

NEW YORK STATE  
A S S E M B L Y

SHELDON SILVER, SPEAKER



committee on  
Environmental Conservation  
Robert K. Sweeney, Chairman



Annual Report 2010

December 15, 2010

Honorable Sheldon Silver  
Speaker of the Assembly  
Legislative Office Building, Room 932  
Albany, NY 12248

Dear Speaker Silver:

I am pleased to submit to you the 2010 Annual Report of the Assembly Standing Committee on Environmental Conservation.

The Committee addressed several important issues this year including the proper disposal of electronic waste, limiting chemical exposure for children and addressing issues related to hydraulic fracturing in the oil and gas drilling industry. This report describes the legislative actions and major issues considered by the Committee and sets forth our goals for future legislative sessions.

Under your leadership and with your continued support of the Committee's efforts, the Assembly will continue the work of preserving and protecting New York's environmental resources during the 2011 legislative session.

Sincerely,

A handwritten signature in black ink that reads "Bob Sweeney". The signature is written in a cursive, slightly slanted style.

Robert K. Sweeney, Chairman  
Assembly Standing Committee on  
Environmental Conservation

**2010 ANNUAL REPORT**  
**OF THE NEW YORK STATE ASSEMBLY**  
**STANDING COMMITTEE ON ENVIRONMENTAL CONSERVATION**

**Robert K. Sweeney, Chairman**

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## TABLE OF CONTENTS

<b>COMMITTEE RESPONSIBILITIES .....</b>	<b>1</b>
<b>MAJOR ISSUES OF 2010.....</b>	<b>2</b>
A.    BUDGET HIGHLIGHTS .....	2
B.    ENVIRONMENTAL QUALITY .....	4
C.    HAZARDOUS WASTE MANAGEMENT.....	6
D.    PESTICIDES MANAGEMENT.....	6
E.    AIR QUALITY .....	8
F.    FISH AND WILDLIFE.....	9
G.    ENVIRONMENTAL ENFORCEMENT.....	12
H.    SOLID WASTE MANAGEMENT .....	13
I.    PETROLEUM MANAGEMENT.....	16
J.    WATER CONSERVATION AND QUALITY .....	16
K.    FOREST AND LAND RESOURCES .....	19
L.    CLIMATE CHANGE.....	19
M.    CHEMICALS .....	20
<b>OVERSIGHT AND PUBLIC HEARINGS .....</b>	<b>21</b>
<b>OUTLOOK AND GOALS FOR 2011.....</b>	<b>22</b>
<b>APPENDIX A .....</b>	<b>23</b>
<b>APPENDIX B .....</b>	<b>24</b>
<b>APPENDIX C .....</b>	<b>26</b>

## **COMMITTEE RESPONSIBILITIES**

The Assembly Standing Committee on Environmental Conservation has jurisdiction over legislation affecting State environmental policy. The Committee considers bills amending the Environmental Conservation Law (ECL), Parks, Recreation and Historic Preservation Law, Canal Law, Executive Law, Soil and Water Conservation Districts Law, and Navigation Law.

The primary concerns of the Committee are pollution prevention and control, resource management, and environmental quality issues. The Committee also monitors the activities and enforcement of environmental laws by the New York State Department of Environmental Conservation (DEC). During the 2010 Legislative Session the Committee considered 446 bills, acting favorably on 68, with 21 becoming law.

## MAJOR ISSUES OF 2010

### A. BUDGET HIGHLIGHTS

The State Fiscal Year (SFY) 2010-11 Enacted Budget included over \$1 billion in funding for environmental programs and included monies for water and wastewater infrastructure and recycling programs.

#### **Hazardous Waste Program Fees**

Under current law, hazardous waste generators pay a fee and a surcharge based on the range of waste generated. For example, hazardous waste generators of between 15 and 25 tons, paid fees and surcharges that total \$5,000. The fee structure penalized smaller generators unfairly and resulted in large generators paying relatively lower amounts. The State Budget contained a provision that would change the fee structure to a flat fee of \$130 per ton, while capping the amount paid by the largest generators at \$800,000.

#### **Environmental Protection Fund**

The Environmental Protection Fund (EPF) received \$134 million. The final EPF budget included funding for traditional EPF programs such as waterfront revitalization, municipal recycling, water quality improvement, and farmland protection. In addition, the Assembly ensured that no less than 25 percent of the EPF funds appropriated for local waterfront revitalization and municipal parks projects will be made available for projects in densely populated or low-income communities that are underserved with respect to existing recreational opportunities in the area.

The table on the following page provides a detailed description of the allocations within the individual EPF accounts.

**EPF Funding**  
**\$(in millions)**

<b><u>EPF Category</u></b>	<b><u>Enacted 2010-11</u></b>
<b>Solid Waste Account</b>	<b>11.014</b>
Municipal Recycling	6.639
Pollution Prevention Institute	2.000
Secondary Markets	1.000
Natural Resource Damages	.200
Pesticide Database	.575
Landfill Closure/Gas Management	.600
 <b>Parks, Recreation &amp; Historic</b>	
<b>Preservation Account</b>	<b>53.660</b>
Waterfront Revitalization	12.000
Municipal Parks	13.432
Hudson River Park	3.000
Stewardship	16.228
Zoos, Botanical Gardens, & Aquaria	9.000
 <b>Open Space Account</b>	<b>69.326</b>
Land Acquisition	17.614
Smart Growth	.300
Farmland Protection	10.750
Agricultural Waste Management	.430
Biodiversity	.500
Albany Pine Bush	2.000
Invasive Species	3.800
Long Island Pine Barrens Planning	1.100
Ocean and Great Lakes	5.000
Water Quality Improvement	2.932
Long Island South Shore Estuary Reserve	0.900
Non-point Source Pollution Control	17.000
Soil and Water Conservation Districts	3.000
Finger Lakes - Lake Ontario Watershed	1.000
Hudson River Estuary Management	3.000
 <b>Total</b>	<b>134.000</b>

## **B. ENVIRONMENTAL QUALITY**

### **Cancer Mapping**

**(A.199-C Brodsky; Chapter 77 of the Laws of 2010)**

Scientists are increasingly interested in the link between the environment and public health. This law is a technical amendment to a law enacted in 2008 that requires the Department of Environmental Conservation (DEC), in cooperation with the Health Research Science Board, to collect and develop information on environmental facilities and cancer cases in order to facilitate the development of computer-generated cancer maps.

### **Smart Growth**

**(A.8011-B Hoyt; Chapter 433 of the Laws of 2010)**

This law will encourage development to be located near existing infrastructure by prohibiting certain State agencies from financing any public infrastructure project that does not meet certain criteria. Those criteria include, protection of the State's natural resources; fostering mixed land uses and compact development, downtown revitalization, brownfield development, and affordability of housing in proximity to places of employment, recreation and commercial development.

### **Prohibition on the Sale and Use of Lead Wheel Weights**

**(A.8687-B Rosenthal; Chapter 494 of the Laws of 2010)**

Wheel weights are used to balance vehicle wheels and decrease uneven tire wear. Most wheel weights currently in use are attached at the edge of the wheel's rim with a clip, with an average vehicle containing two such weights per tire. Unfortunately, the majority of wheel weights are composed of significant amounts of lead (an average of 4.5 ounces). Because these weights are clipped on, they are prone to slipping off when vehicles hit potholes or curbs. This results in an estimated 1.6 million pounds of lead being left behind for release into the environment.

This law will establish a timeframe, beginning April 1, 2011, for the elimination of lead-containing wheel weights. Similar legislation has been enacted in California, Maine, Vermont and Washington.

### **Environmental Impact Zone Designation**

**(A.8489-A Peoples-Stokes; Veto 6758)**

This legislation would require DEC to publish a list of "high local environmental impact zones," which would be defined as areas of the State that are most adversely impacted by existing environmental hazards. In compiling the list, DEC would consider potentially adverse environmental impacts within an area, such as releases of toxic chemicals and petroleum discharges, the quantities of emissions, discharges and stored waste authorized by permit, the amount of pesticides sold and used in the area, the proximity of water bodies, and air quality of the area.



**Enhancing Environmental Quality Review**  
**(A.779-A Paulin; Veto 6748)**

This legislation would ensure the consideration of emerging environmental science issues in determining the significance of a project or action under the State Environmental Quality Review (SEQR) process. DEC would be required to update annually any forms or documentation designed to assist applicants and lead agencies in determining whether a proposed project may have a significant impact on the environment. When updating such forms, DEC would be required to consider changes in science and emerging issues in environmental protection, including impacts on sensitive populations, such as children.

**State Environmental Quality Review Act Standing**  
**(A.9480 Sweeney; Passed the Assembly)**

Under current law, individuals and groups may be barred from bringing legal actions that allege violations of the environmental quality review provisions of the Environmental Conservation Law because the injury alleged by such individual does not differ in kind or degree from the injury that would be suffered by the public at large. This legislation would prevent a court from ruling that an individual or group is without standing to bring an action alleging violations of the State Environmental Quality Review Act (SEQRA) based on the fact that the kind or degree of injury suffered by such individual does not differ from those injuries suffered by the public at large.

**Authorization for Citizen Suits**  
**(A.4272 Brodsky; Passed the Assembly)**

The large number of violations of environmental laws, rules, regulations, permits, certificates and orders make it difficult for the State to pursue timely enforcement actions in every instance where such actions may be necessary or appropriate. This bill would permit citizens to bring certain enforcement actions in cases where the State has not acted. Citizen suit provisions are contained in numerous federal environmental statutes, including the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, and the Safe Drinking Water Act.

**Ensuring Equitable Environmental Quality Review**  
**(A.4245 Brodsky; Passed the Assembly)**

This legislation would add a new requirement to environmental impact statement preparation under SEQRA, requiring a detailed statement on whether the action would cause a disproportionate or inequitable burden or a vital indirect impact on a minority community or economically distressed area affected by the action. In addition, the legislation would direct DEC to expand the existing criteria used in the SEQRA process to include consideration of the proposed action's expected burdens on minority communities and/or economically distressed areas.

## **C. HAZARDOUS WASTE MANAGEMENT**

### **Special Assessment Exemption for Schools**

**(A.8558 Sweeney; Chapter 42 of the Laws of 2010)**

As the dangers of exposure to environmental hazards like lead and mercury become well known, more and more schools are undertaking remediation activities. Hazardous waste remediation activities at schools serve to benefit the safety and health of students, faculty and the entire community. This law will encourage schools to conduct remediation efforts in consultation with DEC or the United States Environmental Protection Agency (EPA), by creating an exemption from certain hazardous waste special assessments, fees and surcharges. This exemption would apply only in cases where remediation efforts are overseen by DEC or the EPA.

### **Reimbursement to Fire Companies for Hazardous Spill Response**

**(A.2692-A Sweeney; Veto 6745)**

Many municipal and volunteer fire companies accumulate significant costs in responding to hazardous materials spills; however, current law does not provide a mechanism to allow for recovery of these costs. This legislation would provide reimbursement to fire companies for costs associated with responding to spills of hazardous materials.

### **Re-establishment of the State Superfund Management Board**

**(A.4462-A Brodsky; Passed the Assembly)**

Since its inception in the early 1980s, the Superfund program has successfully cleaned up hundreds of contaminated waste sites. Currently, there are roughly 900 inactive hazardous waste sites statewide. The state Superfund Management Board, charged with recommending funding mechanisms for the Superfund program to the Legislature, expired statutorily in 1999.

This bill would re-establish the state Superfund Management Board to monitor the implementation of the Program in order to protect New Yorkers from the dangers posed by hazardous waste sites for both current and future generations.

## **D. PESTICIDES MANAGEMENT**

### **Prohibition of Pesticides on Athletic Fields**

**(A.7937-C Englebright; Chapter 85 of the Laws of 2010)**

This law will prohibit the use of pesticides on school and day care playgrounds, athletic fields and surrounding areas unless an emergency application has been approved by the Department of Environmental Conservation (DEC), the Department of Health, the county department of health, or the school board.

### **Pesticide Notification**

**(A.5823 Latimer; Chapter 324 of the Laws of 2010)**

Current law permits counties to opt-in to certain pesticide notification provisions; however, the law was silent regarding notification for the occupants of the multiple family dwellings. This law will establish a procedure to ensure that both owners and occupants are more fully informed about upcoming pesticide applications.

### **Repair of Damaged Pesticide Containers**

**(A.11301 Sweeney; Chapter 274 of the Laws of 2010)**

The EPA released its "Pesticide Container Repair Interim Policy" in October 2009, to address the environmental concerns associated with the unnecessary disposal of consumer pesticide products. According to the EPA, approximately five million pounds of consumer pesticide products may become waste each year in the United States due to damage to the containers before the pesticides can be sold by retailers.

This law will allow New York retailers to implement a "minor repair program" for damaged pesticide containers. Such programs would need to be approved by the EPA and demonstrate that product integrity is ensured. Repaired containers would be prohibited from having any appreciable loss of contents or change in the net contents as indicated on the label, and the physical characteristics of the product would be required to remain unchanged, with no dampening or hardening as a result of contact with water or other liquids.

### **Phasing Out the Use of Pesticides by the State**

**(A.5848-B Brodsky; Passed the Assembly)**

New York State agencies, authorities and their contractors use pesticides that can contaminate ground and surface water, cause reproductive or developmental defects, and may be toxic and/or carcinogenic to humans. This legislation would provide for the implementation of a policy to discontinue the use of pesticides by all state agencies, public authorities, and public benefit corporations and would require the adoption of a pest control policy that relies substantially on non-chemical pest controls. Restriction of pesticide use by the State will not only prevent the harmful environmental and health effects of these chemicals but may also save taxpayers money.

### **State Model Pesticide Policy**

**(A.8785 Zebrowski; Passed the Assembly)**

This legislation would require DEC, in consultation with the Commissioners of the State Education Department and the Department of Health, to develop a model pesticide policy that includes physical, biological and mechanical control methods as well as integrated pest management techniques.

## **E. AIR QUALITY**

### **Sulfur Content of Heating Oil**

**(A.8642-A Sweeney; Chapter 203 of the Laws of 2010)**

When number two home heating oil is burned, sulfur dioxide, a known greenhouse gas, is released into the atmosphere. Studies have shown that reducing the sulfur content of home heating oil is an important step in curbing greenhouse gas emissions. Exhaust particles formed by using home heating oil can exacerbate allergies, trigger asthma attacks, decrease lung function, cause heart attacks and shorten life expectancy. This law will prohibit the use of number two heating oil with a sulfur content in excess of 15 parts per million in residential, commercial or industrial heating after July 1, 2012, and will authorize the Governor to suspend temporarily this requirement by Executive Order, upon a determination by the New York State Energy and Research Development Authority that there is an insufficient supply of the cleaner fuel.

### **Enhancing Public Notification of High Levels of Air Emissions**

**(A.4190 Ramos; Passed the Assembly)**

In the past, major sources of air pollution have exceeded emissions limits while the public was left unaware of the potential health risks of such pollution. One such instance occurred during the winter of 2002-03 when power plants operated by the Power Authority of the State of New York in New York City and Long Island violated emissions limits and were subsequently fined by DEC. The public was not informed of the violations and, thus, was unaware of the increased risk of health hazards associated with high levels of emissions, which included ammonia, carbon monoxide and nitrous oxide.

This legislation would require the owner or operator of an emission source to provide notification within 24 hours to DEC and the public in instances where an emissions limit has been exceeded for a second or subsequent time. DEC would be required to solicit from the Department of Health a study identifying the health implications of such emissions. The study would be required to be completed within 90 days of the emission violation notification and would be made available to the public. Finally, the legislation would provide that in cases where a settlement of air operating permit violations includes an environmental benefit project, such project should be undertaken within the municipality where the violation occurred.

## **F. FISH AND WILDLIFE**

### **Authorization for the Use of Crossbows for Hunting** **(A.924-E DelMonte; Chapter 483 of the Laws of 2010)**

In states that allow the use of crossbows, including Georgia, Michigan and Ohio, crossbows appear to be an important recruitment and retention tool for hunters. Many people start out hunting with crossbows and eventually switch to longbows or compound bows. Currently, crossbows are not permitted in New York. This law will permit, until, December 31, 2012, the use of crossbows for hunting purposes.

### **Fishing Vessel Length** **(A.2294 Thiele; Chapter 485 of the Laws of 2010)**

In 1997, a law was enacted to limit New York State fishing permits only to vessels 70 feet in length or less. The law was enacted at a time when many traditional offshore fishing areas were being closed or restricted to very short seasons and was intended to prevent large out-of-state vessels from obtaining permits. The law did not apply to currently-licensed vessels over 70 feet, but no provisions were made to allow for the replacement of those vessels. As a result, under current law, if a fisherman's boat is lost or sold, the new boat must be 70 feet or less. Federal law allows owners of offshore vessels to replace their existing vessel with one that is up to ten percent longer than the old one and still keep their permit for fishing in federal waters. This law will provide the same authority under New York State law.

### **Identification of Traps** **(A.5956 Magee Chapter 279 of the Laws of 2010)**

This law will permit trappers to label traps with their assigned identification number, rather than their names and addresses. Identification number could only be used, however, if the accompanying names and addresses were available to state, county and municipal law officers.

### **Management of Migratory Bird Seasons** **(A.8915 Sweeney Chapter 84 of the Laws of 2010)**

Annual migratory game bird hunting regulations, including season dates, are set in accordance with federal regulations. Historically, the final federal regulations have not been issued until late August or early September each year. There is no expectation that this timeline will change because it is driven by the annual waterfowl breeding surveys. As a result, DEC is often forced to issue emergency regulations to conform State migratory game bird hunting regulations to the federal regulations in time for opening day. This law will allow seasons to be set automatically in New York based on the final federal regulations, rather than requiring DEC to issue emergency regulations annually to establish the migratory game bird seasons. DEC would retain the option to issue its own regulations, if it chooses to do so, provided that they are no less restrictive than the federal regulations.

**Membership of the Marine and Coastal District Conservation Board**  
**(A.8560-B Sweeney Veto 6777)**

The Marine and Coastal District of New York Conservation, Education and Research Board currently has only three members. With the recent enactment of a marine fishing license, the board will have significantly more responsibilities. This legislation would expand the Board from three to six members, giving the Board additional resources to fulfill their duties. In addition, this legislation would clarify that the license year for the marine fishing license began on January 1<sup>st</sup>, 2010.

**Lifetime Hunting and Fishing License Transfers**  
**(A.11312 Rules (Sweeney); Chapter 507 of the Laws of 2010)**

Lifetime sporting licenses are a privilege many recreational enthusiasts enjoy for their simplicity, permanence, and value. Purchasing a lifetime license signifies a lifelong commitment to conservation and the outdoors. This law will allow a lifetime license to be transferred in cases where the purchaser dies within the first year and at any time following the death of military personnel in combat.

**Prohibition on the Mass Release of Helium Balloons**  
**(A.709 Kavanagh; Passed the Assembly)**

Releasing balloons may seem like a harmless activity; however, the litter caused by balloons has a significant impact on the environment and on marine life. Marine life is especially susceptible since many of the balloons come down over the ocean and the similar appearance of balloon debris to jelly fish causes them to be eaten by marine life. Animals who consume balloons can choke or be prevented for absorbing nutrients, resulting in starvation. Balloons have been found in dead sea turtles and whales in the Atlantic and Gulf coasts. Several states have passed legislation limiting the release of helium balloons. This legislation would prohibit individuals or entities from releasing more than 25 helium balloons per day. Balloons for scientific experiments and hot air balloons would be excluded from the prohibition.

**Prohibition on the Taking of Certain Seahorses**  
**(A.2581 Englebright; Passed the Assembly)**

Long Island's south shore estuaries provide habitat to the northern or lined seahorse (*Hippocampus Erectus*) during the warmer months of the year; however, little is known about their lifecycle or their total population. The taking of seahorses is unregulated currently, but there is a growing market for their use in aquaria, ornamental displays, curios and traditional Asian medicine. This legislation would prohibit the taking of northern or lined seahorses for anything other than educational or scientific purposes.

**Striped Bass Management**  
**(A.4112 Brodsky; Passed the Assembly)**

Legislation passed in 2000, required DEC to appoint a Temporary Advisory Committee to issue recommendations on the commercial management of striped bass in the Hudson River. The Advisory Committee did not reach a consensus on re-opening the fishery, reflecting concerns about the potential depletion of the striped bass if the fishery was re-opened to commercial fishing. The lack of consensus was also based on concerns about the potential loss in revenue generated by the recreational striped bass angling community who travel across the state and the nation to fish for “stripers.” In recognition of these and other concerns, this legislation would prohibit the taking of striped bass from the Hudson River for commercial purposes.

**Terms of Office for Fish and Wildlife Management Board Members**  
**(A.7117 Reilly; Passed the Assembly)**

Currently, members of the Fish and Wildlife Board can serve three, two-year terms before being required to leave the board; however, many members of the Board have asked to serve longer. Board members are not compensated for their service. This legislation would eliminate term limits for members of the Fish and Wildlife Board.

**Snapping Turtle Management**  
**(A.11341 Rules (Magee); Passed the Assembly)**

Currently, turtles may only be taken by longbow or gun. This legislation would permit snapping turtles to be taken by individuals with a trapping license.

**Increased Information Regarding Fishing Laws and Restrictions**  
**(A.6619 Cook; Passed the Assembly)**

Impairment of water quality has prompted the New York State Department of Health to issue numerous fish advisories for recreational anglers. This bill would increase the amount and availability of information available to the angling community including: copies of fish and wildlife laws at all locations where fishing licenses are offered, fishing advisories and notices at any state boat launch servicing areas identified in such advisories and notices, distribution of notices and advisories to participants of a sport fishing contest held on the body of water where the restrictions are in place, and, copies of any fishing notices and advisories to be delivered to surrounding sport-fishing businesses and industries.

## **G. ENVIRONMENTAL ENFORCEMENT**

### **Improving New York State's Compliance With Environmental Laws** **(A.561-A Kavanagh; Passed the Assembly)**

Among the largest polluters in New York State is the State itself. This bill seeks to remedy this problem by requiring DEC to impose penalties upon any State agency that fails to complete a remediation plan within the timeframe required by law. In addition, this legislation would require public hearings and allow for action against agencies for failure to develop and complete remedial plans.

### **Enhanced Public Notice Requirement** **(A.838 Dinowitz; Passed the Assembly)**

Present law regarding DEC's processing of permit applications requires publication in newspapers having "general circulation in the area in which the project is proposed to be located." This legislation would modify those requirements to include publication in the Environmental Notice Bulletin (ENB) and in non-English publications where the primary language of 25 percent of the population is not English. In addition, this legislation would provide the public with access to correspondence between applicants and DEC and information about pre-application conferences or meetings.

### **Disclosure of Environmental Compliance** **(A.4110-A Brodsky; Passed the Assembly)**

Persistent or significant violators who commit breaches of the law directly relating to their ability to carry out the authorized activities of the Environmental Conservation Law should be subject to increased scrutiny before having a permit renewed or obtaining a new permit. In addition, if a permit is issued to a prior violator, it may be appropriate to impose strict reporting or monitoring conditions on such permits, or to require an environmental monitor on-site. This legislation would require increased disclosure of an environmental conservation permit applicant's record of compliance with state, federal and foreign environmental regulations.



**Environmental Justice Advisory Group**  
**(A.8490-A Peoples-Stokes; Passed the Assembly)**

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 this process, the Department convened an environmental justice advisory group. In January 2002, the advisory group issued its report. In March 2003, the Department 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 receive an environmental justice review and address environmental justice.

**Disqualification of Stand-By Contractors**  
**(A.2477 Pretlow; Passed the Assembly)**

Current law authorizes the use of stand-by contractors in cases where it is not practical to solicit bids, including emergency response to hazardous spills. This same law also includes guidelines for qualifying stand-by contractors; however, it does not include provisions for disqualifying contractors. This legislation would require the Department of Environmental Conservation to establish guidelines for the disqualification of stand-by contractors. Such guidelines would include past performance, reasonableness of price charged in past contracts, negligence or malfeasance and the conviction of a crime reflecting upon the honesty, integrity or capability of a contractor.

**H. SOLID WASTE MANAGEMENT**

**Electronic Waste Recycling**  
**(A.11308 Budget; Chapter 99 of the Laws of 2010)**

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. As new devices are purchased, the replaced equipment frequently ends up in a landfill where its chemical components can contribute to pollution. There are direct environmental and public health consequences for New York State residents and workers from the improper handling and disposal of electronic waste, but prior to the enactment of this legislation, there was no comprehensive system for managing the growing problem of electronic waste in the State.

This law will create an electronic recycling and reuse program whereby manufacturers of certain covered electronic equipment will be responsible for the collection, handling and recycling or reuse of returned electronic equipment. Covered electronic equipment includes computers, televisions, and printers. Manufacturers that fail to meet certain collection standards will be subject to penalties.

**Recycling Rechargeable Batteries**  
**(A.6813-D Kavanagh; Chapter 562 of the Laws of 2010)**

Although rechargeable batteries can reduce waste and energy use because of a longer life span than non-rechargeable batteries, they can contain toxic metals, such as cadmium. When not properly disposed, rechargeable batteries can pollute the environment. This law will establish a statewide recycling program and prohibit the disposal of rechargeable batteries in a landfill.

**Siting of Radioactive or Hazardous Waste Sites Near Schools**  
**(A.5176 Lentol; Veto 6813)**

This legislation would prohibit the siting of radioactive or hazardous waste disposal or transfer stations within 1,500 feet of the boundaries of school property.

**Proper Drug Disposal**  
**(A.11334 Rules (Englebright); Passed the Assembly)**

In 2008, legislation was enacted, Chapter 625, that required pharmacies to post information concerning the proper disposal of prescription and over the counter drugs. In addition, Chapter 625 authorized the creation of a drug disposal demonstration program; however, the authorization expires on December 31, 2010. This legislation would extend, until December 31, 2012, the drug disposal demonstration program authorization.

**Compostable or Recyclable Food Service Ware**  
**(A.428-A Kavanagh; Passed the Assembly)**

Styrofoam is a liquid hydrocarbon that is manufactured commercially from petroleum. Each year Americans throw away 25,000,000 Styrofoam cups, an amount equal to 1,369 tons of Styrofoam every day. A single Styrofoam cup can take up to 500 years to disintegrate fully. Styrofoam is very difficult to recycle due to its light weight and low scrap value. It is generally not accepted in curbside programs, is seldom able to be reused, and takes up a considerable amount of space in landfills. In addition, such materials can have serious impact on human health, wildlife, and the aquatic environment because the product breaks down and can clog waterways, or be mistaken for food by wildlife. This legislation would require state agencies and municipalities to use compostable or recyclable food service ware made from material other than polystyrene foam unless there is no viable alternative product of comparable cost.

**Enhancing Statewide Recycling Efforts**  
**(A.1319 Colton; Passed the Assembly)**

This legislation would enhance statewide recycling efforts by clarifying the obligations of waste haulers regarding the handling of recyclable materials and specifying the materials to be separated for recycling. Specifically, the legislation would prohibit private and municipal waste haulers from delivering recyclable materials to landfills, incinerators or transfer stations. Also, the legislation would prohibit the acceptance of recyclable materials for disposal by operators of incinerators or landfills. In addition, the commingling of recyclable materials with other solid waste would be prohibited. Finally, the legislation would specify which materials must, at a minimum, be separated for recycling pursuant to a local recycling law.

**Enhancing Solid Waste Management**  
**(A.5765 Sweeney; Passed the Assembly)**

This legislation would require an applicant who applies for a permit to construct a solid waste management facility to demonstrate that the facility would be consistent with the objectives of the local solid waste management plan of the planning unit where the proposed facility would be sited, as well as the plans of the planning units from which the solid waste would be received. In addition, this legislation would change the definition of solid waste management facility to include recyclable waste handling and recovery facilities.

**Recycling as a Component of Solid Waste Management Plans**  
**(A.10350-A Jeffries; Passed the Assembly)**

Currently, local solid waste management plans are required to contain information about a variety of factors including availability of solid waste management programs and facilities and timetables for implementation; however, plans are not required to include consideration of recycling, an integral component of solid waste reduction. This legislation would require solid waste management plans for New York City to include adequate trash and recycling receptacles in commercial zones and public recreational areas.

## **I. PETROLEUM MANAGEMENT**

### **Local Enforcement of Bulk Petroleum Enforcement** **(A.10888 Paulin; Chapter 543 of the Laws of 2010)**

Currently, five county health departments, Cortland, Nassau, Rockland, Suffolk, and Westchester, have authority to enforce the State's Petroleum Bulk Storage Law. Because the county's enforcement is conducted pursuant to the Public Health Law, there are different penalties for violations. The Public Health Law provides for a maximum penalty of \$1,000 per violation, however, the maximum penalty that can be assessed under the Environmental Conservation Law for the same violation is \$37,500. As a result, if a party violates a regulation in one of the five delegated counties, it would be subject to a maximum fine of \$1,000, whereas if the party violates the same regulation outside those five counties, it would be subject to a maximum fine of \$37,500. This law will align the maximum penalties that may be assessed by the five counties with the rest of the State.

### **Installation of Spill Detection Equipment** **(A.3837 Lentol; Passed the Assembly)**

This legislation would require operators of major petroleum facilities to implement plans and to install equipment for the prompt detection of petroleum discharges.

### **Accident Prevention Planning for Petroleum Facilities** **(A.3892 Lentol; Passed the Assembly)**

This legislation would require comprehensive accident prevention planning for the prevention of petroleum spills and leaks in major petroleum facilities located in New York City.

## **J. WATER CONSERVATION AND QUALITY**

### **Electronic Filing of Wetland Maps** **(A.1976-A Lifton; Chapter 16 of the Laws of 2010)**

The Freshwater Wetlands Act requires DEC maps to be filed with local governments in order to be made available for public inspection. For such maps to be official, they must be distributed in paper format. This legislation would permit local governments to request that the wetlands regulatory maps be filed electronically.

**Phosphorus Content of Certain Products**  
**(A.8914-B Sweeney; Chapter 205 of the Laws of 2010)**

Phosphorus enters the environment in many ways - wastewater treatment plants, defective septic systems, agricultural runoff, fertilizer, manure, decomposing leaves, and urban/suburban runoff all contribute phosphorus to the environment. Although phosphorus impacts water bodies across the State, its impact is greatest on water bodies located in highly developed areas. 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. This law will prohibit the use of phosphorus in dishwasher detergents and limit its use in lawn and turf fertilizers, thereby reducing the level of phosphorus runoff that is discharged to waters of the State.

**Seagrass Protection Act**  
**(A.10269-B Sweeney; Veto 6779)**

New York seagrass beds are a vital habitat and nursery for numerous commercially, recreationally and ecologically important fish and shellfish species. Seagrass beds used to be prevalent, reaching an estimated 200,000 acres in 1930. Today, only approximately 21,803 acres remain. This legislation would provide DEC with specific authority to regulate seagrass areas, including restricting mechanical equipment and limiting pesticides. Many of the provisions contained in the legislation were recommended by the NYS Seagrass Taskforce.

**Protecting the State's Freshwater Wetlands**  
**(A.6363 Sweeney; Passed the Assembly)**

In 2006, the United States Supreme Court ruled that the federal government does not have jurisdiction over isolated wetlands. In light of this ruling, estimates from the Environmental Protection Agency and The Army Corps of Engineers suggest that at least 20 percent and possibly 50 percent of existing wetlands, constituting millions of acres nationwide, are now unprotected. In New York State, estimates are even higher, with potentially as much as 80 percent of the wetlands currently being unregulated and unprotected. While all of New York's neighboring states already have the regulatory authority to step in and regulate the wetlands that the Corps of Engineers formerly oversaw, DEC is currently limited to regulating mapped wetlands of special value or a size greater than 12.4 acres. This legislation would expand DEC's regulatory authority to wetlands over one acre in size or of significant local importance and remove the existing requirement that lands or waters be included on the freshwater wetlands map in order to be considered wetlands.

**Restoration of Areas Adjacent to Wetlands**  
**(A.4807 Sweeney; Passed the Assembly)**

The condition of areas adjacent to a wetland can have a profound effect on the health and viability of the wetland itself, and restoration of those areas can be essential to the restoration of a damaged wetland because adjacent areas act as buffers to protect the abutting wetland from deterioration. In the 2005 case of *Bradley Corporate Park v. Crotty*, DEC's order requiring the restoration of adjacent areas as well as the damaged wetlands was challenged. The Appellate Division rejected the argument. This legislation would strengthen wetland enforcement provisions to: increase penalties for wetland violations; specify the conditions under which DEC can issue a cease-and-desist order and require that a violator may be directed to restore the area adjacent to the freshwater wetland as well as the wetland itself.

**Protecting Residents with Private Wells**  
**(A.4557-A Jaffee; Passed the Assembly)**

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, requiring 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.

**Neighbor Notification of Proposed Wetland Development**  
**(A.2654 Cusick; Passed the Assembly)**

Current law requires any person proposing to conduct a regulated activity upon a wetland to file an application. Notice of such applications is filed with municipalities which then provide notice to adjacent land owners. This legislation would expand the notice requirements to include publication in a newspaper with general circulation and, in municipalities with a population of one million or more, notice to all property owners within 1,000 feet of the watershed.

**Connecticut-New York Bi-State Long Island Sound Committee**  
**(A.3950 Alessi; Passed the Assembly)**

Chapter 690 of the Laws of 1988, created the New York Bi-State Long Island Sound Committee; however, the legislation cannot become effective until both states adopt identical laws. Connecticut amended their legislation to: rename the Committee; include consideration of public enjoyment and protection of natural resources; increase reporting requirements and authorize the Committee to make recommendations regarding uniform signs indicating coastal access to the Long Island Sound. This legislation would make conforming amendments to the provisions of law relating to the Connecticut-New York Bi-State Long Island Sound Committee.

## **K. FOREST AND LAND RESOURCES**

### **Temporary Moratorium on Hydraulic Fracturing** **(A.11443 Rules (Sweeney); Veto 6837)**

This bill would suspend, until May 15, 2011, the issuance of new permits for natural gas or oil drilling involving hydraulic fracturing.

## **L. CLIMATE CHANGE**

### **Reporting of Greenhouse Gas Emissions by State Agencies** **(A.3419 Sweeney; Veto 6747)**

State government is one of the greatest energy consumers in the state. This legislation would require State agencies to calculate the amount of greenhouse gases emitted as a result of agency operations. Also, agencies would be required to describe actual emissions, describe steps taken to reduce emissions and reduce future emissions.

### **Greenhouse Gas Emission Calculator** **(A.3421 Sweeney; Veto 6748)**

Reducing greenhouse gases will help decrease the effects of global warming, preserve resources and help protect the environment. This legislation would require DEC to establish and promote on its website a method for individuals and businesses to calculate their greenhouse gas emissions and offer recommendations on steps to reduce such emissions. In addition, the legislation would require DEC to develop best management and procurement practices for State agencies to reduce their greenhouse gas emissions.

### **Greenhouse Gas Emission Limits** **(A.7572-A Sweeney; Passed the Assembly)**

Scientific studies, including those from the Union of Concerned Scientists and Intergovernmental Panel on Climate Change (2007 Nobel Peace Prize Winner), have concluded that global warming poses a serious threat. The continued emission of greenhouse gases will increase the Earth's temperature, leading to rising sea levels, threats to public welfare and other ecological changes, dramatically affecting fisheries, wildlife and natural resources. This legislation would authorize DEC to establish greenhouse gas emission reporting requirements and, beginning in 2014, 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.

## **M. CHEMICALS**

### **Bisphenol A Phase Out**

**(A.6919-D Englebright; Chapter 280 of the Laws of 2010)**

Studies conducted by the United States Centers for Disease Control have found that young children are especially susceptible to the effects of Bisphenol A (BPA). Other scientific studies have concluded that BPA is an endocrine disrupter that can have negative health consequences, including the early onset of puberty. This law will prohibit the sale of the following products for children three and under containing BPA: beginning December 1, 2010, child care products including bottles, pacifiers and sippy cups; beginning December 1, 2011, toys; and, beginning December 1, 2012, food and beverage containers. Beverage container manufacturers will be permitted to seek a one-year waiver if DEC determines that there are no safe BPA alternatives.

### **DecaBDE Ban**

**(A.7573-A Sweeney; Passed the Assembly)**

Chapter 387 of the Laws of 2004 prohibited the manufacture, process, or distribution of two forms of flame retardants commonly known as pentaBDE and octaBDE, due in part to research suggesting that they cause permanent neurological and developmental damage. A third flame retardant, decabrominated diphenyl ether (decaBDE), has become the most widely used of the three formulations, exceeding 60,000 metric tons worldwide with 40 percent of the use occurring in North America. DecaBDE has been found to accumulate in dust and food and its presence has been noted in blood and breast milk samples. In addition, it has been shown to pose the same public health dangers as those of its banned counterparts and when it breaks down, either by natural environmental processes or when metabolized, it forms by-products that are predominantly found in the now prohibited pentaBDE and octaBDE. This legislation, which would codify a recent agreement between the United States Environmental Protection Agency and chemical manufacturers, would phase out the manufacture and use of DecaBDE by 2013.



## **OVERSIGHT AND PUBLIC HEARINGS**

In 2010, the Committee continued its oversight functions by holding a hearing to review DEC's implementation of programs funded through the SFY 2010-11 State Budget, staffing levels and the overall impact of the Budget on the State's environmental programs.

### **Budget Oversight**

DEC is responsible for conserving and improving New York's natural resources, managing the State's fish, wildlife and marine resources, and controlling water, land and air pollution to enhance the health, safety and general welfare of the State's residents. The State Fiscal Year (SFY) 2010-11 State Budget provides over \$1 billion for the environment. On November 18<sup>th</sup>, in Albany, the Committee held a hearing to review DEC's implementation of programs funded through the SFY 2010-11 State Budget, staffing levels and the overall impact of the Budget on the State's environmental programs.

## **OUTLOOK AND GOALS FOR 2011**

The Committee looks forward to the 2011 Legislative Session. The Committee will continue its history of environmental advocacy and achievement by working to enact sound, workable environmental policies. Also, the Committee will continue to work toward its goal of developing a progressive approach to water quality issues. The Committee will consider legislation to protect wetlands, address sewer overflow issues, reduce the potential for surface and groundwater contamination from septic systems and ensure safe drinking water for homeowners who utilize private wells. Finally, the Committee will continue to work to protect the State's natural resources and the long-term health and abundance of New York's fish and wildlife populations.

**APPENDIX A**  
**2010 SUMMARY SHEET**

**Summary of Action on All Bills Referred to the Committee on**  
**ENVIRONMENTAL CONSERVATION**

<b>Final Action</b>	<b>Assembly <u>Bills</u></b>	<b>Senate <u>Bills</u></b>	<b><u>Total</u></b>
<b><u>Bills Reported With or Without Amendment</u></b>			
To Floor; Not Returning to Committee (Favorable)	0	0	0
To Floor; Recommitted and Died	9		7
To Ways & Means	15	0	15
To Codes	37	0	37
To Rules	5	0	5
To Judiciary	0	0	0
<b>Total</b>	<b>68</b>	<b>0</b>	<b>68</b>
<b><u>Bills Having Committee Reference Changed</u></b>			
To Governmental Operations	1	0	1
<b>Total</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b><u>Senate Bills Substituted or Recalled</u></b>			
Substituted		7	7
Recalled		2	2
<b>Total</b>		<b>9</b>	<b>9</b>
<b><u>Bills Defeated in Committee</u></b>	0	0	0
<b><u>Bills Held for Consideration With a Roll-Call Vote</u></b>	30	0	30
<b><u>Bills Never Reported or Held in Committee</u></b>	314	16	330
<b><u>Bills Having Enacting Clause Stricken</u></b>	8	0	8
<b><u>Motion to Discharge Lost</u></b>	0	0	0
<b>TOTAL BILLS IN COMMITTEE</b>	<b>421</b>	<b>25</b>	<b>446</b>
<b>TOTAL NUMBER OF COMMITTEE MEETINGS HELD</b>		<b>9</b>	

## APPENDIX B

### ENVIRONMENTAL CONSERVATION BILLS THAT PASSED BOTH HOUSES

<b>Assembly Bill</b>	<b>Sponsor</b>	<b>Title</b>	<b>Final Action</b>
A.199-C	Brodsky	Amends the cancer incidence and environmental facility maps project	Chapter 77
A.779-A	Paulin	Directs DEC to periodically update the model environmental impact assessment form	Veto 6740
A.924-E	DelMonte	Authorizes the use of crossbows for hunting	Chapter 483
A.1976-A	Lifton	Authorizes wetland regulatory maps to be filed electronically	Chapter 16
A.2294	Thiele	Relates to the taking of fish for commercial purposes	Chapter 485
A.2692-A	Sweeney	Provides reimbursement to fire companies for costs incurred in hazardous waste clean ups	Veto 6745
A.3419	Sweeney	Requires state agencies to report on greenhouse gas emissions as a result of their operations	Veto 6747
A.3421	Sweeney	Requires DEC to establish a method for individuals and businesses to calculate their greenhouse gas emissions	Veto 6748
A.5176	Lentol	Prohibits radioactive or hazardous waste transfer stations from being sited near school property.	Veto 6813
A.5823	Latimer	Requires commercial pesticide applicators to provide notice to residents of multiple family dwellings prior to pesticide application	Chapter 324
A.5956	Magee	Permits traps to contain the assigned identification number of the trapper	Chapter 279
A.6813-D	Kavanagh	Provides for the recycling of rechargeable batteries	Chapter 562
A.6919-D	Englebright	Prohibits the manufacture, distribution and sale of child care products containing Bisphenol A	Chapter 280
A.7937-C	Englebright	Prohibits the use of certain toxic chemicals for lawn maintenance at schools and day care centers	Chapter 85
A.8011-B	Hoyt	Establishes the "State Smart Growth Public Infrastructure Policy Act"	Chapter 433

A.8256	Koon	Relates to generic environmental impact statements	Chapter 122
A.8489-A	Peoples-Stokes	Requires the Commissioner of DEC to publish a list of high local environmental impact zones	Veto 6758
A.8558	Sweeney	Creates an exemption from certain hazardous waste assessments for elementary or secondary schools	Chapter 42
A.8560-B	Sweeney	Increases the membership of the Marine and Coastal District of New York Conservation Education and Research Board	Veto 6777
A.8642-A	Sweeney	Requires a reduction in the sulfur content of heating oil	Chapter 203
A.8687-B	Rosenthal	Prohibits the sale and use of wheel weights containing lead	Chapter 494
A.8914-B	Sweeney	Relates to phosphorus in household cleaning products and lawn fertilizer	Chapter 205
A.8915	Sweeney	Relates to the management of migratory game birds	Chapter 84
A.9096	Crouch	Designates the Bushkill stream as an inland waterway	Chapter 184
A.9237	Fields	Designates Lake Ronkonkoma as an inland waterway	Chapter 9
A.10269-B	Sweeney	Establishes the "Seagrass Protection Act"	Veto 6779
A.10888	Paulin	Relates to local enforcement of petroleum bulk storage laws	Chapter 543
A.11301	Sweeney	Permits certain repairs to damaged pesticide containers prior to sale	Chapter 274
A.11312	Rules (Sweeney)	Allows for the transfer of lifetime hunting, fishing and trapping licenses under certain circumstances	Chapter 507
A.11443-B	Rules (Sweeney)	Suspends, until May 15, 2011, the issuance of permits for oil and gas drilling involving hydraulic fracturing.	Veto 6837

## APPENDIX C

### ENVIRONMENTAL CONSERVATION BILLS THAT PASSED THE ASSEMBLY ONLY

<b>Assembly Bill</b>	<b>Sponsor</b>	<b>Title</b>
A.428-A	Kavanagh	Requires State agencies and municipalities to use compostable or recyclable food service ware made from material other than polystyrene foam
A.561-A	Kavanagh	Imposes penalties upon agencies that fail to complete a remediation plan
A. 709	Kavanagh	Prohibits the mass release of helium balloons
A. 769	Gunther	Directs the Department of Environmental Conservation, in consultation with federal agencies and the New York City Department of Environmental Protection, to review the Hudson River New York City Drinking Water Supply System
A. 779-A	Paulin	Requires DEC to periodically update State Environmental Quality Review Act forms and documentation
A.838	Dinowitz	Enhances the public notice provisions of DEC's uniform procedures
A.1319	Colton	Establishes new standards for the disposal and source separation of recyclable materials
A.2477	Pretlow	Requires DEC to establish additional criteria for the selection of stand-by contractors
A.2581	Englebright	Prohibits the commercial taking of northern or lined seahorses
A.2654	Cusick	Requires notice to neighboring landowners of the intention to develop wetland areas
A.3837	Lentol	Requires the installation of equipment for the detection of petroleum discharges
A.3892	Lentol	Requires comprehensive planning for the prevention of petroleum spills and leaks
A.3950	Alessi	Makes conforming amendments related to the Connecticut-NY Bi-State Long Island Sound Committee
A.4110-A	Brodsky	Requires increased disclosure of an environmental permit applicant's record of compliance with state, federal, and foreign environmental regulations
A.4112	Brodsky	Prohibits the taking of striped bass from the Hudson river for commercial purposes

<b>Assembly Bill</b>	<b>Sponsor</b>	<b>Title</b>
A.4190	Ramos	Includes air pollution notice conditions as part of source operating permits issued pursuant to the federal Clean Air Act
A.4245	Brodsky	Makes provisions regarding the siting of environmental facilities among minority or economically-distressed communities
A.4272	Brodsky	Grants private citizens standing in civil enforcement actions for violations of the Environmental Conservation Law
A.4462-A	Brodsky	Re-establishes, until June 1, 2019, the State Superfund Management Board as the State Remedial Program Oversight Board
A.4557-A	Jaffee	Establishes testing requirements for private water wells upon property sales or transfers
A.4807	Sweeney	Strengthens the enforcement provisions for freshwater wetland violations
A.5765	Sweeney	Establishes additional requirements for solid waste management facilities
A.5848-B	Brodsky	Provides for the phase-out of pesticides on state property and for the development of pest management plans by state agencies
A.6363	Sweeney	Provides DEC with increased regulatory authority over freshwater wetlands
A.6619	Cook	Establishes additional requirements for the dissemination of information regarding fishing laws and restrictions
A.7117	Reilly	Eliminates term limits for regional Fish and Wildlife Management Board members
A.7572-A	Sweeney	Requires DEC to establish limits on greenhouse gas emissions
A.7573-A	Sweeney	Restricts the use of the brominated flame retardant decabromodiphenyl (decaBDE)
A.8490-A	Peoples-Stokes	Creates a permanent environmental justice advisory group
A.8785	Zebrowski	Requires DEC to establish a model pesticide policy
A.9480	Sweeney	Clarifies when individuals have standing to bring actions alleging violations of the State Environmental Quality Review Act (SEQRA)
A.10158	Kolb	Allows for rifle hunting in portions of Ontario County
A.10160-B	Sweeney	Establishes a procedure for manufacturer collection of mercury-containing thermostats

<b>Assembly Bill</b>	<b>Sponsor</b>	<b>Title</b>
A.10350-A	Jeffries	Requires New York City's solid waste management plans to include consideration of recycling and trash receptacles in high traffic areas
A.10775	Burling	Allows rifle hunting in Wyoming County
A.11334	Rules (Englebright)	Extends the authorization for the drug disposal demonstration program
A.11341	Rules (Magee)	Authorizes trapping licenses to include the taking of snapping turtles
A.11483	Rules (Kavanagh)	Amends the battery recycling law to clarify New York City's enforcement authority