

## Environmental Law

## Expert Analysis

# New York Environmental Legislation in 2018

In 2018, New York State enacted a Drug Take Back Act in response to environmental and public health concerns about improper disposal of unused drugs. Another enactment gave the Department of Health (DOH) greater discretion in enforcement actions against landlords that do not take adequate action to abate lead paint. Other new laws tinkered with legislation enacted in 2017 to protect drinking water and to promote clean energy and energy storage. In addition, Governor Andrew M. Cuomo signed laws concerning farmland and pollinator protection. In New York City, a styrofoam ban went into effect on Jan. 1 after courts rejected a challenge to city determinations underlying the prohibition.

This annual survey reports on these developments and other environmental laws enacted in 2018.

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### Drug Take Back Act

Many leftover drugs are flushed down the toilet, and some containing opioids are improperly used. In July, Governor Cuomo signed the

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A ban on styrofoam food service items and packing peanuts took effect on Jan. 1. The city announced that the ban would take effect after it prevailed in litigation challenging its determination that styrofoam articles could not be recycled in an environmentally effective and economically feasible manner.

Drug Take Back Act (ch. 120) requiring drug manufacturers to implement take back programs for “covered drugs.” Take back programs must provide “convenient, ongoing collection

services” and ensure access in rural and under-served areas. Manufacturers also must explain how covered drugs will be safely and securely tracked and handled from collection through final disposal and destruction. They also must reimburse the costs of pharmacies and other collectors.

### Drinking Water

An October law amended 2017 legislation requiring establishment of emerging contaminant notification levels. The amended law requires DOH to make information about notification levels easily accessible through the DOH website (ch. 314). (On Dec. 18, the Drinking Water Quality Council took a step towards establishment of maximum contaminant levels (MCLs) for three emerging contaminants, 1,4-dioxane, perfluorooctanoic acid and perfluorooctanesulfonic acid.)

The 2018-19 budget legislation added specific requirements for annual reports by the Department of Environmental Conservation (DEC) on the solid waste mitigation and drinking water response programs established

by the 2017-18 budget bill (ch. 58, part AA).

Other 2018 laws concerning water quality included an extension of a long-standing interest rate subsidy for municipal water pollution control projects financed through the Clean Water State Revolving Fund (ch. 250). Another law authorized Long Island local governments to enact laws requiring monitoring of groundwater impacts from mining or mine reclamation (ch. 298).

Another law requires Long Island water purveyors and authorities with 10,000 or more customers to provide information on water usage to customers (ch. 470).

## Energy

In October, a new law amended 2017 legislation that established an affordable residential green building program. The new law (ch. 311) directs the New York State Energy Research and Development Authority (NYSERDA) to prepare a study of financial incentives for affordable residential green building to foster an understanding of the incentives' benefits before committing additional resources. While the 2017 law authorized NYSERDA to provide incentives, the 2018 law instead authorizes NYSERDA to provide "information and resources" to developers and other parties. Also in October, Governor Cuomo signed a law (ch. 297) directing NYSERDA to conduct a study of the feasibility of high-performance energy efficiency

measures in commercial office space.

A 2017 law that codified an energy storage deployment program also was amended in 2018. The 2018 law (ch. 324) required the Public Service Commission (PSC) to establish a 2030 energy storage goal and a deployment policy by the end of 2018. (The PSC did so in December, adopting an energy storage goal of 3,000 megawatts by 2030, as well as a strategy to address barriers to energy storage development.) A second law signed in December requires a competitive process for any procurement of energy storage systems (ch. 417).

Laws were also enacted to create, expand, or extend tax incentives for

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clean energy and energy storage, including (1) expanding the 15-year property tax exemption for certain types of energy systems to include properties with fuel-flexible linear generator electric generating systems (ch. 325); (2) extending the deadline for the solar electric generating system real property abatement in New York City (ch. 327); and (3) establishing a property tax abatement for electric energy storage equipment in New York City (ch. 412).

In November, the governor signed a law giving the NYC Taxi and Limousine Commission (TLC) more flexibility to determine what hybrid and electric vehicles can qualify as taxicabs. Instead of requiring the TLC to permit all hybrid electric and electric models of vehicles that meet all for-hire vehicle requirements to be used as taxicabs (as a 2017 law did), the new law (ch. 339) instead requires the TLC to approve one or more hybrid electric vehicle models for taxicab use. The TLC must also permit 1,350 medallions to use any hybrid electric vehicle model.

## Land Preservation, Farmland Protection, and Land Banks

The 2018-19 budget legislation expanded the Central Pine Barrens on Long Island and added parcels in Shoreham and Mastic Woods to the core preservation area (ch. 58, part CC). The legislation also requires Suffolk County to prepare an inventory of properties suitable for solar projects. These provisions were a compromise that resolved a dispute regarding development of solar facilities in the vicinity. In December 2017, Cuomo vetoed an earlier bill that would have added lands to the Central Pine Barrens and prevented a solar facility from being constructed.

Another law explicitly authorized the Albany Pine Bush Preserve Commission to acquire real property (ch. 449).

In July, the governor signed a law (ch. 158) authorizing state assistance payments for projects that include

“farmer-purchaser farmland protection agreements.” Such agreements are intended to ensure that farmland is affordable to purchasers who intend to continue commercial agricultural production.

The state also expanded the maximum number of land banks to 35 (ch. 508). The legislative memorandum indicated that the state was on the verge of reaching the existing cap of 25. The memorandum said land banks “are effective in repurposing so-called ‘zombie properties’ to give them second life.”

### Public Health

In April, Cuomo signed a law giving DOH the authority to take whatever enforcement action it “deemed appropriate” when landlords fail to comply with DOH demands for remediation of paint conditions conducive to lead poisoning (ch. 20). The 2018 provision replaced a requirement added in 2017 for a formal hearing in all cases. Another law signed in April requires an annual report identifying New York City Transit Authority capital projects involving removal of existing lead-based paint from, and the repainting of, above-ground infrastructure (ch. 18).

A law signed in December creates a radon task force to conduct a study and make recommendations for reducing New York residents’ radon exposure (ch. 414).

### Pollinator Protection

On Dec. 7, Cuomo signed a bill authorizing the Department of

Agriculture and Markets (AGM) to develop guidelines for vegetation management plans for persons making claims that their property or business—including solar electric generating systems—is “pollinator friendly” (ch. 399). In an approval memorandum, however, the governor indicated that he and the legislature had agreed to amend the law in 2019 to authorize AGM to make existing information available rather than to develop new plans “at significant expense.”

### Regulatory Process

The minimum comment period for revised rulemakings involving “substantial revision” to a previously proposed rule was increased to 45 days from 30 days (ch. 408).

### Styrofoam Ban

In New York City, a ban on styrofoam food service items and packing peanuts took effect on Jan. 1. The city announced that the ban would take effect after it prevailed in litigation challenging its determination that styrofoam articles could not be recycled in an environmentally effective and economically feasible manner. *Restaurant Action Alliance NYC v. City of New York*, 165 A.D.3d 515 (1st Dept. 2018). Enforcement of the ban will begin on July 1.

### Other Laws and a Veto

The budget legislation again postponed the deadline (to Dec. 31, 2019)

for state-owned or -operated diesel-powered heavy-duty vehicles to utilize best available retrofit technology (ch. 58, part NN). In addition, the budget legislation revised the Bottle Bill statute to allow the sale of beverage containers connected to each other by a separate plastic holding device that meets specified requirements (ch. 58, part PP).

New laws also eliminated a lower certification fee for certain commercial pesticide applicators (ch. 58, part OO) and extended New York’s “minor repair program” for pesticide containers through July 1, 2020 (ch. 94). (The program allows retailers to avoid disposal of pesticides in damaged containers if they repair the containers in accordance with a U.S. Environmental Protection Agency repair policy.) The state also extended for two more years the revival of time-barred actions brought by Vietnam War veterans for injury or death caused by Agent Orange exposure (ch. 82).

In December, the governor vetoed a bill that would have required DEC to prepare a study of food waste initiatives (S8693). The governor said the bill would have required expenditure of “significant resources” to study an issue that was already “well known to the state.”