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## ENVIRONMENTAL LAW

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### *New York State Environmental Legislation in 2007*

The New York State Legislature passed several laws in 2007 concerning climate change, community land preservation, clean energy, brownfields, hazardous substances, and wildlife management, among others. This annual survey summarizes New York state environmental legislation enacted in 2007, as well as several bills that were passed by the Legislature but vetoed by Governor Eliot Spitzer.

#### **Brownfields**

The Legislature passed a budget bill, Chapter 55, that does not contain language that existed in previous budget bills requiring the governor, assembly speaker, and Senate majority leader to agree on a memorandum of understanding (MOU) before money in the Brownfield Opportunity Area (BOA) program can be distributed and spent with respect to new appropriations. However, money reappropriated for the program from previous years still contains this requirement. The BOA program is jointly run by the New York Department of State and the New York Department of Environmental Conservation (DEC). The last MOU was signed in March 2005.

#### **Energy**

Under Chapter 128, when a solar energy system is purchased and installed by a condominium management association or a cooperative housing corporation, a taxpayer who is a member of the condominium management association or a stockholder in the co-op may claim a proportionate share of the total expense as an expenditure to the credit attributable to his or her residence.

Chapter 255 extended for three years the New York City Energy Cost Savings Program and the Lower Manhattan Energy Program.

Governor Spitzer vetoed legislation extending tax credits for the replacement of a home heating system with an Energy Star®-rated energy unit. The



bill would have extended the personal income tax credit allowed toward the cost of replacing a home heating system with an Energy Star®-rated unit for two years and extended the tax credit for the use of bio-heat for residential home heating for four years. In his veto message, Governor Spitzer said that he supported the goal of the bill but objected to addressing the issue outside of the normal budget process.

Despite extensive discussions, the Legislature failed to pass a new statewide power plant siting law to replace Article X of the Public Service Law, which expired on Jan. 1, 2003. As a result, power plant siting will continue to be governed by the State Environmental Quality Review Act.

In his State of the State Speech of Jan. 9, 2008, Governor Spitzer reiterated his support for reforming Article X; for his "15 by 15" initiative, which aims to reduce energy use by 15 percent by 2015; and for net metering and smart metering of electricity.

#### **Funding**

Chapter 258 authorizes funding for the Environmental Protection Fund (EPF) to be increased from the current \$225 million to \$250 million in the next fiscal year, and \$300 million per year thereafter. The EPF was established in 1993 for capital projects that support clean air and water, protect the state's environment and preserve open spaces and farmland. It is funded by the real estate transfer tax.

The 2007-08 budget bill increased funding to DEC, allowing the agency to add 109 staff positions.

#### **Global Warming**

Chapter 466 requires that vehicle global warming index labels be affixed to motor vehicles manufactured starting with model year 2009. These labels disclose a vehicle's fuel efficiency and its score on the global warming index, which ranks makes and models from "best" to "worst" based on the amount of CO<sub>2</sub> they emit.

Chapter 613 creates the 16-member New York State Sea Level Task Force. It is to complete a report by 2009 that assesses the anticipated impacts of sea level rise, recommends mechanisms to provide more protective standards for coastal development and wetland protection, and recommend adaptive measures to respond to sea level rise.

In the 2007-08 budget, the Legislature provided funding for the creation of an Office of Climate Change within the DEC. The legislation provides funding for 12 staff members. The office is mandated to implement the Regional Greenhouse Gas Initiative (RGGI) and to develop a statewide policy on climate change.

Governor Spitzer vetoed legislation creating the New York State Climate Change Task Force that would hold statewide public hearings to develop a plan on how the state should respond to climate change. Governor Spitzer's veto message described the legislation as redundant, given the new DEC Office of Climate Change.

#### **Hazardous Substances**

Chapter 43 tightens the requirements for special permits and certification for commercial application of aquatic antifouling paints. An applicant for such certification is required to complete a 20-hour training course instead of a 12-hour one. In addition, the certification is now valid for three years instead of five. An applicant for an aquatic antifouling paint application business is now required to employ at least one person who is a certified commercial pesticide applicator or technician or have entered into a contract with a business that employs such a person.

Chapter 172 phases out the manufacture, sale and use of creosote in New York after Jan. 1, 2008. Creosote is the name used for a variety of chemical products that are used to preserve wood and prevent insect infestation. The law does not apply to existing marinas and other facilities used for the berthing, mooring and storing of vessels until Jan. 1, 2010. The law exempts products containing creosote that

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are in use as of the phase-out date, and certain users of creosote, including railroads, electric corporations and public authorities.

Governor Spitzer vetoed legislation prohibiting the siting of hazardous waste landfills in the Great Lakes region. The governor stated that the bill was too broad and could have had an unintended negative impact because the covered region encompasses approximately 40 percent of the state and it would have driven up the costs of disposal and therefore limited some remedial efforts.

Governor Spitzer also vetoed a bill that would require residential property owners to inform tenants about the results of environmental tests regarding vapor intrusion prior to renting or leasing of property, and to inform tenants who are currently residing in the building of these tests. The governor said that he supported the intent of the bill but that he had concerns about a number of its provisions.

Governor Spitzer vetoed legislation that would have required the commissioner of the New York City Department of Buildings to maintain a list of all hazardous violations of the New York City Building Code on the department's Web site. The governor stated that the legislation was inconsistent with the new model building code and that it would be expensive for the city to implement and maintain.

## Land Use and Preservation

The Legislature adopted Chapter 596, the Hudson Valley Community Preservation Act, which establishes an opt-in community preservation program for towns and cities in Westchester and Putnam counties. These municipalities may impose a real estate transfer fee of up to 2 percent, which would be deposited into a dedicated community preservation fund. Before doing so, the municipalities must complete a local community preservation project plan, pass local legislation and hold a voter referendum.

Several bills were passed concerning land designations. Chapter 112 discontinues the use of certain lands as reserved lands within the Long Island Pine Barrens maritime reserve, while Chapter 130 creates the Zoar Valley Unique Area in Cattaraugus and Erie counties as a state nature and historical preserve. Chapter 283 adds all of Saratoga County to the Hudson River Valley Greenway.

In Chapter 124, the Legislature amended the Farmland Protection Plan to allow counties to apply for funding to assist in the updating of their plans after 10 years.

Governor Spitzer created by Executive Order No. 20 a "smart growth" cabinet to coordinate cross-agency activities and review state agency spending and policies to determine how best to discourage sprawl and promote smart land use practices.

## Pesticides

Chapter 216 requires pesticide applicators to inform building occupants about pesticides to be applied within or on the premises. This information must be supplied in either written, digital or electronic format prior to the pesticide's application.

## Pollution Prevention

The 2007-08 budget includes a provision that provides funding for a "pollution prevention institute" program. The institute will promote cost-effective methods of reducing and eliminating the use of toxic substances in the manufacturing process and will foster partnerships between public and private entities to stimulate research and development of environmental technologies.

In addition, Chapter 572 provides assistance to small businesses regarding environmental compliance and pollution prevention. The Department of Economic Development is required to make such information available to small businesses, including state and federal compliance and pollution prevention programs and what loans and grants may be available.

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## Recycling

The Legislature failed to pass what was commonly referred to as the "bigger better bottle bill," which would have expanded the definition of "beverage" in the Returnable Container Act to include noncarbonated drinks other than milk and liquor. It would have also directed the unclaimed deposit money derived from that program to the Environmental Protection Fund. The bill would have also provided assistance for bottle collection efforts in large cities and raised the handling fees for retailers.

## Transportation

While the Legislature did not agree to adopt New York City Mayor Michael Bloomberg's plan to introduce congestion pricing for certain parts of Manhattan, it did adopt Chapter 384, which created the 17-member New York City Traffic Mitigation Commission to study ways of reducing traffic. The commission issued an interim report on Jan. 10, 2008, and is to adopt the final plan on Jan. 31. The Legislature is to consider the plan no later than March 31, 2008.

## Waters and Coasts

Chapter 262 establishes a deposit program whereby the New York State Environmental Facilities Corp. will invest monies from the Water Pollution Control Revolving Fund with participating lenders at reduced rates of return. In return, these lenders will make

low-interest loans to eligible borrowers for water pollution control projects. This law enhances state and local efforts at reducing point-source and non-point-source water pollution.

Chapter 232 bolsters the DEC's ability to access approximately \$7.5 million appropriated in the 2007-08 budget for dredging of the Jones Inlet on Long Island and rebuilding other local beaches, including beaches at Point Lookout, also on Long Island.

Chapter 456 creates the New York State Canal Flood Mitigation Task Force. The 13-member task force is responsible for determining what measures should be taken to enhance flood management and mitigation in, around and along the New York canal system, including the Erie Canal.

## Wildlife

Chapter 674 creates the New York Invasive Species Council and charges it with assessing the environmental, ecological and economic impacts caused by invasive species, and identifying actions to be taken to prevent their introduction, and to respond to and control those species that have already arrived.

The Legislature extended the DEC's authority to adopt management regulations for deer and bears. Pursuant to Chapter 149, the DEC's authority to regulate open seasons for both species is extended to Oct. 1, 2011. Chapter 256 extended the DEC's authority to determine the open seasons, size and catch limits of fish until Dec. 31, 2011.

The Legislature extended to Dec. 31, 2011 the DEC's authority to manage the taking of certain types of fish and similar animals, including: monkfish (Ch. 139); sharks (Ch. 141); clams (Ch. 142); whelks and conchs (Ch. 143); oysters (Ch. 144); winter flounder, scup and black sea bass (Ch. 145); certain other species of fish (Ch. 146); blackfish (Ch. 147); scallops (Ch. 148); striped bass (Ch. 150); fish, shellfish and crustacea in special management areas (Ch. 151); and crabs, bluefish, weakfish and fluke-summer flounder (Ch. 152).

Chapter 37 restricted the use of nets and trawls that are used by fishermen.

Finally, Chapter 249 authorized the commissioner of Agriculture to conduct a survey of the state's beekeepers in order to assess the size and condition of the bee population and how it is affected by diseases, pests and parasites.