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Comments Submitted by WE ACT for Environmental Justice to the New York City Department of Buildings on October 24, 2023 in response to amending section 103-14 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 (GHG) emissions limits for buildings

WE ACT for Environmental Justice is a community-based organization in Northern Manhattan that builds healthy communities by ensuring that people of color and/or low income residents participate meaningfully in the creation of sound and fair environmental health and protection policies and practices. Today we are submitting comments on the proposed rules for Local Law 97 (2019). There needs to be strict guardrails and enforcement strategies to ensure local emissions reductions are successful and timely.

Local Law 97, which – if enforced properly – will help New Yorkers move towards a more equitable and sustainable future. WE ACT for Environmental Justice recognizes the complexity of achieving the goals of Local Law 97, which reduce greenhouse gas emissions from buildings by 40 percent by 2030 and by 80 percent by 2050. The passage of the landmark [Climate Mobilization Act in 2019](#) was a significant step in reducing New York City’s building pollution. Notably, residents in New York City buildings are exposed to dangerous levels of indoor air pollution from the heatings system and appliances. Local Law 97 presents an important opportunity to reduce not only greenhouse gas emissions (GHGs), but to improve the indoor air quality for residents.

Although we are pleased to see the City making progress with the New York City Department of Buildings’ (DOB) release of an updated set of rules for Local Law 97, we remained concerned that:

- **The “Good Faith” Standard potentially serves as a strategy for building owners to avoid penalties and delay deep retrofits.** We remain concerned that the good faith standard continues to allow building owners to delay mobilizing the necessary resources to make critical investments in building decarbonisation that are needed now to mitigate the impacts of climate change and pollution - particularly on environmental justice communities. We fear a deluge of buildings will choose this pathway instead of hitting the 2030 target.- essentially “kicking the can” to later enforcement periods. We urge the



Department to consider additional penalties for continued non-compliance in the 2026-2030 period, given the extended window of leniency allowed through the “good faith” standard. LL97 law makes it such that adjustments for buildings should only be a last resort, so the policy should require much more strict qualifiers and guardrails.

- **Because the “Good Faith” Standard offers such latitude, the Department of Buildings seemingly lacks adequate enforcement plans and resources to monitor both the prerequisites for good faith exemptions and the ongoing work required to prepare for enforcement in the 2026-2030 compliance period.** We are concerned that the City – due to continuous cuts to the budget through the Program to Eliminate the Gap (PEG) – does not currently have adequate budget or staffing to hold these buildings accountable to the updated rules. To prioritize limited resources, we advise that compliance exemptions be prioritized for buildings and affordable housing residents who need it most - especially those demonstrating financial hardship not for buildings that want to delay implementation. The Department should, to support managing the anticipated surge of buildings seeking exemptions, develop staffing plans and budgets needed to support building owners in this extended period, with particular monitoring effort on buildings demonstrating good faith outside of demonstrated financial hardship.
- **There is no language limiting the use of renewable energy credits (RECs) for building owners who are not using the decarbonization plan pathway under “Good Faith Efforts”.** The updated rules offer six ways to meet the “good faith” standard, of which, only one explicitly excludes the use of RECs. However, this good faith effort is only a last resort effort. DOB has not complied with Local Law 77’s (2023) mandate to limit the use of RECs (LL77 Section 28-320.6.1.1). DOB must limit RECs as required by Local Law 77, using the considerations outlined therein. The law’s intent is clearly to limit RECs for buildings following the expected periodic emissions reductions. The Department should do so in a manner that not only uses those considerations but also accounts for the multiple compliance pathways beyond the submission of a decarbonization plan pursuant to Local Law 97. Any use of RECs should be limited to 10% of the pollution over a building’s pollution limit. Particularly, in buildings in environmental justice communities which are already overburdened with poor indoor and outdoor air quality from buildings burning fossil fuels.



- **Use lessons learned from Local Law 87.** All buildings should only be considered in compliance if they have paid all violations and hit emissions reductions targets. And, violations should be recurring and be at a level that incentivizes actual emissions reductions over paying a one-time penalty.

We are in the midst of a worsening climate crisis and the City must do everything it can to reduce emissions and decarbonize our buildings; all with environmental and climate justice as the foundation of this work. Buildings across New York city contribute to [over 70% of the city's Greenhouse Gas emissions](#). Buildings are a source of pollution which causes health issues such as respiratory and cardiovascular illness. Both climate change and air pollution disproportionately harm low income communities and communities of color.

WE ACT calls on Mayor Eric Adams to show that the City can adequately enforce the law to help facilitate Local Law 97 implementation, and to mitigate the delayed timelines currently outlined. This can be done by increasing funding for necessary agencies like the Department of Buildings' Office of Building Energy and Emissions Performance (OBEEP) and the NYC Accelerator. Compliance exemptions should only be made for buildings and affordable housing residents who need it most, not for buildings that want to delay implementation. WE ACT also urges the City to strengthen tenant and anti-displacement protections in the rules, to prevent green gentrification and protect the New Yorkers who have done the least to cause the climate crisis.

To help achieve the success of Local Law 97, we are glad that the city is taking steps to find funding pathways in the "Get 97 Done" plan for buildings experiencing financial hardship. It is vital that a funding pathway exists only for buildings with demonstrated financial hardship, not for large development companies. Establishing a new public rotating fund from sources like the Inflation Reduction Act and from utilities could be a helpful pathway.

Sincerely,

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