

**STATEWIDE PEF/NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION LABOR/MANAGEMENT COMMITTEE MINUTES**

**August 17, 2007**

Attendance:

**PEF:**

David Persson, LM Chair  
Karl Berger, Albany LM Co-Chair  
Katy Murphy, Region 1  
Nigel Crawford, Region 2  
Keith Browne, Region 3  
Harry Spetla, Region 5  
Terry Tyoe, Region 6  
Frank Flack, Region 6  
John Clancy, Region 7  
Jim Kersten, Region 9  
Annette Sansone, Region 9  
Wayne Bayer, Albany  
Holly Clark, Albany  
John Donlon, Albany  
Mark Hyland, Albany  
Mike Kanuk, SUNY-East  
Dylan Keenan, Albany  
Denise Stephens, Albany  
William Wurster, Albany  
Arthur Munson, PEF  
Josephine Rice, PEF  
Dan David, Region 9 [Guest]

***Management:***

Joseph Lattanzio, DEC Director of Employee Relations  
Mark Cadrette, DEC Director of Health & Safety Unit  
Gail Balluff, DEC Employee Relations  
Marie Furlong, DEC Employee Relations [Minutes]

**PEF's questions and statements are in bold faced type.**

*Management's responses are in italics.*

**It was mutually agreed that the minutes will be finalized within 30 days of the meeting.**

**1. Privatization**

**Please provide an update.**

**PEF/encon supports the goals of the Pollution Prevention Institute (PPI) including toxic waste reduction and the protection of both human health and the environment. While we could be convinced that the research aspect of new technologies related to these goals is best supported by academia, we feel strongly that public employee's are best able to represent and serve the needs of overall public interest. When is the public airing of the RFI? Does OSC have an approval of the RFP?**

*Management's response: Management to follow up.*

**Since June 19, 2006, what are the number of contracts for consulting services, value of contracts, the number of contract employees performing such consulting services, types of services provided by such contract employees, the number of hours they work and their total compensation under the contract, at the Department of Environmental Conservation?**

**Has OSC provided a summary of responses to the requirements of Chapter 10 of the Laws of 2006 (Consultant Disclosure Legislation)?**

*Management's response: Management to follow up.*

**What is EFC's involvement in the PPI?**

*Management's response: EFC is on the interagency Pollution Prevention and Compliance Assistance Council and by law (ECL Article 28) the Council will be consulted by the Commissioner before he awards the contract for the Institute. The Council will also be on the Advisory Committee to the Institute for its ongoing work.*

### **Executive Budget**

**How will the Department fund the 109 new positions after six months?**

**How will last years 36 positions be funded?**

**How are the structural imbalances in the Conservation Fund (\$7m), Environmental Regulatory Account (\$4.5m), Clean Air Fund (\$6m), and Natural Resources Account (\$2.3m) being addressed?**

*Management's response: The Department is in the process of filling all of the 109 positions. Staff have been selected for approximately 38 of the items.*

*The Department has already filled the 36 items from FY 2006/07.*

**PEF requests Management address the structural imbalances in the Conservation Fund in the minutes.**

*Management's response: This will be addressed in the 2008-09 Budget Request.*

**Is there a timetable for filling the remainder of the positions?**

*Management's response: Management plans to fill these positions as soon as possible.*

**The Spills status report (7/26/07)**

	<b>Region 3</b>	<b>Region 2</b>
<b>Current</b>	<b>5321</b>	<b>5317</b>
<b>1 year ago</b>	<b>4752</b>	<b>6117</b>
<b>2 years ago</b>	<b>4328</b>	<b>7755</b>
<b>3 years ago</b>	<b>5271</b>	<b>8953</b>
<b>5 years ago</b>	<b>4825</b>	<b>15857</b>

**In June of 2005, management indicated that DER had a plan for eliminating/reducing the backlog of spill investigations in the central and lower Hudson Valley through the use of DER personnel. DER personnel in the mid-Hudson region have now been told that DER is considering contracting out this**

**work or making use of a federal contractor (e.g. TechLaw). What is the reason for this change? What does management plan to do to ensure the integrity of this process and protect the environment and public health and safety? How much involvement will DEC staff have in this process?**

*Management's response: As mentioned at the last meeting, in response to an offer from the USEPA to assist with the review of spill investigations in Region 3, files for approximately 300 cases were provided to EPA's contractor (Techlaw) for them to review and recommend to DEC whether the case can be closed or what the next steps in the investigation should include. This is not a long term action and reflects the use of limited EPA funds, not those of DER. Decisions regarding the final disposition of these cases remains with DER.*

**The Federal Energy Act legislation imposed new requirements on the states and EPA to increase inspections of chemical and petroleum bulk storage facilities. Did Congress and the USEPA decide what funding might be available to the states to carry out the various requirements of the law? What is the DEC's analysis of the staffing impact and will increased staff be requested to do this work?**

*Management's response: As discussed at the meeting in June, the requirements and overall impacts of the Energy Act are under review. This review includes implications for possible changes that would be needed to New York State law and regulations and possible impacts on staffing. The requirements of the Underground Storage Tank Compliance Act (USTCA) portion of the Energy Act are significant and include a requirement to inspect each federally regulated UST facility at least once every three years. Final decisions by Congress and the USEPA regarding what funding might be available to the states to carry out the various requirements of the law have not yet been made. Once information becomes available regarding what, if any, long term funding from EPA will be available to support implementation of the Energy Act in New York State, a decision can be made regarding the State's willingness to assume some or all of EPA's responsibilities through a delegation. At this point, it is premature to discuss the need for additional staff.*

#### **Contracting Out Computer Services**

**Do remaining \$23,337,161 Information Technology (IT) contracts with consultants cost between 53 percent and 62 percent more than the cost to use public employees (including benefits)?**

**Does DEC pay its employees an average annual pay less (including benefits) than supervised consultants?**

**What is the cost savings to the State of New York and its taxpayers, if DEC filled vacant IT positions and relied on those employees, instead of consultants? Can DEC fill positions from other higher grade titles and provide alternative promotional opportunities?**

*Management's response: Due to the scope of the question and the lack of sufficient resources, Management is unable to provide this information.*

**PEF requests an update on the DECALS and Verizon remaining Sportsman Education Application business rules on sportsman education class, the Customer Maintenance and Law Enforcement applications and the remaining open issues in, the System Assessment and OSC approval of the five (5) year contract extension after May 15, 2007. When will DFW&MR take over operational responsibility for application?**

*Management's response: The development work for the Sportsman Education application has been completed and the application is currently in Verizon's Quality Control for testing. It will move the User Acceptance Testing (UAT) environment later in August for testing by the Department's users. The Customer Maintenance application has been upgraded with expanded search capabilities and the Law Enforcement Application also received the same upgraded search capabilities. The majority of the issues in the System Assessment have been addressed by the vendor and continue to be worked (e.g., Sportsman Education) to close out the System Assessment issues. The contract amendment is at OSC at this time. The operational*

responsibility for the daily maintenance of the servers, backend hardware and software will remain with the vendor as stated in the contract amendment. DFW&MR will continue to provide operational management of the system through the administrative applications developed for the program.

**PEF reminds Management's Policy Office that, when dealing with Terms and Conditions of Employment, any policy or directive must be shared with the union per Article 28.**

**2. Work Schedule Flexibility**

**PEF/encon provided comments on the Draft CPP Guidelines document on 11/28/06. Please provide analysis and consideration of objections to the proposed changes and of alternatives proposed.**

**As long as the average workweek can be construed to be 37.5 hours for both overtime eligible and overtime ineligible employees, full time status and the concomitant accrual rates would be maintained.**

**The VRWS Guidelines in the CBA state: (7. Coordination with Alternative Work Schedules) Is it possible to coordinate VRWS agreements with Alternative Work Schedule arrangements when desired by the employee and consistent with operating needs.**

*Management's response: Management to follow up.*

**3. Diversity**

**Diversity of the workforce includes age, race, creed, color, national origin, sexual orientation, military status, sex, disability, genetic predisposition or carrier status, or marital status. How does DEC propose to increase diversity?**

**Karl Berger, Kevin Hintz, John Donlon Jim Kersten are PEF/encon's Diversity subcommittee representatives.**

**Has DEC completed edit of the June 2, 1997 Affirmative Action Plan?**

**What are DEC's specific goals and timetables for the prompt achievement of full and equal employment opportunity for minorities, women, disabled persons and Vietnam era veterans?**

**PEF requests copy of the most recent annual report.**

*Management's response: The Affirmative Action Plan is still being reviewed by the DEC Legal Office at this time.*

**4. Promotional Ladders**

**a. What is the implementation plan for individual Natural Resources titles to be reallocated for parity with Environmental Quality?**

*Management's response: The Commissioner met with Assistant Commissioner Amato and Gerry Barnhart to discuss attempts to reclassify Natural Resources titles. Fish & Wildlife is developing the paperwork to justify the reclassification of certain titles.*

**PEF would like to meet with the new Director of FWMR when he/she is appointed.**

**b. How can specialty job duties and responsibilities be used instead of supervisory**

**responsibilities in job descriptions for titles above SG-18?**

**Would DEC consider any title consolidations for development of parallel career tracks based on the job duties and responsibilities for master professional titles of Biologist, Chemist, Engineering Geologist, Environmental Engineers, Environmental Radiation Specialist, and Foresters to Environmental Analyst and/or Environmental Program Specialist series?**

*Management's response: As mentioned previously, title specific and position specific job descriptions and responsibilities do include responsibilities other than supervision. Supervision is not the sole basis for classification at any level, and there are numerous instances where it is not a classification factor for positions above SG-18.*

*Because minimum qualifications are based on specific titles and associated duties, title consolidation would not be possible between these titles. They each have very distinct minimum qualifications with the exception of the Environmental Analyst and Environmental Program specialist titles, which have a broader base of minimum qualifications. These two titles still have differing knowledge, skills and abilities. If there were a master professional title, the distinctions would be even greater.*

*The Personnel Office has written to the Department of Civil Service requesting that the examinations for Biologist 1 be a "Rating of Training & Experience." Civil Service is now evaluating this proposal.*

- c. **PEF/encon requests that DEC asks Civil Service to reinstate the parallel career track for Biologist 1 (especially Marine & Ecologists series titles) to be eligible again to take the Environmental Analyst 2 & EPS 2 promotional exams. Bio. 1 - Marine have very limited promotional opportunities due to the Marine Title series located only at the downstate regions.**

**The tidal wetlands & freshwater wetland biologists work very close with Permits, Coastal Erosion management, Flood Control (dams) & NYS DOT staff which results in direct knowledge & experience of those programs by the above mentioned specific biologists.**

*Management's response: Civil Service Law requires that positions above entry level (in this case, Environmental Analyst 2 and Environmental Program Specialist 2) be filled by promotion from among individuals holding competitive class lower grade positions in direct line (in this case, Environmental Analyst 1 and Environmental Program Specialist 1) within the department in which the vacancy exists. Eligibility may be extended to individuals in collateral titles (i.e., Biologist 1) in special circumstances such as when a direct line eligible list would not produce enough candidates to fill the number of anticipated vacancies. Currently, the number of direct line candidates eligible for promotion to Environmental Analyst 2 and EPS 2 far exceeds the number of expected vacancies. Therefore, it would not now be appropriate to add collateral titles into this examination.*

*Incumbents of Biologist positions may transfer between parentheses which could provide them with increased promotion opportunities.*

**5. Environmental Management Systems**

**Tabled**

**6. DEC Library and Training & Development**

**When will group training on Library resources and database searching be videoconferenced to Department staff at the DEC Regional Offices?**

*Management's response: The Library staff do not have any programs currently scheduled. Future programs will be videoconferenced and will be announced via e-mail to all DEC staff.*

**7. Foresters**

**What is the plan to increase stewardship positions in Lands and Forests to address the Department's need for additional foresters for forest management priorities and sustainable timber harvest?**

*Management's response: It is the Division's top priority to add additional staff in our regional offices and Central Office to improve stewardship of public lands as well as working with private forest landowners to promote sustainable forestry and protect the health of our forests. The Division is actively seeking Executive support for more Foresters, Real Estate Specialists, Land Surveyors, Environmental Program Specialists, Citizen Participation Specialists and Natural Resource Planners. The Natural Resource Planner title has not been used by this Agency for many years, although the Adirondack Park Agency and the Office of Parks, Recreation & Historic Preservation have such titles. The Division would like the Agency to consider use of these titles as much of the work of the Division requires staff with background in natural resource planning. The Division has also urged the Department of Civil Service to create Geographic Information Specialists (GIS) titles, as local government units in New York State already have, to address our critical needs for staff in this critical area.*

**8. Civil Service**

**a. How many DEC positions are currently filled?**

*Management's response: The Department currently has 3,390.85 filled positions.*

**b. Did DEC fill all waivers?**

*Management's response: There are currently 115 outstanding waivers.*

**c. Did Civil Service approve Job Classification Standards with professional titles of Environmental Engineering Technician and Environmental Analyst?**

*Management's response: No, not yet. Although the Commissioner of Civil Service has indicated that finalizing classification standards is a priority, these titles are still being reviewed.*

**d. When did Personnel last discuss the downstate geographic pay differential for the Biologist 1 and Biologist 2 (Marine) in Region 1 and 2 with Civil Service?**

*Management's response: Personnel is now discussing options with Executive in regard to this issue.*

**e. Acting Positions**

**Tabled**

*Management's response: Agreed.*

**f. Interns**

**Tabled**

**9. Laboratory Consolidation**

**PEF/encon provided comments on the Health & Safety content of the CUH2A Document - "Study - Rough Order of Magnitude ROM & Program Validation", Final Draft, Dated, August 18, 2006, the Consolidated Laboratory Collaboration Effort. Where is DEC planning to relocate the DEC SUNY East labs?**

*Management's response: As mentioned previously, no determination has been made with regard to location. The report prepared by CUH2A considered only DEC divisions, not other Agencies. Any new location would be appropriately sized.*

*As reported by J. McKeon at the last meeting, DAR has briefed the Commissioner and Executive Deputy on the diesel lab and they were supportive. The Department will also need to brief the Governor's Office about accessing the Clean Air Fund for construction costs. We will be working with DOB over the summer on the police academy and the consolidated lab projects.*

**What is the staffing plan for the heavy duty Automotive Emissions Laboratory (AEL) at NYSERDA's Saratoga Technology & Energy Park (STEP)? lab?**

*Management's response: As reported at the June meeting, additional staffing requirements and plans will be developed as the new facility progresses towards construction and occupancy. Any State building under construction must meet the State Building Code.*

*DAR has provided lists of staff for the diesel lab and the consolidated lab. There has been no discussion of having NYSERDA staff there. The design is 75% completed.*

**10. Scheduling of L/M Meetings**

**The next meeting is scheduled for November 29.**

*Management's response: Management is agreeable to the date.*

**PEF invites the Commissioner to attend the next meeting.**

**11. Environmental Monitors**

- a. Will DEC prepare an Environmental Impact Statement for the proposed Commissioner Policy to replace Organization and Delegation Memo #92-10? In response to PEF's March 2004 request, has the Department assembled information regarding how many independent environmental monitors the Department has caused to be hired? If not, why is the Department still avoiding answering this request after three years?**

*Management's response: This issue will be reviewed by the new Administration.*

- b. **During October of 2004, DEC gave a public notice of its intent to change from On-Site Environmental Monitors being DEC career, civil servants to allowing the regulated entity to hire a private third-party consultant (a.k.a. "Independent Environmental Monitor") to perform this critical function of safeguarding public health. When will the analysis of these comments be completed?**

*Management's response: This issue will be reviewed by the new Administration.*

- c. **Kodak and the Department entered into a memorandum of understanding (MOU) that requires Kodak to fund environmental monitor positions under Kodak's Part 373 permit when it is issued. These positions are currently funded under the MOU itself. Kodak's draft Part 373 permit was public noticed in 2004, yet the permit has not been issued. Kodak and the Department recently agreed to at least temporarily suspend processing of the Permit. What are management's plans for funding these positions?**

*Management's response: This issue will be reviewed by the new Administration.*

12. **Health & Safety**

**Specific updates and actions on all outstanding H&S agenda items are itemized within the Statewide Health & Safety Labor/Management Committee meeting minutes which are available on the OER website and through the respective union representatives.**

- a. **PEF/encon requests written description of the NYS Threat Levels and security enhancements as implemented by the agency and Region. Any employee who is required to be available for immediate recall and who must be prepared to return to duty within a limited period of time must be compensated as per programs established pursuant to Article 7.17(a), Article 7.17(b), Chapter 33 of the Laws of 1999 and possibly Article 7.18 and Section 130.8 of the NYSCSL.**
- b. **Does DEC support a Safety Incentive Differential request to Civil Service that expands the criteria to include employees that conduct investigations at hazardous substance spills or other hazardous substance emergencies; or inspect hazardous substance facilities sites (e.g., manufacturers, storage facilities, active/inactive waste sites); investigate and/or manage the cleanup of inactive hazardous waste sites?**
- c. **Has OGS identified the funding allocation for AEDs in yearly increments through fiscal year 2009-10?**
- d. **What is DEC doing to prepare for potential avian flu epidemic or pandemic ? Will meetings and/or field work be suspended to safeguard staff health ? Is telework an element of the Department's Continuity of Operations? Will DEC provided anti-viral medications to "essential" staff that will be required to work and exposed to avian flu and to family members of "essential" staff being required to work and exposed to avian flu ?**

*Management's response:*

AEDs

*The Department's AED implementation program is in full swing. Approximately 225 AEDs have been purchased, distributed and installed Statewide. The Health & Safety Unit is currently coordinating volunteer responder hands-on training with Employee Health Services. Efforts continue on the recruitment of volunteers. DEC-wide, we currently have over 500 volunteers.*

**PEF suggests sending out an Agency-wide communication reminding employees of the need for volunteers and instructing them how to go about doing so.**

*Supervisor Health & Safety Training*

*The third year of the training cycle will conclude in the Central Office on 9/19/07. There are no current plans to continue the training.*

*Avian & Pandemic Flu*

*There is nothing new to report on these issues.*

- e. **Right-to-Know (RTK): On December 12, 2003, PEF filed a statewide complaint with the Attorney General. On September 18, 2006 the Office of the Attorney General reminded DEC that "category specific training" is not training on the specific toxic substances to which employees are routinely exposed. DEC has agreed to provide appropriate training material, once the list of toxic substances that employees are routinely exposed to is compiled. Has DEC compiled the list of toxic substances that employees are routinely exposed to provide appropriate training material?**

*Management's response: As this matter is part of an ongoing investigation, we cannot discuss this issue.*

13. **625 Broadway**

- a. **PEF/encon requests "WALK"/"DON'T WALK" lights with countdown numbers at the southeastern and southwestern corners of the intersection of Water Street and Colonie Street (across Water Street). Employees parking in the Corning Preserve Boat Launch also request signals at the northeastern and southeastern corner of the same intersection (across the 787N off-ramp/Colonie Street).**

*Management's response:*

- b. **PEF/encon requests a "pedestrian crossing" sign be placed in the middle of Orange Street (the same as those successfully piloted on Pearl Street).**

*Management's response: As mentioned previously, Executive Staff have requested that OGS work with the Department to address issues related to the garage entrance at 625 Broadway.*

- c. **Why has Operations not notified Central Office employees that those employees who received an ID card between December 2006 and May 9, 2007 have not been coded for Port access?**

*Management's response: The procedure is that all OGS-issued ID cards for DEC Central Office employees are programmed for Port access upon receipt by Office Services. It is possible that some cards may have been missed or that, due to a problem with the OGS-Honeywell system, the card data was not properly transferred to the controller at the Port site. There were numerous problems with the data connections to the Port during the early part of 2007 have been resolved. Any cards which were reported to Office Services as not working are either re-programmed immediately or a replacement is ordered.*

- d. **PEF/encon requests discussions with security and OGS regarding the new proximity ID cards for entrance to garage during work hours M-F and the blanket restriction on weekend building access.**

*Management response: It is our understanding that a briefing will be held prior to initiating the system.*

- e. **When will the internal DEC website establish a link to the carpooling site?**

*Management's response: Management to follow up.*

- f. **What are the arrangements to provide ID cards for those employees who are exercising their rights to not use their DMV identification number as their employee ID number and their DMV information to create an ID card?**

*Management's response: An alternate means of identification is being discussed.*

- g. **When will DEC brief PEF on the new 625 Broadway access policy?**

*Management's response: It is our understanding a briefing will be held.*

**14. Office Moves**

- a. **What is schedule of construction for the additional 20,000 square feet at the New Paltz office? What is the schedule to start the construction project?**

*Management's response: As mentioned at the meeting in June, construction began in January 2007 with Phase 1 (New Addition) scheduled for completion in November 2007. Phase 2 (Renovation of Existing Building) to begin December 2007 and final completion scheduled for April 2008.*

- b. **Does management continue meaningful discussions for PS&T unit members in the context of Joint Labor/Management Quality of Worklife Committees?**

*Management's response: The Region 3 Regional Director has agreed to conduct quarterly labor/management meetings to discuss this and other matters of interest to the employees of Region 3.*

- c. **Did Galesi Management Corporation install Region 4 exterior lighting to provide ample illumination on all parking areas and pathways, and extend and connect the sidewalks to prevent further injuries to employees and to visitors to the building?**

*Management's response: As reported at the last meeting, a revised proposal for the lighting is being developed. The Town of Rotterdam will be consulted and, after all parties are in agreement, a work order will be issued. The sidewalk project has been completed.*

**15. LATS**

**ERS can use Non-compensatory pay in the calculation of a final average salary (FAS), but only to the extent that the time is earned within the FAS period. The procedure for Non-comp is to allow 80 hours per FAS year unless the employer can verify exactly when the time was earned, in which case DEC would move the appropriate amounts to those time frames. Policy has always been to put any money paid to a member/retiree into the time frame where it was earned. Why does LATS only allow 2 years?**

*Management's response: FAS calculations cover three (3) years. The longest a PEF employee can hold onto comp time is two (2) years: the year it's earned and one subsequent year. Per Civil Service/GOER rules, LATS expires comp time on March 31<sup>st</sup> one full fiscal year after the fiscal year in which it was earned.*

*For example, An employee earns five (5) hours of comp time during FY 2005. It rolls into the previous year's comp on April 1, 2006. The employee has until March 31, 2007 to use that balance or it expires.*

**PEF would like to see a copy of the rules referenced.**

*Management's response: Management provided a copy of the reference material requested to PEF.*

**16. Expense Report Submittals**

**PEF objects to the text of the recently updated Fiscal Bulletin 101 (previously #001).**

*Management's response: Management believes the time frame for submission of expense reports is reasonable.*

**DEC**

*Joseph A. Lattanzio*

DATE November 21, 2007

**PEF/ENCON**

*David J. Persson*

November 21, 2007