

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2023-000951

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SC Court of Appeals

Mitch Randall Yawn and Juanita Mae Stanley,
d/b/a Flowertown Bee Farm and Supplies,

Plaintiffs/ Appellants,

v.

Dorchester County,

Respondents.

**RECORD ON APPEAL
VOLUME I of II**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO.: 2017-CP-18-00138

MITCH RANDALL YAWN AND
JUANITA MAE STANLEY D/B/A
FLORWERTOWN BEE FARM AND
SUPPLES,

Plaintiffs,

v.

DORCHESTER COUNTY,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGEMENT**

This matter came before for the Court by way of a motion for summary judgment filed by Defendant, Dorchester County, (hereinafter sometimes referred to as “the County”). Oral arguments were held on March 28, 2023 via WebEx. Each party was represented by counsel at the hearing. As discussed in detail below, this case stems from an aerial mosquito spray conducted by Dorchester County to control mosquito-borne illness in August 2016. Plaintiffs, Mitch Yawn and Jaunita Stanley, (hereinafter “Plaintiff’s or “Yawn and Stanley”), claim that the mosquito spray caused the death of the bees in their hives. The Plaintiffs filed suit alleging claims for both United States and South Carolina Constitutional violations, as well as negligence, gross negligence and trespass claims pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.*

On May 5, 2020, the Federal District Court for the District of South Carolina granted Dorchester County’s motion for summary judgment as to the United States Constitutional Claims and remanded the remaining state law claims to state court. *Yawn v. Dorchester Cnty.*, 446 F. Supp.3d 41 (D.S.C. 2020). The United States Court of Appeals for the Fourth Circuit affirmed the

district court's order. (See *Yawn v. Dorchester Cnty.*, 1 F.4th 191 (4th Cir. 2021)). As a result of the federal courts' orders, the only causes of action before this Court are the South Carolina Constitutional claims, negligence, gross negligence and trespass pursuant to the South Carolina Tort Claims Act, S.C. Code §15-78-60 *et seq.*

Dorchester County contends that it is entitled to summary judgement on all claims. After reviewing the memorandums and materials submitted by both parties, as well as hearing oral arguments, based on the reasons below, this Court finds that there is no issue of material fact. Accordingly, Dorchester County's motion for summary judgment is granted.

FACTS

Zika is a mosquito borne virus that for most people causes mild symptoms such as fever, headache, joint pain, rash, red eyes, and muscle pain¹. However, for pregnant women, exposure to the Zika virus can have grave consequences. Zika exposure during pregnancy can cause severe birth defects to the unborn baby's brain, as well as miscarriage, stillbirth, other birth defects.² Microcephaly has been the primary birth defect associated with babies exposed to the Zika virus in utero. Microcephaly is a birth defect where a baby's head is smaller than expected when compared to babies of the same sex and age. Babies with microcephaly often have smaller brains that might not have developed properly.³

In 2016, the Zika virus became a topic of national concern.⁴ The virus was spreading rapidly in South America, so much so that ahead of the 2016 Summer Olympics, the Center for Disease Control, ("CDC"), issued a travel warning to travelers to Brazil as well as 44 other

¹ <https://www.cdc.gov/zika/about/overview.html>; Zika can also be transmitted person to person via sexual contact. *Id.*

² <https://www.cdc.gov/zika/about/overview.html>

³ <https://www.cdc.gov/ncbddd/birthdefects/microcephaly.html>

⁴ <https://www.cdc.gov/zika/reporting/2016-case-counts.html>

countries and territories where the Zika virus was circulating.⁵ At this time, there was widespread alarm in the United States regarding the spread of Zika to the United States.⁶ Locally, lowcountry residents were concerned, and the Department of Health and Environmental Control, (“DHEC”), was encouraging local jurisdictions to bolster their mosquito abatement programs ahead of the summer months in preparation for a possible Zika outbreak.

Clayton “Scott” Gaskins has been the Mosquito Abatement Coordinator for the Dorchester County since December 1993. In August, 2016, Mr. Gaskins was contacted by an entomologist at DHEC and informed that three cases of Zika had been reported in Dorchester County. DHEC provided the addresses of the individuals and instructed the County that these specific addresses including a certain radius around the address needed to be treated with pesticide for mosquitos.

Following DHEC’s directive, the County sent both of its trucks to spray for mosquitos at night. However, after observing the specific locations, Mr. Gaskins determined that there were several wooded areas within the designated radius that the County could not access to spray with trucks and were too vast to send someone on foot to spray by hand. Mr. Gaskins testified that he had been receiving numerous complaints regarding the large population of mosquitos in the area, and that this, combined with the travel Zika cases, in his opinion, created public health emergency⁷. Accordingly, Mr. Gaskins consulted with his supervisor as well as Jason Ward, the Dorchester County Administrator, regarding his concerns about the inability to treat these areas for mosquitos with the equipment and resources available. At this time, the decision was made to seek funds

⁵ <https://www.nytimes.com/2016/07/24/health/travel-zika-virus-faq.html>

⁶ https://www.washingtonpost.com/national/health-science/why-the-united-states-is-vulnerable-to-spread-of-zika-virus/2016/01/26/a8c6a9b4-c440-11e5-8965-0607e0e265ce_story.html

⁷ Mr. Gaskins stated that the people infected with the Zika virus were supposed to remain quarantined in their houses. However, if they do go outside, they can get bitten by mosquitos which in turn could infect others.

from the Dorchester County Council to conduct an aerial mosquito spray to ensure that all areas within the radius given by DHEC were treated for mosquitos.

According to the Chairman of the Dorchester County Council, during this time period, County Council had been receiving numerous complaints from citizens regarding the mosquito population and questions as to whether the County was doing everything it could to control the mosquitos as Charleston and Berkeley Counties were conducting aerial mosquito sprays. Further, constituents were attending Council meetings and requesting that Dorchester County conduct aerial mosquito sprays.

Ultimately, County Council approved the funds for the aerial spray and the County established a contract with Allen Aviation to conduct the aerial spray. Allen Aviation was an experienced, licensed and certified aerial pesticide applicator, and handled the aerial sprays for other counties in South Carolina, including Berkeley County. Per the instructions on the pesticide, the aerial mosquito spray had to occur two hours before sunrise or two hours after sunset. Further, South Carolina State law required that the public be given 24-hour notice before an aerial spray. As such, Dorchester County decided to conduct the aerial mosquito control spraying on Sunday August 28, 2016 between the hours of 6:30 a.m. and 8:30 a.m.

In accordance with state law, Dorchester County issued a press release notifying the public of the upcoming aerial mosquito spray. A map of the area included in the spray was attached to the press release. The press release was distributed to numerous media outlets including local television stations, radio stations, newspapers, and social media platforms. In 2016, Mr. Gaskins personally kept a list of residents, including Plaintiffs, who were beekeepers. Although the County is not required by law to personally notify individual beekeepers, Mr. Gaskins, as a courtesy, took it upon himself to contact the beekeepers on his list prior to a mosquito spray.

Prior to the spray, the County provided Allen Aviation with mosquito abatement zone shapefile maps to use during the aerial spray and the County confirmed that Allen Aviation could use the data in its system. According to David Garber, the GIS map Coordinator for Dorchester County, the map data transmitted by the County to Allen Aviation was in WGS 84. Mr. Garber testified that this software provides coordinates by longitude and latitude carried out to the 12th digit and allows the user to locate a target within a few inches. The shapefile maps sent to Allen Aviation included the location of all known beekeepers in the area.

Mr. Al Allen, an Air Force veteran and certified agriculture pilot for Allen Aviation, testified in detail about the preparation for an aerial spray, the pesticide and equipment used, and that shapefiles he received from the County had the location of the beekeepers in the area. Mr. Allen stated that it is industry standard to cut off the spray three seconds before he is over the center of the “do not spray” location. Mr. Allen testified that during the aerial spray he used the maps provided by the County with the beehive markers to make his determination as to when to turn of the sprayer during the flight. In fact, Mr. Allen testified that he specifically remembered cutting off the sprayer as he approached the beehive locations per the map. Mr. Allen said that the aerial spray was a “standard unit flight” and “uneventful.”

On August 29, 2016, one day after the spray, Mr. Gaskins was contacted by Plaintiff Mitchell Yawn who stated he was not informed regarding the aerial mosquito spray, and that he lost approximately 50 bee hives after the aerial spray⁸. Mr. Gaskins testified that upon receiving Yawn’s message, he looked back at his beekeeper list and realized that when making the courtesy calls regarding the upcoming aerial spray, he mistakenly called the individual above Yawn’s name,

⁸ The County contests the number of honeybees the Plaintiffs claim to have lost as well as the income Plaintiffs claim to have lost as a result of the honeybee deaths. However, the County does not dispute that the Plaintiffs lost honeybees during the immediate timeframe after the spray.

and not Mr. Yawn. Mr. Gaskins stated that he called Yawn back, told him that he made a mistake, and apologized to him. Mr. Gaskins testified that he also informed his boss about the call and that his boss informed Dorchester County Administrator Jason Ward regarding the situation.

The County began an investigation to determine what happened and if the aerial spray contributed to the bee die-off. During the investigation, Mr. Chinnis, Chairman of County Council, testified that he was informed that Mr. Gaskins had “[taken] it upon himself to call folks that he knew. . . had bees, and that he routinely did that, and that there was a possibility that he had either called the wrong number or not gotten someone at one of those numbers.”

While the County received numerous calls and emails, the Plaintiffs are the only people who claim to have lost bees as a result of the aerial spray. Nonetheless, the County contacted Clemson University’s Department of Pesticide Regulation, the entity responsible under South Carolina law, for regulating and investigating pesticide use and complaints. The Clemson Department of Pesticide Regulation performed an investigation, which included interviewing Plaintiff Stanley and observing the hives, collecting a representative sample of the bees as well as taking an “unofficial third-party sample of bees”. Clemson further analyzed these samples from Plaintiff Stanley at the Department of Pesticide Regulation’s Pesticide Residue Lab, meet with County employees and officials, meet with Allen Aviation and reviewed Allen’s records, reviewed the pesticide use of the aerial spray, and confirmed with SCDHEC that Dorchester County had been notified of cases of travel related Zika virus in Dorchester County on August 9 and 15, 2016, and had provided maps to Dorchester County showing a mosquito target zone.

While the report did not rule out/eliminate the pesticide used in the mosquito spray as a cause of the Plaintiffs’ loss of bees, it found no violations as to the aerial mosquito spray:

This investigation found no violations occurred as a result of the Trumpet EC application performed on August 28th. This conclusion

was supported by the following statements: the nature and timing of the pesticide application was published in a mass media outlet greater than 24-hours prior to the application, the application was performed at or below the labeled rate, the application was not applied more than 2 hours after sunrise, and the application was performed to prevent a threat to public health after identifying the occurrence of a mosquito-borne disease in the human population.

Even though the Clemson report found no violations and could not definitively state what caused the Plaintiffs' loss of bees, the County tried to work with the Plaintiffs toward a resolution. However, On January 30, 2017, the Plaintiffs filed suit against the County, the Town of Summerville, Allen Aviation, and Al Allen⁹. As stated above, the federal court granted the County's summary judgment as to the federal claims. Only the state causes of action for negligence, gross negligence and trespass pursuant to the South Carolina Tort Claims Act § 15-78-10 *et seq.* remain¹⁰.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *David v. McLeod Reg. Med. Ctr.*, 367 S.C. 242, 626 S.E.2d 1 (2006). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Id.* The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Where the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary

⁹ Only the County remains as a Defendant.

¹⁰ The Plaintiffs also alleged claims under the South Carolina Constitution. However, they did not address the state constitutional violations in their response. Moreover, as the Fourth Circuit has already ruled that there were no Federal Constitutional violations, and South Carolina Constitutional claims are analyzed the same as under federal law, the South Carolina Constitutional Claims cannot stand and must be dismissed as a matter of law. See *Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76, n.6 (2005) citing *Westside Quik Shop, Inc. v. Stewart*, 341 S.C. 297, 306, 534 S.E.2d 270, 275 (2000).

judgment, the court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law. *Humana Hospital-Bayside v. Lighte*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991).

LEGAL ANALYSIS

Negligence/Gross Negligence

In a negligence action, “[t]he court must determine as a matter of law, whether the law recognizes a particular duty.” *Repko v. Cnty of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018) citing *Steinke v. S.C. Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). “If there is no duty, then the defendant in a negligence action is entitled to a directed verdict.” *Id.* The gravamen of Plaintiffs’ argument is that the County was negligent and grossly negligence in failing to notify them of the aerial mosquito spray.

Pesticide use in South Carolina is governed by the Pesticide Control Act, S.C. Code Ann. 46-13-10 *et seq.* The Act delegates authority regarding pesticide use to the “director” which is defined as “the Director of the Division of Regulatory and Public Service Programs, College of Agricultural Sciences, Clemson University.” S.C. Code Ann. § 46-13-20(k). The director is responsible for promulgating regulations regarding the use of pesticides in the state of South Carolina. S.C. Code Ann. § 46-13-30. The Regulations are contained in Article 17 of the South Carolina Pesticide Control Regulations and govern among many things, the products that can be used as a pesticide, adherence to the products’ labeling instructions, notice provisions to the public when a pesticide is going to be used, as well as investigatory duties when there is an alleged

violation of the Regulations.¹¹<https://www.clemson.edu/public/regulatory/pesticide-regulation/pdfs/rules-and-regs-dpr.pdf>.

With regard to notice under South Carolina State law, Section 27-1084(A)(4) of the Rules and Regulations for Enforcement of the South Carolina Pesticide Control Act provides:

For non-commercial applicators only, or for commercial applicators making applications for and under the direct supervision of a governmental entity, the disclosure requirements of the Above Sections may be met by announcement or publication of the nature and timing of pesticide applications in the appropriate media outlets not less than 24 hours prior to the application.”

In this case, it is undisputed that that the County issued a press release regarding the aerial mosquito spray to numerous media outlets including television stations, radio stations, newspapers and social media platforms. Tracey Langley, the Dorchester County employee who created and issued the press release, testified that she sent the press release to the Summerville Journal Scene; Channel 2; Channel 4; Channel 5; the Post and Courier; The Eagle Record; radio stations 103.5; 102.5; 94.3; and 104.5, and the Town of Summerville.

Further, pursuant to the duties delegated to it by the South Carolina Pesticide Act, The Clemson Department of Pesticide Regulation, conducted an investigation into the spray and determined that the spray performed by Dorchester County on August 28, 2016, did not violate any Rules or Regulations for the Enforcement of the South Carolina Pesticide Control Act. It determined that the mosquito spray “was performed to prevent a threat to public health after identifying the occurrence of a mosquito-borne disease in the human population.” With regard to notice to the public, the Clemson investigation found that the Department of Public Relations for the County provided appropriate notice of the nature and timing of the pesticide application as it

¹¹ The regulations govern a voluminous number of topics ranging from licensing requirements of applicators to enforcement of violations.

“was published in a mass media outlet greater than 24-hours prior to the application.” Accordingly, the County complied with notice provisions of Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act.

Plaintiffs contend in addition to the notice given via the mass media outlets listed above, Mr. Gaskins should have personally contacted them to notify them about the aerial spray because they were on his list of beekeepers, and that his failure to do so constituted negligence and gross negligence.

The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq, governs all tort claims against governmental entities and is the exclusive civil remedy for any alleged tort committed by a governmental entity or its employees or agents. S.C. Code Ann. § 15-78-20. It is “the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein.” *Id.* Furthermore, the provisions of the Act state that “must be liberally construed in favor of limiting the liability of the State.” S.C. Code Ann. § 15-78-20(f).

However, within the Tort Claims Act, the Legislature preserved the State’s immunity from certain claims. South Carolina Code Ann. § 15-78-60 provides for certain exceptions to the waiver of immunity. The exceptions applicable to the case at hand are S.C. Code § 15-78-60(1), (4), and (5)¹², which provide in pertinent part, that a governmental entity is not liable for a loss resulting from:

¹² In their complaint, Plaintiffs allege that the County was negligent in its operation of the mosquito abatement program and should have used alternative methods rather than conducting an aerial mosquito spray. However, the County’s operation of its mosquito abatement program and its decision to utilize an aerial spray falls squarely into S.C. Code Ann. § 15-78-60(1) and (5). There is ample evidence in the record that Mr. Gaskins, the County Administrator and the County Council, when confronted with the instructions to treat for mosquitos from DHEC, combined with the knowledge of the inaccessible areas within the treatment radius, not only considered alternatives but actually performed the alternatives and determined that it was not sufficient to protect the public health from Zika. See *Graham v. Town of Latta*, 417 S.C. 164, 184, 789 S.E.2d 71 , 81 (Ct. App.2016); *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004)

(1) legislative, judicial, or quasi-judicial action or inaction;

...

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

Most pertinent to Plaintiffs' claims regarding Mr. Gaskins failure to individually notify them of the mosquito spray is S.C. Code Ann. §15-78-60(4). Subsection (4) provides that a governmental entity is not liability for the adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.

In *Repko v. Cnty of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018), the South Carolina Supreme Court addressed similar claims of negligence regarding a county's failure to properly administer its own policies and regulations. In *Repko*, Harmony Holdings began developing a residential subdivision in Georgetown County. Georgetown County had a regulation in place that allowed a developer to post a financial guarantee such as cash, bonds or letters of credit, with the county in lieu of completing required infrastructure such as roads, drainage, sewer, etc., prior to selling residential lots. *Id.* at 498, 881 S.E.2d 743, 746. Acceptance of a financial guarantee was within the discretion of the county. *Id.* Georgetown County also had policies and procedures in place, which if handled properly, as the developer completed certain stages of infrastructure, the county would take steps to verify completion of the work, and notify the issuing bank that the letter of credit could be reduced accordingly. *Id.*

In *Repko*, Georgetown County, in its discretion, allowed the developer to submit a letter of credit rather than completing the infrastructure and to begin selling residential lots in the development. Over a period of time, the developer submitted and the County approved, four requests to reduce the letter of credit. After the fourth reduction, the letter of credit totaled \$156,704.03. However, the cost of completing the remaining infrastructure in the residential development was over one million dollars. *Id.* at 499, 881 S.E.2d 743, 746. The developer then informed the county that it no longer had the financial means to complete additional infrastructure and declared bankruptcy. *Id.* Those who purchased residential lots in a certain phase of the development were unable to build on their lots because the infrastructure had not been completed. *Id.*

Plaintiff Repko was one of the property owners unable to build on his lot, and filed suit against Georgetown County alleging that the County was negligent and grossly negligent in failing to comply with its own rules, regulations and policies to verify that the infrastructure work had been completed before approving the requests to reduce the letter of credit. Georgetown County asserted various defenses including S.C. Code Ann. § 15-78-60(4). In its opinion, the South Carolina Supreme Court addressed only the application of this section.

The *Repko* Court first recognized that in a negligence action, “[t]he court must determine as a matter of law, whether the law recognizes a particular duty.” *Id.* citing *Steinke v. S.C. Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). “If there is no duty, then the defendant in a negligence action is entitled to a directed verdict.” *Id.* The Court first held that it need not determine whether the regulation created a duty of care, because “even if such duty was created, the County is immune from liability to Repko under subsection 15-78-60(4) of the TCA.” *Id.* at 500, 881 S.E.2d 743, 747. It then recognized that “because subsection (4)

does not contain a gross negligence standard, standing alone, subsection (4) would entitle the County to immunity from liability from its failure to comply with or enforce its regulations.” *Id.* at 504, 818 S.E.2d 743, 749.

The Court continued, and held that it was improper to read into subsection (4) the gross negligence standard contained in subsection (12) solely because Georgetown County pled subsection (12). *Id.* The Court stated “in order for the gross negligence standard from one immunity provision to be read into an immunity provision that does not contain a gross negligence standard, the immunity provision containing the gross negligence provision must first apply to the case.” *Id.* at 507, 818 S.E.2d 750. As subsection (12) was not applicable to *Repko*, the Court held that Georgetown County was immune from Plaintiff’s suit pursuant to S.C. Code § 15-78-60(4).

Similar to *Repko*, in the case at hand, the County contends it complied with the notice requirements Section 27-1084(A)(4) of the Rules and Regulations for Enforcement of the South Carolina Pesticide Control Act by publishing notice of the aerial spray in numerous mass media outlets greater than 24-hours prior to the application and that it had no duty to call the individual bee keepers in advance of the spray. However, even if there was a duty to call the Plaintiff’s prior to the spray, the County is immune from suit pursuant to S.C. Code Ann. § 15-78-60(4). Additionally, there is no other applicable subsection containing a gross negligence standard that would mandate the court read a gross negligence standard into subsection (4). As such, Plaintiffs’ negligence and gross negligence claims fail and the County is entitled to summary judgment¹³.

¹³ Plaintiffs trespass claim also fails as a matter of law. First, trespass is not applicable as the spray did not “interfere with the right of exclusive possession of the land.” See *Graham v. Town of Latta*, *supra*. Even if trespass was applicable, Plaintiffs cannot satisfy the “intentional act” requirement as the Fourth Circuit already held that “the death of Appellants bees was plainly unintentional.” See opinion, p.9.

Trespass

Plaintiffs also assert that the aerial spray by the County constituted a trespass. To constitute an actionable trespass there must be an affirmative act, the invasion of the land must be intentional and the harm caused must be the direct result of that invasion. *Snow v. City of Columbia*, 305 S.C.544, 409 S.E.2d 797 (Ct. App. 1991). In this case, Plaintiffs cannot satisfy the “intentional act” requirement. The County provided a shapefile map with the locations of the beekeepers to Allen Aviation so the pilot could turn off the spray in those locations. The pilot for Allen testified that the map provided to him by the County had the beekeeper locations marked and that he used the map to make the determination as to when to turn off the sprayers during the flight. In fact, the pilot testified that he specifically remembered cutting off the sprayer as he approached the beehive locations per the map. Moreover, the County provided notice to the public via numerous mass media outlets. As the Fourth Circuit Court of Appeals concluded, “the death of [Plaintiffs’] bees was neither intended nor foreseeable. *Yawn v. Dorchester Cnty.*, 1 4th 191, 196 (4th Cir. 2021). Accordingly, the County’s motion for summary judgment as to the trespass claim is granted.

CONCLUSION

The Court finds that there are no issue of material fact that the aerial mosquito spray conducted by the County was proper, and done pursuant to South Carolina law and regulations. Pursuant to South Carolina Code Ann. §15-78-60(1) and (5), the County has wide discretion in its operation of its Mosquito Abatement Program. Leading up to and during the aerial spray, the County weighed competing alternatives and utilized professionally acceptable standards. As to Plaintiffs’ claim that the County was negligent in failing personally notify the Plaintiffs prior to the spray, Plaintiffs’ claims are barred by S.C. Code Ann. § 15-78-60(4). Moreover, Plaintiffs

claim for trespass fails as they cannot satisfy the “intentional act” requirement. Accordingly, the County’s motion for summary judgment is GRANTED.

IT IS SO ORDERED.

[Electronic Signature Page to Follow]



Dorchester Common Pleas

Case Caption: Mitch Randall Yawn , plaintiff, et al VS Dorchester County ,
defendant, et al

Case Number: 2017CP1800138

Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Mitch Randall Yawn and Juanita Mae Stanley
d/b/a Flowertown Bee Farm and Supplies,

Plaintiffs,

V.

Dorchester County; Town of Summerville;
Allen Aviation, Inc; and Al Allen,

Defendants.

Civil Action No. 2:17-cv-440-MBS

OPINION AND ORDER

I. PROCEDURAL HISTORY

This case arises as the result of an aerial mosquito spray conducted by Dorchester County, South Carolina (“Defendant”) that resulted in the deaths of millions of bees owned by Mitch Randall Yawn and Juanita Mae Stanley (“Plaintiffs”) on their bee farm, Flowertown Bee Farm and Supplies. On January 27, 2017, Plaintiffs filed suit against Defendant; the Town of Summerville, South Carolina;¹ Allen Aviation, Inc; and Al Allen² in the Court of Common Pleas for Dorchester County, South Carolina. ECF No. 1. The case was removed to federal court on February 13, 2017. Id. In an amended complaint, filed on August 18, 2017, Plaintiffs allege violations of the Fifth and Fourteenth Amendments of the U.S. Constitution. ECF No. 28 at 7. Specifically, Plaintiffs allege that the spray and subsequent death of the bees amounted to an

¹ The Town of Summerville, South Carolina, was terminated from this action pursuant to a stipulation of dismissal filed on September 25, 2017. ECF No. 37.

² Allen Aviation, Inc. and Al Allen were dismissed on May 6, 2019 after successful mediation. ECF Nos. 87, 88. A stipulation of dismissal with prejudice was entered on June 18, 2019. ECF No. 93.

unconstitutional Taking and that the Due Process and Equal Protection Clauses were violated because their property was taken without notice and opportunity to object. Id. at 7-9. Plaintiffs bring their federal Constitutional claims under 42 U.S.C. § 1983. Plaintiffs also bring state constitutional claims under South Carolina Constitution Article I, §§ 13, 22, the Takings Clause; and Article I, § 2, the Due Process and Equal Protection Clauses. Id. at 9-11. Plaintiffs also bring claims of negligence, trespass, and strict liability under the South Carolina Tort Claims Act. Id. at 11-13.

On December 16, 2019, Defendant filed a motion for summary judgment. ECF No. 101. Defendant argues that Plaintiffs have failed to properly state a § 1983 claim. Additionally, Defendant argues that in the event a § 1983 claim was properly alleged, its actions did not violate the constitution. Defendant did not address the state law claims in its motion. Plaintiffs filed a response in opposition on January 14, 2020. ECF No. 105. A hearing was held on Defendant's motion on February 26, 2020. ECF No. 112.

II. FACTUAL BACKGROUND

In 2016, Defendant received numerous calls from concerned citizens asking Defendant to take action to combat the growing number of mosquitoes in the area, which can transmit the zika virus to humans. ECF No. 101-1 at 10. Officials working for Defendant determined that the usual method to control mosquito populations, spraying with a truck, would not allow mosquito killing agents to reach all areas with mosquito populations. Id. at 9. Therefore, Defendant hired Allen Aviation to perform various aerial sprays of a mosquito killing agent. ECF No. 28 at 5. Defendant states that the purpose of the aerial spray was to stop the spread of the zika virus. ECF

No. 101-2 at 35. The zika virus was a serious health concern in 2016.³ At the time of the spray, there were confirmed cases of the zika virus in South Carolina. *Id.* at 35-36. Clayton Gaskins (“Gaskins”), the Mosquito Abatement Coordinator for Defendant, coordinated the aerial sprays. ECF No. 101-1 at 3. Gaskins placed notices about the first aerial spray with numerous television news channels and in Charleston, South Carolina’s Post and Courier newspaper. *Id.* at 11. Gaskins also made a courtesy call to various beekeepers to inform them that an aerial spray was to take place, in order to give beekeepers further opportunity to protect their bees from the chemicals. *Id.* at 5. Gaskins admitted that he made a mistake and did not call Plaintiffs on this occasion. *Id.* at 16. Plaintiffs did not take any precautions to protect their bees. The aerial spray occurred on August 28, 2016, which resulted in the killing of millions of Plaintiffs’ bees. ECF No. 28 at 5.

III. LEGAL STANDARDS

A. Summary Judgment

The court shall grant summary judgment if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. Rule 56(a). The moving party will be entitled to a judgment as a matter of law if the “nonmoving party has failed to make a sufficient showing on an essential element of her case.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Accordingly, “[o]ne of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses.” *Id.* at 323–24. The moving party must initially show that there is no genuine issue of

³ Morgan Hennessey, DVM, Marc Fischer, MD, and J. Erin Staples, MD, PhD; Zika Virus Spreads to New Areas — Region of the Americas, May 2015–January 2016, Centers for Disease Control and Prevention (January 22, 2016), <https://www.cdc.gov/mmwr/volumes/65/wr/mm6503e1.htm>.

material fact. Id. at 323. Once the movant has made this showing, the non-moving party must demonstrate specific, material facts that give rise to a genuine issue. Id. at 324. A “mere scintilla” of evidence is insufficient to overcome the summary judgment motion. Anderson v. Liberty Lobby, 477 U.S. 242, 252 (1986).

B. 42 U.S.C. § 1983

Title 42, U.S.C. § 1983 provides a vehicle through which plaintiffs can seek relief for violations of their civil rights. Section 1983 states, in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Municipalities are considered “persons” under § 1983. A municipality may be sued if “a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers” caused a Constitutional tort. Monell v. New York City Dep’t. of Soc. Serv., 436 U.S. 658, 690 (1978). The “policy which ordered an unconstitutional act can be established by a single decision by proper municipal policymakers.” Pembaur v. City of Cincinnati, 475 U.S. 469, 484 n.11 (1986).

C. Fifth Amendment of the United States Constitution

The state’s power of eminent domain allows it to take private property for public use. The Fifth Amendment of the Constitution requires that the state compensate those from whom it takes property for public use, providing that “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. The Fourteenth Amendment applies the Fifth

Amendment to the states. Murr v. Wisconsin, 137 S. Ct. 1933, 1942 (2017). Often, the Takings Clause is implicated in cases where the government appropriates land or other real property from individuals. However, the Takings Clause also applies to cases where the government appropriates personal property. Horne v. Dep't of Agric., 135 S. Ct. 2419, 2427 (2015)(noting that “people still do not expect their property, real or personal, to be actually occupied or taken away”). The test to determine if the Takings Clause was violated requires a reviewing court to determine if there was a Taking, and then whether such a Taking “‘deprives the owner of all economically valuable use’ of the item taken.” Id. (quoting Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 323 (2002)). Some courts impose an affirmative act element to Takings Clause claims. Chae Bros., LLC v. Mayor & City Council of Baltimore, No. CV GLR-17-1657, 2018 WL 1583468, at *8 (D. Md. Mar. 30, 2018)(stating that “‘merely...incidental or consequential’ damage to private property—even when resulting from government action—is, at most, ‘compensable as a tort.’”)(quoting Ridge Line v. United States, 346 F.3d 1346, 1355–56 (Fed. Cir. 2003)).

The state’s power of eminent domain is separate and distinct from the state’s police power. The police power refers to the state’s “general power of governing.” Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519, 536 (2012). Specifically, such power “extends to all matters affecting the public health or the public morals.” Stone v. Mississippi, 101 U.S. 814, 818 (1879).

IV. ANALYSIS AND DISCUSSION

The court must first determine whether Defendant, a municipality, enacted a policy that would subject it to liability under § 1983. Here, Gaskins determined that the usual method of mosquito abatement was not effective given the growing mosquito population and the

geographical limitations of truck sprays. ECF No. 101-1 at 6. Gaskins reported this information to his supervisor, Jason Ward (“Ward”), the Dorchester County Administrator. Id. at 7. Ward instructed Gaskins to contact officials in Berkeley County, South Carolina, and Charleston County, South Carolina, to inquire about aerial sprays, as those counties had conducted aerial sprays in the past. Id. Ward also contacted the South Carolina Department of Health and Environmental Control, which suggested that Defendant conduct aerial sprays. Id. at 8. With this information, Ward requested and received funding to conduct the aerial sprays from the Dorchester County Council, and ultimately conducted the aerial sprays. Id. at 9. The court finds that the plan adopted by municipal officials working for Defendant to combat the mosquito problem and ultimate decision to conduct the aerial spray was a policy that was officially adopted by Defendant and satisfies the requirements of a § 1983 claim.

The court must now determine whether a Constitutional tort occurred. Plaintiffs allege that the decision to conduct the aerial spray and the resulting destruction of the bees amounts to an unconstitutional Taking in that the state exercised its power of eminent domain. Defendant argues that it exercised its police power to protect the public from mosquitoes and the zika virus that they carry. Defendant further submits that it did not affirmatively act to take Plaintiffs’ bees for public use.

Courts have illustrated the distinction between the power of eminent domain and the police power. In Lech v. Jackson, a husband and wife sued police officers and the city of Greenwood Village, Colorado, after police officers damaged their home. C/A No. 18-1051, 2019 WL 5581699 (10th Cir. Oct. 29, 2019). In Lech, officers used a “BearCat,” a Humvee-like vehicle, to “open multiple holes” in the home to extract a dangerous criminal. Id. at *2. As a result of the prolonged extraction operation, the Lech home “was rendered uninhabitable.” Id.

The Leches brought a claim under the Takings Clause. The district court found that, in raiding and destroying the Lech home to remove a dangerous criminal, the city was exercising its police power and not its eminent domain power. Id. Accordingly, the district court awarded no compensation.

On appeal, the Court of Appeals for the Tenth Circuit reasoned that, “when the state acts to preserve the ‘safety of the public,’ the state ‘is not, and, consistent[] with the existence and safety of organized society, cannot be, burdened with the condition that the state must compensate [affected property owners] for pecuniary losses they may sustain’ in the process.” Id. at *5 (quoting Mugler v. Kansas, 123 U.S. 623, 669 (1887)). The Tenth Circuit ruled that “when the state acts pursuant to its police power, rather than the power of eminent domain, its actions do not constitute a Taking for purposes of the Takings Clause.” Id. Courts in other Circuits, as well as two district courts in this Circuit, have adopted this reasoning. See, e.g., AmeriSource Corp. v. United States, 525 F.3d 1149, 1153 (Fed. Cir. 2008); Patty v. United States, 136 Fed. Cl. 211, 214 (2018) (“The distinction between an exercise of the police power and a constitutional Taking has been characterized . . . as ‘whether the governmental action operates to secure a benefit for or to prevent a harm to the public.’”)(quoting Morton Thiokol, Inc. v. United States, 4 Cl. Ct. 625, 630 (1984)); Cybernet, LLC v. David, No. 7:16-CV-16-RJ, 2018 WL 5779511, at *16 (E.D.N.C. Nov. 2, 2018); White v. City of Greensboro, 408 F.Supp.3d 677, 703 (M.D.N.C. 2019) (holding that property seized during the execution of a search warrant was not the basis of a Takings Clause claim and that “when law enforcement-officials exercise their authority to seize [or] impound [property]...or otherwise enforce criminal law, law enforcement exercises its police power, not its power of eminent domain”).

In their memorandum in opposition to Defendant's motion for summary judgment, Plaintiffs state that Defendant's decision to spray "may [have been] within [Defendant's] police power," but assert that Defendant "cannot benefit the public by taking the personal property of the Plaintiffs without paying them just compensation." ECF No. 105 at 7. Furthermore, in oral argument, Plaintiffs' attorney argued that he believed that the spray was an exercise of police power but that it was clearly a taking of property without just compensation.

It is undisputed that the spray was conducted to prevent the spread of disease, a matter that would affect public health. Such an action fits squarely within the state's police power. "If the injury complained of is only incidental to the legitimate exercise of governmental powers for the public good, then there is no taking of property for the public use, and a right to compensation, on account of such injury, does not attach under the Constitution." Chicago, B. & Q. Ry. Co. v. People of State of Illinois, 200 U.S. 561, 593–94 (1906). The loss of Plaintiff's bees was unintentional; it was an unfortunate consequence to a proper exercise of Defendant's police power. Because Defendant was exercising its police power, and not its power of eminent domain, the Takings Clause is not implicated.

The court recognizes the importance of bees to agriculture, the economy, and the environment, as well as the need to mitigate threats to bee colonies. See, e.g., <https://www.fda.gov/animal-veterinary/animal-health-literacy/helping-agricultures-helpful-honey-bees> (accessed March 12, 2020). However, because Plaintiffs are not entitled to federal compensation, the court will remand Plaintiffs' state law claims for further consideration. See 28 U.S.C. § 1367(c)(providing that a district court may decline to exercise supplemental jurisdiction when it "has dismissed all claims over which it has original jurisdiction").

V. CONCLUSION

Defendant's motion for summary judgment, ECF No. 101, is **GRANTED**. This matter is hereby **REMANDED** to the Court of Common Pleas for Dorchester County, South Carolina, pursuant to 28 U.S.C. § 1367(c). Defendant's motion to exclude, ECF No. 102, is **DENIED** as moot.

IT IS SO ORDERED.

Charleston, South Carolina
Dated: March _17____, 2020

/s/ Margaret B. Seymour
Margaret B. Seymour
Senior United States District Judge



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

A TRUE COPY
ATTEST: ROBIN L. BLUME, CLERK
BY:  DEPUTY CLERK

Mitch Randall Yawn and Juanita Mae Stanley d/b/a Flowertown Bee Farm and Supplies,	)	Civil Action No. 2:17-cv-440-MBS
	)	
	)	AMENDED ORDER AND OPINION
Plaintiffs,	)	
v.	)	
	)	
Dorchester County; Town of Summerville;	)	
Allen Aviation, Inc; and Al Allen,	)	
	)	
	)	
Defendants.	)	

I. PROCEDURAL HISTORY

This case arises as the result of an aerial mosquito spray conducted by Dorchester County, South Carolina (“Defendant”) that Mitch Randall Yawn and Juanita Mae Stanley (“Plaintiffs”) allege killed millions of bees on their bee farm, Flowertown Bee Farm and Supplies. On January 27, 2017, Plaintiffs filed suit against Defendant; the Town of Summerville, South Carolina;¹ Allen Aviation, Inc; and Al Allen² in the Court of Common Pleas for Dorchester County, South Carolina. ECF No. 1. The case was removed to federal court on February 13, 2017. Id. In an amended complaint, filed on August 18, 2017, Plaintiffs allege violations of the Fifth and Fourteenth Amendments of the U.S. Constitution. ECF No. 28 at 7. Specifically, Plaintiffs allege that the spray and subsequent death of the bees amounted to an

¹ The Town of Summerville, South Carolina, was terminated from this action pursuant to a stipulation of dismissal filed on September 25, 2017. ECF No. 37.

² Allen Aviation, Inc. and Al Allen were dismissed on May 6, 2019 after successful mediation. ECF Nos. 87, 88. A stipulation of dismissal with prejudice was entered on June 18, 2019. ECF No. 93.

unconstitutional Taking and that the Due Process and Equal Protection Clauses were violated because their property was taken without notice and opportunity to object. Id. at 7-9. Plaintiffs bring their federal Constitutional claims under 42 U.S.C. § 1983. Plaintiffs also bring state constitutional claims under South Carolina Constitution Article I, §§ 13, 22, the Takings Clause; and Article I, § 2, the Due Process and Equal Protection Clauses. Id. at 9-11. Plaintiffs also bring claims of negligence, trespass, and strict liability under the South Carolina Tort Claims Act. Id. at 11-13.

On December 16, 2019, Defendant filed a motion for summary judgment. ECF No. 101. Defendant argues that Plaintiffs have failed to properly state a § 1983 claim. Additionally, Defendant argues that in the event a § 1983 claim was properly alleged, its actions did not violate the constitution. Defendant did not address the state law claims in its motion. Plaintiffs filed a response in opposition on January 14, 2020. ECF No. 105. A hearing was held on Defendant's motion on February 26, 2020. ECF No. 112.

II. FACTUAL BACKGROUND

In 2016, Defendant received numerous calls from concerned citizens asking Defendant to take action to combat the growing number of mosquitoes in the area, which can transmit the zika virus to humans. ECF No. 101-1 at 10. Officials working for Defendant determined that the usual method to control mosquito populations, spraying with a truck, would not allow mosquito killing agents to reach all areas with mosquito populations. Id. at 9. Therefore, Defendant hired Allen Aviation to perform various aerial sprays of a mosquito killing agent. ECF No. 28 at 5. Defendant states that the purpose of the aerial spray was to stop the spread of the zika virus. ECF

No. 101-2 at 35. The zika virus was a serious health concern in 2016.³ At the time of the spray, there were confirmed cases of the zika virus in South Carolina. *Id.* at 35-36. Clayton Gaskins (“Gaskins”), the Mosquito Abatement Coordinator for Defendant, coordinated the aerial sprays. ECF No. 101-1 at 3. Tracey Langley, the public information officer for Defendant, placed notices about the first aerial spray with numerous television news channels and in Charleston, South Carolina’s Post and Courier newspaper. *Id.* at 11-12. Gaskins also made a courtesy call to various beekeepers to inform them that an aerial spray was to take place, in order to give beekeepers further opportunity to protect their bees from the chemicals. *Id.* at 5. Gaskins admitted that he made a mistake and did not call Plaintiffs on this occasion. *Id.* at 16. Plaintiffs did not take any precautions to protect their bees. The aerial spray occurred on August 28, 2016, which Plaintiffs allege resulted in the killing of millions of Plaintiffs’ bees. ECF No. 28 at 5.

III. LEGAL STANDARDS

A. Summary Judgment

The court shall grant summary judgment if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. Rule 56(a). The moving party will be entitled to a judgment as a matter of law if the “nonmoving party has failed to make a sufficient showing on an essential element of her case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Accordingly, “[o]ne of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses.” *Id.* at 323–24. The moving party must initially show that there is no genuine issue of

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material fact. Id. at 323. Once the movant has made this showing, the non-moving party must demonstrate specific, material facts that give rise to a genuine issue. Id. at 324. A “mere scintilla” of evidence is insufficient to overcome the summary judgment motion. Anderson v. Liberty Lobby, 477 U.S. 242, 252 (1986).

B. 42 U.S.C. § 1983

Title 42, U.S.C. § 1983 provides a vehicle through which plaintiffs can seek relief for violations of their civil rights. Section 1983 states, in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Municipalities are considered “persons” under § 1983. A municipality may be sued if “a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers” caused a Constitutional tort. Monell v. New York City Dep't. of Soc. Serv., 436 U.S. 658, 690 (1978). The “policy which ordered an unconstitutional act can be established by a single decision by proper municipal policymakers.” Pembaur v. City of Cincinnati, 475 U.S. 469, 484 n.11 (1986).

C. Fifth Amendment of the United States Constitution

The state's power of eminent domain allows it to take private property for public use. The Fifth Amendment of the Constitution requires that the state compensate those from whom it takes property for public use, providing that “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. The Fourteenth Amendment applies the Fifth

Amendment to the states. Murr v. Wisconsin, 137 S. Ct. 1933, 1942 (2017). Often, the Takings Clause is implicated in cases where the government appropriates land or other real property from individuals. However, the Takings Clause also applies to cases where the government appropriates personal property. Horne v. Dep't of Agric., 135 S. Ct. 2419, 2427 (2015)(noting that “people still do not expect their property, real or personal, to be actually occupied or taken away”). The test to determine if the Takings Clause was violated requires a reviewing court to determine if there was a Taking, and then whether such a Taking “‘deprives the owner of all economically valuable use’ of the item taken.” Id. (quoting Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 323 (2002)). Some courts impose an affirmative act element to Takings Clause claims. Chae Bros., LLC v. Mayor & City Council of Baltimore, No. CV GLR-17-1657, 2018 WL 1583468, at *8 (D. Md. Mar. 30, 2018)(stating that “‘merely...incidental or consequential’ damage to private property—even when resulting from government action—is, at most, ‘compensable as a tort.’”)(quoting Ridge Line v. United States, 346 F.3d 1346, 1355–56 (Fed. Cir. 2003)).

The state’s power of eminent domain is separate and distinct from the state’s police power. The police power refers to the state’s “general power of governing.” Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519, 536 (2012). Specifically, such power “extends to all matters affecting the public health or the public morals.” Stone v. Mississippi, 101 U.S. 814, 818 (1879).

IV. ANALYSIS AND DISCUSSION

The court must first determine whether Defendant, a municipality, enacted a policy that would subject it to liability under § 1983. In this case, Gaskins determined that the usual method of mosquito abatement was not effective given the growing mosquito population and the

geographical limitations of truck sprays. ECF No. 101-1 at 6. Gaskins reported this information to his supervisor, Jason Ward (“Ward”), the Dorchester County Administrator. Id. at 7. Ward instructed Gaskins to contact officials in Berkeley County, South Carolina, and Charleston County, South Carolina, to inquire about aerial sprays, as those counties had conducted aerial sprays in the past. Id. Ward also contacted the South Carolina Department of Health and Environmental Control, which suggested that Defendant conduct aerial sprays. Id. at 8. With this information, Ward requested and received funding to conduct the aerial sprays from the Dorchester County Council, and ultimately conducted the aerial sprays. Id. at 9. The court finds that the plan adopted by municipal officials working for Defendant to combat the mosquito problem and ultimate decision to conduct the aerial spray was a policy that was officially adopted by Defendant and satisfies the requirements of a § 1983 claim.

The court must now determine whether a Constitutional tort occurred. Plaintiffs allege that the decision to conduct the aerial spray and the resulting destruction of the bees amounts to an unconstitutional Taking in that the state exercised its power of eminent domain. Defendant argues that it exercised its police power to protect the public from mosquitoes and the zika virus that they carry. Defendant further submits that it did not affirmatively act to take Plaintiffs’ bees for public use.

Courts have illustrated the distinction between the power of eminent domain and the police power. In Lech v. Jackson, a husband and wife sued police officers and the city of Greenwood Village, Colorado, after police officers damaged their home. C/A No. 18-1051, 2019 WL 5581699 (10th Cir. Oct. 29, 2019). In Lech, officers used a “BearCat,” a Humvee-like vehicle, to “open multiple holes” in the home to extract a dangerous criminal. Id. at *2. As a result of the prolonged extraction operation, the Lech home “was rendered uninhabitable.” Id.

The Leches brought a claim under the Takings Clause. The district court found that, in raiding and destroying the Lech home to remove a dangerous criminal, the city was exercising its police power and not its eminent domain power. Id. Accordingly, the district court awarded no compensation.

On appeal, the Court of Appeals for the Tenth Circuit reasoned that, “when the state acts to preserve the ‘safety of the public,’ the state ‘is not, and, consistent[] with the existence and safety of organized society, cannot be, burdened with the condition that the state must compensate [affected property owners] for pecuniary losses they may sustain’ in the process.” Id. at *5 (quoting Mugler v. Kansas, 123 U.S. 623, 669 (1887)). The Tenth Circuit ruled that “when the state acts pursuant to its police power, rather than the power of eminent domain, its actions do not constitute a Taking for purposes of the Takings Clause.” Id. Courts in other Circuits, as well as two district courts in this Circuit, have adopted this reasoning. See, e.g., AmeriSource Corp. v. United States, 525 F.3d 1149, 1153 (Fed. Cir. 2008); Patty v. United States, 136 Fed. Cl. 211, 214 (2018) (“The distinction between an exercise of the police power and a constitutional Taking has been characterized . . . as ‘whether the governmental action operates to secure a benefit for or to prevent a harm to the public.’”) (quoting Morton Thiokol, Inc. v. United States, 4 Cl. Ct. 625, 630 (1984)); Cybernet, LLC v. David, No. 7:16-CV-16-RJ, 2018 WL 5779511, at *16 (E.D.N.C. Nov. 2, 2018); White v. City of Greensboro, 408 F.Supp.3d 677, 703 (M.D.N.C. 2019) (holding that property seized during the execution of a search warrant was not the basis of a Takings Clause claim and that “when law enforcement officials exercise their authority to seize [or] impound [property]...or otherwise enforce criminal law, law enforcement exercises its police power, not its power of eminent domain”).

In their memorandum in opposition to Defendant's motion for summary judgment, Plaintiffs state that Defendant's decision to spray "may [have been] within [Defendant's] police power," but assert that Defendant "cannot benefit the public by taking the personal property of the Plaintiffs without paying them just compensation." ECF No. 105 at 7. Furthermore, in oral argument, Plaintiffs' attorney argued that he believed that the spray was an exercise of police power but that it was clearly a taking of property without just compensation.

It is undisputed that the spray was conducted to prevent the spread of disease, a matter that would affect public health. Such an action fits squarely within the state's police power. "If the injury complained of is only incidental to the legitimate exercise of governmental powers for the public good, then there is no taking of property for the public use, and a right to compensation, on account of such injury, does not attach under the Constitution." Chicago, B. & Q. Ry. Co. v. People of State of Illinois, 200 U.S. 561, 593–94 (1906). The loss of Plaintiff's bees was unintentional; it was an unfortunate consequence to a proper exercise of Defendant's police power. Because Defendant was exercising its police power, and not its power of eminent domain, the Takings Clause is not implicated.

The court recognizes the importance of bees to agriculture, the economy, and the environment, as well as the need to mitigate threats to bee colonies. See, e.g., <https://www.fda.gov/animal-veterinary/animal-health-literacy/helping-agricultures-helpful-honey-bees> (accessed March 12, 2020). However, because Plaintiffs are not entitled to federal compensation, the court will remand Plaintiffs' state law claims for further consideration. See 28 U.S.C. § 1367(c)(providing that a district court may decline to exercise supplemental jurisdiction when it "has dismissed all claims over which it has original jurisdiction").

V. CONCLUSION

Defendant's motion for summary judgment, ECF No. 101, is **GRANTED**. This matter is hereby **REMANDED** to the Court of Common Pleas for Dorchester County, South Carolina, pursuant to 28 U.S.C. § 1367(c). Defendant's motion to exclude, ECF No. 102, is **DENIED** as moot.

IT IS SO ORDERED.

Charleston, South Carolina
Dated: May 5, 2020
Nunc Pro Tunc March 17, 2020

/s/ Margaret B. Seymour
Margaret B. Seymour
Senior United States District Judge

PUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1584

MITCH RANDALL YAWN; JUANITA MAE STANLEY, d/b/a Flowertown Bee
Farm and Supplies,

Plaintiffs - Appellants,

v.

DORCHESTER COUNTY,

Defendant - Appellee

and

TOWN OF SUMMERVILLE; ALLEN AVIATION, INC.; AL ALLEN,

Defendants.

Appeal from the United States District Court for the District of South Carolina, at
Charleston. Margaret B. Seymour, Senior District Judge. (2:17-cv-00440-MBS)

Argued: May 6, 2021

Decided: June 11, 2021

Before KING and THACKER, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by published opinion. Judge Thacker wrote the opinion, in which Judge King
joined. Judge Traxler wrote a concurring opinion.

ARGUED: J. David Breemer, PACIFIC LEGAL FOUNDATION, Sacramento,
California, for Appellants. Amanda R. Maybank, MAYBANK LAW FIRM, LLC,

Charleston, South Carolina, for Appellee. **ON BRIEF:** W. Andrew Gowder, Jr., AUSTEN & GOWDER, LLC, Charleston, South Carolina; Michael T. Rose, MIKE ROSE LAW FIRM, PC, Summerville, South Carolina; Kathryn D. Valois, PACIFIC LEGAL FOUNDATION, Palm Beach Gardens, Florida, for Appellants. Roy P. Maybank, Marshall A. Earhart, MAYBANK LAW FIRM, LLC, Charleston, South Carolina, for Appellee.

THACKER, Circuit Judge:

Juanita Stanley and Mitch Yawn (“Appellants”) sued Dorchester County, South Carolina (the “County”), seeking compensation pursuant to the Takings Clause of the Fifth Amendment for the death of their bees. According to Appellants, because the bees died after the County sprayed pesticide in an effort to kill mosquitos, the bees’ death amounted to a taking of Appellants’ private property. The district court granted the County’s motion for summary judgment, holding that there was no taking because the loss of Appellants’ bees was only an incidental consequence of the County’s action. We affirm.

I.

A.

In 2016, South Carolina state government officials from the Department of Health and Environmental Control (“DHEC”) “urged local jurisdictions to bolster their mosquito control programs heading into the summer months in preparation for a possible Zika virus outbreak.” J.A. 195.* The Zika virus is a mosquito born illness with the potential “to cause serious fetal brain defects” and was confirmed to be present in South Carolina as of May 2016. *Id.*

By August 2016, three cases of travel related Zika virus were reported in the County. The DHEC responded to the confirmed cases by directing the head of the County’s Mosquito Abatement Division, Clayton Gaskins, to spray pesticide in targeted areas within

* Citations to the “J.A.” refer to the Joint Appendix filed by the parties in this appeal.

a certain radius of the Zika-infected individuals' homes. As a result, Gaskins set about to deploy the County's two spray trucks to treat the areas with pesticide.

However, upon visiting the treatment areas, Gaskins determined that there were multiple heavily wooded places within the target areas that could not be reached by the spray trucks. Thus, Gaskins consulted with his supervisor and the County Administrator as to the best course of action. The three of them determined that aerial pesticide spray should be recommended to the County Council because of the inability of the trucks to fully access the DHEC's target areas, as well as numerous citizen reports of excessive mosquitos in the area. According to the 2016 County Council Chairman, the Council had heard from constituents favoring the use of aerial spray to combat the spread of the Zika virus. *See* J.A. 113 (describing the first Council discussion on aerial spraying where a constituent "begged and pleaded" for the aerial spray to be conducted). Ultimately, the County Council approved aerial spray and established a contract with Allen Aviation to conduct the spray.

The aerial spray was scheduled to take place on August 28, 2016, between the hours of 6:30 a.m. and 8:30 a.m. In accord with South Carolina law, the County issued a press release on August 26, 2016, to notify the citizens of the upcoming aerial spray. The press release was issued to numerous media outlets, including local television stations, newspapers, radio stations, and social media platforms. But Appellants were not aware of the press release prior to the aerial spray.

Additionally, although not required by law or County policy, as a courtesy, Gaskins took it upon himself to call local beekeepers before the pesticide sprays. As local

beekeepers, Appellants were on the call list, and had been previously called about upcoming sprays. However, they did not receive a call from Gaskins prior to the August 28 aerial spray. Thus, Appellants did not implement protective measures for their bees before the spray as they had successfully done in the past.

In preparing for the aerial spray, the County provided Allen Aviation with mosquito abatement zone maps, as well as a map that included the location of all beekeepers in the area. During discovery, the pilot who conducted the spray, an Air Force veteran and certified agriculture pilot, testified in a deposition that he used the maps provided by the County with markers to identify the beehive locations in order to determine when to turn off the sprayer during the flight. The pilot also testified that he specifically remembered turning off the sprayer as he approached the beehive locations marked on the map.

Nonetheless, the morning after the aerial spray, Appellants discovered mounds of dead bees surrounding their hives. Appellants contacted Clemson University, Department of Pesticide Regulation (“Clemson DPR”), the entity responsible for regulating and investigating pesticide use and complaints pursuant to state law. The Clemson DPR investigated and found “bees with behaviors consistent with pesticide exposure” as well as “very active bees flying around the yard.” J.A. 150. The investigation included collecting and testing representative samples of dead bees and soil from around the hives, which the Clemson DPR discovered did not contain pesticide residue. However, the report indicated the lack of pesticide residue “likely occurred due to the time which elapsed between the application and when the samples were obtained, combined with [the pesticide]’s ability to rapidly degrade under typical environmental conditions.” *Id.* at 152. Thus, although the

investigation “found no [regulatory] violations occurred” during the August 28 aerial spray, it also did not rule out the aerial spray “as a cause for the loss of the bees.” *Id.* at 152–53.

B.

Appellants filed a lawsuit against the County on January 27, 2017, alleging that the aerial spray of pesticide and subsequent death of the bees amounted to a taking pursuant to the Takings Clause of the Fifth Amendment. Appellants also brought claims pursuant to the South Carolina state constitution and the South Carolina Tort Claims Act. The County moved for summary judgment on December 16, 2019. Concluding there was no taking, the district court granted the County’s motion for summary judgment on the Takings Clause claim.

The district court began its takings analysis by noting the distinction between the power of eminent domain and police power. *See* J.A. 249 (explaining police power “extends to all matters affecting the public health or the public morals” (quoting *Stone v. Mississippi*, 101 U.S. 814, 818 (1879))). The district court held:

It is undisputed that the spray was conducted to prevent the spread of disease, a matter that would affect public health. Such an action fits squarely within the state’s police power. “If the injury complained of is only incidental to the legitimate exercise of governmental powers for the public good, then there is not taking of property for the public use, and a right to compensation, on account of such injury, does not attach under the Constitution.” *Chicago, B. & Q. Ry. Co. v. People of State of Illinois*, 200 U.S. 561, 593–94 (1906). The loss of [Appellants’] bees was unintentional; it was an unfortunate consequence to a proper exercise of [the County]’s police power. Because [the County] was exercising its police power,

and not its power of eminent domain, the Takings Clause is not implicated.

J.A. 252. Therefore, the district court concluded Appellants “are not entitled to federal compensation” and granted summary judgment in favor of the County on the Takings Clause claims. *Id.* Appellants’ state law claims were remanded to state court for further consideration.

II.

“We review the district court’s grant of summary judgment de novo” *Providence Square Assocs. v. G.D.F., Inc.*, 211 F.3d 846, 850 (4th Cir. 2000). Summary judgment “is appropriate where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” *Id.* (quoting *Semple v. City of Moundsville*, 195 F.3d 708, 712 (4th Cir. 1999)).

III.

A.

“The Takings Clause is ‘designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole’” by requiring just compensation when private property is taken for public use. *Ark. Game & Fish Comm’n v. United States*, 568 U.S. 23, 31 (2012) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)). When reviewing Takings Clause jurisprudence, the Supreme Court has “recognized . . . that no magic formula enables a court to judge, in every case, whether a given government interference with property is a taking.” *Id.* Indeed, because of “the nearly infinite variety of ways in which government actions or regulations

can affect property interests, the Court has recognized few invariable rules in this area.”

Id.

Appellants contend the district court erred because its ruling “amounts to the conclusion that, when government interferes with property to preserve public health, safety or welfare, it is immune from the Takings Clause.” Appellants’ Br. 19. In essence, Appellants argue that the district court adopted a per se rule excusing the Government from Takings Clause analysis when it acts pursuant to the police power. In Appellants’ view, this violates the Supreme Court’s caution against “the temptation to adopt what amount to per se rules in either direction[, which] must be resisted.” *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 535 U.S. 302, 342 (2002) (internal quotation marks omitted).

That Government actions taken pursuant to the police power are not per se exempt from the Takings Clause is axiomatic in the Supreme Court’s jurisprudence. “Time and again in Takings Clause cases, the Court has heard the prophecy that recognizing a just compensation claim would unduly impede the government’s ability to act in the public interest.” *Ark. Game & Fish*, 568 U.S. at 36. The Court has consistently “rejected this argument when deployed to urge blanket exemptions from the Fifth Amendment’s instruction.” *Id.* at 37 (“While we recognize the importance of the public interests the Government advances in this case, we do not see them as categorically different from the interests at stake in myriad other Takings Clause cases.”); *see also Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1014 (1992) (“If, instead, the uses of private property were subject to unbridled, uncompensated qualification under the police power, the natural tendency of human nature would be to extend the qualification more and more until at last private

property disappeared.” (internal quotation marks omitted)). Nevertheless, we affirm the district court’s grant of summary judgment because the death of Appellants’ bees was neither intentional nor foreseeable.

B.

“If the injury complained of is only incidental to the legitimate exercise of governmental powers for the public good, then there is no taking of property for the public use, and a right to compensation, on account of such injury, does not attach under the Constitution.” *Chicago, B. & Q. Ry. Co. v. Illinois*, 200 U.S. 561, 593–94 (1906). Thus, we must determine “the degree to which the invasion is intended or is the foreseeable result of authorized government action.” *Ark. Game & Fish*, 568 U.S. at 39. If the invasion is not intended or foreseeable, then it does not constitute a taking. *See id*; *see also Moden v. United States*, 404 F.3d 1335, 1342 (Fed. Cir. 2005) (explaining that a claim based on chemical contamination of real property “must show either that the government intended to invade a protected property interest or that the asserted invasion is the direct, natural, or probable result of an authorized activity and not the incidental or consequential injury inflicted by the activity”).

Here, the death of Appellants’ bees was plainly unintentional. The County’s stated objective was to abate mosquitos in an effort to prevent the spread of the Zika virus. More importantly, the County took specific measures to avoid the unfortunate death of the bees. The County issued a press release to a wide array of media outlets before spraying. The County also hired an experienced pilot and gave him maps with the locations of beehives

so that he could turn off the sprayer when flying over those locations. The pilot testified to doing so.

Appellants argue that the death of the bees was nonetheless foreseeable because of an “explicit warning in the pesticide use instructions stating that dispersal of the substance is ‘highly toxic’ to bees.” Appellants’ Reply Br. 10 (citing J.A. 157). But this frames the foreseeability analysis too narrowly. The question is not simply whether applying the pesticide to bees would foreseeably result in their death, but rather, whether the bees would die despite the County’s specific efforts to avoid exposing the bees to the pesticide. We conclude that it was not foreseeable that the press release would fail to reach Appellants, leaving Appellants and their bees unprepared for the spray. Appellants testified that they had previously successfully taken protective measures prior to sprays of which they were aware, such as closing the hive entrances and laying a damp bed sheets across the hives. Thus, previous sprays did not result in the death of Appellants’ bees. And the fact that the spray in question was conducted aerially while previous sprays were conducted via truck is likewise not enough to conclude that the bees’ death was foreseeable. This is because there is no evidence that Appellants’ protective measures would have been ineffective in this instance had they known about the spray, especially given the pilot’s effort to avoid direct exposure by turning off the sprayer. Indeed, this spray did not kill other local beekeepers’ bees.

The death of Appellants’ bees is undoubtedly a tragedy, but we cannot conclude that it was the foreseeable or probable result of the County’s action when it is a clear outlier in terms of collateral damage arising out of the County’s mosquito abatement effort.

Ultimately, because we conclude the death of Appellants' bees was neither intended nor foreseeable, the Takings Clause does not require compensation.

IV.

For the foregoing reasons, the decision of the district court is

AFFIRMED.

TRAXLER, Senior Circuit Judge, concurring:

Appellants Mitch Yawn and Juanita Stanley claim, in essence, that the death of their bees amounted to a taking by Dorchester County because the County forgot to call the Appellants personally to inform them about the impending aerial spraying, as it had done before other pesticide applications. However, “[a]ccidental, unintended injuries inflicted by governmental actors are treated as torts, not takings.” *In re Chicago, Milwaukee, St. Paul & Pac. R. Co.*, 799 F.2d 317, 326 (7th Cir. 1986). Accordingly, I concur in the judgment affirming the district court’s grant of summary judgment in favor of the County.

I.

In 2016, Dorchester County conducted aerial pesticide spraying in an effort to prevent the spread of the Zika virus. The County followed all required protocols before conducting the aerial sprays, including notifying the public through press releases issued to local news outlets, including newspapers, television and radio stations, and social media platforms. Because pesticides can affect beneficial insects as well as mosquitos, the County gave the pilot a map marked with the location of the known beekeepers in the targeted area, and the pilot turned off the sprayer before flying over those areas. The County’s prior practice with truck-based mosquito spraying was to also call all known beekeepers in the area to give them an additional, personal warning about the upcoming treatment. The County followed that practice before the aerial spray, but either neglected to call the Appellants or was unable to reach them. The Appellants were also unaware of the various public notices given by the County. They did not cover their hives or take other

precautionary steps before the aerial spraying, and their bees died. Other beekeepers who took precautions before the spraying did not lose their colonies.

II.

As the Supreme Court has made clear, claims of an unconstitutional taking are fact-specific and not amenable to many bright-line rules. *See Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012) (“In view of the nearly infinite variety of ways in which government actions or regulations can affect property interests, the Court has recognized few invariable rules in this area.”). In cases like this one, involving the line between takings and torts, the analysis generally focuses on foreseeability.

“[A] property loss [is] compensable as a taking . . . when the government intends to invade a protected property interest or the asserted invasion is the direct, natural, or probable result of an authorized activity and not the incidental or consequential injury inflicted by the action.” *Ridge Line, Inc. v. United States*, 346 F.3d 1346, 1355 (Fed. Cir. 2003) (internal quotation marks omitted); *Columbia Basin Orchard v. United States*, 132 F. Supp. 707, 709 (Ct. Cl. 1955) (For property loss to amount to a taking, “[t]here must have been an intent on the part of the defendant to take plaintiff’s property or an intention to do an act the natural consequence of which was to take its property”); *see Ark. Game & Fish*, 568 U.S. at 39 (“Also relevant to the takings inquiry is the degree to which the invasion is intended or is the foreseeable result of authorized government action.”). The Appellants do not contend that the County intentionally killed their bees; instead, they argue that, given the known toxicity to bees of the pesticide used, the deaths were the

foreseeable result of the authorized governmental action. In my view, that is not the correct approach to the issue.

For purposes of the foreseeability inquiry, “authorized” governmental action refers to governmental action that is “properly carried out.” *In re Chicago, Milwaukee*, 799 F.2d at 326. Thus, the question is not whether it is generally foreseeable that pesticide might kill bees; the question is whether it was foreseeable that bees would die if the County *properly implemented* its aerial spraying plan.

For example, if planes owned by the government regularly overfly a farm, causing the chickens to kill themselves in fright, this planned operation may “take” an easement across the farm. But if a stray military plane crashes into a chicken coop, killing an equal number of fowl, this is a tort rather than a taking. . . . [A] foul-up in the implementation of the program does not require compensation outside the scope of [any applicable Tort Claims Act].

Id.

In this case, the *authorized* governmental action was the aerial spraying of pesticides in a targeted area after the County (1) provided broadly aimed public notices of the operation; (2) provided the pilot with a map showing bee-keeping operations within the targeted area so the spraying could be stopped while flying over those areas; and (3) made personal phone calls to all known beekeepers to personally inform them of the operation. The death of bees would not be the natural consequence of that properly implemented plan, as demonstrated by the fact that Appellants had been able to protect their bees from earlier truck-based pesticide spraying and only the Appellants’ bees were affected by the aerial spraying.

Because the death of Appellants' bees was not the natural consequence of the County's mosquito-control plan, there was no taking. While the County may have erred in the *implementation* of the plan by failing to personally call the Appellants, "the government is not absolutely liable for mistaken implementation of a [plan] that does not otherwise take property." *In re Chicago, Milwaukee*, 799 F.2d at 327; *see Sanguinetti v. United States*, 264 U.S. 146, 148-50 (1924) (concluding that government's construction of canal that caused flooding of neighboring property during periods of high rains was a tort, not a taking, where flooding occurred because engineers designing the canal relied on inaccurate information when determining the carrying capacity of the canal); *cf. Daniels v. Williams*, 474 U.S. 327, 328 (1986) ("We conclude that the Due Process Clause is simply not implicated by a *negligent* act of an official causing unintended loss of or injury to life, liberty, or property."). At most, the County was negligent in its implementation of the mosquito-control plan, which limits the Appellants to any remedy available to them under South Carolina's Tort Claims Act.

III.

Although the district court's approach to the takings claim was perhaps not as clear as it could have been, this court is not limited to the district court's reasoning when affirming the judgment. Because the death of their bees was not a natural or intended consequence of the County's mosquito-control plan, the Appellants' takings claim fails. I therefore concur in the majority's opinion affirming the district court's grant of summary judgment in favor of the County.

IN DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Mitch Randall Yawn and Juanita Mae Stanley	)	Civil Action No.: 2:17-CV-00440-DCN
d/b/a Flowertown Bee Farm and Supplies,	)	
	)	
	)	
	)	
Plaintiffs,	)	<u>AMENDED COMPLAINT</u>
	)	
	)	<u>JURY TRIAL REQUESTED</u>
v.	)	
	)	
Dorchester County; Town of Summerville;	)	
Allen Aviation, Inc.; and Al Allen.,	)	
	)	
Defendants.	)	

Each of the above-named Plaintiffs brings the following actions seeking declaratory, injunctive, monetary and other legal relief. For their complaint, the Plaintiffs state as follows:

I. PRELIMINARY STATEMENT

1. This is a civil action for declaratory, injunctive, monetary and other legal relief brought for violations and threatened violations of the Fifth and Fourteenth Amendments of the United States Constitution; S.C. Const. art. I §§ 3, 13, 22; S.C. Code Ann. § 15-78-10, *et seq.* (South Carolina Tort Claims Act); S.C. Code Ann. § 55-3-60, *et seq.*; the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*; 42 U.S.C. § 1983 (“Section 1983”); and certain common law prohibitions against intentional and negligent torts.
2. This action is brought by the Plaintiffs to (1) obtain a declaration from the Court that actions of Dorchester County and the Town of Summerville have taken the property of

the Plaintiffs for a public use in violation of due process of law and of the equal protection of the laws and without the just compensation required by the United States and South Carolina Constitutions; (2) obtain a declaration from the Court that the Defendants have trespassed on and thereby damaged the property of the Plaintiffs; (3) obtain a declaration from the Court that the Defendants have destroyed the property, business and livelihood of the Plaintiffs negligently and intentionally; (4) obtain a declaration from the Court that the Defendants' spraying of chemicals on the property of the Plaintiffs as alleged herein was unreasonable, unjustified and inherently dangerous to the Plaintiffs, other humans, Plaintiffs' property and plants, insects and animals; (5) obtain from the Court an injunction preventing the continued violations of law alleged herein and, in particular, the placing in the future of the chemicals referenced herein on the property of the Plaintiffs; (6) obtain from the Court an injunction preventing the Plaintiffs from placing in the future any chemical, particularly the chemicals referenced herein, on the property of the Plaintiffs without first giving the Plaintiffs notice and an opportunity to be heard to object to the placement of those chemicals on their property; and (7) obtain from the Court a judgment awarding money to the Plaintiffs to compensate them fairly and fully for the damages and losses they suffered due to the unlawful actions of the Defendants referenced herein, including prejudgment interest, attorney fees and costs.

3. The allegations against the government Defendants are made as to those Defendants in their official capacities. All actions by all government Defendants at all relevant times were taken under color of state law.

4. This Court has jurisdiction over this subject matter and the parties to this action and venue is proper in this Court. The Plaintiffs have standing to bring this lawsuit because of the individual losses suffered by them due to the Defendants' conduct. Plaintiffs request a jury trial.

II. PARTIES

A. The Plaintiffs

5. Mitch Randall Yawn ("Yawn") is a citizen, resident and taxpayer of Dorchester County, South Carolina, and an owner of a business known as Flowertown Bee Farm and Supplies.
6. Juanita Mae Stanley ("Stanley") is a citizen, resident and taxpayer of Dorchester County, South Carolina, and an owner of a business known as Flowertown Bee Farm and Supplies.

B. The Defendants

7. Dorchester County ("County") is a body corporate and a corporation of the State of South Carolina located in South Carolina.
8. The Town of Summerville ("Town") is a body corporate and a municipal corporation of the State of South Carolina located in Dorchester County, South Carolina.
9. Allen Aviation, Inc. ("Allen Aviation") is a corporation formed, existing and operating under the laws of the State of South Carolina; and is headquartered in Horry County, South Carolina.
10. Al Allen ("Allen") is the owner and Chief Pilot of Allen Aviation, and a resident of the State of South Carolina.

III. CONSTITUTIONAL AND STATUTORY FRAMEWORK

A. UNITED STATES CONSTITUTION

11. The Fifth Amendment of the United States Constitution states in part that “No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation,” and applies to Defendants Dorchester County and Town of Summerville through the Fourteenth Amendment of the United States Constitution.

12. The Fourteenth Amendment of the United States Constitution states in part that “No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

B. SOUTH CAROLINA CONSTITUTION

13. S.C. Const. art. I, § 3 states in part the following: “[N]or shall any person be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.”

14. S.C. Const. art. I, § 13 states in part that “private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.”

15. S.C. Const. art. I, § 22 states in part as follows: “nor shall [a person] be deprived of . . . property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.”

C. SOUTH CAROLINA STATUTES

16. S.C. Code Ann. § 15-78-10, *et seq.*, is the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-50 states in part as follows:

(a) Any person who may suffer a loss proximately caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as hereinafter provided.

.

(c) Nothing herein shall affect the power of a court of equity at the suit of a party complainant to enjoin unlawful actions committed by governmental entities or mandate action by governmental entities.

17. S.C. Code Ann. § 55-3-60 states as follows:

SECTION 55-3-60. Liability and lien for damages.

The owner of an aircraft operated over the land or waters of this State is **absolutely liable for injury to persons or property on the land or water beneath the aircraft which is caused by** ascent, descent or flight of the aircraft or the **dropping or falling of an object from an aircraft, whether the owner was negligent or not**, unless the injury is caused in whole or in part by the negligence of the person injured or of the owner or bailee of the property injured. If the aircraft is leased at the time of the injury to person or property both owner and lessee is liable and they may be sued jointly or either or both of them may be sued separately. An airman who is not the owner or lessee is liable only for the consequences of his negligence. The injured person or owner or bailee of the injured property shall have a lien next in priority to the lien for State and county taxes on the aircraft causing the injury to the extent of the damage caused by the aircraft or an object falling from it. A chattel mortgagee, conditional vendor or trustee under an equipment trust of an aircraft out of possession shall not be considered an owner or lessee within the provisions of this section. This section shall not apply to damage to airport property that is neither malicious nor intentional, nor shall this section apply to damage to crushable materials, collapsible structures, or aircraft arresting systems that are designed to deform when used. (Emphasis added.)

IV. FACTUAL ALLEGATIONS

18. On multiple occasions on August 28, 2016, Allen and Allen Aviation (collectively “Allen Defendants”) flew an airplane over the property owned by the Plaintiffs located at 503 Pinehurst Ave., Summerville, SC 29483. Each flight was a separate occurrence.
19. During each of those flights the Allen Defendants sprayed harmful toxic chemicals from their airplane across the property owned by the Plaintiffs at 503 Pinehurst Avenue, Summerville, South Carolina, 29483.
20. Those toxic chemicals sprayed by the Allen Defendants on the property of the Plaintiffs completely destroyed valuable property owned by the Plaintiffs by, *inter alia*, killing approximately four million honey bees, destroying their habitats and the honey produced by the bees, rendering the structures in which the bees lived unusable and wiping out the

bee-keeping business of the Plaintiffs. These occurrences of destroying Plaintiffs' property and business by Defendants' spraying harmful chemicals on their property were reported by news media throughout the world, including in the New York Times, the Washington Post, the Los Angeles Times and in newspapers in Russia and Germany.

21. Those sprayings of harmful toxic chemicals on the property of the Plaintiffs were performed without the prior knowledge and consent of the Plaintiffs; at the request and direction of, with the approval of and as an agent of, Defendant Dorchester County; and pursuant to one or more contracts between the Allen Defendants and Dorchester County.
22. Those sprayings of harmful toxic chemicals on the property of the Plaintiffs were performed at the request and direction of, with the approval of and as an agent of Defendant Town of Summerville; and pursuant to one or more contracts between the Allen Defendants and the Town of Summerville.
23. Dorchester County and the Town of Summerville authorized and caused this spraying of dangerous, harmful, toxic chemicals on the property of the Plaintiffs when said Defendants knew or should have known that the Plaintiffs maintained four million honey bees and a honey bee business on that property and that those chemicals could kill those bees and destroy that business.
24. Dorchester County maintained the names and contact information of the Plaintiffs on a list and earlier represented to the Plaintiffs that Dorchester County would use that information to notify the Plaintiffs before Dorchester County sprayed any harmful toxic chemical on their property. Despite that pledge, Dorchester County failed to notify the Plaintiffs that the Defendants would spray harmful toxic chemicals on their property before the Defendants did so.

25. The Defendants sprayed harmful, dangerous, toxic chemicals on the property of the Plaintiffs for the public purpose of trying to kill mosquitoes that might carry the Zika virus and other diseases harmful to humans. Spraying those chemicals on Plaintiffs' property for that purpose and doing so without giving the Plaintiffs prior notice of and an opportunity to object to that spraying and to the destruction of their property were unnecessary, unreasonable, unwarranted, unjustified, illegal and an overreaction.

26. The Defendants had reasonable alternative methods of killing mosquitoes to combat the Zika virus and other diseases without spraying harmful, dangerous chemicals on the property of the Plaintiffs, but failed to use any of those alternative methods. The Defendants could and should have ensured that the Plaintiffs were notified that Defendants intended to spray harmful chemicals on Plaintiffs' property and given Plaintiffs an opportunity to be heard and to object to that spraying before that spraying occurred. At a minimum, the Plaintiffs were deprived of the opportunity to take measures to mitigate the harm that the spraying would have on their property and their business.

**FOR A FIRST CAUSE OF ACTION
TAKING CLAIMS
FIFTH AND FOURTEENTH AMENDMENTS,
UNITED STATES CONSTITUTION
AND
42 U.S.C. § 1983**

27. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

28. Defendants' spraying of harmful toxic chemicals on the property of the Plaintiffs was affirmative governmental conduct that totally deprived the Plaintiffs of their property rights recognized under state law in their bees, honey, bee-keeping operation and facilities constituting a taking of Plaintiffs' private property for a public use without Plaintiffs'

consent and without just compensation, in violation of the Fifth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

29. In addition, the repeated flyovers and spraying of the Plaintiffs' property in a concentrated and unreasonable manner constituted a physical invasion of the Plaintiffs' property by which the Defendants occupied the Plaintiffs' property without just compensation. This physical invasion is not the result of natural causes or conditions, but rather is a physical occupation resulting from government action.

30. As a direct and proximate result of the Defendants' violations of the Fifth and Fourteenth Amendments of the United States Constitution and of 42 U.S.C. § 1983 described above, the Plaintiffs have been harmed by the complete destruction and removal of their property and business. As a result, the Plaintiffs are entitled to just compensation from the Defendants, including but not limited to prejudgment interest, attorney fees and costs.

**FOR A SECOND CAUSE OF ACTION
VIOLATION OF DUE PROCESS AND EQUAL PROTECTION CLAUSES
FIFTH AND FOURTEENTH AMENDMENTS,
UNITED STATES CONSTITUTION
AND
42 U.S.C. § 1983**

31. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

32. Defendants' spraying of harmful toxic chemicals on the property of the Plaintiffs without reasonable justification and Defendants' doing so without giving the Plaintiffs reasonable prior notice, warning and opportunities to object to the spraying and to take precautions to protect their property from harm while giving reasonable prior notice, warning and opportunities to be heard and to take precautions to others similarly situated were arbitrary and unfair government actions in violation of the due process and the equal protection

clauses of the Fifth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

33. As a direct and proximate result of the Defendants' violations of the Fifth and Fourteenth Amendments of the United States Constitution and of 42 U.S.C. § 1983 described above, the Plaintiffs have been harmed by the complete destruction and removal of their property and business. As a result, the Plaintiffs are entitled to just compensation from the Defendants, including but not limited to prejudgment interest, attorney fees and costs.

**FOR A THIRD CAUSE OF ACTION
TAKINGS CLAIM
SC CONSTITUTION ARTICLE I, § 13**

34. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.
35. Defendants' spraying of harmful toxic chemicals on the property of the Plaintiffs was affirmative conduct constituting a taking of Plaintiffs' private property for a public use without Plaintiffs' consent and without just compensation, in violation of the S.C. Const. art. I, § 13.
36. As a direct and proximate result of the Defendants' violations of S.C. Const. art. I, § 13 described above, the Plaintiffs have been harmed by the destruction and removal of their property and have suffered the other injuries described above, and the Plaintiffs are entitled to full compensation for all of those losses, including but not limited to prejudgment interest, attorney fees and costs.

**FOR A FOURTH CAUSE OF ACTION
TAKINGS CLAIM
SC CONSTITUTION ARTICLE I, § 22**

37. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

38. Defendants' spraying of harmful toxic chemicals on the property of the Plaintiffs was affirmative government conduct constituting a taking of Plaintiffs' private property for a public use without Plaintiff's consent, without just compensation and by a mode of procedure not prescribed by the General Assembly, in violation of the S.C. Const. art. I, § 22.

39. As a direct and proximate result of the Defendants' violations of S.C. Const. art. I, § 22 described above, the Plaintiffs have been harmed by the destruction of their property and have suffered the other injuries described above, and the Defendants should compensate the Plaintiffs fully for all of those losses by the Plaintiffs, including but not limited to prejudgment interest, attorney fees and costs.

**FOR A FIFTH CAUSE OF ACTION
VIOLATION OF DUE PROCESS AND EQUAL PROTECTION CLAUSES
SC CONSTITUTION ARTICLE I, § 3**

40. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

41. Defendants' (a) spraying of harmful toxic chemicals on the property of the Plaintiffs without reasonable justification, and without giving the Plaintiffs reasonable prior notice, warning and opportunities to object to the spraying and to take precautions to protect their property from harm while giving reasonable prior notice, warning and opportunities to be heard and to take precautions to others similarly situated were arbitrary, unfair and in violation of due process of law and the equal protection of the laws, in violation of S.C. Const. art. I, § 3.

42. As a direct and proximate result of the Defendants' violations of S.C. Const. art. I, § 3 described above, the Plaintiffs have been harmed by their property and business having been completely destroyed and have suffered the other injuries described above, and the

Defendants should compensate the Plaintiffs fully for all of those losses by the Plaintiffs, including but not limited to prejudgment interest, attorney fees and costs.

**FOR A SIXTH CAUSE OF ACTION
WILLFUL, GROSS AND SIMPLE NEGLIGENCE
S.C. CODE ANN. § 15-78-10, *et seq.*
SOUTH CAROLINA TORT CLAIMS ACT**

43. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.
44. The Defendants had duties, inter alia, to take reasonable actions to avoid harming Plaintiffs and their real and personal property: specifically not to apply harmful chemicals to Plaintiffs' properties; to warn Plaintiffs of Defendants' intentions to apply harmful chemicals to Plaintiffs' properties; and to give Plaintiffs opportunities to object to said placement of said chemicals and to take precautions to protect their property from harm due to said chemicals. Defendants breached those duties.
45. Defendants' following actions constitute willful, gross and simple negligence, for which Plaintiffs should be compensated under common law, in the case of the Allen Defendants and under the SC Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq* in the case of the government Defendants:
- a. spraying harmful toxic chemicals on the property of the Plaintiffs
 - b. doing so unnecessarily, without good cause and when other reasonable alternatives existed but were not used,
 - c. doing so without giving the Plaintiffs prior warning and an opportunity to object and to be heard and

d. and depriving the Plaintiffs of an opportunity to protect their property against harm while giving prior warning, opportunity to object and opportunity to protect property to others similarly situated.

46. As a direct and proximate result of the Defendants' willful, gross and simple negligence described above the Plaintiffs have been harmed by their property and business having been completely destroyed and have suffered the other injuries described above, and the Defendants should compensate the Plaintiffs fully for all of those losses by the Plaintiffs, including but not limited to prejudgment interest, attorney fees and costs.

**FOR A SEVENTH CAUSE OF ACTION
TRESPASS
S.C. CODE ANN. § 15-78-10, *et seq.*
SOUTH CAROLINA TORT CLAIMS ACT**

47. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

48. Defendants' spraying of harmful toxic chemicals on the real and personal property of the Plaintiffs without the prior authorization, consent and knowledge of the Plaintiffs constitutes trespass, for which Plaintiffs should be compensated. The Allen Defendants are liable to Plaintiffs under the common law of this state and the government Defendants are liable for said trespasses as provided by the SC Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*

49. As a direct and proximate result of the Defendants' trespass described above, the Plaintiffs have been harmed by their property and business having been completely destroyed and have suffered the other injuries described above and the Defendants should compensate the Plaintiffs fully for all of those losses by the Plaintiffs, including but not limited to prejudgment interest, attorney fees and costs.

50.

**FOR AN EIGHTH CAUSE OF ACTION
STRICT LIABILITY
S.C. Code Ann. § 55-3-60**

51. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

52. The Defendants Allen Aviation and Al Allen are owners or lessees of an aircraft which they operated over land and waters of the State of South Carolina.

53. While operating their aircraft, they caused injury to persons and property on the Plaintiffs on the land and water beneath them caused by the dropping of an object, pesticide, by spraying or dusting using that object from the aircraft.

54. No part of the injury described in this complaint was caused in any part by the fault or negligence of the Plaintiffs.

55. As a direct and proximate result of the Defendants' actions described above, the Plaintiffs have been harmed by their property and business having been completely destroyed and have suffered the other injuries described above, and the Defendants should compensate the Plaintiffs fully for all of those losses by the Plaintiffs, including but not limited to prejudgment interest, attorney fees and costs.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

A. Grant a Declaratory Judgment declaring that:

- (1) Property of the Plaintiffs was taken by actions of Dorchester County for a public use and without the just compensation required by the United States Constitution;

- (2) Property of the Plaintiffs was taken by actions of the Town of Summerville for a public use and without the just compensation required by the United States Constitution;
- (3) Property of the Plaintiffs was taken by actions of Dorchester County for a public use and without the just compensation required by the South Carolina Constitution;
- (4) Property of the Plaintiffs was taken by actions of the Town of Summerville for a public use and without the just compensation required by the South Carolina Constitution;
- (5) Property of the Plaintiffs was taken and Plaintiffs' property and business were destroyed by violations of the due process and equal protection clauses of the state and federal constitutions by Defendant Dorchester County;
- (6) Property of the Plaintiffs was taken and Plaintiffs' property and business were destroyed by violations of the due process and equal protection clauses of the state and federal constitutions by Defendant Town of Summerville;
- (7) Property of the Plaintiffs was taken and Plaintiffs' property and business were destroyed by unlawful trespass by the Defendants on the property of the Plaintiffs;
- (8) Property of the Plaintiffs was taken and Plaintiffs' property and business were destroyed due to simple negligence by the Defendants;
- (9) Property of the Plaintiffs was taken and Plaintiffs' property and business were destroyed due to willful and gross negligence by the Defendants;
- (10) Defendants' spraying of chemicals on the property of the Plaintiffs as alleged herein was unreasonable, unjustified, harmful and inherently dangerous to the Plaintiffs, other humans, Plaintiffs' property and plants, insects and animals; and
- (11) Defendants' spraying of chemicals on the property of the Plaintiffs as alleged herein caused injuries to the Plaintiffs without fault by the Plaintiffs as alleged herein, in violation of S.C. Code Ann. § 55-3-60.

B. Grant a Permanent Injunction Order immediately enjoining, restraining and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from:

- (1) Placing the chemical referenced herein on the property of the Plaintiffs; and
- (2) Placing in the future the chemicals referenced herein, and any other chemical, on the property of the Plaintiffs without first giving the Plaintiffs notice, an opportunity to be heard to object to the placement of those chemicals on their property and an opportunity to protect themselves and their property from the placement of those chemicals on their property.

C. Grant a judgment awarding money to the Plaintiffs to compensate them fairly and fully for all damages and losses they suffered due to the unlawful actions of the Defendants referenced herein, including prejudgment interest, attorney fees and costs;

D. Grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff; S.C. Code Ann. § 28-11-30; 42 U.S.C. § 1988; and any other applicable law; and

E. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ W. Andrew Gowder, Jr.

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Counsel for Plaintiffs

JURY TRIAL REQUESTED

July 31, 2017
Charleston, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Mitch Randall Yawn and Juanita Mae)
Stanley d/b/a Flowertown Bee Farm and)
Supplies,)
)
Plaintiffs,)
)
vs.)
)
)
Dorchester County, Town of Summerville,)
Allen Aviation, Inc. and Al Allen,)
)
Defendants.)
)

C.A. No.: 2:17-CV-00440-DCN

**ANSWER OF DEFENDANTS ALLEN
AVIATION, INC. AND AL ALLEN TO
PLAINTIFFS' AMENDED COMPLAINT**

Defendants Allen Aviation, Inc. and Al Allen (collectively referenced as “Allen Defendants”) answer the Amended Complaint of Plaintiffs Mitch Randall Yawn and Juanita Mae Stanley d/b/a Flowertown Bee Farm and Supplies (collectively referenced as “Plaintiffs”), as follows:

FIRST DEFENSE

(Paragraphs 1 through 55 Correspond to the Allegations of Plaintiffs' Amended Complaint)

1. Allen Defendants admit that Plaintiffs have brought an action for the relief claimed in Paragraph 1, but Allen Defendants deny that the alleged violations and threatened violations claimed therein occurred.

2. Paragraph 2 states Plaintiffs' reasons for bringing this action; therefore, no response from Allen Defendants is required. To the extent that a response is deemed to be required from Allen Defendants, Allen Defendants deny that Plaintiffs are entitled to the relief described in Paragraph 2.

3. Allen Defendants lack sufficient information to form a belief concerning the truth of the allegation contained in Paragraph 3, and Allen Defendants therefore deny same.

4. Paragraph 4 states legal conclusions that require no response from Allen Defendants. To the extent that a response is deemed to be required from Allen Defendants, Allen Defendants concede that they are subject to the jurisdiction of the U.S. District Court for the District of South Carolina, and Allen Defendants admit that venue is proper in the Charleston Division.

5. Admitted upon information and belief.

6. Admitted upon information and belief.

7. Admitted.

8. Admitted.

9. Allen Defendants admit Allen Aviation, Inc. is a South Carolina corporation headquartered in Horry County, South Carolina.

10. Allen Defendants admit that Al Allen is the owner and Chief Pilot of Allen Aviation, and that Al Allen is a resident of the State of South Carolina.

11-16. Responding to Paragraphs 11 through 16, Allen Defendants state that the U.S. and South Carolina constitutions, and South Carolina statutes speak for themselves; therefore, no response is required from Allen Defendants.

17. Responding to Paragraph 17, Allen Defendants state that the quoted language (minus the added emphasis) correctly states the language of S.C. Code Ann. § 55-3-60; however, Allen Defendants deny the statute is applicable or enforceable, because said statute has been preempted by the Federal Aviation Act and related regulations.

18. Allen Defendants are without information sufficient to admit or deny the allegations of Paragraph 18.

19. Allen Defendants admit that they sprayed chemicals that the local authorities directed them to spray in and around Summerville for the purpose of mosquito control.

20. Allen Defendants are without information sufficient to admit or deny the allegations of Paragraph 20.

21. Allen Defendants admit only that all sprayings performed by the Allen Defendants for mosquito control in and around Summerville were performed by the Allen Defendants at the request and direction of local authorities. As to the remaining allegations of Paragraph 21, Allen Defendants are without sufficient information to admit or deny the remaining allegations and they therefore deny same.

22. Allen Defendants admit only that all sprayings performed by the Allen Defendants for mosquito control in and around Summerville were performed by the Allen Defendants at the request and direction of local authorities. As to the remaining allegations of Paragraph 22, Allen Defendants are without sufficient information to admit or deny the remaining allegations and they therefore deny same.

23-24. Paragraphs 23 through 24 are not directed at Allen Defendants and require no response from Allen Defendants. To the extent a response is deemed to be required, Allen Defendants deny the allegations of Paragraphs 22 through 23.

25. Allen Defendants admit only that all sprayings performed by the Allen Defendants for mosquito control in and around Summerville were performed by Allen Defendants at the request and direction of local authorities., As to the remaining allegations of

Paragraph 25, Allen Defendants are without sufficient information to admit or deny the remaining allegations and they therefore deny same.

26. Allen Defendants are without sufficient information to admit or deny the allegations of Paragraph 26, and therefore denies the same and demands strict proof thereof.

27. In response to Paragraph 27, Allen Defendants repeat and reallege all prior paragraphs of this Answer as if set forth herein verbatim.

28-30. Paragraphs 28 through 30 state legal conclusions which require no response from Allen Defendants. To the extent that a response is deemed to be required from Allen Defendants, Allen Defendants deny the allegations of Paragraphs 28 through 30. Further, Allen Defendants expressly deny being a governmental entity.

31. In response to Paragraph 31, Allen Defendants repeat and reallege all prior paragraphs of this Answer as if set forth herein verbatim.

32-33. Denied.

34. In response to Paragraph 34, Allen Defendants repeat and reallege all prior paragraphs of this Answer as if set forth herein verbatim.

35-36. Denied.

37. In response to Paragraph 37, Allen Defendants repeat and reallege all prior paragraphs of this Answer as if set forth herein verbatim.

38-39. Denied.

40. In response to Paragraph 40, Allen Defendants repeat and reallege all prior paragraphs of this Answer as if set forth herein verbatim.

41-42. Denied.

43. In response to Paragraph 43, Allen Defendants repeat and reallege all prior paragraphs of this Answer as if set forth herein verbatim.

44. Denied as to Allen Defendants.

45. Denied as to Allen Defendants.

46. Denied as to Allen Defendants.

47. In response to Paragraph 47, Allen Defendants repeat and reallege all prior paragraphs of this Answer as if set forth herein verbatim.

48. Denied as to Allen Defendants.

49. Denied as to Allen Defendants.

50. Paragraph 50 of the Amended Complaint is blank, and requires no response from Allen Defendants.

51. In response to Paragraph 51, Allen Defendants repeat and reallege all prior paragraphs of this Answer as if set forth herein verbatim.

52. Admitted.

53-55. Denied.

56. Allen Defendants deny the allegations of Plaintiffs' Amended Complaint contained in the section beginning with "WHEREFORE."

57. Allen Defendants deny each and every allegation of Plaintiffs' Amended Complaint not expressly admitted above.

SECOND DEFENSE

58. Plaintiffs' claims may be barred by the doctrines of waiver, estoppel, and/or laches.

THIRD DEFENSE

59. If Plaintiffs were at fault in causing the alleged damages, their fault is pled as a complete defense to Plaintiffs' claims, or in the alternative, in proportionate reduction of Plaintiffs' claims.

FORTH DEFENSE

60. Punitive damages, as presently awarded in South Carolina, violate the United States and South Carolina Constitutions.

FIFTH DEFENSE

61. If Plaintiffs' damages were caused by the intervening or superseding fault or breach of other parties, such fault or breach is pled in complete defense of Plaintiffs' claims. Alternatively, the fault of others should be offset against any award against Allen Defendants.

SIXTH DEFENSE

62. Plaintiffs' causes of action fail to state a claim against Allen Defendants in that as a matter of law Allen Defendants violated no duty which it owed to the Plaintiffs, and in that Allen Defendants are not governmental entities.

SEVENTH DEFENSE

63. That all times relevant to the allegations contained in the Complaint, the Allen Defendants were acting at the direction of the co-defendant governmental entities and in the public interest.

EIGHTH DEFENSE

64. Plaintiffs' claims may be preempted by federal law.

NINTH DEFENSE

65. Allen Defendants, as private citizens, are not liable to Plaintiffs for claims arising under the United States Constitution or the South Carolina Constitution.

TENTH DEFENSE

66. Plaintiffs' claims are barred by the economic loss rule.

ELEVENTH DEFENSE

67. The Allen Defendants were acting at the request and direction of the co-defendant governmental entities in response to a sudden emergency caused by the rapid spread of the Zika virus.

TWELFTH DEFENSE

68. The Allen Defendants incorporate by reference any and all affirmative defenses plead by any other Defendant in this action.

THIRTEENTH DEFENSE AND MOTION TO DISMISS

69. Pursuant to Rule 12(b)(6), FRCP, the Allen Defendants move this Court for an Order dismissing Plaintiffs' Eighth Cause of Action, because it fails to state a claim upon which relief can be granted. S.C. Code Ann. § 55-3-60 is preempted by federal regulations governing the use and safety of aircraft operated over the United States.

WHEREFORE, having answered fully, Allen Defendants pray that this case be dismissed with prejudice, for a jury trial on all issues triable thereto, for the costs of this matter, for dismissal of Plaintiffs' eighth cause of action pursuant to the Motion to Dismiss, and for such other and further relief as shall be determined by the Court.

September 1, 2017

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Inc. and Al Allen*

State of South Carolina)
) Circuit Court
County of Dorchester) 2017-CP-18-00138

Mitch Randall Yawn et al.

vs.

Dorchester County

March 28, 2023
Dorchester, South Carolina

B E F O R E:

The Honorable Roger M. Young, Judge.

A P P E A R A N C E S (All present via Webex):

W. Andrew Gowder, Jr.
Attorneys for the Plaintiff

Roy Maybank
Attorney for the Defendant

Mitch Yawn, Plaintiff

Cylia Israel
Transcriber

1 THE COURT: Okay. Well, this is Yawn v. Dorchester
2 County, 2017-CP-18-138. And it is defendant's memo in support
3 of a motion for summary judgement.

4 So let me ask you this, because I read your briefs, and I
5 read the orders. Is there anybody that is claiming there's a
6 different standard on takings between the federal court and
7 the State court? Because the federal court's done a pretty
8 thorough job of throwing out your takings claim and sent it
9 back to say, well, the State -- y'all can I guess argue state
10 takings under the State standard, if there's any difference,
11 and also any of the negligence, trespassing, state causes of
12 action, that sort of thing.

13 But I'm not aware that there's any analysis that's
14 different between a takings claim based on the South Carolina
15 State Constitution versus the United States Constitution. But
16 I guess that would be my initial question: is there anybody
17 that contends that there is a different standard?

18 MR. MAYBANK: From our perspective, Your Honor, from the
19 defendant's, that was the -- once the federal claims were
20 exhausted and heard, that kind of subsumed the State toward --
21 pardon me -- the State constitutional claims as well. And
22 it's our position, that because the standards are almost
23 identical, they are all taken care of.

24 THE COURT: Well, I'm asking. Mr. Gowder --

25 MR. GOWDER: Yeah. Your Honor --

1 THE COURT: -- Mr. Rose? Who's talking --

2 MR. ROSE: -- we don't believe that there is a difference
3 in the texts, and so that's why you didn't see us briefing
4 that issue extensively. And so we'd like to preserve our
5 rights with regard to that argument. But we are not going to
6 take up your time with that this morning.

7 THE COURT: You're not officially abandoning it; is that
8 what I'm hearing?

9 MR. GOWDER: We're not abandoning it, Your Honor. That's
10 correct.

11 THE COURT: But you expect me to rule against you on it?

12 MR. GOWDER: I would not be surprised if you did.

13 THE COURT: Okay. All right. Well, then we won't spend
14 any time arguing on that. And I am not aware of any
15 difference, so let's just go with: I'm ruling against you on
16 your takings claims based on the South Carolina State
17 Constitution.

18 MR. GOWDER: Yes, sir.

19 THE COURT: Okay. So then we got negligence and
20 trespassing left. And I'm just going to throw it out. I read
21 these briefs, thought about it a bit, and it seems to me that
22 the negligent claim that's left -- I'm trying to figure out
23 from the plaintiff's perspective.

24 Are you basing your negligence claim on the fact that
25 they did spraying at all or that they had the right to do

1 spraying, but once that fellow started a notice list for the
2 beekeepers to notify them that that -- they were under no duty
3 to notify them. But once they did, and then they didn't call
4 him, then that was negligence -- or call your client.

5 MR. GOWDER: Your Honor, the latter is our argument. We
6 believe that under the police power, the County could have
7 sprayed under certain conditions if they did so reasonably.
8 But the problem here was that they had created a duty through
9 three years of notifying beekeepers, keeping a list, telling
10 beekeepers when they registered that they would be notified by
11 this official. And on this one occasion, this gentleman
12 admittedly failed to call my clients, and my clients were not
13 able to take action to protect their bees, which they had done
14 on many other occasions when they were notified of truck
15 spraying.

16 The other person nearby who was actually notified was
17 able to take action. And though my clients lost all of their
18 bees, she lost none. And so our argument is that had they
19 been notified, as they had a justifiable reason to believe
20 they would, they would have been able to take action to
21 protect their bees. But they weren't, and they lost their
22 bees. And so we think that that creates at least a question
23 of fact for a jury to determine whether that failure to
24 notify, in this case, was negligence.

25 THE COURT: All right. Well, that raises the issue,

1 since you're conceding, as I understand, that under the police
2 powers that the County had to spray, you're not claiming
3 that's the basis for your negligence?

4 MR. GOWDER: No.

5 THE COURT: If you're conceding that point, then does
6 that mean you're also abandoning the trespass argument that
7 you had?

8 MR. GOWDER: No, sir, Your Honor because trespass is
9 different. Trespass is you enter someone's property without
10 their permission and in this case, dropped pesticide on it. I
11 think it would have been a trespass without a harm and
12 therefore not actionable had there been no damage. But in
13 this case, there was damage. And so it's an actionable
14 trespass.

15 THE COURT: Based on the fact that they overflowed the
16 property?

17 MR. GOWDER: Overflowed and dropped pesticide on it. Yes,
18 sir.

19 THE COURT: Well, under the police powers that they had,
20 then everybody in the County that they sprayed on would be
21 able to sue the County for trespass.

22 MR. GOWDER: Well, they would if they caused damage, we
23 contend.

24 THE COURT: Well, a trespass is a trespass. Whether --

25 MR. GOWDER: A trespass --

1 THE COURT: -- or not they cause damage --

2 MR. GOWDER: -- is a trespass -- I'm sorry.

3 THE COURT: Yeah. So it's the flying over plus dropping
4 the chemicals is the trespass?

5 MR. GOWDER: Yes, sir. And what's instructive actually
6 is -- and the statute that we pled that we don't -- we looked
7 at it hard. We don't believe actually that it applies to the
8 County because the language of the statute talks about the
9 owners or lessees of aircraft. But there's a statute in South
10 Carolina that says that if you fly over someone's property and
11 drop something on it and cause damage, you have strict
12 liability. And that did apply to Allen Aviation, but they're
13 not in the case now.

14 The statute doesn't apply to the County, but we believe
15 it's instructive on the effect of flying over and dropping, in
16 this case, pesticide on the property of the plaintiffs. It is
17 a trespass. If it doesn't cause harm, it's not actionable.
18 But if it causes harm, it is actionable. We think that that's
19 consistent with the law in South Carolina and is at least,
20 again, a factual issue on whether or not flying over and
21 dropping the pesticide caused harm. And we believe that's,
22 again, for the jury.

23 THE COURT: And what is the basis for that? I'm not
24 familiar with the statute, but you said that statute, you
25 concede, doesn't apply to the County but applies to the

1 individual.

2 MR. GOWDER: It doesn't. We think just that -- and we
3 cited a number of trespass cases in our memo. But we think
4 that the -- there are a number of decisions that say that
5 there is trespass when you go onto someone else's property
6 without permission. It's not actionable if there's no damage.
7 But if there is damage, then it is actionable. And that would
8 be our argument.

9 THE COURT: So it wouldn't have been trespass if the bees
10 hadn't have died; is that what you're saying?

11 MR. GOWDER: It would have been a trespass, but it would
12 not have been actionable because it would not have caused any
13 damage.

14 In a way, it's like negligence that causes no harm is not
15 actionable. In this case, trespass that causes no harm is not
16 actionable, but it is still trespass.

17 THE COURT: What about this statement in your brief on
18 page 12? And it talks about -- it's under subsection 3. And
19 it says, "To constitute actionable trespass, however, there
20 must be an affirmative act, the invasion of the land must be
21 intentional, and the harm caused must be the direct result of
22 that invasion." And this cites a Alabama case, but then it
23 says, "Trespass does not lie for nonfeasance or failure to
24 perform a duty." So what does that mean?

25 MR. GOWDER: I'm looking at it in context, Your Honor.

1 Well, I think by nonfeasance, I think it means that if
2 you had the right to enter onto the property, if you were
3 given permission to enter onto the property or had some other
4 right to do so, statutory or contractual, then you would
5 have -- you would not have trespassed in that case because
6 there would be consent to enter.

7 THE COURT: Well, the last half of that says failure to
8 perform a duty. And in this case, the sole wrongdoing that is
9 actionable at least on negligence is the failure to call
10 everyone or, in particular, your client --

11 MR. GOWDER: Right.

12 THE COURT: -- on the call list. So that would seem to
13 indicate that trespass wouldn't lie for failure to perform a
14 duty.

15 MR. GOWDER: Well, Your Honor, I think that that though,
16 the duty that we contend is part of the negligence cause of
17 action. Failure to notify doesn't have anything to do with
18 the permission to enter onto the property. I think in the
19 context of this passage, they're talking about duty with
20 regard to the permission to enter onto property. And I don't
21 think it's the same thing.

22 THE COURT: Well, I'm a little bit -- I'm struggling with
23 the whole idea that spraying for bugs, insects, whatever you
24 spray for, that's performed by a government body is trespass,
25 except for the fact that it doesn't hurt somebody. I mean,

1 I'm struggling with that being the law. I mean, it's either
2 trespassing or it's not trespassing. But I just can't buy, or
3 I'm struggling with buying into the idea that everybody else
4 around got trespassed on, but they can't sue, they can't stop
5 it from happening because they didn't suffer any kind of
6 injury.

7 MR. GOWDER: Well, Your Honor, I -- well to begin with, I
8 think it's the peculiar nature of aerial spraying. But to
9 think about it in the context of what the County does every
10 other time except for this one time in 2016 that they did an
11 aerial spray, truck spraying or hand spraying, they don't
12 typically go on people's property. They'll spray from the
13 public right-of-ways. But if someone were to drive a truck
14 onto my property and spray, I think that's a trespass. If
15 they don't cause any harm, then that's not something I can sue
16 about. But if they do come in, let's say they crush plants or
17 they knock over a building or otherwise damage my property, I
18 think that is something I can sue over. And I think that the
19 aerial spraying's the same thing. The law is that boundary
20 lines are vertical as well as horizontal. And so I think
21 flying over is technically a trespass. But in this case, the
22 trespass comes with damage caused by the trespass. And that's
23 what makes it actionable.

24 THE COURT: Okay. All right. Mr. Maybank, you want to
25 address any of that?

1 MR. MAYBANK: I believe that the case that in South
2 Carolina is on point is the Snow v. the City of Columbia,
3 which is 305 S.C. 544. It's cited in the plaintiff's brief.
4 But I think that the applicable law there is to constitute an
5 actual trespass, it must be an affirmative act, the invasion
6 of land must be intentional, and the harm caused must be the
7 direct result of the invasion, which we've discussed.

8 In this case, the County is authorized to operate a
9 mosquito abatement program. The 10th Amendment, through the
10 exercise of police power for the health and welfare of the
11 public, is left to the State. And the State then via DHEC has
12 delegated to management of mosquito control to the local
13 government, which in this case is Dorchester County. And with
14 not only the complaints of the mosquito population, we also
15 had a disease, the zika, that was going worldwide at the time.
16 And they were directed by the State that they needed to deal
17 with this. To do that, they had alternatives. And they chose
18 the different alternatives and looked at them. One was, as
19 Mr. Gowder has properly pointed, out by way of truck, by way
20 of hand-spraying. Of course, Dorchester County is one of the
21 most wet properties in the State -- counties in the State. So
22 aerial was the only other alternative they had. And there was
23 no intentional act. They did a good job of doing a
24 (indiscernible) with the GIS folks, locating the property for
25 the aerial spray. The testimony by the pilot is that he

1 turned off the sprayer, specifically remembering that he did
2 that and that the County provided notice of the spray via
3 various media outlets, including TV, radio, newspaper, and
4 their websites. So that would be our position is that there
5 was -- it's got to be intentional. And they just don't meet
6 the burden under the State law.

7 MR. GOWDER: Your Honor, if I could, I'd like to direct
8 your attention to page 13 where we cite the Snow case that Mr.
9 Maybank mentioned. In the last two sentences of that passage,
10 it says, "it is said that the plaintiff need not prove the
11 defendant was willful or negligent to recover damages. As
12 used by the court, unintentional meant the defendant did not
13 intend the damage flowing from the entry on the land, not that
14 the entry itself was an unintentional act". Clearly, here,
15 the County, through its agent, intended to do exactly what
16 they did in terms of flying over and dropping the pesticide.
17 We don't contend that they intended to cause the harm that
18 resulted. But that's not something that we have to prove,
19 according to the Snow case.

20 MR. MAYBANK: And I think taking it to its next logical
21 conclusion, Your Honor, like you said, I think, which I agree
22 with, if the act itself, if that's the trespass, then, where
23 does it ever end? Somebody has a respiratory problem; all the
24 sudden, we are now -- the State, in trying to eradicate a
25 known disease is now liable for so many other things. The

1 police power enables the State to do what it did. And
2 therefore, our position is that there is no trespass. It's
3 either trespass with or without damages, or there is no
4 trespass. In this case, there is no trespass.

5 THE COURT: Yeah. Why isn't this a valid exercise of
6 police power? Well, it is a valid exercise of police power to
7 have done the program in the first place, which keeps it from
8 being a taking. So why is this -- why is the police power not
9 subsume a trespass claim? Because it is a little bit
10 troubling that you could have a flyover program over vast
11 areas, but if one person suffers damage, then it becomes
12 trespass as to that one person, solely because they didn't get
13 notified, or they maybe had some peculiar thing going on their
14 property that was unforeseen and it caused damage. I'm
15 struggling with that. I'll be honest with you. I'm
16 struggling with it.

17 MR. GOWDER: I understand, Your Honor. I think it's a
18 calculation between weighing the rights of the government
19 versus the rights of the property owner. And you can see how
20 it comes out with regard to the strict liability statute that
21 applies to owners of airplanes and lessees of airplanes that
22 they put it squarely on the owner of the airplane. It doesn't
23 matter if you were as careful as you possibly could be. If
24 you fly over somebody's property and drop pesticides on the
25 property, you're strictly liable.

1 In this case, I think that the trespass is going onto
2 somebody's property without their permission. None of the
3 cases talk about the police power here. They just talk about
4 entry. And that clearly happened here. And the government
5 needs to do it without causing harm, or the government bears
6 the responsibility for remedying the harm that it causes by
7 going on the property. We're not arguing that they didn't
8 have the right to do it under the police power. But it's
9 still a trespass, and they're still liable if they cause harm.

10 MR. MAYBANK: And I think -- and I understand what Andy's
11 saying. But I think, Your Honor, then it flips us back to
12 what are the duties then to notify the general public, which
13 has been satisfied by what the County did, pursuant to the
14 requirements under the act itself. I think the testimony --
15 no doubt, Scott Gaskins took it upon himself as an individual,
16 not as a county. But I think then the argument is well, if he
17 did it, then the County subsumed that responsibility.

18 But assuming that, for the sake of it, the County did
19 everything it was required to do to notify the general public.
20 Once the notification is out there, once you're enforcing a
21 police action, it's done. The duty by the County has been
22 fulfilled to alert the general public. The plaintiffs can
23 say, well, we live off the grid; we're not plugged in. That
24 cannot then be the new standard of well, we need to go find
25 out who's not plugging in, who's not listening to the radio,

1 who's not watching TV, or the assumption that well, you didn't
2 call me. Well, yes. I did. Well, I missed that phone call.
3 You should have called me back five more times. Drive by my
4 house, you're five blocks away. Why didn't you do that? I
5 mean, I think that fulfilling the statutory requirements,
6 which the facts do support, that Tracey Langley notified
7 Channel 5, Channel 4, Summerville Times (phonetic), Post and
8 Courier, all well within the statutory time. And the
9 investigation done by Clempson (phonetic) showed that
10 everything was done properly. This wasn't a true action taken
11 by Dorchester, in which they followed all the steps that were
12 required under the State law, which would then, I think, kick
13 off this whole argument of trespass because it was not
14 trespass. It just wasn't.

15 THE COURT: Well, let's circle back to this duty to
16 notify, which I think, absent the fact that the County
17 voluntarily undertook this call list program, if it weren't
18 for that fact, you wouldn't be here for at least a negligence
19 cause of action. Setting aside trespass for a moment --

20 MR. MAYBANK: Okay.

21 THE COURT: -- let's just focus in on they voluntarily
22 undertook a duty that they did not have. But once they did
23 it, then they're responsible for failing to do what they
24 voluntarily undertook, and that was warn these people that
25 were on the list, every single one of them, that there was

1 some spraying that was getting ready to take place.

2 MR. MAYBANK: Okay. So the testimony is is that while
3 the County did notify everybody in Dorchester County, either
4 constructively or individually, through reading or calling,
5 this one beekeeper that we were aware of -- there could have
6 been others that we were unaware of. But this one beekeeper
7 within that area was not notified, and Mr. Gaskins apologized
8 for it; that is correct.

9 However, if we take it like you're saying, that it is the
10 Dorchester County's action, then under South Carolina code 15-
11 78-60, subsection 4, a governmental entity is not liable for
12 the adoption, enforcement, or compliance with any law or
13 failure to adopt or enforce any law, whether valid or invalid,
14 including but not limited to any charter, provision,
15 ordinance, resolution, rule, regulation, or written policies.
16 And that's on page 32 through 35 of our memo for summary
17 judgement.

18 And the seminal case on that is Repko v. Georgetown
19 County, which is 424 S.C. 494. And in that case, the County
20 of Georgetown failed to follow its own policies and procedures
21 and allowed a developer to submit a letter of credit instead
22 of requiring the developer complete installation of
23 infrastructure at the development. The developer went
24 bankrupt, and the infrastructure was not complete. As a
25 result, numerous people who purchased lots in the development

1 could not build on the lots because the infrastructure had not
2 been completed. The homeowner sued the County alleging
3 negligence for failure to follow its own policies and
4 regulations. And in that case, the court held that it did not
5 even need to determine if the County's regulation created a
6 duty because even if such a duty was created, the County is
7 immune from liability under section 15-78-60, subsection 4 of
8 the Tort Claims Act. And it also held that because subsection
9 4 does not contain a gross negligence standard, standing
10 alone, subsection 4 would entitle the County, such as in this
11 case Dorchester, to immunity from liability for its failure to
12 comply with or enforce its regulations, i.e. the specific
13 calling to the plaintiffs of the aerial spray.

14 Further, Your Honor, the County complied with the notice
15 requirements under section 27-1084(a)(4) of the rules and
16 regulations for enforcement of the South Carolina Pesticide
17 Control Act by publishing notice of the aerial spray in
18 numerous mass media outlets prior to 24 hours prior to the
19 application. It had no duty to personally call the
20 plaintiffs. And even if it did, it's immune pursuant to
21 subsection 4. And there is no gross negligence standard in
22 subsection 4, nor is there an applicable section that would
23 require gross negligence to be read into subsection 4. So
24 therefore, based on the Tort Claims Act, the immunities,
25 therein, we believe that Mr. Gaskins' failure to call the

1 plaintiff specifically for this specific spray makes
2 Dorchester immune under the liability.

3 THE COURT: Mr. Gowder, why doesn't 15-78-60 subsection 4
4 apply as interpreted under the Repko case?

5 MR. GOWDER: Well, because, Your Honor, by the language
6 of 4, it says it's the adoption, enforcement, or compliance
7 with any law or failure to adopt or enforce any law. That's
8 not what we're talking about here. We're talking about a
9 failure to notify, which was a policy undertaken by the
10 County, that all of these folks relied on, that the County had
11 undertaken over three years. And so that's -- we're not
12 saying that they failed to adopt a law but rather that they
13 failed to do something that they had, through their actions
14 over three years, had created a justifiable reliance on the
15 part of these beekeepers that they could rely on and use to
16 protect the property.

17 THE COURT: Well, it's not --

18 MR. GOWDER: It's more by its -- I'm sorry.

19 THE COURT: Subsection 4 isn't limited to adoption. It's
20 adoption, enforcement, or compliance with any law or failure
21 to enforce any law. So why wouldn't enforcement be covered
22 with the --

23 MR. GOWDER: We're not talking --

24 THE COURT: -- situation of the call list?

25 MR. GOWDER: Yes, sir. Well, we're not talking about the

1 enforcement of a law. What we're talking about is the failure
2 to warn under a duty that the County undertook voluntarily.
3 That's what we're talking about. That's different from the, I
4 think, limited activity that's described in 4. We're not
5 saying that they failed to enforce any law that's out there.
6 And we don't allege that.

7 THE COURT: Well, it's enforce --

8 MR. GOWDER: What we allege --

9 THE COURT: It's enforce a policy, a written policy. You
10 look at 4. It's enforcement but not limited to any charter,
11 ordinance, resolution, rule, regulation, or written policy.
12 So why wouldn't that call list fall under that written policy
13 exception?

14 MR. GOWDER: Because, Your Honor, it's not a written
15 policy. What it is is it's a duty that was undertaken through
16 action by the County, by directing beekeepers when they
17 register with the County to call this particular person and
18 get on the list, by designating Mr. Gaskins as the person who
19 is in charge of the list and who will notify, and an action
20 over the course of years that all of these people relied on.
21 So it's not a law, an ordinance, or a resolution, or a written
22 policy that we're saying, you are negligent because you did
23 not enforce this law or this ordinance or policy. We're
24 saying you're negligent because you didn't do the thing that
25 you created a duty to do by your actions.

1 THE COURT: But that would be a policy. It would be the
2 County adopted a policy of establishing this call list to say
3 to people that are beekeepers or whoever asked to be on that
4 list. And that policy didn't get followed.

5 MR. GOWDER: Your Honor, looking at it in the context of
6 the language of 4, I don't think that that's what 4 is talking
7 about. What we're talking about is a course of action. And
8 it's properly looked at as whether or not the County assumed a
9 duty to do this action. It's not the failure to enforce --
10 we're not saying the County's negligent because you didn't
11 enforce a law or procedure or written policy because that
12 really goes more into 5, also which is the -- or I'm sorry,
13 into 1, which is a legislative action or inaction. And so
14 we're not saying that the County failed to enforce some law or
15 procedure or policy. What we're saying is that they assumed a
16 duty upon which my clients relied that they then failed to
17 perform.

18 THE COURT: But that's kind of just a matter of
19 semantics; isn't it? I mean, you want to say they assumed a
20 duty. But they assumed a duty, which created a policy of
21 calling people before they sprayed, people who had called in
22 and said put my name on this list; I would like to be notified
23 if there's a spray. The County adopted a policy through this
24 individual maybe, not a formal one, but it was the County's
25 policy to call people before spraying was done so that they

1 could protect their bees or whatever it was that they wanted
2 to have protected. And that is a -- that was a policy. And
3 that policy of causing (sic) people was the basis for what
4 you're calling a duty. They assumed a duty.

5 MR. GOWDER: Well, but Your Honor, what we are not
6 arguing -- and it does seem like semantics, but I think it's
7 important to keep the distinctions between these concepts.
8 And what we're not saying is that they were negligent because
9 they failed to enforce any law or policy. What we're saying
10 is is that they had a duty through their action to notify and
11 failing that -- and our clients did rely on it. And failing
12 that duty is negligence. And so we think it's different from
13 trying to argue about enforcing a law, which is really what 4
14 is talking about and taking an action upon which people are
15 justified in relying.

16 THE COURT: All right. Mr. Maybank, do you want to
17 respond to any of that, to anything he said or I asked?

18 MR. MAYBANK: I really don't know how else to classify
19 it, other than it falls under subsection 4, Your Honor,
20 because -- and Mr. Gowder argued earlier that this has been
21 going on for three years, at least. So there is some kind of
22 a -- it's not like it's a singular duty in which this was a,
23 quote unquote, one-off type situation, this is something that
24 the County had been doing for some time. And it subsumed into
25 what its procedures were when it would go about doing this

1 type of spray, albeit the aerial was the first and only time
2 they've ever done it. They would do it when they did the
3 truck-driving, but I believe that you are correct in your
4 analysis in that semantically speaking, I think we're talking
5 about the same thing with just different titles. I think this
6 does squarely fall under subsection 4, and I believe that the
7 County has complied with and is immune from liability under
8 that section.

9 THE COURT: Okay. Anybody else want to argue about
10 anything that I didn't cover?

11 MR. GOWDER: Your Honor, just as a final point on what we
12 were just talking about on 4. I mean, not to be hyper-
13 technical, but I think it matters. All of these synonyms that
14 are listed at the last line or two of 4 are all another way of
15 saying a law. And in the last phrase is "written policy".
16 And I think it matters that it says "written". And in this
17 case, there wasn't any written policy that said that they
18 would notify. It was a practice. And sure, a list was
19 probably written down. But there was nothing that was the
20 equivalent of a law or ordinance that we argue that the County
21 failed to enforce. And that created the origin of their
22 liability. Rather, this was a practice that created a duty to
23 act, and they failed to act. We think there's at least a
24 question of fact about that. And as a result, the motion
25 should be denied.

1 THE COURT: Okay. Well, Mike, I've known you for 40
2 years, and I've never heard you not say anything. So speak
3 now, or forever hold your peace.

4 MR. GOWDER: You need to go off mute, Mike.

5 MR. ROSE: Yes. Well, good morning, Judge. The only
6 thing I would add to what Andy said is the County officials
7 communicated or told or represented to our client that they
8 would call if they were spraying. So it's not just a
9 practice. It's a representation that they relied upon.

10 But anyway, Mr. Gowder did such a good job here that I
11 really have nothing else to add.

12 THE COURT: Well, that's a good -- that's a smooth exit.

13 Well, look, I want to give this a little more thought. I
14 want to take a hard look at that Snow case, a hard look at
15 Repko, and give this a little bit more thought because I know
16 it's an important case to everyone's clients. So I'll take it
17 under advisement and hopefully not take too terribly long to
18 let you know what I decide. Okay?

19 MR. GOWDER: Thank you, Your Honor.

20 MR. ROSE: Thank you, Your Honor.

21 THE COURT: Okay. Thank you.

22 MR. MAYBANK: Good to see you.

23 THE COURT: Good to see everybody.

24 MR. GOWDER: Good to see everybody. Bye-bye.

25 (End of Transcript of Record)

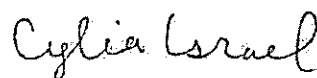
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)
County of Dorchester)

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appeal, in the Court of General Sessions for Dorchester
County, South Carolina, on the 28th day of March, 2023.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

July 27, 2023



Cylia Israel, CDLT-113
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2017-CP-18-00138

MITCH RANDALL YAWN AND)
JUANITA MAE STANLEY D/B/A)
FLORWERTOWN BEE FARM AND)
SUPPLES,)

Plaintiffs,)

v.)

DORCHESTER COUNTY,)

Defendant.)

**DEFENDANT'S MEMORANDUM
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

This case stems from an aerial mosquito control spray conducted by Defendant, Dorchester County, (hereinafter "Dorchester County" or "the County"), to control mosquito-borne illness in August 2016. Plaintiffs, Mitch Yawn and Jaunita Stanley, (hereinafter "Plaintiffs" or "Yawn and Stanley"), claim that the mosquito spray caused the death of the bees in 46 of their hives. The Plaintiffs filed suit alleging claims for both United States and South Carolina Constitutional violations, as well as negligence, gross negligence and trespass claims pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.*

On May 5, 2020, the Federal District Court for the District of South Carolina granted Dorchester County's motion for summary judgment as to the United States Constitutional Claims and remanded the remaining state law claims to state court. (See amended order of District Court dated May 5, 2020). Plaintiffs appealed the ruling. On June 11, 2021, in a published opinion, the United States Court of Appeals

for the Fourth Circuit affirmed the district court's order. (See Opinion of Fourth Circuit Court of Appeals dated June 11, 2021).

As the South Carolina constitutional claims are analyzed the same as the federal constitutional claims, Dorchester County is entitled to judgment on these claims as a matter of law. Moreover, Plaintiffs' state causes of actions are barred by the South Carolina Tort Claims Act, § 15-78-60 et seq. Accordingly, the Court should grant Dorchester County's motion for summary judgment and dismiss the Plaintiffs case as a matter of law.

FACTUAL BACKGROUND

There were many considerations leading up to Dorchester County's decision to conduct an aerial mosquito control spray, as well as numerous actions taken in preparation by the County as well as the company that conducted the aerial spray. Therefore, the facts are somewhat voluminous. For ease of reference the Factual Background section is divided into three sections, 1) circumstances existing in 2016 that led to the County's decision to utilize an aerial spray; 2) preparation for and the aerial spray itself; and 3) the time period following the spray in which Plaintiffs' reported bee die-off from their hives.

Existing Circumstances in 2016 - Citizen Complaints regarding the Mosquito Population and Concern as to Mosquito Borne Illness, Including the National Media Frenzy Regarding the Spread of Zika Virus and Its Effects On Unborn Babies

Zika is a mosquito borne virus that for most people causes mild symptoms such as fever, headache, joint pain, rash, red eyes, and muscle pain¹. However, for pregnant women, exposure to the Zika virus can have grave consequences. Zika exposure during pregnancy can cause severe birth defects to the unborn baby's brain, as well as miscarriage, stillbirth, other birth defects.² Microcephaly has been the primary birth defect associated with babies exposed to the Zika virus in utero. Microcephaly is a birth defect where a baby's head is smaller than expected when compared to babies of the same sex and age. Babies with microcephaly often have smaller brains that might not have developed properly.³

In 2016, Zika virus became a nationally notifiable condition⁴. The Zika virus was spreading rapidly in South America, so much so that ahead of the 2016 Summer Olympics, the Center for Disease Control, ("CDC"), issued a travel warning to travelers to Brazil as well as 44 other countries and territories where the Zika virus was circulating.⁵ At this time, there was national concern in the United States regarding the spread of Zika to the United States.⁶ Lowcountry residents were concerned regarding the spread of Zika in the area and local governments were also

¹ <https://www.cdc.gov/zika/about/overview.html>; Zika can also be transmitted person to person via sexual contact. *Id.*

² <https://www.cdc.gov/zika/about/overview.html>

³ <https://www.cdc.gov/ncbddd/birthdefects/microcephaly.html>

⁴ <https://www.cdc.gov/zika/reporting/2016-case-counts.html>

⁵ <https://www.nytimes.com/2016/07/24/health/travel-zika-virus-faq.html>

⁶ https://www.washingtonpost.com/national/health-science/why-the-united-states-is-vulnerable-to-spread-of-zika-virus/2016/01/26/a8c6a9b4-c440-11e5-8965-0607e0e265ce_story.html

working with the state to ensure preparedness in the event of an outbreak. (Exhibits R and S).

Clayton "Scott" Gaskins is the Mosquito Abatement Coordinator for the Defendant, Dorchester County, (hereinafter "Dorchester County" or "the County"). Mr. Gaskins has been employed with Dorchester County since December 1993. (Exhibit A, p.10, lines 1-7). The Dorchester County Mosquito Abatement Program has evolved a great deal since Mr. Gaskins began with the department.

Sometime in the year 2000, Mr. Gaskins began overseeing the County's Mosquito Abatement Program. (Exhibit A, p.18, lines 14-21). Originally, no special training was necessary. In 2006, the State of South Carolina began requiring any person who oversees mosquito spraying to undergo training and receive a Public Health Category 8 license. (Exhibit A, p.22, lines 6-21). In order to receive the license, Mr. Gaskins had to take and pass the Core exam given by Clemson University which tests general knowledge of pesticide use. Once the Core exam is passed, the applicant, then must take and pass the Public Health Exam. (Exhibit A, p.22, line 22-p.23, line 12). Mr. Gaskins took the course, passed the exams, and received his license in 2006. However, every year, he renews his license and every five years he must complete ten hours of continuing education. (Exhibit A, p.24, line 7-p.25, line 3).

In addition to the licensing requirements, Mr. Gaskins' duties as Mosquito Abatement Coordinator also expanded since he was originally hired. Initially, Mr. Gaskins was responsible for supervising one driver with one mosquito spraying truck and ensuring the driver knew how to operate the spraying machine safely and

correctly. He also ensured that the driver was familiar with the area to be sprayed based on the mosquito complaints the county had received. (Exhibit A, p.10, lines 1-24; p.25, lines 9-25).

However, by 2015, due to the population growth, the County expanded the Mosquito Abatement Program to two trucks and two sprayers. (Exhibit A, p.26, lines 20-25). At this time, in an effort to improve the process, Mr. Clayton consulted with Charleston County regarding a spraying method it was using in which mosquito spraying was done in zones rather than just at locations for which the County received complaints. (Exhibit A, p.27, lines 1-7). Utilizing this information, Mr. Gaskins split Dorchester County into 50 zones and made individual maps of each zone. He also made a priority sheet that he would distribute to the workers who were spraying for him. (Exhibit A, p.27, lines 7-17).

In addition to coordinating and supervising the truck mosquito spraying that occurred at night, Mr. Gaskins was and still is responsible for taking phone calls regarding mosquito complaints, scheduling night spraying, entering the information into the computer, treating low-lying swampy areas with briquettes to control mosquito larvae, and responding to people's homes who have mosquito complaints. (Exhibit A, p.34, line 7-p.36, line 10).

Mr. Gaskins testified that he has the authority to choose the type of pesticide used for mosquito abatement, and that he does this with the guidance and consultation of Trey English, the representative from Adapco, the pesticide company from which the County purchases the pesticides. (Exhibit A, p.37, line 20-p.38, line

5). When asked about whether any information regarding pollinators such as bees, butterflies or birds pollinating habitats, is taught in either the licensing or continuing education classes, Mr. Gaskins testified in the affirmative. Mr. Gaskins stated that the primary emphasis in his classes regarding pesticide use and pollinators is to always follow label instructions. (Exhibit A, p.39, lines 3-22). Mr. Gaskins testified that the label instructions contain the best times to spray so as to not affect the pollinators. (Exhibit A, p.40, lines 4-14).

In 2016, Mr. Gaskins stated that he personally had a list of residents in the County that kept bees. He estimated that there were approximately 14 to 15 people on the list, and that he kept their names, addresses, and zone on the map. (Exhibit A, p.40, lines 19-25). Mr. Gaskins stated that there is no requirement the County personally notify the individual beekeepers, however, as a courtesy, he would contact them when the truck would be out at night doing mosquito spraying. (Exhibit A, p.41, lines 1-5; p.80, lines 5-10). He stated that at the time, the Plaintiffs were on his list. (Exhibit A, p.41, lines 18-20).

Mr. Gaskins testified that in 2016 the Zika virus “was a big issue” and that 2016 was a “very scary time” because of the effect that the virus could have on an unborn baby’s brain size. (Exhibit A, p.44, line 210p.45, line 9). Mr. Gaskins stated that West Nile Virus and other mosquito borne illnesses are always a concern, but in 2016, the number one topic at any conferences was Zika. (Exhibit A, p.45, lines 10-14). In 2016, there were three cases of travel related Zika virus in Dorchester County. (Exhibit A, p.45, lines 18-25).

Mr. Gaskins testified that in 2016, Chris Evans, an entomologist with the South Carolina Department of Health and Environmental Control, ("DHEC"), contacted him to tell him about the Zika cases in Dorchester County and to provide the individuals' addresses. (Exhibit A, p.46, line 18 -p.47, line 5). Mr. Gaskins was told by DHEC that these specific addresses including a certain radius around the specific addresses needed to be treated for mosquitos. (Exhibit A, p.46, line 14-p.48, line 20). The first two Zika notifications from DHEC to Mr. Gaskins at Dorchester County occurred on August 9, 2016, and August 15, 2016. (Id).

As a result of the DHEC notifications, Mr. Gaskins testified that the County sent both trucks to spray for mosquitos at night, and that he went through the neighborhoods going door to door, making sure that there was no standing water. (Exhibit A, p.48, line 21-p.7). However, Mr. Gaskins testified that there were places that he could not get to in order to spray. He stated that there were a lot of wooded areas that his trucks could not get into and that it was too vast for someone to walk through and hand spray. (Exhibit A, p.49, line 18-p.50, line 2). Mr. Gaskins stated that at this time, he told his boss, Jakie Walters, that he had done everything he could do with regard to mosquito control with the equipment and resources available. (Exhibit A, p.50, line 14-p.51, line 22).

Mr. Gaskins testified that he had been suggesting aerial spraying to his supervisor for many years, and it had been discussed within the County in years past but Dorchester County had not conducted aerial mosquito sprays prior to August 2016 due to budget constraints. (Exhibit A, p.52, line 13-p.53, line 12). However, in

June or July 2016, the County decided to establish a contract for aerial mosquito spraying due to the high mosquito populations. (Exhibit A, p.56, lines 9-24). According to Mr. Gaskins, Jason Ward, the Dorchester County Administrator, instructed him to call Charleston and Berkeley Counties to inquire as to who they use for aerial mosquito spraying and to ask whether they had an established contract with an aerial spraying company. (Exhibit A, p.57, lines 11-15).

Mr. Gaskins testified that Berkeley County had a contract with Allen Aviation for aerial mosquito spraying and that Dorchester County could use the established prices from its contract.” (Exhibit A, p.58, lines 1-8). Mr. Gaskins was not involved in the contract negotiations, but testified that Dorchester County pursued the contract with Allen Aviation so the County would be prepared to do an aerial mosquito spray in the event the County’s spraying by truck and hand was not sufficient. (Exhibit A, p.59, line 19-p.60, line 11). The County entered into a contract with Allen Aviation for aerial mosquito spraying on July 21, 2016. (Exhibit J).

With regard to the aerial spray at issue in this case, Mr. Gaskins testified that he had received notification from DHEC regarding the Zika cases in the county. During the same time period, he got complaints from the administration at Summerville Elementary, which was located in the area of the Zika cases as well as a call from a resident who lived near Summerville Elementary School, complaining that “the children are being absolutely tore up by mosquitos” and that “the mosquitos are absolutely horrible.” (Exhibit A, p.61, lines 8-19). Mr. Gaskins stated that he

went to his boss with the information and asked him what the County wanted to do. (Exhibit A, p.61, line 20-62, line 2).

Mr. Gaskins testified that the large population of mosquitos combined with the travel Zika cases was a public health emergency. He stated that the complaints demonstrated how bad the mosquito populations were in the area where the two travel Zika cases were located. Mr. Gaskins stated that the people infected with the Zika virus were supposed to remain quarantined in their houses. However, if they do go outside, they can get bitten by mosquitos which in turn could infect others. (Exhibit A, p.63, line 15-p.64, line 7)

Jason Ward, the County Administrator, likewise, testified that Dorchester County had not conducted aerial sprays in the past, but citizen concern with the mosquito population, and the fact that Dorchester County had been informed by DHEC travel related cases were located in Dorchester County, was the genesis of the aerial mosquito spray. Mr. Ward testified that DHEC suggested that Dorchester County do targeted mosquito spraying because there was evidence of Zika in Dorchester County. (Exhibit G, p.13, line 6-p.14, line 1). Mr. Ward stated that the particular area to be treated was not easily accessible with ground spraying, so the County decided to do aerial spraying. (Id).

Mr. Ward testified that prior to DHEC notification, the County had already begun exploring aerial mosquito spaying as 2016 was a wet year that generated more mosquitos than normal and they were already trying to knock down the mosquito population. (Exhibit G, p.16, lines 16-20). He stated that County Council was

receiving citizen complaints and questions as to whether the County was doing everything possible to control the mosquito population. (Exhibit G, p.32, lines 15-22). Accordingly, in late June or early July 2016, Mr. Ward requested and received funding from Dorchester County Council for additional mosquito control chemicals and briquettes and as well as to allow for aerial spraying if needed. (Exhibit G, p.36, lines 4-20.) According to Mr. Ward, the DHEC notification of Zika Virus in the County and directive that the County do targeted spraying of locations that included areas that were inaccessible by truck or hand, was just one more reason that the decision to conduct the aerial mosquito spray was made. (Exhibit G p.16, lines 16-23; p.32, line 23-p.33, line 6). Mr. Ward also stated that Dorchester knew that Charleston County and Berkeley County were both utilizing aerial mosquito spraying. (Exhibit G p.16 line 24).

Tracey Langley is the current Clerk to Dorchester County Council. However, in 2016, she was the acting public information officer for Dorchester County and the administrative assistant to Jason Ward, Dorchester County's administrator. (Exhibit E p.10, line 21-p.12, line 2). Ms. Langley testified that in 2016, the County was receiving an enormous amount of calls into the County administrator's office about mosquitos. (Exhibit E p.20, lines 5-16). She stated that not only was the County receiving calls from constituents but also from other towns that are within the County as well as DHEC, about mosquito control. (Exhibit E, p.20, lines 14-19). Ms. Langley testified that constituents were attending County Council meetings and requesting that the County conduct aerial sprays. She also stated that the historic flooding in

October of 2015 combined with the large number of wetlands in the area caused a bad mosquito problem in 2016, and that people were complaining and demanding that the County do something to better control the mosquito population. (Exhibit E, p.20, line 19-p.21, line 8).

David Chinnis, the chairman of Dorchester County Council in 2016, also testified that constituents in Dorchester County were very concerned with the transmission of Zika as "the media had been covering Zika very strongly." (Exhibit C, p.11, lines 9-15; p.11, lines 12-23). Mr. Chinnis stated that Council began discussing doing an aerial spray as it would enable them to cover areas not accessible by truck, and they knew that Berkeley and Charleston Counties were already doing aerial sprays. (Exhibit C, p.13, line 18-p.14, line 5). Mr. Chinnis testified, "we had heard stories about Miami. I mean, again, this is a big - - its all over the media . . . and for [Dorchester County] to show up, you know as having Zika in Summerville because somebody got it as a result of something we had failed to do, to me wasn't an option." (Exhibit C, p.14, line 25-p.15, line 8).

The factors discussed above, the discussions amongst the Dorchester County Council, the County Administrator, Dorchester County Facilities Management/Mosquito Abatement Department and Allen Aviation, the company that would actually perform the aerial mosquito spray, all cumulated with a decision that Dorchester County would conduct aerial mosquito control spraying in August of 2016. According to Mr. Gaskins, (head of mosquito abatement for the County), the label on the pesticide stated that the spray had to occur two hours before sunrise or

two hours after sunset. (Exhibit I). Further, South Carolina State law required that the public be given 24-hour notice before an aerial spray. (Exhibit A, p.66, line 20-p.67, line 5). Due to a high school football game Friday evening and the Summerville Farmer's Market on Saturday morning, Dorchester County decided to conduct the aerial mosquito control spraying on Sunday August 28, 2016 between the hours of 6:30 a.m. and 8:30 a.m. (Exhibit K; Exhibit A, p.66, line 21-p.67, line 25).

Ms. Langley was responsible for writing the press release notifying the citizens of Dorchester County of the upcoming August 28, 2016, aerial mosquito spray. (Exhibit E, p.36, lines 1-9; Exhibit K). A map of the area that would be sprayed was attached to the press release. (Exhibit K; Exhibit E, p.39, lines 13-17). Ms. Langley testified that she sent the release to the following media outlets, Channel 2; Channel 4; Channel 5; the Post and Courier; Summerville Journal Scene; The Eagle Record; radio stations 103.5; 102.5; 94.3; and 104.5. She also believes the press release was sent to the Charleston City Paper, and The State. The Town of Summerville also would have received the press release so they could post the information on their website, and social media sites. (Exhibit E p.36, line 9-p.37, line 3).

Ms. Langley stated that she knew for sure that Channel 4 and Channel 5 had the information on their Friday night and Saturday broadcasts, and that she believed it was on their websites. (Exhibit E, p.37, lines 4-17). She stated that the Post and Courier and the Summerville Journal Scene both had the information on their websites, and she believed that the Journal Scene put the information on its Facebook page as well. (Exhibit E, p.37, line 18-p.38, line 6). With regard to the Journal Scene,

Ms. Langley testified that the notice was not in the physical edition of the paper, but only on the online edition and Facebook page. (Exhibit E, p.38, lines 12-23).

Ms. Langley was asked whether the presence of citizens with Zika had anything to do with the aerial spray and the location that was covered by the aerial spray. Ms. Langley responded that the presence of Zika was a component of the concern for the public's safety, but also included in that concern were all of the other diseases that mosquitos carry and transmit, as well as the fact that there were areas that were inaccessible by foot or truck. (Exhibit E, p.46, line 21-p.47, line 24; p.48, lines 3-23).

Preparing for and Completion of the August 28, 2016, Aerial Mosquito Spray

As stated above, Allen Aviation was the contractor hired by Dorchester County to conduct the aerial mosquito spray. In preparation for the aerial mosquito spray, Dorchester County Mosquito Abatement Officer, contacted David Garber, the GIS map Coordinator for Dorchester County, to see if Mr. Garber could adapt the current mosquito abatement zone shapefile maps for aerial mosquito spraying. (Exhibit D, p.9, lines 19-21; p.23, lines 11-19). The shapefile maps would be given to Allen Aviation to use during the aerial spray. (Exhibit D, p.23, lines 17-19).

Mr. Garber testified that in early August 2016, the County did a few tests with Allen Aviation transmitting the map data back and forth to ensure that Allen Aviation could use the map data in their system. (Exhibit D, p.23, lines 20-24). The map data transmitted by the County to Allen Aviation was in WGS '84. According to Mr. Garber, this software provides coordinates by longitude and latitude carried out to the 12th digit and allows the user to locate a target within a few inches. According

to Mr. Garber, "its how you drop a bomb." (Exhibit D, p.26, lines 3-8). On August 22, 2016, Mr. Garber sent a map and two files which included the location of all known beekeepers in the area. (Exhibit D, p.29, lines 3-24; Exhibit L).

Mr. Al Allen is one of the owners and the pilot for Allen Aviation. Mr. Allen spent six years in the Air Force, and previously worked for the Florence City Police Department, the Conway City Police Department, and the Horry County's Sherriff's Office. (Exhibit B, p.5, lines 4-11). He bought Allen Aviation in 2001, and has been employed as a pilot with Allen since that time. (Exhibit B, p.5, lines 17-22). Allen Aviation's main service is aerial application of chemicals and fertilizer. (Exhibit B, p.15, lines 7-17).

In addition to his many years of piloting experience, Mr. Allen has attended Agricultural Flight School, where he began a certified 137 operator /agriculture pilot⁷, and has attended numerous continuing education courses and recertification courses with Clemson, the Department of Pesticide Regulation, and the North Carolina Department of Agriculture. (Exhibit B, p.21, lines 5-23). Mr. Allen has also been certified by Clemson as a commercial aerial pesticide applicator, and is also licensed in the states of North Carolina, Georgia, Florida, Illinois, Indiana, Mississippi, and Tennessee. (Exhibit B, p.22, line 21-p.23, line 3).

Mr. Allen testified that approximately 15-20 percent of his business is aerial mosquito spraying. (Exhibit B, p.24, lines 9-20). His aerial mosquito spraying

⁷ The FAA and the Federal Aviation Regulations, for a pilot to dispense economic fertilizer, or pesticides, he or she must be certified through the FAA as a 137 operator. (Exhibit B, p.22, lines 9-20)

contracts are with Horry County, Berkeley County, and the one spray with Dorchester County. (Exhibit B, p.24, lines 22-25).

Mr. Allen testified that when he is contracted for an aerial mosquito spray by a county, the county's GIS department will send a shapefile of the area to be sprayed. After receiving the map, Allen will then work with the County to confirm the area to be sprayed and the chemical product to be used. (Exhibit B, p.28, lines 1-16). Once Allen has the chemical product on hand, he will again sit down with the maps and look over the air space for any towers, controlled airspace, obstacles or special areas such as large lakes or power plants. Next, he confirms the date with the county, and discuss the timing of the spray. (Exhibit B, p.28, line 18-p.29, line 3). He stated that the county will then make a public address post to inform the public of the time and date of the aerial spraying. (Exhibit B, p.29, lines 4-9). According to Mr. Allen, the time of the spray is also dictated by the label on the chemical to be applied, and that the time of day must be within the label constraints. (Exhibit B, p.34, line 18-p.35, line 14).

With regard to the actual equipment on the plane that releases the pesticide product, Mr. Allen testified that Trey English, the sales person for the pesticide, as well as Charleston County Mosquito Control calibrates the plane's system and ensures that the product will be applied at the proper rate per acre. (Exhibit B, p.44, lines 3-21). Following an aerial spray, Mr. Allen will print a record of the acreage completed and the amount of pesticide that was actually disbursed. (Exhibit B, p.46, lines 4-14). If a client requests that an area not be sprayed, Mr. Allen stated, it will

be shown on the map provided, and that he will cut off the spray prior to flying over the location, while he is over it, and for a period of time after he passes the location. (Exhibit B, p.47, line15-p.48, line 2). Industry standard is to cut off the spray three seconds before he is over the center of the do not spray location. (Exhibit B, p.49, lines 3-20).

With regard to the spray at issue in this case, Mr. Allen testified that Dorchester County contacted Allen for an aerial spray in July or August 2016. (Exhibit B, p.53, line 19-p.54, line 14). Per normal routine, he received the shapefile target maps from Dorchester County for the spray. (Exhibit B, p.95, lines 17-23, Exhibit Q). The map from the County contained the locations of two beehive sites within the target spray area, marked with a red circle, a triangle and an exclamation point. (Exhibit B, p.96, lines 11-21, Exhibit Q). Mr. Allen stated that there were no other exclusion zones on the map, with the exception of the two red dots that he was told were beehive locations. (Exhibit B, p.71, lines 7-12).

With regard to the flight itself, Mr. Allen testified that the County had the pesticide product drop shipped to him, and that he confirmed the application instructions per the product label. (Exhibit B, p.71, line 17-p.72, line 5). Mr. Allen stated that he informed the County that he would apply the product in the morning up until two hours after sunrise. (Exhibit B, p.74, lines 8-10). Accordingly, on the day of the aerial application, they began the application process in air, approximately 6:35, which was a few minutes before official sunrise. (Exhibit B, p.78, lines 1-7).

Mr. Allen testified that during the aerial spray he used the maps provided by the County with the beehive markers to make his determination as to when to turn off the sprayer during the flight. (Exhibit B, p.97, lines 4-8). In fact, Mr. Allen testified that he specifically remembered cutting off the sprayer as he approached the beehive locations per the map. (Exhibit B, p.80, lines 1-5). Mr. Allen said that the aerial spray was a “standard unit flight” and “uneventful.” (Exhibit B, p.84, lines 3-12).

Plaintiffs Contact the County Claiming Bee Die-Off Due to Aerial Spray

On August 29, 2016, one day after the spray, Mr. Gaskins, of Dorchester County Mosquito Abatement was contacted by Plaintiff Mitchell Yawn who stated he was not informed regarding the aerial mosquito spray, and that he lost approximately 50 bee hives after the aerial spray⁸. (Exhibit A, p.79, lines 19-24). Mr. Gaskins testified that upon receiving Yawn’s message, he looked back at his beekeeper list and realized that when making the courtesy calls regarding the upcoming aerial spray, he mistakenly called the individual above Yawn’s name, and not Mr. Yawn. (Exhibit A, p.78, line 25-p.79, line 5). Mr. Gaskins stated that he called Yawn back, told him that he made a mistake, and apologized to him. (Exhibit A, p.81, lines 5-18). Mr. Gaskins testified that he also informed his boss about the call and that his boss informed Dorchester County Administrator Jason Ward regarding the situation. (Exhibit A, p.79, lines 13-20; Exhibit M; Exhibit N). Mr. Ward informed Dorchester County Council of the situation, and began to conduct an investigation to determine

⁸ The County contests the number of honeybees the Plaintiffs claim to have lost as well as the income Plaintiffs claim to have lost as a result of the honeybee deaths. However, the County does not dispute that the Plaintiffs lost honeybees during the immediate timeframe after the spray.

what happened and if the aerial spray contributed to the bee die-off. (Exhibits M and O). During the investigation, Mr. Chinnis, Chairman of County Council testified that he was informed that Mr. Gaskins had “[taken] it upon himself to call folks that he knew. . . had bees, and that he routinely did that, and that there was a possibility that he had either called the wrong number or not gotten someone at one of those numbers.”⁹ (Exhibit C, p.21, lines 17-24)

Due to the number of calls, the County requested and opened the next day, a Call Hotline for anyone with questions regarding the spray or to report bees affected by the spray. (Exhibit G, p.58, lines 3-16). Additionally, on August 29, the County began receiving emails from news outlets, individuals and social media posts accusing the County of killing bees. One email received by Mr. Gaskins on August 29, from a reporter with WCIV/ABC News 4 states in pertinent part, “We are covering a story at a farm in Summerville. The beekeeper says mosquito spraying is killing her bees and her profits. Have you ever hearing anything like this before?” (Exhibit P). A social media post on the morning following the spray states “words cannot describe the devastating loss literally thousands upon thousands of bees from these couple of dozen beehives killed by aerial spraying [sic] not only is this devastating to the bees but also this person’s livelihood [sic] tens of thousands of dollars loss [sic] have we lost our mind spraying poison from the sky.” (Exhibit O; Exhibit F, p.40, lines 1-15).

While the County received numerous, calls and emails, the Plaintiffs are the only people who claim to have lost bees as a result of the aerial spray. Nonetheless,

⁹ Mr. Chinnis also testified that Mr. Gaskin’s call notification list was never an official County policy. (Exhibit C, p.39, lines 18-21).

the County contacted Clemson University's Department of Pesticide Regulation, the entity responsible under South Carolina law, for regulating and investigating pesticide use and complaints. The Clemson Department of Pesticide Regulation performed an investigation, which included interviewing Plaintiff Stanley and observing the hives, collecting a representative sample of the bees as well as taking an "unofficial third-party sample of bees from Plaintiff Stanley which were analyzed at the Department of Pesticide Regulation's Pesticide Residue Lab, meeting with County employees and officials, meeting with Allen Aviation and reviewing Allen's records, reviewing the pesticide used in the aerial spray, and confirming with SCDHEC that Dorchester County had been notified of cases of travel related Zika virus in Dorchester County on August 9 and 15, 2016, and had provided maps to Dorchester County showing a mosquito target zone. (Exhibit H).

While the report did not rule out eliminate the pesticide used in the mosquito spray as a cause of the Plaintiffs' loss of bees, it found no violations as to the aerial mosquito spray:

This investigation found no violations occurred as a result of the Trumpet EC application performed on August 28th. This conclusion was supported by the following statements: the nature and timing of the pesticide application was published in a mass media outlet greater than 24-hours prior to the application, the application was performed at or below the labeled rate, the application was not applied more than 2 hours after sunrise, and the application was performed to prevent a threat to public health after identifying the occurrence of a mosquito-borne disease in the human population.

(Exhibit H).

Even though the Clemson report found no violations and could not definitively state what caused the Plaintiffs' loss of bees, the County tried to work with the Plaintiffs toward a resolution. Mr. Chinnis testified that he discussed the potential for an insurance claim against the County if the bees did die as a result of the spray with the Plaintiffs. (Exhibit C, p.30, lines 1-8). Mr. Chinnis also met with the Plaintiffs and requested that they fill out the insurance paperwork to start a claim against the County; asked them get the County information regarding the value of the lost bees; and even suggested that he would try to get a vote through on County Council to use some of the County's contingency funds to help pay for replacement bee costs. (Exhibit C, p.32, line 5-p.33, line 13). In fact, Mr. Yawn provided information regarding the value of the bees to Mr. Chinnis, but the Plaintiffs never gave the County the completed paperwork to process the claim. (Exhibit C, p.33, lines 14-22). Mr. Chinnis stated that once the Plaintiffs hired an attorney, he did not have any further discussions with the Plaintiffs. (Exhibit C, p.33, lines 22-25).

On January 30, 2017, the Plaintiffs filed suit against the County, the Town of Summerville, Allen Aviation, and Al Allen¹⁰. The Plaintiffs alleged causes of action for violations of the Fifth and Fourteen Amendments of the United States Constitution, and 42 U.S.C. § 1983, violations of due process, equal protections and takings under the South Carolina Constitution, and for negligence, gross negligence, and trespass, pursuant to the South Carolina Tort Claims Act. § 15-78-10 et seq.

¹⁰ Only the County remains as a Defendant.

On May 5, 2020, the United States District Court for the District of South Carolina issued an order dismissing the Plaintiffs' federal constitutional claims and remanding the remaining state claims to South Carolina circuit Court¹¹. (See order dated May 5, 2020). The Plaintiffs appealed to the Fourth Circuit Court of Appeals. Following oral arguments, on June 11, 2021, the Fourth Circuit issued an opinion affirming the district court order. (See opinion dated June 11, 2021).

As the South Carolina Constitutional claims are analyzed the same as federal law, these claims should be dismissed as a matter of law. Further, Plaintiffs' remaining state causes of action are barred by the State Tort Claims Act § 15-78-60 et seq, including but not limited to, § 15-78-60(1) and (5). Accordingly, Dorchester County is entitled to summary judgment as a matter of law.

STANDARD

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *David v. McLeod Reg. Med. Ctr.*, 367 S.C. 242, 626 S.E.2nd 1 (2006). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Id.* The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Where the plaintiff relies solely upon the

¹¹ The original order was filed March 17, 2020. The amended order filed May 5, 2020, did not alter the holding but modified some of the factual findings.

pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law. *Humana Hospital-Bayside v. Lighlte*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991).

LEGAL ARUGMENT

I. THERE IS NO SOUTH CAROLINA CONSTITUTIONAL VIOLATION.

In their complaint, the Plaintiffs allege violations of the U.S. Constitution as well as the South Carolina Constitution. Specifically, Plaintiffs allege a violation of the Takings Clause. However, as stated previously, the Federal Constitutional claims were dismissed by the District Court and the dismissal was affirmed by the United States Court of Appeals for the Fourth Circuit. As the Fourth Circuit has already ruled that there were no Federal Constitutional violations, and South Carolina Constitutional claims are analyzed the same as under federal law, the South Carolina Constitutional Claims cannot stand and must be dismissed as a matter of law. See *Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76, n.6 (2005) citing *Westside Quik Shop, Inc. v. Stewart*, 341 S.C. 297, 306, 534 S.E.2d 270, 275 (2000).

II. PLAINTIFFS' STATE LAW CLAIMS FAIL AS A MATTER OF LAW AS THERE IS NO EVIDENCE THE COUNTY WAS NEGLIGENT IN ANY WAY WITH REGARD TO THE AERIAL MOSQUITO SPRAY. EVEN IF THERE WAS EVIDENCE OF NEGLIGENCE, PLAINTIFFS' CLAIMS ARE BARRED BY THE TORT CLAIMS ACT, S.C. CODE ANN. § 15-78-60(1), (4), and (5).

Plaintiffs' amended complaint seemingly alleges that the County was negligent/grossly negligent in its operation of the Mosquito Abatement Program in

conducting the aerial mosquito spray rather than using “alternative methods of killing mosquitos,” in its choice of chemical used during the aerial spray, and in the notice provided to the public. However, Plaintiffs have not presented any evidence to support these allegations, and in fact, an investigation conducted by Clemson University Department of Pesticide Regulation following the aerial spray found no violations by the County. Moreover, even if there was evidence of negligence or gross negligence, these claims are barred by the Tort Claims Act, S.C. Code Ann. § 15-78-60(1), (4), and (5).

A. There is No Evidence that the County was Negligent with regard to the Aerial Mosquito Spray.

1. Plaintiffs have not presented any evidence of “alternative methods” the County should have used instead of an aerial spray.

First, the Plaintiffs allege that the County should not have conducted an aerial spray at all, but rather used “reasonable alternative methods of killing mosquitos.” However, they have not presented any evidence of what “alternative methods” should have been used. Moreover, contrary to Plaintiffs’ argument, the record is replete with evidence that the County exhausted all other methods of mosquito control prior to conducting the aerial spray.

Mr. Gaskins testified that following the DHEC notifications, the County sent both trucks to spray for mosquitos at night, and that he went through the neighborhoods going door to door, making sure that there was no standing water. (Exhibit A, p.48, line 21-p.7). However, Mr. Gaskins testified that he was concerned as there were places that he could not get to in order to spray. He stated that there

were a lot of wooded areas that his trucks could not get into and that it was too vast for someone to walk through and hand spray. (Exhibit A, p.49, line 18-p.50, line 2). Mr. Gaskins stated that at this time, he told his boss, Jakie Walters, that he had done everything he could do with regard to mosquito control with the equipment and resources available. (Exhibit A, p.50, line 14-p.51, line 22).

With the information from Mr. Gaskins, both Jason Ward, the County Administrator, and David Chinnis, the County Council Chairman, testified the County was already dealing with heavy mosquito populations in 2016 due to unprecedented rain and that 1) DHEC's notification of Zika in the County, 2) DHEC's directive that the County conduct targeted mosquito sprays in the area where the Zika cases were located, and 3) the inability to access the target areas via truck or foot due to the swampy wooded terrain all cumulated with the County's decision that an aerial mosquito spray was necessary in order to protect the public health from Zika and other mosquito borne illness. (Exhibit G p.16, lines 16-23; p.32, line 23-p.33, line 6; Exhibit C, p.13, line 18-p.14, line 5). Contrary to the Plaintiffs' argument, prior to the aerial spray, the County exhausted all other methods of mosquito control and determined that the other methods were not sufficient. There simply is no evidence to support Plaintiffs' claim.

2. There is no evidence that the chemical used by the County during the aerial spray was improper or that the notice of the spray provided to the public was improper.

There is no dispute that Trumpet EC, the chemical used by the County for the aerial spray is approved by EPA for use as an insecticide by "Federal, State,

Tribal, or Local Government Officials responsible for public health or vector control, or by persons certified in the appropriate category or otherwise authorized by the State or Tribal Lead Pesticide Regulatory Agency to perform adult mosquito control applications.” (Exhibit I). Likewise, as discussed in detail below, Clemson University’s Department of Pesticide Regulation conducted an investigation following the aerial spray and found no violations by the County.

Pesticide use in South Carolina is governed by the Pesticide Control Act, S.C. Code Ann. 46-13-10 *et seq.* The Act delegates authority regarding pesticide use to the “director” which is defined as “the Director of the Division of Regulatory and Public Service Programs, College of Agricultural Sciences, Clemson University.” S.C. Code Ann. § 46-13-20(k). The director is responsible for promulgating regulations regarding the use of pesticides in the state of South Carolina. S.C. Code Ann. § 46-13-30. The Regulations are contained in Article 17 of the South Carolina Pesticide Control Regulations and govern among many things, the products that can be used as a pesticide, adherence to the products’ labeling instructions, notice provisions to the public when a pesticide is going to be used, as well as investigatory duties when there is an alleged violation of the Regulations.¹² <https://www.clemson.edu/public/regulatory/pesticide-regulation/pdfs/rules-and-regs-dpr.pdf>.

Following notification of the bee die off, pursuant to the duties delegated to it by the South Carolina Pesticide Act, The Clemson Department of Pesticide

¹² The regulations govern a voluminous number of topics ranging from licensing requirements of applicators to enforcement of violations.

Regulation, conducted an investigation into the spray and determined that the spray performed by Dorchester County on August 28, 2016, did not violate any Rules or Regulations for the Enforcement of the South Carolina Pesticide Control Act. (Exhibit H).

Specifically, the Clemson Department of Pesticide found that the mosquito spray was performed pursuant to the labeling instructions on the pesticide in that “the application was performed at or below the labeled rate” and “was not applied more than two hours after sunrise.” (Exhibit H). The Clemson Department of Pesticide further determined that the mosquito spray “was performed to prevent a threat to public health after identifying the occurrence of a mosquito-borne disease in the human population. (Exhibit H).

With regard to notice, Section 27-1084(A)(4) of the Rules and Regulations for Enforcement of the South Carolina Pesticide Control Act provides:

For non-commercial applicators only, or for commercial applicators making applications for and under the direct supervision of a governmental entity, the disclosure requirements of the Above Sections may be met by announcement or publication of the nature and timing of pesticide applications in the appropriate media outlets not less than 24 hours prior to the application.”

The Clemson investigation found that the Department of Public Relations for the County provided appropriate notice of the nature and timing of the pesticide application as it “was published in a mass media outlet greater than 24-hours prior to the application.” (Exhibit H). In fact, Tracey Langley testified that she created the press release and that in addition to the Summerville Journal Scene, she sent it

to Channel 2; Channel 4; Channel 5; the Post and Courier; The Eagle Record; radio stations 103.5; 102.5; 94.3; and 104.5, and the Town of Summerville. (Exhibit K; Exhibit E p.36, line 9-p.37, line 3). Ms. Langley further testified that The Town of Summerville also would have received the press release so they could post the information on their website, and social media sites. (Exhibit E p.36, line 9-p.37, line 3).

Ms. Langley stated that she knew for sure that Channel 4 and Channel 5 had the information on their Friday night and Saturday broadcasts, and that she believed it was on their websites. (Exhibit E, p.37, lines 4-17). She stated that the Post and Courier and the Summerville Journal Scene both had the information on their websites, and she believed that the Journal Scene put the information on its Facebook page as well. (Exhibit E, p.37, line 18-p.38, line 6). With regard to the Journal Scene, Ms. Langley testified that the notice was not in the physical edition of the paper, but only on the online edition and Facebook page. (Exhibit E, p.38, lines 12-23).

Despite the finding by Clemson's Department of Pesticide Regulation that the County complied with the law and that there were no violations with regard to the spray, Plaintiffs contend that addition to the notice published in and broadcast on all of the mass media outlets listed above, Mr. Gaskins should have personally contacted them to tell them about the aerial spray. While Mr. Gaskins testified that he took it upon himself to make "courtesy calls" to beekeepers known to him in the area, as discussed above, "individual" or "personal" notification of a spray is not required by law. (See Section 27-1084(A)(4) of the Rules and Regulations for Enforcement of the

South Carolina Pesticide Control Act). Moreover, notice was provided to Plaintiffs, and the general public, through various television stations, newspapers, radio stations, social media sites and websites. Accordingly, notice was proper and Plaintiffs' claims fail as a matter of law.

B. Plaintiffs' Claims are Barred by the Tort Claims Act, S.C. Code Ann. 15078-60(1), (4), and (5).

Even if there was evidence of negligence with regard to aerial mosquito spray conducted by the County, Plaintiffs claims are barred by the Tort Claims Act. The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq, governs all tort claims against governmental entities and is the exclusive civil remedy for any alleged tort committed by a governmental entity or its employees or agents. S.C. Code Ann. § 15-78-20. It is "the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein." *Id.* However, within the Tort Claims Act, the Legislature preserved the State's immunity from certain claims. The provisions of the Act state that it "must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20(f).

South Carolina Code Ann. § 15-78-60 provides for certain exceptions to the waiver of immunity. The exceptions applicable to the case at hand are S.C. Code § 15-78-60(1), (4), and (5), which provide in pertinent part, that a governmental entity is not liable for a loss resulting from:

(1) legislative, judicial, or quasi-judicial action or inaction;

...

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

With regard to the discretionary immunity exception, S.C. Code Ann. 15-78-60(5), the courts have held that “[t]o establish discretionary immunity, the governmental entity must prove that the governmental employees, faced with alternatives, actually weighed competing considerations and made a conscious choice.” *Graham v. Town of Latta*, 417 S.C. 164, 184, 789 S.E.2d 71 , 81 (Ct. App.2016). “Furthermore, the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them.” *Id.*; see also *Hawkins v. City of Greenville*, 358 S.C. 280, 293, 594 S.E.2d 557 (Ct. App. 2004).

In *Hawkins v. City of Greenville*, supra, the Court of Appeals addressed negligence claims regarding a municipality’s operation of its sewer and drainage system in the context of S.C. Code Ann. 15-78-60(1), (2), (4), (5), and (13). The court cited from a Texas case, *City of Tyler v. Likes*, 962 S.W.2d 489, 501 (Tex. 1997):

The duties of the municipal authorities in adopting a general plan of drainage, and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgement and large discretion, and depending upon

considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

The *Hawkins* court held that “a comparable degree of discretion was granted to the City in the present case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville” and that the City was immune from suit. *Hawkins* at 358 S.C. 280, 294, 594 S.E2d 557 (Ct. App. 2004).

In *Graham v. Town of Latta*, 417 S.C. 164, 789 S.E.2d 71 (Ct. App. 2016), another sewer system case, the Court of Appeals while applying S.C. Code Ann. § 15-78-60(5), held that “[t]o establish discretionary immunity, the governmental entity must prove that the government employees, faced with alternatives, actually weighed competing considerations and made a conscious choice. Furthermore, the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the use before them.” *Id.* At 184, 789 S.E.2d 71, 81.

The County’s decision to conduct the aerial spray falls squarely into “legislative, judicial or quasi-judicial action” as contemplated by S.C. Code Ann. § 15-78-60(1). It also constitutes the exercise of discretion as stated in S.C. Code Ann. § 15-78-60(5) as the evidence establishes that the County, faced with DHEC’s directive to spray the locations with the known Zika cases not only considered alternatives,

but actually performed the alternatives and determined that it was not sufficient to protect the public health from Zika.

Mr. Gaskins testified that upon notification from DHEC he sent both trucks to spray for mosquitos at night, and that he went through the neighborhoods going door to door, making sure that there was no standing water. (Exhibit A, p.48, line 21-p.7). However, Mr. Gaskins testified that there were places that he could not get to in order to spray. He stated that there were a lot of wooded areas that his trucks could not get into and that it was too vast for someone to walk through and hand spray. (Exhibit A, p.49, line 18-p.50, line 2).

Jason Ward, the County Administrator, and David Chinnis, the chairman of Dorchester County Council, testified that the notification from DHEC regarding the Zika cases as well as DHEC's directive that targeted mosquito spraying be done in the location of the Zika cases, combined with the fact that much of the target area was inaccessible by truck or foot led the County to authorize the aerial mosquito. (Exhibit G p.16, lines 16-23; p.32, line 23-p.33, line 6; Exhibit C, p.13, line 18-p.14, line 5). Mr. Gaskins, Mr. Ward, and Mr. Chinnis all testified that the County consulted with Charleston County and Berkeley County as both neighboring counties were already conducting aerial mosquito spray. (Exhibit A, p.57, lines 11-15). The County hired an experienced pilot, an Air Force veteran and certified agricultural pilot to conduct the spray. (Exhibit B, p.5, lines 4-22; p.21, lines 5-23; p.22, line 21-p.23, line 3). There was extensive testimony regarding the preparation of the County in partnership with Allen Aviation, the company that actually conducted the spray.

(See Exhibit D, p.23-p.26). The pilot testified he received the shapefile maps from the County which contained the location of bee keepers in the area, and that he specifically remembered turning off the sprayer as he approached the beehive locations on the map. (Exhibit B, p.95, lines 17-23; p.8., lines 1-5).

Finally, as discussed previously, Clemson University Department of Pesticide Regulation conducted an investigation following the spray and found no violations on behalf of the County. (Exhibit H). The record demonstrates that the County had wide discretion to operate its Mosquito Abatement Program and that prior to the aerial spray it not only weighed competing alternatives, but actually performed those alternatives and determined that the aerial spray was necessary to protect the public health from Zika and other mosquito borne illness. Accordingly, the County is immune from suit pursuant to subsections (1) and (5) of the Tort Claims Act.

To the extent that Plaintiff claims that the County was negligent due to Mr. Gaskins failure to individually notify them of the mosquito spray as he had in the past, this claim is barred by S.C. Code Ann. §15-78-60(4). Subsection (4) provides that a governmental entity is not liability for the adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.

In *Repko v. Cnty of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018), the South Carolina Supreme Court addressed similar claims of negligence regarding a county's failure to properly administer its own policies and regulations. In *Repko*, Harmony

Holdings began developing a residential subdivision in Georgetown County. Georgetown county had a regulation in place that allowed a developer to post a financial guarantee such as cash, bonds or letters of credit, with the county in lieu of completing required infrastructure such as roads, drainage, sewer, etc., prior to selling residential lots. *Id.* at 498, 881 S.E.2d 743, 746. Acceptance of a financial guarantee was within the discretion of the county. *Id.* Georgetown County also had policies and procedures in place, which if handled properly, as the developer completed certain stages of infrastructure, the county would take steps to verify completion of the work, and notify the issuing bank that the letter of credit could be reduced accordingly. *Id.*

In *Repko*, Georgetown County, in its discretion, allowed the developer to submit a letter of credit rather than completing the infrastructure and to begin selling residential lots in the development. Over a period of time, the developer submitted and the County approved, four requests to reduce the letter of credit. After the fourth reduction, the letter of credit totaled \$156,704.03. However, the cost of completing the remaining infrastructure in the residential development was over one million dollars. *Id.* at 499, 881 S.E.2d 743, 746. The developer then informed the county that it no longer had the financial means to complete additional infrastructure and declared bankruptcy. *Id.* Those who purchased residential lots in a certain phase of the development were unable to build on their lots because the infrastructure had not been completed. *Id.*

Plaintiff Repko was one of the property owners unable to build on his lot, and filed suit against Georgetown County alleging that the County was negligent and grossly negligent in failing to comply with its own rules, regulations and policies to verify that the infrastructure work had been completed before approving the requests to reduce the letter of credit. Georgetown County asserted various defenses including S.C. Code Ann. § 15-78-60(4). In its opinion, the South Carolina Supreme Court addressed only the application of this section.

The *Repko* Court first recognized that in a negligence action, “[t]he court must determine as a matter of law, whether the law recognizes a particular duty.” *Id.* citing *Steinke v. S.C. Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). “If there is no duty, then the defendant in a negligence action is entitled to a directed verdict.” *Id.* The Court first held that it need not determine whether the regulation created a duty of care, because “even if such duty was created, the County is immune from liability to Repko under subsection 15-78-60(4) of the TCA.” *Id.* at 500, 881 S.E.2d 743, 747. It then recognized that “because subsection (4) does not contain a gross negligence standard, standing alone, subsection (4) would entitle the County to immunity from liability from its failure to comply with or enforce its regulations.” *Id.* at 504, 818 S.E.2d 743, 749.

The Court continued, and held that it was improper to read into subsection (4) the gross negligence standard contained in subsection (12) solely because Georgetown County pled subsection (12). *Id.* The Court stated “in order for the gross negligence standard from one immunity provision to be read into an immunity provision that

does not contain a gross negligence standard, the immunity provision containing the gross negligence provision must first apply to the case.” *Id.* at 507, 818 S.E.2d 750. As subsection (12) was not applicable to *Repko*, the Court held that Georgetown County was immune from Plaintiffs suit pursuant to S.C. Code § 15-78-60(4).

Similar to *Repko*, in the case at hand, the County contends it complied with the notice requirements Section 27-1084(A)(4) of the Rules and Regulations for Enforcement of the South Carolina Pesticide Control Act by publishing notice of the aerial spray in numerous mass media outlets greater than 24-hours prior to the application and that it had no duty to call the individual bee keepers in advance of the spray. However, even if there was a duty to call the Plaintiffs prior to the spray, the County is immune from suit pursuant to S.C. Code Ann. § 15-78-60(4). Additionally, there is no other applicable subsection containing a gross negligence standard that would mandate the court read a gross negligence standard into subsection (4). As such, Plaintiffs’ negligence and gross negligence claims fail and the County is entitled to summary judgment¹³.

CONCLUSION

Per the finding of Clemson University Department of Pesticide Regulation, there no issue of material fact that the aerial mosquito spray conducted by the County was proper, and done pursuant to South Carolina law and regulations. Pursuant to South Carolina Code Ann. §15-78-60(1) and (5), the County has wide discretion in its

¹³ Plaintiffs trespass claim also fails as a matter of law. First, trespass is not applicable as the spray did not “interfere with the right of exclusive possession of the land.” See *Graham v. Town of Latta*, supra. Even if trespass was applicable, Plaintiffs cannot satisfy the “intentional act” requirement as the Fourth Circuit already held that “the death of Appellants bees was plainly unintentional.” See opinion, p.9.

operation of its Mosquito Abatement Program. Leading up to and during the aerial spray, the County weighed competing alternatives and utilized professionally acceptable standards. Moreover, even if the County had a duty to personally notify the Plaintiffs prior to the spray, Plaintiffs' claims are barred by S.C. Code Ann. § 15-78-60(4). Accordingly, the County is entitled to summary judgment as a matter of law.

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August 30, 2022

Charleston, South Carolina

In the Matter Of:

Mitch Randall Yawn, et al. vs
Dorchester County, et al.

Clayton H. Gaskins, Jr.

March 13, 2019



A. William Roberts, Jr. & Associates

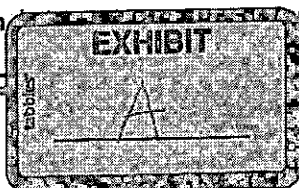
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1 cabinet company for a while, also worked with
2 Trident Construction until December of '93. 23rd
3 of December is when I got hired on with Dorchester
4 County.

5 Q. What position were you hired for at
6 that time?

7 A. Litter and Nuisance.

8 Q. Litter and Nuisance officer. Tell me
9 what your responsibilities were in that role.

10 A. Responsibilities was that for, of
11 course, illegal dumping, anyone going out on
12 illegal dumping, going through the trash trying to
13 find addresses, names, to find out who did it,
14 going to people's homes for abandoned vehicles, not
15 having license plates that's up to date, overgrown
16 lots, trash in the yard.

17 Q. So you were a code enforcement officer?

18 A. Yes, sir. I wasn't -- I was sworn
19 in -- I say sworn in. I forget what they call it.
20 But, yes, sir.

21 Q. So you wrote tickets?

22 A. Yes, sir.

23 Q. Essentially you would investigate and
24 write tickets for violations of littering and trash
25 ordinances?

18

1 have allergies, and it's been so bad out there.

2 MR. GOWDER: You're not alone.

3 Obviously you can take a break whenever you need.

4 MR. MAYBANK: No, no need. I just
5 didn't want you to think I was hacking or coughing
6 trying to signal the witness. All right. Go
7 ahead.

8 THE WITNESS: It was very corrosive to
9 the machines, trucks. Also, it stunk to high
10 heaven. It was very potent. And if it pretty much
11 got on your clothes or anything, you might as well
12 throw it away. So I quit using that product.

13 BY MR. GOWDER:

14 Q. All right. So how long after your --
15 can we peg a date when you started performing this
16 task, roughly?

17 A. When I start doing the mosquitos, the
18 very first?

19 Q. Yes, at the beginning, just so I can
20 get a rough timeline. 2000, 2001?

21 A. I'll say 2000. That's a guesstimation.

22 Q. No, I understand. We're just trying to
23 get a rough timeline here. How long do you think
24 after 2000 were you using malathion?

25 A. I might have changed that year.



1 question you asked before, I mean, since then, yes,
2 I have gone to school.

3 Q. We're going to get there.

4 A. Okay, I wanted to make sure I wasn't
5 misunderstanding what you were asking.

6 Q. Go ahead and tell me that since we're
7 on the subject. What training have you had
8 subsequently about mosquito abatement or
9 pesticides?

10 A. In 2006, it was mandatory to get a
11 Public Health Category 8 through the State of South
12 Carolina to be able to spray in South Carolina. So
13 I had to --

14 Q. Tell me that again. A Public Health...

15 A. Public Health Category 8.

16 Q. What is that?

17 A. It's a license through the State of
18 South Carolina that I had to take to be able to
19 perform spraying legally.

20 Q. For you to supervise the spraying?

21 A. To supervise, yes, sir.

22 Q. What did you have to do to obtain this
23 Public Health Category 8 license?

24 A. I had to take a Core exam with Clemson
25 Extension.

1 Q. What kind of exam?

2 A. It's called Core.

3 Q. C-O-R-E?

4 A. C-O-R-E. Then you had to pass the Core
5 exam to be able to give you the Public Health exam
6 which would give you the category 8. So those two
7 exams had to be taken.

8 Q. What is a Core exam?

9 A. It is just a general knowledge of all
10 types of ways of using pesticides, where to use
11 pesticides, how to use pesticides, what to use them
12 on.

13 Q. Are there like study materials for
14 that?

15 A. Yes, sir.

16 Q. And who provides that?

17 A. I got that from Clemson Extension, I
18 believe, Clemson University.

19 Q. Do you still have your materials from
20 that?

21 A. Yes, sir.

22 Q. Would you provide those to Mr. Maybank?

23 A. The two books? Yes, absolutely.

24 (This page contains information to be
25 supplied by counsel and/or the deponent.)

1 MR. MAYBANK: How are they kept? Are
2 they bound, loose leaf like in a three-ring --

3 THE WITNESS: It's a binder.

4 MR. MAYBANK: Okay. We'll give you
5 them, absolutely.

6 BY MR. GOWDER:

7 Q. So you took the course and passed the
8 exams in 2006 to get this license. What have you
9 done since then?

10 A. Each year, they have refresher courses,
11 I guess. You have to take ten hours of
12 recertification hours within a five-year block.
13 But each year before season starts, they always
14 have small seminars you can go to.

15 Q. Continuing education?

16 A. Continuing education, yes, sir.

17 Q. And you take those?

18 A. Yes, sir. Yes, sir.

19 Q. And who keeps track -- does LLR keep
20 track of your continuing education or does Clemson?

21 A. Clemson does that. Clemson.

22 Q. Okay. And do you still hold the Public
23 Health Category 8 license?

24 A. Yes, sir. You have to renew it every
25 year.

1 Q. Every year?

2 A. Every year, and ten hours is an
3 every-five-year block.

4 Q. Do you have any other licenses,
5 certifications --

6 A. No, sir.

7 Q. -- education related to this?

8 A. No, sir.

9 Q. All right. So let's go back then. So
10 in 2000, 2001, you switched to Permanone, and you
11 still had one truck and one driver; right?

12 A. Yes, sir.

13 Q. So tell me in terms of the -- and what
14 did you do to supervise this truck and driver?
15 What was your job?

16 A. My job was to make sure that, first of
17 all, they knew safety, they knew how to operate the
18 machine. At that time, calls were just called in
19 to Public Works. That's who I worked for. And
20 then I would make sure that wherever the issues
21 were at, I would get with the driver, give him
22 those complaints, and tell him to make sure that
23 these complaints at these addresses were taken care
24 of. Anything around the area, subdivisions, any
25 problems, go ahead and spray also.

1 Q. And the complaints that you were
2 getting were people that said that they had
3 infestations of mosquitos and they needed spraying;
4 is that right?

5 A. Yes, sir.

6 Q. Did you ever have complaints from
7 people that said that the spraying was harmful to
8 them or their pets or their livestock?

9 A. At that time?

10 Q. Yes, sir.

11 A. I don't remember, no, sir. Nothing
12 stands out.

13 Q. So bring me forward with the Mosquito
14 Abatement Program then from that point, from 2001.
15 How long did it continue basically at that level
16 before the Mosquito Abatement Program changed?

17 A. Until about 2015, believe it or not.

18 Q. Okay. All right. And what happened in
19 2015?

20 A. 2015, by that time, I had two trucks
21 and two sprayers. At that time we were still doing
22 the same type of complaints that were called in,
23 going out, taking care of the situation and other
24 areas around it.

25 And then in 2015, I thought to myself,

1 there had to be a better way of organization. So
2 what I did is I got with Charleston County. They
3 have a method with what they call zones that they
4 spray. So what I did is I -- and I can't remember
5 the gentleman's name that I talked to. He gave
6 me -- sent me some information showing how they did
7 their spraying with their zones. And I took
8 Dorchester County with that, and I split Dorchester
9 County up with 50 zones.

10 Q. Fifty?

11 A. Fifty zones. And from there, I did
12 individual maps of each zone, also a priority sheet
13 that had the sprayers' names on them who was
14 spraying for me. And what I did is once I got
15 those maps together and the information together, I
16 would give those to the sprayers, and they would
17 spray those zones.

18 Q. And at this point, two sprayers, two
19 trucks?

20 A. Yes, sir.

21 Q. So tell me a little bit about these --
22 the division into 50 zones. Did somebody help you
23 do that, or did you do that yourself?

24 A. I did that with -- Kasey Byrd was
25 with -- she worked with Water and Sewer. She did

1 to 2016. In 2016 were those two workers just
2 driving the trucks, or were they also doing hand
3 spraying?

4 A. They were just driving trucks.

5 Q. Has Dorchester County ever done hand
6 spraying?

7 A. I'm the individual that does
8 larviciding during the day.

9 Q. Okay. All right. So you do the
10 specific -- I'll call it hand application?

11 A. Yes, yes.

12 Q. Does that involve actually like a wand
13 and a --

14 A. It can.

15 Q. It can? And spraying on a location.
16 And do you also use what I'll call briquettes?

17 A. Yes.

18 Q. In certain areas, you place them like
19 in like a pond of water?

20 A. Standing water, yes, sir.

21 Q. What is that chemical?

22 A. That is methoprene is what it is. It's
23 a growth regulator.

24 Q. Growth regulator for mosquitos?

25 A. Yes, sir, for the larvae, so they won't

1 mature to mosquitos is what it does.

2 Q. Okay. All right. Has Dorchester
3 County made any changes to its Mosquito Abatement
4 Program generally since your mapping in 2015?

5 A. Outside of our website, that we've
6 added things to our websites, no, sir.

7 Q. All right. Who do you report to now?

8 A. Now I report to Carol Thompson.

9 Q. What is her position?

10 A. She is the department head.

11 Q. She's the what?

12 A. She's the department head.

13 Q. For Public Works?

14 A. For Community Services.

15 Q. Community Services. In 2016, other
16 than the supervisory role that you have with these
17 two workers who work under you, what were your
18 responsibilities in your position?

19 A. First of all -- for me?

20 Q. Yes.

21 A. During the day, it was making sure
22 phone calls were taken care of, going out and
23 finding any low-lying areas that may need to be
24 treated with the briquettes, going to complaints,
25 people's homes that they have called saying they're

1 having problems with mosquitos, whether it was
2 ditches that was around their homes, trying to
3 assess issues, treating the areas if I needed to,
4 getting suggestions of what to do outside of
5 scheduling, preparing the vehicles for the drivers
6 at night, adding everything into the computers,
7 records with that. We didn't start doing -- we
8 started -- I think it was 2016 we started doing --
9 now I do landing rate counts is what they're
10 called.

11 Q. What is that?

12 A. Landing rate counts is when you
13 actually go out to a site and stand there and see
14 how many mosquitos land on you within a minute.

15 Q. Wow.

16 A. And you pretty much have to count what
17 you can and document that.

18 Q. And what's the purpose of that data?

19 A. That is for -- to see if an influx of
20 mosquitos can happen, if after storms, rain, things
21 like that.

22 Q. And the purpose of that is at a certain
23 rate or level, do you spray differently or spray
24 more or --

25 A. If there's more than five mosquitos

1 that land on me, we spray with trucks.

2 Q. Okay. Right then, even if it's not a
3 scheduled time?

4 A. Yes, sir, but it's -- yes, sir.

5 Q. Okay. What about in your training
6 for -- in your continuing education for your
7 license, is there -- do you learn about chemicals
8 and about pesticides?

9 A. They mentioned different pesticides,
10 how to use them. But it's not like tests at school
11 and stuff like that. It's an area that is gone
12 over.

13 Q. Do you feel like you're an expert in
14 pesticides?

15 A. Not an expert. I mean, the chemical
16 that I use, I know what it is, label.

17 Q. Right. You've read the label? You're
18 familiar with the label?

19 A. Yes, sir.

20 Q. Do you believe you can choose between a
21 number of different kinds of pesticides or
22 chemicals, do you have enough knowledge to do that?

23 A. Yes, yes.

24 Q. What would be the basis of those kind
25 of decisions?

1 A. Those kind of decisions would be off of ³⁸
2 what the labeling is, what it's for. And, also, I
3 do talk to Trey English, the representative. I do
4 check with surrounding counties too. I do check
5 with them and talk with them.

6 Q. All right. You don't have any
7 licensing or training in chemistry?

8 A. No, sir.

9 Q. Or in pesticides, for that matter?

10 A. Outside of my two Core exams, no, sir.

11 Q. And you rely on Mr. English and his
12 company, Adapco, to really give you the specific
13 knowledge on various pesticide products?

14 A. Yes, sir.

15 Q. All right. What do you know about
16 pollinators?

17 A. I know they pollinate.

18 Q. Do you have any special training or
19 knowledge about bees or butterflies or birds and
20 their pollinating habits?

21 A. Not outside of what the beekeepers have
22 told me, that's it.

23 MR. MAYBANK: I thought you were
24 talking about a machine, the pollinator.

25 MR. GOWDER: They're machines in a way,

1 I suppose.

2 BY MR. GOWDER:

3 Q. Do you learn about or is there any
4 discussion of pollinators in your continuing
5 education or in the materials that you study to get
6 your license?

7 A. Yes, sir.

8 Q. What kinds of things are taught or are
9 the subject of the instruction?

10 A. They go over basically what pollinators
11 are, you know, how they are for the environment,
12 what pesticide applicators need to do outside of
13 following the label to try to -- to be careful, be
14 safe with that issue and around that area.

15 Q. And generally what kinds of things do
16 they say that you need -- what are best practices
17 with regard to pollinators?

18 A. The big thing is always label. Always
19 make sure the label -- that's what they always go
20 back to.

21 Q. You mean follow label instructions?

22 A. Yes, sir. Yes, sir.

23 Q. And what kinds of things are on the
24 labels?

25 A. It explains the best times to spray to

1 not affect the pollinators, and that's what it
2 basically says.

3 Q. What are those times generally?

4 A. From what I -- I know it's a couple of
5 hours before sunrise. I know it's a couple of
6 hours -- that's why we spray at night, for one
7 reason -- a couple of hours before sunset, I
8 believe. But they also don't want you
9 spraying during -- that's why we don't spray during
10 the day, because the pollinators being out doing
11 their jobs, no overflow of spray going on crops,
12 certain flowers, things like that. And it explains
13 why that is and what you need to do basically not
14 to have an issue like that.

15 Q. Okay. All right. Okay. Are there
16 steps that in 2016 Dorchester County was taking in
17 order to address the safety of beekeeping
18 operations in Dorchester County specifically?

19 A. Yes, sir. There was a list that I had.
20 It was about 15 people, 14 people at that time,
21 that were all beekeepers, that what I did, I had
22 their addresses and their telephone numbers. So
23 when complaints came in and things happened, I
24 looked to make sure, because they -- I knew exactly
25 where their zones and where they were located at,

41

1 so I made sure they were contacted to let them know
2 that, look, tonight the truck is going to be out
3 spraying tonight, please make sure your bees are
4 taken care of so there are no issues.

5 Q. Okay. And when did you start that
6 practice?

7 A. I want to say 2013.

8 Q. Okay. All right. And is that still
9 the practice in Dorchester County?

10 A. Yes, sir.

11 Q. All right. How many people are on your
12 list now?

13 A. I've probably got pretty close to 60.

14 Q. Sixty?

15 A. Sixty.

16 Q. But in 2015 -- 2016, you had about 50?

17 A. Yes, sir. Yes, sir.

18 Q. Were Mitch Yawn and Nita Stanley on
19 that list in 2016?

20 A. Yes, sir. Yes, sir.

21 Q. And did you call Mitch from time to
22 time, Mitch or Nita, from time to time with the
23 same type of call you just described, hey, we're
24 going to be spraying in your area this night or
25 this night, and make sure that your bees are

1 stopped spraying in November. All right. November
2 was the last -- I believe November was the last
3 time we sprayed.

4 Q. Okay. So the last time you sprayed,
5 which was November, but you talked with him then?

6 A. Yes, sir. Yes, sir.

7 Q. That's a good question. What is your
8 time period during which you spray?

9 A. Monday through Friday from 9:00 at
10 night until probably about 2:00 or 3:00 in the
11 morning.

12 Q. During what months?

13 A. We'll start April, and we could go,
14 let's say, November. But that could vary because
15 of weather, hurricanes.

16 Q. I'm going to take you to the summer of
17 2016. Okay? What do you remember about what was
18 going on with regard to your job in 2016?

19 A. Just the same -- just doing my job. I
20 mean, just --

21 Q. Well, let me direct you then. Do you
22 recall that there was a particular interest in the
23 Zika virus at that time?

24 A. In 2016 it was a big issue.

25 Q. Tell me about that, what you remember

45

1 about that.

2 A. What I remember about that with the
3 Zika coming out, West Nile, of course, was before
4 that. But the problem with Zika is that the
5 symptoms that were different from West Nile is that
6 for the fetus, for the ladies, when they were
7 pregnant, it had something to do that affected the
8 child's brain, head size. So it was a very scary
9 time. A lot of people were -- it was like the
10 number one thing that you talked to, no matter
11 anthropologists -- entomologists, I believe,
12 anybody. If you went to a conference, Zika was
13 pretty much the number one thing that year that was
14 hit.

15 Q. Did a lot of people in South Carolina
16 get Zika?

17 A. I can't -- I don't know. I can't
18 answer that.

19 Q. Do you know how many people in
20 Dorchester County in 2016 contracted Zika?

21 A. I believe we had three all together.

22 Q. And do you know whether or not they
23 contracted Zika in South Carolina or someplace else
24 and came home to South Carolina?

25 A. They were travel-related cases.



1 Q. So they weren't cases -- they weren't
2 in South Carolina?

3 A. No, sir.

4 Q. Do you know of any instance in which
5 anybody caught the Zika virus within South
6 Carolina?

7 A. Within South Carolina, not traveled
8 within, not that I know of, no, sir.

9 Q. But what you remember is that there was
10 quite a scare?

11 A. There was a big scare about it.

12 Q. In 2016?

13 A. Yes, sir.

14 Q. So as a result of that, were you given
15 any instructions from folks in state or local
16 government about your job and what you needed to
17 do?

18 A. I had two -- I want to answer this the
19 right way -- state DHEC, South Carolina DHEC, Chris
20 Evans, was who the entomologist there, if anything
21 happened with the Zika that was in Dorchester
22 County, I was contacted. And then it went through
23 the chain of command. We had -- in 2016 I had the
24 two cases at that time. I'm trying to remember the
25 dates, when the third one came out. The third one

1 came out, I think, later. But he contacted me, and
2 I found out where those areas were at in Dorchester
3 County. And I have to --

4 Q. Meaning where those people lived?

5 A. Yes. And that's confidential, so I
6 can't -- with the chain of command of how we had to
7 do it, with truck spraying, there was certain
8 things that I had to do when something like that
9 happens and myself during the day that I have to do
10 to those areas to treat those areas. But there are
11 also areas around those two areas that my truck
12 couldn't get to that were wooded and that had no
13 roads in them or anything that I could get to.
14 There was a 500-yard radius to be treated with
15 trucks, and 160-yard, I believe, perimeter if they
16 wanted me to do any type of larviciding that -- any
17 standing water or anything that might be around
18 that I could treat.

19 Q. And who was that?

20 A. That was Chris Evans from South
21 Carolina DHEC.

22 Q. So Chris Evans told you that South
23 Carolina DHEC wanted a certain area within
24 Dorchester County treated?

25 A. At those areas that he told me that the

1 Zika travel-related cases were at.

2 Q. When did he give you those
3 instructions?

4 A. I want to say one was August 9th and
5 August 15th when those two incidences occurred.

6 Q. And how did he give you those
7 instructions?

8 A. Call for one thing, and then he sent me
9 also a map showing the area that he wanted covered,
10 and then the information as far as what was going
11 on with those two areas.

12 Q. Did he identify specific addresses?

13 A. Yes, sir.

14 Q. Which you were to keep confidential?

15 A. Yes, sir.

16 Q. But he also provided you with a mop
17 showing areas that he wanted treated?

18 A. Yes, sir, that 500-yard radius, and I
19 think it's 150- or 160-yard radius of -- for the
20 other larvicide treatment.

21 Q. Okay. All right. And so what did you
22 do as a result of that?

23 A. Sent my trucks, the two trucks I had at
24 that time, we sprayed -- I had both vehicles go
25 out, spray the area that night. And of course I

1 went myself and went through the neighborhood to
2 check anything, going door to door, making sure
3 standing water, if anything needed to be treated.
4 And after we sprayed that night, I believe the next
5 week, I went back and sprayed again with both
6 trucks in that area. And then that was my -- that
7 was my protocol that I had to do.

8 Q. So we're talking about the first couple
9 of weeks of August?

10 A. Yes, sir, the 9th, and then the other
11 one was the 15th, I believe, those two cases.

12 Q. You sent the truck out, and you
13 yourself went out the next day or two to follow?

14 A. Right.

15 Q. And do you believe that that fulfilled
16 the instructions that you had been given by South
17 Carolina DHEC?

18 A. I did the instructions that they told
19 me. But there was places that I could not get to,
20 because it was a lot of wooded area around those
21 two subdivisions, or that one subdivision that was
22 an Indian spring, I believe, that I just -- I
23 couldn't -- it was so vast, there was no way my
24 truck could get into it, for one thing, and for me
25 to walk through all of that, I didn't have the

1 manpower for that, for that area that was outside
2 of the subdivision that we could spray.

3 Q. So as a result of that, what did you
4 decide to do?

5 A. After that was sprayed?

6 Q. Yes. I mean, was there anything else
7 that you could do?

8 A. I was told -- I was called by my
9 supervisor, and I don't know how to explain -- I
10 don't know if I'm jumping ahead.

11 Q. Don't you worry about it. You tell the
12 story, and I'll bring you back if I need to.

13 MR. MAYBANK: He's all ears.

14 THE WITNESS: I told my boss what I had
15 done, and I felt that I met the protocol.

16 BY MR. GOWDER:

17 Q. Who was your boss?

18 A. My boss then was Jackie Walters. He has
19 now since retired.

20 Q. Okay. Go ahead.

21 A. And I explained to him what I did,
22 because Mr. Jason Ward, our County administrator,
23 was involved, because he gets emails. And I don't
24 know Mario -- I can't pronounce his last name. He
25 is with the Dorchester County Emergency. It goes

1 through a protocol of who is contacted. And
2 administration, Mr. Ward, and deputy
3 administrators, you know, are aware of the
4 situation.

5 Then when I get done with my assessment
6 and also get done with the treatment, what we could
7 do with the trucks and myself, I let Mario know
8 what's going on, and he related that to Mr. Ward.
9 And then I tell my boss what I had done. And then
10 from that point, me personally and my truck, that's
11 all we could do.

12 Q. Okay. All right. So you told
13 Mr. Walters, I've done everything I can?

14 A. With what I had to work with, yes, sir.

15 Q. And what did Mr. Walters say about it?

16 A. He said okay.

17 Q. So did you do anything else?

18 A. No, sir. At that particular time?

19 Q. Yes.

20 A. No, sir. That's all I could do. I
21 mean, I didn't have anything else, a means to be
22 able to treat it.

23 Q. All right. Okay. Prior to 2016, had
24 Dorchester County ever done aerial spraying for
25 mosquitos?

1 A. No, sir.

2 Q. Did Dorchester County do aerial
3 spraying for mosquitos in 2016?

4 A. Yes, sir.

5 Q. Since 2016, has Dorchester County ever
6 done any aerial spraying?

7 A. No, sir.

8 Q. How many times has Dorchester County
9 done aerial spraying in your career?

10 A. One time.

11 Q. So let's talk about that a little bit.
12 How did that subject come up?

13 A. That was a subject that I had been
14 asking about, the aerial spraying, because of the
15 issues with my vehicles and myself, that there were
16 places that I just could not get back to or do if
17 we had a major issue with storms, hurricanes, or
18 anything else. When it gets to that point, it's
19 very difficult for truck spraying to be able to
20 take care of that situation. It just is. It's too
21 vast. It's too much.

22 So I was always asking, could I -- I
23 had talked with Charleston County. I talked with
24 Berkeley County. I talked with Beaufort County,
25 the people that had been aerial spraying for a long

1 time, with issues and problems, that that is one
2 tool in your toolbox, if that's a way of saying it,
3 that would be good to have, so in case something
4 like that did happen, that vehicles could not take
5 care of a public health issue or a disaster. So I
6 was always asking, just throwing around the idea to
7 my boss, do you think we can aerial spray, do you
8 think we can aerial spray. At that time --

9 Q. That was Mr. Walters?

10 A. Yes, sir. And it was told to me, not
11 right now, the County doesn't have the money for
12 that. So I was like, okay.

13 Q. So I when did you first start asking
14 about that?

15 A. I might have just been throwing it
16 around, say, 2014, 2015, I mean, mentioning it.

17 Q. Yeah. In your continuing education
18 classes for your license, did they cover aerial
19 spraying? Was that part of the curriculum?

20 A. It was touched, like kind of how I
21 explained what aerial spraying -- the effects, what
22 aerial spraying can do. But it wasn't like, again,
23 like a class to go out and do certain things.

24 Q. They covered it?

25 A. They covered it, but it wasn't for just

1 Q. To --

2 MR. ATKINSON: Objection.

3 BY MR. GOWDER:

4 Q. -- use the best practices?

5 A. Yes, sir, I believe -- yes, sir.

6 Q. So tell me how these conversations --
7 general conversations with Mr. Walters about aerial
8 spraying progressed.

9 A. I was contacted by Mr. Walters, I
10 believe, in the middle of July 2016 when I talked
11 with him. I guess he had talked to Mr. Ward, our
12 County administrator, and I assume that they said,
13 okay, let's go ahead and look into this aerial
14 spraying. I had been talking to Mr. Walters about
15 how I feel it was a very good thing to have,
16 because of what we had, a very small department to
17 be able to cover issues that were a problem, a
18 major problem, that I think we really need to do
19 this.

20 So my honest question is I don't know
21 if he went back and sat down with Mr. Ward and
22 Mr. Ward went to the chairman of County Council.
23 But it was decided, okay, let's go ahead and --
24 let's get a contract with aerial spraying.

25 And I believe -- I can't remember when

1 I sat down with Mr. Allen and them and talked. I
2 think it might have been June. I can't remember.
3 We sat down -- once we got the okay to be able to
4 do aerial spraying, we sat down with Mr. Allen and,
5 I believe, his wife, because I had two -- there was
6 two companies, Williamsburg and Mr. Allen, I
7 believe, in South Carolina that did that. So -- I
8 don't know if I'm talking too much.

9 Q. No, go ahead. Believe me, I'll stop
10 you if I need to.

11 A. Mr. Ward asked if there was -- instead
12 of doing a brand new contract, if there was a
13 county that we could piggyback off of. I asked,
14 well, what do you mean by that?

15 Q. And who said this, Mr. Ward?

16 A. Mr. Ward. And what he meant by that
17 was a county that already had a contract
18 established with aerial spraying to where if we
19 could contact their county and piggyback off of
20 their contract as far as, I guess, what they pay
21 per acre.

22 So what I did is I called Charleston.
23 Charleston said they didn't do that. I called a
24 couple of other places, they didn't do it.
25 Berkeley County did. So the procurement officer

1 for Berkeley County personnel, she said, yes, they
2 would not mind if Dorchester County piggybacked off
3 what the contract was already -- with Allen
4 Aviation already that they had for the price per
5 acre to spray, that Dorchester County could -- of
6 course it had to legally be done with a contract
7 with us, with our name on it, to piggyback off of
8 their contract.

9 Q. When you say piggyback, what do you
10 mean?

11 A. I'm trying to explain. Instead of me
12 sitting down with Allen and getting up a whole
13 brand new contract and all of that, the contract
14 was already set in place with Berkeley County. So
15 Berkeley County allowed us to use that contract
16 to -- that the price -- everything was already
17 established. So that's what we did.

18 Q. Does Dorchester County have a
19 procurement officer?

20 A. Yes, sir, Mr. Sammy Stephens at that
21 time was our procurement officer. He has retired
22 since then.

23 Q. And Mr. Stephens -- did Mr. Stephens
24 make a decision that this was acceptable for
25 Dorchester County not to go through its own

1 procurement process?

2 A. I would believe so, because I know he
3 talked to the procurement officer with Berkeley
4 County. They didn't really keep me informed about
5 that, as far as how the contract was done and who
6 was talked to and that. I know it had to go to Mr.
7 Ward. That's what I assume. But I wasn't in the
8 setting of that. I didn't have anything to do with
9 that.

10 Q. Why wouldn't Dorchester County want to
11 make its own decision?

12 A. That's what Mr. Ward asked. So I don't
13 answer questions. I don't answer; I just do it.

14 Q. So you don't know?

15 A. No, sir.

16 Q. All right. That was a decision made by
17 Mr. Ward and possibly by the procurement officer?

18 A. Yes, sir.

19 Q. But as a result of these conversations,
20 the decision was made to pursue a contract with
21 Allen Aviation?

22 A. Yes, sir.

23 Q. Now, was it for a particular reason or
24 spraying event, or was it to have them available to
25 spray if needed?

1 A. Have them spray if needed.

2 Q. All right. So when these conversations
3 were happening, you estimated in July or so of
4 2016, was there a sense there was a real need for
5 aerial spraying, or were you just getting ready in
6 case you needed them?

7 A. In case something happened, yes, sir.

8 Q. What would that something happened be?

9 A. That would be anything as far as,
10 again, disaster hurricanes, anything that my trucks
11 could not take care of, any major problems.

12 Q. All right. So do you understand that
13 at some point there was a contract entered between
14 Dorchester County and Allen Aviation?

15 A. Yes, sir. Yes, sir.

16 Q. And what led up to -- you said there
17 was one spraying in the history of Dorchester
18 County. What led up to that one spraying event?

19 A. My boss, Mr. Walters, had called me and
20 said, Scott, administration has asked me: Is there
21 aerial spraying that needs to be done? Why aren't
22 we aerial spraying? Is there anything that needs
23 to be done?

24 And I was like, well --

25 Q. When he says administration, who is

1 administration?

2 A. I would say Jason Ward. I don't know
3 100 percent. I would say Mr. Ward. That's who my
4 boss reported to in the County. So I told
5 Mr. Walters, I said: Let me find out what's going
6 on with the County.

7 That's when the issue came up with the
8 two travel-related cases that we had, the Zika
9 cases. I had at that time, when he asked that
10 information, that week, two weeks, I had
11 Summerville Elementary School that was in that area
12 called me -- I cannot remember the lady's name that
13 called me. It had to be in administration, I'm
14 sure -- saying: Scott, look, the children are
15 being absolutely tore up by mosquitos.

16 I had a gentleman that worked with the
17 County that lived not too far from Summerville
18 Elementary School saying: Scott, the mosquitos are
19 absolutely horrible.

20 So I called my boss back and said:
21 Look, we've got these two places and travel-related
22 cases and Summerville Elementary School is calling
23 me telling me how bad the children are getting tore
24 up by mosquitos. We've got somebody that lives not
25 too far from them that works for us saying the same

1 thing. This is an issue, I think. What do you all
2 want to do?

3 So I'm sure he went back and talked to
4 Mr. Ward. That I don't know. And then it was
5 decided to have that area taken care of, more
6 because of the Zika issue, because I don't know if
7 the things that I could treat with my trucks --
8 it's only a 300-foot swath, and it only goes so
9 far. And then after an hour, it settles to the
10 ground, and it dissipates, and it's done.

11 Q. So let's -- I appreciate that answer.
12 So let's back it up and sort of take it in bites.
13 You had -- with your trucks and with your personal
14 surveillance, you had addressed the issues -- the
15 two reports from the South Carolina DHEC on the 9th
16 and 15th, or whatever those dates were; right?

17 A. Yes, sir. Yes, sir.

18 Q. So that was done. Right?

19 MR. MAYBANK: Object to the form.

20 THE WITNESS: (Moves head up and down.)

21 BY MR. GOWDER:

22 Q. Is that a yes?

23 A. That was done.

24 Q. And then at the same time, I guess
25 money had been allocated by County Council to pay

1 for the spraying; is that right?

2 A. Yes.

3 Q. And the contract had been entered into
4 for the spraying?

5 A. Yes.

6 Q. When needed or as needed; right?

7 A. Yes.

8 Q. And so Mr. Walters came to you and said
9 something about do we need to do aerial spraying?
10 Was that the question?

11 A. Yes, sir. Yes, sir.

12 Q. And is it your sense, Mr. Gaskins, that
13 the County was looking for the right opportunity to
14 spray?

15 A. If there was an issue or threat to
16 public health, yes, sir.

17 Q. All right. So spraying occurred, if
18 I'm correct, on August the 28th of 2016; right?
19 Sunday morning?

20 A. Yes, sir.

21 Q. What was the public health emergency
22 that that was addressing?

23 A. It was for the two Zika cases, and also
24 the complaints from the elementary school and from
25 complaints from that area, the person that said how

1 bad the mosquitos were in that area. But the main
2 thing was the two travel-related cases. And I
3 cannot tell you how long they're supposed to keep
4 quarentine in their house and not have them subject
5 to go outside so they do not get bit to transmit
6 that to somebody else, which can turn into a local
7 issue.

8 Q. The trucks had sprayed in those areas
9 where those people lived; right?

10 A. The best we could, yes, sir.

11 Q. Twice?

12 A. The best we could, yes, sir.

13 Q. Presumably they lived -- I'm not going
14 to ask you the address, but presumably they lived
15 in a house?

16 A. Yes.

17 Q. In a neighborhood?

18 A. Yes.

19 Q. And is it safe to say that the truck
20 went through that neighborhood?

21 A. Yes, sir.

22 Q. Probably right by their house?

23 A. Yes, sir.

24 Q. And had the elementary school been
25 treated before for mosquitos?

1 information?

2 A. To Mr. Walters, told him about the
3 issue.

4 Q. About the two Zika people --

5 A. In Summerville and the other issue of
6 the person calling in about how bad --

7 Q. About how bad the mosquitos were at the
8 elementary school?

9 A. Yes, and where he lived, yes.

10 Q. Okay.

11 A. So you want me to explain that week up
12 to what happened?

13 Q. Yes, sir, please.

14 A. After calling Mr. Walters back and
15 explaining all of that to him and the documentation
16 from Mr. Chris Evans, having that as far as the
17 issues --

18 MR. MAYBANK: Say it on the record who
19 Chris Evans is.

20 THE WITNESS: Chris Evans is an
21 entomologist for South Carolina DHEC. It has to be
22 a 24-hour notice, by law, before you spray any kind
23 of aerial spraying. There was -- up to that point
24 before we sprayed, it was tentatively, I believe,
25 going to be on that Saturday to spray. I was

1 checking to make sure that -- because of what the
2 label says, you've got to make sure it's two hours
3 before sunrise or two hours before sunset, I
4 believe. So there has to be a window to be able to
5 do that.

6 So Friday evening, I couldn't do
7 anything Friday evening. It was going to be maybe
8 on Saturday tentatively. I was, well, like, we
9 can't do it on Friday evening, because they have a
10 football game at Summerville High School. We can't
11 be doing it then. Saturday morning I called to
12 make sure everything would be okay, found out that
13 at 7:30 in the morning maybe, they have the
14 Summerville Farmers Market. So we couldn't spray
15 then.

16 So that's when I talked to Ms. Langley,
17 Tracey Langley, who -- I don't know if it was Jason
18 Ward's administrative assistant or County Council
19 clerk -- I can't remember what her -- she's the one
20 that did the media and I talked with kind of
21 getting the stuff together. Jason Ward -- after
22 finding out about those two instances, that's when
23 I told Tracey: Look, I think what we should do is
24 wait until Sunday morning to spray. That way,
25 there is nothing going on. There is nothing

1 She was in that spray zone or in that area that was
2 going to be sprayed. I believe she was in zone 40.

3 So when I took out my list, I called
4 Ms. Hoover and told her, look, we're going to be
5 spraying at this time. This is what you need to
6 do. I understand from what beekeepers tell me,
7 that when the bees all get in the hives, it can get
8 very hot. I don't know why. It just does. So I
9 told her that, what you needed to do, cover the
10 hives. If you want to keep a sprinkler going on
11 it, if you want to put a sheet to keep it cool
12 somehow, whatever you all do to do that. But what
13 I need for you to do is go ahead and cover it up.
14 And about 10:00 that morning, go ahead and uncover
15 the hives. She said okay.

16 Went to the next individual, called,
17 told them the same thing.

18 Q. Who was that?

19 A. That's what I was getting ready to say.
20 When I called that person, told them that -- Monday
21 morning when I came in, I got a message from
22 Mr. Yawn, saying, Scott -- I can't know exactly
23 what he said. He wasn't ugly, but he was like, why
24 didn't you tell me about aerial spraying?

25 And I was like, I did, I did call him

1 and tell him that. So I was taking my list back
2 out, and I was looking at it. And I said, wow, I
3 called mistakenly the individual above him that was
4 in the same zone, 41, that was, I believe, I want
5 to say Mr. Abbott. I'm not 100 percent sure.

6 MR. MAYBANK: Mister who?

7 THE WITNESS: Abbott. And when I found
8 out I did that, I did call Ms. Hoover, I believe,
9 to find out, look, are your bees okay. And she did
10 tell me: Scott, I did what you told me to do.
11 They're fine.

12 I said: Okay. All right.

13 So then when I got the call or the
14 message from Mr. Yawn, I called him -- well, first
15 of all, when I found out what I did calling the
16 person -- I called my boss, Mr. Walters, and told
17 him, look, this is what happened. This is the
18 message I got. I looked at my list. This is who I
19 called. And he said okay. And I'm sure that went
20 from him to Mr. Ward.

21 Then I called Mr. Yawn, and he did --
22 he asked me: Scott, how come you didn't call me
23 about the aerial spraying? You've always called me
24 in the past about trucks spraying. Why didn't you
25 tell me about this?

1 And I told him what I had done. I told⁸⁰
2 him, and I apologized for what happened, that
3 within my time of calling, I called the individual
4 above you mistakenly. And he said okay.

5 And that's what I did. That sheet that
6 I've got, even to today, is -- it's courtesy. It's
7 not a law. We don't have to do it. It's just
8 courtesy to let them know what's going on, to let
9 them know when we're going to spray, whether it's
10 aerial, whether it's truck, it doesn't matter.
11 Again, Charleston, Berkeley, it's kind of like we
12 all kind of follow the same suit. They have issues
13 with what they call for their people, the same
14 thing.

15 BY MR. GOWDER:

16 Q. It's safe though to say -- I mean, how
17 long have you been calling people?

18 A. 2015, '16 when it happened, I'd say
19 I've been calling people since 2013 maybe when that
20 list was made up.

21 Q. So for three years; right?

22 A. Yes, sir.

23 Q. And people -- would you say people
24 counted on it, counted on you calling them?

25 A. I would say yes.

1 Q. And you said that, fortunately,
2 Ms. Hoover did what she was supposed to do, and her
3 bees were okay?

4 A. Yes, sir.

5 Q. When you called Mr. Yawn the second
6 time to tell him, you know, what you discovered,
7 what happened, were you upset?

8 A. Not mad upset.

9 Q. Right. No. Were you emotionally
10 upset?

11 A. I was very apologetic, because I had
12 called someone above him, and the issue -- it
13 hadn't really -- I can't remember if that's before
14 Ms. Stanley was on the news and all that stuff. I
15 can't remember when all that stuff happened. I had
16 called him and told him and apologized to him. I
17 did not talk to Ms. Stanley at that time. He said:
18 Okay. I wish you would have called me.

19 Hung up. And, again, I don't want to
20 be jumping the gun, as far as saying more --

21 Q. No, go ahead.

22 A. After that happened, it might have been
23 a couple of days afterwards, after Ms. Stanley, the
24 news, all of that stuff come out, personally -- I
25 was not told to do this. Personally, I told my

1 wife: Look, I've got to call and talk to her.

2 I said it was something that bothered
3 me, that's my character, and I felt it was the
4 right thing to do.

5 So I called, and I believe it was a
6 couple of days after, and Mr. Yawn answered the
7 phone, and I asked him if I could talk to
8 Ms. Stanley. And he said: Absolutely.

9 I got on the phone, she got on the
10 phone, and I apologized to her. I could honestly
11 hardly talk, to be honest with you, it upset me
12 that bad. It just did. And she did tell me:
13 Scott, I understand. That puts a little -- I think
14 she made the comment, that puts a little band-aid
15 on my heart, however she said it. And I told her
16 that I just felt that it was my responsibility to
17 call you and apologize to you, that I'm not doing
18 it face to face, but I just wanted to let you know.

19 Q. Have you talked to her since then?

20 A. No, sir.

21 Q. But you have talked to Mr. Yawn,
22 because you notify him about the spraying?

23 A. Yes, sir. Yes, sir.

24 Q. Have you had any conversations with him
25 other than just that sort of routine, hey, we're

In the Matter Of:

Mitch Randall Yawn, et al. vs
Dorchester County, et al.

Al Allen

March 19, 2019



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1 Carolina, raised up in Horry County in the Aynor
2 area, went to high school through Aynor, moved to
3 Ohio with my dad and finished high school there,
4 joined the Air Force, spent six years in there
5 stationed in Ohio while I attended Ohio State
6 University, came back, got discharged out of Myrtle
7 Beach Air Force Base in March of '85. I married
8 Shanda June of '85, went to work with the Florence
9 City Police Department, left there, went to work
10 for Conway City Police Department, then the Horry
11 County Sheriff's Department.

12 Q. I'm sorry. Which city police
13 department?

14 A. Florence City and then Conway City.

15 Q. Conway City, that's the one I missed.
16 Thank you.

17 A. And then I went to the Horry County
18 Sheriff's Office where I left a full-time position
19 in 2001 to -- for us to buy out a friend of ours
20 and start Allen Aviation. And so since then, I
21 have been employed through Allen Aviation as a
22 pilot.

23 And I've also pastored churches through
24 the years. I'm not currently, currently a pastor.
25 And also stepped into the political realm in 2007

1 A. Shanda Allen, which owns 51 percent,
2 and Al Allen that owns the other 49.

3 Q. Okay. All right. And has that always
4 been the case?

5 A. Yes, sir.

6 Q. And what is Allen Aviation's business?

7 A. Allen Aviation is an aviation services
8 type business. Our main service is aerial
9 application. We also manage airplanes for other
10 folks, do some corporate flying occasionally, and
11 do some aerial photography.

12 Q. Okay. When you say aerial application,
13 that's application of pesticides?

14 A. Application of aerial chemicals and
15 fertilizer.

16 Q. Chemicals and fertilizer?

17 A. Yes, sir.

18 Q. And manage planes means maintain other
19 people's planes?

20 A. Yes, sir.

21 Q. Corporate flying means getting people
22 from one spot to another?

23 A. Yes, sir.

24 Q. I think I understand what aerial photos
25 are.

1 apply that in a confined area, but the droplet size
2 has to be smaller, so that when a mosquito flies
3 through the air, it will fly into that small
4 droplet size, and it sticks to them.

5 Q. Okay. All right. What training or
6 education, Mr. Allen, if any, do you have in
7 pesticides and pesticide application?

8 A. Well, sir, I'm going back and -- I've
9 been raised up on a farm.

10 Q. Yes, sir.

11 A. I've got several years of hands-on
12 experience of handling certain items. Before we
13 actually started the flying business, I have had
14 a -- I have had a CDL, a commercial driver's
15 license, with the HAZMAT endorsement for years
16 there. Since and just prior to us taking over and
17 starting this, I went to Ag Flight, agricultural
18 flying school, in Bainbridge, Georgia, which I
19 stayed for about 12 weeks. I got the training
20 there. And since then, I've been to numerous CEU
21 courses and certification courses with Clemson,
22 Department of Pesticide Regulation, and North
23 Carolina Department of Agriculture.

24 Q. Okay. Thank you. As a result of the
25 training in Bainbridge, Georgia, did you come away

1 from that with a certification of some kind?

2 A. Yes, sir.

3 Q. What was that?

4 A. That was a 137 operators schooling
5 certificate issued by them, which applies to aerial
6 application.

7 Q. Aerial application of what
8 specifically?

9 A. According to the FAA and the FARs,
10 which is the Federal Aviation Administration and
11 the Federal Aviation Regulations, in order for a
12 person to conduct dispensing of economic
13 fertilizer, pesticides, they have to be certified
14 through the FAA as a 137 operator, which the school
15 in Bainbridge provided that training in order to
16 show that you had had that training so that your
17 local FSDO, which is your Flight Standards District
18 Office, could come out and test you with the flight
19 test and an oral test in order to issue a 137
20 operators certificate.

21 Q. Okay. As a result of your training
22 with Clemson, do you have a certification from
23 Clemson?

24 A. Yes, sir. I'm a commercial aerial
25 pesticide applicator, also licensed the same in the

23

1 State of North Carolina, State of Georgia, State of
2 Florida, State of Illinois, Indiana, Mississippi, I
3 believe now. No? Tennessee, I think it is.

4 Q. Do you fly in all of those states?

5 A. Some of them, I do.

6 Q. All right. That was one of the
7 questions I was going to ask you. In what areas or
8 in what states do you operate as Allen Aviation?

9 A. We have been going out to the State of
10 Illinois and Indiana for about the past five
11 seasons on what is called corn run to where at
12 certain times, mainly during the month of July and
13 the first part of August, to where the corn crop
14 out there has to be sprayed with a fungicide. So
15 there are several ag operators and stuff that
16 actually go out there and spray for about three
17 to -- three- to six-week time period.

18 Q. Right.

19 A. And then in the State of Georgia, a
20 friend of ours that operates there, he calls us
21 occasionally to come over during the season if he
22 gets extra work or busy.

23 Q. Your customer base generally is -- how
24 would you describe it? Is it largely private farm
25 operators, local governments, corporations? Who

1 would you say your customer base is?

2 A. The majority would be private farmers.

3 Q. If all of your business is 100 percent,
4 how much would you say your private farmers are of
5 that 100 percent?

6 A. Probably 70 percent.

7 Q. And tell me who -- what would comprise
8 the remaining 30 percent?

9 A. Public health contracts, some --

10 Q. How much would public health contracts
11 be?

12 A. Probably about 15 to 20 percent.

13 Q. All right. That leaves us another 10
14 to 15 percent?

15 A. Which would be, you know, you throw in
16 your corporate, your aerial photography, et cetera.

17 Q. All right. When you say public health
18 contracts, what does that mean?

19 A. Mosquito spraying, aerial mosquito
20 spraying.

21 Q. And who are your mosquito spraying
22 contracts with?

23 A. Horry County, Berkeley County, and at
24 one time Dorchester County.

25 Q. Okay. How many times did you fly for

1 and they have to send us a shapefile map of the
2 area that they wish to be sprayed.

3 Q. I'm sorry. What's that term?

4 A. A shapefile map.

5 Q. Shape, S-H-A-P-E?

6 A. Yes, sir.

7 Q. And what is that?

8 A. That's an area that they will usually
9 go through their IT or GIS department and will sit
10 down and will draw a line of an included box area,
11 if you will, of the area that they wish to have
12 sprayed. And then they'll send it to us. We look
13 over it, we call them back, we confirm that this
14 shapefile map is the area that you want sprayed.
15 They have by then already chosen what product that
16 they wish to apply.

17 Q. Okay.

18 A. With the product on hand, we will sit
19 down, we will go over the map, and we will compare
20 that map with an aeronautical sectional map in
21 order -- and so to look for any airspace or any
22 towers, et cetera. Once we do that and once it is
23 confirmed with them that that's the area that they
24 want sprayed and the type of product and the amount
25 according to the label, then they will usually post

1 the date, tell us at what date and what time, be it
2 early morning or, you know, late evening, for that
3 area to be sprayed.

4 And they will then make the public
5 address post in order to notify the public that
6 there will be aerial spraying conducted in that
7 area on such and such a date at such and such a
8 time, and they will usually send that also to us,
9 weather permitting.

10 When that day comes, if it's a morning
11 spray, we will usually get to the hanger that
12 morning at Conway. Now, I say we, I'm speaking
13 about Harry Rogers. We will pull the product. We
14 will load it into the aircraft with the sealed
15 system, with a metered system, according to the
16 rate that they wish to apply per acre for that
17 entire shapefile.

18 Q. Um-hum.

19 A. And once the aircraft is loaded,
20 preflighted, then we will usually launch out, in
21 the case of coming down to Dorchester or Berkeley
22 County, about -- usually about 30 minutes ahead of
23 official sunrise. And that in turn gives us the
24 time to be over the target area just a few minutes
25 prior to sunrise so that the application process

1 first concern is, are we going to be entering into
2 any controlled airspace, such as Charleston Air
3 Force Base. If we are, then we have to call them
4 ahead of time, which we do, and we also call them
5 and stuff in the air when we get there so that
6 they'll know that we are going to be operating
7 inside of their airspace, who, what, where, and
8 when, and why.

9 Then we also look for any obstacles,
10 like large towers and stuff like the ones along the
11 coast that are 2000 feet. We don't want to run
12 into any towers.

13 Q. Right.

14 A. And anything else that may specifically
15 stick out in there that we might would need to be
16 aware of, a power plant, a large lake, you know,
17 et cetera.

18 Q. Okay. Got you. And then you say you
19 confirm the product and the amount according to the
20 label?

21 A. We confirm it with the county and what
22 they want, as long as it is within the label
23 constraints.

24 Q. So someone with the county makes the
25 decision on not only the product, but the amount to

1 be sprayed?

2 MR. MAYBANK: Object to the form.

3 THE WITNESS: Yes, sir.

4 BY MR. GOWDER:

5 Q. And time, that's set by the government
6 as well, the time for the spraying? When the
7 spraying is to occur is set by the government?

8 MR. MAYBANK: Object to the form.

9 THE WITNESS: They will ask us as a
10 common practice to either spray in the a.m. or the
11 late p.m. according to what the label says. And in
12 turn, it is up to us to set the actual flight time
13 to start and to finish within those, again,
14 constraints on that label.

15 BY MR. GOWDER:

16 Q. Do you ever fly after sunset or before
17 sunrise?

18 MR. WILKES: Object to form.

19 THE WITNESS: Now, fly?

20 BY MR. GOWDER:

21 Q. Yes, sir.

22 A. Are you speaking about doing the
23 application or flying to and from? Ferrying is
24 what we call it.

25 Q. I'd like to ask you both.

1 good question. What was the question again, Andy?

2 I jut heard Trey English.

3 MR. GOWDER: Who calibrates the
4 equipment.

5 MR. MAYBANK: Okay. Thank you.

6 THE WITNESS: Trey English, along with
7 Charleston County mosquito control. I'm trying to
8 think of Ed's last name. Ed -- I want to say
9 Young, but it's not -- so that was the Congressman.
10 Ed just generally comes to mind. But, annually, we
11 will gather at Kingstree, at Williamsburg County
12 Airport.

13 And Charleston County mosquito control
14 guys, Ed and those, come up and work with Trey
15 English. And they have the equipment to where they
16 will set up for our airplanes to fly through, apply
17 the chemical. They collect it. They run it
18 through their Scantron system, and it tells us how
19 we need to adjust that system, our speeds or our
20 widths which will be common to certain rates that
21 the County has asked to be applied per acre.

22 So, for example, you have to fly
23 through it several times in order, because at 6/10
24 of an ounce per acre, it's going to be a different
25 rate than 1.2 ounces per acre. So you have to fly

1 And it is a program to where you get to put in at
2 what you want at the rate. But the system is
3 calibrated at the factory.

4 Q. Okay. Is there a way to verify or
5 check at the end of the flight whether or not the
6 chemical was disbursed at the intended rate?

7 A. Yes, sir, because it will show your
8 acreage and show the amount of chemical that was
9 actually disbursed.

10 Q. What will show it?

11 A. The Sat-Lock screen.

12 Q. And do you make a record of that after
13 each flight?

14 A. Yes, sir, so we put it in our log.

15 Q. In your --

16 A. In our flight log that we are required
17 to keep on file.

18 Q. Got it, okay. How do you make sure
19 that you're only spraying areas where you want to
20 spray for mosquito abatement?

21 A. You fly according to the shapefile map
22 that the county sent you. You stay in your lane,
23 Bro, as the commercial says.

24 MR. MAYBANK: I just learned that the
25 other day, by the way.

1 MR. GOWDER: What, to stay in your
2 lane?

3 MR. MAYBANK: Yeah. I've never heard
4 that before.

5 THE WITNESS: New phrase.

6 BY MR. GOWDER:

7 Q. What if there are areas within your
8 lane that you're not supposed to spray?

9 MR. WILKES: Object to form.

10 THE WITNESS: Such as? Could you give
11 me an example?

12 BY MR. GOWDER:

13 Q. What if there is a school below you,
14 and the county says: Don't spray over the school?

15 MR. WILKES: Object to the form.

16 THE WITNESS: Then it's the county's
17 responsibility to show that location on the map for
18 us.

19 BY MR. GOWDER:

20 Q. And if they show it on the map, then
21 what do you do when you're in the air to avoid
22 spraying that area?

23 MR. WILKES: Object to form.

24 THE WITNESS: We will cut the spray off
25 prior to going over it, keep it off while we're

1 passing over it, and once we are clear of it, we
2 will cut the spray back on.

3 BY MR. GOWDER:

4 Q. How do you know you're approaching that
5 area? Is that a matter of GPS coordinates, or is
6 that a matter of sight?

7 MR. WILKES: Object to form.

8 THE WITNESS: Both.

9 BY MR. GOWDER:

10 Q. Elaborate on that for me, please.

11 MR. WILKES: Object to form.

12 THE WITNESS: With the real time moving
13 map in the aircraft, and it's moving along showing
14 you as you're flying. You see the streets or the
15 highways. You also have that map with the
16 shapefile on the screen of the area that the County
17 wants you to apply. And if they have an exclusion
18 zone in there -- okay?

19 Q. Right.

20 A. -- as you approach that, you'll see it
21 on your moving map and also have a physical map in
22 hand in the aircraft following along. And as you
23 are approaching that exclusion zone, I will reach
24 down and cut that spray off, one switch, it's off,
25 until you pass over and you've cleared that

1 exclusion zone. And then it is turned on again.

2 BY MR. GOWDER:

3 Q. Where do you cut it off or how much
4 earlier do you cut it off before you get to the
5 exclusion zone?

6 MR. WILKES: Object to form.

7 THE WITNESS: Usually, it is our normal
8 practice to try to cut it off 3 seconds before over
9 the center of that zone or prior to crossing over
10 that zone, keep the spray off until we're
11 completely cleared over on the other outside edge
12 of the zone before it is turned on again.

13 BY MR. GOWDER:

14 Q. Is the 3 seconds, is that an industry
15 standard, or is that your practice, or how did you
16 determine the 3 seconds as opposed to 5 or 10 or 2?

17 A. Because that's an industry common
18 practice, as you might say.

19 Q. Is that something you would have
20 learned in your certification courses?

21 A. Early on, yes, sir.

22 Q. If I were to look in the materials for
23 the certification courses, would I find that
24 standard there?

25 A. Probably not, because it's just a

1 MR. WILKES: Can we take a break in a
2 minute?

3 MR. GOWDER: Sure.

4 MR. WILKES: Is this a good time?

5 MR. GOWDER: Let's go take a break
6 right now.

7 (A recess transpired.)

8 BY MR. GOWDER:

9 Q. Mr. Allen, I want to go -- we've been
10 talking generally up to now in some background. I
11 want to go specifically to your experience in
12 spraying for Dorchester County, okay, which is the
13 subject of this lawsuit, why we're here. I think
14 you said earlier that you sprayed one time for
15 Dorchester County; is that right?

16 A. Yes, sir, that's correct.

17 Q. And so how was it that you came to
18 spray for Dorchester County?

19 A. It was early August -- no, it was the
20 month of July. Yeah, I think it was 2016, we were
21 actually out in the State of Illinois spraying
22 corn, and Shanda received a call from someone at
23 Dorchester County, and -- or it was prior to us
24 going out there, because I'm thinking that we had
25 actually made a physical trip to Georgetown County

1 before we went to the State of Illinois. And at
2 some point in time during our work out there, she
3 was in contact with somebody from Dorchester County
4 faxing contract and signature forms back and forth.
5 And that's my memory of how we got in touch with or
6 how we got connected with Dorchester County.

7 And then upon our return was, to my
8 understanding, when they contacted us for an actual
9 spray, they had a couple of possible areas. And
10 during that time, the actual Zika case came out
11 with DHEC that they in turn contacted us about that
12 was to my understanding in the Summerville area.
13 So that was the purpose of them changing their
14 shapefile and their target area to the Summerville
15 area.

16 Q. We're going to get into all of that,
17 but okay. But I think I understand you.
18 Dorchester County approached Allen Aviation about
19 spraying?

20 A. Yes, sir.

21 Q. And did Allen Aviation go through any
22 sort of procurement process as part of that
23 contracting with Dorchester County?

24 A. The process that we went through,
25 again, to my understanding, according to the State

1 A. I recall it being close to Charleston
2 Class C airspace, but wasn't quite in it, to my
3 recollection. I remember seeing a train track on
4 there. I remember seeing a couple of heavy power
5 lines, towers, et cetera. I can't be specific, but
6 there were obstacles in the area.

7 Q. Were there any areas where Dorchester
8 County told you, please don't spray in these areas?

9 MR. WILKES: Object to form. Go ahead.

10 THE WITNESS: There were no exclusion
11 zones placed on that map except for the two red
12 dots that we were told were a beehive locations.

13 BY MR. GOWDER:

14 Q. Okay. All right. Were you given
15 addresses or owners' names at those locations?

16 A. No, sir.

17 Q. The next step that you listed for me is
18 to confirm the product and the amount and
19 application according to the label. Did you do
20 that in this case?

21 A. Yes, sir, I did.

22 Q. Tell me about that. Tell me what you
23 did.

24 A. You go out, you pull their drums that
25 were sent to us, are drop shipped to us. We pull

1 the label off the drum --

2 Q. Let me stop you there. So who drop
3 shipped the drums to you?

4 A. Dorchester County drop shipped the
5 drums to us at the Conway Airport.

6 Q. Okay. Got you.

7 A. To keep us from having to privately
8 haul it ourselves, you know, or them having to
9 bring it up. It was just a little more --

10 Q. To your knowledge, they would have
11 acquired that through Adapco?

12 A. Yes, sir.

13 Q. Please go ahead. I'm sorry.

14 A. Because Adapco at the time had the
15 State contract providing that.

16 Q. Okay.

17 A. We would go out, pull the drums, pull
18 the label. And when we got set and load the
19 airplane that morning, because you'd always wait
20 until that morning and stuff to load the airplane
21 in case of weather or cancellation of flight or
22 whatever, because you didn't want to have the
23 chemical sitting in the airplane overnight, okay,
24 weight-wise and stuff, because this stuff is
25 extremely heavy. Water is 8 1/2 pounds a gallon,

1 kept on file for a minimum of two years, required.

2 Q. All right. All right. We talked about
3 the time. And as I understand it, you provided the
4 time of day windows when you would be available to
5 fly, and they chose the date. Is that a fair
6 statement?

7 MR. WILKES: Object to form.

8 THE WITNESS: We again told them that
9 we would apply in the mornings, a.m., up until two
10 hours after sunrise, according to the label. We
11 would have to apply prior to that and stop at the
12 latest then. And then same thing in the evening,
13 two hours prior to sunset.

14 BY MR. GOWDER:

15 Q. Okay. And then they chose the day when
16 you would spray?

17 MR. WILKES: Object to form.

18 BY MR. GOWDER:

19 Q. Dorchester County did?

20 A. Yes, sir.

21 Q. Public notice is what Dorchester County
22 handled; is that right?

23 A. Yes, sir.

24 Q. And do you know anything about that?
25 Do you know anything about what kind of public

1 We got there a few minutes of 6:00, by,
2 I think, 6:35 or something. Again, I'd have to
3 refer to my log and stuff for the exact time, but
4 it was a few minutes before official sunrise. And
5 we actually started the application process once we
6 got there through the GPS mapping and following,
7 arriving on scene, finding out, looking,
8 identifying, and set the landmarks with a train
9 track on the northeast side of the end of the
10 block, checking the wind and calling the Charleston
11 tower and said to confirm the wind and probably let
12 them know and stuff that we were out there in case
13 they saw a blip there, such where they would know.
14 We do it often and stuff when we come down and
15 stuff for, you know, Berkeley County and stuff, and
16 they knew our tail number and that and stuff to
17 where they're not trying to find out who this is
18 out there at 7:00 in the morning.

19 Q. Yes, sir.

20 A. We made radio contact and stuff with
21 them, identified the target zone with our map and
22 our onboard shapefile, picked out our boundaries
23 and stuff to the north, you know, et cetera, and
24 then started the application run on that target
25 shapefile.

1 that morning whether or not you cut off your
2 sprayer as you approached the beehives?

3 A. I did, yes, sir.

4 Q. With both of them?

5 A. Yes, sir.

6 Q. How many times did you fly over the
7 areas where those beehives were located?

8 MR. WILKES: Object to form.

9 THE WITNESS: According -- I flew over
10 or near probably twice, but it couldn't have been
11 on the same paths, because each pass is moved over
12 approximately 700, 750 feet. Sometimes we can see
13 the hives when we go over if the hives are sitting
14 out in a nice, open field. But if you can
15 visualize a hive -- two hives would be about the
16 width of this table, from my hand to the end, and
17 approximately about 2 to 3 foot high. When you're
18 doing 160 miles an hour, it's awfully hard to see
19 down.

20 BY MR. GOWDER:

21 Q. Right. Do you recall seeing any of the
22 hives on this plat?

23 A. No, sir, could not see any, did not see
24 any.

25 Q. Were you relying on Mr. Rogers to tell

1 .that flight.

2 MR. WILKES: Object to form.

3 THE WITNESS: Well, weather-wise, it
4 wasn't a very sunny morning. And so we had some
5 high clouds and stuff, and it was actually kind of
6 close to calm. It was a nice day to fly. So the
7 airplane performed well, and it didn't take us as
8 long as I thought it would. And we finished up
9 headed back home and got back to Conway, landed,
10 flushed the aircraft, put the aircraft up, went
11 inside, filled out our logs and stuff. Pretty much
12 standard unit flight, uneventful.

13 BY MR. GOWDER:

14 Q. Let me go back for a minute to the
15 beehives. You say you never saw them physically on
16 the ground?

17 A. No, sir.

18 Q. So is it fair to say that you were
19 relying on the red dot on the map to -- as to the
20 location of where the beehives were?

21 A. Yes, sir, that's correct.

22 Q. What do you remember about the
23 aftermath of that flight?

24 MR. WILKES: Object to form.

25 THE WITNESS: Meaning?



1 you want to do, but not an existing exhibit. It
2 needs to stay as it was during the deposition.

3 MR. GOWDER: Okay. All right. Well,
4 he can mark on that one then.

5 MR. WILKES: We need to remove this and
6 make it -- it needs to be a new exhibit number.

7 MR. GOWDER: That's fine.

8 MR. WILKES: Let's go ahead, if you
9 don't mind, and let's take out what you want to
10 take out, and let's mark it as a new exhibit, and
11 then he can mark on it.

12 MR. GOWDER: Let me let him testify
13 first, and we can decide what he needs to mark.
14 BY MR. GOWDER:

15 Q. You were going to tell me something
16 about this page, Mr. Allen?

17 A. This map appears to be the target map
18 that Dorchester County sent to us that we sprayed
19 on that Sunday morning.

20 Q. Okay. If you would, this is Exhibit
21 Number 10. If you would at the bottom of the page
22 put 10A.

23 A. A?

24 Q. Yes, sir.

25 A. (Witness complied.)

1 Q. And if you would put today's date on
2 it, which is March the 19th, 2019?

3 A. (Witness complied.)

4 Q. And your initial.

5 A. (Witness complied.)

6 Q. All right, sir. So tell me again, did
7 you say this is the page from Dorchester County
8 indicating to you what?

9 A. Of the target area that we made the
10 application on that Sunday morning.

11 Q. Okay. All right. And in the yellow
12 area, there are two red circles with a triangle and
13 an exclamation point. Were those indications on
14 the map when it was given to you by Dorchester
15 County?

16 A. Yes, sir.

17 Q. What did you understand those
18 indications to mean?

19 A. To our understanding, that was the
20 location of two beehive sites within that target
21 area.

22 Q. Okay. With those symbols, were you
23 given addresses?

24 A. No, sir.

25 Q. With those symbols, were you given GPS

1 coordinates?

2 A. No, sir. The map appeared pretty much
3 the same as it is right here.

4 Q. Did you make your decision on when to
5 turn off your sprayer and when to turn on your
6 sprayer based on these symbols?

7 MR. WILKES: Object to form. Go ahead.

8 THE WITNESS: Yes, sir.

9 BY MR. GOWDER:

10 Q. And was there anything else upon which
11 you based your decisions to turn off and on your
12 sprayers other than these symbols?

13 MR. WILKES: Object to form.

14 THE WITNESS: No, sir, that was the
15 only indication we had.

16 BY MR. GOWDER:

17 Q. Do these symbols indicate to you any
18 particular real estate property?

19 MR. WILKES: Object to form.

20 THE WITNESS: No, sir. I don't have
21 any idea.

22 BY MR. GOWDER:

23 Q. Okay. All right. These are symbols on
24 a location on a map?

25 MR. WILKES: Object to form.

Deposition of David Chinnis

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

3 DEPOSITION OF DAVID CHINNIS
4 OCTOBER 28, 2019

5 MITCH RANDALL YAWN AND JUANITA MAE
6 STANLEY DIE/A FLOWERTOWN BEE FARM AND
7 SUPPLIES,

8
9 Plaintiff(s),

10
11 vs.

Case No.: 2:17-cv-00440-MBS

12
13 DORCHESTER COUNTY, TOWN OF
14 SUMMERVILLE, ALLEN AVIATION, INC. AND AL
15 ALLEN,

16 Defendant(s).

17
18 TIME: 10:09 a.m.

19
20 LOCATION: DORCHESTER COUNTY COUNCIL CHAMBERS
21 SUMMERVILLE, SC

22 REPORTED BY: JENNIFER M. ADAMS
23 CERTIFIED SHORTHAND REPORTER
24 CLARK & ASSOCIATES, INC.
CHARLESTON, SC 29415
843-762-6294
25 WWW.CLARK-ASSOCIATES.COM



Deposition of David Chinnis

1 Q. Understood.

2 A. Yeah.

3 Q. And again, with a lot of these questions,
4 I'm going to ask you what you know.

5 A. Sure.

6 Q. And if you don't know, then just tell me
7 that. At some point during 2016, do you remember there
8 coming up at council a discussion of aerial spraying?

9 A. Oh, absolutely.

10 Q. All right. What can you tell me about
11 that?

12 A. The first discussion actually was -- and I
13 wish I could remember the gentleman's name. There was a
14 gentleman that came before council who basically -- I
15 think for lack of better term, begged and pleaded for us
16 to spray, aerial spraying. He -- I can tell you where
17 he lives.

18 He ultimately -- as I sat on the day, I
19 looked up the address he gave me. He happened to be one
20 of my constituents. He lived in the little neighborhood
21 of over 55 off of Midland Parkway. He was very adamant,
22 very concerned about -- the media had been covering Zika
23 very strongly. They were showing the results.

24 Some people -- all we were talking about
25 was the Olympics and Zika in South America. And he came

Deposition of David Chinnis

1 other items that -- that took place at the same time,
2 quite honestly.

3 And this may be a future question, but DHEC
4 had contacted us in that same time frame, and of course,
5 DHEC does things that I sometimes don't understand. But
6 they told us there were travel-related Zika cases in
7 Summerville, and that we needed to make certain that --
8 you know, these areas needed to be sprayed.

9 I can't tell you what the areas were. I
10 just knew they were -- because they don't -- I don't
11 think they told us what the areas were that needed to be
12 -- you know, where this travel-related Zika was. Equine
13 Encephalitis is another one that we know is pretty
14 frequent from the standpoint of mosquitos, so...

15 Q. Right. Right. So as far as council
16 learned or knew, what were the pros and cons of aerial
17 spraying versus truck spraying?

18 A. Aerial spraying allowed us to get into
19 areas -- Dorchester County is a swamp. We are in the
20 low country. I was born and raised here, so I get that.
21 There are areas that they basically told us they were
22 not able to get with truck spraying that we may be able
23 to cover with aerial spraying that was not possible with
24 truck spraying.

25 I mean, that's kind of the -- we -- quite

Deposition of David Chinnis

1 frankly, it was a long conversation about it. The local
2 counties -- Charleston County was doing it. Berkeley
3 County was doing it. We weren't hearing -- yeah. We
4 weren't hearing that they were complaining about
5 mosquitos. Like, again, growing up in Charleston
6 County --

7 Q. Right.

8 A. -- they sprayed all the time.

9 Q. Yeah. Was there any discussion that the
10 truck spraying could not get to the areas where the Zika
11 residents were located?

12 A. It would be hard for me to answer that
13 because they didn't tell us where the Zika residents
14 were.

15 Q. Okay.

16 A. The issue was, there were a large number of
17 mosquitos. There were travel-related cases of Zika, and
18 my -- going back to my biology days in college and
19 knowing vectors and vector species, that's clearly a
20 vector species. Mosquitos bite someone who has Zika.
21 They get to transmit it. And that was my personal
22 thought, I guess, not necessarily a public comment, but
23 a personal thought.

24 Q. Yeah.

25 A. So the opportunity, the challenge of

Deposition of David Chinnis

1 potentially allowing people to come into contact -- to
2 contract Zika in the Charleston area -- we had heard
3 stories about Miami. I mean, again, this is a big --
4 it's all over the media and where they think they have
5 it and for us to show up, you know, as having Zika in
6 Summerville because somebody got it as a result of
7 something that we had failed to do, to me, wasn't an
8 option.

9 Q. Okay. All right. Was there any discussion
10 about the fact that aerial spraying was less targeted
11 and more sort of wide spread or blanketed than --

12 A. Not that I can recall.

13 Q. -- truck spraying?

14 A. Not that I can recall.

15 Q. Okay. All right.

16 A. We honestly didn't have a whole lot. They
17 said we can aerial spray along with Berkeley County. We
18 realized that it would reach areas that we couldn't
19 reach with trucks.

20 Q. Yep.

21 A. We were trying to prevent Zika.

22 Q. Got it. Also, at that time, as a council
23 member, were you aware of what the -- of what the
24 county's policy was with regard to spraying and people
25 that kept beehives --

Deposition of David Chinnis

1 Q. Okay. All right. And other than CNN, was
2 this being reported on other media?

3 A. I couldn't tell you. That was what I saw.

4 Q. I see.

5 A. Yeah.

6 Q. Okay. All right. So what happened next?

7 A. Came home, sat down in St. George, had a
8 meeting about kind of what happened, what we did. I
9 will tell you, I asked the questions very clearly, what
10 was the law? Did we do what we were required to do?

11 It was responded to that you had to alert
12 the media in advance 24 hours. We exceeded that. We
13 sent this information out apparently to all of the media
14 outlets, not all of them reported it, which is obviously
15 maybe a flaw in the state system. But the -- then the
16 question was asked about sort of, you know, what we do.

17 And that's where we came up with apparently
18 our Scott -- I didn't know his name at that point in
19 time. But Scott had created -- created is probably not
20 the right word, but he took it upon himself to call
21 folks that he knew that had -- you know, that had bees,
22 and that he routinely did that, and that there was a
23 possibility that he had either called the wrong number
24 or not gotten someone at one of these numbers.

25 And that was the possibility, and I think

Deposition of David Chinnis

1 A. So there was discussion, I think at that
2 point in time, about the potential for an insurance
3 claim, if it was in fact the result of the spraying,
4 that these bees did die, that they would be able to make
5 a claim against the county. And the county -- I'm
6 assuming, again, I may be incorrect, that the insurances
7 or a fund typically in a case would be where we would
8 approach this.

9 I assured them, based on what I had been
10 told, that no one was interested in -- in suing and so
11 forth. But, you know, if in fact we sprayed, and when
12 we sprayed, the bees died as a result, then, you know,
13 what -- what could we do? I know Clemson was called in
14 at some point in time to ask them to go in and look at
15 the -- the site.

16 I can recall seeing videos of someone that
17 I later learned to know was Ms. Yawn, videos of Mitch,
18 and I think it was Nita's voice, where they were burning
19 beehives prior to Clemson getting down here to -- as I
20 recall it, it took Clemson a few days to get it in their
21 schedule to come down here and do soil tests and so
22 forth.

23 And we anxiously awaited the results from
24 those. I couldn't tell you in what sequence that
25 information actually came in. I just know we eventually

Deposition of David Chinnis

1 like, Andy, I'm at this address, but there's a house in
2 front of me, but there are no cars in front of it.
3 Where do I go? You turn left down this kind of country
4 lane, and we're down at the end.

5 So I go down to the end of the lane.

6 Mr. Yawn meets me in the front yard, invites me in the
7 house. I sit down on the couch. They give me a Coke,
8 and we have a conversation about bees and what happened
9 and so forth and so on.

10 I had mentioned to him that -- and, again,
11 I'll repeat this over and over again because I feel like
12 I was beating a dead horse maybe at that point in time,
13 but fill out the insurance paperwork. Fill out the
14 insurance paperwork. If we are liable for this, it has
15 to be done. There is no other way to do it. You've got
16 to start this way.

17 I had mentioned that I know this has been
18 discussed. I've seen this, that I had mentioned to them
19 -- my idea, I guess, was if in fact we were liable for
20 this -- they talked about how long it took to get bees.
21 Let me back up. So they were saying, we can't get bees
22 right now. We can't get bees. Nobody has got bees.
23 We've looked for them. Nobody has got bees. We'll have
24 to order them.

25 Well, when do you get bees? We get them in

Deposition of David Chinnis

1 the spring, but we have to pay for them now. I heard
2 that more times than I probably care to admit, we have
3 to pay for them now. We have to pay for them now. So I
4 said, well, let me see what I can do. I know county
5 council has a very public -- or I don't think we do
6 anymore, but had a contingency fund that had probably
7 about \$20,000 in it that we vote on.

8 And I said, you know, fill out the
9 paperwork. I can call a special meeting, and we can
10 vote on releasing this contingency. But you have to
11 tell me how much the bees were. You've got to fill out
12 the insurance paperwork, and you've got to provide me
13 some sort of proof of, this is what these bees cost.

14 I got an e-mail at some point in time from
15 Mr. Yawn that kind of looked like it was cut and paste a
16 little bit from somewhere in North Carolina that had a
17 price, as I recall, somewhere in the neighborhood of
18 about \$5,000 for bees. And I said, great, fill out the
19 paperwork. And I always was asking, have we gotten
20 paperwork, have we gotten paperwork.

21 And quite honestly, I never got any
22 paperwork. And then I think, as I recall, the next
23 thing I heard was that they had hired an attorney, at
24 which point I felt like I could no longer have a
25 discussion. It would have to go through our attorneys.

Deposition of David Chinnis

1 here, so I can't -- I wasn't there.

2 THE WITNESS: Right.

3 MR. MAYBANK: But I think anything you
4 publicly talked about after that or got into, I think,
5 is fair game. But I think anything from executive
6 session --

7 THE WITNESS: Right, right.

8 MR. MAYBANK: -- would be attorney-client.
9 And I will still work to get you the documents if we
10 have them -- and reserve the right to leave this open in
11 the event you need to come back and ask him about any of
12 those documents.

13 BY MR. GOWDER:

14 Q. Okay. Yeah. I'm not asking you for any
15 advice you got from Mr. Frampton, but in terms of the
16 presentation to council and the deliberation to council,
17 what do you remember about it?

18 A. That it was -- basically, that we -- that
19 the notification process that, honestly, was never an
20 official policy, that we would -- we publicly stated,
21 that that was not part of the process. I believe the
22 comments were made that we were adhering to the laws of
23 the State of South Carolina in regards to notification,
24 and that we would continue to do that.

25 There were some folks that came up to speak

In the Matter Of:

Mitch Randall Yawn, et al. vs
Dorchester County, et al.

David Garber

April 04, 2019



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1 became their GIS director for a period of two
2 years.

3 Q. And all of this work is GIS related?

4 A. Correct.

5 MR. MAYBANK: Can I ask him to spell --
6 what was that county's name?

7 THE WITNESS: Dona Ana, D-O-N-A, A-N-A.

8 BY MR. GOWDER:

9 Q. And where was that?

10 A. Dona Ana, that's Las Cruces, New
11 Mexico.

12 Q. Got it. And then after those
13 consulting jobs, what did you do next?

14 A. I became a consultant for NAVFAC, Navy
15 Facility Engineering Command, here in the Low
16 Country, worked for them for two years running
17 their geospatial --

18 Q. When did you come to Charleston?

19 A. I think it was 16 years ago. That was
20 for two years, and then became the director of --
21 GIS coordinator for Dorchester County after that.

22 Q. So that would be about 14 years ago?

23 A. According to my ID, yes.

24 Q. In your current position, what does
25 your job entail?

1 your employees or the folks you supervise to input
2 the data. They can input the data themselves?

3 A. He became a SME, subject matter expert,
4 put in his own address points and issued from
5 there.

6 Q. All right. So he does that now?

7 A. Correct. Still does.

8 Q. When did he start doing that?

9 A. I'll have to look at the date that that
10 went live, but I believe it was the summer of '16.

11 Q. So by early 2016, the mosquito
12 abatement maps, zones, were already in place and
13 you were working with them. And then Scott came to
14 you and asked you whether you could adapt that for
15 aerial spraying? Tell me how he brought that up to
16 you.

17 A. To my recollection, it was basically
18 we're going to spray, we have a contractor, can we
19 get data to them. And I said yes. And we did a
20 couple of tests early in August transmitting data
21 back and forth to make sure they could consume the
22 data and logically place it into their system. I
23 don't know what they use. And we sent back and
24 forth graphics and data together. We did a couple
25 of little subtle changes in the data format to make

1 geodetics and do an entire semester if you want to.

2 Q. I don't think I have the time.

3 A. No. What we transmitted to Allen
4 Aviation was that data converted to something
5 called WGS 84, which is World Global Systems NAD
6 84, basically latitude and longitude carried out to
7 the 12th digit. Basically you can locate something
8 within a few inches. It's how you drop a bomb.

9 Q. Okay. All right. So that's the kind
10 of data that you were transmitting?

11 A. Yeah. We just basically converted our
12 coordinate system to WGS 84.

13 Q. And you said that you conducted a
14 couple of tests?

15 A. Tests.

16 Q. Describe those tests to me in some
17 detail.

18 A. We transmitted data in something called
19 a shapefile, which is kind of a generic
20 deconstruction of the geography. It's a piece of
21 geography, a line or a point. It's a series of XY
22 coordinates or tables that are coordinated with it.
23 Part of that information is the projection system.
24 Part of it is the X and the Y pair and then the
25 attributes you put onto it, that you attach to it.

29
1 on it. I know we produced it. I just wasn't sure
2 if we had an extra copy.

3 THE WITNESS: That is my outgoing email
4 on August 22nd to Allen Aviation, and I copied
5 Scott Gaskins.

6 BY MR. GOWDER:

7 Q. And the attachment shows as a zip file
8 as you described it?

9 A. Bee_Keepers_full.zip is a point file.
10 It was all of the beekeepers we had as of that
11 point in time. I think it was only 16 points or
12 something like that, going back. I looked at this
13 data two weeks ago. I unpacked the old original
14 file. DoCo_03.zip file is the polygon area.

15 (The proceedings were interrupted.)

16 (Off-the-record conference.)

17 THE WITNESS: Just to be specific,
18 Bee-Keepers_full.zip is the exhibit basically you
19 have as 111.

20 BY MR. GOWDER:

21 Q. Oh, good. Okay. All right. So
22 looking at that, that's your full list?

23 A. That's the full list as of that point
24 in time.

25 Q. And I want to ask you about that.



In the Matter Of:

Mitch Randall Yawn, et al. vs
Dorchester County, et al.

Tracey Langley

March 20, 2019



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EXHIBIT



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1 was an administrative assistant to the chief
2 financial officer.

3 So when I was initially hired, I was
4 hired as the admin assistant to him. He was new to
5 the County as well. And he stayed about a year and
6 then was offered a deputy administrator position
7 with Horry County, and so he left. When he left, I
8 became the admin assistant to Jason Ward, which is
9 the County Administrator. And so I worked with
10 Mr. Ward up until I became clerk to council. I was
11 named clerk to council as interim in, I want to
12 say, November maybe. And then --

13 Q. November of 2018?

14 A. No, I'm sorry, November of 2016. And
15 then I was appointed as clerk in January of 2017.

16 Q. Great. And do you remain the clerk for
17 council?

18 A. I am, um-hum.

19 Q. Great. Congratulations.

20 A. Thank you.

21 Q. That's quite an important job. When
22 you worked for Mr. Ward -- were you working for
23 Mr. Ward in the August time frame of 2016?

24 A. I was, yes.

25 Q. And what were you doing for him then?

1 I know you said administrative assistant. But what ¹¹
2 did that title encompass?

3 A. Everything.

4 Q. That's kind of what I thought. But
5 what kinds of things then did you do on a weekly
6 basis?

7 A. I'll say -- so Mr. Ward had another --
8 he had -- her formal title was clerk to
9 administrator. So her and I, we worked together
10 with Mr. Ward and kind of --

11 Q. And who was that?

12 A. Susan Brickle.

13 Q. Okay.

14 A. Basically it was set up that I worked
15 on all the projects with Mr. Ward. And then Susan
16 did the day-to-day processing, scheduling, paying
17 bills type things. And then, you know, I worked on
18 the bigger projects with him, Lake Marion, things
19 like that. And in that capacity, at the time we
20 did not have a public information officer, so any
21 time that we had storm events or ground breaking,
22 ribbon cutting ceremonies, anything like that, I
23 was the acting PIO, public information officer.

24 Q. Got it. So you were in charge of
25 notifying the media and doing public notices and

12

1 press releases and things like that?

2 A. Correct, um-hum.

3 Q. Got it. Okay. Very good. Well, what
4 I'm going to ask you to do now is we're just going
5 to go through some of these documents and talk
6 about this case. So the first one that I would
7 like to direct your attention to is Exhibit 6. So
8 it's -- you can kind of see, it's a little ways
9 into the notebook there. It's an email dated
10 Wednesday, June the 15th, 2016, to Bo Peterson, who
11 I understand is a reporter for The Post and
12 Courier, and ask if you recognize this.

13 A. I do.

14 Q. And what is it?

15 A. This is where Mr. Peterson had posted
16 a -- or I guess had printed a story about the
17 mosquitos and Zika and --

18 MR. MAYBANK: Hold on. What are you
19 looking for?

20 THE WITNESS: My glasses.

21 MR. MAYBANK: One second.

22 BY MR. GOWDER:

23 Q. Take your time.

24 A. So some of the information -- when I
25 read the article, some of the information contained

1 Q. In your experience with the County, did²⁰
2 Dorchester County only spray that one time, on
3 August the 28th, 2016?

4 A. Yes.

5 Q. All right. Very good. Next document
6 I'd like to talk to you about is Exhibit 8. You're
7 copied on this one. It's an email from -- first of
8 all, from Scott Gaskins dated August the 1st at
9 11:08, and then there is an email from Jason Ward
10 to Scott Gaskins dated 4/30. Do you know anything
11 about this email string?

12 A. I do.

13 Q. Okay.

14 A. We were receiving an enormous amount of
15 calls into the administrator's office about
16 mosquitos. Not only were we receiving them from
17 constituents, but we were receiving them from some
18 of the other towns that are within the County, as
19 well as DHEC, about the spraying. And we had
20 constituents that were attending council meetings
21 who were saying, you need to aerial spray, you need
22 to aerial spray. We had had the historic flooding
23 in October of 2015, and just, you know,
24 catastrophic. And Dorchester County is -- you
25 know, has a lot of wetlands as it is. So it

1 just -- it kind of -- the problem was bad at that
2 time, the mosquitos. People were complaining and
3 demanding that we do something.

4 Q. So the infestation of mosquitos was
5 heavy at this time?

6 A. Yes.

7 Q. In Dorchester County?

8 A. Yes.

9 Q. You say that people, constituents maybe
10 at council meetings in the public comment period
11 were saying that the mosquitos were heavy, and some
12 were suggesting that the County aerial spray?

13 A. Yes.

14 Q. Why were they suggesting that there be
15 aerial spraying?

16 MR. MAYBANK: Object to the form.

17 BY MR. GOWDER:

18 Q. If you know.

19 A. Yeah, I don't know that. I can tell
20 you that in conversations that I had with citizens
21 who called, Berkeley County is spraying, Charleston
22 County is spraying, why isn't Dorchester County on
23 the ball and spraying? You know, that was the type
24 of questions that were being asked, why aren't you
25 doing more.

1 Q. Let's go to Exhibit 14. Do you
2 recognize this document?

3 A. I do.

4 Q. What is it?

5 A. This is the actual press release that
6 we sent out notifying of the aerial spraying.

7 Q. Okay. And did you write this?

8 A. I did.

9 Q. Okay. All right. Did you have a list
10 of media outlets where you would typically send
11 press releases?

12 A. I did.

13 Q. Do you recall -- I'm sure -- you may be
14 able to recall off the top of your head, but could
15 you recall some of those media outlets?

16 A. Yes, Channel 2, Channel 4, Channel 5,
17 Post and Courier, Summerville Journal Scene, The
18 Eagle Record, all of the radio stations, meaning --
19 I think it was 103.5, 102.5, 94.3, 104.5, I
20 believe. I believe we also sent it to the
21 Charleston City Paper, and I believe even The State
22 paper we included a time, I believe. I would have
23 to look back at the list. And then we would also
24 send it to the Town as well.

25 Q. Town of Summerville?

1 A. Correct, so they could post it -- the
2 information on their website and Facebook, Twitter,
3 things like that.

4 Q. Okay. Now, do you know which media
5 outlets actually forwarded this information?

6 A. I know for sure that Channel 5, Channel
7 4. I know for sure that they had it on their
8 broadcast. I know Channel 5 had it on their 11:00
9 broadcast, and then they had it on their Saturday
10 broadcast.

11 Q. 11:00 on Friday night?

12 A. Correct.

13 Q. And then on Saturday?

14 A. Yes.

15 Q. Saturday at 6:00 or --

16 A. Yeah, the morning news, and then I
17 believe it was on both of their websites.

18 Q. Okay. All right. Do you know whether
19 or not The Post and Courier carried this?

20 A. Yeah, The Post and Courier and The
21 Summerville Journal Scene both had it, had it
22 posted.

23 Q. Posted where?

24 A. So generally when they do their
25 stories, they put them online. Well, you go to The

1 Summerville Journal Scene or The Post and Courier.
2 So you see it online before the paper even comes
3 out is generally how -- and it was posted on there.
4 And they did it -- as far as I know, I believe The
5 Journal Scene had it on their Facebook page as
6 well.

7 Q. Okay. Do you know whether or not the
8 notice appeared in the paper, the physical copy of
9 the Post and Courier?

10 A. I don't recall that, and I never -- I
11 haven't looked, so I don't know for sure.

12 Q. And as far as Summerville Journal Scene
13 is concerned, it's a weekly?

14 A. Yes.

15 Q. Correct?

16 A. Yes.

17 Q. So it would not have appeared before
18 Sunday; right? Because when does that come out?

19 A. Not in the physical paper.

20 Q. Not in the physical paper?

21 A. Right, not in their physical paper.

22 But it was in their online edition and the
23 Facebook.

24 Q. Right. And then the same for the City
25 Paper. Physically, it's a weekly; right?

1 A. That I'm not sure of.

2 Q. Okay. You don't know whether or not it
3 appeared in the physical paper for the City Paper?

4 A. That I don't know. This is the
5 Charleston City Paper.

6 Q. Right.

7 A. Yeah, I don't know.

8 Q. All right.

9 A. We just try to make sure all of the
10 outlets are covered. A lot of people follow them
11 online. So we just make should that we get it out
12 to everyone.

13 Q. Right, understood. Following Exhibit
14 14, there is a map. Do you know whether or not --
15 do you recall whether or not this is the map that
16 was sent out with the press release?

17 A. Yes.

18 Q. And it's Bates as Dorchester County
19 File 0087?

20 A. Yes, sir.

21 Q. And on this map, is there any
22 indication of the symbol that we discussed earlier,
23 the circle with the --

24 A. No, sir.

25 Q. All right. If we can go to Exhibit 15,

1 four, as you mentioned?

2 A. Um-hum.

3 Q. In previous testimony we've been told
4 that in the Summerville area, that there were two
5 residents there that had travel-related Zika that
6 this spraying was meant to address. Where were the
7 other two, do you know?

8 A. The other two, I believe, were in --
9 they weren't like on that same stretch of road, but
10 they were on -- maybe five to ten minutes away from
11 that stretch of road is my understanding.

12 Q. So were they also in the yellow -- the
13 yellow aerial application zone?

14 A. I believe one of them may have been,
15 but I'm not -- Scott had that information. So I'm
16 not completely sure about that, and I don't want to
17 give you wrong information. I'm not sure exactly.

18 Q. Do you know whether or not the spray
19 was meant to address all four cases, or only the
20 two in the Town of Summerville?

21 A. Are you asking if we were spraying for
22 Zika? I mean, we were spraying to treat mosquitos,
23 and Zika is transmitted by mosquitos. So
24 obviously -- and those cases were in that area. So
25 there was concern, and DHEC was -- DHEC was

1 extremely concerned and in constant communication
2 with the County about, you know, those cases. And
3 obviously we can't tell the public where they are
4 or who they are, but that area, we were getting a
5 lot of calls in that area.

6 The fact that there were residents in
7 that area with Zika, obviously that heightened
8 the -- you know, the concern for the safety of the
9 public. So there were -- it wasn't that one
10 specific -- it wasn't just -- we weren't
11 spraying -- aeriually spraying just for Zika. We
12 were spraying because of the mosquitos and because
13 of the diseases that they carry and transmit.
14 So...

15 Q. Did the -- go ahead. I'm sorry.

16 A. No, that's it.

17 Q. Did the presence of these folks with
18 travel-related Zika virus have anything to do then
19 with the aerial spray?

20 A. Again, it was a component of the area
21 that we -- that ultimately was decided to be
22 sprayed. It was a component of it. I mean, it was
23 definitely a factor and consideration because of
24 the safety for, you know, the public.

25 Q. So the location of where these folks

1 lived influenced the decision on where to spray.

2 Is that accurate?

3 A. It was a component of it. It wasn't
4 the entire -- it did not -- the reason that they
5 sprayed wasn't, you know, specifically because of
6 that. But that was one of the reasons why, yes,
7 that area.

8 Q. Do know what the other reasons were?

9 A. Yeah, because of the -- because of the
10 heavy population of mosquitos in those areas and
11 because of the fact that there were so many
12 wetlands in those particular areas that personnel
13 could not get to on foot. So that was, you know --
14 I believe that all of those factors were
15 considerations in where they decided to do the
16 aerial spraying.

17 Q. And it's your understanding that in the
18 area where the spraying occurred, that there were
19 areas where trucks could not effectively spray?

20 A. Correct, yes, areas that trucks could
21 not spray and that, again, staff could not get to
22 to, you know, to put out briquettes and other
23 things.

24 So, again, you've got the Saw Branch
25 canal that runs back, you know, behind -- you know,

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

- - -

MITCH RANDALL YAWN and	)	
JUANITA MAE STANLEY d/b/a	)	
FLOWERTOWN BEE FARM AND	)	
SUPPLIES,	)	
	)	
Plaintiffs,	)	
	)	Case No.
vs.	)	2:17-cv-00440-MBS
	)	
DORCHESTER COUNTY, TOWN OF	)	
SUMMERVILLE, ALLEN AVIATION,	)	
INC. and AL ALLEN,	)	
	)	
Defendants.	)	

DEPOSITION OF ANDREW JOHN MACKE

DATE TAKEN:	Monday, March 25, 2019
TIME BEGAN:	9:00 a.m.
TIME ENDED:	11:05 a.m.
LOCATION:	Austin and Gowder 1629 Meeting Street Suite A Charleston, South Carolina 29406
REPORTED BY:	G. Michael Alexander, Professional Reporter, CSR Magna Legal Services (866) 624-6221 www.MagnaLS.com



1 Q. Do you see that photo?

2 A. Yeah, that's me.

3 Q. What's that?

4 A. I said, yes, looks like that's off my
5 Facebook page.

6 Q. Okay. Do you have those original
7 photographs still?

8 A. I don't know. If I still have my old phone.

9 Q. And this photograph is at the Yawn property,
10 is that correct?

11 A. Yes, this is correct.

12 Q. And when did you take that photograph?

13 A. That Monday morning, I guess, whatever it
14 says. Something at 9:33 a.m. yesterday. I don't know
15 why they put it up there.

16 Q. Probably depends on when it was printed.

17 A. Oh, okay.

18 Q. That's a guess, though, to be honest. Were
19 you aware at the time of there being concerns related
20 to travel-related bee Zika infection relating to
21 Dorchester County?

22 A. I was not aware until I talked to
23 Mr. Chinnis.

24 Q. Okay.

25 A. He said there were some Zika cases in the

Deposition of Jason Ward

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 CHARLESTON DIVISION

4 DEPOSITION OF JASON WARD
5 OCTOBER 8, 2019

6 MITCH RANDALL YAWN AND JUANITA MAE STANLEY D/B/A
7 FLOWERTOWN BEE FARM AND SUPPLIES,

8 Plaintiffs,

9 vs. C/A NO. 2:17-cv-00440-MBS

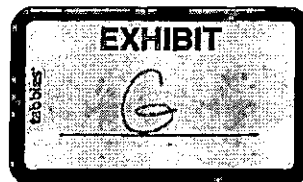
10 DORCHESTER COUNTY, TOWN OF SUMMERVILLE, ALLEN
11 AVIATION, INC. AND AL ALLEN,

12 Defendants.
13

14 TIME: 2:00 PM
15

16 LOCATION: AUSTEN & GOWDER
17 CHARLESTON, SOUTH CAROLINA
18

19
20
21 REPORTED BY: J. LYNN CLARK, RPR, CSR(IA)
22 NCRA CERTIFIED MERIT REPORTER
23 CLARK & ASSOCIATES, INC.
24 CHARLESTON, SC 29415
25 843-762-6294
WWW.CLARK-ASSOCIATES.COM
Lynn@clark-associates.com



Deposition of Jason Ward

1 has passed, I don't know whether it was June or
2 May.

3 Q. But sometime before August.

4 A. Yes.

5 Q. And what was the genesis of that idea?

6 A. We had been contacted by DHEC. DHEC had
7 told us that there was evidence of Zika within
8 the county, giving us some specific areas where
9 we needed to be concerned about Zika, and
10 suggested that we do some spraying.

11 Q. Do some aerial spraying?

12 A. They suggested that we do spraying. And
13 the area in particular was an area that wasn't
14 easily reached by using ground spraying. So as a
15 result of that, we decided to do aerial spraying
16 to try to reach those areas.

17 Q. You made the distinction in your answer
18 between spraying and aerial spraying. So DHEC
19 did not specify to Dorchester County that they
20 should do aerial spraying; is that correct?

21 A. No.

22 Q. Tell me exactly what they suggested that
23 Dorchester County do.

24 A. So they suggested that we do targeted
25 spraying because there was evidence of Zika in

Deposition of Jason Ward

1 the area.

2 Q. And targeted where?

3 A. In the Summerville area.

4 Q. And what was in the Summerville area
5 that needed to be targeted?

6 A. That was the location where they
7 indicated the person had Zika, contact with
8 mosquitos.

9 Q. Did they tell you whether or not the
10 people -- first of all, how many people are we
11 talking about?

12 A. I don't recall the number of people.

13 Q. Do you remember whether they indicated
14 where or how these folks contracted Zika?

15 A. I think they indicated it was travel
16 related.

17 Q. So the folks had gotten it someplace
18 else and came to Summerville with it.

19 A. That's what I --

20 Q. Is that what you understood?

21 A. I believe that's what occurred. Again,
22 going back through years and not having looked at
23 anything in three years, that's the best I can
24 recall.

25 Q. All right. And again, do you remember

Deposition of Jason Ward

1 A. You say regular County budget. Do you
2 mean general fund budget?

3 Q. General fund budget?

4 A. Yes.

5 Q. Thank you for giving me the --

6 A. Well, I'm not trying to be facetious.

7 Q. No, no. I know. No. I appreciate you
8 being precise about it. So thank you.

9 A. Yeah.

10 Q. Talk to me a little bit about the
11 decision-making process then that resulted in
12 deciding to do the aerial spraying. Was there a
13 discussion within the County about whether or not
14 aerial would be a good idea and what it would
15 take to do it and all of that?

16 A. As I recall, that particular year we had
17 a really bad year. It was a wet year, and that
18 generated more mosquitos than normal. So we were
19 trying to really knock down the mosquito
20 population. And DHEC notified us, and as a
21 result of that, with them saying we needed to do
22 some targeted spraying, that was something that
23 we had looked into.

24 We knew that our neighbors, both
25 Charleston and Berkeley, were using that

Deposition of Jason Ward

1 Q. Do you know when you started to think
2 that you might want to engage in aerial spraying
3 in Dorchester County?

4 A. I don't know, but I know it was in 2016
5 since I was asking for money about it.

6 Q. And was this, Mr. Ward, your idea or had
7 someone suggested this to you?

8 A. There was a discussion that I had with
9 Mr. Gaskins and Mr. Walters as well.

10 Q. And what was that discussion?

11 A. Discussion was all the techniques that
12 could be used for mosquito abatement.

13 Q. And why were you discussing other
14 techniques?

15 A. We were having a very wet year, and the
16 mosquito population was very high.

17 Q. And was there a feeling that the
18 existing techniques were not adequate?

19 A. We had some citizens address counsel
20 expressing concern as to whether we were doing
21 everything we could and whether there were other
22 things that could be done.

23 Q. Is it fair to say that the exploration
24 of aerial mosquito spraying had to do then with
25 the wet conditions and the number of mosquitos

Deposition of Jason Ward

1 that were existing as a result?

2 A. In part, yes.

3 Q. Not strictly the concern about the Zika
4 virus.

5 A. I think that was kind of an additional
6 concern, but the population itself was a concern.

7 Q. If you will look to on the next page,
8 Exhibit Number 4. This is an invitation for bid.
9 The top there is the heading for Berkeley County.
10 And there is a date of Tuesday, May 21, 2013.
11 These documents were in the files of Dorchester
12 County.

13 Do you recognize these documents and do
14 you know the relevance of these documents to
15 Dorchester County?

16 A. I don't.

17 Q. Okay. I will tell you -- and I'm not
18 trying to be tricky here, I just wanted to know
19 if you remembered -- there had been discussion
20 with other members of your staff about the fact
21 that Dorchester County may have boot strapped or
22 used Berkeley County's already existing --

23 A. Oh, piggybacked.

24 Q. Yes, sir.

25 A. Okay.

Deposition of Jason Ward

1 water in junkyards and nurseries. Briquettes in
2 retention ponds and areas with standing water.
3 And then it also says that they recently sent the
4 Post and Courier information that Dorchester
5 County would begin aerial spraying for mosquitos
6 in late June or early July and that the County
7 Council had approved \$52,000 for aerial spraying
8 and \$14,549.20 for additional chemicals and
9 briquettes for mosquito control.

10 A. Uh-huh.

11 Q. Do you remember that? Does that seem
12 accurate to you?

13 A. I mean I don't remember the particular
14 vote, but I mean, you know, I don't have any
15 reason to believe that what's here is incorrect.

16 Q. All right, sir. So by June of 2016,
17 based on this e-mail and based on your
18 recollection, you believe that County Council had
19 approved an expenditure for aerial spraying.

20 A. Correct.

21 Q. And thereafter, Dorchester County went
22 through an RFP process to select an applicator;
23 is that right?

24 A. I don't know that timeline based upon
25 this e-mail.

Deposition of Jason Ward

1 spraying. Requested notification of any meetings
2 regarding spraying.

3 Did the County begin getting calls from
4 folks in the county about spraying and about --
5 whether or not they had bees, whether or not they
6 wanted to be on the do not spray list?

7 A. Did the County begin -- can you repeat
8 your question?

9 Q. Yeah, I'm sorry. Not a good question.

10 A. Yeah.

11 Q. At this time following this aerial
12 spraying incident --

13 A. Yes.

14 Q. -- did the County start receiving calls
15 about aerial spraying?

16 A. Yes.

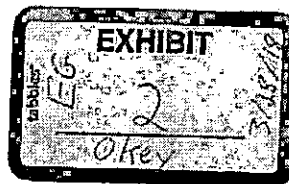
17 Q. And is that an example of that?

18 A. It looks like it but, yeah, it appears
19 to be an e-mail regarding that.

20 Q. And if you'll switch it over to Exhibit
21 26, the next page, an e-mail from Margaret Bailey
22 to department heads, Tuesday, August the 30th.

23 A. Uh-huh.

24 Q. The County administrator's office has
25 requested that a call center be activated to



Case File Number: 083016-47-02

CLEMSON

UNIVERSITY

NON-AGRICULTURAL FOLLOW-UP PESTICIDE USE INVESTIGATION

Dorchester County Public Works
2120 E. Main Street
Dorchester, SC 29437

Submitted by: Ryan A. Okey, Pesticide Program Chief
Department of Pesticide Regulation (DPR)

29 September 2016

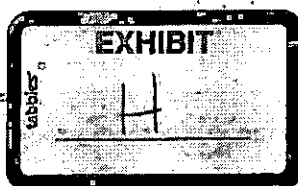
NATURE OF INCIDENT

The Department of Pesticide Regulation (DPR) was contacted by the Dorchester County Extension Office on 29 August 2016 regarding calls they received about a recent aerial application for mosquitoes and the impact it was having on beehives in the area. Additionally, Dr. Jennifer Tsuruda, Apiculture Specialist with Clemson University, forwarded DPR contact information for Ms. Nita Stanley, who alleged the aerial application had fatally affected her bees.

DEPARTMENTAL FINDINGS

DPR Investigator, Michael Russell, met with Nita Stanley, co-owner of Flowertown Bees, located at 503 Pinehurst Avenue, Summerville, SC at approximately 3:00 pm on 30 August 2016. Ms. Stanley stated that a firefighter at a neighboring fire station visited her property on August 29th to see how her bees were after the application. At that time, Ms. Stanley was unaware of the recent aerial application. When she inspected her bee yard, she observed dead bees around each hive.

After talking with Ms. Stanley, Investigator Russell walked down to the location of the hives. He noticed a large number of bees that were deceased on the ground below each hive. As he continued to walk around the hives, he observed bees with behaviors consistent with pesticide exposure, to include bees appearing lethargic on the outside of the hive and worker bees removing dead bees from the entrance of each hive. Investigator Russell also observed very active bees flying around the yard as well. A representative sample of dead and dying bees as well as soil were collected from around the hives by Investigator Russell in compliance with DPR's field sampling policy manual. An unofficial third-party sample of bees that were collected by Ms. Stanley were also obtained. All of the samples were transferred to DPR's Pesticide Residue Laboratory for a full analysis.



Allen 088

Gaskins NAFUI

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DPR met with Scott Gaskins, Ground Supervisor of Dorchester County Public Works, on September 1st and again on the 12th. Mr. Gaskins stated that in July 2016 Dorchester County engaged in talks to perform aerial applications for mosquito control. On July 21st, Dorchester agreed to a contract with Allen Aviation to perform aerial applications in Dorchester County. Mr. Gaskins received confirmed Zika travel related cases in Dorchester County from the South Carolina Department of Health and Environmental Control (DHEC) on consecutive weeks from August 9th through August 19th. Additionally, Mr. Gaskins received nuisance complaints of mosquitoes from the residents of Dorchester County as well as Summerville Elementary School. This information combined with the results of light traps and landing rate counts for mosquitoes, led Mr. Gaskins to create a zone to perform an aerial application for mosquito control. Mr. Gaskins stated that the zone was created to best encompass as many of the above factors as possible. The application zone was submitted to Allen Aviation with a tentative application date of August 27th. On August 26th, the Public Relations Department for Dorchester County published a public notice of the intended application. Mr. Gaskins stated that the tentative date of the application was pushed to August 28th to allow adequate notification. Mr. Gaskins provided DPR with pesticide application records for both the aerial application as well as ground applications performed within the identified zone.

DPR met with Mr. Al Allen, owner and Chief Pilot of Allen Aviation, on September 7th and again on the 15th. Mr. Allen stated that he performed an aerial application of Trumpet EC (EPA Reg. No. 5481-481, AMVAC) in Dorchester County on 28 August 2016. Mr. Allen was provided a map by Dorchester County designating the zone where the application was to be performed. The map included sensitive areas representing the approximate location of beehives, however no specific GPS coordinates were given. In the absence of GPS coordinates, Mr. Allen marks waypoints on the plane's guidance system for sensitive areas. Mr. Allen stated that during the application the spray is shut off approximately three seconds before reaching a sensitive area and turned back on approximately three seconds after passing the sensitive area. This represents an approximate linear distance of three quarters to one mile that the spray is turned off. In addition to pesticide application records, Mr. Allen also provided the most recent equipment calibration record. The records provided by Mr. Allen show that between the hours of 6:45 am and 7:50 am on August 28th he applied 58 gallons of Trumpet EC (EPA Reg. No. 5481-481, AMVAC) at a rate of 0.8 fluid ounces per acre.

DPR performed an in-depth and thorough review of the Trumpet EC (EPA Reg. No. 5481-481, AMVAC) label. The label of Trumpet EC directs that for aerial applications to control adult mosquitoes, the product is to be applied at a rate of 0.6 to 1.2 fluid ounces per acre. DPR also identified language in the *Environmental Hazards* section of this label that contributed to this investigation. The language DPR identified states "*To minimize hazard to bees, it is recommended that the product is not applied more than two hours after sunrise or two hours before sunset, limiting application to times when bees are least active. Do not apply this product or allow it to drift to blooming crops or weeds while bees are visiting the treatment area... except when applications are made to prevent or control a threat to public and/or animal health determined by a state agency on the basis of documented evidence of... the occurrence of mosquito-borne disease in animal or human*

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populations..." DPR observed this section of the label as guidance for optimal times to minimize hazard and an exemption to restrictions normally placed on applications performed during the absence of a threat to public health. The National Weather service data states that sunrise occurred at 6:53 am August 28th and that the air temperature did not exceed 73.4°F during the application.

The Regulatory Affairs team with AMVAC Chemical Corporation provided the following statement regarding this section of the label, "The application times given on the label to minimize hazard to bees are recommendations only. This application timing is not directly related to, nor does it affect the enforceability of, the label restriction requiring the user to not apply the product to or allow it to drift to blooming crops or weeds while bees are foraging. The only scenario in which the latter restriction is not in effect is if the application in question is being made to control or prevent a public and/or animal health threat."

DHEC provided confirmation to DPR that travel related cases of Zika were identified in Dorchester County and the State Public Health Entomologist notified Dorchester County on August 9th and August 15th, and provided maps to the county showing a mosquito target zone. The information provided to Dorchester County did not specify the method of application or the type of pesticide to be applied in these zones. DHEC provided the following statement to DPR "The South Carolina Department of Health and Environmental Control confirms that certain mosquito borne diseases are a public health risk in South Carolina."

The representative sample of dead and dying bees, the soil collected from around the hives, and the unofficial third-party sample of bees collected by Ms. Stanley were analyzed by the DPR Pesticide Residue Laboratory. None of the samples yielded pesticide residue, or specifically Naled, which is the active ingredient in Trumpet EC. These results likely occurred due to the time which elapsed between the application and when the samples were obtained, combined with Naled's ability to rapidly degrade under typical environmental conditions. The official samples were obtained by DPR approximately 53 hours after the application was conducted.

Section 27-1084 (A)(4) of the Rules and Regulation for the Enforcement of the South Carolina Pesticide Control Act states "For non-commercial applicators only, or for commercial applicators making applications for and under the direct supervision of a governmental entity, the disclosure requirements of the above Sections may be met by announcement or publication of the nature and timing of pesticide applications in the appropriate mass media outlets not less than 24 hours prior to the application." The Public Relations Department for Dorchester County published a public notice in The Summerville Journal Scene on August 26th that included the nature, timing, and location of the intended application.

CONCLUSION

This investigation found no violations occurred as result of the Trumpet EC application performed on August 28th. This conclusion was supported by the following statements: the nature

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Page Four

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and timing of the pesticide application was published in a mass media outlet greater than 24 hours prior to the application, the application was performed at or below the labeled rate, the application was not applied more than 2 hours after sunrise, and the application was performed to prevent a threat to public health after identifying the occurrence of a mosquito-borne disease in the human population. This conclusion does not, in anyway, eliminate the Trumpet EC application as a cause for the loss of bees following the application.

SUBMITTED BY

Ryan A. Okey

Ryan A. Okey

cc: Nita Stanley, Flowertown Bees
Al Allen, Allen Aviation
Kelly Wilmott, AMVAC Chemical Corporation
Susan Lake, SC DHEC
Dr. Jennifer Tsuruda, Clemson University
DPR Field Investigators
EPA Region IV
Jason Ward, Dorchester County
File

CF# 083016-47-02

RESTRICTED USE PESTICIDE**DUE TO EYE AND SKIN CORROSIVITY HAZARD**

For retail sale to and use only by Certified Applicators, or persons under their direct supervision, and only for those uses covered by the Certified Applicators Certification.

TRUMPET® EC**INSECTICIDE**

FOR USE ONLY BY FEDERAL, STATE, TRIBAL, OR LOCAL GOVERNMENT OFFICIALS RESPONSIBLE FOR PUBLIC HEALTH OR VECTOR CONTROL, OR BY PERSONS CERTIFIED IN THE APPROPRIATE CATEGORY OR OTHERWISE AUTHORIZED BY THE STATE OR TRIBAL LEAD PESTICIDE REGULATORY AGENCY TO PERFORM ADULT MOSQUITO CONTROL APPLICATIONS, OR BY PERSONS UNDER THEIR DIRECT SUPERVISION, NOT FOR USE IN AND AROUND THE HOME BY HOMEOWNERS OR PROFESSIONAL LANDSCAPE MAINTENANCE PERSONNEL.

ACTIVE INGREDIENT:

Naled (1,2-dibromo-2,2-dichloroethyl dimethyl phosphate) 78.0%

INERT INGREDIENTS:

..... 22.0%

TOTAL: 100.0%

Contains 10.8 pounds Naled per gallon.

Contains petroleum distillates

KEEP OUT OF REACH OF CHILDREN

DANGER / PELIGRO

Si usted no entiende la etiqueta, busque a alguien que se lo explique en detalle.
(If you do not understand the label, find someone to explain it to you in detail.)

FIRST AID	
Organophosphate	
If in eyes:	- Hold eye open and rinse slowly and gently from the side of the eye with water for 15-20 minutes. - Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. - Call a poison control center or doctor for treatment advice.
If on skin or clothing:	- Take off contaminated clothing. - Rinse skin immediately with plenty of water for 15-20 minutes. - Call a poison control center or doctor for treatment advice.
If swallowed:	- Immediately call a poison control center or doctor. - Do not induce vomiting unless told to by a poison control center or doctor. - Do not give any liquid to the person. - Do not give anything by mouth to an unconscious person.
If inhaled:	- Move person to fresh air. - If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably mouth-to-mouth, if a trained individual is contaminated with product. - Call a poison control center or doctor for further treatment advice.

EMERGENCY INFORMATION

Have the product container label with you when calling a poison control center or doctor, or going for treatment.
FOR THE FOLLOWING EMERGENCIES, PHONE 24 HOURS A DAY:

For Medical Emergencies phone: 1-888-681-4261

For Transportation Emergencies, including spill, leak or fire, phone: CHEMTREC..... 1-800-424-9300

For Product Use Information phone: AMVAC..... 1-888-462-6822

NOTE TO PHYSICIAN

Naled is an Organophosphate cholinesterase inhibitor. Contains petroleum distillates. Measurement of blood cholinesterase activity may be useful in monitoring exposure. If signs of cholinesterase inhibition appear, atropine sulfate is antidotal. 2-PAM (Protopam) is also antidotal and may be used in conjunction with atropine, but should not be used alone. Probable mucosal damage may contraindicate the use of gastric lavage. May pose an aspiration pneumonia hazard.

EPA Reg. No. 5481-481

EPA Est. No. 5491-CA-1, 5481-AL-1

Net Contents:

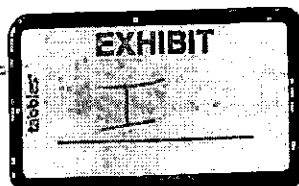
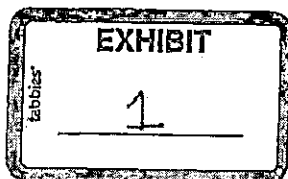
As Marked on Container



4100 E. Washington Blvd., Los Angeles, CA 90023 U.S.A.
1-888-462-6822

11640-7

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Allen 092 246

PRECAUTIONARY STATEMENTS

HAZARDS TO HUMANS AND DOMESTIC ANIMALS

DANGER. CORROSIVE. Causes irreversible eye and skin damage. Causes skin burns. May be fatal if swallowed. Harmful if inhaled or absorbed through the skin. Do not get in eyes, on skin, or on clothing. Do not breathe vapor or spray mist. Prolonged or frequently repeated skin contact may cause allergic reactions in some individuals.

PERSONAL PROTECTIVE EQUIPMENT (PPE)

Some materials that are chemical-resistant to this product are Barrier Laminate, Butyl Rubber, Nitrile Rubber, and Viton.

Mixers, loaders, and other handlers must wear:

- Protective eye wear (goggles, face shield, or safety glasses)
- Long-sleeved shirt and long pants
- Socks plus shoes
- Chemical-resistant gloves (barrier laminate, butyl rubber, nitrile rubber, or viton, selection category E) and apron when mixing or loading

See engineering controls for additional requirements.

In addition, mixers and loaders must:

- Have immediately available for use in an emergency, such as a broken package, spill, or equipment breakdown the PPE specified above for handlers engaged in those activities for which use of an engineering control is not possible

Mixers, loaders, applicators and other handlers engaged in those handler activities for which use of an engineering control is not possible, such as cleaning up a spill or leak and cleaning or repairing contaminated equipment, must wear:

- Protective eye wear (goggles, face shield, or safety glasses)
- Coveralls over long-sleeved shirt and long pants
- Chemical-resistant gloves
- Chemical-resistant footwear plus socks
- Chemical-resistant apron if exposed to the concentrate
- Chemical-resistant headgear for overhead exposure
- A respirator with an organic-vapor removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23G), or a canister approved for pesticides (MSHA/NIOSH approval number prefix TC-14G), or a NIOSH-approved respirator with an organic vapor (OV) cartridge or canister with an R, P, or HE prefilter. Please note that N designation for respirator filters does not apply when applications are made with oils.

USER SAFETY REQUIREMENTS

- Follow manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables exist, use detergent and hot water.
- Keep and wash PPE separately from other laundry. Discard clothing and other absorbent materials that have been drenched or heavily contaminated with this product's concentrate. Do not reuse them.

ENGINEERING CONTROLS

- Mixers and loaders supporting aerial or mechanical ground applications must use a closed system designed by the manufacturer to enclose the pesticide to prevent it from contacting handler or other people *AND* the system must be functioning properly and must be used and maintained in accordance with the manufacturer's written operating instructions.
- The system must be capable of removing the pesticide from the shipping container and transferring it into mixing tanks and/or application equipment.
- At any disconnect point, the system must be equipped with a dry disconnect or dry couple shut-off device that is warranted by the manufacturer to minimize drippage to not more than 2 mL per disconnect point.

Applicators must:

- Use an enclosed cab/cockpit. Wearing specified PPE (e.g., chemical resistant gloves) within an enclosed cab/cockpit is not required.
- Be provided and have immediately available for use in case of an emergency repair of the application equipment, the PPE specified in the PPE section of this labeling for handlers engaged in those activities for which use of an engineering control is not possible.
- Take off any PPE that was contaminated before entering or reentering the cab/cockpit.
- Store all such PPE in a closed, chemical-resistant container, such as a plastic bag, to prevent contamination of the inside of the cab/cockpit.

In addition, motorized ground-equipment applicators must:

- Use an enclosed cab with a nonporous barrier that totally surrounds the occupant and prevents contact with pesticides outside the cab. The cab must either have a properly functioning ventilation system that is used and maintained according to the manufacturer's written operating instructions and is declared in writing by the manufacturer or by a governmental agency to provide at least as much protection as the type of respirator listed in the PPE section above or the occupant must wear a respirator as specified in the PPE section above.

User Safety Recommendations

Users should:

- Wash hands before eating, drinking, chewing gum, using tobacco, or using the toilet.
- Remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
- Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

It is recommended that any worker displaying clinical signs of cholinesterase-inhibition, such as headaches, nausea, and dizziness have an immediate physical examination including appropriate cholinesterase measurements. If initial examination was not conducted by a board-certified person who is certified in occupational health, then a separate examination should be conducted within 24 hours by a person so certified.

ENVIRONMENTAL HAZARDS

This pesticide is toxic to fish, aquatic invertebrates, and wildlife. Runoff from treated areas or deposition of spray droplets into a body of water may be hazardous to fish and aquatic invertebrates. Before making the first application in a season, consult with the primary State agency responsible for regulating the pesticides to determine if permits are required or regulatory mandates exist. Do not apply over bodies of water (e.g., lakes, swamps, rivers, permanent streams, natural ponds, commercial fish ponds, marshes or estuaries), except when necessary to target areas where adult mosquitoes are present, and weather conditions will facilitate movement of applied material away from the water in order to minimize incidental deposition into the water body. Do not contaminate bodies of water when disposing of equipment washwaters or rinsate.

This product is highly toxic to bees exposed to direct treatment on blooming crops or weeds. To minimize hazard to bees, it is recommended that the product is not applied more than two hours after sunrise or two hours before sunset, limiting application to times when bees are least active. Do not apply this product or allow it to drift to blooming crops or weeds while bees are visiting the treatment area, except when applications are made to prevent or control a threat to public and/or animal health determined by a state, tribal or local health or vector control agency on the basis of documented evidence of disease causing agents in vector mosquitoes or the occurrence of mosquito-borne disease in animal or human populations, or if specifically approved by the state or the tribe during a natural disaster recovery effort.

DIRECTIONS FOR USE

Before making the first application of the season, consult with the primary State agency responsible for regulating the use of pesticides to determine if permits are required or regulatory mandates exist.

It is a violation of Federal Law to use this product in a manner inconsistent with its label.

READ ENTIRE LABEL. USE STRICTLY IN ACCORDANCE WITH PRECAUTIONARY STATEMENTS AND DIRECTIONS, AND WITH APPLICABLE STATE AND FEDERAL REGULATIONS.

TANK MIXES

NOTICE: Tank mixing or use of this product with any other product shall be the exclusive risk of user, applicator and/or application advisor. Read and follow the entire label of each product to be used in the tank mix with this product.

TRUMPET EC is a special formulation for use undiluted to be applied for the control of mosquitoes, flies and certain other nuisance insects.

APPLICATION RESTRICTIONS

For application by, or under the supervision of, personnel certified/trained in public health pest control or mosquito control. For each application, a record must be kept of:

- Date, time and areas where application occurred
- Type and size of spray nozzle used
- Dilution and application rate
- Speed of application vehicle (whether air or ground)
- A description of insecticide delivery system used for the specific application
- Climate factors (e.g. ambient temperature, wind speed/direction) as determined using reliable means
- Employees involved in mixing, loading and applying TRUMPET EC

These records must be kept by the responsible public agency or their designee for a minimum of two years using storage methods that will allow the records to be easily retrieved.

Any system used to apply this product must be capable of providing the correct droplet size as specified below. Likewise, all applications must use the correct droplet size as specified below. Careful attention to directions concerning nozzles, nozzle positioning, air speed and droplet size is essential to avoid unwanted effects. Under-atomization produces large droplets that will quickly fall to the ground, while over-atomization produces finer droplets which will evaporate, dissipate, or drift in an unanticipated manner. Correct droplet size is critical to ensure effective mosquito control.

The entire spray system must be inspected before each operation to correct any leaks or obstructions, to detect whether the nozzle, hoses, or other parts are worn and need replacement, to ensure that the flow is properly calibrated and to determine that adequate pressure is being maintained. Adequate cleaning and maintenance of unit must be performed to ensure that the entire system is operating properly. Spray system components essential for correct droplet size must be cleaned or replaced as needed to ensure correct droplet size.

Spray during periods when ground level wind speed is equal to or greater than 1 mph. Apply when thermal activity is low. Do not apply when ambient temperature is less than 50°F.

Do not apply when it is raining in the treatment area.

Treatment of a site must be based on pest surveillance results. Do not treat any site more than 1 time per day. Do not treat any site with more than 2 fl. oz. of undiluted TRUMPET EC per acre within a 7 day period and the amount of undiluted TRUMPET EC applied to any site should not exceed 127 fl. oz. (10.73 pounds per acre of rated a.i./acre) per year. More frequent treatments may be made to prevent or control a threat to public and/or animal health determined by a state, tribal or local health or vector control agency on the basis of documented evidence of disease causing agents in vector mosquitoes or the occurrence of mosquito-borne disease in animal or human populations, or if specifically approved by the state or tribe during a natural disaster recovery effort.

Ground-Based Application:

Spray equipment must be adjusted so that the volume median diameter (VMD) is less than 40 microns ($D_v 0.5 < 40 \mu m$) and that 90% of the spray is contained in droplets smaller than 75 microns ($D_v 0.9 < 75 \mu m$). Directions from the equipment manufacturer or vendor, pesticide registrant, or a test facility using a laser-based measurement instrument must be used to adjust equipment to produce acceptable droplet size spectra. Application equipment must be tested at least annually to confirm that pressure at the nozzle and nozzle flow rate(s) are properly calibrated.

Aerial Application:

Spray equipment must be adjusted so that the volume median diameter is less than 60 microns ($D_v 0.5 < 60 \mu m$) and that 90% of the spray is contained in droplets smaller than 115 microns ($D_v 0.9 < 115 \mu m$). The effects of flight speed and, for non-rotary nozzles, nozzle angle on the droplet size spectrum must be considered. Directions from the equipment manufacturer or vendor, pesticide registrant, or a test facility using a wind tunnel and laser-based measurement instrument must be used to adjust equipment to produce acceptable droplet size spectra. Application equipment must be tested at least annually to confirm that pressure at the nozzle and nozzle flow rate(s) are properly calibrated.

OPERATIONAL USE INSTRUCTIONS

- All equipment used in the mixing or application (by ground or air) of TRUMPET EC must be constructed of corrosion-resistant materials. Stainless steel, bronze, brass, fiberglass, polypropylene and rigid PVC have all proven to be adequately resistant to the effects of TRUMPET EC when properly maintained and inspected.
- Use of Teflon or Viton seals is recommended. Even when these materials are used to construct a spray system, a careful maintenance program involving flushing, cleansing and constant inspection must be followed. Avoid use of steel or galvanized steel.
- Strain TRUMPET EC as it is being loaded. Use a 100 mesh stainless steel or nylon screen. If product crystallization occurs, warm to 70°F until crystals disappear.
- Flushing the system following application is required. Use water to thoroughly flush the entire spray system following application of TRUMPET EC.
- TRUMPET EC must be applied using the correct droplet size. Over-atomization produces finer droplets which either evaporate or dissipate too quickly and become unavailable for mosquito contact. The spread factor for TRUMPET EC on stainless steel or Teflon-coated slides is 0.54 and 0.7, respectively. If applied incorrectly, TRUMPET EC will spot certain automobile paint finishes. Careful attention to recommendations concerning nozzles, nozzle positioning, air speed and droplet size is essential to avoid paint spotting.

ADULT MOSQUITO CONTROL

Adult Mosquito Control in Residential Areas, Municipalities, Tidal Marshes, Swamps, Woodlands, and Agricultural Areas (when applied in wide-area public pest control programs sponsored by governmental entities): It is not necessary to avoid farm buildings, dairy barns, pastures, feed or forage areas. Use in agricultural areas must be in a manner as to ensure that residues do not exceed the established federal tolerance for the active ingredient in or on raw agricultural commodities resulting from use for wide area pest control. Treat shrubbery and vegetation where mosquitoes may be present. Shrubby and vegetation around stagnant pools, marshy areas, swamps, residential areas, municipalities, woodlands, pastures, farm buildings and feedlots may be treated.

Ultra Low Volume (ULV) Aerial Application: Apply 0.6 to 1.2 fl. oz. of undiluted product per acre (equivalent to 0.05 to 0.1 lb. a.i./acre). Use the 1.2 fl. oz. rate where heavy vegetation exists; i.e., woodlands, etc.

Ultra Low Volume (ULV) Ground Application: Apply TRUMPET EC undiluted at a rate of 0.95 fl. oz. per minute at 5 mph; 1.5 fl. oz. per minute at 10 mph; and 2.2 fl. oz. per minute at 15 mph. Apply in a 20 ft. swath. These flow rates are equivalent to 0.02 lb. active per acre. In conditions of high test pressure and/or heavy foliage, a maximum of 0.1 lb. active per acre may be applied.

Vehicles used to apply TRUMPET EC must be kept closed during application (air-conditioned) and equipped with an automatic flow control device. Consult equipment manufacturers for specific recommendations.

HOUSEFLIES, GNATS, CERTAIN OTHER NUISANCE INSECTS AND SUPPRESSION OF BLACKFLIES

Small Flying Moths, Flies (including but not limited to Crane Flies, Adult Stable Flies, Dog Flies, Biting Flies, Filth Flies), Midges in Residential Areas, Municipalities, Tidal Marshes, Swamps, Woodlands, and Agricultural Areas (when applied in wide-area public pest control programs sponsored by governmental entities): It is not necessary to avoid farm buildings, dairy barns, and feed or forage areas.

Ultra Low Volume (ULV) Aerial Application: Apply 1.2 fl. oz. of undiluted TRUMPET EC per acre (equivalent to 0.1 lb. a.i./acre).

SUPPRESSION OF DEER FLIES AND OTHER TABANIDS

Deer Flies in Residential Areas, Municipalities, Tidal Marshes, Swamps, Woodlands, and Agricultural Areas (when applied in wide-area public pest control programs sponsored by governmental entities): It is not necessary to avoid farm buildings, dairy barns, and feed or forage areas.

Ultra Low Volume (ULV) Aerial Application: Apply 1.2 fl. oz. of undiluted TRUMPET EC per acre (equivalent to 0.1 lb. a.i./acre).

STORAGE AND DISPOSAL

PROHIBITIONS: Do not contaminate water, food or feed by storage, disposal or cleaning of equipment. Open dumping is prohibited.

STORAGE: Keep pesticides in original container. Do not put concentrate into, or dilute into food or drink containers. For help with any spill, leak, fire or exposure involving this material, call day or night 1-888-462-6822.

PESTICIDE DISPOSAL: This product is acutely hazardous. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal Law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, or the Hazardous Waste representative at the nearest EPA Regional Office for guidance.

Container Handling:

Returnable Container. Nonrefillable container. Do not reuse or refill this container. This container is a dedicated, single-product returnable container. Return empty container to seller at location designated by seller as a collection point. Do not break seals, add anything to container or open container after use. Do not reuse or contaminate empty container. Do not dispose of untampered empty container or use it for any other purposes. Any evidence of broken seals or other tampering or adding anything to the container renders it unfit for return. In such case, it is the obligation of the holder of the container to dispose of it properly or offer for recycling if available.

It is required that this product be used in a **CLOSED SYSTEM**. This container may require a tank adapter. For questions regarding tank adapters, call AMVAC Customer Service at 1-888-462-6822 (1-888-GO-AMVAC).

LIMITED WARRANTY AND DISCLAIMER

The manufacturer warrants (a) that this product conforms to the chemical description on the label; (b) that this product is reasonably fit for the purposes set forth in the directions for use, subject to the inherent risks referred to herein, when it is used in accordance with such directions; and (c) that the directions, warnings, and other statements on this label are based upon responsible experts' evaluations of reasonable tests of effectiveness, of toxicity to laboratory animals and to plants, and residues on food crops, and upon reports of field experience. Tests have not been made on all varieties of food crops and plants, or in all states or under all conditions.

TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, THERE ARE NO EXPRESS WARRANTIES OTHER THAN THOSE SET FORTH HEREIN. THE MANUFACTURER NEITHER MAKES NOR INTENDS, NOR DOES IT AUTHORIZE ANY AGENT OR REPRESENTATIVE, TO MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, AND IT EXPRESSLY EXCLUDES AND DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY OF QUALITY OR PERFORMANCE. THIS WARRANTY DOES NOT EXTEND TO, AND THE BUYER SHALL BE SOLELY RESPONSIBLE FOR, ANY AND ALL LOSS OR DAMAGE WHICH RESULTS FROM THE USE OF THIS PRODUCT IN ANY MANNER WHICH IS INCONSISTENT WITH THE LABEL DIRECTIONS, WARNINGS OR CAUTIONS.

TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, BUYER'S EXCLUSIVE REMEDY AND MANUFACTURER'S OR SELLER'S EXCLUSIVE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES, OR INJURIES RESULTING FROM THE USE OR HANDLING OF THIS PRODUCT, WHETHER OR NOT BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, SHALL BE LIMITED, AT THE MANUFACTURER'S OPTION, TO REPLACEMENT OF, OR THE REPAYMENT OF THE PURCHASE PRICE FOR, THE QUANTITY OF PRODUCT WITH RESPECT TO WHICH DAMAGES ARE CLAIMED. IN NO EVENT SHALL MANUFACTURER OR SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OR HANDLING OF THIS PRODUCT.

AMVAC offers this product, and Buyer accepts it, subject to the foregoing Limited Warranty which may be varied only by agreement in writing signed by an authorized representative of AMVAC.

Trumpet® is a registered trademark of Amvac Chemical Corporation.

Amvac Chemical Corporation
4100 E. Washington Blvd.
Los Angeles, CA 90023 U.S.A.
1-888-462-6822

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) AGREEMENT

This Contract made and entered into this 21st day of July, 2016, by and between Dorchester County, hereinafter referred to as the "Owner", and Allen Aviation, Inc. 150 Shanda Lane, Aynor, South Carolina, 29511 hereinafter referred to as the "Contractor".

WITNESSETH

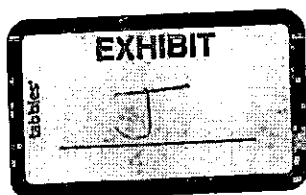
WHEREAS, the Owner has determined that it is necessary and in the best public interest to have the aerial mosquito control spraying in Dorchester County, South Carolina.

WHEREAS, Berkeley County has solicited certain bids for the aerial mosquito control spraying, and WHEREAS, the Contractor hereby agrees to perform the necessary work contracted for in the attached Berkeley County Contract Documents and in accordance with the terms and condition thereof.

NOW THEREFORE, FOR AND IN CONSIDERATION of mutual covenants herein contracted, the Owner and Contractor do hereby mutually agree as follows:

1. The Owner agrees to pay Contractor for the aerial mosquito control spraying at the rate of \$.71 per acre for adulticide and \$5.50 per acre for larvicide with a 24 hour notice to spray. Owner further agrees to pay Contractor the sum of \$200.00 per spray as a fuel surcharge. A minimum of 2,500 acres per aerial spray, according to the terms and specifications hereinafter provided in the Berkeley County Contract Documents.

Page 1 of 2



102,069 Yawn v Dorchester County
Allen Aviation Production0037

Allen 037

2. The Contract Period is from this date for a period of one (1) year with the option of renewal for two (2) additional one (1) year terms by mutual agreement of both parties.
3. The Contractor agrees to and accepts all terms and conditions contained in the Berkeley County Contract Documents. The Berkeley County Contract Documents (44103-01-13/14) consist of the following and are all attached and incorporated herein:
 - a. Instructions to Bidders
 - b. General Conditions
 - c. Specifications Sheets
 - d. Affidavits

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed this 21st day of July, 2016.

DORCHESTER COUNTY, SOUTH CAROLINA

By: [Signature]
Samuel G. Stephens, Jr.
Procurement Director

ATTEST: [Signature]

ALLEN AVIATION, INC.

SIGNATURE: [Signature]
BY: Allen Aviation Inc
TITLE: CEO/Owner

ATTEST: [Signature]

INVITATION FOR BIDS
44103-01-13/14
AERIAL MOSQUITO CONTROL SPRAYING

SECTION "F"
NONCOLLUSION AFFIDAVIT OF BIDDER

STATE OF South Carolina

COUNTY OF Dorchester

Shanda Allen being first duly sworn, deposes and says that:

- (1) He is Owner/Representative (owner, partner, officer, representative or agent) of Allen Aviation Inc, the bidder that has submitted the attached bid;
- (2) He is fully informed regarding the preparation and contents of the attached bid and of all pertinent circumstances regarding such bids;
- (3) Such bid is genuine and is not a collusive or sham bid;
- (4) Neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affidavit, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other bidder, firm or person to submit a collusive or sham bid in connection with the Contract for which the attached bid has been submitted or to refrain from quoting in connection with such Contract, or has in any manner directly or indirectly sought by agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached bid or of any other bidder, or to fix any overhead, profit or cost element of the bid price or the bid price of any other bidder or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Berkeley, South Carolina, or any person interested in the proposed contract; and
- (5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit.

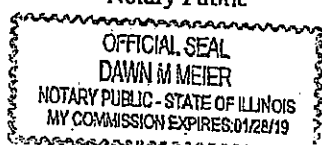
SIGNED: Shanda Allen
TITLE: CEO/Owner

Subscribed and sworn to before me this 21 day of July 2018

Dawn M. Meier

Notary Public

My Commission Expires 1-28-19



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INVITATION FOR BIDS
44103-01-13/14
AERIAL MOSQUITO CONTROL SPRAYING

SECTION "F"
DELINQUENT TAX AFFIDAVIT

Please note the Procurement Department shall verify that all taxes have been paid to the County by vendors with which they intend to do business. If you owe delinquent taxes your bid may be disqualified from consideration. If you wish to inquire as to your tax status, you may contact the Berkeley County Delinquent Tax Office at one of the following numbers:

Moncks Corner (843) 719-4029
Charleston (843) 723-3800 extension 4029
St. Stephen (843) 567-3136 extension 4029

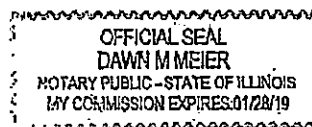
IS YOUR BUSINESS DELINQUENT IN PAYING ANY TAXES OWED TO
BERKELEY COUNTY? no (YES OR NO).

BIDDER SIGNATURE: Shanda Allen
BIDDER NAME: Shanda Allen
POSITION: CEO / Owner
FIRM NAME: Allen Aviation Inc.
ADDRESS: 150 Shanda Ln
Dynor, SC 29511
TELEPHONE: 843-358-3583

Subscribed and sworn to before me this 21 day of July, 2018

Dawn M. Meier
Notary Public

My Commission Expires 1-28-19



INVITATION FOR BIDS
44103-01-13/14
AERIAL MOSQUITO CONTROL SPRAYING

SECTION "F"
COUNTY OF BERKELEY
DRUG-FREE WORKPLACE CERTIFICATION
FORM

THIS SHEET IS TO BE COMPLETED AND RETURNED WITH BID

(CONTRACTOR/VENDOR OTHER THAN INDIVIDUALS)

This certification is required by the Drug-Free Workplace Act, Section 44-107-10 et seq. South Carolina Code of Laws (1976, as amended). The regulations require certification by Contractors/Vendors prior to award, that they will maintain a drug-free workplace as defined below. The certification set out below is a material requirement of fact upon which reliance will be placed when determining the award of a contract. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of contract, or suspension or debarment from the right to submit WRITTEN QUOTATION or proposals for Berkeley County projects.

For purposes of this Certification "Drug-Free Workplace" is defined as set forth in Section 44-107-20 (1), South Carolina Code of Law (1976, as amended). The aforesaid Section defines workplace to include any site where work is performed to carry out the Contractor's/Vendor's duties under the contract. Contractor's/Vendor's employees shall be prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of the Drug-Free Workplace Act.

By signing this document the Contractor/Vendor hereby certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's/Vendor's workplace and specifying the actions that will be taken against employees for violation of the prohibition;
2. Establishing a drug-free awareness program to inform employees about:
 - a) The damages of drug abuse in the workplace;
 - b) The Contractor's/Vendor's policy of maintaining a drug-free workplace;
 - c) Any available drug counseling, rehabilitation, and employee assistance programs;
 - d) The penalties that may be imposed upon employees for drug violations.

INVITATION FOR BIDS
44103-01-13/14
AERIAL MOSQUITO CONTROL SPRAYING

3. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph #1 above;
4. Notifying the employee in the statement required by paragraph #1 that, as a condition of employment under the contract, the employee will:
 - a) Abide by the terms of the statement; and
 - b) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after the conviction.
5. Notifying the using agency within ten (10) days after receiving notice under subparagraph #4-b, from an employee or otherwise receiving actual notice of the conviction.
6. Taking one of the following actions, within thirty (30) days of receiving notice under subparagraph #4-b with respect to any employee who is convicted:
 - a) Taking appropriate personnel action against the employee up to and including termination; or
 - b) Requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraph #1, 2, 3, 4, 5, and 6 above.

FIRM NAME: Allen Aviation Inc
 ADDRESS: 150 Shands Ln
Myrtle, SC 29511
 ATTEST: Nickelie Nicholas SIGNED: Shandee Allen
 DATE: 7-21-16 TITLE: CEO / Owner

RESTRICTED USE PESTICIDE**DUE TO EYE AND SKIN CORROSIVITY HAZARD**

For retail sale to and use only by Certified Applicators, or persons under their direct supervision, and only for those uses covered by the Certified Applicators Certification.

TRUMPET EC**INSECTICIDE**

FOR USE ONLY BY FEDERAL, STATE, TRIBAL, OR LOCAL GOVERNMENT OFFICIALS RESPONSIBLE FOR PUBLIC HEALTH OR VECTOR CONTROL, OR BY PERSONS CERTIFIED IN THE APPROPRIATE CATEGORY OR OTHERWISE AUTHORIZED BY THE STATE OR TRIBAL LEAD PESTICIDE REGULATORY AGENCY TO PERFORM ADULT MOSQUITO CONTROL APPLICATIONS, OR BY PERSONS UNDER THEIR DIRECT SUPERVISION, NOT FOR USE IN AND AROUND THE HOME BY HOMEOWNERS OR PROFESSIONAL APPLICATORS.

ACTIVE INGREDIENT:

Naled (1,2-dibromo-2,2-dichloroethyl dimethyl phosphate) 78.0%

INERT INGREDIENTS:

..... 22.0%

TOTAL:

..... 100.0%

Contains 10.8 pounds Naled per gallon.
Contains petroleum distillates

KEEP OUT OF REACH OF CHILDREN**DANGER / PELIGRO**

Si usted no entiende la etiqueta, busque a alguien para que se la explique en detalle.
(If you do not understand the label, find someone to explain it to you in detail.)

FIRST AID	
Organophosphate	
If in eyes:	- Hold eye open and rinse slowly and gently from the side of the eye with water for 15-20 minutes. - Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. - Call a poison control center or doctor for treatment advice.
If on skin or clothing:	- Take off contaminated clothing. - Rinse skin immediately with plenty of water for 15-20 minutes. - Call a poison control center or doctor for treatment advice.
If swallowed:	- Immediately call a poison control center or doctor. - Do not induce vomiting unless told to by a poison control center or doctor. - Do not give any liquid to the person. - Do not give anything by mouth to an unconscious person.
If inhaled:	- Move person to fresh air. - If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably mouth-to-mouth, if the individual is contaminated with product. - Call a poison control center or doctor for further treatment advice.

EMERGENCY INFORMATION

Have the product container and label with you when calling a poison control center or doctor, or going for treatment.
FOR THE FOLLOWING EMERGENCIES, PHONE 24 HOURS A DAY:

For Medical Emergencies phone: 1-888-681-4261
For Transportation Emergencies, including spill, leak or fire, phone: CHEMTREC 1-800-424-9300
For Product Use Information phone: AMVAC 1-888-462-6822

NOTE TO PHYSICIAN

Naled is an Organophosphoric cholinesterase inhibitor. Contains petroleum distillates. Measurement of blood cholinesterase activity may be useful in monitoring exposure. If signs of cholinesterase inhibition appear, atropine sulfate is antidotal. 2-PAM (Protopam) is also antidotal and may be used in conjunction with atropine, but should not be used alone. Probable mucosal damage may contraindicate the use of gastric lavage. May pose an aspiration pneumonia hazard.

EPA Reg. No. 5481-481

EPA Est. No. 5481-CA-1, 5481-AI-1

Net Contents:

As Marked on Container



4100 E. Washington Blvd., Los Angeles, CA 90023 U.S.A.
1-888-462-6822

PRECAUTIONARY STATEMENTS**HAZARDS TO HUMANS AND DOMESTIC ANIMALS**

DANGER, CORROSIVE. Causes irreversible eye and skin damage. Causes skin burns. May be fatal if swallowed. Harmful if inhaled or absorbed through the skin. Do not get in eyes, on skin, or on clothing. Do not breathe vapor or spray mist. Prolonged or frequently repeated skin contact may cause allergic reactions in some individuals.

PERSONAL PROTECTIVE EQUIPMENT (PPE)

Some materials that are chemical-resistant to this product are Barrier laminate, Butyl Rubber, Nitrile Rubber, and Viton.

Mixers, loaders, and other handlers must wear:

- Protective eye wear (goggles, face shield, or safety glasses)
- Long-sleeved shirt and long pants
- Socks plus shoes
- Chemical-resistant gloves (barrier laminate, butyl rubber, nitrile rubber, or viton, selection category E) and apron when mixing or loading

See engineering controls for additional requirements.

In addition, mixers and loaders must:

- Have immediately available for use in an emergency, such as a broken package, spill, or equipment breakdown the PPE specified above for handlers engaged in those activities for which use of an engineering control is not possible

Mixers, loaders, applicators and other handlers engaged in those handler activities for which use of an engineering control is not possible, such as cleaning up a spill or leak and cleaning or repairing contaminated equipment, must wear:

- Protective eye wear (goggles, face shield, or safety glasses)
- Coveralls over long-sleeved shirt and long pants
- Chemical-resistant gloves
- Chemical-resistant footwear plus socks
- Chemical-resistant apron if exposed to the concentrate
- Chemical-resistant headgear for overhead exposure
- A respirator with an organic-vapor removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23G), or a canister approved for pesticides (MSHA/NIOSH approval number prefix TC-14G), or a NIOSH-approved respirator with an organic vapor (OV) cartridge or canister with an R, P, or HE prefilter. Please note that N designation for respirator filters does not apply when applications made with oils.

USER SAFETY REQUIREMENTS

- Follow manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables exist, use detergent and hot water.
- Keep and wash PPE separately from other laundry. Discard clothing and other absorbent materials that have been drenched or heavily contaminated with this product's concentrate. Do not reuse them.

ENGINEERING CONTROLS

- Mixers and loaders supporting aerial or mechanical ground applications must use a closed system designed by the manufacturer to enclose the pesticide to prevent it from contacting handler or other people *AND* the system must be functioning properly and must be used and maintained in accordance with the manufacturer's written operating instructions.
- The system must be capable of removing the pesticide from the shipping container and transferring it into mixing tanks and/or application equipment.
- At any disconnect point, the system must be equipped with a dry disconnect or dry couple shut-off device that is warranted by the manufacturer to minimize drippage to not more than 2 mL per disconnect point.

Applicators must:

- Use an enclosed cab/cockpit. Wearing specified PPE (e.g.; chemical resistant gloves) within an enclosed cab/cockpit is not required.
- Be provided and have immediately available for use in case of an emergency repair of the application equipment, the PPE specified in the PPE section of this labeling for handlers engaged in those activities for which use of an engineering control is not possible.
- Take off any PPE that was contaminated before entering or reentering the cab/cockpit.
- Store all such PPE in a closed, chemical-resistant container, such as a plastic bag, to prevent contamination of the inside of the cab/cockpit.

In addition, motorized ground-equipment applicators must:

- Use an enclosed cab with a nonporous barrier that totally surrounds the occupant and prevents contact with pesticides outside the cab. The cab must either have a properly functioning ventilation system that is used and maintained according to the manufacturer's written operating instructions and is declared in writing by the manufacturer or by a governmental agency to provide at least as much protection as the type of respirator listed in the PPE section above or the occupant must wear a respirator as specified in the PPE section above.

User Safety Recommendations**Users should:**

- Wash hands before eating, drinking, chewing gum, using tobacco, or using the toilet.
- Remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
- Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

It is recommended that any worker displaying clinical signs of cholinesterase-inhibition, such as headaches, nausea, and dizziness, have an immediate physical examination including appropriate cholinesterase measurements. If initial examination was not conducted by a board-certified person who is certified in occupational health, then a separate examination should be conducted within 24 hours by a person so certified.

ENVIRONMENTAL HAZARDS

This pesticide is toxic to fish, aquatic invertebrates, and wildlife. Runoff from treated areas or deposition of spray droplets into a body of water may be hazardous to fish and aquatic invertebrates. Before making the first application in a season, consult with the primary State agency responsible for regulating the pesticides to determine if permits are required or regulatory mandates exist. Do not apply over bodies of water (e.g., lakes, swamps, rivers, permanent streams, natural ponds, commercial fish ponds, marshes or estuaries), except when necessary to target areas where adult mosquitoes are present, and weather conditions will facilitate movement of applied material away from the water in order to minimize incidental deposition into the water body. Do not contaminate bodies of water when disposing of equipment washwaters or rinsate.

This product is highly toxic to bees exposed to direct treatment on blooming crops or weeds. To minimize hazard to bees, it is recommended that the product is not applied more than two hours after sunrise or two hours before sunset, limiting application to times when bees are least active. Do not apply this product or allow it to drift to blooming crops or weeds while bees are visiting the treatment area, except when applications are made to prevent or control a threat to public and/or animal health determined by a state, tribal or local health or vector control agency on the basis of documented evidence of disease causing agents in vector mosquitoes or the occurrence of mosquito-borne disease in animal or human populations, or if specifically approved by the state or the tribe during a natural disaster recovery effort.

DIRECTIONS FOR USE

Before making the first application of the season, consult with the primary State agency responsible for regulating the use of pesticides to determine if permits are required or regulatory mandates exist.

It is a violation of Federal Law to use this product in a manner inconsistent with its label.

READ ENTIRE LABEL. USE STRICTLY IN ACCORDANCE WITH PRECAUTIONARY STATEMENTS AND DIRECTIONS, AND WITH APPLICABLE STATE AND FEDERAL REGULATIONS.

TANK MIXES

NOTICE: Tank mixing or use of this product with any other product shall be the exclusive risk of user, applicator and/or application advisor. Read and follow the entire label of each product to be used in the tank mix with this product.

TRUMPET EC is a special formulation for use undiluted to be applied for the control of mosquitoes, flies and certain other nuisance insects.

APPLICATION RESTRICTIONS

For application by, or under the supervision of, personnel certified/trained in public health pest control or mosquito control. For each application, a record must be kept of:

- Date, time and areas where application occurred
- Type and size of spray nozzle used
- Dilution and application rate
- Speed of application vehicle (whether air or ground)
- A description of insecticide delivery system used for the specific application
- Climate factors (e.g. ambient temperature, wind speed/direction) as determined using reliable means
- Employees involved in mixing, loading and applying TRUMPET EC

These records must be kept by the responsible public agency or their designee for a minimum of two years using storage methods that will allow the records to be easily retrieved.

Any system used to apply this product must be capable of providing the correct droplet size as specified below. Likewise, all applications must use the correct droplet size as specified below. Careful attention to directions concerning nozzles, nozzle positioning, air speed and droplet size is essential to avoid unwanted effects. Under-atomization produces large droplets that will quickly fall to the ground, while over-atomization produces finer droplets which will evaporate, dissipate, or drift in an unanticipated manner. Correct droplet size is critical to ensure effective mosquito control.

The entire spray system must be inspected before each operation to correct any leaks or obstructions, to detect whether the nozzle, hoses, or other parts are worn and need replacement, to ensure that the flow is properly calibrated and to determine that adequate pressure is being maintained. Adequate cleaning and maintenance of unit must be performed to ensure that the entire system is operating properly. Spray system components essential for correct droplet size must be cleaned or replaced as needed to ensure correct droplet size.

Spray during periods when ground level wind speed is equal to or greater than 1 mph. Apply when thermal activity is low. Do not apply when ambient temperature is less than 50°F.

Do not apply when it is raining in the treatment area.

Treatment of a site must be based on pest surveillance results. Do not treat any site more than 1 time per day. Do not treat any site with more than 2 fl. oz. of undiluted TRUMPET EC per acre within a 7 day period and the amount of undiluted TRUMPET EC applied to any site should not exceed 127 fl. oz. (10.73 pounds per acre of ailed a.i./acre) per year. More frequent treatments may be made to prevent or control a threat to public and/or animal health determined by a state, tribal or local health or vector control agency on the basis of documented evidence of disease causing agents in vector mosquitoes or the occurrence of mosquito-borne disease in animal or human populations, or if specifically approved by the state or tribe during a natural disaster recovery effort.

Ground-Based Application:

Spray equipment must be adjusted so that the volume median diameter (VMD) is less than 40 microns ($Dv\ 0.5 < 40\ \mu m$) and that 90% of the spray is contained in droplets smaller than 75 microns ($Dv\ 0.9 < 75\ \mu m$). Directions from the equipment manufacturer or vendor, pesticide registrant, or a test facility using a laser-based measurement instrument must be used to adjust equipment to produce acceptable droplet size spectra. Application equipment must be tested at least annually to confirm that pressure at the nozzle and nozzle flow rate(s) are properly calibrated.

Aerial Application:

Spray equipment must be adjusted so that the volume median diameter produced is less than 60 microns ($Dv\ 0.5 < 60\ \mu m$) and that 90% of the spray is contained in droplets smaller than 115 microns ($Dv\ 0.9 < 115\ \mu m$). The effects of flight speed and, for non-rotary nozzles, nozzle angle on the droplet size spectrum must be considered. Directions from the equipment manufacturer or vendor, pesticide registrant, or a test facility using a wind tunnel and laser-based measurement instrument must be used to adjust equipment to produce acceptable droplet size spectra. Application equipment must be tested at least annually to confirm that pressure at the nozzle and nozzle flow rate(s) are properly calibrated.

OPERATIONAL USE INSTRUCTIONS

- All equipment used in the mixing or application (by ground or air) of TRUMPET EC must be constructed of corrosion-resistant materials. Stainless steel, bronze, brass, fiberglass, polypropylene and rigid PVC have all proven to be adequately resistant to the effects of TRUMPET EC when properly maintained and inspected.
- Use of Teflon or Viton seals is recommended. Even when these materials are used to construct a spray system, a careful maintenance program involving flushing, cleansing and constant inspection must be followed. Avoid use of steel or galvanized steel.
- Strain TRUMPET EC as it is being loaded. Use a 100 mesh stainless steel or nylon screen. If product crystallization occurs, warm to 70°F until crystals disappear.
- Flushing the system following application is required. Use water to thoroughly flush the entire spray system following application of TRUMPET EC.
- TRUMPET EC must be applied using the correct droplet size. Over-atomization produces finer droplets which either evaporate or dissipate too quickly and become unavailable for mosquito contact. The spread factor for TRUMPET EC on silicone or Teflon-coated slides is 0.54 and 0.7, respectively. If applied incorrectly, TRUMPET EC will spot certain automobile paint finishes. Careful attention to recommendations concerning nozzles, nozzle positioning, air speed and droplet size is essential to avoid paint spotting.

ADULT MOSQUITO CONTROL

Adult Mosquito Control in Residential Areas, Municipalities, Tidal Marshes, Swamps, Woodlands, and Agricultural Areas (when applied in wide-area public pest control programs sponsored by governmental entities): It is not necessary to avoid farm buildings, dairy barns, pastures, feed or forage areas. Use in agricultural areas must be in a manner as to ensure that residues do not exceed the established federal tolerance for the active ingredient in or on raw agricultural commodities resulting from use for wide area pest control. Treat shrubbery and vegetation where mosquitoes may be present. Shrubby and vegetation around stagnant pools, marshy areas, swamps, residential areas, municipalities, woodlands, pastures, farm buildings and feedlots may be treated.

Ultra Low Volume (ULV) Aerial Application: Apply 0.6 to 1.2 fl. oz. of undiluted product per acre (equivalent to 0.05 to 0.1 lb. a.i./acre). Use the 1.2 fl. oz. rate where heavy vegetation exists; i.e., woodlands, etc.

Ultra Low Volume (ULV) Ground Application: Apply TRUMPET EC undiluted at a rate of 0.45 fl. oz. per minute at 5 mph; 1.5 fl. oz. per minute at 10 mph; and 2.2 fl. oz. per minute at 15 mph. Apply in a 30 ft. swath. These flow rates are equivalent to 0.02 lb. active per acre. In conditions of high pest pressure and/or heavy foliage, a maximum of 0.1 lb. active per acre may be applied.

Vehicles used to apply TRUMPET EC must be kept closed during application, (air-conditioned) and equipped with an automatic flow control device. Consult equipment manufacturers for specific recommendations.

HOUSEFLIES, GNATS, CERTAIN OTHER NUISANCE INSECTS AND SUPPRESSION OF BLACKFLIES

Small Flying Moths, Flies (including but not limited to Crane Flies, Adult Stable Flies, Dog Flies, Biting Flies, Filth Flies), **Midges in Residential Areas, Municipalities, Tidal Marshes, Swamps, Woodlands, and Agricultural Areas** (when applied in wide-area public pest control programs sponsored by governmental entities): It is not necessary to avoid farm buildings, dairy barns, and feed or forage areas.

Ultra Low Volume (ULV) Aerial Application: Apply 0.2 fl. oz. of undiluted TRUMPET EC per acre (equivalent to 0.1 lb. a.i./acre).

SUPPRESSION OF DEER FLIES AND OTHER TABANIDS

Deer Flies in Residential Areas, Municipalities, Tidal Marshes, Swamps, Woodlands, and Agricultural Areas (when applied in wide-area public pest control programs sponsored by governmental entities): It is not necessary to avoid farm buildings, dairy barns, and feed or forage areas.

Ultra Low Volume (ULV) Aerial Application: Apply 1.2 fl. oz. of undiluted TRUMPET EC per acre (equivalent to 0.1 lb. a.i./acre).

STORAGE AND DISPOSAL

PROHIBITIONS: Do not contaminate water, food or feed by storage, disposal or cleaning of equipment. Open dumping is prohibited.

STORAGE: Keep pesticides in original container. Do not put concentrate into, or dilute into food or drink containers. For help with any spill, leak, fire or exposure involving this material, call day or night 1-888-462-6822.

PESTICIDE DISPOSAL: This product is acutely hazardous. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal Law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, or the Hazardous Waste representative at the nearest EPA Regional Office for guidance.

Container Handling:

Returnable Container. Nonrefillable container. Do not reuse or refill this container. This container is a dedicated, single-product returnable container. Return empty container to seller at location designated by seller as a collection point. Do not break seals, add anything to container or open container after use. Do not reuse or contaminate empty container. Do not dispose of untampered empty container or use it for any other purposes. Any evidence of broken seals or other tampering or adding anything to the container renders it unfit for return. In such case, it is the obligation of the holder of the container to dispose of it properly or offer for recycling if available.

It is required that this product be used in a **CLOSED SYSTEM**. This container may require a tank adapter. For questions regarding tank adapters, call AMVAC Customer Service at 1-888-462-6822 (1-888-GO-AMVAC).

LIMITED WARRANTY AND DISCLAIMER

The manufacturer warrants (a) that this product conforms to the chemical description on the label; (b) that this product is reasonably fit for the purposes set forth in the directions for use, subject to the inherent risks referred to herein, when it is used in accordance with such directions; and (c) that the directions, warnings, and other statements on this label are based upon responsible experts' evaluations of reasonable tests of effectiveness, of toxicity to laboratory animals, and to plants and residues on food crops, and upon reports of field experience. Tests have not been made on all varieties of food crops and plants, or in all states or under all conditions.

TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, THERE ARE NO EXPRESS WARRANTIES OTHER THAN THOSE SET FORTH HEREIN. THE MANUFACTURER NEITHER MAKES NOR INTENDS, NOR DOES IT AUTHORIZE ANY AGENT OR REPRESENTATIVE, TO MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, AND IT EXPRESSLY EXCLUDES AND DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY OF QUALITY OR PERFORMANCE. THIS WARRANTY DOES NOT EXTEND TO, AND THE BUYER SHALL BE SOLELY RESPONSIBLE FOR, ANY AND ALL LOSS OR DAMAGE WHICH RESULTS FROM THE USE OF THIS PRODUCT IN ANY MANNER WHICH IS INCONSISTENT WITH THE LABEL DIRECTIONS, WARNINGS OR CAUTIONS.

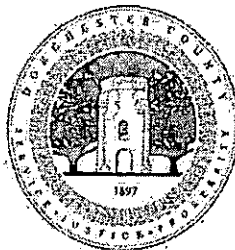
TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, BUYER'S EXCLUSIVE REMEDY AND MANUFACTURER'S OR SELLER'S EXCLUSIVE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES, OR INJURIES RESULTING FROM THE USE OR HANDLING OF THIS PRODUCT, WHETHER OR NOT BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, SHALL BE LIMITED, AT THE MANUFACTURER'S OPTION, TO REPLACEMENT OF, OR THE REPAYMENT OF THE PURCHASE PRICE FOR, THE QUANTITY OF PRODUCT WITH RESPECT TO WHICH DAMAGES ARE CLAIMED. IN NO EVENT SHALL MANUFACTURER OR SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OR HANDLING OF THIS PRODUCT.

AMVAC offers this product, and Buyer accepts it, subject to the foregoing Limited Warranty which may be varied only by agreement in writing signed by an authorized representative of AMVAC.

Tramper® is a registered trademark of Amvac Chemical Corporation.

Amvac Chemical Corporation
4100 E. Washington Blvd.
Los Angeles, CA 90023 U.S.A.
1-888-462-6822

St. George (843) 563-0100
St. George Fax: 563-0137
Summerville (843) 832-0100
Summerville Fax: 832-0137



Jason L. Ward
County Administrator

OFFICE OF THE DORCHESTER COUNTY ADMINISTRATOR
201 JOHNSTON STREET
ST. GEORGE, SOUTH CAROLINA 29477

FOR IMMEDIATE RELEASE

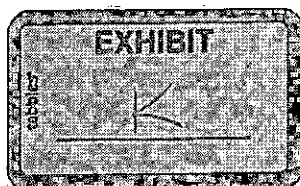
Contact: Scott Gaskins
Dorchester County Mosquito Abatement
Phone: (843) 832-0070
Cell: (843) 200-6637
sgaskins@dorchestercounty.net

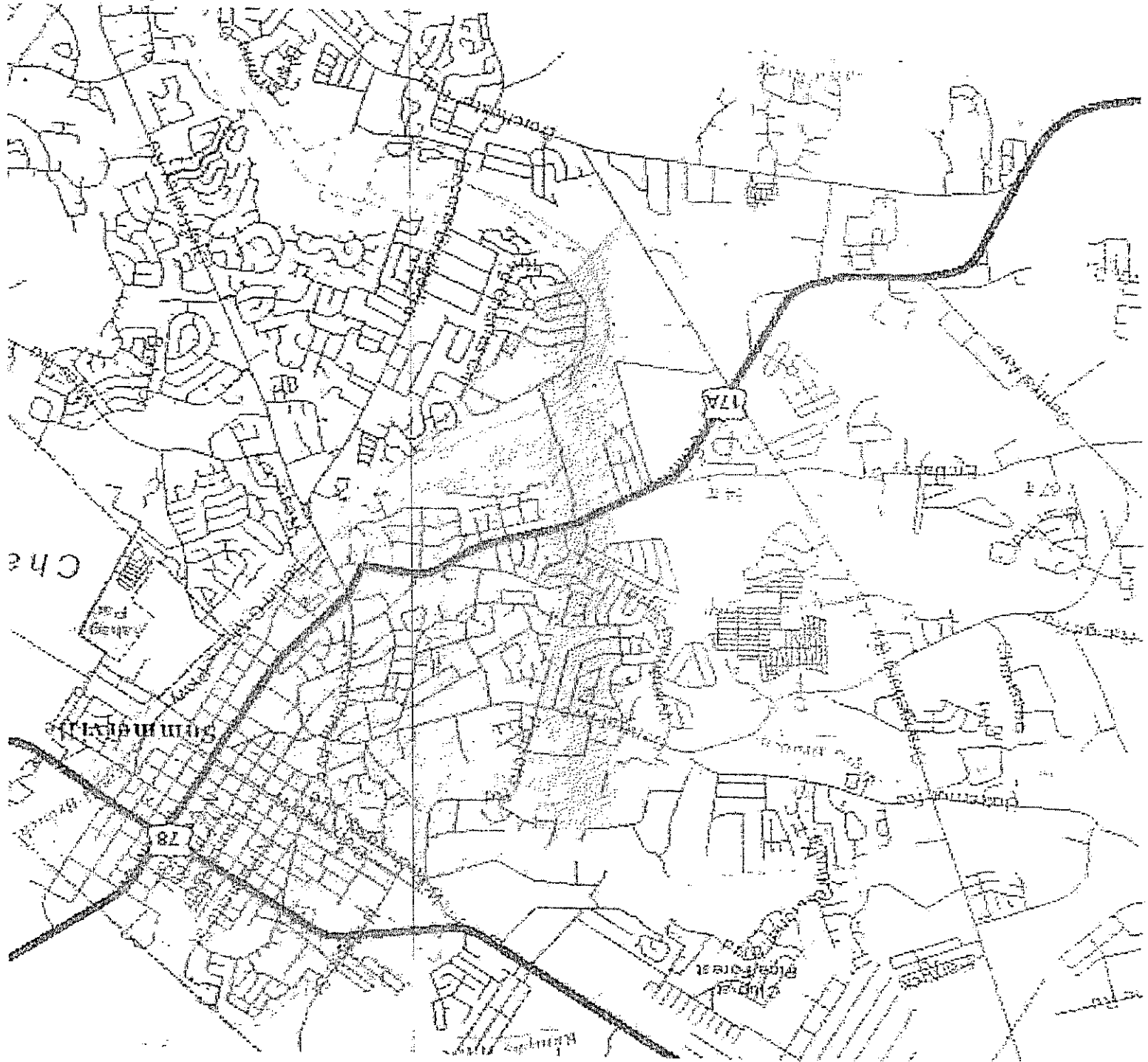
Dorchester County Begins Aerial Spraying for Mosquitoes

St George, S.C. (Friday, August 26, 2016, 9:00 a.m.) — Dorchester County Mosquito Abatement will be spraying, by aircraft, in the southern portion of Dorchester County over Summerville on Sunday, August 28, 2016 between the hours of 6:30 a.m. and 8:30 a.m. The area to be treated is bordered to the northeast by the Berkeley-Dorchester County line from North Maple Street to the intersection of Sawmill Branch Creek. The southwest boundary is along a line following the Sawmill Branch Creek to Old Trolley Road then continuing that bearing to the southern edge of Walnut Farms on the Ashley River crossing over most of Newington Plantation. All communities and subdivisions within these boundaries will be sprayed.

If unfavorable weather conditions exist, the application will be made on the next suitable day. For more information, please contact Dorchester County Mosquito Abatement at (843) 832-0070 or (843) 563-0070. Office hours are Monday – Friday 7:30 a.m. – 4:00 p.m.

###





From: David Garber <DGarber@dorchestercounty.net>
Sent: Monday, August 22, 2016 11:35 AM
To: 'flyallen@scoast.net'
Cc: Scott Gaskins
Subject: Dorchester Area 3 - Summerville first spray
Attachments: Bee_Keepers_full.zip; DoCo_03.zip; SPray_DoCo_03.pdf

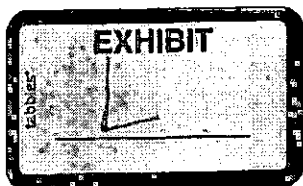
Good morning all

Please not the changes - Per Scotts request.

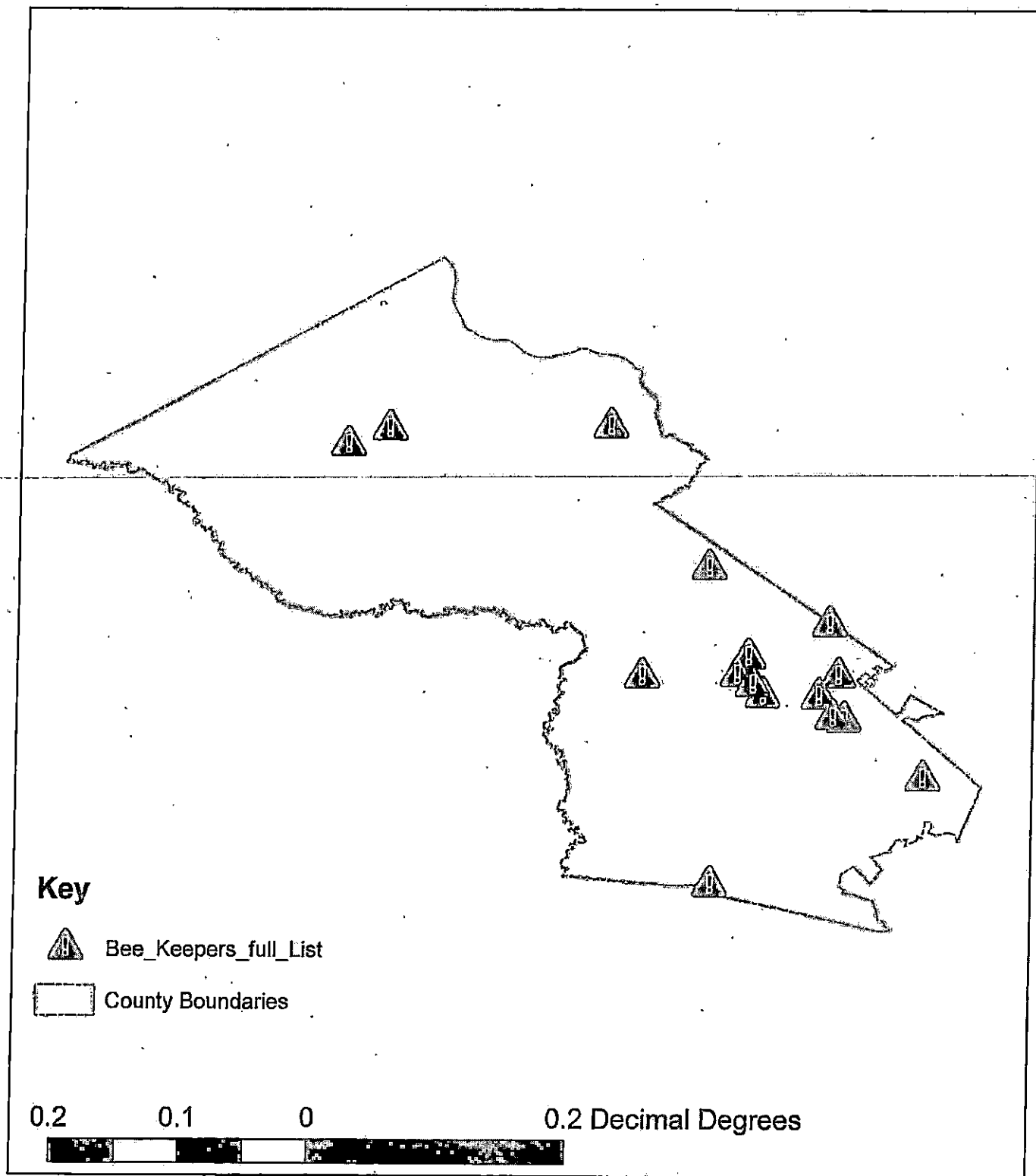
Attached is a map and two shape files - the area over Summerville and a new point file of all known Bee keepers.

Call if you have any questions

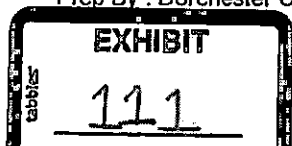
David Garber
GIS Coordinator
Dorchester County SC.
Voice (843) 832-0208
Fax (843) 832-0290
Online Services www.DorchesterCounty.net



Data OUT from Dorchester County 8/22/2016

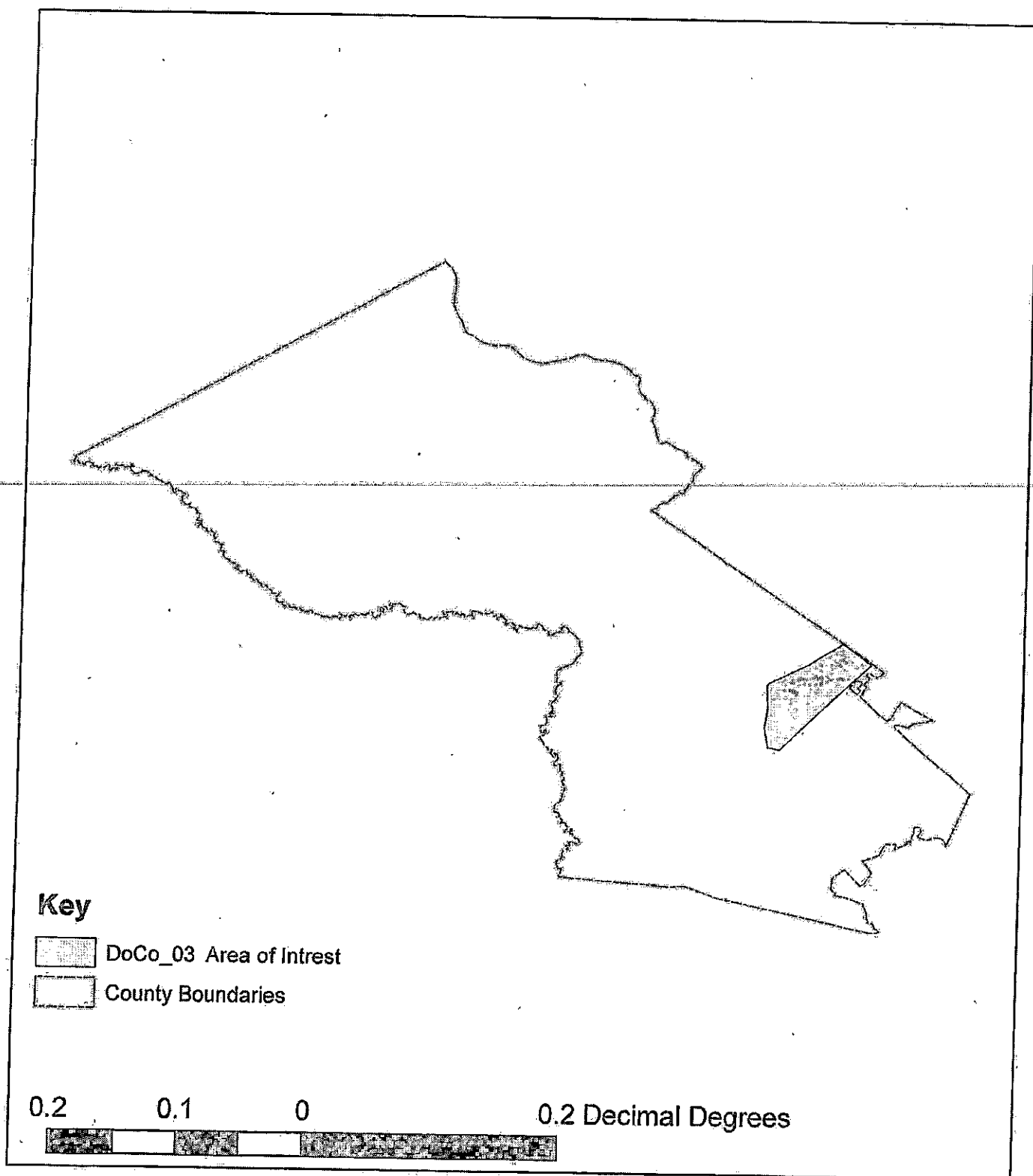


Disclaimer: Dorchester County - General Use Graphic
This data and all graphic representation of the data are obtained from various sources.
DATA GENERATED JULY 2016 AS PART OF VECTOR CONTROL PROGRAM
Prep By: Dorchester County GIS Dept. Data as of 3/26/2019

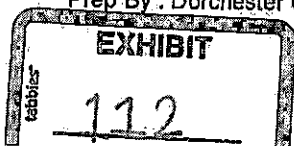


102.089 Yawn v. Dorchester
Mosquito Abate Maps 0006

Data OUT from Dorchester County 8/22/2016



102.089 Yawn v. Dorchester
Mosquito Abate Maps 0005



Scott:

Please prepare an explanation of how you identified bee keepers in Dorchester County and provide it to Jackie and me in the morning.

We will need to determine if the spraying killed the Yawn's bees and the Macke's bees and issue a release offering help and an apology.

Subject: Mitch Yawn

I received a call from Mitch Yawn this morning saying that he lost 50 bee hives after yesterday's aerial spraying. After receiving his voice mail and checking my logs, I realized that I pulled the incorrect contact info when I was calling bee owners in the spray zone. There were three owners in zone 41, but only two of those owners were in the spray zone for Sunday's spraying. When calling these two owners prior to spraying, I accidentally pulled the contact info for the name above Mr. Yawn's in the log book.

Once I realized my error this morning after his voicemail, I contacted Mr. Yawn immediately and explained the mistake that I made. I apologized for the error and told him that I would check with my supervisor to see how the county could help.

As soon as I hung up with Mr. Yawn, I informed Jackie about the situation.

Scott

Handling Calls Assessing Damages, and Making Restitution

Hotline and Clemson Extension

Please contact Margaret Bailey to see if she can get volunteers for the citizens call center to set up a hotline to field calls about mosquitoes. Please contact Clemson Extension first thing tomorrow and see if they will go out and bring us a report of damages from bee keepers affected to get them the help they need.

Scott, Please call the lady who apparently lost all her bees is "Nita Mae" 859-494-2255. She lives on the back side of Tea Farm. That's all I have on her, J. Ward

Scott,

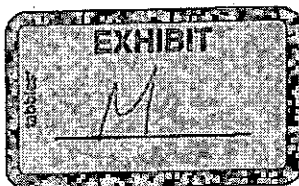
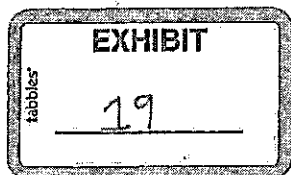
Call Yawn and see how you can help. Reach out to Andrew Macke and see if he can help you determine the name and addresses of bee keepers in the zone that was sprayed to see if their hives were affected.

J. Ward

Mr. Macke's telephone number is (843) 696-1948.

Andrew J Macke

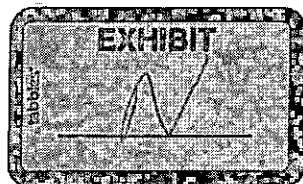
23 hrs - Summerville, SC -



.Begin forwarded message:

From: Scott Gaskins
Date: August 29, 2016 at 3:05:54 PM EDT
To: Jason Ward
Cc: Jakie Walters
Subject: Mitch Yawn

I received a call from Mitch Yawn this morning saying that he lost 50 bee hives after yesterday's aerial spraying. After receiving his voice mail and checking my logs, I realized that I pulled the incorrect contact info when I was calling bee owners in the spray zone. There were three owners in zone 41, but only two of those owners were in the spray zone for Sunday's spraying. When calling these two owners prior to spraying, I accidentally pulled the contact info for the name above Mr. Yawn's in the log book. Once I realized my error this morning after his voicemail, I contacted Mr. Yawn immediately and explained the mistake that I made. I apologized for the error and told him that I would check with my supervisor to see how the county could help. As soon as I hung up with Mr. Yawn, I informed Jakie about the situation.
Scott



Sent: Monday, August 29, 2016 2:24 PM
To: Tracey L. Langley; Jason Ward
Subject: Re: Formal Response to Mosquito Spraying
https://www.facebook.com/permalink.php?story_fbid=360428267678442&id=100011338145585

David Chinnis
843-801-2326
Sent from my iPhone

On Aug 29, 2016, at 10:17 AM, Tracey L. Langley <TLangley@dorchestercounty.net> wrote:

Dear Council:

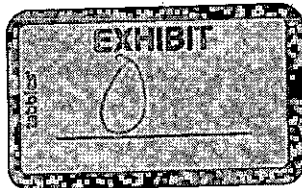
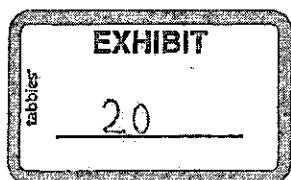
Please see the attached information and formal response to questions and concerns received from Dorchester County residents and the media regarding aerial spraying. This information is on the homepage of the website www.dorchestercounty.net/mosquitocontrol and will be posted on both the EMD and Parks & Recreation Facebook pages. This information has also been pushed out to all media outlets.

Should you have any questions or require additional information, please do not hesitate to contact our office.

With regards,

Tracey L. Langley

Administrative Assistant
Dorchester County Administrator's Office
201 Johnston St., St. George, SC 29477
Phone: (843) 563-0103 or (843) 832-0103
tlangley@dorchestercounty.net
www.dorchestercounty.net

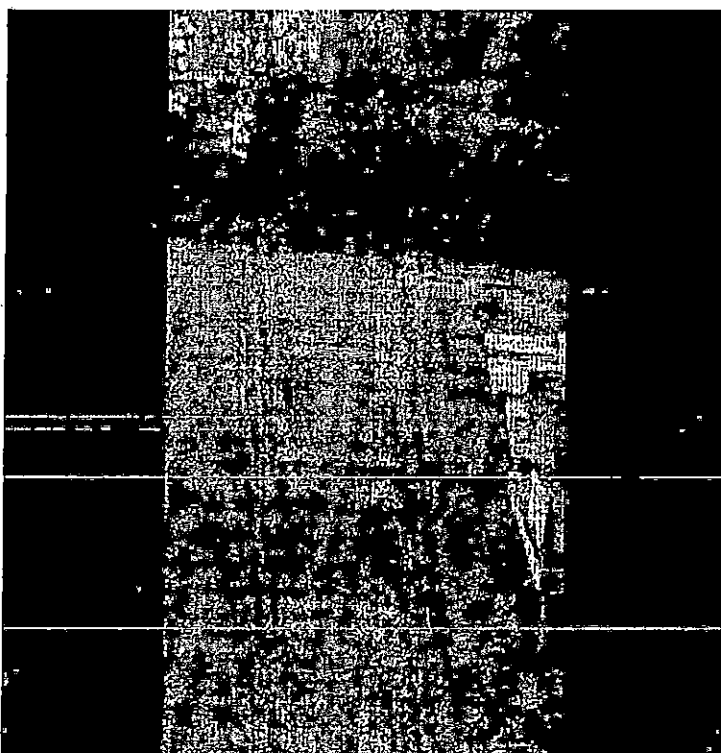




Andrew J Macke

Yesterday at 9:33am · Summerville · 69

Words cannot describe the Devastating loss literally thousands upon thousands of bees from these couple of dozen beehives killed by aerial spraying not only is this devastating to the bees but also this person's livelihood tens of thousands of dollars loss have we lost our mind spraying poison from the sky



10K Views

Like Comment Share

Rachel Elizabeth Harris, Jenny Smalls and 71 others

353 shares

24 Comments



Andrew J Macke This is here in Summerville I failed to mention that

Like Reply · 3 · Yesterday at 9:45am



Andy N David Stegall So sad! Is this your hive?

Like Reply · Yesterday at 9:50am



Andrew J Macke No these bees are owned by Flowertown bees

Like Reply · Yesterday at 9:52am



Andy N David Stegall That just stinks.

Like Reply · Yesterday at 9:54am

 Alexis Macke I can't believe someone approved for this to happen...
Like · Reply · 5 · 23 hrs

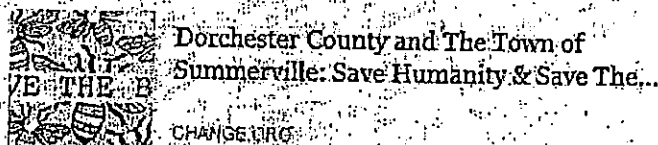
 Kristina Solara Lützenberger This is so awful!!!!
Like · Reply · 23 hrs

 Jennifer Henry Rabicki That is sad!
Like · Reply · 22 hrs

 Andrew Tucker So when making these decisions you would think they would ask Dorchester county/ Summerville residents if they want them to spray pesticides. Sucks that all these bees are just "collateral" damage.
Like · Reply · 2 · 22 hrs

 Kristina Solara Lützenberger we have a petition, we need all the signatures we can get.
Like · Reply · 22 hrs

 Kristina Solara Lützenberger <https://www.change.org/p/dorchester-county-and-the-town-of-summerville-save-humanity-and-save-the-bees>



Like · Reply · 6 · 22 hrs

 Bud Westmoreland Insurance?
Like · Reply · 22 hrs

 Jennifer Graham When are we going to stop killing our planet? I just do not understand this at all. I am so sorry for your loss.
Like · Reply · 6 · 22 hrs

 Cynthia Cole Evans-Marlin Gitano Michael Di Pace read this
Like · Reply · 21 hrs

 Jody L. Green They have sprayed for years, perhaps the bees need to be in the country..I couldn't even spend time in my backyard this weekend due to all the bees swarming. My dog has gotten bite several times. I am sorry for your loss but I don't think this is a good place for them, we are in a very low area and our standing water and ponds are breeding grounds for mosquitoes that might in the future carry Zika virus.
Like · Reply · 3 · 21 hrs · Edited

 Matthew Christopher replied · 16 Replies · 2 hrs

 Jody L. Green Guess what, just walked out to my backyard... The bees are HERE!
Like · Reply · 21 hrs

Hide 22 Replies

 Andrew J. Macke Miss Green with all due respect please educate yourself on bees it will absolutely be amazing what you find out it'll be quite enlightening you'll have a whole different perspective and respect
Like · Reply · 29 · 21 hrs

 Jody L Green Andrew J Macke I have respect and I love honey, however I now can not enjoy my backyard and I find bees in the house! They stay in my hedge in front and my husband was almost strung trying to trim them. It's become a problem. Please understand your neighbors and their concerns and how they would like to live outside again.

Like · Reply · 20 hrs

 Erin Allen Without them, there's no food. It's not about the honey! Like · Reply · 13 · 19 hrs

 Jody L Green Erin Allen Erin I understand all that, but this is a company making honey. This is not a proper place for hives. And we live in a very low area, I have my lawn treated for mosquitos because of their threat...

Like · Reply · 19 hrs

 Erin Allen Zika is not dangerous. It's a cold and never caused one case of microencephaly. The poisons you spray are more dangerous than mosquitoes.

Like · Reply · 14 · 19 hrs

 Jody L Green Erin Allen I disagree, for a pregnant woman it's very dangerous to her unborn child, dayastaling. I have them use marigold dust.

Like · Reply · 19 hrs

 Jody L Green Erin Allen do you think what they sprayed is toxic?

Like · Reply · 1 · 19 hrs

 Cynthia Cole Evans-Martin We know it's toxic!

Like · Reply · 8 · 19 hrs

 Erin Allen Zika is not dangerous to pregnant women. It's been around for over a century and never caused microencephaly. The cases of microencephaly started with the pesticides that were sprayed. Yes, they are spraying poisons. Definitely.

Like · Reply · 8 · 19 hrs

 Jody L Green Erin Allen I don't agree and I know I will never change your mind, namaste!

Like · Reply · 12 hrs

 Robert Thompson Jody L Green almost as bad as having ohohans move in next door.

Like · Reply · 1 · 19 hrs

 Jody L Green Well, just saw the News car drive down my street, another controversy begins!

Like · Reply · 19 hrs

 Jody L Green Robert Thompson I like my neighborhood.

Like · Reply · 18 hrs

 Robert Thompson Jody L Green that's good.

Like · Reply · 18 hrs

 Kristina Solara Litzenberger Do you live near Pinehurst?

Like · Reply · 16 hrs

 Kristina Solara Litzenberger Jody L Green bees are about so much more than honey.

Like · Reply · 6 · 20 hrs

Like · Reply · 20 hrs



Like Reply 70 hrs



Like · Reply · 20 hrs



Write a recte.



Like · Reply · 4 · 20 hrs

⬇ Hide 12 Replies



Like · Reply · 10 · 79 likes



Like Reply · 2 · 17 hrs



Lauren Ann Macke



11 September 1966

[illegible]

Like · Reply · 1 · 17 hrs ·



Like · Reply · 1 · 17 hrs

 Lauren Ann Macke It's also spelled microcephaly.

Like · Reply · 1 · 17 hrs

 Lauren Ann Macke



The story is that scientists had noticed a trend in children born between 2007 and 2009 who had microcephaly, a condition where the head is abnormally small. They found that these children were born during the time that Brazil was using a pesticide called malathion. The researchers found that children born during this time had a higher risk of microcephaly than those born before or after. They also found that the risk was higher for children born in areas where malathion was used more heavily. The researchers concluded that malathion was the cause of the microcephaly outbreak in Brazil.

Like · Reply · 17 hrs

 Lauren Ann Macke.



The story is that scientists had noticed a trend in children born between 2007 and 2009 who had microcephaly, a condition where the head is abnormally small. They found that these children were born during the time that Brazil was using a pesticide called malathion. The researchers found that children born during this time had a higher risk of microcephaly than those born before or after. They also found that the risk was higher for children born in areas where malathion was used more heavily. The researchers concluded that malathion was the cause of the microcephaly outbreak in Brazil.

Like · Reply · 17 hrs

 Lauren Ann Macke <http://www.snopes.com/zika-microcephaly-outbreak-pesticide/>

SECOND NEXUS. UNPROVEN: Zika Microcephaly Cases Caused by Larvicide



SNOPES.COM | BY KIM LACAPRIA

Like · Reply · 17 hrs

 Lauren Ann Macke

At 11:11 AM, Lauren Ann Macke posted a photo of a white dog, possibly a Weimaraner, sitting on a lawn. The dog is looking towards the camera. The background is a grassy area with some trees in the distance.

The photo was taken on a sunny day. The dog is sitting on a green lawn. The background shows a line of trees and a clear sky. The dog is looking directly at the camera.

Like · Reply · 17 hrs

 Lauren Ann Macke

The photo was taken on a sunny day. The dog is sitting on a green lawn. The background shows a line of trees and a clear sky. The dog is looking directly at the camera.

The photo was taken on a sunny day. The dog is sitting on a green lawn. The background shows a line of trees and a clear sky. The dog is looking directly at the camera.

Like · Reply · 17 hrs

 Lauren Ann Macke

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The photo was taken on a sunny day. The dog is sitting on a green lawn. The background shows a line of trees and a clear sky. The dog is looking directly at the camera.

Like · Reply · 17 hrs

From: Scott Gaskins <sgaskins@dorchestercounty.net>
 Sent: Monday, August 29, 2016 3:47 PM
 To: Jason Ward <WardJ@dorchestercounty.net>
 Cc: Jakie Walters <JWalters@dorchestercounty.net>; Tracey L. Langley <TLangley@dorchestercounty.net>
 Subject: RE: Spraying killing Summerville bees

Jason,

I don't have any contact info for Mr. Macke. I think maybe the county's web filtering is keeping me from going to anything on Facebook.

-----Original Message-----

From: Jason Ward
 Sent: Monday, August 29, 2016 3:26 PM
 To: Scott Gaskins
 Cc: Jakie Walters; Tracey L. Langley
 Subject: Re: Spraying killing Summerville bees

Scott,

Call Yawn and see how you can help. Reach out to Andrew Macke and see if he can help you determine the name and addresses of bee keepers in the zone that was sprayed to see if their hives were affected.

J. Ward

> On Aug 29, 2016, at 3:18 PM, Scott Gaskins <sgaskins@dorchestercounty.net> wrote:

>

> Just for your information...see email below.

>

> I have not been responding to any media.

>

> I was planning to visit Mr. Yawn this afternoon, but I don't know if that is a good idea for me to do that by myself since we don't know what farm this email is referring to.

>

> -----Original Message-----

> From: Lara Rolo [mailto:lmrolo@sbgstv.com]

> Sent: Monday, August 29, 2016 2:38 PM

> To: Scott Gaskins

> Subject: Spraying killing Summerville bees

>

> Scott,

>

> Hoping you'll have moment for us tonight.. We are covering a story at a farm in Summerville.. The bee keeper says mosquito spraying is killing her bees and her profits. Have you ever heard anything like this before?

> Please reach out -- 843-303-1708.

>

> Best,

>

> Lara Rolo

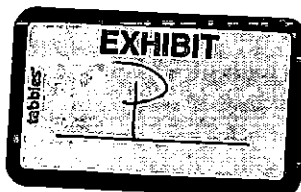
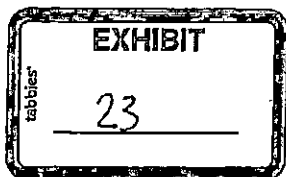
> General Assignment Reporter

> WCIV/ABC News 4

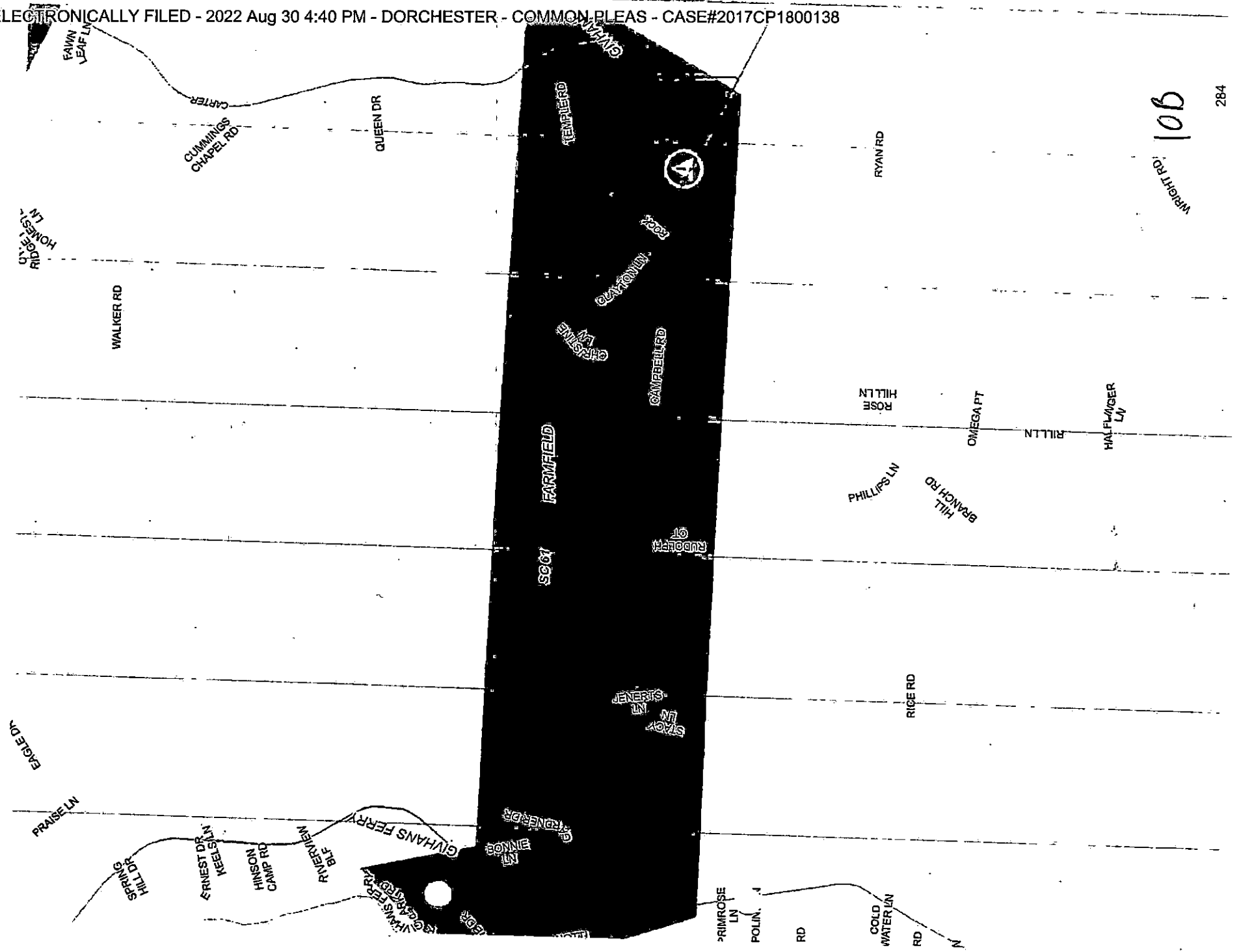
> (O) 843-849-3575

> (C) 843-303-1708

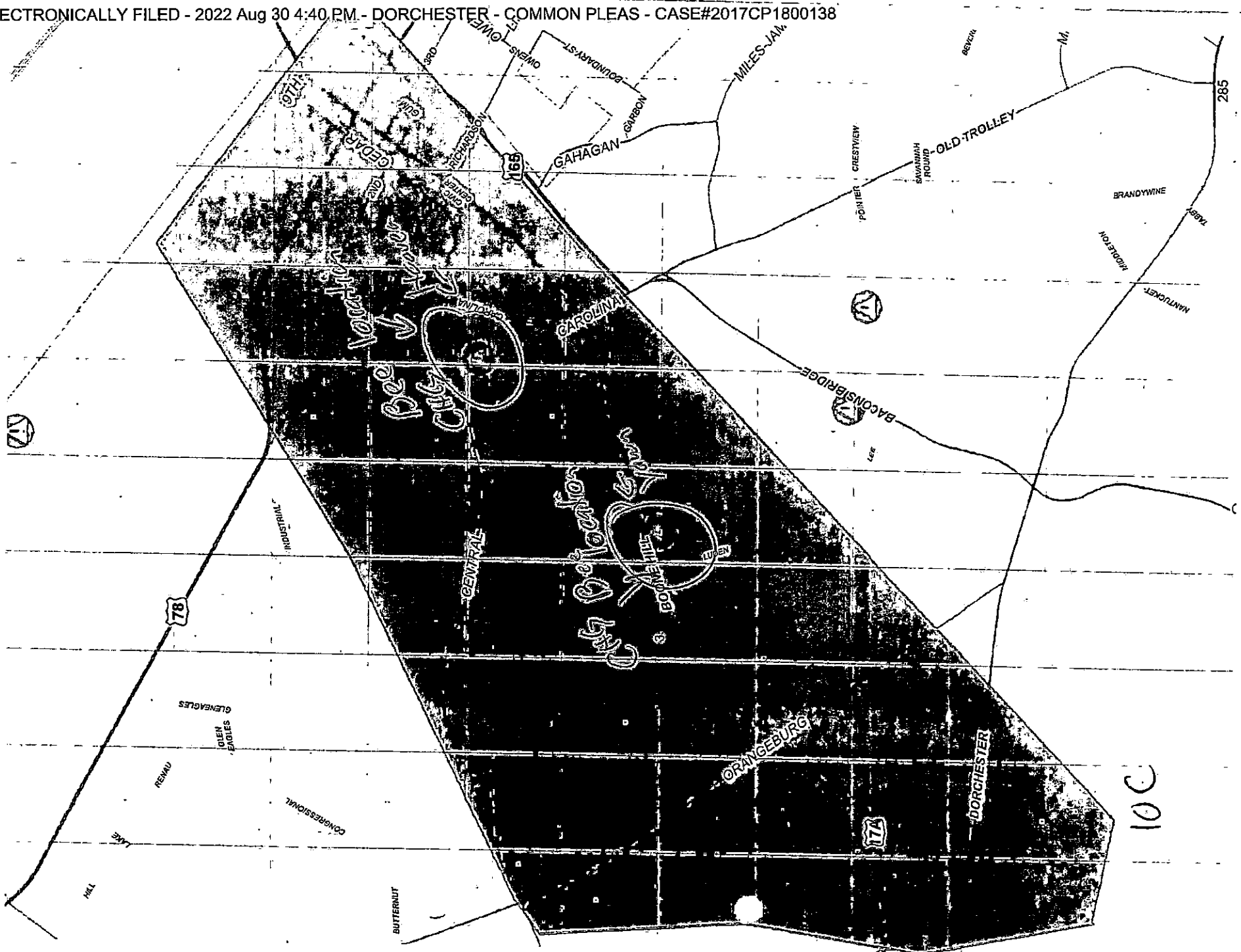
> lmrolo@sbgstv.com

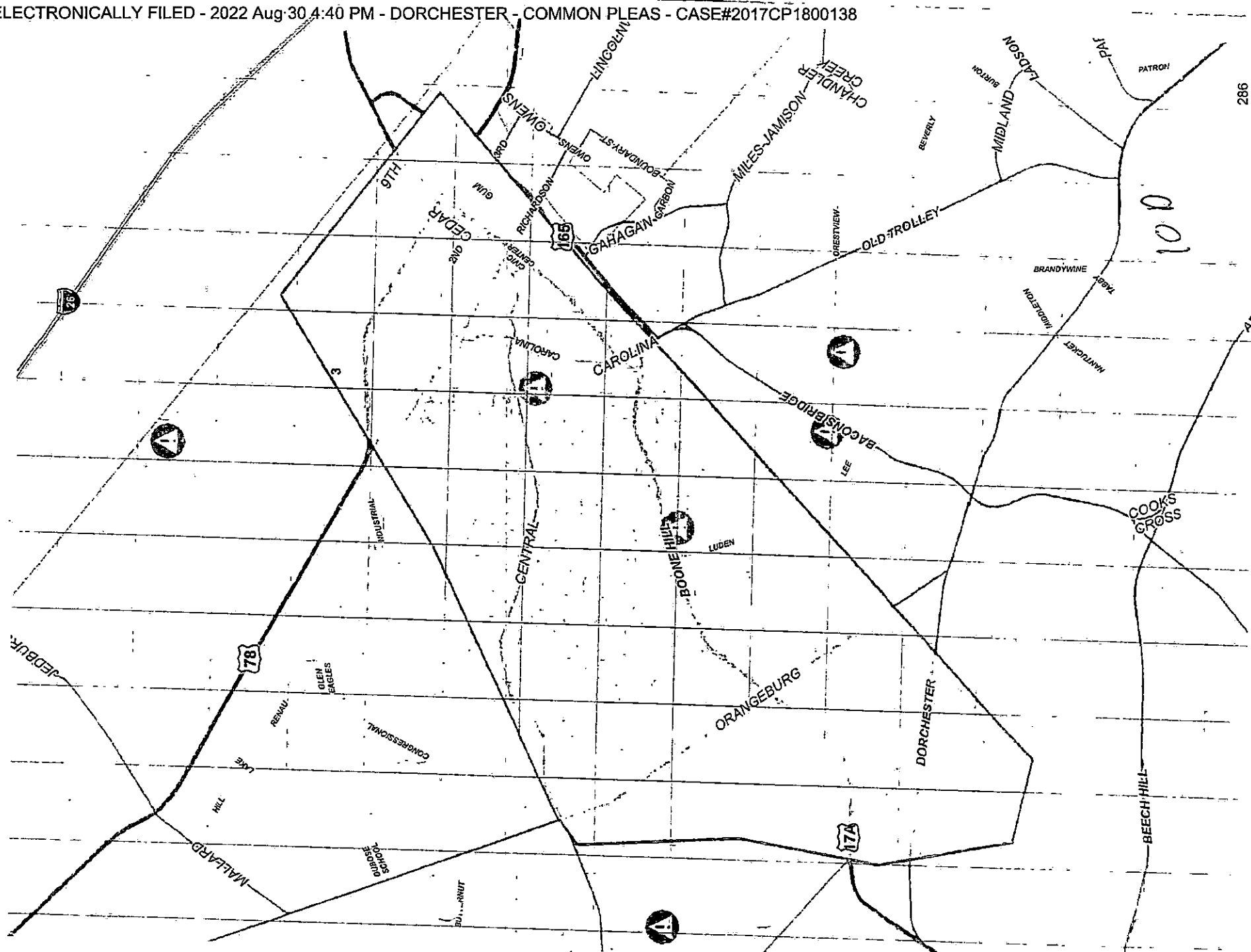


102.089 Yawn v Dorchester County
 Dorchester County File1151



106
WRIGHT RD





From: Tracey L. Langley
 </O=DORCHESTER/OU=DORCHESTER/CN=RECIPIENTS/CN=TLANGLEY>
Sent: Wednesday, June 15, 2016 12:02 PM
To: Bo Petersen <bopete@postandcourier.com>
Subject: P&C Article - Lowcountry prepped for Zika, mosquito managers say

Dear Mr. Peterson:

I am writing to provide you with a correction in response to the below article "Lowcountry prepped for Zika, mosquito managers say," published in the May 28, 2016 edition of the Post & Courier.

Dorchester County will begin aerial spraying for mosquitos in late June or early July. At their regularly scheduled meeting on Monday, June 6, 2016, Dorchester County Council, duly assembled, approved \$52,000 for an aerial spraying contract and \$14,549.20 in additional chemicals and briquettes for mosquito control.

Should you have any questions or need any further information, please do not hesitate to contact our office.

With kind regards,

Tracey L. Langley

Administrative Assistant
 Dorchester County Administrator's Office
 201 Johnston St., St. George, SC 29477
 Phone: (843) 563-0103 or (843) 832-0103
tlangley@dorchestercounty.net
www.dorchestercounty.net

Lowcountry prepped for Zika, mosquito managers say



Bo Petersen Email Facebook @bopete
 May 28 2016 9:00 pm

The Lowcountry could handle an outbreak of mosquito-borne Zika virus, managers say, despite the recent state announcement that Berkeley and Dorchester counties have "little-to-moderate" resources to fight one.

The reason is simple: West Nile virus, which the counties have been surveilling and treating for years. Zika outbreaks would be handled the same way, and "we're prepared for (West Nile) and have been for some time," said Frank Carson, Charleston County mosquito control manager. But managers, state and federal officials said the first and most important line of defense is the precautions taken by individuals and homeowners.

Officials from the state Department of Health and Environmental Control last week urged local jurisdictions to bolster their mosquito control programs heading into the summer months in preparation for a possible Zika virus outbreak. More than half of the state's counties have minimal-to-no mosquito-control program support, according to DHEC. Charleston County has moderate-to-full resources, and Dorchester and Berkeley counties have little-to-moderate resources.

The DHEC rating has more to do with individual local governments' general capabilities in terms of equipment and dedicated manpower, said Carson and Berkeley County mosquito abatement manager Jeff Cary.

"We don't necessarily have as big a program as Charleston County, but we're effective enough to respond to an outbreak," Cary said.

Like Zika, West Nile is a disease carried by mosquitoes. Despite millions on millions of mosquitoes hatched each year, only a handful of cases of West Nile turn up in humans. Most people who are infected show few or no symptoms. Others have symptoms similar to a flu. In a very few cases, serious illness and death can occur.

So far, only one case of Zika has turned up in South Carolina, a resident who had recently returned from a country where the virus occurs.

Two of more than 50 types of mosquitoes found in the Lowcountry could carry the Zika virus, the *Aedes aegypti* and *Aedes albopictus*. The most common symptoms are fever, rash, joint pain, and red eyes, according the federal Centers for Disease Control and Prevention.

People usually don't get sick enough to go to the hospital, and they very rarely die of Zika. But the virus is thought to cause serious fetal brain defects.

In the Lowcountry, Zika would join not only West Nile, but equine encephalitis and other viruses brought back by travelers, including malaria, yellow fever and Chikungunya.



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 Dorchester County File#1071

Besides the counties, five municipalities in the area surrounding Charleston have dedicated mosquito abatement programs: Kiawah Island, North Charleston, Hanahan, Goose Creek and Moncks Corner. Programs range from spray trucks to aerial spraying. They also test for viruses and concentrate spraying in areas where one is detected.

But capabilities vary. For example, Charleston County has nine trucks; Dorchester County has two, and one is currently not in service. The sheer breadth of the three-county area — nearly 5,000 square miles separated by rivers, estuaries and a lake — strains the capacity to do routine mosquito spraying.

DHEC Director Catherine Heigel said it is up to local governments to educate their residents about ways to cut down on the number of mosquitoes in the area. She stressed focusing on public awareness messages, such as removing standing water from yards and mosquito-proofing homes.

"The ultimate goal is to reduce the source (of an outbreak). The residents do play a crucial role in that," Cary said.

Johnny Cribb, Hanahan city administrator, attaches a mosquito pesticide to his hose when he waters the lawn, he said.

"Hopefully homeowners are not waiting for a government solution."

Tracey L. Langley

Administrative Assistant

Dorchester County Administrator's Office

201 Johnston St., St. George, SC 29477

Phone: (843) 563-0103 or (843) 832-0103

tlangley@dorchestercounty.net

www.dorchestercounty.net

From: Tracey L. Langley
 </O=DORCHESTER/OU=DORCHESTER/CN=RECIPIENTS/CN=TLANGLEY>
Sent: Monday, June 20, 2016 4:58 PM
To: Jason Ward <WardJ@dorchestercounty.net>
Cc: Charles H. Potts <CPotts@dorchestercounty.net>; Jakie Walters
 <JWalters@dorchestercounty.net>; Susan Brickle <SBrickle@dorchestercounty.net>;
 Chantell Glover <CGlover@dorchestercounty.net>
Subject: FW: Phone Call - Shelly Wilson w/ DHEC

Jason,
 Scott Gaskins went out and met with Mr. Infinger and walked the property with him. There was some standing water on the property so Scott put out briquettes in the standing water and ditch areas. He also discussed additional prevention methods with Mr. Infinger and showed him active mosquito larvae. Scott has a follow up call into Ms. Wilson to let her know that he went out and saw Mr. Infinger and what measures he took. Overall Mr. Infinger seemed satisfied with what Scott did.

Thanks,

Tracey L. Langley

Administrative Assistant
 Dorchester County Administrator's Office
 Phone: (843) 563-0103 or (843) 832-0103
 tlangley@dorchestercounty.net

From: Tracey L. Langley
Sent: Thursday, June 16, 2016 6:23 PM
To: Jason Ward; Jason Carraher
Cc: Charles H. Potts; Alec W. Brebner; Jakie Walters; Scott Gaskins; Susan Brickle; Chantell Glover
Subject: Phone Call - Shelly Wilson w/ DHEC
 Jason W. and Jason C.,

I received a call from Shelly Wilson who is the Federal Facility Liaison for Environmental Affairs with DHEC asking to speak with Jason Ward regarding code enforcement and Zika. Ms. Wilson relayed that DHEC recently hosted a forum for city and county officials and wanted to speak with the administrator about Dorchester County doing more to prevent mosquito borne illness by way of its code enforcement officers and potentially passing an ordinance. Her contact with the Administrator's Office stemmed from a telephone call she received from Sammy Infinger of 9620 Charleston Highway (Highway 178), St. George. Mr. Infinger relayed to Ms. Wilson that he had previously contacted the county but nothing was done about a ditch near his home with standing water that he can't access because it is on his neighbor's property. He believes the mosquito issues are a result of the standing water from the ditch not being cleaned and draining properly.

In further discussion with Ms. Wilson, I relayed that we have done the following to date:

1. A press release containing information received from the CDC and DHEC;
2. Information received from DHEC and the CDC was also added to the website with a link to the documents containing information about Zika and controlling mosquitos (I updated this information again today on the homepage);
3. A spray schedule and abatement zone maps are accessible to citizens on the website and updated bi-weekly;
4. Stormwater employees are cleaning ditches and retention ponds so they function properly;
5. Junkyards, nurseries, etc., have been contacted to remind them about the prevention of standing water;
6. Briquettes are distributed in retention ponds and areas with standing water.

I also shared with her the information we recently sent to the Post & Courier notifying them that Dorchester County will begin aerial spraying for mosquitos in late June or early July, and at their regularly scheduled meeting on Monday, June 6, 2016, Dorchester County Council, duly assembled, approved \$52,000 for an aerial spraying contract and \$14,549.20 in additional chemicals and briquettes for mosquito control.

Ms. Wilson said it sounds like we are on the right track and asked that code enforcement officers be reminded that should they see or identify a potential area for standing water or mosquito breeding site that they address it. She also requested that someone from the county make contact with Mr. Infinger to resolve the standing water issues and spray for mosquitos in the interim. After contact is made with Mr. Infinger, Ms. Wilson would like someone from the county to follow up with her to advise if Mr. Infinger's concerns have been addressed and resolved. Mr. Infinger's telephone number is (843) 908-2099. Ms. Wilson's cell phone number is (803) 920-4987. I copied Alec, Jakie and Scott Gaskins on this email so they can



address Ms. Wilson's concerns as they apply to their respective departments.
Please let me know if you have any questions.

Thanks,

Tracey L. Langley

Administrative Assistant

Dorchester County Administrator's Office

201 Johnston St., St. George, SC 29477

Phone: (843) 563-0103 or (843) 832-0103

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