

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

NOTICE OF LEGISLATIVE HEARING AND ISSUES CONFERENCE

APPLICANT: NEW YORK CITY DEPARTMENT OF SANITATION, 125 Worth Street, New York, New York, 10013-4006.

PROJECT DESCRIPTION AND LOCATION: The New York City Department of Sanitation has submitted an application to construct and operate a converted marine transfer station in the Bensonhurst section of Brooklyn, on a lot it owns bounded by 25<sup>th</sup> Avenue to the north, Bay 41<sup>st</sup> Street to the south, and Gravesend Bay to the west. The proposed waste management facility -- identified as part of the New York City Solid Waste Management Plan ("SWMP") and New York City Department of Sanitation long-term waste export program -- is designed to process 4,290 tons of municipal solid waste per day, allowing for 5,280 tons per day during emergency conditions. The proposed facility, with a building footprint of 62,856 square feet (88,290 square feet inclusive of building, pier level and access ramps), would be built at the site of the demolished Southwest Brooklyn incinerator to facilitate the transfer of municipal solid waste from collection vehicles into sealed and leakproof containers for export by barge and rail to out-of-city locations. All solid waste transfer and containerized activities would take place within a newly built, fully enclosed building.

In addition to the construction of a new facility building, applicant proposes to dredge the adjacent waterway to allow for barge operations and to disturb tidal wetlands for bulkhead rehabilitation, the replacement of an existing stormwater outfall to support facility operations, and construction of a king pile wall and armor stone placement to protect the adjacent private marine structures. Applicant would mitigate wetland habitat losses by creating and restoring additional tidal wetlands at other areas within New York Harbor, in accordance with mitigation ratios provided in the joint application.

PERMITS REQUESTED: Applicant requests the following permits from the New York State Department of Environmental Conservation ("DEC"):

- (1) A solid waste management facility permit, pursuant to Environmental Conservation Law ("ECL") article 27, title 7, and part 360 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR");
  - (2) An air pollution control (air state facility) permit, pursuant to ECL article 19 and 6 NYCRR part 201;
  - (3) A tidal wetlands permit, pursuant to ECL article 25 and 6 NYCRR part 661;
- and
- (4) A use and protection of waters permit, with associated water quality certification, pursuant to ECL article 15, title 5, and 6 NYCRR part 608.

The project also requires a storm water general permit for construction activities, issuance of which would be considered should the other permits be granted.

SEQRA STATUS: On April 1, 2005, applicant, as lead agency under the State Environmental Quality Review Act ("SEQRA"), filed and circulated a Final Environmental Impact Statement concerning its SWMP, a key initiative of which is the development of this and three other converted marine transfer stations at existing marine transfer station sites. Applicant issued a SEQRA findings statement on February 13, 2006.

NOTICE OF COMPLETE APPLICATION: A Notice of Complete Application was issued by DEC on August 27, 2007, and was published in its Environmental Notice Bulletin on August 29, 2007, and the New York Post on August 31, 2007.

TENTATIVE STAFF POSITION: DEC staff has made a tentative determination to approve the application subject to special conditions in a draft permit it has developed for public review. Under non-upset or non-emergency conditions, the permit would limit waste acceptance to 11,148 tons per week and no more than 2,106 tons on any single day.

LEGISLATIVE HEARING: Pursuant to 6 NYCRR 624.4(a), a legislative hearing will be held to hear and receive the unsworn statements of the public concerning the permit application. The hearing will be conducted by DEC Administrative Law Judge ("ALJ") Edward Buhrmaster from 4:00 to 6:30 p.m. and from 7:00 to 10:00 p.m. on January 15, 2008, in the auditorium of the Shore Parkway Jewish Center, 8885 26<sup>th</sup> Avenue, Brooklyn, New York. All persons, organizations, corporations or government agencies which may be affected by the project are invited to attend the hearing and to submit oral or written comments. While it is not necessary to file in advance to speak at the hearing, lengthy comments should be submitted in writing and summarized for oral presentation. Reasonable time limits may be set for each speaker as necessary to afford all attendees an opportunity to be heard. The hearing location is fully accessible to persons with a mobility impairment. Interpreter services shall be made available to deaf persons at no charge upon request to the ALJ at least 10 days prior to the hearing. Written comments on the application may be mailed to ALJ Buhrmaster at DEC's Office of Hearings and Mediation Services, 1<sup>st</sup> Floor, 625 Broadway, Albany, New York, 12233-1550, and will be considered equally with oral statements delivered at the legislative hearing, provided they are postmarked no later than January 15, 2008. Comments sent in response to DEC's Notice of Complete Application, and comments made at the Environmental Justice Informational Meeting, held by Applicant on April 16, 2007, shall be considered part of the hearing record and need not be resubmitted.

ISSUES CONFERENCE: Pursuant to 6 NYCRR 624.4(b), an issues conference will be conducted by ALJ Buhrmaster at DEC's Region 2 office at 47-40 21<sup>st</sup> Street, Long Island City, New York. The conference will begin at 10 a.m. on January 23, 2008, and continue throughout that day and on January 24, 2008, as necessary. The conference will be held to determine party status for any person or organization that has properly filed (as indicated below) and to narrow and define those issues, if any, that will require adjudication in this matter. Participation at the issues conference shall be limited to

DEC staff, applicant, and those persons or organizations requesting party status. Following the issues conference, the participants will be advised of the ALJ's rulings as to issues and party status, and whether an adjudicatory hearing will be scheduled at a later date. The ALJ's determination whether to conduct an adjudicatory hearing shall be based on whether issues proposed at the conference are substantive and significant, in accordance with 6 NYCRR 624.4(c). Only those persons granted party status may participate in any adjudicatory hearing that takes place. If no petitions for party status are filed, or if any filed objections are withdrawn and all proposed issues are satisfactorily resolved before the issues conference, the conference will be canceled and no adjudicatory hearing will be necessary.

**FILINGS FOR PARTY STATUS AND PROPOSED ISSUES:** Party status to participate in the issues conference and any subsequent adjudicatory hearing will be accorded only to those persons who file a written petition meeting the requirements of 6 NYCRR 624.5(b). Mere opposition to the project is not a sufficient basis to be granted party status. A petition must fully identify the proposed party and the name(s) of the person or persons who will represent the party, the petitioner's environmental interest in the proceeding, any interest relating to statutes administered by DEC that are relevant to the project, whether the petition is for full party or amicus status, and the precise grounds for opposition or support.

If a petitioner seeks full party status, its petition must identify an issue which could result in permit denial, major modification of the project or the imposition of significant permit conditions in addition to those proposed by DEC staff. Petitioners must identify specific legal requirements which they assert would not be met and fully set forth the reasons for their conclusions. Also, petitioners must identify the witnesses that they would present at an adjudicatory hearing and the nature of the evidence each witness would present. If a petitioner intends to rely upon expert testimony, the petitioner must identify the name of each expert, that expert's qualifications, a summary of the subject matter on which the expert is offered, and a summary of the expert's opinions as well as the facts upon which those opinions are based.

If a petitioner seeks amicus status, its petition must identify a legal or policy issue which needs to be resolved by the hearing, indicate the petitioner's interest in the resolution of the issue, and explain how through expertise, special knowledge or unique perspective, the petitioner may contribute materially to the record on such issue.

Persons having similar interests are encouraged to consolidate their filings.

**ALL PETITIONS REQUESTING PARTY STATUS TO PARTICIPATE AT THE ADJUDICATORY HEARING MUST BE RECEIVED AT DEC'S OFFICE OF HEARINGS AND MEDIATION SERVICES NO LATER THAN 3:00 P.M. ON JANUARY 14, 2008.** Address all petitions to Edward Buhrmaster, Administrative Law Judge, New York State Department of Environmental Conservation, Office of Hearings and Mediation Services, 1<sup>st</sup> Floor, 625 Broadway, Albany, New York, 12233-1550. At the same time and in the

same manner that the petition is furnished to the ALJ, a copy of the petition must be furnished to applicant's attorney, Christopher G. King, Esq., at the New York City Law Department, 100 Church Street, New York, New York, 10007-2601, and to DEC staff's attorney, John Nehila, Esq., at the Division of Legal Affairs, DEC Region 2, NYS Department of Environmental Conservation, 47-40 21<sup>st</sup> Street, Long Island City, New York, 11101-5407. Electronic filings and service by fax will not be accepted. Any questions about filing requirements or other hearing procedures may be addressed to ALJ Buhrmaster by telephone at (518) 402-9009. Also, DEC's hearing procedures may be found at <http://www.dec.ny.gov/permits/6234.html>, Guide to Permit Hearings, or by calling the Office of Hearings and Mediation Services at (518) 402-9003.

DOCUMENT AVAILABILITY: A copy of the application materials and the draft permit prepared by DEC staff are available for review at the document repositories established for this project:

- - New Utrecht Library, 1743 86<sup>th</sup> Avenue, Brooklyn; and
- - Brooklyn Community Board 11 Office, 2214 Bath Avenue, Brooklyn.

Also, to review the documents at DEC's Region 2 office at 47-40 21<sup>st</sup> Street, Long Island City, please contact Michelle Moore of DEC's Division of Environmental Permits at (718) 482-4997.

APPLICABLE STATUTES AND REGULATIONS: This application is being processed pursuant to ECL article 1 (General Provisions), article 3 (General Functions), article 15 (Water Resources), article 19 (Air Pollution Control), article 25 (Tidal Wetlands), article 27 (Collection, Treatment and Disposal of Refuse and Other Solid Waste) and article 70 (Uniform Procedures); as well as 6 NYCRR subpart 201-5 (State Facility Permits), part 360 (Solid Waste Management Facilities), part 608 (Use and Protection of Waters), part 621 (Uniform Procedures), part 624 (Permit Hearing Procedures), and part 661 (Tidal Wetlands - Land Use Regulations).

Albany, New York  
November 27, 2007

James T. McClymonds  
Chief Administrative Law Judge