



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

MICAH Z. KELLNER  
65<sup>th</sup> Assembly District

**Keep Our Neighborhood Clean, Green, and Healthy!**

Testimony by Assembly Member Micah Z. Kellner  
Before the NYS Department of Environmental Conservation  
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My name is Micah Z. Kellner and I represent the 65<sup>th</sup> Assembly District, including the site of the proposed East 91<sup>st</sup> Street Marine Transfer Station (MTS). Thank you to the NYS Department of Environmental Conservation for the opportunity to testify this evening.

The drive to approve New York City's Solid Waste Management Plan (SWMP) has created a political situation that I believe has inappropriately influenced the normal checks and balances that accompany the environmental approvals process. Federal law requires that Environmental Impact Statements be prepared for projects of this scale in order to identify and assess the impacts *before* decisions are made; but I believe the EIS for the proposed East 91st St. MTS was prepared with a result already in mind. The EIS document has significant flaws and fails to consider basic and important facts that would likely disqualify the East 91<sup>st</sup> Street site as an environmentally appropriate location for a marine transfer facility.

I urge the NYS Department of Environmental Conservation to deny the City's application for a permit at this site.

Misleading EIS assumption: "reactivation"

A major assumption made by the EIS is that a marine transfer station at the East 91<sup>st</sup> Street site represents a "reactivation" of the same use that ceased operation in 1998. The term "reactivate" implies that having a marine transfer station on East 91<sup>st</sup> Street is as simple as flipping a switch - but the SWMP calls for demolishing the old MTS structure and its ramps and building new ramps leading to a larger facility twice as tall and designed to handle four times as much waste.

The "reactivation" argument is also used to gloss over negative environmental impacts. Throughout the EIS, there is frequently a finding of "no impact" for some factor citing that not much has changed since 1998 when the old marine transfer station closed. One example of this is in the section on land use, where the EIS notes that the surrounding land uses have not changed since the facility closed. This assumes that the marine transfer station use was appropriate in 1998. Missing from this picture is that the former marine transfer facility was built in the late 1930s, when the City zoning map looked very different and that use in this location was more appropriate.

Flaws in the EIS: residential impacts analysis

Unlike any other proposed site in the SWMP, the East 91st St. MTS would be located in the heart of a densely populated residential community.

In the late 1930s, manufacturing and light industrial uses along the waterfront were common and part of a fundamentally different Upper East Side – and New York City - than exists today. Changes in the local and global economy left industrial and manufacturing corridors in many parts of the City, including this one, deserted. Eventually, development pressures convinced the City to rezone the area in order to do away with the obsolete industrial and manufacturing uses and instead permit some of the highest-density residential development in New York City.

If you look at the zoning map (City Planning map 9a) today you see a very small, irregularly shaped M1-4 (light industrial) district in which the former marine transfer station is sited, abutted by neighboring districts with codes like “R8B” (tall residential districts with an FAR of 4.0) and even “R10” (the densest residential districts permissible in New York City, with maximum FARs of 10.0-12.0).

Put another way, US Census data from 2000 tells us that five blocks to the north and south, from Third Avenue to the river, a marine transfer station at East 91<sup>st</sup> Street would be surrounded by 4,964 children - and a total population of just over 40,000 New Yorkers.

The City failed to adequately consider this population density. That the EIS found that there would be no significant impacts (traffic, air, noise, or odor) on this surrounding community is absurd. Trucking 5,280 tons of waste per day, six days a week, twenty-four hours a day, into a facility in such a tightly packed residential neighborhood will have impacts to air pollution, traffic, and noise that will be very significant.

NYC Department of Sanitation’s (DSNY) own rules require that any new private marine transfer station have a “site boundary [that] is at least 400 feet away from a residential district, public park, [or] school....” The access ramp is 100 feet from the closest residential building, and another apartment building is just 50 feet further. Two large NYCHA public housing complexes, the Stanley Isaacs Houses Holmes Towers and John Haynes Homes Towers, are less than 300 feet away from the site.

#### Flaws in the permit application: Does not comply with local laws

DSNY rules regarding new waste transfer stations also require that any new marine transfer station be “entirely within an M2 or M3 district.” The rules specifically prohibit a solid waste transfer station from “expanding its site boundary into an M1 district.” The zoning resolution only permits a waste transfer station in an M1 zone if the station complies with standards relating to noise, vibrations, dust, and odor, among other things. The proposed East 91st St. MTS would be located within an M1-4 district. DSNY itself has admitted that the noise standard for the zoning resolution cannot be met for a marine transfer station here, and no mitigation has been proposed. The only reason that DSNY can avoid following local laws here is because of the previous operation at this site, but finding a loophole to avoid follow the law is not rationale or appropriate public policy.

#### Misleading EIS assumption: capacity

The proposed East 91st St. MTS would be designed to handle four times as much solid waste as the facility constructed in the late 1930s ever did – 5,280 tons of solid waste per day. Remarkably, the EIS only considered the environmental impact of processing 1,700-1,800 tons of solid waste per day, less than half of the total capacity of the proposed station. The City claims that they will only operate the station at the studied capacity, but this is not credible. If they only planned to operate a 1,700-1,800 tons of water per day facility, they would build a facility where that is the maximum capacity.

#### Non-compliance with SEQRA

This is more than a simple flaw in the EIS. Failure to review the full capacity of a proposed facility is directly in violation of the State Environmental Quality Review Act (SEQRA) and greatly limits the ability of the EIS to accurately assess a number of impacts including air pollution, noise, and traffic.

Other direct violations of SEQRA in the EIS are as follows: the EIS did not do impact and cost comparisons for existing conditions and alternatives to the East 91st St. MTS, did not adequately explore alternative sites, and did not detail how trash will be disposed of after it is containerized.

#### Flaws in the EIS: failure to consider Second Ave. Subway construction impacts in traffic study

It is no secret that the MTA is constructing the Second Avenue Subway, so it is bizarre that the EIS failed to consider the conditions that this project will create. Already there have

been traffic flow problems in the East 90s with the construction of the launch box for the project's tunnel boring machine. As Phase I progresses, parts of Second and Third Avenues in the East 60s, 70s, and 80s will need to be shut down for periods of time for the construction of ventilation shafts for the new subway line, stations, and station entrances. If there are no delays, Phase I is scheduled to last until 2013. But with projects involving eminent domain, rising construction costs, and the MTA's budgetary process – realistically the project could drag on much longer.

These are significant traffic impacts that will have spillover affects if a major trucking route is allowed to be added to the area.

#### Flaws in the EIS: failure to consider congestion pricing scenario impacts in traffic study

The Mayor's recently proposed congestion pricing program, if implemented, would have a major impact on the area directly surrounding the proposed East 91st St. MTS. The effects of the congestion pricing zone boundary on traffic in the area will significantly change traffic patterns north of the boundary in the East 90s. This must be taken into consideration.

#### Flaws in the EIS: impacts to community facilities and open space

The proposed East 91st St. MTS would be situated within proximity of several parks and open space resources, including Asphalt Green, the East River Esplanade/Bobby Wagner Walk, and Carl Schurz Park.

Asphalt Green is a park and recreation facility run by Asphalt Green, Inc. on behalf of the New York City Parks Department. Its programs target populations at risk for diabetes, obesity, and asthma. The majority of Asphalt Green's users are children. Overall, 47,000 people use Asphalt Green's facilities each year, including 20,000 public school children. Seniors and the disabled also have high use rates of the facilities and their programs. Asphalt Green has an aquatic center, a recreation center, an outdoor infants playground (DeKovats park), and the only year-round playing field in Manhattan north of 8<sup>th</sup> Street.

The truck staging area and access ramp for the proposed East 91st St. MTS would literally cut through Asphalt Green's aquatic center, infants playground, and its outdoor playing field while surrounding the playing field on two sides. Truck staging and queuing will result in noise and fumes, creating health and safety hazards to the children who play on both sides of the ramp.

The East Side River Esplanade/Bobby Wagner Walk is a heavily used park that is constantly in use by joggers and walkers. The park is directly under the access ramp. Air pollution, fumes and odors, and noise from queuing trucks will destroy the public's ability to enjoy this park.

Carl Schurz Park, another popular park, is located directly to the south of the proposed East 91st St. MTS. The park includes a children's playground, dog run, athletic facilities, gardens, lawns, and venue for concerts and community events.

The cursory treatment of open space and community facilities in the City's EIS and the absurd finding of "no impact" is particularly offensive to spirit of the environmental review process.

#### Flaws in the EIS: failure to consider air quality impacts in East Harlem, large senior population

According to the New York City Department of Health, East Harlem has the highest rate of child hospitalization for asthma and other respiratory ailments in all of New York City. The proposed East 91st St. MTS will be situated less than six blocks from this community.

Less than 300 feet away from the site, the Stanley Isaacs Houses Holmes Towers and John Haynes Homes Towers (NYCHA) have large senior populations and have been designated Naturally Occurring Retirement Communities (NORCs).

It is unconscionable not to consider the impact SWMP will have on these populations by increasing air pollutants.

#### Flaws in the EIS: failure to consider site's risk of flooding and proximity to Hurricane Zone A

New York City's Office of Emergency Management (OEM) has designated the area that includes the proposed East 91st St. MTS to be in "Hurricane Zone A." According to OEM, the few areas in the City with the designation of Zone A face the highest risk of flooding from a hurricane's storm surge from a hurricane of any magnitude.

U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) flood map shows that the proposed East 91st St. MTS would be situated in "Zone AE" – the second-highest risk of flooding in their nine zone system.

The EIS did not consider the impacts of storm surges from hurricanes or other flooding emergencies in terms of damage to infrastructure, disruption of the City's sanitation system, or to a health emergency caused by the spread of water-borne diseases. This is a serious issue that speaks to our collective responsibility to safeguard the health and safety of New Yorkers against unnecessary risks.

#### Problems with draft permit conditions

I join with Gracie Point Community Council (GPCC) in expressing my concern that the special conditions for the permit application are insufficient to protect public health, safety, and welfare for the reasons outlined in testimony submitted by GPCC to DEC today.

#### Conclusion

Sadly, the City is so intent on building a marine transfer station in this neighborhood that they are blinded to its impact. The process has been poisoned with politics, wordsmithing, and exploiting legal loopholes. The EIS should be an important safeguard against threats to public safety, health, and welfare - not a weapon to be wielded by an unrelenting administration unwilling to admit to the real dangers this plan presents.

DEC has already taken the first important step of holding these hearings and giving the public an opportunity to make its case. I hope DEC will look past the administration's gamesmanship and look instead to the law. Because there is no doubt in my mind that the City has not fulfilled its obligations, I urge DEC to reject the City's permit application.