

State and City Climate Councils Can Learn Some Environmental Lessons From Pause New York

June 30, 2020

By Christopher Rizzo and Karen E. Meara. Published in the [*New York Law Journal*](#).

The closures implemented by nations, states and cities to contain the spread of COVID-19 had some unintended environmental benefits. They dramatically reduced air pollution emissions, moderately reduced energy consumption and improved the quality of life for a lot of wildlife. But these benefits are already proving to be short-lived as economies quickly re-open. The pandemic also highlighted how environmental burdens such as poor air quality and lack of open space disproportionately impact low-income communities, often communities of color, and contribute to higher mortality rates.

Environmental advocates and lawmakers have an opportunity to glean some important lessons from the pandemic before they are lost to our rapidly changing news cycle. This article highlights lessons relating to carbon emissions, air quality, energy use and access to open space, and considers how they can inform New York's current and future efforts to achieve environmental goals. It also addresses the fiscal realities of this unique moment and argues that a green New Deal will be key to achieving ambitious goals.

Carbon Emissions

On March 3, just as COVID-19 was on the brink of bringing business as usual to a screeching halt, the New York State Climate Action Council held its inaugural meeting. The Council—24 state appointees lead by the Commissioners of the Department of Environmental Conservation and the NYS Energy Research and Development Agency—is tasked with the hard work of crafting a roadmap to achieve the dramatic carbon emissions reductions required by the state's 2019 Climate Leadership and Community Protection Act. The Act requires a 40% reduction in carbon emissions (over 1990 levels) by 2040 and an 85% reduction by 2050. During the March 3rd meeting, data was presented indicating that the top four sources of carbon emissions in NY are vehicles (36%), buildings (30%), electricity (15%) and garbage (8%). Potential pathways to decarbonization were also listed: electrification of cars and heating, deep penetration of renewables (wind and solar), waste diversion (organics and embedded emissions), conversion of refrigerants, and deep energy efficiency improvements in all sectors. While each of these potential pathways will necessarily play an important role in the final roadmap, the nationwide closures highlighted another pathway to be explored: working from home and reducing travel.

During the height of the closures this spring, millions of "non-essential" employees, primarily office workers, began working from home. Travel plans for business and leisure were cancelled or postponed indefinitely. With this significant reduction in travel by car and plane, carbon dioxide emissions dropped 17% in the United States in March 2020. This annual drop will likely be about half that level but still consistent with the 7.5% annual drop that the U.N. has determined is required to stem the worst impacts of climate change.

Many employers and employees were surprised to find they were able to carry on their work remotely and without extensive travel. This unplanned experiment demonstrated that policies to encourage working from home where feasible for both employers and employees could

have a meaningful role to play in reducing the carbon emissions (not to mention air pollution and traffic) associated with commuting by car and should be added to the list of “pathways” considered by the State’s Climate Action Council. Moreover, policies to encourage more travel and tourism close-to-home can reduce emissions while supporting local economies.

While the unintended side effects of the COVID-19 closures reduced emissions from commuting and air travel, it may have raised emissions from organic waste: faced with major budget shortfalls, New York City discontinued residential collection of organic waste, 31% of the residential waste stream and a major source of greenhouse gas emissions, for an estimated savings of \$21 million in Fiscal Year 2021. The City’s decision to cancel collection and diversion of organic waste to biogas and composting facilities at the same time that the State Climate Action Council is counting on such policies to help the State achieve its carbon reduction goals highlights the risks COVID-19 related fiscal woes presents to policymakers. While working from home can be done by many without substantial cost to government, many of the potential pathways to carbon reductions require substantial upfront investments in everything from a network of electric vehicle charging stations, to transmission lines for renewable energy to intensive waste collection and reduction. Although the State has proposed a \$3 billion “Restoring Mother Nature” bond act to dedicate to a variety of environmental initiatives, the State and City budget shortfalls are estimated to be three times that sum in 2020 alone. Federal investment in environmental initiatives is therefore essential.

Air Quality

Like many crises, the COVID-19 crisis has hit low-income New Yorkers, including a disproportionate number of people of color, harder than others. While there are many factors contributing to these disparities, and most are beyond the scope of this article, a potentially important one is poor indoor and outdoor air quality. Many lower-income New Yorkers live near congested roadways without benefit of a controlled/filtered indoor air environment and are thus exposed to the many lung irritants contained in car and truck exhaust, like nitrous oxide and particulate matter. They therefore suffer disproportionately from asthma and other respiratory conditions. Because COVID-19 is primarily a respiratory disease, underlying respiratory issues puts these New Yorkers at higher risk of experiencing COVID-19’s worst effects, and indeed, data shows that African American and Hispanic New Yorkers have had higher mortality rates than white New Yorkers.

While New York has come a long way from the smog of the 70’s, the COVID-19 crisis has highlighted that there is still work to do to ensure that every New Yorker has clean air to breathe. In 2014-2016, for example, four times as many residents of the Bronx died from asthma as those living in nearby suburbs. As New York considers its options for reducing carbon emissions, it should consider options for incentivizing not only electrification of cars, but also trucks, which contribute disproportionately to pollutants with negative health effects. New York City might also consider accounting for truck emissions in its congestion pricing scheme, though this might run into constitutional issues as courts have held that Congress has preempted state regulation of fuel efficiency and vehicle emissions. Finally, efforts to make buildings more energy efficient should weigh options for improving indoor air; for example, passive houses not only reduce energy use dramatically but also remove allergens and pollution from indoor air.

Energy

The COVID-19 closures reduced not only carbon emissions but also electricity use; the U.S. Energy Information Administration estimates that electricity consumption in most states like New York has dropped about 9-13%. While this is not trivial, it is surprising that the closures didn’t produce greater reductions. In some states like Florida there has been little change due to heavy reliance on cooling systems even for empty office buildings. Reductions have not been greater because in many cities, office buildings continued to operate HVAC systems and leave the lights on. If the dramatic changes in human behavior caused by the COVID-19 closures did not dramatically reduce energy demand, cities need to rethink how buildings operate. This likely means moving quickly to power homes and offices with renewable energy and building the transmission system to transport that energy. It also means converting from oil and gas-fired boilers to electric ones, which will come at great cost to home and building owners. Large building owners in New York City will already need to realize these two changes in order to comply

with the City's 2019 Climate Mobilization Act, which requires modest reductions in greenhouse gas emissions from buildings of 25,000 square feet or more in 2024 and dramatic reductions in 2030.

Outdoor Spaces

Access to quality parks and public open space has never been more important than during COVID-19 closures. Moreover, the lack of access to quality parks in lower-income communities has never been more glaring. This issue is most acute in New York City and the other urban communities in the State.

New York City has an official goal of having 85% of its residents live within walking distance of a park by 2050. The City's One NYC 2050 plan released in 2019 claims that 81% already meet that standard. But in fact many of those New Yorkers live near parks that provide limited recreational value. For example, Tompkins Square Park in the City's East Village is a lovely square with refurbished plantings but its lawns and gardens are mostly fenced off to visitors. To really provide access to recreational spaces for sports, socially-distanced gatherings and exercise, the City will need to consider making permanent the temporary, pandemic street closures.

While the lessons of the COVID-19 closures will not solve the State's environmental challenges, they add to the toolbox available for achieving the State's decarbonization goals, and underscore the urgency of solving intractable problems like poor air quality. As this article went to press, the Climate Action Council held its second meeting. Among the many important topics the Council discussed were these very issues. We look forward to following the Council's deliberations and weighing in on proposed solutions.

Christopher Rizzo and Karen Meara are members of Carter Ledyard's *Environmental and Land Use* Practice Group.

Reprinted with permission from the June 26, 2020 edition of the New York Law Journal © 2020 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. For information, contact 877-257-3382, reprints@alm.com or visit www.almreprints.com.

related professionals

Karen E. Meara / Partner

D 212-238-8757

meara@clm.com

Christopher Rizzo / Partner

D 212-238-8677

rizzo@clm.com