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## Settlement In Harlem Suit Over Odors

By RICHARD PEREZ-PENA

On its last day, the Dinkins administration agreed to pay \$1.1 million to help compensate for the smelly sewage treatment plant the city built in Harlem, and gave community and environmental groups legal leverage intended to insure that the new Mayor would keep the promise of the old to curb odors from the plant.

In settling a lawsuit filed by two groups and several Harlem residents, the city said it would put \$1.1 million in a trust fund to address the community's environmental and health concerns. The plaintiffs, who will control the fund, said the money could be used for anything from a clinic for the respiratory ailments they say are endemic in the area to tree-planting.

The city also agreed to give the residents a role in policing measures to curb the smell, which residents have complained about for more than seven years. The measures include \$55 million worth of work promised at the plant, called the North River Treatment Plant, on the Hudson River from 137th Street to 145th Street.

The new, \$129 million Riverbank State Park was built above the plant.

It is unclear whether the promised improvements will stop the odors. But the plaintiffs said yesterday that the settlement represented a significant success for the neighborhood. 'Victory for West Harlem'

"This is a great victory for west Harlem, and for anyone who wants to fight for their community," said Peggy Shepard, a co-founder of West Harlem Environmental Action, the lead plaintiff in the suit, and a former Democratic district leader.

The settlement -- worked out in negotiations that included Environmental Commissioner Albert F. Appleton, and signed by Deputy Mayor Barbara J. Fife last week -- became final yesterday when it was agreed to by Justice Alice Schlesinger in State Supreme Court in Manhattan. It gives the plaintiffs considerable power in holding the new Giuliani administration to promises made by the Dinkins administration.

The settlement gives the plaintiffs the legal standing to go to court on short notice if they believed the agreement is violated and to request a court order enforcing the deal.

The settlement also states that if the smell becomes noticeably worse, or if planned improvements fail to alleviate the problem, residents can demand that the city hire a consultant, chosen by both sides, to study odor problems and recommend solutions. Before becoming mayor, David N. Dinkins was a vociferous critic of the plant, which began operation in 1986.

Paul A. Crotty, the new Corporation Counsel appointed by Mayor Rudolph W. Giuliani, did not return telephone calls yesterday seeking comment on the settlement.

But Elizabeth St. Clair, the city's chief environmental lawyer for the Dinkins administration and now the Giuliani administration, said that Mr. Giuliani's transition team was advised of negotiations and the proposed agreement before Mr. Dinkins left office. "They asked a lot of questions about it, but they didn't ask us not to enter into the settlement," she said.

In June 1992, the city was sued by West Harlem Environmental Action, which was born out of the fight against the plant; the Natural Resources Defense Council; a day care center near the plant, and several residents, including two community board members. Environmental Racism?

In pressing their case, the plaintiffs argued that exposing the predominantly black and Hispanic neighborhood to the odors was an example of environmental racism, the systematic placement of harmful projects in minority communities.

"We have said for a number of years that west Harlem is a prime example of environmental racism," Ms. Shepard said, citing the presence of two bus depots, a station where garbage is transferred from trucks to river barges and other sites. "When we started saying that, no one was talking about environmental racism. Now it's on everyone's agenda."

Eric A. Goldstein, a lawyer for the Natural Resources Defense Council, added, "The settlement sends an important message that if legitimate environmental concerns of communities of color are ignored, the courts will be a force to right those wrongs."

But Ms. St. Clair said that such charges were not a factor and that for the most part, the settlement simply reiterated commitments the city

had already made. "Our position has always been that the case was not about environmental racism," she said.

In the settlement, the city pledged to abide by an agreement made in 1992 with the New York State Department of Environmental Conservation. The agreement requires the city to make \$55 million in physical improvements at the \$1.1 billion plant, the most significant being to cover the huge open tanks in which raw sewage settles before being treated.

Residents took little comfort from that agreement, saying that the state could make the conditions more lax, or simply refuse to enforce it.

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