

Legislative Commission on



Resource Needs of New York State and Long Island

Fall 2011 • Bob Sweeney, Chairman



Dear Friend:

This newsletter summarizes the initiatives and accomplishments of the New York State Assembly Legislative Commission on Water Resource Needs of NYS and Long Island. New York State continues to face difficult economic choices; however, despite the current fiscal climate, safe, clean and reliable supplies of water continue to be a high priority in the Assembly. This year's budget maintained the Environmental

Protection Fund (EPF) at the 2010-11 funding level of \$134 million, staving off any additional cuts.

As the 2012 legislative session approaches, the Water Commission continues to focus on water-related issues including public water supply protection, the impact of climate change and groundwater protection. The Commission will also continue to monitor 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,

*Assemblyman Robert Sweeney
Chair, Legislative Commission on Water Resource
Needs of NYS and Long Island*

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Hydraulic Fracturing

Over the past few years, low-permeability shale gas reservoirs, including the Marcellus and Utica shale formations, have become the focus of interest as potential new domestic natural gas sources. While there are economic benefits associated with increased natural gas production, there are also potential environmental and health impacts associated with the aspect of the natural gas extraction process known as hydraulic fracturing or “fracking.” The hydraulic fracturing process would be necessary to access much of the natural gas currently locked into the Marcellus and Utica Shale formations.

On July 11, 2011, the New York State Department of Environmental Conservation (DEC) released a revised Draft Supplemental Generic Environmental Impact Statement (DSGEIS) regarding well permit issuance for horizontal drilling and high-volume hydraulic fracturing to develop the Marcellus shale and other low-permeability gas reserves. DEC had received thousands of comments on the previous draft impact statement

(released September 2009) and the revised draft was the Department’s response to those comments. In addition to the revised DSGEIS, the DEC has also released its proposed regulations pertaining to hydraulic fracturing.

Shortly following the Department’s release of the DSGEIS and draft regulations, Assembly Member Sweeney, as Chair of the Assembly Standing Committee on Environmental Conservation, and over 40 of his colleagues sent a letter to the DEC Commissioner requesting that the comment period for both documents be extended from 90-days to 180-days. The letter explained that providing additional time would allow concerned individuals the opportunity to fully read and understand the complex documents and give those living in areas affected by tropical storms Irene and Lee the opportunity to be advocates for themselves. (Many of the same areas affected by the flooding are also in the same geographical region that drilling is proposed.) The Department instead extended the public comment period to December 12, and subsequently to January 11, 2012.

Assembly Actions Related to Hydraulic Fracturing

On May 26, 2011, the Assembly Environmental Conservation Committee, in cooperation with the Assembly Health Committee, held a hearing to review the potential health effects of hydraulic fracturing techniques used in natural gas and oil drilling. Testimony was received from a variety of witnesses including an endocrinologist, ecologist, chemist, pediatrician, toxicologist, and petroleum engineer.

On October 6, 2011, the Assembly Environmental Conservation Committee held a hearing to solicit public input on the revised DSGEIS. At the hearing, academic authorities and environmental advocacy groups expressed concern about the revised DSGEIS and requested changes including stronger regulations and increased staffing to ensure adequate

monitoring of drilling activity.

At both hearings, witnesses expressed a variety of concerns about the potential impacts of natural gas drilling on host communities, water supplies, well monitoring, flowback fluid and waste management. Many at the hearing expressed support for more protective regulations to ensure any drilling is done in an environmentally safe manner. Assembly Member Sweeney has sent a detailed letter to follow up on several issues discussed at the hearing, seeking clarification and additional information.

This past Legislative Session, the Assembly voted on several bills that would provide greater oversight of the natural gas and oil drilling industry and respond to some of the concerns voiced at the public hearings. These measures include:

Drilling Moratorium

This legislation would have established a moratorium, until June 1, 2012, for the issuance of new permits for well drilling that utilize hydraulic fracturing in low permeability natural gas reservoirs, such as the Marcellus and Utica shale formations. This legislation passed the Assembly, but no action has been taken in the Senate. (A.7400/ Sweeney)

Proper Treatment of Hydraulic Fracturing Waste

- ▲ Currently all natural gas and oil waste have an exemption from designation as hazardous waste pursuant to existing DEC rules and regulations. This legislation would require all waste resulting from natural gas and oil drilling exploration and production to be designated as hazardous waste if such waste meets the statutory definition of “hazardous waste.” This legislation passed the Assembly, but no action has been taken in the Senate. (A.7013/Sweeney)

Local Zoning Control in Relation to Gas Drilling

- ▲ This legislation would clarify that current local zoning law, and local zoning laws enacted in the future, will dictate where oil and natural gas drilling and solution mining are a permissible use. This legislation passed the Assembly, but no action has been taken in the Senate. (A3245 /Lifton).

The Assembly Committee on Environmental Conversation and this Commission are actively reviewing the issues associated with natural gas drilling and will continue to do so as the regulatory process evolves. It is essential to the well being of the State that these natural gas reserves be accessed in a manner that is both protective of the environment and public health.

EPA Review of Hydraulic Fracturing Wastewater Disposal

On October 20, 2011, the U.S. Environmental Protection Agency (EPA) announced a schedule to develop standards for wastewater discharges produced by natural gas extraction. The EPA intends to begin the process of developing a proposed standard with the input of stakeholders – including industry, environmental and public health groups.

Currently, wastewater associated with shale gas extraction is prohibited from being directly discharged to waters of the U.S. While some of the wastewater from shale gas extraction is reused or re-injected, a significant amount still requires disposal. Therefore, a potentially significant amount of hydraulic fracturing fluid wastewater will need to be transported to wastewater treatment facilities. A number of these facilities are not equipped to treat this type of wastewater properly. EPA, in its announcement, said that it will develop standards based on demonstrated, economically achievable technologies, for shale gas wastewater.

The EPA timetable is to propose draft rules for comment by 2014, with final rules and regulations effective in 2015.

Environmental Protection Fund

Since its inception in 1993, the Environmental Protection Fund (EPF) has provided more than \$1 billion for environmental projects. These funds support programs that protect the State’s water resources, natural heritage, public health, and industries such as tourism and agriculture. EPF funding has helped to fund important environmental projects in communities throughout the State.

Despite the many successes achieved with the use of EPF monies in areas ranging from open space acquisition, water quality improvements, maintaining parks, historic structures, and recycling, many people remain unaware of the impact the EPF has had on their neighborhoods. A new law, Chapter 277 of the Laws of 2011 (A.5663/ Sweeney), will increase the public’s awareness of the importance of the EPF by requiring contracts to identify the EPF as a funding source; however, this legislation would not require any additional expenditures. This new law is based on the inclusion of contract provisions for the New York State Council on the Arts that require contracts to contain “acknowledgment of NYSCA support to be displayed conspicuously in any communication to the public.”

EPF Budget News

New York, like the rest of the country, continues to face financial challenges because of the difficult economic climate. The Assembly maintained its commitment to the environment by maintaining the Environmental Protection Fund at \$134 million in the State Fiscal Year 2011-2012 NYS budget. Among the EPF categories receiving funding:

- ▲ **\$17.5 million for land acquisition,**
- ▲ **\$13 million for municipal parks,**
- ▲ **\$11.5 million for waterfront revitalization, and**
- ▲ **\$9 million for zoos, botanical gardens and aquariums.**

Earth Day

The Assembly Earth Day legislative package, while not exclusively comprised of water-related bills, did include important measures to ban the use of dangerous chemicals; expand recycling and disposal of hazardous materials; protect New York's wetlands; and implement policies that promote environmental justice for disadvantaged New Yorkers. This legislative package built on the Assembly's long-standing commitment to improving the health and well-being of New Yorkers and protecting our state's natural resources. Water-related legislation passed in the Assembly to honor the spirit of Earth Day included:

- ▲ A measure that authorizes the DEC to implement a permitting program for all water withdrawal systems with a capacity equal to or greater than 100,000 gallons per day. Chapter 401 of the Laws of 2011 (**A.5318-A/Sweeney**).
- ▲ A measure that would help safeguard New York's invaluable wetlands by providing the Department of Environmental Conservation (DEC) with authority over wetlands of one acre or more (**A.3374/Sweeney**) and requiring violators to repair damaged areas adjacent to wetlands (**A.5638/Sweeney**). Both measures passed the Assembly, but no action was taken in the Senate.
- ▲ A measure that would ensure New York residents have clean and safe water by requiring the State Department of Health to promulgate standards for the testing of drinking water from privately-owned wells (**A.667/Jaffee**). This measure passed the Assembly, but no action was taken in the Senate.

Other bills passed by the Assembly in the Earth Day package would:

Prohibit the sale of mercury-added consumer products - Chapter 20 of the Laws of 2011 (**A.668/Jaffee**);

- ▲ Authorize the use of cool roofs on new or substantially renovated state-owned buildings (**A.96/Hevesi**). No action in the Senate;
- ▲ Require DEC to publish a list of high local environmental impact zones (**A.611/Peoples-Stokes**). No action in the Senate;
- ▲ Create a permanent environmental justice advisory group (**A.947/Peoples-Stokes**). No action in the Senate;
- ▲ Prohibit the use of Styrofoam food-serving products by contractors and lessees who contract with the state or with municipalities (**A.2097-A/Kavanagh**). No action in the Senate;
- ▲ Establish a take-back program for the collection of mercury-containing thermostats (**A.3485/Sweeney**). No action in the Senate;
- ▲ Require the DEC to establish rules for the reduction of greenhouse gas emissions to minimize global warming (**A.5346/Sweeney**). No action in the Senate;
- ▲ Restrict the use of Decabromodiphenyl ether (DecaBDE), a flame retardant used in a variety of products - including televisions and computers - which has been linked to permanent neurological disorders such as deficits in learning, memory, hearing and changes in behavior (**A.5798/Sweeney**). No action in the Senate;
- ▲ Establish a procurement preference for the purchase of products, technologies and services by the State that minimizes adverse impacts on public health and the environment through the New York State Healthy and Green Procurement Act (**A.6366-A/Sweeney**). No action in the Senate;
- ▲ Improve recycling policies and procedures throughout the state by establishing clearer requirements concerning the disposal of recyclable materials (**A.1241/Colton**); and require the use of recycled materials when making "packing peanuts" (**A.6145/Sweeney**). Both measures passed the Assembly, but no action was taken in the Senate.

Protecting New York's Ground and Surface Water Resources

New York State has an abundant supply of water, and it is our collective responsibility to ensure that this precious resource is preserved and protected. An ample amount of clean potable water is a vital economic resource for New York's residents and businesses including water to support

agriculture, manufacturing, and other industries, as well as recreation in the State. Good policy and sound natural resource management practices both on the land, underground, and in bodies of water are critical to assuring long-term supplies of water to meet these needs.

Pursuant to Environmental Conservation Law Article 15, DEC has been entrusted with the responsibility to conserve and control New York State's water resources for the benefit of all the inhabitants of the State. However, the water supply provisions of Article 15 derive primarily from outdated statutes written in the first half of the last century. Moreover, since the provisions of Article 15 were enacted, population growth and increased use of water for commercial, industrial and other purposes have resulted in substantially increased demands on the State's water resources. In addition, potential impacts from climate change, and proposals to export vast amounts of water from New York to other states and abroad could pose new

threats to the State's water supply. These issues have served to highlight the limitations on the State's water resources program and DEC's limited ability to regulate water withdrawals. In order to provide greater water resource protection, Chapter 401 of the Laws of 2011 (**A.5318-A/ Sweeney**) authorizes the DEC to implement a permitting program for all water withdrawal systems with a capacity equal to or greater than 100,000 gallons per day. This law will also allow New York to meet its obligation to implement a regulatory program for water withdrawals in the Great Lakes Basin. It is an important goal to create an even regulatory playing field while at the same time protecting the State's finite water resources, which can only be achieved through the creation of the statewide standards and consistent requirements throughout New York.

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Protecting Long Island's Sole Source Aquifer Systems

Water issues are especially important on Long Island as residents rely on a system of aquifers to provide all of their potable drinking water. Everyday activities on the surface of the land above these aquifers can and do introduce contaminants into the Island's precious water supply. Potable water on Long Island is currently of high quality and safe to drink, but if measures are not taken today to protect the aquifer system, future drinking water supplies could be in danger of contamination. Several recent studies, including the most recent *draft Suffolk County Comprehensive Water Resources Management Plan*, have indicated that nitrates, pesticides and volatile organic compounds are present in the Island's underground drinking water supplies at elevated levels and many of these contaminants have increased at an alarming rate over the last several decades.

Proactive measures are necessary to stem contaminant levels before they rise to levels that are either impossible or vastly more expensive to clean up to a level that provides quality potable water. Comprehensive regional planning that includes better sewage management and smarter land use policies must be cooperatively developed and implemented.

A Hearing to Discuss Groundwater Resource Protection Issues in Suffolk County

A public hearing was held on September 27, 2011, in the Town of Babylon to discuss water quality issues on Long Island and to solicit input on issues related to the protection of water resources in Suffolk County.

The Commission is currently examining the testimony received at the hearing. Several witnesses urged that strategies be developed and implemented to reduce the contamination due to rising nitrate, pesticides, pharmaceuticals and volatile organic compounds. Other testimony urged stepped-up conservation measure to ensure that the quality of water remains high into the future.



Assembly Member Bob Sweeney at the September 27, 2011, hearing in the Town of Babylon to discuss water quality issues on Long Island.

Protecting the Carmans River Watershed

One of the best options to protect Long Island's aquifer system is to protect open space. Chapter 538 of the Laws of 2011 will protect the Carmans River watershed and will add approximately 1,000 acres of land to the Central Pine Barrens. This law establishes a process that will allow for better protection of this critical habitat and watershed. (A.8265/ Sweeney).

The Carmans River is 10 miles long and is located in the Central Long Island Pine Barrens Region, which is publicly protected and managed land. Sections of the Carmans River are designated by New York State as a wild, scenic, and recreational river and a New York State Significant Coastal Fish and Wildlife Habitat. The Carmans River and the Peconic River are Long Island's only rivers in the Pine Barrens Region and two of Long Island's four major rivers. The significance of protecting the Carmans watershed is critical to protecting vital habitat, but also to long-term protection of the Island's aquifer system.

Oversight of NY Invasive Species Council and Invasive Species Advisory Committee

On September 13, 2011, the Committee held a hearing to solicit public input on the best methods for preventing the introduction of invasive species into our waters and combating those already present in New York State. Chapter 674 of the Laws of 2007 created the New York Invasive Species Council and Invasive Species Advisory Committee. These entities were charged with developing a four-tier classification system for non-native animal and plant species. This hearing examined a report issued by the Council that proposed such a classification system as well as other issues relating to the introduction of invasive species, methods to combat the invasive species already present, and the effectiveness of State funding, including the Environmental Protection Fund monies. The Commission is currently examining the testimony received at the hearing.

Along the Coast and in the Sea...

New York State's diverse ocean and coastal resources are of tremendous environmental, social, and economic value. Unfortunately, pollution, habitat alteration, and climate change have all had negative impacts on these resources. The Assembly has strived to protect critical environments, such as coastal wetlands and seagrass beds, which in turn helps to ensure the long-term survival of endangered species, such as sea horses. Protecting coastal waters, habitats and species also preserves the continued economic vitality of coastal communities that rely on these resources for their livelihoods. The Commission continues to promote legislation that seeks to preserve the overall ecological health of life along freshwater and saltwater coasts and under the adjoining waters.

Long Island Sound Protection

- ▲ Chapter 33 of the Laws of 2011 enacts legislation that mirrors the efforts in Connecticut to address problems facing the Long Island Sound. The Connecticut-New York Bi-State Long Island Sound Committee is authorized to coordinate and recommend standardization of laws regarding the Long Island Sound and make recommendations on an annual basis for legislation to further safeguard the resource (A.5971/Sweeney).

- ▲ Chapter 278 of the Laws of 2011, introduced at the request of the Village of North Haven, was enacted to allow the village to regulate the manner of construction and location of boathouses, moorings and docks in any waters within or bounding the respective municipality to a distance of 1500 feet from the shoreline. (A.5763/ Thiele).

Protecting Seagrass Beds

- ▲ New York's seagrass beds are a vital habitat and nursery grounds for numerous commercially, recreationally and ecologically important fish and shellfish species. Seagrass beds used to be much larger with some estimates as large as 200,000 acres in 1930. Today only 21,803 acres remain. This bill, based upon recommendations from the NYS Seagrass Taskforce, would authorize the DEC to regulate coastal and marine activities that threaten seagrass (A.7988/ Sweeney). This legislation passed the Assembly, but no action was taken in the Senate.

Protecting Seahorses

- ▲ Chapter 81 of the Laws of 2011 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 (A.2581/ Englebright).

Conservation and Management of Marine and Freshwater Fish

This year the Assembly Environmental Conservation Committee made a concerted effort to examine the numerous laws regulating fishery management policy and extended the

DEC's authority to manage various species. The following is a list of 2011 Chapters enacted into law pertaining to DEC fishery management authority:

- ▲ **Chapter 87** – Regulates striped bass (A.6885/Sweeney);
- ▲ **Chapter 88** – Provides for the taking of blackfish (A.6886/Sweeney);
- ▲ **Chapter 86** – Restricts the taking of fish, shellfish, and crustaceans in designated special management areas (A.6883/Sweeney);
- ▲ **Chapter 289** – Relates to the management of crabs (A.6952/Englebright);
- ▲ **Chapter 290** – Relates to the management of American eel (A.6954/Jaffee);
- ▲ **Chapter 291** – Relates to the management of hickory shad (A.6955/Latimer);
- ▲ **Chapter 292** – Relates to the management of Atlantic herring (A.6961/Titone);
- ▲ **Chapter 293** – Relates to the management of Atlantic cod (A.6962/Weisenberg);
- ▲ **Chapter 294** – Relates to the management of American shad (A.6964/Zebrowski);
- ▲ **Chapter 295** – Relates to the management of Atlantic and shortnose sturgeon (A.6965/Zebrowski);
- ▲ **Chapter 296** – Relates to the management of alewife (A.6966/Zebrowski);
- ▲ **Chapter 297** – Relates to the management of squid (A.7150/Thiele);
- ▲ **Chapter 298** – Relates to the management of blueback herring (A.7211/Jaffee);
- ▲ **Chapter 383** – Relates to the regulation of commercial fishing licenses (A.7801/Sweeney);
- ▲ **Chapter 418** – Relates to the management of weakfish (A.6887/Sweeney);
- ▲ **Chapter 419** – Relates to the management of winter flounder (A.6946/Colton);
- ▲ **Chapter 420** – Relates to continuing regulations relating to the management of whelks and conchs (A.6948/Crespo);
- ▲ **Chapter 421** – Relates to the management of fluke-summer flounder (A.6949/Cymbrowitz);
- ▲ **Chapter 422** – Relates to the management of black sea bass (A.6950/Cymbrowitz);
- ▲ **Chapter 423** – Provides for the management of monkfish (A.6951/Cymbrowitz);
- ▲ **Chapter 425** – Relates to the taking of fish (A.6956/Peoples-Stokes);
- ▲ **Chapter 426** – Relates to the management of scup (A.6958/Simotas);
- ▲ **Chapter 427** – Relates to the management of scallops (A.6959/Thiele);
- ▲ **Chapter 428** – Relates to the taking of sharks (A.6960/Titone);
- ▲ **Chapter 429** – Relates to the management of bluefish (A.6963/Weisenberg);
- ▲ **Chapter 431** – Relates to the management of oysters (A.7078/Ramos);
- ▲ **Chapter 439** – Relates to the regulation of the landing of lobsters (A.7631/Abinanti);
- ▲ **Chapter 481** – Relates to the regulation of certain types of clams (A.6957/Schimel);



Actress Michelle Williams visited with Assemblyman Bob Sweeney to support his efforts regarding hydro-fracking in New York State.

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Other key water protection measures passed by the Assembly this session include measures to:

- ▲ Require lawn care companies to provide certain information to property owners prior to any pesticide application by commercial lawn services. Chapter 526 of the Laws of 2011 (**A.7638-A/Sweeney**);
- ▲ Give the state Soil and Water Conservation Committee membership on the New York Ocean and Great Lakes Ecosystem Conservation Council. Chapter 363 of the Laws of 2011 (**A3556-A/ Magee**); and,
- ▲ Extend, until September 30, 2014, the authority of the New York State Environmental Facilities Corporation to continue its direct investment authority of Clean Water State Revolving Fund ("CWSRF") monies. Chapter 70 of the Laws of 2011 (**A7151/ O'Donnell**)

Recognizing Our Military Service Men and Woman

Several bills were enacted this year that recognize and express New York's appreciation for veterans, active duty members of the armed services and their families. Fishing can provide those who have courageously served or who continue to serve in the military with an opportunity to relax and unwind while enjoying one of New York State's great outdoor activities.

- ▲ Chapter 90 of the Laws of 2011 allows for the transfer of a lifetime hunting, fishing and trapping license held by a member of the armed forces of the United States or a member of the national guard or other reserve component of the Armed Forces of the United States in certain circumstances (**A.6440/ Sweeney**).
- ▲ Chapter 46 of the Laws of 2011 allows DEC to designate organized fishing events that provide physical and emotional rehabilitation for current and former Members of the Armed Services (**A.4263/ Magee**).

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.