

# Decarceration with Decarbonization: *Renewable Rikers* and the Transition to Clean Power

REBECCA BRATSPIES\*

## TABLE OF CONTENTS

I.	INTRODUCTION .....	2
II.	THE SCOPE OF THE TWIN PROBLEMS .....	5
	A. <i>The Climate Crisis</i> .....	5
	B. <i>The Mass Incarceration Crisis</i> .....	7
III.	RESPONDING TO CLIMATE CHANGE: DECARBONIZATION .....	12
	A. <i>New York State Climate Leadership and Community         Protection Act</i> .....	12
	B. <i>New York City Climate Mobilization Act</i> .....	17
IV.	RENEWABLE RIKERS: COMBINING DECARCERATION WITH DECARBONIZATION .....	22
	A. <i>What is Renewable Rikers?</i> .....	23
	B. <i>How Renewable Rikers Advances Social and Racial         Justice Goals</i> .....	27
	C. <i>How Renewable Rikers Advances Climate and Energy Goals</i> .....	30
V.	CONCLUSION .....	33

---

\* © Rebecca Bratspies. Professor, CUNY School of Law and Director Center for Urban Environmental Reform. This Article benefited from discussions with students in my Fall 2021 Health and Environmental Justice Clinic, feedback from the participants at the 2021 Loyola University Chicago's annual Environmental Law Scholars Workshop at Starved Rock Lodge, and the University of Houston Law Center's Environment, Energy & Natural Resources Center Lecture Series. Thanks particularly to Sarah Lamdan, Nick Widsowski, and Melissa Iachan for feedback on drafts. Particular thanks to the many activists pushing to #CloseRikers and to make *Renewable Rikers* a reality, and especially the memory of Cecil Corbin-Marks and Lesley K. McAllister.

*We must set the bar higher – indeed, our common future depends on it,*<sup>1</sup>

## I. INTRODUCTION

The period of 2020-2021 was filled with storms, floods, plagues, fires—catastrophes of Biblical proportions. Amidst so much pain and suffering, it somehow escaped notice that in the summer of 2021, the ocean caught fire.<sup>2</sup> A fossil fuel leak in the Gulf of Mexico led to the ocean surface burning for five hours.<sup>3</sup> In the 1960s, when the Cuyahoga River caught fire, that event contributed to adoption of the Clean Water Act and sparked massive changes in industrial practices. Yet, in 2021, the burning ocean barely even made the evening news! It seems astonishing that 2021 will not be remembered as “the year the ocean caught fire,” but that is only a sign of the times—of how many multiple, parallel catastrophes we are navigating. The ocean is burning? Well, so is Greece, Australia, and the Pacific Northwest. Meanwhile, New Orleans, Germany, Tennessee, and New York City<sup>4</sup> are underwater. The global COVID-19 pandemic has greatly compounded the difficulty of responding to these unnatural disasters,<sup>5</sup> while also being a harbinger of climate-related zoonotic pandemics to come.<sup>6</sup> Many, if not all, of these catastrophes are tied to anthropogenic climate change. Perhaps this is a turning point—the moment when the popular discourse begins to convey a sense of urgency—and climate policies become more than just another chit in the horse trading of politics.<sup>7</sup> If so,

---

1. Emma Farge, *Environmental Threats Are the Biggest Challenge to Human Rights*, REUTERS (Sept. 13, 2021) (quoting Michelle Bachelet, United Nations High Commissioner for Human Rights).

2. Rachel Feltman, *Videos Show a Surreal ‘Eye of Fire’ in the Gulf of Mexico After Gas Pipeline Ruptures at Sea*, POPULAR SCIENCE (July 3, 2021); *Environment NGO Warns of “Irreversible Impact from Pemex Pipeline Fire*, BBC MONITORING (July 5, 2021).

3. *Jacuzzi of Hell: X-Ray of the Apocalyptic Fire in the Gulf of Mexico That Outraged the World*, NOTICIAS FINANCIERAS (July 9, 2021).

4. Barbara Goldberg and Nathan Layne, *Ida’s Record Rain Floods New York-area Homes, Subways; At Least 44 Dead*, REUTERS (Sept. 3, 2021).

5. Farhana Sultana, *Climate Change, COVID-19, and the Co-Production of Injustices: A Feminist Reading of Overlapping Crises*, 22 SOC. & CULTURAL GEOGRAPHY 447 (2021); Reinhard Mechler et al., *Managing Unnatural Disaster Risk from Climate Extremes*, 4 NATURE CLIMATE CHANGE 235 (2014).

6. See, e.g., Rory Gib et al., *Ecosystem Perspectives Are Needed to Manage Zoonotic Risks in a Changing Climate*, 371 BMJ 3389 (2020); Jeanne M. Fair, *Climate Change is Driving the Expansion of Zoonotic Diseases, Research Outreach Andy Plump, Luck is not a Strategy: The World Needs to Start Preparing Now for the Next Pandemic*, STATNEWS (May 18, 2021).

7. See Eric McDaniel, *Joe Manchin’s Objections to a Clean Energy Program Threaten Biden’s Climate Promises*, NPR.ORG (Oct. 16, 2021).

it is about time. For far too long, progress toward decarbonization has been slight while the political classes chattered.<sup>8</sup>

Using extremely undiplomatic language, the United Nations (UN) Secretary General recently warned that our situation is “a code red for humanity.”<sup>9</sup> He was reacting to the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report, which warned that we are in grave danger, and that our window to ward off the most devastating effects of climate change is closing rapidly.<sup>10</sup> Commenting on National Oceanic and Atmospheric Administration’s (NOAA’s) 2022 Sea Level Report, a chief scientist was equally blunt, warning “there will be water in the streets” because of sea level rise attributable to human-caused climate change.<sup>11</sup> The Gulf of Mexico fire has everything to do with the IPCC’s Code Red report and with NOAA’s sea level report—the same insatiable demand for fossil fuels that drives companies like Pemex to drill in the deep ocean is the source of the carbon dioxide (CO<sub>2</sub>) we are pumping into the atmosphere, driving the climate crisis. Something has to give! Urgent action is needed to decarbonize our economy.

While the world was rocked by climate-related *unnatural* disasters, the social unrest sparked by the murder of George Floyd at the hands of Minneapolis police officer Derek Chauvin forced a long-overdue racial reckoning regarding over-policing, mass incarceration, and other forms of state-mediated violence against people of color. Both these profound social challenges must be navigated simultaneously, and it does not take much beyond a glance to show that these twin crises are deeply entwined. Global (and domestic) patterns of energy extraction, generation, and consumption have placed inexcusable burdens on the same communities

---

8. See Richard O. Faulk & John S. Gray, *Climate Change Regulation and Litigation: A “Lost Decade” of Controversy and Confrontation*, 61 THE ADVOC. 13, 13 (2012).

9. Press Release, Secretary General, Secretary General Calls Latest IPCC Climate Report ‘Code Red for Humanity’, Stressing Irrefutable Evidence of Human Influence, U.N. Press Release SG/20847 (Aug. 9, 2021).

10. See generally Valerie Masson-Delmotte et al., IPCC, 2021: Summary for Policymakers. In: *Climate Change 2021: The Physical Science Basis*, Intergovernmental Panel on Climate Change, (2021), <https://archive.ipcc.ch> [hereinafter IPCC 2021 Report].

11. Sarah Kaplan and Brady Dennis, *Sea Level to Rise One Foot Along U.S. Coastlines by 2050, Government Report Finds*, WASH. POST (Feb. 15, 2022) (quoting NOAA oceanographer William Sweet); NATIONAL OCEAN SERVICE – NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, 2022 SEA LEVEL RISE TECHNICAL REPORT (2022), <https://oceanservice.noaa.gov/hazards/sealevelrise/sealevelrise-tech-report-sections.html> [<https://perma.cc/UHA9-5XE5>].

of color that are facing state-sanctioned violence.<sup>12</sup> Calls for a just transition involve recognizing these interconnections, and intentionally planning with them in mind.<sup>13</sup>

This Article offers New York City's *Renewable Rikers* project as an example of how this might be done, and how communities might combine decarbonization with decarceration in order to build a more just and sustainable society. By putting racial justice and overburdened communities at the center of building a clean energy grid, *Renewable Rikers* offers a model for genuine and transformative change that confronts root causes of inequality and builds a better, fairer city. It does so by tying electrification and land use decisions to equity concerns, and by facilitating meaningful community involvement in these infrastructure decisions. In this fashion, *Renewable Rikers* offers a rebuke to the oft-repeated "keeping the lights on" justifications for maintaining and expanding polluting infrastructure,<sup>14</sup> and does so without excluding or demanding further sacrifices from those who can least afford it. Together the *Renewable Rikers* coalition and legislation they helped pass offer a roadmap for how creativity and community collaboration can ensure that energy infrastructure decisions achieve climate and social justice goals at the same time.

The Article begins with a brief overview of the twin challenges that New York City faces concerning climate change and criminal justice. Part III introduces recent New York State and New York City legislative activities targeting climate change at the state and city level. Part IV details the *Renewable Rikers*<sup>15</sup> plan as it was encoded in three recent New

---

12. See, e.g., Shalanda Baker, *Anti-Resilience: A Roadmap for Transformational Justice Within the Energy System*, 54 HARV. C.R.-C.L. L. REV. 1, 6 (2019); Maninder P. S. Thind et al., *Fine Particulate Air Pollution from Electricity Generation in the US: Health Impacts by Race, Income, and Geography*, 53 ENV'T SCI. & TECH. 14,010 (2019); Ann E. Carlson, *The Clean Air Act's Blind Spot: Microclimates and Hotspot Pollution*, 65 UCLA L. REV. 1,036 (2018).

13. See, e.g., SHALANDA BAKER, REVOLUTIONARY POWER 3–36 (2021) (detailing these connections in both personal and structural terms).

14. For a recent use of this rhetoric, see *NRG Astoria Replacement Project*, NRG (2022), <https://www.nrg.com/legal/astoria-peaking-generation-station-project.html> [<https://perma.cc/K9MF-AVLR>]. In all of its promotional materials for this gas fired power plant slated for an already overburdened community, NRG emphasized that its plan would "keep the lights on." For perspective on how this rhetoric was used in the past to justify siting similar facilities in overburdened communities, see Rebecca Bratspies, *Shutting Down Poletti: Human Rights Lessons from Environmental Victories*, 36 WISC. INT'L L.J. 247, 265–67 (2019); Rebecca Bratspies, *Environmental Justice, Sustainable Development, and the Fight to Shut the Poletti Power Plant*, in THE CAMBRIDGE HANDBOOK OF ENVIRONMENTAL JUSTICE AND SUSTAINABLE DEVELOPMENT (Sumudu A Attapatu, Carmen G. Gonzalez, and Sara L. Seck, eds. 2022).

15. I have written elsewhere about the *Renewable Rikers* plan itself. See Rebecca Bratspies, *Renewable Rikers, a Plan for Restorative Environmental Justice*, 66 LOYOLA L. REV. 371 (2021).

York City local laws. Part V, after laying out a description of the plan, then analyzes *Renewable Rikers* in light of the intersecting ramifications of New York’s 2019 Climate Leadership and Community Protection Act (CLCPA) and New York City’s 2017 commitment to permanently shut the jail at Rikers Island. This section situates *Renewable Rikers* at the intersection of the twin crises of the looming climate catastrophe, and the urgent societal need to confront racial injustice. It suggests that *Renewable Rikers* offers a model for swift, radical action on both fronts simultaneously. Finally, Part VI concludes with lessons gleaned from the campaign for both the CLCPA and *Renewable Rikers*, discussing what does and does not work and offering suggestions that can be applied elsewhere.

## II. THE SCOPE OF THE TWIN PROBLEMS

### A. The Climate Crisis

The global perils we face from climate change are well documented,<sup>16</sup> and “it is unequivocal and indisputable that humans are warming the planet.”<sup>17</sup> Indeed, the past five years have been the hottest on record since 1850.<sup>18</sup> The IPCC concluded in 2018 that the world must limit temperature rise to 1.5°C in order to avert catastrophic health impacts and prevent millions of climate change-related deaths.<sup>19</sup> To achieve this result, the IPCC called for reducing global anthropogenic carbon emissions by forty-five percent by 2030 and to net-zero by 2050. The United Nations Environmental Programme (UNEP) estimated that meeting that target would require states to reduce emissions by 7.6% each year from 2020 through 2030.<sup>20</sup> Given that the extreme circumstances associated with the COVID-19 pandemic lockdowns caused only a 6.5% decrease in carbon emissions,<sup>21</sup> it is hard to imagine states meeting this more ambitious target.

---

16. IPCC 2021 Report, *supra* note 10.

17. Matt McGrath, *Climate Change: IPCC Report* (Aug. 9, 2021), <https://www.bbc.com/news/science-environment-58130705> [<https://perma.cc/9978-Z77R>].

18. IPCC 2021 Report, *supra* note 10.

19. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, 2018: Summary for Policy Makers, GLOBAL WARMING OF 1.5°C: AN IPCC SPECIAL REPORT ON THE IMPACTS OF GLOBAL WARMING OF 1.5°C ABOVE PRE-INDUSTRIAL LEVELS (Masson-Delmotte et al., eds., 2018).

20. UNEP, *Emissions Gap Report 2019: Executive Summary* at X (2019).

21. Jeff Tollefson, *COVID Curbed Carbon Emissions in 2020—But Not By Much*, NATURE (Jan. 15, 2021).

One recent estimate reports that in order to have even a fifty-fifty chance of meeting the Paris Agreement target of keeping global warming below 1.5°C, nearly sixty percent of known oil and fossil gas reserves must remain in the ground unextracted.<sup>22</sup> Yet, governments around the world, and perhaps most particularly the United States, are not stepping up to meet the challenge of climate change.<sup>23</sup> Indeed, in a recent editorial that was published in 200 medical journals across the globe, a panoply of medical experts cautioned that “[t]he greatest threat to global public health is the continued failure of world leaders to keep the global temperature rise below 1.5°C and to restore nature.”<sup>24</sup> The World Health Organization similarly declared climate change to be the single biggest health threat facing humanity.<sup>25</sup> Nearly 1,400 scientists joined an article warning that humanity faces “untold suffering” unless we make immediate transformative changes by joining together with a shared sense of urgency, cooperation, and equity.<sup>26</sup> Equity is vitally important because the people being harmed first and most by the changing climate are those who contributed least to its causes and are least able to protect themselves and their communities against it.<sup>27</sup>

Yet, the 2021 United Nations Framework Convention on Climate Change Conference of the Parties (COP26) meeting ended without an agreement

---

22. Dan Welsby et al., *Unextractable Fossil Fuel in a 1.5 C World*, 597 NATURE 230 (2021).

23. The American Petroleum Institute’s nearly immediate response to Russia’s invasion of Ukraine was to call for more drilling, accelerated off shore leasing and permitting, and an accompanying rollback of regulatory safeguards. American Petroleum Institute (@APIenergy), TWITTER (Feb. 23, 2022, 6:17 PM), <https://twitter.com/APIenergy/status/1496670645047996418> [<https://perma.cc/WN5P-CZLA>]. Their republican allies in Congress amplified this message. Hiroko Tabuchi, *U.S. Oil Industry Uses Ukraine Invasion to Push for More Drilling at Home*, N.Y. TIMES (Feb. 26, 2022), <https://www.nytimes.com/2022/02/26/climate/ukraine-oil-lobby-biden-drilling.html> [<https://perma.cc/TF7Q-6HEN>]. By contrast, most other experts argue that the response to Russia’s aggression should be a more rapid shift away from fossil fuels. Sammy Roth, *One Way to Combat Russia? Move Faster on Clean Energy*, L.A. TIMES (Feb. 26, 2022), <https://www.latimes.com/business/story/2022-02-26/one-way-to-combat-russia-move-faster-on-clean-energy> [<https://perma.cc/SA5T-D5ZD>]; Michael Birnbaum and Steven Mufson, *E.U. Will Unveil a Strategy to Break Free From Russian Gas, After Decades of Dependence*, WASH. POST (Feb. 23, 2022), <https://www.washingtonpost.com/climate-environment/2022/02/23/russia-ukraine-eu-nord-stream-strategy-energy/> [<https://perma.cc/76ZW-S2AS>].

24. Lukoye Atwoli et al., *Call for Emergency Action to Limit Global Temperature Increases, Restore Biodiversity, and Protect Health*, 398 LANCET 939, 941 (2021).

25. World Health Organization, *COP26 Special Report on Climate Change and Health / The Health Argument for Climate Action 2* (2021).

26. William J. Ripple et al., *World Scientists’ Warning of a Climate Emergency 2021*, 71 BIOSCIENCE 894, 897 (2021).

27. Kyle S. Van Houtan et al., *The Geographic Disparity of Historical Greenhouse Emissions and Projected Climate Change*, in 7 SCIENCE ADVANCES 473 (2021).

for immediate, bold, and coordinated climate action.<sup>28</sup> The wealthy countries primarily responsible for the climate crisis not only failed to make commitments to keep planetary warming below 1.5°C, but also failed to address the needs of the most vulnerable through adequate adaptation funding.<sup>29</sup> We have already locked in a significant degree of warming.<sup>30</sup> As a result, there is *very high confidence* that glaciers will continue to melt and it is *virtually certain* that means sea levels will continue to rise throughout the century.<sup>31</sup> That means that, at best, current patterns of heat waves, wildfires, and devastating floods will continue.<sup>32</sup> If, on the other hand, the world continues to dither and obfuscate, failing to take real action, “the hellscape we leave to our grandchildren will be unrecognizable.”<sup>33</sup> It is clear that only rapid, concerted action can change this trajectory for the better.

### B. The Mass Incarceration Crisis

The anger that drove protests after a bystander videotaped officer Derek Chauvin kneeling on George Floyd’s neck until he died was a long time building. Between 2015 and October 2021, police officers across the

---

28. At the last minute, the Glasgow Pact—the already weak consensus statement from the COP—was watered down even further by changing the proposed “gradual phase-out” of coal fired power plants to a “gradual phase-down.” Mark Hertsgaard, *The COP26 President Fights Back Tears as the Summit Comes to a Close*, THE NATION (Nov. 15, 2021), <https://www.thenation.com/article/environment/cop26-glasgow-deal-pact/#:~:text=G%20lasgow%2C%20S%20cotland%E2%80%94COP26,to%20%E2%80%9Cphase%20out%E2%80%9D%20coal> [https://perma.cc/5CTL-CELL].

29. Michael Sheldrick, *COP26: A Failure for the Planet and the World’s Poor*, FORBES (Nov. 15, 2021), <https://www.forbes.com/sites/globalcitizen/2021/11/15/cop26-a-failure-for-the-planet-and-the-worlds-poor/?sh=405685772275> [https://perma.cc/K5CQ-YAWT].

30. IPCC 2021 Report, *supra* note 10, at B.4 (noting some scientists predict that we have already locked in warming that exceeds the Paris Agreement’s 1.5°C target); Chen Zhou et al., *Greater Committed Warming After Accounting for the Pattern Effect*, 11 NATURE CLIMATE CHANGE 132 (2021).

31. IPCC 2021 Report, *supra* note 10, at §§ B.5.2-B.5.3, SPM 21.

32. *Id.* at §§ C.2-C.2.7, D.1-D.2.4, SPM 24-25, SPM 27-31.

33. Eugene Robinson, *The U.N.’s dire climate report confirms: We’re out of time*, WASH. POST (Aug. 10, 2021), <https://www.washingtonpost.com/opinions/2021/08/09/united-nations-climate-report-dire/> [https://perma.cc/3294-S3LA].

United States fatally shot<sup>34</sup> more than 5,000 people.<sup>35</sup> There were stark racial and ethnic disparities among those killed in these shootings—Black Americans were more than twice as likely to be fatally shot by the police than were their white compatriots.<sup>36</sup> The New York Police Department (NYPD) spent a decade fighting efforts to reveal the race and ethnicity of those shot by police officers.<sup>37</sup> The information that is available shows that five times as many Black New Yorkers as white New Yorkers died at the hands of the police.<sup>38</sup> The Black Lives Matter movement<sup>39</sup> and the Say Her Name campaign<sup>40</sup> are responses to both this violence perpetrated by police officers and the attendant reality that those officers rarely face any consequences for such actions, whether through the criminal justice system or through workplace discipline.<sup>41</sup>

Extrajudicial killings are the most visible aspect of a profoundly disturbing structure for how criminal law is enforced in the United States.<sup>42</sup>

---

34. Importantly, shootings are not the only way that police officers kill civilians. Indeed, the murders of George Floyd and Eric Gardner involved police officers suffocating their victims.

35. Julie Tate et al., *Fatal Force*, WASH. POST (Jan. 18, 2022), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [<https://perma.cc/86LA-EW98>].

36. *Id.*

37. *NYCLU v. New York City Police Department (Seeking Access to Racial Data for Police Shootings)*, NYCLU ACLU OF NEW YORK, <https://www.nyclu.org/en/cases/nyclu-v-new-york-city-police-department-seeking-access-racial-data-police-shootings> [<https://perma.cc/XL3F-TYF9>].

38. *See id.* (In 1996 and 1997 more than eighty-nine percent of those shot by police were Black or Latinx.); Mara Gay, *Why Was a Grim Report on Police-Involved Deaths Never Released?*, N.Y. TIMES (June 19, 2020), <https://www.nytimes.com/2020/06/19/opinion/police-involved-deaths-new-york-city.html> [<https://perma.cc/DU8G-ZZW7>].

39. BLACK LIVES MATTER, <https://blacklivesmatter.com/>.

40. *#SayHerName*, THE AFRICAN AMERICAN POLICY FORUM, <https://www.aapf.org/sayhername>.

41. In 2014, white NYPD officer Daniel Pantello killed Eric Gardner, a Black man, by subjecting him to an illegal chokehold. Gardner was being arrested for selling individual cigarettes (so-called loosies)—conduct that was a crime largely because it involved selling cigarettes without paying the requisite taxes. This is typically a misdemeanor offense, but in the most extreme circumstances can be a class E felony with a maximum punishment of five years in prison. N.Y. Cigarette and Tobacco Product Tax Law § 1814(a)-(b) (Westlaw 2009). Yet for Gardner, the punishment, without the involvement of a judge or jury, was death. A viral video showed Pantello choking Gardner while other officers held Gardner to the ground. The medical examiner ruled Gardner’s death a homicide, but a Staten Island grand jury refused to indict Pantello. J. David Goodman & Al Baker, *Wave of Protests After Grand Jury Doesn’t Indict Officer in Eric Gardner Chokehold Case*, N.Y. TIMES (Dec. 3, 2014), <https://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html> [<https://perma.cc/7LS7-L2LR>].

42. In this New York reflected the rest of the country where Black Americans overwhelmingly reported facing discrimination at the hands of the police (and elsewhere) while



Black people are more likely to be stopped by the police,<sup>43</sup> more likely to be arrested for petty infractions,<sup>44</sup> more likely to be overcharged by prosecutors,<sup>45</sup> and more likely to be sentenced to prison.<sup>46</sup> As Aya Gruber wrote in 2018 “the criminal system is a, if not *the*, primary site of racial injustice in America.”<sup>47</sup> The collateral consequences for those enmeshed in this skewed criminal law system extend to nearly every aspect of life, including permanent loss of the right to vote,<sup>48</sup> hindered access to

---

white Americans saw no problems. Seth Motel & Carroll Doherty, *From Courts to Cops to Shops: Where Blacks Perceive Discrimination*, PEW RSCH. CTR. (Nov. 4, 2013), <https://www.pewresearch.org/fact-tank/2013/11/04/from-courts-to-cops-to-shops-where-blacks-perceive-discrimination/> [https://perma.cc/7AMR-H9SB].

43. More than eighty percent of those suffering *Terry* stops at the hands of the New York Police Department were Black or Latinx. *Floyd v. City of New York*, 959 F. Supp. 2d 540, 556 (S.D.N.Y. 2013); *id.* at 559-61 (these “stop and frisks” unconstitutionally targeted Black and Hispanic young men); Harold Stolper and Jeff Jones, *The Enduring Discriminatory Practice of Stop & Frisk* (Apr. 16, 2018), <https://www.cssny.org/news/entry/stop-and-frisk> [https://perma.cc/HLH8-FPQN] (mapping the zip codes with disproportionate stop and frisk).

44. Ashley Southall, *Subway Arrests Investigated Over Claims People of Color are Targeted*, N.Y. TIMES (Jan. 13, 2020), <https://www.nytimes.com/2020/01/13/nyregion/letitia-james-fare-beating-nypd.html> [https://perma.cc/7CJQ-QUQH]; N.Y. ADVISORY COMM. TO THE U.S. COMM’N ON CIV. RTS., THE CIVIL RIGHTS IMPLICATIONS OF “BROKEN WINDOWS” POLICING IN NYC AND GENERAL NYPD ACCOUNTABILITY TO THE PUBLIC 10-12 (2018), <https://www.usccr.gov/files/pubs/2018/03-22-NYSAC.pdf> [https://perma.cc/MR7H-5U7U] (describing the disproportionate impact of “broken window” policing on people of color as a “racial tax.”); Sarah Ryley et al., *Daily News Analysis Finds Racial Disparities in Summonses for Minor Violations in ‘Broken Windows’ Policing*, N.Y. DAILY NEWS (Aug. 4, 2014), <https://www.nydailynews.com/new-york/summons-broken-windows-racial-disparity-garner-article-1.1890567> [https://perma.cc/583T-WBXL].

45. Alana Rosenberg et al., *Comparing Black and White Drug Offenders: Implications for Racial Disparities in Criminal Justice and Reentry Policy and Programming*, 47 J. DRUG ISSUES 132, 138 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5614457/> [https://perma.cc/5W2P-HEKL].

46. See generally Michelle Alexander, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDESS* (2010) (arguing mass incarceration strategies had their roots in structural racism, and in the racist political calculations of specific ambitious politicians); See Ruth Delaney et al., *AMERICAN HISTORY, RACE, AND PRISON* (2018) <https://www.vera.org/reimagining-prison-web-report/american-history-race-and-prison> [https://perma.cc/4RR2-DPRC].

47. Aya Gruber, *Equal Protection Under the Carceral State*, 112 NW. L. REV. 1137, 1139 (2018) (quoting Carol S. Steiker, *The Marshall Hypothesis Revisited*, 52 HOW. L.J. 525, 547 (2009)).

48. Jean Chung, *Voting Rights in the Era of Mass Incarceration*, THE SENTENCING PROJECT (July 28, 2021), <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/> [https://perma.cc/QU5B-663M].

housing,<sup>49</sup> reduced eligibility for employment,<sup>50</sup> and decreased eligibility for certain welfare benefits.<sup>51</sup>

Rikers Island is a particularly bleak symbol of this unjust system of mass incarceration and its racialized dynamics. Built out of trash<sup>52</sup> by forced prison labor,<sup>53</sup> the very name Rikers Island has become synonymous with gratuitous and excessive violence directed at prisoners.<sup>54</sup> Indeed, Rikers ranks as one of the ten worst correctional facilities in the United States.<sup>55</sup> Even though the vast majority of those detained on Rikers Island are pre-trial detainees—people who have been convicted of nothing and are in custody only because they cannot afford bail<sup>56</sup>—public officials routinely dehumanize them and refer to them as “violent criminals.”<sup>57</sup>

---

49. Vera Institute, *Housing*, <https://www.vera.org/ending-mass-incarceration/providing-second-chances/housing> [<https://perma.cc/F23Y-5V3V>] (noting that most cities bar formerly incarcerated persons from public housing).

50. Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Incarceration*, 160 PENN L. REV 1789, 1800-01 (2012) (describing the multiple collateral consequences that follow incarceration). The “ban the box” campaign has worked to remove questions about conviction and arrest history from job applications in order to lessen the disadvantages and discrimination that formerly incarcerated workers face. See generally Beth Avery & Han Lu, *Ban the Box*, NATIONAL EMPLOYMENT LAW PROJECT (2021), <https://s27147.pcdn.co/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide-Oct-2020.pdf> [<https://perma.cc/KJL4-KHYH>].

51. Darrel Thompson & Ashley Burnside, *No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions*, THE CENTER FOR LAW AND SOCIAL POLICY (Aug. 2021), <https://www.clasp.org/publications/report/brief/no-more-double-punishments> [<https://perma.cc/3PTH-345N>].

52. *Fumes a Problem at Jail: Board Finds Rikers Island Will Not Be Habitable if Dump Fires Continue*, N.Y. TIMES (Oct. 29, 1931); *Rikers Island Use as Dump Denounced*, N.Y. TIMES (Nov. 27, 1938); *Rikers Island Dumping Nuisance*, N.Y. TIMES (July 8, 1894); *Rikers Island Harbor Line: No Opposition to the Plan of Dumping Refuse There*, N.Y. TIMES (Jan. 17, 1893).

53. For a thorough analysis of forced labor at Rikers Island, see Jayne Mooney and Jarrod Shanahan, *New York City’s Captive Work Force: Remembering the Prisoners Who Built Rikers*, 56 INT’L J. L., CRIME & JUST. 13 (2019).

54. See *Sheppard v. Phoenix*, 210 F. Supp. 2d 450, 451 (S.D.N.Y. 2002) (finding that guards directed excessive levels of violence against prisoners in order to “harm rather than restrain” inmates). See also N.Y.C. DEP’T OF CORRECTIONS, N.Y.C. DEP’T OF CORRECTIONS FY 07-14 (2014), <https://comptroller.nyc.gov/wp-content/uploads/documents/Corrections-PP-10-16-2014.pdf> [<https://perma.cc/ZKY7-B8V5>] (detailing inmate fights and assaults, and use of force by correctional staff against inmates).

55. James Ridgeway & Jean Casella, *America’s 10 Worst Prisons: Rikers Island*, MOTHER JONES (May 14, 2014), <https://www.motherjones.com/politics/2013/05/america-10-worst-prisons-rikers-island-new-york-city/> [<https://perma.cc/AM2K-JJGU>].

56. See U.S. Dep’t of Justice, *CRIPA Investigation of the New York Department of Correction Jails on Rikers Island* (2014), <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf> [<https://perma.cc/8VG5-G9GM>] [hereinafter Bharara Report].

57. Dane Enerio, *NYC to Release ‘Worst Kind of Criminals’ from Rikers Jail Early Over Officer Shortage*, INT’L BUS. TIMES (Sept. 7, 2021), <https://www.ibtimes.com/nyc->

COVID-19 prompted a new kind of humanitarian crisis on Rikers Island. Those detained in the jail had a disproportionate risk of contracting the virus.<sup>58</sup> Social distancing was impossible and the incarcerated were not given masks.<sup>59</sup> A report to the New York City Board of Correction detailed crowded conditions and official indifference.<sup>60</sup> Thousands of those detained tested positive for COVID-19—more than 500 during the first month of the pandemic, even though only about eighteen percent of the prison population was tested.<sup>61</sup> Corrections officers began calling out sick, either because they too had the virus or because they were using sick days as “an unlimited vacation pool.”<sup>62</sup> The already bad conditions deteriorated as pre-trial detainees were held for days and weeks in units without beds.<sup>63</sup> The civilian oversight board asked that the state and the city work together “to rapidly decrease the jail population as a response to the impending public health crisis,” and release the most vulnerable from Rikers.<sup>64</sup> Yet, then-Governor Cuomo and Mayor Bill DeBlasio

---

release-worst-kind-criminals-rikers-jail-early-over-officer-shortage-3289861 [https://perma.cc/JCV7-6EVS]; Benny Bosco Jr., *Only Most Violent Criminals in Jail. Danger to Officers*, CATS ROUNDTABLE (Sept. 13, 2020), <https://www.catsimatidis.com/benny-boscio-jr-only-most-violent-criminals-in-jail-danger-to-officers/> [https://perma.cc/82UB-PT97].

58. Justin Chan, Kelsey Burke, & Rachel Bedard, *COVID-19 in the New York City Jail System: Epidemiology and Health Care Response, March-April 2020*, 136 PUB. HEALTH REP. 375 (Mar. 5, 2021).

59. Reuven Blau, *How the City Failed Three Men Who Died of COVID-19 in Jail: Watchdog*, THE CITY (Mar. 8, 2021), <https://www.thecity.nyc/2021/3/8/22318504/nyc-failed-inmates-died-covid-rikers-jails> [https://perma.cc/2EM3-9M2F].

60. Kate McMahon, *Draft COVID PDRB Report to Agencies*, NEW YORK BOARD OF CORRECTION (Dec. 24, 2020), [https://s3.documentcloud.org/documents/20501179/draft-covid-pdrb-report-to-agencies\\_redacted-3.pdf](https://s3.documentcloud.org/documents/20501179/draft-covid-pdrb-report-to-agencies_redacted-3.pdf) [https://perma.cc/T6YX-74JG].

61. Of the 5,385 persons incarcerated at Rikers Island in March 2020, 978 were tested for COVID-19. Of those, 500 tested positive. *See* Chan et al., *supra* note 58, at 377 (indicating that 978 inmates were tested); McMahon, *supra* note 60, at 8 (giving total population incarcerated at Rikers).

62. Jonah E. Bromwich and Jan Ransom, *10 Deaths, Exhausted Guards, Rampant Violence: Why Rikers is in Crisis*, N.Y. TIMES (Sep. 15, 2021) <https://www.nytimes.com/2021/09/15/nyregion/rikers-island-jail.html> [https://perma.cc/2AME-EH7H] (quoting Department of Corrections Commissioner Vincent Schiraldi).

63. *Id.*

64. The Board specifically prioritized those over fifty, those with underlying health conditions, those detained for technical parole violations, and those serving sentences of less than a year. McMahon, *supra* note 60, at 8.

largely ignored these calls to release those at risk.<sup>65</sup> At the same time, prosecutors continued to request pre-trial detention, and judges continued to send vulnerable people to Rikers Island.<sup>66</sup>

### III. RESPONDING TO CLIMATE CHANGE: DECARBONIZATION

#### A. *New York State Climate Leadership and Community Protection Act*

Nearly a decade ago, Rachel Salcido cautioned that “[a]ny bridge that represents a true [energy] transition must be crossed today.”<sup>67</sup> She lamented that not only did the bridge not exist, but that there were no real plans to build the bridge (meaning to reduce greenhouse gas (GHG) emissions and/or to build an electric grid capable of handling a zero-carbon economy).<sup>68</sup> Here we are, a decade later. At first glance, it seems we are largely still mired in the same disputes from a decade ago. We are still fighting about the social cost of carbon,<sup>69</sup> and Enbridge is moving forward with the Line 3 pipeline over Indigenous and environmental objections.<sup>70</sup> Oil and gas production still receives massive subsidies. However, a closer look shows

---

65. Brennan Center, *Letter to Governor Cuomo Re: Further Release of New York State Incarcerated Population at Risk of Coronavirus Infection* (Mar. 30, 2020), <https://www.brennancenter.org/our-work/research-reports/letter-gov-cuomo-supporting-release-incarcerated-new-yorkers-risk-covid> [https://perma.cc/UPK6-Y6ZU]; Nick Pinto, *If Coronavirus Deaths Start Piling Up in Rikers Island Jails, We'll Know Who to Blame*, THE INTERCEPT (Mar. 23, 2020), <https://theintercept.com/2020/03/23/coronavirus-rikers-jail-de-blasio-cuomo/> [https://perma.cc/6SFA-Q6AW].

66. Gloria Pazmino, *Amid Rikers Island Crisis, District Attorneys Accused of Failing to Act*, NY1.COM (Sept. 23, 2021), <https://www.ny1.com/nyc/all-boroughs/politics/2021/09/24/rikers-island-nyc-crisis-district-attorneys-accused-of-failing-to-act-high-bail-requests> [https://perma.cc/3HSB-YWEK].

67. Rachel Salcido, *Rationing Environmental Law in a Time of Climate Change*, 46 LOY. U. CHI. L.J. 617, 624 (2015).

68. *Id.*

69. *Louisiana v. Biden*, No. 2:21-CV-01074 (W.D. La. Feb. 11, 2022) (enjoining federal agencies from considering the social cost of carbon in regulatory decision-making); *Missouri v. Biden*, No. 4:21-cv-00287-AGF (E.D. Mo. Aug. 31, 2021) (finding that Missouri and other states did not have standing to challenge the Biden administration’s social cost of carbon executive order); Exec. Order No. 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* § 5, 86 Fed. Reg. 7073 (Jan. 20, 2021) (establishing a working group to set a social cost of carbon for use in federal decision-making); Maxine Joselow, *‘Seriously flawed’: Experts Clash Over social cost of Carbon*, E&E NEWS (Aug. 24, 2021 05:38 AM), <https://www.eenews.net/articles/seriously-flawed-experts-clash-over-social-cost-of-carbon/> [https://perma.cc/GEJ7-QRBD].

70. Nia Williams, *Enbridge’s Long-Delayed Line 3 Oil Pipeline Project to Start Up Oct. 1*, REUTERS (Sept. 29, 2021), [https://www.reuters.com/business/energy/enbridge-completes-line-3-oil-pipeline-replacement-project-starts-linefill-2021-09-29/#:~:text=CALGARY%2C%20Alberta%2C%20Sept%202029%20\(,projects%20were%20unable%20to%20overcome](https://www.reuters.com/business/energy/enbridge-completes-line-3-oil-pipeline-replacement-project-starts-linefill-2021-09-29/#:~:text=CALGARY%2C%20Alberta%2C%20Sept%202029%20(,projects%20were%20unable%20to%20overcome) [https://perma.cc/4GHF-SH5Y].

the beginnings of a profound change. The Keystone XL pipeline was cancelled,<sup>71</sup> as was the Atlantic pipeline,<sup>72</sup> the Williams pipeline,<sup>73</sup> and the Byhalia pipeline.<sup>74</sup> State after state have adopted significant renewable energy targets—with thirteen states pledging to reach net-zero by mid-century.<sup>75</sup> New York has been particularly ambitious.

In 2019, New York took a major step in Salcito's metaphorical climate bridge-building when the state legislature enacted the Climate Leadership and Community Protection Act (CLCPA).<sup>76</sup> The Act itself was a compromise, a hybrid between the ambitious, climate justice focused Climate and Community Protection Act championed by liberals in the state legislature,<sup>77</sup> and the much more modest approach favored by then-governor Cuomo.<sup>78</sup> After much back room wangling and public drama, in a legislative session

71. Matthew Brown, *Keystone XL Pipeline Nixed After Biden Stands Firm on Permit*, AP (June 9, 2021), <https://apnews.com/article/donald-trump-joe-biden-keystone-pipeline-canada-environment-and-nature-141eabd7cca6449dfbd2dab8165812f2> [https://perma.cc/M8N9-FC4D]; *With a Pen Stroke, President Biden Cancels Keystone XL Pipeline Project*, DW.COM (Jan. 21, 2021), <https://www.dw.com/en/with-a-pen-stroke-president-joe-biden-cancels-keystone-xl-pipeline-project/a-56285371> [https://perma.cc/T39W-9AB8].

72. Ivan Penn, *Atlantic Coast Pipeline Cancelled as Delays and Costs Mount*, N.Y. TIMES (July 5, 2020), <https://www.nytimes.com/2020/07/05/business/atlantic-coast-pipeline-cancel-dominion-energy-berkshire-hathaway.html> [https://perma.cc/EYN2-67GR].

73. Emily Ponticorvo, *New York to Williams Pipeline: Bye Forever*, GRIST (May 18, 2020), <https://grist.org/beacon/new-york-to-williams-pipeline-bye-forever/> [https://perma.cc/B9TL-S6DA].

74. *Victory for Southwest Memphis: Byhalia Pipeline is Done*, SOUTHERN ENVIRONMENTAL LAW CENTER (July 2, 2021), [www.southernenvironment.org/news/victory-for-southwest-memphis-byhalia-pipeline-is-done/](http://www.southernenvironment.org/news/victory-for-southwest-memphis-byhalia-pipeline-is-done/) [https://perma.cc/6UB3-8HZE].

75. H.B. 329, 31st Leg. (Haw. 2018); N.S.B. S6599, Reg. Sess. (N.Y. 2019); S.B. 254, 80th Sess. (Nev. 2019); R.C.W. 70A.45.020 (Wash. 2020); H.B. 714 (Va. 2020); H.B. 688 (Vt. 2020); S.B. 2408 (Ill. 2021) (enacting net zero legislation); *see also* E.O.-B-55-18 (Cal. 2018); E.O. no. 8-2019 (Mont. 2019); E.O. no. 10 FY 19/20 (Me. 2019); E.D. no. 2020-10 (Mich. 2020); E.O. no. JBE 2020-18 (La. 2020); E.O. no. 1443 (Mass. 2020) (enacting net zero commitment is via executive order).

76. The New York State Climate Leadership and Community Protection Act, S.B. 5499 (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/s6599> [https://perma.cc/DC4U-TY2U].

77. Lew Daly, *The Climate and Community Protection Act*, DEMOS (Mar. 20, 2019), <https://www.demos.org/policy-briefs/climate-and-community-protection-act> [https://perma.cc/3JST-YKKW] (emphasizing key labor standards in this bill—standards that were omitted in the CLCPA).

78. Justine Calma, *Cuomo Guts Key Labor Provisions in Last-Minute Changes to New York's Landmark Climate Bill*, GRIST (June 18, 2019), <https://grist.org/article/cuomo-guts-key-labor-provisions-in-last-minute-changes-to-new-yorks-landmark-climate-bill/> [https://perma.cc/U26V-QK3E].

that lasted well into the night, the CLCPA was approved along party lines.<sup>79</sup> The bill was then sent to the then-Governor who had worked behind the scenes to try to water down its provisions.<sup>80</sup> At first, it was unclear whether then-Governor Cuomo would sign the bill and its accompanying Environmental Justice bill.<sup>81</sup> Ultimately, in December 2019, then-Governor

---

79. David Roberts, *New York Just Passed the Most Ambitious Climate Target in the Country*, VOX (July 22, 2019), <https://www.vox.com/energy-and-environment/2019/6/20/18691058/new-york-green-new-deal-climate-change-cuomo> [https://perma.cc/DQD7-2LAU]; *New York State Takes Historic Action to Address Climate Change by Passing the Climate Leadership and Community Protection Act*, WEACT (June 21, 2019), <https://www.weact.org/2019/06/new-york-state-takes-historic-action-to-address-climate-change-by-passing-the-climate-leadership-and-community-protection-act/> [https://perma.cc/DTK9-WM52] (reporting the vote totals for both the Senate and the Assembly).

80. Justine Calma, *Cuomo Guts Key Labor Provisions in Last-Minute changes to New York's Landmark Climate Bill*, GRIST (June 18, 2019), <https://grist.org/article/cuomo-guts-key-labor-provisions-in-last-minute-changes-to-new-yorks-landmark-climate-bill/> [https://perma.cc/SZH7-CXA7]. In many ways the CLCPA was the culmination of a pitched political battle in New York. Its passage, like other progressive priorities, had been delayed year after year by eight conservative Democrats who caucused with the Republicans—giving the Republicans control of the state senate despite Democrats having a numerical majority. Jen Kirby, *The Primary Defeat of New York's 'Independent Democrats,' Explained*, VOX (Sept. 14, 2018), <https://www.vox.com/policy-and-politics/2018/9/14/17859200/idc-new-york-primaries-democrats-biaggi-klein> [https://perma.cc/X5F3-7PBT]; In exchange these turncoat legislators received perquisites and, in some cases, monetary payments for their role in keeping the state senate in minority Republican hands. Jesse McKinley, *For Group of Breakaway Democrats in New York, It Pays to Be No. 2*, N.Y. TIMES (May 9, 2017), <https://www.nytimes.com/2017/05/09/nyregion/new-york-independent-democratic-conference-republicans.html> [https://perma.cc/MD9C-6Y6C]. The Republican senate used their majority to block enactment of the CLCPA for three years in a row. Most of these turn-coat democratic lawmakers, collectively known as the Independent Democratic Caucus (IDC), were defeated in 2018, when activists organized primary challenges under a “No IDC” banner. Eoin Higgins, *A Group of Democrats Joined Republicans to Give Them Power in New York. On Election Day, New Yorkers Wiped Them Out*, THE INTERCEPT (Sept. 13, 2018), <https://theintercept.com/2018/09/13/new-york-democratic-primary-cuomo-idc/> [https://perma.cc/NBJ4-HXBK]; With the IDC defeated, control of the state senate shifted from Republican to Democratic hands. In their first legislative session, the Democratic senate passed many long-delayed progressive bills, including rent regulation and early voting, in addition to the CLCPA. Vivian Wang and Jesse McKinley, *A Profound Democratic Shift in New York: We Seized the Moment*, N.Y. TIMES (June 22, 2019), <https://www.nytimes.com/2019/06/22/nyregion/albany-laws-ny-progressive.html> [https://perma.cc/5JDV-ZMH9].

81. The timing for the actions mandated by the CLCPA hinged on enactment of the companion environmental justice bill. Although Cuomo signed the CLCPA in July, he delayed signing the companion bill until nearly the last possible minute. Rachel Ramirez, *Time is Running Out for Cuomo to Make New York's Ambitious Climate Law a Reality*, GRIST (Dec. 17, 2019), <https://grist.org/politics/time-is-running-out-for-cuomo-to-make-new-yorks-ambitious-climate-law-a-reality/> [https://perma.cc/GYQ5-KH4F]; Amy Turner, *Cuomo's Unfinished Business on the Climate*, N.Y. DAILY NEWS (Dec. 6, 2019), <https://www.nydailynews.com/opinion/ny-oped-cuomo-unfinished-business-climate-20191206-ubqbltfokrfcfnjisi6jxeo3qla-story.html> [https://perma.cc/F5QZ-3MPR].

Cuomo decided to declare victory and claimed the CLCPA as one of his own crowning political achievements.<sup>82</sup>

Recognizing that “[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York,”<sup>83</sup> the CLCPA embraced a strategic combination of energy efficiency, renewable energy, and clean transportation investments. Overall, the CLCPA strengthened New York’s statewide mandates for both emissions reductions and the adoption of renewable energy, setting some of the country’s most ambitious targets to date.<sup>84</sup> It committed New York to limits its overall GHG emissions to sixty percent of 1990 levels by 2030 and fifteen percent of 1990 emissions by 2050.<sup>85</sup> Central to the CLCPA was its energy justice mandate—the CLCPA requires that agencies simultaneously ensure that their decisions “shall not disproportionately burden disadvantaged communities.”<sup>86</sup>

The CLCPA’s targets for the energy sector are particularly ambitious.<sup>87</sup> The CLCPA commits New York to deriving seventy percent of the state’s electricity from renewable energy by 2030.<sup>88</sup> By 2040, the entire energy supply must be emission free.<sup>89</sup> To date, the New York State Department of Environmental Conservation has used Section Two of the CLCPA to reject two applications for new fossil fuel infrastructure.<sup>90</sup> In addition to

---

82. See, e.g., Andrew Cuomo, *Making Progress Happen: 2020 State of the State* 14 (Jan. 8, 2020), <https://www.governor.ny.gov/sites/default/files/atoms/files/2020StateoftheStateBook.pdf> (claiming that “[u]nder Governor Cuomo, New York is leading the nation in combatting the urgent threat of climate change with ambitious goals and a concrete plan for achieving them” and touting the CLCPA as “the most aggressive climate change law in the country”).

83. New York State Climate Leadership and Community Protection Act (CLCPA) § 1 (2019).

84. *Id.*

85. The legislation contemplates that the state will achieve net zero by offsetting these remaining fifteen percent of emissions.

86. CLCPA § 2 (2019).

87. The offset projects specifically exclude the electricity sector and prohibit waste to energy or biofuels projects.

88. CLCPA § 4, 2019 N.Y. Laws 106 (amending Public Service Law § 66-p(2)).

89. *Id.*

90. See N.Y. State Dep’t of Env’t Conservation, *Notice of Denial of Title V Air Permit: Danskammer Energy*, 2 (Oct. 27, 2021), [https://www.dec.ny.gov/docs/administration\\_pdf/danskammer10272021.pdf](https://www.dec.ny.gov/docs/administration_pdf/danskammer10272021.pdf) [<https://perma.cc/5RL3-82S5>]; N.Y. State Dep’t of Env’t Conservation, *Notice of Denial of Title V Air Permit: Astoria Gas Turbine Power*, 2, 17 (Oct. 27, 2021), [https://www.dec.ny.gov/docs/administration\\_pdf/nrgastoriadecision10272021.pdf](https://www.dec.ny.gov/docs/administration_pdf/nrgastoriadecision10272021.pdf) [<https://perma.cc/PM3F-UDXQ>]. Although DEC rejected the Astoria Gas

these overall emissions limits, the CLCPA also set specific benchmarks for the adoption of renewables, including nine gigawatts (GW) of offshore wind by 2035, six GW of solar by 2025, and three GW of energy storage by 2030.<sup>91</sup>

To ensure that all state actions pull in the same direction (toward emissions reductions) the CLCPA requires that every state agency assess whether their actions to issue permits, approvals, or other decisions are consistent with the state's goal of reducing GHG emissions to the level specified in the CLCPA.<sup>92</sup> It also required the state Department of Environmental Conservation (DEC) to set a social cost of carbon to be used in all permitting and other regulatory decision-making.<sup>93</sup> In December 2020, DEC issued guidance setting the value of carbon at \$121/ton for use in incorporating climate change considerations into State decision-making.<sup>94</sup>

Moreover, in promulgating regulations to implement these goals, the CLCPA explicitly requires that agencies prioritize environmental justice in disadvantaged communities.<sup>95</sup> To this end, Section 7(3) of the CLCPA

---

Title V permit application primarily on emissions grounds, the agency also denied the permit for failure to comply with the Section 7(3) directive that permits not to disproportionately burden disadvantaged communities. The DEC reiterated that it was *required* to prioritize reductions of greenhouse gases and co-pollutants in such communities (emphasis added). NRG has appealed the denial of its Title V permit application and has requested an adjudicatory hearing on the denial. *New Hearing Notices for ENB Issue 2/2/2022*, NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION (2022), [https://www.dec.ny.gov/enb/20220202\\_hearings.html](https://www.dec.ny.gov/enb/20220202_hearings.html) [<https://perma.cc/N6WH-G4EY>]. However, since then, DEC has postponed decisions on two other fossil fuel permit requests. Paul Mantius, *DEC Gives Greenidge Time Window to Expand Bitcoin Mining as Air Permit Review Continues*, THE ITHACA VOICE (Feb. 9, 2022), <https://ithacavoice.com/2022/02/dec-gives-greenidge-time-window-to-expand-bitcoin-mining-as-air-permit-review-continues/> [<https://perma.cc/3HCY-S7YN>] (postponing decision on Title V permit for peaker plant turned Bitcoin miner); Rosemary Misdary, *Following Protest, NY Postpones Decision on Natural Gas Permit for Greenpoint Energy Center*, GOTHAMIST (Feb. 1, 2022), <https://gothamist.com/news/following-protest-ny-postpones-decision-natural-gas-permit-greenpoint-energy-center> [<https://perma.cc/3WVZ-UXMR>].

91. CLCPA § 4, 2019 N.Y. Laws 106 (amending Public Service Law § 66-p(2)).

92. CLCPA § 7(2).

93. CLCPA § 2, 2019 N.Y. Laws 106 (amending the environmental conservation law); CLCPA § 7(2) 2019 N.Y. Laws 106.

94. Andrew Cuomo & Basil Seggos, *Establishing a Value of Carbon*, N.Y. State Dep't of Env't Conservation, 4 (2021), [https://www.dec.ny.gov/docs/administration\\_pdf/vocguidrev.pdf](https://www.dec.ny.gov/docs/administration_pdf/vocguidrev.pdf) [<https://perma.cc/3KDT-JPRA>]; *Appendix: Value of Carbon*, [https://www.dec.ny.gov/docs/administration\\_pdf/vocapprev.pdf](https://www.dec.ny.gov/docs/administration_pdf/vocapprev.pdf) [<https://perma.cc/4QGV-ZBKF>].

95. See CLCPA § 2, 2019 N.Y. Laws 106 (amending the environmental conservation law). The Act defined disadvantaged communities as communities “that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high concentrations of low- and moderate- income households. . . .” The law also defines a Climate Justice Working Group tasked with creating the metrics by which these communities will be identified. This work



contains two complementary requirements: First, state agencies, “in considering and issuing permits, licenses, and other administrative approvals and decisions . . . shall not disproportionately burden disadvantaged communities;” Second, state agencies “shall also prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities.”<sup>96</sup> By June 1, 2024, the DEC and Climate Justice Working Group are required to prepare a strategy “to reduce emissions of toxic air contaminants and criteria air pollutants in disadvantaged communities affected by a high cumulative exposure burden.”<sup>97</sup> Together, these mandates give state agencies and other state entities responsibility to ensure that New York’s transition to a net-zero emissions economy will be equitable.<sup>98</sup> Permitting and other agency decisions must not only avoid harm to overburdened and climate-vulnerable communities but must also prioritize localized reductions of co-pollutants to improve public health and advance equity.<sup>99</sup>

### *B. New York City Climate Mobilization Act*

New York City is the United States’ largest metropolis, with a population of 8.8 million people,<sup>100</sup> roughly 2.5 percent of the country’s population.

---

is ongoing. The working group is composed of many of the state’s major advocates for environmental justice.

96. See CLCPA § 7(3); *see, e.g.*, CLCPA § 2; CLCPA § 4(7)(a). For example, the Act directs that energy storage projects be tied to reduced use of combustion fired peaker plants located in or near these communities.

97. CLCPA § 12(c)(3).

98. See CLCPA § 2. In the Climate Leadership and Community Protection Act, New York State established interlocking definitions for environmental justice communities and disadvantaged communities. “Disadvantaged communities” are defined as “communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate- income households, as identified pursuant to section 75-0111 of this article.”; Section 75-0111 further defines these communities as “communities of color, low-income communities, and communities bearing disproportionate pollution and climate change burdens.” N.Y.C., N.Y., LOCAL LAW 60 (2017). Under Local Law 60, New York City has a similar obligation to identify the location and boundaries of environmental justice communities within the City.

99. In rejecting NRG’s permit application to repower its Astoria peaker plant, DEC emphasized that this environmental justice analysis was a mandatory duty and failure to satisfy the environmental justice test was in itself grounds to reject a permit application. *Denial of Title V Air Permit*, *supra* note 90, at 7.

100. Over the past decade, the City’s population grew by more than 600,000 people. *A Bigger Apple: New York City Population Hits 8.8 Million*, U.S. & WORLD REPORT NEWS (Aug. 12, 2021), <https://www.usnews.com/news/best-states/new-york/articles/2021-08->

In 2020, the city emitted 56.5 million metric tons of CO<sub>2</sub> equivalents<sup>101</sup>—more than 108 countries, including Norway—but less than one percent of the 6,558 million metric tons of CO<sub>2</sub> equivalents emitted by the United States as a whole.<sup>102</sup> Thus, compared to their compatriots, New Yorkers have relatively small carbon footprints. Nevertheless, managing carbon emissions is a major object of concern in the city. Superstorm Sandy gave New York City a picture of its climate vulnerability and a glimpse of what its future might look like—one in which the built environment suffers damage from climate change, rising sea level, and crippling storm surges. Sandy-related damage caused extended blackouts (lasting for over a month in some areas), knocking out power for millions of people. Entire neighborhoods were left with no lights, power, or heat in a freezing November. More recently, extreme rainstorms resulted in unprecedented flooding that turned city streets into rivers, and basement apartments into death traps.

Like New York State, New York City has emphasized the need for a just transition.<sup>103</sup> As he signed two groundbreaking environmental justice bills in 2017, Mayor de Blasio characterized them as “recogniz[ing] the historic injustices that have disproportionately fallen on low-income residents and communities of color—the burden of pollution and the effects of climate change—and offer[ing] a different path forward.”<sup>104</sup> These New York City ordinances direct municipal attention to the disparate impacts that polluting infrastructure has on low-income communities and communities of color. These environmental justice laws are critical background for

---

12/a-bigger-apple-new-york-city-population-hits-88-million#:~:text=NEW%20YORK%20(AP)%20%E2%80%94%20New,are%20further%20concentrating%20the%20country's [https://perma.cc/JP6F-XABU].

101. NYC Mayor’s Office of Climate and Sustainability, *New York City’s Net-Zero Carbon Target for 2050 Is Achievable, Study Finds* (Apr. 15, 2021), <https://www1.nyc.gov/site/sustainability/our-programs/carbon-neutral-nyc-pr-04-15-2021.page> [https://perma.cc/3UAS-Q6K5].

102. *Inventory of U.S. Greenhouse Gas Emissions and Sinks*, U.S. ENV’T PROTECTION AGENCY, <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks> [https://perma.cc/7RRN-NSJ6] (accounting for equestrian from the land sector it becomes 5,769).

103. N.Y.C., N.Y., LOCAL LAW 64 (2017), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2460360&GUID=0C9F8C9D-5F14-4C1E-B4AD-37BB96F82BA3&Options=ID|Text|&Search=environmental+justice> [https://perma.cc/E3Q8-CZES]; see also N.Y.C., N.Y., LOCAL LAW 60 (2017), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1805815&GUID=8901A89B-078E-4D47-88D8-EA3E48E715A1&Options=ID|Text|&Search=environmental+justice> [https://perma.cc/WMD7-XXPB].

104. Office of the Mayor, Mayor de Blasio Signs Legislation to Better Promote Environmental Justice Through the Work of City Agencies (Apr. 25, 2017), <https://www1.nyc.gov/office-of-the-mayor/news/262-17/mayor-de-blasio-signs-legislation-better-promote-environmental-justice-the-work-city> [https://perma.cc/9ARE-BTKN].

understanding New York City's response to climate change. New York City has enacted some of the nation's most innovative climate-related legislation targeting both climate mitigation and climate adaptation.<sup>105</sup>

In 2019, New York City enacted a suite of local laws collectively known as the Climate Mobilization Act or the City's "Green New Deal."<sup>106</sup> These local laws created an extremely ambitious climate reduction effort, instantly catapulting New York City into the vanguard of climate response. The heart of the Climate Mobilization Act is Local Law 97, which requires retrofitting of buildings over 25,000 square feet reduce their carbon footprint forty percent by 2030,<sup>107</sup> and eighty percent by 2050.<sup>108</sup>

Climate mitigation in New York City focuses on buildings because buildings are a major source of carbon emissions and other air pollution within the City. Building emissions currently account for more than seventy percent of New York City's GHG emissions.<sup>109</sup> The large buildings targeted by Local Law 97 emit the lion's share of those greenhouse gases, accounting for nearly half the City's building emissions while comprising only two percent of the City's real estate.<sup>110</sup> Many of those buildings have antiquated and/or inefficient heating and cooling systems and rely extensively on dirty fossil fuels as the source of their electricity.<sup>111</sup> Changing the way these buildings are heated, cooled, and powered will make a real difference to the health and welfare of city residents and the environment. For buildings with the worst carbon footprints, Local Law 97 creates incentives for relatively immediate retrofits to heating, lighting,

---

105. Most recently, New York City Council passed Intro 1620, requiring a Five Borough Climate Resilience Plan. N.Y.C., N.Y., INT. No. 1620-A (2021), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3996243&GUID=8BA20DCE-2975-4E72-A812-0320EE34B96C&Options=Attachments%7C&Search=1620> [https://perma.cc/N747-LPMX].

106. Molly Enking, *New York City's Newly Passed Green New Deal, Explained*, GRIST (Apr. 18, 2019).

107. URBAN GREEN COUNCIL, NYC BUILDING EMISSIONS LAW SUMMARY LOCAL LAW 97 (2020), [https://www.urbangreencouncil.org/sites/default/files/2020.07.09\\_urban\\_green\\_building\\_emissions\\_law\\_summary\\_revised\\_11.17.2020.pdf](https://www.urbangreencouncil.org/sites/default/files/2020.07.09_urban_green_building_emissions_law_summary_revised_11.17.2020.pdf) [https://perma.cc/YG3T-W3MM].

108. N.Y.C., N.Y., LOCAL LAW 97 (2019), [https://www1.nyc.gov/assets/buildings/local\\_laws/l197of2019.pdf](https://www1.nyc.gov/assets/buildings/local_laws/l197of2019.pdf) [https://perma.cc/385H-JHJ9].

109. Mayor's Office of Climate and Sustainability, *Energy Benchmarking*, <https://www1.nyc.gov/site/sustainability/codes/energy-benchmarking.page> [https://perma.cc/6CDW-WZ5D].

110. Enking, *supra* note 106; *see also* URBAN GREEN COUNCIL, *supra* note 107.

111. MELANIE LAROSA, COMMUNITIES AND THE CLEAN ENERGY REVOLUTION 51–52 (2022).

electricity, and ventilation systems that will increase energy efficiency and reduce emissions.<sup>112</sup>

While some New York City buildings are leading the way in efficiency, others, like Trump International, are laggards that exemplify the pressing need for retrofitting.<sup>113</sup> Local Law 97 addresses this situation by requiring the most carbon intensive twenty percent of buildings to act first and most to reduce their carbon footprints,<sup>114</sup> with penalties of \$286 per metric ton of carbon emitted over a building's allotted cap starting in 2024.<sup>115</sup> Under the companion bill, Local Law 95, each covered building is assigned an energy efficiency rating from A to F, based on degree of compliance with Local Law 97 emissions limits. Each covered buildings must prominently display a placard reporting that building's energy efficiency rating near all public entrances.<sup>116</sup> These placards allow potential renters and customers to know where a building stands vis-à-vis Local Law 97 compliance.

Real Estate Board of New York (REBNY), the real estate lobby, bitterly opposed Local Law 97 and tried to block its passage. Spending heavily on ads, mailers, and other attempts to gin up opposition to the law, REBNY cloaked their objections in concern trolling about the impact of the law on small, under-resourced co-operative apartments. They lost. REBNY persuaded their ally, former Governor Andrew Cuomo, to use his executive budget

---

112. *Climate Mobilization Act*, NEW YORK CITY COUNCIL, <https://council.nyc.gov/data/green/#green-bills> [<https://perma.cc/Q3YT-CTKA>].

113. The Flatiron Building and the author's Queens co-operative are among the buildings that received an A rating. By contrast, multiple Trump buildings received Ds—Trump Tower with a twenty-three percent rating, Trump Soho with a twenty-five percent rating, the Mayfair with a and Trump International with a twelve percent rating. A number of buildings, including the Plaza Hotel, have a one percent rating. Under New York City's rating system, Fs are reserved for buildings like 30 Hudson Yards that fail to submit their required paperwork. Caroline Spivak, *The Dakota Got a C: How 50 New York Buildings Scored on their Energy-Efficiency Report Cards*, CURBED (Oct. 14, 2020).

114. *Id.* For an explanation of how Local Law 97 works, see Jahnavi Sajip, *Local Law 97 of 2019: Understanding the NYC Building Emission Limit*, NEARBY ENGINEERS (Feb. 21, 2022), <https://www.ny-engineers.com/blog/local-law-97-of-2019#:~:text=Local%20Law%2097%20of%202019%20will%20establish%20building%20emission%20limits,May%201st%2C%20starting%20from%202025> [<https://perma.cc/REY5-DM2Q>].

115. N.Y.C. ADMIN. CODE §§ 28-320.3.1; 28-320.6.1 (2019), <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCAadmin/0-0-0-112096>. Reports for 2024 emissions are due by May 1, 2025.

116. N.Y.C., N.Y., LOCAL LAW 95, amending Local Law 33 of 2018 (2019), [https://www1.nyc.gov/assets/buildings/local\\_laws/1195of2019.pdf](https://www1.nyc.gov/assets/buildings/local_laws/1195of2019.pdf) [<https://perma.cc/ULV6-KDK7>]. There is a \$1,250 penalty for failure to display this rating. The letter grades are keyed to the US Energy Star Score. Buildings that receive an energy star rating lower than fifty-five receive a grade of D. N.Y.C. BUILDINGS, BENCHMARKING, <https://www1.nyc.gov/site/buildings/codes/benchmarking.page> [<https://perma.cc/U26B-2SQ7>]; N.Y.C. Mayor's Office of Sustainability, NYC Energy and Water Performance Map (2017), <https://energy.cusp.nyu.edu/#/> [<https://perma.cc/6Q6K-PVWN>].

to circumvent the law.<sup>117</sup> He failed.<sup>118</sup> Local Law 97 survived and its first compliance deadline is fast approaching. The law is expected to create thousands of green jobs.<sup>119</sup>

This law marks a paradigm shift for building management in New York City. By reducing energy demands, and by promoting the development of green energy to replace that fossil-fuel based generation, Local Law 97 will benefit overburdened communities.<sup>120</sup> Many of the same luxury buildings that have drawn criticism for their role in displacement and gentrification are also among the City's least efficient buildings—the ones that will need to make the most significant changes on the most rapid timescale in order to meet stringent emissions requirements.<sup>121</sup> The ripple effects of this law will have profound environmental justice effects because the facilities needed to generate the energy that these inefficient luxury buildings currently overconsume are concentrated in just a handful of overburdened neighborhoods.<sup>122</sup> These neighborhoods bear the unwelcomed side effects

117. Two paragraphs buried in Cuomo's 4,000+ page proposed 2022 executive budget would have permitted building owners to meet their Local Law 97 targets by purchasing emissions credits generated elsewhere in the state. STATE OF N.Y., FY 2022 NEW YORK STATE EXEC. BUDGET (2021), <https://www.budget.ny.gov/pubs/archive/fy22/ex/artvii/ted-bill.pdf> [<https://perma.cc/HBS6-RGVD>]. Critics argued that this proposal would have generated so many emissions credits that New York City building owners could meet all their emissions targets until 2030 without making any upgrades at all to the buildings. Letter from AIA New York to Governor Andrew Cuomo (Feb. 17, 2021), <https://drive.google.com/file/d/1-4xjsJt-uQfyRD8zqdGyuG42jZoef-K/view> [<https://perma.cc/B974-7TS2>].

118. Kathryn Brenzel, *Landlords' Building Emissions Workaround is Dead*, THE REAL DEAL (Apr. 01, 2021).

119. ALIGN, *Local Law 97 Will Create More than 40,000 Green Jobs, Help Expand Annual Retrofit Market to \$20 Billion* (Apr. 5, 2021), <https://alignny.org/press/align-to-nyc-council-local-law-97-will-create-more-than-40000-green-jobs-help-expand-annual-retrofit-market-to-20-billion/> [<https://perma.cc/SM4B-DQBM>].

120. In its advocacy against the law, the real estate industry consistently ignored this connection between carbon emissions and other pollution that impacts vulnerable communities. See, e.g., *REBNY Calls Out City's Backward Approach to Green Goal*, REAL ESTATE WEEKLY (Apr. 2, 2021) (quoting developer Douglas Durst as saying "for some reason only renewable power generated within or directly reaching the city . . . is eligible [as offsets]." (emphasis added)).

121. Abe Bendheim et al., *A Climate First Approach to Housing*, URBAN DESIGN FORUM (Dec. 11, 2020), <https://urbandesignforum.org/proposals/a-climate-first-approach-to-housing/> [<https://perma.cc/X2AR-J275>].

122. For example, one neighborhood, Astoria, produces roughly sixty percent of the energy consumed in New York City. Rebecca Bratspies, *Shutting Down Poletti: Human Rights Lessons from Environmental Victories*, 36 WISC. INT'L L.J. 247, 249–50 (2019); see also LAROSA, *supra* note 111, at 51–60.

of fossil fuel-based electricity generation in the form of rampant asthma, various types of cancers, and other well-documented issues associated with exposure to heavy air pollution.<sup>123</sup> These air quality related health issues both increased vulnerability to COVID-19 and continue to compound the health burdens of COVID-19 survivors, many of whom have ongoing lung issues.<sup>124</sup>

#### IV. *RENEWABLE RIKERS*: COMBINING DECARCERATION WITH DECARBONIZATION

New York is on a trajectory to relying on wholly renewable energy in the relatively near term. This transition to a zero-emission energy future is likely to be chaotic and challenging. The stakes are very high. If planners do not pay close attention to how harms and benefits are distributed, the path of least resistance will have them replicating historical patterns of environmental injustice. To ensure a just transition, the voices of those most affected by climate change must be at the center of planning. Meaningful engagement with historically excluded and underserved communities to develop solutions that respond to the climate, while also addressing existing social justice gaps and challenges, is imperative.<sup>125</sup> *Renewable Rikers* offers a model for what that might look like.

---

123. New York City has some of the nation's highest rates of hospitalization and death from asthma, with areas in western Queens, northern Manhattan, and the southern Bronx being particularly impacted. *Epi Data Brief*, NYC HEALTH (Sept. 2021), <https://www1.nyc.gov/assets/doh/downloads/pdf/epi/databrief126.pdf> [<https://perma.cc/36AC-H4TJ>]. Neighborhood specific asthma data is available from the New York City Department of Health, see *Environment & Health Data Portal*, NYC.GOV (2022), <https://a816-dohbesp.nyc.gov/IndicatorPublic/> [<https://perma.cc/X8DF-2KMW>]. Some experts claim that “[t]here is no greater current risk to human health” than air pollution. *Particulate air pollution is the single greatest threat to human health globally*, AIR QUALITY LIFE INDEX, <https://aqli.epic.uchicago.edu/pollution-facts/> [<https://perma.cc/HE93-P7Z6>].

124. Panagis Galiatsatos, *COVID-19 Lung Damage*, JOHN HOPKINS MEDICINE (Feb. 28, 2022), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/what-coronavirus-does-to-the-lungs> [<https://perma.cc/XX7C-R333>] (describing short- and long-term lung problems from COVID). For more information, see *Post-COVID Conditions*, CENTER FOR DISEASE CONTROL AND PREVENTION (Sept. 2021), <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects/index.html> [<https://perma.cc/VLQ9-BEPV>]; *COVID-19 (coronavirus) Long-Term Effects*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-long-term-effects/art-20490351> [<https://perma.cc/GL9A-LEZQ>].

125. Lemir Teron and Susan S. Ekoh, *Energy Democracy and the City: Evaluating the Practice and Potential of Municipal Sustainability Planning*, FRONTIERS IN COMMUNICATION (Feb. 27, 2018), <https://www.frontiersin.org/articles/10.3389/fcomm.2018.00008/full> [<https://perma.cc/WKE4-DNBA>] (emphasizing the key role for individuals and communities as consequential actors for urban energy democracy).

## A. What is Renewable Rikers?

Responding to the well-documented abuses described above, New York City Council voted to close the jail on Rikers Island by 2026.<sup>126</sup> This legislation announced the City's intention to dramatically reduce its jail population by adopting diversion and decarceration as official policy goals.<sup>127</sup> This left the question of what would become of the island, once it was no longer used to incarcerate. In February 2021, the New York City Council answered that question with a trio of local laws known as *Renewable Rikers*.<sup>128</sup> These laws dedicate Rikers Island to renewable energy and environmentally sustainable composting and wastewater treatment uses.<sup>129</sup> Converting Rikers Island into *Renewable Rikers* operationalizes what it means to put environmental justice at the center of achieving New York City's (and New York State's) ambitious emissions reduction targets. It does so by framing infrastructure modernization and resiliency planning through a social justice lens. Under the *Renewable Rikers* plan, clean energy generated on Rikers Island will replace energy from the City's dirty peaker plants located in overburdened frontline communities, many of which are the same communities overburdened by over-policing and by mass incarceration.<sup>130</sup>

---

126. *Council Votes on Historic Legislation to Close Rikers Island*, N.Y.C. COUNCIL (Oct. 17, 2019), <https://council.nyc.gov/press/2019/10/17/1818/> [<https://perma.cc/FXX2-G8RR>].

127. *Smaller, Safer, Fairer: A Roadmap for Closing Rikers Island*, N.Y.C. MAYOR'S OFFICE CRIM. JUSTICE (Dec. 2018), <https://criminaljustice.cityofnewyork.us/reports/smaller-safer-fairer-copy/> [<https://perma.cc/8T99-EZ73>].

128. The three local laws that are collectively known as *Renewable Rikers* are Local Laws 16, 17, and 31 of 2021. All three can be accessed from <https://legistar.council.nyc.gov/Legislation.aspx>.

129. The rest of the *Renewable Rikers* plan—the proposal to replace antiquated, malodorous wastewater treatment facilities in Queens and the Bronx with a modern state of the art facility on Rikers Island—is outside the scope of this Article.

130. Compare for example, a map of the neighborhoods targeted by the unlawful “stop and frisk” policy, with a map of neighborhoods with high asthma rates, and neighborhoods with peaker plants. *Compare* Quinn Hood, *Stop, Question, and Frisk Visualized*, <https://qhood01.github.io/nycSQF/> [<https://perma.cc/62DD-UM5W>], with Cecilia Butini, *Asthma By the Numbers*, MEDIUM (Jan. 20, 2018), and *Peak Coalition Campaign to Replace Polluting Power in NYC EJ Communities*, <https://www.cleaneogroup.org/wp-content/uploads/Peak-Coalition-Fact-Sheet.pdf> [<https://perma.cc/577Q-JHPX>].

State law requires that New York City generate more than eighty percent of its peak energy needs within the City’s boundaries.<sup>131</sup> This requirement is rooted in a transmission bottleneck—there is limited electricity transmission capacity along the power lines running into the City. In the summer of 2021, the state of New York had a total generating capacity of 41,071 MW.<sup>132</sup> The projected peak demand for New York City was 11,047 MW.<sup>133</sup> As usual, the borough of Manhattan was expected to consume the lion’s share of the energy,<sup>134</sup> while generating virtually none of it.<sup>135</sup> Instead, neighborhoods in Queens, the Bronx, and Brooklyn carry the burden of meeting this electricity generation load.<sup>136</sup>

Demand for electricity is not constant throughout the day or the year. Instead, electricity demand fluctuates with time of day and weather conditions.<sup>137</sup> It takes planning and attention to ensure that there is capacity to meet “peak load” — the highest power demands placed on the system over specific periods of time.<sup>138</sup> Peaker plants are so named because they turn on to meet this peak demand.

Meeting peak load is critical to maintaining the system reliability necessary for the health and welfare of New Yorkers. However, the “need to keep the lights on” has too often been used to justify siting polluting infrastructure in overburdened environmental justice communities across the city.<sup>139</sup>

---

131. The precise percentage changes year by year. For 2021, it is 86.6 percent. *Locational Minimum Installed Capacity Requirements Study For the 2020-2021 Capability Year*, N.Y. INDEP. SYS. OPERATOR (Jan. 8, 2020), <https://www.nyiso.com/documents/20142/8583126/LCR2020-Report.pdf/4c9309b2-b13e-9b99-606a-7af426d93a47> [https://perma.cc/DUE5-GXCA].

132. *See 2021 Load & Capacity Data Report*, N.Y. INDEP. SYS. OPERATOR 3–4 (Apr. 2021).

133. *Id.* at 24. Zone J is New York City.

134. Ina Muri, *An Energy Consumption Map for New York City*, ZDNET (Feb. 4, 2012), <http://qsel.columbia.edu/nycenergy/> [https://perma.cc/7F9M-3YYH] (reporting that midtown Manhattan consumes more electricity than Kenya).

135. *2021 Load & Capacity Data Report*, *supra* note 132, at 79–98.

136. *Id.*

137. For an explanation of this variability, *see Hourly Electricity Consumption Varies Through the Day and Across Seasons*, U.S. ENERGY INFO. ADMIN. (Feb. 21, 2020), <https://www.eia.gov/todayinenergy/detail.php?id=42915> [https://perma.cc/T429-HF63].

138. New York requires not only adequate capacity to meet peak demand, but also an operating reserve adequate to meet emergencies. *Reliability Rules & Compliance Manual Version 45*, N.Y. STATE RELIABILITY COUNCIL 77–79, 90–92 (July 17, 2020), <https://www.nysrc.org/PDF/Reliability%20Rules%20Manuals/RRC%20Manual%20V45%20Final.pdf> [https://perma.cc/L8HP-6KY4].

139. For an in-depth discussion of this rhetorical tendency, *see* Rebecca Bratspies, *Shutting Down Poletti: Human Rights Lessons from Environmental Victories*, 36 WISC. INT’L L.J. 247, 268–69 (2019) (describing how “keep the lights on” rhetoric was used to justify siting ten peaker plants in environmental justice communities without environmental



In the summer, peaker plants kick on in the late afternoons to provide air conditioning to folks returning home from work or school. Extreme heat associated with climate change and the urban heat island-effects mean that demand for air conditioning will only increase. The City's reliance on gas fired peaker plants to meet this growing demand for air conditioning is a particularly insidious manifestation of environmental injustice. While ninety percent of New Yorkers have air conditioning in their homes, fewer than half of those living in public housing do.<sup>140</sup> None of the New York Housing Authority's (NYCHA's) 325 developments have central air conditioning.<sup>141</sup> Ninety-five percent of NYCHA residents<sup>142</sup> are people of color,<sup>143</sup> and nearly fifty percent are either over sixty or under eighteen.<sup>144</sup> These are the populations most vulnerable to adverse health impacts from breathing the pollution peaker plants spew, most notably asthma and cardiopulmonary ailments.<sup>145</sup> Indeed, residents in the neighborhoods nearest these peaker plants have shockingly high asthma rates.<sup>146</sup> There is no

---

impact assessment). Most recently NRG has deployed this rhetoric in its attempt to gain approval for new fossil fuel infrastructure in the overburdened neighborhood of Astoria. Christian Murray, *Weigh in on NRG's Proposed Power Plant at Public Hearing Next Week*, ASTORIA POST (Aug. 19, 2021) (quoting NRG as claiming their project is "necessary to keep the lights on").

140. Matthew Scheurman, *One Small Step to Keep Public Housing Cool*, WNYC (June 17, 2019), <https://www.wnyc.org/story/small-step-keep-elderly-cool-public-housing-seniors/> [<https://perma.cc/C9EV-SZY2>]; Sarah Gonzalez, *Without AC, Public Housing Residents Swelter Through the Summer*, WNYC (July 28, 2016), <https://www.wnyc.org/story/life-new-york-public-housing-no-air-conditioning/> [<https://perma.cc/Q3DD-P4FV>].

141. NYCHA manages over 175,000 apartments. See N.Y.C. Hous. Auth., *NEXTGENERATION NYCHA Transparency Review 2* (Mar. 13, 2018), <https://www1.nyc.gov/assets/nycha/downloads/pdf/nextgen-nycha-transparency-review.pdf> [<https://perma.cc/BUW4-UMHU>].

142. N.Y.C. Hous. Auth., *NYCHA 2019 Fact Sheet 1* (Mar. 2019), [https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Fact-Sheet\\_2019\\_08-01.pdf](https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Fact-Sheet_2019_08-01.pdf) [<https://perma.cc/2S23-2MKG>].

143. *Special Tabulation of Resident Characteristics* (2016), <https://www1.nyc.gov/assets/nycha/downloads/pdf/Resident-Data-Summaries.pdf> [<https://perma.cc/63G8-8DTL>].

144. *NYCHA 2019 Fact Sheet*, *supra* note 142, at 2.

145. Nam. P. Nguyen & Julian D. Marshall, *Impact, Efficiency, Inequality and Injustice of Urban Air Pollution: Variability by Emission Location*, 13 ENVIRON. RES. LETT. 24002 (2018); Robert D. Brooks et al., *Particulate Matter Air Pollution and Cardiovascular Disease*, 121 CIRCULATION 2331 (2010).

146. N.Y. Dep't of Health, *Asthma ED Visits and Hospitalizations*, New York State (June 2021), [https://apps.health.ny.gov/statistics/environmental/public\\_health\\_tracking/tracker/index.html#/asthmaCounty](https://apps.health.ny.gov/statistics/environmental/public_health_tracking/tracker/index.html#/asthmaCounty) [<https://perma.cc/XTV5-6QJ6>]. An application of ArcGIS Online maps New York City Peaker Plants with key demographic and health information, including asthma rates, see *Map*, <https://www.arcgis.com/apps/webappviewer/index.html>

question that reliance on these gas powered peaker plants exacerbates the health and energy inequities these impacted communities face.

Moreover, New York City's peaker plants are overwhelmingly located in environmental justice communities.<sup>147</sup> Many are in or near the communities most impacted by incarceration on Rikers Island.<sup>148</sup> The oldest peaker plants date back to the 1950s, and ten of the eighteen peaker plants are fifty or more years old.<sup>149</sup> These old, dirty plants predate the Clean Air Act and do not have modern air pollution controls.<sup>150</sup> As a result, they spew particulates, nitrous oxide and other pollutants at levels that far exceed more modern facilities. So, even though these plants do not run very often, they have an outsized impact on air quality when they do. When peaker plants are operating, "they can account for over one-third of New York's daily power plant nitrogen oxides (NOx) emissions."<sup>151</sup> For example, one of the oldest peaker plants, the Gowanus Gas Turbine Facility,

---

?id=007e9843547a4f9dbeff967fb072af57 [https://perma.cc/E4NJ-H9DD]. New York State Department of Public Service, *State Energy Storage Roadmap* 62 (2018), <https://www3.dps.ny.gov/W/PSCWeb.nsf/All/C12C0A18F55877E785257E6F005D533E> [https://perma.cc/46LS-2HKE] (showing that New York City's peaker plants are "highly correlated with environmental justice areas").

147. PEAK Coalition, *The Fossil Fuel End Game A Frontline Vision to Retire New York City's Peaker Plants by 2030*, 10 (2021), <https://www.cleangroup.org/wp-content/uploads/Fossil-Fuel-End-Game.pdf> [https://perma.cc/46GF-YP6Z]; Elementa Engineering, *Replacing Peaker Plants: DER Strategies for Sunset Park, Gowanus and Bay Ridge*, 4 (2020).

148. A large percentage of Rikers inmates come from the neighborhoods of South Bronx, Brownsville, East New York, Harlem, and Bed-Stuy. See Aaron Marks, *These 5 Neighborhoods Supply Over a Third of NYC's Prisoners*, Gothamist (last updated Jan. 6, 2014, 8:05 PM), <https://gothamist.com/news/these-5-neighborhoods-supply-over-a-third-of-nycs-prisoners> [https://perma.cc/Z32C-VN6X]. These are neighborhoods that rank high on any list of environmental injustice in New York City. See, e.g., Ilana Cohen, *New York's Heat Vulnerable Neighborhoods Need to Go Green and Cool Off*, Inside Climate News (Aug. 18, 2020), <https://insideclimatenews.org/news/18082020/new-york-heat-climate-change-coronavirus/> [https://perma.cc/5FHP-75Z7]; see also *Waterfront Justice Project Interactive Map*, N.Y.C ENV'T JUST. ALL., <https://www.nyc-eja.org/waterfront-map/> [https://perma.cc/6S7J-PUQA].

149. PEAK Coalition, *Dirty Energy, Big Money*, 7 (2020), <https://www.cleangroup.org/wp-content/uploads/Dirty-Energy-Big-Money.pdf> [https://perma.cc/GS8Y-X9MB].

150. In 2019, the New York Department of Environmental Conservation promulgated NOx emissions regulations that will force the old, dirty plants either to make significant physical plant upgrades or to shut down by 2023. See N.Y. COMP. CODES R. & REGS. tit. 6, § 227-3 (2020). As the CLCPA commits New York State to emissions free electricity sector by 2040, the expectation is that most of these dirty fossil fuel peaker facilities will shut down.

151. Governor Cuomo Announces Proposed Regulations to Improve Air Quality and Reduce Harmful Ozone Caused by Power Plant Emissions, N.Y. STATE ENERGY RSCH. AND DEV. AUTH., (Feb. 28, 2019), <https://www.nyscrda.ny.gov/About/Newsroom/2019-Announcements/2019-02-28-Governor-Cuomo-Announces-Proposed-Regulations-to-Improve-Air-Quality-and-Reduce-Harmful-Ozone> [https://perma.cc/MZT7-P35H].

ran for about thirty hours in 2018, yet emitted approximately 19,500 tons of CO<sub>2</sub> emissions.<sup>152</sup> The fate of these peaker plants is at the core of New York's response to the twin crises of environmental justice and climate change.<sup>153</sup>

### *B. How Renewable Rikers Advances Social and Racial Justice Goals*

*Renewable Rikers* offers a radical and potentially transformative response to both climate change and the legacy of over-policing.<sup>154</sup> It does so by recognizing the common root to racialized environmental injustice and anti-Black policing,<sup>155</sup> and understanding these frequently separated fields as two aspects of the multiple ways that racism becomes embodied in the United States today. Rooted in restorative justice, it offers New York City a path forward that respects the pain and harm associated with Rikers Island, and offers the social conditions necessary for healing.<sup>156</sup> *Renewable Rikers* starts from the proposition that incarceration on Rikers Island has done immense harm to communities of color in New York City. Indeed the correctional facility that has been based at Rikers Island for nearly

152. *Opportunities for Replacing Peaker Plants with Energy Storage in New York State*, PHYSICIANS, SCIENTISTS, AND ENG'RS FOR HEALTHY ENERGY (Jan. 23, 2022), <http://psehealthyenrg.staging.wpengine.com/our-work/energy-storage-peaker-plant-replacement-project/new-york> [<https://perma.cc/3CFX-GEQB>].

153. Because the City pays peaker plant owners top dollar to remain on standby, peaker plants are remarkably lucrative. The Peak Coalition estimates that over the last decade, owners have collected \$4.5 billion in 'capacity payments' payments to keep these seldom used facilities online and available for peak demand. PEAK COALITION, DIRTY ENERGY, BIG MONEY 5 (2020). Of that, \$4.5 billion, nearly eighty-five percent has been paid to three out-of-state owners—ArkLight Capital, a private Boston-based hedge fund; NRG, a Houston fossil fuel firm; and LS Power Group, a New Jersey private equity firm. *Id.* at 7.

154. RENEWABLE RIKERS, <https://www.renewablerikers.org/> [<https://perma.cc/MT25-HYHR>]. By radical, I mean starting from the proposition that complete change is necessary to respond to the relevant social problems, in this case climate change and over-policing. See *Radical*, DICTIONARY OF POLITICS AND GOVERNMENT (P.H. Colin ed., A&C Black 3rd ed. 2004).

155. For an insightful exploration of this relationship, see Lindsey Dillon and Julie Sze, *Police Power and Particulate Matters: Environmental Justice and the Spatialities of In/Securities in U.S. Cities*, 54 ENGLISH LANGUAGE NOTES 13 (2016).

156. *Goals*, RENEWABLE RIKERS, [www.renewablerikers.org/goals](http://www.renewablerikers.org/goals) [<https://perma.cc/C5WF-35YA>] (explaining this point); see generally Bryana French et al., *Toward a Psychological Framework for Radical Healing in Communities of Color*, 40 COUNSELING PSYCH. 14, 19 (2020).

ninety years has been variously characterized as “a stain on the city,”<sup>157</sup> “broken”<sup>158</sup> and a “Lord of the Flies”<sup>159</sup> environment that fosters “an unchecked cycle of violence.”<sup>160</sup> The overwhelming majority of those subjected to these conditions at Rikers Island have been Black and Latinx pre-trial detainees.<sup>161</sup> There is wide agreement that the harms inflicted by incarceration at Rikers falls “disproportionately on communities of color.”<sup>162</sup>

*Renewable Rikers* directly confronts both the shameful legacy of abuse on Rikers Island and the historical discrimination, inadequate resources, and racist biases that too often keep environmental justice communities from fully engaging in the transition to sustainable energy.<sup>163</sup> By explicitly linking closure of the Rikers correctional facility with removing noxious uses in heavily impacted communities, *Renewable Rikers* offers a kind of environmental restorative justice for the communities most impacted by incarceration on Rikers Island.

Restorative environmental justice draws from philosopher Nancy Fraser’s insights that social justice requires both redistribution and recognition.<sup>164</sup> In the environmental context, restorative justice typically focuses on community harms, and community restoration, with representatives standing in for the injured community.<sup>165</sup> It also relies on what Susan Opatow has called “moral inclusion”—the process of recognizing and specifically rejecting

---

157. INDEP. COMM’N ON N.Y.C. CRIMINAL JUSTICE AND INCARCERATION REFORM, A MORE JUST NEW YORK CITY 3–4 (2017) [hereinafter LIPMANN COMMISSION REPORT].

158. See U.S. DEP’T OF JUSTICE, CRIPA INVESTIGATION OF THE NEW YORK DEPARTMENT OF CORRECTION JAILS ON RIKERS ISLAND 45 (2014), <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf> [<https://perma.cc/8SB8-T4EE>].

159. Rich Calder, *Rikers is “Lord of the Flies” for Youths: Bharara*, N.Y. POST (Aug. 4, 2014), <https://nypost.com/2014/08/04/us-attorney-slams-rikers-as-dangerous-for-young-offenders/> [<https://perma.cc/36K4-STM5>]; *Lord of the Flies* is the title of a novel about a group of schoolboys whose interactions rapidly descend into violence when they are stranded on an uninhabited island. WILLIAM GOLDING, *LORD OF THE FLIES* (Penguin Books 1954).

160. Nicole Bode & Natalie Musemeci, *Rikers Island Fosters “Unchecked Cycle of Violence” Against Teens, Feds Say*, DNAINFO (Aug. 4, 2014), <https://www.dnainfo.com/new-york/20140804/civic-center/rikers-island-fosters-unchecked-cycle-of-violence-against-teens-feds-say/> [<https://perma.cc/V68N-KF7W>].

161. LIPMANN COMMISSION REPORT, *supra* note 157, at 23–25.

162. LIPMANN COMMISSION REPORT, *supra* note 157, at 2–3.

163. Teron & Ekoh, *supra* note 125 (describing steps Washington D.C. has taken to overcome these obstacles).

164. Nancy Fraser, *Social Justice in the Age of Identity Politics: Redistribution, Recognition, Participation* (1988), [https://www.ssoar.info/ssoar/bitstream/handle/document/12624/ssoar-1998-fraser-social\\_justice\\_in\\_the\\_age.pdf?sequence=1&source=post\\_page](https://www.ssoar.info/ssoar/bitstream/handle/document/12624/ssoar-1998-fraser-social_justice_in_the_age.pdf?sequence=1&source=post_page) [<https://perma.cc/HN86-VGRC>].

165. See generally Hon. Justice Brian J. Preston, *The Use of Restorative Justice for Environmental Crime*, 35 CRIM. L.J. 136 (2011).

exclusionary norms in order to redesign social relationships to bring about greater equality and foster an inclusive definition of social well-being.<sup>166</sup>

The decarceration groups Freedom Agenda<sup>167</sup> and JustLeadership USA,<sup>168</sup> along with environmental justice groups like the New York City Environmental Justice Alliance,<sup>169</sup> fill this role with regard to Rikers Island. New York City, as the owner/operator of Rikers Island Correctional Facility and the sovereign with police powers, takes on the role of responsible party for purposes of restorative justice.<sup>170</sup> *Renewable Rikers* offers a path for not only remediating and mitigating past environmental harms, but for providing public benefits that flow to the injured communities as a form of reparations.<sup>171</sup> Moreover, the Rikers Island Advisory Group ensures that the city does so by centering the voices of those most impacted. *Renewable Rikers* thus offers the kind of deconstructive transformative remedy that Robert Melchior Figueroa calls for to transform wider thinking about culture, justice, and economic relations.<sup>172</sup>

Planning for what comes next on Rikers Island must take restorative justice into account.<sup>173</sup> Experiencing the kinds of racism that New Yorkers faced at Rikers Island causes well-documented harms to individuals, including trauma and post-traumatic stress disorder.<sup>174</sup> In the words of Freedom Agenda leader Darren Mack, Rikers Island “has long been a factory of human

---

166. See generally Susan Opatow, S. et al., *From moral exclusion to moral inclusion: Theory for teaching peace*, 44 THEORY INTO PRACTICE 303–18 (2005).

167. See *Freedom Agenda*, URBAN JUSTICE CENTER, <https://fa.urbanjustice.org/> [<https://perma.cc/K58D-SWRK>].

168. See *Strategic Plan*, JUSTLEADERSHIPUSA, <https://jlusa.org/> [<https://perma.cc/E9S5-V4J2>].

169. See generally N.Y.C ENV’T JUST. ALL., <https://nyc-eja.org/> [<https://perma.cc/RR33-SYJS>]. Other environmental justice groups like WEACTION and UPROSE are also deeply involved, as are more mainstream legal advocacy groups like NRDC and NYLPI.

170. See Preston, *supra* note 165.

171. Joseph W. Dorsey, *Restorative Environmental Justice: Assessing Brownfield Initiatives, Revitalization, and Community Economic Development in St. Petersburg, Florida*, 2 ENV. JUST. 69, 71 (2009).

172. Robert Melchor Figueroa, *Bivalent Environmental Justice and the Culture of Poverty*, 1 RUTGERS J. L. AND URBAN POL. 27, 40-1 (2003).

173. LIPPMAN COMMISSION REPORT, *supra* note 157, at 103 (noting that while we cannot undo the “open wound” of Rikers history, “we can acknowledge it [in] an attempt to make some amends”).

174. Robert T. Carter et al., *Race-Based Traumatic Stress, Racial Identity Status, and Psychological Functioning: An Exploratory Investigation*, 48 PROF. PSYCH. RES. AND PRACTICE 30 (2017); Robert T. Carter, *Racism and Psychological and Emotional Injury: Recognizing and Assessing Race-Based Traumatic Stress*, 35 COUNS. PSYCHOL. 13 (2007).

misery.”<sup>175</sup> Moreover, Rikers Island, which was literally built from Manhattan’s toxic waste, is a concrete example of the racism in our built environment that produces disparities in exposure to environmental toxins and pollution. These disparate exposures, especially when coupled with other racialized sources of social vulnerability, produce impacts that not only limit the life possibilities of individuals, but harm the overall well-being of environmental justice communities.<sup>176</sup>

To be clear, these intersectional problems extend far beyond Rikers Island. Across the country, the criminal legal system both maintains and is maintained by economic, social, and political practices rooted in structural racism. *Renewable Rikers* is an attempt to ensure that the environmental and economic benefits from repurposing Rikers Island flow directly and foremost to the individuals and communities most harmed by incarceration on the island.

*Renewable Rikers* takes up this challenge of restorative justice by converting much of Rikers Island to large-scale solar energy and battery storage installations and linking this new green infrastructure to the removal of dirty peaker plants from environmental justice communities. An isolated island that off gases methane is not a good fit for most urban land uses. But many of the attributes that make Rikers Island inhospitable to more conventional development make it an ideal spot for renewable energy generation and storage. The island is virtually treeless and set in the middle of the East River, with constant, unobstructed sun. The island’s relative remoteness makes it a good spot for testing utility scale battery storage in a dense, urban setting.

### C. *How Renewable Rikers Advances Climate and Energy Goals*

Replacing outdated peaker plants in overburdened communities with renewable energy generation and storage on Rikers Island is not an environmental fantasy—it is a viable technical reality. The National Renewable Energy Laboratory recently found “significant potential for energy storage to replace peaking capacity,” and noted that battery storage become increasingly effective at bridging capacity gaps as solar installation increases.<sup>177</sup>

---

175. Darren Mack, *The Trouble With the Correction Union: It’s a Cheerleader for Mass Incarceration*, DAILY NEWS, Oct. 22, 2021.

176. See generally DORCETA E. TAYLOR, TOXIC COMMUNITIES (N.Y. Press 2014).

177. Paul Denholm et al., *Potential for Battery Energy Storage to Provide Peaking Capacity in the United States*, 15 NAT’L RENEWABLE ENERGY LAB. (NREL) (2019), <https://www.nrel.gov/docs/fy19osti/74184.pdf> <https://perma.cc/C2W9-EPNKJ>.

Utilities across the country are starting to replace peaker plants with utility-scale battery installations.<sup>178</sup> There are currently multiple approved plans to install utility scale battery storage in the overburdened Queens neighborhood directly adjacent to Rikers Island, including at the site of the former Poletti power plant—which had been the single biggest polluter in New York City before it was shut in 2010.<sup>179</sup> The CLCPA specifically calls for the Public Service Commission (PSC) to prioritize batter storage to replace fossil-fuel peaker plants operating in disadvantaged communities.

Current estimates for *Renewable Rikers* indicate that thirty-five acres of solar PV panels installed on Rikers Island could generate about 17.2 GW hours annually,<sup>180</sup> and a twelve acre battery storage installation could potentially hold 1,520 megawatts worth of storage,<sup>181</sup> roughly one half of the goal for the entire state under the CLCPA.<sup>182</sup> According to the plan’s chief sponsor, former City Councilmember Costa Constantinides, *Renewable Rikers* represents “the dawn of a new era for millions of New Yorkers and also a blueprint on how a green and sustainable city could operate in the twenty-first century.”<sup>183</sup>

---

178. Andy Colthorpe, *Large-scale Battery Storage Plant Chosen by California Community as Alternative to Gas Goes Online*, ENERGY STORAGE NEWS (June 30, 2021).

179. See generally Bratspies, *supra* note 122; see *Clean Energy Hub to Replace Former Fossil Fuel Plant in Astoria*, LIC POST (July 19, 2021); see Julian Spector, *New York Approves 316MW Battery Plant for Peak Power, First of Its Kind in Region*, GREENTECH MEDIA (Oct. 18, 2019).

180. See Bill Parry, *City Council Passes Renewable Rikers Act for Greener Future*, QNS.com (Feb. 11, 2021). The *Renewable Rikers* legislation does not specify who will own this infrastructure or who will get the jobs associated with its installation and maintenance. Activists are hoping for publicly-owned solar power, and for the jobs to prioritize those who suffered incarceration on Rikers Island. *Renewable Rikers Act Could Serve as a Model for a Just Transition from Fossil Fuels to Renewable Energy*, WEACT (Feb. 11, 2021), <https://www.weact.org/2021/02/renewable-rikers-act-could-serve-as-a-model-for-a-just-transition-from-fossil-fuels-to-renewable-energy/> [<https://perma.cc/5XGJ-EEGA>].

181. Bill Parry, *City Council Passes Renewable Rikers Act for Greener Future*, QNS (Feb. 11, 2021) (citing Sustainable CUNY analysis).

182. *Id.* Andy Colthorpe, ‘*We Like its Ability to Scale*’: Honeywell Targets Gigawatt-Scale Storage Opportunity with Flow Battery, ENERGY STORAGE NEWS (Oct. 27, 2021). Batteries offer some significant advantages over peaker plants, including greater flexibility, greater efficiency, and lower cost.

183. Videotape: Conducting a study regarding the feasibility of constructing a new wastewater treatment facility on Rikers Island: Hearing on 2021/031 Before the Committee on Environmental Protection, at 9:30 (Jan. 29, 2020). Statement of former city council member Costa Constantinides.

New York is already making significant strides toward the zero-emission electricity sector envisioned by the CLCPA. Carbon emissions from the power sector have decreased by fifty-five percent over the past two decades, even as electricity demand has increased.<sup>184</sup> Over the past decade, wind generation doubled,<sup>185</sup> and solar power has grown exponentially—by some counts as much as 1,800 percent.<sup>186</sup> In 2020, New York approved two offshore wind projects with a combined capacity of 2.4 GW.<sup>187</sup> That brings the state closer to achieving the CLCPA goals of seventy percent of electricity from renewable energy by 2030, and one hundred percent by 2040.

Yet, even as the state was adopting these ambitious goals, it was still approving polluting fossil fuel infrastructure. For example, the 2021 closure of the Indian Point nuclear power plant increased the state's reliance on fossil gas fired plants burning gas fracked in other states.<sup>188</sup> While anti-nuclear activists count the closure of this aging facility just north of New York City as a big win for safety and the environment,<sup>189</sup> it came with a climate cost. Shutting Indian Point meant that New York had to bridge a short-term power gap until new carbon free projects could be brought online. Without offshore wind and/or large-scale solar projects ready to go online and take its place, New York instead brought three gas fired power plants online to fill this gap.<sup>190</sup>

---

184. N.Y. Indep. Sys. Operator, *The Vision for a Greener Grid: Power Trend Report* 7 (2020).

185. *Id.* at 16.

186. *NYSAERDA Announces Milestone of Two Gigawatts of Solar Capacity Installed in New York, Enough to Power 240,000 Homes*, NYSERDA (Dec. 17, 2019), <https://www.nyserda.ny.gov/About/Newsroom/2019-Announcements/2019-12-17-NYSERDA-Announces-Milestone-of-Two-Gigawatts-of-Solar-Capacity-Installed-in-New-York> [https://perma.cc/JG78-4PVH].

187. *2020 Offshore Wind Solicitation*, NYSERDA, <https://www.nyserda.ny.gov/All-Programs/Programs/Offshore-Wind/Focus-Areas/Offshore-Wind-Solicitations/2020-Solicitation> [https://perma.cc/C698-JGZS].

188. *New York's Indian Point Nuclear Power Plant Closes After 59 Years of Operation*, US ENERGY INFO. ADMIN. (Apr. 30, 2021), <https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/Offshore-Wind-Solicitations/2020-Solicitation> [https://perma.cc/8XPV-UHQZ].

189. *See, e.g., Kit Kennedy, Indian Point is Closing But Clean Energy is Here to Stay*, NRDC (Apr. 28, 2021), <https://www.nrdc.org/experts/kit-kennedy/indian-point-closing-clean-energy-here-stay> [https://perma.cc/GKD6-838S].

190. Patrick McGeehan, *Indian Point is Shutting Down. That Means More Fossil Fuel*, N.Y. Times (Apr. 12, 2021). For perspective, Indian Point alone provided twelve percent of the state's entire energy supply. *Indian Point, Closest Nuclear Plant to New York City, Set to Retire by 2021*, EIA.GOV (Feb. 1, 2017), <https://www.eia.gov/todayinenergy/detail.php?id=29772#:~:text=February%20%2C%202017-,Indian%20Point%2C%20closest%20nuclear%20plant%20to%20New%20York%20City,set%20to%20retire%20by%202021&text=In%20January%202017%2C%20Entergy%20Nuclear,north%20of%20New%20York%20City> [https://perma.cc/H948-TRRC]. However, all of New York's CLCPA energy modeling has been done assuming the closure of Indian Point. N.Y.



These gas fired plants are supposed to be temporary replacements until New York completes the build of the offshore wind projects which are currently under development, the first of which is anticipated for 2023. Unfortunately, New York City has had bad experiences with how “temporary” energy infrastructure can become permanent. Indeed, one of the old wrongs that *Renewable Rikers* seeks to right is the past siting of peaker plants in environmental justice communities on a supposedly short-term emergency basis with virtually no environmental assessment or community input.<sup>191</sup> These “temporary” power plants were built in 2000, to respond to claims that there was an energy crisis and that they were necessary to “keep the lights on.” Indeed, the claim was that the need was so urgent there was no time for the luxury of environmental assessment, community engagement, or evaluating environmental justice. Because justice was not a priority, it was easy for these facilities to slide from “temporary” into permanent infrastructure.

*Renewable Rikers* would, of course, not generate anywhere near the energy that Indian Point provided. It is not intended to replace this kind base power generation. *Renewable Rikers* is intended to replace those “temporary” peaker plants—the plants that run briefly at periods of peak energy demand. Thus, *Renewable Rikers* could supplant and replace the power plants forced onto environmental justice communities in 2000.

## V. CONCLUSION

The COVID-19 pandemic, while occurring during one of the hottest years on record,<sup>192</sup> offered an unfortunate dress rehearsal for a looming climate

---

Indep. Sys. Operator, *2019 Congestion Assessment and Resource Integration Study* 24–26 (2019), bcf0ab1a-eac2-0cc3-a2d6-6f374309e961[<https://perma.cc/EH6B-ZUGS>]. Indeed, the Indian Point Closure Task Force estimated that combined energy efficiency and renewable energy gains by 2019 already exceed the annual power output from Indian Point. Indian Point Closure Task Force, *September 25 Presentation 7* (2019), <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=17-00994> [https://perma.cc/275P-GA88].

191. See Bratspies, *supra* note 122.

192. See European Union’s Copernicus Climate Change Service, *Surface Air Temperature for April 2020* (Apr. 2020), <https://climate.copernicus.eu/surface-air-temperature-april-2020> [https://perma.cc/M9H4-VZCJ]; see also Andrew Freeman, *Global Warming pushes April temperatures into record territory as 2020 heads for disquieting milestone*, WASH. POST (May 5, 2020), <https://www.washingtonpost.com/weather/2020/05/05/global-warming-pushes-april-temperatures-into-record-territory-2020-heads-disquieting-milestone/> [perma.cc/9RPN-799P].

catastrophe.<sup>193</sup> What New York saw was that, without deliberate interventions to mitigate inequality, the brunt of the pandemic was borne by the same communities overburdened with peaker plants and targeted by over-policing and mass incarceration, while other New Yorkers were able to use their money and privilege to avoid the worst of the disaster. We cannot let this pattern continue. COVID recovery must mean more than merely returning to the “normalcy” of untenable health and environmental disparities. *Renewable Rikers* offers a different vision, one that rejects the form of business-as-usual that compounds burdens on Black and brown communities in favor of transformative and restorative justice.<sup>194</sup>

This kind of transformation improves things for everybody. The right to breathe clean air is not only a basic human right,<sup>195</sup> it is also a fundamental right guaranteed in the New York State Constitution.<sup>196</sup> Ensuring air of breathable quality is also the driving purpose behind the National Ambient Air Quality Standards (NAAQS) in the Clean Air Act. To that end, the NAAQS are set at a level “requisite to protect public health.”<sup>197</sup> Because New York City’s air does not meet this standard, breathing is already unsafe for residents. New York City is a serious ozone nonattainment zone under the Clean Air Act.<sup>198</sup> This meant that as COVID spread across the city, New Yorkers breathed in unhealthy levels of ozone along with the virus.<sup>199</sup> On many days, New Yorkers also breathed unhealthy levels of particulate pollution.<sup>200</sup> Extensive research has documented that particulate pollution not only helped spread COVID-19, but also increased susceptibility to and

---

193. See ALICE C. HILL, *THE FIGHT FOR CLIMATE AFTER COVID-19* (1st ed. 2021).

194. Jean Lee, *The Plan to Turn New York’s Most Notorious Jail into a Renewable Energy Hub Is What Justice Looks Like*, GIZMODO (July 23, 2020), <https://gizmodo.com/the-plan-to-turn-new-york-s-most-notorious-jail-into-a-1844478478> [https://perma.cc/6XC8-JYUB].

195. Special Rapporteur on Issue of Human Rights Obligations Relating to Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment, A/HRC/40/55 (Jan. 8, 2019); David R. Boyd et al., *The Human Right to Breathe Clean Air*, 85 ANN. GLOB. HEALTH 146 (2019). New York is currently considering a constitutional amendment that would add a right to breathe clean air drink clean water and live in a healthy environment to the state constitution.

196. Rebecca Bratspies, *This Changes Everything: New York’s Environmental Amendment*, THE NATURE OF CITIES (Feb. 25, 2022), <https://www.thenatureofcities.com/2022/02/25/this-changes-everything-new-yorks-environmental-amendment/>.

197. Clean Air Act §109(b)(1), 42 U.S.C. § 7409.

198. *New York Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants*, ENVIRONMENTAL PROTECTION AGENCY (July 30, 2020), [https://www3.epa.gov/airquality/greenbook/anayo\\_ny.html](https://www3.epa.gov/airquality/greenbook/anayo_ny.html) [perma.cc/BXL2-GGQC].

199. See Environmental Protection Agency, *Air Quality Index Daily Values Report* (2020), <https://www.epa.gov/outdoor-air-quality-data/air-quality-index-daily-values-report> [https://perma.cc/9X7R-5G77].

200. *Id.*

severity of the disease.<sup>201</sup> Shutting peaker plants and replacing them with *Renewable Rikers* will be an important step towards improving the air that New Yorkers breathe. Better air will mean less asthma and cardio-pulmonary disease during normal times,<sup>202</sup> and hopefully decreased spread of the next pandemic, whether zoonotic or otherwise.

As New York adapts its infrastructure to respond to a changing climate, it must keep the focus on overburdened communities. In New York City, the air itself has been tainted by decades of racialized disparities in public policy that steered polluting industry into Black and brown communities.<sup>203</sup> These same communities bore the brunt of over-policing and mass incarceration at Rikers Island. *Renewable Rikers* puts remedying these twin injustices at the center of climate mitigation and adaptation. It focuses the benefits of sustainable energy on those communities that far too often bear the costs associated with fossil-fuel based energy generation while being excluded from critical decision-making processes. It also ensures that survivors of Rikers have a leading role in the ongoing conversation about what happens next on the island.<sup>204</sup> *Renewable Rikers* offers a working model for a just transition, modeling how to connect clean energy infrastructure with meaningful engagement of overburdened communities.

This kind of engagement will be critical going forward. Both New York State and New York City have adopted ambitious climate legislation that emphasizes environmental justice. It may be a revelation to lawyers, but

---

201. Zhongqi Li et al., *Effects of Short-Term Ambient Particulate Matter Exposure on the Risk of Severe COVID-19*, J. INFECTION (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8806393/> [<https://perma.cc/9Y9D-QSNA>]; X Wu et al., *Air Pollution and COVID-19 Mortality in the United States: Strengths and Limitations of an Ecological Regression Model*, 6 SCI. ADV. p.eabd4049 (2020); Maria Zoran et al., *Assessing the relationship between surface levels of PM<sub>2.5</sub> and PM<sub>10</sub> particulate matter impact on COVID-19*, 738 SCI. TOTAL ENVIRON. 139,825 (2020); Silvia Comunian et al., *Air Pollution and COVID-19: The Role of Particulate Matter in the Spread and Increase of COVID-19's Morbidity and Mortality*, 17 INT. J. ENVTL. RES. PUB. HEALTH (2020).

202. Rebecca Bratspies, *Struggling to Breathe: Asthma, Pollution, and the Fight for Environmental Justice*, DATA FOR PROGRESS (2020), <https://www.dataforprogress.org/memos/struggling-to-breathe> [<https://perma.cc/AL9K-3WV>].

203. New York City is not alone in this. Max Ehrenfreund, *The Racial Divide in America is this Elemental: Blacks and Whites Actually Breathe Different Air*, WASH. POST (Dec. 4, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/12/04/asthma-like-so-many-other-factors-in-eric-garner-death-is-correlated-with-race/> [<https://perma.cc/UV9A-5XRA>].

204. Courtney Lindwall, *How Rikers Island Became a Vehicle for Justice (Once it Started Shutting Down)*, NRDC STORIES (May 3, 2021), <https://www.nrdc.org/stories/how-rikers-island-became-vehicle-justice-once-it-started-shutting-down> [<https://perma.cc/T3DF-D7CA>].

passing ambitious law is only the beginning of the process. A new law does not by itself change things on the ground.<sup>205</sup> As Frederick Douglass advised, “[p]ower concedes nothing without a demand. It never did and it never will.”<sup>206</sup> Change happens when people demand it; when they organize and vote and insist. Even with New York’s ambitious laws on the books, making New York’s transition from dirty fossil-fuel infrastructure to clean energy will need a lot of that organizing, voting, and insisting. By tying renewable energy generation to shutting down New York City’s dirty peaker plants located in overburdened, frontline communities, *Renewable Rikers* offer a transformative opportunity for restorative justice—allowing New York to right old wrongs while building new social goods. It is the kind of win-win-win vision that can garner the widespread public support that will be key to actually achieving New York’s climate goals.

---

205. For example, Section 1251 of the Clean Water Act of 1972 set a national goal of ensuring that the waters of the United States would be fishable and swimmable by 1983 and of ending all discharge of pollutants into navigable waters by 1985. Nearly fifty years later, we are still fighting for full implementation of this law. *See, e.g.,* Marc Yaggi, *We Need the Government to Fully Enforce the Clean Water Act*, THE HILL (Oct. 11, 2021), <https://thehill.com/opinion/energy-environment/576161-we-need-the-government-to-fully-enforce-the-clean-water-act> [perma.cc/LM7Y-7FBC].

206. Frederick Douglass, *Address at the Celebration of West India Emancipation* (Aug. 1, 1848), <https://www.loc.gov/resource/mfd.21023/?st=gallery> [https://perma.cc/ZE4F-3VWC].