

Proposed September 19, 2007

**EXECUTIVE ORDER
DIRECTING STATE AGENCIES TO GREEN STATE GOVERNMENT: “STATE
SUSTAINABILITY AND GREEN PROCUREMENT”**

WHEREAS, New York State is dedicated to the simultaneous pursuit of environmental quality, public health, economic prosperity and social wellbeing, also known as “sustainability;” and

WHEREAS, the production, use and disposal of materials and the generation and use of energy may have a significant impact on environmental quality and public health and may contribute to pollution, toxic chemical exposures and the generation of waste; and

WHEREAS, New York State government is a major consumer of materials, services and energy spending over \$8 billion per year; and

WHEREAS, pursuant to Article 1 of the Environmental Conservation Law (ECL), it is the policy of the State of New York to conserve, improve and protect its natural resources and environment, enhance the health, safety and overall economic and social well being of the people of the state, fulfill the state’s responsibility as trustee for present and future generations, and promote technologies which minimize adverse impacts on the environment, and pursuant to Article 28 of the ECL, it is the policy of the State of New York “to reduce or eliminate the use of hazardous substances and the generation of such substances, pollution or waste at the source;” and

WHEREAS, by minimizing the potential adverse impacts of their daily activities and spending patterns, state agencies will be taking action to prevent harm to future generations, children, workers, the public and the environment, including water, air, soil and wildlife threatened by persistent, bioaccumulative or toxic (PBT) or cancer-causing chemicals; and

WHEREAS, the Procurement Stewardship Act, Article 11 of the State Finance Law, establishes operating principles and processes for the procurement of commodities, services and technology by the Office of General Services and other state agencies, which may be supported through inclusion of considerations and choices that reduce or limit adverse impacts on public health and the environment for the citizens of the state; and

WHEREAS, a recently released report prepared by AT Kearney found the economic future of New York State will be enhanced by its ability to attract and retain businesses that produce and incorporate clean and sustainable commodities, services and technology, and thereby conserve natural resources and reduce costs; and

WHEREAS, New York State government should take a position of leadership in the sustainable economy, promoting innovation by implementing sustainable management and green procurement programs, thereby serving as a model for local governments, businesses and private citizens, strengthening the market for green commodities, services

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and technology and helping to ensure the ongoing environmental quality, public health, economic prosperity and social well being of New York;

NOW, THEREFORE, I, Eliot Spitzer, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby establish a State Sustainability and Green Procurement Policy for the State of New York which shall include greening the daily activities of state government and purchasing commodities, services and technology that minimize potential adverse impacts on public health and the environment when compared with other commodities, services and technology that serve the same purpose.

This Executive Order applies to all state agencies, departments, boards, commissions, offices and institutions over which the Governor has executive authority, the State University of New York and the City University of New York, and all public benefit corporations and public authorities created by or existing under any State law, at least one of whose members is appointed by the Governor (hereinafter referred to as “state agencies”).

This Order shall supersede EO 142 on waste reduction and recycling and be implemented in coordination with other executive orders on energy efficiency and green cleaning.

I. Interagency Committee on Greening State Government

Within 45 days of the effective date of this Order, there shall be established an Interagency Committee on Greening State Government (Committee). Such Committee shall be comprised of a senior staff representative designated by each of the following state entities: the Office of General Services (OGS); the Department of Environmental Conservation (DEC); the Department of Health (DOH); Empire State Development (ESD); the New York State Energy, Research and Development Authority (NYSERDA); the Environmental Facilities Corporation (EFC); the Dormitory Authority of the State of New York (DASNY); and the Department of Transportation (DOT). The Committee shall also request the participation of a senior staff representative from the Office of the State Comptroller to assist with its duties. OGS and DEC shall serve as co-chairs of the Committee. The Committee shall assist with implementation of the State Sustainability and Green Procurement programs.

Within 12 months of the effective date of this Order, each state agency with 100 employees or more shall assign an individual to serve as its Sustainability and Green Procurement Coordinator. Coordinators shall be given full management support and provided with the necessary resources to meet the goals of this Order.

II. State Sustainability Program

Each state agency shall develop and implement an agency-wide sustainability program, including, but not limited to: (1) the establishment of reduction targets and associated schedules to measure and reach the goals established in this section; and (2) the

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identification and implementation of projects to: (i) reduce or eliminate the use and generation of toxic substances, pollution or waste, giving highest priority to the list of toxic substances of concern identified in this Order; (ii) reduce, reuse, recycle and compost solid waste; (iii) increase energy efficiency and the use of renewable energy sources; (iv) conserve water and other natural resources; (v) maximize the procurement of green commodities, services and technology; and/or (vi) otherwise reduce adverse health or environmental impacts of state government activities and operations.

With respect to recycling, state agencies are encouraged to implement programs that fully comply with or exceed local recycling laws, ordinances or regulations enacted pursuant to General Municipal Law Section 120-aa. State agencies shall undertake efforts to use non-toxic recycled materials in civil engineering applications, and to use locally available non-toxic compost, mulch and soil amendments produced with secondary materials, as defined by the Economic Development Law.

DEC, EFC, NYSERDA and ESD shall provide technical assistance to state agencies in the development and implementation of their sustainability programs.

Waste Reduction Goals

(1) *Waste Reduction.* State agencies shall seek to achieve a reduction in solid waste generated annually through source reduction, reuse, composting, recycling or otherwise diverting such waste from disposal, relative to 2000-01 levels, as follows: 50% by 2010 and 75% by 2015.

(2) *Paper use reduction.* State agencies shall seek to achieve a reduction in paper use of 25% by 2010 relative to 2007-08 levels.

State agencies shall reduce paper consumption by printing or making two-sided copies of documents to the maximum extent practicable, and encouraging: two-sided printing for documents submitted to the agency; routing; the sending of information electronically; the posting of documents on agency websites; and the limited distribution of hard copy reports except where necessary to enhance public participation or education, or competition among potential bidders.

III. Green Procurement Program

A. Minimum Specifications

Within 12 months of the effective date of this Order, state agencies shall purchase and/or contract (“procure”) commodities, services and technology that meet or exceed the following minimum specifications unless the state agency is unable to do so because such procurement will not meet form, function and utility considerations.

(1) *Recycled content.* All copy paper, janitorial paper and other paper supplies shall be composed of 100% post-consumer recycled content, and all copy and janitorial paper

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shall be process chlorine-free to the maximum extent practicable. All publications shall be printed on 100% post-consumer content recycled paper. Where paper with 100% post-consumer recycled content is not available or does not meet form, function and utility considerations, all paper procurements shall use post-consumer recycled content to the maximum extent practicable. Any non-recycled content shall, to the maximum extent practicable, be derived from a sustainably managed renewable resource certified by an independent, third party program deemed appropriate by OGS, DEC and DOH.

(2) Energy efficiency. All commodities, services and technology shall meet or exceed the energy efficiency requirements promulgated pursuant to Energy Law Article 5-108.

B. Green Procurement Lists and Specifications

(1) Priority Types of Commodities, Services and/or Technology

Within 6 months of the effective date of this Order, and annually thereafter, the Committee shall select at least three priority categories of commodities, services and/or technology and at least twelve priority types of commodities, services and/or technology across those categories for which Green Procurement Lists and Green Procurement Specifications will be established. Consideration shall be given to all categories of commodities, services and technology, including but not limited to the following: electronics, electrical and lighting equipment, hardware supplies, vehicles, printing inks, buildings and grounds maintenance and pest control products and services, building supplies, furniture, office and medical supplies and equipment, appliances, food and food service supplies. In identifying such categories and types, consideration shall be given to the greatest potential for environmental and health benefits, the volume and dollar amount of commodities, services or technology procured, ease of implementation and any cost-savings.

(2) Minimum Specifications

All procurements of priority types of commodities, services and technology shall, to the maximum extent practicable, meet the following minimum specifications unless such procurement will not meet form, function and utility considerations.

- (i) No commodity, service or technology shall contain, use, or cause the release of a priority toxic substance of concern as defined in Addendum A to this Order, which is incorporated herein by reference.
- (ii) All procurements of commodities, services or technology shall seek to maximize the use of recycled content. All procurements of commodities, services or technology for which the EPA has developed post-consumer recycled content recommendations, shall be required to meet or exceed such recommendations.
- (iii) Where commodities, services or technology with recycled content are not available or do not meet form, function and utility considerations, all procurements shall use, to the

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maximum extent practicable, sustainably managed renewable resources certified by an independent, third party program deemed appropriate by OGS, DEC and DOH.

(iv) All procurements of commodities, services or technology shall seek to minimize the volume and toxicity of packaging and shall be encouraged to meet Coalition of Northeastern Governors (CONEG) Source Reduction Council preferred packaging guidelines or other sustainable packaging guidelines deemed appropriate by OGS, DEC and DOH.

(3) Green Criteria

The following criteria shall be considered by OGS, DEC and DOH in the development of Green Procurement Lists and Green Procurement Specifications: (i) protection of the environment and public health, including the health of employees, visitors and children; (ii) pollution prevention and waste reduction; (iii) avoidance of priority toxic substances of concern, as defined in Addendum A; (iv) sustainable resource management and use and sustainable manufacturing, including, but not limited to, reducing energy, water and resource consumption and greenhouse gas emissions, maximizing the use of renewable resources, biobased content, recycled and remanufactured content, recyclability and compostability, and maximizing the potential for long-term use through product durability, repairability, maintenance and reuse; (v) positive life-cycle attributes including the minimization of potential adverse impacts on public health, working conditions, land use and the environment associated with raw materials production, manufacturing, packaging, transportation, distribution, use, operation, maintenance and disposal; and (vi) extended producer responsibility.

When comparing the potential adverse health and environmental impacts and trade-offs among competing commodities, services and technology, OGS, DEC and DOH shall consider the overriding importance of protecting human health, and the irreversibility and geographic extent of adverse impacts. When assessing any product with recycled content, priority shall be given to avoiding the purchase of any recycled material that contains or causes the release of a priority toxic substance of concern as defined in this Order.

In applying these criteria to develop Green Procurement Lists and Specifications, detailed life-cycle analysis shall not be required, and OGS, DEC and DOH are encouraged to avoid duplicating efforts and to pool resources by considering the adoption of health and/or environmental specifications developed by other government and non-government entities, including independent third-party certification programs. OGS, DEC and DOH are also encouraged to participate in and support international, national and multi-state efforts to establish environmentally preferable purchasing standards.

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(4) Developing Green Procurement Lists and Green Procurement Specifications

For each priority type of commodity, service or technology first identified, OGS, DEC and DOH shall, in consultation with the Committee and the Advisory Committee:

(i) within 12 months of the effective date of this Order, develop Green Procurement Specifications to be used for the development and issuance of new solicitations and contracts; and

(ii) within 18 months of the effective date of this Order, develop a Green Procurement List of specific commodities, services and/or technology available on existing contracts that meet the provisions of this Order.

Thereafter, for each priority type of commodity, service and/or technology identified, such Lists and Specifications shall be developed and issued annually.

Once Green Procurement Lists or Specifications have been developed and issued by OGS, DEC and DOH, state agencies shall rely on and use such Lists and/or Specifications in their procurements of commodities, services and technology when purchasing from existing contracts or developing new procurement contracts unless the state agency is unable to do so because such procurement will not meet form, function and utility considerations.

Information submitted by the public shall be considered in the development of Green Procurement Lists and Specifications. Prior to finalizing such Lists and/or Specifications, OGS, DEC and DOH shall provide public notice and at least a thirty (30) day period for public comment. As resources and emerging information become available, OGS, DEC and DOH shall periodically review and revise such Lists and Specifications.

IV. Training and Staff

The Committee shall design and implement training and outreach programs for Sustainability and Green Procurement Coordinators and assist the Coordinators with the training of appropriate state agency staff, vendors and contractors. As appropriate, and as resources become available, the Committee is encouraged to design and implement such programs for local governments, businesses, and other private sector organizations and to work with the State Education Department and the Office of Children and Family Services to design and implement such programs for schools, day care centers and other entities responsible for the care of children.

Within 12 months of the effective date of this Order, the Commissioner of OGS shall create a Division Director of Green Procurement (DD) position. The DD shall assist the Commissioner in carrying out his or her duties under this Order.

V. Reports

A. Beginning 12 months after the effective date of this Order and annually thereafter, State agencies shall submit a report to the Commissioners of OGS and DEC regarding progress toward implementing sustainability programs and purchasing green commodities, services and technology in the preceding fiscal year. Such report shall address, to the maximum extent practicable, the following considerations:

- (i) The quantity of waste generated and the quantity of waste recycled, composted or otherwise diverted from disposal, in quantity and as a percentage of total waste produced, in both the preceding fiscal year and the baseline year of 2000-01, and estimated savings in energy and cost;
- (ii) The type and quantity of paper purchased, and any reduction in paper use, in quantity and as a percentage of total paper use in both the current fiscal year and the baseline year of 2007-08, and estimated savings in cost;
- (iii) The type and quantity of 100% post consumer recycled content paper purchased in the preceding fiscal year, in quantity and as a percentage of overall paper purchased, both in the current fiscal year and the baseline year of 2007-08;
- (iv) The quantity of commodities, services and/or technology purchased within a priority type, including the quantity which meets the Green Procurement Specifications or is included on a Green Procurement List, both in the current fiscal year and the baseline year of 2009-10;
- (v) A summary description of the commodities, services and/or technology purchased within a priority type for which Green Procurement Lists or Specifications have been developed but which were found not to meet form, function, and utility considerations, and a summary explanation of the reasons therefore;
- (vi) A description of sustainability projects implemented in the past fiscal year, and the amount of any cost savings or increases realized, including but not limited to: (a) toxic use reduction; (b) waste reduction, recycling and composting; (c) water and natural resource conservation; and (d) green procurement.

B. Within 24 months after the effective date of this Order, and annually thereafter, the Committee shall submit a progress report to the Governor. The report shall compile the information submitted by state agencies under this section, including estimated cost and energy savings, toxic substance and greenhouse gas reductions, and a discussion of progress made toward implementing this Order.

VI. Greening State Government Advisory Committee

There shall be a Greening State Government Advisory Committee (Advisory Committee) consisting of nine members of the public appointed by the Governor in consultation with the members of the Committee. In making such appointments, the Governor shall seek to include representation from green procurement experts, Preferred Sources, manufacturers, vendors, trade associations, labor, and/or environmental, health and environmental justice organizations. The Advisory Committee shall designate a Chair by majority vote. The first meeting shall be held within one month of the appointments. The Advisory Committee shall advise and assist the Committee and OGS, DEC and DOH

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in carrying out the provisions of this Order and submit an annual report to the Governor. The Advisory Committee shall be guided by a consensus approach to decision making, and may operate by majority vote as needed with reflections of minority opinions in reports. Advisory Committee members shall serve without compensation, except that, subject to available funds, they may be reimbursed for the necessary and actual expenses incurred in the performance of any of their duties as members.

VII. Assistance and Cooperation

All state agencies shall provide all reasonable assistance and cooperation requested by OGS, DEC, DOH, the Committee and the Advisory Committee for the purpose of carrying out this Order. Such assistance may include the assignment of staff and the provision of support services, including an annual State Sustainability and Green Procurement training event to facilitate the sharing of information among agencies and other state contract end-users.

VIII. Participation of Other Governmental Entities

Local governments, school districts and state funded facilities not subject to the requirements of this Order are encouraged to review their purchasing and use of commodities, services and technology and select those having properties that minimize potential impacts to human health and the environment such as those contained within the Green Procurement Lists and Specifications developed under this Order.

This Executive Order shall take effect immediately.

Addendum A

"Priority toxic substances of concern" shall include, but not be limited to, substances found on the following lists:

- 1) Any substance listed as known or reasonably anticipated to be a human carcinogen in the National Toxicology Program's *Biennial Report on Carcinogens*;
- 2) Any persistent or bioaccumulative toxic substances, including those on the list of priority chemicals created by the U.S. Environmental Protection Agency National Partnership for Environmental Priorities;
(<http://www.epa.gov/epaoswer/hazwaste/minimize/chemlist.htm>)
- 3) Bisphenol A, perfluorinated compounds and brominated flame retardants, and
- 4) Any additional substances identified by DOH or DEC as of concern to public health or the environment after consultation with the Committee and Advisory Committee and after providing public notice and a public comment period of at least thirty (30) days.