



**TESTIMONY OF EARTHJUSTICE BEFORE THE JOINT HEARING OF THE SENATE  
FINANCE AND ASSEMBLY WAYS AND MEANS COMMITTEES REGARDING THE  
FISCAL YEAR 2022-23 ENVIRONMENTAL AND ENERGY BUDGET PROPOSALS**

Good afternoon, my name is Liz Moran, and I am the New York Policy Advocate for Earthjustice. Earthjustice, as the nation's first and largest national nonprofit environmental law organization, brings far-reaching change by enforcing and strengthening environmental laws on behalf of hundreds of organizations and communities. We are dedicated to defending the right of all people to a healthy environment, protecting our magnificent wild places and species, and fighting to curb climate change.

Thank you for the opportunity to testify today on the Governor's SFY2022-23 budget energy and environment proposals. The Governor's proposed budget included a number of notable items, including:

- \$4 billion Environmental Bond Act
- \$400 million for the Environmental Protection Fund (EPF)
- \$500 million for the Clean Water Infrastructure Act (CWIA)
- \$17 million for electrification of New York State's light-duty vehicle fleet
- Increased funding for the Climate and Resilient Farming Grant Program, for a total of \$17.5 million
- A ban on gas for new construction by 2027
- Changes to energy code to improve energy efficiency in buildings and appliances
- Improved protections for wetlands
- A mandate to fully electrify the school bus fleet by 2035, with a ban on new fossil fuel-powered bus purchases by 2027
- Changes to the Public Service Law which loosens the 100-foot rule for gas
- Increased staffing for the Department of Environmental Conservation

Earthjustice is excited to see many of these proposals and increased investments, but it will be critical for the Legislature to strengthen and build upon several of these proposals, which we have detailed in the subsequent sections of our testimony.

There are some important areas that have not been addressed in the Governor's budget proposal. Of particular note is the lack of significant funding towards addressing the climate crisis. The Governor's budget falls far short of providing the funding necessary towards a just transition and meeting the Climate Leadership and Community Protection Act (CLCPA) mandates. A recent report to the Climate Action Council found that annual investments to

ensure New York is on track to meet its climate mandates must be at least \$10 billion.<sup>1</sup> While this may seem significant, it is miniscule in comparison to inaction – this same report found that costs of climate inaction would exceed \$80 billion.<sup>2</sup>

To summarize our positions, Earthjustice feels a strong budget should have the following:

- \$15 billion in climate funding
- \$1 billion for the Clean Water Infrastructure Act, including additional funding for the replacement of lead service lines and to support private well testing
- A ban on gas for new construction by the end of 2023
- Increased funding for electrification of the state fleet, and must include medium- and heavy-duty vehicles
- Absolutely no raid to RGGI funds
- Increased funding for the Pollution Prevention Institute (P2I) and the Interstate Chemicals Clearinghouse (IC2) within the Environmental Protection Fund
- Meaningful reductions to the production of plastic and plastic waste through a strong Extended Producer Responsibility program
- \$1 billion to end lead poisoning in housing
- Policy to provide water quality protections to private well owners

The remainder of our testimony is organized by topic to provide detailed reactions to what is in the executive budget, as well as those which were left out.

### **Provide New York's Environment with the Funding it Needs**

The climate crisis is already harming New York's public health and environment. Just this past summer, New York saw record flooding and heatwaves, resulting in deaths. The remnants of Hurricane Ida killed 46 people across four states that were hit by the storm, which includes 16 New Yorkers.<sup>3</sup> Devastation like this will only get worse as the climate continues to warm – New York can expect to see more frequent extreme weather events, increased flooding and heat waves, rising water levels, and more.

The costs of the climate crisis have already been exceptionally high. Hurricane Sandy, which took the lives of 44 New Yorkers in 2012, inflicted an estimated \$19 billion in damages and lost economic activity in New York City.<sup>4</sup> There have also been astronomical costs associated with

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<sup>1</sup> New York State Climate Action Council, October 14, 2021 meeting presentation, page 37  
<https://climate.ny.gov/CAC-Meetings-and-Materials>

<sup>2</sup> New York State Climate Action Council, October 14, 2021 meeting presentation, page 34  
<https://climate.ny.gov/CAC-Meetings-and-Materials>

<sup>3</sup> "As Ida Deaths Rise, N.Y. Leaders Look Toward Future Storms," The New York Times, updated November 12, 2021, <https://www.nytimes.com/live/2021/09/03/nyregion/nyc-flooding-ida>

<sup>4</sup> NYC Recovery, "Impact of Hurricane Sandy," accessed January 27, 2022,  
<https://www1.nyc.gov/site/cdbgdr/about/About%20Hurricane%20Sandy.page>



public health damages due to air pollution and reliance upon fossil fuels. As one example, the health impact costs associated with fossil fuel combustion in buildings has cost New York City \$12.5 billion annually, and the rest of New York State \$9.2 billion annually.<sup>5</sup>

Additionally, the warming climate is placing additional strains on New York's water infrastructure. With increased freeze and thaw cycles and increased precipitation, New York's aging water infrastructure is suffering. Estimates dating back to 2008 found that New York will need to invest \$80 billion in drinking and wastewater infrastructure to ensure it is properly repaired, replaced, and upgraded.<sup>6</sup> These needs will only grow without proper investments to meet demands and bold policy and investments to address climate change.

The cost of inaction is greater than the investments necessary to meet New York's climate goals. According to a report to the State Climate Action Council, the cost of inaction exceeds \$80 billion. But the cost benefits of proper investment are tremendous – net benefits of meeting New York's CLCPA mandates are in the range of \$80-\$150 billion. Additionally, public health benefits range from \$160-\$170 billion.<sup>7</sup>

The Governor's proposed budget includes some good funding initiatives, including increasing the Environmental Bond Act from \$3 to \$4 billion, increasing EPF to \$400 million, and including the next \$500 million installment for the CWIA. The Governor has also wisely increased staffing for the Department of Environmental Conservation (DEC). But this still far short of the investments needed to ensure New York meets its CLCPA mandates and protects public health and the environment.

*Include \$15 Billion for Climate Change*

Earthjustice proudly joins our coalition partners in NYRenews, and others, in calling for the SFY2022-23 budget to include \$15 billion to address the climate crisis. As discussed earlier in our testimony, it is estimated that New York will need to invest at least \$10 billion annually to meet New York's CLCPA mandates. New York's CLCPA has made the State a national climate leader, but without providing the funding necessary to meet the goals, these goals will become just that – nothing but goals on paper.

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<sup>5</sup> Talor Gruenwald and Stephen Mushegan, "New York Emits More Building Air Pollution Than Any Other State," RMI, May 18, 2021, <https://rmi.org/new-york-emits-more-building-air-pollution-than-any-other-state/>

<sup>6</sup> Matthew Hamilton, "New York's water infrastructure needs estimated at \$80B over 20 years," TimesUnion, February 13, 2017, <https://www.timesunion.com/local/article/New-York-s-water-infrastructure-needs-estimated-10930256.php>

<sup>7</sup> New York State Climate Action Council, October 14, 2021 meeting presentation, page 34 <https://climate.ny.gov/CAC-Meetings-and-Materials>

There are a number of ways to generate the necessary funding, including instituting a polluter penalty, as would be accomplished through the Climate and Community Investment Act (CCIA), and beginning the process of ending the most egregious fossil fuel subsidies. The CCIA (S.4264-A/A.6967) would generate the needed \$15 billion annually by charging polluters penalties. Ending New York's most egregious fossil fuel subsidies (S.4816/A.6882) would save New York approximately \$334 million annually. Every year, New York gives out \$1.5 billion in fossil fuel subsidies – eventually, all of these subsidies will need to be eliminated.

It is critically important that the funding to address the climate crisis is paid for by the polluters – the fossil fuel industry that spent billions over the course of decades lying to the public about their role in causing the crisis and harming public health – and not on the backs of everyday New Yorkers. Additionally, this funding must be directed towards the New Yorkers that have been the most adversely impacted by the harms of the climate crisis, low-income communities and communities of color.

To ensure New York meets its climate mandates and prioritizes the needs of disadvantaged communities, Earthjustice and NYRenews recommends \$15 billion in climate funding goes towards the following: a climate jobs and infrastructure fund, a community just transition fund, a worker and community assurance fund, and a household climate fund.<sup>8</sup>

*Include \$1 Billion for the Clean Water Infrastructure Act*

Earthjustice urges the legislature to build upon the Governor's proposal by including a total of \$1 billion to the Clean Water Infrastructure Act.

New York's water infrastructure needs are tremendous. Thankfully, starting in the SFY2015-16 budget, New York began to put significant investments towards water infrastructure repairs, replacements, and upgrades through the creation of the Water Infrastructure Improvement Act grant program. In the SFY2017-18 budget, this was built upon with the creation of the Clean Water Infrastructure Act. Today, New York has invested \$3.5 billion towards water infrastructure and other water needs.

But with over \$80 billion in water infrastructure needs, which doesn't include the funding needed towards source water protection, addressing unregulated dangerous contaminants, and replacing lead service lines, this funding remains a chip towards overall need.

A specific line item allocation for the LSLRP through the Clean Water Infrastructure Act and the Environmental Bond Act is needed to dramatically up the resources provided for this initiative. The LSLRP has only awarded \$30 million in grants since 2017. As of 2019, the program had only replaced 200 LSLs, and to date it has only replaced approximately 2,000 LSLs. Many

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<sup>8</sup> NYRenews, "2022 Budget Demand," [https://drive.google.com/file/d/1C2wBqT3s6W7nlN1189K7gMeNnfvkhD\\_q/view](https://drive.google.com/file/d/1C2wBqT3s6W7nlN1189K7gMeNnfvkhD_q/view)



communities that received awards, including Albany and Newburgh, have used all of their funds.

Additionally, we urge \$20 million is allocated within the Clean Water Infrastructure Act to assist private well owners with testing for contaminants.

*Support \$400 Million for the Environmental Protection Fund*

The Governor's Executive budget proposal increases the EPF by \$100 million, from \$300 million to \$400 million. This increase will advance work to protect New York's environment and improve quality of life in every county of New York State. Earthjustice strongly supports this increase and urges the Governor and the Legislature to work together towards a \$500 million EPF.

The Environmental Protection Fund offers much needed funding to various sectors in New York's environment, and the benefits are apparent:

- According to a study by The Trust for Public Land, every \$1 invested in land and water conservation through the EPF returns \$7 to the state.
- The EPF supports 350,000 jobs across New York in a broad spectrum of industries including construction, agriculture, recreation, tourism, forestry, recycling, and recreational fishing.
- EPF-supported industries add \$40 billion to the state's economy every year.

Earthjustice especially supports the funding included in the Governor's budget for the following programs within EPF:

- \$17.5 million for the Climate Resilient Farms program – This program is critical for addressing climate pollution from the agricultural sector and meeting New York's CLCPA mandates. However, we want to ensure this funding goes towards the most beneficial projects.
- \$15 million for Soil and Water Conservation Districts
- \$13 million for Environmental Justice

It is critical that a few other programs also see increased investments, including:

- Increasing funding for the Pollution Prevention Institute (P2I) and Interstate Chemicals Clearinghouse (IC2) to \$7.5M overall and \$500K for the IC2, above the Governor's proposed static \$4M overall and \$100K to the IC2
- Increasing funding for the Children's Environmental Health Centers to \$4M from the Governor's static proposal of \$2M.

### *Increase Staffing for DEC*

Earthjustice is pleased to see the Governor's budget includes the addition of 94 new staffers to the Department of Environmental Conservation; however, after suffering years of funding and staffing cuts, more must be done to bolster DEC. DEC is not only tasked with implementing and enforcing the nation's leading climate law, but must also properly enact and enforce a growing number of environmental laws and regulations. As the climate crisis worsens, it is more important now than ever that DEC is strongly staffed.

### **Adopt Bold Climate Policies and Electrify Everything**

New York took an important step in adopting the Climate Leadership and Community Protection Act. The CLCPA is a nation-leading policy that sets into statute climate goals that align with the recommendations of global climate scientists to ensure global temperatures do not exceed 1.5 degrees Celsius of warming.

But having these goals alone is far from enough – New York must adopt strong policies to ensure the goals are actualized. The public is currently in the process of reviewing and commenting on the CLCPA Scoping Plan, which offers a number of ways for the state to meet its climate goals, but the Governor and Legislature should not wait until that process is done. It is clear that policies will need to be adopted through the budget and legislative process to transition New York off fossil fuels and towards a green, electrified economy.

The Governor's Executive Budget offers a few policies that have the potential to put New York on a strong path for meeting our climate goals, but it will be important for the legislature to strengthen and build upon them. As one clear example, the Governor proposed a ban on gas for new construction, but the timeline is far too slow.

### *Ban Gas for New Construction Starting in 2024, and Change New York's Codes and Standards*

Earthjustice was pleased to see the Governor's Executive Budget included a ban on gas in new construction and meaningful changes to New York's codes and standards to enable more buildings and appliances to be energy efficient. However, the Governor's timeline for implementation of a gas ban for new construction is far too slow.

Earthjustice urges that a gas ban for new construction goes into effect starting in 2024. The legislature can easily do this by including S.6843-A/A.8431 in the budget.

Recently, New York City joined over fifty municipalities in California and elsewhere in adopting policy to ban gas in new construction. New York City's Local Law 154 bans gas in new buildings 6 stories and under starting in 2024, and 7 stories and larger starting in 2027.



Constructing all-electric buildings starting in 2024 is entirely feasible and necessary to ensure that New York meets its climate mandates and halts expansion of fossil fuel infrastructure and dependence as soon as possible. It is time for New York to adopt this policy.

Electrifying buildings and making them more energy efficient is a key component of addressing both climate change and the even more immediate public health threats posed by fossil fuels, which disproportionately harm communities of color. In New York, buildings are responsible for approximately 60% of greenhouse gas emissions, and in New York City it's even larger, at 70%—New York cannot be a climate leader without addressing fossil fuel use in buildings.

Additionally, burning fossil fuels in buildings contributes to dangerous air pollution. Stoves and heating appliances that use gas or oil emit nitrogen dioxide—which causes learning deficits, increased susceptibility to asthma and allergies, aggravated respiratory symptoms, and changed lung function—as well as particulate matter—which can increase the risk of heart and asthma attacks, and lead to premature death. A study by the Rocky Mountain Institute found that children living in homes with a gas stove are 42% more likely to experience asthma symptoms. Chronic exposure to air pollution also increases the risk of death from COVID-19. Indoor fossil fuel combustion is also a significant source of outdoor air pollution, including particulate matter and smog. Communities of color are exposed to higher levels of this pollution than the general population.

Not only will policies to ban gas in new construction and improve energy efficiency protect public health, but these policies are also cost effective and will create jobs. According to an analysis from Rocky Mountain Institute, new all-electric single-family homes are in many cases cost-competitive, or cheaper, than the new fossil fuel-based homes.<sup>9</sup>

Additionally, all-electric buildings are already being constructed in New York. Some examples include:

- **Zero Place, a mixed-use, 4-story, carbon-free building** in late development in New Paltz, 64,000 square feet including 46 apartments and retail.
- **Autumn Gardens, a 72-unit public housing development** at 788 E. High St. in the City of Lockport transitioned to geothermal heating in 2015.
- **Horsefeathers, a 30,000 square foot 24-unit building** with restaurant on ground floor in Buffalo transitioned to geothermal.
- **Tompkins Financial Corporation Headquarters, 7-story commercial building** in Ithaca is all-electric relying on air source heat pumps.

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<sup>9</sup> Claire McKenna, Amar Shah, Leah Louis-Prescott, "All-Electric New Homes: A Win for the Climate and the Economy," October 15, 2020, <https://rmi.org/all-electric-new-homes-a-win-for-the-climate-and-the-economy/>

- **City Centre, over 200,000 square feet of apartments, commercial and retail space** completely reliant on air source heat pump at 301 East State St in Ithaca.
- **100 Flatbush Ave, a 44-story mixed use tower** in downtown Brooklyn with 441 residential units and 30,000 square feet of retail.

And that is only a small snapshot of the all-electric buildings coming online in New York. Banning gas for new construction starting in 2024 is easily doable and a win for climate, air quality, and jobs.

*Electrify School Buses, Transit Buses, and the State's Entire Vehicle Fleet (Not Just Passenger Vehicles)*

Earthjustice strongly supports the inclusion of a statewide program to electrify school buses (ESBs) and the state fleet in the SFY2022-23 budget. However, we call for several additions to make these proposal smore robust: 1) more aggressively funding electrification of the state fleet, 2) include medium- and heavy-duty vehicles in the state fleet electrification mandate, 3) devoting State funding to support the ESB mandate, and 4) to establish a parallel mandate to electrify the state's fleet of transit buses.

The technology to electrify school buses exists today, and with a meaningful State commitment to fully transition the state's fleet to zero-emissions, the cost differential will decline substantially in the near- to medium-term. The total cost of ownership of ESBs compared to diesel is already competitive and will be favorable by the end of the decade if not sooner, based on the lower fuel and maintenance costs of electric technology. A rapid and complete transition away from diesel and other fossil fuels is not just technically and economically viable, but is also a necessary component of any strategy to achieve the CLCPA's binding emission limits. Moreover, robust State investment would provide substantial public health benefits that would meaningfully reduce exposures to toxic air pollutants for schoolchildren, workers, and in communities throughout the State.

While we applaud the inclusion of a school bus electrification mandate, we have the following recommendations to ensure the transportation electrification policies set forth in the budget are successful and will benefit all New Yorkers:

- **Provide funding to support the ESB mandate.** School districts (and transit agencies and other fleets) will need a substantial boost in the form of State dollars to effectuate the policy and ensure it does not turn into an unfunded mandate. Especially considering the heightened burdens posed by the Covid-19 pandemic, we do not want to be in the position of forcing districts to choose between electrification of buses versus other critical needs. A dedicated funding stream to specifically support entities electrifying fleets – with money to cover upfront cost differentials, and technical assistance – must be a part of the State's budget.





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- **Create a permanent and robust statewide program.** We support a model that would fund ESB deployments through a centralized, statewide program under the New York State Energy Research and Development Authority. NYSERDA already operates the New York Truck Voucher Incentive Program (NYTVIP). Currently, NYTVIP is funded through Volkswagen mitigation funds. New York State will inevitably need a permanent and dedicated source of funding to incentivize fleet operators to transition to zero-emissions, especially in the early years of the transition. A centralized, State-administered program brings many advantages, as it would allow for policy options that would be otherwise unavailable. The level of funding can be calibrated to offer higher incentives in the near-term, and can ramp down, or be redirected, as overall purchase costs for zero-emission technology declines and more entities are already on the path away from fossil fuels. Moreover, by administering the program through NYSERDA, there is more certainty that these funds will be dedicated in line with the CLCPA's climate and equity mandates.
- **Target school buses but include transit buses, trucks and other medium- and heavy-duty vehicles.** While we support the need to pursue widespread and rapid ESB deployment, this is not the only sector that will need State support to ramp up progress towards a zero-emission transportation sector. Transit buses, for example, are primed for widespread electrification today, and as yet the State has not created a target to electrify these vehicles. And, to demonstrate leadership, the State must include its medium- and heavy-duty fleet in the state fleet electrification proposal. State funds will be required to support all types of fleets, including trucks and other medium- and heavy-duty vehicles (MHDVs), in their transition to zero-emissions. These funds will be critical to support the State's adoption of the Advanced Clean Fleets rule, which we understand is pending. Funds can be designed to benefit smaller businesses, business owners from disadvantaged communities, as well as those that operate in or near disadvantaged communities.
- **Prioritize investments in disadvantaged communities.** One of the main benefits of a NYSERDA-administered program is that it would allow the State to prioritize funding in disadvantaged communities and communities suffering from poor air quality and related negative health outcomes, as mandated by the CLCPA. A targeted approach to accelerating turnover of diesel vehicles in disadvantaged communities suffering from unhealthy air quality should be a foundational goal of State investments in clean technology. Ensuring the State can prioritize funds in this way should be one of the main principles of any ESB and MHDV funding program.
- **Leverage state procurement to promote good jobs that benefit local communities and minimize impacts on displaced workers.** We have been working in coalition with labor partners to advocate for best-value procurement in transit buses, and we believe a State program for ESBs and other MHDVs would allow for a similar opportunity to leverage public money to maximize the creation of good jobs. We also support initiatives to retrain incumbent workers.

- **Provide technical assistance and support to districts and contractors.** Cost is not the only barrier to wider ESB deployment. School districts may lack the technical resources or expertise needed to pilot new electric vehicle technology and facilitate a transition away from fossil fuel technology, even if they have the will and funds to do so. A State program should address these “soft” barriers, both with respect to vehicles and the charging infrastructure. The State should also provide support for utilities and local governments to ensure that permits are secured and that technical challenges are not the barrier to a fully electric school bus fleet. Finally, the State should make sure the application process is as simple as possible and funds are disbursed in a timely way.
- **Evaluate barriers and plan ahead for the transition.** The State will need to understand the impacts of and potential barriers to a transition of this scale. A planning study can ease anxiety and provide a roadmap to allow State agencies, local governments, and school districts to prepare and ensure the transition goes as smoothly as possible. Such a study should be designed with significant outreach to stakeholders and completed as soon as possible.
- **Direct funding where it will be most beneficial.** While it will be necessary to direct funding to cover the incremental cost differential between fossil fuel and zero-emission school buses, there are other obstacles that the State will need to address to ensure a rapid transition to a zero-emissions transportation system. For that reason, the State’s program should also make funds available for other MHDVs, and additional support like technical assistance grants, charging infrastructure, and other capital-intensive applications. Relatedly, it is critical that this program is funded adequately, and that incentives are scaled appropriately – recognizing that details can be honed as the program evolves.

*Adopt a Statewide Moratorium on Proof-of-Work Cryptocurrency Mining*

New York is facing a new significant threat to its ability to meet its critical climate mandates – the rapidly growing proof-of-work cryptocurrency mining industry. While this issue does not have to be addressed in the budget, it is crucial for Governor Hochul and the Legislature to address this issue this legislative session.

Earthjustice urges the legislature to pass A.7389-B/S.6486-B (Kelles/Parker), which will establish a statewide moratorium on fossil fuel-based proof-of-work mining until an environmental review is conducted.

The urgency of addressing this matter cannot be understated. Proof-of-work mining operations have been resurrecting moth-balled fossil fuel-based powerplants across the country, and putting pressure on our electric grids, including here in New York. These “mining” activities, particularly proof-of-work mining, use enormous amounts of energy to power the computers needed to conduct business – *should this activity expand in New York, it could drastically undermine New York’s climate goals established under the Climate Leadership and Community Protection Act.*



Currently, there are two proof-of-work mining facilities with air permits up for renewal – the Greenidge Generating Station, based in Dresden on the shores of Seneca Lake and the Digihost-Fortistar North Tonawanda (FNT) plant in Western New York.

Environmental concerns regarding proof-of-work mining can be summarized as the following:

- **The energy use from proof-of-work mining is out of this world.** If Bitcoin were a country, it would rank in the top 30 countries of energy users worldwide—between Norway and Argentina.<sup>10</sup>
- **Proof-of-work mining stands to jeopardize meeting global and New York State climate goals.** A recent study published in Nature Climate Change found that Bitcoin mining alone has the potential to push the planet past the targets set by the Paris agreement.<sup>11</sup> New York State has goals under the Climate Leadership and Community Protection Act to reduce greenhouse gas emissions 80% below 1990 levels by 2050, achieve 70% renewable energy for electricity by 2030, and to reduce energy consumption in buildings by 185 trillion British thermal units (Btu) from 2025 projections. New York doesn't currently have enough renewable energy to power existing needs, let alone an industry this energy consumptive. The energy consumption from proof-of-work mining operations would prevent the state from meeting these important goals.
- **Proof-of-work mining at power plants could jeopardize water quality.** These facilities require large quantities of water to generate energy, and the water returned to water bodies is significantly hotter than the water withdrawn. Fluctuations in water temperatures can negatively impact the chemistry of water bodies and the ability of certain aquatic species to survive.
- **Proof-of-work mining generates enormous levels of electronic waste.** Each Bitcoin transaction generates the equivalent of throwing away two iPhones. According to one estimate, cryptocurrency mining produces 30,700 tons of e-waste *annually*.<sup>12</sup>

It must be noted that Earthjustice and many of our partners are not opposed to cryptocurrency or blockchain technology, nor cryptocurrency or blockchain mining – our concerns specifically lie with the hugely energy consumptive practice of proof-of-work mining. There are other forms of mining that can be used, such as the proof-of-stake mining methodology, which utilizes over 99% less energy than proof-of-work mining. Other less energy-consumptive methods include

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<sup>10</sup> See, e.g., N.Y. Times, Bitcoin Uses More Electricity Than Many Countries. How Is That Possible? (Sept. 3, 2021) <https://www.nytimes.com/interactive/2021/09/03/climate/bitcoin-carbon-footprint-electricity.html>; Cambridge Centre for Alternative Finance, Cambridge Bitcoin Electricity Consumption Index, <https://cbeci.org/cbeci/comparisons>.

<sup>11</sup> Nature Climate Change, Bitcoin Emissions Alone Could Push Global Warming Above 2°C, <https://www.nature.com/articles/s41558-018-0321-8>.

<sup>12</sup> BBC News, Bitcoin mining producing tonnes of waste (Sept. 20, 2021), <https://www.bbc.com/news/technology-58572385>

proof-of-authority, open representative voting, federated consensus, proof-of-activity, and proof-of-burn.

Environmental impacts should be carefully studied before allowing proof-of-work mining operations to expand in New York State. New York State has already demonstrated a strong history taking a precautionary approach to potentially harmful environmental practices, such as high-volume hydraulic fracturing (fracking). New York took the appropriate approach with fracking by issuing a moratorium as the State conducted a thorough environmental review process, which ultimately found that fracking could not be conducted safely. This decision has protected public health and the livelihood of businesses across the state.

Earthjustice urges New York to take the same thoughtful approach it did with fracking and apply it to proof-of-work mining. Passing A.7389-B/S.6486-B would take this incredibly reasonable step.

### **Ensure All New Yorkers Have Safe and Clean Water**

New York's waterways and drinking water faces numerous risks, ranging from the climate crisis, aging water infrastructure, and thousands of unregulated and dangerous contaminants from our industrial legacy. The PFOA drinking water crisis in Hoosick Falls that came to light in 2015 was a significant wakeup call for New York that much more must be done to protect water quality from source to tap.

Thankfully, since the Hoosick Falls drinking water crisis, the State has made a number of improvements, including increasing funding for water infrastructure and other water protections through the CWIA, adoption of the Emerging Contaminant Monitoring Act, and adopting Maximum Contaminant Levels (MCLs) for PFOA, PFOS, and 1,4-dioxane. While these policies will reduce the likelihood of what happened in Hoosick Falls from happening elsewhere in New York, but there is still much to be done to better protect New York's waters.

Earthjustice was pleased to see the Governor's Executive Budget include policy to better protect wetlands. Earthjustice also urges the Governor and the Legislature to work together to ensure homeowners of private wells benefit from water testing and other safeguards in the SFY2022-23 budget.

#### *Provide Protections for Owners of Private Wells*

Currently, New York does not require private wells to be tested at any point for drinking water pollutants. This leaves an estimated four million New Yorkers in the dark as to what's in their



water.<sup>13</sup> Pollutants with established drinking water standards and toxic, unregulated contaminants are going under the radar and putting these New Yorkers' health at risk.

During the Water Quality Hearings in September 2016, the Department of Environmental Conservation and Department of Health testified that addressing private wells was a critical step for New York to take. Subsequently, Governor Cuomo's SFY2017-18 executive budget included a proposal to finally require testing of private wells prior to the transfer of property. Unfortunately, that policy did not end up in the final budget that year and has not been brought up since, leaving a promise to New Yorkers unfulfilled.

The Private Well Testing Act (S.48) would require well testing before the sale of a home and every five years by landlords leasing property served by a private well. Rockland County, Westchester County, and New Jersey have all enacted private well testing laws similar to S.48, and their testing programs have uncovered significant levels of contamination over the years.

It is essential for the State Legislature to add PFAS and 1,4-dioxane to the list of chemicals required for testing under S.48. Recent contamination detected in private wells in places like Poestenkill, NY has shone a light on the need to proactively monitor for these emerging contaminants in private wells statewide.

Low-income, rural New Yorkers may not be able to pay hundreds of dollars to have their drinking water tested. Moreover, if harmful levels of contamination are detected, New Yorkers may face costs to install treatment technology running into the thousands of dollars. Where a polluter cannot be identified or contaminants are naturally occurring, state funding to cover the cost of testing and treatment will ensure that pollution is found and eliminated.

Funding from the Clean Water Infrastructure Act should be provided to support the implementation of S.48. Current CWIA funding is available to DEC and DOH to conduct testing and treatment of private wells surrounding sites contaminating drinking water (Title 12 of Article 27 of the Environmental Conservation Law), but this section would not authorize the agencies to pay for the proactive monitoring required by S.48.

We estimate that the cost to test for the contaminants included in S.48, as well as PFAS and 1,4-dioxane, is around \$1,000, and that the total annual cost of testing across New York under the bill would be approximately \$12.8 million. Given that a proportion of wells will need treatment technology installed, providing \$20 million through the Clean Water Infrastructure Act in this year's budget will ensure resources are available to get clean water to every private well owner who needs it.

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<sup>13</sup> Testimony of DEC Commissioner Basil Seggos for the Water Contamination Hearing, September 7, 2016, [https://www.nysenate.gov/sites/default/files/alb\\_dec\\_testimony.pdf](https://www.nysenate.gov/sites/default/files/alb_dec_testimony.pdf)

Earthjustice supports the inclusion of the Private Well Testing Act (S.48) in the state budget, along with providing resources through the Clean Water Infrastructure Act for its implementation, funded at \$20 million this year.

#### *Enhance and Expand Wetlands Protections*

Earthjustice supports the Executive Budget Proposal to expand wetlands protections. If enacted, this proposal would expand the State's protections to over 1,000,000 additional acres of freshwater wetlands. Wetlands are essential for protecting water quality by serving as a natural filter. They are also home to precious and unique wildlife, prevent flooding, recharge aquifers, and help absorb greenhouse gases.

New York protecting wetlands is critically important given the fact that the Supreme Court has decided to hear a case about the Clean Water Act's scope in covering wetlands. It is anticipated that the decision will roll back federal protections of wetlands, which makes New York's action in protection wetlands all the more critical and timely.

### **Reduce Toxic Chemicals in New York's Environment**

Industrial chemicals are added to the products we use and the foods we eat, and pollute our air and drinking water. The rapid escalation in production and use of toxic chemicals over the last fifty years has led to a significant increase in health effects linked to many of these substances, including childhood cancers, infertility, developmental disorders, and learning disabilities. It is critical for New York to adopt laws that protect New Yorkers from harmful chemicals and that all people have access to healthy communities and workplaces, safe food, and clean drinking water.

The plastic pollution crisis jeopardizes New Yorkers ability to have a safe and healthy environment. The average New Yorker produces over 4.5 pounds of trash per day, and New York's landfills accept approximately 6 million tons of waste per year statewide. Additionally, the average American throws out 185 pounds of plastic every year. 8 million metric tons of plastic waste is estimated to enter the oceans every year.

New York must move forward with policies that prevent the production of waste, which makes Extended Producer Responsibility policies crucial tools, if done properly.

Additionally, New Yorkers are still threatened by lead exposure. New York has a uniquely old housing stock, making exposure to lead paint highly likely. It is crucial for New York to provide funding and adopt policies to finally address lead in housing in a meaningful way.

*An Extended Producer Responsibility Program Must Eliminate Toxic Chemicals and Reduce Plastic Production and Waste*



The Governor's Executive Budget includes a proposal to establish an Extended Producer Responsibility Program (EPR) in New York, and a separate proposal to address toxic chemicals in packaging. As it is currently written, Earthjustice is concerned about the EPR proposal. We urge any EPR policy New York adopts:

- Significantly reduces non-reusable packaging, thereby saving taxpayer dollars.
- Requires increase of reuse, recycling, recyclability, and recycled content in packaging in order to effectively drive design changes.
- Ensures fees paid by producers are assessed based on environmental criteria, with the lowest fees assessed on the least harmful packaging.
- Requires a Needs Assessment be conducted to identify barriers to and opportunities for reuse and refill systems and recycling.
- Bans high priority toxic substances and materials from packaging.
- Has strong transparency is built into the system through labeling, reporting, and oversight.
- Does not interfere with New York's successful Bottle Deposit Law – the Governor's current proposal would enable the Bottle Deposit Law to be hampered with, which Earthjustice strongly opposes.

Earthjustice supports the Governor's proposal to address toxic chemicals in packaging, but it could be strengthened with the inclusion of some additional chemicals. The proposal addresses the following chemicals: phthalates, lead, cadmium, mercury, chromium, and PFAS.

Earthjustice recommends the following are added:

- Bisphenols
- Hexavalent chromium and compounds
- Perchlorate
- Benzophenone and its derivatives
- Formaldehyde
- Halogenated flame retardants
- Toluene

*Include \$1 Billion to End Lead Poisoning in Housing*

Earthjustice joins Lead Free Kids NY and others in urging the final SFY2022-23 budget to include \$1 billion in funding to address lead poisoning in housing.

It is widely understood that any level of lead in the body is linked to health harm – including neurological damage in children that is irreversible, increased risk for cardiovascular disease, and likely cancer, making it crucial to eliminate *all* possible routes of exposure to lead. These harms fall disproportionately on low-income communities and communities of color.

The lead crisis is particularly acute in New York. Relative to other states, New York has both the greatest number (3.4 million) and the highest percentage (40.9%) of its housing stock built before 1950 – making New York housing particularly likely to contain deteriorating lead paint.<sup>14</sup> Parts of the state are at even higher risk of childhood lead poisoning. For example, in Buffalo, approximately 90% of the housing stock was built before lead paint was banned in 1978.

From 2014 to 2016, New York State recorded 6,348 cases of elevated blood lead levels of 10 µg/dL or higher in children under 6 years old. To put that into context, 10 µg/dL level is very high - in fact, it is two times higher what NYS now considers to be an elevated level. This means that during that same timeframe, far more children had blood lead levels New York would now consider unsafe.

With the federal government’s inadequate lead policies and its continued lack of enforcement of lead policies in place, it is imperative for New York to adopt policies and provide funding to prevent lead exposure. We recommend that \$1 billion is spent on the following initiatives:

- \$100 Million LeadWeb Expansion & Program Oversight - Department of Health
- \$200 Million Local County Lead Prevention Program - Department of Health
- \$500 Million Lead Repair & Renovation - Department of Housing & Community Renewal
- \$60 Million Lead & Environmental Threat Elimination Training Program - Department of Labor
- \$100 Million Lead & Environmental Hazard Program - Department of Labor
- \$40 Million Environmental Threat Elimination Training Program - SUNY Community College Lead

These funding initiatives, coupled with the passage of important lead policies this legislative session, will go a long way in ending lead in housing.

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Thank you for the opportunity to testify today. Earthjustice looks forward to working with the legislature to ensure New York’s final SFY2022-23 budget rises to the challenge New Yorkers face from the climate crisis and other environmental harms.

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<sup>14</sup> U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, B25034: Year Structure Built, [https://factfinder.census.gov/rest/dnldController/deliver?\\_ts=523447588517](https://factfinder.census.gov/rest/dnldController/deliver?_ts=523447588517) (data accessed Sept. 14, 2017) (numbers derived by adding the data from the “Built 1940 to 1949” and “Built 1939 or Earlier” columns and dividing the sum by the third column, which represents the total number of housing units).