

**Matter of WTC Neighborhood Alliance by Mary
Perillo v Kelly**

2014 NY Slip Op 30327(U)

February 4, 2014

Supreme Court, New York County

Docket Number: 101498/2013

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN
Justice

PART 52

In Re WTC
Neighborhood Alliance
v. et al

INDEX NO. 101498/13

MOTION DATE _____

The NYCPD et al

MOTION SEQ. NO. 001

The following papers, numbered 1 to _____, were read on this motion to/for TRO and Preliminary

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ Injunction No(s) 1, 2, 3

Answering Affidavits — Exhibits _____ No(s) 4, 5, 6, 7, 8, 9, 10, 11

Replying Affidavits _____ No(s) 12

mays 13

Upon the foregoing papers, it is ordered that this motion is

*decided in accordance with the
annexed decision and order*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

FEB 06 2014

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 2/4/14

[Signature], J.S.C.

HON. MARGARET A. CHAN

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Margaret A. Chan
Justice

PART 52

IN RE OF THE MATTER OF WTC
NEIGHBORHOOD ALLIANCE BY
MARY PERILLO, ITS PRESIDENT,
114 LIBERTY CONDOMINIUM, MARY PERILLO,
MARK SCHERZER, KATHLEEN MOORE,
STEVEN ABRAMSON, KAREN GREENSPAN,
DAVID STANKE, ESTHER REGELSON,
CAROLINE SANSONE, JOHN D. CADWALLADER,
JAMES PEDERSEN, NANCY KEEGAN, JOHN OST,
and TAZZ LATIFI,

Index # 101498/2013

Petitioners,

- v -

THE NYCPD RAYMOND KELLY, IN HIS OFFICIAL
CAPACITY AS COMMISSIONER OF THE NEW
YORK CITY POLICE DEPARTMENT, THE CITY OF
NEW YORK, MICHAEL BLOOMBERG, IN HIS
OFFICIAL CAPACITY AS THE MAYOR OF THE
CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, and the
PORT AUTHORITY OF NEW YORK AND NEW
JERSEY,

FILED
FEB 06 2014
NEW YORK
COUNTY CLERK'S OFFICE

Respondents.

Petitioner WTC Neighborhood Alliance (the Alliance) is an unincorporated association of residents or workers in the downtown neighborhood by the World Trade Center (WTC) site, specifically, Liberty and Cedar Streets, in the County, City and State of New York. Petitioner brings this Article 78 proceeding to challenge the environmental impact statement (EIS) issued by respondent New York Police Department (NYPD) for its WTC Campus Security Plan (Security Plan) that included an on-site garage in the Vehicle Security Center (VSC), arguing that it did not meet the mandates of the State Environmental Quality Review Act (SEQRA) and the City Environmental Review Rules (CEQR). Petitioner seeks a declaratory judgment that the EIS does not comply with SEQRA, and annulling the NYPD's Security Plan; and a preliminary injunction to enjoin respondents from implementing the Security Plan until they comply with SEQRA. Respondents respond that the Security Plan is in compliance of SEQRA, and petitioner is essentially "armchair quarter-backing" the security measures because, at bottom, they do not want the Security Campus in their neighborhood.

BACKGROUND

After the heinous September 11, 2001 (9/11) attack on the World Trade Center, which brought down the twin towers, New Yorkers vowed not to fold, but to rebuild. Indeed, the rebuilding plans began in 2002. In 2004, the Lower Manhattan Development Corporation (LMDC) set forth a Master Plan, which included a Final Generic Environmental Impact Statement (FGEIS), to rebuild the 16-acre WTC site, which is bounded by Barclay, West, Albany and Church Streets. The 2004 Master Plan envisioned development of “the National September 11th Memorial and Museum, cultural facilities, up to 10 million gross square feet (gsf) of Class A office space, plus associated non-office space such as storage, mechanical, loading, and subgrade parking, up to 1 million gsf of retail space, a hotel with up to 800 rooms and up to 15,000 gsf of conference space; open space areas, and infrastructure improvements. The FGEIS evaluated a site plan and street configuration that proposed to restore vehicular access through the WTC site both from north to south and from east to west.” (City’s Exhs, Vol. 1, exh. J, p.1-6, ¶ 2). Significant to the case at hand, the FGEIS considered traffic flow, street closures, parking facilities for cars, buses and trucks: “Traffic circulation was proposed to flow south on Greenwich Street and West Broadway from Tribeca to the area south of Liberty Street. Vehicular traffic was proposed to flow west on Fulton Street” (*id.* at ¶ 3). “Traffic flow along Cedar Street was proposed to flow west. Washington Street was proposed to be eliminated north of Cedar Street, which would have required vehicles traveling north on Washington Street to turn left on Cedar Street to access West Street/Route 9A” (*id.* at ¶ 4).

In 2005, amendments and refinements were made to the 2004 Master Plan. It was decided that the Port Authority of New York and New Jersey (Port Authority) had the responsibility for developing the VSC. Significantly, the amendments moved the entrance ramp for the underground parking to Liberty Street, changing it from a one-way street to a two-way street from West Street/Route 9 to Church Street. Ingress and egress to and from the on-site garage from the VSC would be via Liberty Street; vehicles would also be able to exit onto Cedar Street (*id.* at p.1-8, ¶ 2).

Further, 1 WTC was redesigned to increase security. Aside from the design, other plans to add to the security included requiring all vehicles be screened before proceeding to the streets adjacent to 1 WTC, which are Fulton and Vesey Streets. Thus, sally ports were incorporated for Fulton and Vesey Streets. These streets are “managed streets” (*id.* at p. 1-11, ¶ 5). Another measure that evolved from the 2005 refinement was the Port Authority’s managing of the tour buses and truck delivery schedules (*id.* at ¶ 3). The 2005 amendments did away with building a hotel on the site.

As it stands today, based on the parties’ description, maps, and this court’s recent guided tour of the area, accompanied by the parties’ attorneys, and a representative from the Port Authority, the perimeter of the entire WTC site is Church Street/Trinity Place from Barclay Street to the north and Liberty Street to the south; West Street/Route 9A to the west¹. There are four vehicular entrances with security screening to the WTC site. Tour buses will line up in the north bound direction along Trinity Place up to Liberty Street where they will be credentialed before turning left on Liberty Street and proceeding to the sally port controlled area across for screening. This VSC is on the south side

¹ 5 WTC is west of Church Street/Trinity Place, and it is bound by Greenwich Street, Albany Street, Washington Street, and Liberty Park, which is raised. The VSC is below Liberty Park.

of Liberty Street and west of Greenwich Street - in the WTC site. Passengers will disembark there and the buses will then park in a designated area in the underground parking garage on the south side of Liberty Street. The September 11 National Memorial and Museum [9/11 Memorial] run along Liberty Street opposite the parking garage, and are bound by Greenwich Street to the east, West Street to the west, and Fulton Street to the north. Access to the 9/11 Memorial can be from any point around the perimeter as the whole memorial area is open. North of the memorial area is 1 WTC, bound by Fulton, Vesey and West Streets; across from it is the Performing Arts Center, which is bound by Greenwich, Fulton and Vesey Streets. This design allows pedestrians and cyclists unimpeded access. However, vehicles are allowed into the site only after they have been credentialed and screened. Vehicles that are part of the Trusted Access Program (TAP) may enter the site expeditiously. The TAP is for residents and owners of businesses within the secure zone (City's Answer, Ferramosca Aff. ¶ 19). The underground garage on Liberty Street is under Liberty Park, which can be accessed from Greenwich and Liberty Streets on the east side, and West and Liberty Streets on the west side. A Greek church is to be built atop the park.

Petitioner's Claims

Petitioner's concerns were laid out to the NYPD by its Community Board 1 then Chairperson, Julie Menin, on March 12, 2012 to be incorporated into the Environmental Impact Plan. They were enumerated as follows:

1. Pedestrian flow into and out of the WTC site and surrounding area to preserve neighborhood character and prevent the creation of a "fortress" environment;
2. Creation of a transparent, not just permeable perimeter as has been promised by planning agencies to the community;
3. Unobstructed access for residents, workers and visitors to and from the Memorial Plaza as promised by planning agencies;
4. Avoidance of potential long-term pedestrian and vehicular congestion at the intersection of Church and Vesey Streets, which has become the "busiest" intersection in the country, and the intersections of Cedar and Liberty Streets with Greenwich and West Streets;
5. Phasing of traffic flow as various components are phased in over the years to come with build year of 2019, including the 9/11 National Memorial and Museum, 1 WTC, 4 WTC, the Performing Arts Center, 2 WTC, and 3 WTC, the Vehicular Security Center [VSC] with "Liberty Park," the Calatrava PATH Station and 5 WTC;
6. Bus flow into and out of the site while avoiding idling by standing busses;
7. Avoidance of truck routes entering the VSC that back up into Battery Park City or the growing "Greenwich Street South" residential community;
8. Impacts on police, fire, EMS and other emergency services in and around the WTC screening sites;
10. Potential for long term parking within security campus for vehicles enrolled in the Trusted Access Program vehicles;
11. Flexibility of plan to address people in wheelchairs and people with walkers and

- large baby strollers;
- 12. Impact of the parking vehicles (both private and personnel) of the 30 NYPD officers per shift;
- 13. Impact of traffic during the construction phase of the sally ports and retractable barriers simultaneously with many other large construction projects; and
- 14. Implement the Environmental Impact Commitments by working with the Lower Manhattan Construction Command Center's environmental compliance program which includes air monitoring that should continue through the 2019 build-out year; [footnote omitted]
- 15. Impact of security infrastructure on local business[;]
- 16. Discouragement of single passenger vehicles and encouragement of public transportation to and from the WTC site and other downtown destinations[;]
- 17. Reopening portions of Greenwich Street to through traffic or local vehicular access[;]
- 18. Reversing the direction of Cedar Street to allow easier vehicular access for residents[;]
- 19. Creation of a bike lane on Trinity and Church Streets so that the lane to the west does not become in effect a parking lot for taxis and black cars[.]

(Petition, Exh.1, pp.2-3).

Petitioner claims that the NYPD prepared and approved the FEIS for Security Plan, and then implemented the plan without taking a "hard look" at critical areas of environmental concern, making alternative plans, and explaining their conclusions (*id.* at p. 20, ¶ 47). Petitioner stresses that when the Master Plan was in the planning stages, one goal was to open the streets that had been blocked by the original WTC so that the new WTC would not be isolated from the growing residential neighborhood, and access to other neighborhoods would be made easier (*id.*, p.14, ¶ 32). Petitioner points out that the Security Plan to control certain streets - Greenwich, Fulton, Vesey and Liberty Streets - will essentially close off the streets, which were suppose to be open through streets, turns WTC into a "walled fortress" and "the entire perimeter . . . will be impervious to vehicular traffic as the Berlin Wall" (*id.* at pp. 15-16, ¶34).

Petitioner proffers an affidavit by its security expert, Richard Roth, Executive Director of Counter Technology, a security consulting, planning and design firm (*id.*, Roth Aff.). Roth opined that using an underground security center to screen vehicles "[runs] counter to a fundamental criterion of security planning" . . . "because blast injuries and other effects are intensified by such spaces due to the enormous pressure and degree of focusing from the walls and ceiling" (*id.* at p.5, ¶ 9). According to Roth, the better plan is to inspect the vehicles off site. Presently, construction trucks headed for the WTC site are examined off site before driving about three miles to the WTC site. An advantage to the off site inspection, Roth added, is that there will be no traffic jam at the WTC site. He counters the NYPD's timing studies showing backups would not be severe with the supposition that the timing may work out if there was no detection of suspicious vehicles or drivers. And, what if there was a bomber waiting in line for inspection, panics and detonates the explosives while still outside the security campus? Disastrous! Lastly, Roth recommended the "fortress-like defenses" proposed by the NYPD can be softened by the use of height limit barriers known as "head

bangers”, much like doorframes. Vehicles higher than six feet cannot pass through these doorframes without being inspected. Vehicles under six feet, such as taxis and passenger cars, can pass through without inspection since those cars cannot carry that much explosives that would do serious damage. Thus, using head bangers can open the campus to normal traffic, and integrate WTC with the neighborhood (*id.* at p.8 ¶ 14).

Petitioner finds fault with the Security Plan that has the tour buses line up on Trinity Place for credential checking before turning left on Liberty Street to the VSC. This creates diesel pollutants and noise by idling buses, and imposes an additional burden for those who live on Liberty and Cedar Streets due to the discharge of passengers in front of their homes and milling about as they head to the 9/11 Memorial, making the streets impassable.

Finally, petitioner cites other failures and deficiencies in the FEIS as NYPD’s non-compliance with SEQRA. They include failing to include a) Roth’s scenario of a panicked bomber detonating explosives while on line to the sally port; b) the harmful effects on public health from the x-rays used for inspections, which according to Roth, if the x-ray system uses neutron-excited method, people within 40 feet of it could be exposed to x-ray, gamma or neutron radiation (*id.* at p. 7, ¶ 13); c) an evaluation of the Security Plan in 2015 when all the planned facilities should be in place; d) a reason for putting barriers on Liberty Street rather than keeping it open as originally indicated in the 2004 Master Plan; e) “use of an improper No Action Alternative, which had the effect of minimizing the adverse environmental impacts of the Campus Security Plan” (Petition, p. 26, ¶ 60); and f) multiple errors in the assessment of traffic and air quality impacts, as elaborated on in the Comments on the FEIS.

Respondents’ Rejoinder

In response to the petition, respondents submitted affidavits of David Kelly, Assistant Commissioner of the Counterterrorism Bureau (the Bureau) of the NYPD, and Lt. Thomas Ferramosca from the Threat Reduction/Infrastructure Protection Section of that bureau, and three sizable volumes of exhibits. While Kelly was at the Bureau, one of his top responsibilities was to develop a security plan for WTC. Central to the SEQRA issues at hand, Kelly pointed out that the 2004 Master Plan underwent amendments in 2005. One of the amendments was the inclusion of the VSC, which would be Port Authority’s responsibility to develop and operate. There was an earlier environmental review performed by the Federal Transit Administration and the Port Authority, which included a public comment period on the environmental assessment on the VSC: “Public hearing on WTC tour bus and security center”, November 17-23, 2006. The environmental review of the VSC was completed in January 2007, and Port Authority then commenced construction. Thus, the required public comment periods were met.

Ferramosca stressed the need for a “robust security plan” to guard against vehicle-borne explosive devices to ward off threats such as the one in 1993, and who can forget the massive destruction on September 11, 2001 (Answer, Ferramosca Aff. ¶ 3). He pointed out that the WTC Campus continues to be a top terrorist target (*id.* ¶ 4). He understood petitioner’s argument opting for a less rigorous security plan of the site, but considering the NYPD’s main objective of securing

the WTC site from vehicle-borne explosives, the meetings with community outreach groups including Community Board 1; Downtown Alliance; and elected official, stakeholders, the Mayor's Office, Port Authority, and Department of Transportation, the plan balances the needs for security against the needs of commercial and retail enterprises, and the access needs by local residents and businesses. Ferramosca added the security structures are built to match the designs of the overall WTC development; security stations will be coordinated such that the personnel can direct vehicles in congested areas to other non-congested screening campuses (*id.*, ¶¶ 18-19).

Discussion

“Judicial review of a lead agency's SEQRA determination is limited to whether the determination was made in accordance with lawful procedure and whether, substantively, the determination ‘was affected by an error of law or was arbitrary and capricious or an abuse of discretion’ ” (*Akpan v. Koch*, 75 NY2d 561, 570; CPLR 7803[3]). “The reviewing court must employ reasonableness and common sense, tailoring the intensity of the ‘hard look’ to the complexity of the environmental problems actually existing in the project under consideration” (*Chinese Staff and Workers' Ass'n v. Burden*, 88 AD3d 425 [1st Dept.,2011] citing *Matter of Town of Henrietta v. Department of Env'tl. Conservation of State of N.Y.*, 76 AD 2d 215, 224, [1980]).

Under SEQRA, there are several tasks that the lead agency must perform before finalizing the EIS (*see* ECL 8-0109[8]). They include giving agencies and the public a reasonable time period - not less than 10 calendar days - to consider the final EIS before issuing its written findings statement (6 NYCRR 617.11[a]). ; and its findings must:

- (1) consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS;
- (2) weigh and balance relevant environmental impacts with social, economic and other considerations;
- (3) provide a rationale for the agency's decision;
- (4) certify that the requirements of this Part have been met;
- (5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

(6 NYCRR 617.11[d]).

Petitioner's grievance with the Security Plan can be grouped into two main concerns: removing the VSC from Liberty Street and opening other streets in the WTC site to allow through traffic. The analysis is made with these two main concerns in mind.

Despite petitioner's claims to the contrary, the NYPD complied with the SEQRA requirements. To wit, it did compare alternatives as indicated in chapter 16 of the FEIS, entitled "WTC Campus Security Plan FEIS, Chapter 16: Alternatives" (Respondent's Exh., Vol. 3). Three alternatives were examined: 1. a no-action alternative; 2. a no unmitigated significant adverse impacts alternative, and 3. an unrestricted Liberty Street alternative. The last alternative addresses one of petitioner's main concerns. This alternative to leave Liberty Street open and un-managed allows an open road to vehicular traffic going east-west. However, based on the assessment by NYPD's Couterterrorism Bureau, this would allow unfettered access for any vehicle into the WTC site, and thus, would run counter to its goal (*id.*, p.16-3). In any event, the fact that the NYPD did not consider the alternatives favored by petitioner, such as the off-site inspection, or its expert's alternative of using "head bangers". These "[a]lternate means of protecting the site were considered and eliminated because they would not provide deterrence to potential threat vehicles, would not effectively prevent vehicle access into the secure, protected Campus, and/or would not achieve the necessary level of protection. Height limit barriers were deemed impractical due to vehicle access requirements (tour buses and FDNY fire trucks being two examples) CPTED [Crime Prevention through Environmental Design] options were determined to be feasible due to the nature of vehicular traffic, the types and volumes of vehicles, and space constraints at site entrances In developing the Campus Security Plan it was determined that taxis and passenger cars would need to be screened along with larger vehicles in order to adequately protect the Campus from the potential threat of vehicle-borne improvised explosive devices" (City's Answer, Ferramosca Aff., ¶ 31 quoting FEIS 20-39).

Petitioner reproved the NYPD for failing to come up with a scenario like that of its expert - a bomber panicking while waiting to enter the security area, and detonating the explosive outside the WTC site. However, while the NYPD has to consider a reasonable number of alternatives, these alternatives do not have to be the same as those proposed by petitioner (*see, Matter of Save Open Space v Planning Bd. Of the Town of Newburgh*, 74 AD3d 1350, 1352 [2d Dept 2010]). The fact that the NYPD did not imagine this specific scenario does not render the NYPD's consideration of alternatives deficient. "Not every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before a FEIS will satisfy the substantive requirements of SEQRA" (*Develop Don't Destroy (Brooklyn) v Urban Development Corp.*, 59 AD3d 312, 316 [1st Dept 2009] quoting, *Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 417 [1986]). Further, while petitioner's expert opined that an underground garage intensifies a bomb blast, the NYPD's plan is that all vehicles are checked and screened before entering the garage, thus, there should be no explosions in the garage. Given this difference of opinion, "[i]t is not the role of the court to weigh the desirability of the proposed action or to choose among alternatives, resolve disagreements among experts, or to substitute its judgment for that of the agency" (*Matter of Merson v. McNally*, 90 NY2d 742, 752 [1997]).

Petitioner's complaint about the queuing of tour buses along Trinity Place creates images of a line of buses, engines running with fumes and noise permeating the air, and bus loads of tourists disembarking right below their homes, is particularly affecting. The residents there are concerned that the NYPD's plan, which "favors the concerns of tourists over those of City residents" would result in a "even more dramatic drop in quality of life in [their] neighborhood" (Petition, Perillo Aff., ¶ 6). They described streets and corners mobbed with tourists making it impossible for residents to access the streets (*id.* at ¶ 7). Another resident pointed out that "[w]ith as many as 42 tour buses at peak hours at the height of the tourist crush in constant motion or gridlocked, along with car, truck and taxi traffic, on Trinity Place, Cedar and Greenwich Streets and Broadway, the air quality will be worse than ever" (*id.*, Abramson Aff. ¶ 37).

According to the NYPD, these concerns were incorporated in its study. Its data shows that the average number of tour buses to the 9/11 Memorial is only 28 buses for the peak tourist day - Saturday. The NYPD added that with a timed reservation system for the tour buses and truck deliveries, and other measures such as increase staffing to redirect buses to less congested points, the congestion would be controlled during the weekday and Saturday midday peak periods (Respondents' Exh., Vol. 3, FEIS 15-11). Passengers would be dropped in the VSC on the west side of Greenwich Street and north side of Liberty Street, where they would follow a paved path to the 9/11 Memorial. Also, certain streets would be widened to better accommodate pedestrians (*id.*). The FEIS also included an analysis for air and noise pollutants (*id.* FEIS Chapter 9 re: Air Quality; FEIS Chapter 10 re: Noise). It concluded that neither the emissions due to traffic and noise levels would not result in significant negative impacts. Even the increased idle time on Trinity Place and Liberty Street would not result in a violation of the 8-hour CO standard or *De Minimis* Criterion (*id.* FEIS 9-23).

As to petitioner's argument regarding security controlled streets or closing of the streets to vehicular traffic as isolating the WTC area from surrounding neighborhoods, this argument is contradicted by the overall design of the 16-acre site. First considering the former WTC twin towers closed off the east-west traverses not only to traffic but also to pedestrians, except by use of the overhead enclosed walkways, and to bicyclists, the plan now opens much of the east-west streets to pedestrians and cyclists. For example, with the new WTC plan, a pedestrian can walk across Fulton Street that was previously closed off by the former WTC towers. Further, Liberty Street is opened to vehicular traffic as long as the vehicles are screened or identified as a TAP vehicle. Thus, as many residents in Manhattan either walk or bike to neighboring areas, the design makes it easier to connect with other neighborhoods. Further, the determination to close certain streets and/or place the different types of security devices was not made in a vacuum. The NYPD considered the number of people per hours on the WTC area streets, the intersecting corners, and the amount of foot traffic at the peak hours (Respondent's Exh., Vol. 2, FEIS 8-74 to 8-89). While the perimeter is made "impervious to vehicular traffic as the Berlin Wall" (petition at pp. 15-16, ¶34), the WTC site does not resemble a "walled city" at all. To the contrary, there are plenty of open green space in the plan. There are no "walls" to speak of that would isolate the WTC site from its neighboring areas. The only features that are somewhat uninviting are the security measures such as the sally ports and police security checkpoints. The sally ports are the type used at 26 Federal Plaza, 40 Centre Street, and Wall Street area where the barriers rise and recede to the ground. The sally ports, credentialing

booths and other barriers such as bollards will be a modern design to blend in with the streetscape (Respondents' Exh., Vol. 2, FEIS 12-17 to 12-18).

Finally, petitioner's expert criticized the use of x-ray machines to inspect vehicles as that would cause exposure of gamma or neutron rays to people within 40 feet without their knowledge.

Lt. Ferramosca addressed this issue in his affidavit, calling this claim unfounded and rife with inaccuracies (City's Answer, Ferramosca Aff, ¶ 53). He states that "[t]he Counterterrorism Bureau does not use 'neutron-excited method[s]'" or own any "gamma or neutron radiation" emitting equipment. The scanner used produces a dose of radiation that was deemed trivial by the International Council on Radiation Protection and therefore is not a health risk to the public (*id.* ¶54).

In sum, the NYPD followed the SEQRA/CEQR procedures and mandates in issuing its FEIS. It is neither arbitrary nor capricious. Accordingly, the motion for a preliminary injunction is denied and the petition is dismissed.

This constitutes the decision and order of the court.

Dated: February 4, 2014



Margaret A. Chan , J.S.C.

FILED

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