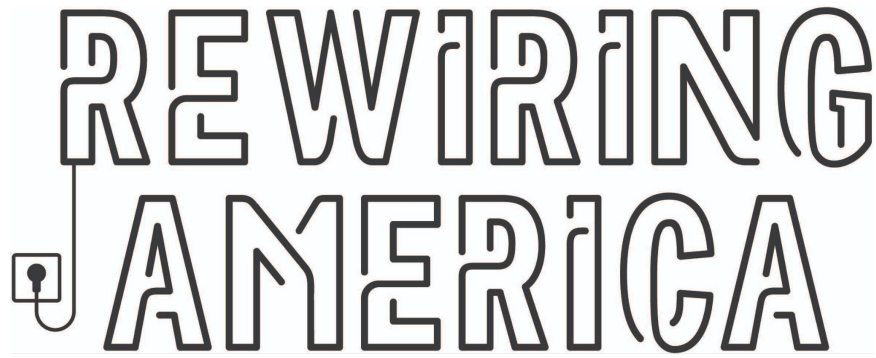


REWIRING AMERICA

The logo for Rewiring America features the words "REWIRING" and "AMERICA" in a large, bold, outlined font. A stylized electrical plug is positioned to the left of the word "AMERICA", with a vertical line extending upwards from the plug, passing through the letter "R" in "REWIRING".

COMMENTS ON NEW YORK CITY'S DEPARTMENT OF BUILDING'S

PROPOSED RULES FOR LOCAL LAW 97

October 24, 2023

Introduction:

Rewiring America is the leading electrification nonprofit, focused on electrifying our homes, businesses, and communities. We develop accessible, actionable data and tools. Rewiring America helps New Yorkers save money, tackle emissions goals, improve health, and build the next generation of the clean energy workforce. We believe in an abundant, flourishing, climate-safe future, and know that, together, we can realize one.

Thank you for the opportunity to comment on the New York City Department of Buildings' Proposed Rules on the Implementation of Local Law 97 and for your consideration of these proposals.

Summary of our comments:

1. DOB's proposed two-year delay should only move forward if noncompliant properties are required to sign a legally binding agreement to push them past the 2024 limits and towards meeting the 2030 limits without the use of RECs.
2. DOB should remove the pathway to meet the emissions limits through RECs. In the alternative, RECs should be limited to offset only 30 percent of a property's overage.
3. DOB should allow Article 321 properties the flexibility to perform prescriptive measures in 2024 and meet the 2030 requirements in 2030.

Background:

The NYC Department of Buildings (DOB) has proposed an amendment to section 103-14 *Requirements for Reporting Annual Greenhouse Gas emissions for Covered Buildings* of *The Rules of the City of New York* in order to establish penalties for noncompliance with Article 320 of Chapter 3 of Title 28 of the *New York City Administrative Code* requiring annual greenhouse gas emissions (GHG) limits for certain buildings.

Local law No. 97 (LL97) was enacted in 2019 to achieve NYC's urgent goal of reducing GHG emissions from the city's largest buildings (25,000 gross square feet or more). The law establishes annual GHG emissions limits for each type of building and requires building owners to report their building's actual GHG emissions to DOB each year. If a building exceeds applicable annual GHG emissions limits, an owner may be subject to civil penalties.

Issue #1: Proposed two-year delay for the 2024 emissions limits

Recommendation: DOB's proposed two-year delay should only move forward if noncompliant properties are required to sign a legally binding agreement to push them past the 2024 limits and towards meeting the 2030 limits without the use of RECs.

LL97 was created to promote the increased decarbonization of NYC's building stock and achieve a 40 percent reduction in GHG emissions by 2030 and 80 percent reduction by 2050. The law established several compliance periods, with the first one starting in 2024, and set annual emissions limits for every building type. Achieving the emissions limits during the compliance 2024-2029 compliance period simply requires prescriptive measures that can produce emissions reductions but not very deep emissions reductions. The compliance period starting in 2030 is when the more significant emissions reduction limits go into effect that will require more significant and deeper retrofits including electrification. According to DOB and based on 2022 data, [89 percent of the covered properties have already met their 2024 targets](#). Of the buildings that are not in compliance, it is estimated that a large portion are located in disadvantaged communities. According to the law, the non-compliant properties would be subject to fines starting in 2024.

However, DOB's recent proposed rules released in September would give the properties that are not in compliance with the 2024 emissions limits an additional two years to meet the 2024 targets. While a two-year grace period is not ideal, it is important that the focus of LL97 implementation remains on the significant emissions reductions needed to achieve a 40 percent reduction by 2030. Therefore, while the measures needed to achieve the 2024 targets are important and can reduce emissions, it is more important that building owners are preparing to

meet the 2030 limits. Meeting the 2030 limits will require deeper decarbonization measures such as switching to efficient electric heat pumps for space and water heating, which account for the majority of a building's emissions.

Therefore, we support the idea of a legally binding agreement with the city that the property owner will upgrade their lighting, conduct an energy audit, hire professionals, and submit benchmark reports as well as a roadmap detailing how they will reduce their long-term emissions.

In addition, anyone that chooses to pursue the two-year delay should not be allowed to meet their emissions limits through RECs (discussed more in the next section).

Issue #2: Limiting renewable energy credits (RECs)

Recommendation: DOB should remove the pathway to meeting the emissions limits through RECs. In the alternative, DOB should adopt the LL97 Advisory Board's recommendation to adopt a limit on Renewable Energy Credits to be 30 percent of the property's overage.

LL97 allows property owners to utilize Renewable Energy Credits (RECs), an instrument certifying that a certain amount of electricity is generated and delivered to the grid from a renewable energy resource, to deduct emissions from their total emissions calculations in an amount equal to the MWh value of the RECs acquired, provided that the energy 'directly sinks into' Zone J and meets certain other requirements. Nonetheless, the law does not require that RECs must be offered as a pathway. DOB's proposed rules allow for the use of RECs and, even worse, does not name a limit to which RECs can help building owners achieve the emissions limits. Accordingly, building owners could satisfy their greenhouse gas reduction limits solely through the purchase of RECs without actually taking any actions to reduce their GHG emissions. The intention of LL97 is to reduce onsite building emissions, which will not be achieved if building owners can achieve the emissions limits solely through the use of RECs. At the very least, DOB should adopt the LL97 Advisory Board's recommendation to establish a limit on Renewable Energy Credits to be 30 percent of the property's overage. In addition RECs should only kick in after the carbon reductions have been exhausted from energy efficiency and electrification.

Issue #3: Compliance flexibility for Article 321 properties

Recommendation: DOB should allow Article 321 properties the flexibility to perform prescriptive measures in 2024 and meet the 2030 requirements in 2030.

LL97 established and required Article 321 buildings (i.e. affordable housing) to meet the emissions limits for both the 2024 and 2030 compliance periods in 2024. There are two pathways for achieving these emissions limits: prescriptive measures or deeper decarbonization measures. In addition, because of the law, Article 321 buildings are only subject to enforcement once and cannot be touched again. As a result, there is some urgency in administering LL97 such that Article 321 buildings are given the flexibility, technical assistance, and support needed to perform deeper decarbonization measures to meet the 2030 emissions limits in 2030.

In addition, as of October 24th, 2023, the proposed rules for Article 321 properties have not been released yet. So, even though these properties are required to meet the 2030 targets in 2024, the lack of clarity on the actions that these properties need to take to meet those targets makes it nearly impossible to plan out the necessary retrofits. Therefore, DOB should allow these properties more flexibility to achieve the targets laid out in statute. In addition, DOB should provide additional clarity on the implementation of the prescriptive energy conservation measures pathway, including what they are and how to ensure they are performed well.

Conclusion:

1. DOB should only move forward with the proposed two year grace period if there is a legally binding contract that requires non-compliant properties to achieve more than the 2024 and 2030 GHG pollution limits without the use of RECs.
2. DOB should not allow the use of RECs to achieve compliance with LL97's GHG pollution limits but if it does allow the use of RECs it should be limited to only 30 percent of a property's overage.
3. DOB should allow Article 321 properties the flexibility to perform prescriptive measures in 2024 and meet the requirements in 2030.