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Environmental Law

Expert Analysis

New York Environmental Legislation In 2019

In 2019, with the Democrats newly in full control of the State Senate, the Assembly and the Governor's office, New York adopted more environmental legislation than it had in more than a decade. This included a sweeping climate change statute, a new environmental justice article in the Environmental Conservation Law, and a statewide ban on plastic carryout bags. This annual survey reports on these developments and numerous other laws targeting environmental concerns.

Climate Change and Energy

In July, New York enacted the **Climate Leadership and Community Protection Act (CLCPA)** (Chapter 106), which set statewide greenhouse gas emissions limits of 60% of 1990 emissions by 2030 and 15% of 1990 emissions by 2050. The governor's signing in December of an

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environmental justice bill (discussed below) triggered a Jan. 1, 2020 effective date for CLCPA, setting deadlines for many of its interim requirements. The Department of Environmental Conservation (DEC) must promulgate regulations by Jan. 1, 2024 to achieve CLCPA's emissions limits. A scoping plan developed by a 22-member Climate Action Council will inform those regulations. The draft scoping plan is due by Jan. 1, 2022, and the final plan by Jan. 1, 2023. DEC, the New York State Energy Research and Development Authority (NYSERDA), and the Public Service Commission (PSC) have many other duties under CLCPA, including setting a social cost of carbon for use by state agencies, establishing a renewable energy program to achieve zero emissions from electricity by 2040,

and creating programs to meet statutory targets for offshore wind generation, photovoltaic generation, and energy storage. CLCPA also contains "just transition" and climate justice provisions. We discussed CLCPA's implications for the electric system, transportation, and buildings in our July column.

The budget legislation included the New York State Bag Waste Reduction Act, which bans entities that collect sales tax from distributing plastic carryout bags starting on March 1, 2020 (Chapter 58, Part H).

Smaller-scale renewable energy and energy efficiency measures were also passed, including budget bill provisions for a renewable energy and energy efficiency program in Westchester County (Chapter 58, Part UU) and for property tax advantages for real property that hosts certain renewable energy and energy storage systems (Chapter 59, Part AA). The governor vetoed a bill that would have required the PSC to

establish a renewable energy credit program that compensated existing large-scale renewable energy generators on a “noncompetitive” basis (S23). The governor instead directed the Department of Public Service and NYSERDA to design a competitive program for existing renewable sources.

In December, Gov. Andrew Cuomo signed two laws related to electric vehicles (EVs), one that eases the way for installing and using EV charging stations at condominiums (Chapter 597) and another that directs NYSERDA to prepare a report on EV issues (Chapter 676). Another law requires annual reporting on energy efficiency standards for certain appliances and equipment (Chapter 666).

New York also enacted a law prohibiting offshore oil and gas drilling and certain related activities in New York coastal areas (Chapter 29).

In addition, New York enacted a law promoting climate change adaptation by granting municipalities power to authorize transfers of development rights to protect lands at risk from sea level rise, storm surge, or flooding (Chapter 502).

Environmental Justice

Another major environmental measure adopted in 2019 was the addition of a new environmental justice (EJ) article to the Environmental Conservation Law. The law (Chapter 735) sets forth EJ principles and requires a 17-member Permanent Environmental Justice Advisory

Group to develop a model EJ policy. State agencies must develop and “be guided” by EJ policies and must appoint EJ coordinators and develop EJ training plans.

Congestion Pricing

The annual budget required the establishment of a “central business district tolling program” south of and including 60th Street in Manhattan. The program is to start in 2021 and is intended to reduce traffic and generate \$15 billion for Metropolitan Transportation Authority capital projects (Chapter 59, Part ZZZ). Further details about congestion pricing can be found in our May 2019 column.

Chemical Substances and Pesticides

On December 30, a bill (S501) that would establish a comprehensive program to regulate toxic chemicals in children’s products was delivered to Governor Cuomo. The governor had not taken action on the bill as of January 5, but already in 2019 he had signed a number of laws regulating chemical substances. The laws include restrictions on firefighting foams containing perfluoroalkyl and polyfluoroalkyl substances (PFAS) (Chapter 702); a prohibition on the sale of household cleansing, cosmetic, and personal care products containing more than trace concentrations of 1,4-dioxane (Chapter 613); a prohibition on the sale of lamps unless they meet mercury content

standards (Chapter 647); a ban on the installation of mercury-containing floors in schools (Chapter 565); and a warning label requirement for children’s jewelry containing lead (Chapter 671). In addition, the budget legislation redefined “elevated lead levels” in the Public Health Law to mean a blood lead level greater than or equal to five micrograms of lead per deciliter of whole blood (reduced from 10 micrograms) (Chapter 57, Part P). Another new law requires ingredient labeling for menstrual products (Chapter 362).

The governor vetoed a ban on the pesticide chlorpyrifos (S5343), saying that a pesticide should not be banned “by legislative decree.” He instead directed DEC to “take immediate action” to ban aerial spraying of chlorpyrifos and to ban all uses “as soon as possible.”

Solid Waste

The budget legislation included the New York State Bag Waste Reduction Act, which bans entities that collect sales tax from distributing plastic carryout bags starting on March 1, 2020 (Chapter 58, Part H). In addition, the budget legislation included measures to reduce organic waste in landfills (Chapter 58, Part SS).

Other laws addressing solid waste issues included the Finger Lakes Community Preservation Act, which restricts incineration facilities within the Oswego River/Finger Lakes Watershed (Chapter 32); a budget law provision extending

certain Waste Tire Management and Recycling Act of 2003 provisions (Chapter 58, Part E); and a law establishing a postconsumer paint collection program (Chapter 673).

Water

In anticipation of state drinking water standards for certain PFAS and 1,4-dioxane, a law enacted in November created a new statute of limitations (CPLR 214-h) for civil actions brought by public or wholesale water suppliers to recover damages for injury to property resulting from the presence of a contaminant in a water supply source (Chapter 442). Other water supply- and conservation-related measures included more stringent water efficiency standards for plumbing fixtures (Chapter 578); lead pipe disclosure requirements (Chapter 57, Part P); and requirements that DEC post information about water withdrawal permits for public water supplies (Chapter 458).

Parks, Wildlife and Natural Resources

In December, the governor signed a law (Chapter 661) establishing a Marine Mammal and Sea Turtle Protection Area around Plum Island, Great Gull Island, and Little Gull Island. New York also enacted a law giving DEC authority to designate otherwise unprotected species as “vulnerable” and directing DEC to designate giraffes as a vulnerable species within 180 days (Chapter

651). The law prohibits the sale of articles made from vulnerable species. Another law extended a 2014 law aimed at preventing the spread of aquatic invasive species (Chapter 81).

A law enacted in September identified two parcels—one in the Catskills and the other in the Adirondacks—for addition to the Forest Preserve (Chapter 287) to satisfy a condition of a 2017 amendment to the New York Constitution that provided for a 250-acre health and safety land account in the Forest

A new law establishing a regulatory framework for the production and sale of hemp and hemp extract (Chapter 614) provides for the Department of Agriculture and Markets to promulgate regulations that include environmental standards for hemp extract production.

Preserve. Other 2019 laws required the Office of Parks, Recreation and Historic Preservation (OPRHP) to prepare a report providing the justification for the permanent closure of any park or historic site at least six months in advance of closure (Chapter 585); required DEC to report on funding to facilitate disabled access to facilities owned or managed by DEC or OPRHP (Chapter 546); and directed OPRHP to prepare a plan for “a comprehensive statewide system of non-motorized multi-use trails” for use by bicyclists, pedestrians,

and other non-motorized users (Chapter 516).

Miscellaneous

Other environmental measures enacted in 2019 included extension of the moratorium on liquefied natural gas (LNG) facilities and transportation routes in New York City (Chapter 48); extension of the Commissioner of Education’s authority to regulate school vehicle idling on school grounds (Chapter 49); and extension of a provision allowing New York City and Suffolk and Nassau Counties to retain 25% of fines collected in their Bottle Bill enforcement (Chapter 65).

Other laws amended provisions concerning pollinator-friendly land management practices for solar energy generators and others (Chapter 203) and extended and enhanced New York City’s green roof tax abatement program (Chapter 79).

In addition, a new law establishing a regulatory framework for the production and sale of hemp and hemp extract (Chapter 614) provides for the Department of Agriculture and Markets to promulgate regulations that include environmental standards for hemp extract production.