Testimony to

Joint Senate and Assembly Budget Hearing

Executive Budget/Department of Environmental Conservation

Presented by

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Thank you for providing the Business Council the opportunity to submit comments on the joint legislative budget hearing on the Department of Environmental Conservation's budget and related issues presented in the Fiscal 2010 Executive Budget.

Our testimony today will focus on several topics of particular concern to the state's business community and to Business Council member companies:

Regulatory Fees – In general, The Business Council believes the Executive Budget proposal relies far too heavily on new revenues, and not enough on spending restraint. Overall, the budget proposes $4.2 billion in new and increased taxes, fees and assessments, the majority of which would be permanent. With business and individuals being adversely affected by the economic downtown, this is the worst time to be imposing significant additional tax and fee burdens on taxpayers. For the private sector, taxes, fees and assessments that are payable regardless of income levels or profits - such as regulatory fees - are especially harmful.

We appreciate the fact that, in the environmental arena, the Executive Budget has a more appropriate balance of spending reductions and limited increases in regulatory fees than the overall budget.

In particular, we support the continuation of the cap on Title V air permit fees. The Business Council has opposed previous budget proposal to increase the $45 per ton fee, or changes to the 6,000 ton cap for each class of contaminant. Dramatic increases in regulatory fees driven by the Executive Budget are be difficult to accommodate at the facility level, as business operating budgets have already been established for the calendar year. To accommodate major fee increases, manufacturing and utility facilities will be required to shift resources from other, more productive investment categories. As a result, any significant fee increase will have an adverse impact on the competitiveness of our manufacturing sector, and contribute to the state's already high electric power prices.

It should be noted that power generators – and ultimately energy consumers – have been burdened with significant state-imposed costs, including the system benefit charge, the renewable portfolio standard assessment, and the cost of purchasing CO2 emission allowances. Combined, these assessments already will add nearly half a billion dollars per year in increased costs on the state's electric power sector, and are intended to support the state's environmental. Given the state of the state's economy, and New York's already un-competitively high electric power costs, it is the wrong time to be imposing significant new fees on this sector.

Title V is a federally mandated permitting program, applicable to "major" air emission sources. More than 400 facilities in New York hold Title V permits and would be subject to this fee proposal. Federal law requires states to finance their permitting programs through per ton emissions fees, and established a "presumptive" fee of $25 per ton, with CPI adjustments, applicable to the first 4,000 tons of emissions for each category of criteria pollutant (VOC, NOx, SOx,

particulate and lead). This federal mandate imposes an unfair burden on permittees, since rising program costs coupled with dramatic reductions in emissions result in a demand for ever higher per ton fees. And emissions have been reduced dramatically in New York, from 570,000 "billable tons" in 1995, to 288,000 in 2006, a nearly 50 percent reduction in emission.

Not only does New York already impose higher fees, and use a high per pollutant cap (6,000 tons), than required by federal law, our fees are also higher than those charged by most states. A recent survey showed at least twelve states with fees at or below $25 per ton.

In previous years, the legislature approved $1 million in additional General Fund support for the Department's Division of Air Resources, to help offset the need for increased Title V fees. We believe that this is a reasonable, appropriate alternative, and note that the U.S. EPA's review of state Title V programs have focused on the adequacy of state permitting programs, not the source of program fees.

Regulatory Review – While not a budget issue *per se*, we would like to take this opportunity to reiterate our support for a high level, multi-discipline Administrative review of major regulatory proposals, reportedly first considered by Governor Paterson in August 2008.

We support an approach in which major regulatory initiatives receive input from, and are reviewed by, Administrative representatives focused on public health, environmental, labor, energy, economic development, revenue and other major issue areas, depending on the specific rule proposal.

This approach would be especially appropriate for major environmental rulemakings, as they can have a significant impact on business competitiveness, and therefore employment and investment; the cost, supply and reliability of electric power; and other important economic factors, in addition to the environmental quality and public health factors that are the focus of such rulemakings.

The Regional Greenhouse Gas Initiative (RGGI) is one example of a rule that, with its focus on emission controls, could have a significant impact on energy costs and the ability and willingness of the private sector to invest in necessary new electric generating capacity in the state. The Business Council and other business interests had called for additional amendments to address such effects before the final RGGI rule was adopted. An example of these final requests was a "funding cap," an allowance price above which state revenues would be used for individual and business rate relief, rather than additional state program spending. Unfortunately, while at least three other RGGI states have adopted a "funding cap," New York did not. Considering that emission allowance price swings, driven by fuel prices, increased demand for allowances, or other market forces could result in allowance revenues hitting $500 million per year – costs born by individual and business energy consumers.

New Source Review (NSR) is another example of an environmental regulation with broad potential economic impacts. New York's businesses are under increasing pressures to update facilities to help achieve the state's energy efficiency and pollution prevention goals. Likewise, ongoing investments are essential to maintaining the economic viability of business operations. Business needs to be able to make changes that respond to customer demand or make their operations more efficient without being subject to unnecessary procedural or permitting requirements, imposition of lower emission limits, sacrifice of production capacity, loss of operational flexibility, and/or additional compliance costs under an expansive pre-construction review program.

NSR will have a significant impact on the ability of New York business-including manufactures, electric power generators, and others-to maintain their facilities, and to make investments necessary to improve their competitiveness, and to respond to changing market demands.

Given the competitive pressures facing New York's industrial sector, and the Governor's commitment to enhancing the state's economic climate, we felt that it was essential that the NSR rule avoid imposing new regulatory hurdles that do not produce significant additional environmental benefits. In our view, the final adopted rule failed this test.

We believe that the Department's recent adoption of a revised NSR rule, with provisions more stringent than the underlying federal regulation and more stringent than that imposed by many states, will have an adverse impact on business' capital investment decisions in New York State.

For these reasons, we support a broader, more formal cabinet-level review process for regulations that will have direct and indirect impact on multiple issue areas.

EPF Funding and Expanded Bottle Bill – With the significant economic slowdown adversely impacting both the private sector and government, it is essential to consider the priority and efficiency of activities and programs, and to avoid duplication of efforts. As such, we are even more convinced that the expansion of the bottle bill is a bad idea.

New York State continues to operate two separate state-wide recycling programs: mandated municipal recycling for those post-consumer wastes for which there is an economic market, and mandated store-based recycling for certain beverage containers. Shifting materials from one mandated recycling program to another will produce limited environmental benefits to the state, while imposing significant additional costs and inconvenience on consumers and businesses alike. The effect of this bill is to impose an additional $120 million per year cost on New York State consumers. Since the impact of this expanded deposit law will be similar to that of a sales tax on food, the impact will disproportionately affect low and middle income taxpayers.

While purporting to provide financial support to municipal recycling efforts, this proposal will in fact take valuable post-consumer materials out of municipal

recycling programs, and divert those materials to store-based recycling. Many beverage bottles that will be affected by an expanded bottle bill are made from PET, which has a current average market value of $360 per ton. Aluminum cans, which are used for some non-carbonated beverages captured by an expanded bottle bill, have a current market value of $1080 per ton. In contrast, newsprint - a major component of municipal recycling programs - has a current average market value of just $52 per ton, a fraction of the value of material that the bottle bill is siphoning off from the municipal recycling program. In short, this bill will reduce the average per-ton recovery value of the municipal recycling stream, while necessitating expanded state-taxpayer financial support for those very same programs (data on current scrap material prices are from scrapindex.com)

By increasing the volume of redemptions, this bill will significantly increase the compliance burden placed on supermarkets, convenience stores and other beverage outlets. The existing bottle bill imposes additional costs on retailers, consumes limited store space and staff resources, and raises sanitation and housekeeping problems in stores. This bill would exacerbate each of these adverse impacts on the retail sector while at the same time divert valuable resources from the municipal recycling system. It is unclear why we would want to mandate that our food stores play an even larger role in our solid waste management system.

Finally, this bill will have a significant adverse financial impact on the beverage industry, which currently uses unclaimed deposits to partially finance their costs imposed by the existing bottle bill.

Touted as an environmental measure, this is in reality a hidden tax on New York State manufacturers, bottlers, distributors and ultimately consumers. These added costs will eventually lead to higher prices and perhaps sales.

Again, we appreciate this opportunity to provide input on the Executive Budget proposal, and look forward to the opportunity to discuss these issues with members of the State Legislature, and answer any questions you may have on our comments today.

Thank you

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