

**PEF/NEW YORK STATE DEC LABOR/MANAGEMENT COMMITTEE REPORT
December 3, 2003**

Prepared by Dave Persson, PEF/encon LM Chair & Josephine Rice, PEF LM Recorder

Attendance:

PEF:

David Persson, LM Chair
Karl Berger, Albany LM Co-Chair
Chris Spies, Region 1
George Stadnik, Region 2
Joseph Battista, Region 3
Andy Marcuccio, Region 4
Mike Grove, Region 5
Frank Flack, Region 6
Terry Tyoe, Region 6
Tara Blum, Region 7
James Kersten, Region 9
Kevin Hintz, Region 9
Mike Keenan, Albany
Vimal Minocha, Albany
Wayne Bayer, Albany
Holly Clark, Albany
James Trossbach, Albany
John Donlon, Albany
Tim LeBarron, Albany
Kuldeep Gupta, Albany
Debbie Gardell, Albany
Jim Kemenash, PEF Field Representative
Josephine Rice, PEF

Management:

Carole LaVigna, DEC Director of Personnel
Everett Chamberlain, DEC Director of Fleet Management
Gail Balluff, DEC Employee Relations
Carl Gonzalez, DEC Employee Relations
Marie Furlong, DEC Employee Relations
Kathi Uderach, Personnel

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

Management's responses are in italics.

Opening Comments:

I. New Business:

1. Budget

- a. **Please provide Strategic Planning Update. PEF believes Dec is wasting money on costly private consultants to deliver vital public services. What steps is DEC going to take to end this growing practice? At a minimum, we request that managers be required to document savings in contracting out by providing a cost-benefit-analysis justifying it.**

*Management's response: We are still waiting for updated information from the Executive Office. It will be provided if received before the minutes are provided. **Has the group met since October 1?** Management could not answer but will forward the request for a response.*

- b. **On September 19, 2003, pursuant to DOB Bulletin H-1025, what was DEC's recommended full-annual savings of new or renewal contracts for state operations, aid to localities, capital projects and installment purchase financing for April 1, 2003 to March 31, 2004? What changes or additions did DEC make to the initial report?**

Management's response: This is a work in progress. We will provide updated information as an attachment to the minutes when it's available. Was the submission made as required? Can't answer. We will have something to report in the minutes.

- c.(1) **Has DEC received cash ceiling information and justified non-personal spending, and personal services beyond October 31, 2003.**

Management's response: Additional allocations were distributed on November 17, 2003. Does that include all funds? Can't answer if personal or non-personal. It's unknown whether all funding sources have been approved. Specific follow-up questions will be forwarded.

- (2) **Has DEC developed an annual plan for the \$168 million that the Legislature budgeted for Superfund program? How will the \$15 million in Technical Assistance grants be spent? Will the 55 associated positions be new or transfer positions?**

Management's response: Planning is still underway.

- d. **Has DEC filled the 37 secondary backfill waivers?**

Management's response: 2 or 3 appointments may still be pending and are due by December 9, but virtually all have been filled.

- e. **Is the project date for the Region 4 move to the industrial park still April 2004? 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? In this regard, Andy Marcuccio should be the PEF steward contacted.**

Management's response: There is nothing new to report regarding Region 4 building. Updated information will be provided when available. When appropriate, the regional director has agreed to the formation of a group to share ideas and involve employees in the process.

- f.(1) **What is the status of the additional 28,000 square feet at the New Paltz office? Is the schedule to start construction project still January 2004?**

Management's response: Design on the contract documents have been completed by the consultant and received by the Department on 11/26/03. These are now undergoing a final review. We plan on having this project go out for bid in January with construction estimated to begin in April 2004.

- f.(2) **Does management continue meaningful discussions for PS&T unit members in the context of a Joint Labor/Management Quality of Worklife Committee?**

Management's response: The regional director will continue to schedule meetings with appropriate staff and solicit comments/suggestions from all staff.

- g. **PEF requests copies of current 23 Memoranda of Understanding with SUNY.**

Management's response: The Department has had difficulty locating all the documents. We will continue exploring the feasibility of providing these to PEF. We are asking that PEF provide more specific identifying information if possible. This may assist the process. Management will follow up with the regional director. PEF suggested management check with Legal rather than individual regions. PEF provided examples from previous minutes for Cayuga Community College, SUNY Buffalo, RACNE, Hazardous Waste Management, and SUNY East. Management will take the request back.

h. Has DOB approved the 427 new vehicles? Did DEC revise OD-17 for compliance with Budget Bulletin D-1110?

Management's response: There are 382 vehicles pending procurement approval. For SFY 2003, 45 vehicles were purchased prior to the vehicle moratorium being implemented by DOB.

OAD-17 has been revised per Budget Bulletin D-1110. It will be forwarded to DOB late this month for their review and approval. Copies of the draft policies have been sent to all unions for review and comment with a request to date of COB 12/10/03. PEF requested copies of the previous OAD-17 policy for comparison.

i. In 1999, Governor Pataki proposed a comprehensive legislative package that included a modest increase in sporting license fees designed to sustain the Conservation Fund and improve hunting fishing and trapping opportunities in the state. How does management propose to keep their promise of maintaining and enhancing programs when the Division of Fish, Wildlife and Marine Resources has experienced a 20% reduction in staffing since 1999?

Management Response: No new information to provide at this time. We are still awaiting a response from the program which, when available, will be included in the minutes. PEF commented that, in the last minutes, management stated that information would be attached to the minutes from three months ago. PEF requests the information within the next two weeks.

2. Civil Service

a. How many positions are filled?

Management's response: As of payroll on 11/19/03, 3,255 positions were filled. Positions with two people job sharing were counted as one position.

b. Did Civil Service approve Job Classification Standards with professional titles of Biologist, Chemist, Engineering Geologist, and Environmental Engineer?

Management's response: Civil Service approved and issued a classification standard in November 2003 for EPS 2, 3 and 4. Civil Service is still reviewing the others. PEF requested copies of the finals. Management believed they had sent PEF copies but added that the information is included on the Civil Service website under Title and Salary Plan. PEF requested the information be provided in Word format. Management didn't have access to the final version in Word format. Once they submit the information to Civil Service and changes are made, it's only available in Adobe format.

- c. What is the DEC plan for exams and are any changes planned in the minimum qualifications? Please provide us with a list of all possible promotion examinations that DEC may hold in 2004 that are likely to only use the Promotion Test Battery.**

Management's response: Approximately two months before an exam is announced, Personnel Office staff and appropriate program managers meet with Civil Service to determine minimum qualifications and test the format. What happened in the past could change once the scope meeting is held. Current information is just a guess. PEF commented that it would be helpful if they could comment prior to the exam announcement. Management is not at liberty to discuss minimum qualifications prior to the exam. PEF was concerned with the promotion test battery being used alone. The union believes technical skills should be tested as well. Management supports the technical competency but Civil Service is reluctant to include that with the battery test.

- d. Is there a schedule for submission of the Division of Fish, Wildlife, and Marine Resources fiscal impact forms for the request to Civil Service for increased hiring rate for the 55 Biologist 1 and Biologist 2 (all parentheses) for appointments in Regions 1 and 2? PEF requested information on the actual funding amount involved.**

Management's response: There is no schedule. This is pending in the ENCON fiscal office and will have an impact on the Department's budget. Civil Service won't review the requests unless they feel there is a reasonable possibility for DOB approval. Management will investigate the actual dollar amount of the funding.

- e. How does management propose to address fiscal issues management to support salary grade parity between the career ladders of the Natural Resources and Quality divisions? Does Management have all organizational charts for comparison?**

Management's response: This is a discussion/decision that management will have/make at the appropriate time. The ability to send such a thing will be discussed at that time. We will attempt to do some type of comparison. We need to ultimately receive approval to move forward. We will make recommendations. Two charts remain outstanding. The workgroup plans to meet in January 2004. PEF added that a report was submitted within the last two weeks which contains much of this information. Management will review that report.

- f. PEF/encon requests that DEC backfill more than one EE2 position. The Commissioner has still not answered our April 7, 2003 letter on the subject. There are 67 EE1s currently on the EE2 promotional to backfill the 46 EE2 positions vacated due to the retirement incentive and backfilling EE3 positions. The engineers on the EE2 promotional list deserve to be equitably compensated for the professional work they perform so DEC can meet its mandates and fulfill its mission.**

Management's response: A follow-up letter was sent October 16, 2003. The EE1, EE2 and EE3 question will be looked at as part of the next set of waiver development as well as the overall priority needs of the Department. That process is just beginning and there is currently no time frame for its completion. The letters remain in the Executive Office.

3. 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.

PEF/encon requests a copy of the Emergency Preparedness Response Plan

Management's response: As stated previously at the last statewide LM meeting, this and all health and safety matters will be addressed via the Statewide Health and Safety Committee forum.

PEF/encon requests 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 terms and conditions of employment.

Management's response: As stated previously at the last statewide LM meeting, this and all health and safety matters will be addressed via the Statewide Health and Safety Committee forum. PEF has not received any information at that level.

What is the curriculum for the 100 employees to receive Incident Command System and/or Interagency Joint Operation Group (IJOG) training? How were the 100 employees selected? Was age discrimination used in the selection process? Please provide a list of PS&T employees. Who are the 24 Level A employees that will use the SEA Positive Air Pressure Respirators and Full face Butyl rubber respirators? Where are the three trailers? Will the employees receive adequate training to enter imminently dangerous to life and health weapons of mass destruction environments?

Management's response: As stated previously at the last statewide LM meeting, this and all health and safety matters will be addressed via the Statewide Health and Safety Committee forum. PEF submitted a letter to management on this topic requesting data involving terms and conditions of employment. PEF reserved the right to raise this issue at the LM forum.

How will DEC expedite the placement of AEDs in state agency buildings? How many Regions have AEDs?

Management's response: As stated previously at the last statewide LM meeting, this and all health and safety matters will be addressed via the Statewide Health and Safety Committee forum. PEF expressed their disappointment with management's attitude on these topics in light of the group promoting a safe environment for its employees. These issues, some dating back to summer 2002, are not being addressed by the Health and Safety Committee. PEF will seek other remedies to resolve these issues. Members are being denied what's expected from employees regarding weapons of mass destruction and other issues that cannot be resolved in that forum. These matters were given to management in terms of possible grievances. A summary will be formatted for PERB. PEF was informed that the ban on purchasing AED's has been lifted by GOER. This issue will be resolved at contract negotiations.

4. LATS – Removed from agenda
5. Emergencies – Removed from agenda.
6. Continuing Education requirements for NYS Professional Engineers

PEF/encon desires that DEC Education and Training certify and offer CEU course for affected engineers as is currently done by DEC for attorneys.

Management's response: PEF has since identified another group, part-time engineers, that would not be grand-fathered into the law. There are some EE2's who will have to take the course as well. DEC and other agencies are meeting with a representative from SED on 12/8/03 to better understand the requirements of the law and discuss ways to offer the CEU credits, especially those that are in common. PEF opined that it should be offered to all licensed engineers and will provide further documentation.

7. Blocked Websites

What exactly is the criteria for blocking web pages, some that are being blocked are media related?

Management's response: We are blocking objectionable sites, security risk sites and those with potential liability to the agency. Example categories would be adult material, MP3 downloads, gambling, games, illegal, hate, auctions and Spyware to name a few. PEF requested a list of the blocked sites. Management replied that there are numerous sites under various categories. PEF requested the tag being used to block the sites as a method of producing the information. Is this criteria consistent among the Albany and the regions or is it based on individual regions? Management will explore further.

8. Fiscal Bulletin 410 – Travel Agent Services

On Nov. 12, 2003, Nancy Lussier sent a mass email to DEC employees, announcing that effective November 23, 2003, the department will be transferring its travel service to Advantage Travel for offices located in Sullivan, Ulster, Dutchess, Columbia, Greene, Delaware, Otsego, Schoharie, Albany, Rensselaer, Schenectady and Saratoga Counties. This email further stated that to be eligible to utilize Advantage Travel each employee who travels must complete a Business Traveler Profile, which should be submitted by November 14th, if possible.

PEF is concerned about the lack of Article 28 notice to the union; the reply time of two days; the personal privacy risks of supplying credit card and passport numbers to an outside contractor; the limitation of choice of room and car rental types; and the fact that optional information was not identified in the text of the mass email nor on the form itself. In particular, the limitation of room & car choices appears to be a unilateral change in a term and condition of employment.

Management's response: Management met with PEF on this issue and believes all concerns were addressed and answered. There is no limitation on room or vehicle choices, the profile must be submitted before any travel (utilizing Advantage) can take place. Credit card and passport information is only required if the employee is going to use those instruments as a basis for personal identification and booking the service. PEF commented that the PDF file cannot be edited. The email issued did have the bulletin as an attachment but didn't identify those items which were optional information. The form needs to be modified for clarification. Personal information is on record with the agency and should not be a requirement for submission over the Internet. Any flexibility regarding car and room size should be stated.

PEF requested a meeting with Nancy, Mike Keenan and one other PEF representative to discuss these concerns.

II. Old Business

1. Privatization and Organizational Development

Do the Public Officer's Law, Vehicle Use Policy, and Out Of State Travel Requests, and Compressed Workweek schedules apply to contract and grant hires?

Contractors are not subject to the Public Officers' Law or out of state travel requests. The compressed work week schedules do not coincide with DEC employees' schedules. Any individual in the employ of DEC and utilizing a DEC vehicle should be subject to DEC vehicle use policy. Contract employees are under a less restrictive threshold compared to DEC employees. Contract employees lack the full skill set that civil servants have and are going out of state for training at the expense of DEC employees being denied travel. There

needs to be a mechanism to monitor the contractors' activities equal to that for civil servants. What parameters do they have on time and attendance? If acting as an agent, they should be covered by the Public Officers' Law otherwise there may be a conflict of interest. There shouldn't be monies available for travel in the private sector and not the public sector. If the purpose is to save money, it should apply to everyone. There is an adverse affect for those who cannot participate in the compressed work week.

Management's response: Management will forward the specific concerns raised by PEF when contract employees operate as agents of the state, ie: enforcement matters, aren't they in fact covered by the Public Officers' Law? In terms of use of state travel request, why is there disparity between contract employees who can be granted permission by division heads while DEC employees are required to obtain permission from the executive level? The fact that contract employees can opt for compressed work week schedules has an adverse affect on the morale of DEC permanent employees who are unable to do so at this time. Management will respond to these concerns within the next three weeks.

Why did DEC use US Forest Service Forest Land Enhancement Program (FLEP) funds for educational programs and technical assistance to forest landowners, work traditionally performed by PS&T unit, to Cornell Cooperative Extension and Cornell University? Did DEC request hiring freeze waivers to use Federal Funds for these positions?

Management's response: No new information to provide at this time. When available, a response will be provided in the minutes. PEF stated that the information was included in a recent press release and provided management with a copy. One person in Region 6 and 9 were using state facilities, equipment and vehicles. There were no requests submitted for these positions for RACNE or any other requests. Some have requested funds to hire more people but no attempt here to use that process. Two foresters were hired from Cornell to address a program. Management will investigate it further. PEF had an issue with security differences and not knowing the screening process for hiring private workers. In regards to contract employees, given the fact that some of these employees have access to restrictive computer data, what security procedures and/or screening procedures are in place to insure that said data won't be compromised?

Why doesn't DEC use FEMA funds to hire DEC employees to administer grant instead of IAGT personnel?

Management's response: No new information is available at this time. When available, a response will be included in the minutes. Do you anticipate there will be a point in time when that information will be available? Management could not answer. PEF stressed the importance of management being represented at the LM forum by those in a position to respond to the agenda items.

Why did DEC hire work traditionally performed by PS&T employees by approving contracts over \$3 million State Wildlife Grants for wildlife conservation projects? Did DEC request hiring freeze waivers to use Federal Funds for these positions?

Management's response: No new information to provide at this time. When available, a response will be included in the minutes. Why did DEC contract with Bagdon Environmental for wetland mapping? (as per the press release on 11/25/03) Management will investigate.

2. Environmental Monitors

Is there a new policy to replace Organization and Delegation Memo #92-10? PEF requests copies of the cost benefit analysis to change this policy. How many 3rd party environmental monitors has DEC caused to be hired?

Management's response: This has been asked and previously answered. No further information to provide on this matter. We request that it be dropped from the agenda. PEF asked if there was a new policy or if the old one was still in place. Management will look into it. The October 2003 minutes stated that the Department is developing a policy. Has it been issued and what are the contents?

3. Boards and Commissions

On September 19, 2002, PEF/encon submitted a FOIL. When will the Office of Legislative Affairs provide a complete membership list for all Department boards and commissions, and a list of all Department personnel approved to represent the Department on all non-Department appointed boards, commissions, or other similar panels? Such lists should include names, addresses, and expiration terms of members. PEF requests that the roster include the titles for personnel.

On what boards and commissions is the Department represented?

Management's response: Question has been previously asked and answered. Please refer to the minutes of the March 13, 2003 meeting. Every division affected by this listing is making an effort to update the information and the request will be honored. Management's current list is internal and incomplete, inappropriate to distribute. Management suggested PEF follow up with the FOIL office on their request. PEF requested a response.

4. 625 Broadway

The DEC Albany office needs convenient and easily operable means of entry into and exit from 625 Broadway, as well as full accessibility to mail rooms, nurse's office and training rooms, first floor meeting room, and heavy glass doors in EFC and 13th/14th floor for the physically disabled throughout the building. PEF/encon requests that DEC urge Picotte management to use some of their \$3,339,737.50 Green Building Tax Credit savings to finance the necessary renovations to upgrade the building for full accessibility. Door openers should be installed and threshold lips corrected. PEF offered to work with management.

Management's response: As stated previously, this and all health and safety matters will be addressed via the Statewide Health and Safety Committee forum. This is new text regarding new issues. We understand the rest rooms were resolved. Issues are not being addressed at the local level and have been continuously raised at the local health and safety meetings.

Despite the fact that nearly 2000 DEC employees have been at the 625 Broadway offices for over 2 years, neither the City of Albany and/or the State of New York have yet to install a sidewalk from the northern-most section of the Water Street parking lot nor has a legal

crosswalk been marked on the pavement across Water Street for individuals to use who pay NYS OGS to park there.

What improvements for pedestrians coming from the Water Street parking lots to 625 Broadway were made this construction season?

Management's response: Issue has been raised, addressed and discussed at the Central Office health and safety committee. PEF raised concerns with the pedestrian corridor posing dangerous situations with the lack of signage and markings. The contract does provide that when issues are not resolved at the local level, they may be brought to this forum. There are statewide implications when people come in from other regions.

5. Pre-Tax Transportation Program

Due to the cancellation of the New York City pre-tax transit pilot program and the negotiations currently taking place to implement a new program, PEF requests that Commissioner Crotty write a letter to GOER and the Governor that supports a fully implemented Statewide pre-tax transit program because this program is congruent with the Department's mission. If the current negotiations result in a plan for a pilot program limited to New York City, will DEC request that GOER include DEC employees, especially since the cost of public transportation has recently increased by 25 to 33%.

Management's response: PEF has previously asked that this item be tabled and management agreed. We have no new information to provide. The Department has no plans to consider this program at this time. There was a commitment from Sheehan 6 months ago to be considered in the pilot. Now we believe DEC should be part of the full program. We had indication of support to be in the program by the Department.

6. Employee Time and Attendance Handbook

PEF believes it is incumbent upon DEC to provide timely and accurate information to its employees. Various sections of DEC's Employee Time and Attendance Handbook have been superceded by later documents such as the Fair Labor Standards Act, PEF Contract, Office of State Comptroller (OSC) Bulletin # G-180, OSC Travel Manual (10/98) & OSC Traveler's Guide (10/98). For example, Section 5.1.6 conflicts with federal and state laws and regulations concerning time worked and should be corrected to read as follows: "Time spent by employees for actual travel and/or service performed while traveling is compensable work time provided that the travel is between the employee's residence and a work site other than their official station." PEF/Encon provided errata concerning other discrepancies to management at the November 29, 2001 Labor Management meeting. When will Management and Budget distribute a revised edition of the Employee Time and Attendance Handbook, which has not been updated since January 3, 1994? PEF requests a one month review of the draft.

Management's response: The handbook is now undergoing final review. The October minutes state that, when appropriate, the Department had agreed to have PEF participate in the review/comment process prior to final printing.

7. Failure to Provide Travel Advances

When will Fiscal Bulletin 354 for Travel Advances be updated?

During the State Fair, what steps did DEC take to ensure that travel advances continue and not on a first come, first serve basis? This method is still unacceptable to PEF. We request that you increase the monies available. PEF asked if employees could be given meal advances, such as is the practice in other agencies.

Management's response: This item was asked and answered in the minutes of the October 2, 2003 meeting. PEF requests that the on-line travel vouchers do not require the social security number. Given security issues, that information is not necessary.

8.(a) Contracting Out Computer Services

What are the actual itemized listing of expenditures by vendor for SFY 2003-04, budget costs, and purpose of contracted out computer support?

Management's response: Management asks that you refer to Attachment A of the minutes.

8.(b) PEF requests an update on DECALS and MCI (WorldCom) remaining five (5) DECALS applications including the internet sales application, the ad hoc query application and the sportsman education application responsibilities and OSC approval of the contract amendment.

Management's response: Sales for the upcoming hunting season began 8/18/03. System is performing effectively with over \$30 million in sales. DEC continues to work with MCI correcting defects and to set priorities on the remaining 5 DECALS applications. The contract amendment is still in the process of the development. Tax and Finance continues to handle phone sales that exceed MCI's capacity. Management will follow up on whether a copy of the contract is available. Why is MCI not listed as a contract? Did DEC recover costs from MCI (Worldcom)? How much was over budget? What were the costs to design, implement and retrofit the new DECALS program?

9. Internet Acceptable Use Policy

PEF's improper practice charge alleged that EnCon violated the Taylor Law when it unilaterally issued an Internet Acceptable Use policy in October, 1997. Will a revised policy be issued by the Governor's Office for Technology on personal use of the internet?

Management's response: There has been no activity on this matter since the last PERB meeting. We still have not received any notice from the Governor's office of Technology for a policy addressing personal use of the state Internet services. This matter remains on hold at PERB until January 7, 2004.

10. Labor/Management Training

PEF/encon requests that joint LM Training be tabled.

11. Scheduling of L/M Meetings

The next Labor/Management meeting is March 11, 2004 PEF requests that Commissioner Crotty attend. A Commissioner last attended a meeting June 15, 1995, over 8 years ago!

Management's response: The invitation will be extended to Commissioner Crotty.

12. Pollution and Energy Reduction Committee (PERC)

Has the Executive approved the nine (9) out of ten (10) days compressed work schedule as a permanent offering in the Central Office and transmitted the request to the Department of Civil Service for formal approval of the program in the DEC Central Office? Has the Executive reappraised the telecommuting expansion in the Central Office which was put in abeyance in Nov. 2002?

The full implementation of these two programs 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: Decisions on both programs currently remains at the executive level. Information shared with the PERC committee is being considered by the executive office.

13. Laboratory Consolidation

Will DEC build the \$25 M three bay light duty Automotive Emissions Laboratory (AEL) with funding from the Clean Water/Clean Air Bond Act under NYSERDA?

Management's response: No new information to provide at this time. As stated previously, SUNYE is no longer the designated site. It was determined that the available land was unsuitable for this purpose. If a determination is made to build on an alternate site, we will work with OGS.

14. Acting Positions – Still pending

Albany

Solid & Hazardous Materials

Is the Pesticide Reporting Section Chief filled?

REGION 1 Regional Spills Engineer position filled?

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