SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS** **PART** **IAS MOTION 5**

Justice

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INDEX NO. 101686/2018

MOTION SEQ. NO. 001 002 003

THE NATIONAL WASTE & RECYCLING ASSOCIATION, CITY RECYCLING CORP., EMPIRE RECYCLING SERVICES, LLC, HI-TECH RESOURCE RECOVERY, INC., METROPOLITAN TRANSFER STATION, INC., RAFAEL BATISTA, and WILLIAM MACKIE,

Petitioners-Plaintiffs,

- v -

THE CITY OF NEW YORK, BILL DE BLASIO IN HIS CAPACITY AS MAYOR OF THE CITY OF NEW YORK, THE CITY COUNCIL OF THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, and KATHERINE GARCIA IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE CITY OF NEW YORK DEPARTMENT OF SANITATION,

Respondent-Defendants.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 90, 91, 92, 93, 94, 102, 103, 105

were read on this motion to/for **ARTICLE 78**.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 87, 88, 89

were read on this motion to/for **DISMISS**.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 82, 83, 84, 85, 86, 101

were read on this motion to/for **LEAVE TO FILE AMICUS BRIEF**.

Petitioners-plaintiffs (hereinafter "petitioners") commenced this action by complaint and petition, pursuant to Article 78 of the CPLR, challenging Local Law 152 arguing, in sum and substance, that Local Law 152 was adopted in violation of the New York State Environmental Quality Review Act (SEQRA) and the City Environmental Quality Review Act (CEQRA). Petitioners assert that respondent-defendants failed to assess the potential socioeconomic impacts to the transfer station industry, that Local Law 152 is unconstitutionally vague, violates due process under the Fourteenth Amendment, and is preempted by state law.[1]

Respondent-defendants, the City of New York, Bill de Blasio in his official capacity as Mayor of the City of New York, the City Council of the City of New York, New York City Department of

[1] Petitioners seeks an order annulling Local Law 152 and declaring that Local Law 152 was enacted in violation of SEQEA and CEQRA; that it is arbitrary and capricious; that it impermissibly conflicts with New York State Department of Environmental Conservation's solid waste management regulations; and that it violates petitioners' due process rights.

Sanitation and Kathryn Garcia in her official capacity as Commissioner of the City of New York Department of Sanitation, (collectively "City") move to dismiss the verified petition and complaint pursuant to CPLR § 3211(a)(1) and (a)(7).

In an environmental review action, a court must determine whether the determination was made in violation of a lawful procedure, affected by an error or law, was arbitrary and capricious, or was an abuse of discretion. The court is not to substitute judgment or "weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA." (*Jackson v NY State Urban Dev. Corp.*, 67 NY2d 400 [1986]). What the court may do is determine whether the procedure was lawful and whether the agency identified relevant areas of environmental concern, took a "hard look" at them, and made a reasoned elaboration of the basis of its determination. (*Id*, citing *Aldrich v Pattison*, 107 AD2d 258 [2d Dept 1985] and *Coalition against Lincoln W., Inc. v New York*, 94 AD2d 483 [1st Dept 1983]).

The New York City Council passed Local Law 152 on July 18, 2018. It was approved by the Mayor on August 16, 2018.[2] Local Law 152 provides for a reduction in waste transfer station capacity in communities having the highest concentration of transfer stations.[3] The law was born out of concerns regarding the heavy truck traffic at these transfer stations resulting in residents of the affected communities being at a higher risk of hazards, such as increased health risks from truck emissions.[4] The City prepared an Environmental Assessment Statement (EAS), pursuant to SEQRA and CEQRA, to determine whether Local Law 152 would have an adverse effect on the environment. The EAS determined that there was ample capacity at other transfer stations throughout the City to receive displaced waste from the overburdened transfer stations at issue and that while there was a probability of job losses and closures, the overall impact on the industry and service of the four-districts involved would be insignificant.

Petitioners' assert in its first cause of action that the City failed to take a "hard look" at the potential impacts of Local Law 152 in violation of SEQRA and CEQRA. Specifically, petitioners claim that the City adopted an inaccurate analysis of the slack capacity of transfer stations in affected communities; that the City's EAS failed to identify the impact from the reduction of capacity at the transfer stations currently relied upon; that the City failed to identify adverse impacts such as air emission, noise, and increase in miles traveled related to transporting waste farther to unload at transfer stations in unaffected areas; and that the City erroneously concluded that adverse socioeconomic losses were not significant.

The City argues for dismissal asserting that petitioners' challenge of the City's assessment of potential socioeconomic, transportation, air quality, and noise impacts to the transfer station industry

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[2] Local Law 152 reduces the permitted capacity of existing private solid waste transfer stations in four community districts in New York City. Local Law 152 includes several exemptions that a transfer station may use to exempt certain categories of waste volumes from the calculations of total capacity to be reduced.

[3] Waste transfer stations are facilities that may receive, process, and hold waste for eventual transfer to another location for further processing or final disposal. Putrescible transfer stations receive waste containing organic material and non-putrescible transfer stations receive inorganic materials, including construction and demolition materials and clean-fill material.

[4] Both types of transfer stations impose heavy truck traffic and attendant diesel emissions, noise, and safety hazards. There are 35 waste transfer stations citywide. All of the City's private putrescible transfer stations are located in the Bronx, Brooklyn, and Queens. A majority of the City's transfer stations are located in Bronx, Brooklyn and Queens Community Districts. (City's *Exhibit E*).

is conclusory and unsupported by verifiable data. The City further argues that its assessment did, in fact, acknowledge potential job loss. However, petitioners' individual economic circumstances were not the focal point of the analysis as SEQRA and CEQRA require an analysis and "hard look" at the entire industry. As such, the City contends that it followed the established methodologies of the CEQRA Technical Manual and after assessing the relevant areas of environmental concern, found that Local Law 152 would not have a significant impact on the environment.

SEQRA and CEQRA both require agencies to "determine whether the actions they directly undertake, fund, or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement." (See *6 NYCRR § 617.1.*) If the agency determines that the environmental impact is not significant, it issues a 'negative declaration." These regulations further state that the intention is for a suitable balance of social, economic, and environmental factors to be incorporated into the planning and decision-making processes of state, regional, and local agencies and not for environmental factors be the sole consideration in decision-making. *Id.* Compliance with SEQRA/CEQRA requires agencies to take a "hard look" at environmental consequences and that information be considered which would lend itself to a reasoned conclusion. However, agencies are not required to consider every possible alternative. (See *Coalition Against Lincoln W., Inc. v New York*, 94 AD2d 483 [1st Dept 1983]).

Here, petitioners' assertion that the City's EAS is incomplete and based upon erroneous data is wholly conclusory and unsupported by evidence. A review of the EAS shows that the City analyzed areas affecting the public, such as potential impacts to transportation, noise, air quality, and socioeconomic conditions. As to petitioners' assertions that the City failed to assess its economic losses, this contention is not accurate as the EAS clearly indicates that an assessment of potential economic loss was included in its assessment of the entire industry. Further, the Court of Appeals has held that in order to have standing to challenge an environmental review a party must demonstrate environmental injuries not solely economic injuries. (See *Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, 76 NY2d 428 [1990].) Consequently, the City was not required to assess the economic impact specific to petitioners as it was charged with assessing environmental impacts on the industry and communities affected as a whole. Accordingly, this cause of action is without merit.

Petitioners in its second cause of action assert that the City impermissibly segmented its environmental review of Local Law 152 from its development of Commercial Waste Zones in violation of SEQRA. Petitioners assert that as Local Law 152 is part of "Commercial Waste Zones," a City plan to create zones for waste hauling companies where hauling companies bid to offer services within designated zones, Local Law 152 should not have been assessed and/or reviewed individually.

The City argues that distinct from Commercial Waste Zones, the intent of Local Law 152 is to reduce transfer station capacity in specific overburdened communities in order to reduce exposure to residents impacted by the high concentration of transfer stations near their homes. The City contends that Local Law 152 and Commercial Waste Zones are not dependent on each other nor part of the same plan, and the implementation of one will not impact the result of the other.

As to this cause of action, the Court finds that Local Law 152 was drafted in response to specific health and hazard concerns of overburdened communities housing more than their fair share

of New York City's garbage by way of transfer stations and thus, not connected to the Commercial Waste Zone plan which addressed issues within the private carting/hauling industry outside of the health concerns of the community. Accordingly, this cause of action is likewise without merit.

For its third cause of action, petitioners claim that the adoption of Local Law 152 failed to abide by the Solid Waste Management Plan (SWMP) and is in direct conflict with it as SWMP contemplates a reduction of transfer capacity of up to 6,000 tons per day whereas Local Law 152 requires reductions of approximately 10,500 tons per day. Petitioners assert that a modification of SWMP was required prior to the Council's enactment of Local Law 152.

The City avers that pursuant to *6 NYCRR 306-15.11(b)(1)*, a SWMP modification is only required when there is a "significant change in the method of managing all or any significant portion of the solid waste generated within the planning unit." The City argues that the SWMP is inclusive of the City's goal of identifying transfer station capacity reduction in overburdened areas, if legally feasible, and if it can be done without affecting the City's ability to conduct waste disposal. The City argues that Local Law 152 does exactly that and does not change SWMP's policy and further, that the change from the aspired 6,000 tons to the approximate 10,000 tons does not amount to a significant change to the way New York City manages waste.

On this ground, the Court finds that Local Law 152 has fulfilled the expectation and the aspirations of SWMP by enacting a law which will alleviate specific districts from over exposure to toxins by reducing the amount of waste at the overburdened transfer stations in their respective communities. It would appear that the goal of 6,000 tons is met satisfactorily, if not remarkably, by Local Law 152 and without impeding on the City's obligation to dispose of waste. Accordingly, petitioners' argument is rejected, and its third cause of action is dismissed.

As a fourth cause of action, petitioners argue that Local Law 152 is preempted because it conflicts with state law and therefore, is a violation of Article 9 of the New York State Constitution and New York Municipal Home Rule Law § 10(1). Petitioners state that Local Law 152 is inconsistent with New York State Department of Environmental Conservation (NYSDEC) permits issued to the private transfer stations and that inasmuch as the capacity permitted by DSNY is identical to that permitted by NYSDEC, Local Law 152 attempts to modify or revoke the permits issued. Petitioners claim that as such, Local Law 152 would prevent the City from managing waste in compliance with NYSDEC and SWMP.

The City argues that the NYSDEC waste transfer station permits authorize a transfer station to accept "up to" and receive "no more" than a certain amount of tonnage per day as articulated in the respective permits. According to the City, this simply certifies a station's ability to handle a particular amount of tonnage but does not require that the station handle that specific amount. Additionally, the City argues that the NYSDEC provision pertaining to actions constituting modifications state that any proposed change that would "(i) affect the hours of facility operation; or (ii) increase the volume(s) or vary the types(s) of any waste accepted at the facility; or (iii) increase the parking or queuing of vehicles associated with the subject facility; or (iv) increase the physical extent of the facility; or (v) increase the transportation, noise, odor, dust, or other impact of the facility, requires prior written authorization from the Department in the form of a permit or permit modification. (See *NYSDEC Permits*, Petitioners' Exhibit P). As the NYSDEC is concerned with any increase in waste management beyond the capacities permitted and related impacts on the

environment, downward adjustments do not require NYSDEC permit modifications. As to petitioners' argument that Local Law 152 violates SWMP, the City re-iterates that the SWMP details an initiative to reduce waste capacity in overburdened areas and as such, Local Law 152 is not in conflict with SWMP but instead incorporates its policies.

The court concurs with the arguments advanced by the City as a clear reading of the NYSDEC permits annexed establish that each facility has been licensed to handle maximum amounts of waste which should not be exceeded without NYSDEC approval. However, handling amounts below the maximum is not only permissible, but safer for the environment and serves to decrease transportation, noise, odor, and dust, factors the NYSDEC considers when granting permits and any modifications thereto. Furthermore, the Court of Appeals noted that "nothing in the state legislation regarding management of solid waste 'shall preclude the right of any [local government] to adopt local . . . ordinances' so long as the local legislation will 'comply with at least the minimum applicable requirements set forth in' the legislation. (*Town of Concord v Duwe*, 4 NY3d 870 [2005]) citing, *ECL 27-0711*). The Court of Appeals further held that "local laws governing municipal solid waste management broader than--but consistent with--the state legislation are explicitly permitted by the Environmental Conservation Law." *Id.* Therefore, petitioners' arguments fail as Local Law 152 does not preempt state law, but instead incorporates and calls for a strict regulation of waste.

Next, petitioners assert that Local Law 152 is unconstitutionally vague. Petitioners allege Local Law 152 fails to address how it will be applied in the future if the currently affected communities are no longer overburdened and asserts that Local Law 152 fails to define certain terms, criteria, or standards.

In its dismissal motion, the City avows that as statutes do not have to account for every future circumstance that may arise, petitioners' forecast of hypothetical scenarios should be rejected. The City also argues that petitioners' hypothetical scenarios will be ripe for judicial intervention should they be able to demonstrate harm in an *actual* instance. The City relies upon *NY Horse & Carriage Assn. v NY, Dept. of Consumer Affairs*, 144 Misc 2d 883 [Sup Ct, NY County 1989] for the proposition that "Statutes, of necessity, must speak in generalities, leaving application as to each specific case to the reasonableness and discretion of executive, administrative, and judicial officers." As to petitioners' claim that Local Law 152 fails to define certain terms, standards, and criteria, the City contends that the language of Local Law 152 is clear and that any purported ambiguity is inaccurate as terms such as "recycled," for example, are defined in the *New York City Administrative Code* § 16-303 and incorporated by reference in Local Law 152.

A statute is unconstitutionally vague on its face only when it cannot validly be applied to any conduct. (See *Stallone v Abrams*, 183 AD2d 555 [1st Dept 1992], *citing Brache v County of Westchester*, 658 F2d 47 [2d Cir 1981]). Furthermore, pursuant to the two-part test articulated by the Supreme Court, to determine whether a statute is unconstitutionally vague, the court must first determine whether the statute "gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited" and then determine whether the law "provides explicit standards for those who apply [it]." (*United States v Schneiderman*, 968 F2d 1564 [2d Cir 1992], *citing Grayned v City of Rockford*, 408 US 104 [1972]).

Here, the court finds that Local Law 152 is not unconstitutionally vague as evidenced by arguments advanced by petitioners against its enactment in which they demonstrate a keen

understanding of what conduct constitutes compliance with Local Law 152 and the mandates therein. Also, the questions and hypotheticals posed by petitioners do not serve as a basis to illustrate vagueness and are not ripe for review. However, as to the specific concern of how Local Law 152 will be applicable when overburdened communities are no longer overburdened, it would appear obvious that the goal of Local Law 152 is to alleviate overburden areas and that compliance with Local Law 152 will hopefully achieve same. Continued compliance with Local Law 152, should serve to prevent the reoccurrence of the environmental issues which led to the necessity of its enactment at the outset.

Lastly, petitioners assert that Local Law 152 violates transfer station owners' substantive due process under the Fourteenth Amendment of the US Constitution and is a violation of its civil rights actionable under 42 USC §1983. Petitioners assert that it holds permits issued by NYSDEC and DSNY permitting the reception of specific daily tonnage of waste for transfer and that petitioners, relying on these permits, made investments and assumed long-term debt obligations to fund the infrastructure needed to operate a transfer station. Because Local Law 152 drastically decreases the capacity permissible at specific transfer stations, petitioners assert a deprivation of their rights and privileges under New York state law. Furthermore, petitioners assert that Local Law 152 is arbitrary and capricious as there is no rationale for the capacity reductions mandated therein.

The City contends that petitioners have failed to assert a constitutional or federal statutory right of which Local Law 152 has deprived them. To the extent petitioners believe they hold a property interest in the renewals of the permits they hold, the City argues that petitioners are incorrect as an applicant for a renewal of a waste transfer permit has no inherent property interest in the renewal and thus, petitioners suffer no deprivation of due process rights. Additionally, as Local Law 152 addresses a persistent problem affecting public health, welfare, and safety in certain community districts, it responds to a matter undeniably within the scope of public health, safety, and welfare and is not arbitrary or irrational.

Pursuant to 42 USC § 1983, petitioners must allege they were denied a constitutional or federal statutory right and that the deprivation of such occurred under color of state law. Consequently, petitioners must establish a clearly identifiable property interest, that pursuant to state or local law they had a legitimate claim of entitlement, and that the government action taken was without legal justification. (See *Bower Assoc. v Town of Pleasant Val.*, 2 NY3d 617 [2004]). A law which furthers public health, safety, or general welfare serves a valid governmental purpose. (*NY Coalition of Recycling Enters. v City of NY*, 158 Misc 2d 1 [Sup Ct, NY County 1992]). Here, petitioners have again failed to assert a valid claim as they have no inherent property interest in permit renewals and as it is undeniable that Local Law 152's mandate of a capacity reduction at overburdened waste transfer stations furthers public health and the general welfare of the residents affected by the emissions, vermin, odor, and toxins associated with transporting, collecting and transferring waste, it is not irrational, arbitrary or capricious. To the contrary, this enactment represents the culmination of several years of resident complaints, tests, assessments, meetings, and drafting and redrafting legislation.

Based upon the foregoing with due consideration and careful review of the entire record, which includes the verified petition and complaint with accompanying exhibits and supporting memoranda; the verified answer, along with affirmations, exhibits, and its memorandum of law; the City's motion to dismiss and supporting papers; petitioners' opposition and supporting documents;

the City's' reply; and the memorandum of law in opposition to the verified petition and in support of the motion to dismiss submitted by the New York City Environmental Justice Alliance, O.U.T.R.A.G.E., International Brotherhood of Teamsters Local 816, and Cleanup North Brooklyn in coalition by amicus brief (Mot. Seq. 003), the Court finds that the City has shown entitlement to the relief sought.

As noted previously, to succeed on a challenge to a negative declaration (no negative impact to the environment), a petitioner must demonstrate that the determination of no significant adverse impacts, is arbitrary, capricious, or made in violation of lawful procedure. In the case at bar, despite having advanced six causes of action seeking to demonstrate that the City's EAS was inaccurate or that the enactment of Local Law 152 itself was done incorrectly or in violation of law, petitioners' claims appear to be motivated substantially and closely intertwined with its anticipation of its own potential financial losses. Here, petitioners predict losses of several employees and even possible business closures and while economic loss is a tangible concern, not taken lightly by this Court, the loss of health, well-being, and life of the public affected by these overburdened transfer stations must be of paramount concern. As stated in the City's papers, as well as, the amicus brief submitted, Local Law 152 addresses serious public health and safety concerns of residents who have suffered from increased air pollution emanating from the many trucks traveling to and from the overburdened transfer stations in their neighborhoods. Local Law 152 undeniably took several years of assessment and negotiation as seen from the foregoing. Its mandates are rational and demonstrate a reasonable basis for its provisions. Accordingly, it is hereby

ORDERED and ADJUDGED that as petitioners fail to state a cause of action or claim warranting annulment of Local Law 152, the City's motion to dismiss (Mot. Seq. 002) is hereby granted, and the petition and complaint (Mot. Seq. 001) are properly dismissed and denied in their entirety; and it is further

ORDERED that Mot. Seq. 003 is granted to the extent that the Court reviewed and considered the arguments advanced in the amicus brief; and it is further

ORDERED that any relief not expressly addressed herein has nonetheless been considered and is denied.

October 3, 2019

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	[X] **CASE DISPOSED**		[ ] **NON-FINAL DISPOSITION**	
APPLICATION:	[ ] **GRANTED**	[ ] **DENIED**	[ ] **GRANTED IN PART**	[X] **OTHER**
	[ ] **SETTLE ORDER**		[ ] **SUBMIT ORDER**	
CHECK IF APPROPRIATE:	[ ] **INCLUDES TRANSFER/REASSIGN**		[ ] **FIDUCIARY APPOINTMENT**	[ ] **REFERENCE**