

1994

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Vernice D. Miller, *Planning, Power and Politics: A Case Study of the Land Use and Siting History of the North River Water Pollution Control Plant*, 21 Fordham Urb. L.J. 707 (1994).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol21/iss3/12>

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# **PLANNING, POWER AND POLITICS: A CASE STUDY OF THE LAND USE AND SITING HISTORY OF THE NORTH RIVER WATER POLLUTION CONTROL PLANT**

*Vernice D. Miller†*

## **I. Introduction**

During the past fifteen years, much research and public attention has been devoted to environmental racism—targeting communities of color for the siting and placement of environmentally undesirable facilities and substances primarily because of the racial composition of these communities. This Essay discusses one example of environmental racism in New York City—the planning and construction of the North River Water Pollution Control Plant in West Harlem.

This case study of the West Harlem community depicts how race-based land use planning and environmental policy-making transformed West Harlem, one of this city's most beautiful communities, into a giant dumping ground. Since 1968, the North River Water Pollution Control Plant ("North River" or "the Plant") has irritated the residents of West Harlem. Initially, countless public hearings and community meetings were held to address why this facility was being built in this community. After the Plant was built, West Harlem residents questioned why the Plant functioned as a major source of air pollution in their community.

This Essay traces the political and economic framework of New York City's land use and planning processes for North River, discusses how issues of race and socioeconomic status are integral elements in this process, and examines one community's actions against environmental racism.

## **II. Background**

The population of New York City has grown exponentially over the last two centuries. At the turn of the twentieth century, local government leaders realized that population growth created a

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great demand for infrastructure development in the City. Transportation, education, health care, housing, water supply and sanitary sewage systems were focal points in the discussion of some overall plan to meet the needs of this expanding metropolis.

### A. Siting History of the North River Facility

The New York City Department of Public Works (the predecessor to the Department of Environmental Protection) discussed the need for a City sanitary sewage treatment system for over three decades before a tentative construction plan for thirty-nine sewage plants was introduced in 1931.<sup>1</sup> The major impetus for the sanitary sewage system's development was the increasing awareness of the public health threats posed by sending, on a daily basis, millions of gallons of raw sewage into the oceans, rivers, and streams surrounding New York City. Initially, sewage from the West Side of Manhattan (the North River facility catchment area) was to be treated in seven plants. The 1931 tentative city sewage plant plan designated these facilities as Dyckman Street, Fort Washington Park, West 129th Street, West 96th Street, West 72nd Street, West 46th Street and West 23rd Street.<sup>2</sup> Each plant was to be built on the Hudson River.

In 1938, Public Works modified this plan to treat the sewage from the seven designated plants plus Riverdale and Marble Hill at the Wards Island facility, which was located on the East River, near East Harlem and the Upper East Side of Manhattan.<sup>3</sup> This plan necessitated the construction of a tunnel from the West Side of Manhattan to direct the sewage to the Wards Island facility.<sup>4</sup> The number of plants was thus reduced under the tentative plan to thirty-two.<sup>5</sup> In 1941, the City Planning Commission adopted the Master Plan of Sewage Treatment Sites and Tributary Areas.<sup>6</sup> The Master Plan further reduced the number of planned sewage treatment plants throughout the City to eighteen.<sup>7</sup>

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1. Memorandum from L. Schwartz, Chief, Division of Plant Design, Bureau of Water Pollution Control, New York City Department of Public Works to S.W. Stefensen, Director, Bureau of Water Pollution Control 1 (May 9, 1966) (on file with author) [hereinafter Schwartz Memorandum].

2. *Id.* at 1.

3. *Id.*

4. *Id.*

5. *Id.* at 1.

6. NEW YORK CITY DEP'T ENVTL. PROTECTION, REPORT ON THE NORTH RIVER WATER POLLUTION TREATMENT PLANT 3 (1984) [hereinafter DEP REPORT].

7. Schwartz Memorandum, *supra* note 1, at 1.

In 1953, the Department of Public Works determined that the cost of tunneling from the West Side of Manhattan to Wards Island had tripled over the Department's original estimate.<sup>8</sup> Further, the amount of treated sewage planned to be discharged in the East River exceeded the river's absorption capacity.<sup>9</sup>

The Department then conducted studies on treating sewage on Manhattan's West Side at two facilities—one at an existing Dyckman Street plant, and a new facility to be built at West 70th-West 72nd Street on the Hudson River.<sup>10</sup> It later amended the plan to using only one primary treatment plant at West 70th-West 72nd Street.<sup>11</sup> The decision to construct only one plant to serve the entire West Side of Manhattan illustrates the City planners' shortsightedness because it guaranteed that waste water treatment capacity would always be limited to the design capacity of the North River facility. This decision also required that the plant constructed in West Harlem be large enough to meet the waste treatment needs for roughly one million people.

The available area at the West 70th-West 72nd Street site proved to be inadequate for a primary treatment plant unless the plant was double decked.<sup>12</sup> Plant access at this location would be costly, and negotiations with Parks Commissioner Robert Moses for additional land were unsuccessful.<sup>13</sup> In addition, construction of a sewage treatment plant was deemed incompatible with the proposed development plans for the Upper West Side.<sup>14</sup>

At the request of the City Planning Commission, the Department of Public Works next investigated the area from West 125th-West 134th Street on the Hudson River as an alternate location for the North River facility.<sup>15</sup> The Department decided that although a primary sewage treatment plant could be constructed at West 125th to West 134th Street, there would be several disadvantages to building at that location. First, the cost of construction would be greater than that for construction at the West 70th-West 72nd Street site. Second, because West 125-West 134 Street was close to navigable waters, a primary treatment facility was not advisable. Third, there was not sufficient land available at West 125-West 134

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8. *Id.*

9. *Id.*

10. *Id.* at 1-2.

11. *Id.* at 2.

12. *Id.*

13. *Id.*

14. *See infra* part III.A.

15. *See* Schwartz Memorandum, *supra* note 1, at 2.

Street for a larger plant that could provide more extensive sewage treatment.<sup>16</sup>

The Department of Public Works ultimately rejected proposed construction of a double decked plant at West 70th-West 72nd Street due to "operation personnel difficulties."<sup>17</sup> Public Works instead decided to build the North River Water Pollution Control Plant at 137th Street-145th Street and the Hudson River, even though the site had previously been found unsuitable for other City facilities<sup>18</sup>. Preliminary borings established that a modified step aeration plant could be built at this location.<sup>19</sup> This facility would provide sewage treatment for an area that covered roughly 6,000 acres, serving a population of roughly one million people.

## B. Regulatory and Design Approval Process

The New York City Planning Commission scheduled a hearing on March 28, 1962, to discuss a proposed modification of the Master Plan of Sewage Treatment Plant Sites and Tributary Areas.<sup>20</sup> The modification proposed changing the site of the plant from West 70th-West 72nd Streets to West 135th-West 145th Streets. There were no appearances from the public at the hearing, however, and the hearing was closed.<sup>21</sup> The Commission unanimously approved the modification.<sup>22</sup>

The Commission also decided that the West 70th-West 72nd Street site would be made available for other restricted uses. The Commission stated that "the West 70th Street-West 72nd Street Site should not be used for any purpose that could be detrimental to the adjacent residential and cultural development . . . [and] any future use of the site should not involve undue traffic interference with the traffic access to: (a) the Lincoln Square Development; (b) the Italian Line piers; and (C) contemplated development over the New York Central Railroad Yards."<sup>23</sup> Over the next six years, the

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16. *Id.*

17. *Id.*

18. In 1959, the Sanitation Department conducted studies for construction of a Harlem Sanitation Center and a modified aeration Pollution Control Plant at West 137th to West 145th Street or at West 132nd-West 134th Streets and the Hudson River. The Sanitation Department decided against construction at either site. *Id.* at 2.

19. Schwartz Memorandum, *supra* note 1, at 2.

20. *Minutes of Meeting of the N.Y. City Planning Comm'n*, N.Y. CITY REC., Apr. 13, 1962, at 328.

21. *Id.* at 329.

22. *Id.*

23. *Id.* at 329-30.

City rapidly pushed through the regulatory process to gain approval to construct the facility at the West Harlem site.<sup>24</sup>

Under section 228 of the New York City Charter, a public hearing by the Board of Estimate was required for the Mayor to initiate the project. In early 1968, the Board held three public hearings concerning the Plant.<sup>25</sup> These hearings marked the first time that the residents of West Harlem learned about the City's plan to build a Sewage Treatment Plant in their midst, and the first opportunity for the community to publicly oppose the plan. Many West Harlem community residents and public officials attended and vigorously opposed the proposed project.<sup>26</sup>

Despite this opposition, on April 25, 1968, the Board of Estimate voted to permit the initiation of the project, and allocated \$164,417,000 for the construction of the Plant and its infrastructure, park facilities, landscaping and land.<sup>27</sup> Initially, the Plant was to treat 220 million gallons per day of raw sewage.<sup>28</sup> Funds for park facilities atop the Plant were included as a mitigation measure to the West Harlem community.<sup>29</sup>

In 1968, the Federal Water Pollution Control Administration required that all municipal waste water facilities upgrade from primary treatment to full secondary treatment requiring 90% or better Bio Oxygenated Demand (BOD) removal from treated sew-

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24. On December 18, 1963, the Municipal Arts Commission approved the preliminary plans for a plant at the West Harlem site. The New York State Department of Health gave approval of the preliminary plans on September 27, 1962 and November 21, 1963. The New York City Department of Health gave preliminary approval of the plans on June 11, 1963. The U.S. Army Corps. of Engineers approved the sewer outfalls for the plant and issued a permit for construction on December 11, 1963. The New York City Site Selection Board approved the West Harlem site for the North River Plant on February 17, 1964. On May 20, 1964, Mayor Robert Wagner signed an Executive Order authorizing the Corporation Counsel to acquire property from the New York Central Railroad Company for the West Harlem North River site. The city purchased railroad property under deed dated May 18, 1964. Title to this property was vested on June 30, 1964. See Schwartz Memorandum, *supra* note 1, at 2.

25. See *Public Hearing on Capital Project No. PW-164, North River Pollution Control Project*, N.Y. CITY REC., Apr. 25, 1968, at 2320-21 [hereinafter *Public Hearing*].

26. See *id.* at 2321.

27. *Id.*

28. *Id.* at 2320. The Associated Engineers design plan for the North River Facility, which was completed in 1979, suggested that a smaller capacity plant would be adequate. The North River design capacity was reduced to 170 million gallons per day from the original 220 million gallons per day. See *Sewage Plant Rises Above River; Manhattan Plant Will Treat Wastes While Supporting Park*, ENG. NEWS REC., June 21, 1984, at 56 [hereinafter *Sewage Plant Rises*].

29. See *Public Hearing, supra* note 25, at 2320.

age.<sup>30</sup> Construction of the foundation for the Plant began in January, 1972.<sup>31</sup>

As a result of a 1976 U.S. District Court Order for a Final Judgment, Associated Engineers were authorized in 1977 to prepare a plan for a Step 1 facility (primary treatment) as prescribed by Public Law 92-500.<sup>32</sup> The Associated Engineers design plan for the North River Facility, completed in 1979, indicated that a smaller capacity plant would be adequate. The North River design capacity was reduced to 170 million gallons per day from the original 220 million gallons per day.<sup>33</sup>

In 1979, the United States Environmental Protection Agency sued the City of New York, claiming that the City violated the Clean Water Act of 1970 by allowing millions of gallons of raw sewage to continue to flow untreated into the Hudson River.<sup>34</sup> The EPA won a court order against the City that required the City to begin primary treatment by May 1986 and secondary sewage treatment by 1991.<sup>35</sup> To meet these court-ordered construction deadlines, however, the City and its contractors had to begin a fast-track design-construct approach.<sup>36</sup> The EPA's rush to bring the North River plant on-line to protect the Hudson River and the City's efforts to avoid hundreds of thousands of dollars in federal fines caused the design engineers, construction, and contracting firms hired by the City to make irreparable errors in the design and construction of the North River Plant.<sup>37</sup>

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30. See DEP REPORT, *supra* note 6, at 3. The technology involved in this process of sewage treatment would be twofold. First, the waste water and sewage will be treated with chemicals that would remove approximately 50% to 60% of the pollutants from the waste effluent, the secondary process (also known as step aeration) would add microbiotic organisms and oxygen to the chemically treated waste that would eat through the polluting organisms that remain in the waste effluent. The secondary process is done in settling tanks that are thirty feet deep. Once the microbiotic process is completed, the waste effluent is 85% to 90% cleaned of pollutants and is turned into a thick sludge and barged out to a land fill or a sludge dewatering facility. *Id.*

31. See *Sewage Plant Rises*, *supra* note 28.

32. See DEP REPORT, *supra* note 6, at 3.

33. See *Sewage Plant Rises*, *supra* note 28.

34. See *id.*

35. The court and the EPA acknowledged that the city would have to continue dumping 143 million gallons a day of raw sewage into the Hudson River, until the primary system at North River was completed. See *Sewage Plant Rises*, *supra* note 28.

36. *Id.*

37. Carol Ash, Regional Director, Department of Environmental Conservation, Remarks at Community Board Public Hearing on the Riverside South Development Project and the North River Sewage Treatment Plant at the Columbia University School of Law (Feb. 1992).

In September 1979, the United States Environmental Protection Agency issued a Finding Of No Significant Impact (F.O.N.S.I.) for the North River facility.<sup>38</sup> This meant that an Environmental Impact Statement (EIS) would not have to be done for this project. The EPA was focused solely on water quality and completely ignored the facility's impacts on the air quality of the neighboring community and the obvious ambient emissions that the facility would create. The EPA repeated this offense in May 1993, when it rendered a second F.O.N.S.I. for North River and simultaneously awarded the City a grant for over \$19 million to increase its coastal zone management program and to assist in odor control at North River.<sup>39</sup> There is no reasonable basis for the EPA's failure to consider this facility's ambient air emissions and the possible environmental impacts on the adjacent community.<sup>40</sup> This decision was a total offense to the thousands of people whose lives would be forever changed by this Plant and its operations.

### C. Financing Costs and Economic Benefits

The Plant began primary sewage treatment operations in early 1986 and secondary treatment operations in 1991. With the completion of the secondary sewage treatment system, the construction costs for North River totaled \$1.1 billion,<sup>41</sup> making it the largest non-military public works project in the United States in the past fifty years. Seventy-five percent of the construction costs were paid by the federal government, fifteen percent by the State of New York, and ten percent by the City.<sup>42</sup>

The City entered into several individual contracts for the construction of this facility, ranging from a high of \$74 million to a low of \$6 million.<sup>43</sup> Despite these gargantuan sums, no minority contracting, engineering, or architectural firms were hired. Only a handful of community residents were hired as Plant workers in response to community pressure; however, within twelve months they either quit or were fired.

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38. See DEP REPORT, *supra* note 6, at 3.

39. Public Announcement from William J. Muzynski, Acting Regional Administrator, U.S. Env'tl. Protection Agency (May 3, 1993) [hereinafter EPA Public Announcement]; Region II, U.S. Env'tl. Protection Agency, Press Release (May 19, 1993).

40. EPA Public Announcement, *supra* note 39.

41. See *Sewage Plant Rises*, *supra* note 28.

42. *Id.*

43. *Id.*

### III. Political/Historical Framework

A political and historical perspective is significant for it underscores how issues of race, socioeconomic class, and prejudice that result from stereotyping a whole race of people formed the foundation of the planning and development processes in West Harlem.

#### A. Robert Moses and "West Side Improvement"

In 1934, Robert Moses became Commissioner of the New York City Department of Parks and Recreation. During Robert Moses' tenure as Commissioner of the Department of Parks, he built 255 parks throughout the five boroughs, yet only one of those parks was in Harlem.<sup>44</sup>

At the same time, Moses was appointed to the New York City Planning Commission. Of all the public works projects that Robert Moses undertook, none was more coveted than his "West Side Improvement."<sup>45</sup> This project was massive in scale and included: completion of the five-mile elevated highway from the southern end of Manhattan to 72nd Street (the Miller Highway), the design and construction of the Miller Highway for six and a half additional miles to the northern tip of Manhattan, the creation of Riverside Park, the 79th Street Boat Basin, covering the New York Central Railroad tracks and enlarging the freight yard, construction of the Henry Hudson Bridge connecting Manhattan and the Bronx, and the construction of the Henry Hudson Highway that would continue through the Bronx to the city line, connecting to the Saw Mill River Parkway and points north of the City.<sup>46</sup> By 1937, the railroad tracks were covered up to 125th Street—the beginning of Harlem.<sup>47</sup>

Robert Moses spent millions of dollars enlarging Riverside Park, however, no money was spent on improving the area between 125th and 155th streets.<sup>48</sup> Moses added 132 acres to Riverside Park in the white neighborhoods, yet not one acre was added to the portion of the park in Harlem that black residents used.<sup>49</sup> Thus, the Harlem section of Riverside Park was no park at all, much as it

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44. ROBERT CARO, *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* 510 (1974).

45. *Id.* at 525.

46. *Id.* at 525-26.

47. *Id.* at 557.

48. *Id.*

49. *Id.*

remains today.<sup>50</sup> Robert Moses condemned and removed all commercial developments from the waterfront along the portion of Riverside Park running south of 125th Street, yet the Harlem waterfront remained littered with commercial and industrial uses.<sup>51</sup> In contrast to his endless efforts to beautify Riverside Drive, “[Moses] lifted the roadway between 125th and 135th streets into the air—on a gaunt steel viaduct. . . . The only ornamentation whatsoever on the starkly ugly steel is the starkly ugly cheap concrete aggregate with which it is paved.”<sup>52</sup>

These are the realities that generations of African and Latin Americans who reside in West Harlem have lived with. The particularities of the unequal and inferior development of Riverside Park north of 125th Street made the offer of constructing the Riverbank State Park atop the Plant even more insidious.

## B. Political Opposition to North River

John Lindsay’s term as Mayor of New York City ushered in a new era of public governance. Unlike the previous administrations that kept all decision-making and public policy behind closed doors, Lindsay welcomed public participation. One main reform occurred in 1968 when the New York State Legislature passed the Open Meetings Law, also known as the “Sunshine Law.”<sup>53</sup> This law required all public agencies in New York State to open all meetings to the public, particularly when the dispensation of public funds was under consideration.<sup>54</sup> Without this law, the residents of West Harlem might have never learned of the City’s intention to build the North River facility in their community until they saw the construction rigs rising over the Henry Hudson Parkway.

When John Lindsay became Mayor, the regulatory and approval process for North River had moved through all the required processes—all that remained was the Board of Estimate’s approval of the expenditure of City monies to begin construction. Mayor

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50. *Id.* at 558.

51. *Id.* This remains unchanged today. As a result, both the commercial section of the community stretching west of Riverside Drive to the shoreline, as well as the residential sections of West Harlem are zoned R8 for mixed uses, meaning that industrial and commercial developments can be built alongside this residential community. This has led to the siting and construction of many facilities that are incongruent with the residential neighborhood of West Harlem (e.g., a Marine Transfer Station, two municipal bus depots and several small industrial and commercial facilities).

52. CARO, *supra* note 44, at 558.

53. N.Y. PUB. OFF. LAW §§ 100-111 (McKinney 1993).

54. *Id.*

Lindsay attempted to ease the impact of this facility on the West Harlem community by appointing Philip Johnson, an architect whose designs included Lincoln Center, to develop a creative and artistic plan for the top of the Plant that would make the plant more visually pleasing to the West Harlem community. Johnson's park design included a series of elaborate fountains rising high above the rooftop of the Plant.<sup>55</sup> Mayor Lindsay presented this plan to the West Harlem community with great pride; however, the community remained outraged over the City's insistence that West Harlem was the best possible location for this facility. The proposed fountains for the top of the Plant did not mitigate their anger.

Congressman William F. Ryan, who is remembered for his commitment to the West Harlem community, consistently argued that the potential negative impact of this Plant on the surrounding community was more significant than the infusion of public monies that would flow into his Congressional district to construct the Plant. In hearings before the United States Department of the Interior, the New York State Legislature, and the Board of Estimate, Congressman Ryan spoke passionately for a community viewed in the main as poor and politically impotent. He consulted medical experts to analyze the potential health impacts that North River posed to the residents of West Harlem.<sup>56</sup> Ryan studied the technology of sewage treatment plants and debated the efficacy of the Department of Public Works' overall sewage treatment plan.<sup>57</sup> Ryan questioned whether the plan would enable the City of New York to meet the mandated levels of water quality proscribed by the Federal government.<sup>58</sup> He paid for an independent assessment of alternate sites for the Plant that found that "waterfront sites at 57th and 66th Streets appear to be the most promising alternates from the standpoint of cost, minimum interference with parks, and public acceptability."<sup>59</sup> Another study showed that foundation costs would also

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55. In October 1968, the Philip Johnson design for the plant was rejected in favor of a rooftop park to be provided by the New York State Parks and Recreation Commission. See DEP REPORT, *supra* note 6, at 3.

56. Memorandum from Congressman William F. Ryan to the Hon. Stewart L. Udall, Secretary of the Interior 2 (Apr. 18, 1968) (on file with author) [hereinafter Ryan Memo].

57. *Id.*

58. *Id.* at 3-6.

59. *Id.* at 3. The "Plant Site Review" was conducted by Hazen & Sawyer. This assessment estimated that the downtown sites would be cheaper in terms of the costs for constructing the interceptor sewers, the pumping station, and the plant and for sludge barging from the plant. *Id.*

be substantially lower at the downtown sites.<sup>60</sup> In addition, there were "other costs" for the park on top of the Plant<sup>61</sup> and other "architectural cosmetic treatment" (i.e., fountains and pool treatment) that would have been unnecessary if the Plant was built at 57th Street and the Hudson River, away from any residential community.<sup>62</sup>

Congressman Ryan lobbied the Federal and City governments to hold public hearings in West Harlem to allow the community to express their objections to the North River Plant, however, no such hearings were held. At a conference sponsored by the Department of the Interior in 1969, Congressman Ryan said,

I wish to register in the strongest possible terms my complete opposition to this project, to its location, to its technical design, and to the attempt to camouflage the stark ugliness it would bring to the shoreline. The residents of the community object most strenuously to the location of the Plant at their front doors.<sup>63</sup>

In 1966, Percy Sutton was elected Manhattan Borough President. As a resident of Harlem, Sutton was concerned about the City's plans for the future development of this community. He was immediately drawn into the debate about North River.

Borough President Sutton served as a lightning rod helping to mobilize local community opposition to the plan to build this Plant in West Harlem. He called upon tenant groups, particularly the residents of River View Towers, a middle-income co-op located directly across from the Plant. Sutton also worked with a local community planning board that was overwhelmingly opposed to the construction of the Plant in West Harlem.

As a member of the Board of Estimate, Sutton repeatedly tried to persuade the Board to hold off its final vote on appropriation of funds for construction until the community's objections were fully heard and investigated.<sup>64</sup> Sutton voted against the Board's appro-

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60. Ryan Memo, *supra* note 56, at 3.

61. The estimated cost for constructing the plant was \$16 million to \$20 million. *Id.*

62. Ryan Memo, *supra* note 56, at 3. The projected added costs totaled \$35 million.

63. *Conference in the Matter of Pollution of the Interstate Waters of the Hudson River and its Tributaries—New York and New Jersey, Federal Water Pollution Control Administration, U.S. Dep't of the Interior*, 3d Sess. 42-43 (Jun. 18-19, 1969) (statement of Congressman William F. Ryan).

64. Seth S. King, *Sewage Plant Voted Over Harlem Protest*, N.Y. TIMES, Apr. 26, 1968, at A1.

priation of \$164,417,000 to construct the interceptor sewer system for North River and to fund the necessary plans for the construction of the Plant.<sup>65</sup> In his testimony at this hearing Mr. Sutton said,

The building of a sewage-disposal plant in an area adjacent to West Harlem was an indignity imposed on this community . . . Now you would build a sewage disposal plant in West Harlem. These are the indignities that make people feel they are not equal . . . I am hurt, deeply hurt, that you do not understand what you are doing to Harlem.<sup>66</sup>

While Sutton conceded there might be ways to make the disposal plant attractive and odorless, he stressed that the community would nevertheless be stigmatized.<sup>67</sup>

In 1966, David N. Dinkins was elected District Leader in the 71st Assembly District, Part A, which began at 143rd Street and Riverside Drive.<sup>68</sup> Dinkins was quite active in the local community effort to oppose the construction of the North River plant in West Harlem. He testified at Board of Estimate hearings against the North River facility.<sup>69</sup> His opposition to this plant would remain constant over the years.

#### IV. Fighting Back: West Harlem's Story of Community Action

Before the 1968 Charter Revision formally institutionalized the role of local Community Planning Boards, these Boards were purely civic advisory bodies, frequently of no more than ten people, who worked under the auspices of the Borough Presidents on local community issues. In 1963, Community Planning Board 9 met with City officials concerning the Plant. In one of those meetings, a representative of the Department of Public Works explained the objectives of the Plant, told the group how well designed North River would be, and promised that the Plant would not have any negative effects on the surrounding community or on the real estate values of the neighborhood. The Department of Public Works rejected the idea of building the Plant at 125th Street as an alternative because this area was to be used for the approach to a new cross-Hudson bridge, and therefore no long range projects were

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65. *Public Hearing*, *supra* note 25, at 2321.

66. *See King*, *supra* note 64, at A1.

67. *See id.* (“[E]veryone who drives down from New Jersey or Connecticut will know at once where Harlem begins, because he will see this 22-acre monstrosity on its edge.”).

68. Dinkins previously served one term in the New York State Assembly representing West Harlem and Washington Heights.

69. *See King*, *supra* note 64, at A1.

planned there. Planning Board 9 ultimately approved the 138th-145th Street site for the Plant "based on the fact that sewage disposal plants are necessary and that this site in the judgement [sic] of competent engineers is the only site suitable from an engineering point of view."<sup>70</sup>

Soon after the plans for constructing the Plant in West Harlem were made public, the political and civic community leaders realized that construction was inevitable. Once this harsh reality began to sink in, the City and the State proposed the construction of a twenty-eight acre park atop the Plant. After decades of living with limited open space and parks, and accepting that the sewage treatment plant was going to be built in their neighborhood, the residents of West Harlem decided to accept the offer to build the Riverbank State Park atop this Plant. Because they had been excluded from the planning and siting process concerning the Plant, West Harlem residents were determined to control and closely monitor the planning process for the Riverbank State Park. The residents held several community conferences in 1968 and 1969 to develop a community vision for the Riverbank State Park and established dozens of committees to oversee every aspect of the park's development. For twenty-four years a great deal of political and financial wrangling followed between the community and the State Department of Parks, Recreation and Historic Preservation, and the park was officially opened on May 27, 1993.

On July 1, 1992, the New York State Department of Environmental Conservation ("DEC") issued a Control Order in response to environmental violations at the North River Plant.<sup>71</sup> The Control Order addressed numerous water quality and air pollution violations committed by the Plant since 1990.<sup>72</sup> The Order commits the DEP to perform certain water conservation and flow reduction measures and a comprehensive Odor Monitoring and Abatement

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70. Letter from Percy E. Sutton, President of the Borough of Manhattan, City of New York to Hon. George Gregory, Jr., Administrator, Environmental Protection Agency (Aug. 7, 1968) (on file with author).

71. *In re* New York City Dep't Envtl. Protection, No. R2-3669-91-05 (N.Y. Dep't Envtl. Conservation July 1, 1992) (North River Sewage Treatment Plant—Odor, Flow and Air Emissions Control Order) [hereinafter Control Order].

72. These violations included exceeding the limitations for daily and annual dry weather flow limitations; violations of parameter limits for fecal coliform bacteria; failure to notify the Department of Environmental Conservation of an interruption in chlorination; high nitrogen oxide emission rates; high hydrogen sulfide concentrations; failure to connect odor control system when loading sludge onto a barge; excessive smoke emissions; and various odor problems. *Id.* at 2-13.

Program at North River.<sup>73</sup> Further, the Order requires the New York City Department of Environmental Protection ("DEP") to establish and fund an Environmental Benefits Program to carry out projects benefitting the community and the environment surrounding the North River Plant.<sup>74</sup> The City DEP is subject to excessive monetary penalties if it fails to comply with any of the provisions of the Order.<sup>75</sup>

In June 1992, West Harlem Environmental Action (WHE ACT), a leading environmental justice advocacy group in New York City, the Natural Resources Defense Council (NRDC), the Hamilton Grange Day Care Center and seven community residents sued the City of New York and the City DEP.<sup>76</sup> The plaintiffs sought injunctive relief declaring that the ongoing foul and noxious odors emitting from North River constituted a private and public nuisance.<sup>77</sup> The plaintiffs also sought an enforceable role in the execution of the Control Order reached by the State Department of Environmental Conservation ("DEC") and the City Department of Environmental Protection ("DEP") to take corrective measures at the Plant. In addition, the plaintiffs requested monetary damages to compensate injuries to their health, devaluation of their property, and diminution of their quality of life from the continuous noxious odors emanating from the plant since 1986.<sup>78</sup>

The City requested a motion for partial summary judgment and dismissal of the initial action. On May 5, 1993, New York State Supreme Court Justice Alice Schlesinger ruled against the City on all counts and denied the City's motion for summary judgment.<sup>79</sup>

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73. *Id.* at 16-22.

74. *Id.* at 15-16. The amount of the fund for this program is set at \$1.1 million dollars.

75. *Id.* at 24-25.

76. *West Harlem Env'tl. Action v. New York City Dep't Env'tl. Protection*, No. 92-45133 (Sup. Ct. N.Y. County May 17, 1993).

77. *Id.*

78. *Id.* One primary concern of the West Harlem community was the explosion of public health problems among its residents from the moment North River began operating. Vast numbers of residents developed severe respiratory conditions such as asthma, chronic bronchitis and allergies. Many community residents experienced persistent itchy eyes, sore throats, runny noses and frequent headaches due to the constant odors emitted by the Plant. Families have been forced to make other living arrangements for their children because of the health risks of living in West Harlem.

79. *See West Harlem Env'tl. Action*, No. 92-45133 ("[b]eyond these citizens' rights to be heard on an issue . . . there is even a greater interest at stake. Individuals, while represented by elected and appointed officials have a basic right to seek redress of their grievances in a court of law even against those same elected and appointed officials.").

On December 30, 1993, the parties reached a settlement agreement.<sup>80</sup> The agreement provided for the intervention of West Harlem Environmental Action and the Natural Resources Defense Council on behalf of the plaintiffs, as co-enforcers of the Consent Order along with the State and City of New York.<sup>81</sup> In addition, the agreement called for strict enforcement of certain corrective actions by the State and the City at North River by specific dates or risk substantial penalties.<sup>82</sup> The agreement also requires a constant measuring of inflow to North River, and an end-of-the-line study after all corrective actions have been completed to assess whether such actions will cease the emanation of all odors from the North River facility.<sup>83</sup>

In addition, the settlement agreement orders the City of New York to pay WHE ACT and NRDC a sum of \$1.1 million dollars toward the establishment of the "North River Fund". This fund is to be administered solely by these two organizations and used to address a range of community environmental and public health issues in West Harlem.<sup>84</sup>

In April 1992, the City and the DEP committed \$55 million in capital funds to correct the design and odor problems at North River. In lieu of a fine to the State Department of Environmental Conservation, the City DEP also created a \$1.1 million West Harlem Environmental Benefits Fund<sup>85</sup> to be administered by a steering committee of community representatives. Through this fund, the community hopes to conduct a health risk assessment, a cumulative environmental impact assessment, independent monitoring of plant operations, development of urban gardens and safe play spaces, development of local green industries, and environmental science internships for neighborhood youth and students.<sup>86</sup>

## V. Conclusion

The public's right to know is an inviolable right. Local communities suffer when they are not informed or included in land use planning and development for their own communities. The resi-

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80. See Stipulation of Settlement, *West Harlem Env'tl. Action*, No. 92-45133 (filed Jan. 4, 1994).

81. *Id.*

82. See *id.* at 3-20.

83. *Id.* at 10-13, 18-20.

84. See *id.* at 20-22.

85. See *supra* note 66 and accompanying text.

86. This fund is separate from the North River Fund established through the settlement agreement. See *supra* note 77 and accompanying text.

dents of West Harlem paid a huge price learning this lesson. Over the years, the residents of the Upper West Side were blamed for sending North River to the West Harlem community. However, it is more likely that even the residents of the Upper West Side did not know of the City's plans for North River.

The siting and construction of the North River Plant has had some positive effects. First, the Plant rejuvenated the "dead" Hudson River that had once been become too polluted to support animal or plant life. The Hudson River is now significantly cleaner than it was before 1986 when North River went on line.

Second, the struggle concerning the Plant has galvanized the West Harlem community and sparked it into action. The Community Board closely monitors land use plans in this community and analyzes environmental issues much more closely than ever before. Two community groups emerged to deal with environmental impacts on West Harlem—the North River Environmental Review Board and West Harlem Environmental Action.

Third, the level of political participation through voting has risen steadily over the last decade. Several election districts in West Harlem produce some of the highest voter turnout in the whole Assembly District. In particular, River View Towers across the highway from the Plant has the highest voter turnout in West Harlem.

Twenty-six years after the North River Pollution Control Plant was sent to their community, the residents of West Harlem have learned how to protect their best interests. This community has taught itself, through almost three decades of experience, important concepts of environmental science, environmental protection and enforcement, waste management systems, and public health. They have learned the value of vigilance, persistence, public participation in local land use and zoning issues, and the need for direct action, all due to the struggle around the Plant. As a result, advocacy groups have emerged to help mobilize the community's voice and power. This community will never again be taken advantage of in such a blatant manner.

The story of the West Harlem community should serve as a model for communities of color throughout this country that they must never give up the struggle to protect their lives and those of generations yet to come. Struggle works!