



Legislative Report from the NYS Assembly Committee on Environmental Conservation

Sheldon Silver, Speaker ■ Robert K. Sweeney, Chair ■ Summer 2012



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Committee on Environmental
Conservation*

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2012 EARTH DAY

Each year, the Assembly considers a package of bills in recognition of Earth Day. This year, the Assembly passed the following legislation:

Water Quality

Sewage Pollution Right to Know Act (A.9420-A Sweeney)

Discharges of untreated or partially-treated sewage include contaminants and pollutants, pathogens, bacteria and toxins raising public health, safety and environmental concerns. Current notification procedures have proven inadequate in disseminating information to the general public. Prompt notification of discharge events, including media notification, will help ensure the public has the information needed to limit recreational uses and activities such as swimming. In addition, shellfish harvesting activities could also be adjusted accordingly. This legislation passed the Assembly. After negotiations with the Senate, A.10585-A (Rules, Sweeney) was introduced and passed both houses. A.10585-A provides greater specificity regarding the types of discharges to be reported and requires the Department of Environmental Conservation to promulgate rules and regulations establishing specific notification requirements.

Proper Disposal of Pharmaceutical Products (A.9421 Sweeney)

Expired, unwanted, or unused pharmaceutical drugs require proper disposal in order to prevent accidental ingestion and/or unintended environmental harm. An extensive water analysis conducted by the United States Geological Survey detected at least one contaminant in approximately 96 percent of the water samples taken from 74 water sources in 25 states and Puerto Rico. Although drug collection events are taking place in some communities, a more coordinated effort is required to help prevent continued contamination. This legislation would establish a demonstration drug disposal program by DEC, in cooperation with the State Police, in State Police facilities representative of rural, suburban and urban areas of the State, in order to provide data that could be used to determine the most effective methods of disposal. This legislation passed the Assembly, but the Senate has not yet taken action.

After Earth Day, both the Assembly and the Senate passed legislation (A.10623 Rules, Cusick) to create the Internet System for Tracking Over-Prescribing Act (I-STOP) which, if signed into law by the Governor, would include provisions intended to strengthen the regulation of controlled substances and would also require the State Department of Health to establish a program to allow for the safe disposal of unused controlled substances anonymously.

*Water Quality
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Assemblyman Bob Sweeney is pictured here with officials from the Village of Lindenhurst, and members of the Sierra Club and SPLASH (Stop Polluting, Littering and Save Harbors), reviewing the installation of a new storm basin filtering system to prevent pollutants from flowing into local ponds. This system will help filter storm water runoff and reduce the harmful pollutants in the water.

Water Quality (continued from page 1)

Private Well Testing (A.667-B Jaffee)

Over one million residents of New York State get their drinking water from private wells. While laws require municipal water suppliers to test their water periodically, and to send residents an annual report on the quality of that water, there are no similar protections for private wells. As a result, people using private wells around the State are unprotected and often unaware that there may be problems with their drinking water. This legislation would establish

a private well testing program in New York State and require testing of private drinking water wells at the time of property transfer. Testing would include: bacteria (total coliform), nitrates, iron, manganese, pH, and all volatile organic compounds for which a maximum contaminant level has been established pursuant to public health regulations. This legislation passed the Assembly, but the Senate has not yet taken action.

Chemicals

Restrictions on the Use of Chemicals in Children's Products (A.3141-A Sweeney)

Currently, New York identifies or prohibits the use of dangerous chemicals on a chemical by chemical basis. Several other states, including Washington, California, and Maine have adopted more comprehensive chemical policies after finding high levels of cadmium, lead and other dangerous chemicals in children's products ranging from crib mattresses to toys. This legislation is modeled after those states and is intended to prevent the use of dangerous chemicals and encourage the use of safer chemical alternatives

in children's products. This legislation would require the Department of Environmental Conservation (DEC) to develop lists of dangerous chemicals and require manufacturers of children's products containing such chemicals to report the use of such chemicals to DEC. The sale of children's products containing hazardous chemicals would be prohibited unless DEC issues a waiver. This legislation passed the Assembly, but the Senate has not yet taken action.

Environmental Justice

High Local Environmental Impact Zones (A.611 Peoples-Stokes)

The siting of projects with potential adverse environmental impacts is a complex and difficult process. Local residents are not usually in favor of having such projects located in their communities, and thus government decision makers must undertake a difficult balancing of competing interests in order to select the most appropriate location for the project. Historically, geographical areas with existing environmental hazards have frequently been selected for the placement of new projects, presumably due to the belief that the "incremental" adverse impact would be less in such an area than in a "pristine" area with no existing environmental problems.

Unfortunately, this process can lead to a concentration of environmental hazards within a small geographical area, and a concomitant increased risk to residents of those areas. This legislation would require DEC to identify "high local environmental impact zones," which are defined as those areas of the State that are most adversely impacted by existing environmental hazards. This legislation passed the Assembly, but the Senate has not yet taken action.

***Environmental Justice
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Recycling

Source Separation and Recycling (A.1241-A Colton)

While progress has been made in expanding recycling capacity and developing secondary materials markets, nearly 80 percent of solid waste ends up in landfills, even though land filling is statutorily the last resort. The combination of recycling loopholes, planned obsolescence, the growth of convenience products, and the advance of technology have all helped stall progress toward a reduction of generated waste.

The "existing market" clause in current law has proven to be cumbersome in practice - creating confusion and potentially undermining the value of recycled materials because a reliable supply of material is critical to justifying private capital investment in secondary materials markets. In practice, most programs have continuously collected the same materials for much of the past two decades despite periodic dips in market values. This legislation would eliminate the "existing market" criteria and instead specify materials required for separation while still authorizing a municipality to include additional marketable items. This legislation passed the Assembly, but the Senate has not yet taken action.

Climate Change

Global Warming Regulations (A.5346-A Sweeney)

Global warming will have detrimental effects on economic well-being, public health, natural resources and the environment. The Intergovernmental Panel on Climate Change, awarded the 2007 Nobel Peace Prize, projected that temperatures would rise more rapidly if greenhouse gases are not abated. The Panel concluded that reducing emissions 80 percent below current emissions by mid-century would prevent the worst impacts of global warming.

This legislation seeks to accomplish the goal of reducing global warming and at the same time provide opportunity for public involvement and input into the regulatory process in order to ensure that the resulting emission limits do not impose undue environmental or economic hardship. This legislation would authorize DEC to establish greenhouse gas emission reporting requirements and, beginning in 2015, after a public hearing, promulgate rules and regulations setting a limit on all greenhouse gas emission sources. The limit established by DEC would be required to be less than the 1990 limit and not impose additional burdens on communities already experiencing significant levels of regulated air contaminants as compared with the county average. Beginning in 2015, the limit established by DEC would be decreased by 2.3 percent each year, resulting in an 80 percent reduction by 2050. This legislation passed the Assembly, but the Senate has not yet taken action.

Invasive Species

Greater Restrictions on the Introduction of Invasive Species (A.9422-A Sweeney)

Invasive species threaten New York's environment by out-competing native species, diminishing biological diversity, and changing whole ecosystems including those within public parks and waterways. At an Assembly public hearing to solicit input on the best methods for preventing the introduction of invasive species and combating the invasive species already present, held in September 2011, the myriad of problems associated with invasive species received extensive discussion. In order to help mitigate the devastating environmental and economic impacts of invasive species, this legislation would provide DEC and the Department of Agriculture and Markets with explicit authority to regulate the sale, purchase, possession, introduction, importation and transport of invasive species and establish penalties for those who violate such regulations. This legislation was signed into law as Chapter 267 of the Laws of 2012.

2012 Super Bills

Each year the Green Panel, consisting of more than a dozen environmental groups, identifies bills of special significance known as "super bills." This year the following Environmental Conservation Committee bills received super bill status:

- **A.3141-A (Sweeney)** – would require the disclosure of harmful chemicals used in children's products and would restrict the sale of products containing certain dangerous chemicals. This legislation passed the Assembly, but the Senate has not yet taken action.
- **A.5346-A (Sweeney)** – would require reductions in greenhouse gas emissions in New York State, with the goal of an 80 percent cut in total emissions by the year 2050. This legislation passed the Assembly, but the Senate has not yet taken action.
- **A.7013 (Sweeney)** – would require drilling waste that meets the definition of hazardous waste, as defined in the Environmental Conservation Law, to be treated as hazardous waste, if such waste meets the definition of hazardous waste in the Environmental Conservation Law. This legislation passed the Assembly, but the Senate has not yet taken action.
- **A.7137-A (Latimer)** – would increase the amount of revenue deposited into the Environmental Protection Fund (EPF) by including a percentage of revenue from unclaimed bottle deposits. This legislation passed the Assembly, but the Senate has not yet taken action.

Environmental Justice (continued from page 2)

Environmental Justice Coordination (A.947 Peoples-Stokes)

Environmental justice is intended to help members of minority and low-income communities make their neighborhoods safer and more liveable. In 1999, DEC received a grant from the United States Environmental Protection Agency to develop a comprehensive environmental justice program. As part of that process, DEC convened an Environmental Justice Advisory Group. In January 2002, the Advisory Group issued its report. In March 2003, DEC adopted a policy on environmental justice and permitting, but took no action on several of the advisory group's recommendations. This legislation would establish an Environmental Justice Advisory Group and Interagency Coordinating Council to implement the recommendations of the advisory group and ensure that State agencies conduct an environmental justice review and address issues related to environmental justice. This legislation passed the Assembly, but the Senate has not yet taken action.

Natural Gas Drilling

The Committee has continued to focus on issues related to natural gas drilling this year. As of the writing of this newsletter, the Department of Environmental Conservation (DEC) is still in the process of reviewing the approximately 65,000 public comments received in response to DEC's proposed 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 Assembly passed the following legislation regarding natural gas drilling:

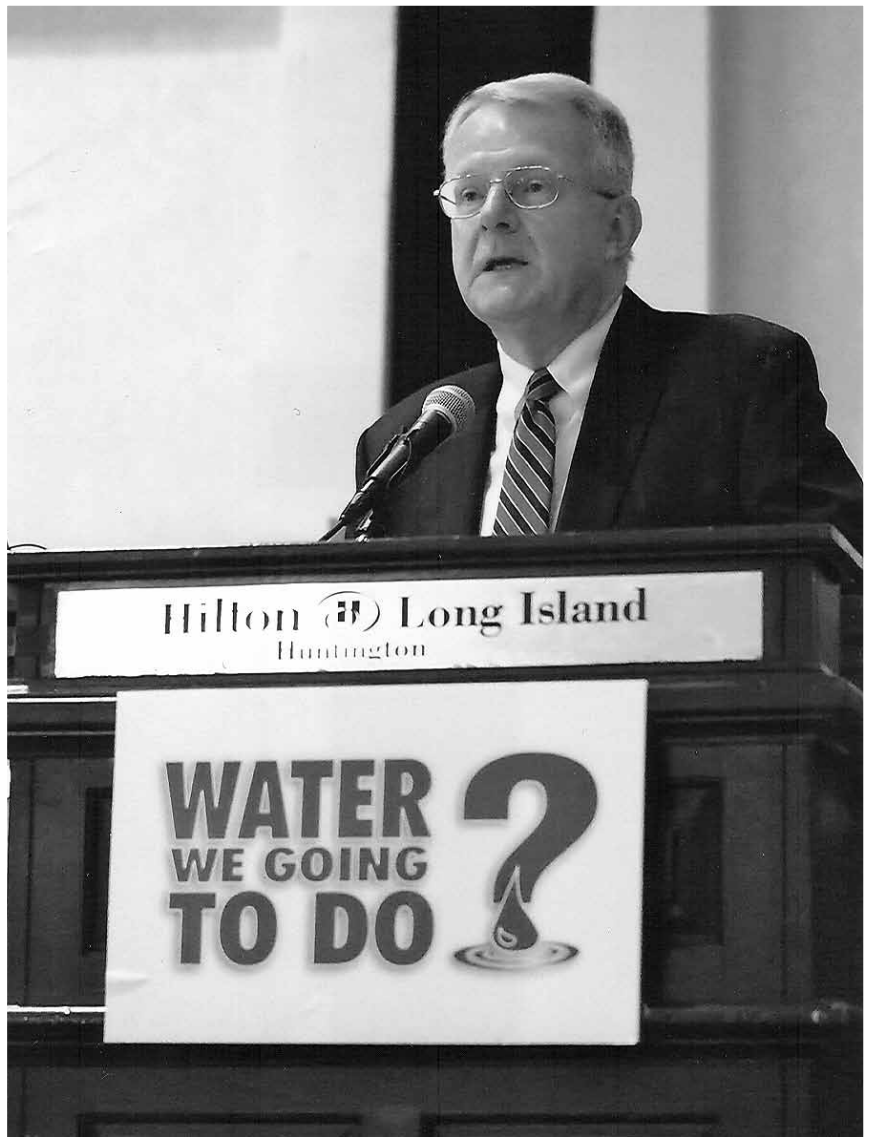
Treatment of Drilling Waste as Hazardous Waste (A.7013 Sweeney)

Currently, the regulations promulgated by the Department of Environmental Conservation that govern the waste produced by the oil and natural gas industries exempt "drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal energy" from being regulated as hazardous waste. This legislation would require waste resulting from oil and gas drilling operations, which meets the definition of hazardous waste, to be treated in a manner consistent with other hazardous wastes. This legislation passed the Assembly, but the Senate has not yet taken action.

Local Zoning Determinations (A.3245 Lifton)

Approximately 100 municipalities in the State have adopted drilling bans. In 1981, the Environmental Conservation Law was amended to provide local governments with the explicit authority to regulate local road use activities associated with natural gas and oil drilling. That legislation also made clear that local governments maintained their authority under the Real Property Tax Law to assess taxes; however, it did not include a specific reference to municipal zoning power. Recently, the ability of local governments to enforce zoning laws was challenged.

The purpose of this bill is to restate that municipalities have the ability to regulate land use generally despite the fact that such land use regulation may have an incidental effect upon the oil and natural gas industries. In other words, municipalities have the power to regulate where activities such as oil and natural gas drilling may take place through their zoning powers but may not enact local laws or ordinances that directly regulate industry or how it operates. This rule was articulated by the Court of Appeals in the case of *Frew Run Gravel Products v. Town of Carroll* in the similar context of mining. Additionally, in the context of natural gas drilling, this rule was recently applied by the Supreme Court, Tompkins County, in its decision in the case of *Anschutz Exploration Corp. v. Town of Dryden*. This legislation passed the Assembly, but the Senate has not yet taken action.



Assemblyman Bob Sweeney was the keynote speaker at a forum regarding Long Island Water Quality issues. Sweeney introduced and passed legislation A. 10584, which would allow state and local governments to work in conjunction with one another to better protect and improve Long Island's water quality.

Health Impact Assessment (A.10234 Rules, Sweeney)

At an Assembly Environmental Conservation Committee hearing held in May 2011, numerous health and academic professionals were critical of DEC's proposed draft SGEIS intended to explore the potential impacts to the environment from gas exploration and development using high-volume hydraulic fracturing and horizontal gas drilling. The health professionals present at the hearing, as well as the New York Nurses Association, indicated that the draft SGEIS did not adequately examine potential health impacts.

This legislation would require one of the State's Schools of Public Health within the State University system to conduct a health impact assessment of gas exploration and development using high-volume hydraulic fracturing and horizontal gas drilling's effects, direct and indirect, on public health, as well as costs to the state's healthcare network. Health Impact Assessments (HIA) are becoming more widely used in formulating government decision making. An HIA utilizes existing data sources such as population data, surveys, risk assessment and literature review to predict the impact on a population from a particular land use decision. This legislation passed the Assembly, but the Senate has not yet taken action.