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City Blocked in Bid to Operate Compost Facility in Local Park

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New York City cannot operate a 20-acre composting facility in Brooklyn's Spring Creek park unless it can get approval to do so from the state Legislature, a Brooklyn state judge has ruled.

Acting Supreme Court Justice Bernard Graham (See Profile) ruled on Dec. 20 in *Raritan Baykeeper v. City of New York*, 31145/06, that the facility, which was built to compost leaves, manure and tree stumps gathered from Spring Creek Park and other city parks, is an alienation of public parkland and therefore a violation of the public trust doctrine, which requires that all parkland be open for use by the public unless the Legislature authorizes another use.

The decision was a victory for Raritan Baykeeper, also known as New York/New Jersey Baykeeper, a group that advocates for clean water in the lower bay of New York's harbor.

The facility, called the Spring Creek Park Composing Facility, was built in 2001 under a memorandum of understanding between the Parks Commissioner and the Commissioner of the Department of Sanitation that allowed about 20 acres of Spring Creek Park to be used for the facility.

It began operating immediately, until the Department of Environmental Conservation told the Sanitation Department in 2002 that it needed a permit. The Department of Sanitation then stopped operation of the facility and applied for a permit from the DEC. Raritan Baykeeper and others opposed that application. The facility has not operated since 2002, but has remained fenced off and inaccessible to the public.

In 2004, a public hearing was held on the permit before a DEC administrative law judge, Susan DuBois.

In 2006, while the application process was still pending, Raritan Baykeeper and two individual citizens filed a petition against the Parks Department and Department of Sanitation challenging the city's plan. They claimed that the plan was an alienation of parkland because the land used for the solid waste facility could not be used for any recreational purpose, and therefore violated the public trust doctrine. The petitioners further said that the project harmed the salt marshes in adjacent Jamaica Bay, which form a natural buffer keeping out water pollution.

They also said that, while in operation, the facility created noise and an unpleasant rotting smell in the area, and presented evidence that the facility was being used for material other than leaves, stumps and manure.

In 2009, DuBois rejected the city's permit application. She also ruled, in an earlier order, than any alienation of parkland would have to be approved by the Legislature. However, in 2012, the DEC commissioner rejected DuBois's determination and issued a permit. Raritan Baykeeper then filed a separate Article 78 petition against the DEC seeking to overturn that decision, and moved to consolidate the two court actions.

Graham denied the motion to consolidate, finding that the issues presented in the two cases were sufficiently different to

remain separate. However, he ruled that Raritan Baykeeper is entitled to summary judgment against the city on the public trust doctrine issue.

Graham noted that it was undisputed that the 20-acre area set aside for the composting facility cannot be used by the public. The city responded that composting solid waste generated by the city's parks is an integral function of the park system, including Spring Creek Park, and that the facility was therefore not an alienation of park land.

Graham, however, found that such a facility ran afoul of the public trust doctrine because it "provides no typical benefits that are expected of a park."

"The scope of the facility also makes clear to the Court that the Department of Sanitation is using Spring Creek Park as a central location to collect all types of organic waste from locations including and beyond Spring Creek Park," the judge continued. "The reality is that the Parks Department has burdened Spring Creek Park with serving as a solid waste processing facility for the general area at the expense of its local residents."

In fact, he said, "in practice the evidence shows that it is more accurately characterized as a working garbage dump" than as a compost facility for the city's parks.

Graham said that, because the city could still get approval from the Legislature to run the facility, the appropriate remedy was a preliminary injunction that the city not operate the facility. He did not order the city to take down the fences and other structures associated with the facility.

Daniel Estrin, supervising attorney of the Pace Environmental Litigation Clinic, said that accepting the city's argument would have created "a very slippery slope."

"Why not let [power tool maker] Black & Decker build a leaf blower factory on park land because parks need leaf blowers?" he added.

Estrin also said that the city has established waste facilities in other parks in the past, including a solid waste facility in Soundview Park in the Bronx, and a dumping ground for cesspool trucks, leading to a sewage pipe, in another part of Spring Creek Park.

"Usually these parks are in underprivileged areas of the city. You try to take 20 acres of Central Park, you'd have an injunction so fast it would make your head spin," he said.

The city is represented by Assistant Corporation Counsel Kathleen Schmid.

"We are disappointed in the Court's decision," Schmid said in an emailed statement. "In particular, we believe that the Court failed to fully consider the fact that the Spring Creek facility is intended to produce compost for use in City parks. Like much of Parks' infrastructure, it exists in a park and is necessary to support the agency's management of parkland throughout the City. As such, it is a proper park use under the law."

She said the city was considering a motion for reargument or an appeal.

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