

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE NATIONAL WASTE & RECYCLING
ASSOCIATION et al.

Petitioners - Plaintiffs,

For Judgment Pursuant to Article 78 of the New York Civil
Practice Law and Rules, and Declaratory Judgment
-against-

THE CITY OF NEW YORK et al.

Respondents -Defendants.

Index No. 101686/2018

Affidavit of Eddie Bautista

AFFIDAVIT OF EDDIE BAUTISTA

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

EDDIE BAUTISTA, being duly sworn, deposes and says:

1. My name is Edward “Eddie” Bautista.
2. I am the Executive Director of New York City Environmental Justice Alliance (“NYC-EJA”). I have held this position since 2010.
3. NYC-EJA is a citywide coalition of community-based organizations from the city’s most environmentally overburdened communities. It consists of approximately eleven organizations from the South Bronx, North and Central Brooklyn, West Harlem, Morningside Heights, Jackson Heights, and East Harlem. These are predominantly communities of color, and the organizations are largely run by directors of color.
4. I began my work in environmental justice organizing as a community organizer at New York Lawyers for the Public Interest (“NYLPI”), where I started in 1990. In 1996, I became the Director of Community Planning and Organizing at NYLPI. In 2006, I left NYLPI to join Mayor Michael Bloomberg’s administration as the Director of City Legislative Affairs. I served in that capacity until 2010.

5. I submit this affidavit to show, contrary to the claims of petitioners-plaintiffs, that Local Law 152 (i) was the result of grass roots advocacy over many years by concerned citizens, (ii) meets vital community concerns to improve air quality in neighborhoods overburdened by diesel fumes caused by the unfair concentration of waste transfer stations in those neighborhoods, and (iii) is in part and parcel a continuation of the equity-minded reforms the SWMP put into place.

A. Early Environmental Justice Organizing in New York City

6. In 1990, NYLPI was working on the Charter Rights Project which dealt with large infrastructure that had environmental impacts on communities of color—it was the first time that the concept of “fair share” was introduced. We didn’t even call it environmental justice in 1990. All of these were communities in heavy manufacturing zones with infrastructure such as sewage plants, power plants, and medical waste incinerators—whether it was Williamsburg, Sunset Park, Red Hook, all these neighborhoods had the same issues bubbling up-- some piece of infrastructure was being sited in their community that was just too much. What was clear was that these were all pieces of infrastructure causing environmental impacts in communities of color, where at the same time these communities were starting to experience skyrocketing asthma rates and other public health problems. At the time, the project was conceptualized as environmental urban health.

7. By 1991, NYLPI learned about the context of “environmental justice.” NYC-EJA was formed in the same year—and this was largely because all of these conversations were happening at the same time.

8. NYC-EJA formed after different community groups from different neighborhoods began to meet during the course of the Charter Rights Project. Frequently, the leaders of these groups were the only people of color at a City Council hearings or at regulatory hearing dealing

with transfer stations, and they would gravitate towards each other. Out of that kind of relationship building, they decided to form what became NYC-EJA, and in fact, NYLPI assisted with the formation.

9. The community groups realized that if we didn't identify what the underlying city policies that were leading to the continuous siting of these polluting infrastructure facilities, and if they didn't find a way to try and insert some rationality or justice into that system, we would be fighting facility by facility into the foreseeable future.

10. In 1996 NYLPI filed the first lawsuit that challenged the system of siting commercial waste facilities, trying to force the Giuliani administration to enforce Local Law 40. That law was passed by the City Council to prevent the clustering of waste transfer stations, though by then it was too late.

11. At the same time Giuliani announced they were going to close Freshkills landfill, they proposed a Brooklyn Navy yard incinerator, but that incinerator was never built. A lot of environmental groups were doing cartwheels because they were thrilled about killing the incinerator project, but those of us at NYLPI and NYC-EJA recognized that if you're not going to landfill the garbage, and you're not going to burn it, where is it going to go?

12. By closing Freshkills, the City also shifted from moving our residential waste out by barge to trucking the waste, and allowed the Marine Transfer Stations ("MTS's") to sit empty and dilapidate.

B. The Privatization of the Waste Industry and Push for the SWMP From Advocates

13. The City and State then announced a short-term plan to begin privatizing residential waste export on a borough-by-borough basis. Beginning in 1997, the City of New York awarded yearly contracts to private waste transfer stations each year for the export of each borough's waste. They finished awarding these contracts in 2001. During this five-year plan to

close Freshkills, the MTS's previously used to transfer the waste to Freshkills on Staten Island were all dormant.

14. Many of these City contracts were awarded to waste transfer stations clustered in the same three communities, which meant bringing even more trucks to their neighborhoods. So on top of the commercial waste already being processed in these communities, the City was now relying on the same infrastructure to export residential waste.

15. During these years, while the short-term contracts were in place, there was no mandate that a borough's waste had to be exported from a transfer station in that borough. Brooklyn ended up with waste from Brooklyn, Queens, and the Bronx. The carting trucks had a capacity of approximately 15 tons of waste each, and the City generates approximately 11,000 tons of residential waste per day—plus another 11,000 of commercial waste, and 14,000 construction and demolition waste. These 15-ton capacity trucks would pick up the trash and take it to a land-based transfer station. The waste was then exported by an 18-wheel tractor trailer that has a capacity of approximately 25 tons. Thousands of diesel truck trips were coming in and out of these communities each week.

16. Many community groups formed a citywide coalition and campaign called Organization of the Waterfront Neighborhoods ("OWN"). OWN wanted to figure out an alternative to what the city was proposing, and began to advocate for the use of the already existing but dormant MTS's to be renovated and utilized again. OWN sued to stop each borough's contract with the truck-based transfer stations from going through, but none of those suits was successful.

17. At this time, the City Council became aware of the OWN campaign and reached out. The City Council realized that there could not be an interim plan in place without amending the Solid Waste Management Plan ("SWMP"), which was under its purview, and so it told the

Mayor, “You can’t just enter into these long term 20 billion dollar contracts. We have to approve this.”

C. The SWMP

18. In 2001, everyone running for mayor was briefed by OWN, and the person running policy issues for Bloomberg’s campaign had a special understanding about the issue because she had worked for the Speaker of the City Council. She adopted the idea of retrofitting the marine transfer stations as a long-term plan to handle waste as part of Bloomberg’s platform.

19. In the first new Mayoral administration, the community groups began putting pressure on the new Council speaker, the new Sanitation Committee Chair, and the Mayor to revisit the marine transfer station retrofitting proposal in amending the Solid Waste Management Plan. The Mayor made a statement to the effect of, “In my second 100 days of mayor, I’m going to come up with an answer to the problem of where we’re sending our garbage.” Months later, he announced the plan to reopen the marine transfer stations—basically our plan. Major victory.

20. The community groups spent the next three years negotiating and working with both the Department of Sanitation and the Economic Development Corporation.

21. By 2005, the City had developed a proposal for the marine transfer stations, and had pushed the land use applications through the Council.

22. In 2006, I left my position at NYLPI to go work directly at the Mayor’s office; I joined the Bloomberg administration as the Director of City Legislative Affairs. My role was largely based on getting the Solid Waste Management Plan passed by the Council—that’s what I got brought in for, though it was never quite said, but it was clear that this solid waste management plan would be one of the first things that would happen in 2006, because the land use items had already been passed and already been approved by the Council.

23. Within the first six months that I was working at the mayor's office was when the solid waste management plan had to be heard—June of 2006. That involved a lot of negotiations with different council people, particularly those with marine transfer stations in their districts.

24. My role was staffing and working with DSNY and the Mayor's administration at the same time as I was negotiating with the City Council and to try and figure out a way forward—I had to get both parties to yes. And the Mayor was clear, he wanted this plan because of environmental justice and equity. Back in 2001 and 2002, his own framing of the waste plan was as an equity, environmental justice, and public health goal.

25. As part of the Solid Waste Management Plan negotiations, the council members from North Brooklyn and the South Bronx wanted to connect relief for their communities as part of this deal. What came out of the negotiations was a commitment that the City Council would authorize the Department of Sanitation to pursue capacity reduction at the land-based transfer station in the overburdened districts. The Council said, "Okay, DSNY, we will give you a year to try and reach voluntary reductions in the land-based waste transfer stations, but if we're not happy at the end of the one year, we are going to do it ourselves."

26. The SWMP then passed through the Council after those hearings, with that provision allowing the Council to legislate capacity reductions if DSNY's negotiations failed within a year.

27. DSNY tried to negotiate with some of the transfer station owner in the three most impacted neighborhoods, but as you can imagine, the transfer station owners were not going to willingly give up capacity that they're using.

D. Waste Equity Bills as Implementation of the SWMP

28. In 2010, I left the Mayor's office to join NYC-EJA. The City Council Speaker, Christine Quinn, had been there for the SWMP negotiations and understood that there was

unfinished business from it regarding the capacity reductions. So the Council started making noise, with the Council Member from North Brooklyn, Diana Reyna, leading. This was unfinished business for her, and so when it became clear that what was coming from DSNY wasn't enough, she said, "Well, according to the Solid Waste Management Plan, we have the right to legislate real reductions if we're unsatisfied with what the Sanitation Department came up with." That is what led to the first of three different waste equity bills for mandatory reductions in capacity.

29. The first iteration of the waste equity bill was Intro 1170, introduced by Council Member Reyna in 2013, which envisioned 18% throughput cuts across the board for the three communities. And this was a big deal because it would have meaningfully reduced not only trucks but the amount of garbage going to the overburdened communities. This was the Council being smart. In the SWMP, they always retained their right to revisit reduction of waste in the overburdened districts legislatively if DSNY failed to get it done—the Council always envisioned a failsafe where they would come back in and they would legislate if no deal or a bad deal got cut. So, the first iteration of this bill proposes to cut 18% of actual throughput, not permitted capacity. The community groups rallied in support and went to the media in order to get their voices heard on the issue. However, the Bloomberg administration threatened to veto, so that bill got killed.

30. After the Bloomberg administration, Mayor de Blasio was elected, and we got a whole new Council. The same bill was then introduced as Intro 495 by Diana Reyna's successor, Antonio Reynoso.

31. This time, we were in a stronger position because Antonio Reynoso was Chair of the Sanitation Committee. The community spent countless hours talking to Council Member

Reynoso, his staff, and the administration trying to get the bill to a point where the administration would be supportive but there would be some actual relief for the communities.

32. The communities also organized public protests and demonstrations to urge their Council Members to support the waste equity bill. In particular, there were very active rallies in the South Bronx, and in Southeast Queens.

33. In 2017, NYC-EJA was organizing a coalition of folks in Southeast Queens with the assistance of a young minister working out of Allen A.M.E. Church. That minister, the congregants, the coalition all organized a pray-in at the local transfer station, and the local Council Member showed up. The community made sure he knew they supported the waste equity bill, and even a year later visited his office to remind him of their support.

34. Ultimately, Intro 495 also failed to come to a vote before the end of that Council term. Luckily, Antonio Reynoso maintained his post as Chair of the Sanitation Committee, and reintroduced the waste equity bill as Intro 157. With this new term, we had yet another new Speaker, and brand new political situation. And this past year, Intro 157 finally was passed by the Council and signed into law, becoming Local Law 152.

E. Community Involvement in Passing Local Law 152

35. The community groups that make up NYC-EJA worked hard to ensure the passage of what eventually became Local Law 152, to follow through with what they'd been waiting for since the SWMP passed.

36. Many NYC-EJA members and partners played important roles advocating for waste equity, and many had been advocating for environmental justice for years: El Puente, a group formed in 1983 in North Brooklyn, started doing environmental justice work early and identified it as such in 1988-89, working on a campaign against a radioactive waste transfer station called Radiac; in the South Bronx you had different groups—first it was the South Bronx

Clean Air Coalition which no longer exists, and then The POINT joined NYC-EJA in 1997 and joined OWN the same years to fight for waste equity; in Southeast Queens there was a group called Federation of Civic Associations of Southeast Queens; and UPROSE in Sunset Park

37. These organizations have been involved in the City's infrastructure and solid waste fights for going on 30 years now. They were all instrumental in starting the campaign, helping to advocate for the original Local Law 40 siting regulations, and negotiating how key pieces of infrastructure will be built and work within the whole system. They understand that all the pieces have to fit.

38. Local Law 152 represents the first and only reduction in truck traffic associated with solid waste—and in particular with the commercial waste stream—in the 30 years that these community members have been fighting this fight. The SWMP in 2006 promised relief for these communities, and never delivered it. So as modest as it may be, it is the only truck traffic reduction from an industry that refuses to even upgrade their truck fleets in accordance with another city law that passed half a decade ago.

39. Thanks to Local Law 152, we now have a cap so that the South Bronx, North Brooklyn, and Southeast Queens never have to deal with any more than they've been experiencing, and will actually see a reduction in trucks. And now other communities don't have to worry about becoming overburdened, because Local Law 152 ensures that no community will take more than 10% of the city's waste, so it protects Sunset Park and other similar neighborhoods.

40. Local Law 152 ensures fair share and waste equity in a way that no policy ever has before. It also incentivizes better waste handling practices; it incentivizes the switch from truck to rail, which will go a long way to reducing truck fumes and air pollution in our communities. It incentivizes organics recycling. It incentivizes a better system that means being

better neighbors to communities. We have some truck reduction, but almost as importantly, we have all these different kinds of incentives to push the industry in a better direction than it has ever been going in. So from multiple public policy and public health perspectives, folks in these communities see Local Law 152 as a victory, and see it as a victory they've been owed for a long time.



Eddie Bautista

Sworn to before me this ²⁴ day of April, 2019


Notary or Clerk of the Court

DARRELL WILLIAMS
Notary Public, State of New York
No. 01WI4775750
Qualified in Kings County
Commission Expires January 31, 2023