

ENVIRONMENTAL LAW

Expert Analysis

New York Environmental Legislation in 2020

This past year New York saw the collapse of one major environmental initiative due to the pandemic, but the enactment of several important new environmental laws.

In 2020, the Restore Mother Nature Environmental Bond Act of 2020—which was New York’s first environmental bond act in almost 25 years—became a casualty of the pandemic’s economic consequences. If approved by voters, the Bond Act (Laws of 2020, Chapter 58, Parts QQ and RR) could have raised up to \$3 billion for capital projects “for the single purpose of making environmental improvements that preserve, enhance, and restore New York’s natural resources and reduce the impact of climate change.” (A more complete review of the Bond Act appeared in our March 2020 column.)

However, the Bond Act’s appearance on the ballot in November 2020 was conditioned on the Division of



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the Budget’s certification that the debt would not adversely affect funding available for currently authorized capital projects deemed essential to public health and safety or for essential governmental services. On July 30, Governor Andrew

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Cuomo announced that the Bond Act would not be “financially prudent” and therefore would not appear on the ballot.

The legislative year for other environmental laws was nonetheless fairly prolific. In February, the governor signed into law a bill carried over from 2019 that established a

Toxic Chemicals in Children’s Products program. This new law, along with two other bills targeting specific chemicals, moves New York into the first rank of state-level chemical regulation.

Other major environmental legislation enacted in 2020 included a law to facilitate development of renewable energy systems and a statewide ban on Styrofoam containers and packing peanuts. This annual survey reports on these developments and numerous other laws targeting environmental concerns.

Chemical Regulation And Pesticides

The Toxic Chemicals in Children’s Products law (Laws of 2019, Chapters 756 and 757) creates a program modeled after programs in other states such as California, Maine, and Washington that have comprehensive chemical regulatory policies, in contrast to New York’s approach of regulating uses of dangerous chemicals on a chemical-by-chemical basis. New York’s law—which the 2020/21 budget legislation amended in accordance with an agreement between the governor and the legislature (Chapter 55, Part X, Subpart AA of

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2020)—requires that the Department of Environmental Conservation (DEC) promulgate and maintain lists of “chemicals of concern” and “high priority chemicals” and will impose reporting requirements on manufacturers of children’s products that contain such chemicals above certain thresholds. The law also provides for prohibitions on distribution and sale of children’s products containing certain high-priority chemicals.

In 2020, New York also enacted two laws directed at specific chemicals and products—a prohibition on perfluoroalkyl and polyfluoroalkyl substances (PFAS) in food packaging that takes effect at the end of 2022 (Chapter 307) and a ban on use of trichloroethylene (TCE) as a vapor degreaser, intermediate chemical, refrigerant, or extraction solvent, or in other manufacturing or industrial cleaning processes or uses (Chapter 370).

The TCE ban is to take effect on Dec. 31, 2021, but the governor said he and the Legislature had agreed to delay the effective date to allow time for identification of safe alternatives and to enact a severability clause in case action by the U.S. Environmental Protection Agency under the Toxic Substances Control Act pre-empts state regulation of one or more of the uses.

Another new law banned use of the pesticide glyphosate on state property (Chapter 378), though the governor indicated the law would be amended to allow glyphosate applications in certain circumstances.

Other 2020 amendments to the pesticides laws require that signs, lawn markers, educational materials, and notices be in both English and Spanish, as well as any other languages that the DEC commissioner deems necessary (Chapter 145).

New York also adopted a Public Health Law provision defining the quorum of the Advisory Council on Lead Poisoning Prevention to be a majority of the appointed voting membership (Chapter 314). The memorandum in support of the

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bill indicated that the council had “struggled to achieve a quorum due to a lack of appointees” and that the amendment would allow the Council to more effectively perform its function of advising on policies to reduce lead exposure.

Solid and Hazardous Waste

Chapter 133 requires that waste from oil or natural gas development activities be regulated as hazardous waste if it otherwise meets the Environmental Conservation Law’s definition of hazardous waste. Chapter 286 prohibits disposal by incineration of aqueous film-forming foam (AFFF) containing PFAS in the City of Cohoes, where DEC previously directed a facility to cease disposal of AFFF.

In December, the governor signed a bill (Chapter 332) intended to address large-scale illegal dumping of waste, particularly on Long Island. The new law has several components: new felonies and penalties for disposing of construction and demolition (C&D) waste or hazardous or acutely hazardous substances on the property of another; a new category of “scheme to defraud in the first degree” for systemic conduct involving solid waste disposal that results in more than \$1,000 in damages; and a requirement for certified waste tracking manifests for C&D waste generated in New York City.

Two other laws aimed to reduce generation of solid waste. One banned disposable food service containers that contain expanded polystyrene foam (e.g., Styrofoam) and polystyrene loose fill packaging (Chapter 58, Part PP). The other law—the Excess Food Act—provides that supermarkets “shall from time to time make excess food available” to organizations that provide food for free to needy persons (Chapter 352). The governor signed the Excess Food Act but indicated it would be merely an interim mechanism to increase food donation until the mandatory Food Donation and Food Scrap Recycling program established in 2019 takes effect in January 2022.

Energy and Climate Change

The most significant 2020 climate change law was the Accelerated Renewable Energy Growth and Community Benefit Act (AREGCBA) in the budget legislation (Chapter 58,

Part JJJ). The AREGCBA established a Major Renewable Energy Development Program that consolidates environmental review and permitting for large renewable energy systems (and co-located systems storing energy generated from such systems) in a new Office of Renewable Energy Siting in the Department of State. The AREGCBA includes other provisions intended to support achievement of the 2019 Climate Leadership and Community Protection Act's greenhouse gas reduction and renewable energy targets, including programs to encourage renewable energy development at difficult sites and at previously developed sites. (Our May 2020 column was devoted to a more detailed discussion of AREGCBA.)

Other measures enacted in 2020 that support the state's renewable energy and decarbonization goals included the addition of "green projects" to the Excelsior Jobs Program (Chapter 59, Part L), the extension of the municipal sustainable energy loan program to new construction (Chapter 184), legalization of electric-assist bicycles and electric scooters (Chapter 58, Part XX), and provisions to protect parking spaces for charging electric vehicles (Chapter 206).

Another 2020 law codified New York's prohibition of high-volume hydraulic fracturing and instituted a moratorium on gelled propane hydraulic fracturing while DEC prepares an analysis of its potential impacts (Chapter 58, Part WW).

On New Year's eve, Governor Cuomo signed three bills (Chapters 384, 385 and 386) concerning the closure

of the Indian Point Nuclear Power Plant in Westchester County. The bills allow the Town of Cortlandt, the Village of Buchanan and the Hendrick Hudson School District to collect property tax on the spent fuel at the plant; extend the Payment in Lieu of Taxes agreement; and require that displaced workers be paid prevailing wages.

Water Quality/Drinking Water

The Randy Preston Road Salt Reduction Act (Chapter 313) establishes a 14-member Adirondack Road Salt Reduction Task Force to prepare a report assessing the impacts of road salt, including on surface and ground waters and public and private lands, and making recommendations for road salt reduction. The law also requires the Department of Transportation and DEC to cooperate on a road salt reduction pilot plan and test program through 2024.

The Public Health Law was amended to require online posting of annual water supply statements by water works corporations (Chapter 57).

Wildlife

A 2020 law provides that species listed as endangered or threatened under New York law based on designation by the Secretary of the Interior under the federal Endangered Species Act will remain protected by State law even after the Secretary removes such designation (Chapter 170).

Land Use

New York enacted laws restricting siting of live poultry markets in New

York City (Chapter 135) and requiring the City to adopt a process for siting long-term, non-emergency homeless shelters (Chapter 383). The process must include a public hearing held in the community district where the proposed shelter would be located.

Miscellaneous

A number of laws passed in 2020 comprised "technical amendments" to some of 2019's environmental legislation in accordance with agreements reached by the governor and legislature prior to the governor signing the 2019 bills. The technical amendments included changes to the landmark environmental justice law, amendments to the definition of "vulnerable species," and amendments to a law restricting use of PFAS-containing firefighting foams.

Governor Cuomo vetoed bills that would have given local governments more control over sand mines; that would have required permits for those seeking to alter Class C streams; and that would have extended protections of Jamaica Bay.