

2018

New York Environmental Legislation in 2017

Michael B. Gerrard

Columbia Law School, michael.gerrard@law.columbia.edu

Edward McTiernan

Arnold & Porter

Follow this and additional works at: https://scholarship.law.columbia.edu/faculty_scholarship



Part of the [Environmental Law Commons](#)

Recommended Citation

Michael B. Gerrard & Edward McTiernan, *New York Environmental Legislation in 2017*, 259(8) N.Y.L.J., JANUARY 11, 2018 (2018).

Available at: https://scholarship.law.columbia.edu/faculty_scholarship/3061

This Article is brought to you for free and open access by the Faculty Publications at Scholarship Archive. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Scholarship Archive. For more information, please contact scholarshiparchive@law.columbia.edu.

Environmental Law

Expert Analysis

New York Environmental Legislation in 2017

In 2017, New York State enacted multiple laws that tackle aspects of two major environmental issues facing the state: protecting water quality and advancing the state's clean energy goals. In addition, Governor Andrew Cuomo signed laws concerning oil tankers on the Hudson, elephant welfare, food waste, and lead paint. He also approved a moratorium barring New York City's plastic bag fee from taking effect. This annual survey reports on these developments and other environmental laws enacted in 2017.

Drinking Water

The 2017-18 budget legislation established new regulatory programs to monitor emerging contaminants in public drinking water systems and to mitigate and remediate drinking

MICHAEL B. GERRARD is a professor and Director of the Sabin Center for Climate Change Law at Columbia Law School, and senior counsel to Arnold & Porter Kaye Scholar. EDWARD McTIERNAN is a partner in Arnold & Porter Kaye Scholer, and former general counsel of the New York State Department of Environmental Conservation. MARGARET BARRY, also with the firm, assisted in the preparation of this article.



By
**Michael B.
Gerrard**



And
**Edward
McTiernan**

water impacts caused by solid waste disposal sites. The monitoring law (L. 2017, ch. 57, part M) requires public water systems to test for substances on a list of emerging contaminants

The 2017-18 budget legislation established new regulatory programs to monitor emerging contaminants in public drinking water systems and to mitigate and remediate drinking water impacts caused by solid waste disposal sites.

promulgated by the Department of Health (DOH). This list will include 1,4-dioxane, perfluorooctane-sulfonic acid, and perfluorooctanoic acid, as well as other substances added based on recommendations from a newly established Drinking Water

Quality Council. DOH will set notification levels for listed chemicals; the presence of contaminants in drinking water at concentrations at or above those levels will trigger notification requirements.

To address sites causing drinking water contamination, the budget legislation created a new Article 27, Title 12, in the Environmental Conservation Law (ECL), to supplement existing authorities to investigate and mitigate risks caused by waste disposal sites with the potential to impact groundwater. The law (ch. 57, part T) directs the Department of Environmental Conservation (DEC) to prepare annual comprehensive plans for mitigating and remediating solid waste sites that threaten drinking water supplies, including by identifying priority sites. When actual or potential threats to public health are identified, DEC's powers under the new law include implementing or ordering measures such as installation of treatment systems and provision of alternative water supply sources.

The budget legislation also required DEC to work with DOH to incorporate drinking water quality data into a geographic information system (GIS) and required the Environmental Facilities Corporation (EFC) to study the feasibility of compiling a database of water quality infrastructure projects funded by EFC, DOH, and DEC. The budget bills contained a number of measures to fund projects to protect water quality, including replacements of septic systems and lead service lines, intermunicipal water infrastructure projects, emergency infrastructure construction and repairs, and source water protection projects (ch. 57, part T).

Another state law (ch. 245) addressed funding for water quality protection by authorizing the Village of Hoosick Falls to issue up to \$1.5 million in bonds for reimbursement of “extraordinary expenses” incurred and “extraordinary revenue losses” suffered as a result of the discovery of perfluorooctanoic acid in its municipal water supply in 2014.

Another 2017 law aimed at protection of drinking water requires DEC to issue regulations for Long Island compost and mulch facilities to prevent water quality impairment (ch. 449).

Clean Energy

A number of laws were enacted in 2017 to promote development of clean energy sources. An amendment

to the Power NY Act of 2011 made geothermal energy systems eligible for on-bill financing (ch. 425), while amendments to the Real Property Tax Law made micro-hydroelectric energy, fuel cell electric generating, micro-combined heat and power generating equipment, and electric energy storage equipment and storage systems eligible for a 15-year property tax exemption (ch. 336).

A new provision in the Public Service Law (ch. 415) requires establishment of an energy storage deployment program to promote installation of systems “capable of absorbing energy, storing it for a period of time, and thereafter dispatching the energy.” In a signing

To encourage development of renewable energy sources to support electric vehicles, another law requires that investor-owned utilities establish residential tariffs for purchase of electricity solely for charging electric vehicles.

statement, Governor Cuomo said the law would facilitate development of renewable energy sources.

To encourage development of renewable energy sources to support electric vehicles, another law requires that investor-owned utilities establish residential tariffs for purchase of electricity solely for charging electric vehicles (ch. 337). The law is intended to encourage electric

vehicle charging during periods when significant amounts of renewable energy are dispatched to the electric grid.

Another law eased requirements for municipal sustainable energy loan programs. The law (ch. 320) allows participation in loan programs even if the renewable energy generated on property owned by a participant is to be used off site. In addition, the law eliminates a requirement limiting the maximum loan amount to 10 percent of the appraised value of the property and allows municipalities to use State funds—not just federal funds—to finance their loan programs.

A law signed in December 2017 requires the New York State Energy Research and Development Authority to provide incentives for affordable residential green buildings (ch. 486).

Also in December, Cuomo vetoed a bill (S6157/A7722) that would have added approximately 1,100 acres of privately owned land to the Central Pine Barrens and Core Pine Barrens Areas on Long Island. The landowners had initiated plans to develop solar energy projects at the sites; the legislation would have impeded the projects. Cuomo said he objected to the legislation, which “unnecessarily pits land preservation against renewable energy, both of which are necessary to preserve the State’s environment and natural resources for future generations.”

At the end of December, Cuomo signed amendments to the New York City Administrative Code (ch. 503) requiring the city's Taxi and Limousine Commission to permit use of all hybrid electric and electric vehicle models as taxicabs so long as they meet requirements for use as for-hire vehicles.

Oil Tankers

Another new law authorizes DEC to establish guidelines for operation of petroleum-bearing vessels on the Hudson River and to establish zones where such vessels cannot operate (ch. 351). The law—a response to a currently suspended U.S. Coast Guard proposal to establish new anchorage grounds on the river between Yonkers and Kingston—directs the DEC commissioner to prepare a report with recommendations for plans, policies, and programs affecting petroleum-bearing vessels on the Hudson.

Lead Paint

Changes to §1373 of the Public Health Law imposed more stringent enforcement requirements for addressing lead paint hazards. The amendments (ch. 411) impose a mandatory duty on the Commissioner of Health to give written notice and demand discontinuance of a paint condition conducive to lead poisoning whenever an “area of high risk” has been designated. Previously the determination of whether to issue

such a notice and demand was left to the commissioner's discretion. In addition, the amendments made a formal hearing mandatory whenever a landlord failed to comply and placed the evidentiary burden on landlords to establish that a paint condition conducive to lead poisoning does not exist. The formal hearing requirement will likely change in 2018—Governor Cuomo indicated in an approval memo that he had reached an agreement with the Legislature to address his concern that requiring formal hearings could interfere with more effective enforcement mechanisms.

Solid Waste

Several measures signed into law may affect generation of solid waste. One measure (ch. 316) authorizes development of guidelines to encourage school districts and higher education institutions to donate “excess, unused, edible food” to local voluntary food assistance programs. Another bill (ch. 312) requires implementation of recycling programs at state parks, historic sites, and recreational facilities. The governor vetoed a bill (S6750) that would have required chain pharmacies to provide drug disposal collection points but said he was directing DEC to prepare a report on the feasibility of a statewide pharmaceutical stewardship program.

In February, Cuomo signed a bill (ch. 7) preventing a New York City law

charging a five-cent fee for “carryout merchandise bags” from taking effect. Cuomo said that plastic bag pollution was a “statewide challenge” warranting a “statewide solution.” He established a New York State Plastic Bag Task Force to develop a “uniform and equitable” plan to address the “plastic bag problem.” Recommendations were expected by the end of 2017.

Wildlife

Pursuant to the Elephant Protection Act (ch. 333), circuses and other entertainment acts may no longer use elephants beginning in October 2019. Cuomo also signed bills increasing fines and penalties for illegal takings of big game (ch. 408) and directing DEC to prepare a report on deer management techniques to address deer overpopulation in urban and suburban areas (ch. 466).

Regulatory Process

A year after signing a bill increasing the length of notice periods for some environmental regulations from 30 to 45 days, Cuomo signed legislation that requires 60-day notice periods prior to holding public hearings (ch. 455). The new legislation amends not only provisions governing ECL rulemaking processes but also provisions in the state Administrative Procedure Act and the Executive Law that apply more broadly.