

**FOCUS:
ENVIRONMENTAL**



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Artificial Intelligence (“AI”) is a major driver of the economy, energy usage, and countless ethical and legal questions facing practitioners. Indeed, AI technology companies have been on a roll for investors, although indications are that future performance is becoming less clear and may not equal their relative performance of 2025.¹ The forecasts for the use of the technology and its effectiveness are stories in constant flux. Not to be outdone, government agencies are looking at ways to incorporate AI into their operations, and in a recent development, for their rulemaking process. The United States Department of Transportation is seeking to use the technology to write federal transportation regulations.² The federal agency’s General Counsel

Artificial Intelligence Regulating Government: The Next Step?

noted that they don’t need the perfect rule, but instead, the agency wants “good enough.”³

Background

The use of AI, it is clear, is now a tool that will continue to be used and that likely will not be discardable. This reality is further underscored by widespread public use and continual business advancement, resulting in these technologies becoming more effective as they develop. The technology continues to evolve, as does the need for users of these new tools to understand its environmental impacts and its limitations. The confluence of all these factors has resulted in consideration of the role of AI by executive branch regulatory agencies that administer much of the law in New York, and across the United States.

In one example, the use of AI at the federal level has raised questions about transparency and how the government is incorporating the use of the technology in otherwise legally prescribed permit application and environmental review processes.⁴ Practitioners note that these governmental efforts, particularly regarding National Environmental

Policy Act (“NEPA”) proceedings, required summaries and responses to issues that need to be carefully overseen by humans to make sure that they are accurate given the purpose of the statutory review to identify environmental impacts.⁵

Executive Regulatory Agency Use of AI

New York has taken many steps to address the use of AI in state government. These efforts focus on increased energy sources necessary to address growing energy needs in New York, and on developing guidance for State executive agencies as they contemplate the appropriate use of AI in regulatory matters. The Office of Information Technology Services is charged with the development of acceptable AI use policy.

The latest version of the policy was released in 2025.⁶ It works in conjunction with the State’s policy on the use of open-source software, among others.⁷ The policy relies upon the role and involvement of human oversight. The policy notes that humans must make the final decisions, and not automated systems.⁸

In addition, the policy focuses on core principles that include fairness, equity and bias, transparency and inventory efforts to track the use of various AI systems, by each agency.⁹ The volume and analysis of data in AI systems, can expose private information—inadvertently—into systems, particularly those that are open sourced. The State policy recognizes the vulnerability of data, and specifically, recognizes the need to maintain legal privacy and intellectual property protections, particularly regarding copyrighted materials.¹⁰

New York’s policy addresses a rapidly advancing and changing technology.¹¹ State officials also note the resource intensive nature of complex AI problem solving and recognize and acknowledge the environmental impacts—in terms of both energy and water usage required. As the AI technology and use continues to develop, an update to the policy is anticipated in the first half of 2026, with further revisions to address the continuing emerging issues and to address agency compliance with the developed policy.

analysis, both new and historic, to inform regulatory decision making. These areas require understanding of administrative regulations and the technical information necessary to comply with law. The analysis of data is particularly relevant in enforcement and compliance proceedings and for processing permits before regulatory agencies, such as the New York City Department of Environmental Protection, New York State Department of Environmental Conservation, New York State Department of Health, and the Office of Renewable Energy Siting and Electric Transmission, and others.

Consultants play an important and necessary role for the regulated community to assess and interpret the requirements of these rules and regulations. They also play an integral role in designing plans to meet environmental requirements for remediation at sites that address on-site and off-site soil contamination and groundwater issues. Consultants’ expertise is also important in meeting due diligence review requirements of environmental conditions at properties required for commercial transactions. In each of these areas, the interest in leveraging AI technologies continue to grow.

The experts in this area have noted the need for a full understanding of the functionality and limitations of each AI platform, its ability to keep information confidential, and the need to assess and to ensure that the underlying data that informs the AI analysis, and ultimately its conclusions are correct. In addition, and importantly, experts note issues that must be considered for AI use are similar to those being developed in AI policies for state regulatory agencies. The overlap includes the need for transparency, the need to explain the AI technology and its results, the need to address privacy and data stewardship, and the need to address bias and fairness in the AI models.

Unlike judicial proceedings, there often is no direct accountability to a decisionmaker if AI glitches or provides incorrect or fabricated information or conclusions. There are examples of AI automation going awry, and the subsequent impact on the underlying data used by this technology must be acknowledged and addressed by both government and consultant users of the technology.¹² This reality demonstrates the importance of human professional judgment in decision making and analysis by both government and consultants. Similarly, there is also a need for accountability to regulate AI use in the regulatory process.

Use of AI by Experts to Address Regulatory Agency Requirements

The implementation of environmental and energy law necessarily relies upon data and data



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Governments Addressing Growing Energy Needs of Technology

New York's evolving views meeting growing energy needs, including the demands of the burgeoning AI industry, are considering a more nuanced approach. In 2019, the state passed the Climate Leadership and Community Protection Act that set forth an ambitious effort to transition the state's energy system to a zero emissions system by 2040.¹³ The demands of the growing use of cloud-based computing and AI has led to a substantial increase in the needs for new sources of energy.

In fact, in 2025, the governor directed the New York Power Authority to develop at least 1 GW of new sources of nuclear energy, and new technologies to be part of the energy system.¹⁴ These efforts culminated in companies and upstate communities responding to the requests and indicating their interest.¹⁵ In the 2026 State of the State address, the Governor increased the target for nuclear development to 5 GW of new nuclear power.¹⁶ These new energy realities presume a full build out of contemplated renewables and battery storage. Together, these strategies are intended to address reliability and affordability challenges exacerbated by increased AI and cloud-based computing energy needs.

In this context, the federal government has much of the nuclear power plant licensing and permitting authority.¹⁷ It is set forth in federal regulations.¹⁸ The federal government is undertaking efforts to speed up the nuclear licensing process.¹⁹ New York State also has a role in the process under the Public Service Law, and various other sources of authority, including the Clean Water Act. Despite these efforts, there are substantial supply chain and design constraints impacting the commercial construction of the next generation of nuclear power plants. These constraints may result in at least a decade before more widespread commercial nuclear power adoption can address the growing energy needs of AI and cloud-based systems.

Differences with Judicial Proceedings

The implications of AI use, by comparison, are different for judicial proceedings.²⁰ The use and leveraging of AI continues to raise ethical questions regarding applicability of civil procedural rules and judge's individual rules to Court submissions. The legal practice implications are common topics in commentary and as noted in a recent Commercial Transactions Committee meeting, where a leading jurist's views of the appropriateness and

limitations of AI were presented and discussed.²¹

The changes evident in legal practice include use of AI in a wide range of activities, from drafting documents and legal narratives, to conducting legal research and preparing case filings. Each of these areas, however, is defined and addressed through legal training and judicial oversight. Notably, new and emerging areas of concern include disclosure to clients of the use of AI in practice—a requirement increasingly addressed in initial retainer agreements, and implications on attorney-client privilege by the use of AI and queries by clients.

The major legal research and service providers are also actively engaging in and developing new and more capable AI tools to assist practitioners' everyday work. Underscoring the challenge, and to demonstrate these issues, it has become common for conflicting views of AI bots to develop in the litigation context.

Recently, our firm found conflicting views of two of the largest legal research companies when running a Memorandum of Law in support through AI to determine if anything was missed in the analysis.²² A co-counsel in the matter ran the memo through a competing AI research tool and challenged portions of our draft. However, these comments were made without adequate independent research—instead overly relying on AI results. The AI tools comparison missed key points, underscoring why AI cannot replace experience or judgment in our profession. While this experience is somewhat entertaining, it underscores the fundamental concerns with reliance on AI by less experienced practitioners and even new employees in government, who may not have in depth training or experience to check the accuracy and efficacy of the search queries.

Additionally, there are also implications for attorney client privilege when unsecured AI tools are used and what ingesting confidential client information into the wrong service can mean. Plainly, there are significant implications to misunderstanding the rules and guideposts for the use of this new technological marvel. Another key component of the AI use conundrum for lawyers is consideration of the impacts on the physical world resulting from the increased use by firms, practitioners, courts, and government.

Conclusion

In the end, the power of AI cannot offer the experience and judgment of humans. This ability and judgment are at the core of effective and responsible legal representation that meets the letter and intent of our codes of professional

responsibility and ethics. Government and consultants are continuing to develop regulations and functional approaches of how and when to use AI in the complex regulatory reality of modern government. While the maxim "trust but verify" the accuracy of whatever may be produced by an AI analysis will remain necessary, the work to find responsible ways to have AI assist in government operations will continue to raise bias and fairness questions.

The impacts of the use of AI should also be considered. Due to the complexity, and often comprehensiveness of some AI research efforts (and subsequent follow up efforts), the growing environmental impacts of the need for more energy and the consumption of water necessary to keep the system working is an equally important question.²³ Nonetheless, Google recently estimated that the average AI text query consumed approximately the equivalent of the energy necessary to watch a TV for about nine seconds, and five drops of water. Given the more involved AI queries, it is easy to see that with millions of users, there are significant costs and impacts from using this new tool.²⁴

As the electrical grid ages and AI use surges, the demand for ever more electricity is real, and results in significant cost increases. Further, states like New York that have ambitious statutory goals to transition to a carbon free energy system are addressing once unforeseen realities by considering new energy technologies. The increased energy needs, especially for complex queries, are likely to result in new AI pay structures and costs for the use of the substantial computer resources necessary for the system to work.

The question really is not whether to use AI for so many things, but should you? 🗡️

This article follows the New York State Bar Association's (NYSBA) Annual Meeting on January 16, 2026, of the Environmental and Energy Law Section (EELS). The author had the honor to serve as this year's EELS Program Chair.²⁵ One of the panel discussions addressed ethical issues of AI in environmental and energy law practice, which inspired this article.

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3. *Id.*
4. Juan-Carlos Rodriguez, *Feds' Use of AI in Permitting Rulemaking Raises Concerns*, Law360 (Nov. 17, 2025), <https://www.law360.com/articles/2407406/feds-use-of-ai-in-permitting-rulemaking-raises-concerns>.

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9. *Id.* §§ 4.3, 4.4, 4.7.
10. *Id.* §§ 4.7, 4.8, 4.10.
11. *Id.* § 4.9.

12. Beatrice Nolan, *An AI-Powered Coding Tool Wiped Out a Software Company's Database, Then Apologized for a "Catastrophic Failure on My Part"*, Fortune (July 23, 2025), <https://fortune.com/2025/07/23/ai-coding-tool-replit-wiped-database-called-it-a-catastrophic-failure/>.

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14. See N.Y. Governor's Off., *Governor Hochul Directs New York Power Authority to Develop a Zero-Emission Advanced Nuclear Energy Technology Power Plant* (Nov. 1, 2025), <https://www.governor.ny.gov/news/governor-hochul-directs-new-york-power-authority-develop-zero-emission-advanced-nuclear-energy>.

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