

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PROPOSES REGULATIONS FOR REDUCING STATEWIDE GREENHOUSE GAS EMISSIONS THROUGH 2050

Hodgson Russ Environmental and Renewable Energy Alert
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On August 19, 2020, the New York State Department of Environmental Conservation (“NYSDEC”) issued proposed greenhouse gas (“GHG”) reduction regulations to implement the Climate Leadership and Community Protection Act (“CLCPA”).[1] The CLCPA directs NYSDEC to adopt regulations establishing two statewide emissions limits: a limit for 2030 that is equal to 60% of 1990 GHG emissions levels, and a limit for 2050 that is equal to 15% of 1990 emissions levels. The proposed regulations seek to implement this requirement by first establishing an estimate of the 1990 GHG levels as a baseline, and then expressing the required emissions limits in millions of metric tons of carbon dioxide equivalent.[2] These statewide emissions limits will need to be considered by state agencies when issuing permits, licenses, and other administrative approvals and decisions. Once finalized, the proposed regulations will get the ball rolling on the next phase of CLCPA implementation.

I. CLCPA Mandate

The CLCPA was signed into law on July 18, 2019 and created a “comprehensive regulatory program to reduce the greenhouse gas emissions that correspond with emissions reductions goals” set forth in the State Energy Plan, the United States Global Change Research Program, and the Intergovernmental Panel on Climate Change (“IPCC”) projections. The CLCPA requires that the State conduct an accounting of GHG emissions from all sources located within the state and sources located outside of the state that are associated with in-state energy consumption.

To achieve the codified emissions targets, the CLCPA established the Climate Action Council – a 22-member committee comprising State agency and authority representatives and appointed members from stakeholder organizations. Under the CLCPA, the Climate Action Council is tasked with developing a Scoping Plan that recommends ways to reduce emissions across all sectors of the State economy, including the transportation, buildings, industrial, commercial and agricultural sectors.[3]

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II. NYSDEC Proposed Rule

The NYSDEC proposed rule applies to all parts of the State and to all State agencies, offices, authorities, and divisions in carrying out the programs, promulgating the regulations, and implementing the decisions required by the CLCPA. The proposed rule establishes an estimate of statewide GHG emissions in 1990 as 401.38 million metric tons of carbon dioxide equivalent. Thus, the CLCPA requirement to reduce statewide greenhouse gas emissions to 60% of the 1990 baseline by 2030 and to 15% of the 1990 baseline by 2050 equates to a statewide emissions limit of 240.83 million metric tons of carbon dioxide equivalent in 2030 and 60.21 million metric tons in 2050. The rule does not impose any compliance obligations on any entities to meet these targets, but rather establishes standards for state agencies, authorities, and departments to use in making permitting, licensing, and other administrative decisions. Notably, the rule neither implements the CLCPA's mandate to achieve a 100% emissions free electricity sector by 2040, nor implements the statewide goal to achieve net zero GHG emissions in all sectors of the economy by 2050, which were not tasks delegated to NYSDEC under the CLCPA. Instead, the Climate Action Council will be responsible for ensuring the Scoping Plan charts a path forward to achieve those emissions reduction goals, as measured against the baselines established in this rulemaking proceeding.

III. What's Next?

The proposed rule is open for public comment, which can be submitted electronically or in hard copy, until October 27, 2020.[4] A public hearing on the proposed rule will be held via webinar from 2:00 – 6:00 PM EST on October 20, 2020. Instructions on how to join the hearing webinar and provide an oral statement will be published by the NYSDEC in the Environmental Notice Bulletin by October 7, 2020.[5] Following the hearing and the public comment period, a final rule will be published in the State Register and will be effective upon publication.

For more information about the proposed regulations or the rulemaking process, or for assistance with developing comments, please contact Mike Hecker (716.848.1599), Sarah Main (518.433.2424), Noah Shaw (518.736.2924), or a member of the Hodgson Russ Renewable Energy Practice or Environmental Practice.

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[1] Proposed 6 NYCRR Part 496 Statewide Emissions Limits, <http://www.dec.ny.gov/regulations/121059.html>; formal notice of the proposed rulemaking was issued in the State Register on August 19, 2020, *available at* <https://www.dos.ny.gov/info/register/2020/081920.pdf>.

[2] The CLCPA defines “carbon dioxide equivalent” as “the amount of carbon dioxide by mass that would produce the same global warming impact as a given mass of another greenhouse gas over an integrated twenty-year time frame after emission.” ECL § 75-0101(2).

[3] For more information about the Climate Action Council, *see* <https://climate.ny.gov/Climate-Action-Council>

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[4] For information regarding the submission of written comments, see <http://www.dec.ny.gov/regulations/121052.html>.

[5] The NYSDEC's Environmental Notice Bulletin can be accessed at <https://www.dec.ny.gov/enb/enb.html>.

