

New York State Bans Natural Gas Equipment in Most New Construction

May 10, 2023

On May 3, 2023, New York became the first state in the nation to ban natural gas in most new building construction as part of the Fiscal Year 2024 New York State Budget. The ban is intended to advance the State's clean energy and climate agenda by prohibiting "fossil-fuel equipment and building systems,^[i] in any new building not more than seven stories in height, except for a new commercial or industrial building greater than one hundred thousand square feet in conditioned floor area" by December 31, 2025, and prohibits the installation of fossil-fuel equipment and building systems in all new buildings after December 31, 2028.^[ii]

Notably, however, the prohibition will not apply to existing buildings, including to "the repair, alteration, addition, relocation or change of occupancy of such buildings" and "the installation or continued use and maintenance of fossil-fuel equipment and building systems, including as related to cooking equipment, in any such buildings."^[iii]

The law also exempts several buildings/uses from the prohibition including: (i) for generation of emergency back-up power and standby power systems; (ii) in certain manufactured homes; or (iii) in buildings that are used as a manufacturing facility, commercial food establishment, laboratory, car wash, laundromat, hospital, other medical facility, critical infrastructure, including but not limited to emergency management facilities, wastewater treatment facilities, and water treatment and pumping facilities, agricultural building, fuel cell system, or crematoriums."^[iv]

However, where exemptions apply, the law requires that such exemptions "to the fullest extent feasible, limit the use of fossil-fuel equipment and building systems to the system and area of the building for which a prohibition on fossil-fuel equipment and building systems is infeasible; require the area or service within a new building where fossil-fuel equipment and building systems are installed be electrification ready, except with respect to servicing manufacturing or industrial processes; and minimize emissions from the fossil-fuel equipment and building systems that are allowed to be used, provided that the provisions set forth in this paragraph do not adversely affect health, safety, security, or fire protection."^[v] The law explicitly states that financial considerations are not a sufficient basis to determine physical or technical infeasibility.^[vi]

New York's natural gas ban follows the Ninth Circuit Court of Appeal's mid-April 2023 decision in *California Restaurant Ass'n v. City of Berkley*,^[vii] which held the federal Energy Policy and Conservation Act preempts the City of Berkley, California's local ordinance prohibiting natural gas piping in certain newly constructed buildings.

Cullen and Dykman LLP prepared a legal alert summarizing the decision, which can be found [here](#).

Cullen and Dykman LLP's Energy, Renewables and Utilities practice group will continue to monitor New York's implementation of the natural gas ban and will update clients accordingly. Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Should you have any questions or you would like to discuss how this change in law effects your organization, please contact Brendan J. Mooney at bmooney@cullenllp.com or (516) 357-3757.

Thank you to Ciara Villalona, a Law Clerk pending New York bar admission, who assisted in the preparation of this alert.

Footnotes

[i] The law defines "fossil-fuel equipment and building systems" as "(i) equipment, as such term is defined in section 11-102 of this article, that uses fossil-fuel for combustion; or (ii) systems, other than items supporting an industrial or commercial process as referred to in the definition of equipment in section 11-102 of the energy law, associated with a building that will be used for or to support the supply, distribution, or delivery of fossil-fuel for any purpose, other than for use by motor vehicles."^[i] N.Y. Energy Law § 11-102(8) defines equipment as "plumbing, heating, electrical, lighting, insulating, ventilating, air conditioning, and refrigerating equipment, elevators, escalators, and other mechanical additions or installations, but does not include any items constituting an industrial or commercial process."

[ii] Ch. 56 of the Laws of 2023 (new section to be N.Y. Energy Law § 11-104(6)(b)).

[iii] *Id.*(new section to be N.Y. Energy Law § 11-104(7)(a)(i)-(ii)).

[iv] *Id.*(new section to be N.Y. Energy Law § 11-104(7)(b)(i)-(iii)).

[v] *Id.*(new section to be N.Y. Energy Law § 11-104(7)(c)).

[vi] *Id.*

[vii] *California Rest. Ass'n v. City of Berkeley*, 65 F.4th 1045 (9th Cir. 2023).

Practices

- Environmental
- Energy, Renewables and Utilities

Attorneys

- Brendan J. Mooney