



**Building owners beware: Failure to comply with NYC emission standard could lead to hefty fines - by Golden, Phillipou and Atzrott**

September 03, 2019 - Owners Developers & Managers

Susan Golden,  
Venable LLP

Michael Phillipou,  
Venable LLP

Hilary Atzrott,

In April 2019, the NYC Council approved a “Green New Deal” to reduce greenhouse gas emissions by 2050. The regulations created an Office of Building Energy and Emission Performance (the office) within the Department of Buildings along with laws requiring certain buildings (the covered buildings) to comply with emission ceilings (the emission ceiling.) Covered buildings must be in compliance by January 1, 2024 and certify compliance by May 1, 2025.

Covered buildings include:

- New and existing single buildings larger than 25,000 gross s/f.
- Multiple buildings on a single tax lot that, in the aggregate, exceed 50,000 gross s/f.
- Multiple buildings held in condominium ownership that are governed by the same board of managers and exceed 50,000 gross s/f.

The following buildings are generally excluded:

- Dwellings of three stories or less for which no HVAC system serves more than two units.
- Rent regulated and city-owned buildings.
- Industrial facilities used primarily for the generation of electric or steam power.
- Property owned by a housing development fund company organized under the business corporation law and the private housing finance law.
- Houses of worship owned by a religious institution.

Table 1: 2024-2029 Annual Emission Limits

The emission ceiling provides maximum building emissions, expressed in metric tons of carbon dioxide equivalent per s/f, permitted for an occupancy group. If a covered building contains multiple

occupancy groups, the total emission limit is calculated as the sum of each applicable occupancy group's emission limits. The 2024 - 2029 limits are set forth in Table 1.

To calculate the total tons of carbon dioxide generated, a coefficient of energy consumption is applied to each type of greenhouse gas generated by a building. The co-efficient is multiplied by the covered building's utilization of that energy source. For a covered building to comply, the sum of greenhouse gas emissions must be under the annual building emission limit for that occupancy class. The 2024 - 2029 coefficients are set forth in Table 2.

#### Table 2: 2024-2029 Coefficients

The formula for building emissions and corresponding greenhouse gas coefficients will change every five years, beginning in 2030. While formulas for 2030 through 2034 have been established, those for 2035 through 2050 have yet to be published.

The owner of a covered building must file a report with the office by May 1, 2025 and every year thereafter, certifying compliance or indicating the amount by which the covered building exceeds the limits. Failure to file a report subjects owners to a maximum penalty equal to the total gsf of the building multiplied by \$0.50 times the number of months late in filing.

If the owner of a covered building files a report and indicates that the building emissions are over the permitted limits, the penalty is calculated as the difference in permitted versus actual emissions multiplied by \$268. In certain instances, penalties may be reduced by an administrative law judge.

A covered building's total yearly emissions may be reduced if the owner demonstrates purchase of renewable energy credits or greenhouse gas offsets, or the use of clean distributed energy resources that comply with office standards. Alternatively, certain covered buildings may receive adjustments due to structural or financial hardships, 2018 emissions that exceed the 2024 standards by more than 40%, or use as a not-for-profit hospital or healthcare facility. Under any adjustment, a covered building must ultimately comply with the emission ceiling, but is granted additional latitude in the timing or extent of compliance. The emission ceiling will evolve as additional rules are promulgated by the office. But building owners in NYC would be well served to keep apprised of these and related developments.

Susan Golden is a partner in the real estate practice, Michael Phillipou is a partner in the real estate practice and Hilary Atzrott is an associate in the real estate practice at Venable LLP, New York, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540