

Comments of Professor Rebecca Bratspies before the NYC Racial Justice Commission, August 3, 2021.

Thank you for inviting me to testify today.

I want to start with the big picture and connect some dots about how we got here, then I will offer 5 suggestions for this Charter revisions that might move us forward.

Everyone has a right to breathe clean air clean and to drink clean water. Everyone!! These are basic human rights recognized by the United Nations, and by the 150 countries that have enshrined these environmental rights in their constitutions. This fall, New York will vote whether to amend the NY constitution to add §19 “Each person shall have a right to clean air and water, and a healthful environment.

While the United States constitution does not have an explicit environmental provision, we do have laws that could do much the same thing, specifically § 109 of the Clean Air Act that requires air quality standard be set at a level “requisite to protect human health with an adequate margin of safety.” That means that under existing domestic law, everyone should already have clean air to breathe, clean water to drink, a healthy neighborhood to live in.

However, the reality is often quite different.

Too many of our Black and brown community have been forced to fight tooth and nail for these basic human rights. Black communities, communities of color, low-income communities bear far more than their fair share of the environmental burdens in this City.

Take a map of the neighborhoods in New York City that were redlined nearly a century ago, What you have is a map of the City’s **structural racism**—the map that cut Black and brown neighborhoods out of the New Deal and out of the economic prosperity it built.

Now update that map.

- Add a layer for where New York City sited its power plants,
- where the City sited its waste water treatment plants,
- where the private waste transfer stations are located,
- where the polluting industry is more generally—

It's the same map! This is the map of New York City's **environmental racism**. It rests on the structural racism of redlining but has been added to layer by layer by a City that ignored the needs and priorities of these communities. It is also the map of the neighborhoods burdened by over-policing and mass incarceration.

Now take this map of structural racism and environmental racism.

- Add to it the places with few green spaces or street trees,
- the places where environmental enforcement is lax,
- the places where kids struggle with asthma
- and miss too much school because they are sick,
- the places with disproportionate cardiopulmonary disease
- the places most vulnerable to the City's heat island effect,
- the places where COVID-19 hit hardest.

Once again it is the same map. This is the map of New York City's **environmental injustice**—the impacts that polluting industry, that lack of enforcement has on the health and welfare of its most vulnerable residents.

It is this map of environmental injustice, of environmental racism that I hope you will begin to redraw as you revise the City's Charter.

Just a few facts to illustrate these points:

- Until 2018, four neighborhoods processed $\frac{3}{4}$ of the City's waste. All were and still are overwhelmingly Black and brown. The stench, the dust, the truck traffic, the pollution for the entire city concentrated into 4 neighborhoods. This is environmental injustice.
- Many of the City's peaker plants predate the Clean Air Act. They are filthy—spewing particulates, nitrous oxides, and other pollutants as they start up and shut down, something peaker plants do frequently. Virtually all are in EJ communities.
- In 2000, the City sited 10 new peaker plants. Without exception, every single one was in an environmental justice community. These facilities were forced on

communities without their input and over their objections, and with virtually no environmental assessment. The City justified its actions because the facilities were supposedly “temporary” –for 3 years only. Well, anyone born when these plants were built is now old enough to drink—the facilities are still there.

- 60% of the City’s power is generated in one overburdened Queens neighborhood.

Despite the CLCPA’s carbon free mandate, there are two fossil fuel plants currently trying to get new operating licenses in environmental justice communities.

Some Facts About the Health Implications of Structural Racism, Environmental Racism and Environmental Injustice:

New York City is a serious noncompliance zone for ozone, one of the pollutants regulated by the Clean Air Act.

- That means that New Yorkers routinely breathe air that does not meet the standard of “requisite to protect the public health.”
- The harm from this pollution is concentrated in the city’s low-income communities and communities of color.
 - For example, Hunts Point/Mott Haven (overwhelmingly Black and Latinx) has extremely high levels of ozone and particulate pollution.
 - Its asthma rates are **more than double** the city-wide average.
 - Children visit hospital emergency rooms for asthma at a rate **many times greater** than the city-wide average.
 - By contrast, Tottenville, a comparatively prosperous, overwhelmingly white neighborhood on Staten Island has significantly less pollution.
 - children there visit hospital emergency rooms for asthma-related ailments at a rate **nearly an order of magnitude below** the city-wide average.

Overall, a Black child in New York City is

- 42% more likely to have asthma than a white child;
- 8 times more likely to be hospitalized for asthma-related ailments;
- and 2 or 3 times more likely to miss school because of asthma.

Solutions:

There are charter revisions you can make that would start to end this legacy of structural environmental racism and help New York City move from environmental *injustice* to environmental justice. We all deserve to live in healthy communities. Here are 5 suggestions for how to make that happen.

1. The City Charter should be amended to explicitly guarantee every City resident the right to breathe clean air, drink clean water, live in housing that is not toxic or damaging to their health.
2. The City Charter should put environmental justice at its center—in doing this, we could use the recent NJ EJ law as a model.
 - Environmental injustice should be a mandatory reason to deny a permit, license, etc.
 - If a new facility will have a disproportionate negative impact on an already overburdened community, the relevant agency should HAVE to reject it. This will give teeth to the Charter’s “Fair Share” provision
 - Pursuant to Local Law 60 of 2017 New York City just finished a map designating its EJ communities.
 - This charter revision would be a way to make that designation meaningful,
 - and would implement the CLCPA’s mandate that 35-40% of green energy benefits go to disadvantaged communities.
3. The City Charter should learn from Participatory budgeting:
 - In participatory budgeting **communities speak first and last**. Anyone over 12 has a voice—not based on citizenship, on property ownership or any of the other privileges that skew our conversations.
 - These conversations occur in community spaces accessible to those with disabilities, where people feel safe, welcomed, and valued, and at times that work for working people, for parents.
 - There is still a key role for agency expertise, but communities set the agenda and regulators take seriously their self-identified needs and priorities.
 - **Renewable Rikers is an example of the kind of transformative proposals that emerge from this community-driven policymaking.**
 - As part of this approach, Community Boards need to be entirely rethought. They need wide-spread representation and teeth so that communities are in the driver’s seat about development and land use decision-making.
4. The Charter should explicitly recognize that all property is held subject to a **“Social mortgage.”** This is a recognition that private property ownership confers stewardship obligations.
 - Just as a conventional mortgage binds the homeowner to repay the institution that made ownership of that home possible,
 - A **social mortgage** obligates the property owner to recognize their obligation to the community that made that ownership of the property possible

- through providing services such as health care, education, transportation, police and fire protection, as well as through the cultural vibes that make neighborhoods desirable.
 - It converts property ownership from an extractive to a participatory stance, recognizing the stake in the community of those with no private property holdings. It can be a way to change how we think of “as of right” zoning.
 - A land use planning process built on this foundation will be a more just, more equal process capable of addressing displacement
5. Finally, the City needs to reward its workforce for their role in making environmental justice manifest. The Charter should require agencies to
- Include explicit environmental justice metrics in every job promotion/raise description.
 - Evaluate productivity and excellence based on how responsive people are,
 - how they solve community problems,
 - how they achieve inclusion and equity not how many fines or tickets they issue or how many projects get built.

I look forward to our conversation and am glad to provide any follow-up information you might like.