

**West Nile Virus
Policy and
Programmatic Activities
That Intersected With
Law**

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- OEM and DCAS declare a procurement emergency in September of 1999 to purchase chemicals and applicator services.

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- A prior environmental review was not necessary in 1999 because of emergency exemption language in SEQRA regulations.

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- The plan put forth in February of 2000 made it clear that an environmental review relative to the use of pesticides would be necessary.

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- DOH issues a “negative declaration” finding that applying larvicides to water bodies would not significantly impact the environment.

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- DOH determines that a thorough environmental assessment resulting in an environmental impact statement (EIS) will be necessary to determine whether the application of adulticides to control adult mosquitoes will significantly impact the environment.

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- DOH declares a procurement emergency to enter into a consultant contract providing assistance in the preparation of an environmental impact statement (EIS).

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- In April of 2000 the NYC Board of Health adopts a resolution declaring water accumulations that are conducive to mosquito breeding to constitute a public health nuisance, ordering all persons in control of premises or property to eliminate such conditions, and directing DOH and its agents to abate such nuisances when the owner fails to abate.

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- DOH uses the Board of Health resolution to aggressively abate stagnant water conditions, and to obtain access warrants.

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- DOH obtains permits from state DEC for larviciding. DOH applies larvicide to 135,000 catch basins, and other bodies of stagnant water.

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- In July of 2000, after a human case of WNV is confirmed, DOH begins spraying a synthetic pyrethroid to control adult mosquitoes, notifying the public and DEC prior to each spraying event. DEC imposes conditions, including pre and post spraying water sampling.

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- An environmental coalition brings suit in federal court to enjoin the spraying. A motion for a preliminary injunction is denied. Spraying continues. In September, 2000 the federal court dismissed all of the plaintiffs claims, except for one alleged violation of the federal Clean Water Act. The decision is appealed and in June of 2001 the Second Circuit Court of Appeals upholds the decision.

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2001 Season

- DOH cannot retain a contractor. It applies larvicide directly.
- Later, DOH applies adulticide by truck directly.

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- As part of the EIS process DOH seeks information from manufacturers, DEC and EPA regarding inert ingredients in the various pesticides. DOH is not successful.
- In July 2001 the EIS is completed and a finding of no significant risk resulting from aduenticiding is issued.
- <http://cityweb.nycnet/html/wnv/feis.html>

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- Notwithstanding language in the Environmental Conservation Law exempting public health activities, DOH seeks and obtains DEC permits to apply adulticides in areas adjacent to freshwater and tidal wetlands. DEC imposes strict conditions, including GPS reports.

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- The federal litigation continues on the one remaining claim.