

New York State Department of Environmental Conservation
Division of Legal Affairs, Region 2
47-40 21ST Street, Long Island City, NY 11101-5407
Phone: (718) 482-4865 • FAX: (718) 482-4962
Website: www.dec.state.ny.us



209777

By Facsimile (202 565-9004) & US Mail

January 5, 2004

Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JAN - 6 2004

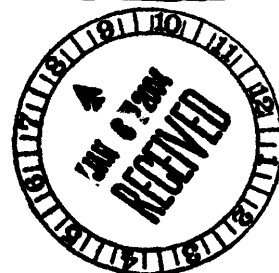
Part of
Public Record

Re: Finance Docket No. 34429
Petition of the New York City Economic Development Corporation, Acting
on Behalf of the City of New York, New York for Declaratory Order

Dear Mr. Williams:

The New York State Department of Environmental Conservation ("NYSDEC") supports the request submitted by Edward D. Greenberg, Esq. in a letter dated January 2, 2004, on behalf of the New Jersey Department of Environmental Protection ("NJDEP") for an extension of the time for written comments.

We share NJDEP's concern about the broad and possibly precedential implications the requested declaratory ruling could have well beyond the particular project - including but not limited to a potential of unmitigated destruction of natural resources. This alone should favor an attempt to develop a complete record that is not compromised by time constraints.



In addition, NJDEP may be able to contribute in a meaningful way to the pending proceeding not only in light of the related proposed construction of a connector between the Staten Island Railroad and the Chemical Coast Secondary Line (STB Finance Docket No. 34428) in the state of New Jersey but also since the tidal streams that are affected by the proposed project (Prall's Creek: CSX Bridge No. 292; Sawmill Creek: CSX Bridge No. 389; and Neck Creek: CSX Bridge No. 386) are all tributaries to the Arthur Kill, a navigable water over which both the state of New York and New Jersey have partial jurisdiction under both state and federal law.

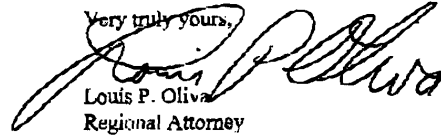
As NJDEP's counsel correctly points out, NJDEP has not been part of the discussions between the petitioner and NYSDEC and, in light of the holiday season, has not been able to discuss with the NYSDEC staff what, if any, issues may also affect NJDEP.

Finally, the holiday season also affected our own ability to prepare comments by the January 9, 2004, deadline. While we still will make every attempt to submit by that time comments to the petition, the parties and the proceeding would be better served if additional time were provided.

It should be noted that on December 16, 2003, EDC submitted to NYSDEC a document in excess of 200 pages entitled *Proposed Staten Island Railroad Reactivation Environmental Assessment* together with a request to continue the processing of earlier applications EDC had submitted to NYSDEC for state permits "with the hope that DEC will complete its permitting process and allow the project to proceed, before the STB completes its deliberations." (Letter of December 11, 2003 by Alice Cheng to John Cryan.). This document is currently undergoing review by NYSDEC staff but in light of the holidays that review process has not yet been

completed. Its analysis is likely to be helpful in responding to some of NYSDEC's concerns vis-a-vis the pending petition.

Therefore, we respectfully join NJDEP's request for an extension of the period to submit written comments.

Very truly yours,

Louis P. Oliva
Regional Attorney

cc:

By telefacsimile and US mail
David M. Konschnik, Esq.
Director of Office of Proceedings
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001
(Fax No. 202 565 9003)

By telefacsimile and US mail
Charles A. Spitulnik, Esq.
Alex Menendez, Esq.
MCLEOD, WATKINSON & MILLER
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
(Fax No. 202 408-7763)

By telefacsimile and US mail
Robert La Palme
New York City Economic Development Corporation
110 William Street
New York, NY 10038
(Fax No. 212 312-3912)

By telefacsimile and US mail

Heidi Rubinstein, Esq.
New York City Law Department
100 Church Street
New York, NY 10007
(Fax No. 212 788-1619)

By telefacsimile and US mail

Edward D. Greenberg, Esq.
Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C.
Canal Square
1054 31st Street, N.W.
Washington, D.C. 20007-4492
(Fax No. 202 342-5219)