

Developments in Federal
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Out with the Trash, In with the New: Challenges and Solutions in New York City's Solid Waste Management System

Viewpoint

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regulatory framework adapted to reduce our carbon footprint and encourage waste reduction and recycling?

Importantly, in New York City our waste system is a long-standing environmental justice problem. For many years, low-income communities and communities of color have been home to a disproportionate number of waste processing facilities, on top of the many other environmentally burdensome facilities sited in the same areas.

After years of advocacy, there are many changes to New York City's waste system on the horizon, including the City's ambitious goal of achieving "Zero Waste" by 2030.¹ We have the opportunity to transform how we manage the City's solid waste—streamlining the regulatory and operational system to reduce landfill-bound waste and greenhouse gas emissions, while simultaneously giving environmental justice communities relief from the disproportionate amount of garbage moving through their communities for the past three decades. This article describes how the current system came to be, and discusses recent legislative and regulatory developments and litigation that seek to make the system more equitable and sustainable.

Solid waste management has always been one of urban civilization's greatest challenges, and in one of the world's largest cities, waste collection and processing continue to pose complex problems. New York City produces more than 24,000 tons of waste each day. How is all that waste collected, processed, and disposed of? And as we begin to comprehend the importance of diverting waste from landfills to reduce greenhouse gas emissions and curb climate change, how has our City's legal and

Waste Processing in NYC: Background and Environmental Justice Issues

For many years, the City of New York operated a municipal landfill in Staten Island known as Fresh Kills—once the largest

¹ See N.Y.C., ONE NEW YORK: THE PLAN FOR A STRONG AND JUST CITY 176 (2015), <https://onencity.cityofnewyork.us/wp-content/uploads/2018/04/OneNYC-1.pdf>.

landfill in the world.² Almost all residential waste collected by the Department of Sanitation (DSNY), as well as some collected by private waste haulers that pick up commercially generated waste, was trucked to marine transfer stations along the city's waterfront, where the trash was loaded onto barges and floated over to be dumped at Fresh Kills. In 1996, in response to many years of outcry from residents of Staten Island sick of having to handle trash from all five boroughs, and after the State passed a law directing that the landfill begin the process of closure, the City announced it would close Fresh Kills and cease operating the aging marine transfer stations along its waterfront.

With the closing of Fresh Kills landfill, as well as the closure of municipal incinerators, the more than 20,000 tons of garbage generated each day in New York City in the late 1990s had to go somewhere. Seeing the potential for lucrative city contracts, many private sanitation companies decided to open or expand land-based waste transfer stations, where garbage could be trucked, processed, and then packed onto long-haul trucks bound for landfills outside city limits. They looked to open these truck-intensive facilities in areas in or close to industrial- or manufacturing-zoned regions of the city such as North Brooklyn, the South Bronx, and Southeast Queens—all of which also were low-income communities and communities of color.

Today, more than 20 years after the proliferation of private waste transfer stations, these three neighborhoods collectively handle more than two-thirds of the entire city's waste. Not coincidentally, other polluting facilities—such as cement plants, wastewater treatment plants, and truck depots—are clustered in these neighborhoods as well. As a result, these environmental justice communities suffer negative health outcomes, including high asthma rates, cardiovascular disease, and cancer, and face dangers every day from the hundreds of large commercial waste trucks tearing up side streets, blowing through stop signs, idling in front of residential areas, dropping litter, and leaking leachate on their way to and from the transfer stations.

In 2006, after a decade of fighting back, environmental justice advocates achieved a major victory in the fight for a fair waste system. The City officially released a new Solid Waste Management Plan (SWMP), which for the first time included principles of environmental equity and incorporated a comprehensive plan to shift New York's waste export system from its reliance on diesel trucks back to a cleaner, more efficient system of marine- and rail-based export. By making this critical shift,

the City projected that it would cut 5.5 million vehicle miles traveled from the road annually.

The SWMP pledged to open at least four new or refurbished marine transfer stations (MTSs) on City-owned sites where waste had previously been loaded onto barges destined for Fresh Kills. It also committed the City to reducing commercial waste going into overburdened communities, and to reducing associated truck traffic as well, by exploring the use of a separate MTS in Manhattan dedicated solely to commercial waste. Twelve years later, that idea has not gained any traction. However, three of the more modern and equitably sited MTSs are open and operational, and DSNY has managed to substantially reduce its reliance on privately owned truck-based transfer stations.

The journey toward opening all four equitably sited MTSs to reduce the amount of waste and trucks in environmental justice communities was plagued with delays, largely due to the political pushback from influential communities that had strong NIMBY objections to the equitably sited state-of-the-art facilities.³ More than a decade after the SWMP set forth actions to bring equity into solid waste management, the fourth MTS still has not opened, and the commercial waste MTS has never gotten off the ground. Political pushback also delayed other equity-minded reforms contemplated in the SWMP, including a direction to the City Council to act in concert with DSNY to reduce truck-based transfer station capacity once the MTSs were up and running and able to process the majority of DSNY's collected waste.

Regulatory Framework

Reform of New York City's solid waste system is currently so challenging in part because of an overlapping and tangled regulatory scheme governing solid waste. The overlapping scheme creates regulatory inefficiencies, resulting in very little practical oversight.

The New York State Department of Environmental Conservation (DEC) has jurisdiction over waste transporters and facilities under Article 27 of the Environmental Conservation Law, and requires that waste processing facilities and transporters meet certain conditions to obtain permits from the agency.⁴ For waste processing facilities in New York City, however, DEC is not generally an active enforcement or investigative

² Fresh Kills opened as a landfill in 1948, but until at least 1970 when the Clean Air Act was passed, much of New York City's waste was burned in incinerators. New York City officially banned incinerators in apartment buildings in 1989. *See Incinerator Ban Is Adopted*, N.Y. TIMES, June 14, 1989, at B5, available at <https://www.nytimes.com/1989/06/14/nyregion/incinerator-ban-is-adopted.html>.

³ *See, e.g.,* Arlene Karidis, *Manhattan Marine Transfer Station Moves Forward Despite Opposition*, WASTE 360 (Aug. 30, 2016), <https://www.waste360.com/transfer-stations/manhattan-marine-transfer-station-moves-forward-despite-opposition>; Sarah Crean, *Garbage Arguments: Battle Over Transfer Station Underscores City Trash Dilemma*, N.Y. ENV'T REP. (Aug. 4, 2014), <http://www.gothamgazette.com/5202-garbage-arguments-battle-marine-transfer->; Mireya Navarro, *In Fight Against Trash Station, Upper East Side Cites Injustice*, N.Y. TIMES, June 30, 2011, <https://www.nytimes.com/2011/07/01/science/earth/01garbage.html>; Nicholas Confessore, *Mayor Wins Test Over His Trash Disposal Plan as Council Drops Veto Override Vote*, N.Y. TIMES, June 23, 2005, <https://www.nytimes.com/2005/06/23/nyregion/mayor-wins-test-over-his-trash-disposal-plan-as-council-drops-veto.html>.

⁴ *See* 6 N.Y.C.R.R. Subpart 362-2 and Part 364.

agency unless the agency receives complaints. Because the Solid Waste Management Act of 1988 delegates primary responsibility for waste management to localities,⁵ the City itself is the primary regulator of solid waste management.

As previously mentioned, all of New York City's residential waste is collected by DSNY. DSNY employees are municipal employees, eligible for a pension and other benefits available to City workers. DSNY promulgates rules governing residential municipal waste in Title 16 of the Rules of the City of New York. DSNY also regulates and oversees all recycling efforts by residents and businesses.

Commercial waste—or all waste generated by businesses and other commercial enterprises, including the many office buildings in New York City—must be collected by a private sanitation hauler, as DSNY does not collect this waste. Before the late 1990s, these private sanitation companies operated without any City regulatory oversight. The private sanitation industry was controlled by various organized crime syndicates known as trade waste “associations.” In the 1980s and 1990s, a number of federal racketeering cases were brought against many of these private sanitation companies in an attempt to break the cartel that controlled New York City's private sanitation industry. In 1996, after the largest prosecution against dozens of companies and individuals involved in the waste industry, New York City passed Local Law 42, establishing the Trade Waste Commission—which later changed its name to the Business Integrity Commission (BIC). BIC is tasked with conducting background investigations on every individual and company seeking to operate a private sanitation business in the city and with overseeing all of these companies' operations. There has been some recent debate as to the breadth of BIC's power and jurisdiction since its original task was to rid the private sanitation industry of organized crime and corruption,⁶ but more recently it has promulgated rules and issued a directive requiring private truck fleets to meet emissions standards, install side guards to protect pedestrians, and ensure that source-separated recyclables are transported separately from other putrescible waste so as to not contaminate recyclable material.⁷ BIC's rules governing its oversight of private waste hauling companies can be found in Title 17 of the Rules of the City of New York.

Finally, all the commercial waste collected by these private sanitation companies—and, as mentioned above, some of the residential waste collected by DSNY—is transported to mostly truck-based privately owned transfer stations located throughout

the city, but primarily in North Brooklyn, the South Bronx, and Southeast Queens. These facilities are permitted by both DEC and DSNY, as are all material recovery facilities or “MRFs,” which process recyclable material.

This tangled web of regulations results in an overlapping and inefficient regulatory system resulting in very little oversight of the operations of many private actors. The lack of enforcement of the current private waste system in New York City to be plagued with bad actors engaged in a race-to-the-bottom competitive atmosphere. Furthermore, because different entities have enforcement jurisdiction over different parts of the waste stream, enforcement is erratic and ineffective at best. For example, in 2017, New York City's commercial recycling laws went into effect, and both DSNY and BIC promulgated corresponding rules. Enforcement was set to begin on August 1, 2017. As of late September and into October of 2017, however, DSNY had issued hundreds of violations to commercial entities for failing to separate recyclables for collection, but BIC had yet to issue a single violation to haulers who continued to regularly carry potentially valuable recyclables in their putrescible waste trucks, thereby contaminating many of the recyclables—indicating that they were not going to be recycled after all.⁸ The inefficient and ineffective regulatory system that implements and enforces the law is undermining its intent.

Solutions: The First Step—Organizing and Legislating Toward Waste Equity

Residents of the handful of low-income communities and communities of color that are home to the bulk of the city's waste transfer stations and processing facilities have long advocated for policy change to reduce the burdens of waste infrastructure in their neighborhoods. Hundreds of diesel-burning trucks bring in and export garbage generated across the city, bringing with them noxious air pollution, unsafe streets, and unwanted noise. Many of the workers who collect and process this waste live in these neighborhoods as well. For decades, communities have demanded that relief for overburdened environmental justice communities be prioritized alongside investments that bring us closer to the City's stated Zero Waste goals. Often these goals work hand in hand, as with investments in high-diversion, low-emission facilities such as the municipally run marine transfer stations.

⁵ See N.Y. ENVTL. CONSERV. LAW § 27-0106(2) (“A state-local partnership, in which the basic responsibility for the planning and operation of solid waste management facilities remains with local governments and the state provides necessary guidance and assistance, must be forged.”).

⁶ See, e.g., Kiera Feldman, *At Hearing for Bronx Trash Hauler, More Questions About Safety and Oversight*, PROPUBLICA (Sept. 5, 2018, 5:34 PM EDT), <https://www.propublica.org/article/at-hearing-for-sanitation-salvage-more-questions-about-safety-and-oversight>; Gwynne Hogan, *City Requests More Authority to Impose Safety Standards on Private Trash Haulers*, STREETS BLOG NYC (Nov. 27, 2017), <https://nyc.streetsblog.org/2017/11/27/city-requests-more-authority-to-impose-safety-standards-on-private-trash-haulers/>.

⁷ See 17 R.C.N.Y. § 5-12; N.Y.C. Bus. Integrity Comm'n, Comm'n Directive (Apr. 2, 2018), https://www1.nyc.gov/assets/bic/downloads/pdf/directives/dir_veh_mgmt_port.PDF.

⁸ See Video: Hearing Before N.Y.C. Council Comm. on Sanitation & Solid Waste Mgmt. on Zero Waste Oversight (Sept. 18, 2017), <https://on.nyc.gov/2Ek1919> (testimony of NYLPI at 1:31:00 mark); see also Cole Rosengren, *DSNY Issued Hundreds of Commercial Recycling Violations—and Haulers Will Be Next*, WASTE DIVE (Oct. 17, 2017), <https://www.wastedive.com/news/dsny-issued-hundreds-of-commercial-recycling-violations-and-haulers-will/507398/>.

As previously noted, the SWMP approved in 2006 specifically instructed that once more equitably sited and sustainable marine transfer stations were operational, the New York City Council should pass legislation reducing the permitted capacity of waste facilities in overburdened communities as a first step toward shifting the City's reliance away from truck-based transfer stations to marine-based ones.⁹ But such legislation, known as "waste equity legislation," had gotten no traction in the City Council for almost a decade after the passage of the SWMP.

In the face of powerful, moneyed opposition—ranging from the private waste industry and their lobbyists¹⁰ to residents of the Upper East Side¹¹—low-income communities and communities of color who bear the burden of environmental racism came together to realize their collective power and influence over key decision-makers. Through education and outreach, community organizers and members of community organizations such as OUTRAGE, OWN, Cleanup North Brooklyn, THE POINT CDC, Youth Ministries for Peace and Justice, El Puente, NAGG,¹² and SE Queens Organizing for Waste Equity collaborated with organized labor, advocacy organizations, and community members to bring the impacted community members' lived experience of pollution to the attention of policy makers.¹³ Together, these community groups, labor organizations, community lawyers such as New York Lawyers for the Public Interest (NYLPI), environmental advocacy organizations, and environmental justice advocates harnessed their collective power to form a waste equity coalition.

Using tactics such as petition drives, demonstrations, town halls, and press conferences, community leaders both demonstrated real public concern about the impact of waste facilities on their neighborhoods and also showed that voters were paying attention to how (and whether) the elected officials would act.

Legislation is the most critical tool to reforming the waste system, as it codifies goals into measurable requirements in law. The first iteration of waste equity legislation was introduced in 2011, five years after the SWMP was approved, by North Brooklyn Council Member Diana Reyna, whose district processed—and still processes—approximately 40% of the

city's waste. Three years later, her successor, Council Member Antonio Reynoso, re-introduced the waste equity legislation as Intro 495. Intro 495 received a hearing in 2015, but was stalled because the de Blasio administration cited legal concerns with the bill, which left ample discretion to the Commissioner of DSNY as to which private facilities would be required to reduce the amount of garbage they process.

In 2016, DSNY Commissioner Garcia proposed a compromise version of Council Member Reynoso's waste equity legislation, whereby permitted capacity of facilities in overburdened districts would be reduced by a uniform percentage across the board. This solution promised to resolve concerns that courts might strike down mandated reductions as arbitrary and capricious, but the compromise was a far less direct manner of reducing waste and diesel trucks in the communities because there was already so much unused permitted capacity in the overburdened community districts. Because permits allowed so much unused capacity, in practice the revised bill would not have reduced the net amount of waste trucked in to some overburdened districts. However, the bill would protect districts from any increases in the amount of waste and trucks going forward. The overburdened communities, advocates, and Council sponsors saw the potential benefits of the compromise bill and decided to work together with the administration to push the bill forward. After Intro 495 failed to receive a vote before the Council's term ended at the end of 2017, Council Member Reynoso re-introduced the legislation yet again, as Intro 157 of 2018.

Other key features of Intro 157 included incentives for private waste companies to expand recycling and organics processing capacity, as well as incentives for investments in rail-based infrastructure to reduce the private waste industry's reliance on diesel trucks in collecting, dumping, and exporting waste. The waste equity bill also contained a provision that ensured no other district in the city would become overburdened: it prohibited any district in the city from processing more than 10% of the city's waste moving forward, which is a crucial protection for communities such as Sunset Park.

⁹ See N.Y.C. DEPT. OF SANITATION, *Commercial Waste Management*, in COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN 4-1, 4-10-4-11 (Sept. 2006), https://dsny.cityofnewyork.us/wp-content/uploads/2017/12/about_swmp_ch4_0815.pdf.

¹⁰ David Giambusso & Brendan Cheney, *Lobbying Efforts Deal Body Blow to Bronx Support for Waste Equity Bill*, POLITICO (Dec. 14, 2016, 3:56 PM EDT), <https://www.politico.com/states/new-york/city-hall/story/2016/12/bronx-political-wrangling-delivers-body-blow-to-waste-equity-bill-108072>.

¹¹ Rebecca White, *Gathering on Upper East Side to Oppose Garbage Station*, N.Y. TIMES CITY ROOM (June 11, 2011, 5:43 PM), <https://cityroom.blogs.nytimes.com/2011/06/11/gathering-on-upper-east-side-to-oppose-garbage-station/>.

¹² NAGG is now known as North Brooklyn Neighbors, but continues to be involved in waste equity and green neighborhood advocacy.

¹³ See, e.g., Naeisha Rose, *Waste Equity Debate Rages on in St. Albans*, TIMES LEDGER (May 15, 2018, 12:00 AM), https://www.timesledger.com/stories/2018/19/wasteequity_2018_05_11_q.html; Joe Hirsch, *Bronxites to City: Slash Our Trash*, MOTT HAVEN HERALD, Jan. 2, 2017, <http://www.mott-havenherald.com/2017/01/02/bronxites-to-city-slash-our-trash/>; Erin Durkin, *More Waste Trucks Clogging the Streets in Williamsburg and Greenpoint, Study Finds*, N.Y. DAILY NEWS (Nov. 16, 2011, 6:30 PM), <https://www.nydailynews.com/new-york/brooklyn/waste-trucks-clogging-streets-williamsburg-greenpoint-study-finds-article-1.978738>.

In July 2018, after further negotiations—and in response to a wave of negative media coverage of the private waste industry¹⁴—the City Council passed Intro 157. Mayor de Blasio signed the waste equity bill into law in a special ceremony attended by many of the community groups advocating on this issue in North Brooklyn in August 2018.

Solutions: Litigating to Advance Waste Equity

Litigation also has a role to play in advancing waste equity. A lawsuit on behalf of one community group to counter the negative impacts of a private waste transfer station in the middle of its members' neighborhood has been helpful in drawing attention to the human cost of the waste equity problem in New York City.

Cleanup North Brooklyn (CNB) is a community-based organization founded in the neighborhood of Bushwick/East Williamsburg. CNB's members are families, artists, and small business owners who came together to fight a poorly managed private waste transfer station sited in the middle of their neighborhood that causes rotting garbage odors, excessive noise throughout the night, idling trucks with harmful fumes exacerbating asthma, and a proliferation of rats. In late 2016, CNB published a report documenting over a thousand instances of misconduct by the transfer station in the course of one week.¹⁵ The report, "Profits Before Safety," was the result of grassroots organizing by the community group and created an opportunity for lawyers at NYLPI, including the author of this article, who had been representing the community to assist in finalizing and vetting the report.

After the report's publication, the NYLPI team guided CNB through a City-mediated meeting with the facility's owners and operators. During the meeting, the community members presented their top concerns and requests to improve operations, and the facility's managers made specific commitments. NYLPI confirmed the commitments in writing following the meeting in a letter from the community to the facility.

Months later, the facility had made no significant improvements, and the community received no response to the post-meeting

letter. On August 30, 2017, represented by NYLPI attorneys and pro bono co-counsel Schindler Cohen & Hochman LLP, CNB and nine individual members of the group filed a lawsuit in Kings County Supreme Court alleging that the waste transfer station was causing a public and private nuisance, and that the facility's violations of local and state laws constituted a nuisance *per se*.¹⁶

The lawsuit seeks a court order requiring the transfer station's owners to stop creating harmful conditions at their garbage facility. The case is still pending in Kings County Supreme Court, but community members feel more empowered in a fight that they know other environmental justice communities are watching—because not only does this battle aid in North Brooklyn's fight for waste equity, but it also gives hope that other overburdened communities could avail themselves of legal tools as well.

More Solutions: What's Next? Commercial Waste Zoning

The passage of waste equity legislation and the potential for a court order (or court-enforced settlement) mandating higher standards of operation for a poorly sited facility are important victories for the environmental justice community working to advance waste equity and transform the polluting and unsafe waste industry. The greatest potential for truly systemic reform, however, lies directly ahead in the coming years as the City considers a commercial waste zone plan.

In 2014, DSNY commissioned an independent consultant to analyze the potential benefits to the City that a zoned commercial waste collection system could provide. The Transform Don't Trash NYC coalition had been advocating for the City to move toward a zoned collection system, in which the city is divided into geographic zones and carters compete under an RFP system for the right to collect commercial waste in each zone. The coalition pointed to the potential environmental, equity, safety, and efficiency benefits such a system could provide. In 2016, DSNY released the results of the study, which concluded that a zoned system could reduce the greenhouse gas emissions

¹⁴ A key component of both the organizing and legislative advocacy to advance waste equity goals was working with a communications and media strategy. The most powerful messaging in this context has been to put a spotlight on waste haulers' and facilities' shockingly unsustainable, unsafe, and illegal practices. Sadly, given the current state of the waste industry in New York City, there are countless examples of poor practices—from garbage truck crashes, to exploitation of workers, to reports on abysmal recycling rates. The investigative reporting done by ProPublica reporter Kiera Feldman on the dangers and corruption in New York City's waste industry was essential in helping to advance the fight for waste equity. Ms. Feldman first contacted a waste equity advocacy coalition partner, a labor organization, as part of her background work for a piece on the private sanitation industry; she asked the union for help accessing and interviewing workers in the industry. Through conversations with many key organizers and workers in the industry, she uncovered the awful working conditions, inefficiencies, illegal practices, and vast corruption that still remain in the private sanitation industry in New York City. She published a series of powerful articles that pushed the conversation around the city's waste industry into the mainstream and forced policy makers to pay attention as the waste equity legislation was moving forward. The press attention proved a crucial piece in galvanizing community members and urging policy makers to address the problems.

¹⁵ CLEANUP NORTH BROOKLYN, PROFITS BEFORE SAFETY: THE IMPACTS OF A PRIVATELY OWNED WASTE TRANSFER STATION ON A NORTH BROOKLYN COMMUNITY (2016), available at <http://www.cleanupnbk.org/profits-before-safety/>.

¹⁶ See *Cleanup N. Brooklyn v. Brooklyn Transfer LLC*, Index No. 516850/2017 (Sup. Ct. Kings County).

released by this industry by up to 64% and reduce vehicle miles traveled by the unsafe and outdated trucks in the private sanitation industry by 68%.¹⁷ The consultants concluded that the current system is so inefficient that commercial waste hauling trucks travel more than 23.1 million miles in New York City each year—representing multiple trips to the moon and back. After seeing the potential for such significant environmental progress under a zoned system, the de Blasio administration committed that the City would work with stakeholders and experts to study what the best design and implementation plan for such a zoned system would be.

DSNY, BIC, and consultants spent two years working with stakeholders from within the sanitation industry, small business owners and associations, real estate interests, community organizations, environmental and environmental justice advocates, and labor organizations. In November 2018, the final proposal for the Commercial Waste Zone Plan was revealed.¹⁸ A scoping hearing for the environmental review was scheduled for December 2018. In the following months, the environmental review process will fully flesh out many of the complicated contours of the transformational plan. At the same time, the City Council is beginning to work with stakeholders and DSNY to draft thoughtful authorizing legislation that will provide the framework for the commercial waste zone plan.

Environmental advocates, labor groups, and community-based organizations who have been involved with the Transform Don't Trash NYC coalition will continue to advocate to ensure that the final plan and legislation take advantage of the opportunity to holistically reform the industry from top to bottom, mandating that any and every carter who secures a contract from the City to operate as one of only a few haulers within a geographic zone complies with all applicable regulations, invests in green technology, pays and treats workers fairly, has clean-burning truck fleets, meets diversion goals, employs GPS technology for smarter and more efficient routes, and only disposes of material at responsible, better-sited, and sustainable facilities.

This watershed moment in New York City's solid waste processing history represents a real opportunity to take a morass of complicated and inefficient regulations with gaping loopholes, and to convert the system into a well-regulated, transparent, safe, and sustainable one—and to incentivize further emission reductions, diversion increases, and investment in green technology while doing so, which in turn represents the potential for creation of good green jobs. In short, the commercial waste zone system has the ability to transform our waste system—and our city—and to accomplish both environmental and equity goals.

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NYLPI in 2016. Ms. Iachan uses her background in government, regulatory law, and litigation to advocate for systemic change to benefit low-income communities and communities of color who face disproportionate impacts from public health challenges and environmental burdens.

New York Lawyers for the Public Interest is a social justice organization that was founded 40 years ago to provide critical legal services and advocacy for New Yorkers in need. They provide services in environmental justice, health justice, and disability rights programs through the community lawyering model. NYLPI's community lawyering model is a client-driven process that promotes sustainable solutions and strategies for neighborhood empowerment.

NYLPI has been at the forefront of advocating for waste equity for more than two decades, and serves as lead counsel in the Cleanup North Brooklyn litigation against Brooklyn Transfer LLC.

LEGAL DEVELOPMENTS

ASBESTOS

Court of Appeals Found That Evidence of Ford's Liability in Asbestos Case Was Legally Insufficient

The New York Court of Appeals affirmed the Appellate Division's determination that evidence in an asbestos personal injury action was insufficient as a matter of law to establish that Ford Motor Company's (Ford's) conduct proximately caused the decedent's injuries. The decedent worked for utilities, where he worked with asbestos-containing products manufactured by Ford and others. A jury in the Supreme Court, New York County, found that Ford was 49% liable, but the trial court ruled that Ford was entitled to judgment as a matter of law. In rejecting the plaintiffs' appeal, the Court of Appeals cited its 2006 decision in *Parker v. Mobil Oil Corp.* and its 2014 decision in *Cornell v. 360 W. 51st St. Realty, LLC* as setting the applicable evidentiary standards. Only five judges participated in the case. Neither Judge Feinman (who was a member of the Appellate Division panel and dissented from its decision) nor Judge Garcia participated in the case. Judge Fahey wrote a separate concurring opinion to highlight his view that the plaintiffs' evidence failed to establish a connection between Ford's products and the decedent's exposure to asbestos. Judge Wilson also wrote a concurring opinion, indicating that he would have affirmed on general causation grounds identified by the Supreme Court, rather than on the failure to establish specific

¹⁷ N.Y.C. Dept. of Sanitation & N.Y.C. Bus. Integrity Comm'n, Private Carting Study: Executive Summary 6–9 (Aug. 17, 2016), https://dsny.cityofnewyork.us/wp-content/uploads/2017/12/Private_Carting_Study_Executive_Summary.pdf.

¹⁸ The plan and related information are available at *Commercial Waste Zones Implementation*, N.Y.C. DEPT. OF SANITATION, <https://www1.nyc.gov/assets/dsny/site/resources/reports/commercial-waste-zones-plan> (last visited Dec. 7, 2018).