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ENVIRONMENTAL  
ADVOCATES OF **NEW YORK**  
YOUR GOVERNMENT WATCHDOG

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

Peter Iwanowicz, Executive Director  
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 unhealthful smog, soot, and climate pollution that is associated with motor vehicles.

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
			<b>23</b>

According to NYSERDA (<http://www.nyserda.ny.gov/-/media/Files/EE/RGGI/2015-RGGI-Operating-Plan.pdf>):

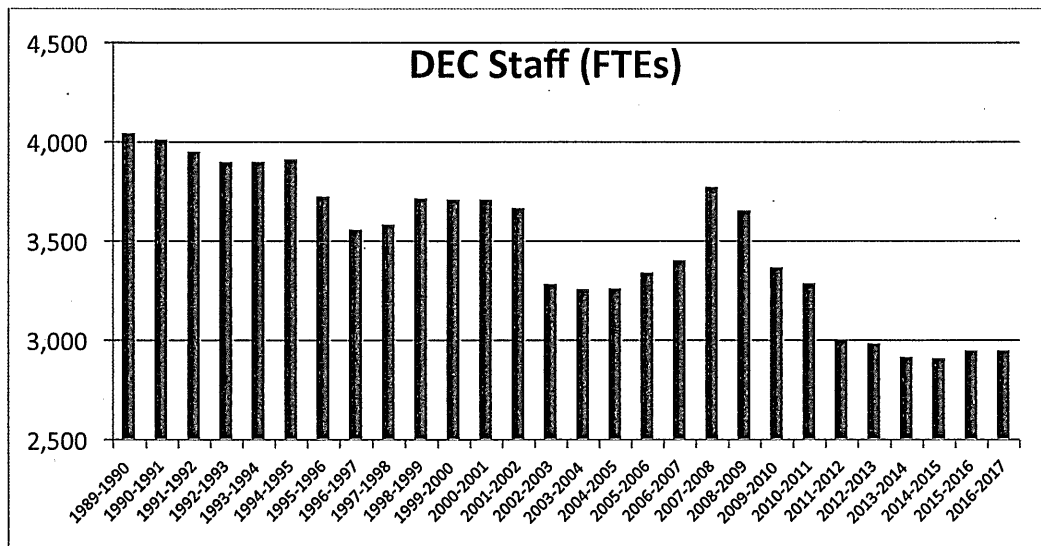
Historically the investment of RGGI auction proceeds has been designed to complement existing programs, including the System Benefits Charge (SBC), Renewable Portfolio Standard (RPS), Weatherization Assistance Program, Energy Efficiency Portfolio Standard (EEPS), and various transportation programs funded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

- 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.

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

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December 17, 2015

Hon. Andrew M. Cuomo  
Governor of New York State  
Executive Chamber  
New York State Capitol  
Albany, New York 12224

Dear Governor Cuomo:

As clean energy advocates and supporters of your efforts to address climate change, we write to request that your 2016-2017 Executive Budget proposal not contain any diversion of revenue from the Regional Greenhouse Gas Initiative (RGGI) auction proceeds to the state budget. New York State is implementing climate policies that set an example for the nation and the world, and a budget strategy that diverts RGGI proceeds for General Fund purposes is inconsistent with, and in fact would undermine, those efforts.

As you have articulated, the impacts of climate change are already affecting New York's economic security, safety, and public health. Poor air quality, which is worsened by climate change, is making our children sick and shortening the lives of some seniors. Extreme weather events cost our economy billions in lost production, burden infrastructure, and damage property.

Under your leadership, New York is becoming recognized as a true clean energy and climate leader. The State Energy Plan sets aggressive and important goals to reduce our climate pollution by 80 percent of 1990 levels by 2050. The Plan includes 2030 goals of reducing climate pollution by 40 percent, receiving 50 percent of our energy from clean renewable sources, and increasing energy efficiency by 23 percent. The reaffirmation of these goals when you appeared with former Vice President Al Gore and signed the Under 2 MOU sent a clear and bold message that New York State is serious about acting on climate. Your call for the Public Service Commission to codify the Energy Plan's renewable energy goals and your administration's

engagement in regional efforts around offshore wind and greenhouse gas reductions from the transportation sector are game changers.

The cap and invest model established through RGGI has been a tremendous success. RGGI is the first market-based standard in North America to limit power plant carbon dioxide pollution. It has been held up by the federal government as a model for the nationwide effort to cap climate pollution through the Clean Power Plan.

On top of its evident health and environmental benefits, RGGI has proven to be an economic driver throughout the region. RGGI allowance auctions have, thus far, generated over \$2.3 billion.<sup>1</sup> States have invested auction proceeds in a variety of consumer benefit initiatives, including energy efficiency, renewable energy, direct bill assistance, and additional climate pollution reduction programs. New York has benefitted from over \$895 million<sup>2</sup> in auction proceeds, the bulk of which has been allocated to renewable power, efficiency, and clean energy technology and market innovation programs—creating jobs, lowering consumer costs, and driving further reductions in emissions. To date, RGGI programs have provided energy bill savings and other benefits to more than 130,000 households and 2,500 businesses spanning all of New York State's 62 counties.<sup>3</sup>

The need to act on climate is urgent and imperative, and your leadership shows that New York is a serious player in the efforts against climate change. The international agreement by nearly 200 countries to move forward with climate action is an amazing start to the cleaner, healthier future the world needs. With the current leadership in Congress continuing to stand in the way of national progress, it's up to states—particularly New York—to set the standards for others to follow.

RGGI funds, and the clean energy and efficiency initiatives they support, are an essential component of the state's overall climate action plan. Repurposing funds from the carbon abatement programs specified by Department of Environmental Conservation and New York State Energy Research Development Authority regulations threatens the integrity of RGGI in New York and causes a ripple effect throughout the region if other states also choose to shift carbon allowance revenues away from their intended use.

We appreciate your attention to this matter, and we look forward to working with you to make New York the climate leader our nation needs.

Sincerely,

32BJ 1199  
Acadia Center  
Adirondack Mountain Club

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<sup>1</sup> Regional Greenhouse Gas Initiative, Auction Results, [http://www.rggi.org/market/co2\\_auctions/results](http://www.rggi.org/market/co2_auctions/results).

<sup>2</sup> Regional Greenhouse Gas Initiative, Cumulative Allowances and Proceeds (New York), [http://www.rggi.org/docs/Auctions/30/NY\\_Proceeds\\_By\\_Auction.pdf](http://www.rggi.org/docs/Auctions/30/NY_Proceeds_By_Auction.pdf).

<sup>3</sup> New York State Department of Environmental Conservation, The Regional Greenhouse Gas Initiative (RGGI), <http://www.dec.ny.gov/energy/rggi.html>.

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 Advocates of 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  
Union of Concerned Scientists

cc: Hon. John Flanagan, Temporary President of the Senate  
Hon. Carl Heastie, Speaker of the Assembly  
Hon. Andrea Stewart-Cousins, Senate Democratic Conference Leader  
Hon. Brian Kolb, Assembly Minority Leader  
Hon. Jeffrey Klein, Independent Democratic Conference Leader  
Mary Beth Labate, Director, Division of Budget  
Jim Malatras, Director of State Operations  
Matthew Millea, Deputy Director of State Operations  
Kate Dineen, Assistant Secretary for the Environment

