

# The New York State Solid Waste

# EXAMINER

## News From Assemblyman Alan Maisel Chair, Legislative Commission on Solid Waste Management

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Summer Edition 2013

*Dear Colleagues and Readers:*

*The 2013 Legislative session has provided a number of interesting and challenging opportunities. I continue to enjoy my tenure as Commission Chairman, working with colleagues in the Assembly and Senate on numerous waste management issues that we will describe in this newsletter.*

*The following bills passed the Assembly this session:*

- *the bill banning the use of bisphenol A on thermal receipt paper; and*
- *the bill authorizing the donation of counterfeit clothing to not-for-profit groups to distribute to the needy.*

*The bill establishing producer responsibility for the take-back and recycling of mercury-containing lamps remained on the Assembly calendar at the end of session.*

*The bill establishing producer take-back and recycling requirements for ionizing smoke detectors containing americium-241 remained in the Assembly Ways and Means Committee.*

*We have continued our work and advocacy for bills that would:*

- *regulate various aspects of hydraulic fracturing wastes, including waste disposal and use of waste on roads; repeal compulsory integration of drilling units; place a moratorium on new oil and gas underground storage permits; and ban inclusion of non-disclosure agreements in legal settlements;*
- *establish manufacturer responsibility for take-back of drugs from hospitals and health care facilities;*
- *license scrap processors to ensure proper recovery and prevent theft of recyclable and scrap materials;*
- *require reuse and recycling of hardcover books;*
- *manage unwanted telephone directories and promote directory recycling;*
- *improve disclosure of the location of in-ground and above-ground residential fuel storage tanks; and*
- *require flooring contractors to remove used carpeting from a residential customer's property.*

*The newsletter also reports on FY 2013-14 funding for and allocations from the Environmental Protection Fund and funding/staffing for the Department of Environmental Conservation.*

*You may contact the Commission office at any time to bring solid waste issues to our attention. Thank you for your interest in the work of our Commission.*

*Alan Maisel*



## ISSUE HIGHLIGHTS

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# HOSPITAL AND RESIDENTIAL HEALTH CARE FACILITY DRUG COLLECTION AND DISPOSAL

## Maisel Bill Would Establish Manufacturer Drug Take-Back Programs

### The Maisel Legislation (A.1584-A/ S.642 Stavisky et al)

Assemblyman Maisel has re-introduced legislation which would establish a drug producer responsibility law. Drug manufacturers selling pharmaceuticals in New York would be:

- required to create and finance prescription and over-the-counter (OTC) drug take-back programs for hospitals and residential health care facilities;
- authorized to contract with third parties to run the programs and bear responsibility to ensure the security of the collection programs;
- prohibited from charging fees to hospitals and residential health care facilities for drug collection;
- required to submit bi-annual reports to DEC on their programs, including the types and amounts of drugs collected; and
- required to dispose of all collected drugs in an environmentally sound manner, pursuant to rules and regulations promulgated by the NYS Department of Health (DOH) and report biannually to DOH on their drug collection programs.

Disposal of these drugs as solid waste would be prohibited. The NYS Department of Environmental Conservation (DEC) would be responsible for enforcement of any regulations necessary to implement the law.

*The Maisel bill was not acted upon in the Assembly or Senate in 2012. The current bills have been assigned to the Assembly and Senate Health Committees.*

### The Impacts of Current Drug Disposal Methods

The presence of medications in drinking water, even at low concentrations, may create public health problems for the general populace, particularly infants and young children, through chronic exposure to a wide range of drugs. Additionally, surface waters have been contaminated with animal drugs, including anabolic steroids and drugs to treat arthritis, cancer, heart disease, diabetes, allergies, dementia and even obesity, similar to drugs used to treat humans. Publicly owned treatment works are not capable of removing drugs before discharging their effluent.

Little is known about the long-term or chronic impacts of low-dose human exposure to individual drugs or the chemical stew of many drugs that may interact or transform into other dangerous substances. Chronic low-level exposure concerns focus on certain drug classes:

- chemotherapy that can act as a powerful poison;
- hormones that can hamper reproduction or development;
- medications for depression and epilepsy that can damage the brain or change behavior;

- antibiotics that can allow human germs to mutate into more dangerous forms; and
- pain relievers and blood-pressure diuretics.

Pharmaceuticals in waterways are also damaging wildlife across the nation, causing conditions such as feminization and low testosterone levels in male fish.

While drugs are tested to be safe for human use, the time frame for exposure is usually over a matter of months, not a lifetime. Pharmaceuticals also can produce side effects and interact with other drugs at normal medical doses. Pharmaceuticals are prescribed to people who need them, and are not meant to be delivered to everyone in their drinking water.

In March 2013, Newsday reported that a survey by Citizens Campaign for the Environment reviewed drug disposal plans for 59 Suffolk County health care facilities and found that 51 percent reported a continued reliance on flushing medications down the toilet.

PhRMA, the lobbying arm of the pharmaceutical industry, argues that this bill will create higher drug prices, while suggesting that the amounts of drugs in our drinking water is minute. Drug companies make millions of dollars on the sale of drugs and currently contribute nothing for the disposal or contamination caused by millions of unwanted or unusable drugs. The bill is supported by the NYS Health Facilities Association as well as a broad range of environmental and public health advocates.

### Federal Policies for Drug Take-Back Programs

The Secure and Responsible Drug Disposal Act of 2010, signed by President Obama was meant to encourage voluntary take-back programs. Such programs have been hindered in the past by federal drug enforcement and hazardous waste disposal laws that fail to differentiate between pharmaceuticals and illicit drugs. This law amends the Federal Controlled Substances Act, giving the U.S. Attorney General the authority to promulgate regulations allowing patients to deliver unused prescription drugs to “appropriate entities” for safe disposal. The law also allows for the authorization of pharmaceutical drug disposal by long-term health care facilities on behalf of their patients.

Currently, there are no Federal mandatory testing or reporting requirements for the presence of pharmaceuticals in drinking water. Pharmaceuticals are not regulated as a class of contaminants under the Safe Drinking Water Act, the authorizing legislation for Federal drinking water standards.

The Federal Resource Conservation and Recovery Act (RCRA) exempts household waste (including prescription and OTC drugs) from hazardous waste regulation. In 2008, EPA proposed to add pharmaceuticals characterized as hazardous to its Universal Waste Rule; however, this rulemaking still has not been completed. Individual states may determine that drugs are hazardous wastes and must be managed as such.

## Current New York State Policy for Drug Disposal

New York has not classified drugs as hazardous wastes, thereby allowing hospitals and health care facilities to dispose of unwanted and unused drugs as solid waste. At best, hospitals and health care facilities may be able to return expired medications to manufacturers. This process, known as “reverse distribution” is not always available. Furthermore, EPA has made clear that distributors may not accept already dispensed medication back.

New York State does not have mandatory testing or reporting requirements for the presence of pharmaceuticals in drinking water. The State only has generic standards for principal organic contaminants.

## Legislative Action on Pharmaceuticals

In 2008, the Legislature approved legislation directing the NYS Department of Environmental Conservation (DEC) to develop a public information program on the proper storage and disposal of drugs. The Department was also directed to develop a notice that would be posted in all pharmacies, containing this information. The Legislature authorized a two-year extension of this program in 2010.

In 2012, legislation was proposed by Assemblymember Robert Sweeney and Senator Mark Grisanti (A.9421/S.6857) directing DEC to enter into contracts to establish a demonstration drug disposal program to determine the most effective method of disposal of drugs. That bill and subsequent legislation introduced in 2013 (A.5465/S.3985) failed to pass the Senate.

On March 22, 2011, the Suffolk County Legislature voted unanimously in favor of a law requiring all hospitals, nursing homes, hospice facilities and long-term care facilities in the county to submit plans for the safe disposal of unused and/or expired medications.

## DOH Guidance for Hospitals and Residential Health Care Facilities

NYS hospitals and health care facilities, including nursing homes

and long-term care facilities, find themselves with thousands of unwanted, unused or expired pharmaceuticals. Guidance from the NYS Department of Health (DOH) previously required hospitals and health care facilities to flush unwanted or unused drugs, which are not removed by municipal treatment plants, thereby contributing to contamination of waters of the State.

In 2010, the NYS Attorney General announced settlements with five Mid-Hudson health care facilities after his investigation showed that they released pharmaceutical waste into the New York City watershed. Violations included failure to properly identify, track, and dispose of pharmaceutical and other wastes defined as “hazardous waste” under RCRA. The settlements required the facilities to stop flushing unused drugs, instead directing these drugs to waste management facilities capable of safely treating pharmaceuticals.

The DOH website does not contain any current information on disposal methods being used by hospitals or healthcare facilities.

## DEC Guidance for Drug Disposal

The DEC website contains the following information and recommendations regarding drug disposal for households:

- keep medications in a safe, secure place; and
- if drug collection programs are not available, add water, salt ashes, dirt, cat litter, coffee grounds or other undesirable substances to avoid misuse of drugs, seal all drugs in an outer container and dispose of the container in the trash.

Further, the DEC website reminds pharmacies, veterinarians and retailers of their obligation to display a poster reminding people not to flush drugs and to dispose of drugs as noted above.

DEC’s website does have a Household Drug Collection Schedule listing voluntary household drug collection events in 33 counties. The collection programs vary from regular to occasional collection events and appear to be paid for by the sponsors, which may be solid waste management programs or local police agencies.

# DONATION OF CONFISCATED COUNTERFEIT CLOTHING ARTICLES

## The Maisel Bill A.1652-A Passed the Assembly

Assemblyman Maisel’s bill A.1652-A (S.2020-A Griffo) would prevent the disposal of confiscated counterfeit clothing. Current NYS law allows the court to authorize destruction of confiscated counterfeit clothing products. This bill would permit courts to authorize the donation of counterfeit clothing to not-for-profit corporations with an established history of providing goods and services to the indigent. Counterfeit clothing products could not be sold by such organizations or anyone receiving the products. Notification of the lawful mark owner would be required, in order to allow the owner an opportunity to object to the donation.

*The Assembly bill passed the Assembly. The Senate bill was reported from the Consumer Protection Committee to the Codes Committee.*

## Reusing Counterfeit Clothing

Current law does not allow for the donation of confiscated counterfeit products. A broad range of products, from designer labeled clothing, watches, perfumes and cosmetics to alcohol and tobacco; CDs, DVDs, video and audio tapes; computer software and games; vehicle parts; consumer electronics; and, toys and pharmaceuticals are routinely confiscated. Sales of these products are estimated to be in the billions of dollars annually worldwide.

The ACG (the Anti-Counterfeiting Group), a not-for-profit trade association considered a leading authority in the world trade of fakes, describes the counterfeit market as twofold. There is a primary market where consumers purchase counterfeit and pirated

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## MAKING IT WITH MUSHROOMS! Assemblyman Maisel Visits “Ecovative” Plant

Assemblyman Maisel and the Solid Waste Commission staff visited a local entrepreneurial business in Green Island that utilizes mycelium (mushroom) technology to bind agricultural waste into molded shapes, thereby replacing plastic foam and other synthetic materials with natural alternatives. The company was incubated at Rensselaer Polytechnic Institute (RPI); RPI together with 3M Company and the DOEN Foundation are significant investors in Ecovative.

Utilizing its innovative Mushroom@Packaging, Ecovative is developing a new class of home-compostable bioplastics based on mycelium, an organism similar to a living polymer. This technology provides a sustainable and eco-responsible alternative to plastics and plastic foams. For example, Ecovative makes protective packaging corner blocks to hold electronic equipment in place, as a replacement for polystyrene forms.

Ecovative’s growth has been fueled by grants, prizes and support from key partners including the NYS Energy Research and Development Authority, the National Science Foundation, the U.S. Department of Agriculture, the Environmental Protection Agency and others. The company has received numerous international awards

for sustainability and “green” technologies. Ecovative is working with NOAA to provide scientific buoys as part of an early warning system for tsunamis, as well as developing new apparel and liquid absorbing mats.



*Assemblyman Maisel discusses scientific buoys with Eben Bayer, Ecovative’s co-founder and CEO.*

## RECORDING RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENTS

### Maisel Bill Would Provide Localities and DEC with Location of Residential Fuel Storage Tanks

#### The Maisel Bill A.1583 would require

- residential property condition disclosure statements to be recorded by the county clerk with the relevant local government and DEC within 10 days of receipt; and,
- DEC to establish a publicly available electronic database of this information and to publish the information on DEC’s website.

*The bill is assigned to the Assembly Judiciary Committee.*

#### Benefits of Providing Information on Residential Fuel Storage Tanks

The provision of information about environmental conditions on residential property, such as the presence of in-ground or above-ground residential fuel storage tanks is currently required only to be provided by the property seller to the buyer. This bill would ensure that not only property owners, but the affected local government, DEC and the general public, are aware of the location of residential fuel storage tanks. There are millions of residential fuel tanks buried in New York that may pose significant environmental and public health hazards due to their age and condition. It is important that local governments are aware of these potential sources of contamination.

#### Current Regulation of Petroleum Storage Tanks

The Department of Environmental Conservation (DEC) regulates **non-residential** petroleum storage tanks through:

- Part 613 Petroleum Bulk Storage regulations for petroleum facilities with storage capacity of greater than eleven-hundred gallons, including daily recordkeeping of leak-detection tests and periodic tightness tests.
- Part 612 regulations requiring DEC registration of these storage facilities; and,
- Part 611 regulations establishing procedures for petroleum spill cleanup and removal.

Five NYS counties have been delegated authority from DEC to administer the State’s Petroleum Bulk Storage Program: Nassau, Suffolk, Rockland, Cortland and Westchester. The counties are allowed to retain any fines and penalties resulting from enforcement actions. Cortland County has reported that banks “encourage” removal of tanks by not issuing mortgages for non-residential properties with old underground tanks or tanks currently not in use.

These counties directly benefit from regulating petroleum storage facilities in their jurisdiction and being able to conduct immediate response to spill cleanup and removal.

# HIGH-VOLUME HYDRAULIC FRACTURING (HVHF) AND HORIZONTAL DRILLING FOR NATURAL GAS IN 2013

## Maisel Introduces Bills Relating to HVHF Waste Management, Disposal and Gas Storage

High-Volume Hydraulic Fracturing (HVHF) continues to be a subject of great interest and controversy for the NYS Legislature and the public. Assemblyman Maisel has introduced a number of bills directed primarily at the regulation of wastes resulting from HVHF and storage of natural gas.

**A.1770 Maisel et al/S.448 Avella et al:** would establish a moratorium on the in-state disposal and/or processing of any fluids used in hydraulic fracturing occurring outside of the State until 120 days after completion of a U.S. Environmental Protection Agency (EPA) study and report evaluating the potential adverse impacts of these wastes on water quality and public health. Additionally, the bill would require the Department of Environmental Conservation (DEC) to demonstrate that it:

- has the capacity to administer and enforce a program to regulate the disposal of hydraulic fracturing drilling fluids, drill cuttings and soil;
- is able to identify and test for all chemical components of these drilling fluids;
- has the capability to conduct inspections of any facilities that contract to receive drilling fluids, drill cuttings and soil; and
- can establish appropriate monitoring requirements for the presence of low-level radioactive materials from hydraulic fracturing drilling operation waste.

*Status: Assembly and Senate Environmental Conservation Committees.*

**A.2265 Maisel et al/S.4630 Grisanti et al:** would prohibit the inclusion of a non-disclosure agreement in a legal settlement relating to hydraulic fracturing where the facts disclosed relate to a public health or safety threat. Further, the court would be prohibited from approving a settlement that includes a non-disclosure agreement until the court has reviewed all facts with regard to a threat to public health or safety. Status: Assembly and Senate Judiciary Committees.

**A.3806 Maisel et al:** would clarify DEC's responsibility to protect the environment and public health of NYS residents and to provide for the development and extraction of oil and natural gas in an environmentally sound manner that prevents contamination of land and water resources as well as environmentally sound management of waste products resulting from these activities. The bill would further establish the full authority of local governments in all decisions relating to oil and natural gas extraction relating to their powers for land use planning, zoning, real property taxation and local roads. It would further grant DEC authority only with regard to natural gas and oil drilling and extraction activities. The bill would also repeal the provisions establishing compulsory integration of drilling units. Status: Assembly Environmental Conservation Committee.

**A.6520 Maisel:** would impose a moratorium on the issuance of DEC permits for the underground storage of natural gas. The bill would further require DEC to conduct a full environmental quality review to examine the impacts of the increased need for natural gas storage resulting from HVHF and horizontal drilling. Following public hearings on the draft environmental impact statement (EIS) throughout the state and the completion of a final EIS, DEC would be required to report its findings to the Governor and the Legislature and whether or not the moratorium should be lifted. Status: Assembly Environmental Conservation Committee.

**A.7251 Maisel et al/S.4656 Grisanti et al:** would ban the use of hydraulic fracturing waste on roads or lands. Status: Assembly and Senate Environmental Conservation Committees.

**A.7270 Maisel et al/S.4658 Grisanti et al:** would prohibit publicly owned treatment works (POTWs) from accepting wastewater from natural gas HVHF drilling operations utilizing greater than 300,000 gallons of water.

*Status: Assembly Environmental Conservation Committee, Senate Energy and Telecommunications Committee.*

### Update on New York State's Final Supplemental Generic Environmental Impact Statement (SGEIS)

DEC has still not completed the Final SGEIS, a response document to all of the comments submitted on the Revised Draft SGEIS. The NYS Department of Health has been asked to prepare a health impact assessment that would be incorporated into the FSGEIS. The completion date continues to slide, and the Governor has given no indication of when he expects the FSGEIS to be released.

In April 2013, opponents of gas drilling called for DEC to scrap the work done by a consultant, Ecology and Environment Inc. which was hired in 2011 to do an economic analysis of how shale gas development would affect New York. The company was listed as a member of the Independent Oil and Gas Association of New York

in a letter sent to Gov. Cuomo, urging him to lift the drilling ban. The company's economic analysis had been criticized by opponents alleging that it failed to analyze negative economic effects, including the toll of truck traffic on roads and increased health care costs.

In 2012, newspapers reported that the Cuomo administration would be pursuing hydraulic fracturing activities in selected Southern Tier and Central New York counties (likely Broome, Chemung, Chenango, Steuben and Tioga), limiting drilling to the deepest areas of the Marcellus Shale rock formation and only where the local communities

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## High-Volume Hydraulic Fracturing (HVHF) and Horizontal Drilling for Natural Gas in 2013

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want gas development. Seventy-five legislators, including Assemblyman Maisel, wrote to the Governor asking him to resolve six critical issues before permitting hydraulic fracturing in New York.

These issues include rescinding New York’s natural gas hazardous waste regulatory exemption; banning “recycling” of natural gas drilling wastewater into injection wells; and banning disposal of natural gas drilling wastewater by land-spreading or dumping into municipal waste treatment plants. The letter goes on to call for a continued moratorium on hydraulic fracturing until the concerns

have been resolved. There has been no further word from the Governor regarding this proposal.

It has also been reported that thousands of landowner leases have reached their five-year term since the shale drilling moratorium began in 2008. This provides landowners the potential opportunity to get out of leases they signed for \$2-3 per acre and 12.5 percent royalties or to negotiate new leases for more favorable terms. However, getting out of a lease may be difficult – many leases have clauses giving the drilling company the right to extend the lease for another five years.

### Legal Rulings on Hydraulic Fracturing

On May 2, 2013, an Appellate Division in Albany upheld a lower court ruling by issuing two decisions upholding the legal authority under New York law for the towns of Dryden and Middlefield to ban gas drilling within their borders. This decision turned on the Court’s

holding that “the powers delegated to local governments...to regulate the use of land through...zoning laws” are not preempted by state laws that regulate “the details and procedures” of oil and gas drilling. This decision is likely to be appealed to the Court of Appeals.

## 2013 ENVIRONMENTAL PROTECTION FUND (EPF)

For Fiscal Year 2013-2014, the Governor proposed to increase funding for the EPF to \$153 million, \$19 million more than the level approved for the past three fiscal years. The Legislature accepted this appropriation, although there were minor changes within the funding categories. The chart below shows a comparison of FY 2012-13 and FY 2013-14 funding for categories of interest.

| EPF Category ↓                            | Fiscal Yr → | 2012-2013    | 2013-2014    |
|-------------------------------------------|-------------|--------------|--------------|
| Landfill Closure/Gas                      |             | \$270,000    | \$250,000    |
| Municipal Recycling                       |             | \$6,435,000  | \$7,000,000  |
| Secondary Materials                       |             | \$1,000,000  | \$1,000,000  |
| Pesticides Program                        |             | \$960,000    | \$1,000,000  |
| Pollution Prevention Institute            |             | \$2,100,000  | \$3,250,000  |
| Non-point Source Pollution Control (Ag)   |             | \$13,000,000 | \$14,200,000 |
| Non-point Source Pollution Control (Muni) |             | \$4,000,000  | \$4,500,000  |
| Water Quality Improvement                 |             | \$2,932,000  | \$6,945,000  |
| Agricultural Waste Management             |             | \$700,000    | \$1,000,000  |

#### Notes:

**Municipal Recycling:** increase from \$6,435,000 to \$7,000,000 appears to be an effort to reduce the backlog of recycling projects.

**Pesticides Program:** increase from \$960,000 to \$1,000,000 is due to expiration of re-appropriations, thereby requiring new funding.

**Pollution Prevention Institute** increase from \$2.1 million to \$3.25 million is for new projects, including pesticide pollution prevention on Long Island; and assisting organizations and businesses implement pollution prevention programs.

**Water Quality Improvement:** increase from \$2,932,000 to \$6,945,000 is for flood damage and flood control projects.

**Agricultural Waste Management:** increase from \$700,000 to \$1,000,000 will assist Concentrated Animal Feed Operations (CAFOs) with regulatory compliance.

### “UNREDEEMED BOTTLE BILL” DEPOSITS FOR THE EPF

There has been a long-standing effort by environmental advocates to increase the funding for the Environmental Protection Fund. One source of money supported by advocates is the dedication of unclaimed deposits from the Returnable Beverage Container Law otherwise known as the “Bottle Bill.”

This year, the 2013-14 Budget dedicates an additional \$15 million to the EPF from unclaimed bottle deposits. The Assembly’s original budget bill would have expanded container deposits to other beverages such as teas, sports, energy and fruit drinks. The bill would also have dedicated an additional \$5 million to the EPF from the anticipated increase in unclaimed deposits. The Assembly’s proposal was rejected in the final budget negotiations.

# GETTING RID OF MERCURY

## Assemblyman Maisel's Bill Establishes Producer Responsibility for Mercury Lamp Recycling

### Mercury in Lamps

Most traditional incandescent light bulbs will be phased out of the marketplace by the end of 2014, as required by the federal Energy Independence and Security Act of 2007. The purpose of the Act is to increase energy independence through the production of renewable fuels and improved efficiency of products including standard light bulbs, buildings and vehicles.

The U.S. Environmental Protection Agency (EPA) Energy Star program has been encouraging consumers to switch from incandescent light bulbs to energy efficient CFLs. CFLs use up to 75 percent less energy than incandescent bulbs and last up to 10 times longer. According to EPA, lighting accounts for almost 20 percent of the average home's electric bill.

However, CFLs contain a very small amount of mercury sealed within the glass tubing (about four milligrams), which improves the efficiency of the light source. It is estimated that the mercury content in CFLs has dropped at least 20 percent in the past several years, as manufacturers have reduced mercury through technical advances. Nevertheless, concerns remain regarding traditional disposal methods of landfilling and waste combustion for expired CFLs and other mercury-containing lamps which release mercury into the environment.

### Provisions of the Bill (A.1768 Maisel et al/ S.730 Avella et al)

The bill would ban disposal of mercury-containing lamps as solid waste and establish producer responsibility requirements for their collection and recycling. The bill would require manufacturers of mercury-containing lamps sold in New York to:

- submit plans to the Department of Environmental Conservation (DEC) by June 1, 2014 that provide for the collection from households and small businesses of such lamps intended for disposal and the implementation of recycling programs;

- be responsible for all costs associated with the collection and recycling programs;
- implement the collection and recycling programs by December 1, 2014; and
- report annually to DEC on the implementation of the plans.

Producers would include those who have legal ownership of the brand or brand name of any mercury-containing lamp sold in New York, those who import mercury-containing lamps or those who make unbranded mercury-containing lamps sold in the State.

DEC would be responsible for:

- reviewing and approving collection/recycling plans;
- maintaining and posting on its website a list of locations serving as collection points for such lamps; and
- annually, after December 1, 2015, posting a report on its website detailing and evaluating the collection and recycling of mercury-containing lamps as well as information on actual collection rates.

*The Assembly bill was reported to the Assembly Calendar as Rules Report #79. There was no action on the Senate bill.*

### Current Options for Managing Mercury-Containing Lamps

Voluntary collection programs available in some large retail stores, hardware chains and local household hazardous waste collection programs capture a small portion of unwanted mercury-containing lamps. However, these programs are insufficient to recover and recycle all of the mercury-containing lamps in New York.

This bill would ensure that these mercury-containing products

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*Assemblyman Maisel and Commission staff with Ecovative Design representatives.*

# BANNING BISPHENOL A (BPA) ON THERMAL RECEIPT PAPER

## Maisel Bill A.1654 Passes the Assembly

It is estimated that more than eight billion pounds of BPA are produced worldwide annually and that 2.4 billion pounds are used in the United States annually. BPA is used in a broad range of products such as plastic products, food container linings and paper products, including thermal receipt paper, newspapers and tickets.

Connecticut banned BPA on thermal receipt paper in 2011, with provisions of the law taking effect in 2013 and 2015. In January 2013, **Suffolk County** banned the use of thermal receipt paper containing BPA.

## The 2013 Legislation – A.1654

The 2013 bill (A.1654) would ban BPA on thermal receipt paper, following the model Connecticut law by:

- banning the manufacture, sale or distribution of thermal receipt paper containing BPA after October 1, 2014, unless EPA has not identified safe, commercially available alternatives to BPA, in which case,
- the manufacture, sale or distribution of thermal receipt paper containing BPA would be banned on July 1, 2016.

The Senate bill **S.4709-A, Marcellino et al**, was amended in late May to include a preemption of local laws regulating BPA in receipt paper requested by the Retail Council of New York. Subsequently, two memoranda in opposition to the bill from the National Federation of Independent Businesses (NFIB) and the New York Association of Convenience Stores (NSACS) were distributed to the Senate in late May. Assemblyman Maisel considers these memoranda to contain inaccuracies and unsubstantiated innuendo as the basis of their opposition, to which he responded in a memo to the Senate. It is interesting to note the NSACS memo acknowledges that “there are legitimate concerns about BPA exposure in the retail environment.”

*The Maisel bill passed the NYS Assembly on June 13, 2013 and was sent to the Senate Rules Committee. The Marcellino bill remained on the Senate calendar until the end of session when it was recommitted to the Senate Rules Committee.*

## Brief NYS Legislative History of BPA

- **2010:** New York State passed a law to prohibit the use of BPA in child care products, including sippy cups, baby bottles and straws intended for use by a child under the age of three.
- **2011:** Assemblyman Maisel introduced new legislation (A.212-A) to ban the use of BPA on thermal receipt paper. This bill remained in the Environmental Conservation Committee.
- **2012:** The bill was again amended and A.212-B passed the Assembly in June, dying in the Senate Rules Committee; the bill was not moved in the Senate.

## States and Countries Taking Action on BPA

Numerous states have taken action on BPA in children’s products such as baby bottles, and sippy cups, including California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, Vermont, Washington, Wisconsin; the countries of Canada and China; and the European Union.

In addition, the following actions have been taken on BPA:

- **California:** In 2013, the state’s Office of Environmental Health Hazard Assessment announced its intention to add BPA to California’s Proposition 65 list of “chemicals known to cause cancer or birth defects or other reproductive harm.”
- **Connecticut:** Banned BPA on receipts effective in 2013.
- **Delaware:** In 2011, banned BPA in other food and beverage containers.
- **Vermont:** In 2010, the state passed a law banning the manufacture, sale or distribution of canned infant formula, bottled infant formula, and reusable food and beverage containers containing BPA.
- **Canada:** In 2010, the Canadian government formally declared BPA to be toxic, setting the stage for further restrictions on the chemical throughout the country.
- **France:** France banned BPA in food containers for children effective in 2013; effective for all other food packaging in 2015.
- **Denmark:** As of 2010, Denmark banned BPA in all food contact materials for children under the age of three until new studies document that low doses of BPA do not have an impact on the nervous system development or the behavior of rats.
- **Sweden:** The Swedish Chemicals Agency (KEMI) presented a proposal to the Swedish Government in 2012 for a national ban on BPA on cash receipts and tickets. Using the EU chemicals Classification and Labelling Inventory, KEMI found there is not even basic hazard data on five of the potential 19 alternatives to BPA. The Swedish government has not taken further action at this time.

## Recent Research on Exposure to BPA and Alternatives for Thermal Receipt Paper

The 2012 Commission newsletter contains a substantive discussion of the potential routes of exposure to BPA from thermal receipt paper. There has been increased attention on evaluating alternatives to BPA, principally bisphenol S (BPS), which has been the favored replacement chemical.

It is important to understand how little we know of the tens of thousands of chemicals in commerce. In 2007, the U.S. Environmental Protection Agency (EPA) estimated that there were approximately 82,000 chemicals in its Toxic Substances Control Act (TSCA) inventory. The human health and environmental adverse effects of these chemicals have generally not been evaluated.

## BPA Linked to Obesity in Girls Aged 9 to 12

In a new study published on June 12, 2013 in the online journal PLoS One, researchers from the Kaiser Permanente Division of Research in Oakland, CA reported that BPA is associated with a higher risk of obesity in girls aged 9 to 12. The study was conducted in Shanghai analyzing data on boys and girls in grades 4-12. Among girls 9-12 years of age, 36% of those with higher than average BPA urine levels were overweight or obese; girls with at least 10 micrograms per liter of BPA in their urine (extremely high level) were five times as likely to be in the top 10th percentile. In other words, their risk of being overweight or obese was five times greater compared to girls with average or lower levels.

The authors wrote that girls in the beginning and middle of puberty whose BPA urine levels were above average, have double the risk of being obese or overweight compared to their counterparts with lower levels. The lead researcher, De-Kun Li, Ph.D. said, "This study provides evidence from a human population that confirms findings from animal studies – that high BPA exposure levels could increase the risk of being overweight or obesity." Other studies have demonstrated that BPA interferes with how the body distributes and deals with fat.

The authors concluded: "Our study suggests that BPA could be a potential new environmental obesogen, a chemical compound that can disrupt the normal development and balance of lipid metabolism, which can lead to obesity. Worldwide exposure to BPA in the human population may be contributing to the worldwide obesity epidemic."

## Alternatives to BPA

More recent studies on the impacts of BPS as an alternative to BPA in receipt paper and endocrine disrupting chemicals in general include:

**"Bisphenol S, A New Bisphenol Analogue, in Paper Products and Currency Bills and Its Association with Bisphenol A Residues"** NYS Department of Health researchers (Liao, Liu and Kannan) released this study in 2012. They analyzed 16 types of paper, including thermal receipts, paper currencies, flyers, magazines, newspapers, food contact papers, airplane luggage tags,

printing paper, paper towels and toilet paper. The overall mean concentrations of BPS in thermal receipt paper samples were similar to concentrations reported earlier for BPS in the same set of samples. Further, BPS was detected in 87% of currency bill samples from 21 countries at levels ranging from the lowest detection to 6.26 micrograms/gram. The estimated daily intake of BPS through dermal absorption via handling of papers and currency bills was estimated on the basis of concentrations and frequencies of the handling of papers by humans. Thermal receipt papers were found to be the major source of human exposure to BPS. The researchers believe this is the first report on the occurrence of BPS in paper products and currency bills.

In an article titled, **"Thermal Reaction: The Spread of Bisphenol S via Paper Products"** in Environmental Health Perspectives by Lindsay Konkel, dated March 2013, Kannan states, "It appears that BPS and BPA are equally problematic" in terms of toxicity.

**World Health Organization 2012 Report, "State of the Science of Endocrine Disrupting Chemicals (EDCs)"** This report finds that almost 800 chemicals are known or suspected to be capable of interfering with hormone receptors, hormone synthesis or hormone conversion. However, only a small fraction of these chemicals have been investigated in tests capable of identifying overt endocrine effects in intact organisms. The report notes the rise of endocrine-related diseases and disorders such as:

- the rise of earlier onset of breast development in young girls in all countries where this has been studied, which is a risk factor for breast cancer;
- the prevalence of obesity and type 2 diabetes has dramatically increased worldwide over the last 40 years; and
- the increase of global rates of endocrine-related cancers (breast, endometrial, ovarian, prostate, testicular and thyroid) over the past 40-50 years.

The report recommends improving the understanding of EDCs' effects on wildlife and humans from exposure to these chemicals; improving testing of EDCs; reducing exposure to EDCs and thereby vulnerability to disease; and identifying endocrine active chemicals.

## NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION BUDGET FY 2013-14

The following chart shows final FY 2013-14 Budget appropriations for the NYS Department of Environmental Conservation (DEC) State Operations, DEC Personnel and the Environmental Protection Fund (EPF). The DEC State Operations appropriation decreased from \$473.5 million in FY 2012-13 to \$451.8 million in FY 2013-14, down 4.6 percent. The EPF appropriation increased from \$134 million in FY 2012-13 to \$153 million in FY 2013-14, up 14.2 percent. The authorized level for full time equivalent (FTE) positions remains at 2,916.

|                                                             | FY 2012-13<br>Enacted      | FY 2013-14<br>Gov Recommended | FY 2013-14<br>Enacted      | % Change from<br>FY 12-13 to FY 13-14 |
|-------------------------------------------------------------|----------------------------|-------------------------------|----------------------------|---------------------------------------|
| <b>DEC State Operations</b>                                 | \$473,507,000 <sup>1</sup> | \$451,805,000                 | \$451,805,000 <sup>2</sup> | -4.6                                  |
| <b>DEC Personnel – Full time equivalent (FTE) positions</b> | 2,916                      | 2,916                         | 2,916                      | 0.0                                   |
| <b>Environmental Protection Fund (EPF)</b>                  | \$134,000,000              | \$153,000,000                 | \$153,000,000              | 14.2                                  |

<sup>1</sup>The DEC State Operations Appropriation was adjusted during FY 2012-13 from \$434.9 to \$473.5 million.

<sup>2</sup>The Enacted FY 2013-14 Budget includes a \$24.56 million decrease in Personal Service appropriations below the FY 2012-13 level. This reflects adjusting appropriations to actual spending levels due to collective bargaining agreements reached in 2012.

# MAISEL LEGISLATION WOULD ENCOURAGE RECOVERY AND RECYCLING OF HARDCOVER BOOKS

## The Legislation: (A.1653 Maisel et al/ S.4410 Avella et al)

Assemblyman Maisel's bill would ban the disposal of hardcover books as solid waste immediately upon enactment. The bill would further require the Department of Environmental Conservation (DEC) to:

- inventory existing solid waste programs that recover, reuse and recycle hardcover books and share this information with municipalities;
- post this information on their website; and
- ensure that all municipalities are notified of the hardcover book disposal prohibition and the requirements of the bill.

Within two years of the effective date, municipalities would be required to establish programs to recover, redistribute, reuse or recycle hardcover books and keep records of books collected, including total tonnage of books collected, their disposition and the recycling companies utilized. Joint collection programs to accomplish this requirement would be permitted. Recyclers of hardcover books would be required to submit information to DEC on the tonnage of books they receive from municipalities, their disposition and the recyclers utilized.

## Recycling Hardcover Books

According to U.S. Environmental Protection Agency (EPA) estimates of Greenhouse Gas (GHG) emissions for alternative management strategies, recovery of textbooks has one of the best emission reductions per ton of source reductions (-9.11). Residential curbside collection programs process hardcover books as mixed paper; therefore it is difficult to quantify amounts and disposal costs for hardcover books. These books are frequently



Assemblyman Alan Maisel with Solid Waste Commission staff: (l to r standing) Patrick Golden, Assemblyman Maisel, Douglas Rosenthal; (l to r sitting) Debra Jenkins, Marilyn DuBois and Heidi Kromphardt.

collected separately from other paper at no cost by for-profit recyclers, but the source agencies seldom keep records on these quantities. Many libraries and schools maintain separate storage areas for hardcover books, realizing savings from reduced garbage collection and disposal which offset these costs.

## NYS Counties and Larger Cities Recycling Hardcover Books

In 2012, the Commission conducted a survey of the State's larger cities and surrounding counties to obtain information on the types of collection programs in existence and how they are administered. The following responses were received:

**Onondaga County** collected hardcover books from 2004-2010 at a drop-off center; the books were shipped to a recycling contractor in Buffalo. The County allowed community organizations and schools to "harvest" books before shipping the remainder to the recycler. Lack of adequate shipping containers was identified as an impediment. The County did not recover any costs because storage space and labor costs offset waste disposal savings.

**Oneida-Herkimer Solid Waste Authority** receives approximately 50 tons of hardcover books annually, including about 10 tons from two single-day collection events at a library. The Authority noted the lack of consistent reliable markets as an impediment to recycling hardcover books. The Authority estimates that annual handling costs are modest and offset by avoided disposal costs.

**The City of Rochester** accepts hardcover books via residential curbside recycling. The books, along with other paper products, are transported and processed at the Monroe County Materials Recovery Facility. The City has not experienced a significant increase in operational costs for collecting hardcover books.

**Erie County** partners with Cascades Recovery US to collect hardcover books from the County library, the County law office and other departments, as well as Buffalo and other area school districts.

One issue raised by several respondents was the lack of designated staff responsible for managing the book recycling program, which is necessary to ensure that unwanted books are properly collected, segregated and recycled.

## Hardcover Book Recycling by New York State

The Office of General Services (OGS) receives approximately four tons of hard and soft cover books monthly through their recycling program at the Empire State Plaza, which are taken by Cascades Recovery, although these books are not part of their contract. According to OGS, all of their facilities statewide recycle paper, including hardcover books. Cascades is also working on a hard and soft cover book processing project with a not-for-profit organization in Rochester.

# RECYCLING IONIZATION SMOKE DETECTORS

## Maisel Legislation Requires Manufacturers to Establish Take-Back Programs

### Ionization Smoke Detectors and Americium-241

There are two types of smoke detectors, ionization detectors and photoelectric detectors. Ionization detectors contain a source of ionizing radiation which is a minute quantity (approximately 1/5000th of a gram) of americium-241, an alpha particle and gamma emitter with a half-life of 432.7 years. Americium is a man-made metal produced when plutonium atoms absorb neutrons in nuclear reactors. The largest and most widespread use of americium-241 is as a component in household and industrial smoke detectors.

According to the EPA website, americium-241 poses a significant risk if ingested. It tends to concentrate in the bone, liver and muscle and can remain for decades, continuing to expose the surrounding tissues to alpha and gamma radiation, thereby increasing the risk of developing cancer.

The Nuclear Regulatory Commission regulates the radioactive materials in smoke detectors. Because the amount of americium in these devices is so small, current NRC regulations exempt individuals purchasing smoke detectors from regulations related to disposal of radioactive materials. The public can dispose of single household smoke detectors as ordinary trash.

However, the anticipated lifetime of an ionizing smoke detector is only 5-6 years. Therefore, millions of these detectors will be disposed of into landfills unless manufacturers are required to bear the responsibility and cost of ensuring proper disposal.

### The Maisel Bill (A.1767/S.3834 Farley)

Assemblyman Maisel re-introduced legislation in 2013 that would

create a producer responsibility program for taking back ionizing smoke detectors. Specifically, the bill would require manufacturers that produce and sell ionizing smoke detectors in New York to:

- establish take-back programs for proper disposal of these devices;
- register with the Department of Environmental Conservation (DEC) and submit a program for the collection, handling, recycling or reuse of such detectors; and,
- pay a registration fee of \$1,000 to be deposited into the Environmental Protection Fund.

The recovery program for ionization smoke detectors would at a minimum include:

- a mail-back return program, including instructions on safe handling and preparation of the detector for recycling;
- a public education program to inform consumers about the collection program via an Internet website, a toll-free telephone number and written information about the environmental benefits of recycling radioactive material, batteries and other components of the detector; and
- authorization for manufacturers to enter into cooperative detector collection programs.

By requiring recovery and environmentally sound recycling and disposal, this bill will serve to reduce environmental exposures to landfill and sanitation workers, firefighters and emergency response personnel, as well as the general public, to americium-241. The bill also prevents contamination to New York's land and water resources by creating responsible product stewardship.

*The bill was reported from the Assembly Environmental Conservation Committee to the Ways and Means Committee. The Senate bill currently remains in the Senate Environmental Conservation Committee.*

## DONATION OF CONFISCATED COUNTERFEIT CLOTHING ARTICLES

continued from page 3

products in the belief they are genuine; and a secondary market, where cheaper counterfeit products are knowingly purchased.

In 2009, New York and New Jersey U.S. Customs and Border Protection officials established a program to donate counterfeit articles seized from local airports and seaports to the needy through international and local charities. Similar programs have been established in Los Angeles, Detroit and San Francisco.

This legislation would remove any legal barriers in New York to clothing donation programs thereby benefiting the needy and indigent. By eliminating the current requirement to destroy or dispose of these items, the program also meets the highest goal in solid waste management – waste reduction.

## GETTING RID OF MERCURY

continued from page 7

would not enter our landfills, thereby reducing one potential source of human exposure to mercury and contamination of the land and water. The bill would hold manufacturers, who profit from the sale of these products, responsible for the collection and recycling of mercury-containing lamps at the time of disposal.

At the present time, fourteen other states ban disposal as solid waste of mercury-containing lamps and three states (Vermont, Washington and Maine) have enacted producer responsibility programs for mercury lamps similar to this proposal.

# EXAMINER

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To further our efforts to reduce waste, please inform us if you have a change in address by calling us at (518) 455-3711, fax at (518) 455-3837 or write us at:

The LCSWM, 4 Empire State Plaza, 5th Floor, Albany, NY 12248

## THEFT OF RECYCLABLES AND SCRAP

### Assemblyman Maisel Introduces Legislation to Regulate Scrap Processors

The illegal collection and the theft of scrap materials as well as other recyclables has become a significant problem. Scrap metal is of particular concern, including copper, aluminum, brass, zinc, nickel, platinum and bronze. These metals have value because they can be melted and reshaped for other uses. According to press reports, metal theft has dramatically increased in recent years. The economic consequences of scrap metal theft include:

- replacement cost of stolen components;
- repair expenses for damaged equipment; and
- lost revenue from stolen recyclables.

A U.S. Department of Justice (DOJ) report, "Theft of Metal Scrap" published in April 2010, identifies factors that contribute to scrap metal theft including high demand for metal on the international market, increased opportunities for offenders to target locations and metal types not previously susceptible to theft, and weak regulation of the metals resale market. Utility facilities are an obvious source of valuable metals. Additionally, the housing crisis in recent years has resulted in foreclosure properties left unprotected and vulnerable to materials theft.

The bills discussed below attempt to address these problems by creating a more sophisticated system of regulation for scrap processors and strengthening enforcement and violation penalties as a disincentive for illegal collection and sale of materials intended for recycling or scrap.

#### Bills Addressing Theft of Recyclables and Other Scrap Materials

**A.5054 Maisel:** This bill would establish a comprehensive statewide licensing program in the NYS Department of State (DOS) for scrap processors, including registration and identification provisions. DOS would be required to maintain a registry of all registered scrap processors.

Scrap processors would be required to install electronic video surveillance systems at all weighing scales and points of sale locations. The bill would prohibit the sale of certain items such as metal items bearing markings from any governmental entity, utility company,

cemetery or railroad unless these are legally offered for sale. The legislation contains registration requirements and penalties for violations of the act.

The bill would preempt local laws, with the limited exception of Local Law 50 of New York City (as enacted in 2006), which regulates scrap processors. However, the City and the Institute of Scrap Recycling Industries (ISRI) could not reach agreement on issues relating to the exemption language for the City law, because the City is seeking to amend the law to enhance enforcement and penalties for compliance. Other concerns were the administrative delegation and enforcement authority, registration fees and violation penalties proposed.

*Status: The Assembly bill was assigned to the Economic Development Committee.*

**S.1591-A Grisanti:** This bill originally matched the above A.5054 Maisel bill, but was amended late in the session to address concerns of ISRI, including delegation of enforcement and reduced violation penalties.

*Status: The bill passed the Senate on June 20, 2013.*

**A.5278 Maisel/S.1667 Grisanti:** The bill would ban the purchase as scrap of items such as street signs, funeral markers or metal items bearing the marking of a governmental entity, utilities, cemeteries or railroads, unless offered for sale by an authorized employee. The bill contains a local law preemption, except for the 2006 Local Law 50 of New York City.

*Status: The Assembly bill was assigned to the Economic Development Committee; the Senate bill was assigned to the Consumer Protection Committee.*

**A.3564 Peoples-Stokes/S.1531 Perkins:** This bill would impose stricter regulations on junk dealers, salvage dealers and scrap metal processors by increasing penalties for illicit transactions. The bill focuses on the sale of scrap copper and other metals and would ban the sale of certain items such as street signs and funeral markers.

*Status: The Assembly bill was assigned to the Economic Development Committee; the Senate bill was assigned to the Senate Consumer Protection Committee.*