

New York State Assembly | Sheldon Silver, Speaker



committee on

Environmental Conservation

Robert K. Sweeney, Chairman

December 15, 2009

Honorable Sheldon Silver
Speaker of the Assembly
Legislative Office Building, Room 932
Albany, NY 12248

Dear Speaker Silver:

I am pleased to submit to you the 2009 Annual Report of the Assembly Standing Committee on Environmental Conservation.

The Committee addressed several important issues this year including the proper disposal of electronic waste, the Bottle Law expansion and global warming. This report describes the legislative actions and major issues considered by the Committee and sets forth our goals for future legislative sessions.

Under your leadership and with your continued support of the Committee's efforts, the Assembly will continue the work of preserving and protecting New York's environmental resources during the 2010 legislative session.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Sweeney". The signature is written in a cursive, slightly slanted style.

Robert K. Sweeney, Chairman
Assembly Standing Committee on
Environmental Conservation

2009 ANNUAL REPORT
OF THE NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON ENVIRONMENTAL CONSERVATION

Robert K. Sweeney, Chairman

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COMMITTEE RESPONSIBILITIES

The Assembly Standing Committee on Environmental Conservation has jurisdiction over legislation affecting State environmental policy. The Committee considers bills amending the Environmental Conservation Law (ECL), Parks, Recreation and Historic Preservation Law, Canal Law, Executive Law, Soil and Water Conservation Districts Law, and Navigation Law.

The primary concerns of the Committee are pollution prevention and control, resource management, and environmental quality issues. The Committee also monitors the activities and enforcement of environmental laws by the New York State Department of Environmental Conservation (DEC). During the 2009 Legislative Session the Committee considered 394 bills, acting favorably on 101, with 16 becoming law.

SUBCOMMITTEES

The Environmental Conservation Committee examined policy issues with the assistance of two subcommittees - the Subcommittee on Oversight of the Department of Environmental Conservation and the Subcommittee on Shoreline Protection. These subcommittees help promote more deliberative, long-term discussions and solutions to complicated and far-reaching challenges.

Subcommittee on Oversight of the Department of Environmental Conservation – Adam T. Bradley, Chair

This Subcommittee examines issues regarding the DEC's ability to protect human health and the environment and effectively implement the provisions of the Environmental Conservation Law. These issues include the adequacy of staffing, auditing of and reporting by the Department, ensuring public access to DEC records and overseeing the implementation of environmental laws and regulations.

Subcommittee on Shoreline Protection – Steven Cymbrowitz, Chair

This Subcommittee focuses on topics involving the protection of both coastal and freshwater shorelines. Issues considered by the Subcommittee may impact such areas as the shores of Long Island Sound, New York Harbor, the Great Lakes, the Hudson River and Adirondack lakes. Issues under examination include beach and shoreline erosion control, tidal and freshwater wetlands protection, shoreline setbacks to control nonpoint source pollution and the protection of shore areas from aquatic invasive species.

MAJOR ISSUES OF 2009

A. BUDGET HIGHLIGHTS

The State Fiscal Year (SFY) 2009-10 Enacted Budget included approximately \$1.6 billion in funding for environmental programs and included monies for water and wastewater infrastructure and recycling programs.

Environmental Protection Fund

The Environmental Protection Fund (EPF) received \$212 million. In his budget proposal, the Governor maintained EPF funding at \$205 million. The Assembly budget proposal boosted the Governor's proposal further bringing total EPF spending to \$212 million. The final EPF budget provided substantial funding for traditional EPF programs such as waterfront revitalization, municipal recycling, water quality improvement, and farmland protection. Finally, the Assembly ensured that no less than 25 percent of the funds appropriated for local waterfront revitalization and municipal parks projects under the EPF will be made available for projects in densely populated or low-income communities that are underserved with respect to existing recreational opportunities in the area.

The table on the following page provides a detailed description of the allocations within the individual EPF accounts.

EPF Funding

\$ (in millions)

EPF Category	Enacted 2008-09	Executive 2009-10	Enacted 2009-10
Solid Waste Account	13.775	17.975	15.840
Municipal Recycling	9.825	10.825	10.825
Pollution Prevention Institute	1.000	1.000	2.253
Secondary Markets	2.500	2.250	1.381
Natural Resource Damages	0	.900	.431
Pesticide Database	0	1.500	.500
BCERF	.450	0	.450
Landfill Closure/Gas Management	0	1.500	0
Parks, Recreation & Historic Preservation Account	61.600	67.400	65.284
Waterfront Revitalization	22.375	9.000	24.021
Municipal Parks	19.225	8.400	20.813
Hudson River Park	1.000	5.000	6.000
Stewardship	4.000	38.000	5.000
Hud-Ful-Champ Quadricentennial	3.000	3.000	.450
Walkway Over the Hudson	0	4.000	0
Zoos, Botanical Gardens, & Aquaria	9.000	0	9.000
Open Space Account	129.625	119.625	130.876
Land Acquisition	58.725	58.000	58.900
Smart Growth	1.000	2.000	.400
Farmland Protection	23.000	17.500	22.054
Agricultural Waste Management	.350	.350	.450
Biodiversity	.500	0	.500
Albany Pine Bush	2.000	1.400	2.000
Invasive Species	4.000	1.500	4.794
Long Island Pine Barrens Planning	1.100	.700	1.100
Ocean and Great Lakes	4.500	2.000	5.953
Water Quality Improvement	9.000	11.000	8.900
Long Island South Shore Estuary Reserve	0.900	0.675	0.900
Non-point Source Pollution Control	14.250	15.500	17.068
Soil and Water Conservation Districts	3.000	3.000	3.000
Finger Lakes - Lake Ontario Watershed	2.300	1.200	1.151
Hudson River Estuary Management	5.000	4.800	3.706
Total	205.000	205.000	212.000

B. ENVIRONMENTAL QUALITY

Cancer Mapping

(A.199-A Brodsky; Passed the Assembly)

Scientists are increasingly interested in the link between the environment and public health. This legislation is a technical amendment to a law enacted in 2008 that requires the Department of Environmental Conservation (DEC), in cooperation with the Health Research Science Board, to collect and develop information on environmental facilities and cancer cases in order to facilitate the development of computer-generated cancer maps.

State Environmental Quality Review Act Standing

(A.3423 Bradley; Passed the Assembly)

Under current law, individuals may be barred from bringing legal actions that allege violations of the environmental quality review provisions of the Environmental Conservation Law solely on the basis that the injury alleged by such individual does not differ in kind or degree from the injury that would be suffered by the public at large. This legislation would prevent a court from ruling that an individual is without standing to bring a private action alleging violations of the State Environmental Quality Review Act (SEQRA) based on the fact that the kind or degree of injury suffered by such individual does not differ from those injuries suffered by the public at large.

Controlling Light Pollution

(A.7281 Rosenthal; Passed the Assembly)

Increasing scientific and experimental evidence demonstrates that misdirected, unshielded, excessive or unnecessary outdoor night lighting has detrimental effects, including wasted energy. This legislation would require state agencies and public corporations to consider: shielding certain lights, energy conservation, and efficiency and recommendations by the Illuminating Engineering Society of North America. In addition, the legislation would protect the night time environment and conserve energy by allowing DEC to designate dark areas. The legislation would also provide for the development of a model comprehensive outdoor lighting ordinance and informational pamphlet.

Environmental Impact Zone Designation

(A.8489 Peoples-Stokes; Passed the Assembly)

This legislation would require the DEC to publish a list of “high local environmental impact zones,” which would be defined as areas of the State that are most adversely impacted by existing environmental hazards. In compiling the list, DEC would consider potentially adverse environmental impacts within an area, such as releases of toxic chemicals and petroleum discharges, the quantities of emissions, discharges and stored waste authorized by permit, the amount of pesticides sold and used in the area, the proximity of water bodies, and air quality of the area.

Ensuring Equitable Environmental Quality Review
(A.4245 Brodsky; Passed the Assembly)

This legislation would add a new requirement to environmental impact statement preparation under the State Environmental Quality Review Act (SEQRA), requiring a detailed statement on whether the action would cause a disproportionate or inequitable burden or a vital indirect impact on the minority community or economically distressed area affected by the action. In addition, the legislation would direct DEC to expand the existing criteria used in the SEQRA process to include consideration of the proposed action's expected burdens on minority communities and/or economically distressed areas.

Enhancing Environmental Quality Review
(A.779 Paulin; Passed the Assembly)

This legislation would ensure the consideration of emerging environmental science issues in the determination of the significance of a project or action under the State Environmental Quality Review (SEQR) process. DEC would be required to annually update any forms or documentation designed to assist applicants and lead agencies in determining whether a proposed project may have a significant impact on the environment. When updating such forms, DEC would be required to consider changes in science and emerging issues in environmental protection, including impacts on sensitive populations, such as children.

C. HAZARDOUS WASTE MANAGEMENT

Treatment, Storage and Disposal of Regulated Medical Waste
(A.4341-B Perry; Chapter 14 of the Laws of 2009)

Local zoning laws play an important role in protecting the health and safety of residents, and permit applicants should be held accountable for complying with such laws. This law will require a permit applicant for the treatment, storage or disposal of regulated medical waste to certify that such activities conform to existing local zoning laws or ordinances.

Reimbursement to Fire Companies for Hazardous Spill Response
(A.2692-A Sweeney; Passed the Assembly)

Many municipal and volunteer fire companies accumulate significant costs in responding to hazardous materials spills; however, current law does not provide a mechanism to allow for recovery of these costs. This legislation would provide reimbursement to fire companies for costs associated with responding to spills of hazardous materials.

Re-establishment of the State Superfund Management Board
(A.4462-A Brodsky; Passed the Assembly)

Since its inception in the early 1980s, the superfund program has successfully cleaned up hundreds of contaminated waste sites. Currently, the funds for implementation of the state superfund provided by the Environmental Quality Bond Act of 1986 are exhausted, leaving roughly 800 hazardous waste sites statewide with little funding for cleanup costs. Unfortunately, the state superfund management board, whose task was to recommend funding mechanisms for the superfund program to the Legislature, expired statutorily in 1999 and cannot address the fiscal crisis currently facing the superfund program.

This bill would re-establish the state superfund management board to address re-financing the state superfund program and monitor its implementation in order to protect New Yorkers from the dangers posed by hazardous waste sites for both current and future generations.

Special Assessment Exemption for Schools
(A.8558 Sweeney; Passed the Assembly)

As the dangers of exposure to environmental hazards like lead and mercury become well known, more and more schools are undertaking remediation activities. Hazardous waste remediation activities at schools serve to benefit the safety and health of students, faculty and the entire community. This legislation would encourage schools to conduct remediation efforts in consultation with the Department of Environmental Conservation or the United States Environmental Protection Agency, by creating an exemption from certain special assessments, fees and surcharges on hazardous waste generated by or at an elementary or secondary school in association with remediation efforts conducted in accordance with the involvement of those agencies.

D. PESTICIDES MANAGEMENT

Phasing Out the Use of Pesticides by the State
(A.5848 Brodsky; Passed the Assembly)

New York State agencies, authorities and their contractors use pesticides that can contaminate ground and surface water, cause reproductive or developmental defects, and are often toxic and/or carcinogenic to humans. Restriction of pesticide use by the State will not only prevent the harmful environmental and health effects of these chemicals but may also save taxpayers money. This legislation would provide for the implementation of a policy to discontinue the use of pesticides by all state agencies, public authorities, and public benefit corporations and would require the adoption of a pest control policy that relies substantially on non-chemical pest controls.

Prohibition of Pesticides on Athletic Fields
(A.7937-A Englebright); Passed the Assembly

This legislation would prohibit the use of pesticides on school and day care playgrounds, athletic fields and surrounding areas unless an emergency application has been approved by the Department of Environmental Conservation (DEC), the Department of Health, a county department of health, or the school board.

State Model Pesticide Policy
(A.8785 Zebrowski); Passed the Assembly

This legislation would require DEC, in consultation with the Commissioners of the State Education Department and the Department of Health, to develop a model pesticide policy that includes physical, biological and mechanical control methods as well as integrated pest management techniques. This legislation passed the Assembly, but the Senate has not yet taken action.

E. AIR QUALITY

RGGI Proceeds
(A.6321 Sweeney; Passed the Assembly)
(A.7017 Gianaris; Passed the Assembly)

Global climate change threatens the environment, natural resources and economy of New York State. In an effort to reduce its contribution to global warming, the State has led the way in developing the Regional Greenhouse Gas Initiative (RGGI), a multi-state cap and trade program to stabilize and reduce carbon dioxide emissions. Initially, the program will involve emissions from power plants, currently the third highest source of emissions. The bill, A.6321 Sweeney, would require the funds received by the Department of Environmental Conservation from the sale of air emission allowances to be used for the following programs: greenhouse gas emission reduction; energy efficiency; renewable energy development and clean air technology. The bill, A.7017 Gianaris, would establish a fund for the proceeds of the emission allowances of RGGI.

Enhancing Public Notification of High Levels of Air Emissions
(A.4190 Ramos; Passed the Assembly)

In the past, major sources of air pollution have exceeded emissions limits while the public was left unaware of the potential health risks of such pollution. One such instance occurred during the winter of 2002-03 when the Power Authority of the State of New York power plants in New York City and Long Island violated emissions limits and were subsequently fined by DEC. The public was not informed of the violations and, thus, was unaware of the increased risk of health hazards associated with high levels of emissions, which included ammonia, carbon monoxide and nitrous oxide. This legislation would require the owner or operator of an emission source to provide notification within 24 hours to the DEC and the public in instances where an emissions limit has been exceeded for a second or subsequent time. Upon notification, the DEC would be required to solicit from the Department of Health a study identifying the health implications of such emissions. The study would be required to be completed within 90 days of the emission violation notification and would be made available to the public. Finally, the legislation would provide that in cases where a settlement of air operating permit violations includes an environmental benefit project, such project should be undertaken within the municipality where the violation occurred.

Sulfur Content of Heating Oil
(A.8642 Sweeney); Passed the Assembly

When number two home heating oil is burned, sulfur dioxide, a known greenhouse gas, is released into the atmosphere. Estimates have shown that reducing the sulfur content of home heating oil is an important and critical step in curbing greenhouse gas emissions. Exhaust particles formed by using home heating oil can exacerbate allergies, trigger asthma attacks, decrease lung function, cause heart attacks and shorten life expectancy. This legislation would prohibit the use of number two heating oil with a sulfur content in excess of 15 parts per million in residential, commercial or industrial heating after July 1, 2011, and would authorize the Governor to temporarily suspend this requirement by Executive Order, upon a determination by the New York State Energy and Research Development Authority that there is an insufficient supply of the fuel.

F. FISH AND WILDLIFE

Prohibition on the Sale of Tasmanian Forester Kangaroos **(A.8559-A Sweeney; Chapter 338 of the Laws of 2009)**

The Tasmanian Forester Kangaroo (*Macropus giganteus tasmaniensis*) is listed as an endangered kangaroo subspecies by the United States Department of the Interior's Fish and Wildlife Service pursuant to the Federal Endangered Species Act of 1973. The Tasmanian Forester Kangaroo was listed as endangered on June 4, 1973, due to over harvesting dating from the 1800s and habitat loss resulting from agricultural activity. The New York State sales prohibition applies to all kangaroos although no other subspecies of kangaroo are listed as endangered or threatened by the federal government. This law will make it clear that the sale or possession of the endangered Tasmanian Forester Kangaroo is prohibited.

Rifle Hunting in Schuyler County **(A.7509 O'Mara; Chapter 441 of the Laws of 2009)**

This law extends, until October 1, 2011, authorization for rifle hunting in Schuyler County.

Rifle Hunting in Ontario County **(A.7581-A Kolb; Veto Memo 73)**

This legislation would have authorized, until October 1, 2011, authorization for rifle hunting in Ontario County.

Rifle Hunting in Madison Counties **(A.8302-A Magee; Chapter 161 of the Laws of 2009)**

This law makes permanent the authorization for rifle hunting in Madison County.

Prohibition on the Mass Release of Helium Balloons **(A.709 Kavanagh; Passed the Assembly)**

Releasing balloons may seem like a harmless activity; however, the litter caused by balloons has a significant impact on the environment and on marine life. Marine life is especially susceptible since many of the balloons come down over the ocean and the similarity of balloon debris to jelly fish causes them to be eaten by marine life. Animals who consume balloons can choke or be prevented for absorbing nutrients, resulting in starvation. Balloons have been found in dead sea turtles and whales in the Atlantic and Gulf coasts. Several states have passed legislation limiting the release of helium balloons. This legislation would prohibit individuals or entities from releasing more than 25 helium balloons per day. Balloons for scientific experiments and hot air balloons would be excluded from the prohibition.

Striped Bass Management
(A.4112 Brodsky; Passed the Assembly)

Legislation passed in 2000, required the New York State Department of Environmental Conservation (DEC) to appoint a Temporary Advisory Committee to issue recommendations on the commercial management of striped bass in the Hudson River. The Advisory Committee did not reach a consensus on reopening the fishery, reflecting concerns about the potential depletion of the striped bass if the fishery was re-opened to commercial fishing. The lack of consensus was also based on concerns about the potential loss in revenue generated by the recreational striped bass angling community who travel across the state and the nation to fish for “stripers.” In recognition of these and other concerns, this legislation would prohibit the taking of striped bass from the Hudson River for commercial purposes.

Increased Information Regarding Fishing Laws and Restrictions
(A.6619 Cook; Passed the Assembly)

Impairment of water quality has led the New York State Department of Health to issue numerous fish advisories for recreational anglers. This bill would increase the amount and availability of information available to the angling community including: copies of fish and wildlife laws at all locations where fishing licenses are offered, fishing advisories and notices at any state boat launch servicing areas identified in such advisories and notices, distribution of notices and advisories to participants of a sport fishing contest held on the body of water where the restrictions are in place, and, copies of any fishing notices and advisories to be delivered to surrounding sport-fishing businesses and industries.

Horseshoe Crab Management
(A.8900 Sweeney; Passed by the Assembly)

The Red Knot bird (*Calidris canutus rufus*) migrates over 10,000 miles from South America to the Arctic. A 2007 assessment report prepared by the United States Fish and Wildlife Service indicates that the Red Knot population in its over-wintering area has gone from 51,300 in 2000 to 17,200 in 2006. Although the exact cause of the drastic population decrease has not been determined conclusively, it does correspond to a decrease in the horseshoe crab population. The horseshoe crab eggs of the northeastern United States provide the Red Knots with an important food source on their way to the Arctic. In light of the interdependence between Red Knots and horseshoe crabs, several northeastern states have taken action, ranging from moratoria to catch limits, to halt the precipitous population decline of the Red Knot. This bill would increase the amount of information available to determine if additional steps are necessary to regulate the taking of horseshoe crabs in New York and protect the Red Knot population. Additionally, it would: increase the fee for horseshoe crab permits; require increased reporting and require the DEC to issue a report by June 1, 2010, regarding spawning activities and shorebird interactions.

G. ENVIRONMENTAL ENFORCEMENT

Improving New York State's Compliance with Environmental Laws **(A.561-A Kavanagh; Passed the Assembly)**

Among the largest polluters in New York State is the State itself. This bill seeks to remedy this problem by requiring the Department of Environmental Conservation (DEC) to impose penalties upon any State agency that fails to complete a remediation plan within the timeframe required by law. In addition, this legislation would require public hearings and allow for action against agencies for failure to develop and complete remedial plans.

Enhanced Public Notice Requirement **(A.838 Dinowitz; Passed the Assembly)**

Present law regarding DEC's processing of permit applications requires publication in newspapers having "general circulation in the area in which the project is proposed to be located." This legislation would modify those requirements to include publication in the Environmental Notice Bulletin (ENB) and in non-English publications when 25 percent of the population does not have English as a primary language. This legislation would also provide the public with access to correspondence between applicants and DEC and information about pre-application conferences or meetings.

Disclosure of Environmental Compliance **(A.4110-A Brodsky; Passed the Assembly)**

Persistent or significant violators who commit breaches of the law directly relating to their ability to carry out the authorized activities of the Environmental Conservation Law should be subject to increased scrutiny before having a permit renewed or obtaining a new permit. In addition, if a permit is issued to a prior violator, it may be appropriate to impose strict reporting or monitoring conditions on such permits, or to require an environmental monitor on-site. This legislation would require increased disclosure of an environmental conservation permit applicant's record of compliance with state, federal and foreign environmental regulations.

Environmental Justice Advisory Group **(A.8490-A Peoples-Stokes; Passed the Assembly)**

Environmental justice is intended to help members of minority and low-income communities make their neighborhoods safer and more liveable. In 1999, DEC received a grant from the United States Environmental Protection Agency to develop a comprehensive environmental justice program. As part of this process, the Department convened an environmental justice advisory group. In January 2002, the advisory group issued its report. In March 2003, the Department adopted a policy on environmental justice and permitting but took no action on several of the advisory group's recommendations. This legislation would establish an Environmental Justice Advisory Group and Interagency Coordinating Council to implement the recommendations of the advisory group and ensure that state agencies receive an environmental justice review and address environmental justice.

Disqualification of Stand-By Contractors
(A.2477 Pretlow; Passed the Assembly)

Current law authorizes the use of stand-by contractors in cases where it is not practical to solicit bids, including emergency response to hazardous spills. This same law also includes guidelines for qualifying stand-by contractors; however it does not include provisions for disqualifying contractors. This legislation would require the Department of Environmental Conservation to establish guidelines for the disqualification of stand-by contractors. Such guidelines would include past performance, reasonableness of price charged in past contracts, negligence or malfeasance and the conviction of a crime reflecting upon the honesty, integrity or capability of a contractor.

H. SOLID WASTE MANAGEMENT

Electronic Waste Recycling
(A.7571 Sweeney; Passed the Assembly)
(A.9049 Sweeney; Passed the Assembly)

Electronic waste represents one of the fastest growing and most hazardous components of New York's waste stream, containing many toxic substances, including lead, mercury, chromium, cadmium, polyvinyl chloride and beryllium. The Environmental Protection Agency estimates that in 2004 there were approximately 1.2 billion pounds of covered electronic equipment sold in the United States. As new devices are purchased, the replaced equipment frequently ends up in a landfill where its chemical components can contribute to pollution. There are direct environmental and public health consequences for New York State residents and workers from the improper handling and disposal of electronic waste, but there is currently no comprehensive system for managing the growing problem of electronic waste in the State. This legislation would create an electronic recycling and reuse program whereby manufacturers of certain covered electronic equipment would be responsible for developing a plan for the collection, handling and recycling or reuse of the electronic equipment the manufacturer produces that is offered for return in the State. Covered electronic equipment would include computers, televisions, and printers. In addition, manufacturers would be responsible for all costs associated with the development and implementation of the electronic waste management plan and would be prohibited from imposing a fee on consumers for the collection, handling and recycling or reuse of covered electronic equipment.

Compostable or Recyclable Food Service Ware
(A.428 Kavanagh; Passed the Assembly)

Styrofoam is a liquid hydrocarbon that is commercially manufactured from petroleum. Each year Americans throw away 25,000,000 Styrofoam cups, an amount equal to 1,369 tons of Styrofoam every day. A single Styrofoam cup can take up to 500 years to fully disintegrate and Styrofoam is very difficult to recycle due to its light weight and low scrap value. It is generally not accepted in curbside programs, is seldom able to be reused, and takes up a considerable amount of space in landfills. In addition, such materials can have serious impact on human health, wildlife, and the aquatic environment because the product breaks down and can clog waterways, or be mistaken for food by wildlife. This legislation would require state agencies and municipalities to use compostable or recyclable food service ware made from material other than polystyrene foam unless there is no viable alternative product of comparable cost.

Recycling as a Component of Solid Waste Management Plans
(A.306 Peralta; Passed the Assembly)

Currently, local solid waste management plans are required to contain information about a variety of factors including availability of solid waste management programs and facilities and timetables for implementation; however, plans are not required to include consideration of recycling, an integral component of solid waste reduction. This legislation would require solid waste management plans for New York City to include adequate trash and recycling receptacles in commercial zones and public recreational areas.

Enhancing Statewide Recycling Efforts
(A.1319 Colton; Passed the Assembly)

This legislation would enhance statewide recycling efforts by clarifying the obligations of waste haulers regarding the handling of recyclable materials and specifying the materials to be separated for recycling. Specifically, the legislation would prohibit private and municipal waste haulers from delivering recyclable materials to landfills, incinerators or transfer stations. Also, the legislation would prohibit the acceptance of recyclable materials for disposal by operators of incinerators or landfills. In addition, the commingling of recyclable materials with other solid waste would be prohibited. Finally, the legislation would specify which materials must, at a minimum, be separated for recycling pursuant to a local recycling law.

Enhancing Solid Waste Management
(A.5765 Sweeney; Passed the Assembly)

This legislation would require an applicant for a permit to construct a solid waste management facility to demonstrate that the facility would be consistent with the objectives of the local solid waste management plan of the planning unit in which the proposed facility would be sited, as well as the plans of the planning units from which the solid waste would be received. In addition, this legislation would change the definition of solid waste management facility to include recyclable waste handling and recovery facilities.

I. PETROLEUM MANAGEMENT

Moratorium on the Development of Liquefied Natural Gas **(A.6914 Cusick; Chapter 84 of the Laws of 2009)**

In 1973, on Staten Island, an empty liquefied natural gas tank exploded – claiming 40 lives. In 1978, a moratorium on the issuance of environmental certificates for facilities and routes for the transportation of liquefied natural or petroleum gas was instituted. This law will extend, until April 1, 2011, the existing moratorium.

J. WATER CONSERVATION AND QUALITY

Interest Subsidies of the Clean Water State Revolving Fund **(A.8690 Jaffee; Chapter 279 of the Laws of 2009)**

The Clean Water State Revolving Fund (CWSRF) is funded through federal capitalization grants and requires the State to provide matching funds equal to at least twenty percent of the federal capitalization grants. The Environmental Facilities Corporation allocates a portion of the federal capitalization grants and State matching component to provide a reserve fund to secure the repayment of financings made to recipients. This "allocation" is referred to in the statute as a "corpus allocation." The corpus allocation for a financing is equal to at least one-third of the principal amount of each financing outstanding at any given time, excluding portions of the financing used to fund a debt service reserve fund. Currently, recipients who, during the period commencing June 1, 1992 and, ending September 30, 2009, (i) submit an application for a CWSRF financing, (ii) close on the CWSRF financing, and (iii) commence construction of the project related to the financing, qualify for a fifty percent corpus allocation. This law will extend, until September 30, 2012, the 50 percent interest rate subsidy and ensure that that the subsidy will not revert to one-third interest rate subsidy, effective October 1, 2009.

Membership of the New York State Canal Flood Mitigation Task Force **(A.293 Magnarelli; Passed the Assembly)**

In 2007, in response to severe flooding along the Erie Canal, the Legislature established the New York State Canal Flood Mitigation Task Force to make recommendations on how to prevent future flooding. This legislation provides a technical amendment to clarify the appointment procedure.

Protecting the State's Freshwater Wetlands
(A.6363 Sweeney; Passed the Assembly)

In 2006, the United States Supreme Court ruled that the federal government does not have jurisdiction over isolated wetlands. In light of this ruling, estimates from the Environmental Protection Agency and The Army Corps of Engineers suggest that at least 20 percent and possibly 50 percent of existing wetlands, constituting millions of acres nationwide, are now unprotected. In New York State, estimates are even higher, with potentially as much as 80 percent of the wetlands currently being unregulated and unprotected. While all of New York's neighboring states already have the regulatory authority to step in and regulate the wetlands that the Corps of Engineers formerly oversaw, New York's Department of Environmental Conservation (DEC) is currently limited to regulating mapped wetlands of a size greater than 12.4 acres. This legislation would expand DEC's regulatory authority to wetlands over one acre in size or of significant local importance and remove the existing requirement that lands or waters be included on the freshwater wetlands map in order to be considered wetlands.

Restoration of Areas Adjacent to Wetlands
(A.4807 Sweeney; Passed the Assembly)

The condition of areas adjacent to wetlands can have a profound effect on the health and viability of the wetland itself, and restoration of those areas can be essential to the restoration of the damaged wetland because the adjacent area acts as a buffer to protect the abutting wetland from deterioration. In the 2005 case of *Bradley Corporate Park v. Crotty*, the violator challenged the DEC's order requiring the restoration of adjacent areas as well as the damaged wetlands. The Appellate Division rejected the argument. This legislation would strengthen wetland enforcement provisions to: increase penalties for wetland violations; specify the conditions under which the DEC can issue a cease-and-desist order and require that a violator may be directed to restore the area adjacent to the freshwater wetland as well as the wetland itself.

Protecting Residents with Private Wells
(A.4557 Jaffee; Passed the Assembly)

Over one million residents of New York State get their drinking water from private wells. While laws require municipal water suppliers to test their water periodically, and to send residents an annual report on the quality of that water, there are no similar protections for private wells. As a result, people using private wells around the State are unprotected and often unaware that there may be problems with their drinking water. This legislation would establish a private well testing program in New York State, requiring testing of private drinking water wells at the time of property transfer. Testing would include: bacteria (total coliform), nitrates, iron, manganese, pH, and all volatile organic compounds for which a maximum contaminant level has been established pursuant to public health regulations.

Electronic Filing of Wetland Maps
(A.1976-A Lifton; Passed the Assembly)

The Freshwater Wetlands Act requires that DEC maps be filed with local governments to be made available for public inspection. In order for such maps to be official, they must be distributed in paper format. Paper maps have limited public impact in that they can only be viewed during the office hours of the municipal clerk. This legislation would authorize the electronic filing of wetlands regulatory maps.

Neighbor Notification of Proposed Wetland Development
(A.2654 Cusick; Passed the Assembly)

Current law requires any person proposing to conduct a regulated activity upon a wetland to file an application. Notice of such applications is filed with municipalities which then provide notice to adjacent land owners. This legislation would expand the notice requirements to include publication in a newspaper with general circulation and, in municipalities with a population of one million or more, notice to all property owners within 1,000 feet of the watershed.

Connecticut-New York Bi-State Long Island Sound Committee
(A.3950 Alessi; Passed the Assembly)

Chapter 690 of the Laws of 1988, created the New York Bi-State Long Island Sound Committee; however, the legislation cannot become effective until both states adopt identical laws. Connecticut amended their legislation to: rename the Committee, include consideration of public enjoyment and protection of natural resources, increase reporting requirements and authorize the Committee to make recommendations regarding uniform signs indicating coastal access to the Long Island Sound. This legislation would make conforming amendments to the provisions of law relating to the Connecticut-New York Bi-State Long Island Sound Committee.

K. FOREST AND LAND RESOURCES

Forest Preserve Land Swap
(A.8284 Sweeney; Constitutional Amendment 2nd passage)

This legislation would amend the State Constitution by authorizing the State to convey up to six acres of forest preserve land adjoining State Route 56 in St. Lawrence County to National Grid for the construction of a new 46kV power line along the road. In exchange, National Grid would be required to convey at least 10 acres of forest land to the State for incorporation into the forest preserve. Such lands to be conveyed by National Grid to the State would be required to be at least equal in value to the land conveyed by the State.

L. CLIMATE CHANGE

The New York State Sea Level Rise Task Force **(A.7894 Sweeney; Chapter 150 of the Laws of 2009)**

The New York State Sea Level Rise Task Force was created in 2007, and was charged with the task of preparing a report to evaluate ways to protect coastal ecosystems and natural habitats and increase coastal community resilience in the face of expected sea level rise. The report was initially due on December 31, 2009. This law will extend, until December 31, 2010, the authority of the Sea Level Rise Task Force.

Greenhouse Gas Emission Limits **(A.7572 Sweeney; Passed the Assembly)**

Scientific studies, including those from the Union of Concerned Scientists and Intergovernmental Panel on Climate Change (2007 Nobel Peace Prize Winner), have concluded that global warming poses a serious threat. The continued emission of greenhouse gases will increase the Earth's temperature, leading to rising sea levels, threats to public welfare and other ecological changes, dramatically affecting fisheries, wildlife and natural resources. This legislation would authorize the Department of Environmental Conservation (DEC) to establish greenhouse gas emission reporting requirements and, beginning in 2014, after a public hearing, promulgate rules and regulations setting a limit on all greenhouse gas emission sources. The limit established by DEC would be required to be less than the 1990 limit and not impose additional burdens on communities already experiencing significant levels of regulated air contaminants as compared with the county average. Beginning in 2015, the limit established by DEC would be decreased by 2.3 percent each year, resulting in an 80 percent reduction by 2050.

Reporting of Greenhouse Gas Emissions by State Agencies **(A.3419 Sweeney; Passed the Assembly)**

State government is one of the greatest energy consumers in the state. This legislation would require State agencies to calculate the amount of greenhouse gases emitted as a result of agency operations. Also, agencies would be required to describe actual emissions, describe steps taken to reduce emissions and reduce future emissions.

Greenhouse Gas Emission Calculator
(A.3421 Sweeney; Passed the Assembly)

Reducing greenhouse gases will help decrease the effects of global warming, preserve resources and help protect the environment. This legislation would require DEC to establish and promote on its website a method for individuals and businesses to calculate their greenhouse gas emissions and offer recommendations on steps to reduce such emissions. In addition, the legislation would require DEC to develop best management and procurement practices for State agencies to reduce their greenhouse gas emissions.

M. DEPARTMENTAL POWERS

The Conservationist Magazine
(A.8713 Cymbrowitz; Chapter 195 of the Laws of 2009)

Promotion and marketing are integral components of the magazine industry and help replace lost subscriptions. For example, the Department of Environmental Conservation (DEC), which is responsible for the *Conservationist* magazine, must replace approximately 19,000 subscribers each year to maintain the magazine's current subscriber base. DEC's marketing consultant conducted marketing research that demonstrated sweepstakes are the most effective method to increase renewal and new subscriber response rates. This law will extend, until August 1, 2012, the authorization for DEC to conduct sweepstakes and other activities to increase subscriptions to DEC's the *Conservationist* magazine.

N. CHEMICALS

Bisphenol A Phase Out
(A.6919-B Englebright; Passed the Assembly)

Studies conducted by the United States Centers for Disease Control have found that young children are more susceptible to Bisphenol A (BPA). Other scientific studies have concluded that BPA is an endocrine disrupter that can have negative health consequences, including the early onset of puberty. This legislation would prohibit the sale of the following products for children three and under containing BPA: beginning December 1, 2010, child care products including bottles, pacifiers and sippy cups; beginning December 1, 2011, toys; and, beginning December 1, 2012, food and beverage containers. Beverage container manufacturers would be permitted to seek a one-year waiver if the Department of Environmental Conservation determines that there are no safe BPA alternatives.

DecaBDE Ban

(A.7573 Sweeney; Passed the Assembly)

Chapter 387 of the Laws of 2004 prohibited the manufacture, process, or distribution of two forms of flame retardants commonly known as pentaBDE and octaBDE, due to their prevalence in the environment and research suggesting that they cause permanent neurological and developmental damage. A third flame retardant, decabrominated diphenyl ether (decaBDE), has become the most widely used of the three formulations, exceeding 60,000 metric tons worldwide with 40 percent of the use occurring in North America. DecaBDE has been found to accumulate in dust and food and its presence has been noted in blood and breast milk samples. In addition, it has been shown to pose the same public health dangers as those of its banned counterparts and when it breaks down, either by natural environmental processes or when metabolized, it forms by products that are predominantly found in the now prohibited pentaBDE and octaBDE. This legislation would restrict the use of DecaBDE in certain products including certain electronic devices, upholstered furniture or textiles for indoor residential use and, mattresses and mattress pads.

OVERSIGHT AND PUBLIC HEARINGS

In 2009, the Committee continued its oversight functions by holding hearings on the following issues: a new environmental bond act, mercury exposure and the draft supplemental generic environmental impact on gas drilling proposed by the Department of Environmental Conservation (DEC).

Environmental Bond Act

In the past 15 years, bond act proposals have been put before New York State voters with varying success. In 1996, voters approved the “Clean Water/Clean Air Bond Act” to spend \$1.75 billion for environmental projects including environmental restoration, safe drinking water and air quality. The \$3.8 billion “Transportation Infrastructure Bond Act of 2000” was rejected by voters, but the \$2.9 billion “Rebuild and Renew New York Transportation Bond Act of 2005” for the purpose of improving, enhancing, preserving and restoring the quality of the State’s transportation infrastructure was approved. A coalition of environmental groups suggested that a new \$5 billion “Clean Water, Clean Air & Green Jobs Bond Act” proposal should be submitted to voters in November. On May 27, 2009, the Committee held a hearing to solicit input on the Bond Act proposal. Following the hearing, legislation was introduced, A.8810 (Sweeney)/S.5886 (Thompson), that would enact the New Bond Act. The Assembly Environmental Conservation Committee reported the bill to the Assembly Ways and Means Committee.

Mercury Exposure

Mercury, a naturally-occurring element, is found in air, water and soil. It has been used in the production of cement and a number of household items including thermometers, switches and light bulbs, as well as in batteries, novelty toys and some product packaging. Mercury is also a component of coal, with coal-burning power plants representing the largest human-caused source of mercury emissions to the air. Studies have found that mercury exposure at high levels can harm the human brain, heart, kidneys, lungs and immune system, with infants and children especially susceptible. At high levels of exposure, mercury can lead to death, reduced reproduction, abnormal behavior and slower growth and development in fish and animals. The United States Geological Survey released a study of mercury contamination in United States’ streams. The study included 291 streams nationwide and tested more than 1,000 fish. Mercury was found in each fish sampled. On October 13, 2009, the Committee held a hearing to examine what measures could be taken to reduce mercury exposure.

Draft Supplemental Generic Environmental Impact Statement for Natural Gas Drilling

On September 30, 2009, DEC released a draft Supplemental Generic Environmental Impact Statement (SGEIS) regarding well permit issuance for horizontal drilling and high-volume hydraulic fracturing to develop the Marcellus shale and other low-permeability gas reserves. On October 15, 2009, the Committee held a hearing to solicit public input on the draft SGEIS. Following the hearing, and in response to requests from numerous Assembly members, the comment period was extended until December 31, 2009.

Pesticides Roundtable

The Committee, in cooperation with the Assembly Standing Committee on Education, held a roundtable on April 29, 2009, to solicit information on the use of pesticides in schools, including a discussion of Assembly bills A.1617 (Zebrowski), A.1974 (Kellner), A.2299 (Englebright) and A.5848 (Brodsky). Following the hearing, A.7937-A (Englebright) which would prohibit the use of certain toxic chemicals on school and day care playgrounds and athletic fields, and A.8785 (Zebrowski), which would require DEC to establish a model pesticide policy for schools and day care facilities, were introduced and passed the Assembly subsequently.

OUTLOOK AND GOALS FOR 2010

The Committee looks forward to the 2010 Legislative Session. The Committee will continue its history of environmental advocacy and achievement by working to enact sound, workable environmental policies. Also, the Committee will continue to work toward its goal of developing a progressive approach to water quality issues. The Committee will consider legislation to protect wetlands, address sewer overflow issues, reduce the potential for surface and groundwater contamination from septic systems and ensure safe drinking water for homeowners who utilize private wells. Finally, the Committee will continue to work to protect the State's natural resources and the long-term health and abundance of New York's fish and wildlife populations.

APPENDIX A
2009 SUMMARY SHEET

Summary of Action on All Bills Referred to the Committee on
ENVIRONMENTAL CONSERVATION

<u>Final Action</u>	<u>Assembly Bills</u>	<u>Senate Bills</u>	<u>Total</u>
<u>Bills Reported With or Without Amendment</u>			
To Floor; Not Returning to Committee (Favorable)	19	0	19
To Floor; Recommitted and Died	0		0
To Ways & Means	29	0	29
To Codes	38	0	38
To Rules	15	0	15
To Judiciary	0	0	0
Total	101	0	101
<u>Bills Having Committee Reference Changed</u>			
To Economic Development	2	0	2
Total	2	0	2
<u>Senate Bills Substituted or Recalled</u>			
Substituted		2	2
Recalled		2	2
Total		4	4
<u>Bills Defeated in Committee</u>	0	0	0
<u>Bills Held for Consideration With a Roll-Call Vote</u>	10	0	10
<u>Bills Never Reported or Held in Committee</u>	269	1	270
<u>Bills Having Enacting Clause Stricken</u>	7	0	7
<u>Motion to Discharge Lost</u>	0	0	0
TOTAL BILLS IN COMMITTEE	389	5	394
TOTAL NUMBER OF COMMITTEE MEETINGS HELD		10	

APPENDIX B

ENVIRONMENTAL CONSERVATION BILLS THAT PASSED BOTH HOUSES

<u>Assembly Bill</u>	<u>Sponsor</u>	<u>Title</u>	<u>Final Action</u>
A.2684-A	Rabbitt	Revives the Greenwood Lake Protection Act	Chapter 298
A.2956	Sayward	Designates Mirror Lake and Lake Placid as inland waterways for waterfront revitalization purposes	Chapter 299
A.3941-A	Scozzafava	Designates the Little River in the Adirondack Park as an inland waterway for waterfront revitalization purposes	Chapter 300
A.4341-B	Perry	Requires a permit application for the treatment, storage, or disposal of regulated medical waste to certify that such activities conform with existing local land use laws or ordinances	Chapter 14
A.5939	Cahill	Makes the addition of Ulster County to the Hudson River Valley Greenway permanent	Chapter 310
A.6413	Russell	Designates Chaumont River as an inland waterway for waterfront revitalization purposes	Chapter 110
A.6469-A	Morelle	Increases to 300 feet the restriction on vessels operating in the channel between Irondequoit Bay and Lake Ontario	Chapter 313
A.6914	Cusick	Extends, until April 1, 2011, the moratorium on the issuance of environmental safety certificates for facilities and routes for the transportation of liquefied natural or petroleum gas	Chapter 84
A.7509	O'Mara	Authorizes the use of rifles for deer hunting in Schuyler County until October, 2011	Chapter 441
A.7581-A	Kolb	Authorizes the use of rifles for deer hunting in Ontario County permanently	Veto 73
A.7665	Hooper	Extends, until October 1, 2011, the authority of Nassau County to enforce certain water pollution provisions	Chapter 86

<u>Assembly Bill</u>	<u>Sponsor</u>	<u>Title</u>	<u>Final Action</u>
A.7894	Sweeney	Extends, until January 1, 2011, the powers and duties of the New York State Sea Level Rise Task Force	Chapter 150
A.8284	Sweeney	Permits the transfer of certain forest preserve lands for the construction of a power line	Con. Amend 2nd passage
A.8302-A	Magee	Makes provisions allowing the use of rifles for deer hunting in Madison County permanent	Chapter 161
A.8559-A	Sweeney	Prohibits the sale of Tasmanian Forester Kangaroo	Chapter 338
A.8690	Jaffee	Extends certain provisions related to the Clean Water State Revolving Fund	Chapter 279
A.8713	Cymbrowitz	Extends certain marketing provisions for the Conservationist magazine	Chapter 195

APPENDIX C

ENVIRONMENTAL CONSERVATION BILLS THAT PASSED THE ASSEMBLY ONLY

<u>Assembly Bill</u>	<u>Sponsor</u>	<u>Title</u>
A.293	Magnarelli	Provides a technical amendment to the New York State Canal Flood Mitigation Task Force legislation approved last year
A.306	Peralta	Requires New York City to conduct additional planning related to the placement of trash and recycling bins
A.428	Kavanagh	Requires State agencies and municipalities to use compostable or recyclable food service ware made from material other than polystyrene foam
A.561-A	Kavanagh	Imposes penalties upon agencies that fail to complete a remediation plan
A. 709	Kavanagh	Prohibits the mass release of helium balloons
A. 769	Gunther	Directs the Department of Environmental Conservation, in consultation with federal agencies and the New York City Department of Environmental Protection, to review the Hudson River New York City Drinking Water Supply System
A. 779	Paulin	Requires DEC to periodically update State Environmental Quality Review Act (SEQRA) forms and documentation
A.838	Dinowitz	Enhances the public notice provisions of DEC's uniform procedure
A.1319	Colton	Establishes new standards for the disposal and source separation of recyclable materials
A.1976-A	Lifton	Authorizes the filing of electronic wetland regulatory maps
A.2477	Pretlow	Requires DEC to establish additional criteria for the selection of stand-by contractors
A.2654	Cusick	Requires notice to neighboring landowners of the intention to develop wetland areas
A. 2692-A	Sweeney	Authorizes the reimbursement of fire companies for costs associated with responding to hazardous material releases
A.3419	Sweeney	Requires State agencies to report on greenhouse gas emissions resulting from their operations

<u>Assembly Bill</u>	<u>Sponsor</u>	<u>Title</u>
A.3421	Sweeney	Requires DEC to establish a method for individuals and businesses to calculate their greenhouse gas emissions
A.3423	Bradley	Clarifies when individuals have standing to bring actions alleging violations of the State Environmental Quality Review Act (SEQRA)
A.3950	Alessi	Makes conforming amendments related to the Connecticut-NY Bi-State Long Island Sound Committee
A.4110-A	Brodsky	Requires increased disclosure of an environmental permit applicant's record of compliance with state, federal, and foreign environmental regulations
A.4112	Brodsky	Prohibits the taking of striped bass from the Hudson river for commercial purposes
A.4190	Ramos	Includes air pollution notice conditions as part of source operating permits issued pursuant to the federal Clean Air Act
A.4245	Brodsky	Makes provisions regarding the siting of environmental facilities among minority or economically-distressed communities
A.4272	Brodsky	Grants private citizens standing in civil enforcement actions for violations of the Environmental Conservation Law
A.4462-A	Brodsky	Re-establishes, until June 1, 2019, the State Superfund Management Board as the State Remedial Program Oversight Board
A.4557	Jaffee	Establishes testing requirements for private water wells upon property sales or transfers
A.4807	Sweeney	Strengthens the enforcement provisions for freshwater wetland violations
A.5765	Sweeney	Establishes additional requirements for solid waste management facilities
A.5823	Latimer	Requires commercial pesticide applicators to provide notice to residents of multiple family dwellings prior to pesticide application
A.5848	Brodsky	Provides for the phase-out of pesticides on state property and for the development of pest management plans by state agencies

<u>Assembly Bill</u>	<u>Sponsor</u>	<u>Title</u>
A.6321	Sweeney	Provides statutory direction for the use of funds received by the Department of Environmental Conservation from the sale of allowances from the Regional Greenhouse Gas Initiative
A.6363	Sweeney	Provides the Department of Environmental Conservation (DEC) with increased regulatory authority over freshwater wetlands
A.6619	Cook	Establishes additional requirements for the dissemination of information regarding fishing laws and restrictions
A.6919-B	Englebright	Prohibits the manufacture, distribution and sale of child care products and toys containing Bisphenol A for children under three years old
A.7017	Gianaris	Establishes the Climate Change Solutions Fund for the receipt of proceeds from the Regional Greenhouse Gas Initiative
A.7117	Reilly	Eliminates term limits for regional Fish and Wildlife Management Board members
A.7276	Rosenthal	Includes the preservation of the nighttime sky in the statutory declaration of the environmental policy of the State
A.7281	Rosenthal	Enacts the "Healthy, Safe and Energy Efficient Outdoor Lighting Act" to reduce the impacts of harmful outdoor lighting
A.7571	Sweeney	Enacts the "Electronic Equipment Recycling and Reuse Act"
A.7572	Sweeney	Requires DEC to establish limits on greenhouse gas emissions
A.7573	Sweeney	Restricts the use of the brominated flame retardant decabromodiphenyl (decaBDE)
A.7719	Gordon	Authorizes a study of animal life in the vicinity of the Dewey Loeffel Hazardous Waste Site and Nassau Lake
A.7918-A	Lupardo	Reconstitutes the New York State Oil, Gas and Solution Mining Advisory Board
A.7937-A	Englebright	Prohibits the use of pesticides on school and day care turf and playing fields
A.8489	Peoples-Stokes	Establishes criteria for DEC to identify areas of the state most adversely affected by existing environmental hazards

<u>Assembly Bill</u>	<u>Sponsor</u>	<u>Title</u>
A.8490-A	Peoples-Stokes	Creates a permanent environmental justice advisory group
A.8558	Sweeney	Exempts elementary and secondary schools from certain fees resulting from the clean up of hazardous wastes
A.8560-A	Sweeney	Expands the membership of the Marine and Coastal District of New York Conservation, Education and Research Board
A.8642	Sweeney	Requires a reduction in sulfur emissions for number two heating oil heating oil used in the state
A.8785	Zebrowski	Requires DEC to establish a model pesticide policy
A.8900	Sweeney	Requires additional information to be reported to DEC regarding the taking of horseshoe crabs
A.9049	Sweeney	Establishes a statewide program for the collection of electronic waste