



ARTICLE 1 SECTION 19: NEW YORK'S NEW ENVIRONMENTAL RIGHT

(Also known as "New York's Green Amendment")

FAQs¹

What does New York's Constitutional Environmental Right say?

Article 1, Section 19 of the New York Constitution now states that "Each person shall have a right to clean air and water, and a healthful environment."

How did the Environmental Right become a part of the New York Constitution?

According to the process for amending the New York Constitution, the Environmental Rights Amendment was first a bill that passed in two consecutive legislative sessions in 2019 and 2021. The Environmental Rights Amendment was then placed on the November 2, 2021 ballot, and over 70% of voters agreed it should be added to the NY Constitution's Bill of Rights. It became Article I, Section 19 on January 1, 2022.

How might the NY Environmental Right broaden environmental protections?

The Environmental Right creates an overarching legal obligation on all government officials in the state to ensure that whenever they contemplate taking action, they consider and protect people's right to clean water and air, and a healthful environment. As part of the New York Constitution's Bill of Rights, the right to clean air and water and a healthful environment is now on par with our other fundamental rights such as freedom of speech, freedom of religion, and the right to vote. Constitutional standards ensure these rights can be overridden only when:

1) the state can demonstrate there is a compelling state interest for doing so; and 2) the government has taken all steps to minimize the infringement of its actions on the protected environmental rights.

The Environmental Right will help ensure existing environmental laws are interpreted and implemented consistently with the Constitution; create a strong foundation for new environmental protection laws; and provide constitutional grounds to address legal gaps or loopholes that affect the right to clean air and water and a healthful environment. One of the primary motivations behind creating the Environmental Right was the issue of contaminants such as PFAS that are not yet comprehensively regulated in New York State, often referred to as "emerging contaminants." For example, residents in Hoosick Falls, NY, were exposed to and suffered severe health consequences from unregulated PFAS released by a plastics manufacturing facility and had little recourse prior to enactment of the right. In the future, communities trying to prevent or suffering from harms associated with similar unregulated contaminants could use the NY Environmental Right to prevent contamination or seek redress.

Will the NY Environmental Right make it more difficult for polluters to burden my community?

Many sources of pollution must go through governmental review such as site plan approval, zoning changes, and/or a permitting process in order to operate under the law. Requirements vary

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for different types of operations, but nearly all of them require an environmental impact assessment as prescribed by the State Environmental Quality Review Act (SEQR). Under SEQR, which was designed to ensure disclosure of environmental impacts, government agencies frequently approve projects despite their harmful environmental impacts because agencies conclude the project will have beneficial economic or social benefits.

With the additional requirement of the NY Environmental Right, it is now imperative that agencies, municipalities, planning boards and other governmental entities protect every person's fundamental right to clean air and water, and a healthful environment in their decision-making, including zoning decisions, approval of environmental reviews, and permitting decisions for polluting facilities. Government officials must consider whether projects or other government actions will be detrimental to environmental rights, even if other existing legal protections are followed.

The NY Environmental Right makes it more difficult for the government to approve a project that infringes on the public's right to clean air and water and a healthful environment. It should also provide an incentive for the government to monitor and enforce laws more carefully to prevent pollution at existing facilities.

How can New York's Environmental Right further environmental justice?

Because the new right is guaranteed to "each person," it requires equitable protection of all communities and provides an additional tool to secure environmental justice.

As discussed above, the Environmental Right requires government officials to go beyond existing laws and regulations in considering whether an action might infringe on the right to clean air or water or a healthful environment, including considering cumulative impacts in environmentally overburdened communities. Governments have often failed to consider cumulative impacts

of multiple polluting facilities in many communities of color and low-income communities across New York that are already overburdened with environmental hazards including fossil fuel infrastructure, waste management facilities, and other operations that pollute the air, water, and overall environment. Because of its broad guarantees, the NY Environmental Right requires governments to look beyond the impacts of an individual facility and facility-specific regulations and instead consider whether their actions infringe on the right to overall clean water and air, and a healthful environment in all communities.

How can we ensure that the NY Environmental Right will protect our communities?

The people of New York can ensure broad protection of clean air and water, and a healthful environment by using their voice. As people and organizations bring lawsuits in court invoking the Environmental Right, judges will decide the meaning and applicability of this constitutional protection in each case and begin to develop legal precedent for future cases. Courts will use standard principles of constitutional interpretation to provide guidance in cases asserting this new right. Courts, however, do not operate in a vacuum. They can be influenced by the public's changing expectations and demands, and advocates can demand a broad and meaningful application of this new Environmental Right. The new Environmental Right isn't limited to being used in legal processes. Your voice as an advocate can lift up the Environmental Right at a protest, on a phone call to your representative, in an op-ed or social media post to help educate decision-makers and hold them accountable, and demand that the Environmental Right's promises come to fruition for all New Yorkers.

What other states currently have similar constitutional environmental rights?

Several other state constitutions have environmental protection provisions. Pennsylvania and Montana, like New York, have constitutional environmental rights provisions that place environmental rights on par with other human, civil and political rights given highest constitutional protection. In addition to their constitutional promise of environmental rights recognized in the Bill of Rights section of their state constitutions, both states have state Supreme Court rulings that interpret and apply the constitutional language and have given strong recognition to the rights of the people to clean water, clean air and healthy environments. New York will be able to turn to the progress made in Pennsylvania and Montana to help interpret, understand and apply New York's Article 1 Section 19.

Template for Submitting ERA Comments on Agency Actions:

This is a suggested template for public comments using the New York Environmental Right. Please fill in the bolded blanks and feel free to customize the language according to your specific needs and situation. **For credibility and force of effect, the language below should be carefully and significantly revised to fit the specific situation and facts at issue.** This is merely a starting point. These comments are meant to address agency or municipality actions such as the issuance of a permit or regulation.

New York's Constitution guarantees that "[e]ach person shall have a right to clean air and water, and a healthful environment." In 2019, New York state legislators passed this Environmental Rights Amendment ("ERA") in response to "[r]ecent water contamination and ongoing concerns about air quality" that "highlighted the importance of clean drinking water and air as well as the need for additional protections." Recognizing that existing environmental laws had failed to fully protect this fundamental right, legislators drafted the ERA to "put in place safeguards to require the government to consider

the environment and our relationship to the Earth in decision making." Voters passed a proposition adding the ERA to New York's Constitution on November 2, 2021 to add these rights to our state's Bill of Rights, thereby giving our environmental rights highest constitutional standing and protection to add these rights to our state's Bill of Rights, thereby giving our environmental rights highest constitutional standing and protection.

In light of Article I, Section 19 of the New York Constitution, **[relevant agency/municipality]** has an enhanced obligation to ensure our environmental rights are protected. The Constitutional obligation requires the agency to affirmatively protect the constitutional right to clean air, clean water and a healthful environment, to fully consider whether its actions might impair these rights, and to prevent impairment of these rights to the maximum extent possible. This obligation may, at times, require the **[agency/municipality]** to go beyond environmental statutes and regulations if necessary to protect this constitutional right.

By **[description of agency action in question, such as: "issuing this permit" or "promulgating this rule"]**, **[agency name]** will deny **[Commenter's name/Organization/Members/Community]** of their right to **[clean air/clean water/a healthful environment]**. **[Commenter's name/Organization/Members/Community]** would be harmed by **[the agency action]** because **[description of the harms]**. A failure by the agency to address these potential harms would constitute a violation of the Environmental Rights Amendment.

Additional Resources:

Educational resources:

- New York's Environmental Right Repository, Pace University School of Law:
<https://nygreen.pace.edu/>
- This Changes Everything: New York's Environmental Rights Amendment:
<https://www.thenatureofcities.com/2022/02/25/this-changes-everything-new-yorks-environmental-amendment/>
- Law 360, How Green Amendments Protect Key Environmental Rights:
<https://www.law360.com/articles/1442901>
- Constitutional "Green Amendments", Fact Sheets, FAQs & Other Resources:
<https://forthegenerations.org/resources/>

Community resources:

- [Environmental Advocates NY](#)
- [New York Lawyers for the Public Interest](#)
- [Green Amendments For The Generations](#)

Legal resources:

- [Constitutional Green Amendments; Making Environmental Justice a Reality, American Bar Association Natural Resources & Environment Journal](#)
- [Environmental Law Institute \(ELI\) Dialogue: Green Amendments, A Vehicle for Environmental Justice Panel](#)
- [New York Lawyers for the Public Interest](#)