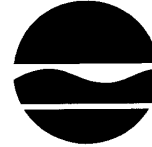


**New York State Department of Environmental Conservation
Division of Legal Affairs, Region 2**

47-40 21ST Street, Long Island City, NY 11101-5407

Phone: (718) 482-4965 • FAX: (718) 482-4962 Website: www.dec.state.ny.us



Erin M. Crotty
Commissioner

209998

January 29, 2004

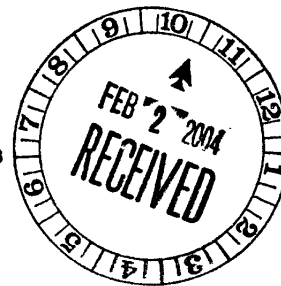
By Telefacsimile (202 565-9004) and Overnight Mail

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

ENTERED
Office of Proceedings

FEB - 2 2004

Part of
Public Record



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

ENTERED
Office of Proceedings

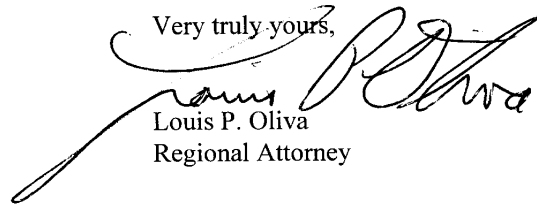
FEB - 2 2004

Part of
Public Record

Dear Mr. Williams:

Enclosed please find one original and ten copies of NYSDEC's comments to the petition.

Very truly yours,


Louis P. Oliva
Regional Attorney

cc:

By telefacsimile and overnight mail

Charles A. Spitulnik
Alex Menendez
MCLEOD, WATKINSON & MILLER
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Washington, D.C. 20001
(Fax No. 202 408-7763)

By first class mail

Robert La Palme, Esq.
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110 William Street
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(Fax No. 212 312-3912)

By telefacsimile and first class mail

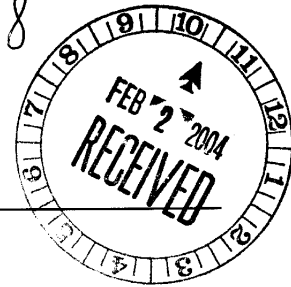
Heidi Rubinstein, Esq.
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(Fax No. 212 788-1619)

By telefacsimile and first class mail

Edward D. Greenberg, Esq.
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Washington, D.C. 20007-4492
(Fax No. 202 342-5219)

209998

Surface Transportation Board



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Office of Proceedings

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Finance Docket No. 34429

Part of
Public Record

**Petition of the New York City Economic Development
Corporation for Declaratory Order**

**Comments of the New York State Department of
Environmental Conservation to the Petition**

ENTERED
Office of Proceedings

FEB -2 2004

Part of
Public Record

By:

Louis P. Oliva
Regional Attorney
New York State Department of Environmental
Conservation, Region 2
47-40 21st Street
Long Island City, New York 11101-5407
(718) 482-4963

January 29, 2004

Note: This filing contains color

The New York State Department of Environmental Conservation ("NYSDEC") does not seek to impede the attempts by the City of New York, the New York City Economic Development Corporation ("NYCEDC" or "Petitioner"), and the Port Authority of New York and New Jersey to reintroduce, enhance, and expand freight rail service in the northwestern area of Staten Island.¹ To the contrary: NYSDEC has supported and continues to support the utilization of rail-based transport including the export of solid waste as it is proposed to occur from the Arthur Kill Transfer Station that will form the end of the proposed "New Track". Specifically, and contrary to what the petition insinuates,² NYSDEC has supported NYCEDC in its attempt to obtain state permits for the projects at issue. When Petitioner allures to "unresolved issues over environmental impacts and mitigation of wetlands impacts [that] have prevented the applications from being deemed complete,"³ it should be noted that, with respect to the two permit applications submitted to the NYSDEC, the Petitioner itself assumed lead agency status for the environmental review process and that the cause for delays in the completion of that process can be found in Petitioner's own domain. There has been no attempt by NYSDEC

¹ In the interest of simplification we adopt for the purposes of this submission the nomenclature used in the Petition, distinguishing between the "Railroad Rehabilitation Work" and the "New Track." It should be noted, however, that Petitioner should provide further clarification about the actual location and length of the "New Track." see comments in paragraph 4 at page 10, below.

² For example on page 6 where it states: "NYSDEC is **now** attempting to impose permitting and other requirements..." (Emphasis added.)

³ See page 6 of the Petition.

to prevent or impede the project from going forward.

However, considering that the project(s) will be implemented in highly sensitive environmental areas, recognized as such both by the State of New York and the federal government, it is this Department's obligation to ensure that the implementation will be done in an environmentally sound fashion. New York State's constitution includes a mandate to "conserve and protect its natural resources and scenic beauty," and the state's legislature is required to "include adequate provisions for the [. . .] protection of agricultural lands, wetlands and shorelines" (Constitution of the State of New York Art. 14 § 4).

We see Petitioner's attempts to skirt all environmental review processes for the New Track and circumvent the state's and New York City's own⁴ environmental review process for the Railroad Rehabilitation Work, given the circumstances of the project at issue, not only as the unnecessary cancellation of a traditionally cooperative and productive relationship between NYSDEC and NYCEDC in promoting environmentally sensitive development of New York City's infrastructure but also as not supported by statute and contrary to applicable law.⁵ This is

⁴ New York City Mayor's Executive Order No. 91 mandated the City Environmental Quality Review ("CEQR") process in 1977, implementing the requirements of the State Environmental Quality Review Act ("SEQRA", Article 8 of the Environmental Conservation Law). In 1989, the revised City Charter authorized the City Planning Commission to adopt rules of procedure for CEQR. The Commission exercised its authority and promulgated rules that became effective October 1, 1991; these rules were superimposed on Executive Order No. 91.

⁵ In addition, as set forth in more detail in paragraph 4 below, Petitioner's activities concerning the construction of the "New Track" are already subject to a NYSDEC permit that binds Petitioner and insofar renders the Petition moot.

an ironic outcome considering statements made by Petitioner in earlier proceedings before the Board.⁶

We are cognizant of the fact that the currently prevailing interpretation of the preemptive language in 49 U.S.C. §§ 10501(b)(2) and 10901 would leave the Surface Transportation Board as the gatekeeper against unwarranted destruction of natural resources. We therefore suggest that the Board narrowly interpret statutory language that otherwise would result in an avoidance of the Board's review process in environmentally sensitive areas, especially when such interpretation would not compromise the congressional objective of avoiding the balkanization of interstate transportation⁷ and protecting worthwhile projects against Not-In-My-Backyard opposition and unnecessary delay.

Finally, we would like to bring to the Board's attention the fact that without even awaiting the Board's decision and despite statements to NYSDEC to the contrary in the course of a meeting on November 19, 2003, the Petitioner already commenced work, including the

⁶ For example, Petitioner's comments in docket number EP 582 (Sub.1): "NYCEDC is participating in this proceeding to review the proposed rules with an eye towards ensuring that the Surface Transportation Board ("STB") uses the full range of its authority under its enabling legislation **to guard the public interest, including** preservation of a level competitive playing field and **preventing adverse impacts on safety and the environment.**" (Emphasis added.)

⁷ The House Report No. 104-311, dated November 6, 1995, states: "Although States retain the police powers reserved by the Constitution, the Federal scheme of economic regulation and deregulation is intended to address and encompass all such regulation and to be completely exclusive. Any other construction would undermine the uniformity of Federal standards and risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically interstate form of transportation."

demolition of bridges, the clearing of vegetation, grubbing, grading, placement of fill (including ashes) in wetlands areas. These activities occurred within the area of the "Railroad Rehabilitation Work" where Petitioner does not dispute the Board's jurisdiction.

HISTORY OF THE PROCEEDING

On December 14, 2001, following a request by NYCEDC, a pre-application meeting was held in the offices of the NYSDEC to discuss the revitalization of the SIRR and evaluate what state and federal permits would be required, and who would have lead agency status for the purposes of environmental review under the State Quality Environmental Review Act (SEQRA) and New York City's own City Environmental Quality Review.

One year later, on December 20, 2002, NYCEDC submitted two applications to NYSDEC. The first, identified under DEC File No. 2-6403-00213/00001, sought authorization for the demolition and reconstruction of three bridges along the Travis Branch. The second, identified as DEC File No. 2-6401-00269/00001, concerned activities in association with the Wye connection between Arlington Yard and the Travis Branch.

On July 2, 2003, Petitioner representatives submitted a letter to NYSDEC stating: "I am writing to detail EDC's plans for preparation of environmental review and permit applications. [. . .] I will be forwarding a lead agency request letter for a coordinated review of this project." This corresponds to requirements under the New York State Environmental Quality Review Act⁸

⁸ Article 8 of the Environmental Conservation Law of the State of New York.

and New York City's own environmental review process⁹ to determine who will be the lead agency. It is apparent that EDC's own environmental review process had just begun and that claims NYSDEC had delayed or impeded the proceeding are without merit.

On October 29, 2003, Petitioner initiated the pending proceeding before the Board. NYSDEC received a copy of the petition on November 6, 2003, together with a request to meet on the afternoon of November 19, 2003.

On November 19, 2003, NYCEDC met with NYSDEC staff, further informing NYSDEC of the pending application before the Surface Transportation Board. At that meeting, Petitioner's representatives stated that no work was being done on the project. Shortly thereafter, on the same day, NYSDEC received the first complaints from the public about ongoing demolition activities along the Staten Island Railroad and verified these allegations during site inspections.

ARGUMENTS

1. PETITIONER ACTS *ULTRA VIRES*

The City of New York as a subdivision of the State of New York, and NYCEDC as its agent, are acting *ultra vires* insofar as they seek an exemption from the laws of the state of which they are subdivisions.

- a. The NYCEDC is a not-for-profit corporation that was incorporated in the state of New York in 1966 and stands under control of the mayor of the City of New

⁹ The "City Environmental Quality Review" is codified as Mayor's Executive Order No. 91 of 1977, as revised by additional rules of the New York City Planning Commissioner, published in the Rules of the City of New York, Title 62, Chapter 5.

York. The NYCEDC operates under contract with the City of New York.¹⁰

NYCEDC's president and chairman of the board are both appointed by the Mayor.

- b. The City of New York is a subdivision of the State of New York and as such is bound by its laws and regulations, including the Environmental Conservation Law.
- c. Section 9.11 of NYCEDC's *Maritime Contract* requires the corporation to "obtain any approval, permit, license, grant, right or other authorization required by **any** law, rule, regulation or order in connection with any contract it enters into." (Emphasis added.) Accordingly, NYCEDC must seek authorization from NYSDEC in accordance with state law.

2. THE NEW TRACK IS A RAILROAD LINE AND AS SUCH SUBJECT TO THE BOARD'S LICENSING REQUIREMENTS

The "New Track" as it is described in the petition would not be exempt under 49 U.S.C. § 10906 because it is neither an industrial track nor a spur or switching track but rather qualifies as an extension. As the Board held in *Riverview Trenton Railroad Company*, STB F.D. No. 34040 (served May 15, 2003), if a track - even track that is used for purposes such as switching - (1) will constitute the entire operation of the new carrier; (2) permits the using carrier to extend

¹⁰ The general contract is entitled *Amended and Restated Contract between The City of New York and New York City Economic Development Corporation, relating to New York City Economic Development Corporation's performing certain economic development services for The City of New York* and is dated June 30, 2003. The specific contract is entitled *Amended and Restated Maritime Contract between the City of New York and New York City Economic Development Corporation*.

operations into, or invade, new territory, and thereby alter the competitive balance between railroads; and/or (3) is essential to the through movement of traffic from shipper to consignee, then it is deemed to be a railroad line subject to Board licensing requirements, rather than excepted spur or auxiliary track.

We suggest that at least two of these three triggers for the Board's jurisdiction are met in this case: The extension of the SIRR would serve at least two shippers that currently lack access to rail service: The City of New York's Fresh Kills Transfer Station and Visy Paper. (See also Petitioner's comment letter of December 16, 2003 in the Petition of the Port Authority of New York and New Jersey, FD 34428.). To the best of our knowledge the SIRR is the Petitioner's only railroad operation.

3. THE PUBLIC TRUST DOCTRINE LIMITS THE SCOPE OF THE STATUTORY PREEMPTION AND EXEMPTION.

The public trust doctrine derived and was adopted by American courts from its roots in Roman law where "running waters, like the air and the sea, were res communes, things common to all and property to none," (*U.S. v. Gerlach Live Stock Co.*, 339 U.S. 724, 744). See, for example, *Illinois Central Railroad co. V. Illinois*, 146 U.S. 387, 452-453, 13 S.Ct. 110, 118, 36 L.Ed. 1018, 1042:

"The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining."

The public trust doctrine applies to navigable water bodies but also tidal wetlands irrespective of their navigability and extends to non-tidal (freshwater) areas as well (*Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 108 S.Ct. 791). Associated with the public's trust in these areas is the public's right to utilize them for navigation, recreation, fishing, crabbing and related activities.¹¹ Where private interests and the public trust collide, they must be balanced against each other. (*Town of Oyster Bay v. Commander Oil Corporation*, 96 N.Y.2d 566, 759 N.E.2d 1233, 734 N.Y.S.2d 108).

The implication of the public trust doctrine in the context of 49 U.S.C. Subtitle IV is that Congress lacked the authority to exempt rail construction projects from governmental oversight to the extent such projects will negatively affect lands that are subject to the public trust. Insofar as 49 U.S.C. §10906 prevents the Board from exercising its oversight and ensuring that the principles of the public trust doctrine are upheld, it is the state's right and obligation to fill that void. At a minimum, this applies to any private project that would result in the destruction of areas that are subject to the public trust, for example, an industrial track or spur whose construction intercepts the flow of water to a tidally influenced area. However, based on the application of the public trust doctrine in the State of New York (*id.*), the public trust doctrine also mandates a balancing between the impacts on areas subject to the public trust and a proposed project. In other words, the public trust doctrine demands that negative impacts on

¹¹ In the State of New York, the public trust doctrine finds its expression in the regulatory scheme created by the Tidal Wetlands Act (Environmental Conservation Law Article 25), the Freshwater Wetlands Act (Environmental Conservation Law Article 24) and the Protection of Waters Act (Environmental Conservation Law Article 15) which are administered by NYSDEC.

tidal wetlands and freshwater areas within the public trust are minimized to the extent it is reasonable and practicable. Therefore, irrespective of 49 U.S.C. §10906, NYSDEC as the agency responsible for the management of freshwater and tidal wetlands, has jurisdiction over any spur, industrial, team, switching or side track that is located within an area that is subject to the public trust doctrine.

4. THE NEW TRACK IS ALREADY SUBJECT TO NYSDEC'S JURISDICTION UNDER DEC PERMIT 2-6403-00141/00001

On March 5, 2002, the NYSDEC issued permit No. 2-6403-00141/00001 to the City of New York, represented by the New York City Department of Sanitation, for the construction and operation of the Fresh Kills Solid Waste Transfer Station (see Exhibit 1). The authorized activities include "rail spur construction and construction and planting of a wetland mitigation area to offset the loss of tidal wetlands from said construction." The project is divided into two areas, identified as "Area A" (the facility itself) and "Area B." The latter is described as

"a strip approximately 3,300¹² feet long, linking Area A to the existing terminus of the Travis Branch of the Staten Island Railway at the Visy Paper access road (south of the lagoon). Area B is the proposed rail extension right-of-way. The Department would negotiate easement agreements for the right-of-way with the owners of the affected properties: Consolidated Edison, Visy Paper and NRG. The right-of-way would accommodate a main line and a passing track and would vary in width between a minimum of 60 feet and a maximum of 140 feet over its length. The right-of-way would cross Victory Boulevard. The Department proposes to demap that portion of Victory Boulevard that includes the crossing and Victory Boulevard west of the crossing."

¹² The distance of "Area B" is not consistently described. For example, the *Geotechnical Evaluation [for] Area B Rail Line Extension Staten Island, New York*, which is part of Volume 3 of the Engineering Report, states that the "rail alignment through Area B is approximately 4,400 feet in length."

(Engineering Report Staten Island Solid Waste Transfer Station Part 360 Permit
Application Volume 1, October 2000, at page 2.)

Exhibit 1.A, a map prepared on behalf of New York City's Department of Sanitation, shows the site location for the Staten Island Transfer Station and depicts "Area B." It is apparent that Area B corresponds to what the petition describes as the "New Track." The permit has been in effect for 2 years and is binding upon the City of New York. Construction activities pursuant to the permit have commenced. The expiration date of the permit is March 5, 2007.

Petitioner cannot now circumvent its responsibilities under the permit it obtained two years ago. The permit created certain rights but also obligations that the Petitioner is bound to comply with. In addition, since the Petitioner has the authority to construct the New Track under the permit, the petition is moot as far as the New Track is concerned.

5. SIGNIFICANT POTENTIAL IMPACTS ON SENSITIVE ENVIRONMENTAL AREAS WARRANT AN ENVIRONMENTAL ANALYSIS OF THE PROJECTS.

- a. The project area traverses significant fish and wildlife habitat areas. A map attached hereto as Exhibit 2 identifies the freshwater and tidal wetland areas under the jurisdiction of NYSDEC.
- b. Old Place Creek Pond, the Sawmill Creek Marshes, and Fresh Kills have been identified as "significant Coastal Fish and Wildlife Habitat" by the New York State Department of State, Division of Coastal Resources and Waterfront

Stabilization.

- c. Moreover, the U.S. Fish and Wildlife Service has designated the Arthur Kill Complex, which encompasses the western shore of Staten Island, including the entire project area, as a *Significant Land Habitat Complex*. (See U.S. Fish and Wildlife Service, *Significant Habitats and Habitat Complexes of the New York Bright Region*, Final Report, November 1996, pp.577 et seq.¹³ A map depicting the complex is attached hereto as Exhibit 3.) The report notes that

"[t]hese areas include important nesting and foraging areas for several species of herons, egrets, and ibises as well as for gulls and waterfowl. The freshwater wetland areas and forested buffers are also extremely important as some of the only remaining open space in the urban core suitable as feeding and roosting areas for waterbirds and migratory stopover habitat for songbirds and raptors [. . .] This area also contains several plants and natural communities reaching their northeast limit, thus making them rare in New York State."

"This complex consists of four major habitat groupings: **colonial wading bird breeding sites or heronries; waterbird foraging areas; freshwater marshes and wooded swamps; and upland forests**. The focal points of this complex are the three island heronries: Shooters Island, Pralls Island, and Isle of Meadows. **Shooters Island** is an uninhabited bedrock and fill island located in the Kill van Kull at the southern end of Newark Bay, partly in New Jersey and partly in New

¹³ The URL for the report is:
http://training.fws.gov/library/pubs5/web_link/text/akc_form.htm#Arthur%20Kill%20Complex

The list of Species of Special Emphasis within the Arthur Kill Complex can be found at
http://training.fws.gov/library/pubs5/web_link/tables/aki_tab.htm

The link to the map attached as Exhibit 3 can be found at
http://training.fws.gov/library/pubs5/web_link/images/akc02a2.jpg

York. The island is partially wooded with species such as black locust (*Robinia pseudoacacia*), tree-of-heaven (*Ailanthus altissima*) and Japanese honeysuckle (*Lonicera japonica*). Small patches of salt marsh containing cordgrass (*Spartina alterniflora*) and common reed (*Phragmites australis*) occur around the shoreline, along with scattered debris, rotting docks, abandoned buildings, shipwrecks, and barges. **Pralls Island**, located in the Arthur Kill, was originally a high marsh island over which dredged material was dumped, creating a central densely wooded upland area with tree-of-heaven, gray birch (*Betula populifolia*), and black cherry (*Prunus serotina*) ringed by low marsh dominated by salt marsh cordgrass and common reed. **Isle of Meadows**, located at the confluence of the Arthur Kill and Fresh Kills, is similar in origin and vegetation to Pralls Island and contains areas of low and high tidal marsh along its northern and western shores."

"The main foraging areas of this complex used by nesting colonial wading birds from the three island heronries are: **Arlington/Mariners Marsh, Bridge Creek, Goethals Bridge Pond, Old Place Creek, Gulfport Marsh, Sawmill Creek Marsh, Neck Creek Marsh, Fresh Kills and Richmond Creek, Piles Creek, Rahway River Mouth, Kawameeh Park, and Middlesex Reservoir**. These areas represent a diversity of wetland habitat types, primarily tidal and nontidal emergent salt, brackish, and fresh marshes, mudflats, ponds, and creeks, dominated by cordgrasses (*Spartina alterniflora* and *S. patens*), spike grass (*Distichlis spicata*), marsh elder (*Iva frutescens*), common reed, and cattail (*Typha latifolia*). In addition to vegetated wetland areas, this complex contains extensive interspersed areas of human-made structures, including railroad yards, oil tank farms, bulkheads, docks, road systems, landfills, and numerous industrial and residential buildings, both occupied and abandoned. Other areas further removed from this complex in the Hackensack Meadowlands and Newark Bay may also be important foraging areas."

"Descriptions of specific foraging areas on Staten Island follow. Arlington Marsh is a tidal flat area with a narrow band of salt marsh along the Kill van Kull shoreline close to the Shooter's Island heronry and high marsh further inland. Mariner's Marsh is a complex of former drydocks that are now freshwater wetlands including seven ponds, marshes, meadows, woods, and streams. At the corner of the Arthur Kill and Kill van Kull, Bridge Creek is a tidal creek with an island of intertidal marsh, shoals, bars, and flats and grasslands on the adjacent vacant uplands. South of this area is Howland Hook, a large container shipping port with sediments contaminated by high concentrations of dioxin. To the south and inland of these areas, Goethal's Bridge Pond is a 20-hectare (50-acre) shallow freshwater-to-brackish pond surrounded by emergent marsh dominated by common reed and a contiguous forested area. Old Place Creek is the most extensive meandering tidal creek in northern Staten Island, with a narrow strip of

intertidal marsh and extensive areas of high marsh. Its headwaters include Graniteville Swamp and the Staten Island Corporate Park. Though culverted, the drainage of Old Place Creek still extends east of South Avenue. Gulfport Marsh is a large 66-hectare (162-acre) emergent marsh dominated by common reed and cattails, with pockets of open water. This is the second largest freshwater emergent marsh in New York City. Sawmill Creek Marsh is located across Prall's Creek directly opposite the Prall's Island heronry and contains salt marshes, tidal flats, and freshwater wetlands with several small ponds and a 10-hectare (25-acre) freshwater/brackish marsh with headwaters in the Staten Island Corporate Park. Neck Creek Marsh is a high marsh area separated from a freshwater marsh and pond by a dike. Fresh Kills is the largest tidal wetland system (about 405 hectares [1,000 acres] of tidal wetlands) in the Manhattan Hills ecological region. The complex includes two relatively natural wetland areas: Isle of Meadows marsh and heronry and William T. Davis Wildlife Refuge, as well as three major tributaries including Main Creek, Richmond Creek, and Springville Creek. In the middle of the Fresh Kills complex is one of the largest sanitary landfills in the world; this landfill is slated for closure in 2001."

- d. The project encompasses at least three (3) crossings over navigable waters of the United States and the state of New York with sensitive environments. The water bodies include Merrill's Creek (Trestle Bridge No. 392), Saw Mill Creek (Trestle Bridge 389); and Neck Creek (Trestle Bridge 386), all of which are tidal streams with significant resource values that are mapped and regulated (under state law) as tidal wetlands because they provide numerous characteristic tidal wetlands benefits such as marine food production, wildlife habitat, flood and storm and hurricane control, recreation, cleansing of ecosystems, sedimentation control, education and research, and open space and aesthetic appreciation.
- e. Some of the potential impacts associated with the Railroad Rehabilitation Project include the filling and destruction of sensitive wetlands areas, additional

destruction of wetlands as a result of staging of material and equipment and access to the work sites, management of construction and demolition debris in the sensitive habitat areas, leachate of material (such as concrete) as well as discharges of sediments and pollutants into navigable waters and wetland areas.

- f. Some of the impacts associated with the proposed project, such as the management of stormwater and the issuance of a water quality certificate, are subject to federal programs under the Clean Water Act that are delegated to the state of New York and administered by NYSDEC.

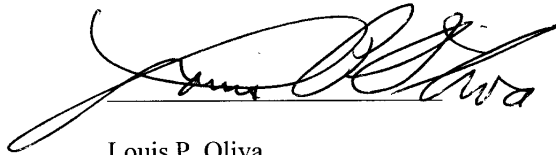
In closing, NYSDEC reiterates its position that Petitioner would be best advised to withdraw the petition, which is counter-productive at best.

With respect to the New Track, the petition is moot in light of a state permit that has been issued two years ago and is binding upon the City of New York. Irrespective of the permit, the New Track would not be exempt from the Board's jurisdiction because it is neither an industrial track nor a spur nor a switching track.

Concerning the Railroad Rehabilitation Work, NYSDEC is ready to assist in the environmental review process to the extent the Board asserts its jurisdiction. To the extent the Board does not assert jurisdiction, NYSDEC reserves the right to assume regulatory oversight for

those areas, including tidal wetlands and pertinent freshwater zones that are subject to the public's trust, in order to ensure that the project does not alienate and unnecessarily harm such lands.

Long Island City, New York
January 29, 2004

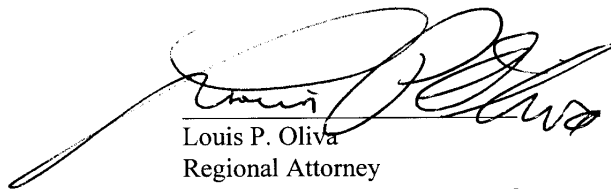


Louis P. Oliva
Regional Attorney
New York State Department of
Environmental Conservation Region 2
Long Island City, NY 11101-5407

CERTIFICATION

I certify that I have this day served copies of NYSDEC's comments upon the petitioner, the New York City Development Corporation, Acting on Behalf of the City of New York, New York, by telefacsimile and overnight mail.

January 29, 2004



Louis P. Oliva
Regional Attorney
New York State Department of
Environmental Conservation Region 2
Long Island City, NY 11101-5407

Exhibit 1

Copy of NYSDEC Permit No. 2-6403-00141/00001

New York State Department of Environmental Conservation
Division of Environmental Permits, Region 2 Office
47-40 21st Street, Long Island City, NY 11101
Tel: (718) 482-4997 Fax: (718) 482-4975



Erin M. Crotty
Commissioner

5 March 2002

Harry Szarpanski, P. E., Assistant Commissioner
New York City Department of Sanitation
Bureau of Long-term Export
44 Beaver Street, 12th Floor
New York, NY 10004

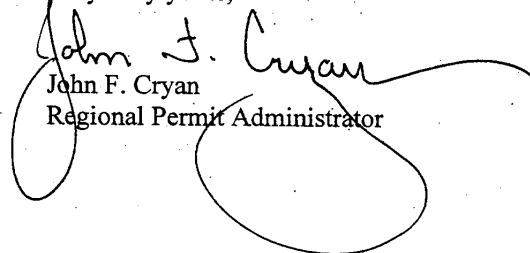
Re: DEC Permit No. 2-6403-00141/00001
NYC DOS - Staten Island Transfer Station
ECL Article 27 -- Solid Waste Management
ECL Article 25 - Tidal Wetlands
NOTICE OF PERMIT ISSUANCE

Dear Mr. Szarpanski:

Enclosed is your permit. Please read all conditions carefully. Please provide a full copy of this permit to all agents, contractors, and employees performing any part of the permitted activities.

If you have any questions, please call Jeffrey Rabkin or me at the number above.

Very truly yours,


John F. Cryan
Regional Permit Administrator

cc: K. Brezner, P. E., DEC Region 2 Div. of Solid & Hazardous Materials
Capt. T. Revella, DEC Region 2 Division of Law Enforcement
NYC Councilman Oddo, S. I.

encl.

JFC:bh

(WP8/PERMIT.LSW)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DEC PERMIT NUMBER:
2-6403-00141/00001FACILITY:
New York City Department of
Sanitation - Staten Island
Transfer Station**PERMIT**
Under the Environmental
Conservation Law (ECL)EFFECTIVE DATE:
5 March 2002EXPIRATION DATE:
5 March 2007TYPE OF PERMIT: ☒ New ☐ Renewal ☐ Modification ☒ Permit to Construct ☒ Permit to Operate☒ Article 27, Title 7; 6 NYCRR
360: Solid Waste Management☒ 6 NYCRR 608: Water
Quality Certification☐ Article 15, Title 15: Long
Island Wells☐ Article 17, Titles 7, 8: SPDES☒ Article 25: Tidal Wetlands☒ Article 15, Title 5: Protection
of WatersPERMIT ISSUED TO:
New York City Department of SanitationTELEPHONE :
212-837-8001ADDRESS OF PERMITTEE:
44 Beaver Street, 12th Floor, New York, NY 10004CONTACT PERSON FOR PERMITTED WORK:
Harry Szarpanski, P. E., Assistant Commissioner, Bureau of Long-term
ExportTELEPHONE :
212-837-8001PROJECT/FACILITY NAME:
New York City Department of Sanitation - Staten Island Transfer StationPROJECT/FACILITY ADDRESS:
Fresh Kills Landfill, Staten Island, NY

DESCRIPTION OF AUTHORIZED ACTIVITY:
Construction and operation of a municipal solid waste transfer station with a maximum allowed total solid waste throughput of 1,250 tons per day of municipal solid waste (MSW) collected by New York City Department of Sanitation and generated solely from Staten Island calculated as a daily average over a six-day period during any calendar week (Monday through Saturday). The normal maximum peak allowable is 1,950 in any single day. At any given time, the facility may store, on-site, no more than 6,187 cubic yards of MSW in the Processing Building. The facility is authorized to operate six days per week, 24 hours each day, Monday through Saturday. As a contingency, operations may occur on Sunday for peak loads or emergency conditions. The facility shall initially operate as a truck-to-truck transfer station, but shall add truck-to-rail capacity. The project includes rail spur construction and construction and planting of a wetland mitigation area to offset the loss of tidal wetlands from said construction.

All work associated with the authorized activity described above shall comply with all of the applicable provisions of 6 NYCRR Part 360 (Solid Waste Management Regulations), effective 29 September 1997. By acceptance of this permit, the Permittee agrees that this permit is contingent upon strict compliance with the ECL, all applicable regulations, and the General Conditions and Special Conditions included herein.

REGIONAL PERMIT ADMINISTRATOR:
John F. CryanADDRESS: 47-40 21st Street
Long Island City, NY 11101

AUTHORIZED SIGNATURE:

DATE
5 March 2002

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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

NOTIFICATION OF PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The Permittee has accepted expressly, by the execution of its application for the subject work, the full legal responsibility for all damages and costs, direct or indirect, of whatever nature and by whomever suffered, for liability it incurs resulting from activity conducted pursuant to this permit or in noncompliance with this permit and has agreed to indemnify and save harmless the State from suits, actions, damages, and costs of every name and description resulting from such activity.

Item B: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the Permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the subject work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

GENERAL CONDITIONS

General Condition 1: Facility Inspection by the Department

The subject facility, including relevant records, is subject to inspection without notice at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the Permittee is complying with this permit and the ECL. Such representative may order the subject work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The Permittee shall provide a person to accompany the Department's representative during an inspection of the subject facility when the Department provides written or verbal notification to the Permittee at least 24 hours prior to such inspection.

A copy of this permit, including all general and special conditions therein, all amendments thereto, and all documents referenced therein must be available for inspection by the Department at the project site at all times that activity associated with the subject work is occurring. Failure to produce a copy of such permit, conditions, amendments, or documents upon request by a Department representative is a violation of this permit.

Any sign provided by the Department with this permit shall be protected from the weather and posted in a conspicuous location at the subject work site throughout the period during which any of the subject work occurs.

General Condition 2: Relationship of this Permit to Other Department Orders and Determinations

Unless expressly provided for by the Department, this permit does not modify, supersede, or rescind any order or determination previously issued by the Department or any of the terms, conditions, or requirements contained in such order or determination.

General Condition 3: Applications for Permit Renewals or Modifications

The Permittee must submit a separate written application to the Department for renewal, modification, or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification, or transfer granted by the Department must be in writing. The Permittee must submit a renewal application at least:

- a) 180 days before expiration of permits for State Pollutant Discharge Elimination System (SPDES), Hazardous Waste Management Facilities, major Air Pollution Control (APC) and Solid Waste Management Facilities; and
- b) 30 days before the expiration of all other permit types.

Submission of applications for permit renewal, modification, or transfer are to be submitted to:
NYSDEC Regional Permit Administrator, Region 2, 47-40 21 Street, Long Island City, NY 11101 (tel. 718/482-4997).

General Condition 4: Permit Modifications, Suspensions, and Revocations by the Department

The Department reserves the right to modify, suspend, or revoke this permit when:

- a) the scope of the permitted activity is exceeded or a violation of any condition of the permit or provisions of the ECL and pertinent regulations is found;
- b) the permit was obtained by misrepresentation or failure to disclose relevant facts;
- c) new material information is discovered; or
- d) environmental conditions, relevant technology, or applicable law or regulation have materially changed since the permit was issued.

General Condition 5: Compliance with Other Regulatory Requirements

The Permittee is responsible for obtaining any other permits, approvals, lands, easements, and rights-of-way that may be required for the subject work. The Permittee and its independent contractors, employees, agents, and assigns must comply with all applicable local, State, and federal regulatory requirements.

General Condition 6: Permittee to Ensure that its Contractors to Comply with Permit

The Permittee shall ensure that its independent contractors, employees, agents, and assigns read, understand, and comply with this permit, including all General and Special Conditions herein, in general, and General Condition No. 5, above, in particular. Such persons shall be subject to the same sanctions for violations of this permit as those prescribed for the Permittee.

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7. That if future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.
8. That the State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.
9. All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, or any other environmentally deleterious materials associated with the project. Any creosote-treated lumber shall be weathered for at least six months before it is brought to the subject work site.
10. Any material dredged in association with the work herein permitted shall be removed evenly, without leaving large refuse piles, ridges across the bed of a waterway or floodplain, or deep holes that may have a tendency to cause damage to navigable channels, the banks of a waterway, water quality, sediment quality, or benthic habitat.
11. There shall be no unreasonable interference with navigation by the work herein authorized.
12. If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the Permittee shall, without expense to the State, and to such extent and in such time and manner as the Department may require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.
13. If granted under Article 36, this permit does not signify in any way that the project will be free from flooding.
14. If granted under 6 NYCRR Part 608, the Department hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306, and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.
11. In accordance with Title 19, Part 600.4 (c) of the New York Code of Rules and Regulations, the Department hereby certifies that the action described and approved in this permit, if located within the Coastal Zone, is consistent to the maximum extent practicable with the policies and purposes of the New York City Waterfront Revitalization Program.

SPECIAL CONDITIONS

Part 360 Solid Waste Management

1. The facility is prohibited from accepting any solid waste which does not originate in Richmond County, and is prohibited from accepting any non-household construction and demolition debris.
2. All work and activities authorized by this permit shall comply with all of the applicable provisions of 6 NYCRR Part 360 (Solid Waste Management Regulations), especially Subparts 360-1 and 360-11, unless otherwise specified herein.
3. All construction associated with the subject facility shall conform to the following documents, including all attachments thereto: An engineering report Volume 1, 2, and 3 prepared for NYCDOS by HDR Engineering, dated October 2000 and supplementary information submitted on October 29, 2001, November 9, 2001 and November 14, 2001. The operation of the subject facility must conform to the above referenced engineering report and the final operation and maintenance manual required in Special Condition 4. In the event that any portion of the following documents conflicts with any provision of this permit, the permit provision shall prevail.
4. Within ten days after the completion of the construction authorized herein, permittee shall have a professional engineer licensed by the State of New York deliver to the Regional Solid and Hazardous Materials Engineer certification that the subject facility is constructed in conformance with the documents cited in Special Condition 3 above, with as-built drawings that shall be appended to such certification. The Permittee shall not operate the facility unless and until (a) the Department receives such certification, as-built drawings, and a final operation and maintenance manual, and final contingency plan from permittee, and (b) permittee receives written approval from DEC of the final operation and maintenance manual and final contingency plan, and confirmation of DEC's acceptance of the construction authorized herein. The final contingency plan shall contain, among other things, an alternative disposal plan in the event of facility shutdown, including a list of alternative transfer and disposal facilities which will be used and their capacities.
5. Five business days prior to commencement of the rail operation, written notification for same must be sent to NYSDEC. An updated rail plan must be submitted before January 2, 2004 for approval by NYSDEC. This said plan should provide more detailed information of the current status and plans of the rail operation than the current plan provides. If this shows unanticipated and unacceptable environmental impacts, the Department reserves the right to require approvals prior to the commencement of the rail operation.
6. The Permittee shall send solid waste only to the solid waste disposal facilities that are proposed by the Permittee pursuant to Special Condition 3, and that are approved by the Regional Solid and Hazardous Materials Engineer.

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New York City Department of Sanitation - Staten Island
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SPECIAL CONDITIONS

ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

- a) Prior to the expiration of any permit required to operate any such disposal facility, the Permittee shall submit to the Regional Solid and Hazardous Materials Engineer, in duplicate, a complete copy of the renewal or extension of such permit. If the Permittee fails to submit such copy, or if any such disposal facility loses any governmental authorization required for its operation (for any reason, including expiration and failure to renew permit, permit suspension, permit revocation, facility closure, cessation of operations or abandonment), the Permittee shall immediately cease sending solid waste to such facility and shall notify the Regional Solid and Hazardous Materials Engineer of such cessation and the reason(s) for same.
- b) Prior to the date that the Permittee proposes to add disposal facilities to the list of such facilities to which it is authorized to send solid waste, the Permittee shall submit the following data to the Regional Solid and Hazardous Materials Engineer: (a) a complete copy of each state authorization required to operate each such disposal facility and (b) a letter from the operator of such disposal facility stating the amount of MSW it shall accept from the subject transfer station, including any conditions it places on such acceptance.
- c) Permittee may add to the disposal facilities to which it sends MSW only after the Regional Solid and Hazardous Materials Engineer approves such addition in writing. If the Permittee seeks to delete a disposal facility to which it is authorized to send MSW, the Permittee shall submit to the Regional Solid and Hazardous Materials Engineer a list of each disposal facility to which the Permittee wishes to stop sending MSW
7. No less than ten business days prior to dates that the Permittee proposes to commence the herein authorized construction and the herein authorized operation, the Permittee shall deliver two completed copies of the attached "Notice of Intent to Commence Construction" or "Notice of Intent to Commence Operation," as appropriate. One such copy shall be delivered to the Regional Permit Administrator and one such copy shall be delivered to the Regional Solid Waste Engineer at the Department's Region 2 office.
8. The doors of the subject facility shall remain closed except when vehicles, equipment, or personnel are entering or leaving the facility.
9. There shall be no queuing or parking of vehicles associated with the operation of this facility off the facility site except for the West Service Road within the Fresh Kills Complex, which is owned by the New York City. Idling of trucks at the facility and in queuing areas shall comply with all applicable laws.
10. Except as provided in subparagraph (b) of this Special Condition, any proposed change, including, but not limited to one that would (i) affect the hours of facility operation; or (ii) increase the volume(s) or vary the type(s) of any waste accepted at the facility; or (iii) increase the parking or queuing of vehicles associated with the subject facility; or (iv) increase the physical extent of the facility; or (v) increase the transportation, noise, odor, dust or other impact of the facility, shall require written authorization from DEC in the form of a permit or permit modification. No such change is to be initiated unless and until such permit or permit modification is first obtained.

[Special Condition No. 10 is continued on Page 5 of 7.]

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SPECIAL CONDITIONS

ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

10. [con't.] Any proposed change that would be a minor alteration, such as the addition of a tarping rack or the re-configuration of the facility's physical plant without the addition of any equipment, may be performed in accordance with the following procedure: No less than 30 days before initiating any such minor structural or operational change(s) to the subject facility, the Permittee shall provide written notice to the Regional Solid and Hazardous Materials Engineer, with a copy to the Regional Permit Administrator. Such notice shall include the following: (i) a revised facility site plan, process flow diagram, or other detailed drawing(s), as appropriate, specifically illustrating such change(s) and (ii) a letter which (a) details such change(s); (b) amends the Permittee's Engineering Report or other material, as appropriate; and (c) identifies the Permittee's proposed date to initiate such change(s). The Permittee shall not initiate any such change(s) prior to approval by the Regional Solid and Hazardous Materials Engineer.
11. All materials/waste that will be disturbed or removed from the site as a result of planned grading and excavating activities will be handled and disposed of in accordance with all applicable DEC regulations. In this case, any removal material from the site must receive prior DEC approval as to its final destination. The construction contractor will maintain dust suppression during all excavating and grading activities on the site.
12. Before any soils are disturbed on the subject site, the Permittee shall erect erosion and sedimentation controls that are adequate to prevent erosion and sedimentation off-site. Such controls shall be maintained until the disturbed soil is stabilized by pavement or a self-sustaining cover of vegetation that is adequate to prevent erosion and sedimentation on and off such site. Before such controls are removed, the Permittee shall remove all sediment that has accumulated at such controls.
13. An account to fund environmental monitor(s) shall be established and maintained as follows:
- a) The sum of \$10,000 shall be maintained in the DEC Monitor Account for this facility for the funding of environmental compliance activities related to the subject facility. This sum is based on annual monitor program costs and is subject to quarterly revision. Subsequent quarterly payments shall be made for the duration of this permit in order to maintain an account balance sufficient to meet the next nine months' anticipated expenses. Quarterly payments shall be made for the duration of this permit in accordance with the following provisions.
- b) Costs to be covered by this fund include: i) direct personal service costs and fringe benefits of the environmental monitor(s) and full-time monitor supervisor(s), including the costs of replacement personnel for the person(s) regularly assigned to these positions; ii) direct non-personal service costs, including but not limited to the purchase or lease of a vehicle and its full operating costs, and any appropriate chemical sampling and analysis; iii) inflation and negotiated salary increases; and iv) indirect support or overhead costs at the Department's federally-approved Indirect Cost Rate.
- c) Upon written request by the Permittee, the Department shall make available to the Permittee any records (e. g., vouchers, time records) relating to such monitor costs, consistent with applicable law.
- d) As noted, the Department may revise the required payment on a quarterly basis to include all costs of monitoring to the Department. The quarterly revision may take into account factors such as inflation, salary increases, accrued interest to be applied to the balance, changes in operating hours and procedures, and the need for additional on-site monitors and the supervision of such monitors by full-time monitor supervisors. Upon written request by the Permittee, the Department shall provide the Permittee with a written explanation for the basis of any such revision.

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SPECIAL CONDITIONS

ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

- e) Within 30 days of the date of written notice by the Department to the Permittee that a monitor payment is due, the Permittee shall deliver such payment to: NYS Department of Environmental Conservation, 625 Broadway, 3rd Floor, Albany, NY 12233-1510, Attention: Director of Environmental Monitors. Each monitor payment shall be required in advance of the period in which it will be expended.
- f) Upon termination (expiration without renewal, revocation, or transfer) of this permit and payment of any outstanding costs, the unexpended balance of the Permittee's environmental monitor account, including interest, will be returned to the Permittee.
- g) Failure to make a required environmental monitor payment is a violation of this permit. The Department may take appropriate action to enforce the payment provisions, including suspension or revocation of this permit.
- h) The environmental monitor shall, when present at the subject site, abide by all of the Permittee's health and safety and operational requirements and policies; provided, however, that this subparagraph shall not be construed as limiting the monitor's powers as otherwise provided for by law and shall not result in the monitor's being less protected than the monitor would be if he or she were to abide by state and federal health and safety requirements.
- i) The Permittee shall furnish to the Regional Solid and Hazardous Materials Engineer, a current site policy and procedures manual for health and safety issues. Within 10 days after any revision to such manual, the Permittee shall submit to the Regional Solid and Hazardous Materials Engineer, a copy of such revision.
14. The ventilation system must be operated in the Processing and Maintenance Building at all times that waste is in the facility and in accordance with the engineering report and the Final O&M manual.
15. If during the duration of the permit, the permittee wishes to change the facility operator, the permittee must first submit the proposed operator name, address, home and business address, home and business phone number, qualifications and credentials for DEC's approval. If the operator is approved, the permit shall be modified to reflect the new operator.
16. If the NYCDOS Commissioner declares pursuant to city laws and regulations that an emergency exists, the daily municipal solid waste throughput shall be allowed to exceed the limits listed above to the peak load not to exceed 2,880 tons, and operate on Sundays, provided that: (1) the number of days covered by such emergency declarations shall not exceed six in any year; and (2) that DEC shall be notified in writing by the NYCDOS Commissioner within twenty-four hours of the occurrence of a city-declared emergency and the nature of the emergency condition. Emergencies covered herein are extreme weather events that disrupt the NYCDOS's collection schedule, and other unforeseeable or uncontrollable events that cause similar disruptions to the NYCDOS collection operations. At no other time may Sunday operations occur. Fiscally-related circumstances are not covered by the provisions of this special condition.
17. The facility will be operated in compliance with the following waste storage limitations:
- Processing Building Storage - The quantity of as-received municipal solid waste stored on the tipping floor of the processing building shall not exceed 6187 cubic yards at any time.
 - Interim Truck Operation - On-site storage of containerized waste
 - (1) Prior to the rail operations, MSW delivered to the facility for processing that is then compacted and containerized in sealed, leak-proof containers may be stored on site. The number of containers stored on site shall not exceed 256. The duration of storage of any loaded container on site shall

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SPECIAL CONDITIONS

ADDITIONAL SPECIAL CONDITIONS FOR ARTICLES 27 and 6 NYCRR Part 360 (Solid Waste Management Facilities)

- (b) (1) [con't.] not exceed 72 hours. Prior to facility operation, permittee shall submit for DEC approval its proposed method of verifying that any loaded container is not stored more than 72 hours.
- (2) Transfer trailers with full loads of waste may also be parked on site. The number of parked trailers shall not exceed 27. The duration of storage of any loaded trailer on site shall not exceed 72 hours.
- (3) The maximum number of total containers shall not exceed 256 and the maximum number of transfer trailers shall not exceed 27. Since the storage areas for the above two are the same, they are mutually exclusive of each other. As such if both storage options are utilized at the same time, the storage must to be reduced accordingly such that the area for storage is no greater than delineated area in the engineering report.
- (c) Rail Transfer - On-site storage of containerized waste

After the rail operations start, MSW that is compacted and containerized in leak-proof containers with a capacity of approximately 47 cubic yards may be stored on flatbed cars set on sidings. The number of such loaded containers on flatcars shall not exceed 210. The number of such containers stored on site shall not exceed 256. The duration of storage of any such loaded container on-site shall not exceed seven days.

Tidal Wetlands and Mitigation

18. Wetlands mitigation work shall comply with drawings no C2-24 through C2-27 found in the application materials cited in Special Condition No. 3 above. Wetland mitigation monitoring shall comply with the document entitled, "Staten Island Transfer Station Wetland Monitoring Plan," dated October 2001, received by DEC 10/09/01.
19. The annual mitigation site monitoring report shall be submitted to DEC (Mail To Steve Zahn at the address on Page 1 of this permit) no later than Nov. 1st of each year during the five-year monitoring program.
20. Within sixty days after issuance of this permit, Permittee and its wetland restoration consultant shall meet with DEC staff to refine the selection of mitigation reference sites and performance criteria for the mitigation.
21. Concrete and concrete leachate, and concrete equipment wash water is prohibited from entering water bodies, wetlands or regulated wetland adjacent areas.
22. Excavated material, demolition and construction debris, and all other solid waste shall be removed from the project and mitigation sites and taken to an approved facility for disposal.
23. Best management practices shall be used to prevent the movement of construction materials, debris, soils and sediment into water bodies and wetlands. Said practices may include, but are not limited to, silt fencing or curtains, straw bales, and floating booms where appropriate.
24. Temporary storage and staging of construction materials and equipment shall be limited to the project work site or unvegetated upland areas located at least thirty feet away from wetland boundaries.
25. All disturbed areas where soil which will be exposed or stockpiled for longer than one week shall be contained by placement of a continuous line of staked straw bales and silt fencing located between the area containing the soil and any wetlands and wetlands adjacent areas to remain undisturbed.
26. The attached notice of commencement of work shall be completed and sent to DEC (Attn: Steve Zahn, at the address on Page 1 of this permit) at least 48 hours prior to the start of work on the construction site, the rail spur site, and at the mitigation site.

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NOTICE OF INTENT TO COMMENCE WORK

Date: _____

New York State
Department of Environmental Conservation
Marine Resources Unit
47-40 21st Street
Long Island City, NY 11101
Attn: Steve Zahn

Re: DEC Permit No. _____

Dear Mr. Zahn:

In accordance with Special Condition No. _____ of the referenced permit, I hereby serve notice to commence work on or about _____, 2001.

This is also to certify that having read the permit, in entirety, I am fully aware of and understand the general and special conditions and agree to comply in all respects to those requirements. I further understand that prior to undertaking any modification to the authorized project, I must seek and receive approval of the Regional Permit Administrator.

Very truly yours,

Signature of the Permittee

Signature of the Contractor (if any)

Permittee's Name (Printed)

Contractor's Name (Printed)

Permittee's Address: _____

Contractor's Address: _____

Telephone # _____

Telephone # _____

NOTICE

The permittee and his contractor (if any) are required to follow all permit conditions. Violations of the permit may lead to legal action, including the imposition of substantial monetary fines and corrective work.

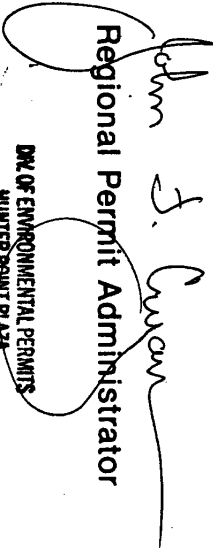
New York State
Department of Environmental Conservation



NOTICE



The Department of Environmental Conservation (DEC) has issued permit(s) pursuant to the Environmental Conservation Law for work being conducted at this site. For further information regarding the nature and extent of work approved and any Departmental conditions on it, contact the Regional Permit Administrator listed below. Please refer to the permit number shown when contacting the DEC.


Regional Permit Administrator

Permit Number 2-6403-00141/00001

DEC OF ENVIRONMENTAL PERMITS
HUNTER POINT PLAZA

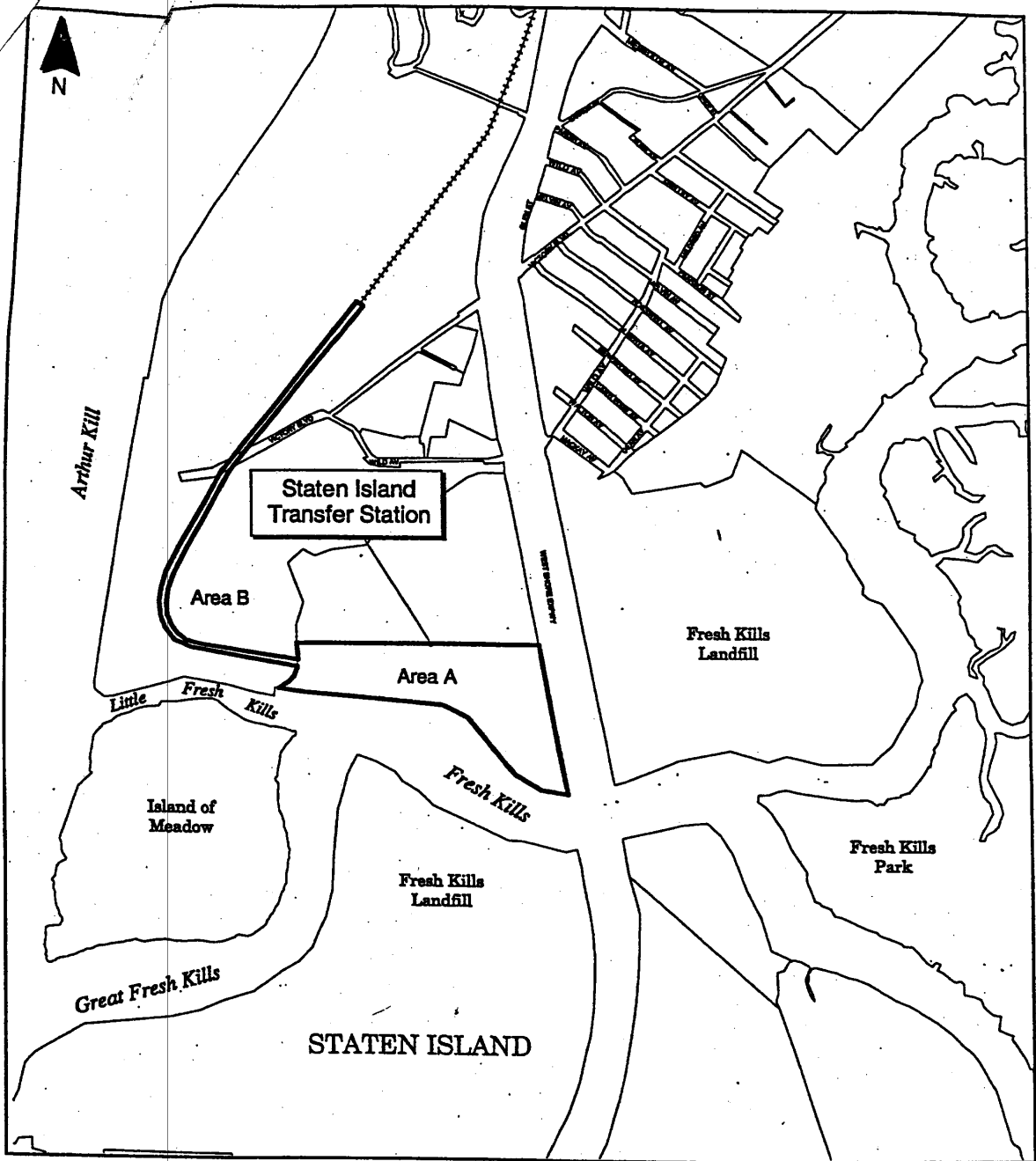
47-40 21st STREET - 2nd FL.
LONG ISLAND CITY, NY 11101

Expiration Date 5 MARCH 2007

NOTE: This notice is NOT a permit

Exhibit 1.A

NYC Department of Sanitation
Map Depicting "Area B" (The New Track)



Site delineations are approximate.
Base Map Source: New York City Department of City Planning

700 0 700 Feet

	Figure 2.14-1 Site Location Staten Island Transfer Station	
	CITY OF NEW YORK DEPARTMENT OF SANITATION	

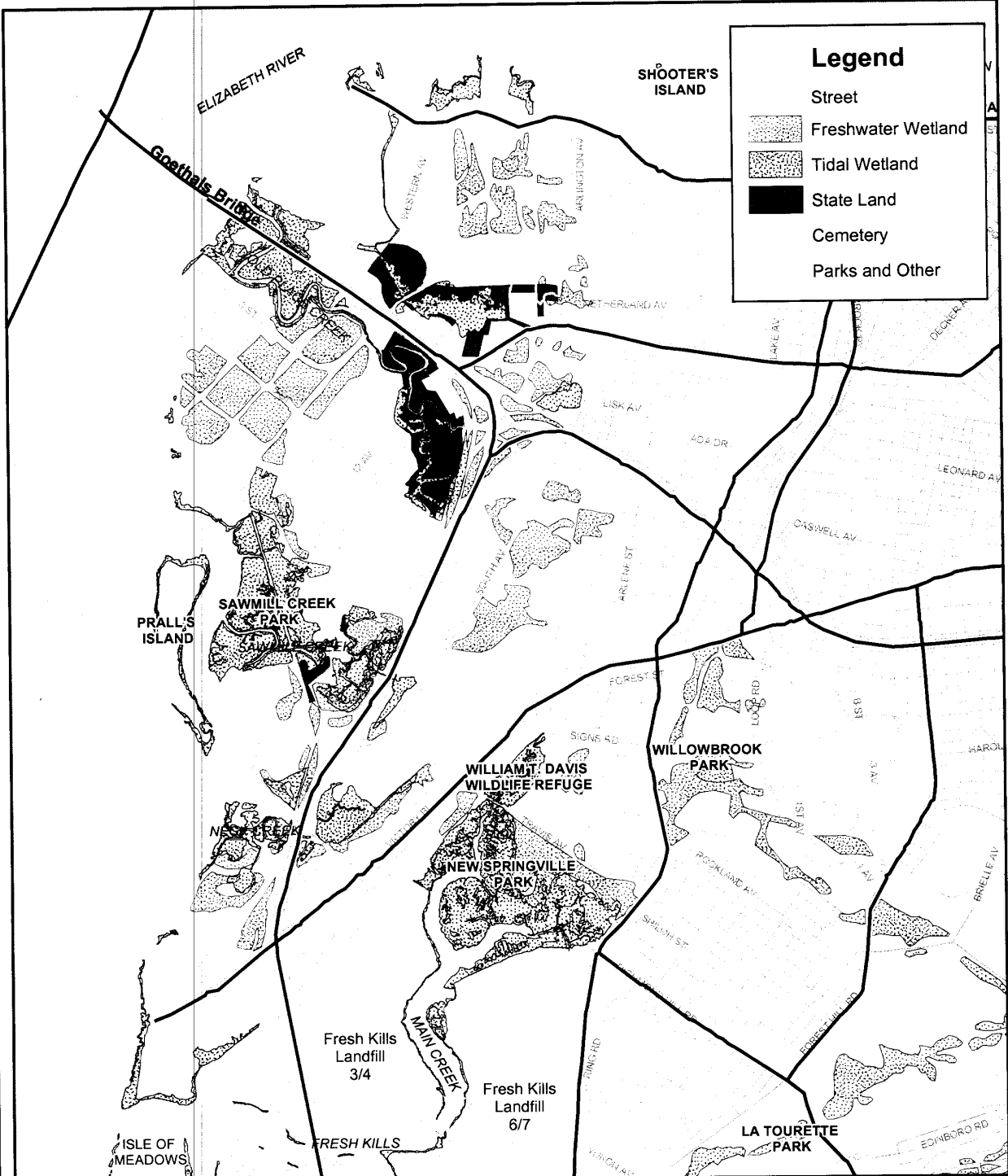
DEIS

Exhibit 2

New York State
Department of Environmental Conservation
Map Depicting Wetlands in Project Area

Northwest Staten Island

***NOT FOR OFFICIAL USE
OR PUBLICATION***



Map Prepared by
Office of Natural Resources
NYS DEC Region 2
1-27-2003

George E. Pataki, Governor
Erm M. Crotty, Commissioner



0 0.5 1 Miles

This map was prepared using existing data sources. Reasonable efforts have been made to ensure the accuracy and completeness of the map. Map accuracy is limited by the accuracy and date of the source data. This map is to be used for reference purposes only. Site specific conditions should be field verified.

Exhibit 3 U.S. Fish and Wildlife Service Map

Arthur Kill Complex - Map 2 of 2

