

ENVIRONMENTAL LAW

Expert Analysis

State Bar Task Force: 22 New York Actions to Address Climate Change

The new Obama administration is reversing eight years of federal refusal to take mandatory action to address climate change. However, the lower levels of government will continue to play central roles. States and municipalities are the principal regulators of building construction, land use, and electric utilities; they are major users of goods and services that generate greenhouse gases (GHGs)—and they have other key roles.

To see how New York can better contribute to these efforts, in 2008 Bernice K. Leber, president of the New York State Bar Association, convened a Task Force on Global Warming. Its 12 members were given the task of updating two prior NYSBA reports on the subject¹ and, more importantly, formulating specific action recommendations that could be presented to Democratic Governor David Paterson, his administrative agencies, and the Legislature. I was honored to be named chair of the task force.² Students in the Columbia Law School Environmental Law Clinic performed key research,³ and the NYSBA's Environmental Law Section and numerous state agencies provided invaluable assistance.

The task force report will be released at the Presidential Summit at the NYSBA annual meeting on Jan. 28, 2009 at the Marriott Marquis Hotel, and will be available at www.nysba.org.⁴

This article gives a preview of its recommendations. The task force was acutely aware of the state's current fiscal situation and, thus, concentrated on action items that it expects will either save money because of their energy cost savings or will have, at worst, a modest cost to state and local government.

By
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GHG Reduction Objective

New York has an impressive array of laws, policies and programs to reduce statewide GHG emissions. However, there is no statewide comprehensive climate change strategy that has a specific, measurable and binding reduction target.

The existing programs employ many different metrics of success. Some of New York's programs aim to increase the use of renewable energy, reduce overall electricity use, or reduce energy use in buildings, and so on, by certain percentages.

Without a common metric, it is very

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difficult to gauge progress and to set priorities, and in particular to determine what are the most cost effective ways to control GHG emissions.

President Barack Obama and several states have adopted an objective of reducing emissions to 80 percent below 1990 levels by 2050, and several other countries are moving in that direction as well. (The baseline was set in 1990 by the Kyoto Protocol.) The task force recommends that this goal be adopted in New York and that the state's disparate programs be measured against this goal. There should also be an interim goal of achieving 1990 levels by 2020.

Buildings and Energy

The first cluster of the task force's recommendations include energy efficiency in buildings. Nationwide, buildings account for nearly 40 percent of total energy consumption and contribute nearly that much in total GHG emissions.

1. Improve New York's current incentives regarding energy efficiency in buildings: New York has so many tax credits and other incentives for green buildings that the complex eligibility rules are difficult to decipher. New York should establish a centralized clearinghouse for this information. It should also: update building energy codes more swiftly, to reflect evolving national and international standards; provide incentives and resources for local governments to enforce these codes, for without enforcement the codes are meaningless; expedite the permit processing for climate-friendly projects; and prioritize energy efficiency incentives for affordable housing.

2. Enhance New York's Renewable Portfolio Standard (RPS): Electric utilities in New York must charge consumers a surcharge that goes toward achieving a goal that 25 percent of electricity used in the state will be from renewable sources by 2013. This is not as impressive as it looks, because 19.3 percent of the electricity used in the state already comes from large hydroelectric projects, such as that at Niagara Falls. Many other states are increasing their RPS goals, and New York's percentage should be increased to at least 30 percent.

3. Authorize the Public Service Commission (PSC) to require time-of-use pricing: Charging higher electricity rates during times of peak demands would tend to spread the peak, allowing more use of low-GHG sources. The Legislature should amend the statute that arguably prohibits the PSC from imposing time-of-use pricing.

4. Provide incentives for installation of smart meters: Electric meters that allow

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time-differentiated charges also encourage low-GHG sources.

5. Require electric submetering in all residential buildings: Since 1977, newly constructed and substantially renovated multi-unit buildings have had to be submetered, which gives tenants an incentive to reduce their power use. Submetering should be phased into older buildings that are over a set size threshold. The current regulation that requires 70 percent of shareholders in co-ops and condominiums to vote in favor of submetering should be abolished.

6. Amend the Energy Code to cover more building renovations: Many renovations do not need to meet current Energy Code requirements because, under a state regulation (which does not conform to national and international codes), the rules only apply to renovations involving the replacement of more than 50 percent of a building subsystem. New requirements are also banned that would cost more than the present value of the expected energy savings over a 10-year period. The currently high thresholds for the applicability of the Energy Code should be lowered. The exemption for historic properties should also be narrowed.

7. Require schools to meet green building standards: Under Local Law 86 of 2005, new and renovated New York City school buildings must meet green building standards. Similar requirements should be imposed in the rest of the state. Currently, the New York State Education Department's guidelines for new and renovated schools are voluntary.

8. Adopt conservation requirements for water and wastewater treatment plants: These plants should be added to the list of facilities that must meet energy conservation requirements.

9. Reinstate energy planning requirements in Article Six of the Energy Law: The State Energy Planning Board should be reinstated, and not be subject to automatic sunset.

Land Use

10. Amend State Environmental Quality Review Act (SEQRA) regulations to incorporate GHG emission considerations: The New York State Department of Environmental Conservation (DEC) should follow the lead of several other states and amend the regulations under SEQRA to provide that some discussion of climate change (at a level appropriate in light of project circumstances) is more explicitly required for all actions under environmental impact statement review under SEQRA. The DEC has already taken some steps in this direction.

11. Incorporate GHG emission considerations into local comprehensive

plans: The Town, Village and General City Laws should be amended to require GHG emissions and energy efficiency to be taken into account when developing comprehensive plans.

12. Encourage wind projects, including those located offshore: The state should encourage further use of wind resources, including off the shore of Long Island and in Lake Ontario.

Vehicles and Transportation

13. Strive for a 10 percent reduction in vehicle miles travelled: This much-discussed goal, to be achieved within 10 years, should be reaffirmed, especially since transportation is the one sector where statewide energy consumption has increased.

14. Consider feebates for the purchase of new vehicles: Legislation should be considered that imposes fees on vehicles with low fuel economy and grants rebates to vehicles with high fuel economy to encourage and reward good vehicle purchase decisions.

15. Encourage governmental purchasing of alternative fuel vehicles: The requirement that state agencies may only purchase alternative fuel vehicles should be extended from light-duty vehicles to medium and heavy vehicles, and additional state assistance should be provided for municipal purchase of such vehicles.

16. Promote energy-saving vehicle maintenance techniques: The Department of Motor Vehicles should take further measures to encourage motorists to keep tires adequately inflated, replace clogged air filters, and take other actions that would improve mileage.

Other Initiatives

17. Expand the Regional Greenhouse Gas Initiative (RGGI): New York is one of the 10 Northeastern and mid-Atlantic states in RGGI, which requires emissions reductions in large electric generating units. The future of RGGI and comparable programs in other regions is uncertain given pending federal legislation. But if RGGI continues, it should be expanded to apply to additional sources of GHGs. Consideration should also be given, after thorough economic analysis, to lowering the RGGI cap to create a pricing dynamic to better encourage reduction in GHG levels. Use of the considerable proceeds that will be realized from RGGI auctions should also be shielded from political interference.

18. Pursue carbon capture and sequestration (CCS) in New York if federal funds are available: Given the reality that coal will continue in heavy use for many years, despite its high carbon intensity, it

is important to develop technologies for CCS. To the extent that federal funds will pay the costs of such development, New York should participate.

19. Promote green workforce development: In keeping with actions in many other states, and now likely to be taken at the federal level as part of the economic stimulus package, New York should promote "green collar" jobs by enhancing educational and job training programs for blue-collar employment that focuses on energy efficiency and alternative energy.

20. Encourage Interagency Committee on Sustainability and Green Procurement to be aggressive in setting green specifications: This entity, established by an executive order issued by Governor Paterson, should be aggressive in incorporating energy efficiency and GHG reductions into the specifications for products purchased by the state.

21. Promote methane capture: Efforts should be expanded to require the capture of methane (a potent GHG) from landfills and sewage treatment plants, and to use it to generate electricity whenever possible.

22. Improve New York's floodplain mapping system: Current floodplain maps from the Federal Emergency Management Agency (FEMA) look at historical data. With sea levels rising, historical data are no longer the best predictor of what flooding will look like in the future. New York should update its flood zone maps to reflect which areas are at risk of flooding by looking at projections of future sea level rise.



1. N.Y. State Bar Ass'n, "The Threat of Global Climate Change—What Can New Yorkers Do? State and Local Strategies to Reduce Greenhouse Gas Emissions in New York State" (1994); New York State Symposium on Economic Development and Climate Change (including NYSBA), Recommendations for a Climate Change Agenda for New York State (1998).

2. The other members of the task force were David Driesen, Veronica Eady Famira, J. Kevin Healy, Katrina Kuh, Edward Lloyd, Eileen Millett, David Paget, Virginia Robbins, Patricia Salkin, James Sevinsky and James Van Nostrand. J. Cullen Howe was task force reporter.

3. Participating were Naomi Abraham and Travis Annatoyn, Jessica Bell, Anna Fleder, Amanda Hungerford, Bryan Hurlbutt, Maritere Padilla Rodriguez, and David Scherr.

4. These are recommendations of the task force, not of the full New York State Bar Association. The NYSBA House of Delegates, which has the power to take formal policy positions, will be considering the task force's recommendations in the coming months.