



Department of
Environmental
Conservation

NYS Climate Change Superfund Act

Environmental Law Institute – Examining State Climate Superfund Bills

March 19, 2025

Statutory Overview

- NYS Climate Change Adaptation Cost Recovery Program - i.e., Climate Change Superfund (Act) – signed by Governor Hochul on December 26, 2024 ([Governor Press Release](#))
 - S.2129-B/A.3351-B
 - Signed with understanding of forthcoming chapter amendments
- Chapter amendment process in New York State
- Chapter amendments to Climate Change Superfund passed by Legislature and signed by Governor on February 28, 2025
 - Fully enacted version of Act now incorporates changes from chapter amendments
- Act adds a new Article 76 to the New York Environmental Conservation Law (ECL)
 - Also amends the State Finance Law (SFL) to establish the Climate Change Adaptation Fund
- Charges Department of Environmental Conservation (DEC) with key role in implementation

Summary of Cost Recovery

- Seeks to recover a total assessment of **\$75 billion** in climate change damages from Responsible Parties, over a period of **25 years**
- Responsible Parties are those engaged in extraction and refining of fossil fuels and exceeding **one billion metric tons** of covered greenhouse gas (GHG) emissions
 - Covered period is 2000-2024 (changed in chapter amendments)
 - Covered emissions are those attributable to total amount of fossil fuels extracted or refined worldwide
 - Based on strict liability
- Cost recovery amount for each Responsible Party is determined proportionally
 - Proportional share of the \$75 billion overall cost recovery amount under the Act
 - Based on share of aggregate covered GHG emissions from all responsible parties
- DEC may apply GHG emission factors consistent with those utilized under NYS Climate Leadership and Community Protection Act (changed in chapter amendments)

Additional Details of Cost Recovery Process

- DEC may require Responsible Parties to provide information regarding their past practices, including production, extraction, refining, and GHG emissions information
 - DEC will make certain information publicly available to the maximum extent practicable
- DEC will issue Cost Recovery Demands to each Responsible Party
- Administrative appeals process
 - A Responsible Party may submit a request for reconsideration to DEC, including grounds and supporting documentation
 - DEC may reallocate cost recovery amounts, including identifying new Responsible Parties and issuing updated notices of cost recovery demand if needed
- Payment installation options and penalties for unpaid amounts
 - Penalty of 50% of unpaid amount plus interest

Summary of Adaptation Fund

- Monies received from Responsible Parties through cost recovery are deposited into Climate Change Adaptation Fund (Fund), as established by NYS SFL
- Fund can be utilized for a range of qualifying expenditures, including climate change adaptation infrastructure projects
- DEC to develop a Climate Change Adaptation and Resilience Plan to guide investments from the Fund
 - Also requires appropriation by Legislature
- At least 35% of qualifying expenditures from the Fund must go to projects that benefit disadvantaged communities (with goal of 40%)
 - Disadvantaged communities are identified through existing Climate Act process
- Includes labor and job standards and worker protection provisions
 - Requirements for certain projects that receive money from the Fund

Implementation Timeline

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| 12/26/24 | Effective Date of Act |
| 6/26/27 | DEC to promulgate regulations, following public notice and comment
Regulations will address: (1) necessary information to be submitted to agency, (2) methodologies and publicly available databases for determining Responsible Parties and their applicable share of GHG emissions, and (3) other procedures. |
| 6/30/28 | DEC to issue notices of cost recovery demand to each Responsible Party |
| 12/26/28 | DEC to complete Statewide Climate Change Adaptation and Resilience Plan to inform qualifying expenditures from Fund |
| 12/31/28 | Due date for initial payment from Responsible Parties |



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