

NAACP Niagara Falls Branch

Niagara Falls, NY 14305

July 1, 2022

Draft Scoping Plan Comments

c/o NYSERDA

17 Columbia Circle

Albany, NY 12203-6399

via email: [scopingplan@nyserda.ny.gov](mailto:scopingplan@nyserda.ny.gov)

**RE: Comments on NYS Draft Climate Action Scoping Plan (“Plan”)**

Dear Climate Action Council Members,

We are pleased to provide comments on the above-referenced Plan regarding:

1. Climate Justice v. Environmental Justice
2. Regional Equity (Who benefits?)
3. Just Transition: Workforce Development / Investment of Revenue/Proceeds / Transportation
4. Community Air Monitoring Program
5. Land Use (Who benefits?) / Increase Forest/Farmland Protection in Municipal Comprehensive Plans

The above-referenced plan has many benefits for New Yorkers, particularly New York City, but we are concerned that New York State seeks to narrow EPA climate topics by diluting or omitting disproportionate impacts and burdens from waste incinerators, groundwater contamination, federal radiological contaminated sites, closed MSW and hazardous waste landfills and related corrective actions. Some topics are apparently omitted by NY based on incorrect claims of reliable data availability<sup>1</sup>, others because exposure would involve swimming or fishing (and consumption) in contaminated waters. People in Niagara County, however, do fish and eat the fish, and do swim in creeks, streams, and rivers.

New York must wean itself off waste incineration with legislation. The Plan calls for nothing in this regard and fees would not be enough to effect needed change.

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<sup>1</sup> NYSDEC draft Disadvantaged Communities criteria states that excluded EPA data on hazardous waste treatment, storage and disposal facilities was unreliable, then goes on to conflate TSDFs with hazardous waste generators. However, DEC has an adopted Hazardous Waste Facility Siting Plan and an extensive E-Smart database tracking all permit, volume and compliance info. for the largest users, commercial TSDs, as well as for generators.

- New York must enact even stronger composting mandates for food waste, not just for larger generators.
- New York must mandate recycling of all paper and require disposal facilities to shoulder that burden.
- New York must use the above diversions to reduce its waste incineration volumes which, in some cases, have been increasingly used to burn out-of-state industrial waste, not just MSW.

## 1. Climate Justice v. Environmental Justice

We are concerned that disproportionate burdens from *existing, daily* exposure to contaminants such as dioxins, PCBs, VOCs and semi-VOCs from incinerators were diluted by future climate risk of periodic flooding, traffic and density as proposed in New York’s draft Disadvantaged Communities criteria. We support investment to reduce GHGs and protect poor communities from flooding, however, that should not be at the expense of diluting the plain reading of environmental justice, which protects *all citizens* from disproportionate burdens. Climate justice issues in permitting such as flooding should be distinct from environmental justice in permitting that addresses disproportionate burdens from emissions of dangerous contaminants and high rates of illness and premature death.

We’ve not seen Environmental Justice embraced in permitting by NYSDEC. NYSDEC allowed the Covanta Niagara incineration facility to conduct its EJ community outreach session at a location outside the EJ community. See attachments to this letter showing: 1) Niagara County is among the top 3 in EPA’s Air and Water Toxic Release Inventory, and 2) the six-mile radius of Covanta’s NO<sub>2</sub> dispersion over the entire city, numerous schools, and the Tuscarora Nation.

NYSDEC neglected to consult with the Tuscarora Nation before declaring the CWM Chemical Services toxic waste landfill application complete in 2014. Their petition for amicus status in 2018 asserted their EJ designation (identified on NYSDEC EJ mapping), but NYSDEC still refused to recognize them as an EJ community for permitting.

## 2. Regional Equity: “Who benefits?” Not just, “Who has any existing or potential burden?”

### a) Covanta’s Niagara Falls waste incinerator is the 13<sup>th</sup> largest in the U.S.

Several years ago, when neighboring Ontario, Canada within our 60-mile waste shed was preparing to increase its disposal capacity, instead of eliminating one of Covanta’s two antiquated turbines,<sup>2</sup> our waste shed was effectively increased to 500 miles with approval

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<sup>2</sup> Covanta Niagara’s primary incineration equipment is 42 years old, one of the oldest in the U.S.

of rail transfer. Today Queens ships nearly a half-million tons to the City of Niagara Falls for incineration.

- In 2019, Covanta Niagara emitted nearly *double the annual tons* of CO<sub>2</sub> of all Erie County Title V smokestacks, *combined*.<sup>3</sup>
- The City of Niagara Falls has a population of 48,000 and a poverty rate that is 35% higher than New York City, according to the most recent census.
- Covanta Niagara's 2020 annual report states it disposed 192,000 tons of ash in local landfills, or 24% of 802,000 total tons received, only 18% of which was MSW from our region.
- In 2022 Covanta stated it burned PFAS by accident. NYSDEC onsite monitors watched Covanta construct a 190-ft high gas-burning smokestack without a permit *for months* in violation of state regulations requiring a permit to construct.
- According to the study "*Tracking dioxins, NACEC (North American Commission for Environmental Cooperation) study tracks dioxins from Canada, Mexico, and the United States to the Arctic,*" Dioxins are a public health and environmental concern because have known carcinogenic and toxic properties that produce reproductive abnormalities, suppression of the immune system, and cancer. Waste Incinerators are the largest emitters of dioxin including NO<sub>x</sub>, SO<sub>x</sub>, VOCs, etc. Waste Incinerators should be included in the plan, and all should be shut down until they can comply with the Clean Air Standards.

b) Niagara County is the *only* county in New York State ever to host a commercial RCRA-C (and TSCA) hazardous waste landfill. That's a clear disproportionate burden, especially as liners age and with harsher climate change weather events. Since 1995, EPA has concluded that there is no need for states to proactively site hazardous waste treatment storage and disposal facilities. NYSDEC reached that conclusion 15 years later, in 2010.

### 3. Just Transition: Workforce Development / Investment of Revenue/Proceeds / Transportation

Workforce Development: The New York State Power Authority (NYPA) hydro-electric facility in Lewiston, adjacent to the City of Niagara Falls, employees a dismally low percentage of people of color. Out of approximately 2000+ NYPA employees only approximately 80 employees are African American. NYPA has diversity in its Corporate Office but please pay particular attention to its generating facilities and the positions within the trades (crafts); in which most craft positions, only require a High-school Diploma, they are not civil service. These positions each have an apprenticeship program attached, and the African American community begins less than 2 miles away from the Niagara Project.

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<sup>3</sup>According to NYS Climate Justice Working Group data set provided by NYSDEC. Understanding CO<sub>2</sub> is a global exposure, it is worth noting as to burden that CO<sub>2</sub> emissions for the City of Niagara Falls are about 15 tons per person, compared with 0.25-1.85 for any NYC boroughs.

NYPA allows discriminatory practices in hiring and promotions. NYPA retaliates against employees who dare to speak up and stand up against these practices. Especially at NYPA's generating facilities. It is as if NYPA, like the banks, has "red-lined" African American communities. The Just Transition should not only focus on workers displaced by climate change initiatives but address the severe inequities existing in New York State's own clean energy employment. I am requesting that strategies and protections be put into place to ensure that African American Communities be protected against private companies and contractors, and especially NYS Authorities and agencies that have historically denied employment and promotions, and provide reliable transportation, assuring that emerging green jobs be awarded to the most negatively impacted communities across the state.

Investment of Revenue/Proceeds: The City of Niagara Falls is the *only municipality in the state* we know of which hosts a waste disposal facility without any compensating host fees.

As noted previously, stronger recycling legislation is the only reliable way to achieve diversion goals. If, in addition to such legislation waste generator fees are imposed, the State should make sure host communities are fairly compensative for both waste disposal and traffic. Legislation authorizing any municipality to impose a disposal tax of \$3.00/ton on disposal facilities would help ensure host communities are compensated and encourage diversion both in-state and out-of-state, net of any existing host fee compensation.

New York already imports a significant amount of industrial waste from out-of-state as well as MSW. The Waste Advisory Panel should have included an *independent* member knowledgeable about competition, especially interstate competition in the solid waste industry.

Transportation: The Niagara Frontier Transportation Authority (for Erie and Niagara counties) already underserves minority populations in Niagara County. For example, the Authority provides no transportation from the City of Niagara Falls to the City of Lockport, where county offices are located. The NFTA has cut our bus routes, and we have noticed that they are expanding the services in more affluent communities but have taken away what little transportation we had in our poor communities. It must be noted that Niagara Falls is one of the most economically depressed areas within New York State. Other shortcomings will be exacerbated by climate change. We ask the Climate Action Council to request a climate change plan for transportation in Niagara County for NYSDEC designated EJ communities, which already include most of Niagara Falls and the City of Lockport.

#### 4. Community Air Monitoring Program

- Technical Assistance Grants should have been offered to EJ communities before, not after communities were asked for input on the boundaries of the mobile sampling.

- Air dispersion modeling for all Niagara Falls area smokestacks and emissions sources should be conducted and coordinated with the interpretation of mobile air sampling and as a check on facilities which conduct infrequent stack testing.

Both federal and state policies (including New York's 2019 Climate Act) call for *meaningful* involvement of EJ communities. Only a select few communities have been meaningfully involved in New York's Disadvantaged Communities criteria development. For example, two members on the Climate Justice Working Group are from the Adirondacks but only one person from WNY, in Buffalo, which has no landfills or waste incinerators.

The proposed boundaries for air sampling in Niagara Falls were first provided on a zoom call without street names, and that call was the sole opportunity for suggestions before the mobile air sampling was to begin, prior to June 23<sup>rd</sup> we were told on the call.

NYSDEC has not conducted any cumulative modeling to our knowledge and continued permitting each smokestack in a vacuum. (See attached EPA's New York Air and Water Toxic Release Inventory.) Several years ago, we requested NYSDEC conduct combined air dispersion modeling for all Title V and State permitted smokestacks in the City of Niagara Falls in light of the NO<sub>2</sub> modeling done on our behalf by a private engineer showing Covanta's reach was several miles. (See attached NO<sub>2</sub> dispersion map roughly 6 miles in all directions.) At that time, we also learned anecdotally of two third graders with brain cancer in the same Niagara Falls elementary school class.

#### 5. Land Use / Increase Forest and Farmland Protection in Municipal Comprehensive Plans

Due to fake agricultural pond applications used to disguise clay mines for landfills, we are losing fertile agricultural acreage that will be even more important to the Nation's food production with climate change. The state should ban the removal of clay from any agricultural-zoned property.

Niagara County is the only county in the state ever to host a commercial hazardous waste treatment, storage, and disposal facility: Cecos, and CWM Chemical Services LLC. Niagara County is also home to active RCRA-D landfills: Modern in Lewiston and the Allied Republic on the border of the Town of Niagara and the City of Niagara Falls.

Niagara County has the permanent burden of 8 million tons of PCBs and toxic waste buried in the Lewiston-Porter Central School District and in the City of Niagara Falls, the vast majority of which was imported from outside the state. And millions more tons in MSW and industrial waste. The EPA states all landfills leak.

Waste should be managed where it is generated, and yet the inequity of waste incineration and landfill burdens on upstate populations caused by downstate populations is not recognized

anywhere in the draft plan. The Plan should establish the objective to remove incineration and reduce landfill capacity concurrent with mandatory paper recycling and food waste diversion beginning in two years.

Thank you for consideration of these comments.

Sincerely,

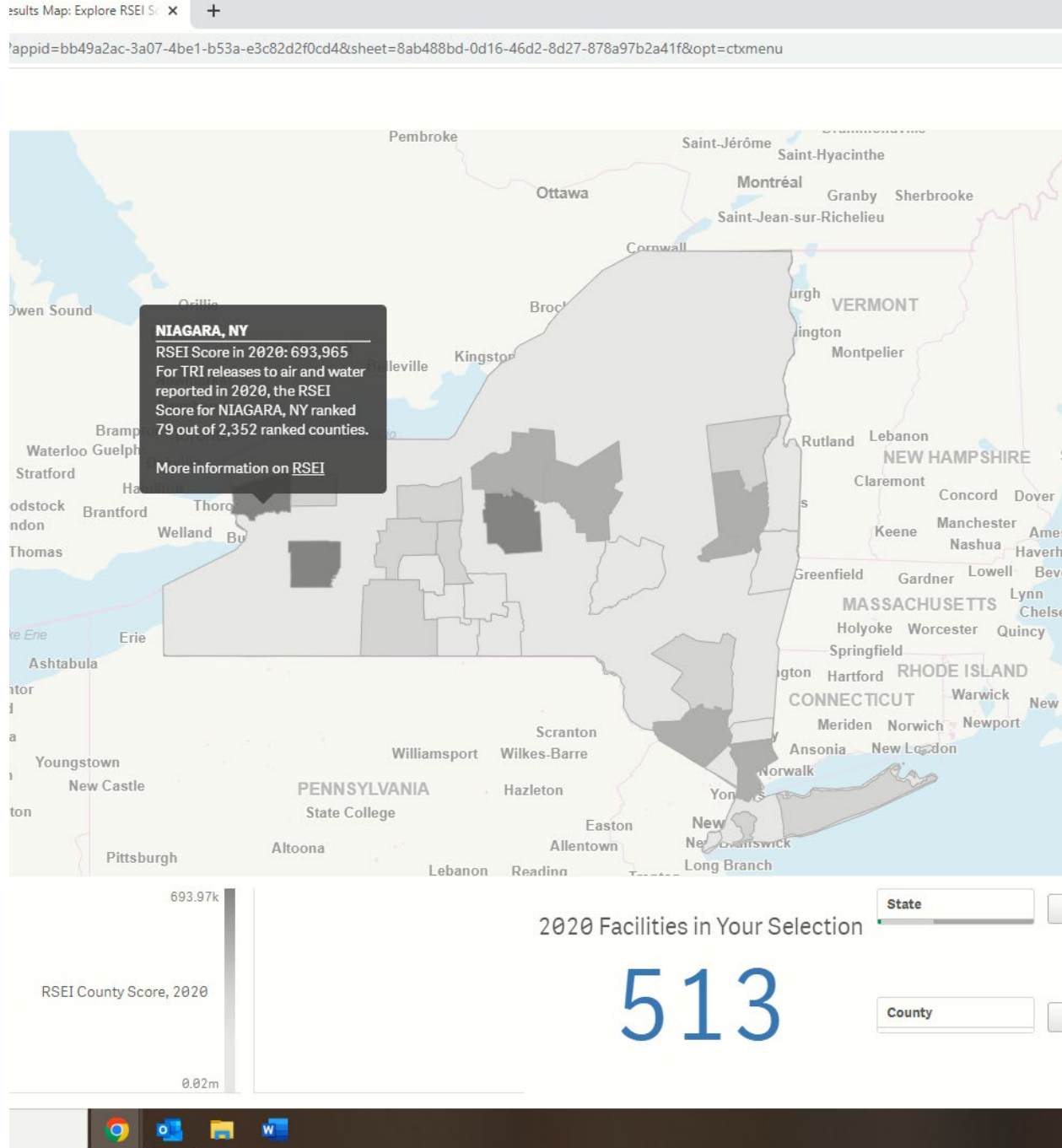
NAACP Niagara Falls Branch

By: *Shiley Hamilton*

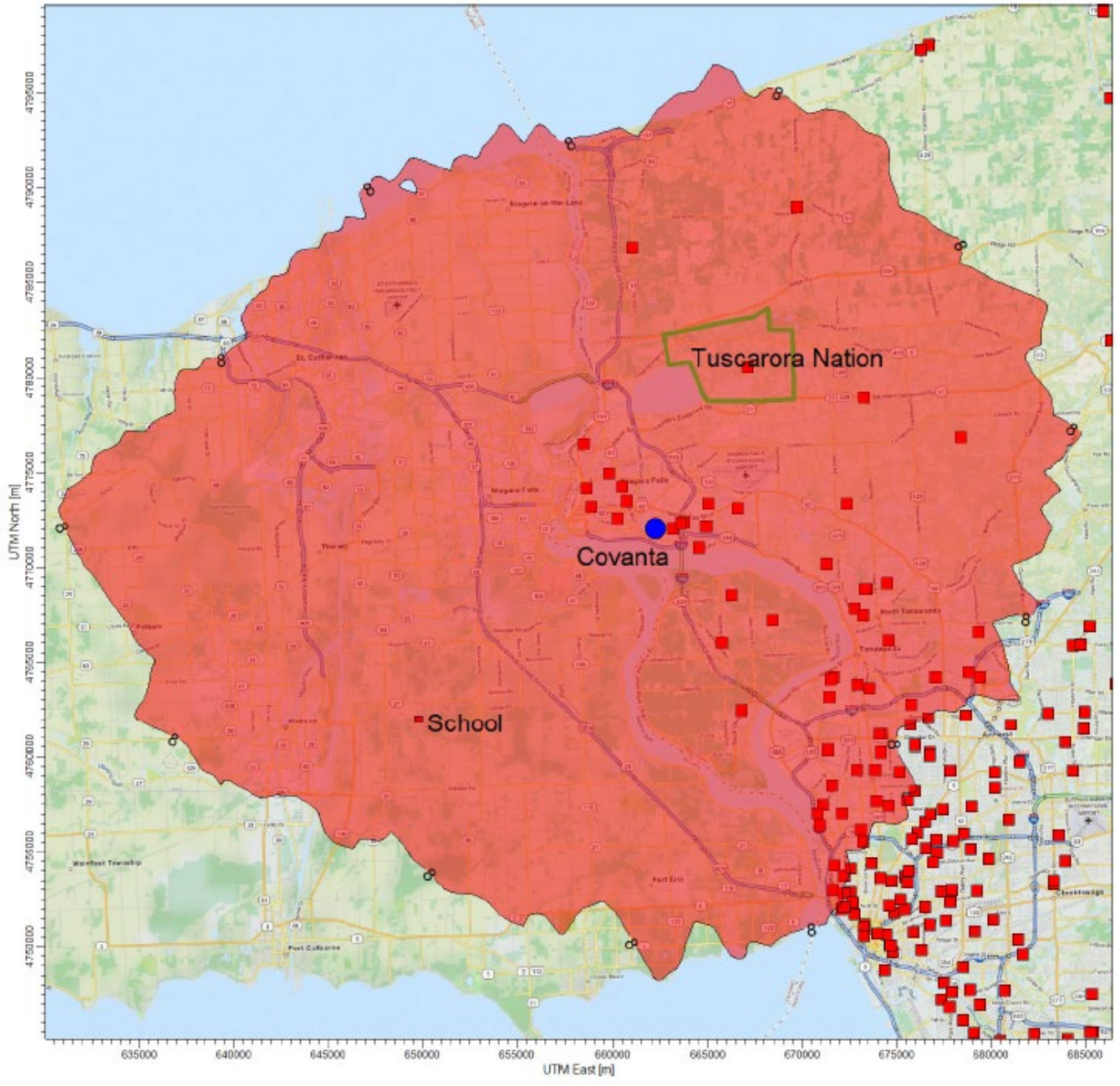
President

Attachments (2)

Attachments:







**Figure 3 - Significant Impact Area Due to NO<sub>2</sub> Emissions from Covanta ( $\mu\text{g}$  per cubic meter)**