

CAROLYN B. MALONEY
12TH DISTRICT, NEW YORK

2308 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3212
(202) 225-7944

COMMITTEES:
FINANCIAL SERVICES

GOVERNMENT REFORM

JOINT ECONOMIC COMMITTEE,
[SENIOR HOUSE DEMOCRAT]



Congress of the United States

House of Representatives

Washington, DC 20515-3212

DISTRICT OFFICES:

1651 THIRD AVENUE
SUITE 311
NEW YORK, NY 10128
(212) 860-0606

31-19 NEWTOWN AVENUE
ASTORIA, NY 11102
(718) 932-1804

619 LORIMER STREET
BROOKLYN, NY 11211
(718) 349-5972

WEBSITE: www.house.gov/maloney

July 20, 2015

Marc Gerstman
Acting Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233

Dear Acting Commissioner Gerstman:

I am writing to express my strong opposition to the renewal of the New York City Department of Sanitation's (DSNY) permits to construct and operate the 91st Street Marine Transfer Station (MTS). Since you have specifically allowed comments with respect to the air quality permit, most of my comments relate to that permit, but I believe that you should be soliciting comments with respect to all three permits since we know a lot more about this area and its propensity to flood than we did when the permits were issued. I note that the 91st Street MTS is located in one of the city's most densely-populated residential neighborhoods, adjacent to two public housing developments and the Asphalt Green recreational facility (AG) which is used by thousands of children, seniors and others on a daily basis. This facility will put the health and safety of residents and visitors at risk in the name of so-called environmental justice.

There have been material changes in the environmental conditions at the MTS site and in the surrounding neighborhood since the original permits were issued, and new environmental regulations have been promulgated. Accordingly, the New York State Department of Environmental Conservation (DEC) should exercise its discretion and treat the permit renewals as if they are new applications.

I believe that DEC should pay particular attention to the following issues:

- **The MTS is being built in an area with some of the worst air quality in the City.** Trucks using the 91st Street MTS will add to the amount of PM_{2.5} in the area, leading to higher levels of asthma, respiratory disorders, heart disease, and premature death into an area already known as the asthma capital of New York. The planned MTS would continue the degradation of local air quality in one of the few areas of the City which has not experienced significant improvement in air quality over the last decade. I refer you to the April 2015 New York Community Air Survey prepared by the New York City Department of Health and Mental Hygiene, Queens College – City University of New

York and ZevRoss Spatial Analysis which can be found at <http://www.nyc.gov/html/doh/downloads/pdf/environmental/comm-air-survey-08-13.pdf>. The study is an ongoing analysis of New York City's Air Quality that was commenced in 2008. Since the initial air quality measurements were done, air quality in most of New York City has improved substantially; however, not all areas of the city have improved. The report makes clear that some neighborhoods suffer 'disproportionately high exposures' – and one of those neighborhoods is the Upper East Side near the proposed Marine Transfer Station. Accordingly to the report, building density and proximity to roads, particularly roads with a lot of stop and go traffic, are predictors of where emissions will be highest. The MTS's proximity to many older dense residences, the FDR Drive and truck routes along 1st and 2nd Avenues, means that it will be adding emissions in one of the City's most polluted areas. Far from providing environmental justice, this facility exacerbates a problem in one of the city's most polluted neighborhoods. When the MTS opens, additional truck traffic will add pollutants in an area already suffering from extremely bad air quality. In specific, the report highlights the impact of three toxins, small particulate matter (PM_{2.5}), Nitrogen Dioxide (NO₂) and Sulfur Dioxide (SO₂):

- **PM_{2.5}** - Fine particles are 2.5 micrometers in diameter or smaller, emitted from sources including automobiles, industry and construction. Fine particulate matter can get deep into the lungs, from whence they cannot be exhaled and subsequently are absorbed into the bloodstream. In 2008, when the study measured PM_{2.5}, most of the city had high levels of PM_{2.5}. By winter 2012-2013 and summer 2013, most of the city had improved, but certain areas remain particularly bad, including the Upper East Side where the MTS will be located. The report states: "Although PM_{2.5} concentrations have declined throughout the city, they remain relatively high throughout much of Manhattan - which has many large buildings and heavy traffic - as well as along major highways and in industrial areas." And while the statement refers to all of Manhattan, in fact, midtown and the Upper East Side are the areas that are worst.
- **NO₂** – When NO₂ was first measured, most of the city was bad. By 2013, much of the city had improved, but again, Manhattan, including the Upper East Side had not shown the same degree of improvement. The report states: "Although NO₂ concentrations have declined throughout the city, they remain relatively high in the areas of highest traffic and building density in Manhattan, the Bronx and Brooklyn and around major transportation corridors." The MTS is located adjacent to the FDR Drive where you would expect NO₂ levels to be particularly high.
- **SO₂** – SO₂ levels are measured in the wintertime when boilers are most often in use. SO₂ has primarily been a problem in the areas where large residential buildings use oil 4 and 6. As you would expect, the area with the biggest ongoing problem is the Upper East Side. "While SO₂ concentrations have declined significantly across the city, they remain relatively higher in areas with a high density of residual oil boilers, particularly areas of the Upper East and West Sides, northern Manhattan, and the western Bronx."

The MTS will place a huge burden on a neighborhood where pollutants are not only high, but persistently high at a time when pollution in the rest of the City has measurably dropped.

- **The U.S. Environmental Protection Agency (EPA) strengthened the standard for fine particulate matter since the original permits for the 91st Street MTS were issued.** While standards for fine particulates were first promulgated in 1997, the EPA strengthened its standards in 2006 and 2012. The agency strengthened the annual fine particle standard in 2012 by lowering the level from 15.0 $\mu\text{g}/\text{m}^3$ to a level within the range of 12.0 $\mu\text{g}/\text{m}^3$ to 13.0 $\mu\text{g}/\text{m}^3$. An area would meet the standard if the three-year average of its annual average $\text{PM}_{2.5}$ concentration is less than or equal to the level of the final standard. Measurements of $\text{PM}_{2.5}$ levels have never been taken near the MTS. One can imagine that such levels would already be high as a result of the FDR Drive and other traffic. Adding up to 500 garbage trucks to an already heavily polluted area is not appropriate. DEC should insist on monitoring fine particulate matter in this area. The EPA reports that fine particulate matter has been linked to serious health consequences including irritation of the airway, decreased lung function, aggravated asthma, irregular heartbeat, heart attacks, and premature death. Additionally, the New York City Department of Health and Mental Hygiene warns, “Inhaled $\text{PM}_{2.5}$ worsens heart and lung disease, causing hospital admissions and deaths.” The City Department of Environmental Protection (DEP) has committed to biannual air monitoring of the 91st Street MTS site; however, the City has stubbornly refused to consider monitoring $\text{PM}_{2.5}$ levels.
- **Biannual Monitoring is Insufficient.** The City proposes to monitor air quality near the facility twice a year. This is insufficient to develop a picture of air quality adjacent to the site. It is more likely to provide a false sense of security than a real picture of air quality in the community. Additionally, there is no plan to stop operations if air quality in the air is being impacted negatively.
- **The Yorkville neighborhood surrounding the 91st Street MTS has new traffic patterns—including the addition of the First Avenue bicycle lane and substantial construction on the Second Avenue subway—since the original DSNY permits were approved.** There should be a realistic analysis on how the traffic changes could impact truck traffic and truck idling in the neighborhood. On the Vision Zero website, a traffic safety initiative adopted on January, 2014, the city states “The City of New York must no longer regard traffic crashes as mere ‘accidents,’ but rather as preventable incidents that can be systematically addressed.” While garbage trucks account for less than 4% of the vehicles on the streets of New York City, they are responsible for over 12% of all pedestrian fatalities and nearly a third of all bicyclist fatalities according to the United States Department of Transportation. Still the City seeks to open the MTS, which will serve up to 500 diesel-burning garbage trucks each day, in proximity to schools and Asphalt Green, a major recreational facility serving seniors and children from across East Harlem and the Upper East Side, without studying the safety impacts of that increased traffic or the air pollution associated with the traffic.

I note that DEC is also considering renewal of the Solid Waste Management, Water Quality Certification and Tidal Basin permits, and I think it is important for DEC to consider the following in connection with those permits:

- **The US Federal Emergency Management Agency (FEMA) issued new flood maps appropriately reflected the likelihood of flooding in this community.** The new flood maps show that the MTS platform will sit 5.59 feet beneath the recommended 100-year floodplain elevation. Even if all precautions are taken, a serious weather event could cause the MTS to flood, sending solid waste and residue flooding into the streets of this residential neighborhood. I note that during Superstorm Sandy, flood waters cascaded into the streets of this community, up to a level of nearly six feet in some places. The force of the water carried a boiler out of the building at 200 East End Avenue. It is hard to imagine that the MTS would be able to withstand such flooding. The City's proposed remedy that it would stop operations at the facility in time and move all garbage up to a higher level simply defies credulity.
- **Sea levels Are Rising in this Area.** The National Oceanographic and Atmospheric Administration (NOAA) has reported that there was a 128 millimeter rise in sea level along the North Atlantic coast of the United States during 2009 and 2010. This represents a significant increase in the rate of sea level rise than previously anticipated. The acceleration of the sea level rise in the area represents a clear risk to the safe operation of the 91st Street MTS, particularly if a weather event causes flooding.

I believe that after DEC considers the significant impact of the MTS on air quality and traffic on this already overburdened community, DEC should deny the reauthorization of the permit. Thank you for your consideration of these concerns.

Sincerely,


CAROLYN B. MALONEY
Member of Congress

CBM/shg