

**This LM Report was prepared
by Dave Persson & Josephine Rice:**

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

December 1, 2005

Attendance:

PEF:

David Persson, LM Chair
Karl Berger, Albany LM Co-Chair
Chris Spies, Region 1
George Stadnik, Region 2
Nigel Crawford, Region 2
Hassan Hussein, Region 2
Keith Browne, Region 3
Terry Tyoe, Region 6
Frank Flack, Region 6
Tara Blum, Region 7
Wayne Bayer, Albany
Denise Stephens, Albany
Robert McDonough, Albany
Lawrence D'Arco, Albany
Jim Kemenash, PEF
Josephine Rice, PEF

Management:

Jack McKeon, DEC Assistant Commissioner for Administration
Joseph Lattanzio, DEC Director of Employee Relations
Marline Agnew, DEC Personnel
Mark Malinoski, DEC Assistant Director of Operations
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 would be finalized within 30 days of the meeting.
Updates to be forwarded when available.**

I. New Business:

A. Discussion

1. Privatization

What are the number of contracts, value of contracts, types of services contracted and the number of employees hired to perform services through contracts at the Department of

Environmental Conservation?

Title 6, Section 615.2 of the Environmental Conservation Law defines contractor as," a municipality, natural person or business entity, that is a party to a contract as defined in this section; this term includes general or prime contractors, subcontractors, vendors, consultants, subconsultants, provider of professional services and suppliers."

Similarly, ECL defines a Contract as, "any State grant, loan, agreement, or any other instrument by which the State provides or otherwise makes available assistance in the form of funds or the services of State personnel."

Please identify the contract or MOU from which these employees are paid.

Adirondack Lakes Survey Corporation;

American Littoral Society;

Environmental Protection Fund contractors;

Institute for the Application of Geospatial Technology (IAGT);

Natural Heritage Trust;

Nature Conservancy;

New England Interstate Water Pollution Control Commission;

Regional Application Center for the North East (RACNE);

Science & Technology Foundation;

SUNY;

SUNY Research Foundation;

SUNY - Sea Grant - NEMO Program

Cornell

Syracuse SUNY ESF and various computer contractors, such as but not limited to: WorldCom, Hewlett Packard, Compaq.

Management's response: PEF: At the last meeting, management agreed to provide numbers on privatization. Management replied they would only provide those details if the corresponding legislation is passed. Thirteen staff from RACNE and NEIWPC attrited in Division of Water. They will be replaced by new hires as state employees, but not to the equivalent of thirteen. Management is working with EPA to move money from NEIWPC to DEC. The EPA grant is decreasing this year. After fringe benefits and indirect costs, it costs DEC more money for regular employees. PEF commented that DOB and the Governor requested that information as part of the legislation rejection. Management wasn't asked for specifics and hasn't collected that information. They are working with DOB to raise the target of budget fills. The December 14 public hearing will list programs and ask about the implementation of the budget. There were no reductions expected for the 2006-2007 fiscal year because people throughout DOB and the Governor realize that the mandates have not decreased. PEF questioned whether all EPF money was being spent. Management replied that, because there are so many grant programs, most money comes to the Department and is then sub-allocated. Between the RFP's, municipalities, and capital budget we have a cash ceiling of \$21 million. PEF counter argued that it's more cost effective to have state employees than contracting out. Management hasn't done any cost effective, long-term analyses for long-term investments. They thought fringe benefits were 49% and indirect costs are about 33% and added that indirect costs are not on every salary.

NEIWPCC items are funded by EPA grants for federally funded items. A prorate of 33%-35% is charged on every salary except federal special revenue or general fund. PEF felt in order to compare costs; you also need to compare matching titles. Environmental Analysts 1 (EA1) are hired at Grade 16. Consultants at that level, after a short period of time, are upgraded to a comparable Grade 23, bypassing those on the promotional list. Once trained, consultants argue they should be upgraded on the fast track. Environmental Program Specialists (EPS), without the two-year traineeships, argue for promotions without any Civil Service constraints. In some cases the target document will not have individuals with resumes. Many don't qualify for the corresponding Civil Service exams. With questionable qualifications, there may not be a cost savings. Management didn't want PEF to expect the 13 consultants leaving to be replaced with exactly 13 civil servants, but will hire as many as possible. PEF will provide management with a copy of Mr. McDonough's comments to make sure the merit and fitness argument is included in the minutes as well as value and accountability issues. PEF stated the NEIWPCC overhead rate was 15.5% over cost of salary three years ago. Management could not confirm that figure nor did they have the correlation on indirect costs. NEIWPCC is not for profit under federal law and everything used goes back into NEIWPCC. PEF added that there were also administrative charges in addition to the costs of office space, equipment and vehicles to consider. Management replied that some of those figures are being debated with the Office of State Comptroller in the current audit being done, but that in-kind services being listed twice was a legitimate argument. Administration costs for RACNE were 10-20%. Cayuga County Community College is a not for profit, government-type agency. The Comptroller ruled an MOU was not acceptable because it's not a state agency. They want DEC to bid everything out. It may not result in more state employees. PEF asked if 32 MOUs with SUNY are being converted into contracts. Management replied that the Comptroller ruled no MOUs with SUNY in lieu of contracting. They want a competitive process rather than the MOU process. PEF wanted the turnover rate and training rate computed into the costs. Management didn't want to debate the details because they are not doing a cost/effective analysis. Federal money was available during the hiring freeze. That's no longer the case and they will now look to hire state employees. PEF was interested in standardization in terms of knowing what went into the analysis. Management replied that an analysis was never done. There was a hard freeze and this was their only other opportunity. NEIWPCC and RACNE was different than most of the other contracting out because those workers resemble DEC employees. Under the superfund program, engineers were hired and made totally efficient and effective.

PEF asked about the potential for an increase in fills from DOB as a result of the EPA grant being transferred back to DEC from NEIWPCC. DOB needs to know that RACNE, as a result for special items, won't cost anything. PEF asked to be kept updated.

Contracting Out Computer Services

What is the projected listing of expenditures by vendor for SFY 2005-06, budget costs, and purpose of contracted out computer support?

Management's response: Computer services will not be available until the end of the year.

PEF requests an update on DECALS and MCI (WorldCom) remaining five (5) DECALS applications including the ad hoc query application and the sportsman education application responsibilities and OSC approval of the contract amendment. At current license sales level, when will the fund require another increase in the cost of a license or general fund bailout? What is the current annual cost of DECALS maintenance/operating costs including the Harvest Reporting System? When will DFW&MR take over operational responsibility for application?

Management's response: New information has been posted on DECALS.

In which divisions do these contract employees work? At what locations do these employees work? Do they work side-by side state employees and do they supervise state employees? Are they covered by the same Ethics Law restrictions as state employees?

Management's response:

- a. What funds are used to employ contract employees, are they paid out of appropriations allocated in DEC's budget for non-personal/contractual services?**

Management's response:

- b. How much of the Environmental Protection Fund is used to pay contract employees?**

Management's response:

- c. What percentage of a contractor's salary does DEC pay for benefits, administrative overhead, and profit?**

Management's response:

- d. Why does DEC pay contractors 10-20% administrative fees?**

Management's response:

- e. Why does DEC pay overhead charges that are approximately 130% of the labor costs?**

Management's response:

- f. As the Comprehensive Wildlife Conservation Strategy (CWCS) transitions to an implementation phase, has DEC used \$2,937,728 State Wildlife Grants funding to add six (6) new staff before the end of the 2005-06 fiscal year?**

Management's response:

- g. The State Wildlife Grants program coordinator waiver was approved and the position, a Biologist 2 in Albany, was filled. Why is this position now to be a contract Environmental Program Specialist 1?**

Management's response:

- h. Has DEC hired two NEIWPC Marine Biologists in Region 1 (East Setauket), as the Peconic Estuary Program Coordinator and Long Island Sound Habitat Restoration Coordinator, work traditionally performed by PS&T employees (Biologist 1- Marine)? One member left the agency & the other got a promotion & transferred to Central Office in Albany.**

Management's response: Hudson River Estuary has staff funded by NEIWPC. Fish and Wildlife are federally funded. Management was not familiar with all the funding resources but will look into it. They also didn't know if the positions were formally held by PS & T employees but will check. They argued with budget to increase the target because, with the federal money, it won't cost the state anything. A Biologist 2 was formally in that position but now they hired a contractor. They have considered moving from contracts and becoming much more staff intensive. Management will look into Region 1. The division is actively working for the target. If the job is not filled in Region 1, it won't be replaced by NEIWPC. The target is now being used elsewhere in the state.

2. Work Schedule Flexibility

The increasing diversity of the workforce such as age, race, creed, color, national origin, sexual orientation, military status, sex, disability, genetic predisposition or carrier status, or marital status and the ability to be flexible are new objectives that demand a broader approach that includes commuter benefits.

The term commuter benefits encompasses a variety arrangements that include: flextime, alternative work schedules, compressed pay periods, VRWS, carpooling, incentives for use of mass transit, and telecommuting.

The full implementation of compressed work week and telecommuting in the Central and Regional Offices would reduce pollution across the State and concurrently improve employee morale and productivity. Thus, PEF requests that the CPP and telecommuting programs be offered to all regions without delay.

Management's response: The PEF field representative will follow up with a memo, referencing the manual numbers. Management agreed to a number of things. PEF maintained that commuting from home to the office is sometimes considered travel but from home to a train

station is always travel. That's not the case as stated. PEF continues to disagree with the overtime status. The five days, 7:30 or 8pm reference cannot change unless two week's notice is given, to avoid overtime. It refers to a change in schedule not hours in a particular work week.

Workers' Compensation and Family Leave – The 1995-2004 memorandum by Civil Service as part of attendance and leave, talks about calculating twelve months. Material was provided. It should again be eligible, following a second year and cannot be cut off. The practice shouldn't have changed with this issuance. PEF felt there might be supervisors who may not know that and will use it as such. PEF asked for a specific time line, not wanting to waive their rights. Management was aware of the time element and will provide a response.

There were many questions regarding the structuring of the compressed work week and supervision. Management was unsure about the seniority considerations but is willing to review it. Regional offices will not have individual policies, it will be statewide. The pilot appeared as if much was dependent on what the division director wanted. It's important to employees and the department. Executive staff and others involved met to get some kind of work plan and ask questions. They also had discussions with other agencies. PEF wanted to participate in the discussions. PEF sent a letter to Commissioner Sheehan on October 19, 2005 as a basis for discussion but got no response. Regional directors should be involved and division directors making decisions may end up in the matrix. The top ones were Remediation and Solid and Hazardous Waste. DEC doesn't want compressed work week to be a divisive mechanism. There are legitimate issues. There is a PERC report from three years ago from the survey. PEF's view was positive regarding implementation of the pilot and they were surprised it was not expanded sooner. Management cited concerns and equity of people at different levels. It would be helpful to quantify those things.

Management wanted to make sure Divisions were implementing it appropriately. The time and attendance policy is being done to get the rules down. Division and Regional Directors felt there was nothing to oversee the program. The memo mentioned they were in charge and had the responsibility. That same philosophy should be in telecommuting. People were worried that if they didn't get it, they would go to that division. The report said 40% of the people thought it was good for the department. There was concern for the remaining 60% and equity for management people. PEF believed it was reasonable to ask managers to manage work concerns. They added that the Friday/Monday coverage problem goes beyond the compressed week, and into vacation, sick and personal leaves. Built into the policy are ways for people to get around it. Managers have discretion to work around that. Also, 20% of the 60% were undecided. New Jersey's Department of Environmental Protection has had this program for five years with no problems. Coverage comes down to managers doing their job. It's ridiculous that others have not had this opportunity. Management stated that, going forth, whatever is done in Albany will be extended to regions. They will develop a time frame soon and provide the information. PEF continued to request a meeting for a response to the letter sent to the Commissioner.

Management stated that telecommuting is off the table. There is a telecommuting policy. They are more comfortable with a compressed workweek. People think someone doing it is not there, doing something else. They don't see any advantages in telecommuting. One participant in

telecommuting believed she was much more productive telecommuting because there were less distractions and technology was advanced enough to make it possible. It's important that the decision makers remove their personalities. There should be standard objective guidelines for those people to justify doing it or not.

There are 68 from Remediation in the program. Fish and Wildlife have 5 participants. If it's extended to regions, they don't want people saying why aren't they are doing it. The benefits of a compressed work week include less pollution and traffic. The concern is coverage. Managers are not viewing it as being more productive, especially if out in the field already. There is concern with job movement.

a. What educational effort will follow issuance of Employee Time and Attendance Handbook?

Management's response:

b. Environmental Management Systems (EMS)

Will DEC prepare an RFP to obtain bid proposals that develop and implement EMS, and estimate the costs, including: an investment of internal resources, including staff/employee time; costs for training of personnel; costs associated with the hiring of outside consulting assistance, if needed; and costs for technical resources to analyze environmental impacts and improvement options, if needed?

Management's response:

3. Diversity

Diversity of the workforce includes as 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?

PEF will forward Management its comments on the Affirmative Action Plan.

Management's response: The affirmative action plan is currently under review by our Affirmative Action Office. Once incorporated, DEC will follow with an edited version.

4. Promotional Ladders

a. Will DEC update the table Comparison of Environmental Quality and Natural Resources Allocations? When is the next meeting scheduled?

Management's response:

- b. Will DEC discuss titles for development of parallel career tracks based on the work responsibilities for master professional titles of Biologist, Chemist, Engineering Geologist, Environmental Analyst, Environmental Engineer, Environmental Radiation Specialist, and Environmental Program Specialist? How can promotion exams test knowledge, skills, and abilities to assess the competence of people to be chosen for those titles?
PEF stated that Biologist 1 were no longer eligible to take the promotional Biologist 2 exam in the last six to eights years because they don't have the educational requirements, based on Civil Service criteria. Why have lists, if people are not eligible to take exams?

Management's response: Management didn't like the idea of having Environmental Engineers eligible. They discussed the concept of starting to develop employees to create pools to draw from. It benefits the department and employees by moving into various areas. Depending on the size of the division, some ladders may be broader than in other regions. People moving around gain a greater respect and understanding of other people's work. There is a lack of Environmental Program Specialists 2s in the region. One EPS2 was approved for Region 3. People are dead-ended as experts in their field. PEF stated that in the EPS traineeship transition exam list many people were frozen out of the opportunity to apply. They would have to apply for the transitional list. People were instead being hired off the open-competitive, bypassing those on the promotional list. Management had urged them to look at the EPS open-competitive in an effort to hire new people into the department. Over the last five years we have done 95% of our hires from promotional lists. PEF asked for the most recent comparable title list to monitor if a person is eligible for the position . Marline Agnew will provide a copy.

Personnel and Office of Training have been asked to provide plans, mainly environmental engineers, who have abandoned recruitment efforts, to get that back up and give plans for a better orientation program promoting the Department. We want to use videoconference abilities and make improvements. During this calendar year, 218 people have come into the department. We want to educate them better on what the entire department does, as well as doing more supervisory training. Division of Permits had a pilot that is not required, but strongly recommended. It covered practical things, like time and attendance and LATS. They asked for feedback. SEEDS wants project work before training. There is a lab project that management will be reaching out to PEF for input. Those are examples of working together on big issues. Every member but one will be a PEF member, not necessarily representing PEF at that point. DEC is asking everyone on the committee to view it from a department perspective, not just division. PEF commented that the dialogue has improved.

B. Information

1. Budget

- a. How many DEC positions are currently filled?

Management's response: Staffing is an on-going concern. Management stated that as of December 1, there are 3306 on staff, including 218 new hires in the 2005 calendar year, 87 retired and 62 left for other reasons, resulting in a net increase of 69. There were 248 promotions since then and 31 reclassifications including the Fish Culturist series. Since January, 541 waivers were approved in both restricted and non-restricted fills. There are 156 waivers were approved, but not yet used (90 unrestricted 66 restricted). The goal for staffing levels is 3330, with a float of almost 60 jobs. There were 15 items in the superfund (5 for DOS and 10 for DOH) that went to us but were sub-allocated to other agencies. No other sub-allocations involved staff.

- b. The Conservation Fund was over 5 million dollars in the red on 3/31/05. Will new license sale revenues overcome deficit? What is the impact of Patriot Plan section 14 to the Conservation Fund? What actions did DEC take this Fiscal Year to assure viability of the Conservation Fund? What actions are planned?**

Management's response: Everyone in DOB and the Governor's office is concerned and working on methods for the 2006-2007 budget. We will find some money so there is no impact on efforts. There will be a 15% reduction in NPS. Loan language is available within the fund. They are working on shifting people back to general fund from conservation fund. There were no negative impacts expected as far as lay offs.

- c. Reports from the Legislature and communities indicate that the Department, DOB, Governor's office and legislature vastly underestimated the impact on state tax revenues of tax credits for developers and owners applying for Brownfield grants. Suggestions are being made that this legislation, because of the tax credits, is in essence becoming an "incentive to pollute". What corrective action steps are being proposed by DEC management to remedy this?**

Management's response:

2. Civil Service

- a. How many waiver requests are pending at DOB?
How many waiver requests did DOB approve?**

Management's response: See Budget 1.a.

- b. Did Civil Service approve Job Classification Standards with professional titles of Engineering Geologist and Environmental Engineering Technician?**

Management's response:

- c. Did Management and Budget approve the submission of the Division of Fish, Wildlife & Marine Resources fiscal impact forms that request \$600,000 geographic**

pay differential for the Biologist 1 and Biologist 2 (Marine) for appointments in Region 1 and 2?

Management's response: Management was not sure of the time frame, but will get back to PEF.

- d. **Will DEC recruit candidates and hold an open competitive exam for the Associate Bacteriologist (Marine) position if there is no Senior Bacteriologist (Marine) title for promotion or a promotion field of at least 3 candidates? Has DEC reviewed the reclassification of this position once the incumbent is appointable to the Associate level? This is the only laboratory in NYS that is approved by the FDA to examine water samples for year-round monitoring of the sanitary conditions of shellfish harvest areas and supporting NY's shellfish industry.**

Management's response:

- e. **The recently passed Federal Energy Act legislation imposed new requirements on the states and EPA to increase inspections of chemical and petroleum bulk storage facilities. What is the DEC's analysis of the staffing impact and increased staff be requested to do this work? PEF asked that DEC try to delegate it by region.**

Management's response:

f. **Acting Positions**

PEF requests that waivers be submitted for the vacant positions and that they in fact be filled.

Management's response:

3. **Continuing Education requirements for NYS Professional Engineers**

When will the Division of Lands and Forests Land Surveyors establish Land Surveyor continuing education credits for the DEC Education and Training to sponsor?

Management's response:

4. **Laboratory Consolidation**

Where is DEC planning to relocate the DEC SUNY East labs? Will the labs be consolidated with other DEC divisions or Agencies at the new site? Will the new location result in expanded lab space and/or additional DEC staff?

Will DEC build a heavy duty Automotive Emissions Laboratory (EL) in Malta with funding

from the Clean Water/Clean Air Bond Act under NYSERDA? Will DEC use NYSERDA's Environmental Monitoring, Evaluation, and Protection (EMEP) program to provide policy-makers with scientifically credible and objective information on the impacts of pollution associated with energy and electricity generation?

Management's response: Management hopes to get together a team. There will be NYSERDA funding for the lab, \$12 million or \$14 million from MTA and \$3 million to \$4 million from the Bond Act. DEC pays a list figure amount. OGS will be brought into the process. There's been no funding identified for the Air Emissions lab.

5. Scheduling of L/M Meetings

For 2006, PEF suggests meeting on following proposed dates:

March 30 or April 6

June 28

September 21 Long Island

November 16

Management's response:

C. Unresolved Topics

1. Environmental Monitors

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?

Management's response:

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. How many comments did DEC receive concerning this privatization proposal?

Management's response:

Of these how many were favorable; how many opposed this concept?

Management's response:

Did DEC receive comments from the business community on this proposal?

Management's response:

Did any of these express concern about the wisdom of this change?

Management's response:

What safeguards will DEC have in place to ensure monitors hired by polluters will exercise the same due diligence in ensuring that polluters comply with DEC's guidance, permits, regulation, and clean-up orders?

Management's response:

When will the analysis of these comments be completed?

Management's response: Environmental monitors are being worked on. PEF asked about the four NEIWPC Environmental Monitors for NYC.

2. 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 a written description of the NYS Threat Levels and security enhancements as implemented by the agency and Region. PEF/encon is concerned that threat level implementation be uniform in DEC and OGS buildings as it may affect employees who are required to be available for immediate recall and who must be prepared to return to duty within a limited period of time.**
- b. **18 DEC employees are now eligible for the Safety Incentive Differential. PEF/encon asks DEC to request that Civil Service expand 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. **When will all DEC public buildings be equipped with AEDs? How many Regions have AEDs? PEF/encon requests that DEC work to provide 100% training for staff in use of defibrillators.**

Management's response:

3. 625 Broadway

- a. **PEF/encon requests that an electronic pedestrian crossing button be installed on Water Street.**

- b. Why were all compost containers replaced with tall white trash top loaders? Does Waste Disposal meet recycling requirements for the Green Building Annual Eligibility Certificate under Article 19 of the Tax Law?**
- c. Please provide cost to Divisions to move Solid Waste staff from the 8th floor to the 9th floor, which displaced Pesticides now located on the 11th floor in wake of OGS decision to move a new non-DEC tenant into NYSDEC space?**
- d. What were the total costs (computer, telephone, lost productivity, etc.) for rearranging/moving most of the 11th floor DER 3 times in 3 years?**

Management's response:

4. Office Moves

- a. Has the State of New York Office of General Services (OGS) negotiated a lease agreement with the Galesi Group, the current landlord, for a new, one-story facility within the Rotterdam Corporate Park near the existing Regional Office building? for a full-service lease agreement, pursuant to the New York State Public Buildings Law, for approximately 29,000 usable square feet of general office space? Is the projected date for the Region 4 move still late 2006?
Has management engaged in meaningful discussions for PS&T unit members in the context of a Joint Labor/Management Quality of Worklife Committee, which shall make recommendations to the Regional Director?**

Management's response:

- b. What is the review status of the plans, specs, building code checklist and consultants' responses for the additional 28,000 square feet at the New Paltz office? What is the schedule to start the construction project?**

What is the status of plans for relocation of Tarrytown office staff to White Plains?

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 4 lease is at OGS for approval. Once approved, they will have an idea of when they can break ground, possibly spring of 2006 for a move-in date. The New Paltz plans were finalized. Depending on the bids, ground breaking may be in March. A lease was signed for the Tarrytown move to White Plains and includes a reconditioning of space. Due to a problem with furniture, the move in date may be February 2006. PS & T members are involved in discussions for the New Paltz move.