

New York’s Environmental Right: Constitution Bill of Rights Article I, Section 19

A. Post Adoption 2022

Citation	Summary
Articles	
<p>New York’s Green Amendment: First Decisions</p> <p>Michael B. Gerrard and Edward McTiernan</p> <p>N.Y.L.J. (Mar. 8, 2023)</p>	<p>Expert Analysis: In the little more than a year since approving the environmental rights amendment, one of the great questions in New York environmental law has been—what does this mean? It looks significant, but just how much? That is left to the courts to decide. We now have two decisions, both of which are under appeal, and four pending cases that have not been decided. This column discusses the emerging jurisprudence under what has been called New York’s Green Amendment.</p> <p>High Acres Landfill Decisions: (1) Fresh Air for the East Side v. State of New York; and (2) Fresh Air for the Eastside v. Town of Perinton.</p> <p>Pending Cases: Seneca Lake Guardian v. DEC; (2) Marte v. City of New York; (3) People of the State of New York v. Norlite; (4) Abdullahi v. City of Buffalo (filed on Jan. 30); and (5) Renew 81 for All v. New York State Department of Transportation (decided on Feb. 14).</p> <p>Implications: So we are seeing Green Amendment claims included in lawsuits about a variety of projects and actions. Especially if the findings in the decisions about the High Acres Landfill gain traction, we will see a lot more of this. A rule that holding and complying with the necessary permits may not be enough, and that suits may be filed six years after the subject action, would lead to great opportunities for environmental plaintiffs and great uncertainties for the regulated community. The uncertainties may be especially great with projects that have both environmental positives and negatives, such as wind- farms and transmission lines—both sides could claim that the Green Amendment supports their views, leaving much discretion with the judges. The Green Amendment could add to the force of Section 7.2 of the CLCPA, which requires all state agencies to consider whether their decisions are inconsistent with the attainment of the statewide green- house gas emissions limits.</p> <p>https://www.law.com/newyorklawjournal/2023/03/07/new-yorks-green-amendment-the-first-decisions/#:~:text=2%2C%202021%2C%20the%20voters%20of,%2C%20and%20a%20healthful%20environment.%E2%80%9D</p>
<p>The right to a clean, healthy and sustainable environment: how to make it operational and effective</p>	<p>In the last year, the United Nations General Assembly has adopted, and New York State's Constitution Bill of Rights has been amended to include, a right to a healthy environment. This continues a trend of adoption of a constitutional or statutory right to a healthy environment. The right to a healthy environment is constitutionally recognised in 110 countries. The article explores what a right to a healthy environment entails and how it can be made operational and effective. It is presented in three parts: first, what the</p>

<p>Brian J Preston</p> <p>J. Energy & Nat. Res. L. (Jan. 31, 2023)</p>	<p>right to a healthy environment involves; second, the correlative duties to uphold and protect the right; and third, the systematic and structural change to law and governance needed to uphold the right and discharge the duties.</p> <p>https://doi.org/10.1080/02646811.2023.2165310</p>
<p>The New Environmental Rights in NY's Constitutional Bill of Rights</p> <p>Nicholas A. Robinson</p> <p>Lecture NYSBA Annual Meeting on Jan. 25, 2022</p>	<p>I. New York's Newly Amended Bill of Rights Inaugurates a New Foundation for the Environmental Rule of Law: This Outline Sketches Out the Jurisprudential Context for Beginning to Assess the "Impact" of New York's "Green Amendment," Recognizing a Human Right to the Environment</p> <p>II. Amending NEW YORK STATE'S BILL OF RIGHTS Article 1, §19: "Environmental Rights"</p> <p>III. Public Debate Prior to Voting on the Constitutional Environmental Rights Amendment and Following Adoption of the Amendment</p> <p>IV. How does this new Bill of Rights Clause Ensure a Person's Right to the Environment:</p> <p>V. V. Constitutional Litigation Issues to Secure NY Environmental Rights</p> <p>VI. This New Era of Environmental Jurisprudence in NY</p> <p>https://digitalcommons.pace.edu/lawfaculty/1205/</p>
<p>New York's Constitutional Right to the Environment</p> <p>Nicholas A. Robinson</p> <p>Am. Coll. Env't Laws. (Nov. 24, 2021)</p>	<p>New York's amended Bill of Rights ushers in a new era of environmental jurisprudence, as there is no federal analogue and only scant case law from the handful of States, like Massachusetts, Montana and Pennsylvania, whose constitutions provide environment rights. Since air pollution accumulates from diverse sources, public health is maintained only by community-wide governmental action. ... Invoking the right to a healthy environment prods governments to take their environmental duties seriously. ... Public health has entered a state of emergency in many nations, not unlike New York. With environmental security increasingly at risk, New York's new "Green Amendment" can off- set that risk. New Yorkers can now petition state government or city hall to redress their environmental grievances. Individuals can go to court to re-secure the protections promised by state environmental statutes. Freedom entails preserving each individual's capacity to foster resilience and to protect life, livelihood and property. New York's enhanced Bill of Rights now provides the foundation for realizing the environmental rule of law.</p> <p>https://perma.cc/TF4C-YPMN</p>
<p>Op-eds and Blogs</p>	
<p>New York's new constitutional right to a clean environment faces first judicial test</p> <p>Emily Pontecorvo</p>	<p>A case challenging a landfill provides the first insights into how the courts — and state officials — will interpret the amendment. The suit was brought by Fresh Air for the East Side, a grassroots organization of neighbors to the sprawling High Acres landfill, one of the state's largest. The 1,000-acre site straddles the border of Perinton and Macedon, two towns in western New York. Though it opened in the 1970s, the facility began receiving exponentially more trash — most of it from New York City — after private owner Waste Management installed a rail line in 2015. Around the same time, the company committed a "combination of errors" that inundated the</p>

<p>Grist (Feb. 15, 2023)</p>	<p>town in foul smells At least four other green amendment cases have been filed in New York. In one, residents of Manhattan’s Lower East Side are using it to fight construction of two skyscrapers. Another was brought by Seneca Lake Guardian, an environmental group, against the state for approving a waste transfer station that could leak toxic chemicals into Cayuga Lake, a source of drinking water. It’ll become clearer what the green amendment means in practice as those cases make their way through the courts.</p> <p>https://perma.cc/TL4V-LE4V</p>
<p>Celebrating the 1-Year Anniversary of the New York Environmental Rights Amendment</p> <p>Mayo Saji</p> <p>Earth Justice (Feb. 7, 2023)</p>	<p>It’s been a year since New York State adopted an “Environmental Rights Amendment” into the state constitution. ... We believe that communities throughout the state will play an instrumental role in ensuring the right is faithfully implemented by courts and regulators. That is why, in the year since the amendment’s adoption, Earthjustice has continued to work with partners to raise awareness about this new environmental right and locate the best avenues for community engagement. ... We strongly encourage New Yorkers to speak up about this new environmental right, especially in these early moments of the environmental right’s application in New York State. ...</p> <p>https://perma.cc/BCJ6-LJMH</p>
<p>FAQs: Article 1 Section 19: New York’s New Environmental Right</p> <p>Earth Justice (2023)</p>	<p>What does New York’s Constitutional Environmental Right say? How did the Environmental Right become a part of the New York Constitution? How might the NY Environmental Right broaden environmental protections? Will the NY Environmental Right make it more difficult for polluters to burden my community? How can New York’s Environmental Right further environmental justice? How can we ensure that the NY Environmental Right will protect our communities? What other states currently have similar constitutional environmental rights? Template for Submitting ERA Comments on Agency Actions</p> <p>https://perma.cc/NY9U-BHCY</p>

B. Prior to Adoption 2021

Citation	Summary
Books	
<p>The Green Amendment: The People’s Fight For a Clean, Safe & Healthy Environment (2nd ed. 2022)</p>	<p>On November 2, 2021, with a decisive 70 percent of the vote, the people of New York determined to add a Green Amendment to their state constitution....</p> <p>Excerpt at: https://perma.cc/PE9X-WCK5</p>

<p>The Green Amendment: The People’s Right to a Healthy Environment (1st ed. 2017)</p> <p>Maya K. van Rossum</p> <p>Austin, TX: Disruption Books</p>	
<p>Articles</p>	
<p>What To Know About The Proposed Green Amendment In NY</p> <p>Marco Poggio</p> <p>Law360 (Oct. 31, 2021)</p>	<p>If approved, the amendment would provide New Yorkers with an additional legal tool to protect their communities and their health from pollutants and help correct the state’s course on environmental issues that have traditionally been worse in low-income communities and communities of color, experts say.</p> <p>https://www.law360.com/articles/1432453/what-to-know-about-the-proposed-green-amendment-in-ny</p>
<p>Environmental Human Rights in New York’s Constitution</p> <p>Nicholas A. Robinson</p> <p>N.Y. St. B.A. J., Oct. 2017, at 12.</p>	<p>There is an environmental case to be made in favor of convening a Constitutional Convention. On the 200th anniversary birth of Henry David Thoreau, we can remember his admonition: “Live in each season as it passes; breathe the air, drink the drink, taste the fruit, and resign yourself to the influence of the earth.” What has this to do with the Constitution?</p> <p>http://digitalcommons.pace.edu/lawfaculty/1079/</p>
<p>Updating New York’s Constitutional Environmental Rights</p> <p>Nicholas A. Robinson</p> <p>38 Pace L. Rev. 151 (2017)</p>	<p>A task force of the association’s section on environmental and energy law examined the issue for six months and concluded that <u>there</u> is merit in recognizing the right to the environment. This article introduces the emergence of this issue in its historical context.</p> <ul style="list-style-type: none"> I. Exercising the Constitutional Right to Convene a Convention II. The “Forever Wild” Provisions III. The Constitutional Forest Preserve <ul style="list-style-type: none"> A. Sections 1 and 5 of Article XIV B. Section 2 IV. Nature Conservation and State Land Sales to Augment the Forest Preserve V. Rights and Duties—Updating the “Conservation Bill of Rights” VI. Antecedents Recognizing Constitutional “Environmental Rights” VII. Amending New York’s Constitution to Establish an Environmental Rights <p>https://doi.org/10.58948/2331-3528.1961</p>

<p>Subnational Environmental Constitutionalism and Reform in New York State</p> <p>James R. May</p> <p>38 Pace L. Rev. 121 (2017)</p>	<p>This article has three parts. Part I provides a primer to the field of subnational environmental constitutionalism. Part II explores the opportunities and challenges in enforcing existing subnational environmental provisions. Part III then examines a case study involving language to consider at a constitutional convention for the State of New York.</p> <p>https://digitalcommons.pace.edu/plr/vol38/iss1/8/</p>
<p>Report and Recommendations Concerning Environmental Aspects of the New York State Constitution</p> <p>N.Y.S.B.A. Environmental and Energy Law Section</p> <p>38 Pace Law Review 182 (2017)</p>	<p>Task Force with the purpose to study and prepare a written report, to submit to the Section's Executive Committee, regarding (1) environmental issues appropriate for consideration in any amendment to the New York Constitution, beyond the issues which the NYSBA House of Delegate has already determined, and (2) constitutional issues relevant to climate change, and (3) appropriate provisions for an environmental right in the State Constitution, and (4) any other environmental issues that the Task Force considers important for submission to the Section Executive Committee.</p> <p>https://doi.org/10.58948/2331-3528.1962</p>
<p>Op-eds, Blogs and Letters</p>	
<p>FAQs by Delaware Riverkeeper Network, Green Amendments For The Generations, Environmental Advocates of New York & Adirondack Mountain Club (2020)</p>	<p>What is a Green Amendment? Does New York have a Green Amendment? Why do we need a Green Amendment when our state already has a well-developed set of environmental protection laws? How will a Green Amendment affect government decision-making and activities? How are terms like 'clean water', 'clean air', 'healthful environment' defined? Are these terms too broad for a constitutional provision? Why Must a Green Amendment be Placed in the Bill of Rights Section of the Constitution? Why is a Green Amendment beneficial for environmental justice? Does a Green Amendment Expand Government Power? What states have Green Amendments currently? How can legislators be responsible for protecting the right to clean water and air or a stable climate when these are not entirely within the control of any one state? Does a State Green Amendment mean that state government actions/activities/laws can never infringe on the constitutional environmental right?</p> <p>https://perma.cc/9T8E-Q4KV</p>
<p>Letter from different professors, including Maya K. van Rossum,</p>	<p>A Letter Calling on the NYS Legislature to Support a Green Amendment: ... Every aspect of our lives from our health, to our property values, to the quality of our lives and recreation are impacted by the health of our environment; as such, protecting our environmental rights is fundamentally important. This amendment to the Bill of Rights complements (i.e. does not displace) Article XIV of the New</p>

<p>to the New York State Legislature (Apr. 9, 2019)</p>	<p>York State Constitution, the Conservation Article, which calls for protection of the State’s natural resources and recognizes environmental protection as important public policy.</p> <p>Furthermore, enshrining environmental rights sends the message that New York is a true national leader on the environment. Forty-three states or commonwealths have some form of expression of environmental values in their Constitutions; but only the State of Montana and the Commonwealth of Pennsylvania have recognized protecting environmental rights as inalienable, putting environmental rights on par with other political and civil liberties. We believe that it is time for New York to do the same and amend its Constitution to recognize the right to clean air and water, and a healthy environment.</p> <p>https://perma.cc/SKG4-VB86</p>
<p>Letter from Maya K. van Rossum, the Delaware Riverkeeper, Delaware Riverkeeper Network</p> <p>to the New York Senators and Assembly members (Apr. 23, 2018)</p>	<p>Business Opposition to the Constitutional Right to a Healthful Environment: Given that we all depend upon clean water, clean air & a healthy environment to support and sustain our very lives, it is right and appropriate that they should be protected with the same legal vigor and strength that we protect the other political rights, civil rights and human rights we hold dear.</p> <p>https://perma.cc/77DM-WJYK</p>
<p>Letter from different professors, including Maya K. van Rossum,</p> <p>to the New York State Legislature (June 13, 2017)</p>	<p>Thirty-five states or commonwealths have some form of “environmental rights” or expression of environmental values in their Constitutions; but only the State of Montana and the Commonwealth of Pennsylvania are recognized as true leaders for protecting environmental rights on par with other political and civil freedoms we all hold dear. We believe that it is time for New York to update its Constitution with a right to clean air and water, and a healthy environment.</p> <p>https://perma.cc/MCE5-LDHV</p>