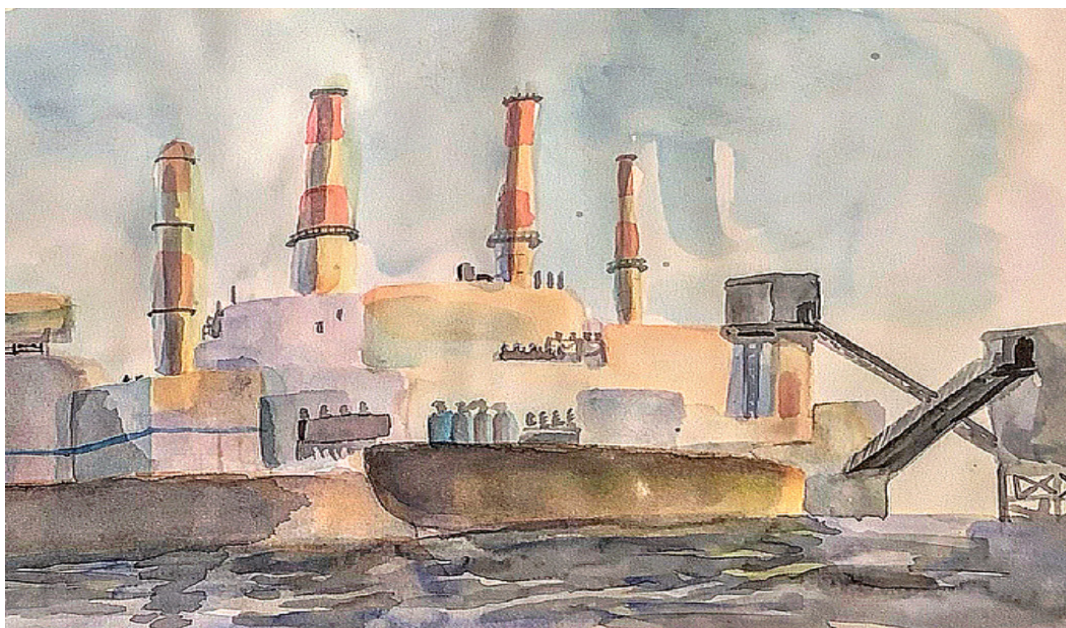




From Pollution to Solutions: Exploring Equitable Remedies for Communities Impacted by Peaker Plants in NYC

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ABSTRACT

This article focuses on equitable remedies by the New York City government for air pollution sources that disproportionately harm environmental justice communities in New York City, using peaker plants as a case study. Air pollution is a pervasive environmental hazard that affects millions of people worldwide. In New York City, however, the problem of air pollution has taken on a distinctly racial and socioeconomic dimension. While New York City boasts some of the most stringent environmental regulations in the country, the reality is that the most vulnerable communities—namely, people of color, low-income households, and people with disabilities—bear a disproportionate burden of New York City's air pollution. The Climate Leadership and Community Protection Act, signed into law in 2019, effectively mandates the closure of these plants. Though, the communities that suffered from the effects of air pollution, which go beyond health effects, are then left to suffer without any additional support to undo the decades of harm brought upon them by New York City's failure to address air pollution in environmental justice communities as part of a pattern prioritizing capitalist interests over public health and well-being. This article will argue that when peaker plants, and other sources of air pollution, are removed, there needs to be equitable relief in the form of mitigation that offsets or remedies harm suffered.

The Problem: Sources of Poor Air Quality in NYC Environmental Justice Communities and Adverse Effects Beyond Immediate Health Effects

Poor air quality in New York City can be attributed to many factors. This article will focus primarily on Peaker Power Plants, with a brief mention of vehicular air pollution in the Bronx. Both the peaker plants and the vehicle traffic in the Bronx are influenced by both actions taken by the New York City government. The peaker plants are also partly, but not fully addressed by the introduction of the CLCPA, thus leaving the door open for

New York City to introduce additional support for environmental justice communities.

A. Peaker Power Plants: A Case Study on Air Pollution Sources in NYC

In New York City, there is a disconnect between the neighborhoods that use the most electricity and those that face the negative consequences of having energy facilities in their backyards. Manhattan, the whitest¹ and most affluent² of the five boroughs, uses the most electricity by far.³ Despite using the most electricity, Manhattan generates almost none of it.⁴ Instead, Queens, Brooklyn, and the Bronx carry the burden of supplying Manhattan and the rest of New York City with electricity.⁵ New York's energy is generated by many types of facilities,⁶ increasingly renewable sources,⁷ but the most harmful that are still in operation today are called "peaker plants."⁸ These plants are called "peakers" as they switch on and off during peak energy demand, such as when air conditioners turn on during the hot summer months.⁹ The problem with these plants is twofold: the plants are a source of pollution¹⁰, and they are primarily located in vulnerable environmental justice communities.¹¹ The pollutants emitted, in part, are carbon dioxide, nitrogen oxides (a precursor to ozone and smog), and particulate matter.¹² These pollutants have contributed to New York City's high asthma rates in its poorest neighborhoods, often where these peaker plants are located.¹³ Ambient air pollution exposure can cause myriad health problems, such as reduced lung function, respiratory infections, and an increased risk for stroke, heart disease, chronic obstructive pulmonary disease, and cancer.¹⁴ These adverse health effects from power-plant-related pollution do not only exist in the abstract, as studies have shown that preventable premature deaths can be attributed to air pollution (in the form of particulate matter) can be attributed to power plants.¹⁵ More recently, research has shown that exposure to particulate matter from air pollution is correlated with higher mortality rates for Covid-19.¹⁶

What is particularly nefarious about these peaker plants is how they came to be, as New York City made very clear what its priorities were when these were introduced. New York City has obligations to many groups of people, including its businesses, tourists, entertainment, and of course, its residents. Naturally, New York City has to engage in a delicate balancing act of promoting the interests of the various groups without severely impacting others. However, in terms of protecting its residents, especially its most vulnerable populations, from

1 Dynamics of Racial/Hispanic Composition in NYC Neighborhoods 2010 to 2020, NYC DEP'T OF CITY PLANNING (Nov. 10, 2021) (demonstrating that Manhattan is predominantly white), <https://storymaps.arcgis.com/stories/46a91a58447d4024afd00771eec1dd23>.

2 Data Tool, NYC OPPORTUNITY, <https://www.nyc.gov/site/opportunity/poverty-in-nyc/data-tool.page>.

3 Estimated Total Annual Building Energy Consumption at the Block and Lot Level for NYC, QSEL, <https://qsel.columbia.edu/nycenergy/>.

4 See N.Y. INDEP. SYS. OPERATOR, 2018 LOAD AND CAPACITY DATA REPORT 46- 64 (2018), [https://www.nyiso.com/documents/20142/0/2018 Load & Capacity Data \(Gold Book\).pdf/4083d4ea-8647-7330-b0c6-d57a9eedd3d4](https://www.nyiso.com/documents/20142/0/2018+Load+&+Capacity+Data+(Gold+Book).pdf/4083d4ea-8647-7330-b0c6-d57a9eedd3d4).

5 *Id.*

6 See Emily S. Rueb, *How New York City Gets Its Electricity*, N.Y. TIMES (Feb. 10, 2017), <https://www.nytimes.com/interactive/2017/02/10/nyregion/how-new-york-city-gets-its-electricity-power-grid.html>.

7 *PowerUpNYC*, NYC MAYOR'S OFFICE OF CLIMATE & ENV'T JUSTICE, <https://climate.cityofnewyork.us/initiatives/powerupnyc/>.

8 See, PEAK COALITION, DIRTY ENERGY, BIG MONEY (2020), <https://www.cleangroup.org/wp-content/uploads/Dirty-Energy-Big-Money.pdf>.

9 See N.Y. INDEP. SYS. OPERATOR, THE POTENTIAL FOR ENERGY STORAGE TO REPOWER OR REPLACE PEAKING UNITS IN NEW YORK STATE 3 (2019), https://www.ethree.com/wp-content/uploads/2019/08/E3_The_Potential_for_Energy_Storage_to_Repower_or_Replace_Peaking_Units_in_New_York_State_July_2019.pdf

10 DIRTY ENERGY, BIG MONEY, *supra* note 8.

11 *Id.* at 5-9.

12 *Id.*

13 See Disparities among Children with Asthma in New York City, NYC Health (Sep. 2021), <https://www.nyc.gov/assets/doh/downloads/pdf/epi/databrief126.pdf>.

14 See Air quality and health, WHO, <https://www.who.int/teams/environment-climate-change-and-health/air-quality-and-health/health-impacts>.

15 See Abt. Assoc. Inc., et al., The Particulate-Related Health Benefits of Reducing Power Plant Emissions (Oct. 2000), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=097b2e9f643554e100ba2b686b850f18852d9136>.

16 Wu et al., Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis, 6(45) SCIENCE ADVANCES at 1 (2020).

air pollution, New York City has failed to do so and has chosen to promote capitalistic interests at the expense of environmental justice communities.

One such example of New York City's failure to put the interests of its residents over the interests of capitalism can be found in the peaker power plants. In the early 2000s, New York faced an energy shortage and pushed through a number of power plants in order to meet demand, opening in 2003.¹⁷ The plants were supposed to be a temporary three-year project that would supply New York City with enough energy until a more permanent solution could be worked out.¹⁸ Today, they are still active and profitable for their owners, pulling in \$4.5 billion between 2010 and 2019 despite only being active for a fraction of the year.¹⁹ The New York Power Authority (NYPA), which is a New York state public-benefit corporation,²⁰ showed little regard for the communities it placed these peaker plants in. NYPA failed to complete an adequate environmental review and summarily concluded that there would be "no negative or cumulative environmental impacts" from placing these plants in New York City's environmental justice communities.²¹ NYPA was also deceptive regarding the process of locating the plants. As NYPA's plans for the peaker plants were being discussed, they repeatedly claimed that "all locations chosen by the Power Authority are in industrial areas"²² when NYPA was actually planning to put every single plant in an environmental justice community.²³

The environmental review process was dodged in several ways. First, NYPA cunningly avoided having the peaker plants classified as Major Electric Generating Facilities, which would make them subject to a lengthy and "rigorous" approval process (Article 10 process) that involves public input and steps to ensure environmental and public health laws are followed.²⁴ Today, this approval process for Major Electric Generating Facilities has a minimum generating capacity threshold of twenty-five thousand kilowatts; anything above this is deemed a "major" facility and thus has to complete this process.²⁵ One step of this process involves submitting a "preliminary scoping statement" that contains, among other things, information for the public about potential environmental and health impacts, proposed studies to evaluate those impacts, proposed mitigation measures, and reasonable alternatives to the project.²⁶ When the peaker plants were proposed in 2001, the threshold was higher for "major" facilities at eighty thousand kilowatts or more.²⁷ These facilities, to be placed in pairs, would generate eighty-eight megawatts of power, that would accordingly trigger the above-mentioned review process, but NYPA configured the plants only to produce 79.9 megawatts, and the New York State Board on Electric Generation Siting and the Environment (Siting Board) authorized them without the Article 10 review.²⁸

Additionally, there is evidence to suggest that the plants may not have been necessary, as power con-

17 Kirk Johnson, *New York Turns Into a Lab On the Future of Electricity*, N.Y. TIMES (July 25, 2001), <https://www.nytimes.com/2001/07/25/nyregion/new-york-turns-into-a-lab-on-the-future-of-electricity.html>.

18 E.E Lippincott, *Silvercup Studios Brings Power Plant Saga Into the Limelight*, QUEENS CHRONICLE (Dec. 28, 2000), https://www.qchron.com/editions/western/silvercup-studios-brings-power-plant-saga-into-the-limelight/article_93a542d0-9a76-5b10-8624-85e1f0b42399.html.

19 See PEAK Coalition Campaign to Replace Polluting Power in NYC EJ Communities, <https://www.cleangroup.org/wp-content/uploads/Peak-Coalition-Fact-Sheet.pdf>.

20 Meet NYPA, N.Y. POWER AUTH., <https://www.nypa.gov/about/the-new-york-power-authority>.

21 Rebecca Bratspies, *Renewable Rikers: A Plan for Restorative Environmental Justice*, 66 LOY. L. REV. 371, 392 (2020).

22 Matthew L. Wald, *Power Agency Details Plans For Electric Turbines in City*, N.Y. TIMES (Nov. 22, 2000), <https://www.nytimes.com/2000/11/22/nyregion/power-agency-details-plans-for-electric-turbines-in-city.html>.

23 RICHARD PÉREZ-PENÁ, *State Admits Plants Headed To Poor Areas*, N.Y. TIMES (Mar. 15, 2001), <https://www.nytimes.com/2001/03/15/nyregion/state-admits-plants-headed-to-poor-areas.html>.

24 Article 10, NYSEDA, <https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Siting-Resources/Siting-for-Large-Scale-Renewables/Article-10>.

25 N.Y. PUB. SERV. LAW § 160 (McKinney).

26 Article 10, *supra* note 24.

27 N.Y. PUB. SERV. LAW § 160 (McKinney) (repealed Jan. 1, 2003).

28 N.Y. State Bd. on Elec. Gen. Siting & Env't, *Case 00-F-1934, Declaratory Ruling Concerning Standards For Defining Generating Capacity* (Nov. 16, 2000), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={4EC5B-CC5-DBD5-49E7-8128-C2486172FBAF}>.

servation efforts by NYPA could have avoided the blackouts that were feared at the time.²⁹ While NYPA is not controlled by New York City, the peaker plants have to get re-permitted every five years through the New York State Department of Environmental Conservation.³⁰ Only recently has the New York City Council stepped in by contacting the DEC in an effort to stop the re-permitting of one of the plants in the Bronx.³¹ New York City's continued silence is deafening, and its inaction is a direct endorsement of the harms faced by environmental justice communities across the city.

The CLCPA and Peaker Plants

The Climate Leadership and Community Protection Act (CLCPA) offers some hope for environmental justice communities, but as will be discussed, it is only a partial remedy for those communities. In 2019, former New York Governor Andrew Cuomo signed the CLCPA into law, thus enacting New York State's primary legal tool for combating climate change. The primary goal of the act is that it requires the State of New York to reduce greenhouse gas emissions by 40% by the end of the decade and no less than 85% by 2050 (from 1990 levels).³² The CLCPA Scoping Plan establishes a framework for how New York State will achieve its goals and is divided into six distinct strategies, one of which is electricity.³³

Chapter 13 of the scoping plan, "electricity," contains both guidelines for 2030 and 2040 to facilitate a shift away from nonrenewable fossil-fuel energy generation.³⁴ For 2030, the CLCPA requires that 70% of state-wide electricity come from renewable energy sources.³⁵ For 2040, this number increases as the CLCPA requires that the State achieve a zero-emission electricity system, meaning that it must be 100% renewable.³⁶ While 2040 is a way out, the plants are slated to close before that. NYPA had previously committed to closing the plants by 2035³⁷, but the passage of the Build Public Renewables Act (BPRA) will require the plants to close by 2030 as it mandates that all state-owned properties that ordinarily receive power from NYPA are powered by renewable energy by 2030.³⁸ However, this is only a partial victory for New York City's environmental justice communities. The BPRA will create union jobs for renewable energy projects, guarantee pay rate protection, offer re-training, and ensure new positions are filled with non-renewable energy workers affected by the transition.³⁹ However, there is no indication that members of New York City's environmental justice communities would be given any preference for these positions. Additionally, a portion of BPRA that did not make the final provision would have expanded NYPA's board of trustees to include members from environmental justice groups⁴⁰, thus perpetuating the absence of restitution for those who suffered from peaker plant air pollution for the past two decades.

B. Equitable Remedies: Exploring Bronx Air Pollution as a Case Study

Peaker Plants will serve as a valuable example for exploring the concept of equitable mitigation remedies as they are already slated to close in the near future. Though, as mentioned earlier, New York City has a slew of air pollution sources that still need to be addressed and would also serve as ideal opportunities for introducing equitable mitigation after they have been addressed (removed) by New York City. One prime example is

29 Id. at 394.

30 Caroline Spivak, Bronx Asthma Alley Protests Plans to Extend Power Plant Permits, CITY LIMITS (Nov. 12, 2015), <https://citylimits.org/2015/11/12/bronxs-asthma-alley-protests-plans-to-extend-power-plant-permit/>.

31 Id.

32 Climate Act, N.Y. State, <https://climate.ny.gov/> (last visited May 4, 2023).

33 New York's Scoping Plan, N.Y. State, <https://climate.ny.gov/resources/scoping-plan/> (last visited May 4, 2023).

34 New York State Climate Action Council, NEW YORK STATE CLIMATE ACTION COUNCIL SCOPING PLAN, ch. 13 (2022).

35 Id.

36 Id.

37 Marie J. French, State budget calls for NYPA to retire small downstate gas peakers by 2030, POLITICOPRO (May 1, 2023), <https://subscriber.politicopro.com/article/2023/05/state-budget-calls-for-nypa-to-retire-small-downstate-gas-peakers-by-2030-00094660?source=email>.

38 Aliya Uteuova, New York takes big step toward renewable energy in 'historic' climate win, The Guardian (May 3, 2023), <https://www.theguardian.com/us-news/2023/may/03/new-york-renewable-energy-public-utilities>.

39 Id.

40 Id.

air pollution from vehicle traffic in the Bronx. This example is relevant to the peaker plants discussion as both pollution sources are preventable in that alternatives were available, and various governmental entities, including New York City, chose the option that gave the least concern to environmental justice communities.

Throughout this section, the Bronx will be referred to as an “environmental justice community.” An environmental justice community can be defined as a community that is predominantly populated by people of color and/or a population that is significantly below the poverty line, and that community is also subjected to a disproportionate burden of environmental hazards when compared to other communities.⁴¹ The Bronx certainly meets the requirements of an environmental justice community. The Bronx, particularly the South Bronx neighborhood, is very diverse and has a minority white population; the borough also suffers from economic insecurity, with the South Bronx being one of the poorest congressional districts in the country.⁴² The borough’s status as an Environmental Justice community is further confirmed by the Disadvantaged Communities Map. The CLCPA tasked the Climate Justice Working Group with the development of criteria to identify disadvantaged communities, which were then displayed on a map that shows a significant portion of the Bronx labeled as a disadvantaged community.⁴³ Generally, the borough suffers from high asthma rates due to poor air quality.⁴⁴ The Bronx neighborhoods with the highest childhood asthma rates, Mott Haven and Hunts Point, are also the neighborhoods with some of the lowest income in the borough.⁴⁵

The borough’s proximity to three major highways, the Major Deegan, Bruckner, and Cross Bronx expressways, is the primary cause of this air pollution.⁴⁶ The Cross Bronx expressway was particularly harmful to the Bronx not only due to the added pollution it brought but because of how it was constructed. The Cross Bronx expressway carved through some of the most racially diverse neighborhoods in the country and displaced over 60,000 people as a result.⁴⁷ The construction and the city’s subsequent divestment from the borough left much of the Bronx without adequate green spaces, further exacerbating air quality issues today.⁴⁸ For example, Mott Haven is located near the expressway and has a tree coverage rate of only seven percent.⁴⁹ Wealthier Bronx neighborhoods like Riverdale can have tree coverage rates over six times that.⁵⁰ The Cross Bronx Expressway and other factors have created an “urban heat island” effect in the Bronx, where certain areas can be hotter than others due to disparities in tree coverage and green spaces.⁵¹ Today, Bronx residents still deal with developments that are harmful to their health, as the city is more concerned with prioritizing the interests of corporations. For example, in 2018, Fresh Direct opened a warehouse in the Mott Haven neighborhood of the Bronx, resulting in about 1,000 diesel trucks being added to Bronx streets.⁵² When the warehouse opened in 2018, it was met with significant pushback from residents and environmental justice organizations, such

41 Emily Welsch, *Environmental Justice Definitions*, UNIV. MICH. (1997) <http://nmhealth.org/eheb/documents/environmental%20justice%20definitions.pdf>.

42 The Bronx, N.Y. UNIV. FURMAN CENTER, <https://furmancenter.org/neighborhoods/view/the-bronx>; Angelina Ruiz, What does sustainability mean in the Bronx?, VOX (Sep. 8, 2021, 9:00 AM), <https://www.vox.com/the-goods/22654323/sustainability-bronx-environmental-racism-zero-waste>.

43 Disadvantaged Communities Criteria, N.Y. CLIMATE JUSTICE WORKING GROUP, <https://climate.ny.gov/resources/climate-justice-working-group/>.

44 Eric Patrick McLoughney, *The Breath of the Bronx: Limited Greenspace and Poor Respiratory Health* (May 10, 2019) (B.A. Thesis, Fordham University).

45 JOVAN GONZALEZ, VERONIQUE LANKAR & YELDA HANGUN-BALKIR, *AIR POLLUTANTS AND CHILDHOOD ASTHMA IN THE BRONX* (2021).

46 *Id.*

47 The Bronx: The Cross Bronx Expressway, SEGREGATION BY DESIGN, <https://www.segregationbydesign.com/the-bronx/the-cross-bronx-expressway>.

48 John Leland, Why an East Harlem Street Is 31 Degrees Hotter Than Central Park West, N.Y. TIMES (Aug. 20, 2021), <https://www.nytimes.com/2021/08/20/nyregion/climate-inequality-nyc.html>.

49 *Environment and Health Data Portal*, CITY OF N.Y., <https://a816-dohbeshp.nyc.gov/IndicatorPublic/beta/data-explorer/active-design/?id=2157#display=summary>.

50 *Id.*

51 Leland, *supra* note 48.

52 Gonzalez, *supra* note 45.

as South Bronx Unite.⁵³ These groups noted that the Fresh Direct trucks would primarily serve more affluent communities, such as neighborhoods in Manhattan, and would, therefore, disproportionately pollute Bronx residents by having to drive to and leave the warehouse that is outside the neighborhoods most responsible for the increase in air pollution.⁵⁴ Of course, development and commercial activity are necessary to stimulate the city's economy, but New York City is neglecting its duty to protect its most vulnerable residents from preventable environmental harm.

The Solution: Exploring Equitable Mitigation Remedies for Environmental Justice Communities

Once the peaker plants have been shut down and can no longer harm New York City's most vulnerable residents and communities, there is then the question of how do these environmental justice communities become whole again after decades of harm. The removal of the pollution source is only one part of the remedy. Long-term exposure to air pollution, especially in environmental justice communities, causes generational harm by increasing the risk of chronic health conditions and developmental issues in children, which can have life-long impacts on their health and well-being.⁵⁵ These communities may also face economic and social challenges due to the adverse effects of pollution on local industries and property values, further exacerbating the cycle of disadvantage and inequality across generations.⁵⁶ Therefore, the solution is to implement equitable mitigation remedies that also contain an element of restitution. However, there is no simple definition for what an equitable mitigation remedy is. The concept and definition of an equitable remedy for environmental justice communities can vary depending on the legal approach used, the extent and nature of harm experienced by the affected community, and the type of relief sought by the community. To that end, there is no one-size-fits-all approach. This section will therefore consider general examples of equitable mitigation and restorative justice.

Before providing examples of equitable mitigation, it would be helpful to briefly explore the principles of mitigation and equity separately. Mitigation can be considered a form of restorative injunctive relief. In the context of environmental law, mitigation is used as a remedy to offset the harm done from past violations of environmental law.⁵⁷ Unlike a simple fine used for deterrence, mitigation addresses the harm done to specific communities and attempts to reverse the adverse impacts on human health and the environment.⁵⁸ Equity, although being a distinct principle, would complement any mitigation efforts to provide the best remedy for New York City's environmental justice communities. Historically, courts used equity in situations where a rigid application of the laws would result in injustice or unfairness.⁵⁹ Today, equity is a principle used to preserve or return to the status quo, to return the plaintiff to the condition they were in before the harm occurred.⁶⁰

One way to bring equitable mitigation remedies to New York City's environmental justice communities could come in the form of reparations. Reparations could be provided as a source of funding to be used by environmental justice communities, and could also be non-monetary and instead be support for awareness and education campaigns or other programs.⁶¹ In considering reparations as a remedy for New York City's Environ-

53 Hazar Kilani, 'Asthma alley': why minorities bear burden of pollution inequity caused by white people, *THE GUARDIAN* (Apr. 4, 2019, 2:00PM), <https://www.theguardian.com/us-news/2019/apr/04/new-york-south-bronx-minorities-pollution-inequity>.

54 Id.

55 Health consequences of air pollution on populations, WHO (Nov. 15, 2019), <https://www.who.int/news/item/15-11-2019-what-are-health-consequences-of-air-pollution-on-populations>.

56 Rourke L. O'Brien et al., Prenatal exposure to air pollution and intergenerational economic mobility: Evidence from U.S. county birth cohorts, 217 *Soc. Sci. & Med.* 92-96 (2018) (this study found that those who were born in counties with higher air pollution have significantly less intergenerational economic mobility for those who also grew up in low-income households).

57 John C. Cruden & Bruce S. Gelber, Federal Civil Environmental Enforcement: Process, Actors and Trends, 18 *NAT. RES. & ENV'T* 10, 14 (2004).

58 EPA, Securing Mitigation as Injunctive Relief in Certain Civil Enforcement Settlements (Nov. 14, 2012), <https://www.epa.gov/sites/default/files/2021-04/documents/usingallappropriateinjunctiverelieftoolsincivilenforcementsettlement0426.pdf>

59 Jurisdiction: Equity, *FED. JUD. CTR.*, <https://www.fjc.gov/history/work-courts/jurisdiction-equity>.

60 See *Liu v. SEC*, 140 S. Ct. 1936, 1943 (2020).

61 Catherine Millas Kaiman, Environmental Justice and Community-Based Reparations, 39 *SEATTLE U. L. REV.* 1327, 1358 (2016).

mental Justice communities, it is important to view reparations as a form of reconciliation and one part of the healing process rather than simply paying a debt owed for environmental injustices suffered.⁶² One suggested framework for incorporating environmental justice reparations involves a series of steps that begins with recognizing the environmental injustice, acknowledging the affected community, incorporating that community in discussions, and then enacting reparations based on those discussions.⁶³ Examples of reparations for environmental injustices are limited, but the concept itself is still being used. For example, California has recently approved recommendations from a task force on reparations to “compensate and apologize to Black residents for generations of harm caused by discriminatory policies.”⁶⁴ The Biden Administration’s Justice40 initiative, although not a form of reparations, at least provides similar support to environmental justice communities and is designed to “confront decades of underinvestment” though the success in community stakeholder engagement will determine the overall success of the program.⁶⁵

An alternative method for seeking a remedy could be in the form of litigation, such as a citizen suit via the Clean Air Act. Though it should be cautioned that pursuing litigation may involve significant costs and a substantial time commitment and may not produce an ideal remedy. A lawsuit challenging the EPA’s enforcement of the Clean Air Act for peaker plants in New York City would not be viable because the EPA has established emissions standards for peaker plants and has the authority to enforce those standards.⁶⁶ Additionally, New York has passed laws to phase out the use of peaker plants by 2030 and transition to cleaner sources of energy in the form of the CLCPA.⁶⁷ As a result, it would be difficult to argue that the EPA’s enforcement of the Clean Air Act for peaker plants is arbitrary or capricious, which is the standard for challenging agency actions in court. However, in other cases of environmental injustice in the form of air pollution, the Clean Air Act can still be used as a tool to achieve equitable mitigation remedies. The purpose of the act is “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.”⁶⁸ Cases involving Clean Air Act violations have held that mitigation components support the purpose of the act and “comports with the Acts’ tenets to protect and improve the quality of our air and water.”⁶⁹ Notably, there is no language within the acts that would preclude mitigation or equitable remedies, as Congress only limits the equitable authority of courts by the “clear[est] ... command” or “inescapable inference.”⁷⁰

Reflecting on the necessity and urgency for equitable solutions, it becomes increasingly evident that addressing environmental injustices is not only a matter of environmental concern but an urgent call for social justice. Environmental injustices suffered by environmental justice communities in New York City and elsewhere do more harm than just cause preventable illnesses and other adverse health effects. One such example is how children exposed to air pollution can have drastically affected futures. Beyond inflicting preventable illnesses and adverse health effects, these injustices represent a form of oppression that perpetuates systemic inequalities and demands immediate action to restore justice and safeguard the well-being of vulnerable communities. A ‘pollution-to-prison pipeline’ is created by exposing children who live in these communities to additional forms of air pollution. Children exposed to pollutants develop asthma and other illnesses;⁷¹ air pollution-caused ill-

62 Id. at 1359.

63 Id. at 1369.

64 California’s plan for reparations to Black residents: what you need to know, *THE GUARDIAN* (May 8, 2023), <https://www.theguardian.com/us-news/2023/may/08/california-taskforce-reparations-explainer>.

65 Justice40, *THE WHITE HOUSE*, <https://www.whitehouse.gov/environmentaljustice/justice40/>.

66 Power Plants and Neighboring Communities, EPA, <https://www.epa.gov/power-sector/power-plants-and-neighboring-communities>.

67 Climate Act, *supra* note 32.

68 42 U.S.C. § 7401(b)(1).

69 Sara A. Colangelo, Forging Complete Justice: Equitable Relief in Environmental Enforcement, 46 *HARV. ENVTL. L. REV.* 315, 338 (2022).

70 Id. at 340.

71 The Links Between Air Pollution and Childhood Asthma, U.S. EPA (Oct. 22, 2018), <https://www.epa.gov/sciencematters/links-between-air-pollution-and-childhood-asthma>.

nesses are one of the leading causes of poor school attendance.⁷² Poor attendance is one of the leading factors in children later becoming involved with the criminal justice system⁷³, thus drastically affecting their future. This phenomenon also occurs as the same environmental justice communities where the pollutants exist are often the same neighborhoods that are over-policed by the NYPD,⁷⁴ which increases the likelihood that someone will have an interaction with law enforcement. The pervasive nature of environmental injustices and their profound impact on vulnerable communities necessitate immediate and comprehensive action. By addressing these injustices, we not only prioritize the well-being and future prospects of affected children but also challenge the systemic inequalities and oppression that perpetuate these injustices.

Conclusion

Addressing the air pollution crisis in New York City's environmental justice communities, mainly caused by peaker plants, requires more than just closing these pollution sources. The disproportionate burden of pollution faced by marginalized communities demands equitable mitigation remedies and restitution. While the CLCPA offers some hope for reducing greenhouse gas emissions and closing peaker plants, it falls short of providing comprehensive relief for the communities affected. Equitable solutions must encompass not only the removal of pollution sources but also efforts to address the long-term health, economic, and social impacts on these communities. By acknowledging environmental injustices as a form of oppression and prioritizing social justice, New York City can take meaningful steps toward restoring justice and safeguarding the well-being of its most vulnerable residents. It is crucial to address this issue comprehensively and ensure that future environmental policies prioritize the health and rights of all communities.

72 Brian Maffly, Research shows school absences rise with air pollution, *THE SALT LAKE TRIBUNE* (Oct. 10, 2020), <https://www.sltrib.com/news/environment/2020/10/10/research-shows-school/>.

73 Education and Public Safety, Justice Policy Institute (Aug. 30, 2007), https://justicepolicy.org/wp-content/uploads/2022/02/07-08_rep_educationandpublicsafety_ps-ac.pdf.

74 Emily Widra and Nick Encalada-Malinowski, Where people in prison come from: The geography of mass incarceration in New York, *PRISON POLICY INITIATIVE* (July 2022), <https://www.prisonpolicy.org/origin/ny/2020/report.html>.