

ENVIRONMENTAL AND ENERGY INFORMATION MEMO

JANUARY 2, 2025

New York Becomes Second State to Enact Climate Change Superfund Act

On Dec. 26, 2024, Governor Hochul signed the Climate Change Superfund Act (Act) into law, making New York the second state (after Vermont) to impose the cost to repair and prevent climate change impacts on a broad segment of the fossil fuel industry.

The Act states that climate change, which results primarily from combustion of fossil fuels, is an immediate and grave threat to New York's communities, environment and economy. To address the harm that has occurred and that will occur in the future, the Act amends the New York State Environmental Conservation Law to establish a climate change adaptation cost recovery program predicated on the "polluter pays" principle.

The cost recovery program is intended to secure compensatory payments from responsible parties to provide revenue for climate change adaptive infrastructure projects in New York. Payments will be used for new or upgraded infrastructure to mitigate and protect against climate change impacts. Beginning in 2026, the program will assess \$3 billion per year for 25 years (a total of \$75 billion) on fossil fuel companies to partially offset the hundreds of billions of dollars required to repair and prepare for climate change events between now and 2050.

The Act establishes a "covered period" of Jan. 1, 2000 through Dec. 31, 2018, and payment will be demanded from any entity which, during any part of the covered period, was engaged in the business of extraction of fossil fuels or the refining of petroleum products and which the New York State Department of Environmental Conservation (NYSDEC) determines is responsible for more than one billion tons of covered greenhouse gas (GHG) emissions.

Cost recovery demands will be issued to responsible parties who are considered strictly liable for a share of the costs. Individual cost recovery demands will be issued in amounts representing the same ratio to \$75 billion as a responsible party's share of covered GHG emissions is to the aggregate GHG emissions of all responsible parties.

The Act applies a formulaic approach to determining the amount of GHGs attributable to a responsible party. Specifically, 942.5 tons of CO₂e is treated as released for every million pounds of coal attributable to a party; 432,280 metric tons of CO₂e is treated as released for every million barrels of crude oil attributable to a party; and 53,440 metric tons of CO₂e is treated as released for every million cubic feet of fuel gas attributable to a party.

While targeted to entities engaged in extracting and refining fossil fuels, a potential open question may be the scope of Act's eventual reach. For example, "covered greenhouse gas emissions" is defined to mean the total quantity of GHGs released into the atmosphere during the covered period (expressed in CO₂e), including GHGs resulting from "extraction, storage, production, refinement, transport, manufacture, distribution, sale and use" of fossil fuels or petroleum products extracted, produced, refined or sold by the entity. The means by which GHGs have been generated (e.g., distribution, sale, use) is broader than the activities engaged in by responsible parties (extraction or refining). Accordingly, it will be important to monitor the NYSDEC's rulemaking efforts to determine whether the Act may be interpreted to capture additional entities whose activities lead to the GHG emissions.

The Act represents a bold effort to ensure redress for climate change harms, and while praised by environmental advocates, its effectiveness will certainly be tested in the courts.

If you have any questions regarding the material provided in this informational memo, please contact [Robert Tyson](#), or an attorney in Bond's [environmental and energy practice](#) with whom you are regularly in contact.

