



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

nyc.gov/law

For Immediate Release

**MANHATTAN JUDGE DISMISSES SUIT CHALLENGING THE PLANNED
MARINE WASTE TRANSFER STATION AT EAST 91ST STREET
AND THE EAST RIVER**

***THE PROPOSED WASTE STATION IS A CRITICAL COMPONENT THE CITY'S
LANDMARK SOLID WASTE MANAGEMENT PLAN***

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, media@law.nyc.gov

New York, December 28, 2009 – New York County Supreme Court Justice Michael Stallman has ruled that the New York City Department of Sanitation's (DSNY's) plan to construct and operate a new marine waste transfer station, located at East 91st Street and the East River in Manhattan, will not intrude upon public parkland and does not require State legislative approval. In two prior rulings, issued in 2006 and 2007, Justice Stallman rejected separate challenges to the environmental review of the same facility, finding that the potential impacts stemming from the project were thoroughly analyzed during the environmental and land-use review processes.

The proposed marine waste transfer station is a critical component of Mayor Michael R. Bloomberg's comprehensive 20-year solid waste management plan for the entire City. That plan, which largely replaces the City's existing truck-based waste export system with a system that uses barges and railways to export waste in sealed shipping containers, resulting in a vast decrease in truck traffic on City streets, was approved by the City Council by a vote of 44-5 on July 19, 2006. The plan has also been approved by the New York State Department of Environmental Conservation, and the State issued permits to construct and operate the transfer station on October 14, 2009.

The decision to include the East 91st Street facility in the overall solid waste management plan will allow Manhattan to assume responsibility for processing some of its own residential and commercial waste, rather than having to send that waste to other boroughs or to New Jersey, as it does under the current truck-based system. The new containerization facility would replace the former East 91st Street marine transfer station, which operated on the same site for nearly 50 years until 2001, when the Fresh Kills landfill closed.

The sole claim in the current lawsuit involved the project's alleged impacts to recreational facilities in the vicinity of the project site. The plaintiffs, consisting of New York State Assemblyman Adam Clayton Powell, IV; a group of residents of the Upper East Side; and a non-profit youth athletic association, claimed that the construction and operation of the transfer station would impinge on nearby parkland in violation of New York State's public trust doctrine. This doctrine prohibits land that has been dedicated for public park use from being utilized for any non-park purposes. Although the reconstructed transfer station will be located on DSNY property that currently houses a defunct transfer station, the plaintiffs maintained that the construction of the new facility, which will occur almost entirely in the East River, would interfere with the use of the Asphalt Green sports and recreation complex, which is operated by a private, non-profit entity and is reserved for paying customers 70 percent of the time, as well as the Bobby Wagner Walk portion of the East River Esplanade.

In a decision dated December 21, 2009, Justice Stallman found that the City had demonstrated that neither Asphalt Green nor Bobby Wagner Walk are dedicated parkland, and are not subject to the public trust doctrine. Justice Stallman further found that the project, which has been carefully designed to avoid construction-related impacts on neighboring properties and to allow both Asphalt Green and Bobby Wagner Walk to remain open during construction, would not substantially intrude on the surrounding recreational areas.

Carrie Noteboom, Senior Counsel at the New York City Law Department, said: "We are pleased with the Court's ruling. The planned transfer station at East 91st Street is an important part of the shift to a much more environmentally friendly and responsible waste management system for the City. DSNY has made every effort to ensure that the project does not interfere with operation of either Asphalt Green or Bobby Wagner Walk, both of which were developed while the existing DSNY facility operated at the site, and which successfully coexisted with DSNY operations for many years."

The City's legal team included Division Chief Susan M. Kath and Senior Counsels Christopher King, Carrie Noteboom and Amanda Goad of the New York City Law Department's Environmental Law Division.

The ruling was dated December 21 and was just received by the New York City Law Department.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov/law.

###