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**Comments Submitted by WE ACT for Environmental Justice  
to the New York City Department of Buildings on November 21, 2024 in  
response to proposed third set of rules regarding Local Law 97 of 2019.**

Submitted via [rules.cityofnewyork.us](https://rules.cityofnewyork.us) and [dobrates@buildings.nyc.gov](mailto:dobrates@buildings.nyc.gov)

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 of 2019. There needs to be strict guardrails and enforcement strategies to ensure local emissions reductions are successful and timely.

These comments refer to the following proposed rules regarding Local Law 97 of 2019 (LL97):

- [Calculation of Emission Limits for Buildings](#)
- [Filing Requirements for Application to Adjust Emission Limits](#)
- [Penalty Provisions Relating to Failure to File Energy Efficiency Report](#)
- [Fees Associated With Filing of Emission Reports](#)

LL97, 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 LL97, 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 heating systems and appliances. LL97 presents an important opportunity to reduce not only greenhouse gas emissions (GHGs), but to improve indoor air quality for residents.



Throughout the implementation of LL97, WE ACT has advocated for the need to direct LL97 penalties toward building decarbonization projects in local affordable housing buildings to truly support buildings that are experiencing financial hardship and are unable to conduct upgrades. We recognize that state law prevents the City from earmarking LL97 penalties for any specific purpose and that, by law, all LL97 penalties collected will go directly to the City's general fund. As such, we are pleased to see the establishment of the Affordable Housing Reinvestment Fund (AHRF) as part of this proposed rules package to support financially-strapped affordable housing buildings in reducing their emissions and maintaining compliance with LL97.

**However, there are some areas of the proposed rules that we are concerned about:**

- **The use of offset programs.** Climate and environmental justice advocates have long been skeptical of false solutions such as offset programs. Offsets essentially allow buildings that can afford it to continue to pollute. The proposed rules permit the use of future emissions projections as the foundation for offset calculations. Buildings will need to submit annual emissions reports, and data from prior years will offer a more precise assessment, helping to limit unnecessary fossil fuel emissions. We are encouraged to see that the revenue raised from the sale of offsets would go into the AHRF to support affordable housing decarbonization. The Department of Buildings (DOB) should be pushing buildings to reduce their emissions by making the necessary upgrades based on designated pathways thereby providing direct benefit to their tenants.
- **Offset program pricing.** We are concerned that since the proposed price of each offset is the same as the cost of the penalty, \$268, building owners will be incentivized to pay to pollute and will not work toward decarbonizing. DOB should discourage building owners from purchasing offsets until all other pathways to compliance have been exhausted. Since the law allows for the purchase of offsets towards 10% of a building's annual emissions and there is a clear lack of funding for affordable housing, to maximize the amount of funding going into the AHRF, this approach encourages building owners to consider offsets rather than making direct changes to reduce emissions. DOB should use educational campaigns and simple application processes to support compliance. Under the reporting requirements of Local Law 97, building emission data will be collected directly from



the utility. DOB can use prior year reporting data to assess the actual emissions of buildings rather than relying on estimates of future emissions. This rewards building owners that reduce emissions and appropriately penalizes buildings that continue or increase emissions.

- **Assistance for affordable housing.** We appreciate the allocation of initial AHRF funds to HPD's Resilient and Equitable Decarbonization Initiative (REDi) program that allows for full funding of building retrofits including pre-weatherization and pre-electrification measures, which can be barriers to building electrification. We look forward to New York City Department of Housing Preservation and Development's (HPD) reporting on the frequency and costs of removing these barriers to help inform the allocation of funds and program design in the next New Efficiency New York funding round. We are concerned, however, that naturally occurring affordable housing in need of funding may find REDi program requirements difficult to meet. We are aware of inadequacies in current programs that provide insufficient levels of assistance, particularly for affordable housing, and do not support buildings that use fuel oil, many of which are affordable and in need of funds to comply with the Article 321 prescriptive pathways. We urge DOB to both explore use of the AHRF funds and/or advocate for other funds to be dedicated to serving these buildings.
- **Biodiesel coefficient.** It is encouraging to see the inclusion of a biodiesel coefficient with close value to fuel oil coefficient does not favor the use of biofuel in buildings. We urge the Administration not to take any actions that will encourage the expansion of biofuel usage. Biofuel usage perpetuates the use of fossil fuel infrastructure and increases co-pollutant emissions which can lead to worsened health impacts like hospitalizations from increased levels of asthma attacks and can increase the cost to ratepayers.
- **Financial hardship.** We appreciate the clarification in defining financial, physical, and legal constraints to compliance that permit adjustments to annual building GHG emissions limits for justified need. We understand and appreciate that definitions for financial hardship are based on industry practices and were determined in consultation with industry leaders. However, we feel the measure for financial hardship is too broad. Assessment that may be difficult for some is not difficult for all buildings required to comply. The Department of Buildings, and the NYC Accelerator program, should focus help and support on the buildings that need it and not allow for a



policy that provides a loophole for the buildings with access and resources to the best lawyers and accountants. The comprehensive requirements of documented compliance actions and application procedures to be considered for these annual adjustments provide some guardrails to prevent misuse, but there are no guardrails to ensure that buildings do not repeatedly file for adjustments. We urge the City to be transparent in the evaluation of the metrics and application processes towards the goal of full compliance with LL97 requirements.

- **Cogeneration.** On-site cogeneration increases efficiency, but continues to encourage the burning of gas on site at a time when buildings should be prioritizing removing fossil fuels. The proposed rules should strongly restrict the use of cogeneration and require plans for buildings to phase out its use.

Thank you for the consideration of these comments. We look forward to continued collaboration to ensure the successful implementation of LL97.

Sincerely,

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