



*New York State Assembly*  
**2011 ANNUAL REPORT**

*committee on*  
**ENVIRONMENTAL  
CONSERVATION**

*Robert K. Sweeney*  
*Chairman*



*Sheldon Silver*  
*Speaker*

December 15, 2011

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 2011 Annual Report of the Assembly Standing Committee on Environmental Conservation.

The Committee addressed several important issues this year including limiting chemical exposure for children, better regulating water withdrawals and addressing issues related to hydraulic fracturing in the oil and gas drilling industry. 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 2012 legislative session.

Sincerely,

A handwritten signature in black ink that reads "Bob Sweeney". The signature is written in a cursive, slightly slanted style.

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

**2011 ANNUAL REPORT**  
**OF THE NEW YORK STATE ASSEMBLY**  
**STANDING COMMITTEE ON ENVIRONMENTAL CONSERVATION**

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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), 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 2011 Legislative Session the Committee considered 454 bills, acting favorably on 136, with 69 becoming law.

## MAJOR ISSUES OF 2011

### A. BUDGET HIGHLIGHTS

The State Fiscal Year (SFY) 2011-12 Enacted Budget included over \$1 billion in funding for environmental programs as well as monies for water and wastewater infrastructure and recycling programs.

#### **Environmental Protection Fund**

The Environmental Protection Fund (EPF) received \$134 million. The final EPF budget included funding for traditional EPF programs such as waterfront revitalization, municipal recycling, water quality improvement, and farmland protection. In addition, the Assembly ensured that no less than 25 percent of the EPF funds appropriated for local waterfront revitalization and municipal parks projects 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)**

<b>EPF Category</b>	<b>Enacted 2011-12</b>
<b>Solid Waste Account</b>	<b>11.014</b>
Municipal Recycling	6.639
Pollution Prevention Institute	2.000
Secondary Markets	1.000
Natural Resource Damages	.200
Pesticide Database	.575
Landfill Closure/Gas Management	.600
<b>Parks, Recreation &amp; Historic Preservation Account</b>	<b>53.660</b>
Waterfront Revitalization	12.000
Municipal Parks	13.432
Hudson River Park	3.000
Stewardship	16.228
Zoos, Botanical Gardens, & Aquaria	9.000
<b>Open Space Account</b>	<b>69.326</b>
Land Acquisition	17.614
Smart Growth	.300
Farmland Protection	10.750
Agricultural Waste Management	.430
Biodiversity	.500
Albany Pine Bush	2.000
Invasive Species	3.800
Long Island Pine Barrens Planning	1.100
Ocean and Great Lakes	5.000
Water Quality Improvement	2.932
Long Island South Shore Estuary Reserve	0.900
Non-point Source Pollution Control	17.000
Soil and Water Conservation Districts	3.000
Finger Lakes - Lake Ontario Watershed	1.000
Hudson River Estuary Management	3.000
<b>Total</b>	<b>134.000</b>

## **B. ENVIRONMENTAL QUALITY**

### **Environmental Impact Zone Designation**

**(A.611 Peoples-Stokes; Passed the Assembly)**

This legislation would require DEC to publish a list of “high local environmental impact zones,” that 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 the area’s air quality.

### **Enhancing Environmental Quality Review**

**(A.334 Paulin; Passed the Assembly)**

This legislation would ensure the consideration of emerging environmental science issues in determining the significance of a project or action under the State Environmental Quality Review (SEQR) process. DEC would be required to update annually 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**

### **Restrictions on the Sale of Mercury-Added Products**

**(A.668 Jaffee; Chapter 20 of the Laws of 2011)**

When products containing mercury are discarded, they often enter the waste stream, polluting soil, drinking water sources, and aquatic habitats. Mercury has been proven to impair brain development. The Centers for Disease Control and Prevention estimate that between 300,000 and 630,000 infants each year are born in the United States with mercury levels high enough to be associated with IQ loss.

A law enacted in 2004 authorized a ban on certain mercury-containing products (i.e. thermostats) upon a finding by the Department of Environmental Conservation (DEC) that there were mercury-free alternatives. At a hearing held by the Assembly Environmental Conservation Committee in 2009, DEC testified that they were unable to make such a finding because of the myriad of products available. Other states, including Maine and Wisconsin, have adopted mercury product bans without requiring such an affirmative finding. This law follows those models and better reflects the intent of the 2004 law by banning mercury-containing products when there are mercury-free alternatives.

**Reimbursement to Fire Companies for Hazardous Spill Response**  
**(A.7672 Sweeney; Veto Memo 66)**

Many municipal and volunteer fire companies incur significant costs in responding to spills of hazardous materials; however, current law does not provide an adequate 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.

**D. PESTICIDES MANAGEMENT**

**Electronic Pesticide Notification**  
**(A.7638-A Sweeney; Chapter 526 of the Laws of 2011)**

Currently, the statutory language pertaining to commercial lawn applicators limits them to providing information to property owners or their agents only in written form in at least 12 point type. This is contrary to other sections of the Environmental Conservation Law, in which the statutory language permits pesticide information to be supplied in written or electronic format. This law will allow, at the customer's option, commercial pesticide applicators to provide pesticide information electronically. Current law already allows such electronic transmission for indoor pesticide applications.

**E. NATURAL GAS DRILLING**

**Gas Drilling in Allegany State Park**  
**(A.393-A Hoyt; Chapter 568 of the Laws of 2011)**

When Allegany State Park was established in the early 20<sup>th</sup> century, the State acquired ownership of the surface rights; however, ownership of the sub-surface mineral resources was retained in private ownership. The Office of Parks, Recreation and Historic Preservation (OPRHP) has received preliminary information from oil and gas companies indicating they have acquired leases of privately-held oil subsurface resources and proposing to commence oil and gas drilling.

This law will establish the framework for OPRHP's review and permitting of oil and gas extraction to ensure that if such activities are conducted, adverse impacts to the Park's natural, scenic, and recreational resources will be minimized or avoided.

**Temporary Moratorium on Hydraulic Fracturing**  
**(A.7400 Sweeney; Passed the Assembly)**

This bill would suspend, until June 1, 2012, the issuance of new permits for natural gas or oil drilling involving hydraulic fracturing.

**Treatment of Drilling Waste**  
**(A.7013 Sweeney; Passed the Assembly)**

Currently, the regulations promulgated by the Department of Environmental Conservation that govern the waste produced by the oil and natural gas industries exempt "drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal energy" from being regulated as hazardous waste. This exemption is in place despite the fact that the waste resulting from the exploration, development, extraction and production of crude oil and natural gas may be hazardous in many instances.

This legislation would supersede that regulation and ensure that if waste from these operations meets the definition of hazardous waste, then it be treated in a manner consistent with other hazardous wastes. Failure to classify waste properly that meets this threshold could present a real danger to public health and the environment. If not treated properly, hazardous waste can, among other concerns, lead to contaminated air, drinking water, soil, and food. If waste produced from oil and natural gas activities meets the definition of hazardous waste, it should be subject to the same laws regarding generation, transportation, treatment, storage and disposal as other hazardous wastes.

**Ability of Local Governments to Use Zoning to Regulate Natural Gas Drilling**  
**(A.3245 Lifton; Passed the Assembly)**

In 1981, the Environmental Conservation Law was amended to provide local governments with the explicit authority to regulate local road use activities associated with natural gas and oil drilling. This legislation also made clear that local governments maintained their authority under the Real Property Tax Law; however, it did not include a specific reference to municipal zoning power. As a result, the ability of local governments to enforce zoning laws was challenged. The NY Court of Appeals concluded that zoning ordinances do not "relate to the regulation" of the industry, as prohibited by the Environmental Conservation Law, but rather regulate the location, construction and use of buildings and land within the town.

This legislation would clarify that local governments have the authority to enact local zoning laws that pertain to the siting of natural gas and oil drilling activities.

## **F. FISH AND WILDLIFE**

### **Prohibition on the Taking of Certain Seahorses** **(A.2439 Englebright; Chapter 81 of the Laws of 2011)**

Long Island's south shore estuaries provide habitat for the northern or lined seahorse (*Hippocampus erectus*) during the warmer months of the year. The northern seahorse is commonly found in the Great South and Moriches Bay during the summer where it concentrates in vegetated areas.

Seahorses are routinely collected for commercial purposes including use as aquarium fish, traditional Chinese medicines and ornamental displays and curios. Because they are slow moving or attached to vegetation they can be captured easily with seine nets. Little is known about their overall abundance or population trends so it is unclear whether they can sustain the level of harvest to which they are currently being subjected. This law will prohibit the taking of Northern or Lined seahorses for commercial purposes.

### **Management of Migratory Bird Seasons** **(A.7560 Russell; Chapter 76 of the Laws of 2011)**

Annual migratory game bird hunting regulations, including the timing of hunting seasons, are established in accordance with federal regulations. Historically, the final federal regulations have not been issued until late August or early September each year. There is no expectation that this timeline will change because it is driven by the annual waterfowl breeding surveys. As a result, DEC is often forced to issue emergency regulations to conform State migratory game bird hunting regulations to the federal regulations in time for opening day. This law will extend DEC's authority to set seasons automatically in New York based on the final federal regulations, rather than requiring DEC to issue emergency regulations annually to establish the migratory game bird seasons. In addition, DEC would retain the option to issue its own regulations, if it chooses to do so, provided that they are no less restrictive than the federal regulations.

### **Minimum Licensing Age for Junior Archery** **(A.2021-A Gunther; Chapter 25 of the Laws of 2011)**

Prior to the passage of this legislation, junior archer licensees were required to be at least fourteen years old before they could hunt big game (i.e. deer or bear). This law will permit a junior archer who is at least twelve years old to hunt deer or bear if accompanied by his or her parent or legal guardian or other person at least 21 years of age. Such person must be licensed and must have at least three years of hunting experience. In addition, such parent or guardian must maintain physical control over the junior archer so they can issue verbal instructions, maintain constant visual contact and provide guidance and supervision.

**Lifetime Hunting and Fishing License Transfers**  
**(A.6440-A Sweeney; Chapter 90 of the Laws of 2011)**

Lifetime sporting licenses are a privilege many recreational enthusiasts enjoy for their simplicity, permanence, and value. Purchasing a lifetime license signifies a lifelong commitment to conservation and the outdoors. This law will allow a lifetime license to be transferred following the death of military personnel in combat.

**Striped Bass Management**  
**(A.7487 Abinanti; Chapter 435 of the Laws of 2011)**

Legislation passed in 2000 required DEC to establish 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 re-opening the fishery, in part due to 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 law will prohibit the taking of striped bass from the Hudson River for commercial purposes until April 1, 2015.

**Terms of Office for Fish and Wildlife Management Board Members**  
**(A.4729-A Reilly; Chapter 511 of the Laws of 2011)**

Currently, members of the Fish and Wildlife Board can serve three, two-year terms before being required to leave the board; however, many members of the Board have asked to serve longer. Board members are not compensated for their service. This law will eliminate term limits for members of the Fish and Wildlife Board.

**Authorization to Use Three Fishing Lines**  
**(A.3480-B Russell; Chapter 455 of the Laws of 2011)**

This law will permit individuals, until December 31, 2013, to fish in freshwater with up to three lines. Similar legislation has passed in Michigan and is believed to have increased the interest and involvement of recreational anglers. Prior to the passage of this legislation, individuals were limited to two lines.

**Youth-Only Pheasant Hunting Days on Long Island**  
**(A.4786 Sweeney; Chapter 366 of the Laws of 2011)**

Youth-only pheasant hunts are already offered in the northeastern and western portions of the State; however, the Environmental Conservation Law currently authorizes DEC to set youth-only hunts for pheasants by regulation everywhere in the State but on Long Island.

Long Island sportspersons have expressed an interest in improving and expanding youth-only hunting opportunities. Special youth-only hunts, occurring before the open season, give youth a unique opportunity to participate in the sport free of other hunters, and with greatly improved chances of obtaining their quarry. This law will permit DEC to establish youth-only pheasant hunts on Long Island.

**Prohibition on the Sale and Possession of Bear Gallbladders**  
**(A.6291-A Rosenthal; Chapter 468 of the Laws of 2011)**

This law will prohibit the possession, bartering, or selling of bear gallbladders or biles unless a valid bear tag is attached and require hunters who transport bear, for the purposes of harvesting the gallbladder and/or bile, to retain the bear tag attached thereto. Also, taxidermists would be required to: maintain records of all bear gallbladders and bile received along with the information from the attached valid bear tag; record the name and address of the person(s) to whom any bear gallbladder or bile is sold or bartered; report to DEC annually and retain records for at least five years. In addition, DEC would be required to publish information reported by taxidermists on the website after redacting all personally identifying information.

**Snapping Turtle Management**  
**(A.378-A Magee; Passed the Assembly)**

Currently, turtles may only be taken by longbow or gun. This legislation would permit snapping turtles to be taken by individuals with a trapping license.

**G. ENVIRONMENTAL ENFORCEMENT**

**Improving New York State's Compliance With Environmental Laws**  
**(A.2229 Kavanagh; Passed the Assembly)**

Among the largest polluters in New York State is the State itself. This legislation would remedy this problem by requiring 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.

**Environmental Justice Advisory Group**  
**(A.947 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, DEC convened an environmental justice advisory group. In January 2002, the advisory group issued its report. In March 2003, DEC 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 conduct an environmental justice review and address environmental justice.

**H. SOLID WASTE MANAGEMENT**

**Bottle Bill Amendments**  
**(A.5270-A Canestrari; Chapter 459 of the Laws of 2011)**

In 2009, the Legislature enacted sweeping changes to the State's "Bottle Bill Law." This law will clarify how the square footage for retail space should be calculated, decrease the number of reverse vending machines required to be available at retail establishments and permit the use of alternative container collection technologies.

**Metal Beverage Containers**  
**(A.7483 Gantt; Chapter 381 of the Laws of 2011)**

The original "Bottle Bill Law," enacted in 1982, included provisions to require deposit requirements to be etched on to the top of beverage containers and to prohibit the use of detachable metal pull tabs that had the potential to cause serious injury or death to fish and wildlife. At the time the original law was enacted, metal bottles did not exist; however, in recent years a number of bottlers have designed and marketed beverages in metal bottles. Bottlers maintain that the metal containers are environmentally and business friendly because they weigh less than glass containers and therefore cost less to transport, the metal container has greater markets for recycling than do glass containers, they cost less to refrigerate thereby saving energy, and by being virtually unbreakable, the risk of injury to humans or animals is greatly diminished.

This law will remove the statutory prohibition on the sale of metal beverage containers while still maintaining restrictions on the use of metal pull tabs.

**Compostable or Recyclable Food Service Ware**  
**(A.2097 Kavanagh; Passed the Assembly)**

Styrofoam is a liquid hydrocarbon that is manufactured commercially from petroleum. Each year Americans throw away an estimated 25,000,000 Styrofoam cups. A single Styrofoam cup can take up to 500 years to disintegrate fully. 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.

**Enhancing Statewide Recycling Efforts**  
**(A.1241 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.

**Recycling as a Component of Solid Waste Management Plans**  
**(A.1596 Jeffries; Passed the Assembly)**

Currently, local solid waste management plans are required to contain information about a variety of factors including the 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.

## **I. PETROLEUM MANAGEMENT**

### **Moratorium on the Development of Liquefied Natural Gas** **(A.108 Cusick; Chapter 10 of the Laws of 2011)**

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, 2013, the existing moratorium.

## **J. WATER CONSERVATION AND QUALITY**

### **Water Withdrawal Reporting** **(A.5318-A Sweeney; Chapter 401 of the Laws of 2011)**

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

Pursuant to Environmental Conservation Law Article 15, the Department of Environmental Conservation (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 last century, and therefore are outdated. Under the provisions of Article 15, DEC's regulatory authority is largely limited to public water supplies to ensure adequate quantities of potable water. As a result, consumptive uses of water for agricultural, commercial, and industrial purposes remain largely unregulated by the State.

This law will 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, and would allow New York to meet its obligation under the Great Lakes-St. Lawrence River Basin Water Resources Compact to implement a regulatory program for water withdrawals in the Great Lakes Basin. Moreover, application of the program 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. Further, this law will result in a strengthening of the water conservation elements of the current permitting program and encourage water reuse, consistent with the Compact and sound resource management.

**Connecticut-New York Bi-State Long Island Sound Committee**  
**(A.5971 Sweeney; Chapter 33 of the Laws of 2011)**

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 law will make conforming amendments to the provisions of law relating to the Connecticut-New York Bi-State Long Island Sound Committee.

**New York City Drinking Water**  
**(A.468 Gunther; Veto Memo 51)**

In April 2005, massive floods swept through many counties within New York State. The flooding caused major damage to many communities, including the destruction of homes and roadways, numerous injuries and at least one fatality. This flood was one of the worst floods the region has seen in over 50 years.

This legislation would require the New York State Department of Environmental Conservation and the New York City Department of Environmental Protection, in consultation with the United States Army Corps of Engineers, the United States Geological Survey, and the United States Department of Interior Bureau of Land Reclamation to review the west of Hudson River New York City drinking water supply system and make recommendations to alleviate the threat of flooding. In addition, the study required by this bill would include the monitoring and maintenance of reservoir levels during high flow events and the extension and/or expansion of rain-based and snow pack spill control programs.

**Environmental Facilities Corporation Financing**  
**(A.7151 O'Donnell; Chapter 70 of the Laws of 2011)**

The Environmental Facilities Corporation (EFC) provides municipalities with grants and low cost loans to finance drinking and wastewater infrastructure. In 2005, EFC received authority to expand the direct investment of Clean Water State Revolving Loan Funds monies to include any security obligation available to municipalities under the General Municipal Law. This law extends, until September 30, 2014, the investment power of the Environmental Facilities Corporation.

### **Seagrass Protection Act**

**(A.7988 Sweeney; Passed the Assembly)**

New York seagrass beds are a vital habitat and nursery for numerous commercially, recreationally and ecologically important fish and shellfish species. Seagrass beds used to be prevalent, reaching an estimated 200,000 acres in 1930. Today, only approximately 21,803 acres remain. This legislation would provide DEC with specific authority to regulate seagrass areas, including restricting mechanical equipment and limiting pesticides. Many of the provisions contained in the legislation were recommended by the NYS Seagrass Taskforce.

### **Protecting the State's Freshwater Wetlands**

**(A.3374 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, DEC is currently limited to regulating mapped wetlands of special value or a size greater than 12.4 acres. This legislation would expand DEC's regulatory authority to include 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.5638 Sweeney; Passed the Assembly)**

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

**Protecting Residents with Private Wells**  
**(A.667 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 and require 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.

**K. FOREST AND LAND RESOURCES**

**Authorization for the Exchange of Certain Forest Preserve Land**  
**(A.8214 Sweeney; Chapter 318 of the Laws of 2011)**

A 2009 Constitutional amendment approved by the State's voters authorized the construction of a 46 kV power line to serve residents in the Adirondacks. This law will authorize the State to convey approximately six acres of forest preserve land, which adjoins County Route 56 in St. Lawrence County, to the utility National Grid for construction of a power line. In exchange, National Grid will convey approximately 20 acres of land to the State for incorporation into the forest preserve. A metes and bounds description of the lands to be conveyed to National Grid from the State and those lands to be conveyed by National Grid to the State is contained in this legislation.

**Central Pine Barrens Expansion**  
**(A.8265 Sweeney; Chapter 538 of the Laws of 2011)**

The Carmans River is a major river on Long Island and, along with its sister river, the Peconic, is one of two within the Central Pine Barrens. Although various State and local measures have been undertaken, a number of threats to the Carmans River persist and are anticipated to cause progressive degradation both within the Carmans River as well as its watershed unless more definitive action is undertaken. The Town of Brookhaven is in the process of developing and implementing a Carmans River Watershed Protection and Management Plan.

This law will expand the Core Preservation Area boundary of the Central Pine Barrens to encompass those groundwater contributing areas most critical to the Carmans River, those from which groundwater requires the least amount of time to reach the river and those areas identified as being critical to preserve hydrological and ecological integrity.

**Community Housing Within the Adirondack Park**  
**(A.8303 Sweeney; Chapter 135 of the Laws of 2011)**

This law, which began as a Governor's Departmental bill, would define "community housing" to include dwelling units less than 1,500 square feet in size located on one parcel within three miles of a hamlet land use area, and not closer than one tenth of a mile to a shoreline. Such housing would also be required to be legally limited to people with 120 percent or less of the area median income. In addition, this law specifies that up to four community housing units equal one principal building.

**L. CLIMATE CHANGE**

**Greenhouse Gas Emission Limits**  
**(A.5346 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 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.

**M. CHEMICALS**

**TRIS Phase Out**  
**(A.6195-A Sweeney; Chapter 259 of the Laws of 2011)**

TRIS is the common name for a family of chlorinated flame retardants. On April 8, 1977, the United States Consumer Product Safety Commission banned the sale of any children's clothing containing the flame retardant chemical TRIS phosphate (TRIS BP). 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. The ban on the use of TRIS applied only to children's clothing. Because of the comparatively low cost of TRIS it is used increasingly in baby gear including strollers, nursing pillows and rocking chair foam. This law will prevent the sale of child care products containing TRIS (TCEP) after December 1, 2013, in order to eliminate possible exposure risks for children through skin contact or mouthing. A report published by the Environmental Protection Agency titled "Environmental Profiles of Chemical Flame Retardant Alternatives" contains details regarding several flame retardants that represent a low health hazard concern. These flame retardants would potentially serve as a better alternative to TRIS.

## **DecaBDE Ban**

**(A.5798 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 in part to 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 found predominantly in the now prohibited pentaBDE and octaBDE. This legislation, which would codify a recent agreement between the United States Environmental Protection Agency and chemical manufacturers, would phase out the manufacture and use of decaBDE by 2013.

## **OVERSIGHT AND PUBLIC HEARINGS**

In 2011, the Assembly Standing Committee on Environmental Conservation continued its oversight of environmental issues by holding hearings to examine the following issues: the potential health effects of hydraulic fracturing; invasive species; Suffolk County water quality; the proposed revised draft SGEIS; and toxic chemicals in children's products.

### **Health Effects of Hydraulic Fracturing**

Hydraulic fracturing involves the high-pressure injection of water and chemicals into rock to stimulate the production of oil and gas. A number of concerns regarding the potential health effects of exposure to such chemicals have been raised.

On May 26, 2011, the Committee, in cooperation with the Assembly Committee on Health, held a hearing to examine those potential health effects. Testimony was presented by a variety of witnesses including an endocrinologist, ecologist, chemist, pediatrician, toxicologist, and petroleum engineer.

### **Prevention of the Introduction of Invasive Species**

On September 13, 2011, the Committee held a hearing to solicit public input on the best methods for preventing the introduction of invasive species and combating those already present in the State.

Chapter 674 of the Laws of 2007 created the New York Invasive Species Council and Invasive Species Advisory Committee. These entities were charged with developing a four-tier classification system for non-native animal and plant species. This hearing examined a report issued by the Council that proposed such a classification system as well as other issues related to the introduction of invasive species, methods to combat the invasive species already present, and the effectiveness of State funding, including the Environmental Protection Fund monies. Testimony was presented by a variety of witnesses including the United States Fish and Wildlife Service, the United States Department of Agriculture and Markets, DEC, scientists and environmental groups.

### **DEC's Proposed Revised Draft Supplemental Generic Environmental Impact Statement on Gas Drilling**

On September 30, 2009, the New York State Department of Environmental Conservation (DEC) released a Draft Supplemental Generic Environmental Impact Statement (DSGEIS) regarding well permit issuance for horizontal drilling and high-volume hydraulic fracturing to develop the Marcellus shale and other low-permeability gas reserves. DEC received thousands of comments and on September 7, 2011, released a revised DSGEIS. The purpose of this hearing was to solicit public input on the revised DSGEIS. Testimony was presented by a variety of witnesses including the United States Geological Survey (USGS), DEC, New York State Petroleum Council, environmental groups and concerned citizens.

## **Suffolk County Water Quality**

The draft Suffolk County Comprehensive Water Resources Management Plan was released recently to “enhance the understanding of the County’s aquifer system and its relationship to the County’s surface waters, to assess the relationships between water quality and land use, to identify groundwater, drinking water supply and surface water issues facing Suffolk County in the near term and the long term, and to present the framework for a program to guide future resource protection efforts and management decisions.

On September 27<sup>th</sup> a hearing was held in Babylon to solicit input on the Suffolk County report and to examine issues related to the protection of water resources in Suffolk County. Testimony was presented by a variety of witnesses including Suffolk County, scientists and environmental groups.

## **Toxic Chemicals in Children’s Products**

In 1976 the federal government enacted the Toxic Substances Control Act (TSCA) with Congress and despite the passage of over 30 years, the significant growth in the number of new chemicals, and the development of new health information indicating that certain populations, such as children, are subject to additional risks from chemical exposure, TSCA has remained largely unchanged. However, laws governing children’s products were modified when Congress passed the Consumer Product Safety Improvement Act of 2008 (CPSIA) that provided the Consumer Product Safety Commission with additional powers and included mandatory third party testing for certain children’s products, standards for durable nursery products, and a prohibition on the sale of certain products containing specified phthalates.

In lieu of TSCA reform, an increasing number of states have begun their own chemical regulation programs. Some states, such as Maine and Washington, have adopted a regulatory framework in which all chemicals that meet certain health and environmental criteria are banned. Other states, including New York, have adopted a chemical-by-chemical approach, focusing primarily on children’s products. New York has most recently prohibited the use of the chlorinated flame retardant TRIS (*TCEP*) in certain children’s products. Assembly bill 3141 represents a departure from this approach and would apply the regulatory framework approach to products in New York.

On December 5<sup>th</sup> the Environmental Conservation Committee, in cooperation with the Assembly Committees on Health and Consumer Affairs and Protection, held a hearing to solicit input on how best to regulate the use of chemicals in children’s products in New York State. Testimony was presented by a variety of witnesses including environmental and consumer groups as well as industry representatives.

## **OUTLOOK AND GOALS FOR 2012**

The Committee looks forward to the 2012 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 monitor natural gas developments. The Committee will consider legislation to protect wetlands, improve water quality and ensure safe drinking water. 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**  
**2011 SUMMARY SHEET**

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

<b>Final Action</b>	<b><u>Assembly</u> <u>Bills</u></b>	<b><u>Senate</u> <u>Bills</u></b>	<b><u>Total</u></b>
<b><u>Bills Reported With or Without Amendment</u></b>			
To Floor; Not Returning to Committee (Favorable)	48	0	48
To Ways & Means	13	0	13
To Codes	62	0	62
To Rules	13	0	13
To Judiciary	0	0	0
<b>Total</b>	<b>136</b>	<b>0</b>	<b>136</b>
<b><u>Bills Having Committee Reference Changed</u></b>			
To Codes Committee	1	0	1
To Economic Development Committee	2	0	2
To Local Governments Committee	1	0	1
<b>Total</b>	<b>4</b>	<b>0</b>	<b>4</b>
<b><u>Senate Bills Substituted or Recalled</u></b>			
Substituted		9	9
Recalled		2	2
<b>Total</b>		<b>11</b>	<b>11</b>
<b><u>Bills Defeated in Committee</u></b>	0	0	0
<b><u>Bills Held for Consideration With a Roll-Call Vote</u></b>	13	0	13
<b><u>Bills Never Reported or Held in Committee</u></b>	290	33	323
<b><u>Bills Having Enacting Clause Stricken</u></b>	11	0	11
<b><u>Motion to Discharge Lost</u></b>	0	0	0
<b>TOTAL BILLS IN COMMITTEE</b>	<b>454</b>	<b>44</b>	<b>498</b>
<b>TOTAL NUMBER OF COMMITTEE MEETINGS HELD</b>		<b>12</b>	

## APPENDIX B

### ENVIRONMENTAL CONSERVATION BILLS THAT PASSED BOTH HOUSES

<b>Assembly Bill</b>	<b>Sponsor</b>	<b>Title</b>	<b>Final Action</b>
A.108	Cusick	Extends the moratorium on the issuance of environmental safety certificates for the transportation of liquefied natural or petroleum gas	Chapter 10
A.295-A	Hevesi	Makes technical corrections to provisions on possession and transportation of wildlife	Chapter 126
A.393-A	Hoyt	Relates to oil and gas drilling in Allegany State Park	Chapter 568
A.468	Gunther	Directs the review of the West of Hudson River New York City Drinking Water Supply System program	Veto 51
A.668	Jaffee	Restricts the sale of mercury-added consumer products	Chapter 20
A.2021-A	Gunther	Reduces the required minimum age for obtaining a junior archery license	Chapter 25
A.2439	Englebright	Prohibits the commercial taking of northern or lined seahorses	Chapter 81
A.2986-A	Burling	Allows rifle hunting in Wyoming County	Chapter 326
A.3480-B	Russell	Authorizes an individual to angle for fish with up to three lines in freshwater	Chapter 455
A.3556-A	Magee	Adds the State Soil and Water Conservation Committee to the New York Ocean and Great Lakes Ecosystem Conservation Council	Chapter 363
A.4263-A	Magee	Authorizes DEC to designate additional fishing events as rehabilitation for armed forces veterans or active members	Chapter 46
A.4357-A	Lifton	Authorizes rifle hunting in Cortland County	Chapter 323
A.4729-A	Reilly	Relates to membership on regional fish and wildlife boards	Chapter 511
A.4786	Sweeney	Provides for the establishment of youth-only pheasant hunting days on Long Island	Chapter 366
A.5270-A	Canestrari	Relates to the number of reverse vending machines required for mandatory acceptance of empty beverage containers	Chapter 459

A.5318-A	Sweeney	Establishes regulations for the use of the State's water resources	Chapter 401
A.5347-A	Thiele	Relates to harvesting surf clams and ocean quahogs	Chapter 158
A.5663	Sweeney	Requires that, for certain contracts, the public be made aware that the source of funding for the contract is the Environmental Protection Fund	Chapter 277
A.5763	Thiele	Relates to the regulation of vessels in the Village of North Haven in Suffolk County	Chapter 278
A.5971	Sweeney	Makes conforming amendments to provisions of law relating to the Connecticut-New York Bi-State Long Island Sound Committee	Chapter 33
A.6055-A	Goodell	Allows rifle hunting in Chautauqua County	Chapter 321
A.6195-A	Sweeney	Prohibits the sale of child products containing TRIS (TCEP)	Chapter 259
A.6291-A	Rosenthal	Prohibits the possession, sale, barter, offer, purchase, transportation, delivery, or receipt of bear gallbladders without proper documentation	Chapter 468
A.6440-A	Sweeney	Permits the transfer of a lifetime hunting, fishing and trapping license	Chapter 90
A.6544	Hoyt	Requires the modification of the New York State Stormwater Management Design Manual by the department of environmental conservation	Chapter 557
A.6883	Sweeney	Extends DEC's authority to regulate fish, shellfish, and crustacea in designated special management areas	Chapter 86
A.6885	Sweeney	Extends DEC's authority to regulate striped bass	Chapter 87
A.6886	Sweeney	Extends DEC's authority to regulate blackfish	Chapter 88
A.6887	Sweeney	Extends DEC's authority to regulate weak-fish	Chapter 418
A.6946	Colton	Extends DEC's authority to regulate winter flounder	Chapter 419
A.6948	Crespo	Extends DEC's authority to regulate whelks and conchs	Chapter 420

A.6949	Cymbrowitz	Extends DEC's authority to regulate fluke-summer flounder	Chapter 421
A.6950	Cymbrowitz	Extends DEC's authority to regulate black sea bass	Chapter 422
A.6951	Cymbrowitz	Extends DEC's authority to regulate monkfish	Chapter 423
A.6952	Englebright	Extends DEC's authority to regulate crabs	Chapter 289
A.6953	Gunther	Extends DEC's authority to regulate hunting in the northern zone	Chapter 424
A.6954	Jaffee	Extends DEC's authority to regulate American eel	Chapter 290
A.6955	Latimer	Extends DEC's authority to regulate hickory shad	Chapter 291
A.6956	Peoples-Stokes	Extends DEC's authority to regulate the taking of fish	Chapter 425
A.6957	Schimmel	Extends DEC's authority to regulate certain types of clams	Chapter 481
A.6958	Simotas	Extends DEC's authority to regulate scup	Chapter 426
A.6959	Thiele	Extends DEC's authority to regulate scallops	Chapter 427
A.6960	Titone	Extends DEC's authority to regulate sharks	Chapter 428
A.6961	Titone	Extends DEC's authority to regulate Atlantic herring	Chapter 292
A.6962	Weisenberg	Extends DEC's authority to regulate Atlantic cod	Chapter 293
A.6963	Weisenberg	Extends DEC's authority to regulate bluefish	Chapter 429
A.6964	Zebrowski	Extends DEC's authority to regulate American shad	Chapter 294
A.6965	Zebrowski	Extends DEC's authority to regulate Atlantic and shortnose sturgeon	Chapter 295
A.6966	Zebrowski	Extends DEC's authority to regulate alewife	Chapter 296
A.7078	Ramos	Extends DEC's authority to regulate oysters	Chapter 431
A.7150	Thiele	Extends DEC's authority to regulate squid	Chapter 297
A.7151	O'Donnell	Extends certain special investment powers of the New York State Environmental Facilities Corporation	Chapter 70
A.7211	Jaffee	Extends DEC's authority to regulate blueback herring	Chapter 298

A.7217	Calhoun	Includes the Walkill River within the definition of inland waterways for the purposes of waterfront revitalization	Chapter 348
A.7241	Sayward	Includes the Sacandaga River within the definition of inland waterways for the purposes of waterfront revitalization	Chapter 166
A.7380	Friend	Clarifies the authorization for rifle hunting in Schuyler County	Chapter 202
A.7381	Palmesano	Clarifies the authorization for rifle hunting in Chemung, Steuben, and Yates counties	Chapter 203
A.7463-A	Cusick	Authorizes the removal of certain reeds by the owners of residential real property in high risk brush fire areas in Staten Island	Chapter 306
A.7483	Gantt	Authorizes the sale of metal beverage containers with caps that do not decompose	Chapter 381
A.7487	Abinanti	Prohibits the taking of striped bass from the Hudson River for commercial purposes	Chapter 435
A.7559-A	Lupardo	Extends DEC's authority to regulate the hunting of big game	Chapter 437
A.7560	Russell	Extends DEC's authority to regulate migratory game birds	Chapter 76
A.7631	Abinanti	Extends DEC's authority to regulate lobsters	Chapter 439
A.7637	Magee	Clarifies the authorization for rifle hunting in Madison County	Chapter 173
A.7638-A	Sweeney	Modifies the method by which lawn care companies provide certain information to property owners	Chapter 526
A.7672	Sweeney	Provides reimbursement to fire companies for costs associated with responding to spills of hazardous materials	Veto 66
A.7801	Sweeney	Extends DEC's authority to regulate commercial fishing licenses	Chapter 383
A.7943	Gunther	Clarifies provisions related to the junior archery license	Chapter 178
A.8214	Sweeney	Authorizes the exchange of certain lands between National Grid and the State	Chapter 318
A.8265	Sweeney	Adds certain lands within the Carmans River watershed to the core preservation area of the Central Pine Barrens	Chapter 538
A.8303	Sweeney	Defines "community housing project" for the purposes of the Adirondack Park Agency	Chapter 135

## APPENDIX C

### ENVIRONMENTAL CONSERVATION BILLS THAT PASSED THE ASSEMBLY ONLY

<b>Assembly Bill</b>	<b>Sponsor</b>	<b>Title</b>
A.334	Paulin	Directs DEC to update the model environmental impact assessment form periodically
A.378-A	Magee	Relates to the issuance of trapping licenses for snapping turtles
A.611	Peoples-Stokes	Requires DEC to develop and publish a list of high local environmental impact zones
A.667	Jaffee	Enacts the “private well testing act”
A.947	Peoples-Stokes	Creates a permanent environmental justice advisory group
A.1158	Sweeney	Authorizes the regulation of cadmium-added novelty consumer products
A.1241	Colton	Provides additional specificity on source separation and disposal of recyclable materials
A.1596	Jeffries	Requires solid waste management plans for the city of New York to include adequate trash receptacles in commercial zones and public recreational areas
A.2097	Kavanagh	Relates to food service waste reduction
A.2229	Kavanagh	Imposes penalties on State agencies that fail to complete a remediation plan
A.3245	Lifton	Allows local governments to enact or enforce zoning restrictions related to oil and gas drilling
A.3374	Sweeney	Expands the ability of DEC to regulate freshwater wetlands
A.3485	Sweeney	Establishes a mercury-containing thermostat collection program
A.3743	Englebright	Provides that on publicly-accessible municipally owned property where trapping is allowed signage should be posted at entry points
A.5346	Sweeney	Establishes greenhouse gas emission limits and reporting
A.5638	Sweeney	Requires restoration of areas adjacent to wetlands
A.5798	Sweeney	Restricts the use of decabromodiphenyl ether in certain products
A.6145	Sweeney	Establishes recycling requirements for polystyrene loosefill packaging, also known as “packing peanuts”

A.7013	Sweeney	Removes an existing regulatory exemption and requires waste from natural gas or oil drilling to be handled as hazardous waste if it meets certain criteria
A.7400	Sweeney	Establishes a moratorium on the use of hydraulic fracturing for the extraction of natural gas or oil
A.7988	Sweeney	Establishes the Seagrass Protection Act
A.8041-A	Sweeney	Requires DEC to make recommendations regarding certain advisory panels, boards, and task forces