



The Council of The City of New York

Hon. Christine Quinn
Speaker

**The Eyesore Next Door:
Outdoor MTA Properties Are
Poorly Maintained**

A Staff Report To:

The Committee on Oversight And Investigations

Hon. Eric Gioia
Chair

The Committee on Transportation

Hon. John C. Liu
Chair

March 2006

Hon. Christine Quinn
Speaker

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EXECUTIVE SUMMARY

“They dump diapers, diapers with stuff in them, garbage on the corners... It’s really unfair... I’ve got summonses over the years [for the trash] and had to pay them.”

—Anna Parathyras, whose family has lived next to the Long Island Rail Road (LIRR) tracks in Woodside, Queens since 1950, on the growing problem of dumping along the tracks.

“It is a constant mess, and they [the Metropolitan Transportation Authority] don’t clean, they don’t take any responsibility for it. ... We gave up. ... It’s more energy to fight them than to spend the money to have it cleaned.”

—Dart Westphal, 52, President of the Mosholu Preservation Corporation, on the conditions by Metropolitan Transportation Authority (MTA) properties on Webster and Jerome Avenues in the Bronx.

“The underpasses and surrounding turf of the LIRR is deplorable. ... I am in constant battle with the LIRR, because every time we meet with [them] it’s a tug of war, and they’re always telling me how [the Department of Transportation] is responsible. ... Nothing seems to be their responsibility.”

—Sally Martino-Fisher, 60, District Manager for Community Board 13 in Queens, on trying to get the MTA to clean up LIRR properties in eastern Queens.

The MTA carries 2.4 billion people a year over its network.¹ It provides and maintains the critical public transportation infrastructure that supports the greater New York metropolitan area. Yet for people whose homes neighbor the MTA tracks and stations, the MTA is more simply and immediately a bad neighbor, with poorly maintained and rarely cleaned properties that become targets for such neighborhood blight as illegal dumping, graffiti, littering and rodents.

An investigation prepared by the staff of the City Council Policy and Investigations Division for the City Council Committee on Oversight and Investigations finds that if the MTA were a private property owner, it would likely be punished with fines and violations for the conditions allowed to persist along its tracks and around its stations.² Indeed, most of the property surveyed adjacent to or underneath

¹ Metropolitan Transportation Authority (hereinafter MTA), “The MTA Network.” <http://www.mta.nyc.ny.us/mta/network.htm>. (Last accessed Jan. 23, 2006).

² For example, §16-118 of the New York City Administrative Code states that “every owner, lessee, tenant, occupant, or person in charge of any building or premise shall...[keep]...said sidewalks, flagging, curbstones, and air shafts, areaways, backways, courts and alleys free from garbage, refuse, rubbish, litter, debris and other offensive material.”

aboveground subway, Metro-North, or Long Island Rail Road tracks and stations was found to be poorly maintained and unclean.

Key Findings

- 16 of the 24 areas surveyed (66.6%) were rated as dirty and/or poorly maintained.
- 18 of the 24 areas surveyed (75%) had moderate to heavy dumping on, adjacent to or under MTA property.
- 13 of the 24 areas examined (54.2%) contained graffiti on trestles, retaining walls and/or fencing.
- On a 1-to-4 scale, the dirtiest areas surveyed were in Brooklyn: Borough Park (3.048); and Queens: Rockaway Park (2.900).
- Large items such as couches, car seats and other assorted household items are being dumped next to MTA properties. The photo below shows dumping underneath a LIRR overpass in Jamaica, Queens. If this were private property, the owner would be fined for not properly disposing of the furniture and litter on the sidewalk.



During the summer of 2005, investigators from the staff of New York City Council Committee on Oversight and Investigations randomly sampled and visited 24 of the 94 New York City neighborhoods (as delineated by ZIP code boundaries) where the MTA maintains aboveground or elevated subway lines, MetroNorth tracks and/or Long Island Rail Road tracks. Field teams of two investigators each walked alongside the tracks and around the stations at these locations, noting property conditions. Investigators used a rating system that employs a 1-to-4 scale for various characteristics and physical features—like graffiti, litter, the condition of retaining walls, etc.—with lower numbers representing better scores. Each neighborhood’s overall ranking was calculated as the average score for all component features.

In order to address the undesirable conditions found, the Council recommends the following:

- The MTA should immediately inspect, clean and repair all problem areas.
- The MTA should install better lighting around tracks and stations to deter would-be perpetrators of dumping and graffiti.
- The MTA should install security cameras in problem areas, with signs to alert the public of 24-hour surveillance.
- The Governor should institute TransitStat, a publicly accessible online system to track various performance indicators for the MTA, including cleanliness and maintenance around MTA properties.

While the MTA has made recent improvements to its infrastructure, including track repairs and station renovations, it has failed to address those conditions that allow dumping, littering and graffiti to persist around many of its properties. Litter and other refuse that is not collected in a timely way permits the perception of abandonment. A lack of lighting gives criminals the cover of darkness. In addition, tracks create dead-end streets, magnets for litterers, dumpers and graffiti vandals.

These conditions exist at MTA properties throughout the five boroughs. The table on the next page lists the five cleanest and best maintained, as well as the five dirtiest and

worst maintained MTA properties in neighborhoods surveyed. Note that on the one-to-four scale used, low scores correspond to better conditions.

Five Cleanest/Best Maintained and Five Dirtiest/Worst Maintained MTA Properties in Neighborhoods Surveyed

#	Neighborhood	Zip	Borough	Rating
1.	New Utrecht	11204	Brooklyn	1.250
	New Utrecht	11228	Brooklyn	1.250
3.	Bushwick	11237	Brooklyn	1.500
4.	East Harlem	10029	Manhattan	1.521
5.	Morris Heights	10453	Bronx	1.550
20.	Weeksville	11233	Brooklyn	2.547
21.	Melrose	10455	Bronx	2.729
22.	Pelham	10461	Bronx	2.880
23.	Rockaway Park	11694	Queens	2.900
24.	Borough Park	11219	Brooklyn	3.048

This report marks the first attempt to rate the cleanliness and maintenance of outdoor areas surrounding MTA property. In June of 2005, the New York City Council released a report entitled “On Track: Ensuring Clean Subways Citywide,” which rated the cleanliness of subway station interiors. Similar reports evaluating MTA cleanliness inside the subway and commuter rail system include the New York Public Interest Research Group’s (NYPIRG’s) “Subway Shmutz” report, as well as the Long Island Rail Road Report Card produced by the Long Island Rail Road Citizens Committee. None have examined the conditions of areas surrounding outdoor MTA properties.

INTRODUCTION

When the Metropolitan Transportation Authority (MTA) Is Your Neighbor: Three New Yorkers' Stories

Anna Parathyras

“Throughout the years it’s gotten worse,” says Anna Parathyras, whose family has owned a house adjacent to the Long Island Rail Road (LIRR) tracks in Woodside, Queens since 1950.¹ “My father never had to worry about the outside. ... Now I’m the big old senior and I have to worry about it,” she adds.

What Ms. Parathyras is referring to is the dumping that takes place next to her home. Her house is located on a dead-end street that terminates at the Woodside LIRR. According to Ms. Parathyras, “under the railroad, it’s dark, cars pull up, dump their ashtrays, [and] empty their garbage,” along with “diapers, diapers with stuff in them.” Often winds will move some of the garbage to her property, causing her to receive numerous summonses over the years.

Ms. Parathyras took her complaints to her City Council Member, Eric Gioia, who wrote to the Metropolitan Transportation Authority (MTA) requesting cleanup of the garbage and installation of “No Dumping” signs on her behalf.² In its response, the LIRR accepted no responsibility to rectify conditions, referring Council Member Gioia instead to two City agencies: the New York City Department of Transportation (DOT) for the installation of signage on city sidewalks “even when these pathways are located under railroad trestles,” and the New York City Department of Sanitation for the removal of litter and debris.³

This assignment of responsibility, however, has engendered some dispute. In its response to reports of damaged sidewalks at the same location, DOT has stated that

¹ All factual information provided by Anna Parathyras in a telephone interview on February 9, 2006.

² See Appendix A for documents.

³ Metropolitan Transportation Authority (hereinafter MTA) Long Island Rail Road (hereinafter LIRR), letter to Councilmember Eric Gioia, December 27, 2005. (See Appendix A.)

“by law, the owner of the property adjacent to the sidewalk is responsible for installing, maintaining, and repairing the sidewalk” and that the “MTA has been notified ... of defective sidewalk conditions that exist at the locations mentioned.”⁴ The MTA, however, has maintained that “to the extent the DOT believes the LIRR (or the MTA) is responsible for maintaining the sidewalks at issue—it is mistaken.”⁵ The MTA further asserted that “the so-called ‘sidewalk laws’... do not apply to the LIRR because the LIRR is a state public authority and is exempt from such laws.”⁶ The upshot has been that no one has taken responsibility to keep this area clean.

Ms. Parathyras finds this longtime problem “really unfair,” and is unhappy that the MTA does not do more to dissuade would-be litterers, like putting up additional “No Dumping” signs. “The irony is that the sign [that’s presently] up is behind where they [people who dump their garbage] would park,” she observes. Ms. Parathyras was about to take the lack of signage into her own hands: “I was going to sit and paint some,” she says, “but you’re not allowed to put anything on the LIRR” properties.

Dart Westphal

“We’ve had a number of problems with all of those things,” says Dart Westphal, 52, President of the Moshulu Preservation Corporation, when asked if his organization has encountered problems with dumping around MTA properties.⁷

The MTA maintains a subway shop and yard along Jerome Avenue, across from Herbert Lehman College, Harris Park and the Bronx High School of Science. Mr. Westphal finds it “is a constant mess, and they don’t clean, they don’t take any responsibility for it.”

The problem has gotten so bad on Webster Avenue, between Gun Hill Road and 233rd Street, that neighborhood organizations have been forced to hire the same cleaning services used by “Adopt-A-Highway” programs to keep the area clean. “We gave up.

⁴ New York City Department of Transportation (hereinafter DOT), letter to Councilmember Eric Gioia, February 28, 2005. (See Appendix A)

⁵ MTA LIRR, letter to Mr. Condes, July 27, 2005. (See Appendix A.)

⁶ *Ibid.*

⁷ All factual information provided by Dart Westphal in a telephone interview on February 9, 2006.

... It's more energy to fight them than to spend the money to have it cleaned," he says. Mr. Westphal reports the dumped matter is anything from "couches, garbage, and construction debris... remnants and bits and pieces [from carpet installation, to] leftover wooden strips with nails."

Mr. Westphal explains that the two-block stretch between the entrances to the Moshulu Parkway stop on the #4 train is constantly plagued by litter, which the MTA ignores. "No one ever cleans; along those sidewalks, along this bridge is always a mess," Mr. Westphal stated. When he has questioned the MTA, he says the agency's response has been that "they're only responsible for cleaning right where the entrance to the station is."

This is not a new problem or one that's been complained about quietly, according to Ms. Westphal; "the presidents of Montefiore [Medical Center], Fordham [University], the [New York] Botanical Gardens, Bronx Community College and Lehman College" have met with MTA leadership and, he says, "we still didn't get a better response."

Sally Martino-Fisher

"It's just a mess," says Sally Martino-Fisher, 60, the District Manager for Community Board 13, which includes the neighborhoods of Queens Village, New Hyde Park, Bellerose, Cambria Heights, Laurelton, Rosedale, and Floral Park in eastern Queens.⁸ "The underpasses and surrounding turf of the LIRR is deplorable [and]... I am in constant battle with the LIRR, because every time we meet with [them] it's a tug of war, and they're always telling me how [DOT] is responsible. ... Nothing seems to be their responsibility," she observes.

Ms. Martino-Fisher says the dumping, which occurs mainly around the LIRR tracks, is "an assortment of stuff," including contractor materials and household garbage. "A lot of contractors use the sites to dump as well, but there's a lot of garbage, there's tires, anything you can think of it," she says.

⁸ All factual information provided by Sally Martino-Fisher in a telephone interview on February 9, 2006.

In her tenure of almost 14 years at the Community Board, Ms. Martino-Fisher has often had to rely on the Department of Transportation (DOT) to clean up the affected areas. “In 14 years, they [DOT] have been out there a number of times, they [the MTA] never come out,” she stated.

“I think [the MTA] should be fined; they just can’t get away with this,” she concludes.

Living with the MTA

The experiences of Ms. Parathyras, Mr. Westphal and Ms. Martino-Fisher living and working by aboveground MTA tracks and stations all echo common themes: the prevalence of illegal dumping and littering; the lack of cleaning and routine maintenance; and the MTA’s unwillingness to take responsibility for any of it. Millions of people in the greater New York metropolitan area rely on the MTA to get in and around the City for their daily business. For Ms. Parathyras, Mr. Westphal and Ms. Martino-Fisher—and the many others who live and work near our public transportation infrastructure—this crucial public service comes at the cost of the unsightly and illegal activities, like dumping and graffiti, it attracts to their neighborhoods. For them, the MTA is, simply and most immediately, a bad neighbor.

BACKGROUND

MTA Basics

Every day, 14.6 million people rely on the Metropolitan Transportation Authority (MTA) to travel within the greater New York metropolitan area.⁹ The MTA's network covers 5,000 square miles connecting New York City with Long Island and parts of southeastern New York State and Connecticut.¹⁰ For many, this public transit network, comprised of New York City Transit (NYCT) and two commuter rail systems, the LIRR and the Metro-North Railroad, is their primary mode of travel.¹¹

New York City Transit is the umbrella organization for New York City's 27-line subway system [and the Staten Island Railway (SIR)] and the 244 bus routes that operate in all five boroughs.¹² New York City Transit carries more than seven million passengers on an average weekday.¹³

The LIRR transports an average of 274,000 passengers each weekday and maintains 11 lines and 124 stations connecting Nassau, Suffolk, Queens, Brooklyn and Manhattan.¹⁴ The MTA Metro-North Railroad connects seven New York counties (Dutchess, Putnam, Westchester, Bronx, New York, Rockland and Orange) and two counties in Connecticut (New Haven and Fairfield) with a network of 120 stations and six railways.¹⁵

⁹ Metropolitan Transportation Authority (hereinafter MTA), "The MTA Network," <http://www.mta.nyc.ny.us/mta/network.htm>. (Last accessed Jan. 23, 2006).

¹⁰ *Ibid.*

¹¹ *Ibid.*; Additionally, the MTA runs the Long Island Bus, which links 96 communities, and seven bridges and two tunnels within New York City.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ MTA Long Island Railroad. "About the MTA Long Island Railroad," <http://www.mta.info/lirr/pubs/aboutlirr.htm>, (Last accessed Jan. 22, 2006).

¹⁵ MTA: Metro-North Railroad. "About the Metro-North Railroad." <http://www.mta.info/mnr/html/aboutmnr.htm>. (Last accessed Jan. 22, 2006).

The MTA operates on an \$8 billion budget, with the bulk of the budget (66%) going to its NYCT division.¹⁶ The chart below shows how the MTA's budget is allocated among its component agencies.

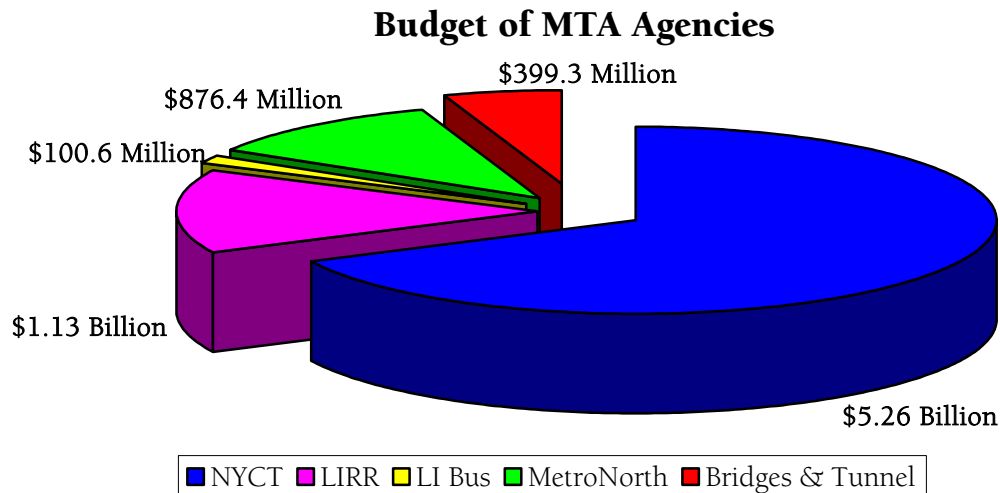


Figure 1. Source: MTA, 2004

The late 1970s and early 1980s were a troublesome time for the MTA. Constant malfunctions on outdated equipment, stations falling apart and high crime plagued the system. For the first time since the authority was created in 1965, the MTA developed a comprehensive Capital Improvement Plan in 1982 to salvage the system and keep it operating.¹⁷

The introduction of the Automated Fare Collection system in 1997 generated annual boosts in subway ridership.¹⁸ MetroCards and unlimited ride packages were more cost-effective for both the agency and the public, increasing the number of free transfers between lines, trains and buses, while eliminating the costly and outdated token system. In addition, the computerized fare collection system gave the MTA real-time results for ridership counts and station demands. Between 2000 and 2004,

¹⁶ See footnote 1.

¹⁷ MTA New York City Transit, *2000-2004 Capital Improvement Plan*. <http://www.mta.nyc.ny.us/mta/capital/cap-nyct.htm>. (Last accessed June 12, 2005.)

¹⁸ *Ibid.*

annual NYCT ridership, defined by the MTA as the number of individual rides for which the agency collects a fare,¹⁹ increased by 45 million passengers.²⁰

While improvements to the NYCT infrastructure have been met with increases in ridership, upgrades on LIRR have not produced similar results. In recent years, the MTA has invested in the LIRR's infrastructure, replacing many trains in both the diesel and electric sections of the line, as well as rehabilitating 65 stations (including the extensive and ongoing Jamaica train hub renovation).²¹ During this same time period, the MTA reported decreases in annual ridership on the LIRR (4.8 million less).²² One reason for the decreased ridership may be that more people are commuting via car. During the same time period, the Metro-North Railroad reported a slight decrease of 1.04 million in ridership, as the MTA Bridge & Tunnel division reported an increase in traffic volume of 6.3 million.²³

Cleanliness of the MTA Network

In June of 2005, the New York City Council Committee on Oversight and Investigations conducted an investigation that visited NYCT stations and graded their cleanliness. The report, "On Track: Ensuring Clean Subway Stations Citywide," found that over half of the stations were dirty and that the worst stations surveyed were predominantly in some of New York's poorest neighborhoods.²⁴

¹⁹ This number represents individual trips paid for with cash, a pay-per-ride MetroCard, or unlimited pass, or fare reimbursement, such as those collected for senior citizens, school children, and the disabled. The number also double-counts transfers. For example, a passenger who switches from a bus to a train using a free transfer would be counted twice, according to MTA methods.

²⁰ MTA. Performance Indicators: NYCT Subway Annual Ridership. <http://www.mta.nyc.ny.us/mta/ind-perform/annual/nyct-s-ridership.htm>. (Last accessed Jan 22, 2006.)

²¹ MTA. About the MTA Long Island Railroad. <http://www.mta.nyc.ny.us/lirr/pubs/aboutlirr.htm>. (Last accessed Jan 22, 2006)

²² MTA. Performance Indicators: Long Island Railroad Annual Ridership. <http://www.mta.nyc.ny.us/mta/ind-perform/annual/lirr-ridership.htm>. (Last accessed Jan 22, 2006).

²³ MTA. Performance Indicators: Metro-North Railroad Annual Ridership. <http://www.mta.nyc.ny.us/mta/ind-perform/annual/mnr-ridership.htm>. (Last accessed Jan 22, 2006); also MTA. Performance Indicators: Bridges & Tunnels Annual Traffic Volume. <http://www.mta.nyc.ny.us/mta/ind-perform/annual/bt-ridership.htm>. (Last accessed Jan 22, 2006).

²⁴ New York City Council, "On Track," (June 2005), http://www.nycouncil.info/pdf_files/reports/dirtysubway.pdf

The New York State Legislature formed the Permanent Citizen Advisory Committee (PCAC) of the MTA in order to give riders a say in the agency's activities.²⁵ The PCAC is the coordinating body and funding mechanism for three riders' councils: the Long Island Rail Road Commuters Council (LIRRCC); the Metro-North Railroad Commuter Council (MNRCC); and the New York City Transit Riders Council (NYCTRC).²⁶

Cleanliness has been a concern for PCAC's committees as well as for the New York Public Interest Research Group (NYPIRG) Straphangers Campaign. The Straphangers Campaign issues an annual "Subway Shmutz" report that ranks each subway line, as well as the system overall, for the level of cleanliness in the subway cars. While between 1998 and 2004 the trend had been a cleaner system, in 2005 the "Subway Shmutz" survey showed for the first time in four years that conditions in the subways had begun to deteriorate, with a five percent drop in the number of clean cars.²⁷ Among the reasons cited by the report for the deteriorating conditions were cutbacks in cleaning staff.²⁸ Similarly, the last LIRR Report Card, produced by the LIRRCC in 2003, noted that "riders feel that cleanliness has declined significantly" both on board and in various stations, and that cleanliness improvements were the second most wanted improvement by riders in 2003.²⁹

Since 1983, NYCT itself has conducted the Passenger Environment Survey (PES), a quarterly assessment of conditions and cleanliness of buses and trains.³⁰ The survey's frequency was cut in 2003, a development met a year later by a report from the NYCTRC that criticized the MTA for failing to use the PES as a management tool.³¹

²⁵ Permanent Citizens Advisory Committee (hereinafter PCAC). About Us. <http://www.pcac.org/aboutus.htm> (Last accessed Jan. 22, 2006).

²⁶ *Ibid.*

²⁷ NYPIRG Straphangers Campaign. *Subway Shmutz VII: Cleanliness in New York City Subway Cars*. April 2005. <http://www.straphangers.org/shmutz05/index.html>. (Last accessed Feb. 8, 2006).

²⁸ *Ibid.*

²⁹ Long Island Rail Road Commuter's Council. *The Long Island Rail Road Report Card*. 2005. <http://www.pcac.org/reports/pdf/licard03.pdf>

³⁰ The methodology and indicators used in this investigation were adapted from the PES and the Straphangers Campaign "Subway Shmutz" reports as well as the New York City Council report "On Track? Ensuring Clean Subway Stations Citywide."

³¹ New York City Transit Riders Council. "Hit or Miss: A Survey of New York City Subway Stations." August 2004. <http://www.pcac.org/reports/pdf/2004%20station%cond%20report.pdf>. (Last accessed Feb. 7, 2006)

The report also criticized how the MTA uses the PES rating system, which ignored certain factors when determining overall scores, and used averages to skew results.³²

Cleanliness of Outdoor MTA Properties

Despite numerous reports on the cleanliness of stations and trains, there have been no assessments on the conditions of the areas surrounding MTA properties by any of these organizations. In the absence of any sort of regular reporting, and no set standards specific to these properties, it is helpful to examine the rules that govern privately owned properties.

In New York City, people responsible for private properties are subject to a number of regulations designed to maintain clean and sanitary conditions throughout the City. For example, the Department of Sanitation, in its Digest of Codes, mandates that property owners shall keep their sidewalks free from “garbage, refuse, litter, debris and other offensive material.”³³ The Department of Health and Mental Hygiene (DOHMH) enforces provisions in the Health Code and the Administrative Code of the City of New York that require properties to be kept free of rodents and conditions that harbor rodents, with responsible parties liable to pay fines.³⁴ In addition, property owners are penalized “for failing to remove graffiti from the premises.”³⁵

The MTA’s Legal Obligations

If the MTA were a private landlord, it would be legally responsible for adhering to New York City’s health and safety regulations. But the MTA is not a private landlord; it is a public benefit corporation.³⁶

³² *Ibid.*

³³ New York City Administrative Code. §16-118.1

³⁴ New York City Administrative Code. §17-331.1

³⁵ New York City Administrative Code. §10-117.3

³⁶ A “public benefit corporation” is a corporation organized to construct or operate a public improvement wholly or partly within the state, the profits from which inure to the benefit of the state or to the people thereof. NY CLS Gen. Const. § 66.

In considering whether public bodies are exempt from local laws and regulations, New York courts have considered whether they are performing a proprietary or governmental function. Acting as a landowner, “a governmental entity is liable for failure to comply with the same minimum regulatory standards as are applicable to all similarly situated landowners if the challenged conduct is proprietary and not governmental in nature.”³⁷ Courts have held that the Transit Authority, a branch of the MTA, is not immune from the City’s regulatory safety standards in subway stations because the maintenance of subway stations is a proprietary, not a governmental, function.³⁸ Accordingly, the Transit Authority is “liable for failure to comply with the same minimum regulatory standards as are applicable to all similarly situated landowners.”³⁹

State law does explicitly grant the MTA exemptions from any “local laws, resolutions, ordinances, rules and regulations” that conflict with the public authorities law creating the MTA, or that conflict with any rule or regulation of the authority, except insofar as such laws or rules apply to “facilities that are devoted to purposes other than transportation or transit.”⁴⁰ Insofar as the tracks and areas around them are devoted to transportation purposes, the MTA may make the argument that it is exempt from local health and sanitary codes on the basis of the public authorities law.

³⁷ 62A NY Jur 2d, Government Tort Liability, § 194, quoted in *Huerta v. N.Y. City Transit Auth*, 290 A.D.2d 33, 38 (N.Y. Sup. Ct. 2001). Proprietary functions are those “in which governmental activities essentially substitute for or supplement ‘traditionally private enterprises’” *Karedes v. Colella*, 100 N.Y.2d 45, 50 (N.Y. 2003) quoting *Sebastian v State of New York*, 93 N.Y.2d 790 (N.Y. 1999). For example, the State may act in its proprietary capacity “as a landlord by virtue of its ownership of and control over a public facility and at the same time act in its governmental capacity by providing police protection to maintain law and order at that facility.” *Sebastian*, 93 N.Y.2d at 793-794.

³⁸ *Huerta*, 290 A.D.2d at 38, citing *Weiner v. Metropolitan Transp. Authority*, 55 N.Y.2d 175, 181 (N.Y. 1982), *Clinger v. New York City Transit Auth.*, 85 N.Y.2d 957 (N.Y. 1995).

³⁹ *Huerta*, 290 A.D.2d at 38, citing *D'Arpa v New York City Tr. Auth.*, 239 A.D.2d 126 (N.Y. App. Div. 1997); *Farrington v City of New York*, 240 A.D.2d 697 (N.Y. App. Div. 1997); *Dempsey v Manhattan & Bronx Surface Tr. Operating Auth.*, 214 A.D.2d 334 (N.Y. App. Div. 1995).

⁴⁰ NY CLS Pub A § 1266. “The local laws, resolutions, ordinances, rules and regulations of a municipality or political subdivision, heretofore or hereafter adopted, conflicting with this title or any rule or regulation of the authority or its subsidiaries, or New York city transit authority or its subsidiaries, shall not be applicable to the activities or operations of the authority and its subsidiaries, and New York city transit authority, or the facilities of the authority and its subsidiaries, and New York city transit authority and its subsidiaries, except such facilities that are devoted to purposes other than transportation or transit purposes.” State law similarly exempts the MTA from local taxation and fees on property it owns, as well as property it leases or uses for transportation purposes. NY CLS Pub A § 1275.

However, courts have recently clarified and narrowed the circumstances under which public benefit corporations like the MTA are exempt from local laws. Public authorities and other public benefit corporations are only exempt when compliance with local laws “would interfere with [their] function and purpose,”⁴¹ or would “interfere with the accomplishment” of that function and purpose.⁴²

Finally, courts have also held that the MTA cannot operate wholly without regard for the health and safety of the communities it serves. Therefore, even if the MTA is exempt from local health and safety regulations, state authorities such as the State Commissioner of Health are authorized to enforce the State Sanitary Code against it.⁴³

In response to concerns from New Yorkers throughout the five boroughs, this investigation assesses conditions at aboveground properties owned or used by the MTA to determine the extent to which the MTA adheres to health and safety regulations at those properties.

⁴¹ *Levy v. City Comm'n on Human Rights*, 85 N.Y.2d 740, 745 (N.Y. 1995). *See also Bogdan v. N.Y. City Transit Auth.*, 2005 U.S. Dist. LEXIS 9317 at *15-16 (S.D.N.Y. 2005) (Public Authorities Law does not exempt Transit Authority from local human rights laws that do not interfere with TA's purpose) (“If the Legislature meant literally that no local law should apply to the TA, it would be unnecessary to provide that only local laws that ‘conflicted’ with the Public Authorities Law should be inapplicable, and then, only as to ‘facilities . . . devoted to . . . transportation and transit purposes.’ . . . It would then appear that the Legislature did not intend to prohibit the application of all local laws to the TA, but only of such laws that interfered with the accomplishment of its transportation purposes.”)

⁴² *Rios v. Metro. Transp. Auth.*, 800 N.Y.S.2d 355 (N.Y. Sup. Ct. 2004) (MTA not exempt from local laws and regulations prohibiting employment discrimination). *See also Everson v. N.Y. City Transit Auth.*, 216 F. Supp. 2d 71, 80-81 (E.D.N.Y. 2002) (claims alleging gender discrimination under New York City Administrative Code valid against Transit Authority because compliance with local human rights laws would not interfere with the Authority's purpose); *Huerta*, 290 A.D.2d at 39 (Transit Authority subject to Administrative Code provisions regarding escalator safety, because such provisions “would hardly interfere with the accomplishment of the Transit Authority's purpose”).

⁴³ *People v. Long Island Railroad*, 397 N.Y.S.2d 846 (N.Y. Sup. Ct. 1976); 1977 Op Atty Gen July 6 (informal). The MTA cannot, however, generally be held accountable in the courts by individual riders alleging mismanagement or poor service since the MTA renders services to the public as a whole and has no “special relationship” with or “private obligation” to particular riders. The ultimate remedy for solving problems with the management and operation of the MTA was through the electoral process. *Leeds v. Metropolitan Transp. Authority*, 460 NYS 2d 219, 220 (N.Y. App. 1983).

METHODOLOGY

To assess the cleanliness of the areas surrounding MTA properties, City Council investigators identified 94 New York City neighborhoods (delineated by zip code boundaries) where the MTA maintains aboveground or elevated subway lines, MetroNorth tracks and/or Long Island Rail Road tracks. Field teams of two investigators each visited a random sample of 24 of these neighborhoods (25.5%) throughout the five boroughs during the summer of 2005. The number of neighborhoods, per borough, in the sample—11 zip codes in Queens, six in Brooklyn, six in the Bronx, and one each in Staten Island and Manhattan—is approximately proportionate to the number of neighborhoods with MTA properties in each borough.

Once at the area, each of the two investigators on a given team walked along or under the tracks, and around the stations, noting conditions of the property. Independent of his or her partner, each investigator evaluated the following features at spots along the route.

- fencing conditions;
- content of the property;
- condition of the property;
- retaining walls;
- underpasses and/or bridges;
- sidewalks; and
- track beds.

Using guidelines developed by DOHMH, investigators also examined locations to determine if there was a visible rodent problem. Each investigator inspected the area, rated each feature, and recorded his or her ratings on a standardized form.⁴⁴ This form was modeled after one developed by the MTA in 1997 for the PES and also one used in the New York City Council’s 2005 investigation “On Track: Ensuring Clean Subway Stations Citywide.”

⁴⁴ See Appendix B for complete survey form.

Investigators used a rating system that employs a 1-to-4 scale for the various characteristics examined, with lower numbers representing better scores. The numerical ratings were defined differently for each characteristic to best reflect conditions specific to each. For example, the ratings for retaining walls were different from those of sidewalks. The keys below illustrate the difference:

<u>KEY (retaining walls)</u>	<u>KEY (sidewalks)</u>
1) Good condition (Well maintained)	1) None (Basically litter free)
2) Acceptable (Light graffiti or damage)	2) Light (Lightly scattered dry litter; no opened or spilled food, malodorous, or hazardous conditions)
3) Unacceptable (Corroding, pieces falling off, moderate graffiti, visible cracks or other damage)	3) Moderate (Moderately scattered dry litter; no opened or spilled food, malodorous, or hazardous conditions)
4) Hazardous (In heavy disrepair, large pieces missing, high levels of graffiti, wall bulging and/or wall falling down or unsupported)	4) Heavy (Heavy litter; any opened or spilled food, malodorous or hazardous conditions)

Investigators' rankings for each feature of each area were recorded in a spreadsheet. The average score for each feature was incorporated into the overall ranking for each neighborhood (as delineated by zip code boundaries), which was calculated as an average of each feature's rankings. The overall neighborhood ranking was determined as the average scores for all features within an area.

FINDINGS

The following results are based on data collected by investigators in the 24 neighborhoods surveyed.

Analysis

The table below ranks the neighborhoods surveyed by the cleanliness and state of repair of the MTA properties examined, from cleanest/best maintained (low scores) to dirtiest/worst maintained (high scores).⁴⁵ It shows each neighborhood's zip code, borough, and overall score.

**Ranking of Neighborhoods Surveyed by
Cleanliness & Maintenance of MTA Property**

#	Neighborhood	Zip	Borough	Rating
1.	New Utrecht	11204	Brooklyn	1.250
	New Utrecht	11228	Brooklyn	1.250
3.	Bushwick	11237	Brooklyn	1.500
4.	East Harlem	10029	Manhattan	1.521
5.	Morris Heights	10453	Bronx	1.550
6.	Riverdale	10471	Bronx	1.691
7.	Rego Park	11374	Queens	1.854
8.	Woodside	11377	Queens	1.941
9.	Concourse Village	10451	Bronx	2.008
10.	Hollis	11423	Queens	2.202
11.	Long Island City	11101	Queens	2.210
12.	Bronxdale/Olinville	10467	Bronx	2.218
13.	St. Albans	11412	Queens	2.249
14.	Jamaica	11434	Queens	2.375
15.	Bayside	11361	Queens	2.384
16.	St. George	10301	Staten Island	2.387
17.	Brighton Beach	11235	Brooklyn	2.393
18.	South Ozone Park	11420	Queens	2.400
19.	Jamaica	11435	Queens	2.528
20.	Weeksville	11233	Brooklyn	2.547
21.	Melrose	10455	Bronx	2.729
22.	Pelham	10461	Bronx	2.880
23.	Rockaway Park	11694	Queens	2.900
24.	Borough Park	11219	Brooklyn	3.048

⁴⁵ For detailed findings, see Appendix C.

Eighteen of the 24 areas surveyed (75%) had moderate to heavy dumping on, adjacent to or under MTA property at some point along the area investigated.

Thirteen of the 24 areas examined (54.2%) contained graffiti on the MTA's trestles, retaining walls and/or fencing.

Analysis by Type of MTA Property

In ten of the neighborhoods surveyed, the only MTA property was the New York City subway. The table below shows the neighborhood, ZIP code, borough, subway lines and overall score for these ten neighborhoods.

Neighborhoods Served by Subway Service, Ranked by Cleanliness & Maintenance

#	Neighborhood	Zip	Borough	Subway Lines	Score
1.	New Utrecht	11204	Brooklyn	D, M	1.250
	New Utrecht	11228	Brooklyn	D, M	1.250
3.	Bushwick	11237	Brooklyn	M	1.500
4.	St. George	10301	Staten Island	SIR	2.387
5.	Brighton Beach	11235	Brooklyn	Q	2.393
6.	South Ozone Park	11420	Queens	A	2.400
7.	Melrose	10455	Bronx	2, 5	2.729
8.	Pelham	10461	Bronx	2, 5, 6	2.880
9.	Rockaway Park	11694	Queens	A	2.900
10.	Borough Park	11219	Brooklyn	D, M	3.048

The only MTA property in another ten of the neighborhoods surveyed was commuter rail, either Long Island Rail Road or MetroNorth. The table on the next page shows the neighborhood, ZIP code, borough, commuter rail service and overall score for these neighborhoods.

**Neighborhoods Served by LIRR/MetroNorth,
Ranked by Cleanliness & Maintenance**

#	Neighborhood	Zip	Borough	Service	Score
1.	East Harlem	10029	Manhattan	LIRR	1.521
2.	Riverdale	10471	Bronx	MetroNorth	1.691
3.	Rego Park	11374	Queens	LIRR	1.854
4.	Concourse Village	10451	Bronx	MetroNorth	2.008
5.	Hollis	11423	Queens	LIRR	2.202
6.	St. Albans	11412	Queens	LIRR	2.249
7.	Jamaica	11434	Queens	LIRR	2.375
8.	Bayside	11361	Queens	LIRR	2.384
9.	Jamaica	11435	Queens	LIRR	2.528
10.	Weeksville	11233	Brooklyn	LIRR	2.547

Four neighborhoods had elevated subway service as well as either MetroNorth or LIRR service. Because physical infrastructure (tunnels, bridges, fencing) is often shared by the two, the following neighborhoods are listed separately. The following table shows the zip, borough, neighborhood, subway lines and overall cleanliness score for these neighborhoods.

**Neighborhoods Served by Subway Service and
MetroNorth/LIRR, Ranked by Cleanliness & Maintenance**

#	Neighborhood	Zip	Borough	Service	Score
1.	Morris Heights	10453	Bronx	MetroNorth 4	1.550
2.	Woodside	11377	Queens	LIRR 7	1.941
3.	Long Island City	11101	Queens	LIRR 7, N, W	2.210
4.	Bronxdale/Olinville	10467	Bronx	MetroNorth 4, 2, 5	2.218

Analysis by Individual Features

The table on the next page shows both the mean and median score for each feature rated. By either measure, the MTA properties surveyed were in poor shape. On the measure “Condition of Property,” a mean rating of 2.538 and a median of 2.5 border closely on the rating of “unacceptable” conditions characterized by “abandoned

appliances, unkempt fences and walls, high weeds and grass, bags of trash, some large items of trash [and/or] stagnant water.” Similarly, the feature “Retaining Walls,” with a mean score of 2.444 and a median score of 2.5, also borders closely on an “unacceptable” state characterized by “[corrosion], pieces falling off, moderate graffiti, visible cracks or other damage.”⁴⁶

Mean & Median Scores for Individual Features

<u>Indicator</u>	<u>Mean</u>	<u>Median</u>
Condition of the Fence(s)	2.077	2
Content of Property	2.556	2.75
Condition of the Property	2.538	2.5
Retaining Walls	2.444	2.5
Underpasses and/or Bridges	2.155	2
Sidewalks	2.464	2
Track Beds	1.425	1

Findings in Violation of Existing Regulations

The photographs on the following pages show examples of dumping, refuse-covered sidewalks, dead animals and walls covered in graffiti at some of the MTA properties surveyed. As the captions that accompany the photos make clear, if these MTA properties were privately owned, they would be in violation of existing law and subject to fines or other penalties.

⁴⁶ See Appendix B for survey form, including full explanation of all ratings.

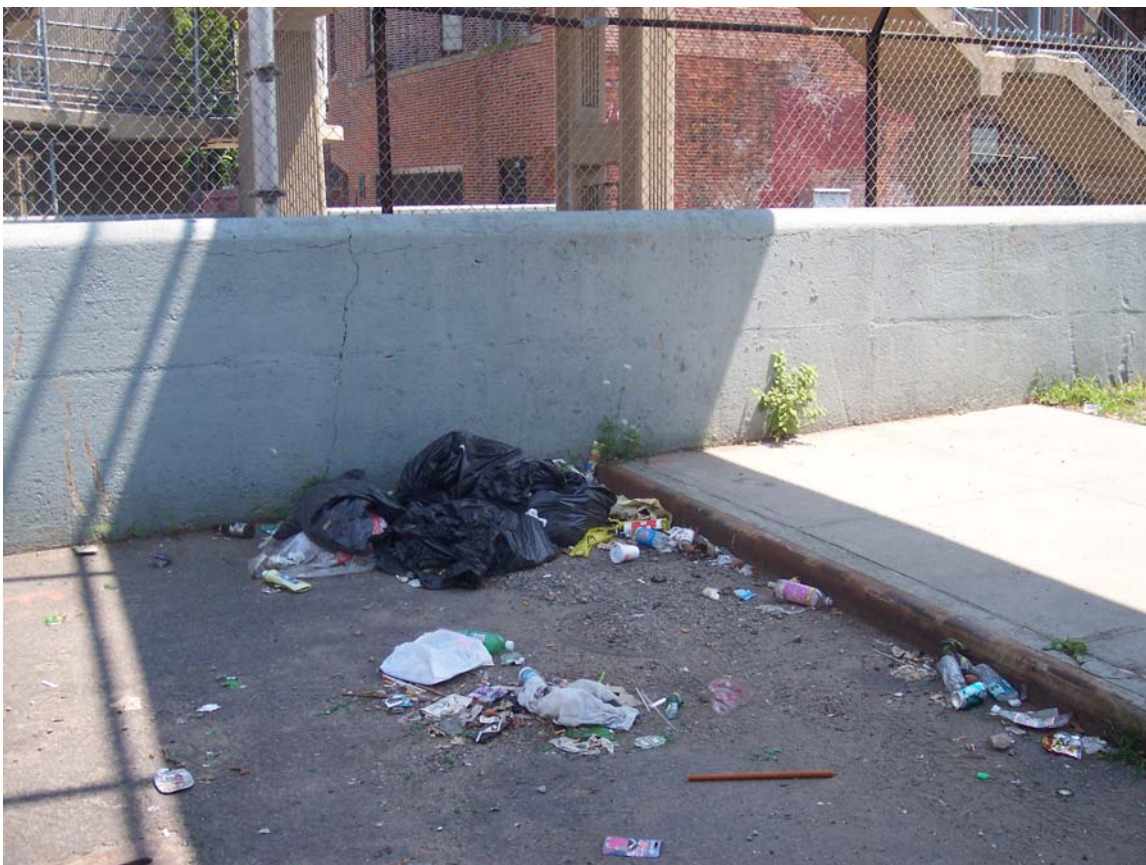
Jamaica, Queens (11435)



Section 16-118 of the New York City Administrative Code requires “every owner, lessee, tenant, occupant, or person in charge” of any building, premise, or vacant lot to keep “sidewalks, flagging, curbstones, and air shafts, areaways, backways, courts and alleys free from garbage, refuse, rubbish, litter, debris and other offensive material.”⁴⁷ This photo displays extensive dumping underneath a LIRR overpass, including large furniture.

⁴⁷ New York City Administrative Code §16-118.1.

St. George, Staten Island (10301)



In addition, section 16-118 of the Administrative Code states “every owner, lessee, tenant, occupant or person in charge ... shall also remove garbage, refuse, rubbish, litter, debris, and other offensive materials.”⁴⁸ This photo shows dumping next to the Staten Island Railway, including garbage bags and scattered litter.

⁴⁸ New York City Administrative Code §16-118.1.

Bronxdale, The Bronx (10467)



A homemade sign warns about rat infestation on an MTA property. According to New York City Administrative Code §17-133.1, “every person, corporation, or body that shall violate or not conform to any provisions of the health code... pertaining to the eradication of rodents, the elimination of rodent harborages or other rodent related nuisances shall be liable to pay a civil penalty.”⁴⁹

⁴⁹ New York City Administrative Code §17-331.1.

East Harlem, Manhattan (10029)

As with other waste, property owners are required to remove dead animals from their properties.⁵⁰ In this photo, a pigeon carcass sits underneath Metro North Railroad tracks.

⁵⁰ New York City Administrative Code §16-118.1

Borough Park, Brooklyn (11219)

In addition to the dumping next to this MTA property, there is extensive graffiti. Under §10-117.3 of the New York City Administrative Code, if this site were a commercial or residential property, the owners would face penalties for failing to remove graffiti from the premises.⁵¹

⁵¹ New York City Administrative Code §10-117.3.

CONCLUSION

If the MTA were a private property owner, it would likely be punished with fines and violations for the conditions documented in this report. New Yorkers know that they would be fined if they left large household items—such as sofas—on their sidewalks for extended periods of time. The MTA must know this also, yet it allows persisting conditions that create the appearance of abandonment and blight, while shirking all responsibility to clean it up.

While 14.6 million travelers a day rely on the MTA to provide reliable, safe and clean service, there are thousands of New Yorkers who simply find the MTA a bad neighbor. The MTA has a responsibility to these New Yorkers as well.

Taking into account the circumstances of this situation—factors such as the relative risk to health posed by the condition of the MTA property and the relative ease with which the MTA could comply with existing regulations—the MTA should be required to follow the City’s laws duly enacted under its police power to protect the health and safety of New York City residents. If the Transit Authority can be required to adhere to local safety standards inside subway stations, as any landowner can be held responsible, local health and safety regulations should also be applicable to tracks and adjacent areas.⁵²

Maintaining its property in accordance with City law—following basic regulations pertaining to sanitation and pest control, for instance—should not interfere with the accomplishment of the MTA’s purpose of providing safe and secure transportation for New Yorkers; to the contrary, it is entirely consistent with, if not essential to, this purpose. The MTA must work with the City, elected officials and community groups to clean up the properties and correct the conditions that allow dumping, graffiti and other undesirable conditions to persist.

⁵² State law does provide, however, that the purposes of the MTA “are in all respects for the benefit of the people of the state of New York and the authority shall be regarded as performing an essential governmental function in carrying out its purposes and in exercising the powers granted by this title.” NY CLS Pub A § 1264.

RECOMMENDATIONS

- **The MTA should immediately inspect, clean and repair all problem areas.**

First and foremost, the MTA must take responsibility for the state of the properties it owns, and the burdens its lack of cleaning and maintenance impose on its neighbors. The MTA should immediately inspect all its outdoor properties, and over the next three months, clean and repair all problem areas. It should report to the City Council on its progress, and put in place a regular maintenance and cleaning schedule. The MTA should also work with Community Boards and other locally based organizations to ensure it receives timely information about occurrences of such problems as dumping and graffiti to ensure they can be quickly addressed.

- **The MTA should install better lighting around tracks and stations.**

The cover of darkness aids people who illegally dump their waste or vandalize public property with graffiti. Better lighting would make these properties less hospitable for such activities and would therefore make them easier to maintain. In a hearing before the City Council Committee on Transportation on February 2, 2006, the MTA testified that they have installed perimeter security fencing and increased lighting in certain areas.⁵³

- **The MTA should install security cameras in problem areas, with signs to alert the public of 24-hour surveillance.**

The MTA should install cameras in areas that regularly experience dumping and graffiti. With signs in place to alert the public of their presence, cameras will serve as a deterrent, and can aid law enforcement officials in apprehending individuals who engage in dumping or vandalizing.

⁵³ Ronnie Hakim, General Counsel at MTA Capital Construction, on February 2, 2006, to the Committee on Transportation.

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- The Governor should institute TransitStat, a publicly accessible online system to track various performance indicators for the MTA, including cleanliness and maintenance around MTA properties.

Just as the New York City Police Department has used CompStat to measure and apprise the public of its performance, the MTA should similarly monitor and post performance measurements, such as ridership, on-time statistics, progress on its capital plan, and measures of cleanliness inside stations, trains, buses, and in the areas around its properties. It should post the results online in an easily understood format to allow members of the public to learn how their neighborhoods, stations, trains and buses rate.

The MTA is already required by various provisions of the state Public Authorities Law to report some of this information to various state entities. For example, every five years it is required to submit capital program plans to the Capital Program Review Board, which includes appointees of the Governor, State Legislature and Mayor. The plans must set system-wide goals and objectives for capital spending, establish standards for service and operations, and set forth an estimate of the amount of capital funding required each year and the expected sources of such funding.⁵⁴ The MTA also must submit to the review board within sixty days after the end of each calendar year updated information including the actual commitments for the capital plan for the previous calendar year compared to planned commitments and expenditures by funding source for each capital element in the previous calendar year.⁵⁵

The MTA is also required to submit annual updates to the governor of its strategic operation plan, including a status report summarizing the extent to which planned service and performance standards developed for the previous year were achieved, the causes of any failure to achieve projected standards of service, and corrective measures the authority intends to take to avoid non-achievement of projected standards in the next upcoming year.⁵⁶ Other sections of the Public Authorities Law require the MTA's Committee on Capital Program Oversight to issue quarterly reports on its activities

⁵⁴ NY CLS Pub A § 1269-b.

⁵⁵ NY CLS Pub A § 1269-c.

⁵⁶ NY CLS Pub A § 1269-d.

and findings, and require the MTA's Management Advisory Board to submit to the governor and the legislature a report on its activities each year.⁵⁷

TransitStat would expand on those requirements, and make reporting more public and more frequent. The Governor, who appoints a majority of the MTA's board, can make this happen.

⁵⁷ NY CLS Pub A § 1263 and NY CLS Pub A § 1279-a(4), respectively.