

Insights

NEW YORK STATE ESTABLISHES GHG EMISSION CAPS UNDER THE CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT

Dec 30, 2020

The State of New York is continuing to implement the New York Climate Leadership and Community Protection Act (CLCPA), which set a December 31, 2020 deadline for the promulgation of statewide greenhouse gas (GHG) emission limits. The CLCPA requires the emission limits to reflect a 40 percent reduction in statewide GHG emissions by 2030 and an 85 percent reduction by 2050. The emission reductions are to be measured from the baseline of statewide GHG emissions in 1990. By notice published in the State Register on December 30, 2020, the State adopted the required regulation, to be codified at 6 N.Y.C.R.R. Part 496.

The regulation defines the term “carbon dioxide equivalent” as the mass of GHG emissions weighted in accordance with the potential of each gas to cause global warming, pursuant to the protocol created by the International Panel on Climate Change. The regulation codifies the carbon dioxide equivalent of each regulated GHG. For example, the carbon dioxide equivalent value of methane is 84, the carbon dioxide equivalent of nitrous oxide is 264, and the carbon dioxide equivalent value of HFC-23 is 10,800. The regulation identifies 62 chemicals as GHGs.

Next, the regulation defines the key term “statewide greenhouse gas emissions.” Consistent with the CLCPA, the regulation defines the term as the “total annual emissions of greenhouse gases produced within the state from anthropogenic sources and greenhouse gases produced outside of the state that are associated with the generation of electricity imported into the state and the extraction and transmission of fossil fuels imported into the state, expressed in tons of carbon dioxide equivalents.”

Using this definition, the regulation estimates that the statewide greenhouse gas emissions in 1990 were 409.78 million metric tons of carbon dioxide equivalent. With this baseline established, the regulation applies the CLCPA’s percentage reduction requirements to establish a statewide GHG emission limit of 245.87 million metric tons of carbon dioxide equivalent for 2030 and 61.47 million metric tons for 2050.

Achievement of these regulatory mandates will have a profound effect on the State's economy. In essence, the CLCPA mandates that fossil fuels – the energy source that has powered industrial and economic activity in the State since the beginning of the industrial age – be replaced by renewable sources of energy, and that energy utilization be made far more efficient. Promulgation of the statewide emission limits sets the stage for the State to take the next step required by the CLCPA: the Climate Action Council's publication of its Scoping Plan by January 1, 2023. The Scoping Plan is to identify the strategies the State should pursue to achieve the required emission reductions. Ultimately, the State's Department of Environmental Conservation and other agencies will give teeth to the Scoping Plan with the promulgation of regulations imposing mandates that will spark an enormous effort on the part of every sector of the State economy to effectuate the sea change that the CLCPA requires in the coming decades.

RELATED PRACTICE AREAS

- Energy Transition

MEET THE TEAM



Philip E. Karmel

New York

philip.karmel@bclplaw.com

[+1 212 541 2311](tel:+12125412311)



J. Kevin Healy

New York

jkevin.healy@bclplaw.com

[+1 212 541 1078](tel:+12125411078)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.