

Legislative Session Ends Without Major Environmental Initiatives

The 2004 session of the New York Legislature ended with passage of few environmental initiatives. Perhaps the most important environmental bill passed this session is the mercury product labeling law (S.7399-A/A-10051-B). The law requires on-product labeling of most mercury-containing products and authorizes DEC to issue labeling regulations provided they allow for the use of labels adopted by other states that are similar to those required by the statute. The law bans knowingly or intentionally disposing of mercury-added consumer products in municipal landfills or incinerators (instead requiring that such wastes be source separated). The distribution of mercury-added novelty products (e.g., figurines, toys, clothing) is banned as of January 1, 2005 as is the sale of mercury fever thermometers without a prescription. The law also bans the sale of elemental mercury unless the final purchaser signs a statement that the mercury will be used for dental amalgam, research, or manufacturing purposes. Violation of the various labeling, disposal and ban provisions is punishable by fines. An Advisory Committee on Mercury Pollution will be established to study mercury pollution and prepare a report to the governor and legislature on its findings.

Other bills passed this session include: (1) a law extending and broadening current restrictions on the use of plastic piping and conduits in many multi-family, commercial and industrial construction applications; and (2) a law banning the manufacture, sale or use of creosote treated products (with exceptions for most utility and rail uses) and banning the burning of creosote products with a limited exemption for energy recovery. No legislative action was taken on other important environmental bills including those relating to air permit fees, chemical facility security requirements, and enforcement.

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STATE NEWS

Legislative Session Ends (Cont'd from page 1)

On the issue of Superfund reform, the Senate and Governor reached agreement on a bill (S.7627) to correct errors in last year's massive Brownfield/Superfund reform bill. This bill proposes to amend last year's law to make the following changes, among others:

- Exclude most remedial wastes and all universal wastes from the new hazardous waste surcharges (which range from \$4,000 to \$360,000 depending on the quantity of hazardous waste generated).
- Revise the definition of "brownfield site" to clarify that RCRA corrective action sites are excluded but allow DEC the option of extending the program to such sites.
- Add a 10-day deadline for DEC to issue a written completeness determination after receiving additional information requested by the Department to remedy an incomplete brownfield application.
- Clarify that the applicant and not the Department is responsible for providing certain notices to individuals on the brownfield site contact list (relating to commencement of construction, approval of final engineering report, issuance of certificate of completion).
- Clarify that the certificate of completion may be transferred to the applicant's successors and

assigns upon transfer of the brownfield site and that a notice of the certificate of completion (and not the covenant not to sue) must be filed with the county clerk.

- Clarify the information required to be included in an environmental easement.
- Simplify the procedure local governments must follow in assessing whether to grant building permits or other approvals at sites governed by environmental easements, including eliminating a provision requiring DEC approval.
- Significantly amend the exemption for government entities that acquire ownership or control of property involuntarily in their capacity as sovereign.
- Delete the one-year deadline for DEC to issue regulations establishing standards and practices for conducting "all appropriate inquiries" for purposes of establishing an affirmative defense.

The bill also contained revisions to other provisions of last year's legislation, including the tax credit program. The Senate passed the bill in the closing days of the legislative session, however no comparable bill was introduced in the Assembly. For a copy of S.7627 or the mercury product labeling law, use the QUIK-REPLY Form.

DEC Seeks Comment on Various Brownfield Cleanup Program Documents

DEC recently made available for comment three documents relating to its new Brownfield Cleanup Program (BCP). Two address the state's effort to develop soil clean-up objectives (SCOs) for sites under the BCP, while the third is a program guide, summarizing the steps for participating in the BCP.

Regarding Soil Cleanup Objectives, DEC has issued a series of information sheets describing the preliminary approach to developing the tables of contaminant-specific SCOs. The topics covered by

the information sheets include:

1. Land Use Definitions
2. Target Chemicals
3. Protection of Public Health: Exposure Pathways and Exposure Parameter Values
4. Protection of Public Health: Cumulative Exposure from Multiple Routes
5. Protection of Public Health: Toxicity Values for Systemic Effects

6. Protection of Public Health: Combining Oral and Inhalation Toxicity Values for Systemic Effects
7. Protection of Public Health: Toxicity Values for Contact Irritant Dermatitis
8. Protection of Public Health: Systemic Health Effects from Exposure to Mixtures
9. Protection of Groundwater
10. Protection of Fish and Wildlife Resources
11. Background Soil Concentrations

The second document relating to SCOs is a proposal for DEC to collect soil samples throughout the state to generate data on contaminant levels in rural surface soils. While the BCP legislation authorizes DEC to consider background soil levels in rural areas in the development of SCOs, data about existing contaminant concentrations in rural soils is incomplete. The proposed study will consist of two components: a "public health" component, to determine ranges for contaminants in shallow surface soils in rural areas, and an "ecological" component to determine ranges in deeper surface soils in habitat areas marginally influenced by human activities. With respect to the public health component, DEC is proposing to collect 125 samples immediately below the surface, using geographic information system (GIS) software to ensure that each part of the state is adequately sampled. Samples for the ecological portion of the survey will be collected whenever a suitable habitat area can be readily identified within 400 yards of the public health sampling location. DEC expects that no more than 100 samples will be suitable for habitat area sampling. The samples will be collected from the top six inches of soil (rather than

immediately below ground surface). The proposal also outlines procedures for collecting, transporting, and analyzing the samples and reporting the results. DEC is proposing to analyze samples for the following: volatile target compounds, semivolatile compounds, pesticides and aroclors (PCBs), metals, including mercury, and total and amenable cyanide. A complete list of proposed analytes is included as an appendix to the survey.

The public comment period on these documents closed on June 30, 2004. Copies are available on DEC's website at: www.dec.state.ny.us/website/der/superfund/soil.html, or use the QUIK-REPLY Form.

The third document, the *Brownfield Cleanup Program Guide*, is a guide to the administrative steps necessary to apply for acceptance into the BCP, from pre-application through obtaining a certificate of completion. The BCP Guide largely tracks the requirements in the statute; in addition, it offers suggestions on ways to speed review and approval of BCP applications. While the Program Guide focuses on administrative issues, technical guidelines on the site investigation and remedy selection/implementation process are covered in *DER Technical Guidance Document for Site Investigation and Remediation* (known as DER-10). DEC made a draft of DER-10 available for comment in January 2003, before the legislation creating the BCP was enacted. According to the draft BCP Guide, DEC intends to issue DER-10 later this summer.

A copy of the draft guide is available on the DEC website at: www.dec.state.ny.us/website/der/bcp. DEC is accepting comments on the guide until July 12, 2004.

DEC Schedules Meetings of PSD/NSR Workgroup

DEC has scheduled the first three meetings of its newly formed PSD/NSR Workgroup, which has been charged with providing input on drafting a Prevention of Significant Deterioration (PSD) program and revising the State's existing nonattainment New Source Review (NSR) regulations to reflect recent changes to the federal NSR program. EPA significantly amended the rules governing PSD and nonattainment NSR applicability in December 2002. DEC objects to many of the proposed changes and has filed a

lawsuit challenging the rule. In the interim, DEC has returned authority for the PSD program to EPA, and has formed the PSD/NSR Workgroup in the hopes of resolving issues raised by the federal regulations before proposing its own rules.

Representatives of the Business Council of New York State, the American Chemistry Council, and the National Federation of Independent Businesses are participating in the DEC workgroup on behalf of industry generally. They will be joined by representatives of various environmental

groups, state agencies and the energy industry. The workgroup meetings are planned for July 8, 2004,

July 22, 2004 and August 5, 2004, with two additional meetings to be scheduled.

NYS Companies Carrying Fire Insurance Must Report Storage of Hazardous Materials

Section 209-u of the General Municipal Law requires New York state businesses that both carry fire insurance policies and store hazardous materials to report the presence of such hazardous materials to the local fire department. Hazardous materials, for the purposes of this report, are those which must be labeled as such under Department of Transportation (DOT) requirements. The form requires the facility to provide the hazardous material description, proper DOT shipping name, and the average amount stored on an annual basis.

The report is to be submitted to the local fire department on the anniversary date of the fire insurance policy. Enforcement of the law is the responsibility of the local municipal code enforcement officer, and, while enforcement is uncommon, violators are subject to a fine of up to \$250 for the first offense and \$250 - \$1000 for a second offense. For a copy of the law and the required reporting form, use the QUIK-REPLY form.

CALENDAR OF EVENTS

- July 14:** Mohawk Valley Environmental Information Exchange Monthly Meeting. Topic: Required OSHA Training for Employees. Radisson Hotel Utica Center- 200 Genesee St. Utica (Across from the State Office - Building- Park in the garage free) Meeting Format: Buffet Breakfast 7:30 - 8:00AM - Program 8:00 - 9:30 AM \$10-12 includes breakfast. For reservations email davep@mvatc.net.
- September 10:** Capital District Environmental Breakfast Club 7:30 am, Holiday Inn Turf, Wolf Rd. Colonie. Topic: You Bought It, Now What? Implementing performance expectations and management programs at newly acquired facilities. Speaker: Doug Schultz, GE Power Systems. \$12 pre-registered, \$14 day of event. 518/438-9907 ext. 240 or e-mail bpopolizio@youngsommer.com

QUIK-REPLY FORM

For more information on the topics in this issue, fax or mail this form to: Vicki Schlierer, Regulatory Affairs Paralegal, Young, Sommer...LLC, Five Palisades Drive, Albany, NY 12205. Fax: (518) 438-9914.

Name: _____

Title: _____

Company: _____

Address: _____

City, ST, Zip: _____

Phone: (____) ____ - _____ Fax: (____) ____ - _____

Please send the following:

- SPCC Extension Proposal
- S. 7627 - one house Brownfield/Superfund amendments
- Mercury product labeling law
- Brownfield Soil Cleanup Objectives Information Sheets
- Draft Program Guide for Brownfield Program
- Hazardous Materials Reporting Form (GML 209-u)

Reservations for the Capital District Environmental Breakfast Club, Holiday Inn Turf, Wolf Road, Colonie, NY **September 10, 2004**

_____	Registration (includes full breakfast buffet)	\$12.00
_____	Binder update	\$5.00

Please make your reservation no later than **September 7, 2004**. Fax your reservation to 518/438-9914; call Betsy Popolizio at 518/438-9907 ext. 240; or email bpopolizio@youngsommer.com Cancellations will be accepted until September 7, 2004. No refunds or credits given after that time. To help us plan, please make a reservation. **The registration fee will be \$14.00 for walk-ins.**