

STATE ENVIRONMENTAL LAW

Expert Analysis

NY State Legislature Passes Two Major Environmental Bills

In June, the New York State Legislature passed two of the most significant environmental bills in recent memory. The two bills, Senate Bill S439A and Senate Bill S6599, will affect New York State residents, property owners, developers, businesses, local governments, and other entities and institutions in the state in large and small ways.

PFAS

The chemicals perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) are fluorinated organic chemicals that are part of a larger group of man-made substances called PFAS, or perfluoroalkyl and polyfluoroalkyl chemicals. Resistant to water, grease, and stains, PFOS and PFOA were widely incorporated in carpets, clothing, furniture fabric, food packaging, and firefighting foam used at airfields. They have been found in water supplies across the state, as I have previously discussed in these pages. See Charlotte A.

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By
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Biblow, “Addressing Concerns Over Chemicals in Drinking Water,” *NYLJ* Sept. 22, 2016, and “State’s Battle Against Firefighting Foam Intensifies,” *NYLJ* July 26, 2018.

In recent years, many companies agreed to phase out their use of PFOA and PFOS. Efforts also have been made on both the federal and state levels to regulate PFOS and PFOA. For example, the U.S. Environmental Protection Agency (EPA) issued provisional health advisories for PFOS and PFOA in 2009, although it has not yet established national drinking water standards for PFOS or PFOA. A bill pending in the U.S. Congress, S1509-116th Congress, PFAS Release Disclosure Act, would require the EPA to promulgate PFAS federal drinking water standards within two years of its enactment.

In New York, in April 2016, the New

York State Department of Environmental Conservation (NYSDEC) issued an emergency rule that added PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt to the state’s list of hazardous substances. The NYSDEC was particularly interested in class 8 firefighting foams containing these chemicals.

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at airports, refineries, bulk storage terminals, and other facilities handling large volumes of flammable liquid petroleum or natural gas because of their ability to produce a fast-spreading foam. The NYSDEC believes that PFAS chemicals in class B firefighting foam can seep into groundwater

and contaminate drinking water sources.

Senate Bill S439A, once the governor signs it, will add a new Section 159-b to the New York Executive Law that bans the entire class of PFAS chemicals in firefighting foam used and manufactured in New York (subject to certain limited exceptions, such as for oil refineries and chemical plants). The bill provides a two-year window before the ban takes effect. The bill requires written notification of any PFAS chemicals found in personal protective firefighting equipment at the time of sale.

The bill provides for civil penalties for initial violations in an amount up to \$5,000 per violation. Repeat offenders are looking at penalties of up to \$10,000 per violation.

In a related development, in early July, the commissioner of the New York State Department of Health (DOH), Dr. Howard Zucker, accepted the New York State Drinking Water Quality Council's recommendations for maximum contaminant levels in drinking water for PFOS and PFOA, as well as for 1,4-dioxane, a chemical that has been used as a stabilizer in solvents, paint strippers, greases, and wax. The levels are 10 parts per trillion for both PFOS and PFOA, which the DOH said in a statement are the most protective in the nation. The level for 1,4-dioxane of 1 part per billion is the nation's first-ever level set for that chemical, according to the DOH.

The commissioner directed the DOH to begin the regulatory process

for adopting these standards. See "Amendment of Subpart 5-1 of Title 10 NYCRR (Maximum Contaminant Levels (MCLs))."

Finally, in conjunction with these proposed new drinking water standards, Governor Andrew Cuomo announced the availability of \$350 million under the Water Infrastructure Improvement Act and the Intermunicipal Water Infrastructure Grant Program for local governments across the state to help upgrade water systems in an effort to combat contaminants.

The Climate Bill

The second bill, Senate Bill S6599, titled the New York State Climate Leadership and Community Protection Act, has even greater aspirations than the PFAS bill. It will put the state on a path to net zero emissions in all sectors of the economy and incorporates the most aggressive emissions limitations in the country, requiring 100 percent carbon free electricity by the year 2040. This will require a phasing out of oil-powered heating systems and gasoline-powered cars.

Senate Bill S6599, signed by the governor on July 18, 2019, begins with findings about climate change, stating that the legislature has determined that climate change "is adversely affecting economic well-being, public health, natural resources, and the environment of New York." The bill further states that the adverse impacts of climate change include "an increase in the severity and frequency of extreme

weather events, such as storms, flooding, and heat waves;" "rising sea levels, which exacerbate damage from storm surges and flooding, contribute to coastal erosion and saltwater intrusion, and inundate low-lying areas, leading to the displacement of or damage to coastal habitat, property, and infrastructure;" "a decline in freshwater and saltwater fish populations;" "increased average temperatures," with a concomitant increase in "the demand for air conditioning and refrigeration among residents and businesses;" "exacerbation of air pollution;" and "an increase in the incidences of infectious diseases, asthma attacks, heart attacks, and other negative health outcomes."

The legislative findings add that these impacts "are having a detrimental effect on some of New York's largest industries," including agriculture, commercial shipping, forestry, tourism, and recreational and commercial fishing, and are placing "additional strain on the physical infrastructure" that delivers critical services to New York citizens, including the state's energy, transportation, stormwater, and wastewater infrastructure.

After referencing the United Nations Framework Convention on Climate Change, also known as the Paris Agreement, and other actions taken by New York State to reduce greenhouse emissions, the bill sets a goal for New York State "to reduce greenhouse gas emissions from all [human-caused] anthropogenic sources 100 percent

from 1990 levels by the year 2050, with an incremental target of at least a 40 percent reduction in climate pollution by the year 2030.”

Senate Bill S6599 establishes a New York State Climate Action Council. The council will have 22 members, including a number of state commissioners, the chairperson of the Public Service Commission, and the presidents of the New York State Energy Research and Development Authority, the New York Power Authority, and the Long Island Power Authority. Other members will be appointed by the governor and by leaders of the state senate and assembly. At large members will include individuals with expertise in issues relating to climate change mitigation or adaptation, such as from environmental justice, labor, public health, and regulated industries.

The council is tasked with convening expert advisory panels to work on a variety of topics, including transportation, energy intensive and trade-exposed industries, land use and local government, energy efficiency and housing, power generation, and agriculture and forestry, to provide recommendations to the council on specific topics. The council also is required to convene a “just transition working group” to “advise [it] on issues and opportunities for workforce development and training related to energy efficiency measures, renewable energy and other clean energy technologies, with specific focus on training and workforce opportunities

for disadvantaged communities, and segments of the population that may be underrepresented in the clean energy workforce such as veterans, women and formerly incarcerated persons.”

The bill requires the council to prepare and approve a “scoping plan” outlining recommendations for attaining the bill’s statewide greenhouse gas emissions limits to

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aid in the adoption of a state energy plan. This needs to be done within two years of the effective date of the law.

The bill also contains greenhouse gas reporting requirements and sets greenhouse gas emissions limits. In particular, the NYSDEC must establish a statewide greenhouse gas emissions limit of 60 percent of 1990 emissions by 2030 and another 15 percent of 1990 emissions by 2050.

The bill establishes a renewable energy program designed to achieve a minimum of 70 percent of statewide electric generation obtained by renewable energy systems by 2030 and zero emissions from the

statewide electrical demand system by 2040.

Moreover, the bill provides additional authority for state agencies to promulgate greenhouse gas regulations and requires the NYSDEC to consider climate change in permitting decisions.

There is much more detail in the bill, but its goal is clear: eliminate the state’s greenhouse gas emissions by 2050.

Conclusion

State Senator Todd Kaminsky, one of the sponsors of Senate Bill S6599, has been quoted as saying that the bill “is going to change the way every New Yorker lives.” The state, he said, is “going to be deriving our power from clean energy sources, running our cars on renewable energy, and going to work in buildings that do not emit carbon.”

There will be opportunities galore, and significant hurdles to overcome, in order to accomplish the goals set forth in these two bills. Individuals, business executives, and state and local officials should pay particular attention to hearings, proposed rules and regulations, and other government pronouncements relating to these two bills in the months and years to come.