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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

2026 Environmental and Energy Law Forecast

NEW YORK

Recent New York State Superfund Program Amendments and Outlook

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In May 2025, New York enacted important amendments to its Superfund statute (the Inactive Hazardous Waste Disposal Sites Program) as part of the governor's FY 2025–2026 budget bill, moving the Superfund statute much closer to its federal analogue, the Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA).

The amendments close gaps in the New York's Superfund statute that have long been available under the CERCLA. Whereas the New York State Department of Environmental Conservation's (NYSDEC) previously lacked a streamlined mechanism to obtain recovery costs, the amendments impose strict, joint, and several liability to responsible persons for response costs and expressly authorizes the NYSDEC to commence actions to recover such costs. The amendments similarly establish strict, joint, and several liability for natural resource damages, and enable NYSDEC to seek recovery of such damages.

Beyond strengthening and streamlining NYSDEC's enforcement authority, the amendments clarify key aspects of the Superfund statute. For instance, the amendments add a statutory definition of "responsible persons" subject to cleanup liability and establish a state-law analogue to CERCLA's bona fide prospective purchaser (BFPP) exemption. The new definition of "responsible persons" includes current owners and operators; owners and operators at the time of disposal of hazardous waste; generators, transporters, disposers, and arrangers of hazardous waste; and persons liable under statutes, common law, or CERCLA. The amendments also establish an express BFPP exemption, providing purchasers who acquire property with knowledge of contamination to obtain liability protection if certain criteria are met.

The new amendments go beyond liability and defenses, touching various aspects of New York's Superfund program, including site identification and prioritization, community engagement, financial assurance, and certain PFAS liability exemptions for municipalities.

The focus in 2026 will shift to implementation, with NYSDEC's new enforcement authorities being particularly important to the regulated community in 2026.

New York State PFAS Update

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In 2026, New York is poised to expand its regulation of per- and polyfluoroalkyl substances (PFAS) with new product bans, added oversight of publicly owned treatment works (PTOWs), broadened requirements for biosolids investigation, continued development of soils cleanup standards, and establish new guidance for providing alternate water for private water supplies.

As reported in last year's forecast, New York's Environmental Conservation Law (ECL) restricts the sale of apparel with intentionally added PFAS 2025, with outdoor apparel bans coming into effect in 2028. In 2026, the New York State Department of Environmental Conservation (NYSDEC) plans on proposing implementing regulations for this ban, which will be subject to public notice and comment.

New York will continue its efforts to prohibit PFAS in consumer goods in 2026. In December 2025, New York passed a law prohibiting the distribution, sale, and offered sale of menstrual products containing PFAS and other toxins, set to go into effect in December 2026. This year also includes key deadlines under New York's "Extended Producers Responsibility for Carpet Law," which prohibits the sale or offered sale of all carpets containing or treated with PFAS effective December 31, 2026.

In 2026, NYSDEC will begin implementing the Technical and Operational Guidance Series) 1.3.14: "Publicly Owned Treatment Works (POTWs) Permitting Strategy for Implementing Guidance Values for PFOA, PFOS, and 1,4-Dioxane." The guidance outlines NYDEC's initial implementation strategy for applying guidance values (GVs) for certain PFAS and 1,4-Dioxane in State Pollutant Discharge Elimination System (SPDES) permits for POTWs. Initial efforts will focus on POTWs located within drinking water supply watersheds or that recycle biosolids. NYSDEC also intends to request PFAS information whenever SPDES permits are being reviewed for another permitting action. In response to these investigations, NYSDEC may modify permits to add monitoring, action levels, pollutant minimization programs, or compliance schedules. The guidance also highlights that POTWs are required to disclose information related to their industrial users in permit applications and now, as part of regularly required pollutants scans, conduct effluent sampling for the 40 PFAS compound suite and 1,4-Dioxane. POTWs are also required to provide adequate notice to the NYSDEC if there is a substantial change in the volume or character of pollutants introduced by industrial users. Given the low GV levels for PFAS, the introduction of any detectable amount of these contaminants may constitute a substantial change.

In December 2025, NYSDEC's Division of Materials Management proposed new draft policy that would expand the requirements of the existing guidance "Biosolids Recycling in New York State – Interim Strategy for the Control of PFAS Compounds (DMM-7)". Under DMM-7, certain permitted facilities that accept biosolids must sample biosolid sources for PFAS and report the result to NYSDEC. The proposed policy would extend current sampling and reporting requirements to "soil products" produced from biosolids, such as compost and heat dried products. NYSDEC has stated that the expanded data collection will inform the development of biosolid analytical and operating limits. Public comments on the draft policy were due by January 9, 2026.

NYSDEC continues to develop rural background PFAS concentrations in soil to support future soil cleanup objectives. In March 2025, NYSDEC released a statewide rural soil study reporting detections of PFOS in

more than 97% of surface soil samples and PFOA in approximately 76.5%, underscoring the challenges associated with establishing background-based cleanup criteria.

Finally, NYSDEC proposed revisions to DER-24: “*Draft Policy Revisions Detailing State Assistance for Contaminated Water Supplies*”. The draft policy clarifies when NYSDEC will provide alternate water supplies for private wells affected by DER program sites or spills, and outlines procedures for defining areas of interest, interpreting sampling results, and selecting, implementing, or discontinuing alternate water supplies, with public comments due by February 10, 2026.

Developments in Green Amendment Litigation in New York

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As previously reported in [earlier forecasts](#), New York’s environmental rights amendment to the Bill of Rights of the New York State Constitution, Article 1, §19, known as the “Green Amendment”, guarantees each New Yorker the “right to clean air and water, and a healthful environment.” Since its enactment in 2022, the amendment has generated sustained litigation testing whether, and to what extent, it creates a self-executing constitutional right that can be enforced by private parties against government actors.

The first appellate decision addressing the Green Amendment was issued in 2024 in *Fresh Air for the Eastside, Inc. v. State of New York*, where the Appellate Division, Fourth Department dismissed key constitutional claims. The court held that challenges to discretionary enforcement decisions by environmental regulators are generally not subject to judicial review and reaffirmed that constitutional claims cannot be brought against private parties. While the decision narrowed potential enforcement pathways, it left unresolved broader questions regarding the scope and mechanics of Green Amendment claims against governmental entities.

Those questions were taken up more directly in 2025 in *Friends of Fort Greene Park v. NYC Parks and Recreation Department* (Index No. 159628-23), which arose from a challenge to a municipal park renovation project involving the removal of mature trees. The petitioners alleged that the Parks Department’s issuance of a determination that the project would not have a significant environmental impact under the State Environmental Quality Review Act (SEQRA) violated their Green Amendment rights, independent of SEQRA compliance. In a July 2025 decision, the court held that the Green Amendment is self-executing and creates an enforceable constitutional right that may be asserted directly against government actors without additional legislation. The court articulated a three-part framework: (1) examining statutory compliance; (2) whether a government action violates the constitutional right to a healthful environment; and, if so, (3) whether the action is justified by an important and proportionate governmental interest. Applying that framework, the court rejected the challenge, finding the SEQRA review adequate and concluding that the project’s accessibility improvements and long-term environmental benefits justified the action.

In a separate 2025 case, *Citizen Action of New York et al. v. NYSDEC* (Index No. 903160-25), petitioners sought to compel the New York State Department of Environmental Conservation (NYSDEC) to promulgate regulations implementing the Climate Leadership and Community Protection Act (CLCPA). Petitioners argued that the agency’s delay violated both the CLCPA and New Yorkers’ constitutional environmental rights under the Green Amendment. The court’s ruling, however, was grounded in the statutory mandates

of the CLCPA, ordering regulatory action based on legislative requirements rather than issuing an independent merits ruling on the Green Amendment claim.

The key questions going into 2026 are whether the New York Court of Appeals will clarify whether the Green Amendment creates a robust, standalone constitutional cause of action and, if so, how broadly it applies to governmental decisions that affect environmental conditions.

Report on New York's Climate Superfund Law

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As previously reported in [earlier forecasts](#), New York enacted the Climate Change Superfund Act (CCSA) in December 2024, adding ECL Article 76 and establishing a climate-change adaptation cost-recovery program administered by the New York State Department of Environmental Conservation (NYSDEC). Grounded in a “polluter pays” framework, the CCSA authorizes NYSDEC to issue cost-recovery demands to “responsible parties,” generally large fossil-fuel extractors or refiners whose attributed greenhouse gas emissions exceed one billion tons during the covered period, based on statutory emissions-attribution formulas.

Amendments to the CCSA, effective February 28, 2025, expanded the covered period to 2000-2024, revised attribution and administrative review provisions, delayed the timing for demand notices and payments, and extended NYSDEC’s deadline to promulgate implementing regulations to mid-2027.

As anticipated, the CCSA has prompted extensive litigation. In February 2025, a coalition of 22 states and four industry groups filed suit in federal court, alleging that the CCSA is unconstitutional, preempted by federal law, impermissibly retroactive, and violative of the Commerce Clause. A parallel challenge by major trade associations, including the U.S. Chamber of Commerce and the American Petroleum Institute, was filed later that month and consolidated with the multistate action. In May 2025, the U.S. Department of Justice filed a separate federal action seeking declaratory and injunctive relief and has moved for summary judgment. As of early 2026, no court has issued a merits decision, and all challenges remain pending.

The key issues to watch in 2026 are threshold judicial decisions and whether NYSDEC proceeds with formal rulemaking to implement the CCSA amid ongoing litigation.

New York Implements Greenhouse Gas Reporting for 2026

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In December 2025, the New York State Department of Environmental Conservation (NYSDEC) finalized regulations establishing a Mandatory Greenhouse Gas (GHG) Reporting Program, codified at 6 NYCRR Part 253. The program creates a statewide framework for collecting emissions data to support the implementation of the Climate Leadership and Community Protection Act. NYSDEC has emphasized that the program is for data collection and inventory development and does not itself require emissions reductions or allowance purchases.

The reporting program applies to several categories of “reporting entities.” These include facilities emitting at least 10,000 metric tons of carbon dioxide equivalent annually; suppliers of fossil fuels and fuel products delivered into New York; electric power entities responsible for electricity imported into or exported from the state; certain waste transporters exporting waste out of New York; and other specified categories such as agricultural lime and fertilizer suppliers and certain anaerobic digestion and liquid waste storage operations. For many supplier categories, reporting is triggered by any quantity of covered fuel, while higher thresholds determine whether additional requirements, such as verification, apply. Covered facilities must report emissions from stationary combustion as well as process, vented, and fugitive sources, supported by detailed activity data.

Key compliance deadlines include submission of Emissions Monitoring and Measurement Plans for applicable reporters by September 1, 2026; GHG Monitoring Plans for large emission sources by December 31, 2026; the first Emissions Data Report by June 1, 2027 (covering calendar year 2026); and, where applicable, third-party verification statements by December 1, 2027.

Affected companies must assess applicability across reporting categories, designate authorized responsible representatives, implement systems to capture required emissions and activity data beginning in 2026, prepare and submit monitoring plans, and, where applicable, engage an accredited verifier well in advance of the first reporting and verification deadlines in 2027. Failure to comply with the Mandatory GHG Reporting Program can result in enforcement under the Environmental Conservation Law, with reporting violations treated as continuing offenses.

New York State Proposes to Expand Green and Sustainable Remediation Policy

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The New York State Department of Environmental Conservation (NYSDEC) has [proposed revisions to DER-31](#), a green and sustainable remediation (GSR) policy guidance that would significantly broaden the scope, procedural requirements, and analytical expectations for remediation projects under NYSDEC oversight. The proposal, issued in October 2025, reflects a shift from a flexible best-practices framework toward a more structured approach that embeds sustainability, climate resiliency, and greenhouse gas considerations into remedial decision-making. Although issued as guidance, DER-31 establishes substantive expectations that must be addressed to obtain approvals under 6 NYCRR Part 375. However, NYSDEC retains discretion to depart from the policy based on site-specific circumstances.

The proposed revisions would apply to all phases of remediation on NYSDEC-regulated sites and across all NYSDEC remedial programs, including the State Superfund, Brownfield Cleanup Program, Environmental Restoration Program, and Resource Conservation and Recovery Act (RCRA) Corrective Action Program. The draft expressly ties the policy to the Climate Leadership and Community Protection Act and New York’s broader statutory climate commitments. Key additions include mandatory environmental footprint analyses assessing lifecycle impacts of remedial alternatives; climate screening and, where warranted, climate vulnerability assessments; and potential disproportionate burden analyses for remedies near disadvantaged communities. The revisions would also expand documentation and tracking requirements throughout the post-remediation site management period.

In addition, NYSDEC expands policy language tied to renewable energy development on remediation sites, emphasizing coordination with NYSDEC and alignment with broader remedial objectives when integrating renewable systems or other sustainability enhancements. The amendments would require developers to enter into a NYSDEC Model Consent Order, comply with detailed technical guidance, and submit a pre-notification readiness form.

The public comment period closed on December 2, 2025. If adopted, the revised DER-31 is expected to affect remedy selection, project planning, review timelines, and compliance strategies for remediation and redevelopment projects statewide.

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