

Key New York State Actions to Address Climate Change

- **SEQRA.** In 2009, the New York State Department of Environmental Conservation (DEC) finalized its “Guide for Assessing Energy Use and Greenhouse Gas Emissions in an Environmental Impact Statement,” which addresses how the agency will assess climate change pursuant to the State Environmental Quality Review Act (SEQRA).
- **RGGI.** In 2008, the DEC finalized its regulations governing New York’s implementation of the Regional Greenhouse Gas Initiative (RGGI). 6 NYCRR §§ 242.1 to 242.10. Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont created RGGI in 2005 to reduce greenhouse gas emissions to 10% below current levels by 2018.

RGGI creates a mandatory cap and trade program for carbon dioxide emissions from electricity generators with a capacity of 25 megawatts or more. While member states have some flexibility in RGGI’s implementation, a memorandum of understanding (“RGGI MOU”) among the members will guide the process, provide some uniformity and ensure that credits can be traded among the states. The states also created RGGI Inc., a nonprofit corporation, to oversee the joint efforts (www.rggi.org).

In 2008, the New York State Energy Research and Development Authority finalized its regulations governing New York’s implementation of RGGI. NYSERDA is primarily involved in the use of hundreds of millions of dollars of funds expected to be created by the auction of carbon credits. 21 NYCRR Part 507.

- **Vehicle Emissions.** Like a handful of other states, New York has adopted California’s Greenhouse Gas Exhaust Emission Standards for motor vehicles, which would reduce GHG emissions from cars by 37 percent, and from light trucks 24 percent by 2016. In 2009 the U.S. Environmental Protection Agency granted California a waiver of federal preemption under the U.S. Clean Air Act, which allows the numerous states that follow California’s approach to implement these new standards. New York and its fellow RGGI states have also pledged to create a new “Low-Carbon Fuel Standard.”
- **Renewable Energy.** In 2004, the New York State Public Service Commission has adopted a “renewable portfolio standard.” (Case 03-E-0188-Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, September 24, 2004) As described by the DEC: “This standard was implemented by New York State in 2004 to promote the research, development and use of alternative energy. Its goal is to increase the proportion of renewable electricity used by New Yorkers to at least 25% by the year 2013. Renewable energy resources include wind, hydroelectric, solar and biofuels.” (Notably absent from this definition is nuclear energy.)
- **Energy Efficiency.** In 2008, the New York State Public Service Commission adopted an energy efficiency portfolio standard. (Case 07-M-5048, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, June 23, 2008). As described by the DEC: “This state program has as its goal to reduce power demand 15 percent from forecasted levels by 2015, through energy efficiency. It includes eliminating a key conservation disincentive by

decoupling utility profits from the amount of energy being consumed (this step is already underway); strengthening efficiency standards for appliances and buildings, and addressing New York's largest energy consumer, state government. When fully funded, this program is expected to provide more than \$4 billion in benefits to customers, along with thousands of jobs to support energy efficiency programs, such as retrofitting outdated and inefficient residential, commercial and industrial properties and installing new energy efficient equipment.”

- **Tracking Emissions.** New York participates in the Climate Registry, a national nonprofit partnership that has established a standardized systems for recording and reporting greenhouse gas emissions. Other states and nations are members.
- **Affirmative Litigation.** New York and several other states sued American Electric Power Company and several other large electricity companies, alleging that their emissions created a public nuisance by contributing to global warming. The U.S. District Court of the Southern of New York dismissed the lawsuit in 2005, finding, among other things, that the states were attempting to address nonjusticiable “political questions.” Connecticut v. Am. Elec. Power Co., 406 F. Supp. 2d 265 (S.D.N.Y. 2005). The U.S. Court of Appeals for the Second Circuit has recently reversed that decision and remanded the case to the district court, allowing the states to continue to press their claim that “by emitting 650 million tons per year of carbon dioxide [the companies are] causing and will continue to cause serious harms affecting human health and natural resources.” 2009 U.S. App. LEXIS 20873.
- **Smart Growth.** In 2008, Governor Spitzer issued an executive order to establish a “smart growth” cabinet comprised of heads of various state agencies. Unlike some states (including Maryland), New York has not yet adopted state-wide legislation to address sprawl, loss of open space, urban revitalization and the other principles of smart growth.

This short summary omits many of the other steps, many non-binding, that New York is taking to address climate change. It also omits the many financial incentives that New York offers, particularly through NYSERDA, for those seeking to install renewable energy or build green buildings. For a listing of more New York State actions, see:

- The New York State Department of Environmental Conservation’s list of climate change and energy efficiency programs at <http://www.dec.ny.gov/energy/43384.html> and the website of the New York State Energy Research and Development Authority;
- The U.S. Department of Energy’s Database of State Incentives for Renewables & Efficiency (DSIRE) at <http://www.dsireusa.org/>; and
- The American Bar Association’s text, Global Climate Change and U.S. Law, edited by Michael Gerrard and its chapter on state efforts, written by the Pace Law School Center for Environmental Legal Studies. The updated chapter is available at <http://www.abanet.org/abapubs/globalclimate/>.