



New York Water Environment Association, Inc.

The Water Quality Management Professionals

126 North Salina Street • 100 Clinton Square, Suite 200 • Syracuse, New York 13202
(315) 422-7811 • Fax: 422-3851 • www.nywea.org

Recent Environmental Legislative, Regulatory and Judicial Developments¹

November 2005 Through February 10, 2006

I. NEW YORK

A. Legislation

1. Budget

Based upon a summary provided by The Business Council of New York, highlights of the proposed Department of Environmental Conservation and environmental program spending include:

On the revenue side:

- Increase Air Title V fees to \$67 per ton, raising program revenues by \$6.1 million per year.
- Raise another \$3.7 million per year through increases in various other DEC regulatory fees.
- Increases in freshwater wetlands fees would raise \$1 million per year.

¹ For more information, please contact Libby Ford, QEP at 585-263-1606 (lford@nixonpeabody.com).
<http://www.nixonpeabody.com/>

The NYWEA GAC thanks Nixon Peabody LLP for its on-going support of this newsletter. It also thanks WEF's Government Affairs Staff, The Business Council of New York and AMSA for much of the information in this newsletter. If you are not already a member of one or all of these organizations, visit their web pages and consider becoming a member. The WEF web page can be reached through the NYWEA web page at <http://www.nywea.org/index.htm>; the AMSA web page is at amsa-cleanwater.org; and TBCNY is at bcnys.org. NYWEA gratefully acknowledges the following sources of the information contained in this newsletter: BNA Environmental Reporter, EPA Administrative Law Reporter, Water On-Line, Pollution On-Line and Environmental Protection E-News: these are excellent resources for the environmental manager, attorney or consultant.

On the spending side:

- Spending on DEC general operations is proposed at \$455 million, an increase of \$24 million or about 5.6%. Most of the spending increase will be financed through projected increases in revenues from state-imposed fees.
- DEC staffing would increase by 43 positions. Most new positions are in air/water quality programs (14 positions) and fish/wildlife/marine resources (12 positions, some likely related to an expanded wetlands program) and solid/hazardous waste management (7 positions).
- The Governor is proposing to expand the Environmental Protection Fund from \$150 million/year to \$180 million/year, by shifting existing revenues derived from the state's real estate transfer tax.
- The budget again proposes \$135 million to support the State's superfund program, based on the 10 year spending program authorized by the 2003 "brownfield act." \$7.4 million is proposed to support DEC oversight of the brownfield and voluntary cleanup program.

Source: E-Mail from TBCNY (Ken Pokalsky), January 17, 2006. The DEC budget is at: <http://publications.budget.state.ny.us/fy0607app1/fy0607app1b.html>

2. Other

See Table 1 for the status of environmental legislation that was "on the move" the end of the last legislative session and which is likely to continue to move this year.

B. Policy

Maps Showing Potential Environmental Justice Areas

County level maps are now available through the DEC web site. The maps were created using the U.S. Environmental Protection Agency Region 2 Environmental Justice Screening Wizard and racial and income demographic data from the 2000 U.S. Census. In order to qualify as a Potential Environmental Justice Area, the population in a census block group must meet the definition of either a "low-income community" or "minority community" or both.

Source: <http://www.dec.state.ny.us/website/ej/countymaps/index.html>

DEC Renews Commitment to Hudson River Restoration with Action Agenda

NYSDEC has announced the release of the final "Hudson River Estuary Action Agenda 2005-2009." The Action Agenda contains the long-range goals and action steps for the coming four years. Some of the goals of the Action Agenda include:

- Restoring the signature fisheries of the Estuary.
- Making the river swimmable from its source in the Adirondacks to New York City by 2009.
- Engaging partners in stewardship of natural resources.

- Protecting streams – The Action Agenda proposes to support inter-municipal agreements that help to develop groundwater conservation strategies, protect and restore forest buffers along waterways, reduce stormwater runoff, remove impediments to free-flowing streams and improve water quality.
- Preserving the Hudson Valley's scenery.
- Promoting public understanding of the river.
- Creating more public access to the Hudson River.

The final Agenda can be viewed at

www.dec.state.ny.us/website/hudson/agendacomment.html.

Source: <http://www.dec.state.ny.us/website/press/pressrel/2005/2005145.html>

EPA Proposes to Accommodate Delay in New York City Watershed Plan

A five-year watershed protection plan issued for New York City's drinking water supply in 2002 would be modified to allow for delays in construction of an ultraviolet-light disinfection plant, under an Environmental Protection Agency proposal. EPA's Region 2 office said it would extend the schedule for the city to build the UV-light plant to disinfect water from the city's Catskill/Delaware water supply, in return for an additional \$6 million in city spending on wastewater treatment plants to mitigate the delay. The agency said the changes follow consultations with the state Health Department and the city Department of Environmental Protection. In November 2002, EPA allowed the city to continue to avoid federal filtration requirements for the Catskill/Delaware system for another five years, while stepping up conditions for the city's watershed protection program. Construction of the UV-light plant by August 2009, which would add a second layer of disinfection to an existing chlorination system, was among several conditions imposed by EPA for the city to meet the standards of the Surface Water Treatment Rule without filtration. The Catskill/Delaware system, located west of the Hudson River, provides 90 percent of the city's drinking water. The Croton system, located east of the Hudson, provides the other 10 percent and is subject to filtration under a separate series of agreements between the city and EPA.

C. Regulatory

1. Water

New York City To Improve Water Quality With Significant Decreases in Nitrogen Discharges

New York State and New York City have reached an agreement that will sharply reduce nitrogen discharges from wastewater treatment plants on the East River. The agreement is expected to greatly improve water quality in Long Island Sound, which is the subject of a Nitrogen Total Maximum Daily Load. Under the new agreement, New York City will undertake a phased approach that, by 2017, will result in a 58.5 percent reduction in nitrogen discharges from its wastewater treatment plants. The agreement also provides for the City to construct upgraded wastewater facilities at the 26th Ward Water Pollution Control Plant on Jamaica Bay, conduct further studies on Jamaica Bay,

and submit, by October 2006, a comprehensive plan to achieve water quality standards for Jamaica Bay.

Source: <http://www.dec.state.ny.us/website/press/pressrel/2006/200606.html>

D. Judicial and Enforcement

1. Water

Blackout Leads to Lengthening of New York City Probation Term

The August 2003 northeast blackout which led to a 30-million-gallon discharge of untreated sewage into the East River by a City POTW led NYC to admit to having violated the terms of its probation in an earlier matter, prompting a federal judge to add at least three years to a term of probation handed down in 2001. The city agency had been placed on probation in August 2001 after it pleaded guilty to felony Clean Water Act violations relating to mercury discharges from old equipment in an upstate water supply facility. According to the Court, the discharge constituted a knowing violation of the Clean Water Act because the city had failed to properly maintain and promptly repair the emergency electrical system at its Red Hook Water Pollution Control Plant in Brooklyn, as required by permit. Reportedly at the time Red Hook's backup generators failed in the blackout, more than five years had passed since DEC had urged the city to immediately address problems with inoperable generators there. Similar overflow problems reportedly occurred at the city's North River treatment plant. The city also admitted to a misdemeanor Toxic Substances Control Act violation involving the knowing use of machines contaminated with polychlorinated biphenyls without closing them off from the water supply or protecting employees from exposure.

Source: BNA Environment, February 10, 2006 citing *United States v. New York City DEP*, S.D.N.Y., No. 01-CR-836, 2/7/06

2. Tanks

U.S. Settles Environmental Lawsuit Against New York City Involving Underground Storage Tank Systems

The United States has settled a civil lawsuit against New York City involving violations of the Resource Conservation and Recovery Act (RCRA) in connection with the City's underground storage tank systems. The settlement requires the City to pay \$1.3 million in civil penalties and to bring substandard tank systems into compliance with federal law. The Consent Decree also requires the City to undertake an additional environmental project to improve the City's ability to identify releases from its underground storage tanks. In the lawsuit, the U.S. charged that, from at least 1997, the City has been violating RCRA in connection with its underground storage tank systems. New York City owns at least 1600 underground storage tanks in over 400 locations throughout the New York City metropolitan area, including all five boroughs.

Source: WEF, This Week In Washington, 1/27/06

E. Regulatory

1. Brownfields

Draft Regulations for Brownfield and Superfund Programs

DEC has issued draft regulations to implement the State's Superfund and Brownfield Programs. The goal of the Brownfield Cleanup Program (BCP) is to enhance private-sector cleanups of brownfields and to reduce development pressure on open spaces. The draft regulations, related Draft Generic Environmental Impact Statement, and Technical Support Document (TSD) for the Development of the Soil Cleanup Objectives is available for public comment until March 27, 2006. The draft regulations include proposed soil cleanup standards and use-based tables for remediation being done under the State's 2003 Brownfield and Superfund legislation. Separate sets of soil cleanup objectives were developed in consideration of public health, groundwater, and ecological resources. When a site has been successfully remediated, the Applicant receives a Certificate of Completion. The Certificate triggers liability protections provided by statute and allows parties to apply for tax credits, helping to offset the cost associated with brownfield redevelopment. Since the program's creation in 2003, 169 sites have been approved under the new BCP. The complete text of the proposals may be viewed at DEC Central Office in Albany and each DEC regional office. Information on the regulations can also be accessed on the DEC's website at www.dec.state.ny.us/website/der.

Source: <http://www.dec.state.ny.us/website/press/pressrel/2005/2005135.html>

II. FEDERAL

A. Congress

EPA Preliminary 2007 Budget Includes 4 Percent Cut Mainly from SRF Loans and State Grants

The Bush administration has announced its plan to cut EPA funding by nearly 4 percent in fiscal 2007, in part by targeting reductions in low-interest revolving loans for state water and sewer projects and holding the line on spending for superfund cleanups. The administration's proposed budget would provide \$7.3 billion for EPA in fiscal 2007, more than \$300 million below the current level and a significant decline--about \$1.1 billion--from the agency's record budget of \$8.4 billion appropriated in fiscal 2004. The proposed cuts would include \$200 million from EPA's clean water state revolving fund (SRF), which provides states and localities low-interest loans for water quality projects such as stormwater improvement and prevention of sewage overflows. The president would fund the clean water fund at \$687.6 million in fiscal 2007, a 29 percent cut from the \$886.8 million Congress provided for the program in the current fiscal year. The clean water fund has declined significantly from the \$1.09 billion provided in fiscal 2005. In some good news for New York however, the funding of the Long Island Sound is proposed to increase by \$60 Million to \$467 million, while Great Lakes funding is proposed to be increased by 20.1 Million.

Source: BNA Environment February 10, 2006 and WEF This Week in Washington, February 10, 2006.

EPA to Hire Three New Investigators With Extra Funds

The Environmental Protection Agency intends to use some of the extra \$8 million approved by Congress for the agency's fiscal year 2005 budget to hire three new criminal investigators. In the years 2003 to 2006, the number of EPA criminal investigators has fallen annually from 210 to 205, 193, and 185 (plus the three intended hires), respectively. The Environmental Protection Agency's enforcement office has also reworked its website to allow the public to report possible environmental crimes or violations of environmental rules.

Source: BNA Environment Reporter January 27, 2006

B. Judicial And Enforcement

1. Water

Wastewater Management Company Settles Reporting Violations Charges

A wastewater management company has agreed to pay \$2 million and institute changes in its operations and environmental oversight to settle charges of alleged improprieties at two wastewater treatment facilities in Connecticut. Under terms of a deferred prosecution agreement filed Operations Management International Inc. (OMI), has already made substantial changes to operations and environmental oversight, including the implementation of a nationwide compliance effort at a cost of more than \$6 million. In addition, the agreement calls for the company to contribute \$2 million to targeted projects in the state. Half of those funds will go to the Greater New Haven Water Pollution Authority to pay for plant upgrades, and the remaining funds will go to two public interest organizations. Another \$1 million will be used to assist in the funding of an endowed chair of Environmental Studies at the U.S. Coast Guard Academy in New London, Conn.

Source: BNA Environment, February 10, 2006 citing *United States v. Operations Management International Inc.*, D. Conn, docket number unavailable, 2/8/06

Lawsuit Against Scrap Metal Recycler Alleges Violations of Stormwater Laws

An environmental group has filed a lawsuit against California scrap metal recycling facility alleging violations of federal and state industrial stormwater laws. Standard Iron and Metal Co. and its president were named in the action filed January 10 by Our Children's Earth Foundation. The complaint alleges that the company has failed to implement an adequate stormwater management program. As a result, the suit alleges, that contaminated stormwater runoff at the facility flows into storm drains that empty into the San Francisco Bay. The Plaintiffs said in the lawsuit that its sampling in December of the facility's stormwater runoff found higher levels of pollutants than allowed under the company's federal industrial stormwater permit issued by the state's regional water board. Standard Iron crushes and shreds automobiles, appliances, industrial materials, and other sources of metal. The materials, including large piles of metal dusts, shreds,

and shavings, are stored in uncovered piles and exposed to stormwater flows, the lawsuit alleged. Also, pollutants leak from materials waiting to be processed and vehicles and equipment used at the facility, the complaint alleges. The lawsuit is seeking a court order to force the company to comply with the terms of its discharge permit and seeking fines for the alleged CWA violations.

Source: BNA, January 20, 2006 citing *Our Children's Earth Foundation v. Standard Iron and Metals Co.*, N.D. Cal., No. 06-CV-00168 MJJ, 1/10/06.

Ship Engineer Sentenced to Year in Prison For Falsifying Record Book

The chief engineer of a Panamanian-flagged ship was sentenced to prison for a year and a day for falsifying oil discharge records. The chief engineer of the Magellan Phoenix, pleaded guilty to violating the Act to Prevent Pollution from Ships. Under the sentence, he will also serve three years of probation following completion of his prison term. Coast Guard inspectors boarded the Magellan Phoenix, when it arrived in Gloucester, N.J. In the course of the inspection, inspectors learned that the ship had routinely discharged oil sludge and oil-contaminated bilge water directly overboard into the ocean, without using the ship's oil water separator and without recording these discharges as required in the ship's oil record book.

Source: BNA Environment January 16, 2006, citing *United States v. Abrogar*, D.N.J., No. 05-00649, U.S. District Court for the District of New Jersey 1/5/06.

New York Supports Corps Authority Over Wetlands – Supreme Court Reviews Two Cases

New York and Michigan are leading a group of 34 states and the District of Columbia in backing federal authority to regulate wetlands with indirect links to navigable waters in two Clean Water Act cases up for review before the U.S. Supreme Court. Both rulings upheld the jurisdiction of the U.S. Army Corps of Engineers to require permits from those who would fill or discharge pollutants into wetlands that are either separated by man-made barriers from tributaries or located next to smaller tributaries that flow into larger water bodies, which are used for navigational purposes. The U.S. Supreme Court will be reviewing the cases on February 21. In one case, the U.S. Court of Appeals for the Sixth Circuit upheld the corps' jurisdiction over wetlands that were connected by a hydrological connection (such as a drainage ditch) to navigable waters of the United States (*United States v. Rapanos*). The Sixth Circuit also held in a separate case that under the Clean Water Act the corps could regulate wetlands, even though a man-made berm cut off the flow of water from the property to a ditch that emptied into a tributary of navigable waters (*Carabell v. U.S. Army Corps of Engineers*).

Source: BNA January 27, 2006, citing *Rapanos v. United States*, 376 F.3d 629 U.S., No. 04-1034, *brief filed* 1/13/06; *Carabell v. U.S. Army Corps of Engineers* U.S., 391 F.3d 704, 59 ERC 1621 (6th Cir. 2004) No. 04-1384, *brief filed* 1/13/06.

2. Air

McWane Inc. To Pay \$3 Million Fine For Falsified Emissions Test Results

Cast-iron pipe manufacturer McWane Inc., a former Vice President and General Manager, pleaded guilty to environmental crimes in connection with the operation of Pacific States Cast Iron Pipe Co. McWane pleaded guilty to two counts of submitting a document to the state of Utah containing falsified emission test results. The General Manager pleaded guilty to one count of rendering inaccurate a testing method required by the Clean Air Act. McWane was ordered to pay a \$3 million fine and to serve a three-year period of probation. Sentencing for the General Manager is scheduled for May. In November 2005, the company and these individuals were indicted for conspiracy to violate the CAA by rendering inaccurate a state-required emissions testing method, for making false statements in documents required by the CAA, and for defrauding the federal government. McWane and the General Manager also were indicted for separate CAA violations for rendering inaccurate the testing method and McWane was indicted for separate false statement charges for misrepresentations made in documents submitted to the state of Utah. Charges were dismissed against a corporate environmental manager in return for his agreement not to appeal his conviction in another McWane case in Birmingham, Ala.

Source: Environmental Protection On-Line, 2/9/06 citing (<http://www.utd.uscourts.gov>)

C. Regulatory

1. Water

EPA Semiannual Regulatory Agenda

The Environmental Protection Agency published its Semiannual Regulatory Agenda on October 31, 2005 with updates on the status of rules and major policies under development, including information on the deadlines for rules (70 Fed. Reg. 65,206). The agenda requires EPA to issue preliminary 2006 effluent guidelines in September 2006. In response to a February 28, 2005 ruling issued by U.S. Court of Appeals for the Second Circuit, EPA is legally bound to revise its 2003 rule for concentrated animal feeding operations. Among the revisions, EPA is obliged to require permits from only those CAFOs that discharge pollutants or propose to discharge. EPA said it will issue a notice for proposed rulemaking in March 2006 and a final rule in March 2007. EPA also intends to issue a final rule in June 2006 requiring cooling water intake towers at various facilities, including paper and pulp factories, coal- and gas-fired power plants, chemical manufacturing plants, petroleum product refineries, to be designed to minimize "adverse environmental impacts" on fish and other aquatic organisms in rivers. In January 2006, EPA will issue a rule stating that a NPDES permit is not required for pesticides applied in compliance with FIFRA, such as pesticides to kill mosquito larvae in aquatic weeds or standing water. The rule will say a permit is not required for pesticides sprayed to control pests located "over the waters of the United States."

Source: BNA Environment Reporter, 11/4/05

Proposed New Policy for Peak Wet Weather Discharges from Municipal Sewage Treatment Facilities

EPA proposed a new policy for addressing peak wet weather discharges at wastewater treatment plants. Many municipal wastewater treatment systems experience problems during heavy rain downpours (peak wet weather), when flows to the wastewater treatment plants exceed the plant's biological treatment capacity. During peak wet weather, limited diversions around biological treatment units ("blending") can help prevent raw sewage from being discharged into our nation's waters, backing up into homes and other buildings, or damaging biological treatment units. EPA's announced goal in proposing this new policy is to ensure that all feasible solutions are used by local governments when addressing problems related to peak wet weather and to improve treatment of wastewater to protect human health and the environment. The policy reflects the joint recommendations of the Natural Resources Defense Council and the National Association of Clean Water Agencies. The policy encourages public participation via the National Pollutant Discharge Elimination System permit process, and provides for public notification in the event that a diversion does take place. EPA will accept written comment for 30 days after the policy is published in the Federal Register. To learn more, visit: <http://www.epa.gov/npdes/wetweather>.

Source: <http://www.epa.gov/water/waternews/2005/051222.html#1>

EPA Releases New Tool for Determining Cause of Ecological Harm to Rivers and Streams

EPA has released a new web-based tool, the Causal Analysis/Diagnosis Decision Information System (CADDIS), that simplifies determining the cause of contamination in impaired rivers, streams and estuaries. CADDIS provides a standardized and easily accessible system to help scientists find, use, and share information to determine the causes of aquatic impairment. Causal analyses look at stressor-response relationships, meaning the effect of a specific substance or activity on the environment. Typical water stressors include excess fine sediments, nutrients, or toxic substances. CADDIS was developed by EPA scientists through partnerships with EPA programs and regions, as well as states and tribes. The recently released version of CADDIS is the first of three. Future versions will include modules to quantify stressor-response relationships and databases and syntheses of relevant literature on sediments and toxic metals. CADDIS is available on EPA's Web pages at: <http://www.epa.gov/caddis>.

Source: WEF, This Week In Washington, 1/27/06

EPA Announces Faster Bacterial Contamination Test for Beach Waters

EPA has announced the success of a new rapid method for testing beach water quality that reduces the time for detecting bacterial contamination from 24 hours to two. In a paper published in the January issue of "Environmental Health Perspectives," EPA researchers presented some of the first findings of the National Epidemiological and Environmental Assessment of Recreational (NEEAR) Water Study. NEEAR is a multi-year research project being conducted by EPA and the Centers for Disease Control and Prevention. The first phase of the project assessed the new method in the Great Lakes.

In tests done at two Great Lakes beaches, researchers verified that the new method accurately predicts possible adverse health effects from bacterial contamination. The next phase will collect and analyze similar data at ocean beaches. Additional information on the NEEAR Water Study is available at: <http://www.epa.gov/NEEAR/>.
Source: WEF, This Week In Washington, 1/27/06

GAO Report Criticizes EPA's Data on Lead in Drinking Water

The Government Accountability Office (GAO) released a report highly critical of EPA's database as inadequate to determine whether implementation of its lead rule is effective. According to GAO, EPA does not have data for over 30 percent of large and medium-sized systems' and 70 percent of all community systems' efforts to implement the lead rule. In addition, GAO questioned the reliability of the data EPA does have because it found that some states reported few to no violations. The report also concluded that few schools and childcare facilities have tested their water for lead levels as a response to the Lead Contamination Control Act of 1988 or as part of current operating procedures. Thus, the GAO was unable to determine how pervasive lead contamination is in schools and childcare facilities.

Source: WEF, This Week In Washington, 1/27/06 The GAO report can be found at www.gao.gov.

Possible Expansion of Pollutants Eligible for Removal Credits

Manufacturers are calling on EPA to amend the list of pollutants eligible for credits based on how easily the pollutants are removed from wastewater treatment plants, according to comments filed with EPA. In September 2005 EPA sought comment on whether to amend the list of pollutants for which a publicly owned treatment works (POTW) facility can grant removal credits to an industrial discharger because the pollutants can be consistently removed by existing wastewater treatment processes. Through removal credits, industrial users may discharge a pollutant in quantities that exceed those allowed under an applicable categorical pretreatment standard because EPA has determined that the POTW consistently removes the pollutant. EPA plans to issue in March a final updated list of pollutants that will be regulated in sewage sludge. If a pollutant is regulated under the sewage sludge rules, it may be eligible for the removal credit provision under EPA's pretreatment regulations.

Source: BNA Environment Reporter, 1/6/06

Large Drinking Water Systems Must Meet Oct. 1 Disinfection Byproducts Deadline

Drinking water utilities serving more than 100,000 people will have until October 1 to submit monitoring plans for disinfection byproducts to either the Environmental Protection Agency or to the appropriate state agency under a final rule. The Stage 2 Disinfection Byproducts Rule (DBPR) sets the October 1 deadline for the "Initial Distribution System Evaluation" (IDSE) Plans. The plans are used to identify where utilities will monitor drinking water for the two groups of disinfection byproducts: total trihalomethanes and haloacetic acid. The rule sets maximum contaminant levels, or

enforceable standards for contaminants, and monitoring, reporting, and public notification requirements for total trihalomethanes and haloacetic acids, and revises monitoring requirements for bromate. It also sets maximum contaminant level goals, which are not enforceable, for the byproducts chloroform, monochloroacetic acid, and trichloroacetic acid. In addition, the rule requires the best available technologies for meeting enforceable standards and approves additional analytical methods for the determination of disinfectants and disinfection byproducts. A drinking water utility will send IDSE either to EPA or the state drinking water agency, depending on the level of "early implementation" activities for which a state is set up. The Stage 2 Disinfection Byproducts Rule will take effect March 6, 2006. The deadline for submission of the monitoring plan and deadlines for other requirements in the Stage 2 DBPR are staggered for smaller systems, based on their size. A companion rule to control microbial contaminants, especially cryptosporidium, known as the Long-Term 2 Enhanced Surface Water Treatment Rule, was published Jan. 5, 2006.

Source: BNA Environment Reporter January 6, 2006 citing the Jan. 4 Federal Register, (71 Fed. Reg. 388).

2. Other

EPA Releases Performance, Accountability Report for FY 2005

On Nov. 16, 2005 EPA released its Performance and Accountability Report for Fiscal 2005, meeting the requirements of the Government Performance and Results Act (GPRA) and other management legislation. The 1993 GPRA requires federal agencies to report annually to Congress on the results of their activities during the fiscal year. Among the highlights listed in the report:

- EPA announced new clean air rules for mercury and interstate air pollution.
- EPA launched a "Clean Diesel Campaign" to reduce emissions from new and existing diesel engines.
- EPA and state partners attained water quality standards in an additional eight percent of waters previously identified as impaired.
- EPA completed cleanup of 40 sites on the Superfund National Priorities List for a cumulative total of 966 sites cleaned up.
- EPA announced \$76.7 million in brownfields grant funding to recipients in 45 states.
- EPA reduced, treated, or eliminated more than 1.1 billion pounds of pollutants as a result of agency enforcement actions.

The report also discusses the agency's financial management. EPA's financial statements are audited by the inspector general, who issues an audit report on the principal financial statements, internal controls, and compliance with laws and regulations. EPA received a clean audit opinion from the agency's inspector general for the sixth consecutive year, with no material weaknesses for internal controls and no substantial noncompliance with laws and regulations. The report is available at

<http://www.epa.gov/ocfo/finstatement/2005par>

Source: Environmental Protection, 11/17/05



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126 North Salina Street • 100 Clinton Square, Suite 200 • Syracuse, New York 13202
(315) 422-7811 • Fax: 422-3851 • www.nywea.org

Table 1²

“Active” New York Water-Related Legislative Proposals (February 13, 2006)

Moving In Assembly and Senate	
A 2517C Same as S 1290 A LAVALLE	DiNapoli (MS) – Bigger Better Bottle Bill - AN ACT to amend the environmental conservation law, the economic development law and the state finance law which provides for the mandatory acceptance of empty beverage containers; allows the commissioner of environmental conservation to approve state assistance payments from deposits of beverage container refund values; provides for the repeal of certain sections related thereto. 01/04/06 DIED IN SENATE 01/04/06 RETURNED TO ASSEMBLY 02/02/06 amend and recommit to rules 2517c 02/07/06 rules committee discharged and committed to ways and means 02/02/06 AMEND AN RECOMMIT to Environmental Conservation 02/02/06 PRINT NUMBER 1290C

² For more information, please contact Libby Ford, QEP at 585-263-1606 (lford@nixonpeabody.com). <http://www.nixonpeabody.com>. The NYWEA GAC thanks Nixon Peabody LLP for its on-going support of this newsletter.

<p>A 3575B Same as S2356-A MARCELLINO</p>	<p>DiNapoli (MS) – On-Site Treatment Systems - AN ACT to amend the environmental conservation law which relates to the regulation of residential on-site wastewater treatment systems; directs the commissioner of environmental conservation to prepare a report on the impact of on-site sewage treatment systems on the waters of the state and on the public health; provides siting criteria for new septic systems and for inspections of new and existing residential septic systems upon sale or transfer.</p> <p>04/07/05 amend two times and recommit to environmental conservation</p> <p>01/04/06 DIED IN SENATE</p> <p>01/04/06 RETURNED TO ASSEMBLY</p> <p>01/04/06 committed to rules</p> <p>01/17/06 reported</p> <p>01/18/06 rules report cal.100</p> <p>01/18/06 ordered to third reading rules cal.100</p> <p>01/24/06 passed assembly</p> <p>01/24/06 delivered to senate</p> <p>01/24/06 REFERRED TO ENVIRONMENTAL CONSERVATION</p>
Passed Assembly	
<p>A300 No Same As</p>	<p>Tonko (MS) –Primary Water Supply Aquifer Areas.</p> <p>AN ACT to amend the environmental conservation law, in relation to projects requiring environmental impact statements within primary groundwater recharge areas.</p> <p>01/24/05 passed assembly</p> <p>01/24/05 delivered to senate</p> <p>01/24/05 REFERRED TO ENVIRONMENTAL CONSERVATION</p> <p>01/04/06 DIED IN SENATE</p> <p>01/04/06 RETURNED TO ASSEMBLY</p> <p>01/04/06 committed to rules</p> <p>01/30/06 reported</p> <p>01/30/06 rules report cal.151</p>

	<p>01/30/06 ordered to third reading rules cal.151</p> <p>01/30/06 passed assembly</p> <p>01/30/06 delivered to senate</p> <p>01/30/06 REFERRED TO ENVIRONMENTAL CONSERVATION</p>
<p>A 1467A</p> <p>No Same As</p>	<p>McEneny (MS) - Testing of School Water - AN ACT to amend the public health law and the education law, in relation to the water dispensed within public schools. Provides for annual school lead-copper tap water testing; requires the publishing of reports of contamination and abatement of such contamination; requires school districts to provide potable water to school children attending affected schools.</p> <p>01/04/06 DIED IN SENATE</p> <p>01/04/06 RETURNED TO ASSEMBLY</p> <p>01/24/06 passed assembly</p> <p>01/24/06 delivered to senate</p> <p>01/24/06 REFERRED TO HEALTH</p>
<p>A1802B</p> <p>No Same As</p>	<p>Brodsky (MS) – State Use of Pesticides - AN ACT to amend the environmental conservation law, in relation to the phase-out on varying time schedules of state use of various categories of pesticides on state property; does not apply to certain antimicrobial pesticides; requires the department of environmental conservation to adopt a pest management plan for every state department, agency, and public benefit corporation; provides for waivers and exemptions.</p> <p>01/04/06 DIED IN SENATE</p> <p>01/04/06 RETURNED TO ASSEMBLY</p> <p>01/18/06 ordered to third reading rules cal.76</p>
Moving In Assembly Only	
<p>A 1952A</p> <p>Same as S 1773A FUSCHILLO</p>	<p>Karben (MS) – Environmental Community Right to Know Act - AN ACT to amend the environmental conservation law which enacts the “Environmental Community Right to Know Act of 2005”; relates to preserving and enhancing the public’s right to know the efforts used by state government to safeguard the environment and public health; provides for public access to process decision making, methodology</p>

	<p>and review; provides definitions, duties of the commissioner and provides for public access via electronic means.</p> <p>01/04/06 DIED IN SENATE</p> <p>01/04/06 RETURNED TO ASSEMBLY</p> <p>01/13/06 amend (t) and recommit to rules</p> <p>01/13/06 print number 1952a</p>
<p>A 2524</p> <p>Same as S 1336</p> <p>LAVALLE</p>	<p>Thiele – Sewage Sludge Moratorium - AN ACT to amend the environmental conservation law which imposes a moratorium on application of septage, sludge or sludge products on agricultural lands, school property, golf course property and state recreational park lands until the Department of Environmental Conservation promulgates regulations to establish a clean soil standard, a clean sludge standard and a testing protocol; provides that such application shall not be made unless it meets such standard.</p> <p>01/04/06 referred to environmental conservation (No movement, but of interest)</p>
<p>A 4462</p> <p>No Same As</p>	<p>DiNapoli (MS) – Sanitary Sewer Overflow - AN ACT to amend the environmental conservation law in relation to Sanitary Sewer Overflow. Restricts sanitary sewer overflow and the issuance of SPDES permits; requires notification procedures in the event of a sanitary sewer overflow; requires the preparation of an annual report by SPDES permittees.</p> <p>01/04/06 referred to environmental conservation (No movement, but of interest)</p>
<p>A 5163</p> <p>Same as S4630</p> <p>KLEIN</p>	<p>Brennan (MS) – Water Supply Emergency Plans - AN ACT to amend the public health law which relates to the preparation of water supply emergency plans; includes certain persons who supply drinking water to fewer than three thousand three hundred people within the definition of a water supplier which requires such person to file a water supply emergency plan; directs the commissioner of health and the county health departments to provide guidance and assistance to community water systems regarding vulnerability assessments, emergency plans and addressing potential threats to the provision of safe drinking water; and provides greater penalties for violations. Criminal Sanction Impact</p> <p>01/04/06 DIED IN SENATE</p>

	01/04/06 RETURNED TO ASSEMBLY 01/24/06 passed assembly 01/24/06 delivered to senate 01/24/06 REFERRED TO HEALTH
Moving In Senate Only	
S435 Same as A339 GUNTHER	LARKIN – Provides for minimization and limitation of siting and expansion of solid waste landfills in proximity to aquifers and other public water supplies. AN ACT to amend the environmental conservation law, in relation to solid waste landfills. Provides for minimization and limitation of siting and expansion of solid waste landfills in proximity to aquifers and other public water supplies; requires the department of environmental conservation to accept and consider comments and objections from affected municipalities; requires consideration of possible over-concentration and local land use laws and plans. 01/04/06 died in assembly 01/04/06 returned to senate 01/04/06 REFERRED TO SENATE Environmental Conservation