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# New York Environmental Legislation in 2023

By Michael B. Gerrard

January 10, 2024

In 2023, New York enacted laws to aid the state in achieving the renewable energy and greenhouse gas emissions reduction mandates of the 2019 Climate Leadership and Community Protection Act (CLCPA). The state also now has new laws to reduce exposure to lead in drinking water and paint; to ban natural gas furnaces and stoves in new buildings; to restrict neonicotinoid pesticides; and to encourage “nature-based solutions” for stabilizing tidal coastlines.

These and other new and amended environmental and energy laws—as well as notable vetoes—are discussed in this article.

## Climate Change and Clean Energy

The fiscal year (FY) 2024 budget legislation included provisions to advance New York’s transition to a lower-carbon energy system. The budget laws directed the New York Power Authority (NYPA) to develop renewable energy generating projects—either alone or jointly through use of public-private agreements (Chapter 56, Part QQ). The law also requires NYPA to make a plan to phase out electricity production from its small natural gas power plants in the Bronx, Brooklyn, Queens, Staten Island and Suffolk County by the



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end of 2030 and replace these plants, “where appropriate,” with renewable energy systems. NYPA also must establish decarbonization action plans for 15 State-owned “highest-emitting facilities” (Chapter 56, Part RR).

The FY 2024 budget also created a Climate Action Fund to receive revenue generated under the CLCPA, including through a potential cap-and-invest program (Chapter 56, Part TT). At least 30% of the funds will go to a Consumer Climate Action Account (to reduce potential increased costs for consumer goods and services); up to 3% will go to an Industrial Small Business Climate Action Account (to reduce

costs for qualifying businesses); and at least 67% will go to a Climate Investment Account (to assist in New York State's transition to a less carbon-intensive economy).

On Dec. 20, the New York State Department of Environmental Conservation (DEC) and New York State Energy Research and Development Authority (NYSERDA) released a pre-proposal outline for a cap-and-invest program and a Climate Affordability Study to consider how to deliver the proceeds of the cap-and-invest program that are allocated to the Consumer Climate Action Account. DEC and NYSERDA are holding virtual stakeholder meetings on Jan. 23, 25 and 26 to discuss the role of cap-and-invest, the pre-proposal outline and preliminary analysis.

FY 2024 budget laws also require that the state energy conservation construction code prohibit the installation of fossil-fuel equipment and building systems in new buildings of up to seven stories after Dec. 31, 2025 (except for new commercial or industrial buildings that have more than 100,000 square feet of conditioned floor area) and in all new buildings after Dec. 31, 2028 (Chapter 56, Part RR). This has the effect of banning natural gas furnaces and stoves in new buildings, with certain exceptions.

Plaintiffs that describe themselves as "companies, trade associations, and unions that rely on the availability of gas appliances and systems for their livelihoods" have filed a lawsuit in the federal district court for the Northern District of New York asserting that federal law preempts this state law. *Mulhern Gas v. Rodriguez*, No. 1:23-cv-01267 (N.D.N.Y.).

Citing "a lack of information about the local benefits and impacts of renewable energy

development and the best ways for communities to maximize benefits while avoiding and mitigating impacts," another law (Chapter 759) gives NYSERDA authority to develop a clean energy outreach and community planning program to provide information and assistance to communities to facilitate "sustainable and equitable development of local clean energy." The law will be amended in 2024 to incorporate the program into existing initiatives.

Another clean energy law established an agrivoltaics research program to be run by Cornell's College of Agriculture and Life Sciences (Chapter 712). The program's goal is "to develop innovative science-based solutions to facilitate the co-location of crops and photovoltaics while promoting the biodiversity of endemic flora and fauna."

The Housing Affordability, Resiliency, and Energy Efficiency Investment Act (Chapter 535) authorized New York City to make loans or grants using authorities under the Private Housing Finance Law for incorporation of "climate resiliency improvements" in existing and new affordable housing, while Chapter 485 extended the deadline to apply for a real property tax abatement for solar electric generating systems and electric energy storage equipment in New York City to Jan. 1, 2036.

Another law eased regulatory requirements for boreholes for geothermal heating or cooling systems (Chapter 483).

### **Wildlife and Natural Resources**

In December, the governor signed the Birds and Bees Protection Act (Chapter 755), which establishes restrictions on neonicotinoid pesticides to protect pollinators, birds, and other wildlife. The law prohibits sale, distribution, and purchase

of corn, soybean and wheat seeds coated or treated with neonicotinoid pesticides starting in 2027 (though the governor's approval memorandum suggested that forthcoming chapter amendments will provide additional time).

The law also prohibits application of pesticides containing certain neonicotinoid ingredients to outdoor ornamental plants and turf immediately and other neonicotinoid pesticides starting July 1, 2025 (though chapter amendments may permit more time).

The law gives DEC authority to grant temporary suspensions of or exemptions from the bans in certain circumstances and allows certified applicators to use neonicotinoid pesticides to treat against invasive species in woody plants. By January 2026, DEC and other agencies must conduct "a study to identify practicable and feasible alternatives" to neonicotinoid pesticides.

In addition to chapter amendments providing more time for compliance, the governor's approval memorandum indicated that other measures would be incorporated to ensure that the state's agriculture sector could continue operations, including a waiver process for "problem pests."

Other laws granted towns authorities to establish "aquatic growth control districts" (changed from "aquatic *plant* growth control districts") to raise funds to control invasive aquatic invertebrate species as well as invasive aquatic plants (Chapter 561). To address problems caused by overabundance of deer, two bills signed by the governor in December created deer management pilot programs, one in Syracuse and one in Southold on Long Island, and established qualifications for certified nuisance wildlife specialists (Chapters 683 and 704).

## Lead

On Dec. 19, the governor signed the Lead Pipe Right to Know Act (LPRTKA) into law (Chapter 730). The law requires public water systems to conduct inventories of all service lines that connect to their distribution systems. The LPRTKA is intended to codify U.S. Environmental Protection Agency (EPA) and New York State Department of Health (DOH) requirements for service line inventories and to gather information to ensure that State and federal funds for replacing lead service lines are spent efficiently and equitably. Surveys must be completed in compliance with both EPA requirements and LPRTKA requirements.

On Nov. 30, EPA issued proposed Lead and Copper Rule Improvements that would require lead service line inventories as well as the replacement of lead service lines within 10 years and other actions by water systems. The LPRTKA requires that inventories include information about the material composition of the service lines and whether lead has ever been present. The inventories and summary information will be published on the New York State Department of Health website, including with interactive mapping for larger water systems, and on the websites of the public water systems.

The initial inventories are due in October 2024, and public water systems whose inventories include service lines classified as lead, galvanized, or unknown must update the inventories at least annually. The governor indicated that amendments would be necessary to ensure that the law exceeds but does not conflict with federal requirements.

Earlier in the year, the budget law amended the Public Health Law to require the development of a registry for residential dwellings of at least two

units outside New York City that “are potentially eligible for lease,” were built before 1980 (before lead-based paint was banned for residential use) and are located in communities of concern as identified by DOH (Chapter 57, Part T, enacting new Public Health Law Sec. 1377).

Owners of qualifying dwellings will be required to certify that they are free of lead paint hazards by submitting inspection certifications. DOH will issue regulations regarding the required inspections, which must include, at a minimum, visual inspections for deteriorated paint and outdoor soil conditions, as well as dust wipe samples.

The DOH regulations must provide for self-certifications and establish procedures in the event of false certifications. DOH must also establish an annual inspection and audit process that involves review of at least 10% of the certification inspections. DOH will report annually on its implementation of the registry, including the number of properties qualifying for the registration, the number of properties required to submit inspection certifications, the number of inspection certifications submitted, and the number of properties inspected by DOH as part of the audit process.

The registry is intended to identify rental properties with lead hazards and lead to the remediation of those hazards.

### **Property Disclosures and Land Use**

A law that takes effect in March 2024 (Chapter 484) eliminates a provision of the Real Property Law that allowed a seller of residential real property to “opt out” of providing a disclosure statement regarding flood risk, lead plumbing, asbestos, and other issues by giving the buyer a \$500 credit against the purchase price. The law also requires more detailed disclosures regarding flood history and flood insurance

requirements. (For more discussion of this law, see this November 2023 column.)

Another law restricts digital billboards in the vicinity of Mitchell-Lama housing in New York City (Chapter 756).

### **Waters, Wetlands and Coastal Areas**

A law signed by Governor Hochul in September requires DEC to authorize and encourage use of “nature-based solutions” as the preferred alternative for stabilizing tidal shorelines (Chapter 487). DEC must incorporate the preference for such solutions in its regulations for water resources, tidal wetlands and coastal erosion hazard areas and must develop guidance for permitting of shoreline management projects.

Amendments to the wetlands law require that applications for regulated activity involving use of a pipeline upon a freshwater wetland include information about insurance (Chapter 486).

The budget included the Suffolk County Water Quality Restoration Act, which created a fund to finance projects for protection, preservation, and rehabilitation of groundwater and surface waters, as recommended in the Suffolk County Subwatersheds Wastewater Plan (Chapter 58, Part TT). The law also authorized the creation of a consolidated county-wide wastewater management district and extended a sales tax to finance the county drinking water protection program until 2060.

Another law bars the discharge of radiological substances into the Hudson River in connection with the decommissioning of the Indian Point nuclear power plants (Chapter 279).

### **Solid Waste**

A new law prohibits the throwing, placing, or disposal of “refuse, trash, garbage, rubbish, litter



or any nauseous or offensive matter” on park lands or private lands adjacent to park lands (Chapter 640). The law also established fines and service requirements for violations of the prohibition and increased the fines for an existing prohibition on depositing or leaving waste on lands under the jurisdiction of the Office of Parks, Recreation and Historic Preservation. The existing prohibition was amended to clarify that it applies to “dumping” on park lands.

Other laws related to management of waste included a one-year extension of the expiration date for the 2013 Mercury Thermostat Collection Act to January 1, 2025 (Chapter 349) and amendments to the waste tire program law to authorize use of funds for demonstration projects for waste tire reuse projects in agricultural settings and analysis of waste tire reuse opportunities (Chapter 651).

### Vetoed

The governor vetoed several bills related to climate change and energy, including bills requiring preparation of an annual expenditure report regarding funds needed and funds spent to achieve the state’s climate change goals (A1191-B/S288-C); preparation of a report on replacing dormant electric generating sites with renewable energy facilities (A4386/S3439); and development of recommendations for establishing microgrids (S4854/A6009).

The governor indicated she was supportive of the goals of the bills but that they should be considered during the budget process due to their fiscal impact. She also directed state agencies to address the issues addressed in the bills.

The governor also vetoed bills that would have required NYSERDA to develop an interactive

electric vehicle (EV) charging station map (A5687/S5253-A); directed the Public Service Commission to develop standards for EV charging stations (A1721-B/S5120-B); and required commercial garages that receive State funding to install EV charging stations to provide public access to charging (A1122/S110). The governor cited various reasons for rejecting these bills, including that they required actions that would duplicate existing resources; that they were not well-suited to the agencies directed to carry them out; or, in the case of the commercial garages bill, that they would discourage participation in State incentive programs for EV charging.

She also vetoed bills requiring a study of groundwater and stormwater issues in southeast Queens (S1449/A2608) and collection of recyclables in New York City parks (A3933-A/S727). In addition, she vetoed (for a second time) bills to expand protected streams to include “Class C” waterways (S1725/A4601-A) and to authorize localities with freshwater wetlands programs to ban applications of pesticides to the locally regulated wetlands (S5957/A5949).

She also vetoed the New York Tropical Deforestation-Free Procurement Act (S4859-A/A5682-A), which would have created a more expansive and stringent program to ensure that the State does not contract with companies contributing to tropical deforestation.

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