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## ENVIRONMENTAL LAW

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### *New York Environmental Legislation in 2008*

**N**ew laws were enacted in New York in 2008 requiring the disclosure of results of indoor air quality tests to tenants; modifying the Brownfields tax credits; adding incentives for green buildings; and making a number of smaller changes.

This annual survey article describes the new environmental laws that were signed into law in 2008. It also recounts Governor David Paterson's vetoes of environmental legislation, and an executive order he issued on green procurement.

#### **Air Quality**

Chapter 521, one of the year's most important enactments, is designed to protect tenants from vapor intrusion and other problems. It requires that landlords provide their current and prospective tenants with the results of tests involving indoor air, sub-slab air, ambient air, sub-slab groundwater samples, and sub-slab soil samples if the results exceed guidelines developed by the New York State Department of Health (DOH) or the U.S. Occupational Safety and Health Administration. Disclosures must appear, among other places, in leases. The statute does not require landlords to conduct tests, but it does require them to disclose test results they obtain from various kinds of sources. This law was signed by Governor Paterson on Aug. 5 and becomes effective on Dec. 3, 2008; whether it covers test results obtained prior to that date is unclear. (Former governors George Pataki and Eliot Spitzer had vetoed similar bills.)

Chapter 91 revises the rules governing a task force established to study the health effects of toll plaza air quality. The task force will prepare a report identifying policy options and recommendations regarding health effects of air quality at toll plazas in New York City, including effects on individuals who work at such plazas, by April 1, 2011.

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Governor Paterson vetoed legislation that would have established a state program to promote new technologies to avoid, abate, mitigate, capture or sequester greenhouse gases. In his veto memorandum, Governor Paterson stated that while he supported the intent of the bill, it should be considered in the budget process when the state projects revenue and considers initiatives in a variety of areas.

#### **Brownfields**

Chapter 55, signed into law on April 23, 2008, placed a 90-day moratorium on accepting applications for contaminated sites to be placed in the state's Brownfields Cleanup Program (BCP).

Chapter 390 adjusts the tax incentives available under the BCP. For residential and commercial properties, the law limits the tangible property credit to \$35 million per project or three times the cost of site cleanup, whichever is less. For manufacturing sites, the limit is \$45 million or six times the cost of remediation, whichever is less. The law increases the tax credits available for a project's remedial costs from 22 percent to up to 50 percent, depending on the cleanup level. (This bill was discussed in greater detail in this column on July 25, 2008.)

#### **Energy**

Three enactments authorized the increased development of renewable energy with a process called net metering, which allows electricity customers to sell excess electricity back to their local utility. Chapter 452 expands the

state's solar net metering program to apply to businesses and increases the size of eligible solar photovoltaic systems to 25 kilowatts for residential customers and up to 2 megawatts for nonresidential customers. Chapter 480 increases the size of farm waste electric generation systems that can be net metered from 400 kilowatts to 500 kilowatts. Chapter 483 authorizes net metering for wind technology for all utility customer classes. Previously, the law authorized such systems for residential and farm operations only.

#### **Green Buildings**

Chapter 565 requires all new construction and substantial reconstruction projects undertaken by the state to comply with certain green building principles. The law authorizes the state Department of Environmental Conservation (DEC), in consultation with the New York State Energy Research and Development Authority (NYSERDA), to promulgate rules and regulations concerning these building principles.

Chapter 631 establishes a green residential building grant program. The law authorizes NYSERDA to encourage the use of design and construction techniques in the construction and renovation of residential buildings that achieve energy efficiency, reduce greenhouse gases, conserve natural resources, reduce waste, create a healthy indoor living environment and incorporate products that are environmentally responsible. NYSERDA is authorized to provide incentives for owners of residential buildings that have been constructed or renovated pursuant to applicable green building standards between Jan. 1, 2010 and Oct. 31, 2013.

Chapter 461 allows building owners in New York City who install green roofs on at least 50 percent of available rooftop space to apply for a one-year property tax credit of up to \$100,000. The credit is equal to \$4.50 per square-foot of roof area that is planted with vegetation, or approximately 25 percent of the typical costs associated with the materials, labor, installation and design of the green roof. Building owners will be able to apply for the credit starting Jan. 1, 2009.

Chapter 473 provides a four-year property tax abatement for the construction and installation of a solar electric generating system for residential, condominiums/cooperative apartments and commercial properties in New

York City. The amount abatement depends on when the system is operational—the sooner it is installed, the greater the tax abatement. If the system is in service before Jan. 1, 2011, the amount of the property tax abatement would be 83/4 percent of eligible expenditures in each of the four years of the compliance period. The abatement is lower for systems placed into service later. Existing state law already contains a provision for a personal income tax credit for individuals who purchase solar energy technology for residential use.

## Greening State Government

On April 26, 2008, Governor Paterson signed Executive Order No. 4 establishing a New York State Green Procurement and Agency Sustainability Program to promote policies within state agencies and authorities that reduce the consumption of materials and energy and reduce potential impacts on public health and the environment. State agencies are required to purchase environmentally friendly commodities, services and technology and develop sustainability and stewardship programs. There will be three primary initiatives: an interagency committee, environmentally friendly agency programs and policies, and training state employees to pursue their duties in a manner which is mindful of their impact on the environment. Each state agency and authority will develop and implement programs and policies that will promote environmental sustainability and stewardship by supporting recycling, reducing or eliminating the use and generation of toxic substances, pollution and waste, increasing energy efficiency, and using renewable energy sources. Agencies must assign an employee to serve as a sustainability and green procurement coordinator.

## Hazardous Substances

Chapter 625 concerns the management and disposal of drugs. DEC, in consultation with DOH, is required to develop and implement a public information program regarding the proper disposal of drugs. In addition, notices regarding proper disposal methods are required to be displayed in pharmacies.

Chapter 638 directs DEC and DOH to produce an environmental facility and cancer-incidence map on a computer-generated map that will be created by looking at census blocks.

Chapter 334 amends the law concerning petroleum and chemical storage facilities. The amendment changed the definitions of “facility” and “petroleum” and added definitions of “tank” and “spill.” The amendment also allows DEC to prohibit deliveries of petroleum to tanks in certain instances.

## Land Use

Chapter 396 amends the law that provides an 80 percent real property tax exemption to forest lands subject to a recognized forest certification program to include participation

in a forest certification program recognized in the regulations of DEC.

Chapter 375 amends a law concerning the state agricultural environmental management (AEM) program. An AEM plan would now take into account air pollution and other adverse environmental impacts from farm operations. An AEM plan could include measures to address greenhouse gas emissions, global warming and renewable energy related to farm operations. The state Agricultural Department’s environmental management program would assist farmers in addressing issues related to greenhouse gas emissions and could include assistance to farmers for the development of agriculturally derived renewable energy sources.

Chapter 269 changes the statutory standard for adverse possession. Under the law, an adverse possessor can only acquire title if their occupancy exists under a “claim of right,” in addition to an adverse, open and notorious, continuous, exclusive and actual occupancy. A “claim of right” is defined as a reasonable basis for the belief that the property belongs to the adverse possessor or property owner.

## Mining

Chapter 107 makes permanent the law concerning bluestone mining exploration. The law was originally set to expire on July 31, 2009.

## Solid Waste

Chapter 596 permits the New York City Department of Sanitation to operate a marine transfer station on the Gansevoort peninsula to process recyclable materials generated in Manhattan. The permit was conditioned on New York City entering into a memorandum of understanding with the governor identifying a sum of money that the city will use for improving the Hudson River Park.

Chapter 200 concerns waste tire management. Tire retailers are authorized at their discretion to pass on the \$2.50 recycling fee to tire purchasers to be included as part of the advertised price of the tire or to list this separately in addition to the price of the tire.

## Water

Chapter 528 increases penalties for violations of regulations pertaining to potable water. Under the amendment, a person or entity found in violation of the law is subject to a fine of up to \$1,000. This amount was raised from a previous maximum of \$200. The amendment also provides that each day on which a violation occurs may be considered a separate incident.

Chapter 336 amends the law establishing the New York State flood mitigation task force. Among other things, the amendment expands the task force’s duties to include looking at ways to enhance flood management and mitigation of the major water bodies within the Oswego river basin.

Chapter 27 made New York the fourth state to ratify the Great Lakes-St. Lawrence River Basin Water Resources Compact. The compact provides a comprehensive management framework for achieving sustainable water use and resource protection. The main provisions of the compact establish a ban on new or increased diversion of water from the basin, except under certain limited circumstances. It also requires a consistent standard to review proposed uses of water from the basin. The compact is based on agreements signed in 2005 by the governors of eight states and the premiers of two Canadian provinces. On Oct. 3, 2008, after all eight states ratified the compact and both houses of Congress approved it, President George W. Bush signed the compact into law.

## Wildlife, Natural Resources

Chapter 533 amends the Bruce S. Kershner Old-Growth Forest and Protection Act. The amendment adds a section defining “old-growth forest” to mean a parcel of at least 10 acres which includes tree species at least 180-200 years old. The law provides that such lands are to be recommended for preservation to the governor. Chapter 541 adds Washington County to the Hudson River Valley Greenway.

Chapter 211 increases the size of lobsters that can be caught.

Chapter 25 prohibits the electrocution of fur-bearing animals, including arctic, red and silver foxes; chinchillas; minks; pine martens; muskrats; and other fur-bearing animals included in §11-1907 of the Environmental Conservation Law (ECL). A violation of this law is a class A misdemeanor.

Chapter 26 amends the law establishing the New York invasive species council. The law removes the mandatory language with respect to the development of a comprehensive plan for invasive species management and replaces it with the term “recommend.” The law also repeals §9-1711 of the ECL, which prohibited state agencies, public authorities and projects supported by the state from knowingly purchasing or intentionally distributing species identified in the plan once it is released, except as permitted for control, research or education purposes.