

**As of May 27, 2005, the Joint Minutes are still being  
reviewed by management.  
This LABOR/MANAGEMENT COMMITTEE REPORT  
for the March 30, 2005 Meeting  
was prepared by Dave Persson & Josephine Rice.**

Attendance:

**PEF:**

David Persson, LM Chair  
Karl Berger, Albany LM Co-Chair  
Katy Murphy, Region 1  
George Stadnik, Region 2  
Densford Escarpeta, Region 3  
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  
Holly Clark, Albany  
William Wurster, Albany  
James Trossbach, Albany  
Tim LeBarron, Albany  
Jim Kemenash, PEF  
Josephine Rice, PEF

***Management:***

Denise Sheehan, Commissioner  
Jack M. , Assistant Commissioner  
Joseph Lattanzio, DEC Director of Employee Relations  
Carole LaVigna, DEC Director of Personnel  
Michael Turley, DEC Director of Operations  
Mark Cadrette, DEC Health & Safety Unit  
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.**

### **Opening Comments**

Acting Commissioner Sheehan expressed her concern with the dynamic between PEF and the management team becoming increasingly antagonistic over time. She was interested in elevating the meeting so as not to miss any opportunities. Feedback from the core value audit was discussed at the December meeting and will be brought to this forum so people can collectively work on those concerns. She suggested restructuring the meeting around more global topics for discussion such as, opportunities for advancement, working on our limited title series across the board, and more generic issues. She also suggested a trainee program specifically designed for minorities and women candidates to increase diversity.

Commissioner Sheehan wanted a succession plan in place to address pending retirements. She felt the awards ceremony was another opportunity for employee recognition and welcomed PEF's input. She stated that she would be more inclined to attend future meetings if the structure were changed from a list of questions to a format where there is an exchange at a higher level of global issues.

PEF explained that the current format has evolved over a course of years based on the fact that questions went unanswered because of lack of participation at the top level. Efforts were made between meetings to no avail. Contracting out, compressed work week and telecommuting were important issues for PEF and have been on the agenda for years. The Time and Attendance Handbook has been a long process. Health and Safety items were raised to this level when they weren't being addressed at the local meeting. It's more a matter of documenting and tracking progress. It's very useful knowing the questions in advance. PEF would like to share the information on their website and the Department's. The format evolved because over time, management attendees were not empowered to make decisions. PEF appreciated management's proposal but wished to continue documenting any unanswered questions, particularly any mechanical ones, in a written document. PEF was not adverse to modifying the meeting format.

Management concurred that certain issues were appropriate to the agenda and should be replied to but wanted to identify those topics that should be joint endeavors. PEF attempted to establish LM training in response to frustrations with the process. Regional directors need to learn the process, their limitations and flexibility, to work things out.

### **ACTION**

PEF will take management's comments under advisement and respond within the next couple of weeks. PEF was invited to attend one of the local labor/management meetings.

Management stated that they prefer to focus on four or five issues. It's incumbent upon PEF to pursue their issues with the regional directors prior to advancing them to the statewide level. Management has repeatedly tried to pursue a specific agenda, as with securing AED's into the regions. Assistant Commissioner decided that something as important as AED's should not get lost in the agenda or be left to the discretion of the regional directors. It should be supported from the Department's overall budget.

PEF felt the regional directors needed to attend every local meeting. They were not seeing this in the Buffalo area. PEF felt it was an outrage not to have a PEF bulletin board at 625 Broadway for communications. Smaller issues, such as work schedules, need to be resolved. Management commented that using Environmental Protection Fund for hiring DEC staff is strictly precluded. NPS sustained a \$5 million cut by the legislature from operations.

### Meeting Structure

Management described their vision for a new meeting structure in three parts:

Part I – Big issues for discussion/dialogue. Actions to be taken. Management was committed to getting people with authorization in the room that can affect change. It was decided that two or four members from PEF will form work groups with management.

Part II – Informational and routine items.

Part III: Questions still remaining unanswered or long standing issues. PEF suggested having guidelines as to a timeline for responses.

## **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:* The items for the wetlands work will not be included in the budget. As of one week ago the FTE's were at 3,261. Fifteen items are related to the superfund program that passed one and a half years ago. DOB approved 202 waivers on May 2004 which have not all been filled because of the time frame and process. The goal is to have 3,330 positions filled. They are working with DOB for automatic backfills. Many were holding out for pay raises before retiring. They anticipate twenty people leaving in April. PEF recognizes the process and offered assistance in making it less cumbersome internally. They are identifying jobs that will become vacated and those requiring the backfill will have that included. It may not be included if they are uncertain as to where that backfill item will originate from. There were 60 waivers approved that were not yet filled. Approval was given to fill Environmental Engineers (EE)2 vacancies from EE1's. They are trying to do waivers every six to eight weeks and to improve communications. Division directors are in charge of funding. PEF inquired as to the promotions from EE1 & 2. Management felt that many opportunities were built into the process. EE's are unique because it's automatic through licensure. PEF felt that since most promotions cost \$5,000, they don't understand why DEC doesn't push promotions more because it doesn't change the fill level. Management will question regional directors if they don't believe a position is grade appropriate.

PEF asked for cost savings justification. There is no plan to use personal services (PS) money, contractual monies would come from NPS. PEF asked why Encon was contracting out instead of hiring more state employees. Management was able to bond for contracting but didn't view it as in lieu of hiring staff. NEIWPC is also limited. Contracts have been made with ECL (a governor entity), Cornell, Syracuse and Columbia within the budget constraints. Encon contracts out to privates for contract services. PEF viewed DOB's shifting work previously done by DEC into different areas of the budget as an expanding new practice. There are divisions where all DEC employees feel like second class citizens. All emphasis is placed on contracts. PEF's major frustration is DEC not advocating for the need for more employees to the legislature. PEF is really concerned about privatization and all career ladders disappearing. Retirees are replaced

with contractors. It would benefit everyone to clarify when work goes out of workers' hands to non DEC employees.

- 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:*

- 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:* PEF asked for the number of contract employees and superfund contracts. Management asked that the question be better defined. PEF asked if the Department is losing federal money because of lack of state money to match. Management was not aware of any loss. PEF added that DEC will not meet diversity in workforce by continuing this option. Management stated that seventy additional people were hired last week.

- 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:*

- 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:*

- 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:*

- 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:*

- i. 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:*

- j. 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:*

- k. 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:*

- l. 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:*

- m. 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:* Management stated that the SEEDS project information is available via the website.

- n. Who are the eight employees on the SEEDS Design Team?

*Management's response:*

- o. 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:*

- q.(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:* OGS is currently in lease negotiations with their selected developer. Management will share information as it is received. A single floor structure is planned for the new office building, adjacent to the existing building. The target date to move staff into the new space is one year from now, in 2006.

There were five scheduled meetings, two were already held with no union involvement. PEF reported that two employees were asked for general input from supervisors. Management will send an e-mail reminder for further input. They will meet with OGS to understand the limit of five meetings. They are trying to get within budget to move this ahead. They are not seeking a civil green building certification.

**q.(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:*

**r.(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?**

**r.(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:*

**s. 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:*

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:* a. 3,261 filled positions; no waivers pending. 60 waivers approved.

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

*Management's response:* Still pending.

**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:* Nothing pending at DOB. Management will provide additional information in update for minutes.

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:* Management would recruit for an open-competitive exam.

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:* The Bacteriologist was filled on 12/30/04. Reclassification will be reviewed at that time.

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.

1.b. Management agreed to retain all issues pending a sufficient response in Part C. Every effort will be made to get updates.

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 the 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:* Legislation is due on April 1 to implement a 10 year schedule for AED's. In two weeks, demonstration for the latest models will be given to all division and regional directors and to help drive the effort to put these in now. The new model is fully automated. The price has decreased 50% from the first purchase five years ago.

## **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:*

**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:*

**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:*

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:*

3. Empire State Outdoors Television Program

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

*Management's response:*

4. Ernest Trad Award

PEF is pleased that the Trad Award was re-instituted.

*Management's response:*

5. Continuing Education requirements for NYS Professional Engineers

Has DEC Education and Training 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:*

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:*

**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:*

**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:*

**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 clean-up orders?**

*Management's response:*

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

*Management's response:*

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:*

9. Pre-Tax Transportation Program

The NYS Ride program begins May 1, 2005 for PEF members working in New York City. There are over 3,000 participants to date. The target was estimated at 1500 to 1800. PEF requests that the topic be dropped.

10. Employee Time and Attendance Handbook

PEF will provide comments on the March 7, 2005 draft.  
What educational effort will follow issuance of handbook?

*Management's response:* Management was aware of concerns regarding the seventeen policy documents which included compressed workweek. Some things were redirected for the LATS system. The revised handbook will be shared with PEF. It was provided to regional directors and division directors last fall. They discussed the feasibility for the 7:00 am early start time. PEF will include their arguments in a letter to Management prior to the meeting. Vacation supervisors will make sure employees don't lose vacation because they reached maximum accruals. PEF will review the documents for inconsistencies with the contract in a separate document. Division directors have stated that they prefer everyone work 8:30 to 4:45. PEF was concerned with employees being directed not to record actual hours. According to the T&A sheet, appropriate work hours are to be entered. PEF questioned the greater restrictions on work hours while moving toward compressed work week and telecommuting. PEF felt flextime would increase diversity with employees needing child care or elder care. PEF concurred that the call hours should have coverage. Management maintained that most business is done 9am-5pm and had a big issue with staff leaving at 3:00. PEF believed division managers had different interpretations. It was agreed that staff and supervisors would need training for this major effort. Additional information will be within the next couple of weeks. Information was provided at the meeting for Regions 2 and 3-14.

11. Failure to Provide Travel Advances

PEF requests that the topic be dropped.

*Management's response:*

12. Contracting Out Computer Services

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:*

**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:*

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:*

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:*

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:*

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:* PEF was in agreement with management's memo stating their interest to expand the compressed work week and telecommuting pilot program. They requested that management remove the discretionary option for all regions. One prohibition that should be removed that pertained strictly to the pilot was excluding VRSW. Management stated that the compressed period program will be expanded in the central office and offered as an option to all regions. Regional director will continue to have the discretion to abstain. Management will request they review of and justification submitted on what the program could do for their region. PEF was concerned that people will be denied based on a whim or value judgment rather than fact. It's positive for morale and should be considered as long as it doesn't interfere with operations. We will look for assistance from the PERC committee. Currently everyone will have to base their particular program with a 7:30 – 9:30 start time.

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 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:*

18. Acting Positions - Still pending  
Albany

Solid & Hazardous Materials  
**Is the Pesticide Reporting Section Chief filled?**

*Management's response:* Yes.

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

*Management's response:* Not yet, plan underway.

**Stamford**

**Is the Forester 3 position filled?**

*Management's response:* No, however, priority with the next round of waivers.

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

*Management's response:*