

State Environmental Regulation

Expert Analysis

How Government Can Help Coasts Adapt to Climate Change

Many of the subjects that I discuss in this column relate in one way or another to climate change. This past September, for example, my column titled “Agency Ruling Signals State Power on Greenhouse Gases” explored a decision by the New York State Department of Environmental Conservation (NYSDEC) that could be interpreted as a way for local and state regulators to control greenhouse gases (GHG)—a climate change issue.

It seems only natural, of course, for a “State Environmental Regulation” column to explore topics relating to climate change. Just read the headlines. From The New York Times on October 26: “In Antarctica, Two Crucial Glaciers Accelerate Toward the Sea.” From The Washington Post on November 13: “Climate change upped the odds of Hurricane Harvey’s extreme rains, study finds.” And from The Wall Street Journal

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By
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on November 16: “How Companies Are Pushing Ahead on Climate-Change Targets.”

Climate change is more than just news stories. Consider that, earlier

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this month, the “Climate Science Special Report” issued by 13 federal agencies, declared that humans are the dominant cause of climate change—and that we now are in the warmest period in modern civilization.

Although the Trump administration sought to downplay the report after it was released, issuing a statement that said, in part, that the climate “has changed and is always changing” and that, “[a]s the Climate Science Special Report states, the magnitude of future climate change depends significantly on ‘remaining uncertainty in the sensitivity of Earth’s climate’” to GHG emissions, there can be no doubt about the practical significance of climate change to everyone.

That, of course, includes residents and property owners in New York, New Jersey, and Connecticut—perhaps none more so than those who live, work, or enjoy the coast.

As highlighted in a recent report by the Regional Plan Association (RPA) titled “Coastal Adaptation: A Framework for Governance and Funding to Address Climate Change,” the tristate region has over 3,700 miles of tidal coastline, with thousands of homes, other buildings, and infrastructure that will be affected by a rise in sea levels. In the region, about one million people already live in places at risk

of flooding from an extreme storm—a number that will nearly double by 2050 when the sea level is expected to rise by two feet.

According to the RPA's report, the 167 local governments that are on the coast in the tristate area will have to make "physical and regulatory changes necessary to adapt to this new coastline," including "[r]estoring wetlands, building sea walls, raising buildings, retrofitting infrastructure and buying out vulnerable homeowners." How will they be able to accomplish that?

In addition to various statistics and explanations of how coastal areas in the tristate region will suffer from climate change, the RPA report includes suggestions for state and local legislators and regulators to help coastal areas adapt to climate change. The balance of this column discusses those suggestions.

The Problem

The RPA report describes four "impediments" that limit the tristate region's current ability to deal with climate change.

First, the report says that planning and investments are "reactive rather than proactive." In other words, according to the RPA report, there is no plan or budget for coastal adaptation projects that prioritize investments or prepare for future contingencies.

Second, the report points out that the "vast majority" of the region's local governments lack the staff and

resources to address, and to plan for, climate change.

Third, the report characterizes coastal flooding as a regional problem, but says that planning typically occurs locally—and that the states and local governments have "different rules, policies and guidelines, and limited incentives to collaborate."

Finally, the report suggests that existing state coastal management programs are not consistent with each other and do not necessarily permit the same strategies to be adopted by all three states.

Coastline Governance Today

The RPA report reviews, in some depth, the existing coastal management programs operating in the three states, beginning with the National Coastal

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Zone Management Program, which is administered by the National Oceanic and Atmospheric Administration. As the RPA report points out, New York, New Jersey, and Connecticut all have created their own coastal management program (CMP).

The New York State Department of State (NYSDOS) is the administrator of New York's CMP. The RPA report describes the New Jersey CMP as primarily a federal program relying for the most part on federal funding

and Connecticut's CMP as primarily involved with the issuance and approval of permits. The RPA report says that the three CMPs all act "independently" and coordinate efforts on an "ad hoc basis when a project or a specific issue requires it."

There is at least one important similarity shared by the three state CMPs, according to the RPA report. They all have limited power to regulate land use.

The RPA report observed that the CMPs of New York and Connecticut both address only certain aspects of climate change. In New York, the NYSDOS and NYSDEC develop model local laws that consider risk from sea level rise, storm surge, and flooding and develop guidance on how coastal areas can use natural resources and processes to deal with those problems. The Connecticut CMP requires that planners and developers consider the potential impact of sea level rise, coastal flooding, and erosion patterns on coastal development.

There also are regional estuary and estuarine reserve programs, including the Hudson River Estuary Program and the Peconic Estuary Program in New York and the Barnegat Bay Partnership in New Jersey.

The RPA report concludes, however, that the region's coastal management programs amount to a "patchwork of coastal regulation."

There is a solution, however, that can "fill the void in climate adaptation," according to the RPA. The RPA report recommends that New York,

New Jersey, and Connecticut create a “regional coastal commission.”

The Commission’s Responsibilities

The RPA proposes four responsibilities for a regional coastal commission.

First, it should produce a regional coastal adaptation plan that “sets a vision” and “aligns policies” across local and state boundaries.

Second, the commission should develop “science-informed standards” that “guide and prioritize” adaptation projects and development along the coast. Those projects, in the view of the RPA, would be coordinated by the commission.

Third, the commission would coordinate and encourage collaborative projects that are not restricted by municipal or state boundaries.

Finally, the commission would award funding from newly-created adaptation trust funds. The RPA report proposes that the three states create these trust funds, at least initially, with surcharges of 0.5 percent to 1.5 percent on insurance policy premiums. The RPA report estimates that such surcharges would amount to an additional payment by policyholders of \$1 per month in Connecticut, \$5 per month in New York, and \$15 per month in New Jersey. The RPA report explains that the New Jersey surcharge would be higher than the surcharge in the other two states “because of the higher levels of identified unmet needs in the state.”

Governance

There are various ways to decide who should be members of the coastal

commission and how it should be governed. The RPA report recommends that members be chosen to represent the states, counties, and local jurisdictions as well as urban, suburban, and “natural” coast areas.

The RPA report acknowledges that elected officials “could have a role” on the commission, but specifically recommends that governance remain “independent from political cycles and direct political influence.”

Toward that end, the RPA report says, the “latest science” should inform the commission’s work.

Best Practices

The RPA report recommends 10 “best practices” that it says the commission should follow, beginning with a “clear and targeted mission” and involving elected officials “while staying independent from election cycles.”

Among other things, the RPA report advocates structuring the commission according to specialization and subject areas. For instance, subcommittees could specialize in particular geographic areas, such as the Long Island Sound.

The RPA report also suggests that a “neutral facilitator” could help the commission members work together more easily, and could help members “work through” their “competitive resource” instincts.

The commission also should consider having an independent advisory science committee as well as a central data repository, according to the RPA report.

To be successful, the commission in addition should have a “diversified

funding portfolio” that is supplemented by a “self-sustaining, revenue-generating source of funding” that is not dependent on government funding or grants.

Conclusion

As the RPA report observes, there are models for regional commissions on which a tristate coastal commission certainly could be based. Indeed, the RPA said that it reviewed nine regional collaboratives focusing on adapting to climate change in preparing its report. These include the San Francisco Bay Conservation and Development Commission, the Louisiana Coastal Protection and Restoration Authority, and the Bay Area Regional Collaborative. Two models in particular focus on interstate matters: the Interstate Environmental Commission in the New York, New Jersey, Connecticut tristate area, which was established in 1936 to enforce water quality regulations, and the multi-state Chesapeake Bay Program, which was created in 1983.

It certainly is not at all clear that state officials in New York, New Jersey, and Connecticut ultimately will agree to establish a commission and to cede certain powers to it for the purpose of adapting their states’ coastline to climate change. Given what is at stake, however, it would appear that the states’ governors and legislators at least should begin discussing whether to pass legislation to create the commission recommended by the RPA. Let’s hope that they do so soon.