



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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For Immediate Release

**U.S. DISTRICT COURT DISMISSES LAWSUIT
CHALLENGING NEW YORK CITY'S EFFORTS TO CONTROL THE WEST NILE
VIRUS**

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New York, December 2, 2002 -- Judge John S. Martin, Jr., of the United States District Court for the Southern District of New York has granted the City's motion for summary judgment and dismissed a complaint challenging the City's use of pesticides to combat the West Nile virus. The lawsuit had been commenced by individuals and organizations challenging pesticide spraying in 1999, 2000 and in subsequent years. The case was commenced in 2000, one year after the West Nile virus appeared in the New York City region.

In the complaint, the plaintiffs asserted claims based on alleged violations of the federal Clean Water Act and the Resource Conservation and Recovery Act (RCRA) as well as state environmental review law. The plaintiffs' initial requests for a temporary restraining order and a preliminary injunction to halt spray activities were both denied, and the City's motion to dismiss was granted with respect to the federal, state and environmental review claims. In denying the plaintiffs' requests for injunctive relief, Judge Martin allowed the City's crucial efforts to battle the West Nile virus to proceed pending resolution of the plaintiffs' Clean Water Act claim.

In his earlier opinion denying a preliminary injunction, Judge Martin noted that the spraying of pesticides in accordance with labeling instructions approved by the United States Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) does not violate the Clean Water Act. The court also noted that FIFRA does not provide a private right of action and may only be enforced by the federal government.

The plaintiffs attempted to avoid this earlier ruling by asserting that the City discharged pesticides directly into water bodies, in violation of the FIFRA labeling instructions. However, the evidence the plaintiffs presented fell short of their claims.

In his recent decision, Judge Martin held that, even assuming the allegations were true, the plaintiffs failed to identify any alleged incidents that would amount to anything more than technical violations of labeling requirements. As such, under federal law, the claims could only be brought by the EPA or the Attorney General.

"This decision provides a much appreciated endorsement of the City's laudable efforts to protect the public health of New York City citizens by controlling the spread of this potentially fatal disease," said Inga Van Eysden, a senior counsel in the Environmental Law Division of the New York City Law Department, who, in tandem with Assistant Corporation Counsel Mark McIntyre, handled the case.

Working in consultation with the federal Centers for Disease Control and Prevention, the Environmental Protection Agency, the New York State Department of Environmental Conservation and the New York State Department of Health, the New York City Department of Health and Mental Hygiene has developed a comprehensive plan for the surveillance, prevention and control of the West Nile virus that has served as a model for other jurisdictions as the West Nile virus has spread across the country. According to recent statistics published by the CDC, human cases of West Nile virus have been found in 43 states. The disease has caused over 200 deaths.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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