

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

June 12, 2008

Attendance:

PEF:

David Persson, LM Chair
Karl Berger, Albany LM Co-Chair
Katy Murphy, Region 1
Keith Browne, Region 3
Andy Marcuccio, Region 4
Kristofer Alberga, Region 5
Harry Spetla, Region 5
Terry Tyoe, Region 6
Frank Flack, Region 6
Don Nelson, Region 7
Jim Kersten, Region 9
Kevin Hintz, Region 9
Wayne Bayer, Albany
Mark Hyland, Albany
Mike Kanuk, SUNY-East
William Wurster, Albany
Sam Stallone, Albany
Denise Stephens, Albany
Tim LeBarron, Albany
John Donlon, Albany
Holly Clark, Albany
Ed Bradley, PEF
Josephine Rice, PEF

Management:

Joseph Lattanzio, DEC Director of Employee Relations
Carole LaVigna, DEC Director of Personnel
Mark Cadrette, DEC Director of Health & Safety Unit
Gail Balluff, DEC Employee Relations
Marie Furlong, DEC Employee Relations
Richard Wagner, DEC Region 5
John Vana, DEC Environmental Permits
Nina White, DEC Employee Relations [Minutes]
Paige Davison, Wildlife Center
Diana Fortune, Wildlife Center

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.

Rich Wagner welcomed group in Betsy Lowe's absence.

Diana Fortune and Page Davison praised Betsy Lowe's extraordinary efforts in supporting the Wildlife Center Natural History Museum construction project.

A. Management Presentation: Pollution Prevention Institute.

Management response: John Vana gave a Power Point presentation on the Pollution Prevention Institute (see attached). The purpose of the Pollution Prevention Institute (P2I) is to promote cost effective pollution prevention techniques so that large and small business can reduce energy and resource use, hazardous substances, pollution and wastes. This will primarily be accomplished through research and development to design and test "green" manufacturing methods and provide technical support to businesses for pollution reduction measures that will help make them more competitive. In addition, the P2I will support the work of DEC staff through direct technical support on emerging issues, training for DEC staff, the ability for DEC staff to refer clients to the P2I, direct client assistance and R&D that can align with DEC regulatory direction, and supporting the workforce of the future by integrating P2 and sustainability concepts in college level curricula. The P2I will foster partnerships between government, academia and business to support the economy in NY while also protecting the environment.

B. NYS-Ride

1. Privatization

What compelling reasons will justify further contracting out?

For 2006-2007 DEC had \$71.12 million in unreported professional services consultant contracts. What is the reason for the under reporting of expenditures as required by Chapter 10 of the Laws of 2006, the Procurement Stewardship Act?

Management response:

Executive Budget

What is DEC's Spending Reduction /Financial Management Plan for implementing the enacted 2008-09 budget and maintaining both budget balance and critical program goals?

Management's response:

What are the structural imbalances in the Conservation Fund, Environmental Regulatory Account, Clean Air Fund, and Natural Resources Account and how are they being addressed?

Management's response: As stated previously, appropriation amounts have been included to fund all approved positions.

Lands & Forests

Did the Executive support the Lands & Forests plan for more Foresters, Real Estate Specialists, Land Surveyors, Environmental Program Specialists, Citizen Participation Specialists, Natural Resource Planners, and Geographic Information Specialists (GIS) in Budget request?

Management's response: As stated previously, Executive supported additional staff for a variety of offices. Again, just four items were approved in the final Budget. Three were for Invasive Species and one for the Canal Mitigation Task Force. All are General Fund items. All will be Civil Service titles (two Biologists, a Forester in the Invasive Species Unit and an Engineer or Environmental Program Specialist for the Canal Mitigation Task Force.)

Bulk Storage

Did OGC draft legislation needed to modify both the PBS AND CBS statutes for equivalency with EPA's UST regulations and to implement the Energy Policy Act of 2005?

Management's response: Yes. DER, OGC and Legislative Affairs have been working together to draft legislation needed to modify PBS and CBS statutes to make State law equivalent to federal requirements and to address requirements under the Energy Policy Act of 2005. Bills have been introduced in both the Senate (S6055) and Assembly (A10952) and are under review. Several meetings have occurred with legislative, industry and environmental stakeholders to identify issues of concern and clarify the bills where needed. We are hopeful that passage of the bills will occur in this session.

Will a DER work assignment issued to CDM complete PBS inspections at approximately 1200 facilities regulated under the Energy Policy Act over the next two years?

Management's response: Yes. DER has issued a work assignment to CDM to have it assist in the inspection of approximately 1,200 federally regulated facilities over the next two years. This work is funded under a grant from the EPA to meet EPA requirements under federal law. It is intended as an immediate and short term solution to address EPA's requirement to inspect facilities subject to federal jurisdiction on a three year cycle.

Contracting Out Computer Services

Can DEC fill positions from other higher grade titles and provide alternative promotional opportunities?

Management's response: The Division of the Budget recently approved the establishment of temporary Project Assistant positions at the Office for Technology to enable them to appoint their consultants to competitive positions. Candidates who are interested in a permanent competitive career promotion track could take the entry level Grade 18 IT Specialist 1 T&E examination. Their temp item could be replaced by a permanent competitive IT Specialist 1, SG-18. Candidates could then compete in promotion examinations and, possible, some candidates could be eligible for permanent appointment to the SG-27 level within three (3) years.

DEC could establish positions of this nature and ultimately provide promotional opportunities; however, this would require budgeted fills which the Department is currently lacking.

2. Work Schedule Flexibility

What modifications did Civil Service make to CPP prior to GOER submission?

Management's response: GOER wanted the Department to add : 1. "Establishment of an alternative work schedule is a management right and can be revoked by management at any time that such schedule does not assist in the agency carrying out its mission or the stated goals of this policy." 2. "Management has the right to discontinue the compressed pay period program in an emergency or for other programmatic needs." 3. "Participation must not interfere with the operational or programmatic needs of the Department" 4. GOER also clarified the opting out considerations.

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?

Has DEC Legal completed review of this plan?

PEF requests copy of the most recent annual report.

What Divisions/Programs has DEC management identified as most in need of diversification?

Management's response: The Affirmative Action Plan is still with the Legal Office.

4. Promotional Ladders

- a. Did Fish & Wildlife develop justifications for individual Natural Resources titles to be reclassified for parity with Environmental Quality? Executive had the Natural Resources and Geographic Pay Differential packages since December 2005. The Natural Resource Supervisor position was not part of the package. Is any part of the original package still being pursued?**

Management's response: The Natural Resources Supervisors package went to Civil Service on 5/07/08.

b. Did DEC and Civil Service develop rating scale for Biologist 1 examination?

Management's response: Yes. Civil Service issued the announcement for this continuous recruitment examination on 6/06/08.

5. Environmental Management Systems

Tabled

6. Civil Service

a. How many DEC positions are currently filled?

Management's response: The Department currently has 3754.8 filled items.

b. Did DEC fill all waivers?

Management's response: Waivers are constantly in process. Carole will give more information on the waiver process.

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

Management's response: No, not yet.

d. When will DEC ask Civil Service for the downstate geographic pay differential for the Biologist 1 and Biologist 2 (Marine) in Region 1 and 2? Bureau of Marine Resources organizational chart shows that the entire Bureau (all programs; all regions) is riddled with vacancies (34 to be exact) out of 90 positions. The fact that the high percentage of vacancies in BMR is "historic" and ongoing just proves that salaries are too low to recruit and retain Marine Biologists 1 & 2 in programs in downstate offices.

In Region 2, two dredging items (Biologist 1 - Marine) became vacant in 2004 & 2006, the Regional Manager's item (Biologist 2 - Marine) became vacant in 2007 & the Jamaica Bay Damages Account item (Biologist 1 - Marine) became vacant in early 2008. The Region 3 regulatory item (Biologist 1 - Marine) became vacant in late 2007. This is not "historic".

East Setauket office BMR H/Q: Marine Resources-Shellfisheries Surf Clam (Item 37251) Biologist 1 Marine position vacant since January 2008 and; Marine Resources-Shellfisheries Sanitation Program (Item 37333; public health protection) Biologist 1 Marine position vacant since January 2008

Management's response: On 7/25/03 DFWMR provided detailed documentation for a very specific Region 1 and 2 geographic pay differential proposal. There was also an earlier proposal in 2002 which did not go into the detail of the follow up proposal in 2003. Additionally, a 2/18/04 memo from G. Barnhart to L. Stark proposed a reallocation of the Biologist titles that, if implemented, would reduce the cost of the Region 1 and Region 2 geographic pay differential by approximately one-half. While salaries have increased somewhat since 2003, the great differences between DEC Biologists and non-DEC biologists

remain, and DFWMR believes their proposal is still well founded. DFWMR has asked that a specific proposal for a geographic pay differential and a reallocation of the Biologist series to be submitted to Civil Service for a number of years now, but DEC has yet to submit either to Civil Service.

Additionally:

How is Management implementing Commissioner Priority for "Succession Planning" in regard to the Shellfisheries Section Head, Biologist 3 Marine (Item 37329) position, which will become vacant in July due to retirement? This Section Head supervises three units which implement the Department's Shellfish Sanitation Program which protects public health; and,

Shellfish Inspection Unit Leader, Food Inspector 3 (item 37237) which is now vacant due to retirement on May 9? The Food Inspection unit has significant public health protection functions which are supposed to have priority for backfilling.

Management's response: Due to the agency currently being over target, DFWMR will seek to fill the Biologist 3 (Marine) position when it is vacated by the incumbent in July.

What are now listed as the Division's highest priorities?

Management's response:

- *Biologist 4 (Ecology) that serves as the Chief of the Bureau of Habitat: Establishment of position pending at Civil Service.*
- *Waivers requested for and in the process of filling:*

*Biologist 1 (Wildlife), Region 5, for Freshwater Wetlands Regulatory Program;
Biologist 1 (Wildlife), Region 3, for Endangered Species Regulatory Program;
Biologist 2 (Wildlife), Central Office, to supervise the Sportsman's Education Program;
Biologist 1 (Aquatic), Region 6, for Stream & Waters Protection Regulatory Program.*

The DFWMR is currently developing a prioritized list of positions to seek to fill once the agency is below its target fill level.

- e. **Why is management not petitioning Civil Service to allow a provisional appointment to the Biologist 2 positions in the Bureau of Forestry and the Bureau of Wildlife, so that these positions may be filled by Biologists who are willing to work in the Region, and would be qualified to take the exam at the next offering, as is done with other programs?**

Management's response: There is no Biologist 2 position in the Bureau of Forestry. The Biologist 2 position in the Bureau of Wildlife was filled provisionally on 2/21/08. Civil Service has not yet scheduled a date for this exam.

- f. **Has the Department submitted an Engineer-in-Training proposal to the Division of the Budget (DOB) for final approval and worked with DOB to facilitate a timely review?**

Management's response: This "engineering escalation plan" was sent to DOB on 3/12/08. The Department is still awaiting approval.

g. 42% of State workforce will be 55 within five years. What is the succession plan?

Management's response: Developing succession planning processes will be a priority for SFY 08/09. Executive would strongly welcome written suggestions from PEF.

h. Acting Positions

According to the latest Remediation Roster, the Remedial Bureau B (Regions 2-4) Chief and the Section D Chief are acting. Is this still the case? In Solid & Hazardous Materials, Bureau Program Management - Division of Planning & Analysis Section Chief and Hazardous Waste Radiation Management Bureau Chief; are they also acting?

Management's response: Yes, the incumbents of these positions are "Acting." Civil Service cannot provide us with Environmental Engineer 3 and 4 Rosters, from which we could make permanent appointments, until sometime this summer. The written component of these exams was held in March of this year; the information provided by candidates for the Evaluation of Education and Experience component is still being processed. We are expecting Civil Service to produce position-specific Rosters for us by August. At that time, these divisions should be making permanent EE 3 and EE 4 appointments to supervise these bureaus and sections .

i. Interns

7. Laboratory Consolidation

When is the next DEC, Ag & Markets, DOH, DOT, & State Police meeting to discuss the possibility of " identifying state laboratory resources in the Capitol region to try to coordinate planned and future laboratory design and construction projects so that co-location at a common site and efficiencies through use of shared facilities and infrastructure is considered. "

Management's response: An informational gathering meeting was held by the Division of the Budget at the State Capitol on 5/22/08. In addition to DOB, the following agencies were represented: DEC, DOH, Agriculture & Markets, DOT, OGS, the Dormitory Authority and the Governor's Office. The State Police did not attend. No follow-up meeting has been scheduled at this time.

Will DEC share PEF's 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: DEC will share PEF's comments on the Health and Safety content of the CUH2A document at the appropriate time.

What is the staffing plan for the heavy duty Automotive Emissions Laboratory (AEL) at

NYSERDA's Saratoga Technology & Energy Park (STEP) lab? What lists of staff (titles and numbers has DAR provided for the diesel lab and the consolidated lab? Is design complete? What is funding source?

Management's response: As reported at previous meetings, 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 has been completed.

No funds were approved in the SFY 2008-09 Budget for a Consolidated Lab. The Department continues to explore funding options.

8. Scheduling of L/M Meetings

The next meeting is scheduled for August 20. PEF will need to confirm the date. PEF/encon invites the Commissioner to attend the next meeting.

Management's response: Management agrees.

9. 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?**

What is the status of the new administration's review of this item?

Management's response: This matter is still under review.

- 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?**

What is the status of the new administration's review of this item?

Management's response: This matter is still under review.

10. 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?

PEF offered to assist management's working group in draft revisions to the SID guidelines, which would be more accommodating to DEC before submittal to Executive Office for review and approval prior to submission to Civil Service.

Management's response: Management will follow-up.

- c. Has OGS identified the funding allocation for AEDs in yearly increments through fiscal year 2009-10?

Management's response: 225 AED units have been deployed throughout the State and that the DEC AED program is almost completely implemented. We are about to change providers for our online training and maintenance tracking program.

- 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 provide anti-viral medications to "essential" staff who will be required to work and be exposed to avian flu and to family members of "essential" staff being required to work and be exposed to avian flu?

- e. **Right-to-Know (RTK):** On December 19, 2003, PEF filed a statewide complaint with the Attorney General. On April 18, 2006 the Office of the Attorney General reminded DEC that 12 NYCRR § 59-1.9(a)(4) requires that safety & health programs shall provide for and encourage employee involvement in the structure and operation of the program, so that they will commit their insight and energy to achieving the goals and objectives of the safety program.

Management's response: This matter is still under investigation by the General Counsel's office, and Management feels it is inappropriate to discuss this subject in this forum. The Health & Safety office is about to distribute the electronic Occupational Exposure Survey.

11. **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: The Department will attempt to address this concern during this fiscal year.

- 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).**

PEF/encon requests an update of the developments from the Executive staff's request that OGS and the Department address this issue and others related to the garage entrance at 625 Broadway.

Management's response: The Department will attempt to address this issue during this fiscal year.

- c. **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 stated that a briefing would be held prior to initiating the system. This briefing was never held.

Management response: A conversion date for Prox Card entrance to the DEC Central Office garage has not yet been determined. Prior to the conversion date, management has agreed to brief PEF on this matter.

- d. **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:

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

Management stated that a briefing would be held on this item. The briefing was never held.

Management's response:

12. **Office Moves**

- a. **Was the New Paltz Phase 2 (Renovation of Existing Building) begun May 2008 with final completion scheduled for November 2008?**

Management's response: As stated at the last meeting, Phase 1 is complete with new furniture being installed beginning 2/25/08. Staff moves were scheduled for the weekends of 4/05/08 and 4/19/08. Phase 2 began on 5/01/08 and will continue for six (6) months with furniture delivery and staff moves to follow.

- 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. **When will Galesi Management Corporation install Region 4 exterior lighting on north side of**

building to provide ample illumination on all parking areas, pathways, and sidewalks for safety of employees and visitors?

Management's response: As stated at the last meeting, the exterior lighting proposal presented to the Town Board was rejected. OGS is working with the landlord to revise the proposal to be presented to the Town Board. Other options are being actively investigated and pursued with the landlord and OGS.

DEC

Joseph A. Lattanzio

DATE 12/16/08

PEF/ENCON

David Persson

12/10/08