

RESOLUTION NO. 2001-8

A RESOLUTION OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AUTHORIZING THE TOWN ATTORNEY TO JOIN IN A LAWSUIT WITH THE CITY OF POMPANO BEACH AND/OR WITH OTHER MUNICIPALITIES ON BEHALF OF THE RESIDENTS OF SOUTHWEST RANCHES, SEEKING INJUNCTIVE RELIEF AGAINST BOB CRAWFORD IN HIS CAPACITY AS COMMISSIONER OF THE FLORIDA DEPARTMENT OF AGRICULTURE.

WHEREAS, Bob Crawford, in his capacity as Commissioner, Florida Department of Agriculture and Consumer Services, has declared “an agricultural emergency” and established a quarantine covering areas of South Florida, including, but not limited to, the Town of Southwest Ranches and other municipalities in Broward County; and

WHEREAS, Bob Crawford has initiated within the quarantine area, including Southwest Ranches, the Citrus Canker Eradication Program (CCEP) which includes the removal of those citrus trees infected with citrus canker; and those located within 1900 feet of an infected tree, whether infected or not; and

WHEREAS, this program as it is being carried out is believed to possibly violate the due process protections of the United States Constitution and the Florida Constitution, and if not enjoined, will cause irreparable harm to numerous citizens of the Town of Southwest Ranches who are owners of citrus trees; and

WHEREAS, the City Commission of the City of Pompano Beach has directed its legal counsel to file suit seeking an Injunction to stop the Citrus Canker Eradication Program (CCEP) from continuing and has requested other cities to join with it as party plaintiff in said lawsuit; and

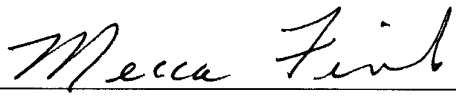
WHEREAS, the public interest of the citizens of Southwest Ranches will be best served by the participation of the town of Southwest Ranches in said lawsuit.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1. The Town Council of the Town of Southwest Ranches does hereby authorize the Town Attorney, on behalf of the Town and its residents who own citrus trees within the quarantine area to add the Town of Southwest Ranches as a party plaintiff in the lawsuit being filed by the City of Pompano Beach against Bob Crawford, in his capacity as Commissioner, Florida Department of Agriculture and Consumer Affairs, seeking an Injunction to stop the Citrus Canker Eradication Program (CCEP) from continuing, and hereby ratifies all actions taken by the Town Attorney in furtherance of said objectives.

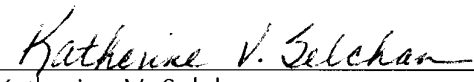
Section 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 9th day of November, 2000.



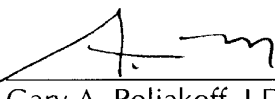
Mecca Fink, Mayor

Attest:



Katherine V. Selchan
Interim Town Clerk

Approved as to form and correctness:



Gary A. Poliakoff, J.D., Town Attorney

F

BECKER & POLIAKOFF, P.A.

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 Ft. Lauderdale, Florida 33310-9057

*Attach to
 Canter resolution
 once approved,*

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Reply To:

Gary A. Poliakoff, Esq.
 (954) 985-4150
 gpoliakoff@becker-poliakoff.com

October 27, 2000

Office of the City Attorney
 Attn: Gordon B. Linn, Esq.
 City of Pompano Beach
 P.O. Box 2083
 Pompano Beach, Florida 33061

Re: City of Pompano Beach, et. al v. Florida Department of Agriculture and Consumer Services, et. al

Dear Gordon:

Thank you for allowing the Town of Southwest Ranches to participate in the City of Pompano Beach's Complaint for Declaratory and Injunctive Relief to end the State's destruction of thousand of citrus trees throughout our area.

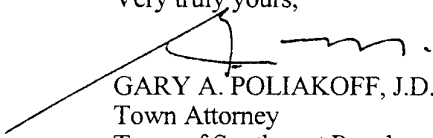
Two of the Town's residents, Donald & Gretta Pickney 4650 S.W. 163rd Avenue, Fort Lauderdale, 33331 and Lily Sayre 5101 S.W. 145th Avenue, Fort Lauderdale 33330, would like to be named parties to represent our class of residents who have been harmed.

As per our previous conversation, the Town of Southwest Ranches has agreed to be a named party in this cause of action. It is our mutual understanding that the Town's financial obligation for participation is solely on a voluntary basis.

Please advise if we may assist with any of the legal issues.

Please do not hesitate to call.

Very truly yours,


 GARY A. POLIAKOFF, J.D.
 Town Attorney
 Town of Southwest Ranches

GAP/sb
 cc: All Members of the Southwest Ranches Town Council

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RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA
AUTHORIZING THE TOWN ATTORNEY TO JOIN IN A LAWSUIT WITH THE CITY
OF POMPAÑO BEACH AND/OR WITH OTHER MUNICIPALITIES ON BEHALF OF
THE RESIDENTS OF SOUTHWEST RANCHES, SEEKING INJUNCTIVE RELIEF
AGAINST BOB CRAWFORD IN HIS CAPACITY AS COMMISSIONER OF THE
FLORIDA DEPARTMENT OF AGRICULTURE.**

WHEREAS, Bob Crawford, in his capacity as Commissioner, Florida Department of Agriculture and Consumer Services, has declared “an agricultural emergency” and established a quarantine covering areas of South Florida, including, but not limited to, the Town of Southwest Ranches and other municipalities in Broward County; and

WHEREAS, Bob Crawford has initiated within the quarantine area, including Southwest Ranches, the Citrus Canker Eradication Program (CCEP) which includes the removal of those citrus trees infected with citrus canker; and those located within 1900 feet of an infected tree, whether infected or not; and

WHEREAS, this program as it is being carried out is believed to possibly violate the due process protections of the United States Constitution and the Florida Constitution, and if not enjoined, will cause irreparable harm to numerous citizens of the Town of Southwest Ranches who are owners of citrus trees; and

WHEREAS, the City Commission of the City of Pompano Beach has directed its legal counsel to file suit seeking an Injunction to stop the citrus Canker Eradication Program (CCEP) from continuing and has requested other cities to join with it as party plaintiff in said lawsuit; and

WHEREAS, the public interest of the citizens of Southwest Ranches will be best served by the participation of the town of Southwest Ranches in said lawsuit.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1. The Town Council of the Town of Southwest Ranches does hereby authorize the Town Attorney, on behalf of the Town and its residents who own citrus trees within the quarantine area to add the Town of Southwest Ranches as a party plaintiff in the lawsuit being filed by the City of Pompano Beach against Bob Crawford, in his capacity as Commissioner, Florida Department of Agriculture and Consumer Affairs, seeking an Injunction to stop the Citrus Canker Eradication Program (CCEP) from continuing, and hereby ratifies all actions taken by the Town Attorney in furtherance of said objectives.

Section 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2000.

Mecca Fink, Mayor

Attest:

Town Clerk

Approved as to form and correctness:

Gary A. Poliakoff, J.D., Town Attorney

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida; CESAR delCAMPO and LINDA delCAMPO; TOWN OF DAVIE, a municipal corporation of the State of Florida; ARTHUR and MARSHA JOSEPH; MICHAEL BENDER; KATHERINE COX; TOBY BOGORFF; CITY OF COCONUT CREEK, a municipal corporation; ROBERT R. BAZYK; JAMES N. HENRY; TOWN OF SOUTHWEST RANCHES, a municipal corporation of the State of Florida; DONALD and GRETTA PICKNEY; LILY SAYRE; CITY OF PLANTATION, a municipal corporation of the State of Florida; BROWARD COUNTY, a political subdivision of the State of Florida; PATRICIA and JOHN HAIRE; CITY OF MARGATE, a political subdivision of the State of Florida; CAROLINE SELIGMAN; COOPER CITY, a municipal corporation of the State of Florida; and FRANK MENDOLA,

Plaintiffs,

vs.

FLORIDA DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES, and BOB CRAWFORD, in his
official capacity as Commissioner of the Florida
Department of Agriculture and Consumer Services,

Defendants.

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF;
CLAIM FOR INVERSE CONDEMNATION
(Class Representation)**

The numerous Plaintiffs listed above, individually, and as representatives of all potential class members, hereby file this Complaint against the Defendants FLORIDA DEPARTMENT

OF AGRICULTURE AND CONSUMER SERVICES and BOB CRAWFORD in his official capacity as Commissioner of the Florida Department of Agriculture and Consumer Services (hereinafter collectively referred to as "DEPARTMENT"), seeking class certification, a declaration of inverse condemnation, a declaratory judgment, and a temporary and permanent injunction, pertaining to the DEPARTMENT'S present and future enforcement of the Citrus Canker Eradication Program. In support thereof, CITY alleges as follows:

COMPLAINT

1. This is an action brought under Chapter 86 of the Florida Statutes, seeking a declaratory judgment pertaining to the rights of the Plaintiffs with regard to DEPARTMENT'S rules, regulations, interpretations, and enforcement methods under the State of Florida's Citrus Canker Eradication Program (hereinafter "CCEP"); further, Plaintiffs bring an inverse condemnation action pursuant to Article X, Section 6(a), Article I, Section 9, and Article I, Section 21 of the Florida Constitution.. Finally, Plaintiffs are seeking temporary and permanent injunctive relief relating to all the above.

PARTIES:

2. CITY OF POMPANO BEACH, TOWN OF DAVIE, CITY OF COCONUT CREEK, TOWN OF SOUTHWEST RANCHES, CITY OF PLANTATION, CITY OF MARGATE and COOPER CITY are all municipal bodies politic and corporate in perpetuity, established and created pursuant to various Special Acts of Florida, each possessing appropriate home rule powers.

3. BROWARD COUNTY is a political subdivision of the State of Florida. As a Charter County is possesses complete home rule powers in accordance with that Charter.

4. These various local governments bring this suit on behalf of themselves as the owners of citrus trees which are affected by the DEPARTMENT'S actions, and as Class Representatives of any and all residents and property owners who own citrus trees within their respective jurisdictions and which are affected by the DEPARTMENT'S actions with regard to the CCEP.

5. Additionally, each local government has the authority and the duty to bring actions to protect the health, safety and welfare of all its citizens, and this lawsuit is brought by these governmental entities in that capacity and for that purpose, in addition to the individual and class representations made herein.

6. Plaintiffs CESAR and LINDA delCAMPO are residents of CITY OF POMPANO BEACH and own citrus trees which have not been determined to be infected with any disease, yet have received an Intermediate Final Order (IFO) from DEPARTMENT, and are thus scheduled to have their citrus trees destroyed by DEPARTMENT. They are representative of the estimated hundreds of additional class members within CITY OF POMPANO BEACH who have similarly received an IFO, or are currently awaiting a determination regarding the predetermined fate of their healthy and uninfected citrus trees, all without a hearing or sufficient prior notice.

7. ROBERT R. BAZYK and JAMES N. HENRY are residents of CITY OF COCONUT CREEK who have received IFO's from DEPARTMENT for trees which have not been determined to be infected with any disease, and yet are scheduled to have these trees destroyed without a hearing.

8. ARTHUR and MARSHA JOSEPH, MICHAEL BENDER KATHERINE COX, and TOBY BOGORFF are all residents of the TOWN OF DAVIE. The JOSEPHS and BENDER have received IFO's and are scheduled to have their healthy trees destroyed although

they have received no hearing, and under the rules of DEPARTMENT may not even ask for a post-determination hearing. KATHERINE COX and TOBY BOGORFF have already had their healthy trees destroyed by DEPARTMENT, without the proper notice, hearings, or other due process considerations required under the laws of this State and the United States, nor have they received just and full compensation for this per se taking.

9. FRANK MENDOLA is a resident of COOPER CITY and has received an IFO for his healthy citrus trees, all without proper or sufficient notice, without any prior or post-determination hearings, and without any other procedural safeguards required by the laws and constitutions of state and federal government.

10. PATRICIA and JOHN HAIRE are residents of unincorporated BROWARD COUNTY who have received their IFO requiring destruction of healthy trees, all of which was determined unilaterally by DEPARTMENT and without due process.

11. CAROLINE SELIGMAN is a resident of the CITY OF MARGATE and has received an IFO to remove her healthy citrus trees despite any attempt by DEPARTMENT to afford her proper due process.

12. DONALD and GRETTA PICKNEY, and LILY SAYRE are residents of SOUTHWEST RANCHES and have been deprived of their due process rights through the unilateral administrative determination of the DEPARTMENT that their healthy trees must be destroyed, all in violation of due process rights normally accorded to each and every person in the United States and the State of Florida.

13.. Defendant Florida Department of Agriculture and Consumer Services is a department of state government for the State of Florida which is responsible for enforcement of the regulations and other actions under the CCEP, and is in all ways *sui juris*.

14. Defendant Bob Crawford is the Commissioner of the Florida Department of Agriculture and Consumer Services, and is sued strictly and solely in his official capacity as such.

VENUE AND JURISDICTION:

15. Venue is proper within Broward County, Florida pursuant to Section 47.011, Florida Statutes, as all enforcement actions complained of herein have, are or will occur within the City of Pompano Beach, Broward County, Florida.

16. Jurisdiction with the Circuit Court of the Seventeenth Circuit in and for Broward County is proper pursuant to Sections 26.012 and 86.011, Florida Statutes.

17. This action is not an appeal of any of the so-called "Immediate Final Orders" (IFO) issued by DEPARTMENT under its administrative rules.

CLASS REPRESENTATION ALLEGATIONS:

18. This class action is brought pursuant to the provisions of Fla.R.Civ.P. 1.220(b)(1) and (b)(3).

19. Each member of the proposed class owns citrus trees which have either, already been determined by the DEPARTMENT to be infected with citrus canker, *Xanthomonas axonopodis pv. citri* (Asian Strain) [hereinafter "Xac"], or within 1900 feet of an infected tree, thus, pursuant to assertions put forth by DEPARTMENT and COMMISSIONER, requiring their removal and destruction without full or just compensation and contrary to law, or are within the area yet to be inspected by the DEPARTMENT and thus facing the imminent danger of losing their citrus trees to the CCEP.

20. Each member of the proposed class has either received an IFO or is awaiting word from the DEPARTMENT with regard to the DEPARTMENT'S planned fate of their (or, in the

case of local governments, their citizens') citrus trees under the CCEP, and thus is in danger of losing their property without just compensation and without due process.

21. Each plaintiff within the proposed class has been denied due process under the Fifth and Fourteenth Amendments of the United States Constitution, as well as under the Florida Constitution through defective notice provisions, defective appeal procedures, arbitrary and capricious rules and regulations, lack of scientific evidence to support the findings of the DEPARTMENT and its CCEP, failure of the DEPARTMENT and its employees, agents and contractors to follow the DEPARTMENT'S own rules and regulations, and failure to provide just compensation. Each Plaintiff within the proposed class is affected by DEPARTMENT'S Rules which, as detailed below, are contrary to state and federal law.

22. While the exact number of class members is currently unknown, it is estimated that there are approximately several thousand residents and owners of property within BROWARD COUNTY who will be affected by DEPARTMENT'S actions with regard to the CCEP.

23. The proposed class shall encompass all residents or owners of property within BROWARD COUNTY, incorporated or otherwise, who have otherwise healthy citrus trees, yet are scheduled to have those trees destroyed under the current provisions and practices of the DEPARTMENT'S CCEP, whether they have received a IFO yet or not. Additional class members shall include those who have yet to receive word from DEPARTMENT with regard to the fate of their citrus trees and therefore are unable to determine whether their healthy citrus trees are destined for destruction by DEPARTMENT, and thus face the imminent danger of losing said trees without proper notice and without just compensation, and contrary to law.

24. The local government plaintiffs, as municipal corporations or political subdivisions of the State, have the resources necessary to prosecute this action on behalf of all proposed class members. Said resources include various full time "in-house" and/or outside legal staffs, engineers, planners, technicians and scientists of various sort, and thousands of employees to assist in gathering information pertaining to the subject matter of this lawsuit. They also possesses the budgetary resources sufficient to allow their attorneys to devote sufficient time and attention to this matter.

25. The individual plaintiffs are residents of the various local government parties, who have taken a particular interest in this matter and wish to preserve the citrus trees or ensure that due process is afforded prior to destruction of such. They have variously attended meetings, gathered information and documentation regarding the issues, and have spoken with numerous officials and individuals within and without the State and local governments in a continued and strong effort to correct what they rightly perceive as an injustice perpetrated upon the residents of BROWARD COUNTY by DEPARTMENT.

26. Under current administrative rules of DEPARTMENT, any citrus tree owner who wishes to appeal the IFO must do so by filing with the Fourth District Court of Appeal. Individual appeals by numerous appellants, all with similar or identical facts and situations, creates the potential for varying adjudications establishing incompatible standards of conduct for DEPARTMENT.

27. Each proposed class member, by virtue of having a non-infected citrus tree, yet being subjected to imminent destruction of these trees, will have similar issues concerning the due process violations of the procedures followed by the DEPARTMENT, including the arbitrary and capricious nature of the CCEP for lack of scientific evidence in support, and those

whose trees have already been destroyed, or will eventually be destroyed have a common issue of whether, and to what extent, they are entitled to just and full compensation for such a taking of their property.

28. Furthermore, one action in Circuit Court for all potential class members promotes judicial efficiency because the allegations at issue concern common issues of fact and law, for which a record must be established through testimony. Such a record is not available nor possible under the appellate procedures called for by the DEPARTMENT'S administrative guidelines, and therefore, require this Circuit Court proceeding to document for the record, the arguments, facts, testimony, opinions, evidence, etc.

GENERAL ALLEGATIONS:

29. The Florida Legislature has delegated to DEPARTMENT the duty and authority to adopt rules specifying facts and circumstances that, if present, would require the destruction of plants for purposes of eradicating, controlling, or preventing the dissemination of citrus canker (*Xac* bacteria) within the State of Florida.

30. Pursuant to Section 581.184(1), Florida Statutes, these rules adopted by DEPARTMENT shall stay in effect for any period during which, in the judgment of the COMMISSIONER, there is the threat of the spread of citrus canker within the state.

31. In carrying out this delegated authority, DEPARTMENT has established a quarantine area which includes all incorporated and unincorporated areas of Broward County, and has provided for certain rules and regulations in connection therewith, found at 5 F.A.C. §5B-58.001, including the inspection of citrus trees for the *Xac* bacterial and, where present, issuance of IFO's attaching a copy of the diagnostic report, inventory, map, and recommendation of action, all of which were immediately enjoined by the recipient.

32. Despite the decades long history of citrus canker within the state with continual existence of Xac bacterial, within the last month, the COMMISSIONER has suddenly and inexplicably found that "an immediate serious danger to the public health, safety or welfare exists . . .", and declared an emergency to the "agricultural and horticultural interests of this state". (Emergency Rule 5BER00-4)

33. Based on the COMMISSIONER'S declared "emergency", the DEPARTMENT has issued "emergency rules", which involve amending existing administrative rules and guidelines dealing with the CCEP. Found at 26 F.A.W. 4502, Rule No. 5BER00-4, these "emergency" rules and regulations eliminated the requirement that citrus tree owners be provided the report, inventory, map and recommendations. It further purported to eliminate the available remedy of immediate enjoinder of the IFO. In short, it eliminated all semblance of due process and proof of notification to the affected property owners as the requirement at this point in time is simply that the IFO be delivered in person, by mail, or posting on the property, which does not guarantee the property owner will have actual notice prior to the taking of their property by DEPARTMENT.

34. In addition to the destruction of trees allegedly contaminated with Xac, the rules provide for the destruction of all healthy citrus trees, even if said trees are found as far away as 1900 feet from any allegedly infected tree.

35. Under the Emergency Procedures of the DEPARTMENT once this unilateral decision of DEPARTMENT is received through the IFO, the only available remedy for the owner is to file an appeal with the District Court of Appeal, thus allowing no mechanism for a pre or post decision fact-finding hearing, nor the availability of making any kind of record for consideration by the appellate court.

36. The rules provide for no just compensation for this obvious "taking" of healthy trees.

37. DEPARTMENT regulates citrus canker as a "plant" pest." Fla. Admin. Rule No. 5B-58.001(2).

38. Section 581.181, Fla. Stat. Regulates and applies to plant pests, infection or infestation. This Statute requires DEPARTMENT to "notify in writing the owner or person having charge of the premises, and the owner or person in charge shall, within ten (10) days after the notice, cause the removal and destruction of the infested and infected plant or plant product if it cannot be successfully treated; otherwise, the owner or person in charge shall cause it to be treated as directed in the notice by the director or an authorized representative of the division." Thus, Plaintiffs assert that the DEPARTMENT is statutorily required to provide notice and an opportunity for owners to treat plants infected with plant pests, and only upon failing to do so is the DEPARTMENT given the authority by Statute to destroy the tree pursuant to the provisions of Section 581.181(2), Fla. Stat. (1999)

COUNT I
(Inverse Condemnation)

Plaintiffs reaver, adopt and incorporate herein, all allegations set forth in paragraphs 1-38 above, and furthermore allege:

39. DEPARTMENT is a governmental entity executing the CCEP for a purported public purpose (assisting the state's citrus industry).

40. Defendants' actions in destroying healthy citrus trees under the CCEP constitutes a seizure or physical invasion of Plaintiffs property rights.

41. Such a seizure or physical invasion is a per se taking under state and federal Constitutions, and is permanent in nature.

42. Per se permanent takings require full compensation under Article X, §6, Fla. Const.

43. The CCEP rules constitute an unlawful application of the DEPARTMENT'S rules and regulations with regard to healthy citrus trees, and has resulted in a taking without just or full compensation.

44. Appeal of the IFO to the District Court of Appeals would be a futile action as there is no underlying record created by a unilaterally issued IFO, and thus the appellate courts have no basis on which to review and determine the appropriateness of DEPARTMENT action.

45. Thus, issuance of the IFO is the equivalent of a "final decision" by the government, and Plaintiffs have no duty or requirement to exhaust the one and only "remedy" which DEPARTMENT has deemed appropriate, as such is futile.

WHEREFORE, Plaintiffs pray for the following relief:

A. Enter an Order finding that the actions of DEPARTMENT and COMMISSIONER constitute a taking of Plaintiffs' property.

B. Hold a trial with a twelve-person panel to determine the full and just compensation due and owing to Plaintiffs for the taking of their healthy citrus trees.

C. That the Court enter an Order preventing further takings without just compensation and requiring DEPARTMENT to cease its activities with regard to the CCEP as applied to citrus trees until such time as it establishes reasonable and lawful procedures to ensure that Plaintiffs receive full and just compensation.

D. Order Defendants to pay Plaintiffs' a reasonable attorney's fee and costs, pursuant to eminent domain procedures.

E. Such other relief as the Court deems necessary and proper.

COUNT II
(Declaratory Judgment)

Plaintiffs reaver, adopt and incorporate herein, all allegations set forth in paragraphs 1-38 above, and furthermore allege:

46. Declaratory judgment proceedings are available to obtain a determination of the rights of the Plaintiffs following the entry of a determination adverse to Plaintiffs, such as the IFO's, by a purely administrative order of the COMMISSIONER.

47. The IFO's, as well as the entire procedure, rules and regulations under the guise of the CCEP are defective and unconstitutional.

48. The IFO does not allow for pre-order hearings or even post-order hearings, it does not provide for proper or sufficient notice, it fails to properly or fully state the appropriate laws and regulations, and it is not in compliance with the existing rules and statutes applicable to DEPARTMENT.

49. The rules and regulations applicable to the CCEP, as promulgated and carried-out under the emergency rules issued by DEPARTMENT and contained within Rule 5BER00-4, are unconstitutional as they violate substantive due process requirements, in that they are arbitrary and capricious, particularly with regard to the arbitrary and unsupportable 1900 foot rule; they require destruction of trees rather than other, less invasive methods such as chemical treatment; they apply to all citrus regardless of species or variety whereas scientific evidence clearly demonstrates that Xac bacterial predominantly attacks selected varieties; the DEPARTMENT

has ignored evidence regarding the effectiveness of these less invasive and severe methods of prevention, such as spraying, immuno suppressants or other technology; the fact that canker is actually more of a "cosmetic" disease and does not affect the quality or health of the fruit or trees.

50. The rules and regulations applied by DEPARTMENT in furtherance of its CCEP are violative of the federal and state Constitutions in that they deprive Plaintiffs of procedural due process by the following shortcomings: the IFO's provide insufficient notice, both in terms of content and in the amount of time provided for appeal; the "appeal" process is woefully inadequate as it does not allow a true record to be brought to the appellate court; no pre or post order hearings are provided for, thus there is no chance to argue the "facts" or to determine what evidence is being used against the affected citrus tree owners; the burden is shifted onto the Plaintiffs to appeal a pre-determined decision, thus rendering the citrus tree owners in a prejudiced position in that they must pay the filing fee, they must come before the appellate court without a record and without any opportunity to present factual arguments, without discovery, and with a presumption of the correctness of the unilaterally issued IFO; the IFO's are often not provided prior to tree destruction, or are provided less than five days before the destruction of the trees; the alleged "infected" trees are often incorrectly identified; the 1900 foot distance is often misapplied; the evidence of infection is destroyed by DEPARTMENT, thus thwarting owners' attempts to prove DEPARTMENT wrong.

51. The declaration of COMMISSIONER of an emergency, nearly five years into the CCEP, and without sufficient scientific evidence in support thereof, is arbitrary and capricious.

52. Pursuant to Section 120.54(4), Fla. Stat. (1999), an Emergency Rule may be adopted when the procedure provides at least the procedural protection given by other statutes,

the State Constitution or the United States Constitution and that the agency takes only that action necessary to protect the public interest under the emergency procedure.

53. In the instant case, the effect of the rule is directly contrary to the guarantees provided by the federal constitution under the Fourth and Fifth Amendments in that it fails to protect the property owner from illegal search and seizures of their property and fails to give them due process and allows a taking with no process for just compensation.

54. Emergency rules are only effective for a period of 90 days, which would extend the rule from September 20th to December 18. The stated rationale for the adoption of the rule was that recent tropical storms and hurricanes have resulted in disease spread from infested areas into non-infested areas ever closer to major citrus production areas. Since the adoption of the rule there has not been any further significant storms or hurricanes and the "prime time" for hurricanes and tropical storms has concluded. Therefore, the rationale for the emergency rule is no longer in existence to the extent that there was any merit to it. This is especially true since citrus canker has been known in Florida for decades and up until this September 19, 2000, citizenry affected by tree removal orders were to be given notice under the rules.

55. There is a bona fide, actual and present and meaningful dispute between Plaintiffs and Defendants and a practical need for a declaration by the Court adjudicating their respective rights and obligations. The declaration implicated is based on a present controversy and upon a ascertainable state of facts as outlined above. An immunity, power, privilege or right of the parties is dependent upon the facts and law applicable to those facts. The positions of the Plaintiffs and Defendants with respect to the foregoing are adverse and antagonistic.

56. Plaintiffs, as the party moving for Declaratory Judgment allege that they are in doubt as to their rights or status as owners of healthy citrus trees within the declared quarantine area, and they are entitled to have such doubts removed.

WHEREFORE, Plaintiffs pray for the following relief:

A. A judgment declaring that the DEPARTMENT'S rules and practices with regard to its CCEP are unlawful and unconstitutional, in violation of due process rights under both state and federal constitutions, and for both procedural and substantive due process rights.

B. Declare that the COMMISSIONER'S declaration of an emergency, and the ensuing rules further diminishing the procedural rights of Plaintiffs under the CCEP, is unreasonable, arbitrary and capricious, unsupported by valid scientific evidence. It is therefore violative of substantive due process rights.

C. Order the DEPARTMENT to cease all enforcement methods in use at this time for citrus trees under its CCEP, until such time as it may establish reasonable, valid, lawful, and supportable methods of citrus canker eradication.

D. Determine through declaratory judgment that the COMMISSIONER'S finding of an emergency was unsupported by any competent and substantial evidence, and thus arbitrary and capricious, making it a violation of substantive due process provisions of state and federal constitutions.

E. Order such further and additional relief as may be deemed appropriate by the Court, including injunctive relief, and providing for a reasonable attorney's fee and the costs associated with this action.

COUNT III
(Injunctive Relief)

Plaintiffs reaver, adopt and incorporate herein, all allegations contained within paragraphs 1-38 and 46-56, in support of temporary and permanent injunctive relief, and in addition allege as follows:

57. Plaintiffs request a temporary injunction under Rule 1.610(a), Fla.R.Civ.P., for the purpose of maintaining the status quo with regard to the existence of uninfected citrus trees, until such time as the court may resolve the dispute on the merits.

58. Failure to obtain a temporary injunction will result in continued destruction of citrus trees which are undeniably not infected with citrus canker, the loss of which is irremediable. In addition, the rules of the CCEP do not allow the importation, purchase, or planting of new citrus trees within the quarantine areas, and thus, Plaintiffs cannot replace these trees even if replacement were to be considered a remedy.

59. To allow DEPARTMENT to complete the CCEP under the present rules will moot this controversy since the program will be completed before it can be properly challenged.

60. Due to the emergency rules of DEPARTMENT, Plaintiffs have no adequate remedy at law, as there are no procedures established under the rules for making a record before appeal, for arguing facts, for discovery, for pre or post Order hearings, for preservation of evidence, or for any other effective remedy under law.

61. As detailed above, the Plaintiffs have stated a cause of action which is sufficient to raise the likelihood of success on the merits to a "substantial" likelihood. There are clear due process problems with the rules and the CCEP, including procedural and substantive, as well as a clear per se taking without just compensation.

62. The public interest is served by issuing this injunction to protect the health, safety and welfare of the citizens, and assure the constitutional rights of plaintiffs and all residents of the quarantined area are protected. Citrus trees are an important constituent in the decorative, landscaping and aesthetic qualities of the affected areas. Wholesale destruction of the tree canopy, for some misplaced perception by DEPARTMENT and COMMISSIONER, that an emergency has suddenly sprung upon the citrus industry, cannot and should not be tolerated by the Court. Rather, the Court should require a careful, considered, and reasonable approach which aims to balance the interests of the citrus industry on the one hand, with the due process rights of the citizens of the state on the other.

63. The Court should not permit DEPARTMENT to violate and ignore the constitutional rights of the hundreds or even thousands of plaintiffs in the proposed class, so as to assist a few large corporate entities in the citrus industry.

WHEREFORE, Plaintiffs pray that the Court

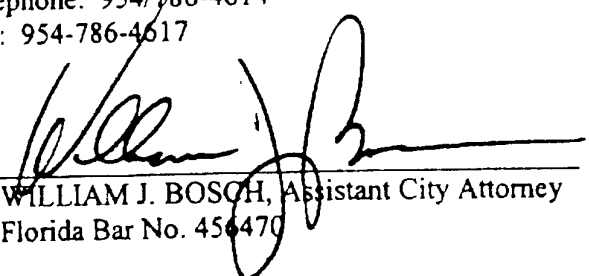
A. Issue a Preliminary Injunction to stop the CCEP from continuing until adequate procedural and supervisory safeguards are implemented, ensuring that DEPARTMENT cease violating the due process rights of Plaintiffs. This order should require that all citrus trees on which Plaintiffs have received an IFO requiring their destruction, be preserved until the merits of this case can be resolved, and that DEPARTMENT cease from issuing further IFO's until the procedures and rules under which said orders are issued can be adequately reviewed by this Court.


B. Issue a Permanent Injunction ordering the DEPARTMENT to cease implementation of its CCEP until such time as it establishes procedures and rules which adequately protect and insure no violations of Plaintiffs' due process rights.

C. Issue an Injunction finding that the Emergency declared by COMMISSIONER is null and void, and any and all rules issued in consequence thereof shall be similarly null and void.

D. Provide Plaintiffs with such other relief as the Court deems necessary to enforce the temporary and permanent injunctions requested herein, including attorneys' fees and costs

GORDON B. LINN, CITY ATTORNEY
CITY OF POMPANO BEACH
P.O. Box 2083
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By: 
WILLIAM J. BOSCH, Assistant City Attorney
Florida Bar No. 456470


C. WILLIAM HARGETT, JR., CITY MANAGER

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me on the 27th day of October, 2000, by C. WILLIAM HARGETT. He is personally known to me.

NOTARY SEAL:


NOTARY PUBLIC, STATE OF FLORIDA

Court.



MY COMMISSION # CC961186 EXPIRES
October 1, 2004
BONDED THRU TROY FAIR INSURANCE, INC.

Information ordering the DEPARTMENT to cease
(Commission Number)

WJB:jrm
10/27/00
l:lit/fda/2001-231