

STATE OF NEW YORK
SUPREME COURTALBANY COUNTY

In the Matter of the Application of

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

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules**Decision & Order**
Index No. 903160-25

-against-

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

Respondent-Defendant.

Supreme Court, Albany County
Motion Return Date: August 14, 2025

Present: Julian D. Schreibman, JSC

Appearances: Earthjustice
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Schreibman, J.:

This is a hybrid action and special proceeding under Article 78 of the CPLR. Petitioners seek a mandatory injunction directing respondent New York State Department of Environmental Conservation (“DEC”) to issue regulations in satisfaction of DEC’s statutory obligation under the Climate Leadership and Community Protection Act of 2019 (the “Climate Act”). Petitioners argue that DEC’s failure to promulgate Climate Act-compliant regulations is both a violation of a duty enjoined by law and a violation of newly enacted provisions of the New York State Constitution. All parties agree that all of the issues raised in the case are now fully submitted to the Court. In addition to the parties’ briefings, the Court has conducted oral argument, accepted *amicus* briefing, and received supplemental submissions from the parties.

For the reasons set forth herein, the Petition is granted. Because the Court grants petitioners relief under Article 78, it does not reach the Constitutional questions and expresses no opinion thereon. DEC will be directed to promulgate regulations that comply with the Climate Act no later than February 6, 2026.

Discussion

Law making begins in the legislative branch. In New York, when the Assembly and Senate agree on and pass a bill, it goes to the Governor. When the Governor signs the bill into law, he or she is embracing the Legislature's decision and committing, under the Governor's constitutional mandate, to faithfully enforce that law. In our modern democracy, the work of implementing a new law frequently falls to an administrative agency, within the executive branch, which will promulgate rules or regulations according to a process that is, itself, highly regulated by law. As a result of the sophistication and breadth of expertise found in modern-day administrative agencies, the Legislature often invests an agency with significant discretion in the pursuit of a new law's objectives. (*See, e.g. Mahopac Central School Dist. v NYS Dept. of Ed.*, 240 NY3d 534, 540 [3rd Dept. 2025]).

In the present case, in 2019, the Legislature passed the Climate Act with the express goal of making New York a leader in addressing climate change through reduced emissions of greenhouse gasses. The Climate Act specifically committed the state to achieving a 40% reduction in greenhouse gas emissions by 2030, and an 85% reduction by 2050, measured against 1990 emissions levels. Then-Governor Cuomo signed the Climate Act into law signifying his commitment to reach those targets. While the Climate Act set very specific objectives for greenhouse gas emission reductions, it largely left the task of figuring out how to achieve those targets to the DEC.

As relevant to this matter, the Climate Act set in place a three-step process. (*See Glen Oaks Village Owners, Inc. v City of New York*, 2025 WL 1458090, *1 [NY May 22, 2025]). First, within one year of the Climate Act's passage, DEC was charged with determining the statewide greenhouse gas emissions limits necessary to achieve the Climate Act's requirements.

(Environmental Conservation Law (“ECL”) §75-0107[1]). DEC did so and did so within the timeframe set by the Climate Act. (6 NYCRR Part 496). Second, the Climate Act created a Climate Action Council (the “Council”), “an advisory group made up of 22 members with relevant expertise, and [gave] the Council a two-year period to prepare a Scoping Plan containing recommendations for attaining statewide greenhouse gas emissions limits.” (*Glen Oaks* at *1; *see* ECL §75-0103). As DEC did at step one, the Council completed its work within the two-year timeframe set forth in the statute and issued the Scoping Plan.

The third step, and the subject of this litigation, required the DEC, relying on the Scoping Plan, to issue regulations that would actually achieve the mandated emissions reductions. Specifically, the Climate Act provides that DEC “**shall** . . . promulgate rules and regulations to **ensure** compliance with the statewide emissions reductions limits[.]” (ECL §75-0109[1][emphasis added]). The very next subsection of the Climate Act reinforces this obligation, stating that the regulations to be promulgated by DEC “shall: **Ensure** that the aggregate emissions of greenhouse gases from greenhouse gas emission sources **will not exceed** the statewide greenhouse gas emissions limits” established in the first phase of the law’s implementation. (ECL §75-0109[2][a][emphasis added]). Moreover, DEC’s regulations were required to “[r]eflect, in substantial part, the findings of the scoping plan” prepared by the Council. (ECL §75-0109[2][c]). The Climate Act required DEC to promulgate regulations fulfilling these requirements “[n]o later than four years after the effective date” of the law. (ECL §75-0109[1]). This deadline passed on or about January 1, 2024.

Although more than 18 months have elapsed since that statutory deadline passed, it is undisputed that DEC has not issued regulations that comply with the foregoing terms of the Climate Act. While DEC notes that it has taken other, commendable regulatory steps to reduce

greenhouse gas emissions, it candidly concedes that the impact of those regulations would fall far short of the 40%/85% reductions mandated by the Climate Act, and therefore that such regulations do not “ensure” compliance with the Climate Act. Petitioners have sued to compel DEC to comply with the Climate Act by promulgating rules and regulations which fulfill the law’s mandates. Where petitioners “assert that the Legislature has mandated certain programs and that the executive branch has failed to deliver the services[, t]he appropriate forum to determine the respective rights and obligations of the parties is in the judicial branch.” (*Klostermann v Cuomo*, 61 NY2d 525, 536 [1984]).

Petitioners have established a right to mandamus relief. Numerous cases, including from our highest court, have awarded relief in analogous circumstances. In *NRDC v New York City Dept. of Sanitation*, 83 NY2d 215 [1994], the Court of Appeals upheld an award of mandamus to correct the City’s failure to implement a local law requiring the establishment of a city-wide recycling program. The Court found that the language of the law created a clear right to enforcement of its terms. “The use of the verb ‘shall’ throughout the pertinent provisions illustrates the mandatory nature of the duties contained therein. . . . [T]he compulsory language of the provisions with which petitioners seek compliance unquestionably evinces an intent on the part of the City Council to impose mandatory duties upon respondents.” (*Id.* at 220).

Similarly, in a case decided the same day as *NRDC*, the Court of Appeals held that claims of budgetary constraints were insufficient to relieve the City of a duty imposed by the City Charter to establish an independent budget office (“IBO”). (*New York Public Interest Research Group v Dinkins*, 83 NY2d 377 [1994][“*NYPIRG*”]). Despite a requirement in the City Charter to establish the IBO, appoint a director, and fund the IBO’s operations within a specific fiscal year, the Mayor recommended postponing the implementation in light of a major budget shortfall. The City

Council agreed and for two years in a row approved budgets that made no provision for the IBO. Upholding the lower courts' award of mandamus, the Court of Appeals held that the language of the Charter spoke in mandatory terms and that the budgeting decisions of the City Council could not affect an implied amendment of the Charter's obligations. (*NYPIRG*, 83 NY2d at 383-86). The City argued that it had "decided to divert money that would have funded the IBO to other vital City services," and therefore that the award of mandamus was an abuse of discretion. The Court of Appeals rejected that argument. (*Id.* at 387). Even where a statute does not provide an express deadline, mandamus to compel may be ordered. (*Matter of Utica Cheese v Barber*, 49 NY2d 1028 [1980] [agency action "at some unknown time in the future" did not satisfy statutory requirement to act on application "within reasonable time"]).

Respondent's reliance on a series of federal cases, applying a different standard, does not diminish the force of these New York precedents. Asked at oral argument to articulate why the foregoing cases were not effectively controlling on the outcome here, respondent argued in essence that the present situation was more "complicated."¹ It is undoubtedly true that the task placed before the DEC is very complicated indeed. But as a legal argument, this is unavailing. Respondent's proposition is without objective guardrails. A Court is poorly equipped to determine when a circumstance is too administratively complicated for an agency to be ordered to follow the law. The circumstances faced by the City of New York in *NRDC* and *NYPIRG* were undoubtedly complicated, yet our highest court insisted that the City follow the law. Adopting a "complicated test" would, in reality, simply re-introduce agency discretion into actions that are non-discretionary by law.

¹ The Court has not yet received a transcript of the oral argument but has proceeded with this Decision and Order in light of the potential prejudice to all parties of further delays.

As petitioners correctly perceive, it is respondent's supplemental letter brief which illustrates the problem with DEC's approach to its Climate Act obligations. Respondent's August 11, 2025 supplemental letter brief (NYSCEF Doc. No. 91) contends that promulgating Climate Act-compliant regulations is "infeasible." Based on the argument that follows, it appears that this adjective was well-chosen. Infeasible does not mean impossible, precisely, but rather impracticable. Here, as explained by DEC, the promulgation of regulations is not infeasible because the agency lacks the necessary expertise. To the contrary, there is no question the agency possesses deep, relevant expertise. It is also not infeasible because of time constraints. Indeed, the administrative record reflects that one version of compliant regulations exists in final, or near-final, form. And, it is not infeasible because the experts have concluded that achieving the emissions reductions targets is scientifically unachievable. Nowhere does DEC take this position. Rather, respondent has deemed the regulations to be "infeasible" because, in its opinion, achieving the law's targets "would require imposing extraordinary and damaging costs upon New Yorkers[.]" (*Id.* at 2). DEC continues, "the 2030 goal itself is not practically feasible *due to costs consumers simply cannot bear.*" (*Id.* at 5).²

Whether DEC's conclusion is right or wrong, making this judgment is beyond the scope of its authority under the Climate Act. To be sure, the Legislature could, and in other contexts probably has, instructed the DEC (or other agencies) to pursue certain goals through regulation and in so doing authorized the agency to make cost/benefit determinations regarding how best to advance those goals. But that is not what the Climate Act did. The Legislature has already decided that the Climate Act's goals "shall" be achieved. The Legislature has not empowered DEC to set

² As petitioner points out, the extent of these projected costs may itself be partly a result of the agency delay in promulgating the required emissions-reductions regulations. (NYSCEF Doc. No. 92).

its own targets, to achieve results within a range, or to simply to make progress. Instead, it has specified a result and required DEC to issue regulations that “shall” fulfill it.

Faced with this mandate, DEC does not have the discretion to say no or to decide that it has the authority to choose not to follow the express legislative directive at issue. Under our system of separation of powers, upon concluding, based on its subject-matter expertise, that achieving the goals of the Climate Act might be “infeasible” for the reasons stated, DEC had two options. One, it could issue compliant regulations anyway, and let the chips fall where they may for the State’s political actors. Or, two, it could raise its concerns to the Legislature so that the State’s elected representatives could make a determination about what costs their constituents can or cannot bear in the pursuit of reining in climate change. The Legislature could then amend the Climate Act – or not. However, applying well-established principles of law, it is clear that what DEC could not do is unilaterally determine the course of New York’s environmental policy by refraining from issuing legally-mandated regulations. Accordingly, petitioners have demonstrated entitlement to relief in the form of an order mandating promulgation of Climate Act-compliant regulations.

On this Record and in the course of making the instant determination, the Court must next address the issue of setting a timeframe for DEC’s compliance with its mandatory obligation. The deadline under the Climate Act has already long-passed. Petitioners, noting the purported existence of compliant regulations within DEC, suggest 30 more days is sufficient. At some level, this belies petitioners’ claim, and supports respondent’s hypothesis, that petitioners are not content-neutral about the required regulations, but rather seek a specific regulatory solution. Respondent, on the other hand, essentially seek an open-ended grace period to promulgate proposed regulations that would diminish the impact of the instant determination.

The Court has no more authority to set climate policy than DEC, and would generally expect to have less. However, bearing in mind the factors and issues addressed by the parties, the Court considers that, at this point, it would be improvident to order relief before the next regularly scheduled session of the Legislature convenes. The Court takes judicial notice that the next such session is scheduled to commence in January 2026. If legislative action modifies DEC's obligations under the Climate Act, DEC will act in accordance therewith. In the absence of legislative relief, however, respondent shall "promulgate rules and regulations to ensure compliance with the statewide emissions reductions limits" set forth in the Climate Act no later than February 6, 2026. Respondent is cautioned that, having afforded it with the time to both further develop its regulations and address its concerns to the political branches, the Court is highly unlikely to grant extensions of this deadline.

The Court has otherwise considered any arguments/submissions not specifically addressed herein and finds them unavailing or rendered academic. Accordingly, it is hereby

ORDERED, ADJUDGED, and DECREED that the petition is granted to the extent set forth herein and respondent is hereby directed to draft regulations under ECL §75-0109, and issue the regulations on or before February 6, 2026; and it is further

ORDERED that relief not expressly granted herein is denied; and it is further

ORDERED that any remaining claims are dismissed as moot.

This shall constitute the Decision and Order of the Court. The original Decision and Order is being filed with the Albany County Clerk via NYSCEF. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable

provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: October 24, 2025
Kingston, New York

ENTER,



JULIAN D. SCHREIBMAN, JSC

Papers considered: Notice of Petition, Verified Petition and Memorandum of Law by Rachel Spector, Esq. dated March 31, 2025, with Affirmations and Exhibits; Respondent-Defendant's Verified Answer and Memorandum of Law by Meredith G. Lee-Clark, Assistant Attorney General, dated May 7, 2025, with Affirmation and Exhibits; Petitioners-Plaintiffs' Reply Memorandum of Law dated May 28, 2025; Notice of Motion and Amicus Brief by counsel for Amicus curiae dated June 4, 2025, with Exhibit and Affirmations; Respondent-Defendant's supplemental letter submission dated August 11, 2025; and Petitioners-Plaintiffs' supplemental letter submission dated August 14, 2025.