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**TESTIMONY OF THE
NEW YORK PUBLIC INTEREST RESEARCH GROUP
BEFORE THE JOINT SENATE FINANCE AND
ASSEMBLY WAYS AND MEANS COMMITTEE
REGARDING THE 2014-15 EXECUTIVE BUDGET:
ENVIRONMENTAL CONSERVATION
ALBANY, N.Y.**

JANUARY 29, 2014

Good afternoon. My name is Laura Haight and I am Senior Environmental Associate at the New York Public Interest Research Group (NYPIRG). NYPIRG is New York's largest consumer and environmental advocacy organization, with 20 offices across the state and tens of thousands of supporters. Thank you for this opportunity to present testimony on the proposed FY 2014-15 Executive Budget.

RESTORE DEC STAFFING

As the state's economy improves, we should be restoring the agencies charged with protecting New York's natural resources and public health. The Department of Environmental Conservation (DEC) is at an all-time staffing low. Since 2008, the DEC has lost approximately 800 staff positions. As Environmental Advocates of New York documented in its recent report, "Turning a Blind Eye to Illegal Pollution" (September 2013) the DEC's ability to enforce laws to protect our air and water has declined significantly, and the agency is increasingly relying on industry self-monitoring. Unfortunately, this budget adds only one FTE staff position to the DEC. We need to reinvest in the DEC's professional workforce in order to protect New Yorkers and respond to the ever-increasing natural and manmade disasters as our aging infrastructure crumbles and severe storms like Hurricane Sandy and Irene become more frequent.

INCREASE FUNDING FOR ENVIRONMENTAL PROTECTION

The state's environmental funding needs far outstrip the funding proposed in the Governor's budget. We greatly appreciate the Legislature's commitment over the years to ensuring that the state's Environmental Protection Fund (EPF) is adequately funded. Thanks to your efforts during budget negotiations last year, the EPF was increased by \$15 million in FY 2013-14 and another \$4 million for the FY 2014-15 budget, using revenue from the Bottle Bill.

We are disappointed that the proposed executive budget does not provide more funding for the EPF. We urge the Legislature to work to **restore EPF funding to \$200 million** in the FY 2014-15 budget.

Within the individual EPF categories, we urge you to increase funding for **municipal recycling programs**. Currently this category is at an all-time low of \$7 million. The EPF provides 50-50 matching grants for municipalities to support recycling and household hazardous waste collection programs. The EPF is the only source of assistance to cash-strapped local governments to operate these programs, and there is a long waiting list for municipal recycling grants.

It is also important for New York to maintain its commitment to the shared resource of the **Interstate Chemicals Clearinghouse (ICC)**. \$100,000 should be specifically earmarked for the ICC in the EPF, as it has been previously, rather than subsumed in the Pollution Prevention Institute's budget.

ADDITIONAL REVENUE SOURCES

The environmental community has identified numerous potential sources of revenue to pay for these programs. In addition to tapping existing sources of revenue, such as the **Real Estate Transfer Tax (RETT)**, which has traditionally been used to finance the EPF, the state should consider creative proposals such as a **fee on plastic and paper disposable bags** in New York, which could generate \$100 million or more in new revenue, while also reducing litter and pollution in our communities.

Another source of funding for the EPF is the **Bottle Bill**. The state is now collecting more than \$100 million a year from unclaimed bottle and can deposits in New York. Of that, \$19 million is directed to the EPF under the Governor's budget proposal. NYPIRG believes that **100% of the unclaimed deposits from the Bottle Bill should be directed to the EPF**.

In addition, New York could generate more money for the state and the EPF through **better enforcement of the Bottle Bill**. New York should follow the example of California, which has invested in additional auditing staff to track down over 700 companies that have not reported the deposits they have been collecting (see www.calrecycle.ca.gov/Temp/201415BCPs/Audit.pdf). The Container Recycling Institute (CRI) estimates that New York is losing out on as much as **\$96 million a year** in revenues because of under-reporting of deposits initiated on beverages sold here.

The Legislature should also **expand the Bottle Bill** to include sugared waters, teas, sports drinks, and other noncarbonated beverages. While the primary purpose of this measure would be to reduce litter and increase recycling, it would generate an additional \$12 million a year for the EPF, according to CRI's estimates.

Finally, there should be a comprehensive review of the DEC's permitting fees to identify funding gaps and see if New York's fees are in line with other states. For instance, DEC has expended significant resources over the past ten years reviewing and processing Chemical Waste Management's application for a new landfill in Niagara County, all at tax-payer expense, because there is no application fee for siting or expanding hazardous waste facilities in New York.

NEED FOR LONGTERM SUPERFUND FINANCING

There are currently more than 800 toxic waste sites awaiting cleanup through the state's Superfund program, and more sites get added to the list every year. Unfortunately, the State's 10-year bonding authority for the state's Superfund expired last March. The Governor has proposed including \$90 million in this year's budget to extend the Superfund program for one year, along with \$10 million for the Environmental Restoration program, which funds the cleanup of municipal properties.

This is a radical shift from how the Superfund has been financed in the past, and will have negative impacts on the program. The program has always been funded through long-term bonding. The Superfund was initially financed through the \$1.6 billion Environmental Quality Bond Act in 1986. That funding expired in 2001, and cleanups of these dangerously polluting sites virtually ground to a halt for several years before the Legislature finally refinanced the Superfund in 2003, with \$1.2 billion bonding over ten years.

The State needs to make a longterm commitment toward the cleanup of its most toxic hazardous waste sites, not subject this program to the vagaries of year to year budget appropriations. We urge the Legislature to **extend the State's bonding authority for another ten years to support Superfund and ERP cleanups.**

In addition, we have concerns that the proposed funding level will not allow for the expeditious cleanup up these toxic waste sites. The current proposal represents a 25% decline from previous Superfund levels of \$120 million a year. The Superfund program should be restored to \$120 million a year and the budget should include sufficient agency staff resources to fully implement the program at that funding level.

RESTORE BROWNFIELD OPPORTUNITY AREA FUNDING

The Governor's proposed budget eliminates funding for the Brownfield Opportunity Area (BOA) program, which provides financial and technical assistance to municipalities and community-based organizations to develop area-wide revitalization plans and implementation strategies for communities affected by brownfields. The BOA program is a key component of the Brownfield Cleanup Program, and defunding it will cut the legs out from under dozens of municipal planning efforts across the state. According to New Partners for Community Revitalization, 42 eligible applicants were turned away in October due to lack of BOA funds, and an estimated 70 additional communities are seeking the opportunity to apply. **We urge that BOA funding be restored in the FY 2014-15 budget.**

BROWNFIELD CLEANUP PROGRAM REFORMS

We commend the Governor for advancing a proposal to reform the state's Brownfield Cleanup Program (BCP). For years, the state has been hemorrhaging hundreds of millions of dollars for development projects that did not need the program's lucrative tax credits to move forward. NYPIRG and other groups have long advocated for targeting the redevelopment tax credits to sites that can demonstrate financial need.

While we support many aspects of the Governor's brownfields reform proposal, we have a lot of concerns about the details. These include:

- The criteria for eligibility for the tangible property credits need to be revised to allow for affordable housing projects and projects consistent with Brownfield Opportunity Area (BOA) plans; in addition, language concerning “priority economic development projects” should be tightened to ensure that projects are consistent with community needs
- The proposal imprudently removes some of the BCP cleanup and public participation requirements while allowing severely contaminated Superfund sites into the program
- The proposal eliminates bonus credits for Track 1 (“unrestricted use”) site cleanups, despite the law’s stated preference for permanent site cleanups
- The proposed “BCP EZ” fast-track voluntary cleanup option offers weaker cleanup requirements as an incentive for participation; this is unacceptable for sites that will be receiving a liability release from the state at the completion of the project
- The proposal eliminates the Brownfield Advisory Board

Among the provisions we support are:

- Terminating sites that do not complete their cleanups within the specified time periods (by the end of 2015 and 2017, respectively)
- Extending the hazardous waste generator fee exemption to additional cleanups in the state of New York

Finally, we question whether the proposed reforms go far enough to contain the runaway costs of this program. The Legislature should review the tax caps that were imposed in the 2008 amendments and consider lowering them.

The program must be reformed to result in more and better brownfields cleanups without bankrupting the state. We urge the Legislature to engage with the Governor’s office to **ensure that the final brownfield reform package is fiscally prudent, environmentally protective, and socially and geographically equitable.**

IMPROVE, DON’T GUT, STATE’S PESTICIDE REPORTING PROGRAM

We strenuously oppose the proposal to eliminate pesticide use reporting (TED, Part Q). The pesticide use data collected through New York’s 1996 Pesticide Reporting Law has led to groundbreaking scientific research and informed a number of important public policy decisions, at the state, local, and federal level. The executive budget proposal would essentially gut this program, shutting down opportunities for medical or scientific research, and making the remaining data collection of marginal utility. We question why the Governor is seeking an increase in EPF funding for this program (from \$1 million to \$1.2 million) while proposing to scale back the program so significantly. The Legislature should **reject the Governor’s proposal and instead pursue ways to make data collection more efficient and the data itself more accessible.**

FUND CLEAN ENERGY ROADMAP FOR NEW YORK

New York is lagging behind its 45 by 15 energy goals – 30% renewable energy by 2015 combined with a 15% reduction in energy demand. To bolster the state’s energy planning efforts and help propel our shift to clean energy, we request that the Legislature include an appropriation of \$252,800 for a comprehensive, independent investigation into the technologies, infrastructure

and policies needed for New York to make the transition to a safe, clean and renewable energy supply. The study, *ReNewYork: The Green Energy Path to Jobs and Prosperity*, would provide key information that can inform the state's future energy planning and help New York move expeditiously toward a carbon-free and nuclear-free future.

NO FUNDING FOR FRACKING

The state's environmental review of high-volume horizontal hydro-fracturing (fracking) has not been completed, and we're far from a final product that adequately acknowledges the dangers posed by this invasive industrial process. To date, the state has not conducted a legitimate Health Impact Assessment, instead opting for a limited review that falls far short of what medical and public health experts are calling for. Until the health impacts are truly understood, the state cannot possibly be in a position to move forward with fracking. It would be inappropriate to include money related to this controversial natural gas extraction method in the budget unless those monies are specifically dedicated to conducting a comprehensive Health Impact Assessment. We urge the Legislature to refrain from including any projected revenues from the extraction of natural gas through fracking in the budget. Also, the State should not dedicate funding to issuing drilling permits or otherwise ramping up fracking activity in New York.

NO MORE DELAYS ON DIESEL EMISSION REDUCTIONS

Another item that we urge the Legislature to keep out of this budget is any further delay in implementing the "Best Available Retrofit Technology" (BAT) requirement of the New York State Diesel Emissions Reduction Act of 2006 (DERA). According to the Clean Air Task Force, New York ranks second in the nation in terms of negative health impacts from diesel pollution; including respiratory diseases, heart attacks, premature deaths and numerous other health problems monetized at nearly thirteen billion dollars annually in health damages. Heavy diesel engines also emit the majority of black carbon, a powerful climate-warming agent. The DERA law requires state-owned or contracted heavy diesel vehicles and equipment covered by the law to meet modern emissions standards or be retrofitted with a device - such as a diesel particulate filter - that reduces harmful pollution. This law should have been fully implemented by the end of 2010, but during the past three budget cycles, the Senate majority has pushed to delay implementation of the law. The final budgets adopted in 2011, 2012 and 2013 each delayed implementation by an additional year, and this law is now scheduled to go into effect by the end of 2014.

There is no justifiable excuse to further delay the implementation of this important public health initiative. The technology to clean up pollution from dirty diesel engines is widely available, and much of it is made right here in New York by companies like Corning. The law includes a waiver provision in the event that no suitable retrofit device is available for a particular application, and also includes a "reasonable cost" provision to help keep costs in check while maximizing reductions in harmful emissions. NYSERDA has even developed a website that makes it easy to find the appropriate emissions-reducing device for any vehicle or piece of equipment (CleanDieselClearinghouse.org). It is time for the Legislature to stop kicking the can down the road. We urge you to keep any further delays to this important public health initiative out of the FY 2014-15 budget.

Thank you for this opportunity to testify today. I would be happy to answer any questions.

