

Legislative Commission on



Resource Needs of New York State and Long Island

Fall/Winter 2009 • Bob Sweeney, Chair



Dear Friend:

I am pleased to report that despite the difficult economic climate, water issues continued to be at the forefront in the Assembly, as demonstrated by the enactment of several new laws, including an expanded bottle law, a water withdrawal reporting measure and the Green Jobs/Green New York Act.

The Water Commission will continue to focus on a wide and varied agenda of water-related issues in the coming year including water and sewer infrastructure, stormwater mitigation measures, climate change, and groundwater protection.

As always, I welcome your ideas and concerns. Please do not hesitate to contact me.

Sincerely,

*Assemblyman Bob Sweeney
Chair*

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Marcellus Shale

New York is home to rich natural gas reserves. In 2006, there were 6,213 active natural gas wells that generated a state record of 55.3 billion cubic feet of natural gas. The Marcellus formation extends from the Southern Tier of New York into Ohio, Pennsylvania and West Virginia and is estimated to contain \$1 trillion worth of natural gas. In the past few years, low-permeability shale gas reservoirs, including the Marcellus shale formation, have become the focus of interest as potential new domestic natural gas sources.

While there are considerable economic benefits associated with drilling for natural gas in New York, there are also potential environmental impacts associated with natural gas extraction including those associated with the process known as hydraulic fracturing, commonly referred to as “fracking.” In 2008, the Assembly Standing Committee on Environmental Conservation held a hearing to address some of the potential environmental impacts associated with oil and natural gas drilling. At the hearing, many witnesses expressed concern about the potential impacts of natural gas drilling on water supplies and expressed support for stronger regulations to ensure water safety.

On September 30, 2009, the New York State Department of Environmental Conservation (DEC) released a draft Supplemental Generic Environmental Impact Statement (SGEIS) regarding well permit issuance for horizontal drilling and high-volume hydraulic fracturing to develop the Marcellus shale and other low-permeability gas reserves. The draft SGEIS will establish the procedures for the development of low permeability shale formations such as the Marcellus formation and includes proposals for measures to mitigate potential environmental impacts. The Assembly Standing Committee on Environmental Conservation held a hearing on October 15, 2009, to solicit public input on the draft SGEIS. At the hearing, academic authorities and environmental advocacy groups expressed concern about the draft SGEIS and requested stronger regulations and increased staffing to ensure adequate monitoring of drilling activity.

Initially, the public comment period for the 800 plus page draft SGEIS was limited to 60 days. In response to a request from Chairman Sweeney and other lawmakers, the DEC has recently announced that the public comment period has been extended until December 31, 2009. Assemblyman Sweeney has requested

that the comment period be extended another 150 days. The additional time is needed to better assess risks to water supplies and the environment.

The Assembly Environmental Conservation Committee moved two bills directly related to natural gas drilling. They are:

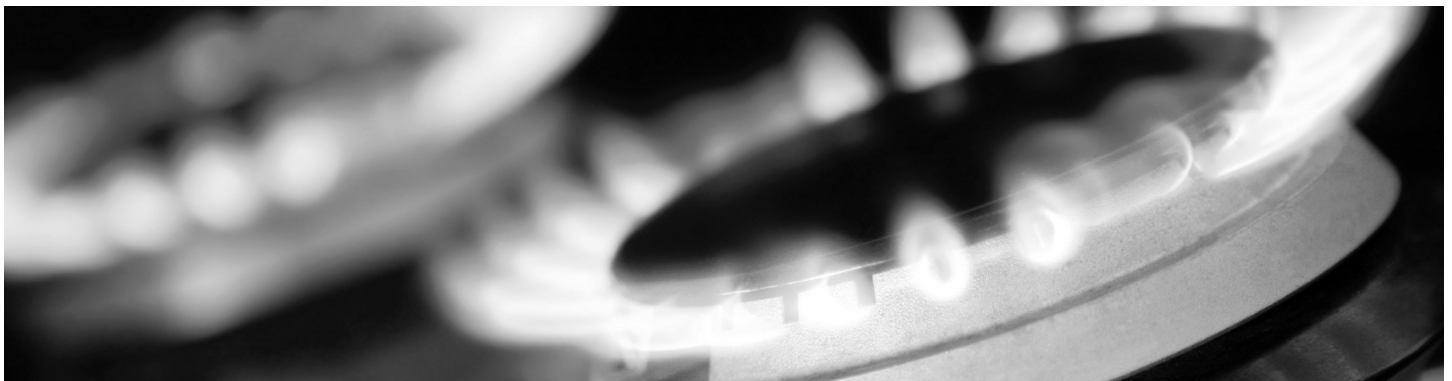
A.8784 (Sweeney) This legislation would: require permit holders to test the quality of ground and surface water sources within a thousand foot radius of the drilling area and on all water wells in the production unit, unless the Department of Environmental Conservation (DEC) determines that an expanded radius is required; require such testing to occur prior to drilling, following any hydraulic fracturing (fracking), prior to well completion and annually for producing wells; define “compounds or contaminants of concern” to include, at a minimum, the ingredients contained in hydrofracturing fluids and chemical treatment; establish liability for the permit holder if the post-drilling/hydrofracturing test results indicate contamination or decreased flow rate; and, require DEC to promulgate methane and “compounds or contaminants of concern” regulations.

(Passed the Environmental Conservation Committee, referred to the Assembly Codes Committee); and

A.7918-A (Lupardo) This legislation would reinvigorate the New York State Oil, Gas and Solution Mining Advisory Board by expanding its membership from thirteen members to fifteen members and require the board to provide recommendations on industry best practices and water supply protections. In addition, the bill would also include the Commissioner of the Department of Agriculture and Markets as an ex-officio board member.

(Passed the Assembly)

In the past few years, low-permeability shale gas reservoirs, including the Marcellus shale formation, have become the focus of interest as potential new domestic natural gas sources.



Clean Water and Sewage Critical Infrastructure Funded from Federal Stimulus

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) to provide federal stimulus funding. New York State is expected to receive \$26.7 billion for updating infrastructure, improving schools and job training. New York's share of ARRA funds for environmental programs is approximately \$2.3 billion. The following provides a snapshot of New York's share of ARRA funding for the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund that provide low-cost loans and grants to municipalities for the construction, replacement and improvement of water and sewer infrastructure.

Clean Water State Revolving Fund (CWSRF)

Clean water infrastructure projects will include publicly-owned wastewater treatment plants, municipally-owned sewers and treatment capacity for industrial wastewater; combined sewer flow abatement, stormwater abatement, combined sewer overflow abatement, security measures for wastewater treatment plants and sewer systems; and energy efficiency measures for wastewater treatment plants and sewer systems.

- New York State will receive \$435 million in ARRA funds for the Clean Water State Revolving Fund over a two year period. The funds will go directly to the New York State Environmental Facilities Corporation, the entity that administers all funding for the Clean Water State Revolving Fund.
- New York State currently has \$700 million worth of projects in the pipeline for State fiscal year 2009/2010.
- ARRA requires 50 percent of the funds to be used for loan forgiveness, negative interest loans, grants or some combination of all three.

- ARRA further requires not less than 20 percent of funds be used for green infrastructure including water, energy efficiency improvements or environmentally innovative activities.

Drinking Water State Revolving Fund (DWSRF)

Drinking water systems eligible for funding include community water systems, both public and privately owned, and non-profit, non-community water systems. Eligible costs include planning, design, construction, improvement or acquisition of facilities, equipment, sites or buildings for the supply, control, treatment, distribution and transport of drinking water and testing and monitoring to ensure water quality, as well as investments to upgrade or replace infrastructure, address exceedances of federal or state health standards, prevent future violations, and provide the public with safe drinking water. Funding will be based on the Drinking Water Intended Use Plan, which is prepared annually by the Department of Health (DOH) and Environmental Facilities Corporation (EFC).

- New York State is expected to receive \$87 million in stimulus funds for the DWSRF, and has \$2 billion worth of projects that are ready.
- ARRA requires 50 percent of the funds to be used for loan forgiveness, negative interest loans, grants or some combination of all three.
- ARRA further requires not less than 20 percent of funds be used for green infrastructure including water or energy efficiency improvements or environmentally innovative activities.

Additional information on specific aspects of ARRA can be found at www.recovery.gov. Future newsletter articles will continue to keep readers apprised of developments related to water and wastewater infrastructure funding.

Meeting Future Wastewater Infrastructure Needs: POST-FEDERAL STIMULUS MONEY

While the federal stimulus funds are a welcome start in addressing New York's wastewater infrastructure needs, many critical needs remain unmet. The current cost estimates for the next twenty years to repair, replace, and update New York's drinking water infrastructure are at least \$38.7 billion for drinking water infrastructure and \$36.2 billion for municipal wastewater infrastructure.

On October 30, 2009, President Obama signed an appropriations bill which approved \$2.1 billion for Clean Water State Revolving Loan Funds (CWSRF) across the nation, along with another \$1.38 billion for nationwide Drinking Water State Revolving Loan Funds (DWSRF). Based on the traditional federal funding formulas, New York will receive \$228.9 million in Clean Water State Revolving Loan Funds and \$88.6 million for Drinking Water State Revolving Loan Funds. For many years the federal government was the primary source of funding for wastewater infrastructure. Today, federal funding sources have decreased by over 70 percent. Assemblyman Sweeney continues to work with New York's Congressional delegation to urge them to include long-term, consistent infrastructure funding to assist New York in making upgrades to its crumbling wastewater infrastructure, noting that "wastewater infrastructure is critical to ensuring public health and the environment, and that investments in wastewater infrastructure will protect the environment, create employment, provide a stimulus to the economy, and lay the groundwork for long term smart growth."

The State Assembly Works on Ways to Cope with Global Warming

Changes in weather patterns, water levels, and the environment are already being felt, and will continue to impact the state's industries, infrastructure and economy. The New York State Assembly has been pursuing a wide range of efforts to help mitigate the potentially harmful effects of climate change. These efforts include legislation to cap greenhouse gas emissions, support greater energy efficiency and encourage the development of alternative, cleaner energy.

Green Jobs/Green New York (Silver) **Chapter 487 of the Laws of 2009**

This new law authorizes the New York State Energy Research and Development Authority (NYSERDA) to create and administer a Green Jobs/Green New York program to provide funding to communities, homes, small businesses and not-for-profits to help revitalize the economy in an energy-independent and environmentally responsible way. This legislation will help stimulate the development of clean technologies and promote the creation of good paying "green" jobs. In addition, this initiative will help the environment by increasing energy efficiency and stimulating renewable energy initiatives across the State. The Regional Greenhouse Gas Initiative (RGGI) will provide \$112 million in funding for residential and small business energy-efficiency projects. A revolving loan fund will help commit resources—with no less than 50 percent of capital going to retrofit residential homes with green technology.

Green Homes (Sweeney) **Chapter 409 of the Laws of 2009**

This new law will allow towns to establish a home energy efficiency program within their refuse and garbage districts. Energy efficiency programs will help to decrease electricity and heating fuel demand. This program will help homeowners to go green while saving green. Improving energy efficiency will not only reduce consumers' energy bills, but will also reduce emissions that contribute to global warming.

Global Warming Pollution Control **(A.4572 Sweeney)**

This legislation would authorize DEC to regulate greenhouse gas emissions, including the establishment of emission reduction goals, annually reporting emissions amounts, and tracking the progress of entities in their emission reduction efforts. *(Passed the Assembly)*

Climate Change Solutions Program **(A.6321 Sweeney)**

In an effort to reduce its contribution to global warming, the State participates in the Regional Greenhouse Gas Initiative (RGGI), a multi-state cap and trade program to stabilize and reduce carbon dioxide emissions from electric generating facilities. This legislation would dedicate funds raised from the sale of emission allowances through the RGGI program to support the devel-



opment of clean, renewable sources of energy and other programs to advance the state's air quality goals. *(Passed the Assembly)*

Climate Change Solutions Fund **(A.7017 Gianaris)**

This legislation would create a climate change solutions fund to receive the proceeds of emission allowance auctions resulting from the RGGI program. *(Passed the Assembly)*

Calculating Greenhouse Gas Emissions **(A.342 Sweeney)**

This legislation would require the Department of Environmental Conservation (DEC) to establish a method for residents and businesses to calculate their greenhouse emissions and also would require DEC to develop recommendations on how state agencies can reduce greenhouse gas emissions. *(Passed the Assembly)*

Greenhouse Gases Management Research and Development Program (A.249 Magnarelli)

This legislation would establish the Greenhouse Gas Management Research and Development Program to provide grants to research new technologies to avoid, abate, mitigate, capture and/or sequester carbon dioxide and other greenhouse gases. *(Passed the Assembly)*

Limiting Sulfur Content in Heating Oil **(A.8642 Sweeney)**

This legislation would limit the sulfur content in number two heating oil to no greater than 15 parts per million beginning July 1, 2011. Reducing the sulfur content would reduce the amount of sulfur dioxide, a known greenhouse gas that is released into the atmosphere. Estimates have shown that reducing the sulfur content of home heating oil is an important and critical step in curbing greenhouse gas emissions. *(Passed the Assembly)*

Water Withdrawal Reporting

In 2008, the Assembly Standing Committee on Environmental Conservation held two hearings on water quality issues facing New York State. As a result of those hearings, this year's State Budget contained a new provision establishing water withdrawal reporting. The new law requires that anyone who withdraws or is operating any system or method of withdrawal that has the capacity to withdraw more than 100,000 gallons of groundwater or surface water per day at a single tract of land, water source or place of business to file an annual report with the Department of Environmental Conservation (DEC). Reporting requirements include:

- the water source, the location of the water source and the source capacity if known;
- the amount of water withdrawn for the reporting period, including the average or peak withdrawals for intervals specified by the department;
- a description of the use of the water withdrawn; and
- estimated amounts of water to be returned, if any, the locations of such returns and the method of such returns.

The law exempts from the reporting requirements withdrawals for emergency fire suppression or other public emergency purposes; data and records already required to be reported to the DEC under another program; closed loop, or similar non-extractive geothermal heat pumps; and reclaimed wastewater withdrawn for reuse. Also, withdrawals for agricultural purposes and for public water supply purposes are exempt from the reporting requirements.

This program will be funded through a fifty dollar annual filing fee with the DEC. Revenue received from the reporting fees will be deposited to the credit of the Environmental Protection Fund. (*Chapter 50 of the Laws of 2009, NYS Environmental Conservation Law §15-3301*)



Assemblyman Sweeney, Chair of the Assembly Environmental Conservation Committee, discussing the need to protect coastal waters and improve water quality with Department of Environmental Conservation Commissioner Pete Grannis. Pictured left to right are Assemblymembers Ginny Fields and Fred Thiele, Assemblyman Sweeney, and Commissioner Grannis.

Great Lakes Compact: Progress Update



A draft report, entitled Recommendations for Implementing the Great Lakes–St. Lawrence River Basin Water Resources Compact, was prepared by the Great Lakes Basin Advisory Council (GLBAC) in response to the 2008 legislation authorizing the Great Lakes–St. Lawrence River Basin Water Resources Compact (Chapter 27 of the Laws of 2008, Sweeney).

The Great Lakes Basin is comprised of five of the largest freshwater lakes in the world. The Great Lakes and their bays and tributaries contain 20 percent of the world’s supply of freshwater and 95 percent of North America’s supply of surface freshwater. The Great Lakes represent an invaluable natural resource for the people living within and along the Basin boundaries. Approximately 80 percent of New York’s fresh surface water and over 700 miles of New York’s shoreline are within the drainage basins of Lake Ontario, Lake Erie, and the St. Lawrence River.

Although the Great Lakes are large, they are also vulnerable. Only a small percentage of the waters of the basin are recharged annually, and the Great Lakes are susceptible to the effects of increased demands from municipalities and industries and changes in water recharge patterns including rain, runoff, and snowmelt. The Great Lakes Compact is an effort to manage and sustain these valuable resources so that their economic, ecological and social benefits can be enjoyed by future generations.

Pharmaceuticals in Drinking Water: Update

Recent studies have demonstrated that drinking water often contains trace amounts of common medications. Although additional studies are needed, the presence of these medications may have the potential to create health problems, especially with infants and young children.

New York State took initial action in 2008, with the enactment of a law requiring the Department of Environmental Conservation (DEC), in consultation with the Department of Health (DOH), to conduct a public education campaign to encourage the public not to flush unwanted drugs. The law also authorizes the agencies to enter into contracts for demonstration projects to determine the most effective ways of managing unwanted drugs.

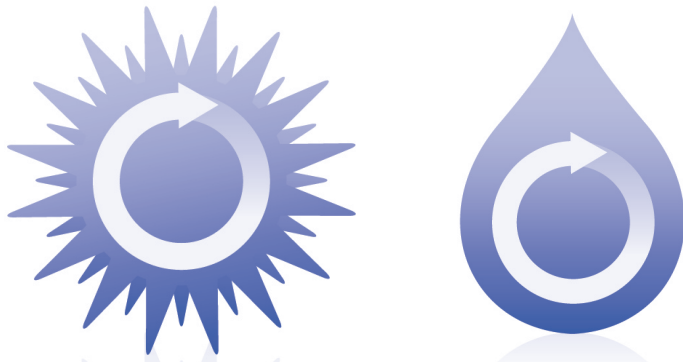
DEC and DOH have established a working group to further research this important issue. The Commission will continue to evaluate the DEC’s drug collection programs and seek to examine new efforts aimed at reducing and eliminating drug disposal into the waters of New York State.

Bottle Law Expansion

New York State's Bottle law, originally enacted in 1982, was expanded as part of the 2009-2010 State Budget to include a refundable five-cent deposit on bottled water. Over the past two decades, single-serving bottled water has become increasingly popular. Although water bottle containers are generally recyclable, only a small portion of them actually are recycled, with the substantial majority using up disposal capacity or littering our communities. Studies have shown that because of the enhanced incentive to return them, deposit containers are recycled at a much higher rate than non-deposit containers. A study by the Onondaga County Resource Recovery Agency, found that the recycling rate for plastic bottles with a deposit was 77 percent versus 16 percent for those without a deposit. The county had similar findings for aluminum cans (83 percent deposit vs. 13 percent non-deposit) and glass bottles (95 percent vs. 32 percent). Furthermore, a 2007 New York Public Interest Research Group (NYPIRG) survey found that non-deposit containers made up 61 percent of beverage container litter volume although they only represent about 30 percent of beverage containers by market share.

Water Tip: Tap Water is Best

Bottled water costs up to \$6 per gallon, but tap water generally costs no more than a half-cent per gallon and meets equally, if not more, rigorous testing requirements. In addition, bottled water has other costs including substantially greater use of energy and other natural resources.



Clean Bond Act Initiative

On May 27th in Albany, the Assembly Environmental Conservation Committee held a hearing to solicit input on the proposal to authorize a new \$5 billion "Clean Water, Clean Air & Green Jobs Bond Act." Previous environmental bond acts have provided funding for a number of significant environmental programs, and a number of environmental groups have advocated for a new bond act. Legislation introduced, A.8810 (Sweeney), would enact the "Clean Water/Clean Air/Green Jobs Bond Act of 2009," which would authorize the creation of a state debt of an amount not exceeding five billion dollars for the purpose of preserving, enhancing, restoring and improving the quality of the state's environment. This legislation would help to meet the challenges of the 21st century, create new green jobs and improve the quality of life for millions of New Yorkers. *(Reported from the Assembly Environmental Conservation Committee to the Assembly Ways and Means Committee)*



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Environmental Protection Fund (EPF)



While the economic downturn continues to take a toll on New York State's budget, funding for environmental programs in the State remains a priority. The State budget for fiscal year 2009-2010 provides almost \$1.6 billion in funding for the environment. The EPF, which is a dedicated source of funding for a variety of key environmental programs throughout the State, received an appropriation of \$222 million in this year's budget. The 2009-2010 EPF includes the following appropriations for water-related programs:

- \$24.4 million for Waterfront Revitalization projects;
- \$17.8 million for Non-point Source Pollution control;
- \$9 million for Water Quality Improvement projects;
- \$4.8 million for Hudson River estuary management;
- \$6 million for Ocean and Great Lakes' programs;
- \$5 million for Invasive Species;
- \$3 million for Soil and Water Conservation Districts;
- \$1.2 million for the Finger Lakes—
Lake Ontario Watershed;
- \$6 million for the Hudson River Park;
- \$.9 million for the South Shore Estuary Preserve.



Contact Information:

If you would like further information or to share your ideas or concerns, please call my office at **518-455-5787**, or send facsimiles to **518-455-3976**. Letters may be sent to **Assemblyman Robert Sweeney, Chairman of Legislative Commission on Water Resource Needs of New York State and Long Island, Room 625, Legislative Office Building, Albany, New York, 12248** or by e-mail to sweeney@assembly.state.ny.us. Also, to further the NYS Assembly's efforts to reduce waste, please inform us if you have a change of address or wish to be removed from the mailing list.