



**ENVIRONMENTAL  
ADVOCATES OF NEW YORK**

YOUR GOVERNMENT WATCHDOG

## **Testimony Regarding the Environmental Provisions of Governor Cuomo's Executive Budget Proposal for SFY 2016-2017**

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*January 28, 2016*

Governor Cuomo's 2016-2017 Executive Budget Proposal includes some positive policy proposals that would help to protect our environment and public health here in New York State.

- ✓ Increasing the Environmental Protection Fund (EPF) to \$300M and creating new programs in it that will support the efforts of leading communities (Climate Smart Communities) that are fighting the very real impacts of climate change and lowering their carbon footprints, and funding to support the *Centers for Environmental Health*;
- ✓ Providing additional support (\$50M on top of the previous commitment of \$75M) for clean water infrastructure grants to communities who desperately need funding to fix their pipes;
- ✓ Committing that state vehicles and those under contract with the state will meet the requirements of the Diesel Emissions Reduction Act of 2006 (DERA)
- ✓ Permanently extending the Waste Tire Disposal Fee;
- ✓ Establishing a goal to close the last remaining coal-fired power plants in our state by 2020; and
- ✓ Directing the Public Service Commission to mandate 50% renewable electricity for New York by 2030.

However, there are aspects of the Governor's proposal that would take New York in the wrong direction by making it harder for New York to achieve its climate and clean energy goals, and ensure sustained progress towards a healthier New York.

- Raiding \$38M from the carbon pollution funds of RGGI, \$23M of which will be used to once again support the General Fund;
- Holding staffing levels at DEC to historically low levels while expanding the scope of the agency's mission under the EPF;
- Redirecting staff positions for DEC enforcement, air and water, and other important divisions, and transferring those positions off of the General Fund to agency administration and Rehabilitation and Infrastructure Capital Projects funding; and
- Dedicating \$340M to the Thruway user tax credit program, which subsidizes driving and the unhealthy smog, soot, and climate pollution that is associated with motor vehicles.

Page 1 of 8

It is imperative that the Legislature modifies the Executive Budget proposal to enact a final budget that is truly in the best interests of all New Yorkers and our environment.

Climate change is the biggest challenge facing this and future generations. We have a moral obligation to act. I agree with the Governor who said in October 2015, “Climate change is a reality, and not to address it is gross negligence by government and irresponsible as citizens.”

Governor Cuomo would like New York to be known as a national climate leader. The final State Energy Plan adopted in June 2015 has the right goals to get us there. In fact, the 80% cut in climate pollution (half of which is to be achieved by 2030), the 50% renewable electricity program by 2030, and a 23% increase in energy efficiency will move us entirely away from burning fossil fuels in just under 34 years.

The SFY 2016-2017 Budget is the foundation on which our success in attaining this monumental shift of New York’s economy will rest.

It’s important we work together to get it right.

It’s important that all New Yorkers know the plan to get there and that it is enacted into law.

It’s important that all state government decisions are run through a “climate test.” Those projects, grants, or permits that are consistent with our climate goals pass the test.

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### **Building on the EPF’s Community Benefits**

The Environmental Protection Fund (EPF) is traditionally viewed as the state’s hallmark program for funding environmental initiatives, and we are very happy to see the Governor’s proposal to increase the EPF to \$300M, up \$123M from last year.

We are also glad that the Governor is not asking you this year to support an EPF that relies on raids to other environmental funds or off-budget revenue, such as the auction proceeds of the Regional Greenhouse Gas Initiative.

The EPF is critical, as it invests in outdoor tourism, supports recycling programs, conserves farmland, and protects drinking water for millions of New Yorkers. It creates jobs and makes communities more attractive to tourists, businesses, and residents. Every single county in New York State has benefited from millions of dollars in local investment since the Fund’s 1993 launch.

The expanded EPF for this year holds the promise that this state will support local leaders as they address the impacts that result from climate change.

While we strongly encourage the Legislature to fund the program at the \$300M level proposed by the Executive, we do recommend that the Legislature consider an alternative funding stream

to get there. The five-year financial plan through 2021 anticipates a \$300M EPF, but the revenue source for \$120M of the \$123M increase this year is identified as the financial settlement funds collected by the state; in short, a one-shot. With the Real Estate Transfer Tax (RETT)—the EPF’s historic source of funding—on pace to hit an all-time high this year, there is ample reason to use it to make this increase happen this year and for all future years. We suggest that the EPF be funded via RETT, and that one-shot revenues support one-shot infrastructure projects.

## **RGGI Raid**

The Executive Budget proposal sweeps \$38M in funding from the New York State Research and Development Authority (NYSERDA) that is generated from RGGI carbon allowance auctions with \$23M going directly to the General Fund. According to the Assembly “yellow book” and from Executive briefings, it appears \$23M of these funds will go to cover expenditures related to a number of tax credits. Almost all of the tax credits that are supported by the Executive’s RGGI raid pre-date the program’s existence. The one that draws the single biggest amount dates to the first term of the Pataki Administration.

<b>Incentive</b>	<b>Statutory Provision</b>	<b>Enacting Legislation</b>	<b>Amount Raided from RGGI in SFY 15-16 (\$ millions)</b>
Biofuel Production Tax Credit	Tax Law § 28*2	L 2006, ch 62	3
Clean Heating Fuel Credit	Tax Law § 606(mm)	L 2006, ch 35	3
Alternative Fuels and Electric Vehicle Recharging Property Credit	Tax Law § 187-b	L 2006, ch 109	1
Green Buildings Credit	Tax Law § 19	L 2000, ch 63	1
Sales Tax Exemption for Residential Solar Energy Systems	Tax Law § 1115(ee)	L 2005, ch 306	1
Sales Use Tax Exemption for Commercial Solar Energy Systems	Tax Law § 1115(ii)	L 2012, ch 406	1
Residential Solar Energy System Personal Income Tax Credit	Tax Law § 606(g-1)	L 1997, ch 399	13
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According to NYSERDA (<http://www.nyserda.ny.gov/-/media/Files/EE/RGGI/2015-RGGI-Operating-Plan.pdf>):

Historically the investment of RGGI auction proceeds has been designed to complement existing programs, including the System Benefits Charge (SBC), Renewable Portfolio Standard (RPS), Weatherization Assistance Program, Energy Efficiency Portfolio Standard (EEPS), and various transportation programs funded by the federal Congestion Mitigation and Air Quality Improvement Program.

Diversion of funds out of RGGI to support long-standing tax credits runs counter to the value of these resources supplementing existing programs, and lowers the total amount of funding the state should be spending to move us toward our climate and clean energy goals.

In addition, the General Government Public Protection Article VII bill S. 6405/A.9005 Section 20 contains language to tap \$15M from RGGI auction proceeds to support a new program at SUNY and community colleges that will assist in training workers for clean energy jobs. Since this program will cover personnel expenses, it appears the Executive is planning future raids of RGGI for this purpose.

The revenues of the RGGI auctions are collected pursuant to NYSERDA and DEC regulations. And, while the Executive has sought and achieved raids on the RGGI funds into the General Fund on two occasions (2009 and 2015), the Legislature has never expressly authorized the collection of funds. Annual raids on the fund to support on-going activities beg the larger question of why all RGGI revenues are not appropriated?

Environmental Advocates, along with the following groups, oppose the diversion of RGGI proceeds to the State Budget (letter attached): 32BJ 1199; Acadia Center; Adirondack Mountain Club; Alliance for a Green Economy; Alliance for Clean Energy New York; American Farmland Trust; American Lung Association in New York; Appalachian Mountain Club; Audubon New York; Citizens Campaign for the Environment; Citizens for Local Power; Environment New York; Environmental Defense Fund; Land Trust Alliance; Long Island Pine Barrens Society; National Wildlife Federation; Natural Resources Defense Council; NY-GEO; NYPIRG; Open Space Institute; Renewable Energy Long Island; Scenic Hudson; Sierra Club Atlantic Chapter; The Adirondack Council; The Nature Conservancy in New York; and Union of Concerned Scientists.

### **Properly Staffing DEC to Hold Polluters Accountable**

The SFY 2016-2017 budget should restore Department of Environmental Conservation (DEC) staff levels to address the losses sustained at the agency and ensure the state's laws and protections can be fully enforced. Too many laws passed by, and with the support of, legislators in this room are being inadequately implemented and enforced for one simple reason: there aren't enough cops on the beat.

DEC staff members do the best they can with the resources they have. But since 2008, DEC has lost more than 800 staff, forcing the agency to choose between increasingly poor options as it struggles to carry out its mission to protect our health and the environment, which leaves New Yorkers vulnerable to harmful pollution.

An Environmental Advocates' September 2013 report demonstrated, Governor Cuomo's DEC has become increasingly reliant on polluter-produced self-monitoring reports to determine compliance with environmental permit conditions—including conditions under the federal Clean Air and Clean Water Acts. Across-the-board cuts include:

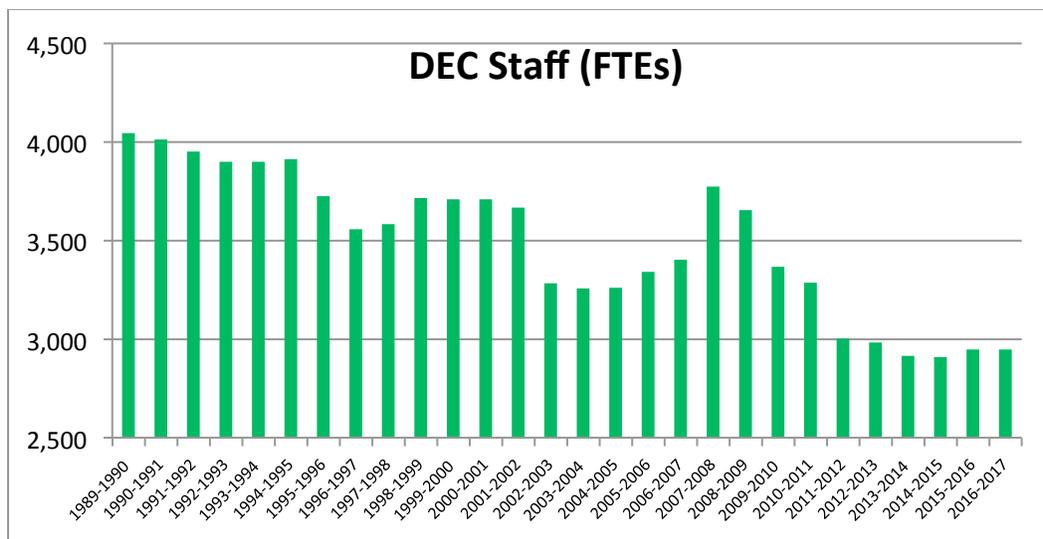
- Cutting pollution inspections by 35%;
- Slashing water pollution inspections by 74%;
- Reducing enforcement actions against polluters by 24%; and

- Eliminating effluent tests for water pollution and chopping “stack” tests for climate-altering pollution by 44%.

Governor Cuomo’s administration has rationalized these cuts as “doing more with less.” Protecting public health and holding polluters accountable needs real people on the ground.

Comptroller DiNapoli’s December 2014 report on environmental funding showed a similar pattern of staffing corresponding with lower inspection and enforcement actions. Unfortunately, despite the documented public health concerns that stem from an understaffed environmental watchdog, DEC cannot do more with less. As with last year, this budget anticipates fewer enforcement staff.

This problem will only worsen in the out-years under Governor Cuomo’s proposal. Inflation is projected to increase by 2%, negotiated contracts include salary increases this year with new rounds of negotiation beginning for some units, and pension costs are likely to rise as an aging state workforce retires. By calling for relatively flat agency budgets and staffing, Governor Cuomo is locking in de facto budget cuts.



Our December 2015 report, *Clearing the Air*, reveals a steep decline in resources for DEC’s ability to track and reduce air pollution. Since 2009, the state’s air pollution monitoring network has been reduced from 74 to 55 monitors. New monitors to assess near-roadway emissions have not been deployed in the heavily trafficked New York City/Long Island metropolitan area. Funding for the clean air operating funds fell from \$45M in SFY 2007-2008 to \$29.8 M in SFY 2015-2016.

It is unclear if this year’s budget will provide funds out of the \$40M New York Works Capital program that is allocated to DEC to support additional deployment of air pollution monitors. In years past, this bond fund was tapped to support it, but air pollution monitoring should really be covered by general fund operations.

The budget anticipates flat funding from federal sources to cover delegated enforcement of the Clean Water Act and the Clean Air Act—a trend that has existed under the budget austerity agreements of Congress and the Obama Administration. With escalating personnel and other costs, flat budgets are actual budget cuts that the state General Fund should backfill.

## **Restorations and Rollbacks**

***No More DERA Delays:*** The Executive Budget Proposal does not include any further delay of implementing the Diesel Emissions Reduction Act of 2006. This law is 10 years old and has never been fully implemented.

The Legislature should reject any notion of further delaying the law through this year’s budget process. Emissions from aging, dirty, heavy-duty diesel engines are incredibly harmful, causing heart and asthma attacks, leading to premature deaths, and costing New Yorkers over \$12 billion annually in monetized health impacts.

When enacted, DERA was roundly praised as a tool in New York’s fight against air pollution and a boon to the Upstate manufacturing industry, yet the enacted state budget has delayed its implementation for the past five years. Further delays put the public in harm’s way and are unacceptable.

Let the law you passed be fully implemented this year.

***Centers of Excellence in Children’s Environmental Health:*** Children’s health has changed for the better. Thanks to public health innovations, infectious diseases are no longer the primary cause of morbidity and mortality. But today’s children are afflicted with chronic diseases that start in childhood (and often evolve into adulthood) with debilitating effects on not just the children themselves, but their families and communities. Environmental factors play a dominant role. The cost of environmental disease in New York State is over \$6B per year. The Centers of Excellence in Children’s Environmental Health are a statewide network of health professionals and institutions whose mission is to provide cost-effective interventions to children, families, and communities, and offer much-needed expertise on environmental illnesses to physicians across the state who are largely untrained in this area. This network is an important and invaluable resource for New York, and it is great news that after failing to fund the Centers last year, the Governor’s proposed EPF provides \$1M to support these Centers.

## **Wastewater Infrastructure Investment**

Aging, crumbling wastewater infrastructure is a pervasive problem in New York. DEC has reported that, statewide, there is a wastewater infrastructure investment need over the next 20 years of at least \$36B. From the Finger Lakes to the Great Lakes, to the St. Lawrence and the Hudson, Long Island Sound to the Atlantic Ocean, our waters are the backbone of our economy and our way of life. These resources support vital multi-million dollar fishing and tourism industries, serve as a means of conveying goods across the state and the country, provide millions of New Yorkers with clean, fresh drinking water, and provide opportunities to swim, play, and relax.

Last year, the Legislature and the Executive developed the 2015 Water Infrastructure Improvement Act in the SFY 2015-2016 budget, allocating \$200M in community grants over three years. This funding is providing an important boost to your economic development and climate resiliency efforts, while aiding communities who lack the resources to make these investments independently. This year, the Governor is proposing to increase the funding for this program from the anticipated \$75M to \$125M, and to work again next year for a similar commitment.

Water infrastructure needs far exceed the amount of funding that has been made available. According to the Environmental Facility Corporation's (EFC's) 2016 Intended Use Plan for the Clean Water State Revolving Loan Fund, \$6B was listed for wastewater infrastructure projects, but only \$738M is available in loan funds. Municipalities across the state are fortunate to have the EFC's programs to offer savings on their long-term interest payments; however, even with low cost financing, many communities are struggling to implement improvements because of the debt they would incur.

The costs on a community to single-handedly bear the financial burden of updating what is often a decades—if not century—old system are not viable. Many water infrastructure projects are exceptionally expensive. For example, the town of Henderson in Jefferson County decided to postpone its plans to build a wastewater treatment facility, stating that the project was “simply not economically feasible at this point in time.” The requested financing for the Henderson project was listed by EFC as \$8.7M. Additional grant dollars are a crucial necessity in order to get communities across the state in a position where they can put the shovel to the ground and fix their pipes.

Without properly investing in wastewater infrastructure, our clean water is at risk. New York urgently needs to make substantial investments in water infrastructure across the state, and we urge the legislature to make that a priority in the 2016-2017 budget by moving the grant program to be at the \$800M level for this year and next.

### **Child Safe Products Act**

While not specifically a budget item in the Executive Budget Proposal, the Governor's briefing book includes his support for this important legislation.

Shockingly, there are thousands of harmful chemicals found in everyday products and toys designed specifically for children. Yet, there are no regulations in place to ensure the recognition and removal of these toxins. Parents cannot properly safeguard their children from chemicals like mercury, benzene, and arsenic because they are commonly found in frequently used products. The Child Safe Products Act provides a clear channel between producers and consumers about what chemicals are harmful. Consumers shouldn't have to worry about ingredients in toys made for toddlers.

In 2013 and 2014, this legislation passed the Assembly with overwhelming support; it also enjoyed broad bipartisan support in the Senate, with more members cosponsoring the legislation than votes needed for passage. Nonetheless, Senate leadership refused to allow a vote. Environmental Advocates of New York urges Governor Cuomo and legislators to include this

common-sense children's health legislation in this year's enacted budget. The bill has the votes. For the sake of our children, let's enact a law to protect them before April 1, 2015.

### **New York Works**

As has been the case in recent years, the budget includes another \$40M from the "New York Works" program for funding some DEC capital projects, which Environmental Advocates supports. We are concerned, however, that capital funds are being used to cover items that should be considered basic agency operations (e.g. air pollution monitors that have a life-span that is far shorter than the life of most state bonds).

There is conflicting information in the Division of Budget briefing books on whether New York Works funds are earmarked for air pollution monitoring equipment or not. While this equipment is sorely needed to provide the critical information about the health and safety of our air that people with asthma, respiratory illnesses, and advanced age rely on for day-to-day planning, air quality monitoring should fall under the basic operations of the DEC and not come out of bonded capital spending.

The state should not be bonding for basic equipment that is unlikely to outlive the bond terms. Governor Cuomo should appropriate operating funds to support operating expenses like deployment and maintenance of air pollution monitors.

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Thank you for the opportunity to testify today. We look forward to working with the Legislature to advance a budget that is protective of New Yorkers' health and the Environment.

*Environmental Advocates' mission is to protect our air, land, water, wildlife, and the health of all New Yorkers. Based in Albany, we monitor state government, evaluate proposed laws, and champion policies and practices that will ensure the responsible stewardship of our shared environment. We support and strengthen the efforts of New York's environmental community and work collaboratively to make our state a national environmental leader.*