

Local Law 97: What NYC building owners and operators need to know now that the law's first compliance period (2024-2029) has begun

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This advisory provides a short refresher on New York's Local Law 97, the City's climate law that aims to reduce greenhouse gas (GHG) emissions of about 50,000 of the City's largest buildings, and then describes recent major developments in the law's implementation.

The Basics of LL97: A Refresher

The City passed Local Law 97 (LL97) in 2019 to address building emissions, which account for about 70 percent of the City's GHG emissions (transportation accounts for about 30 percent). To that end, LL97 requires covered buildings to meet specific limits for greenhouse gas emissions per square foot. The law establishes three compliance periods: 2024-2029, 2030-2034, and 2034-2050. Each compliance period has increasingly stringent emissions limits. To avoid penalties, a building's GHG emissions must remain below the GHG limit of the current compliance period.

The first compliance period started on January 1, 2024 and runs through 2029. This first period of compliance bases emissions limits on a building's property type (residential, commercial, institutional, etc.). Building owners must file a report with the New York City Department of Buildings (DOB) by May 1, 2025, detailing the building's annual greenhouse gas emissions for the preceding calendar year. A building's annual emissions is calculated by summing its emissions attributable to on-site fossil fuel consumption (e.g., from a gas boiler) plus emissions associated with electricity consumed in the building but produced offsite.

Buildings that do not comply will incur a penalty of up to \$268 per ton of CO2 equivalent over their limit. According to a preliminary review by the DOB, most buildings are already in compliance for the 2024-2029 period – only 11 percent were not on track to meet the requirements at the time of the review. However, this percentage will likely increase during the more demanding second and third compliance periods.

After the first compliance period, the emissions limits tighten. Paralleling New York State's emissions reductions mandates under the Climate Leadership and Community Protection Act (CLCPA), by 2030 covered buildings must reduce their carbon emissions by 40% compared to 2005 levels, increasing to 80% reductions by 2050. Many buildings have been able to grab low-hanging fruit early in the law's tenure. Changing building practices to become more energy efficient can shave off unnecessary energy usage – insulating exposed heating pipes, tuning boilers, operating HVAC systems properly, or switching to LED light bulbs. Meeting the Law's lower emission limits that will apply in 2030 will be harder.

The Mayor's Office of Climate and Environmental Justice has established "[NYC Accelerator](#)", a program that provides free consultation services to building owners about compliance. But to comply with stricter limits building owners and operators will likely need outside advice about more complex retrofits and green upgrades. For example, buildings will need to consider more intensive solutions like commercial scale heat pumps and renewable energy solutions like solar panels and battery storage. As requirements get stricter, creative solutions will be required to comply with law.

Recent Developments:

1. Major Challenge to Local Law 97 Dismissed

On October 27, 2023, a New York Supreme Court judge dismissed a facial challenge to Local Law 97. Plaintiffs' primary argument was that LL97 was preempted by the CLCPA, the State's trailblazing climate law, and therefore invalid. The trial court judge granted the New York City's motion to dismiss, finding each of the plaintiffs four causes of action unavailing. The plaintiffs – two cooperative housing corporations, their board presidents, and the owner of a mixed-use building – filed a Notice of Appeal of the entirety of the trial court's decision in the First Department on January 9, 2024.

2. Department of Buildings Publishes Second Rules Package

Soon after the trial court dismissed the action challenging LL97, in mid-December 2023, the DOB finalized a second package of rules to implement the law. After issuing draft regulations on September 12, 2023 and considering public comments, the finalized rules include two noteworthy elements.

a. The "Good Faith" Effort Two Year Extension

a.

For the 2024-2029 compliance, building owners who have not yet accomplished the level of work necessary to comply with the emissions limit, may mitigate penalties and delay compliance until 2026 by demonstrating their "good faith effort" to comply with the law. To demonstrate a good faith effort, a building owner must:

- Submit the annual building emissions report and maintain compliance with any adjustment DOB has granted
- Comply with Local Law 84 of 2009 and as amended, which concerns energy benchmarking
- Comply with Local Law 88 of 2009 and as amended, which concerns lighting upgrades and sub-meter installation, AND, among other options;
- Provide DOB with a "Decarbonization Plan" by May 1, 2025 that will bring the building into compliance with its 2024 limits no later than 2026.

1 RCNY §103-14(i)(2).

This provision gives buildings that are likely to miss their 2024 emissions limits an opportunity to avoid penalties for 2024 and 2025 by, among other requirements and options, creating a plan that details how the building will come into compliance with its 2024 emissions limits by 2026. Plans must include an energy audit, inventory of equipment, and demonstrate concrete timelines, financing, and expected emissions reductions from planned alterations to reach net zero emissions by 2050.

b. No-Cap Renewable Energy Credits

The DOB's rules apply no limits on building owners' purchase of Renewable Energy Credits (RECs) to offset their excess annual emissions from electricity generation for the 2024-2029 compliance period. Through the purchase of RECs, building owners can offset their excess electricity emissions while still relying on fossil fuels to power their building. In other words, a qualified building can offset 100% of its excess emissions through RECs. Environmental advocates sharply criticized this aspect of the draft rule, but it remains in the final DOB rule.

A REC is a tradable commodity that represents a certain amount of renewable energy that was produced somewhere else. Under LL97 rules, qualifying RECs are limited to “Tier 4” projects – those where renewable energy is generated in or delivered directly into New York City. Only two foreseeable projects meet one of those criteria: the Champlain Hudson Power Express (CHPE) and Clean Path New York (CPNY), with CHPE set to come online in 2026 and CPNY in 2027. There is also the possibility that Offshore Wind Renewable Energy Credits (ORECs) associated with offshore wind projects that serve New York City may meet the requirements of the law. As these projects develop – e.g., Empire Wind 1 and Beacon Wind – the City will indicate whether buildings can purchase RECs from those projects.

In future rulemakings, as the City and State climate law emissions mandates become increasingly demanding, DOB may begin to restrict REC usage to a certain portion of a building’s excess emissions. As always, we will continue to monitor developments in the law and provide updates.

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