

New York State Department of Transportation

For Demolition of Pier and Appurtenant
Structures at Site of Proposed
Westside Highway Project ('Westway')

DEC 19-01

Statutes and Regulations

6 NYCRR Sections 203.2(d) and 203.9(a).

NOTE:

6 NYCRR Part 203 (Indirect Source Review) was amended in July 1979 and March 1981. Both amendments decreased the geographical area to be subject to Part 203 review. Currently, 6 NYCRR Part 203 applies only to the county of New York south of 60th Street. The Department is proposing the elimination of indirect source review for all privately sponsored proposals throughout New York State. New York City is contemplating assuming indirect source review within its jurisdictional boundaries.

Issue

Whether demolition of piers on the site of the proposed Westway constitutes the beginning of construction on the project, thus requiring an indirect source permit under 6 NYCRR Part 203.

Summary of Facts

Piers 48, 51 and 52 were situated in the path of the proposed Westway Highway (Westway), and the Westway project required an indirect source permit before any preparation for construction could take place.

The petitioner, the New York State Department of Transportation, sought immediate demolition of the piers. The piers were a source of anxiety to the City due to the frequent suspicious fires and criminal activity occurring on them. The collapse of pier 51 during the time that the final ruling was pending demonstrated the immediacy of the situation.

The money for demolition would come from the general interstate fund and not from the monies specifically funding the Westway construction. The Department of Transportation contended that the piers were so dilapidated that they would have to be demolished in the near future whether or not the Westway was ever constructed.

Summary of Ruling

The pier demolition does not require an indirect source permit because the primary motivation for removing the piers at the date of the petition was public safety and not construction of the highway. The ruling applies only to the three piers specified in the petition and should not be read to grant approval for demolition of other dilapidated structures in the path of Westway.

Judicial Disposition

No party has challenged the declaratory ruling.

Text of Ruling

June 22, 1978

Sandra Mitchell Caron, Esq.
Assistant Commissioner
Legal Affairs
NYS Department of Transportation
1220 Washington Avenue
State Campus
Albany, New York 12232

RE: Petition for Declaratory Ruling - Demolition
of Piers and Appurtenant Structures at
Site of Proposed Westway

Dear Ms. Caron:

By your letter of June 2, 1978, received on June 5, 1978 you requested, pursuant to Section 204 of the State Administrative Procedure Act and the Department's rules and regulations promulgated thereunder, 6 NYCRR Part 619, a Declaratory

Ruling that the demolition of certain piers within the proposed Westway project area may commence prior to the receipt of an indirect source permit under 6 NYCRR Part 203 for the Westway project. In support of your petition, you state that piers 48, 51 and 52 should be promptly demolished for reasons of public safety since during the period from 1972 to 1976 the New York City Fire Department responded to approximately 80 fires of suspicious origins or other similar emergencies per year in the vicinity of these piers. In addition, you state that these piers have become a haven for violent criminal activity and that removal of the piers would in no way represent an irreversible commitment to the construction of the proposed Westway since these piers will have to be demolished irrespective of whether Westway is ever built.

By letter of June 8, 1978 you were requested to supply certain additional information so that your request for a declaratory ruling could be considered complete. The specific information requested was the source of funds to be used in the pier demolition project and whether the removal of piers 48, 51 and 52 was part of a proposal to demolish additional piers or other structures prior to the time a decision in the Westway indirect source permit hearings can be expected.

By your letter of June 19, 1978 you have stated that the funds to be used for demolition of piers 48, 51 and 52 will be the general interstate fund and that such funds are not designated for the

West Side Highway Project (Westway) and that assuming a decision in the reopened indirect source permit hearings is rendered no later than September 15, 1978, the Department of Transportation proposes no other demolition of piers or other structures in the Westway corridor prior to the issuance of an indirect source permit for the Westway project. In addition, you reiterate the need to remove piers 48, 51 and 52 as a matter of public safety since you assert that over the past weekend pier 51 collapsed while people were on it.

6 NYCRR Part 203.3(a) provides:

'No person shall commence construction or modification of an indirect source of air contamination or associated parking area without having a valid permit to construct issued by the Commissioner pursuant to this Part.'

The term 'commence construction or commence modification' as used in the above-stated prohibition, is defined in 6 NYCRR Section 203.2(d) as meaning:

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'to initiate a program of on-site construction, including, but not limited to, site clearance, grading, dredging, landfilling, or entering into a contract for paving or installation of foundations or for the fabrication, erection or installation of building components, specifically designed for an indirect source or an associated parking area or in preparation of the fabrication, erection or installation of the building components of an indirect source.'

Accordingly, under the terms of 6 NYCRR Part 203 the commencement or initiation of a 'program' of 'site clearance' which is 'specifically designed' for an indirect source without first having obtained an indirect source permit is prohibited. The issue presented by the request for a declaratory ruling is whether the removal of piers 48, 51 and 52, which are within the proposed Westway corridor, and which would have to be removed in order to accommodate the proposed Westway project, amount to a 'program of on-site construction', i.e., site clearance, specifically designed for an indirect source which is prohibited without the issuance of an indirect source permit.

I conclude that inasmuch as the primary motivation for the removal of only piers 48, 51 and 52 at this time is alleged to be the apparent dilapidated condition of these piers which mandate their removal as a matter of public safety, that the removal of such piers does not, in itself, constitute a 'program' of on-site construction 'specifically designed for an indirect source'. This ruling applies only to the removal of piers 48, 51 and 52 and may not properly be construed as applying to any other state of facts with respect to the removal of any other structures or facilities within the proposed Westway project area and cannot be considered as representing on the part of the Department of Transportation any commitment to the construction of the proposed Westway project since, as you pointed out in your June 2 1978 letter 'the very nature of these dilapidated piers is evidence enough that they will have to be demolished in the near future whether or not Westway is ever built.'

Sincerely,

Philip H. Gitlen
General Counsel