



Darren Suarez
Director of Government Affairs

January 10, 2019

Town of Coeymans
18 Russell Avenue
Ravena, NY 12143

Re: **Proposed amended ordinance language to Local Law #2**

Dear Supervisor Crandall and Town Board of Coeymans, NY,

The Business Council of New York State, Inc. submits the following comments regarding Local Law #2 of 2018 in the Town of Coeymans.

The Business Council is the leading business organization in New York State, representing the interests of more than 2,400 member businesses employing more than one million New Yorkers. The primary function of The Business Council is to serve as an advocate for its members in policy matters affecting economic development, jobs and the general business climate in the state.

The Business Council is concerned that Local Law #2 contains significant technical flaws that will make the law difficult to interpret and difficult to ensure compliance. Simply, Local Law #2 fails to provide certainty. The principle of certainty is widely accepted as a fundamental of American and English law. Legal certainty allows businesses and individuals to make decisions with a reasonable expectation of governments' reaction. Without some level of legal certainty, individuals and business are unlikely to make investments because they are concerned about unintentionally breaching the law. In the worst case scenario, businesses are concerned that legal uncertainty can result in manipulation, unequal enforcement or coercion.

The Business Council supports Lafarge and the proposed amended ordinance language to Local Law #2 of 2018 in the Town of Coeymans, because the amendments provide additional certainty.

Lafarge, with a level of certainty, has invested hundreds of millions of dollars to build one of the cleanest and most efficient cement kilns in the world. This effort took more than a decade from permitting to completion. The modernization of the Ravena Cement Plant significantly improved the facility's environmental performance. The facility was designed to be an efficient, competitive and state-of-the-art facility that meets or exceeds emission limits. During the facility upgrade process, Lafarge has been subjected to, and observed, the permitting and construction processes as set up by the New York State Department of Environmental Conservation and the United States Environmental Protection Agency. The modernization demonstrated Lafarge's commitment to the community.

The proposed Local Law #2 contains two main provisions: 1) a Waste Disposal Facility shall not process more than 25 tons of Waste in any 24 hour period, and 2) a Waste Disposal Facility with an air emissions point source shall not process more than one ton of waste in any 24 hour period without complying with monitoring requirements.

To determine how this legislation will apply to any entity they must determine:

- A. Are you a waste disposal facility?
- B. What is “waste”?

Are you a waste disposal facility?

Local Law #2 defines a waste disposal facility broadly as facility which disposes of or uses waste to produce energy. The definition of waste disposal facility includes a specific exemption for residential on-site space heating. This exemption is a clear indication that the proposed Local Law #2 could apply to a facility (school, church, hospital, business) that uses “waste” as defined by this Local Law as heat.

What is “waste”?

This question is not easy to answer. Local Law #2 contains a broad and unmanageable definition of waste. The definition of “waste” references six different New York State laws, two Federal laws, state regulations and one New York State Public Service Commission Order. Additionally, the definition includes a provision that would incorporate “any material determined by the US Environmental Protection Agency (“EPA”) or state agency to be a non-hazardous secondary material.” This specific provision would allow any determination by EPA or any state agency to change the legal status of a facility.

Please take note that Local Law #2 contains a definition of waste and not solid waste. Additionally, the definition does not expressly state that a material must be discarded to be considered a waste and it includes “contained gaseous material.”

Due to the broad and changing definition of waste any local facility (school, church, hospital, business) utilizing natural gas, biofuel, petroleum or wood fuel pellets for heating purposes could be subject to the requirements of the legislation.

Unfortunately for businesses or other facilities, because of the significant uncertainty regarding the application of Local Law #2, they must responsibly consider that they will be subject to at the very least the monitoring requirements of the legislation.

The monitoring requirements of the legislation requires a facility to install the Continuous Emissions Monitoring Systems for the following dioxins/furans (D/F), nitrogen oxides (NOx), arsenic, mercury, carbon dioxide, sulfur oxides (SOx), cadmium, nickel, carbon monoxide, particulate matter (PM), chromium (VI), selenium, hydrochloric acid (HCl), volatile organic compounds (VOCs), lead, zinc, hydrofluoric acid (HF), polycyclic aromatic hydrocarbons (PAHs), and manganese.

This proposed requirement does not take into consideration the quality or representativeness of the data that will be produced by the equipment, the commercial availability or the cost of equipment. Instead, the definition only considers equipment availability and the ability to obtain service contracts. There are many technologies and/or pieces of equipment that are offered for sale and will be maintained by a supplier; however, it is important that the equipment actually

provide reliable data and that there are maintenance and operational criteria to ensure the quality and representativeness of the output. Without proper maintenance, operation, and quality assurance, the data generated by these systems, regardless of a service contract, will not be representative of actual emissions.

It should be noted that approved performance specifications do not exist for D/F, polycyclic aromatic hydrocarbons (PAHs), or the listed metals (As, Cd, Cr, Pb, Mn, Ni, Se, Zn); therefore, it would be impossible for anyone determine the cost of this monitoring.

The Business Council is concerned that Local Law #2 contains significant technical flaws that will make the law difficult to interpret and to comply with. Local Law #2 fails to provide certainty. That lack of certainty means Local Law #2 could require a facility (school, church, hospital, and business) that uses natural gas, biofuel, petroleum or wood fuel pellets for heating purposes to implement costly and specialized air monitoring that is currently unavailable.

In conclusion, as the largest provider of portland cement in the United States, Lafarge provides our country, the ready mixed concrete industry and certainly the State of New York, with a great, reliable product to help our economy thrive. Operational flexibility and creativity is a must in a changing economic and environmental landscape, the permitting requirements already exist at the state and federal levels to recognize this.

We encourage you to support the proposed clarifying changes to Local Law #2.

The Business Council of New York State appreciates the opportunity to comment. Should you have any questions or need more information, please contact me.

Sincerely,

Darren Suarez