

# NOW & NEXT

## Environmental Law Alert

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### New York takes important next step in the regulation of greenhouse gasses

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New York's recently issued draft roadmap for reducing greenhouse gas emissions has significant implications for virtually every industry sector in New York State.



#### What's the Impact?

- / The proposed plan would establish requirements to reduce greenhouse gas emissions in the transportation, building, electricity, industry, agriculture and forestry, and waste industries
- / Public comments on the plan will be accepted through May 1, 2022

On June 20, 2019, the New York State Legislature passed the Climate Leadership and Community Protection Act (CLCPA). Among other things, the act (through New York's new Environmental Conservation Law (ECL) Article 75) requires a 40% reduction in statewide greenhouse gas (GHG) emissions from 1990 levels by 2030 and an 85% reduction by 2050. The CLCPA also amends the State Public Service Law to require decarbonization of the electric sector. By 2030, 70% of the state's electric generation must be from renewable sources and, by 2050, 100% of electric generation in the state must be from renewable sources.

## CLCPA Draft Scoping Plan released

On December 30, 2021, the New York State Climate Action Council released an 861-page [Draft Scoping Plan](#) (Draft Plan) that serves as a “framework for how the State will reduce greenhouse gas emissions and achieve net-zero emissions, increase renewable energy usage, and ensure climate justice.” The council is comprised of 22 members, including the heads of various state agencies and members appointed by the governor and legislature.

## Strategies impacting key industry sectors

The main strategies of the Draft Plan are organized by industry sector, including transportation, building, electricity, industry, agriculture and forestry, and waste.

### *Transportation*

According to the Draft Plan, the transportation sector was responsible for approximately 28% of the state’s GHG emissions in 2019. A key element of the state’s transportation sector GHG reductions is the promotion of zero-emission vehicle (ZEV) usage, with recommended policies resulting in as many as three million ZEVs on the road by 2030 and may include limited reliance on renewable diesel and other lower-carbon fuels in existing combustion internal combustion engines while transitioning to ZEV usage. By 2050, the transportation sector will need to shift almost 100% to ZEVs.

The Draft Plan also emphasizes the need for large-scale investment in public transit and reducing vehicle miles traveled (VMT) through shared mobility, biking, walking infrastructure and smart growth improvements. Strategies for achieving these goals and the proliferation of ZEVs include:

- / Adoption of California’s Advanced Clean Cars 2 Regulations (California’s regulations are currently under development but expected to require 100% light-duty ZEV sales by 2035)
- / Adoption of California’s Advanced Clean Trucks Regulations (which New York has already accomplished through adoption of the [Advanced Clean Truck Rule](#) on December 29, 2021)
- / Providing enhanced ZEV purchase incentives (providing a direct rebate for ZEV purchases while imposing a fee on the purchase of fossil fuel vehicles)
- / Converting New York’s trucks, buses, and non-road equipment (including construction and farm equipment) to zero-emissions technologies, prioritizing medium and heavy-duty vehicles that impact disadvantaged communities
- / Enhancing the availability, accessibility, reliability, and affordability of public transportation services with an emphasis on unserved and underserved communities
- / Providing incentives for businesses and developments located near existing transit stations
- / Working with municipalities to modify existing development manuals to support transportation options and eliminate parking maximums and minimums

- / Amending and strengthening the state's Smart Growth Public Infrastructure Policy Act (ECL, Article 6) to more effectively avoid new state infrastructure spending that would promote sprawl
- / Using market-based solutions, such as variable pricing and parking policies, high registration fees for more-carbon intensive vehicles, mileage-based user fees, and special assessment districts to finance transportation improvements

### *Building*

The Draft Plan includes the ambitious goal of electrifying 85% of homes and commercial building space statewide by 2050. A handful of the key strategies promoted to achieve this goal include:

- / Adopting regulations that prohibit the replacement of fossil fuel equipment at the end of its useful life
- / Adopting local and state-wide codes that require highly efficient, zero-emission standards and incorporate requirements for building resilience
- / Requiring energy benchmarking and disclosure, starting with owners of multifamily and commercial buildings larger than 10,000 square feet, in 2023 by requiring annual reporting of whole-building energy and water consumption data to New York State Energy and Development Authority (NYSERDA) for public disclosure
- / Scaling up financial incentives and expanding access to public and private low-cost financing for building decarbonization
- / Relying on the high-efficiency heat pumps to retrofit and decarbonize existing commercial and residential buildings

### *Electricity*

According to the Draft Plan, fossil fuel generation, including natural gas, oil, and dual-fuel generation, produced more than 43% of statewide electricity. In order to achieve electricity system decarbonization by 2040, the state proposes to continue procurement programs for land-based and offshore renewable resources and extend cap reductions for the State's CO2 budget trading program, the Regional Greenhouse Gas Initiative. New sector strategies include:

- / Pursuing eventual phasing out of fossil fuel for baseload and peak generation
- / Accelerating growth of large-scale renewable energy generation by facilitating transmission and distribution upgrades and establishing permitting goals for the Office of Renewable Energy Siting based on megawatts of renewable energy permitted each year
- / Encouraging the expansion of clean distributed energy generation and distributed energy resources (i.e., technologies that generate electricity at or near where it will be used)
- / Promoting Community Choice Aggregation programs such as community solar projects

## *Industry*

The Draft Plan provides incentive-based strategies to mitigate direct GHG emissions, primarily from stationary sources. Incentive-based strategies are utilized given the high potential that increases in energy costs will lead industries to leave the state and relocate to areas less restrictive of GHG emissions. GHG reduction strategies are based on “four pillars” of energy efficiency, switching to low-carbon fuels (including renewable electricity), decarbonizing the electricity supply, and negative emissions.

## *Agriculture and forestry*

While the Draft Plan addresses strategies for reducing GHG emissions, focusing on methane and nitrous oxide, it also discusses how the agricultural and forestry sector can help reduce demand for imported goods and provide carbon sequestration benefits. The Draft Plan presents 25 strategies for GHG reduction and sequestration, organized by four themes: sustainable forest management; livestock management; soil, health, nutrient management and agroforestry; and climate-focused bioeconomy.

## *Waste*

GHG emissions from the waste sector represent about 12% of statewide emissions. Seventy-eight percent of such emissions are attributable to methane gas, mostly produced via decomposition of organic matter in landfills. Strategies for reducing emissions associated with the waste stream focus on the three “Rs”: Reduction, Reuse, and Recycling. Since 18% of the waste stream in New York consists of food scraps, the Draft Plan seeks to establish programs to transfer excess edible foods to feed the hungry, including amending the Food Donation and Food Scraps Recycling Law (2019) to phase in organics source-separation requirements, eventually banning combustion and landfilling of organics, and requiring a surcharge (fee per ton) on all waste generated in New York. The state is also directed to phase out single-use packaging and implement container deposit programs where feasible. Another strategy is extending existing producer responsibility and end-of-life management programs to include a broader range of products. The Draft Plan also calls for evaluation and research regarding the strategic use of biogas and cogeneration technologies.

## *Cross-sector policies*

Chapters 17 through 21 of the Draft Plan address cross-sector and state-wide policies.

## *Greenhouse gas pricing*

The Draft Plan, recognizing that a program pricing GHG emissions needs to be “designed to bring about change in the market and promote equity,” presents three GHG pricing options for public input:

- / A tax or fee establishing a carbon price referred to as a *carbon pricing*

- / A program that caps emissions across the economy or within particular sectors and allocates emissions primarily through an auction mechanism that provide revenues for investment, known as *cap-and-invest*
- / A *clean energy supply standard*, which would require providers of liquid and gaseous fuels across the economy to reduce the carbon intensity of fuels they introduce into commerce

### *A managed transition from fossil fuels*

Under all scenarios presented for GHG reduction under the Draft Plan, the “vast majority” of fossil fuel consumers—residential, commercial, and industrial—will transition to electricity by 2050. Although the Draft Plan includes recommendations for a managed transition away from fossil fuels, it also states the need for more analysis and planning in order to develop “the most equitable and effective strategy for transitioning from fossil gas while maintaining affordable, safe, and reliable service.” Indeed, the Draft Plan lists some rather monumental undertakings needed to decarbonize the state’s fossil gas system:

- / Utilities need to transform their business models
- / Gas utility customers need to retrofit heating, hot water, and cooking appliances in their homes and businesses
- / Local governments need to consider building code changes
- / Commercial and industrial gas customers need to consider changes to their business operations
- / Regulators will need to equitably and legally balance shareholder and customer interests when deciding, for example, how to handle assets tied to fossil fuels that are no longer able to generate an economic return because of changes associated with decarbonizing the economy, commonly referred to as stranded assets.

### *“Smart” land use*

Patterns of land development directly impact carbon emissions, sequestration, and storage. Key land-use strategies for achieving the CLCPA’s GHG targets are present in the Draft Plan in three themes: Protection, Restoration, and Monitoring of Natural and Working Lands; Forests and Farmland in Municipal Land Use Policies; and Smart Growth.

### *Local government*

According to the Draft Plan, partnership with local government is a keystone to the state’s GHG mitigation strategies. Five strategies are included in the Draft Plan to encourage and support local climate action. The first strategy includes establishing a statewide dashboard of community GHG emissions inventories. The second policy encourages local governments to lead energy efficiency efforts by developing a model above-minimum energy conservation codes and construction policies, including promoting adoption of the NY Stretch Energy Code. The state will also develop model laws to help municipalities plan for siting clean energy facilities. The fourth strategy calls for the state to support local community clean energy initiatives. The fifth discusses

the need for the state to provide support and guidance, expanding program opportunities, incentives, technical assistance, and centralized procurement services.

### *Adaptation and resilience*

Despite the state's efforts to reduce GHG emissions, the Draft Plan acknowledges the current and likely future impacts of climate change. Therefore, the Draft Plan provides adaptation and resilience strategies organized in three themes: Building Capacity, Communities & Infrastructure, and Living Systems.

### Measuring success

The Draft Plan concludes with three chapters addressing how the state will "measure success." The first concluding chapter discusses partnerships necessary to effectively address climate change, including needed action by the federal government. Chapter 23 discusses reporting requirements under the CLCPA that are necessary to track New York's progress in meeting GHG emissions limits.

The final chapter, Future Work, indicates that the Climate Action Council will hold at least six regional public hearings on the Draft Plan. The final Scoping Plan will be released no later than January 1, 2023. After that, the New York State Department of Environmental Conservation (NYSDEC) must propose and finalize regulations to achieve the statewide GHG emissions no later than January 1, 2024. Thereafter, the Scoping Plan must be updated every five years.

### Public comments

There is a 120-day [public comment](#) period (through May 1, 2022) for the Draft Plan, and details regarding public hearings on the draft will be made available in early 2022.

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