless pesticide spraying of the people of Brooklyn and Queens with toxins in contempt of its signed agreement and the law. Currently, the City is threatening to continue the spray operation in violation of the settlement agreement and in the absence of 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, 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 2007 Settlement Agreement.

CONCLUSION AND ACTION REQUESTED

On behalf of the Plaintiffs in this matter, **I am asking the Public Advocate to question the NYC DOH’s 2011 issuance of waivers to the prohibitions in Local Law 37, its failure to**

provide sufficient public notice, and to hold hearings on whether to allow adulticides to be sprayed into the air at all for 2011.

I am also asking the Public Advocate to attend **the second meeting with the No Spray Coalition and the Department of Health. We also expect the EPA, DEC, and OSHA to send representatives.** Also, I'm asking that the Public Advocate require NYCDOH to formally accept two permanent NO Spray representatives chosen by the No Spray Coalition and the Public Advocate, as well as 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 Public Advocate independently monitor all NYCDOH adulticide sprayings in the future.

Sincerely,

Mitchel Cohen
Coordinator, No Spray Coalition