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**WE ACT for Environmental Justice (WE ACT)**  
271 West 125<sup>th</sup> Street, Suite 308  
New York, New York 10027  
<http://www.weact.org>  
(212) 961-1000

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Testimony to the Council of the City of New York, Committee on Transportation.  
The Honorable John Liu, Chair.  
October 18, 2006

**Peggy Shepard and Cecil Corbin Mark**  
**WE ACT for Environmental Justice, (WE ACT)**  
**and**  
**Sheila Foster, Esq., Fordham University Law School**

## **I. BACKGROUND**

### Diesel Health Impacts

As you know, diesel combustion produces over 40 organic compounds that EPA identifies as Hazardous Air Pollutants (HAPs), chemicals that are toxic to human health and the environment. Along with chemical toxins, diesel exhaust contains fine particulate matter (PM – or soot). Of these, particles that are 2.5 microns or less in diameter (known as PM<sub>2.5</sub>) are particularly deadly because they can escape the body's protective barriers (such as hairs or mucous membranes) and travel straight to the lungs where they interfere with normal respiratory function. Importantly, HAPs and PM can cause cancer and contribute to a host of serious health risks such as asthma, respiratory illnesses, immunological and neurological dysfunction, and cardiovascular disease.

Diesel toxicity is a serious threat to adult health, but its most enduring impact is on children. As a result of the high concentration of diesel exhaust from heavy bus traffic and depot emissions, Northern Manhattan children suffer some of the highest rates of asthma and asthma-related hospitalizations in the nation. These health effects in turn negatively impact the children's school attendance, academic performance, and ultimately their long-term economic competitiveness.

### Northern Manhattan Residents Have Born More Than Their Fair Share of NYCT's Pollution

Bus barns and diesel bus depots are disproportionately located in Northern Manhattan; for decades, New York City Transit (NYCT) has sited the overwhelming majority of them north of 96th Street. Today, consistent with the longstanding pattern, 5 of 6 operating diesel bus depots<sup>1</sup> are located in low-income communities and communities of color in Northern Manhattan. In fact, over

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<sup>1</sup> NYCT operates a sixth bus depot in Northern Manhattan – the Amsterdam Depot. Although this facility no longer houses buses, it continues to support NYCT operations, and residents continue to observe buses coming into and leaving from the depot.

82% of Manhattan's entire diesel bus fleet -- more than 1,000 buses -- is presently housed, maintained and traveling into and out of NYCT depots located north of 96th Street, even though this section comprises less than 31% of Manhattan's total land area.

NYCT bus depots are almost all located in residential neighborhoods, often in close proximity to apartment buildings, schools, daycare centers, playgrounds, senior gathering places and local streets with significant pedestrian traffic. Thus, NYCT depots pose the highest risk to the most vulnerable people.

***Negative Health Impacts of Bus Depots*** – As a result of motor vehicle traffic and diesel pollution, Northern Manhattan residents have suffered disproportionate health impacts. Indeed, residents here suffer some of the highest rates of asthma and other debilitating respiratory diseases in the country. According to the New York City Department of Health and Mental Hygiene, Northern Manhattan residents are 60% more likely than other New Yorkers to be hospitalized for asthma; and 25% of all children living in Central Harlem suffer from asthma – almost three times the national average. Although other sources of pollution contribute to these health outcomes, a significant portion of Harlem's asthma epidemic is attributable to or exacerbated by diesel exhaust from buses and the disproportionate placement of diesel buses in this community.<sup>2</sup>

***Bus Depots Diminish Quality of Life in Northern Manhattan*** – Because of the disproportionate siting of NYCT bus depots north of 96th Street and NYCT's historical and well-documented poor record of environmental practice,<sup>3</sup> tens of thousands of residents for years have suffered diminished quality of life. For example, prolonged idling of diesel buses during maintenance, cold weather and at other times has been a regular and long-standing occurrence; such activities have added noise and pollution to Harlem neighborhoods. Moreover, NYCT's regular practice of parking (often double-parking) buses on public streets, sidewalks, and vacant lots, measures taken to alleviate short-term storage needs, has endangered public safety and limited access to streets and residential parking.

Depot operation and maintenance activities have impacted also the indoor air quality of nearby residents who report persistent deposition of black carbon on windowsills and curtains in apartments, schools, and businesses. As a consequence, people living near depots must keep their windows closed even during the sweltering summer heat, a practice that exacerbates respiratory illnesses, reduces the capacity for physical activity, and diminishes the livability of their homes. Although NYCT has taken some steps to reduce toxic emissions and reduce community impacts (e.g., use of ultra-low sulfur diesel fuel), much of the adverse health and environmental effects associated with depot operation remain unaddressed.

To begin to proactively address some of the environmental and health problems that bus depots pose to local residents, WE ACT has over the years organized the Residents' Oversight Council (ROC) in each of the communities surrounding the bus depots. Our goal is to empower local residents to become stewards of their own environments and to monitor MTA-NYCT in order to ensure bus depots are operated in compliance with relevant environmental protection laws. ROC members have found and documented that MTA-NYCT routinely idles its buses in and around the

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<sup>2</sup> See Northridge, et al, "Diesel Exhaust Exposure Among Adolescents in Harlem: A Community-Driven Study," American Journal of Public Health, July 1999 at 998-1001.

<sup>3</sup> See NYCT Consent Order issued by New York State Department of Environmental Conservation in May 2001.

depots as well as in New York City streets, in defiance of both City and State anti-idling statutes. We have passed this information onto the New York Attorney General Elliott Spitzer's office, and MTA-NYCT is presently under investigation by that office for violating state idling limits. We have also learned that the New York State Department of Environmental Conservation (NYS DEC) issued a consent order in May 2001 that provides for monitoring of and reporting from MTA-NYCT facilities detailing idling activities and compliance with applicable regulations. The consent order also involves environmental violations related to petroleum, fuel, and chemical handling and storage. DEC is actively enforcing this order and makes period inspection of MTA-NYCT.

### WE ACT's Civil Rights Complaint and the Federal Transit Authority's Ruling

In November 2000, after almost a decade of struggling to improve NYCT's environmental practices, WE ACT, with the support of the Harlem community including Community Boards 9, 10, 11 and 12, filed a complaint with the U.S. Department of Transportation against the Metropolitan Transportation Authority ("MTA") and NYCT. The complaint pointed out instances of MTA and NYCT's violation of Title VI of the Civil Rights Act of 1964, which forbids entities receiving Federal financial assistance from taking action that discriminates on the basis of race, color, or national origin.<sup>4</sup> Specifically, the complaint asserted that NYCT's conduct unlawfully exposed minority and low-income communities to high health and safety risks through its decisions concerning the use of diesel fuel, bus depot siting and the use of public sidewalks, vacant lots and streets as overflow bus parking facilities.

In November 2004, the Department of Transportation's Federal Transit Administration ("FTA") released its review of NYCT operations. Although the FTA found that "the MTA is not, on balance, in violation of Title VI," it did find that the MTA will have to comply with certain federal rules; these are: 1) conduct appropriate federal environmental impact analyses in construction, rehabilitation and reconstruction of bus depots and other facilities; 2) properly study system-wide changes in planning and programming so as to ensure equal, non-discriminatory distribution of service facilities; 3) curtail practice of idling buses and running bus engines during winter nights which could exacerbate Harlem's already poor local air quality; 4) provide appropriate opportunities for public participation – including providing Spanish translation of MTA planning materials – in planning operation and capital construction projects in order to ensure that minority, low-income and other communities are afforded opportunities to participate "as equal partners" in transportation planning; and finally, 5) give due consideration to environmental justice principles in siting decisions.

## **II. A PROMISE MADE, A PROMISE BROKEN AND A NEGOTIATED RESOLUTION STALLED**

### Governor Pataki's CNG Promise to Harlem and Its Breach by the MTA

In January 1997, Governor George Pataki and the MTA announced that NYCT would purchase 500 low-pollution buses to replace diesel-powered buses in NYCT's bus fleet as part of an overall effort to reduce diesel particulate pollution in New York City. Specifically, the Governor promised that three NYCT bus depots -- one each in Brooklyn, the Bronx and Manhattan -- would be

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<sup>4</sup> See 49 C.F.R. Section 21.5.

renovated to allow for those facilities to be equipped exclusively with clean-burning CNG buses. Since then, two depots (one in Brooklyn and one in the Bronx) were in fact converted to CNG and CNG buses have successfully been operating from those depots for years. The third depot slated to receive CNG vehicles -- the Manhattanville depot, located in Harlem -- was never converted; to this day it continues as the base for storage and maintenance of approximately 240 diesel buses. This facility is located on 135th Street and Broadway, directly across from a public school and from housing developments where more than 4,000 people reside.

In February 2004, after years of delay and no prior notice to the community, NYCT announced that it intended to abandon its commitment to convert the Manhattanville depot to CNG. NYCT maintained that, despite the earlier promises by Governor Pataki, “technical challenges” and construction costs associated with modifying the fueling system for CNG in a multi-story facility made the conversion unwise. MTA also claims that the clean air benefits from CNG vehicles are comparable to hybrid diesel-electric buses it intended to purchase.

WE ACT maintains that the conversion Manhattanville Depot to CNG -- as the Governor had long promised -- is a reasonable approach, particularly because Harlem residents continue to suffer some of the highest pollution loadings and asthma rates in the region. CNG has a proven track record of dramatically reducing particulate matter pollution in New York City and around the nation. Nevertheless, WE ACT expressed a willingness to discuss modifying the commitment to convert Manhattanville to CNG, provided NYCT would agree to take reasonable steps to address broad and longstanding concerns of Harlem residents regarding NYCT bus depot operations.

#### NYCT Further Surprises WE ACT During Their Negotiations

In Spring 2004, New York University's Wagner School of Public Policy invited the NYCT and WE ACT/NRDC to meet to discuss their differences, in an attempt to resolve their dispute. WE ACT/NRDC met with MTA several times over the next nine months, and we worked toward reaching an accord in which WE ACT/NRDC would agree not to challenge the MTA's failure to carry through the capital plan commitment to convert Manhattanville Depot to CNG in exchange for NYCT's commitment to address related air pollution and quality-of-life issues at Manhattanville and other bus depots in Northern Manhattan.

In March 2005, despite the appearance of progress in our negotiations, WE ACT and NRDC were again surprised when NYCT publicly announced that it would modify the MTA capital plan element to delete the commitment to convert Manhattanville to CNG and instead would be ordering diesel hybrid-electric buses. WE ACT and NRDC felt that this public announcement was premature, ill-advised and disrespectful, coming as it did in the middle of our negotiations and without any meaningful notice.

Nevertheless, WE ACT and NRDC returned to the negotiating table to meet with NYCT early in 2006, in yet another good faith attempt to resolve our differences. NYCT sent to WE ACT/NRDC as a result of that follow-up meeting was described by NYCT as presenting the best chance to end the dispute.

### **III. NYCT's DRAFT LETTER FAILS TO ADEQUATELY ADDRESS WE ACT/**

## **NRDC's REASONABLE CONCERNS**

### An Unacceptable Draft

The fundamental flaw of the NYCT's draft letter to WE ACT, designed to resolve the outstanding dispute, is its failure to make firm commitments to any of the proposed policy and operational changes it describes. To be sure, the letter does make important but tentative, concessions, including converting the Manhattanville Depot to hybrid-electric vehicles, rebuilding the Mother Clara Hale Depot, turning over the Amsterdam Depot to the City, making air quality improvements at the some Northern Manhattan depots and creating opportunities for ongoing communication between the NYCT and Northern Manhattan community residents. But in every such instance, the commitments are vague (e.g., without clear timetables) and are written so loosely (e.g., changes described as part of a "plan" or as actions that NYCT "expects" to or "anticipates" that it will take if resources allow, etc.) that they amount to no real commitments that WEACT and the Northern Manhattan community can count on with any certainty.

The failure of the NYCT draft letter to firmly commit to specific action is its most serious shortcoming, but not its only one. Several outstanding policy issues that WE ACT has raised throughout our negotiations have not been fully addressed. In addition, the letter is unnecessarily dismissive of WEACT's concerns both as to the pollution disparity and the historic burdens that this community has suffered.

### Resolving the Impasse

WE ACT and NRDC remain committed to securing concrete commitments from the MTA to improve its environmental practices and expand opportunities for public participation in decisions concerning operations and capital construction plans. For this reason, we ask NYCT to make the following firm commitments:

1. NYCT will convert Manhattanville and Mother Clara Hale Depots to full hybrid electric buses by December 2008 and June 2009, respectively;
2. NYCT will completely rebuild, rather than merely rehabilitate, the Mother Clara Hale Depot by June 2009. The new depot will be built to the same capacity – 140 buses – as the present one and will adopt nationally recognized, independent guidelines (e.g., the U.S. Green Building Council's Leadership in Energy and Environmental Design Standards ["LEEDS"]) for "green" design, construction, and landscaping;
3. NYCT will close the Amsterdam Depot to all transit operations by a date not later than the completion of the Mother Clara Hale rebuilding project (June 2009), but in no case later June 2010, and will operate in its place a job-training facility to teach skills such as bus maintenance and repair;
4. NYCT will initiate a Northern Manhattan Depot improvement program for all five operating depots, which will include, among other things: a) the installation and regular maintenance of best available technology emission control devices on all

emissions sources, (including vehicles, equipment and the depot building itself); b) best practices for storage and disposal of hazardous materials; c) adequate staffing of depot facilities in order to ensure the safety and security of neighboring residents; d) provision for open and green spaces around depots and for planting of trees and shrubs; e) annual training on environmental health and safety work practices for all drivers and maintenance workers; and f) a stringent plan for enforcement of idling restrictions;

5. NYCT will create and/or expand community outreach programs at each of the Northern Manhattan bus depots for the purposes of disseminating timely information and receiving community input on its operations and capital plans as they apply to Northern Manhattan bus depot operations and any future rebuilding or rehabilitation initiatives; these community outreach programs will include regularly scheduled meetings with neighboring residents to discuss health and environmental concerns, in addition to any other meetings convened for the purposes of discussing capital projects as required by state or federal law.

We are asking for your support at the City Council to do the following:

- Pass a City Council Resolution that describes the above concerns and requests the State Legislature and the Governor-elect to develop legislation and initiatives to address these concerns and hold MTA accountable for operating decisions that adversely and disparately impact low-income communities and communities of color.
- Call on your colleagues at the State legislature to hold public hearings.
- Pass a home rule message to the State legislature requesting city jurisdiction and/or requesting reform of the Public Authorities Law to ensure transparency and local community participation in the MTA decision-making process

While all residents and commuters in New York City enjoy the benefits of public bus service, residents of Northern Manhattan and other communities of color alone must live with a disproportionate, discriminatory burden of the health risks created by bus depots. With your help, all residents of New York City can breathe more freely knowing that the public transportation we use will not compromise our health or the health of our children.