

**STATEWIDE PEF/NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION LABOR/MANAGEMENT COMMITTEE MINUTES  
March 30, 2005**

Attendance:

**PEF:**

David Persson, LM Chair  
Karl Berger, Albany LM Co-Chair  
Katy Murphy, Region 1  
George Stadnik, Region 2  
Andy Marcuccio, Region 4  
Les Eggleton, Region 5  
Terry Tyoe, Region 6  
Don Nelson, Region 7  
James Kersten, Region 9  
Kevin Hintz, Region 9  
Mike Keenan, Albany  
Wayne Bayer, Albany  
James Trossbach, Albany  
Tim LeBarron, Albany  
Holly Clark, Albany  
Robert McDonough, Albany  
Jim Kemenash, PEF  
Josephine Rice, PEF

***Management:***

Acting Commissioner Denise Sheehan  
Assistant Commissioner Jack McKeon  
Joseph Lattanzio, DEC Director of Employee Relations  
Carole LaVigna, DEC Director of Personnel  
Mark Malinoski, DEC Assistant Director of Operations  
Carl Gonzalez, DE Employee Relations  
Gail Balluff, DEC Employee Relations  
Marie Furlong, DEC Employee Relations

**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.  
Updates to be forwarded when available.**

Acting Commissioner Denise Sheehan thanked the Committee for the invitation to attend and the opportunity for dialogue. She spoke of the desire to restructure the Committee's agenda which would allow for a more comprehensive discussion of major issues. She also spoke of a desire to work together with PEF on such major issues as employee advancement, diversity, employee recognition and succession planning. AC Sheehan stated that, if such a higher level of discussion can be achieved/maintained on such important issues, this might warrant her continued participation.

PEF noted that the current format is in place because no Executive Management personnel have attended. PEF further noted that many issues have been on the agenda for years because these issues are important to them. PEF also noted the need to document the process and track any progress on such issues.

PEF requested a meeting with AC Sheehan to discuss the Department's proposed Work Schedule Policy to which AC Sheehan was agreeable. PEF further noted the need for labor/management training which could facilitate the change in the meeting format. PEF and Management agreed to discuss a modified format subsequent to today's meeting and possibly utilize it for the next Committee meeting.

AC Sheehan and Assistant Commissioner McKeon again thanked the Committee for the invitation and opportunity for this discussion.

## **I. New Business:**

### **1. Budget**

- a. The SFY1995-96 Executive Budget stated that DEC had 4221 full-time equivalent employees (FTEs) on March 31, 1995 . The SFY2005-06 Executive Budget states you will have 3345 FTEs on March 31, 2005. How can DEC fulfill its obligations under the law, including the additional work the agency has taken on due to legislative initiatives enacted into over the last ten years, with 876 less full-time employees?**

*Management's response: Regarding the number of positions and the waiver process, we have 3,352 items in this year's budget, 7 of which for the flood plain/wetlands work we won't get. This brings the number down to 3,345, 15 of which are related to the Superfund program. Five (5) items will go to DOS and 10 to DOH. Our real number will be 3,330. As of last week, the Department had 3,261 filled items. There is still a hiring freeze which necessitates we go through a waiver process. Since May 2004, we have received 202 waivers. Because of the time frame, there is a lag to get to our goal which is 3,330 filled positions. The Department is trying to accelerate this process. Because we are aware that employees hold out to get their pay raises before filing for retirement, we have included the number we anticipate to be in this group into the next waiver package. The Department is trying to be more aggressive in identifying jobs to be vacated and backfilled. We currently have 60 approved waivers that have not been used yet. We are processing waivers every 6-8 weeks. **Update: We have now received over 300***

*waivers since May 2004.*

- b. How many total DEC positions does the Department of Civil Service currently authorize, including exempt, non-competitive, and competitive class positions? How many of these positions are currently filled?**

*Management's response: There is no such number maintained by Civil Service.*

- c. Did DEC fill all positions that were authorized to be filled under the enacted SFY2004-05 budget appropriations for DEC? If DEC did not fill all these positions, why did you fail to fill them?**

*Management's response: Not all positions were filled. We are accelerating our efforts to fill each of our 3,330 targets.*

- d. If the agency's numbers have remained constant despite the drop in workers, does the number of current DEC full-time equivalent employees include the number of full-time equivalent employees who are employed under the personal services contracts (e.g. Environmental Facilities Corporation, NYSERDA, New England Interstate Water Pollution Control Commission, SUNY Research Foundation, Natural Heritage Trust and computer consultants)?**

*Management's response: No.*

- e. How many contract employees currently are employed at DEC? What divisions do these employees work in? What locations do these employees work at? 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: We are developing information to answer this question.*

- f. What funds are used to employ contract employees? Are they paid out of appropriations allocated in DEC's budget for non-personal/contractual services? Does the Comptroller approve all contracts used to pay DEC contractors or are some let through SUNY to avoid the normal contract approval process? Has the Comptroller's Office found any problems with the way you are paying your contractors like RACNE?**

*Management's response: We cannot use any personal service money for contractors. We fill in with consultant and MOU services such as RACNE (Cayuga Community College), Columbia and Syracuse when we need extra help to get a job done not in lieu of hiring State workers. Also, we do it within the constraints of our budget. EPF funds are used to contract out to non-profit organizations. DEC must use an MOU with SUNY since a State agency cannot contract with another State agency.*

- g. Are any appropriations allocated for personal services used to pay DEC contract employees? If yes, why is DEC using money allocated by Legislature to hire State employees to hire contract employees?**

*Management's response: No.*

- h. Are any appropriations allocated for the Environmental Protection Fund used to pay contract employees? If DEC used state employees do this work wouldn't they be prohibited from using EPF funds to pay the salaries of these employees?**

*Management's response: Some EPF funds are used to contract out to not-for-profit groups.*

- i. Are DEC contract employees paid the same base salaries, not including the cost of benefits, as DEC state employees for doing the same work? Are they required to work the same hours and to complete the same time sheets as DEC State employees?**

*Management's response: Obviously, salaries vary for contract employees. The time sheets would be the responsibility of their employers.*

- j. What percentage of a contractor's salary does DEC pay for benefits, administrative overhead, and profit? What is the comparable State employee fringe benefit cost?**

*Management's response: For follow up.*

- k. Why does DEC pay a contractor an administrative fee? Does the work covered by the administrative fee duplicate personnel and other functions already performed by DEC administrative staff? Wouldn't it be less expensive for DEC to hire a state employee and not have to pay an additional administrative and profit fees to hire a contract employee to do the same work?**

*Management's response: The Department requests that PEF explain what they mean by administrative fee.*

- l. Please provide Sustainability and Strategic Planning Update. How will the Commissioner's seven priorities of Greenhouse Gas, Acid Rain, Ozone, Superfund, Open Space, Onondaga Lake and the World Trade Center affect DEC's limited resources? What is the funding source for the 2 year \$198K SEEDS Systems contract?**

*Management's response: The collaborative effort is updated regularly on In-Sight. The items listed are high priorities of the Department. Year 2 of SEED will be funded from the General Fund.*

**m. Who are the eight employees on the SEEDS Design Team?**

*Management's response: Go to "Collaborative Initiative" on the front Insite web page for details on the SEEDS Design Team.*

**n. Has the State of New York Office of General Services (OGS) selected a proposal within Schenectady County 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? What is the projected date for the Region 4 move? 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: OGS has selected a developer and is in the process of finalizing the lease negotiations. The developer has proposed to construct a new one-story building adjacent to the existing Region 4 headquarters. OGS and DEC are working with the developer to include features that will make the building a LEEDS Certified Green Building. While no construction schedule has been set yet, we fully expect this project to be completed within a year. The Regional Director has already held meetings with senior staff and will continue to do so during the course of the design development process.*

**o.(1) What is the status of the additional 28,000 square feet at the New Paltz office? What is the schedule to start the construction project?**

*Management's response: Unfortunately, the final design submitted by the Architect is beyond the project budget. Operations Design & Construction staff have completed their review of the final documents and have provided cost reduction changes back to the Architect. The earliest project bid date now is May 2005. **Update: The earliest possible bid date is now August 2005.***

**o.(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: Yes. The Regional Director will continue to schedule meetings with appropriate staff. The Regional Director will continue to solicit comments/suggestions from all staff and will continue these meetings as appropriate.*

**p.(1) DER is in the process of developing ways to reduce by 6500 the backlog in spill investigations in the NYC and lower Hudson River valley by temporarily reassigning staff from other regions and programs. What programs and responsibilities in other DER programs will be neglected or triaged by this short staffing compensation initiative?**

*Management's response: No information to provide.*

- p.(2) What plans does DEC have to reduce the 40,000 site backlog in inspections and investigations of bulk storage facilities and spill investigations? Are there any staffing increases planned to reduce the inspection cycle from the inadequate once every 40 to 100 years?**

*Management's response: No information to provide.*

- q. The Conservation Fund is projected to be over 4 million dollars in the red on 3/31/05. How will the Dept. and the DFW&MR pay its vendors(utility companies, etc.) and its employees(travel expenses, etc) until Sept, 2005 when new licenses sales revenues should overcome this deficit?**

*Management's response: We are taking a number of actions which will assure viability of the Fund.*

## **2. Civil Service**

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

*Management's response: We currently have 3,261 filled positions. We have no waivers pending.*

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

*Management's response: Not yet.*

- c. What is the funding amount for Management and Budget's submission of the Division of Fish, Wildlife & Marine Resources fiscal impact forms that request increased geographic pay differential for the Biologist 1 and Biologist 2 (Marine) for appointments in Region 1 and 2?**

*Management's response: \$600,000.*

- d. What actions are pending at DOB that address fiscal issues management and support salary grade parity between the career ladders of the Natural Resources and Quality divisions?**

*Management's response: There is nothing pending at DOB that specifically addresses the Natural Resources/Environmental Quality salary parity issue.*

- e. Division of the Budget approved waivers for 31 Environmental Engineer 2 positions.**

**Are three (3) still vacant: 2 Superfund items in Remediation (1 in Albany, 1 in LIC) and 1 in Operations (Albany)?**

*Management's response: The 2 Superfund positions have been filled. Due to current needs for construction inspection staff, the waiver was changed to an Assistant Superintendent of Construction title which was filled on March 24, 2005.*

- f. How will DEC recruit candidates for the Associate Bacteriologist (Marine) position if there is no Senior Bacteriologist (Marine) title to provide a pool of qualified candidates? Did DEC fill the Bacteriologists (Marine) position? If so, will DEC request 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: If there is no Senior Bacteriologist for promotion or a promotion field of at least 3 candidates, we would recruit and hold an open-competitive exam.*

*Yes, the Bacteriologist (Marine) position was filled on 12/30/04. Reclassification will be reviewed at the time of the request to determine the appropriateness, timing and feasibility.*

**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.**

**3.(a) PEF/encon requests an electronic copy of the Emergency Preparedness Response Plan.**

**3.(b) 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 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.**

**3.(c) When will 30 employees receive 160 hours of training to enter imminently dangerous to life and health weapons of mass destruction environments? What is the first responders' curriculum?**

**3.(d) DEC employees are no longer 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); or manage the cleanup of inactive hazardous waste sites.**

**3.(e) Did DEC modify the Division of Solid and Hazardous Materials Standard Operating Procedures (SOP) without PEF review? SOPs must be shared with PEF under Article 28. PEF has a role in the review of SOPs.**

**3.(f) 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: As stated previously at the last Statewide L/M meeting, this and all health and safety matters will be addressed via the Statewide Health & Safety Committee forum.*

*The legislation on the AEDs is not out yet. This legislation will require a ten year implementation schedule. We plan to demonstrate the latest model AEDs at a Regional Director/Division Director meeting. That session will be used to encourage their purchase now rather than when/after the legislation is signed.*

## **II. Old Business**

### **1. Privatization**

**1.(a) According to budget calculations, will the U.S. Forest Service allocation continue to support DEC Foresters in the Bureau of Private Land Services Forest Stewardship program or will this too be contracted out to Cornell University or some other private group?**

*Management's response: Asked and answered previously. We have not contracted out with any private group. Although future funding is undetermined at this time, it is expected to continue at the current level. No additional information is available to provide at this time.*

**1.(b) Will the initial work being done with State Wildlife Grants funding survey, inventory and planning efforts leading to the development of the required Comprehensive Wildlife Conservation Strategy (CWCS) be completed by October 1, 2005? As the program gradually transitions from a planning phase to an implementation phase, will DEC seek to use \$2,937,728 State Wildlife Grants funding to add staff for program implementation where that is the best option?**

**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: No information available at this time.*

**1.(c) Has DEC hired two NEIWPC Marine Biologists in Region 1 (East Setauket), work**

**traditionally performed by PS&T employees? Why doesn't DEC Division of Fish, Wildlife & Marine Resources use State matching funds for the Sport Fishing Tax - Wallop-Breaux/Dingel - Johnson - Federal Grant money to fill vacant federally funded items?**

*Management's response: Not yet.*

## **2. Environmental Management Systems (EMSs)**

**Will DEC include EPA's BEST Workplaces for Commuters(<http://www.bwc.gov/>) in its EMS? Commuting to and from work is a primary cause of increased traffic congestion and air quality problems.**

**If DEC is to develop and implement an EMS, has DEC estimated 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: The EMS currently being developed for Godfrey Point does not consider this an EPA commuting program.*

*As stated previously, we are still conducting a pilot program at the Godfrey Point sign shop. EMS at Godfrey Point is being done with all DEC staff, no consultants. July 2005 is the scheduled date for completion of the project.*

## **3. Empire State Outdoors Television Program**

**Does NY Network (SUNY) now have the \$500K Empire State Outdoors contract?**

*Management's response: It is not a contract. NY Network is a State agency so we have an MOU with them for this.*

## **4. Ernest Trad Award**

**PEF is pleased that the Trad Award was reinstated.**

*Management's response: Management suggests this item be dropped.*

## **5. Continuing Education requirements for NYS Professional Engineers**

**Has DEC Training & Organization Development established outside source training with the Division of Lands and Forests PDH (Professional Development Hour) credits for Land Surveyors?**

**When will the Air, Waste Management and Water Quality Divisions liaisons complete**

**internal approval for Regional monthly technical seminars for which participants may receive PE Continuing Education Credits?**

*Management's response: We are not sure what is meant by "outside source training" or "Professional Development Hour." It is unknown when the internal review will be completed.*

**6. 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: As PEF has filed a 11/19/04 FOIL request for information on this program, we do not feel it is appropriate to discuss this any further in this forum. We, therefore, request that this be dropped.*

**Will management please confirm that DEC staff who are monitors at Kodak will be retained to perform their duties at Kodak Park? If While PEF/encon understands and appreciates that the Department must still negotiate with Kodak concerning the monitor issue in the Part 373 permit, the Department has repeatedly stated that existing DEC monitors will be retained.**

*Management's response: Not able to respond at this time.*

**During October of last year, 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: Not able to respond at this time.*

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

*Management's response: Not able to respond at this time.*

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

*Management's response: Not able to respond at this time.*

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

*Management's response: Not able to respond at this time.*

**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 clean-up orders?**

*Management's response: Not able to respond at this time.*

**When will the analysis of these comments will be completed?**

*Management's response: Not able to respond at this time.*

**7. 625 Broadway**

**Unresolved topics**

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

**7.(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?**

**7.(c) Please provide cost to Divisions to move Solid Waste staff from the 8<sup>th</sup> floor to the 9<sup>th</sup> floor, which displaced Pesticides now located on the 11<sup>th</sup> floor in wake of OGS decision to move a new non-DEC tenant into NYSDEC space?**

**7.(d) What were the total costs (computer, telephone, lost productivity, etc.) for rearranging/moving most of the 11<sup>th</sup> floor DER 3 times in 3 years?**

*Management's response: As stated previously at the last Statewide L/M meeting, this and all similar matters are addressed via the weekly Central Office Union Update Meetings.*

**9. Pre-Tax Transportation Program**

**The NYS Ride program begins May 1, 2005 for PEF members working in New York City. PEF requests that the topic be dropped.**

*Management's response: Management agrees. GOER estimated that approximately 1,500 or 1,700 would participate. To date, over 3,000 have signed up.*

**10. Employee Time and Attendance Handbook**

**PEF will provide comments on March 7, 2005 draft.**

**What educational effort will follow issuance of handbook?**

*Management's response: This agency works at all times of the day and evening. LATS made us aware that some people were not complying with the Department standards. We needed a better set of rules to accommodate such programs as the compressed work week. There is nothing in the new Work Schedule Policy that wasn't in the previous policy. The policy was reviewed by Regional and Division Directors. The Work Schedule Policy fits all situations. Exceptions for work-related issues (needing to be in the field early) will need Management approval. The Department will conduct training for staff and supervisors.*

**11. Failure to Provide Travel Advances**

**PEF requests that the topic be dropped.**

*Management's response: Management agrees.*

**12. Contracting Out Computer Services**

**12.(a) What are the actual itemized listing of expenditures by vendor for SFY 2004-05, budget costs, and purpose of contracted out computer support?**

*Management's response: As we are at the close of the fiscal year, it will take some time to determine the final itemized listing. We will follow up.*

**12.(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. What is the impact of Patriot Plan section 14 to the Conservation Fund? 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: No information to provide at this time.*

**13. 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: This case remains on hold at PERB until 4/04/05. We still have not received any notice from the Governor's Office for Technology on the issuance of a policy addressing personal use of State Internet services. No additional information is available at this time.*

**14. Labor/Management Training**

**PEF/encon requests that joint L/M Training be scheduled. Four years of Article 15 monies must be spent in two years.**

*Management's response: The Department is willing to enter into discussions regarding this matter.*

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

**The next Labor/Management meeting is June 29, 2005. The remaining dates for the year will be October 5 and December 1. The October meeting should be outside Albany in either Buffalo, NYC or Long Island. PEF requests that the Commissioner attend. A Commissioner last attended a meeting June 15, 1995, almost 10 years ago!**

*Management's response: It was agreed to meet in NYC in the Fall. PEF will investigate moving the date to the later part of September.*

**16. 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 reapproved the telecommuting expansion in the Central Office which was put in abeyance in November 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.**

**When will management respond to PEF's June 9, 2004 position paper on telecommuting, compressed pay period, carpooling, and transit subsidy programs?**

*Management's response: A decision on both programs currently remains at the Executive level.*

**17. Laboratory Consolidation**

**Will DEC build a heavy duty Automotive Emissions Laboratory (AEL) in Malta with funding from the Clean Water/Clean Air Bond Act under NYSEDA? Will DEC use NYSEDA'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: No new information to provide at this time. As stated previously, SUNY East is no longer the designated site for this laboratory. It was determined that the available (SUNY East) land was unsuitable for this purpose. The Department is now in*

*the process of determining whether or not to build this laboratory somewhere else. If a determination is made to build on an alternate site, the Department will work with OGS toward this end. Management to follow up on the funding source for the NYSERDA program. Currently not able to answer the question on the funding source for NYSERDA's Environmental Monitoring, Evaluation and Protection (EMEP) program as these are NYSERDA monies.*

**18. Acting Positions - Still pending**

**Albany**

**Solid & Hazardous Materials**

**Is the Pesticide Reporting Section Chief filled?**

*Management's response: Yes.*

**Environmental Remediation**

**Is the Bureau of Technical Support EE4 position filled?**

*Management's response: Not yet, but planning is now underway. Update: Yes. An appointment was made on 4/14/05.*

**Stamford**

**Is the Forester 3 position filled?**

*Management's response: Not yet; however, it will be a priority for both the region and program in the next round of waiver requests. Update: A Forester 3 position for Region 4 is in the current waiver request.*

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

*Management's response: So noted.*

DEC

PEF/ENCON

*Joseph A. Lattanzio*

*David J. Persson*

**DATE July 12, 2005**

**July 11, 2005**