

Legislative Commission on



Resource Needs of New York State and Long Island

Fall 2010 • Bob Sweeney, Chairman



Dear Friend:

Despite the difficult economic climate, I am pleased to report that water issues continue to be addressed by the Assembly, as demonstrated by several bills which passed both houses and need only the Governor's signature to become law. These bills include measures to: ensure that pesticides and other pollutants are kept from polluting valuable water resources; reduce the harmful impacts associated with greenhouse gases; and protect ecologically

and economically important threatened seagrass beds.

In the coming session, the Water Commission will continue to focus on water-related issues including public water supply protection, the impact on climate change and groundwater protection. The Commission will also continue to monitor the developments of the Marcellus Shale natural gas drilling proceedings and regulatory activities.

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

Sincerely,

Bob Sweeney

Assemblyman Bob Sweeney
Chair

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Protecting Water Quality & Conserving Quantity

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, as well as recreation in the State. Aquatic and terrestrial flora and fauna are also dependent on these critical water resources to maintain healthy populations. Good policy and sound natural resource management practices both on the land and in bodies of open water are critical to assuring long-term supplies of water to meet these needs. Toward that end, the following are some key measures introduced in the Assembly:

Prohibiting the Use of Toxic Pesticides on School and Daycare Center Playgrounds

(A.7937-C/Englebright) prohibits the use of toxic pesticides on school and daycare center playgrounds, turf, athletic, and playing fields. This measure contains special provisions for the use of pesticides in emergency situations with the approval of local health departments or schools. (*Chapter 85 of the Laws of 2010*)

Protecting Against Future Flooding

(A769-A/Gunther) would help identify methods to mitigate the potential for future flooding, including, but not limited to, 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. The bill also requires a hydrological study of the Esopus Creek to identify areas at chronic risk of flooding as well as measures that could

potentially reduce flood damage to flood plain residents. (*Passed Assembly*)

Well Water Testing

(A.4557-A/Jaffee) would authorize the commissioner of the Department of Health, in consultation with the Department of Environmental Conservation (DEC), to establish standards for the testing of private-well drinking water, and require that a test of private-well drinking water be conducted during the sale of property. (*Passed Assembly*)

Mercury Collection

(A.10160-B/Sweeney) would protect the environment and public health by requiring the establishment of a program to collect mercury-containing thermostats, ensuring they do not go on to cause harm to the public and the environment. (*Passed Assembly*)

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, as well as recreation in the State.



Under the Sea...on the Coast

New York State's diverse ocean and coastal resources are of tremendous environmental, social, and economic value. Unfortunately, pollution, habitat alteration, and even climate change have all had negative impacts on our ocean waters and coastal resources. Protecting critical environments, such as coast wetlands and seagrass beds, is necessary to protect endangered species, such as sea horses and horseshoe crabs, and to preserve the economic vitality of coastal communities. The Commission continues to promote legislation that seeks to preserve the overall ecological health of life under the sea and on the coast by protecting the delicate balance between them.

Expanding the Marine and Coastal District of New York Conservation, Education and Research Board

(A.8560-B/Sweeney) would expand the Marine and Coastal District of New York Conservation, Education, and Research Board from three to nine members. With the recent enactment of a marine fishing license, the board will have significantly more responsibilities. *(Passed Both Houses)*

Protecting Seagrass Beds

(A.10269-B/Sweeney) would authorize the DEC to adopt rules and regulations to regulate coastal and marine activities that threaten seagrass beds. New York seagrass beds are a vital habitat and nursery grounds for numerous commercially, recreationally, and ecologically important fish and shellfish species in New York State. Seagrass beds used to be much larger with some estimates reaching as large as 200,000 acres in 1930. Today, only 21,803 acres remain. Seagrass is such an integral

part of our underwater environment that protecting this natural ecosystem is vital. *(Passed Both Houses)*

Protecting Seahorses

(A.2581/Englebright) would prohibit the taking of the northern or lined seahorse (*Hippocampus Erectus*) for commercial purposes. Routinely, the northern seahorse is traded for use as aquarium fish, ornamental displays, curios, and traditional Chinese medicine. *(Passed Assembly)*

Horseshoe Crab Permits

(A.8900-B/Sweeney) would increase awareness regarding the value of protecting horseshoe crabs. Specifically, this bill would require the DEC to increase the amount of information available regarding the taking of horseshoe crabs, increase the fee for horseshoe crab permits, and require the DEC to issue a report within a year of the effective date of the bill regarding spawning activities and shorebird interactions. *(Assembly 3rd Reading)*

Protection of Freshwater Wetlands

(A.4807/Sweeney) would strengthen wetland preservation by increasing the civil penalty for violation of the protection of freshwater wetlands provision from \$3,000 to \$10,000 and require violators to restore the area adjacent to the freshwater wetland, as well as the wetland itself. *(Passed Assembly)*

A.6363 *(Sweeney)* would provide the DEC authority over freshwater wetlands one acre or more in size. This would remedy the problem of isolated wetlands no longer being protected by the U.S. Army Corps of Engineers, as a result of Supreme Court rulings in 2001 and 2006. *(Passed Assembly)*



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 Shale 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.

In 2008, Governor Paterson directed the DEC to prepare a Supplemental Generic Environmental Impact Statement (SGEIS) to specifically address potential high-volume horizontal drilling in the Marcellus Shale formation. 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. DEC received in excess of 14,000 comments on the draft SGEIS, and is in the process of evaluating those comments and finalizing the SGEIS. As of April 2010, the DEC already had 58 pending applications for

horizontal drilling in the Marcellus shale.

In 2009, the Assembly Environmental Conservation Committee held a series of public hearings on the issue of drilling in the Marcellus Shale. In response to concerns raised, it was recommended to the DEC to extend the public comment period for the Draft Supplemental Generic Environmental Impact Statement by 180 days. The DEC extended the public comment period by 30 days.

The New York City and Syracuse watersheds are subject to Filtration Avoidance Determinations (FADs), which mean that any distinct land disturbance, such as fracking, could endanger the water supplies for millions of people in the New York City and Syracuse region. Moving forward too quickly without having all of the facts may provide short-term economic gains, but at the long-term cost of destroying New York's water resources.

In April 2010, the DEC, after hearing from a number of concerned citizens, formally decided that applicants for natural gas drilling permits using fracking drilling in FAD watersheds will not be able to utilize the SGEIS. Rather, decisions will be made on a case-by-case basis with applicants needing to meet numerous special requirements relating to the unfiltered surface water supply, including conducting individual environmental reviews in these watersheds.

The Commission will continue to monitor horizontal drilling policy in the Marcellus Shale formation.

A number of bills have been considered and favorably reported by the Assembly Environmental Conservation Committee which are directly related to natural gas drilling, including:

Protecting NYC Water Supply

(A.1322-C/Brennan) would establish a moratorium on the issuance of permits for the drilling of wells and prohibits drilling within ten miles of the New York City water supply infrastructure. *(Assembly Rules Committee)*

Reinvigorate the New York State Oil, Gas and Solution Mining Advisory Board

(A.7918-D/Lupardo) would expand the membership of the New York State Oil, Gas and Solution Mining Advisory Board from thirteen to sixteen members and require the board to provide recommendations on industry best practices and water supply protections. *(Assembly 3rd reading)*

Establishing Liability

(A.9414/Lifton) would establish the natural gas exploration and extraction liability act of 2010 to protect landowners and municipalities from drilling-related activities that result in hazards that could result in irreparable and costly damage to a landowner's drinking water, home, or livelihood in agriculture or tourism, as well as to roads and bridges maintained by municipalities. *(Assembly Codes Committee)*

Oversight of Natural Gas Drilling

(A.10088/Sweeney) would provide greater oversight of natural gas drilling in relation to the use of on-site reserve pits for flowback waters which may pose a potential hazard to humans

and wildlife. (*Assembly Codes Committee*)

Prohibit the On-Site Storage of Drill Cuttings

(*A.10090-A/Sweeney*) would prohibit the on-site storage of drill cuttings and drill cutting samples for more than 45 days, and would prohibit the on-site disposal or burial of drill cuttings or drill cutting samples. (*Assembly Codes Committee*)

Fracking Rules and Regulations

(*A.10091-A/Sweeney*) would require the DEC to develop rules and regulations to require the disclosure of hydraulic fracturing fluids and prohibit the use of hydraulic fracturing fluids containing chemicals that pose a risk to human health. (*Assembly Rules Committee*)

A.10092

(*Rules, Sweeney*) would require an environmental impact statement to be prepared for any natural gas or oil drilling involving the use of hydraulic fracturing fluid. (*Assembly Rules Committee*)

Task Force on Opportunities for Natural Gas Mining

(*A.10234-A/Parment*) would establish a task force that would examine issues related to the value added opportunities for indigenous natural gas in New York State. (*Assembly Rules Committee*)

Reclamation Planning

(*A.10292/Rules-Sweeney*) would minimize the long-term potential impacts associated with drilling by requiring the development of a reclamation plan. The plan proposed within this bill is similar to the reclamation plan currently required for mining activities. (*Assembly Rules Committee*)

Temporary Suspension of Fracking Permits

(*A.11443-b/Rules-Sweeney*) would suspend any permitting for hydraulic fracturing in low-permeability natural gas reservoirs such as the Marcellus Shale and Utica Shale formations to ensure adequate review and analysis of the effects of this type of drilling on water quality, air, the environment, safety and public health until May 15, 2011. (*Assembly 3rd Reading*)

Moratorium on the Issuance of New Fracking Permits

(*A.10490-A/Englebright*) would establish a moratorium on the issuance of new permits for the activity of horizontal hydraulic fracturing for the extraction of natural gas or oil until 120 days after the federal Environmental Protection Agency completes its comprehensive two-year research study to investigate the potential impacts associated with hydraulic fracturing. (*Assembly Rules Committee*)

Minimum Royalty Payment for Landowners

(*A.10956/Lupardo*) would increase the minimum royalty payment for landowners who undergo compulsory integration in the New York Marcellus Shale region from 12.5% to the highest royalty in an existing lease in the drilling unit, but no less than 18.75%. (*Assembly Rules Committee*)

Surface Access Permits within Allegany State Park

(*A.11093-A/Hoyt*) would specify the terms, requirements and enforcement of surface access permits issued to entities proposing to extract privately-owned oil or gas resources within Allegany State Park. (*Assembly Codes Committee*)

American Recovery and Reinvestment Act (ARRA): Update

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) to provide federal stimulus funding. New York's share of ARRA funds for environmental programs is approximately \$2.3 billion. The following provides a snapshot of New York's ARRA initiatives 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):

New York State was approved to spend \$433 million in ARRA funds for the Clean Water State Revolving Fund over a two year period. These funds will go directly to the New York State Environmental Facilities Corporation (EFC), the entity that administers all funding for the Clean Water State Revolving Fund. As of July 8, 2010, the EFC has either made payments or committed in contracts the entire federal allocation for clean water infrastructure projects.

Drinking Water State Revolving Fund (DWSRF):

New York State is approved to spend \$87 million in stimulus funds for the DWSRF. Drinking water systems eligible for funding include community water systems, both public and privately owned, and non-profit, non-community water systems. 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). As of July 8, 2010, approximately \$41 million of the stimulus funds has been expended or contractually obligated.

Additional information on specific aspects of how New York State has used ARRA funds can be found at www.openbooknewyork.com/stimulus/index.htm or www.recovery.gov. Future newsletter articles will continue to keep readers apprised of developments related to water and wastewater infrastructure funding.

The State Assembly Works on Ways to Cope with Climate Change

Changes in weather patterns, water levels, and the environment related to climate change are already being felt, and will continue to impact our state's industries, infrastructure and economy. The Commission has been pursuing a wide range of efforts to help mitigate the potentially harmful effects of climate change on our water resources. These efforts include legislation to cap greenhouse gas emissions, support greater energy efficiencies and encourage the development of alternative, cleaner energies. Through these and other initiatives, the New York State Assembly will continue to seek ways to help our State and its residents adapt to changes in the environment and the economy resulting from climate change.

Limiting Sulfur Content in Heating Oil

(A.8642-A/Sweeney) limits the sulfur content in number two heating oil to no greater than 15 parts per million beginning July 1, 2012. Reducing the sulfur content will 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. (Signed into Law Chapter 203 of the Laws of 2010)

State to Reduce Greenhouse Gas Emissions

(A.3419/Sweeney) would encourage State agencies to reduce their greenhouse gas emissions. Specifically, this bill would amend the Environmental Conservation Law relating to the annual requirement that State agencies conduct an annual envi-

ronmental audit by requiring that such audits include a calculation of the amount of greenhouse gas emitted as a result of such agencies' operations. Each agency would be required to describe actual emissions, steps taken to reduce emissions and potential further actions to reduce emissions. (Passed Both Houses)

Calculating Greenhouse Gas Emissions

(A.3421/Sweeney) would require the 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 Both Houses)

Greenhouse Gases Management Research and Development Program

(A.249/Magnarelli) 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. (Vetoed by Governor, Message #2)

Combatting Greenhouse Gas Emissions

(A.7572-A/Sweeney) would require the reduction of harmful greenhouse gas emissions which have been demonstrably linked to global warming. This legislation will have New York State meet the greenhouse gas levels recommended by the Intergovernmental Panel on Climate Change. (Passed Assembly)

Recycling Electronic Waste

Electronic waste represents one of the fastest growing and most hazardous components of New York's waste stream, containing many toxic substances, including lead, mercury, chromium, cadmium, polyvinyl chloride and beryllium. There are direct environmental and public health consequences for New York State residents from the improper handling and disposal of electronic waste.

Chairman Sweeney championed legislation to provide consumers with an easy, free method to recycle e-waste.

Manufacturers will be required to accept, recycle or reuse discarded electronics equipment based on how much electronics they sell. The bill covers computers, keyboards, televisions, printers and digital music players that are battery powered and have internal memory, DVD players, digital video recorders and video game consoles.

Until now, this equipment was ending up in a landfill

where its hazardous chemical components posed a continuing threat of groundwater contamination, or it was burned in an incinerator where the toxic substances were released into the air, threatening both human health and the environment.

When this equipment ends up in a landfill, it is exposed to weatherization, heat, and the decomposing effects of acids and other solvents. This can cause the toxic chemicals in the equipment to leak and pool, eventually escaping the landfill through the ground, water runoff and other means. When this occurs, the waters of the state are the most in jeopardy. Rivers, lakes, streams and shore all suffer from toxic chemicals such as lead, mercury, chromium, cadmium, polyvinyl chloride and beryllium.

This legislation will directly and indirectly protect the waters of the state from the hazard posed by discarded toxic materials in electronic waste. (Signed into Law)

Reducing Phosphorous in the Waters of the State

Phosphorus from dishwasher detergent and lawn fertilizer has the potential to significantly impact the quality of New York's water resources. Discharge of excess phosphorus into the state's waters has been linked to excess eutrophication, reducing biodiversity, limiting recreational uses, and increasing the costs of treating drinking water.

When water bodies receive an unnaturally high quantity of plant-supporting nutrients like phosphorus, excess plant growth results, often in the form of algae blooms and nuisance weeds. Just one pound of phosphorus has the capacity to grow from 500 to 700 pounds of algae, which can reduce levels of dissolved oxygen in the water, causing fish and shellfish to die. These low oxygen conditions also cause iron, manganese and phosphorus to be released from sediments into the water, deteriorating water quality used for human consumption.

Chairman Sweeney sponsored legislation (*A.8914/Sweeney*) to limit the amount of phosphorous in dishwasher detergents and lawn fertilizers. Reducing phosphorus discharges

to the state's waters will drastically reduce costs to remove excess phosphorus from drinking water and wastewater while expanding recreational uses and improving water quality in bays, rivers, lakes, and drinking water supplies.

Dishwasher detergents may contain up to 9% phosphorus and can account for up to 34% of the total phosphorus in municipal wastewater. Lawn fertilizer contains up to 3% phosphorus and can account for up to 50% of the soluble phosphorus in storm water runoff.

Instead of removing phosphorus at wastewater treatment plants, which can cost up to \$20 per pound, or removing phosphorus from storm water, which can cost between \$25 and \$600 per pound, the new legislation will reduce the phosphorus at its source, which will save tax payers significant costs. Local property tax payers will not be required to install phosphorus storm water treatment in impaired watersheds, will pay less for chemical treatment, and generate less sludge at wastewater treatment plants. (*Signed into Law Chapter 205 of the Laws of 2010*)

Pharmaceuticals in Drinking Water

Pharmaceutical wastes are a contaminant of emerging concern in waterways. Recent scientific studies have revealed that arrays of pharmaceuticals are present in rivers and streams as well as in the drinking supplies of a number of American cities. This condition has likely existed for some time, but testing methodologies have only recently been developed to detect these chemicals in water bodies. While the concentrations of pharmaceuticals found in water are far below typical medical doses, studies have found problematic impacts on wildlife. The EPA has acknowledged these ecological impacts, as well as the potential for human health concerns, and confirmed that pharmaceutical discharges to waterways are a serious concern.

DEC has developed a web site <http://www.dontflush-yourdrugs.net> and other educational materials to inform the public about proper management of pharmaceuticals. Pursuant to the Drug Management and Disposal Act, passed in New York State in 2008, the educational materials developed include a notice that must be displayed in all pharmacies and retail stores that sell medications, including over-the-counter drugs, vitamins, and supplements. This information is intended to provide New Yorkers with an interim strategy to more appropriately manage their unused and unwanted pharmaceuticals while a more comprehensive and environmentally protective pharmaceutical collection program is developed. Also, several com-

munities and pharmacies in New York have voluntarily established take-back programs for unused and unwanted pharmaceuticals.

Extending Demonstration Program (*A11334/Rules-Englebright*)

Would amend Chapter 625 of the laws of 2008, to extend the demonstration program in order to determine the most effective method for the disposal of drugs. (*Passed Assembly*)

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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) 455-5787**, faxing us at **(518) 455-3976**, or writing us at the above address.

Environmental Protection Fund (EPF)

While the economic downturn continues to take a toll on New York State's fiscal condition, funding for environmental programs in the State remains a priority. Difficult choices had to be made related to the EPF. The EPF, which is a funding source for numerous environmental programs throughout the state, received an appropriation of \$134 million in this year's budget. The 2010-2011 EPF reversed the Executive moratorium on land preservation, and includes the following appropriations for water-related programs in millions:

- \$16.2M for DEC/OPRHP State Land Stewardship
- \$13.4M for Municipal Park, Recreation, and Historic Preservation projects
- \$12M for Local Waterfront Revitalization projects
- \$3M for the Hudson River Park
- \$13.3M for Agricultural Non-point Source Pollution Control
- \$3.7M for Municipal Non-point Source Pollution Control
- \$2.9M for Water Quality Improvement projects
- \$1M for Finger Lakes/Lake Ontario Watershed
- \$3.8M for Invasive Species
- \$5M for Ocean and Great Lakes' programs
- \$3M for Hudson River estuary management
- \$3M for Soil and Water Conservation Districts
- \$0.9M for the South Shore Estuary Preserve



Contact Information

If you would like further information or to share your ideas or concerns, please call **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.