



Legislative Commission on TOXIC SUBSTANCES AND HAZARDOUS WASTES

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Fall 2005 • NEWS FROM ASSEMBLYMEMBER DAVID KOON • Volume I
CHAIR, LEGISLATIVE COMMISSION ON TOXIC SUBSTANCES AND HAZARDOUS WASTES



Dear Colleagues and Friends:

2005 has been a unique and interesting year for the Commission. Certainly the fair and on-time FY 2005-06 budget captured much of the public's attention. The Legislature successfully increased funding for the Environmental Protection Fund (EPF) to \$150 million (an increase of \$25 million) while fending off the Governor's attempt to off-load other programs onto

the EPF. This issue will be discussed further in this newsletter.

The Legislature and the Governor negotiated multi-year funding for brownfields projects that are authorized under the Brownfield Clean-Up and Superfund Refinancing law enacted in 2003. The funding will be utilized for municipal and community-based organization planning grants, increased public participation, establishment of a groundwater database and technical assistance grants. This program offers communities important opportunities to remediate and redevelop thousands of sites, par-

ticularly in urban areas, for productive purposes. Information on the specific types of grants and programs available in this program are included in this publication.

As a result of my work over the past four years, the Legislature passed a bill in 2005 (A 6852-C, Koon et al/ S 2828-D, Flanagan et al) that establishes a Small Business Pollution Prevention and Environmental Compliance Assistance Program to help eligible businesses improve their products and processes in an environmentally sound manner.

Another bill I sponsored that would ban the use of certain toxic constituents in commercial fertilizers and agricultural liming products was vetoed by the Governor for technical reasons. I hope to address these issues next session.

The Commission also worked with Assemblymember Thomas DiNapoli, Chair of the Assembly Environmental Conservation Committee on hearings in November 2004 (Endicott), April (Ithaca) and May (Hopewell Junction) 2005 on the topic of vapor intrusion from underground contamination into structures. A report of the findings and recommendations is expected to be published in the Fall.

A new issue we have worked on this year is the addition of lead in jewelry, particularly inexpensive costume jewelry. Jewelry that was tested in the Rochester area showed extremely high levels of lead, a neurotoxin that is very hazardous to children. I have introduced legislation to limit the amount of lead in jewelry and will continue to work on this issue next year.

The Legislature passed a bill developed in part by the Commission to expand the 2004 law banning the use of mercury in various products. Other issues of interest include prohibiting the open burning of household waste, tracking environmental health data, regulating hazardous materials transport security and evaluating Great Lakes water issues.

You will find articles on all of these topics in the newsletter. I hope that you find this newsletter interesting and informative, and encourage you to share your concerns and comments with me.

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David P. Koon



LEAD IN JEWELRY POSES SIGNIFICANT THREAT TO CHILDREN

This year, Assemblyman Koon focused the public's attention on the impacts of lead in jewelry, particularly inexpensive costume jewelry marketed for children. High concentrations of lead have consistently been found in inexpensive jewelry. Mr. Koon introduced his bill after investigations showed that limited federal action has failed to eliminate or reduce this significant health threat.

Lead is a neurotoxin that can cause acute effects (seizures, coma and death) and chronic effects (attention deficit problems, learning disabilities, mental retardation and behavioral problems). Lead has been found to be particularly hazardous to young children – even very low lead levels can cause brain function impairment. No level of lead exposure has been found to be safe for a developing child.

BACKGROUND

Only after legal action by the Center for Environmental Health in California, the federal Consumer Product Safety Commission conducted the largest product recall in U.S. history by removing more than 150 million pieces of children's jewelry from vending machines nationwide in 2004. In March 2005, another 2.8 million pieces of children's jewelry sold as "Charming Thoughts" were recalled by CPSC. However, these recalls have **failed** to deal with much of lead-tainted jewelry being sold in the U.S., most of which is imported into the country.

The CPSC has been working on this problem for six years, yet the agency has refused to promulgate binding rules. The current CPSC approach has serious deficiencies including

- ◆ **failure to adopt regulations for lead in children's jewelry and no requirements for industry to test children's jewelry;**
- ◆ **failure to address cumulative exposures from multiple components;**
- ◆ **failure to include other types of jewelry, including that made with PVC plastics, which may also contain lead; and**
- ◆ **failure to provide a clear standard for unacceptable lead levels in children's jewelry.**

Following the CPSC recall, Rochesterians Against the Misuse of Pesticides (RAM) purchased jewelry in a number of large retail stores in the Rochester area. Laboratory tests confirmed high levels of lead in all of the jewelry — one piece of jewelry contained 61,000 parts per million (ppm) lead and another piece contained 45,500 ppm lead!

CONSUMER INFORMATION ON LEAD JEWELRY

The Consumer Product Safety Commission website has pictures of the type of jewelry that has been found to contain lead. This is by no means the entire spectrum of such jewelry, but may help parents to avoid purchasing lead-contaminated jewelry. The website address is www.cpsc.gov





Assemblymember David Koon speaks at a press conference in Rochester with Senator James Alesi announcing the introduction of legislation to regulate the lead content in jewelry.

A LEGISLATIVE SOLUTION

Mr. Koon's bill (A 7726-A Koon /S 5300-A Alesi) would prohibit the sale of lead-containing jewelry that contains the following levels of lead:

- ◆ **more than 600 ppm after July 1, 2006; and**
- ◆ **more than 200 ppm after January 1, 2008.**

The bill would also require DEC to publish and widely disseminate information on the dangers and hazardous of jewelry containing lead.



GOVERNOR VETOES KOON BILL REGULATING TOXIC FERTILIZERS

Chairman Koon has worked on legislation regulating toxic constituents in fertilizers for the past several years. This year, the Legislature passed his bill A 7078/ S 3996 Marcellino. Unfortunately, the Governor vetoed the bill, based on what he considered to be a serious technical flaw.

As discussed in our 2004 newsletter, the bill would prohibit the sale of commercial fertilizers and agricultural liming materials with pollutant levels greater than the limits established for soil conditioning products made from solid waste under the Environmental Conservation Law. Products tested in New York were found to have high levels of lead and arsenic, two elements of significant concern.

The Governor vetoed the bill (Veto Message No. 14) because other elements (notably zinc and molybdenum) added to fertilizers are listed as pollutants in the solid waste regulations and exceed the regulatory limits set in those regulations. Therefore, commercial fertilizers containing these elements could not be sold in New York. The Governor's message states that he has directed the Departments of Agriculture and Markets, Environmental Conservation and Health to evaluate the problem and develop alternative approaches to regulating the materials of concern.

The Commission will monitor the agencies' progress on this matter and likely seek a legislative solution to this serious problem during the next session.

COALITION LAUNCHES PROGRAM TO RECYCLE AGRICULTURAL PLASTIC FILM

Assemblyman Koon Meets with Coalition in Cooperstown

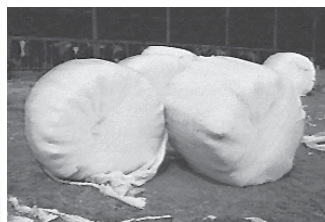
In March, 2005, Assemblyman Koon met with representatives of a coalition to discuss their pilot program to recycle agricultural film plastics. Agricultural plastic films are increasingly used by farmers for silage storage. Coalition members include the Otsego County Conservation Association, the New York Center for Agriculture Medicine and Health, Otsego County Solid Waste Department, Otsego County Cooperative Extension and Cornell University. The driving force behind the Coalition's efforts is to find a viable alternative to burning the plastics.

Burning plastics constitutes a serious health hazard. The U.S. Environmental Protection Agency (EPA) has found that solid waste burning is the largest quantified source of dioxins in this country. Airborne dioxins can settle on feed crops, which are eaten by domestic meat and dairy animals, stored in their fat and ultimately consumed by humans. Other dangerous pollutants, including benzene, particulates, lead, arsenic and mercury can be released in

significant amounts, resulting in damaging exposures to the respiratory and nervous systems, kidneys and liver.

Although farmers might prefer not to burn these plastics, the expense and inconvenience of current, more environmentally friendly disposal options are significant deterrents. The Coalition has investigated other means of recycling. Cornell University's Environmental Risk Analysis Program conducted a feasibility study of local agricultural recycling efforts. The next steps in this project will be working with the local farming community to initiate an education program, procuring an efficient plastics baler, arranging a film collection site and collection time period, identifying reprocessing markets, and training staff.

It is the overall goal of this program to negate one of the arguments against the legislation prohibiting the open burning of household garbage (see separate article) by making recycling available for agricultural films.



ASSEMBLY PASSES OPEN BURNING BAN BILL

For the eighth consecutive year, the Assembly has approved legislation sponsored by Mr. Koon (A 3073) that would close a regulatory loophole to ban the open burning of household garbage. Unfortunately, the Senate failed to act on a similar bill (S 2961-A Maziarz).

This bill continues to gather extensive support from solid waste managers, environmental organizations, local officials, health professionals, firefighters and casualty insurance companies. Although DEC refuses to change its regulations, the agency has indicated its support for this bill.

ASSEMBLY HOLDS PUBLIC HEARINGS ON VAPOR INTRUSION

The Assembly Environmental Conservation Committee, chaired by Assemblymember Thomas DiNapoli, sponsored three public hearings around the state to explore the issue of vapor intrusion from contaminated sites into homes and businesses. Indoor air contamination by volatile chemicals from soil and groundwater is an emerging area of public health concern. Vapor intrusion occurs when contaminants vaporize and rise up through cracks, gaps, or pores in soil and foundations into structures.

Vapor intrusion has occurred at several Superfund sites in New York and has the potential to be a problem at brownfield sites as well. The New York State Departments of Environmental Conservation (DEC) and Health (DOH), as well as the United States Environmental Protection Agency (EPA), have issued draft guidance pertaining to various aspects of vapor intrusion, but none have been finalized.

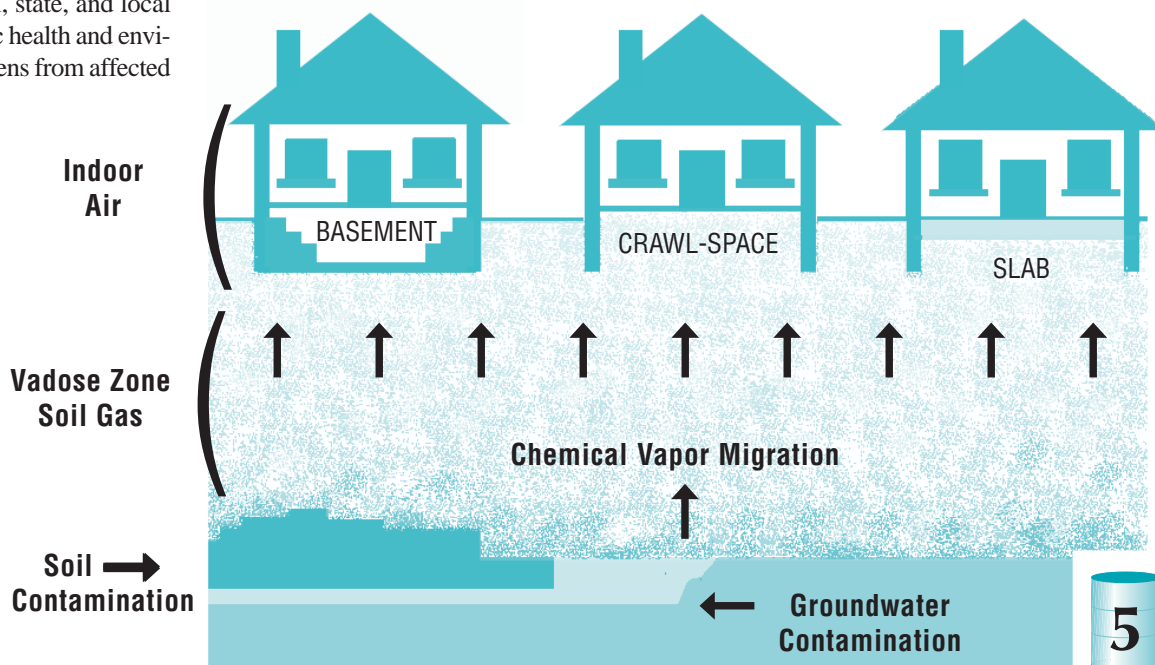
In November 2004, the Committee convened a series of public hearings to determine what lessons can be learned from past experience in order to properly address vapor intrusion in the future. The first hearing was held in Endicott, New York on November 15, 2004; the second in Ithaca, New York on April 21, 2005; and the third and final hearing in Hopewell Junction, New York on May 19, 2005. The Committee received testimony from panels of witnesses including federal, state, and local government officials; public health and environmental experts; and citizens from affected communities.

In March 2005, the Committee issued a preliminary report titled "Vapor Intrusion of Contamination from Soil and Groundwater Into Indoor Air", which is available from the Commission's office and on the Assembly's website. Some of the preliminary findings and conclusions are:

Indoor Air Contamination May Pose Significant Public Health Risk

- ◆ There is a high level of uncertainty, and even controversy, associated with all of the issues associated with vapor intrusion – from site screening and initial testing through the setting of indoor air quality standards, mitigation and remediation.
- ◆ Government **must** provide citizens with complete and accurate information on the potential health and environmental impacts associated with different policy choices in an open and transparent manner with full citizen participation.
- ◆ The NYS Department of Health (DOH) should revise its trichloroethylene (TCE) Guidelines to reflect the most protective (i.e. conservative) assumptions about toxicity and exposure supported by science.
- ◆ Residents living adjacent to or near a contaminated site with a potential for vapor intrusion, but outside the perimeter of the area that has been designated to be tested, have legitimate concerns about contamination in their homes. In such cases, DEC and DOH should test indoor air of any resident requesting a test.
- ◆ When development is approved at sites with the potential for vapor intrusion problems, long-term monitoring and mitigation should be required. All potential owners, tenants and other long-term users of the site should be notified of the potential for vapor intrusion prior to sale or entering into a contract.

The Committee will issue a final report of its findings and recommendations in the fall.



LANDMARK POLLUTION PREVENTION (P2) BILL PASSES BOTH HOUSES

Helping New York Businesses Protect the Environment and Improve their Bottom Line

As a result of more than four years of work by Assemblyman Koon, landmark legislation that would enhance New York's environment and economy by helping businesses to reduce the amount of pollution produced by adopting more efficient production methods, work practices and products has been passed by both houses of the Legislature (A.6852-C/S.2828-D). The bill has been sent to the Governor for his action.

BACKGROUND

Four years ago, Assemblyman Koon initiated a dialogue with small businesses to discuss ways the state could provide assistance to enhance their environmental regulatory compliance. Business representatives wanted the Department of Environmental Conservation (DEC) and other agencies to take a more proactive approach to enforcement with a focus on assisting companies rather than closing them. They wanted on-site technical assistance that did not carry the threat of increased enforcement. They also emphasized the critical need for better enforcement against "bad actors" to ensure a level playing field for all businesses.

Following a series of meetings and roundtables, Assemblyman Koon issued a Commission report entitled "Helping Small Businesses Succeed Through Pollution Prevention" in 2003. The Report included a comprehensive assessment of New York's existing pollution prevention initiatives and summarized the programs of over twenty other states.

Since the Report's release, Assemblyman Koon has successfully worked to secure increased funding for a State program that finances technical assistance and research and development projects by local governments, academia and the private sector. The passage of this bill will elevate the role of pollution prevention within DEC and expand the state's assistance programs.

"This bill provides for a cultural shift in New York's approach to protecting public health and the environment," said Assemblyman Koon. "While maintaining the State's existing regulatory programs, it is time to invest in programs and establish incentives that will help New York businesses pursue innovation, improve their environmental performance, and maintain their competitive advantage in an increasingly global marketplace."

THE LEGISLATION

The bill would grant DEC authority to implement comprehensive pollution prevention initiatives, including annual training for all department staff; the coordination of assistance, inspection and enforcement efforts; and the provision of information regarding opportunities for pollution prevention as a matter of course during permitting, inspection and enforcement activities. Support for an increase in state technical assistance is accompanied by a directive to adopt policies to address how DEC will respond if violations are discovered in the course of providing such assistance.

The bill also would establish a Small Business Pollution Prevention and Environmental Compliance Assistance Program to help eligible businesses to achieve pollution prevention through on-site consultations and the development of comprehensive environmental management systems. This program is an expansion of the existing Clean Air assistance program currently carried out by the Environmental Facilities Corporation (EFC) and Empire State Development (ESD).

HOW P2 WORKS FOR BUSINESS AND INDUSTRY

Pollution prevention is a "catch-all" term for changes in raw materials, production methods, work practices or products that reduce, avoid or eliminate the use of hazardous substances. This is in contrast to traditional means of controlling pollution "at the end of the pipe." Pollution prevention techniques offer the potential to reduce or eliminate pollutants and waste before they are created.

Opportunities for pollution prevention include the re-design of products to use less toxic materials; the re-capture and re-use of hazardous materials within the production process; and improved monitoring and maintenance of operations to reduce leaks and unnecessary waste. Such changes can result in significant reductions in the use of chemicals, energy and natural resources, which translate into less risk for workers and consumers, less pollution and a healthier environment. A recent study by the National Pollution Prevention Roundtable documents that pollution prevention assistance programs across the country resulted in the avoidance of more than 167 billion pounds of pollution from 1990 to 2000.

The savings to businesses can also be significant. Pollution prevention can reduce costs through greater efficiencies, such as lower raw material, production and energy costs, and decreases in the cost of chemical storage, waste treatment and disposal. Experience in New York has shown that for every dollar government spends on pollution prevention assistance, small businesses save six dollars.

ASSEMBLYMAN KOON ATTENDS GREAT LAKES LEGISLATIVE CAUCUS

Invasive Species and the Great Lakes Compact

Assemblyman Koon attended the Great Lakes Legislative Caucus on March 18, 2005 with representatives from Michigan, Indiana, Minnesota, Wisconsin and Quebec (Illinois, Ohio and Pennsylvania were missing). Major agenda items included the Great Lakes Charter Amendments and Compact and the impact of invasive species in the Great Lakes.

The Great Lakes Compact was available for public comment until August 29, 2005. One of the concerns discussed was the absence of a role for State Legislatures in this process, other than comments submitted by individual legislative members. Representatives agreed on the need to establish greater role for the Caucus in this process. There was also interest in convening hearings on the Compact in individual states for greater review and input. Mr. Koon recommended that the group meet again after the revised Compact is released. This idea is under consideration depending on the availability of funding.

The introduction of invasive species such as zebra mussels continues to be an issue of great concern to the region. There are representatives who consider this matter to have a greater impact than water withdrawals. Some states are pursuing legislative authorization for a regional agreement with other Great Lakes Basin states to develop strategies to deal with this issue. It will take regional cooperation to effectively reduce or eliminate the continuing threat of invasive species introduction. DEC has issued the Draft Final Report of the New York State Invasive Species Task Force, Summer 2005, for public review.



Assemblymember David Koon join representatives from other Great Lakes states at the Great Lakes Caucus in Chicago.

LEGISLATURE APPROVES EXPANSION OF MERCURY-ADDED CONSUMER PRODUCTS LAW OF 2004

Assemblyman Koon joined Assemblymember Thomas DiNapoli in sponsoring a bill to expand the list of mercury-added consumer products that would be banned from sale or distribution (A6850-A DiNapoli/S4469-A Marcellino). The new prohibitions include:

- ◆ After January 1, 2006, sale or distribution of mercury barometers, mercury esophageal dilators, mercury bougie tubes, mercury gastrointestinal tubes, mercury flow meters, mercury hygrometers, mercury psychrometers and mercury pyrometers.
- ◆ After January 1, 2007, sale or distribution of mercury hydrometers or mercury manometers would be prohibited
- ◆ After January 1, 2008, sale or distribution of mercury switches, mercury relays individually or as part of a product component.

- ◆ By February 20, 2008, DEC would be required to issue a written finding whether non-mercury alternatives are available and comparable in price, accuracy and performance for mercury sphygmomanometers, mercury wetted reed relays, mercury flame sensors, mercury thermometers (other than those already prohibited) and mercury thermostats.

In addition, DEC would be authorized to collect data from product manufacturers or trade associations on mercury-added products.

The bill has passed both houses and awaiting consideration by the Governor.



BILL CREATING AN ENVIRONMENTAL HEALTH TRACKING SYSTEM UNANIMOUSLY PASSES ASSEMBLY

Assemblyman Koon's Environmental Health Tracking bill (A 969-A) unanimously passed the Assembly this year. The bill would create an Environmental Health Tracking System to track and evaluate a variety of chronic diseases and cancer in relation to environmental exposures. The bill would also establish a working group comprised of technical experts from various State agencies as well as environmental toxicologists from SUNY Schools of Public Health at Albany and Buffalo to determine the best method to monitor

chronic diseases. The Department of Health would be required to adopt and implement recommendations made by the working group.

A 2002 study conducted by the John Hopkins School of Public Health found that chronic diseases account for 7 of every 10 deaths in the country each year. Economic costs associated with diseases total \$325 billion annually. This bill would require compilation and coordination of all existing data held by individual state agencies on diseases and environ-

mental sites, and would establish a surveillance system to assess potential links between chronic diseases and environmental exposures. The surveillance system would be a major first step for the State, by creating a proactive, cost-effective approach to fighting chronic diseases, as opposed to relying on costly treatment of these diseases.

The bill has passed the Assembly unanimously the last four legislative sessions. This year Senator James Alesi sponsored the bill (S 2626-A). Hopefully, the legislation will continue to gain momentum next year and become law.





INDOOR MOLD

What are the Health Risks?

Assemblymember Koon and Senator Carl Marcellino have introduced legislation for the past several years to study those indoor molds that are potentially toxic or more harmful to humans. (A 4577-B/S1771-B).

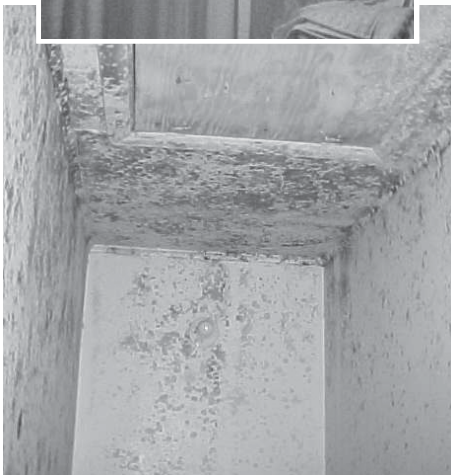
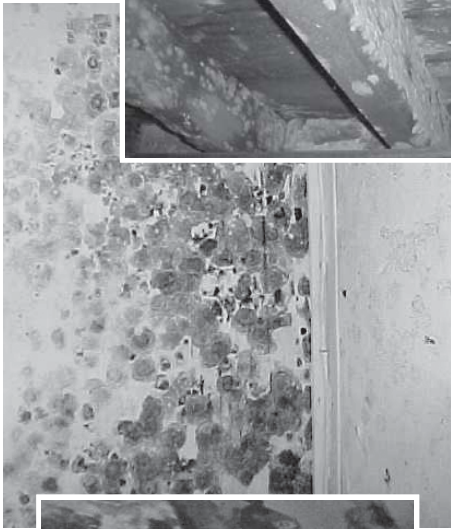
Mold in structures is not a new problem. Anyone who has a damp basement or water intrusion problems knows how difficult and expensive mold control and removal can be. Mold spores may also cause health problems such as allergic and asthmatic reactions, and affect vital organ function and susceptibility to colds and flu. Human exposures, particularly to more vulnerable populations such as children, the elderly, asthmatics and those susceptible to allergies, are of particular concern.

The Koon/Marcellino bill would establish a New York State Toxic Mold Task Force composed of 14 members, including the Health Commissioner and the Secretary of State (joint chairs), who select the remaining members from the following organizations/disciplines;

- ◆ SUNY College of Environmental Science and Forestry
- ◆ New York Indoor Environmental Quality Center, Inc.
- ◆ New York City Department of Health and Mental Hygiene
- ◆ New York STAR Center for Environmental Quality Systems
- ◆ Public health officer
- ◆ Environmental health officer
- ◆ Certified public health engineer
- ◆ Pediatric environmental health specialist
- ◆ Toxicologist
- ◆ Mycologist (study of molds)
- ◆ Mold abatement expert (labor representative)
- ◆ Real estate management (experience in structural renovation)

The Task Force would be responsible for evaluating scientific evidence on the health effects of mold exposure and mold exposure limits, particularly for vulnerable populations; determining methods of environmentally sound mold control and remediation; and reporting to the Governor and the Legislature on its findings by November 30, 2006.

The bill has passed both houses and was sent to the Governor.



ASSEMBLY INCREASES ENVIRONMENTAL FUNDING IN 2005-06 BUDGET

The Assembly successfully increased funding for environmental projects and thwarted the Governor's attempt to "offload" various initiatives to the Environmental Protection Fund (EPF). The EPF was increased by \$25 million for a total of \$150 million for the state fiscal year that began on April 1, 2005.

Included in the increase was \$7 million for secondary materials marketing and waste prevention projects strongly advocated by Assemblyman Koon, representing a \$2 million increase over the Governor's proposal for this category and a half million increase over last year's appropriation. This program provides funding for private sector and not-for-profit organizations for projects which increase the use of recyclable materials in manufacturing or reduce pollution. Assemblyman Koon also successfully passed his Small Business Pollution Prevention and Environmental Compliance Assistance Act (see separate article in this newsletter). Funding from this EPF category will support that new

program.

OTHER EPF FUNDED INITIATIVES SUPPORTED BY MR. KOON INCLUDE:

- ◆ \$ 7 million for municipal recycling projects
- ◆ \$ 3 million for municipal landfill closure projects
- ◆ \$ 14.250 million for local waterfront revitalization projects
- ◆ \$ 14.315 million for municipal parks
- ◆ \$ 6 million for zoos, botanical gardens and aquaria
- ◆ \$ 40 million for open space preservation
- ◆ \$ 16 million for agricultural and farmland protection
- ◆ \$ 750 thousand for the Historic Barn Preservation Program
- ◆ \$ 11.7 million for non-point source pollution control
- ◆ \$ 1.860 million for Soil and Water Conservation Districts
- ◆ \$ 1.5 million for Finger Lakes-Lake Ontario Watershed Protection Alliance
- ◆ \$ 3 million for Quality Community Grants

The Legislature also provided \$15 million for brownfield projects (see separate article in this newsletter) and \$18 million for waste tire remediation projects.



Assemblymember David Koon (second from right) joined (l to r) Senator Carl Marcellino, Assemblymember Steven Englebright, Senator James Alesi, and Assemblymember Thomas DiNapoli in presenting a Legislative Resolution to Karen Miller of the New York State Breast Cancer Network. The Resolution declared April 12, 2005 as Breast Cancer Awareness Day in recognition of the work of the New York State Breast Cancer Network and its local affiliates.



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“GROUNDBREAKING” BROWNFIELD PROJECTS RECEIVE FUNDING

In March, the Legislature and the Governor agreed on funding for brownfield projects. A memorandum of understanding (MOU) was entered into for \$30 million of funding to cover the past two fiscal years. An additional \$15 million was included in this year’s FY 2005-06 budget. The agreement ensures a multi-year funding stream aimed at addressing thousands of contaminated properties.

Under the agreement, community-based organizations and municipalities will have access to over \$23 million in financial assistance for neighborhood planning and brownfield site assessment. This will include Brownfield Opportunity Area (BOA) grants and Technical Assistance grants (TAGs). Monroe County and the City of Rochester received three BOA grants in the first round of funding.

Specific provisions of the agreement authorize:

- \$9 million for BOA grants to municipalities and community-based organizations to plan for the redevelopment of brownfields within targeted urban areas, including funding for planning and site assessment;
- an additional \$10 million for future BOA grants;
- \$3 million for TAGs for community based organizations to increase public participation and assist communities in the evaluation of site data and the development of public areas;
- \$2.75 million to set up a groundwater database to help identify contaminated groundwater and protect sensitive groundwater sources; and
- \$4 million for staff support of BOA and TAG administration

The application deadline for this year’s BOA grants was June 30th. An additional \$15 million provided in this year’s budget will be subject to a future agreement. These programs were authorized by the historic Brownfield Clean-Up and Superfund Refinancing legislation enacted in 2003 (Chapter 1 of the Laws of 2003).