

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of

CITIZEN ACTION OF NEW YORK, PEOPLE
UNITED FOR SUSTAINABLE HOUSING BUFFALO,
SIERRA CLUB, and WE ACT FOR
ENVIRONMENTAL JUSTICE,

Petitioners-Plaintiffs,

For a Judgment Under Article 78 of the Civil Practice
Law and Rules and Declaratory Judgment,

-against-

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

Respondent-Defendant.

ORAL ARGUMENT
REQUESTED

**VERIFIED PETITION AND
COMPLAINT**

Index No. _____

Petitioners-Plaintiffs Citizen Action of New York, People United for Sustainable Housing Buffalo, Sierra Club, and WE ACT For Environmental Justice (collectively, “Petitioners”), for their verified petition for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”) and their complaint seeking a declaratory judgment pursuant to section 3001 of the CPLR, by their attorneys, Earthjustice, New York Lawyers for the Public Interest, and Pace Environmental Litigation Clinic, allege as follows:

PRELIMINARY STATEMENT

1. Even as more frequent extreme weather events driven by climate change batter New York, the state is stonewalling necessary climate action in outright violation of its statutory obligations. In 2019, New York passed a landmark climate law—the Climate Leadership and

Community Protection Act (“CLCPA”)—to combat climate change by requiring steep cuts in greenhouse gas emissions in the coming years. After engaging in an extensive process to develop regulations required under the law to achieve the required cuts in greenhouse gas and air pollution, in January the state suddenly and inexplicably reversed course. It abruptly halted its plan to release regulations that are the linchpin of the climate law and has provided no plan or timeline for their release.

2. Although the climate law sets mandatory limits on New York’s statewide greenhouse gas emissions, it does not specify how the emissions reductions will occur or obligate any polluting entity to reduce emissions. Instead, the Legislature directed the New York State Department of Environmental Conservation (“DEC”) to give the law teeth by issuing regulations that ensure the state achieves its statutory greenhouse gas reduction mandates. Under the law, those regulations were due to be finalized by January 1, 2024. But DEC has failed to even release draft regulations to meet this requirement, even though it has prepared regulations that are reportedly ready for publication.

3. The climate law requires New York to reduce greenhouse gas emissions 40% by 2030 and 85% by 2050, as compared to 1990 levels. This was and remains a nation-leading commitment. However, with only five years until the first deadline, New York’s emissions are rising rather than falling. The state must not only reverse this trend but must rapidly decrease emissions in the next few years.

4. In order to achieve the state’s climate mandates, New York must gradually reduce reliance on fossil fuels and scale up clean energy technologies such as electric vehicles and renewable sources of electricity. Because burning fossil fuels emits local air pollution in addition

to greenhouse gas emissions, transitioning to clean energy technologies will also reduce pollution that causes cancer, asthma, and other serious illnesses.

5. That transition can only occur under a regulatory framework that creates the right conditions. The Legislature directed DEC to design and implement that framework, and DEC's failure to comply with its mandatory duty to regulate threatens New York's climate targets as well as New Yorkers' health and wellbeing.

6. DEC's refusal to release these regulations is an abrupt about-face. In 2023, DEC started the process of developing comprehensive regulations intended to reduce New York's statewide greenhouse gas emissions to meet the limits set forth in the CLCPA. DEC provided the public with a great deal of information as it considered how to shape the regulations, including programmatic details and who would be required to comply—and, importantly, how the regulations would reduce greenhouse gas emissions and local air pollution across New York, producing enormous health and economic benefits, especially in the communities that have historically endured the highest pollution burdens.

7. In late 2023 and throughout 2024, DEC repeatedly represented to the public that the draft regulations it was developing would come out in 2024, and, after a public comment period, the regulations would be finalized and in effect by 2025.

8. In late 2024, DEC privately told representatives of some Petitioner organizations that the draft regulations that had been under discussion for nearly two years were essentially ready and would be released imminently, in January 2025.

9. In January 2025, DEC reversed course and made it clear that the draft regulations would not be released this year. Despite demands from legislators, Petitioners, and other

environmental advocates to issue the draft regulations now so that the state has a chance of meeting the upcoming 2030 emissions limit, DEC has not provided a date for their release.

10. DEC's abdication of its statutory duties is unlawful and critically threatens the state's ability to achieve the emissions reductions requirements of the CLCPA. DEC's failure to implement the Legislature's directive is also endangering Petitioners' members who continue to breathe dirty air, suffer from pollution-related illnesses, and face economic barriers in their efforts to protect themselves and their communities by replacing fossil fuel-burning equipment with clean new technology. The state must not be allowed to continue to violate the law by withholding a climate solution that it has deemed necessary to achieve the greenhouse gas reduction targets of the climate law and that it estimates will prevent many premature deaths and asthma-related emergency room visits each year.

PARTIES

11. Petitioner-Plaintiff WE ACT for Environmental Justice is a New York City membership organization with 1,100 members whose mission is to build healthy environments for its members and the communities they represent. Founded in 1987, WE ACT works to ensure that people of color and low income residents participate meaningfully in the creation of sound and fair environmental health and protection policies and practices. WE ACT partners with New York State to operate the Manhattan Clean Energy Hub. The Manhattan Clean Energy Hub helps community organizations and small businesses access and navigate opportunities created by the transition to a clean energy economy including clean energy careers, renewable energy installations, energy efficiency improvements, and transportation alternatives.

12. Petitioner-Plaintiff People United for Sustainable Housing Buffalo ("PUSH Buffalo") is a membership organization that mobilizes Buffalo residents to create strong

neighborhoods with quality, affordable housing; to expand local hiring opportunities; and to advance racial, economic, and environmental justice. PUSH Buffalo works to decrease the rate of housing abandonment by reclaiming empty houses from neglectful public and private owners and redeveloping them for occupancy by low-income residents; and to develop neighborhood leaders capable of gaining community control over the development process and planning for the future of their neighborhoods.

13. PUSH Buffalo partners with New York State to serve as a regional clean energy hub for Western New York, providing assistance to residents who want to make their homes more energy efficient. PUSH Buffalo faces barriers in expanding the scope of its programs without regulations in place that would fund and facilitate efforts to install electric appliances in homes and to make home improvements that are necessary prerequisites to energy efficiency measures.

14. PUSH Buffalo is the sole member of the Buffalo Neighborhood Stabilization Company, Inc., a housing developer that builds new energy-efficient, all-electric homes and that retrofits existing buildings to be energy-efficient and all-electric. PUSH Buffalo would like to expand its efforts to build sustainable and affordable housing in Buffalo but faces barriers due to regulatory gaps and the cost of electric appliances and energy-efficiency materials.

15. Petitioner-Plaintiff Citizen Action of New York (“CANY”) is a grassroots statewide membership organization with more than 1,600 members that advocates for social, racial, economic, and environmental justice. CANY has served on the steering committee of NY Renews, a coalition of nearly 400 organizations, since the coalition was founded and helps direct Climate Can’t Wait, a consortium of New York climate advocacy organizations.

16. Petitioner-Plaintiff Sierra Club is a grassroots environmental organization with more than 600,000 members across the country; the Atlantic Chapter is responsible for membership and activities in New York State. Consistent with its mission, Sierra Club works to promote a cleaner, healthier, and more sustainable natural environment in its members' communities. Sierra Club has approximately 37,000 members in New York State.

17. Respondent-Defendant DEC is an executive agency of the State of New York with the powers and duties set forth in the New York Environmental Conservation Law.

JURISDICTION AND VENUE

18. This Court has jurisdiction pursuant to CPLR 3001, 7801, 7803, and 7804(b).

19. Petitioners timely initiated this special proceeding by properly filing their Verified Petition and Complaint and all supporting affirmations.

20. Venue is properly in Albany County pursuant to CPLR 503(a), 505(a) & 506(b) because DEC has its principal office in Albany County, the claims asserted concern a refusal to perform a duty in Albany County, the material events have taken place in Albany County, and Petitioner-Plaintiff CANY is headquartered in Albany County.

BACKGROUND

CLIMATE CHANGE AND AIR POLLUTION IN NEW YORK

21. As the Legislature has found, climate change is already harming New Yorkers. CLCPA § 1(1), 2019 N.Y. Sess. Laws Ch. 106 (S. 6599).

22. New York is suffering from rising temperatures; air pollution, which increases when the temperature rises; higher incidences of negative health outcomes including infectious disease, asthma attacks, and heart attacks; and more frequent and more severe extreme weather events such as storms, flooding, and heat waves. *Id.*

23. One of the most catastrophic of these extreme weather events, Superstorm Sandy, caused over 50 deaths and \$32 billion in damage in New York in 2012. *Id.* § 1(5). Since then, the state has experienced unprecedented flash floods that drowned New Yorkers in their homes, wildfires on Long Island and in the Catskills, and serious droughts.

24. Climate change is caused primarily by greenhouse gas emissions that occur from burning fossil fuels to generate electricity, heat homes and businesses, manufacture products, and power motor vehicles, as well as greenhouse gases that leak during the extraction, transportation, and use of fossil fuels.

25. Burning fossil fuels also creates local pollution—often called “co-pollutants”—including nitrogen oxides, particulate matter, and carcinogens such as benzene.¹

26. These co-pollutants cause and contribute to severe health impacts, including asthma, reduced lung function, cardiovascular disease, cancer, and premature death.²

27. Air pollution disproportionately harms low-income New Yorkers and New Yorkers of color. In fact, “[i]n identifying those who bear a disproportionate burden of the impacts of climate change and pollution, a person’s race and wealth are the two most predictive factors.”³

28. Black New Yorkers are more likely to be killed by, or hospitalized for, heart disease than New Yorkers of other races.⁴

¹ See New York State Climate Action Council, Scoping Plan 64, 96–97, 100, 102, 114, 159 (Dec. 2022) [hereinafter Scoping Plan], <https://climate.ny.gov/-/media/Project/Climate/Files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf>.

² *Id.*; see also NYSDEC, Particulate Matter: New York State Community Air Monitoring Initiative, 2022-2023 (July 24, 2024), <https://dec.ny.gov/sites/default/files/2024-07/camparticulate.pdf>, attached hereto as Exhibit 1; NYSDEC, Black Carbon and Nitrogen Oxides: New York State Community Air Monitoring Initiative, 2022-2023 (July 24, 2024), <https://dec.ny.gov/sites/default/files/2024-07/camblackcarbon.pdf>, attached hereto as Exhibit 2. All exhibits annexed to this Verified Petition and Complaint are identified and verified in the attached Affirmation of Rachel Spector.

³ Scoping Plan, *supra* note 1, at 58.

⁴ Scoping Plan, *supra* note 1, at 96.

29. Asthma hospitalization rates in New York are higher in low-income areas than in higher income areas, and among Black and Hispanic New Yorkers than among White New Yorkers.⁵

30. Reducing the use of fossil fuels in New York would significantly decrease air pollution, generating billions of dollars' worth of health benefits.⁶

NEW YORK ENACTS A LANDMARK CLIMATE LAW

31. After President Trump withdrew the United States from the international Paris Climate Agreement in 2017, the NY Renews coalition—of which Sierra Club, CANY, PUSH Buffalo, and WE ACT are members—called on New York lawmakers to enact state legislation to address climate change.

32. Following a multi-year campaign by NY Renews and others, in 2019 the Legislature passed, and the Governor signed, the Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws Ch. 106 (S. 6599) (“CLCPA”).

33. The CLCPA aims to rapidly reduce greenhouse gas emissions, address air pollution in overburdened communities, and create economic opportunities for New Yorkers in the transition to a clean energy economy. *See, e.g.* CLCPA § 1(7) (“Actions undertaken by New York state to mitigate greenhouse gas emissions should prioritize the safety and health of disadvantaged communities . . .”); *id.* § 1(3) (recognizing that developing clean energy technologies can create jobs and tax revenue).

34. The CLCPA came into effect on January 1, 2020.⁷

⁵ *Id.*

⁶ *Id.* at 137.

⁷ The CLCPA took effect on the same date as New York’s 2019 law establishing an environmental justice advisory group. CLCPA § 14. That law came into effect on January 1, 2020. *See* 2019 Sess. Law News of N.Y. Ch. 735 (S. 2385) § 2.

35. In enacting the law, the Legislature found that “[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York.” CLCPA § 1. The Legislature further determined that “substantial emissions reductions are necessary to avoid the most severe impacts of climate change.” *Id.* § 1(5).

36. The Legislature recognized that the decisions New York makes today are critical to addressing and mitigating the dangers posed by climate change: “The severity of current climate change and the threat of additional and more severe change will be affected by the actions undertaken by New York and other jurisdictions to reduce greenhouse gas emissions.” *Id.* § 1(2)(a).

37. Based on those findings, the CLCPA requires that New York reduce greenhouse gas emissions 40% by 2030 and 85% by 2050, below 1990 levels, across all sectors of the economy. ECL § 75-0107(1)(a)–(b), 75-0109(4)(a)–(b), (f).

38. The CLCPA does not specify what measures the state must take to reduce emissions or obligate any polluting entity to reduce emissions. Instead, the CLCPA requires the state to develop a plan to reduce emissions, and instructs the DEC to then promulgate regulations that reflect the state’s plan.

39. As the first step in that process, the CLCPA established the Climate Action Council, a statewide body charged with developing the Scoping Plan, a roadmap to attain the statewide greenhouse gas limits set by the law. ECL § 75-0103. The Council is staffed with the heads of major state agencies, as well as expert appointees of the Governor and Legislature. *Id.*

40. The Climate Action Council is tasked with developing and approving a Scoping Plan that acts as a roadmap for achieving the CLCPA greenhouse gas limits. *Id.* The Scoping

Plan must also assess the public health benefits of reducing local air pollution through measures that cut greenhouse gas emissions. *Id.*

41. The Scoping Plan is not self-effectuating and does not impose binding requirements on any state or private entity. Rather, the Scoping Plan provides recommendations for steps that New York should take to achieve the CLCPA mandates.

42. The CLCPA directs DEC to promulgate regulations by January 1, 2024 to ensure that the state achieves the statutory greenhouse gas reduction requirements. ECL § 75-0109(1), (2)(a). The regulations “shall . . . [r]eflect, in substantial part,” the Scoping Plan developed by the Climate Action Council. *Id.* § 75-0109(1), (2)(c).

43. The regulations must also “[i]nclude legally enforceable emissions limits, performance standards, or measures or other requirements to control emissions from greenhouse gas emission sources” across all sectors of the economy except emissions from livestock. *Id.* § 75-0109(2)(b).

44. Additionally, the regulations must “[i]nclude measures to reduce emissions from greenhouse gas emission sources that have a cumulatively significant impact on statewide greenhouse gas emissions, such as internal combustion vehicles that burn gasoline or diesel fuel and boilers or furnaces that burn oil or natural gas.” *Id.* § 75-0109(2)(d).

45. The Legislature directed DEC to design and implement the regulations “in a manner that . . . encourages early action to reduce greenhouse gas emissions.” *Id.* § 75-0109(3)(a).

46. In enacting the CLCPA, the Legislature also found that “[c]limate change especially heightens the vulnerability of disadvantaged communities, which bear environmental and socioeconomic burdens as well as legacies of racial and ethnic discrimination. Actions

undertaken by New York state to mitigate greenhouse gas emissions should prioritize the safety and health of disadvantaged communities . . .” CLCPA § 1(7). The CLCPA requires that DEC’s greenhouse gas regulations “[p]rioritize measures to maximize net reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities . . . and encourage early action to reduce greenhouse gas emissions and co-pollutants.” *Id.* § 75-0109(3)(d).

NEW YORK TAKES INITIAL STEPS TO IMPLEMENT THE CLCPA

47. After holding 32 meetings and receiving over 35,000 public comments, in which Petitioners and their members participated, the Climate Action Council voted on December 19, 2022, to finalize the Scoping Plan.

48. The Scoping Plan recommends numerous steps New York should take to reduce emissions in individual sectors and also recommends implementing a comprehensive statewide regulatory program to achieve the CLCPA’s greenhouse gas reduction requirements.

49. The Scoping Plan finds that in order to meet the CLCPA mandates, the State must aggressively increase the sale of vehicles that do not emit any greenhouse gases or other air pollution.⁸

50. Moreover, according to the Scoping Plan, in order for New York to meet the statutory greenhouse gas reduction requirements, gas-burning building appliances such as boilers and stoves must be replaced by electric appliances such as electric stoves and electric heat pumps.⁹ Specifically, the Scoping Plan envisions that by 2030, one to two million energy-efficient homes will use electricity as opposed to burning fossil fuels for heating, and that heat pumps will provide space heating and cooling for 10% to 20% of commercial space statewide.¹⁰

⁸ Scoping Plan, *supra* note 1, at 147–148.

⁹ *Id.* at 176–180.

¹⁰ *Id.* at 179.

Additionally, the Scoping Plan specifies that the majority of new purchases for space and water heating should be heat pumps starting this decade, and from 2030 on, more than 250,000 homes should be retrofitted or constructed annually to be energy-efficient and ready to install heat pumps for heating, cooling, and hot water.¹¹ The Scoping Plan also determined that by 2050, 85% of homes and commercial spaces should rely on electric rather than fossil fuel appliances for heating.¹²

51. In addition to recommending steps in specific sectors like buildings and transportation, the Scoping Plan identifies the need for a comprehensive policy to achieve the CLCPA’s 2030 and 2050 statewide greenhouse gas emission limits.¹³ The Scoping Plan recommends that New York implement a “cap-and-invest” system to ensure that the state meets those limits.¹⁴

52. Under a cap-and-invest system, New York would set an overall annual cap on greenhouse gas emissions and then auction off pollution allowances.¹⁵ Each allowance would represent the right to emit a certain amount of greenhouse gas emissions.¹⁶

53. Certain companies that emit significant quantities of greenhouse gases—or that sell products that emit greenhouse gases—would need to purchase allowances equivalent to those emissions.¹⁷ This system incentivizes companies to reduce emissions, because if they reduce emissions, they do not need to buy as many allowances.

¹¹ *Id.* at 179–180.

¹² *Id.* at 180.

¹³ *Id.* at 339.

¹⁴ *Id.* (citing ECL § 75-0109); *see also id.* at 341.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 342.

54. Under a cap-and-invest system, the overall greenhouse gas emissions cap would decrease each year.¹⁸ As a result, New York would auction off fewer allowances each year and reduce statewide greenhouse gas emissions over time.

55. Additionally, the Scoping Plan recommends that the state use revenue generated from selling allowances for investments to decrease greenhouse gas emissions, such as energy efficiency measures or clean energy infrastructure.¹⁹

56. The Scoping Plan found that taking steps to achieve the CLCPA greenhouse gas reduction requirements would also reduce local air pollution, creating “substantial health benefits from improved air quality, on the order of \$50 billion to \$110 billion from 2020 through 2050.”²⁰

As the Scoping Plan explained:

[C]limate investments are also health investments that will meaningfully reduce pollution in communities and buildings by decreasing harmful emissions and improving air quality. For New Yorkers, this means cleaner air, avoiding tens of thousands of premature deaths, thousands of non-fatal heart attacks, thousands of other hospitalizations, thousands of asthma-related emergency room visits, and hundreds of thousands of lost workdays.²¹

57. According to the Scoping Plan, urban areas, which have more air pollution, would enjoy greater overall and per capita health benefits as New Yorkers reduce reliance on fossil fuels.²²

58. Moreover, these health “[b]enefits would increase over time as policies affecting emission reductions take effect.”²³

¹⁸ *Id.* at 341.

¹⁹ *Id.* at 342.

²⁰ *Id.* at 137.

²¹ Scoping Plan, *supra* note 1, at 4.

²² *Id.* at 137, 142.

²³ *Id.* at 138.

59. As required by the CLCPA, the Climate Action Council convened a Just Transition Working Group to, among other things, study the number of jobs that would be created by New York’s efforts to address climate change. ECL § 75-0103(8)(g)(i).

60. The Just Transition Working Group found that by taking steps to reduce greenhouse gas emissions across the economy, New York would add at least 211,000 new jobs between 2019 and 2030.²⁴ According to the Just Transition Working Group, most of those jobs would accrue to the buildings sector, such as jobs working on heating, ventilation, and air conditioning in homes as well as energy efficiency measures such as sealing windows.²⁵ Job growth would occur in every region of the state.²⁶

61. In addition to the Climate Action Council, the CLCPA also created a new statewide entity called the Climate Justice Working Group, which is responsible for establishing criteria to identify disadvantaged communities. ECL § 75-0111.

62. In March 2023, the Climate Justice Working Group issued final criteria related to pollution, climate risk, and health and demographic factors to identify disadvantaged communities, and the state created an online map showing the geographical contours of disadvantaged communities.²⁷

THE PEOPLE OF NEW YORK ENSHRINE A RIGHT TO CLEAN AIR AND A HEALTHFUL ENVIRONMENT IN THE STATE CONSTITUTION

63. In 2019 and 2021, both houses of the Legislature passed bills to amend the New York Constitution to add a provision in the Bill of Rights that states: “Each person shall have the right to clean air and water, and a healthful environment.”

²⁴ *Id.* at 90.

²⁵ *Id.*

²⁶ *Id.* at 91.

²⁷ See *Disadvantaged Communities*, NYSERDA, <https://www.nyserda.ny.gov/ny/Disadvantaged-Communities> (last visited March 7, 2025).

64. In November 2021, seventy percent of New York voters approved the ballot measure to add the Environmental Rights provision to the New York Constitution. The constitutional amendment went into effect on January 1, 2022, and became part of the state’s Bill of Rights, as Article I, Section 19 of the New York Constitution.

DEC DEVELOPS REGULATIONS TO IMPLEMENT THE CLCPA

65. As discussed, in the final Scoping Plan issued in December 2022, the Climate Action Council recommends that New York create a cap-and-invest program to achieve the CLCPA greenhouse gas emission reduction requirements.

66. At her January 2023 State of the State address, Governor Hochul directed DEC and the New York State Energy Research and Development Authority (“NYSERDA”) to “advance an economy-wide Cap-and-Invest Program that establishes a gradually declining cap on greenhouse gas emissions . . . all while investing the proceeds in programs that drive emission reductions in an equitable manner.”²⁸

67. Governor Hochul’s 2023 State of the State address announced that DEC and NYSERDA would design the cap-and-invest program over the course of 2023.²⁹ In announcing the plan to develop a cap-and-invest program, the Governor stated that “[t]hese investments will fund crucial programs to improve air quality, reduce reliance on polluting power plants . . . among other vital efforts to reduce pollution hotspots.”³⁰

²⁸ Governor Kathy Hochul, *2023 State of the State: Achieving the New York Dream* 123 (2023), <https://www.governor.ny.gov/sites/default/files/2023-01/2023SOTSBook.pdf>.

²⁹ *Id.* at 125.

³⁰ *Governor Hochul Unveils Cap-and-Invest Program to Reduce Greenhouse Gas Emissions and Combat Climate Change*, Governor Kathy Hochul (Jan. 10, 2023), <https://www.governor.ny.gov/news/governor-hochul-unveils-cap-and-invest-program-reduce-greenhouse-gas-emissions-and-combat>.

68. Governor Hochul indicated that the state would rely on regulations implementing the cap-and-invest program to fulfill DEC’s statutory obligation to issue regulations under the CLCPA that “ensure[] compliance with statewide emissions reduction limits.”³¹

69. In budget legislation adopted on May 3, 2023, the Legislature created the “New York climate action fund” to receive revenue generated by the cap-and-invest program the Governor had recently announced. *See* Pub. Auth. Law § 1854 (25) (providing that revenue generated under the CLCPA regulations must be spent according to State Fin. Law § 99-qq); State Fin. Law § 99-qq (creating the “New York climate action fund”). The Legislature directed certain percentages of the revenue to separate accounts within the climate action fund, including at least 67% of revenue to a climate investment account. State Fin. Law § 99-qq (3)(c). The climate investment account funds are designated for investments that implement the Scoping Plan recommendations, prioritizing investments in disadvantaged communities. *Id.* The Legislature also created a consumer climate action account, which will receive at least 30% of the cap-and-invest revenue and be used to defray any consumers costs associated with the cap-and-invest program. *Id.* § 99-qq(3)(a).

70. From June to September 2023, DEC and NYSERDA held nine webinars about cap-and-invest to provide information on how the program might work, seek input on numerous program design questions, and receive feedback from New Yorkers on various topics, including labor, equity, and questions specific to individual sectors such as electricity and waste.³²

³¹ Compare Governor Kathy Hochul, 2023 *State of the State: Achieving the New York Dream* 125 (2023), <https://www.governor.ny.gov/sites/default/files/2023-01/2023SOTSTBook.pdf> (explaining that the cap-and-invest program would “ensure[] compliance with statewide emissions reduction limits”) with ECL § 75-0109(1) (directing DEC to “promulgate rules and regulations to ensure compliance with the statewide emissions reduction limits[.]”).

³² *Cap-and-Invest Stakeholder Feedback Sessions*, New York State Cap-and-Invest Program, <https://capandinvest.ny.gov/Meetings-and-Events> (last visited Mar. 21, 2025).

71. DEC and NYSERDA requested written feedback from stakeholders and the public in response to questions posed during these webinars, which the Sierra Club submitted in summer 2023.

72. In December 2023, DEC and NYSERDA issued a Pre-Proposal Outline of the cap-and-invest program.³³ The outline provides a detailed overview of DEC and NYSERDA’s plans for the program. The agencies requested feedback from the public on the outline by March 1, 2024.³⁴ The Sierra Club, Citizen Action New York, and NY Renews submitted comments on the Pre-Proposal Outline.

73. The Pre-Proposal Outline states that the cap-and-invest program will come into effect by 2025 and repeatedly refers to 2025–2026 as “the first compliance period.”³⁵ It includes proposed allowance prices that would be in effect in 2025, and a proposed emissions cap for that year.³⁶

74. In January 2024, DEC and NYSERDA held a second series of webinars to discuss the Pre-Proposal Outline, engage interested stakeholders, and share a preliminary analysis of the likely impacts of the cap-and-invest program under consideration.³⁷

75. According to DEC and NYSERDA’s analysis, the cap-and-invest program would “substantially accelerate emission reductions and can be an essential contributor to clean energy

³³ NYSDEC & NYSERDA, Cap-and-Invest Pre-Proposal Outline (Dec. 20, 2023) [hereinafter Pre-Proposal Outline], <https://capandinvest.ny.gov/-/media/Project/CapInvest/Files/Second-Stage-of-Pre-Proposal-Outreach.pdf>.

³⁴ *Id.*; NYSDEC & NYSERDA, New York Cap-and-Invest (NYCI) Pre-Proposal Stakeholder Outreach: Preliminary Scenario Analyses 71 (Jan. 2024), <https://capandinvest.ny.gov/-/media/Project/CapInvest/Files/2024-01-26-NYCI-Preproposal-Analysis-Webinar.pdf>.

³⁵ Pre-Proposal Outline, *supra* note 33, at 15, 24.

³⁶ *Id.* at 15–16, 22.

³⁷ *Cap-and-Invest Stakeholder Feedback Sessions*, New York State Cap-and-Invest Program, <https://capandinvest.ny.gov/Meetings-and-Events> (last visited Mar. 21, 2025).

transition in New York.”³⁸ By 2030 the program would raise between \$6 and \$12 billion per year, which could defray New Yorkers’ costs of transitioning to clean energy sources such as electric appliances and electric vehicles.³⁹

76. DEC and NYSERDA also found that the cap-and-invest program would improve air quality across the state, mostly due to decreased pollution from motor vehicles and fossil fuel-fired building appliances.⁴⁰ Health benefits would be highest in urban areas, and disadvantaged communities would experience greater per-capita health benefits than other communities, including marked reductions in asthma incidence and emergency room visits.⁴¹ By 2035, DEC and NYSERDA estimated that the program could avoid 1,500 premature deaths and 1,800 asthma-related emergency room visits per year.⁴²

77. At a NYSERDA Board meeting on January 24, 2024, DEC Deputy Commissioner Jon Binder stated that cap-and-invest “compliance obligations begin and allowance auction revenue starts coming in 2025.”⁴³

78. On June 17, 2024, DEC Deputy Commissioner for Public Affairs Maureen Wren stated that the draft cap-and-invest regulations would come out at some point in 2024.⁴⁴

79. In August and September 2024, NYSERDA held a series of webinars about how New York would use the revenue generated through the cap-and-invest program, in preparation

³⁸ DEC & NYSERDA, New York Cap-and-Invest Pre-Proposal Stakeholder Outreach Preliminary Scenario Analyses 23 (Jan. 2024), <https://capandinvest.ny.gov/-/media/Project/CapInvest/Files/2024-01-26-NYCI-Preproposal-Analysis-Webinar.pdf>.

³⁹ *Id.*

⁴⁰ *Id.* at 44.

⁴¹ *Id.*

⁴² *Id.* at 45.

⁴³ NYSERDA, NYSERDA’s 265th Board Meeting: Clean Copy of Transcript (Jan. 24, 2024), <https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/About/Board-Governance/Board-and-committee-meetings/BoardTranscript/Board-Transcript-12024.pdf>.

⁴⁴ Marie J. French, *Report Calls for Including Power Plants in ‘Cap and Invest’*, Politico (June 17, 2024), <https://www.politico.com/newsletters/weekly-new-york-new-jersey-energy/2024/06/17/report-calls-for-including-power-plants-in-cap-and-invest-00163621>.

for allocating initial cap-and-invest program revenue in the upcoming 2025–26 fiscal year budget.⁴⁵ In response to NYSERDA’s request for input, Sierra Club and WE ACT submitted comments on how the revenue should be invested.

80. During a webinar on August 15, 2024, NYSERDA employee Vanessa Ulmer stated that DEC and NYSERDA would propose cap-and-invest regulations later that year, and that in 2025 the state would begin spending revenue generated by the program.⁴⁶

81. On the same webinar, Maureen Leddy, Director of the Office of Climate Change at DEC, said that draft regulations would come out in 2024.⁴⁷

82. Despite these repeated assurances, DEC and NYSERDA did not issue draft regulations in 2024.

83. In December 2024, DEC staff charged with designing and implementing cap-and-invest regulations met with individuals representing some of the Petitioners. DEC staff told those Petitioners’ representatives that draft regulations would come out in January 2025, with the goal of starting the cap-and-invest program in the third quarter of 2025.

DEC ABRUPTLY CHANGES COURSE AND REFUSES TO ISSUE REGULATIONS

84. At the January 14, 2025 State of the State address, Governor Hochul made clear that DEC would not release the draft cap-and-invest regulations in January as expected, and did not provide a timeline for their release.⁴⁸ Instead, the Governor explained that, rather than

⁴⁵ *Cap-and-Invest Stakeholder Feedback Sessions*, New York State Cap-and-Invest Program, <https://capandinvest.ny.gov/Meetings-and-Events> (last visited Mar. 21, 2025).

⁴⁶ NYSERDA, *New York Cap-and-Invest Climate Investment Account Webinar*, YouTube, at 00:54:55 (Aug. 16, 2024), https://youtu.be/mfoWMFaS_HQ.

⁴⁷ *Id.* at 00:51:40.

⁴⁸ Governor Kathy Hochul, *2025 State of the State* 121 (Jan. 14, 2025), <https://www.governor.ny.gov/sites/default/files/2025-01/2025StateoftheStateBook.pdf>.

releasing draft cap-and-invest regulations in January, DEC and NYSERDA would propose new regulations on greenhouse gas emissions *reporting* “[o]ver the coming months.”⁴⁹

85. Regulations on greenhouse gas emissions reporting do not reduce emissions or require companies to pay for the right to emit greenhouse gases. Rather, reporting requirements allow DEC to collect data on statewide greenhouse gas emissions.

86. DEC already collects data on statewide greenhouse gas emissions from federal sources and air permit holders.⁵⁰

87. A few hours after the State of the State address, NY Renews and other environmental groups in New York put out statements expressing concern that the draft regulations would not come out in January as expected and calling on the state to move forward with the cap-and-invest program.⁵¹

88. On January 15, 2025, Eric Walker, Senior Policy Manager for Energy Justice at WE ACT, stated, “We need strong leadership, not half measures. A robust Cap-and-Invest program can unlock billions for investments that drive economic development, cleaner air, and energy affordability in local communities—without placing burdens on the state’s broader economy.”⁵²

⁴⁹ *Id.*

⁵⁰ See NYSDEC, 2024 Statewide GHG Emissions Report: Summary Report (Dec. 2024) <https://dec.ny.gov/sites/default/files/2024-12/summaryreportnysghgemissionsreport.pdf>.

⁵¹ *NY Renews Response to Governor Hochul's 2025-2026 State of the State*, NY Renews (Jan. 14, 2025), <https://www.nyrenews.org/news/2025/1/14/sos-2025>.

⁵² *WE ACT Responds to Governor Hochul's 2025 State-of-the-State Address*, WE ACT for Environmental Justice (Jan. 15, 2024), <https://www.weact.org/2025/01/we-act-responds-to-governor-hochuls-2025-state-of-the-state-address/>.

89. On January 15th, 2025, State Senator Kevin Parker stated that Governor “Hochul and her team failed to tell policymakers about their new hesitancy to impose cap and trade after codifying language in the 2023-24 budget to create a fund to impose the program this year.”⁵³

90. According to news reports, even before the State of the State, the draft cap-and-invest regulations were complete and ready to be published for public comment.⁵⁴

***DEC CONTINUES TO REFUSE TO RELEASE REGULATIONS, DESPITE
LEGISLATORS’ AND ADVOCATES’ DEMANDS***

91. On January 21st, 2025, multiple groups, including WE ACT, released a statement criticizing the delay of the cap-and-invest regulations and calling on the state to move forward with releasing the regulations.⁵⁵

92. On January 22, 2025, NY Renews launched the *Fund Climate Campaign* calling on New York to release the cap-and-invest regulations.⁵⁶

93. At a January 28th, 2025 legislative budget hearing, State Assemblymember Anna Kelles questioned then-Interim DEC Commissioner Sean Mahar about cap-and-invest and asked when the draft regulations would come out.⁵⁷ Interim Commissioner Mahar responded that DEC would propose greenhouse gas reporting requirements in the next few months, but did not

⁵³ Kate Lisa, *New York Lawmakers Push Back on Hochul's Hesitancy to Impose Cap-and-Invest Plan*, Spectrum News 1 (Jan. 15, 2025), <https://spectrumlocalnews.com/nys/central-ny/politics/2025/01/16/n-y--lawmakers-push-back-on-hochul-s-hesitancy-to-impose-cap-and-invest>.

⁵⁴ Marie J. French, *Agency Staff Finished Drafting ‘Cap and Invest’ Rules Before Hochul Delayed Program*, POLITICO (Jan. 27, 2025), <https://subscriber.politicopro.com/article/2025/01/agency-staff-finished-drafting-cap-and-invest-rules-before-hochul-delayed-program-00200511>, attached hereto as Exhibit 3; The Capitol Pressroom, *Not Much Energy in Environmental Conservation at the Capitol*, YouTube at 00:15:45 (Jan. 31, 2025), <https://www.youtube.com/watch?v=uygeR6ezF9k>.

⁵⁵ *WE ACT Responds to Governor Hochul’s 2025 State-of-the-State Address*, WE ACT for Environmental Justice (Jan. 21, 2025), <https://www.weact.org/2025/01/we-act-responds-to-governor-hochuls-2025-state-of-the-state-address/>.

⁵⁶ Devyn Fusaro, *Hundreds of New Yorkers Joined State Legislators for NY Renews Mass Mobilization & Lobby Visits at the Capitol, Launched Fund Climate Campaign in FY 2025-26*, NY Renews (Jan. 22, 2025), <https://www.nyrenews.org/news/2025/1/22/fund-climate-campaign-launch-fy-2025-26>.

⁵⁷ NY State Assembly, *2025 New York Joint Legislative Budget Hearing – Environmental Conservation/Energy*, at 01:34:30 (Jan. 28, 2025), <https://nystateassembly.granicus.com/player/clip/8798>.

provide a timeframe for the release of the draft cap-and-invest regulations or any other regulations that would reduce statewide greenhouse gas emissions.⁵⁸

94. Then-Interim Commissioner Mahar stated that the Governor “has directed us to produce the reporting rule requirements first and those will be coming out in the coming months as we continue the robust stakeholder engagement that we have had over the past few months to really make sure New Yorkers are aware of the cap-and-invest program and how it is going to work.”⁵⁹

95. When State Senator Liz Krueger asked then-Interim Commissioner Mahar at the same hearing about the veracity of reports that the draft cap-and-invest regulations are complete, he responded that the Governor directed DEC to start by proposing the reporting regulations in order to continue to hear from stakeholders.⁶⁰ When Senator Krueger asked how many public hearings have been held and how many comments have been submitted about the proposed cap-and-invest program already, Interim Commissioner Mahar responded that he would have to follow up with specific numbers because “it has been robust over the last two years and there have been multiple engagement opportunities.”⁶¹

96. The CLCPA requires DEC to hold public workshops and at least two public hearings after issuing draft regulations. ECL § 75-0109(1).

97. The CLCPA does not require DEC to solicit public feedback before issuing draft regulations.

⁵⁸ *Id.* at 01:35:00.

⁵⁹ *Id.*

⁶⁰ *Id.* at 02:13:00

⁶¹ *Id.* at 02:14:30

98. DEC has held at least fourteen webinars⁶² and accepted over six thousand comments⁶³ on the cap-and-invest program to date.

99. On January 30th, a coalition called New Yorkers for Clean Air was launched to call on New York to release the draft cap-and-invest regulations.⁶⁴ The coalition held a press conference on February 26, 2025 calling for the release of the draft regulations.⁶⁵

100. On February 10th, 2025, NY Renews led more than eighty organizations, businesses, faith groups, and unions in calling on the state to immediately release the draft cap-and-invest regulations.⁶⁶

101. On March 4th, 2025, Acting DEC Commissioner Amanda Lefton released a statement explaining that DEC would move forward with draft regulations on greenhouse gas reporting within the month, but did not provide a timeline for issuing draft cap-and-invest regulations, or any other regulations to reduce statewide greenhouse gas emissions.⁶⁷

102. On March 11th, 2025, the New York Senate passed Senate Resolution No. 488, which “calls on the Executive to immediately issue all draft regulations necessary to implement a cap-and-invest program under the Climate Leadership and Community Protection Act, finalize

⁶² *Cap-and-Invest Stakeholder Feedback Sessions*, New York State Cap-and-Invest Program, <https://capandinvest.ny.gov/Meetings-and-Events> (last visited Mar. 21, 2025).

⁶³ *Cap and Invest Feedback - Comment List*, New York State Cap-and-Invest Program, <https://www.commentmanagement.com/comment/list/Cap-and-Invest> (last visited Mar. 21, 2025).

⁶⁴ *Coalition Forms to Call on Governor Hochul to Release Cap-and-Invest Rules, Cut Pollution, Protect Clean Air*, New Yorkers for Clean Air (Jan. 30, 2025), <https://www.nyforcleanair.com/news/coalition-forms-to-call-on-governor-hochul-to-release-cap-and-invest-rules-cut-pollution-protect-clean-air>.

⁶⁵ *New Yorkers for Clean Air Calls for Governor Hochul to Cut Pollution and Release Cap-And-Invest Rules*, New Yorkers for Clean Air (Feb. 26, 2025), <https://www.nyforcleanair.com/news/new-yorkers-for-clean-air-calls-for-governor-hochul-to-cut-pollution-and-release-cap-and-invest-rules>.

⁶⁶ *Letter to Governor to Immediately Release Draft Cap-and-Invest Regulations*, NY Renews (Feb. 10, 2025), <https://www.nyrenews.org/news/2025/2/10/letter-to-governor-to-release-draft-cap-and-invest-regulations>.

⁶⁷ *Statement from Department of Environmental Conservation Acting Commissioner Amanda Lefton*, NYSDEC (Mar. 4, 2025), <https://dec.ny.gov/news/press-releases/2025/3/statement-from-department-of-environmental-conservation-acting-commissioner-amanda-lefton>.

such regulations as expeditiously as possible, and begin emissions allowance auctions as soon as is feasible thereafter.” 2025 NY Senate Budget Res. No 488.

103. On March 26, 2025, DEC released draft regulations on greenhouse gas reporting.⁶⁸ In announcing the draft regulations, DEC explained that they are “for data collection only,” and that they do “not impose requirements for facilities to reduce [greenhouse gas] pollution or to obtain emissions allowances.”⁶⁹ In releasing the draft reporting regulations, DEC did not provide a timeline for releasing draft regulations to implement cap-and-invest or any other program to reduce greenhouse gas emissions. In fact, a DEC “frequently asked questions” webpage about the draft reporting regulations includes the question “When will the cap-and-invest program be implemented?” but responds by simply explaining that DEC is continuing stakeholder engagement.⁷⁰

104. The webpage also states that the first reporting requirement will be in June 2027 and that the data collected will “help inform other policies or actions that may be taken to reduce pollution, including but not limited to a potential future cap-and-invest program,”⁷¹ suggesting that draft regulations for cap-and-invest, or other emissions reduction regulations, might not be released until 2027 if at all.

105. To date, DEC has not provided a timeline for releasing the draft cap-and-invest regulations, or any other regulations that would fulfill DEC’s duty under ECL § 75-0109(1).

⁶⁸ *DEC Releases Draft Regulations to Collect Greenhouse Gas Emissions Data*, NYSDEC (Mar. 26, 2025), <https://dec.ny.gov/news/press-releases/2025/3/dec-releases-draft-regulations-to-collect-greenhouse-gas-emissions-data>.

⁶⁹ *Id.*

⁷⁰ NYSDEC, *Mandatory Greenhouse Gas Reporting Program Frequently Asked Questions* at 4 (Mar. 26, 2025), <https://dec.ny.gov/sites/default/files/2025-03/ghgreportingfaq.pdf>.

⁷¹ *Id.* at 2, 4.

***DEC’S REFUSAL TO ISSUE REGULATIONS IS HARMING NEW YORKERS,
INCLUDING MEMBERS OF PETITIONER ORGANIZATIONS***

106. DEC’s comprehensive emissions reduction regulations must reflect the Scoping Plan, prioritize co-pollutant reductions in disadvantaged communities, encourage early action, and address emissions from motor vehicles and building appliances. *See* ECL § 75-0109(2)(c)–(d), (3)(a), (d).

107. According to the Scoping Plan, taking steps to reduce greenhouse gas emissions would decrease local air pollution and mitigate New Yorkers’ health burdens. DEC’s own analysis of the cap-and-invest program found that the program would significantly reduce air pollution and produce health benefits, especially in disadvantaged communities.

108. By refusing to issue regulations, DEC is defying the Legislature’s clear directive to take early action to address greenhouse gas emissions and local air pollution and prolonging New Yorkers’ exposure to air pollution and exacerbating resulting health impacts, especially in disadvantaged communities, including Petitioners’ members.

109. For example, Merton D. Simpson is a member of CANY who lives in a disadvantaged community in Albany.⁷² Mr. Simpson’s community is severely harmed by pollution from the Sheridan Avenue Steam Plant, which runs on natural gas.⁷³ There is a cancer cluster around the plant: To Mr. Simpson’s knowledge approximately thirty families have at least one member with cancer, or who has died of cancer, near the plant.⁷⁴ Mr. Simpson himself is being monitored for cancer.⁷⁵ The steam plant provides energy to the Empire State Plaza,⁷⁶

⁷² Simpson Affirmation ¶¶ 1–3.

⁷³ *Id.* ¶¶ 7–8.

⁷⁴ *Id.* ¶ 10.

⁷⁵ *Id.* ¶ 12.

⁷⁶ *Id.* ¶ 7.

which includes several state-owned buildings. If the Empire State Plaza were instead powered by clean energy sources, there would not be as much pollution in Mr. Simpson's community.⁷⁷

110. Mark Schaeffer is a member of CANY who lives in a disadvantaged community in Albany.⁷⁸ Mr. Schaeffer is a longstanding environmental advocate, and participated in the campaign to pass the CLCPA and commented on the Scoping Plan.⁷⁹ As a senior citizen, Mr. Schaeffer is vulnerable to the impacts of air pollution; he also suffers from chronic allergic rhinitis that is exacerbated by air pollution, especially particulate matter emitted by trucks, which contribute to poor air quality in Mr. Schaeffer's neighborhood.⁸⁰ As a member of the Capitol District Transportation Authority from 2015–2021, Mr. Schaeffer advocated for expanding electric buses, which would reduce particulate matter that is emitted by diesel-run buses.⁸¹ Electric buses are among the types of clean energy investments that could be funded by revenue generated by cap-and-invest or other regulations to achieve the CLCPA's statewide greenhouse gas reduction mandates.

111. Cynthia Kirk is a member of CANY who lives in a disadvantaged community in Binghamton.⁸² As a veteran who suffers from asthma and lung damage as a result of her deployment, Ms. Kirk is very susceptible to harm from air pollution.⁸³ Ms. Kirk's neighborhood has a lot of motor vehicle traffic that creates air pollution and she lives close to a fossil fuel-fired power plant that also emits air pollution.⁸⁴ Ms. Kirk would like to spend more time on her porch,

⁷⁷ *Id.* ¶ 14.

⁷⁸ Schaeffer Affirmation ¶¶ 2–3.

⁷⁹ *Id.* ¶¶ 4–5, 12–13.

⁸⁰ *Id.* ¶¶ 1, 7; see also *Older Adults and Air Quality*, AirNow, <https://www.airnow.gov/air-quality-and-health/older-adults/> (last visited Mar. 19, 2025).

⁸¹ *Id.* ¶¶ 10, 14.

⁸² Kirk Affirmation ¶¶ 2–3, 8.

⁸³ *Id.* ¶¶ 4, 12–14.

⁸⁴ *Id.* ¶¶ 7, 9–11, 15.

walking to a nearby park, and exercising outside, but air pollution in her neighborhood limits her ability to do those activities.⁸⁵ The air quality inside her home is also negatively impacted by a gas stove and gas boiler, and she and her husband would like to switch to electric appliances, but cannot afford to do so.⁸⁶

112. Sonya Rice is a PUSH Buffalo member who lives in a disadvantaged community in Buffalo.⁸⁷ Ms. Rice lives about a mile from the Peace Bridge that connects Buffalo and Canada.⁸⁸ She is exposed to pollution from idling trucks on the bridge, both inside her home and when she goes for walks in her neighborhood.⁸⁹ The Peace Bridge is the second most heavily-used border crossing between the United States and Canada and averages 3,000 trucks per day, and according to DEC it is a significant source of air pollution.⁹⁰ Ms. Rice is also exposed to pollution from fossil fuel combustion in her own home because her appliances run on gas, including her stove, furnace, hot water heater, and clothes drier.⁹¹ As a senior citizen,⁹² Ms. Rice is particularly vulnerable to air pollution.⁹³ She and her landlord both wish he could replace her gas stove with an induction stove, but the cost of induction stoves is a barrier.⁹⁴ Ms. Rice has also been acutely harmed by reliance on gas: She experienced carbon monoxide poisoning from a gas appliance in her last home.⁹⁵ Her dream is to have a house with a passive air system that provides clean air—as she puts it, “[p]eople should not be getting sick in their own homes.”⁹⁶

⁸⁵ *Id.* ¶¶ 16–17.

⁸⁶ *Id.* ¶¶ 19–22.

⁸⁷ Rice Affirmation at ¶¶ 2–4.

⁸⁸ *Id.* ¶ 5.

⁸⁹ *Id.*; see also *Buffalo, Tonawanda, and Niagara Falls New York State Community Air Monitoring Initiative*, NYSDEC (Feb. 28, 2025), <https://storymaps.arcgis.com/stories/b9308348446541ffad2c05e72f603c8f>.

⁹⁰ *Buffalo, Tonawanda, and Niagara Falls New York State Community Air Monitoring Initiative*, *supra* note 89.

⁹¹ Rice Affirmation at ¶ 12.

⁹² *Id.* ¶ 6.

⁹³ *Older Adults and Air Quality*, *supra* note 80.

⁹⁴ Rice Affirmation at ¶ 13.

⁹⁵ *Id.* ¶ 9.

⁹⁶ *Id.* ¶¶ 15–16.

113. Luz Velez is a member of PUSH Buffalo who has longstanding respiratory issues and poor lung function.⁹⁷ Like Ms. Rice, she lives less than two miles from the Peace Bridge and is harmed by air pollution emitted by trucks crossing and idling on the bridge.⁹⁸ Ms. Velez's health is also threatened by her gas stove, which she would like to replace with an efficient induction stove, but she cannot afford one.⁹⁹

114. Angel Garcia is a Sierra Club member who lives in a disadvantaged community in the South Bronx.¹⁰⁰ According to DEC, asthma-related emergency room visits for children are higher in the South Bronx than in any other New York City neighborhood due in part to the area's concentration of highways and the impacts of car and truck pollution.¹⁰¹ Mr. Garcia lives about a half mile from the Bruckner Expressway and about a mile from the Major Deegan Expressway and is also very close to several congested streets that have heavy car and truck traffic.¹⁰² According to DEC, the section of Bruckner Expressway close to Mr. Garcia's apartment has the highest traffic volume of any arterial thoroughfare in the Bronx, and truck pollution impacts are significant along the Bruckner and Major Deegan Expressways.¹⁰³ As a senior citizen,¹⁰⁴ Mr. Garcia is vulnerable to the impacts of air pollution.¹⁰⁵ Mr. Garcia also lives with his daughter and grandson, who both suffer from asthma.¹⁰⁶

⁹⁷ Velez Affirmation ¶¶ 2, 10–13.

⁹⁸ *Id.* ¶ 8.

⁹⁹ *Id.* ¶ 20.

¹⁰⁰ Garcia Affirmation ¶¶ 2, 5–6.

¹⁰¹ *The Bronx: New York State Community Air Monitoring Initiative*, NYSDEC (Feb. 28, 2025), <https://storymaps.arcgis.com/stories/70a8f9595a8c4f669bce0afd46b19380>.

¹⁰² Garcia Affirmation ¶¶ 10–14.

¹⁰³ *The Bronx: New York State Community Air Monitoring Initiative*, *supra* note 101.

¹⁰⁴ Garcia Affirmation ¶ 7.

¹⁰⁵ *Older Adults and Air Quality*, *supra* note 80.

¹⁰⁶ Garcia Affirmation ¶ 8.

115. Katrin Summers is a Sierra Club member who lives about four miles from the Caithness Long Island Energy Center, a large gas-burning power plant, and worries about pollution impacts on her community’s health.¹⁰⁷ DEC recently renewed the power plant’s air permit even though the Sierra Club raised concerns about the power plant’s greenhouse gas emissions and local air pollution.¹⁰⁸ Under the CLCPA, before making a permitting decision, DEC must assess whether the decision would interfere with or be inconsistent with the state’s greenhouse gas reduction requirements. CLCPA § 7(2). If so, DEC must either deny the permit or provide a justification for approving it and identify mitigation measures. *Id.* However, DEC has adopted a policy of not conducting that analysis for most permit renewals—as opposed to new permits—until the regulations implementing the CLCPA are in place.¹⁰⁹ Due to its own delay in issuing regulations under the CLCPA, DEC approved the Caithness Long Island Energy Center’s renewal permit without conducting the greenhouse gas analysis required by law.¹¹⁰

116. Perry Sheffield is a WE ACT member who lives and works in a disadvantaged community in Manhattan.¹¹¹ Ms. Sheffield lives close to Third Avenue, which is heavily trafficked by cars and trucks, creating significant air pollution.¹¹² Additionally, Ms. Sheffield has a gas stove and her building is heated by oil.¹¹³ Her building hosts an air quality monitor as part

¹⁰⁷ Summers Affirmation ¶¶ 2, 4, 7, 10.

¹⁰⁸ *Id.* ¶ 5.

¹⁰⁹ NYSDEC, Division of Air Resources, DAR-21: The Climate Leadership and Community Protection Act and Air Permit Applications 3 (Dec. 14, 2022), attached hereto as Exhibit 4 (“A permit renewal that does not include a significant modification . . . and would not lead to an increase in actual or potential GHG emissions would in most circumstances be considered consistent with the CLCPA pending finalization of the Scoping Plan and future regulations.”).

¹¹⁰ DEC, Responsiveness Summary July 3, 2024: Caithness Long Island Energy Center 1-4722-044426/00007 at 1–2 (July 3, 2024), attached hereto as Exhibit 5.

¹¹¹ Sheffield Affirmation ¶¶ 1–2, 4, 9.

¹¹² *Id.* ¶ 5.

¹¹³ *Id.* ¶ 6.

of WE ACT’s community air quality monitoring program, and she has noticed that when the oil boiler is running on cold days, the air quality is worse.¹¹⁴

117. Jewel Jones is a WE ACT member who lives in a disadvantaged community in Manhattan that is heavily polluted by truck, car, and bus traffic.¹¹⁵ Ms. Jones lives on an avenue that is frequented by heavy duty vehicles, a block from a congested parkway, and a block from a New York City Department of Sanitation garage that attracts significant truck traffic.¹¹⁶ Sanitation trucks often sit on the street, sometimes idling, about a block from Ms. Jones’s home.¹¹⁷ Ms. Jones also uses gas for heating and cooking.¹¹⁸

NEW YORK IS NOT ON TRACK TO MEET CLCPA EMISSIONS LIMITS

118. The CLCPA requires that by 2030, New York’s statewide greenhouse gas emissions be 40% below 1990 levels. ECL § 75-0107(1)(a).

119. The most recent year for which DEC has data on statewide greenhouse gas emissions is 2022.¹¹⁹ Between 1990 and 2022, greenhouse gas emissions in New York fell by only 9.4%.¹²⁰

120. Rather than decreasing, greenhouse gas emissions increased in both 2021 and 2022.¹²¹

¹¹⁴ *Id.* ¶ 7.

¹¹⁵ Jones Affirmation ¶¶ 2, 4–5.

¹¹⁶ *Id.* ¶¶ 6, 8–10.

¹¹⁷ *Id.* ¶¶ 6, 8.

¹¹⁸ *Id.* ¶ 11.

¹¹⁹ See NYDEC, 2024 Statewide GHG Emissions Report: Summary Report at iv (Dec. 2024), <https://dec.ny.gov/sites/default/files/2024-12/summaryreportnysghgemissionsreport.pdf>.

¹²⁰ *Id.* at 9–10.

¹²¹ *Id.* at iv.

121. New York must not only reverse the trend of rising emissions but rapidly decrease emissions to achieve the CLCPA mandate of a 40% reduction from 1990 levels in less than five years. ECL § 75-0107(1)(a).

122. Without the comprehensive economywide regulations required under ECL § 75-0109 in place, the state does not have the means to ensure these mandatory emissions reductions occur.

FIRST CAUSE OF ACTION

Failure to Comply with Environmental Conservation Law § 75-0109

123. Petitioners-Plaintiffs repeat and re-allege the allegations contained in each paragraph above and incorporate such allegations by reference as if set forth herein.

124. The CLCPA requires that DEC issue regulations by January 1, 2024 to ensure that the state achieves the statutory greenhouse gas reduction requirements. ECL § 75-0109.

125. In failing to issue regulations required by ECL § 75-0109, DEC has failed to perform a duty enjoined upon it by law.

126. DEC's failure to comply with the requirement to issue regulations violates the CLCPA.

SECOND CAUSE OF ACTION

Violation of the New York State Constitution, Article I § 19

127. Petitioners-Plaintiffs repeat and re-allege the allegations contained in each paragraph above and incorporate such allegations by reference as if set forth herein.

128. The New York State Constitution guarantees that “[e]ach person shall have a right to clean air and water, and a healthful environment.”

129. DEC's failure to issue regulations required by ECL § 75-0109 prolongs New Yorkers' exposure to air pollution that would decrease if DEC had complied with the law and the regulations were in place.

130. DEC's failure to issue those regulations violates the Environmental Rights provision, Article I Section 19 of the New York Constitution, because it infringes on the fundamental right to clean air but is not necessary or narrowly tailored to further a compelling state interest.

PRAYER FOR RELIEF

WHEREFORE, Petitioners-Plaintiffs respectfully request that the Court:

- a) Pursuant to CPLR 7803(1) and 7806, enter judgment in favor of Petitioners-Plaintiffs and order DEC to immediately issue draft regulations under ECL § 75-0109 and finalize the regulations on a reasonable timeline, without delay;
- b) Pursuant to CPLR 3001, declare that DEC has violated the CLCPA and/or the New York State Constitution by failing to issue regulations pursuant to ECL § 75-0109;
- c) Award Petitioners-Plaintiffs costs, fees, and disbursements incurred in connection with these proceedings; and,
- d) Grant such other and further relief as this Court deems just and proper.

Dated: March 31, 2025
New York, NY

Respectfully submitted,

By:



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VERIFICATION

Rachel Spector, being duly sworn, states that she is the attorney representing Petitioners-Plaintiffs in this action and that the foregoing petition is true to her own knowledge; that the grounds of her belief as to all matters not stated upon her knowledge are attached exhibits and attached affidavits by members of Petitioners; and that the reason why the verification is not made by Petitioners-Plaintiffs is that Petitioners-Plaintiffs are not in the county where she has her office, there are two or more parties united in interest and pleading together and none of them acquainted with the facts is within that county, and all the material allegations of the pleading are within the personal knowledge of the attorney.

Dated: March 31, 2025
New York, NY

Respectfully submitted,



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