



Comments to the New York City Department of Buildings

Re: Proposed Rules Amending Section 103-14 and adding Section 103-17 on Compliance with Local Law No. 97 of 2019

Submitted via rules.cityofnewyork.us and dobrules@buildings.nyc.gov

October 24, 2023

Dear Commissioner Oddo,

Urban Green Council, Association for Energy Affordability (AEA), Natural Resources Defense Council (NRDC), New York League of Conservation Voters (NYLCV) and the Regional Plan Association (RPA) support the Department’s proposed rules for Local Law 97.

Local Law 97 is a transformational law and the centerpiece of New York City’s climate strategy for buildings, which make up two-thirds of citywide carbon emissions. Successful implementation means ensuring the law remains ambitious, equitable and effective, ultimately cutting carbon emissions through efficiency and electrification in New York City buildings.

These proposed rules, together with the broader Getting 97 Done package, are a major, concrete step toward full implementation of the law. They give clarity to the market, incentivize beneficial electrification and provide practical pathways for compliance to deliver the carbon savings we so urgently need from New York City buildings. They also strike a balance between addressing the challenges faced by buildings such as co-ops and condos and the imperative to reduce climate-warming emissions and achieve the long-term goals of Local Law 97. Our organizations appreciate the Department’s thoughtful and balanced approach informing these proposed rules.

Our comments below highlight areas we support and offer recommendations on ways to further strengthen the rule and Local Law 97 in implementation.

- 1. We strongly support the proposed beneficial electrification credit, which has enormous potential to jumpstart early electrification adoption.**

The long-term success of Local Law 97 depends on converting most of New York City’s buildings from fossil fuel heating and hot water systems to highly efficient electric heat pumps. To that end, Local Law 97 must support the nascent electrification retrofit market and, wherever possible, incentivize heat pumps over additional investment in fossil fuel equipment.

The proposed beneficial electrification credit does exactly that, with very significant credit for installing heat pumps in the next few years. Our preliminary analysis shows that a poorly-performing building well over the 2024 GHG limit could, for example, electrify a domestic hot water system by 2026 and get into compliance through 2034 with that measure alone. This investment is a much better outcome than doubling down on certain-to-be-stranded fossil fuel systems. Early heat pump adoption also does an enormous service to the market, helping to launch the electrification economy by getting building owners, operators, service providers and others accustomed to heat pumps.

The timeline for the beneficial electrification credit also aligns well with New York City's law phasing out fuel oil No. 4. Over 1,000 covered buildings currently use fuel oil No. 4 for heat or hot water and must convert to another fuel source by July 2027. [Over 70%](#) of these buildings are located in the city's environmental justice communities, and this equipment turnover represents a critical intervention point to electrify that we might not see again for 20 years. We urge the city to work with NYSERDA and the utilities to identify and engage these building owners to make the most of this significant investment opportunity, helping owners to understand the beneficial electrification credit and make the leap to at least partial electrification.

2. For buildings that have fallen behind, the proposed good faith option is a reasonable approach to get back on the path to compliance through investment in buildings.

Based on the latest data, only about 1,500 of the most carbon-intense buildings need to take action to comply with GHG limits in the first compliance period. Many of these are buildings that need the most help and guidance to get on track to long-term carbon savings.

Local Law 97 requires the Department to consider good faith efforts when determining penalties. While we'd of course prefer all buildings deliver the carbon savings in 2024, the proposed good faith efforts option recognizes the realities of the Covid-19 pandemic, supply chain and workforce disruption, the time it's taken to develop the details for this unprecedented law, and the necessary education and outreach.

On balance, the good faith efforts option provides a practical pathway to steer compliance toward the much bigger 2030 carbon savings we so urgently need in this growing climate crisis and puts buildings on a track to net zero by 2050. In particular we support these components of the proposed rule:

- The decarbonization plan puts a focus on actual energy efficiency and electrification upgrades happening in buildings, rather than other potential compliance options and focuses on achieving critical carbon reductions rather than penalties that will flow into the city's general fund;
- The decarbonization plan requires owners to engage in long-term planning to 2050 and prohibits the use of renewable energy credits in the first compliance period;
- The electric readiness option recognizes that for some of NYC's older multifamily buildings substantial investment is necessary to increase electric service capacity for full electrification; and
- The Department retains the ability to retroactively penalize owners who don't ultimately deliver on promised investments.

While we support the Department’s balanced approach here, we also provide the following recommendations to inform its implementation:

- The proposed verification benchmarks for the decarbonization plan will help ensure its effectiveness, but additional verification such as spot audits will likely be necessary;
- Building owners need clarity – through additional guidance or otherwise – on the mechanics of the long-term decarbonization plan, particularly since the emissions impact of retrofit measures beyond 2034 depends on GHG coefficients that are not yet set;
- The good faith efforts process will place significant administrative burden on the Department, and the City must allocate budget, expedite hiring and prioritize staff retention accordingly;
- As the Department finalizes the rules and guidance for the good faith option, the focus **must** remain on actual investment in buildings to ensure local benefits like green jobs, better air quality and healthier homes; and
- The City must ensure – through the NYC Accelerator and coordination with the State and utilities – that sufficient education and assistance is available for building owners choosing this path, particularly affordable housing, to develop and execute decarbonization plans.

3. Proposed restrictions on RECs will help ensure LL97 drives investments in NYC buildings and delivers local benefits like green jobs and lower pollution.

Local Law 97 was written to include the option of compliance through renewable energy credits (RECs), and the Department has already adopted a sensible rule to limit RECs to offsetting emissions from electricity use. Tier 4 RECs are an environmental good – they represent clean energy delivered to NYC, which we need to displace our fossil-powered electricity. However, there is no statewide equivalent to the Clean Energy Standard for buildings. Local Law 97 is a building performance standard, and the law must remain focused on driving building upgrades, which deliver local benefits like green jobs, lower air pollution and healthier living spaces for New Yorkers. To that end, it is absolutely critical to retain the proposed rule’s limitation on RECs for the first compliance period for buildings opting for the decarbonization plan.

This restriction on RECs is an important step in the right direction, but additional restrictions should be adopted. We urge the Department and Council to work together to adopt an additional reasonable limit across all compliance periods to preserve the intent of the law. We strongly support the 30 percent REC limit recommended by the LL97 Advisory Board and the NYC Comptroller, which balances the benefits of clean energy with the need to keep LL97 focused on building upgrades.

4. The proposed rules provide much-needed guidance on the prescriptive path, which will enable upgrades to realize near-term energy, carbon and cost savings.

Local Law 97’s prescriptive path is available to about 8,000 properties, or around half of all multifamily buildings under the law. The proposed rules provide much-needed clarity so upgrades can begin in this enormous sector.

We encourage the Department to provide additional guidance for consistent and effective uptake from industry, including addressing any necessary technical clarifications to ensure upgrades are justified and optimal across specific building and system types. For example, field

experience suggests thermostatic radiator valves (TRVs) are often not beneficial in buildings with one-pipe-steam distribution heating systems.

The prescriptive path will provide a downpayment on carbon savings, but over the longer term the City must work with the State and utilities to drive deeper upgrades in these buildings. With that aim in mind, prescriptive path buildings should be permitted to instead opt to reach 2030 GHG limits by 2030, provided that guardrails are in place to verify progress and the Department has enough capacity to manage that process and maintain affordability.

5. We strongly encourage the development of a new Equitable Buildings Fund to provide compliance options that drive investment into affordable housing.

Existing analysis suggests that RECs will likely not be financially attractive compared to the carbon penalty in 2030, alleviating some of the concern that RECs could be a floodgate that undermines building upgrades. However, this potential outcome **does not** obviate the need for a reasonable limit on REC-based compliance: the future is uncertain and Local Law 97 needs a vehicle to drive investment into affordable housing upgrades.

As mentioned above, compliance options should prioritize investment in buildings and, in particular, investments that benefit residents of affordable housing who are most in need of the environmental, health and economic benefits that building upgrades will provide, and whose buildings' owners face the greatest challenges financing and implementing retrofits.

To that end, we urge the Administration and City Council to develop a new option to make an alternate compliance payment into an Equitable Buildings Fund for approved and additional efficiency and electrification upgrades in designated affordable housing in New York City. With proper pricing and guardrails, this vehicle would keep more compliance dollars—and potential penalty dollars—in New York City's buildings, driving building improvements, jobs and health and comfort benefits while helping those most in need of support.

New York would not be the first city to pursue this option. The Equitable Emissions Investment Fund created as part of Boston's building performance law (BERDO 2.0) does just this, and is a helpful precedent to follow.

6. Technical and financial assistance and education are critical to ensure Local Law 97's success.

Beyond these proposed rules, the Mayor's entire Getting 97 Done package includes a suite of efforts to help owners and managers improve their buildings, scale the workforce needed to make these improvements and identify and access the full array of local, state and federal assistance. This is crucial to ensuring the full and effective implementation of Local Law 97.

Transforming the buildings sector will require greater support and coordination at all levels of government, including leveraging and deploying the millions of dollars that will be available through the federal Inflation Reduction Act (IRA) and aligning key State efforts. The State, in particular, is an important partner in ensuring that the resources and necessary regulatory

framework are in place to support Local Law 97 and the investment in buildings that is needed to not only achieve the law's carbon goals, but the multitude of other local benefits that flow from building upgrades. Implementation of New York's landmark Climate Leadership and Community Protection Act (CLCPA), including the State's efforts pursuant to its New Efficiency: New York initiative, must ensure that sufficient targets and funding are in place to scale up energy efficiency and electrification through well-designed utility and state programs, particularly those focused on affordable housing and the LMI sector.

Scaling up the NYC Accelerator and continuing to provide the direct support that is needed to walk building owners through the retrofit process will of course also remain critical to ensuring the law's success. In addition, we are encouraged that there will be enhanced information-sharing efforts to improve awareness, including the "Climate-Friendly Buildings: Local Law 97 in Your Neighborhood" program and NYSERDA-funded Regional Clean Energy Hubs. Our organizations are ready and willing to help shape these efforts and the seamless integration of City, State and Federal resources that needs to occur.

--

These proposed rules amending section 103-14 and adding section 103-17 represent another major milestone for this groundbreaking law. Our organizations thank the Mayor and the Department for their leadership and we look forward to continued engagement to ensure the robust and effective implementation of this rule and Local Law 97.

Sincerely,

Danielle Manley
Policy Manager
Urban Green Council

Elizabeth Broad
Director of Advocacy & Organizing
Association for Energy Affordability

Alia Soomro
Deputy Director, New York City Policy
New York League of Conservation Voters

Donna De Costanzo
Eastern Regional Director, Climate & Clean Energy Program
Natural Resources Defense Council

Dale Bryk
Senior Fellow for Energy and Environment
Regional Plan Association

Urban Green Council is a nonprofit focused on decarbonizing buildings for healthy and resilient communities.

The Association for Energy Affordability (AEA) is dedicated to achieving energy efficiency in new and existing buildings to foster and maintain affordable and healthy housing and communities, especially those of low-income.

Natural Resources Defense Council (NRDC) is an environmental nonprofit that has been advocating for clean energy policies and programs in New York for more than 50 years.

New York League of Conservation Voters (NYLCV) is the only statewide environmental organization in New York that fights for clean water, clean air, renewable energy and open space through political action.

The Regional Plan Association (RPA) is an independent non-profit civic organization that develops and promotes ideas to improve the economic health, environmental resiliency, and quality of life of the New York metropolitan area.