



## Legislative Report from the NYS Assembly Committee on Environmental Conservation

Sheldon Silver, Speaker ■ Robert K. Sweeney, Chair ■ Summer 2011



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*Dear Friend,*

*This newsletter summarizes the initiatives and accomplishments of the New York State Assembly Standing Committee on Environmental Conservation in the past few months.*

*Each citizen in New York has an interdependent relationship with the environment. We thrive and grow from the environment's natural treasures, and simultaneously influence the earth's health with our actions. My efforts as the Chair of the Committee on Environmental Conservation have been guided by this belief. I will continue to work to ensure a healthy environment for today's New Yorkers and future generations.*

*Very truly yours,*

*Bob Sweeney*

*Robert K. Sweeney, Chair  
New York State Assembly  
Environmental Conservation Committee*

## 2011-12 Budget Accomplishments

New York, like the rest of the country, continues to face financial challenges because of the difficult economic climate. The Assembly maintained its commitment to the environment and provided \$134 million in funding for the Environmental Protection Fund (EPF). The following EPF categories received funding including: \$13 million for municipal parks, \$9 million for zoos, botanical gardens and aquariums, \$17.5 million for land acquisition, and \$11.5 million for waterfront revitalization.

## Session Accomplishments

### Natural Gas Drilling

The development of new drilling and extraction techniques has meant that low-permeability shale formations, including the Marcellus and Utica formations, can be tapped for their natural gas resources. In response to the expected increase in the number of drillers seeking permits, the Legislature passed a moratorium last year that would have prohibited the issuance of permits until May 15, 2011. Governor David Paterson vetoed

# Session Accomplishments *(continued)*

the legislation and issued Executive Order 41 prohibiting the issuance of permits until after the Supplemental Generic Environmental Impact Statement (SGEIS) was finalized by the Department of Environmental Conservation (DEC). In response to continued concerns raised about the safety of hydraulic fracturing, the Assembly held a hearing and passed legislation. A summary of those activities follows:

## **Hearing on the Health Impacts of Hydraulic Fracturing Techniques:**

Hydraulic fracturing (fracking) involves the high-pressure injection of water and chemicals into rock to stimulate the production of oil and gas. There are a number of concerns regarding the potential health effects of exposure to such chemicals. On May 26th in Albany, the Assembly Standing Committee on Environmental Conservation, in conjunction with the Assembly Standing Committee on Health, held a hearing to solicit information on the potential health impacts of fracking within New York State. Witnesses included an endocrinologist, ecologist, chemist, pediatrician, toxicologist, and petroleum engineer.

The Assembly has passed a number of bills to provide greater oversight of the natural gas and oil drilling industry in order to protect the public health and environment including:

**Drilling Moratorium:** This legislation, A.7400 (Sweeney), would establish a moratorium, until June 1, 2012, on the issuance of new permits for well drilling that utilize hydraulic fracturing in low permeability natural gas reservoirs, such as the Marcellus and Utica shale formations. Extending the moratorium will ensure ample time for review of the finalized Supplemental Generic Environmental Impact Statement (SGEIS). The SGEIS is expected to be issued by DEC on or around July 1, 2011. This legislation passed the Assembly, but the Senate has not yet taken action.

**Proper Treatment of Fracking Waste:** Currently all natural gas and oil waste has an exemption from designation as hazardous waste pursuant to DEC rules and regulations. This legislation, A.7013 (Sweeney), would require all waste resulting from natural gas and oil drilling exploration and production to be designated as hazardous waste if such waste meets the statutory definition of “hazardous waste.” In addition, this legislation would require DEC, within six months of the effective date, to make all necessary changes to bring its regulations into compliance with this section. This legislation passed the Assembly, but the Senate has not yet taken action.

## **Increased Protections for New York’s Water Resources**

New York State is fortunate to have plentiful water resources. The preservation and protection of water resources is vital to New York’s residents and businesses, which rely on these resources for drinking water supplies, recreation, and to support agriculture, manufacturing and other industries in the State. Good policy and sound natural resource management practices are critical to assuring long-term supplies of water in order to meet these needs now and into the future.

Pursuant to Environmental Conservation Law Article 15, DEC has been entrusted with the responsibility to conserve and control New York State’s water resources for the benefit of all the inhabitants of the State. However, the water supply provisions of Title 15 derive primarily from statutes written in the first half of the last century, and are outdated. Moreover, since the provisions of Article 15 were enacted, population growth and increased use of water for commercial, industrial and other purposes have resulted in substantially increased demands on the State’s water resources. In addition, potential impacts from climate change, and proposals to export vast amounts of water from New York to other states and abroad could pose new threats to the State’s water supply. These issues have served to highlight the limitations on the State’s water resources program and DEC’s limited ability to regulate water withdrawals.

This legislation, A.5318-A (Sweeney), would authorize DEC to implement a permitting program for all water withdrawal systems with a capacity equal to or greater than 100,000 gallons per day. This legislation would allow New York to meet its obligation to implement a regulatory program for water withdrawals in the Great Lakes Basin. Moreover, the creation of the standards statewide assures consistent requirements throughout New York and creates an even regulatory playing field while at the same time protecting the State’s finite water resources. This legislation passed the Assembly and the Senate.



# Earth Day

On May 2, 2011, the Assembly commemorated Earth Day by passing a 15-bill package. The legislation included a variety of measures that address global warming, encourage State agencies to become more “environmentally conscious” and protect water resources. A summary of the Earth Day package follows:

- A.96 (Hevesi) – authorizes the use of cool roof materials, including white vinyl, coated or painted white roofs, on new or substantially renovated state-owned buildings.
- A.611 (Peoples-Stokes) – identifies the criteria for DEC to consider in publishing a list of high local environmental impact zones for those areas most adversely affected by existing environmental hazards, including information regarding brownfields, the release of toxic chemicals, petroleum discharges, and quantities of pesticide sold.
- A.667 (Jaffee) – establishes standards for the testing of drinking water from privately owned wells to ensure the health and safety of New York State residents.
- A.668 (Jaffee) – prohibits the sale of certain mercury-added products by removing the requirement for DEC to determine that there are non-mercury alternatives available.
- A.947 (Peoples-Stokes) – creates a permanent environmental justice advisory group to ensure that no group of people, including a racial, ethnic or socioeconomic group, bears a disproportionate share of negative environmental consequences resulting from any operations, programs and policies.
- A.1241 (Colton) – clarifies the obligations of waste haulers regarding the handling of recyclable materials and specifies the materials to be separated for recycling.
- A.2097 (Kavanagh) – requires the State, municipalities and their contractors to use food service ware made from material other than polystyrene foam (Styrofoam) if such materials are within 15 percent of the cost of non-biodegradable alternatives.
- A.3374 (Sweeney) – provides DEC with increased regulatory authority over freshwater wetlands of one acre or more.
- A.3485 (Sweeney) – requires manufacturers of mercury-containing thermostats to establish a program for the collection and proper disposal of such thermostats.
- A.5318-A (Sweeney) – provides DEC with the authority to establish water withdrawal permitting to preserve and protect the State’s water resources and to comply with the Great Lakes Compact.
- A.5346 (Sweeney) – authorizes DEC to promulgate rules and regulations to curb greenhouse gas emissions in New York State, including the development of a statewide cap on emissions.
- A.5638 (Sweeney) – conforms freshwater wetland enforcement to existing tidal wetland enforcement by requiring violators to mitigate adjacent wetland areas.
- A.5798 (Sweeney) – prohibits the manufacture, processing or distribution of the brominated flame retardant decabrominated diphenyl ether (DecaBDE) beginning December 31, 2011.
- A.6145 (Sweeney) – establishes requirements for the recycled content of polystyrene loosefill packaging, commonly referred to as “packing peanuts.”
- A.6366-A (Sweeney) – establishes minimum specifications for recycled content, waste reduction, energy efficiency, and green building design for commodities procured by State agencies and creates the State Healthy and Green Procurement Coordinating Council.



# Reducing Chemical Exposure

## **Mercury Thermostat Recycling:**

Recent estimates suggest that about one ton of mercury enters the waste stream every year, with a portion of that amount coming from out-of-service mercury-containing thermostats. Mercury is a known toxin that can cause brain, kidney and/or lung damage. This legislation, A.3485 (Sweeney), would require manufacturers of mercury-containing thermostats to submit and implement a plan, no later than December 1, 2012, establishing a collection program for such thermostats that is free of charge to contractors, service technicians and homeowners. This legislation contains a thermostat collection standard of at least 65 percent beginning in 2016. This legislation passed the Assembly, but the Senate has not yet taken action.

**Mercury-Added Products:** In 2005, legislation was enacted to prohibit the sale and distribution of certain products that contain mercury. This legislation, A.668 (Jaffee), amends Chapter 676 of the Laws of 2005 to strengthen the existing prohibition on the sale of certain mercury-added products by removing the requirement for DEC to issue a written finding regarding the availability of comparable non-mercury alternatives. This legislation has been signed into law, Chapter 20 of the Laws of 2011.

**Cadmium:** Cadmium is a metal that is inexpensive, malleable and highly resistant to corrosion, making it an ideal product for manufacturers to use in products; however, cadmium has been associated with harmful health effects. This legislation, A.1158 (Sweeney), would prohibit the sale or distribution, beginning June 1, 2013, of any cadmium-added novelty consumer product and require manufacturers that produce or sell cadmium-added novelty consumer products to

notify retailers about the prohibition and instruct them on how to dispose of the remaining inventory properly. This legislation passed the Assembly, but the Senate has not yet taken action.

## **Decabromodiphenyl ether (DecaBDE):**

In 2004, legislation was enacted that prohibited the manufacture, process or distribution of two forms of brominated flame retardants (PentaBDE and OctaDBE) because of their prevalence in the environment and research suggesting that they cause permanent neurological and developmental damage. This legislation, A.5798 (Sweeney), would codify agreements between the United States Environmental Protection Agency and DecaBDE manufacturers to phase out the production, importation and sale for most uses of DecaBDE by December 31, 2012, and for all uses by December 31, 2013. This legislation passed the Assembly, but the Senate has not yet taken action.

## **Tris(2-chloroethyl)Phosphate**

**(“TRIS”):** On April 8, 1977, the United States Consumer Product Safety Commission banned the sale of children’s clothing containing the flame retardant chemical TRIS phosphate (TRIS). The ban came after a two-year study by the National Cancer Institute showed that TRIS causes cancer in test animals and could be absorbed by children through the skin or mouthing of TRIS treated clothing. This legislation, A.6195-A (Sweeney), would ban any new children’s care product containing a component of TRIS, 2-chloroethyl phosphate (TCEP), beginning December 1, 2013. Children’s care products would include products aimed at children under three including for example, crib mattresses, strollers and toys. The Assembly and Senate passed this legislation.

## Super Bills

Each year the Green Panel, a group of more than a dozen leaders of environmental groups, identify bills of special significance known as super bills. This year the following Environmental Conservation bills received super bill status:

- A.5318-A (Sweeney) – would require users of 100,000 gallons of water per day to obtain a permit from DEC in order to protect New York’s water supply and comply with the Great Lakes Basin Compact. This legislation passed the Assembly and the Senate.
- A.5346 (Sweeney) – would require reductions in greenhouse gas emissions in New York State, the goal being an 80 percent cut in total emissions by the year 2050. This legislation passed the Assembly, but the Senate has not yet taken action.
- A.7013 (Sweeney) – would require that waste resulting from gas drilling be treated as hazardous waste, if such waste meets the definition of hazardous waste. This legislation passed the Assembly, but the Senate has not yet taken action.