

Announcer ([00:00](#)):

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Steve ([00:18](#)):

Hello, everyone and welcome back to Empire Environmental. It's been a while. We have some exciting developments to talk about today, which is the final adoption of the Climate Action Plan by the Climate Action Council here in New York. A little bit of background first and then we'll introduce our guests for today's podcast. First, enacted in 2019, the Climate Leadership and Community Protection Act, often called the CLCPA, has set some aggressive goals in statute to reduce greenhouse gas emissions in New York and fight climate change. Some of those limits include things like an 85% reduction from 1990 levels of greenhouse gases by 2050.

([00:59](#)):

We have a zero-emission goal for the entire electricity system by 2040, goals to have 6,000 megawatts of solar by 2025, and 9,000 megawatts of offshore wind by 2035, and 3,000 megawatts of storage, energy storage, by 2030. These are some of the most aggressive goals in the world, certainly in the country. In order to help make that happen, the CLCPA created something called the Climate Action Council or CAC. They're supposed to develop a plan to reach those goals. But importantly, that plan is aspirational. They cannot set anything into statute or even regulation. Their recommendations from this council have to now be enacted sometimes into law.

([01:49](#)):

In some cases, sometimes by regulation. As you'll see, as we discuss further some of the recommendations, the devil is definitely going to be in the details. With me today, I have the primary author of the CLCPA, Todd Kaminsky, who is now a shareholder in our Albany office. Hello, Todd.

Todd Kaminsky ([02:10](#)):

It's great to be with everybody today, and it's a very, very strange and beautiful thing to see a child that you birthed into the world become a teenager, which I guess is what this is the equivalent of, and grow up a little bit. Lots to discuss and I'm grateful to be here.

Steve ([02:27](#)):

That's great. I also have with me my colleague Jane McLaughlin from the Albany office, a member of the government law and policy practice and the environmental practice. Jane has been following this for a long time. She's a former employee of the Department of Environmental Conservation, like yours truly, and is very much steeped in these issues. Jane, welcome as well.

Jane McLaughlin ([02:50](#)):

Thank you. It's funny that Todd talks about it having a child that becomes a teenager because I left DEC to go have a child right before the CLCPA was officially agreed upon and signed into law. We're in the same boat.

Steve ([03:06](#)):

But that child is definitely not a teenager yet.

Jane McLaughlin ([03:09](#)):

No, no, no, no. He is still a toddler. That's right.

Steve ([03:13](#)):

Well, Todd and Jane are both GT podcast newbies, but I know they're going to do great and we're going to kick it off. As I talked about, this climate plan came out in draft at the end of 2021 and was subject to an extensive what DEC would call stakeholder outreach, getting comments from the public. One of the things I wanted to know, Jane, just overall, how much did this plan change over the last year?

Jane McLaughlin ([03:41](#)):

I would say that thematically it was pretty consistent, right? We knew based on the draft scoping plan and based on the integration analysis, which was the cost benefit analysis that the Climate Action Council staff undertook to identify the cost benefit analysis of the CLCPA and had various scenarios on how the state would achieve these GHG emission reduction mandates. We knew that we were going to basically see every sector impacted by the plan. It was an all hands-on deck approach. We knew that there was going to be significant deployment of renewable energy resources, and then the grid was going to have to transform, and we were going to need to see transmission upgrades.

([04:32](#)):

We knew that there was going to have to be major electrification in the transportation sector, as well as decarbonization of building operations. We knew that there was going to be some sort of economy-wide strategy that would need to be implemented to both achieve the GHG emission reduction mandates, but also help fund implementation of the CLCPA. Because that's been a big question mark, right? How's the state going to pay for all of this?

Steve ([05:06](#)):

I was just going to say, just if I could interrupt, Todd, being a recovering-elected official as you are, I'm wondering if you had any observations about did this process go the way you thought it did, including this year of stakeholder outreach and any changes? Is this kind of what you thought? Any surprises?

Todd Kaminsky ([05:24](#)):

Yeah. I think it's important that we step back and realize how significant the CLCPA was and that getting to this place was not inevitable. What do I mean by that? Well, first of all, we're the first state to set these ambitious goals that will say our electric sector will be completely decarbonized by 2040, our economy will be carbon neutral by 2050. No other state could say that. All right, so we put that in law. What does that mean? It's just on paper. What has to then happen?

([05:49](#)):

Well, we decided a while ago that it wasn't a prudent thing to have legislators on the floor of the Senate and Assembly deciding what the future and how we're going to get to let's say building efficiency, how much wind power is needed, how much transmission. Those are technical things that experts have to work out. The real truth is there's also hard decisions have to be made about how to pay for all this that elected officials certainly don't want to be anywhere near. We set out this Climate Action Council full of experts that were supposed to hash this stuff out. Now, I think the closeness of the last election showed just how fragile the system is.

([06:28](#)):

I mean, we were, to put it a little glibly, a few votes away from this not happening at all. And at the same time, I think we want reasoned measured policy where all sides get to weigh in and we don't come up with the most extreme answers. I think that's what this council worked through and largely did. I mean, there's a lot in this plan that still says we need to study, and we don't know, and we'll have to wait and see. I think that's fair and honest, but there's a lot of places where it takes bold steps and finally makes decisions that elected officials either would not have the expertise or the willingness to make, such as we need to come up with an economy-wide cap-and-invest of the cap emissions.

(07:10):

This says we need direct sales of electric vehicles. That's a real tough thing to say in the face of a lot of the opposition that comes to that, whether that's opposition to Tesla or opposition by...

Steve (07:19):

Let's talk about it because that's an interesting one. Direct sales of vehicles, that's been a hot button political issue in the legislature. Tesla's got a few that they kind of got in and there was litigation and then an agreement where they just agreed to stick with I think it's three in the whole state.

Todd Kaminsky (07:37):

Five.

Steve (07:38):

Five? Okay, five. Everybody else doesn't have any, unless they're selling them through conventional dealerships. There is a concern that the dealers are more interested in conventional vehicles because they throw off more income in terms of repairs and regular maintenance and they make a lot of money on that, so they're not going to be actively selling EVs. But this can't happen. The Climate Action Council, as much as you envisioned it, they can't impose this. This is going to have to go back to the ledge.

Todd Kaminsky (08:08):

Sometimes there's a clear line, a constitutional line, about what powers the legislature has versus the executive. This one, in the Climate Action Plan at least, it's very clear that it says the legislature should pass a law that does the following.

Steve (08:27):

That help does to a politician who may be on the fence or worried politically, does this recommendation help push something like this over the finish line, or is it irrelevant?

Todd Kaminsky (08:36):

It's irrelevant to an elected local official or state official. It is not irrelevant if it means it gets in the budget, because then it's in a whole different political dynamic.

Steve (08:47):

Interesting. Jane, let's talk a little bit about cap-and-invest. Used to be called cap-and-trade. That became a dirty word. The same thing got rebranded to cap-and-invest. Tell us a little bit about what the Climate Action Council said about it and where the complexities, third rail issues come when it comes to cap-and-invest and just what it is. You might as well explain for our listeners what exactly it is.

Jane McLaughlin ([09:12](#)):

Sure. That was one difference between the draft and the final, is that the final plan lands on a cap-and-invest program. It was between cap-and-invest and potentially a carbon tax, which would require an act of the legislature. That adds an interesting layer there, a political layer that, frankly, the legislature does not have an appetite to take on.

Steve ([09:44](#)):

Backing up for a second, cap-and-invest, the concept is you cap the amount of greenhouse gas emissions that the entire economy can emit, and then basically, sort of like the RGGI program is for just electric generation, you got to pay.

Jane McLaughlin ([09:59](#)):

This applies to every sector. Yeah, that's right.

Steve ([10:02](#)):

This kind of RGGI, which is the Regional Greenhouse Gas Initiative, RGGI for the entire economic sector of the State of New York. You've got to pay to pollute. Economists love this concept because it puts these externalities, it puts a cost into this, and it helps make renewable energy more competitive if people have to pay to emit greenhouse gases and the cost that they impose on society. It seems like economists love it. It seems like it could be effective policy. Why has this been so hard? Why was this so controversial?

Jane McLaughlin ([10:38](#)):

Well, it was controversial, I think, because there was some opposition, at least during the deliberations of the council and the Climate Justice Working Group, which was the group that was created to help solve some of the environmental justice issues. That's a critical component of the CLCPA is helping communities that have been disproportionately impacted by climate change. One consideration was, well, how are we going to do this without harming disadvantaged communities? The way they have recommended addressing that in the final plan was to set parameters that would prevent the purchase of allowances that would increase emissions in those communities.

Steve ([11:33](#)):

Right, because there was a concern. I guess the disadvantaged communities, the environmental justice advocates, they don't love cap-and-invest even with the rebranding because they think people can just pay to pollute in environmental justice communities. That's their take.

Jane McLaughlin ([11:48](#)):

Certainly, and that's the point, there's a cost to industry because you've got to pay. The way they recommend it is the state setting an auction mechanism. It's priced based on price per ton of GHG emissions. There's going to be a cost to industry. There was some concern there on how that would play out. Frankly, it's going to be adopted or promulgated through regulations. It's going to be a pretty significant undertaking, I think.

Todd Kaminsky ([12:21](#)):

With only a year. You have this interesting dynamic where it took two years to get here, but then they say, "Hey, DEC, you got one year to promulgate this rule." What I think is really interesting, Steve, is that you could say all the reasons why this is good. It's based on the market, so you don't have to figure out what the price is. It has an emissions cap. The real reason why they like it is this raises a lot of money, and they're trying to figure out how the government has to pay for a lot of these upgrades to building efficiency in low to moderate areas and help people retrofit their homes.

([12:58](#)):

We don't know. This doesn't do all the heavy lifting that is to come in terms of how we're paying for a lot of this. We know that cap-and-invest will end up generating a lot of money that helps get part of the way there.

Steve ([13:11](#)):

Right. People in this area would say, "And what we're doing is we're calculating a real cost of greenhouse gas emissions," the cost of dealing with climate change and climate change adaptation and things like that. "We're just adding so that the real cost of generating fossil fuels is reflected in the economy" would be the idea. But definitely the practicalities make a lot of sense.

Jane McLaughlin ([13:38](#)):

The caps decline. That's I think the initial advantage to the cap-and-invest over simply a carbon tax or fee is that the state's able to gradually lower the emissions caps so that there's certainty across all sectors. We have certainty over the...

Steve ([14:00](#)):

Yes, the government needs money, but isn't this just like a tax increase? Isn't this just going to be reflected in the cost of goods? We've got inflation. I mean, politically, isn't this a tough sell?

Todd Kaminsky ([14:13](#)):

But that's why no one who runs for office voted on this. I mean, that's part of the strategy of having a CAC make hard granular decision.

Jane McLaughlin ([14:25](#)):

And by selecting a cap-and-invest, which can be done through rule making administratively versus something that would require an act of the legislature, that I think can help depoliticize the issue.

Steve ([14:39](#)):

I wonder if in the end, it doesn't just blow back on legislators who pass this law with people.

Todd Kaminsky ([14:47](#)):

I mean, what people never talk about is none of this detracts from the power of the legislature. The legislature tomorrow could go amend any of this, alter any of this, pass a different whole strategy to... I mean, it's a super majority in both houses. If they're not going to act in the face of this, it says something. I mean, sometimes doing nothing says something. I think the fact that a body of different experts, some of whom the legislature selected are making these decisions, reflects the legislature's thoughts that it should be experts who make these decisions. Some of them anyway.

Steve ([15:21](#)):

We'll see what happens when the rubber hits the road. One of the other things that the scoping plan I think always had is very good news for renewable developers. I mean, you've got aggressive calling for, as you said, Jane, all hands on deck, land-based solar, land-based wind, offshore wind, energy storage, transmission upgrades. It's a great time to be an energy developer, especially if you're not developing conventional fossil fuel generation, right?

Jane McLaughlin ([15:56](#)):

Right.

Steve ([15:59](#)):

There's a lot to like if you're in that. We've seen a lot of this in terms of NYSERDA giving out a lot of contracts. The private industry coming in to develop this. There's been a lot of issues with actually getting these things permitted and constructed. But that's starting to change now. It's been a decade-long effort, but it seems like we are starting to see actual significant utility scale renewable generation going on in New York State.

Jane McLaughlin ([16:33](#)):

And opportunities too for new sources of power generation because there is this contemplation that we're going to need dispatchable zero carbon resources. There's some sense in the plan about what that might look like. They talk a lot about green hydrogen and advanced nuclear, but this plan also serves, I think, as a market signal too because one of the components of the strategy is to encourage the development of new technology. This yet-to-be-developed technology that will help complement the existing renewable energy resources.

Steve ([17:21](#)):

I mean, I'm smiling because it's like, okay, we're putting out a detailed plan, we're putting meat on the bones, and stuff we don't even know about yet is going to take care of this. That makes me very nervous.

Jane McLaughlin ([17:32](#)):

There was some discussion about that during the meetings.

Todd Kaminsky ([17:36](#)):

That's always been true. When we launched this endeavor, we had to say we are taking a leap of faith that two decades from now, the technology will be advanced, the cost will be less. There's a chicken or egg. If you don't say to the world, "We're open for business. Start developing something because you got to market here," then you don't have it.

Steve ([18:00](#)):

But let's talk about Jane used this word dispatchable resources. What that really means is that when you stick your appliance plug in the wall, there's got to be juice. The issue with renewables, wind and solar, is they're intermittent. They're great. We're building a lot of it, but there is always a need for something called base load. There has to be energy there on demand all the time. The concept of energy storage

could help do that, but there isn't much in here about nuclear. I mean, it's just kind of like, "Oh yeah, maybe there's a new nuclear solution."

(18:37):

Nuclear is zero energy base load. If you're somebody who worries about base load, who worries about reliability, is there going to be enough energy? Because remember, we're going to be actually increasing electricity load with EVs, electric vehicles, electric heat in buildings.

Todd Kaminsky (18:55):

Our peak season switches, Steve, when you electrify everything.

Steve (18:59):

Right. It goes from the summer peak with air conditioning to now winter peak for heating of buildings. Does that keep bothering you guys up at night a little bit? It kind of keeps me up at night.

Todd Kaminsky (19:09):

Yeah, but at the same time, it would've been a much worse situation had the plan said "electrify everything." No hydrogen. No RNG. No nuclear. There are people on the Climate Action Council, that is their vision. Anything that doesn't involve electricity is evil. This plan did not say that. It opens the door, perhaps not as wide as some advocates for hydrogen and RNG and nuclear wanted, but certainly it does. I think if there's a demonstration that it could be done in a responsible way and that it's not going to perpetuate the continuing fossil fuel stranglehold that it has on the American economy, that there's a way forward.

(19:50):

I think that's beneficial. We know that the governor has talked about being a hydrogen hub. We know that the federal government has put out plans to have hydrogen hubs with billions of dollars behind it throughout the United States. We know the new Inflation Reduction Act, for example, just put anaerobic digesters that put out RNG on the same tax status as other renewable products. They're saying, "Hey, build this, we'll give you half your capital money back in a tax deal." I do think that the American economy generally and the signals from Washington are pushing that way.

(20:28):

New York didn't slam the door on that. I think that's good news for producers of those energy sources. Frankly, from your perspective, for folks who say, "Hey, we need another molecule," renewables are just not enough.

Steve (20:41):

Jane, covering a few other things, clean transportation standard. Transportation represents almost 30% of greenhouse gas emissions in the state. You got to deal with transportation. What are the recommendations in that area?

Jane McLaughlin (21:00):

That's an additional change from the draft. It initially began as the concept of a clean fuel standard. There has been a push in the legislature over the past couple years to enact a law that would require DEC to adopt a clean fuel standard. Ultimately, it turned into this clean transportation standard, and

that was one of the recommendations. It's essentially a way to encourage investment in replacement for fossil fuel and help promote transportation electrification.

Steve ([21:40](#)):

It's not just EVs. We're talking about trucks, and we're talking about everything.

Jane McLaughlin ([21:47](#)):

That's right. What they're trying to do here is ensure long-term electrification by setting this trajectory for carbon intensity reductions out through 2050. That helps send price signals that indicate when these traditional fossil fuels would stop generating credits. One consideration that came up, especially within the context of the climate justice working group was, again, what is the effect going to be of a clean transportation standard on disadvantaged communities? The plan attempts to address those concerns.

([22:32](#)):

This is, again, another example, I think, where you have some folks on the council and certain groups that really weren't in favor of it because they think it just continues to prop up fossil fuels and is too incremental. Push for full electrification, but this keeps fuels going. But I think for a lot of supporters of a clean transportation standard, this is going to help get us from point A to point B.

Steve ([23:02](#)):

But like so many things, Jane, there's such tremendous, when you start to get into the details, tremendous capital costs and time. Let's just take the buses for the MTA. First of all, electric buses are difficult to get and expensive. But more than that, the real complexity is there's no place to charge them. All the bus depots are from the time of The Honeymooners, Jackie Gleason. You've got to really put infrastructure investments in to be able to charge these buses overnight so they're ready the next time. I mean, EVs as passenger vehicles are starting to really turn the corner. A lot of different options.

([23:46](#)):

Definitely we're going to see a lot of exciting things in the next decade, but I think there's going to have to definitely be significant incentives to try to make people switch. You're going to get to a point, in my view, where the people who are excited about it or who are willing to switch, switch, and then you're going to have a lot of holdouts. I think you're going to need to do things. You're going to have to get really imaginative. For congestion pricing, how about a lower toll if you have an EV? I mean, there's just going to have to be places where people get rewarded from making that switch, because people don't like it.

Jane McLaughlin ([24:19](#)):

Two points there. I mean, I think consumer behaviors are undoubtedly going to have to change, and that's discussed throughout the plan. I mean, we're going to need New Yorkers to switch from traditional combustion vehicles to EVs. They're going to need to install chargers in their homes. For the building component, people are going to need to switch to heat pumps. There's going to be this whole education component to that, consumer education. But there also needs to be incentives. Throughout the plan, you'll see various recommendations to incentivize this switch in consumer behavior.

([25:00](#)):

There's already rebates and credits offered by the federal government through the state for EVs. You'll probably see more of those coming. And then certainly the state has been already hard at work trying to



switch the fleets away from combustion to electric vehicles. That's the mandate that vehicles sold in the state are going to have to be EVs by a date certain by 2035, I think. The second point is that this just goes to show you that these various sectors, they really can't operate in silos. There's going to have to be...

Steve ([25:43](#)):

Right. You're going to have to create a lot more generation to deal with the winter peak and all that stuff. We got to end soon. I just want to talk about the next big sector, which is the building sector. If you've got modern office buildings, they often do heat through electricity. But a lot of the older buildings in New York, older commercial buildings, virtually all residential buildings heat through either heating oil or natural gas. The Climate Action Council has some pretty significant recommendations in that area, don't they?

Jane McLaughlin ([26:18](#)):

Yes. Yes, they do. I mean, the building sector is the largest source of emissions based on the state's accounting. It's 32%. Decarbonization of the building sector is a very critical component of the plan. Again, it's transforming how we heat our buildings. The plan focuses a lot on electrification to space and water with high efficiency heat pumps, and with that comes the concern about cost to consumers. You'll see recommendations on, again, how to incentivize consumers.

Steve ([26:59](#)):

It's the capital upgrade, as well as the actual. Right now the cost to run it is more expensive.

Jane McLaughlin ([27:05](#)):

Right, and that's just for homes. Then you have commercial buildings to deal with.

Steve ([27:10](#)):

What happens, Todd? Are we going to be seeing mandates that single family owners, homeowners in Staten Island or Upstate New York are going to have to replace their boilers with heat pumps in the next couple of years? Is that the kind of thing that we're going to see? It would seem like people wouldn't be so excited about that.

Todd Kaminsky ([27:27](#)):

The answer is yes and no. The no part is the next couple of years. It gives dates in the scoping plan about when single family residential homes will have heat pumps in order to get different permitting and it talks about incentives. There's a big educational component. When you get a house, you're not really sure what you're getting. You say to your plumber or your contractor, "What do I need?" They may not even know what these things are or how they operate. There's a lot of challenge there. The key, Steve, is that when the life cycle of someone's product ends, that is a key moment for intervention, if you will, that you don't get again.

([28:07](#)):

Otherwise, you're ripping up perfectly good, in terms of operation, good for operation piece of equipment that people won't stand for. If I know my furnace has five years left in it, how do we at the end of that get someone to replace them more? It talked about how in the last year's budget for a ground source heat pump there was a tax incentive put in. They need to grow for air source heat pumps

that have better efficiency. By the way, there is an interesting footnote in there. It says, "But if you live in a really, really cold climate, you may need some other fuel there on really cold days if your heat pump doesn't work," which I think is a stunning admission.

(28:47):

But at any rate, I do think you are focusing on the exact very hard challenge. This law cannot be about someone banging on your door and saying, "I'm here to inspect your furnace." People in America will go crazy and for good reason. How do we make it...

Steve (29:05):

Focus on replacements. It's going to be mostly focused on replacement

Jane McLaughlin (29:05):

New construction.

Todd Kaminsky (29:07):

And give incentives to do so and enough education to workers in the space and to homeowners to know that that's something they need to do.

Steve (29:14):

My uncle used to deliver fuel oil. Maybe I should go into the heat pump business. All right, any final thoughts on this? If this wets your appetite, you can Google Greenberg Traurig E2 Environmental blog. You can get the blog post where we went into even more detail than we could go into on this podcast. But Jane, Todd, any final thoughts?

Jane McLaughlin (29:41):

Well, I'll go first, Todd. I'll let you close it out since this is your teenager.

Steve (29:47):

You brought this on to all of us.

Jane McLaughlin (29:51):

This is really a significant milestone for the state, and it's going to leave the foundation for future energy policy across the state. One of the goals of the CLCPA I think was to lead by example. Todd can probably speak to this too. When the bill was working its way through the process, we had heard, "Well, if New York's doing it and no one else is, then what's the point? This is so much larger than the state."

(30:22):

But I think what we're going to see come out of this is not just limited to New York State energy policy, but will hopefully help other states do the same thing and adopt if not a scoping plan, but start to really rethink their energy future and what they can do to help do their part in reducing GHG emissions. This was a landmark piece of legislation and I think that the scoping plan will hopefully inspire others to follow suit.

Todd Kaminsky (31:02):

I would just say if somebody who is slightly aware of what's going on or pays attention every now and then listening to this podcast wants to know what this means, this is the end of the beginning. This is the equivalent of the Constitution being ratified at 1789. We fought a war, we know where we're going, but the people who wrote the Constitution couldn't answer every question. They couldn't even answer what some of the words meant in their own document. Lots had to be played out to fight over the meaning of that document. That's where we are. We're at the end of the beginning. We know where we're trying to go.

[\(31:35\)](#):

We have a good sense of what the framework is. We don't know all the details. We still have to be tested on the will to achieve this, and we still have to be all in on wanting to do it. I think it's really exciting. I think the challenges, some of which, Steve, you've laid out today in terms of how are we actually going to do this, are still there, but we've achieved a significant milestone and now we got to take it to the next level. The main thing, however, that I wanted to set out and we as a legislature wanted to set out is, send a signal to the world that we want to be on the ground floor of a new green economy.

[\(32:08\)](#):

That's already happening. If it keeps going, I think New York will be in a great place with where this country is transitioning to. New York will be leading the pack.

Steve [\(32:16\)](#):

Yeah, that is a good last point. I do focus my nature to focus on the challenges and the difficulties, but there is no question that New York, in terms of port upgrades and renewable energy, there's a lot of exciting things happening, a lot of new industry being born, a lot of economic opportunity in New York being brought by this. But to use your Constitution analogy, the US Constitution in 1789 was pretty audacious. It could have all blown up. With a few risks here and there, it stood the test of time. New York, I think, is also going to get this one shot. It's going to be maybe not a straight line to success.

[\(32:58\)](#):

There's going to be a lot of challenges. But how this is done, done in a way to ensure reliability, ensure that the public comes along, is willing to do it. Because I think people understand for the future generations, they need to fight climate change and reduce greenhouse gas emissions, but they also have to live their lives every day and pay their bills. That is going to be the real challenge too as we put meat on the bones. Jane and Todd, thank you very much for appearing here on Empire Environmental. Listeners, read up by catching our blog on our blog post on the E2 Environmental blog by Greenberg Traurig. Thanks again for listening.