

Court Enforces CLCPA Compliance: NY DEC Ordered to Adopt Emission Reduction Regulations



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Environmental Alert

(by [Polly Hampton](#), [Gina Buchman](#) and [Jordan Brown](#))

On October 24, 2025, the Albany County Supreme Court (Court) issued a decision and order in *Citizen Action of New York et al v. New York State Department of Environmental Conservation*, Index No. 903160-25, [NYSCEF Document No. 93](#). The Court directed the New York State Department of Environmental Conservation (DEC) to issue regulations to meet the emissions reduction mandates pursuant to the State's 2019 [Climate Leadership and Community Protection Act](#) (CLCPA). The CLCPA amended the Environmental Conservation Law (ECL) to include Article 75, which sets forth the statewide greenhouse gas (GHG) limits and directs DEC to promulgate regulations to ensure compliance. Pursuant to that authority, ECL § 75-0109 required DEC to adopt rules "to ensure compliance with the statewide emissions reduction limits" established in § 75-0107. The Court's order gives DEC until February 6, 2026, to finalize those implementing regulations.

Background

In 2019, then New York Governor Andrew Cuomo signed into law the CLCPA, which mandates two statewide GHG emissions targets: a 40 percent reduction from 1990 levels by 2030, and an 85 percent reduction by 2050. The statute directs the DEC to adopt regulations to achieve those goals, however, implementation has been economically challenging.

In early 2023, DEC and the New York State Energy Research and Development Authority (NYSERDA) initiated the rulemaking process to establish a New York Cap and Invest (NYCI) Program, engaging in significant outreach to gather input from stakeholders. In December 2023, DEC and NYSERDA published a [pre-proposal outline](#) describing the structure and major components of the forthcoming rulemaking. The outline previewed three parts: the Mandatory GHG Reporting Rule, the Cap-and-Invest Rule, and the Auction Rule.

The Mandatory GHG Reporting Rule establishes standardized methods for collecting and verifying GHG emissions data from covered sources across the State, including utilities, fuel suppliers, and large industrial facilities. Accurate reporting is essential to determine the statewide emissions baseline and to assign compliance obligations under the program.

The Cap-and-Invest Rule proposes a program that would set an annual cap on the amount of greenhouse gas permitted to be emitted in the State. DEC will allocate a corresponding number of tradable allowances to match that limit. Obligated entities must then purchase allowances at auction and surrender allowances to DEC equal to their greenhouse gas emissions for each compliance period. Proceeds from the sale of allowances would be invested into state decarbonization initiatives and distributed to New Yorkers to potentially offset program costs passed to consumers. Proposed obligated entities would include stationary sources that meet the annual GHG emissions threshold of 25,000 metric tons of CO₂e and fuel suppliers that sell 100,000 gallons of liquid fuel or 15,000,000 standard cubic feet of gaseous fuel to end users in New York based on emissions data reported through the State's Mandatory GHG Reporting Rule. Emissions below these thresholds may still trigger obligations at the fuel supplier level, and electricity sector requirements remain under consideration.

The Auction Rule would govern the sale and distribution of emission allowances within the cap-and-invest system. The Rule would describe the operation of NYCI Allowance auctions and mechanisms to protect the overall integrity of the Allowance market, prevent market manipulation, and provide cost containment and program stability.

In January 2025, Governor Kathy Hochul's administration paused development of the NYCI Program, stating in her annual State of the State Address [briefing book](#) the delay would "create[e] more space and time for public transparency and a robust investment planning process." It is this tension between the Legislature's ambitious mandates and the Executive branch's measured approach that lies at the heart of *Citizen Action of New York*.

In March 2025, DEC released the GHG Reporting Rule for public comment, noting the feedback received would inform development of the remaining rules. The public comment period for the GHG Reporting Rule closed on July 1, 2025. As of the publication of this *Alert*, the DEC has yet to publish its responses to the comments received nor has it opened a public comment period for the remaining two Rules under the NYCI Program.

Shortly after the GHG Reporting Rule was published, on March 31, 2025, a coalition of environmental organizations filed a petition alleging that DEC had missed the January 1, 2024, deadline under ECL § 75-0109(1). *Citizen Action of New York* centered on the interpretation of ECL § 75-0109(1) which requires the DEC to adopt regulations "no later than four years after the effective date of this article," or by January 1, 2024, following at least two public hearings to ensure compliance with the statewide emission limits. The petition sought a court order requiring DEC to issue the full set of regulations by February 6, 2026.

Impact of the Court's Decision

On October 24, 2025, the Court granted the petition and ordered DEC to complete the full regulatory package consistent with the CLCPA by February 6, 2026. The Court rejected DEC's argument that additional time was warranted to refine or phase in the regulatory framework, emphasizing that such discretion was not contemplated under the statute. The Court wrote, "whether DEC is right or wrong, making this judgment is beyond the scope of its authority under the CLCPA." And while the Court granted DEC a brief window to complete the rulemaking process, it made clear that this freedom had its limitations. The Court warned DEC that "[r]espondent is cautioned that having afforded it with the time to both further develop its regulations and address its concerns to the political branches, the Court is highly unlikely to grant extensions of this deadline."

DEC is unlikely to meet the Court's February 6, 2026, deadline. Under the State Administrative Procedure Act § 202, any proposed regulation must undergo a public comment period of at least 60 days, after which DEC must review and respond to the public submissions before finalizing the rules. To afford DEC additional time to finalize regulations, DEC may appeal the decision and petition for an automatic stay of the lower court's order. The legislature could also amend the statute prior to the end of the year to grant DEC greater flexibility or additional time to develop and implement the required regulations. Whether that occurs will depend on coordination between the Governor and Legislature, raising broader questions about the balance of power between the executive and legislative branches in shaping New York's climate policy.

Going forward, the resolution of DEC's compliance with the Court's order, whether through expedited rulemaking or legislative action, will have significant implications for the State's ability to meet its statutory climate targets.

If finalized, mandatory greenhouse gas reporting and compliance requirements under a cap-and-invest program would have significant compliance costs for obligated entities. Interested parties, particularly those that would have been considered "obligated entities" under the December 2023 pre-proposal outline, will have an opportunity to review the final proposed rule and comment on that proposal. Potentially regulated parties may want to comment on such issues as the anticipated financial impact of the program on businesses and consumers, administration of the program, reporting obligations, or interaction of the program with other regulatory schemes (such as the Regional Greenhouse Gas Initiative and federal GHG reporting obligations).

Babst Calland continues to track climate change legislation and litigation, as well as federal and state regulatory developments. For more information on this and other climate change-related matters, please contact Polly Hampton at (412) 773-8715 or phampton@babstcalland.com, Gina F. Buchman at (202) 853-3483 or gbuchman@babstcalland.com, Jordan N. Brown at (202) 853-3459 or jbrown@babstcalland.com or any of our other [environmental attorneys](#).

Babst | Calland
Attorneys at Law

PITTSBURGH, PA | CHARLESTON, WV | HARRISBURG, PA | LAKEWOOD, NY | STATE COLLEGE, PA | WASHINGTON, DC