

April 12th, 2022.

NYSERDA
17 Columbia Circle
Albany, NY 12203-6399
Email: scopingplan@nyserda.ny.gov

NYSERDA,

Re: Draft Scoping Plan Comments – the Elusive Case of the Last-mile-trucking facilities in New York’s BIPOC and Environmental Justice Communities

One of the fundamental objectives of the ECL and the scoping plan is to ensure that environmental and climate justice are demonstrably seen to be implemented in EJ/BIPOC¹ communities to guarantee a healthful living environment where EJ/BIPOC communities can live and thrive. This objective is reinforced by the provisions of NYS’s recently enacted ‘Green Amendment’ to its constitutional Bill of Rights which provides for environmental rights for all persons - *“Each person shall have a right to clean air and water, and a healthful environment.”*²

The draft Scoping Plan under the theme “ Transitioning to ZEV’s and Equipment”, Adoption of Zero-Emission Trucks, Buses and Non-road Equipment strategy (T2)³ and Mobility-Oriented Development strategy (T6)⁴ **AND** under the scoping plan’s theme “Smart Growth”⁵, the Regional and County Planning and Technical assistance strategy (LU9)⁶ and the Direct Planning, Zoning, and Pre-Development Assistance to Municipalities strategy (LU10)⁷ makes commendable efforts to deal with the issue of environmental justice and climate change, with particular reference to EJ/BIPOC communities. However, these do not go far enough and more will be required beyond the ‘Smart Growth’ concept as defined in the draft Scoping Plan,⁸ to deal with the environmental and climate risks brought about by the ‘regulation- evading’ last-mile-trucking facilities (particularly in New York City), with the attendant emission of GHGs, pollution and drop in air quality which would impact adversely on already overburdened EJ/BIPOC communities and impair the attainment of our climate mandate under the Climate Act. This difficulty is due to the fact that the astronomical growth of the logistics industry and online retail exacerbated by the COVID-19 pandemic has greatly increased the amount and frequency of freight flows in New York

¹ The draft Scoping plan (for example, see page 5 and 32) makes reference to ‘Disadvantaged Communities’, Environmental Justice Communities (EJ) and Black, Indigenous and People of Color (BIPOC), low-and moderate-income communities, frontline communities but for purposes clarity, convenience and consistency, the term “EJ/BIPOC Communities” would be used in this writeup instead of term “Disadvantaged Communities”.

² N.Y. Const., Art. 1, Sec. 19

³ Draft Scoping plan, Chapter 11, at page 104-107

⁴ Ibid at page 110-112

⁵ Ibid, Chapter 19, page 272, at page 292-293

⁶ Ibid at page 294-295

⁷ Ibid at page 295-298

⁸ Ibid, at page 292

City (and presumably Statewide). This has led to an explosion of last-mile trucking facilities throughout New York city. These facilities are being cited in predominantly EJ/BIPOC communities, which have over the years borne the disproportionate burden of pollution, economic depression and the dangerous effects of climate change.

In spite of the efforts aimed at achieving EJ for EJ/BIPOC communities, the communities remain at risk of increased exposure to more pollution and increased risk of exposure to the dangerous effects of climate change in New York City, due to the substantial increase in the siting of last-mile-trucking facilities. Regrettably, the scoping plan does not appear to capture this underlying threat to its fundamental objective. These facilities are not required to undergo any public process or environmental reviews because they are not defined under local zoning laws. They are sited as of right with no review, based on the 1961 zoning which does not anticipate the present use of these last-mile-trucking facilities as warehouses. The NYC Department of City planning (DCP) regards these as “warehouses” that can be constructed “as-of-right” in manufacturing districts and C8 commercial districts.⁹ No environmental review is required to assess the already well documented environmental burdens in EJ/BIPOC communities which are now at risk of being further overburdened by increased traffic, increased air pollution, increased health risks (with asthma rates already at epidemic levels) increased noise, increased generation of trash and a higher risks of the adverse effects of climate change and pedestrian deaths.

This gap in land use regulation has been a major factor in the explosive growth of these last-mile-trucking facilities in the EJ/BIPOC communities such as Red Hook, Hunts Point and Sunset Park (with 6 (six) facilities proposed for Sunset Park and Red Hook - an environmental nightmare).

There have been attempts by the NYS DOT (with limited success) to regulate increased traffic by the publication of its Smart Truck Management plan.¹⁰ However, the agency has not undertaken the traffic study residents have been asking for a long time and it remains uncertain if the citywide approaches stated in DOT’s truck plan will be quick or have the required impact to reduce the impact of the new warehouses in Red Hook and Sunset Park, many of which are due to become fully operational not too long from now. This would suggest a failing in securing environmental justice for EJ/BIPOC communities, whose voices and concerns are not being heeded at the present time.

Although the draft Scoping plan makes several references to the importance of not overburdening EJ/BIPOC communities in seeking to attain the State’s climate mandate, the various strategies identified in the draft plan do not appear to create a clear cut pathway for how these strategic initiatives would be applied in practical terms to ensure that EJ/BIPOC

⁹ NYC’s Zoning Handbook (2018 Edition), Chapter 4, <https://www1.nyc.gov/assets/planning/download/pdf/about/publications/zoning-handbook/zoning-handbook-04.pdf> (last accessed April 12, 2022).

¹⁰ ‘Delivering New York – A Smart Truck management Plan for New York City’ May 2021. <https://www1.nyc.gov/html/dot/downloads/pdf/smart-truck-management-plan.pdf> (last accessed April 12, 2022)

communities are protected from the disproportionate impact of environmental injustice and climate change in seeking to meet New York's climate mandate.

Suggested Proposals:

These environmental injustices (both present and potential) against already overburdened EJ/BIPOC communities ought not to be allowed to occur or continue and should be eliminated, if the objects of the scoping plan, the ECJ, CJWG and the Green Amendment as they relate to environmental and climate justice for EJ/BIPOC communities are to be realized. The scoping plan should take into account the following suggestions to deal with the evasive case of last-mile-trucking facilities:

1. A statewide standardized approach that would recommend:

(a) that municipalities and the NY City Planning Commission amend the text of the zoning Resolution for last-mile-trucking facilities so that a zoning amendment would prevent facilities from clustering or require companies to convert all trucks to electric vehicles or mandate solar power panels on the roof of these facilities. Also, the Zoning Resolution Text Amendment should define last-mile trucking facilities on the basis of size and VMT per day;

(b) some conditions can be attached to the special permit process for establishing/operating these facilities by requiring not just an environmental impact assessment but require that these facilities mitigate the negative impacts of their activities. The special permit should require developers to show the facility's impact on traffic, air pollution in surrounding EJ/BIPOC communities, and compliance with waterfront district zoning requirements and the emission reduction mandates of the Climate Act;

(c) the special permit process should allow for the voices and concerns of impacted EJ/BIPOC communities to be heard and their concerns taken into account (including concerns about siting and mitigation measures) in deciding whether to grant a special permit and, if so, on what conditions, to ensure that environmental justice and climate justice are achieved for these already overburdened communities and efforts made to facilitate their effective and meaningful participation in the process;

(d) there should be some pedestrian safety measures put in place by the DOT where these facilities are located to enhance public safety due to the increased traffic;

(e) that steps be taken to monitor increase air pollution at these EJ/BIPOC communities where there are clusters of last-mile-trucking facilities, by the implementation of local community air monitoring programs/ controls at these sites.

2. Incentivizing last-mile-trucking companies to change to smaller, greener vehicles for the last mile by granting tax credits to these companies for a cleaner fleet, funded, at least in part, by the

Environmental Protection Agency's (EPA) grant pursuant to the federal government's Justice40¹¹ initiative to assist EJ/BIPOC communities affected by pollution and other negative impacts of these facilities.

3. Alternative means of transportation referred to in the scoping plan should include transportation by water; for example, in NYC, the modernization of the Red Hook Container Terminal and other marine terminals and expanding waterfront access would be useful as a suitable and sustainable alternative means of transportation, so more companies would ship freight by water and reduce the risk of pollution and of climate change, rather than by truck, which currently accounts for most freight coming into the city of New York.

4. The various Sector strategies identified in the draft plan should be refined to give a clearer pathway for identifying how EJ/BIPOC communities would not be disproportionately impacted and would be benefitted by these Sector strategies in seeking to attain New York State's climate mandate.

In the event that these suggested proposals are adopted in the scoping plan's Land Use Key strategy LU9 and LU10 under the theme Smart Growth and with a review process in place that guarantees a fair spread in the siting of last-mile-trucking facilities, then higher environmental standards would be achieved and environmental justice for EJ/BIPOC communities (in line with our climate mandates) would provide for greater oversight over who gets to do business in our communities, working in partnership with community-driven plans to mitigate the risk of the dangerous effects of climate change and fostering a healthful living environment for EJ/BIPOC communities.

The draft scoping plan has highlighted the importance and benefit of environmental justice and climate justice for EJ/BIPOC communities¹² and the time to give real effect to these environmental rights is NOW because EJ/BIPOC communities matter!

Thank you.
Teraine Okpoko, Esq.
email: to@lawtopc.com

¹¹ Executive Order (E.O. 14008 of Jan 27, 2021) section 223 - 86 FR 7619, <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad> (last accessed April 12, 2022)

¹² Draft Scoping plan page 19 and Chapter 6 pages 32 through 40.