June 29, 2023
New York State Department of Environmental Conservation
Division of Materials Management
Bureau of Solid Waste Management
625 Broadway
Albany, NY 12233-7260

Sent via email to NYSSolidWastePlan@dec.ny.gov

Re: Comments on New York State Draft Solid Waste Management Plan (2023–2032)

Thank you for the opportunity to comment on the Draft New York State Solid Waste Management Plan (2023–2032) (“NYSSWMP” or “the Plan”). New York Lawyers for the Public Interest (NYLPI) appreciates New York State Department of Environmental Conservation’s (“DEC”) approach to waste management grounded in sustainability and the vision of a circular economy.

Generally, the goals outlined in NYSSWMP are commendable—they are appropriately bold and aggressive and highly necessary to meet the moment on the ever-escalating climate crisis, heeding the mandates of the Climate Leadership and Community Protection Act (“CLCPA”). NYLPI strongly supports:

- Adoption and implementation of a per-ton disposal fee. Such a fee structure would recognize the significant negative externalities of solid waste disposal and would generate needed revenue to support infrastructure and education around waste prevention, recycling, and mitigation programs. If a per-ton fee is legislated, it should include requirements for transparent reporting of all amounts disposed in-State and exported, a detailed accounting of revenues generated and invested. Such data should be made available to the public to provide accountability for the administration and outcomes of the fee program and compliance with CLCPA mandates for investments in disadvantaged communities (“DACs”).

- Steps to prevent fugitive methane emissions from landfills and biogas capture facilities.

- Expansion and amendment of the existing Food Donation and Food Scraps Recycling Law to include smaller food scraps generators and eliminate any exemptions based on distance to organics recycling facilities.

- Proposals to encourage repairs of existing products, reduce e-waste, incentivize use of reusable and refillable products, restrictions on single-use products, and a ban on the disposal of unsold retail goods.

The NYSSWMP goal of reducing per-capita disposed waste by 85% by 2050 is both ambitious and necessary, given the urgency of the climate crisis and the significant greenhouse gas (GHG) emissions, local air quality
problems, and grossly unequal community burdens caused by waste disposal sites and transfer stations across our state and region. New York City—the state’s largest planning unit—has adopted similarly aggressive waste reduction targets in its recently released Sustainability Plan. However, NYC’s diversion rate has declined in recent years, only some of which can be attributed to the COVID–19 Pandemic. Similarly, across the state, diversion rates remain low, and landfills and incinerators continue to be major sources of greenhouse gas pollution and other harmful pollution with particularly burdensome effects on disadvantaged communities (“DACs”).

Our overarching concern about the Draft NYSSWMP is a lack of specificity around how goals and strategies are going to be realized and a lack of tangible commitments from the State in terms of both the investment and infrastructure needed to achieve a circular economy of waste that is equitable, and that best protects all New Yorkers, especially those living in environmental justice and DACs. We urge DEC and legislators to consider the following recommendations:

1. **DEC must ensure that the NYSSWMP is implemented in full compliance with the requirements of the Climate Leadership and Community Protection Act.**

In general, as New York prepares to, and eventually does, implement the goals of the NYSSWMP, it is imperative that it take care to ensure that all actors in this sector are complying with the CLCPA, which mandates economy-wide emissions reductions and prohibits further disproportionate burdens on DACs.

Given that greenhouse gas emissions from waste are estimated to be 12% of New York State’s total emissions—a share comparable to the electric power sector—the SWMP must call for a rapid transition away from landfills, which are responsible for 78% of greenhouse gas emissions from waste and primarily located in DACs.

At a minimum, the State should deem *any* expansion of landfill capacity and incinerators to be plainly inconsistent with the emissions reduction mandates of the CLCPA, and with the NYSSWMP’s goal of reducing disposed waste by 85% by 2050. As landfills and incinerators are disproportionately sited in environmental justice communities and DACs, expansion of any of these facilities would lead to an impermissible and disproportionate burden on DACs. Further, as diversion goals are achieved, not only should expansions of landfills and incinerators be unnecessary, but the State should plan for the closure of existing landfill and incineration sites, starting with those located in or around DACs.

The State must go beyond routine analysis of waste permits: it must also carry out rigorous alternatives analyses, and it must plan and finance infrastructure, programs, and mitigation strategies to ensure that we meet our waste and emissions reductions goals as outlined in the Plan.

Moreover, as DEC continues its efforts to design a robust, economy-wide cap-and-invest program, it should account for all three scope emissions associated with the waste sector. It is essential that any exceptions in this space be applied sparingly.

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Finally, the State should consider adopting internal guidance for permitting decisions in the waste management sector (like the DAR-21 guidance for air permits) that outlines the steps DEC will take to perform a robust CLCPA § 7(2) and § 7(3) analysis for Part 360 and other relevant waste permits.

2. **DEC should provide more specific information about how New York plans on achieving its stated waste management goals.**

The Plan lacks transparency and specificity when it comes to how the State is planning to achieve stated waste reduction targets, whether directly or by providing investment and/or other support to local governments.

For example, the draft plan does not specify how the State is planning to manage the steep increase in organic materials that must be source separated, transferred, and processed to achieve diversion targets. Further, while the draft plan acknowledges that waste transfer facilities and landfills are concentrated in environmental justice communities, the Plan provides little information about what the remedial efforts will or should look like.

We encourage DEC to provide the public and local governments with greater information about how interim goals are being set and on concrete pathways to achieve those goals, including any quantitative data used to make decisions and predictions. The Plan should include an array of programs, legislation, and options for similarly addressing the concerns of the environmental justice communities most affected by our historical waste practices.

3. **We urge New York State to make substantial investments in the facilities and systems that are necessary to divert waste from landfills and incinerators as required by both the CLCPA and the NYSSWMP.**

We are concerned that the Draft NYSSWMP does not include specific plans to address gaps between waste and emissions reductions targets and actual waste diversion rates, particularly in densely populated regions like New York City (Region 2). For example, the Plan sets an interim recycling target of 22% for the municipal solid waste stream for 2023, ramping up to 85% diversion by 2050. Meanwhile, New York City has reported declining diversion rates in recent years, and reports diverting less than 20% of total department-managed waste in Fiscal Year 2023.

Investments by New York State must rapidly reduce the amounts of municipal solid waste currently being landfilled, incinerated, and exported for disposal from the State as well as achieve the waste reduction goals and the greenhouse gas emissions mandates codified in the CLCPA.

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4. New York should prioritize investments in infrastructure that will mitigate the worst effects of waste sector emissions and harms on DACs.

As noted in the Climate Action Council’s Final Scoping Plan, reductions in volumes of waste collected, transferred, disposed, and exported will reduce the number of polluting and dangerous trucks in DACs where waste facilities are concentrated. As the agency responsible for achieving those reductions, DEC should plan for rapid and substantial investment that will specifically reduce disproportionate harm to DACs from the waste sector in the NYSSWMP.

For example, New York State should support heavy-duty fleet electrification to mitigate the local pollution caused by concentrations of diesel waste trucks in communities where waste facilities are sited.

In 2018, an extensive study of NYC’s private waste found that the trade waste fleet alone is responsible for an estimated 23 million truck miles driven annually on local streets and highways. The study also concluded that diesel garbage trucks are heavily concentrated in a few EJ communities where private transfer stations are clustered along with other pollution sources such as highways, food distribution operations, and other diesel-truck intensive infrastructure.

Furthermore, New York State should support the use of waste transfer stations and recycling facilities that minimize environmental impacts, such as those designed to transport waste via barges and rail instead of trucks. Both state and local governments should adopt policies and regulations to incentivize the use of environmentally preferable transfer and recycling facilities for both publicly and privately managed waste streams and take steps to ensure that facility siting and truck routing minimize the distances that collection trucks travel to such facilities.

5. New York should emphasize the tremendous economic and social co-benefits that come with a transition to a circular economy of waste and the creation of green jobs and businesses.

The NYSSWMP should emphasize the enormous potential to create thousands of good, green, union jobs in transition to a circular waste economy. The Plan mentions job creation only in very abstract terms; in contrast, Massachusetts’ SWMP references the specific number of jobs created and/or supported by the state’s organics waste reduction efforts.

The State should also take immediate steps to create and sustain innovative circular economy businesses in DACs and other environmental justice communities that have borne the worst negative impacts of the current, disposal-centered waste system. For example, the state should support and incentivize food recovery, donated goods, composting, re-use and repair, and other innovative initiatives in or around DACs, including businesses

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6 Id. at 2.
that owned by or employ their residents. In general, DEC and NYS should continue to minimize regulatory barriers to comprehensive planning and funding for such projects.

**Conclusion**

As wildfire smoke and rising temperatures continue to threaten the health of New Yorkers, we are reminded of an inescapable truth: the climate crisis is here. Experts tell us that we have about ten years—or one Solid Waste Management Plan period—left to drastically curb economy-wide emissions if we are to avoid the worst-case climate scenarios. Our state’s solid waste management policies can and must serve as a national and global blueprint for reducing harmful disposal practices while also directing green jobs and sustainable infrastructure to the communities across our state most directly impacted by pollution, climate change, and the transition to a sustainable economy.

NYLPI looks forward to collaborating with DEC and legislators on developing and implementing this critical plan.

Yours,

Justin Wood
Director of Policy
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**About New York Lawyers for the Public Interest**

*Founded more than 45 years ago by leaders of the bar, New York Lawyers for the Public Interest (NYLPI) is a community-driven civil rights organization that pursues justice for all New Yorkers. Through its Environmental Justice Program, NYLPI confronts environmental racism and works to eliminate the unfair burden of environmental hazards borne by low-income communities and Indigenous, Black, Brown, Asian, and other communities of color to create a more equitable and sustainable New York.*

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