



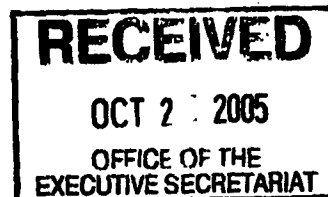
CITY OF NEW YORK
PRESIDENT
OF THE
BOROUGH OF STATEN ISLAND

JAMES P. MOLINARO
PRESIDENT

BOROUGH HALL, STATEN ISLAND, N.Y. 10301

October 26, 2005

Mr. Stephen L. Johnson
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue N.W.
Mail Code: 1101A
Washington, D.C. 20460



Re: Petition filing: Objecting to the Granting of a Title V Air Permit for New York Power Authority's "In-City" Power Plant, Pouch Terminal, Staten Island (Rosebank)

Dear Administrator Johnson:

This letter is to serve as my petition to the Environmental Protection Agency (EPA), objecting to the recent approval by EPA Region 2 of the New York State Department of Environmental Conservation's (DEC) Title V permit for the New York Power Authority's (NYPA) "in-city" power plant in the Rosebank section of Staten Island, known as the Pouch Terminal site.

For the record, I am objecting to the permit for only this facility; I have no issue with any of the other recently constructed "in-city" NYPA power plants that concurrently received a Title V permit. As borough president of Staten Island, the Rosebank power plant is the one facility out of the 11 that necessitates an objection to this Title V air permit for one specific reason: it is the only one built directly across the street from residences.

While my issues are outlined below, they are also covered in more detail in several attachments I am including to this letter:

- Attachment #1: The December 20, 2001, testimony of then-borough president Guy Molinari on the Rosebank facility's court-mandated EIS
- Attachment #2: A copy of NYPA's *PowerNow!* newsletter
- Attachment #3: My September 16, 2003, public hearing testimony before the DEC concerning the draft Title V air permit for the Rosebank facility

- Attachment #4: My October 31, 2003, comments, per the DEC's extension of the public comment period for the proposed Title V air permit
- Attachment #5: My May 20, 2004, letter to DEC requesting an update on the draft Title permit
- Attachment #6: My July 19, 2004, letter to DEC asking for a response to my May 20th letter
- Attachment #7: The August 20, 2004, response letter from DEC, stating that a decision is expected in the near future on the air permit
- Attachment #8: My June 15, 2005, letter to DEC requesting once again an update on the status of the draft air permit, 22 months after the public hearing had ended.

These attachments, besides providing a more defined context and background for my outlined issues, also inform EPA that I am not raising new issues, that they were brought to the DEC's attention during two public hearings and in several correspondences from my office to the DEC.

The attachments are also important because they document our 5-year frustration with the regulatory process, specifically, how from the outset until its recent approval, the public was never able to fully participate in the permit process as an active partner because of one basic fact: *since the DEC did not believe there is a truly affected public to begin with, the community never became a fully informed constituency.* For the State never disagreed with NYPA's characterization - in the required Environmental Assessment Statement and the court-ordered Environmental Impact Statement - that within the power plant's radius of influence the site was devoid of residences - *even though there are homes directly across the street from the plant.*

But Staten Island continued to write and speak out to the DEC at every available opportunity, reminding the agency that there is a directly impacted constituency here with legitimate issues. We received neither acknowledgments nor discussions of our concerns; instead, as the plant continued to operate under draft permit conditions, we were told to just wait for the public hearing's responsiveness summary. And as we waited and waited - ultimately, for 22 months - a regulatory charade was being publicly played out. For throughout this waiting period, even as it issued a second Consent Order in March, 2005, against NYPA for ... *inexcusable exceedances of steady-state and startup/shutdown limits...*, the DEC would, on the one hand, continue to praise in the press the merits and benefits of the power plant while, on the other hand, refuse to even address or acknowledge the merits of even one of the issues the community had raised.

It is no wonder, then, that the community continues to believe that the DEC was all the while working not for the public but in tandem with NYPA.

Below for your review are my summary points. Where necessary, I refer to documents within the enumerated attachments. Finally, please note that items in italics come from the DEC's recent responsiveness summary.

- It was only due to a lawsuit brought against NYPA by the community that the Rosebank site became the only location where NYPA was forced to perform a separate EIS.
- DEC states that ... *at the time the original permit was issued, the emission limits assigned to the plants were based on steady-state operation...* This is a surprising statement, seeing how, when NYPA spoke at public meetings and wrote in their community literature about the power plant, that the facility would be operating **only** on an as-needed basis, specifically, during potential brown-out periods in the summertime. To the public, the applicant for the Title V permit implied that the Rosebank facility was not to be a steady-state operation. And, as shown in Attachment #2, NYPA put in writing and distributed to the public during the plant's construction phase, that NYPA ... *will guarantee meeting emissions levels of 2.5 parts per million (ppm) of nitrogen oxides and 5 ppm of carbon monoxide...*
- No operational data of any kind, especially air emissions, was included in the draft Title V permit. The public thus remained ignorant for over two years of the documented air emission violations until **after** the public hearing for the draft Title V air permit.
- Between the time of the initial NYPA Title V permit application and the public hearing - a 14 month span - the DEC issued a Consent Order against NYPA, after which NYPA amended its Title V application for less restrictive air emissions limitations. This was done with no public involvement: no public notification of the Consent Order and why it was issued, no public review and comment, and no public sharing of the 18 months worth of emissions violations.
- DEC states that quarterly air monitoring reports for the power plant's operation are always available for public review. Yet, the agency fails to mention that the information is available only through Freedom of Information requests. This was made quite evident when a Rosebank constituent, Mr. Dan Nemeth, requested from DEC air data during the draft permit public comment period. Mr. Nemeth was informed that he first had to file an FOI request - and then proceeded to wait over three months for the information, at which point the original public comment period had already ended. **The questions remain: why was there no operational air emissions data in the draft permit and no information about the first DEC Consent Order against NYPA?**
- DEC states that its review was always based on worst-case operating conditions. Yet, the agency ignored the known industry fact that startups and

shutdowns are the worst case situations - especially to people living directly across the street from such a plant.

- Between the time of NYPA receiving the operating permit and the DEC's recent approval of the Title V permit, two Consent Orders were issued against NYPA. Even when the second Consent Order was issued, **the enforcement action again ignored the public: no public outreach; no documents for the public to review; no opportunity to question either NYPA or DEC; no public comment period.**
- The only reason DEC finally acknowledged any emissions violation or the existence of the first Consent Order was due to the fact that a local Staten Island newspaper informed DEC it was about to publish a story about the violations.
- Eighteen months passed before a DEC enforcement action was instituted for the violations to the facility's operating air permit. There is no record of why DEC allowed the facility to continue to operate with such ongoing permit violations, violations that occurred at times daily but also, in one particular instance, five times in one day (see Attachment #4).
- DEC states that it rarely announces the issuance of a Notice of Violation. Yet, (1) given the number of consistent violations over the 18-month period of time, (2) the public controversy surrounding this site, and (3) the public stating for the record at every available opportunity of being against the siting and operation of the facility, it is unconscionable that the highest environmental agency in New York State chose not to consider the community living 100 feet from the plant as a significant stakeholder that **should** receive any and all information on environmental violations occurring across the street from where they live.
- When my office finally reviewed the facility's 18-month operational record, for each reported violation to the DEC during this time NYPA responded with "No Action is Needed". No DEC record was available indicating concerns about the "why" of these ongoing violations - or, for that matter, questioning why the "no action is needed" response was indeed the correct one. And it remains a mystery as to why, in the 18th month of violations, the DEC at that point decided to take its first regulatory action.
- The air emissions under the proposed draft Title V permit - and approved by the DEC as part of the January, 2003 Consent Order - were less stringent than those under the facility air permit. No justification was given in the draft Title V permit why the DEC had raised the bar from one permit to the other - even though, as already quoted from Attachment #2, NYPA stated that it **guaranteed** the plant would meet far lower emission levels.
- With the end of the public hearing/comment period, it took 22 months before the DEC released the public hearing's responsiveness summary. The summary was first available only on the day all 11 permits were forwarded to Region 2

- EPA - and no reason was given by DEC why it took so long.
- During the intervening 22 months, **and only revealed by accident in the recent responsiveness summary**, a second Consent Order against NYPA was issued because ... *Following the execution of the January 2003 Order on Consent, staff did note the occurrence of inexcusable exceedances of steady-state and start-up/shutdown limits at the NYPA facilities. A second enforcement case was initiated... in March 2005...* Again the public was never made aware of this second enforcement action, and never given the opportunity to review and comment upon it. Indeed, with this kind of approach towards the public, under what conditions would DEC have informed us? **And all this occurred before any DEC decision was made concerning the draft Title V permit.**
- Pointing to what EPA allows, the DEC states that NYPA had to collect actual operating data for emissions during startup and shutdown before the DEC could determine the appropriate startup/shutdown emission rates for the Title V permit. Yet, where EPA allows a period of up to the first six months as the "shakedown" period, DEC allowed more than 18 months. No justification was provided as to why DEC granted NYPA triple the amount of time than what a federal agency allowed.
- In the Rosebank EIS, NYPA ignored one major air pollution source within the immediate vicinity of the power plant, Sun Chemical.

These are just a few of the more obvious facts on how the public was purposely made ignorant by NYPA and the State's highest environmental agency. Community anger escalated again this past winter when - due to a 30-minute false alarm so audible that it brought local residents and the Fire Department (FDNY) to the facility - NYPA admitted that for most of the time when the plant was starting up and operational, **no plant operator was present at the facility**, and, the FDNY, never allowed into the facility, had no knowledge of the nature of any alarm or security systems within it.

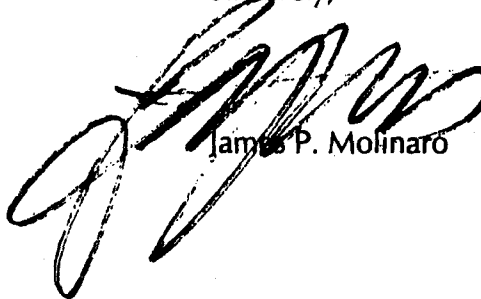
For almost two years I consistently asked DEC: if the plant is so environmentally benign, why is there no permit? Why the long wait? And did we not have a right to know, at a minimum, about the air emission violations that instigated the second Consent Order especially since it was levied while the merits of the draft permit were being determined?

I began this letter stating that my sole concern is strictly with this one facility. I have attempted to outline for EPA where I still see many unanswered questions and how the public was never a fully informed and equal partner in the permit process. The extent of these open environmental questions and public then raises procedural and due process permit irregularities that does not, in my opinion, translate into granting a five-year Title V air permit. In essence, I am requesting that EPA deny this permit.

The Rosebank community believes that government failed them and that for NYPA, working closely with the DEC, the ends justified whatever means to get the necessary air permit. I want to change this perception.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'James P. Molinaro', written in a cursive style.

James P. Molinaro

**Testimony of
Staten Island Borough President
Guy V. Molinari**

**Pouch Terminal Site for the
New York Power Authority's
In-City Generation Project**

**Draft Environmental Impact Statement
Public Hearing
December 20, 2001**

Good evening.

Let me begin by making some statements of fact concerning the selection of the Pouch Terminal site.

Last December, I received a call from the Power Authority requesting an opportunity to brief the Borough Presidents on the plans to build on an expedited basis 10 in-City emergency power generating plants. In fact, the Power Authority conducted a similar briefing at the Queens Borough President's office.

With technical people present from my office and the Power Authority's office, the briefing lasted about two hours. We learned that the emergency generator plants were needed because, according to Power Authority analyses, the City no longer had the infrastructure to supply electrical power consumption during peak demands.

During the briefing, the Power Authority informed us that they had already selected the Staten Island site - directly adjacent to the Fox Hills substation. Upon further questioning by my staff, we learned that what should be the most obvious choice - the Travis area/West Shore transmission corridor - could not be used because that power grid did not have room for the transmission of new electrical power.

However, within a month later, and without consulting with my office, the Power Authority dropped its original location and chose the

Pouch Terminal site, the subject of tonight's hearing.

This hearing is taking place not because the Power Authority requested one; this hearing is occurring because it was mandated as a result of the Court-ordered Environmental Impact Statement. Indeed, the Power Authority's original plan was to hold only one hearing for the entire City-wide emergency generator proposal. That hearing was to take place in Brooklyn, less than a week before Christmas. We felt this was totally unacceptable and I am grateful that my deputy, Jim Molinaro, convinced the Power Authority that Staten Island deserves its own hearing.

The Environmental Impact Statement now at issue includes the December, 2000, Staten Island Environmental Assessment for the Pouch Terminal site. This was a document that my office never received from the Power Authority when they reached a decision this past January to forgo the Fox Hills substation. If my office had received that document in a timely manner my testimony before the Department of Environmental Conservation in January would have been quite different.

By including the Assessment, Staten Island can now present arguments before an administrative law judge on how wrong this site is for the power plant. I am requesting that this hearing's administrative judge examine the Environmental Assessment carefully, paying specific attention to the manner in which the Rosebank community, especially the

neighborhoods within the 400-foot buffer zone and within ½-mile of the project site, is being portrayed. I point this out because with a few examples, it is clear how the Power Authority has mis-characterized this community. I offer the following.

According to the Power Authority:

1. Within the 400-foot study area surrounding the site, the area is mainly composed of industrial uses with some commercial and residential uses. But the Power Authority provides no definition for "mainly" and "some".
2. While the neighborhood character immediately surrounding the project site is characterized as industrially developed, the Power Authority does not explain what happened to the "some residential uses" within the 400-foot study area.
3. While the residential uses to the west of the project and across Bay Street may not be considered compatible with the proposed facility, the Power Authority states that because they are located in close proximity to existing industrial and commercial uses, the residents in this area are less likely to be significantly affected by the development of a power plant project.
4. Because the Power Authority is a State agency, it does not need to comply with New York City zoning regulations. Thus, even though

the City's zoning regulations do not allow a power generating facility to be located within this area, the Power Authority has determined that because of the other non-power plant industrial uses in the area, a power plant would not result in any significant conflicts with local zoning. This is clearly a demeaning interpretation of the quality of people's lives, and the viability of their homes and neighborhoods before the power plant's construction.

5. Even though people live not only directly across the street from the facility but also within the 400-foot buffer zone, the Power Authority has chosen to ignore them as irrelevant when discussing how, under a worse case situation, ammonia vapors would not affect any residence or public receptors because, according to Power Authority, there are none within 200 feet.
6. When reviewing the project for air standards, the Power Authority states that there are few residences in the area but none immediately adjacent to the project site. Once again, the "few" actual residences are irrelevant.
7. Even though the Power Authority claims that the project site is industrial in character, no background air samples were taken to determine if the power plant would exacerbate any existing industrial problems. Indeed, the Power Authority has effectively

ignored the Sun Chemical facility located within the ½-mile study area, a facility which has caused air pollution concerns for many, many years.

8. When it comes to noise, the Power Authority suddenly acknowledges that there are residences "... across the street from the project site on Bay Street..." and that maximum project noise impacts would be expected at those residences. The noise levels were monitored for two days last December and the Power Authority, using the Equivalent Sound Level descriptor, interpreted the results as "... relatively high and reflect the high level of vehicular activity adjacent on the roadways in the area and industrial character of the area..." This is a misleading interpretation since vehicular traffic is by nature transitory. Even a single, noisy truck driving by once during a given hour in the middle of the night will easily skew equivalent noise calculations readings and their interpretations into the high side. Indeed, the Power Authority uses this "high" number in conjunction with the expected noise from the power plant, stating that the power plant's noise would only increase the background noise in the middle of the night by 2.6 decibels, that is, from 61.8 dBA to 64.4 dBA, an insignificant increase. What is wrong with this noise interpretation is that the Power Authority has chosen to

ignore one basic fact: the power generator, unlike truck traffic that passes by within a matter of seconds, is a permanent piece of equipment that, when put into operation, will stay on for many hours on end. Thus, whenever there is no truck traffic in the middle of the night, there will unfortunately be a noisy power generator still in operation.

9. While construction noise from impact-type equipment may be discernible and might be considered intrusive at nearby residences, since there are no residences, according to the Power Authority, immediately adjacent to the project site, this noise would not have an adverse impact.

The inconsistencies and mis-characterizations that run throughout these few examples do not reflect the everyday reality lived by the people across the street from the site and within the 400-foot buffer zone. So let's be clear on this one issue: under NYC regulations, any power plant **would not be allowed at this site**. For the Power Authority to claim exemption and disregard the necessities of these regulations to protect residents is just plain wrong. And simply because someone already lives in an industrial neighborhood does not automatically translate into a determination that they will not be further adversely impacted by

bringing in a power plant.

To conclude, the project should not have been given a "neg. dec." designation.

You will hear tonight from Rosebank residents what life was like during the plant's construction activities and during the power generator's start-up and interim operation. You may also hear tonight comments concerning how the very week of these public hearings, the Power Authority began offering millions of dollars to Staten Island for energy conservation and air pollution mitigation. One has to wonder why this is happening now.

With no federal standard in place, I do not believe that the PM-2.5 pollutant is an issue that could shut down this power plant. Staten Islanders well remember that while in 1948 Fresh Kills was only to be open for two years, it took 53 years to shut it down. As I stated a few weeks ago, if the proposed Fortistar power plant project in Travis reveals that there is in fact power transmission capacity in that West Shore corridor, then the right thing to do is to shut down the Pouch Terminal facility.

Thank you.

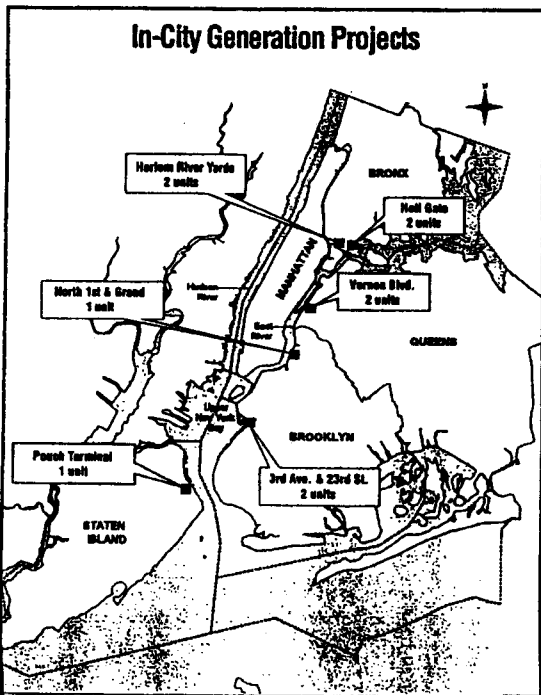
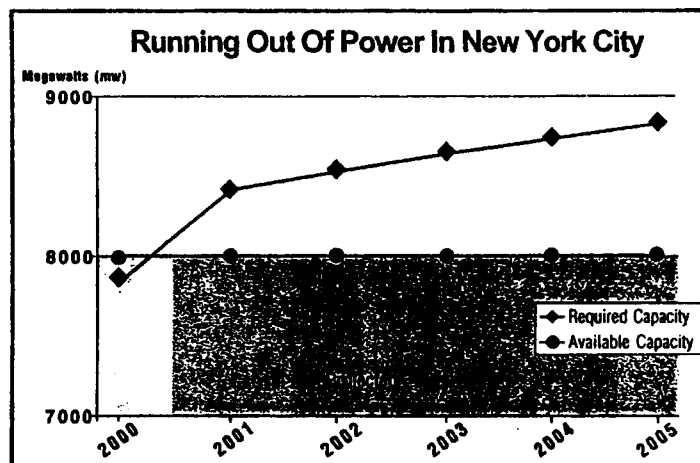
POWER NOW!

IN-CITY GENERATION PROJECTS



PROJECT OVERVIEW: The New York Power Authority has purchased 10 simple-cycle, 44-megawatt natural gas-powered generating plants for installation at sites throughout New York City. The new units are intended to avert a serious power supply problem in the City between next June 1 and the completion of large new plants that are expected to begin operation within the next two or three years. The state's Public Service Commission has advised the Authority that there is an urgent need for at least 315 megawatts in 2001 and that it would be prudent and highly desirable to install additional capacity to ensure system reliability.

DO WE REALLY NEED THESE NEW, SMALLER PLANTS RIGHT NOW? We do if we want to help assure that the lights don't go out next summer. New York City's booming economy, especially in areas of information technology, is expected to continue to grow at a rapid rate, accelerating the demand for more electricity. New York City escaped serious supply problems last summer only because the weather was mild. Every prediction points to continued growth and continued increases in demand for electricity in the immediate future. Completion of these plants is crucial to insuring that adequate supplies of electricity are available for the next two summers.



SCHEDULE FOR INSTALLATION: To be prepared for the summer demand season, these new plants must be ready to begin operation June 1, 2001. This will insure the availability of over 400 megawatts of electricity for use in the city between now and the addition of permanent new generating plants.

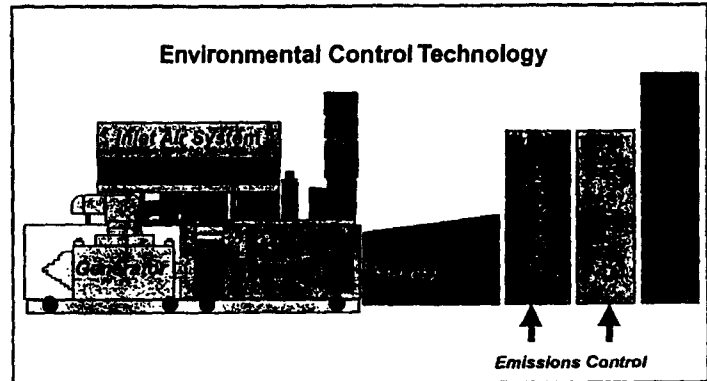
PROJECT SITES: The six sites selected for these new, small power plants are about 1 to 1 1/2 acres in size and have natural gas supplies and electrical connections ready or near at hand.

POWER PLANTS: The gas turbine generators are model LM6000 units manufactured by General Electric. Each can produce a maximum of 44 megawatts of electricity. The units are rated as the most fuel-efficient simple cycle natural gas turbine generators in the world. Where two units are located on a site, power output would be limited by the air permits to 79.9 megawatts.

POWER NOW!

IN-CITY GENERATION PROJECTS

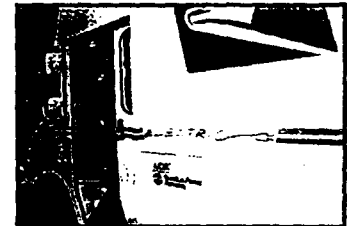
AIR POLLUTION CONCERNS: These units will be the "cleanest" generators in the city, using the best environmental control technology available. The Power Authority will spend an additional \$5 million per unit, or a total of about \$50 million, for additional equipment to insure the plants remain clean. This equipment includes a water injection system that, combined with a selective catalytic reduction system, will guarantee meeting emissions levels of 2.5 parts per million (ppm) of nitrogen oxides and 5 ppm of carbon monoxide.



NOISE: The Power Authority has undertaken extensive studies evaluating noise levels of all equipment at the sites to determine composite noise levels. With this information, measures will be taken at the sites to reduce noise levels so that there is no significant impact on ambient noise levels.

ADDITIONAL BENEFITS: Helping to ensure adequate supplies of electricity is just one part of the Power Authority's service to the residents of New York City and the rest of the state. Among the other benefits the New York Power Authority provides are:

- economical electricity that saves government customers — and taxpayers — an estimated \$250 million each year in New York City.
- economic development power that helps protect 144,000 jobs in New York City.
- energy-efficient lighting for government facilities that improves illumination and saves taxpayers nearly \$34 million a year in electric charges. The electricity saved by these projects — 389,704,000 kilowatt-hours — is enough to serve about 65,000 residences, or about half of the electricity needed in Staten Island. The savings eliminated the need to build two additional small turbine units in New York City.
- replacement of dirty coal-fired furnaces in 78 schools in New York City, cleaning the air for students in the schools.
- 180,000 new energy-efficient refrigerators for public housing units.
- energy-efficient traffic signals.
- nonpolluting electric vehicles to government agencies to promote clean air.



FOR MORE INFORMATION:

Call Joe Leary, at 914-390-8187, or e-mail him at joseph.leary@nypa.gov

www.nypa.gov

Provides additional information on the Power Authority and its programs.

In December of 2001, my office joined with the residents of Rosebank at a pre-Christmas public hearing to present testimony concerning the Rosebank power plant's court-ordered draft environmental impact statement. There were two basic issues within the draft EIS that my office took exception with, and because I believe that they remain relevant to the purpose of the hearing this evening, I am including the 2001 testimony as an attachment.

The first issue was the misrepresentation and mischaracterization of where the power plant was physically within the Rosebank community. The basic, two-part Power Authority premise presented in the 2001 EIS - which, by the way, was based on a December 2000 Environmental Assessment Statement that had no public review and comment - was the following: because no one really lived with the 400-foot buffer zone from the power plant, and, those that did live within the ½ mile radius of the site were already living inside an industrially and commercially developed area, no resident would be significantly impacted by this power plant project.

While it may have been easy for the Power Authority to ignore on paper

its own Figure 2 in the EAS and Sanborn land use maps that clearly delineate the many residential blocks and lots within the 400-foot radius, the people who lived directly across the street from the power plant and who showed up at the public hearing to testify, should not have been ignored. They should not have been categorized as non-existent or, worse, irrelevant as potentially full-time receptors of environmental impacts. Indeed, the Power Authority claimed that under a worse case scenario for the release of ammonia vapors, there would be no effect on the public because no one lived within 200 feet.

The second and perhaps more critical issue was that because the Power Authority was a State agency, it did not need to comply with New York City zoning regulations. In essence, while the City's zoning regulations do not, and I repeat, do not, allow a power generating facility to be located within this specific area, the Power Authority determined that, in their opinion, because of other non-power plant industrial uses already in the area, a power plant would not result in any significant conflict with local zoning.

Is this not an outrageous example of "the ends justifying the means"?

Now, almost two years later, the Power Authority is seeking a five-year Title V operating permit for this facility from the State Department of Environmental Conservation and must, therefore, be subject to a public hearing.

Those of us in elected office have an obligation to listen to the public, weigh in the facts and the issues, and speak out when government fails. As with the draft EIS two years ago, government - in this case, the DEC and the Power Authority - failed the public by remaining silent about (1) that the power plant had violated air pollution limitations for NOx, ammonia, and carbon monoxide, (2) why the violations occurred to begin with, and, (3) what corrective actions were taken.

We do not even know how often the power plant operates and for how long. How then can we understand, interpret, or for that matter participate in a public discussion about, impacts of air pollution problems due to start up and shut downs of a power plant when we do not even have one basic category of information: how many times a day, a week, a month, and/or a year has start up and shut down occurred and continues to this day?

In addition, we only recently found out something about our "neg dec" facility: air pollution violations occurred more than a year ago, and not one word from any government source! Indeed, this information came about not from the responsible environmental regulatory agency or from the owner/operator of the facility, but from a Staten Island *Advance* reporter. Furthermore, we do not even know what were the actual Rosebank air pollution violations because the violations are not broken down by facility; instead, they are lumped together with the other 10 new Power Authority generating facilities across the City!

For example, it appears that ammonia emissions are part of the air pollution violations. The Power Authority, as mentioned earlier, stated in their December, 2000, EAS, that no one lives within 200 feet of the plant. Yet, you will hear tonight from people who in fact live within this sphere of influence. Can we - or, more importantly, how can we - confidently state that there were no impacts on these residents? Or is it because the facility was given a "neg dec" and thus their concerns are irrelevant?

The Power Authority and the DEC have not earned the trust and

confidence of the community with these actions, or rather, inactions.

And to submit comments for this draft Title V permit when we remain in the dark about our particular facility, to have to point out to the agencies that nowhere in this permit is there any direct public involvement or inclusion during the next five years of operation and reporting, would simply imply that the community has rolled over and accepts the power plant.

This is certainly not the case, as you will probably hear tonight.

The agencies did not listen to the community two years when we presented clear evidence showing the fallacies behind the designation of a "neg dec" for the draft EIS for Rosebank. Do you blame us for feeling the same way about the value of any potential comments we may have concerning an air permit for a facility that to this day is in the wrong location on Staten Island? I certainly don't.

Thank you.

CITY OF NEW YORK
PRESIDENT
OF THE
BOROUGH OF STATEN ISLAND

Attachment #4



JAMES P. MOLINARO
PRESIDENT

BOROUGH HALL, STATEN ISLAND, N.Y. 10301

October 31, 2003

Mr. John Ferguson
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12232

Re: Comments to Proposed Title V Air Permit for New York Power Authority's
Rosebank, Staten Island, Power Plant

Dear Mr. Ferguson:

This letter is to serve as extended comments, per the DEC's extension of the public comment period to October 31, 2003 for the proposed Title V air permit for the New York Power Authority's Rosebank power plant.

General Comments

At last month's public hearing in Rosebank, I and many residents bitterly complained about the lack of operational data in the draft Title V permit application. Without such data, specifically, *any and all air emission violations from this plant since operations began in 2001*; I believed that Staten Island was:

- (1) at a complete disadvantage in being able to effectively present its case to the DEC that the Rosebank power plant was in fact polluting the community each and every time the plant was started up
- (2) Staten Island was left with little ammunition to effectively argue that because the plant has never operated as originally presented and guaranteed, it is now unacceptable to "reward" the Power Authority with Title V permit conditions that allow for even higher pollutant emissions.

It was fortuitous when the public comment period was extended for 30 days. During that time, a Rosebank resident presented my office with a copy of nearly 18 months worth of Rosebank power plant air emissions. This information was only disclosed as a result of a Freedom of Information request to the DEC. It is worth noting, that the request that was *not* honored by the agency until after the original public comment period had closed.

I say fortuitous because we now have the kind of data and information the Title V draft permit application should have been mandated to include from the beginning. The information clearly indicates that not only is the power plant literally violating its emissions limits every time it operates but it is also not operating on the "as needed" basis for emergency generation of power. This was the premise presented to Staten Island as the reason the plant had to be constructed immediately in Rosebank.

Specific Comments

Based on the review of Rosebank power plant air emissions data for the period from October, 2001 through March, 2003, the following are specific comments with associated questions:

- In general, on every day that the plant is started up and shut down, emission violations of NOx and CO occur. Therefore, there are, at a minimum, four violations per day. Is this to be allowed to continue under the Title V permit?
- The emissions violations are listed as occurring during one hour of startup and one hour for shutdown. Are we to understand, that when a CO violation is listed as 4000% over its emission limit, that this was a constant level during the entire operation time? Between startup and shutdown, are any additional air samples taken to confirm that there were no intervening violations? Indeed, if there are no intervening violations, why does that same pollutant show up as a shutdown violation?
- There are periods when there are several startups and/or shutdowns. This translates into even more emissions violations occurring daily. For example, on 1/30/02, while the plant operated for 7 hours, it had 2 startups and 2 shutdowns. Besides the four NOx violations registered, ranging from 172% to 568% above permitted levels, there was a CO violation of 2232% above permitted levels. Therefore, in one day there were 5 violations. When one then looks at the previous day's operations and accompanying violations, the CO on 1/30/02 exceeded the previous day's violation of 2092% above maximum allowable. And yet, when looking at the data sheets, every Power Authority response was *No Action Taken*.

- If the data is to be believed, it must be presumed that *whenever* the plant is started *it will automatically violate its permit conditions*. Indeed, by examining the data for the time period from 2/5/02 to 2/25/02, each and every day had *consecutive* violations that also included days with multiple violations of NOx (ranging from 8% to 856% above allowable limits) to CO violations (ranging from 38% to 1661% above allowable limits), and NH3 violations (from 1% to 90% above allowable limits). After 20 days of emission violations why did the DEC accept the Power Authority's response under "Action Taken" of *No Action Taken*?
- If the *No Action Taken* pattern of response was a major factor behind the 2003 Consent Order and fines against the Power Authority, why did it take the DEC almost a year from the time of these violations to the imposition of the Order? Furthermore, why were the violations allowed to keep on occurring *for the remainder of 2002*?
- Whether there was one day of down time or several in a row, the data indicates that whenever the plant started up again *at least one pollutant violation occurred*. Is this acceptable to the DEC as a plant operating in compliance with its permit conditions?
- Multiple plant startups and shutdowns per day do not correspond to how the power plant's operation was presented to the community. This plant was to be used as an emergency power generator during peak demand periods. Given the operational history, and the fact that the plant *is certainly operating during off-peak demand periods*, how does this factor in determining what are the Title V permit conditions for the Rosebank facility? Indeed, with the contradictions to the original operating premise, would the DEC now review the facility as if it was a traditional power plant that can operate 24 hours a day, seven days a week, for several week and/or months at a time?
- During the summer of '02, the plant operated every weekday in July and August. Out of these 36 days, for 12 of them, or 1/3 of the time, the plant operated with multiple startups/shutdowns. During startups, CO violations ranged from 7.7% to 4008% above allowable limits. Similarly, NOx violations ranged from 4% to 444% above allowable limits. For shutdowns, NOx violations ranged from 20% to 344% above allowable limits and NH3 ranged from 3% to 230% above allowable limits. Once again, and under the "Action Taken" column, the Power Authority stated *No Action Was Taken*. Why was this allowed?
- Given the violation levels and frequency of occurrences, especially during the summer of '02, no previous document - be it the EAS, the EIS, or the present draft Title V permit application - was required by the applicant to evaluate the effects of *combinations* of these specific power plant pollutants during the course of a day

with multiple startups/shutdowns. Is this not the "worst case" scenario that needs to be evaluated, especially now that the data shows that this is in fact a Rosebank standard operating procedure? For example, on 7/8/02, an over 13-hour operational day, in the first hour of startup, the violation was a combination of CO at 4008% and 444% of NOx allowable limits, while during shutdown there was a violation that combined in one hour a CO violation 164% above allowable limits and a NH3 violation 72% above allowable limits. What if this had been an air inversion day? This is a distinct possibility as this particular event occurred in July. Should this have been an "incident day" of concern? *In fact, what is the worst case scenario for this power plant, given that residents live directly across and within a 400-foot radius of the plant?*

- In January, 2003, out of 31 days, there were 11 operational days with an average of 4 operating hours. On January 16, the plant operated for only 2 hours; it appears that this "operation" was the one hour of startup - with a NOx violation of 469% above allowable limits and a CO violation of 223% above allowable limits. The second and final hour was the shutdown hour, with a NOx violation now at 929% above allowable limits. So the total NOx violation was not in one hour but from the two consecutive hours, totaling into a violation of 1498% above the allowable limit. It also clear that the NOx was *increasing from the first to the second hour*. This same one-hour startup, followed by a one-hour shutdown scenario was repeated 13 days later on the 29th, with NOx violation increasing over 270% above allowable limits.
- In addition, during January, 2003, there were 11 operational days during which NOx emissions increased between startup and shutdown. Was the increase in NOx emissions from startup to shutdown discussed in the Rosebank EIS or in the present draft Title V permit?

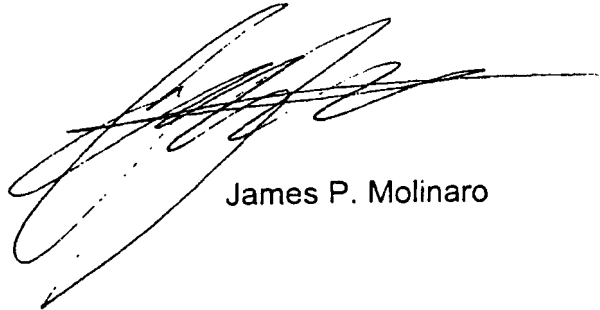
A very basic issue is what are the precedents for the DEC to issue a Title V permit for 11 *apparently* similar facilities spread out across such a large geographical area? Why should Rosebank be grouped in with the other 10 sites when no other site has our particular site conditions? For example, the Rosebank site has people living directly across and within the 400-foot radius of the plant. The operating data for Rosebank highly indicates that each of the 11 facilities must be evaluated separately. Clearly, the decision for a Title V permit should rest on each site's merits.

More importantly, the fact that over 18 months worth of Rosebank emissions data did exist but was excluded from our public review process of the Title V permit application remains an unacceptable action by both the Power Authority as the applicant and the DEC as the regulator that dictates what should be included in the permit application package. What is to stop any of us from believing that the Rosebank plant is the facility that has the most egregious pollution track record of the 11 plants? In fact, it is difficult to understand if and when the DEC reviewed the emissions data. I am puzzled why it was

acceptable to continue to allow the Power Authority to violate its permit conditions for over 18 months by not even questioning why it took "no action"?

In conclusion, let the record reflect what the Power Authority guaranteed Staten Islanders during the winter of 2001 in their publication concerning the proposed in-city generators: *This equipment includes a water injection system that combined with a selective catalytic reduction system will guarantee meeting emissions levels of 2.5 ppm of NOx and 5.0 ppm CO.* The data clearly shows that this was far from accurate and, as such, the application for a Title V permit should be denied.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Molinaro", written in a cursive style with a long horizontal flourish extending to the right.

James P. Molinaro

Attachment #5

CITY OF NEW YORK
PRESIDENT
OF THE
BOROUGH OF STATEN ISLAND



JAMES P. MOLINARO
PRESIDENT

BOROUGH HALL, STATEN ISLAND, N.Y. 10301

May 20, 2004

Ms. Erin M. Crotty
Commsissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1010

Dear Commissioner Crotty:

It has been seven months since the public comment period closed regarding the New York Power Authority's draft Title V permit for the Staten Island power plant in Rosebank. Since then, my office and the impacted Rosebank community have been patiently waiting for the responsiveness summary detailing the public comments received and the Department's response. To date, we have been given no notification as to when such a document is to be released, or, more importantly, what is causing the delay.

Over the past four years, the siting, construction and operation of the Rosebank power plant has created on the Island much bitterness towards government and the DEC. These sentiments were clearly expressed by both residents and my testimony during the September 16, 2003, public hearing. I brought this point further home when I forwarded, under the deadline extension for public comments, a five-page letter on October 31, 2003, detailing previously unknown environmental issues that were discovered within newly released information from the DEC to the Rosebank community, information that was curiously omitted in the draft Title V permit application for the power plant.

Staten Island adhered to the deadlines imposed by the DEC. Why, then, was a "responsiveness" deadline not mandated upon the DEC itself? The power plant

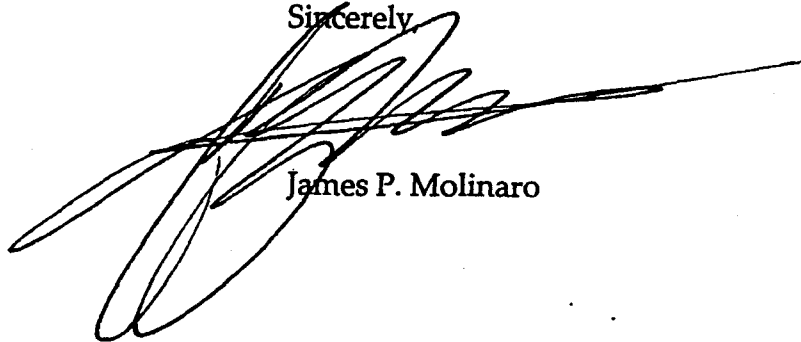
continues to operate at higher pollution levels than originally promised in writing by the Power Authority under the temporary operating permit. And because the DEC voiced no objections and gave no reason why it was now acceptable to raise the emissions bar for the draft permit, Staten Islanders continue to view this as a reward to a polluter.

I need not remind the DEC that just such an approach with regards to operating a facility without a final permit was used for decades by government concerning the running of Fresh Kills. I had hoped that when that illegal dump closed, government would not entertain again this kind of regulatory philosophy, especially on Staten Island.

The DEC needs to make its decision on Rosebank once and for all. The warmer weather is now at our front doors, earlier than anticipated. The impacted residents want to enjoy an outdoors that excludes pollutants from a power plant located 100 feet from their front doors. They want to open their bedroom windows at night and not have to smell the ammonia emissions wafting in with a cooling breeze.

Rosebank is the wrong location for the power plant. The permit conditions *should not* be minimized. If it can't operate otherwise, then it should be denied an operating permit. Thank you.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

James P. Molinaro

Attachment # 6

CITY OF NEW YORK
PRESIDENT
OF THE
BOROUGH OF STATEN ISLAND



JAMES P. MOLINARO
PRESIDENT

BOROUGH HALL, STATEN ISLAND, N. Y. 10301

July 19, 2004

Ms. Erin M. Crotty
Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1010

Dear Commissioner Crotty:

On May 18th I wrote to you requesting an update on the New York Power Authority's draft Title V permit for the Staten Island power plant in Rosebank. I have yet to receive either an acknowledgment or a response.

The summer is already upon us and the power plant is operating with greater frequency each week. My environmental engineer continues to receive odor complaints from residents living directly across the street from the plant, with the worst offender being the strong and pervasive natural gas smell. It had gotten so bad that I recently had to call the Regional Director, Tom Kunkel, asking if he could send out an inspector based on that day's complaints. The DEC inspector noted the odor and stated that it was evident because of that day's air inversion.

I need not remind the DEC that in their draft permit the Power Authority did not discuss air inversions and their associated impacts on the residents. This is troubling, given what Staten Islanders had to endure for decades from summertime air inversions that trapped the noxious odors from Fresh Kills. Would not summertime air inversions constitute the worst case scenario to be investigated under any draft air permit application?

The longer DEC remains silent on the permit issue, the more it reinforces negative opinions about government in general and the DEC specifically. I am thus once again respectfully requesting an update on this issue and why it has taken so long to make a decision. Thank you.

Sincerely,

James P. Molinaro

ATTACHMENT # 7

New York State Department of Environmental Conservation
Office of the Executive Deputy Commissioner, 14th Floor
625 Broadway, Albany, New York 12233-1010
Phone: (518) 402-8543 • FAX: (518) 402-8541
Website: www.dec.state.ny.us



AUG 20 2004

Mr. James P. Molinaro
Borough President
Borough of Staten Island
Borough Hall
Staten Island, NY 10301

Dear Mr. Molinaro:

This is in response to your letters to New York State Department of Environmental Conservation (Department) Commissioner Erin Crotty regarding the New York Power Authority's (NYPA) power plant in Rosebank, Staten Island. Commissioner Crotty may be required to act as a decision maker regarding the permit for this facility, and as a result, cannot respond to you directly.

Your letters asked when the Department will release its Responsiveness Summary responding to comments on the Rosebank facility's Title V application. You also questioned the plant's emissions levels; its operation without a "final" permit; and the appropriateness of its Rosebank location. Understandably, these issues are of important concern to you and the Rosebank community, and the Department has given them serious consideration. A Responsiveness Summary will be released at the time a final permit decision is made. A decision is expected in the very near future.

The Rosebank plant currently operates under the authority of a Consent Order, signed by the Department and NYPA on January 22, 2003. The Order authorized new emission limits for startup and shutdown periods. Those emission limits were determined after a detailed review of NYPA's operating data, including modeling which analyzed the short-term impacts of emissions on human health and the environment.

Based on air dispersion modeling of NOx and carbon monoxide (CO) under the emission limits established by the Department, the Rosebank facility's emissions concentrations will remain below United States Environmental Protection Agency (EPA)-defined Significant Impact Levels (SIL). Such concentrations, when added to background, result in total air emissions concentrations well below the health-based National Ambient Air Quality Standards. For example, under a worst-case scenario, 8-hour CO ambient air concentration from the Rosebank facility with the new startup emissions rate is 5.21 ug/m³, well below the SIL of 500 ug/m³.

2.

Although neither the Consent Order nor the draft Title V permit change particulate matter emission levels, the concentrations of 24-hour particulate-matter sized 10 microns or less (PM₁₀) and PM_{2.5} have also been examined by the Department. The results show that the ambient air concentrations of PM₁₀ and PM_{2.5} from the Pouch Terminal facility, even when operating during startup and shut-down, are well below the EPA- and DEC-defined SILs. In addition, neither the Consent Order nor draft Title V permit provide for an increase in ammonia emissions and the emissions limits for ammonia have been established at levels that protect public health and the environment.

The new startup/shutdown emissions limits represent roughly one ton of NOx emissions for an entire year. While there are no federal or state short-term NOx standards, DEC compared the one-hour NOx concentrations from the facility with the one-hour NOx guideline concentrations used by California and Massachusetts—the only other two states in the country that regulate emissions during startup or shutdown. The maximum short-term impacts from the Rosebank facility would not exceed either the California or Massachusetts one-hour guidelines. There is no federal standard for regulating startup and shutdown phases of operation in a permit, and the NYPA facilities are the first instance where the Department has imposed limits on startup and shutdown.

An independent study commissioned by NYPA in response to community concerns, confirmed DEC's modeling was appropriate and went beyond what was required to analyze specific emissions. The study confirmed the appropriateness of the limits and underscored that the limits imposed by the Department are among the most stringent in the country.

As you know, NYPA constructed the Rosebank plant and five other small power plants in New York City (City) to address an emergency need for electricity capacity during the 2001 peak summer season and thereafter. A final decision has not yet been made on the Title V permits for these facilities. Please be assured that the Department's decision making will be based on sound science, comply with all federal and state requirements, and will ensure the protection of air quality and public health.

The Department will fully consider your comments in our review of this permit. Thank you for writing.

Sincerely,



Denise M. Sheehan

ATTACHMENT # 8

CITY OF NEW YORK
PRESIDENT
OF THE
BOROUGH OF STATEN ISLAND



JAMES P. MOLINARO
PRESIDENT

BOROUGH HALL, STATEN ISLAND, N.Y. 10301

June 15, 2005

Ms. Denise M. Sheehan
Acting Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1010

Dear Acting Commissioner Sheehan:

Twenty-one months have come and gone since the Staten Island public hearing for the New York Power Authority's Rosebank power plant draft Title V permit, and we have yet to receive either the responsiveness summary from the public hearing, the Department's answers to these comments, or, more importantly, the finalized air permit.

In each of the two letters I wrote to the Department - the first 13 months ago, followed by the second two months later - I voiced my frustration that the longer DEC delayed resolving the public comments and the finalized permit issues, the more this inaction reinforces negative opinions about government in general and the DEC specifically. Even in the response letter I received from you 10 months ago in your then capacity as DEC's Executive Deputy Commissioner, it was confusing for me to try and understand why, with no final permit issued, the Department was enamored with the state-of-the-art Rosebank power plant and how pleased the DEC was in imposing draft limits that are among the most stringent in the country. Indeed, when you further stated that a decision was expected in the very near future, I thought at the time: if this power plant is so remarkable in how it can operate, what is preventing the DEC from issuing the final permit today?

And so I, for one, continue to be amazed at how, to this day, the Rosebank permit remains an open issue. To justify DEC inaction by assuring me, as you did in your August, 2004, letter, that the power plant is allowed to operate under the authority of a Consent Order, is unacceptable. I need not remind the DEC that Fresh Kills was also allowed to operate under not one but three separate DEC Consent Orders for 21 years until Staten Island forced the City and State to finally shut it down - *and it remained without a permit until the day the garbage stopped.*

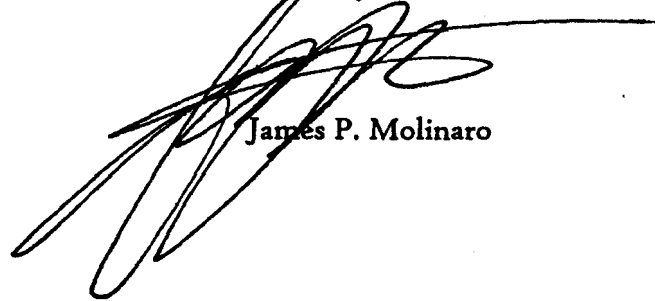
Inept regulatory actions should not be repeated on Staten Island. The power plant, running under draft conditions for over two years, is operating under conditions bitterly opposed by the public during the DEC's own public hearing. In my opinion, for each "un-

permitted" day that goes by is one day too many for my constituents. I stress this because of a nagging fear I have: *how do I know for certain that the State will not turn around and now require in the final permit conditions even more stringent emissions limitations?* And if you do strengthen the permit conditions, wouldn't that mean then that the power plant has been polluting the Rosebank community unnecessarily for over two years under DEC's watch, all in the name of a draft permit?

The Rosebank community continues to call my office, asking me where is the accountability here? The Staten Island public met its DEC deadline requirements for comments; yet, there is no DEC deadline. And what are they hiding?

These are questions that only the DEC can answer, and at this point in time, we deserve to have them answered immediately. I respectfully await your timely response to this letter.

Sincerely,

A handwritten signature in black ink, appearing to be 'James P. Molinaro', written over a horizontal line. The signature is stylized and somewhat illegible due to the cursive nature of the handwriting.

James P. Molinaro