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NEW YORK PUBLIC INTEREST RESEARCH GROUP

TESTIMONY OF THE NEW YORK PUBLIC INTEREST RESEARCH GROUP TO THE NEW YORK CITY DEPARTMENT OF BUILDINGS REGARDING THEIR NEWLY (SEPTEMBER 27) PROPOSED RULES FOR LOCAL LAW 97 November 7, 2024

Thank you for the opportunity to testify at today’s hearing. My name is Eric Wood and I am the Senior Environmental Program Coordinator for the New York Public Interest Research Group (NYPIRG). NYPIRG is a non-partisan, not-for-profit research and advocacy organization. Consumer protection, environmental preservation, public health, healthcare quality, higher education affordability, and governmental reforms are our principal areas of concern.

As one of the largest states and the nation’s financial capital, New York’s leadership on climate change can shape U.S. policy. At a time when the federal government is failing to act fast enough to protect us from the dangers that the changing climate poses to our communities and is failing to quickly adapt to the very reality of climate change, the time for New York to lead is now.

Local Law 97 is the nation’s strongest climate action plan and it can be set as a model for the entire planet in humanity’s fight against climate change. New York City should be proud of the law as it stands. However, the newly proposed rules introduce loopholes that could increase pollution, and exacerbate public health threats. We urge the Department of buildings to close the overly broad “pollution adjustment” loophole, close the “cogeneration” loophole by accounting for the actual gas burned by each system, and close the “offsets” loophole by funding affordable housing retrofits with government subsidies basing the cost of the offset on the actual emissions reductions, not estimates. Creating loopholes in Local Law 97 only protects the wealthy, while stagnating our battle with rising sea levels and increasing threats to public health.

Close the “Pollution Adjustment” Loophole

The “pollution adjustment” loophole is too broad and is left vulnerable to being taken advantage of by wealthy building owners, the top polluters, and slows necessary progress in protecting people’s health and lives. The regulations propose that a co-op would be considered in “financial distress” if maintenance costs increase more than 5% over inflation annually over three years. The building, therefore, would be allowed to pollute more. However, there are many reasons a building might increase maintenance by over 5% over inflation while not being in financial distress.

According to the U.S. Department of Treasury, the IRS is losing \$160 billion annually to the nation’s top earners who aren’t paying their fair share, due to loopholes they exploit. We urge you not to let Local Law 97 fall to the same fate.

The “pollution adjustment” must be for those who need it, and a flat rate of five-percent over three years is not an equitable way to approach adapting to Local Law 97. The “pollution adjustment” loophole should be specifically for the relatively few building owners that will have trouble affording compliance with Local Law 97. Rather than a flat rate, building owners should have to prove “financial distress” according to their wealth or income. Wealth distribution was a focal point in the origins of the creation of Local Law 97, and this loophole, as proposed, begins to crumble the goals of the nation’s leading climate legislation.

Close the “Cogeneration” Loophole

The “cogeneration” regulations introduce a loophole by using the grid coefficient as a guiding tool for individual building compliance. The New York City electrical grid is made up of several power sources, including nuclear and solar, that have less air pollutants than fracked gas. Building owners with cogeneration systems that burn a higher percentage of gas as their “codependent” could emit higher levels of air pollutants.

The average carbon dioxide coefficient of natural gas is 0.0550 kg CO₂ per cubic foot. “Heat release” is the heat liberated by the combustion of the fuel (Btu/hr) per cubic foot of furnace volume. Local Law 97 can include a formula that calculates emissions compliance on individual building “heat release” and the CO₂ coefficient of gas, rather than the grid coefficient which is a combination of several energy sources. An individualized calculation based on actual gas burned by the cogeneration system would address the most egregious polluters and could help strengthen our communities who are working to comply.

Close the “Offsets” Loophole

While the Affordable Housing Reinvestment Fund is a good idea – to send much-needed dollars to low-income housing electrification retrofits – the proposed Fund is set up to be financed by offsets purchased by building owners in order to get off the hook from reducing more pollution. At \$278/ton, the “offsets” loophole creates a smooth path of “business as usual” for the wealthiest building owners in New York City, essentially leaving building emissions stagnant overall rather than decreasing harmful air pollutants, as Local Law 97 sets out to do. Instead, the City should hold buildings to pollution reductions across the board, and provide subsidies to help affordable housing comply.

Why Are These Loophole Closures Important?

Extreme heat is the leading cause of weather-related deaths. Annually, New York City sees an average of 450 heat-related visits to the emergency room and more than 100 deaths. Between 2030 and 2050, climate change is estimated to cause approximately 250,000 excess deaths per year. Of these, 38,000 is expected to be due to heat exposure in elderly people, 48,000 due to diarrhea, 60,000 due to malaria, and 95,000 due to childhood undernutrition. The additional deaths are projected to occur in late spring and summer—before and after the traditional heat-wave season.

Local Law 97 is working for an overwhelming number of building owners as it stands and we can help the few that are struggling to meet the , but the newly proposed rules are not the answer. NYPIRG commends New York City, the Department of Buildings, and the efforts community members have made to achieve the goals set forth in Local Law 97. We look forward to helping

solve the remaining few questions to ensure compliance with the law, without introducing loopholes that allow more pollution. NYPIRG calls on the New York City Department of Buildings to amend the newly proposed rules with the above suggestions and ensure that future rules and regulations are not overly broad and susceptible to exploitation by wealthy building owners. Thank you.