

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

November 29, 2007

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
Terry Tyoe, Region 6
Frank Flack, Region 6
Jim Kersten, Region 9
Kevin Hintz, Region 9
Wayne Bayer, Albany
Holly Clark, Albany
Mark Hyland, Albany
Mike Kanuk, SUNY-East
William Wurster, Albany
Sam Stallone, Albany
Dylan Keenan, Albany
Denise Stephens, Albany
Lawrence D'Arco, Albany
Rob McDonough, 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
Nina White, DEC Employee Relations [Guest]
Marie Furlong, DEC Employee Relations [Minutes]

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

Management's responses are in italics.

It was mutually agreed that the minutes will be finalized within 30 days of the meeting.

1. Privatization

**PEF/encon supports the goals of the Pollution Prevention Institute (PPI) including toxic waste reduction and the protection of both human health and the environment. The Pollution Prevention Unit, which did similar work, was staffed by 17 civil servants in 1994 for \$1.5 M, which is \$2 M today. How many proposals did DEC receive? Does OSC have an approval?
What are the proposed costs and cost breakdown for the proposals?**

PEF provided Management with a breakdown of FY 05-06 contractor expenditures (excludes IT). (Attach to minutes.)

Management's response: The Department is required to include information related to Contract Employees in its annual budget request. In State Fiscal Year (SFY) 2007-08, the Department estimated that 169 contract employees were providing services to the Department at an estimated average salary of \$199,834; the estimate for SFY 2008-09 is 159 employees at an estimated average salary of \$198,843.

The number of employees was estimated using the annual contract expenditures in the current year and dividing by the average annual salary for a typical consultant services contract. The annual salary includes fringe benefits, indirect costs (i.e. rent and utilities) and non-personal services costs (i.e. supplies, equipment, travel); actual salary costs would most likely range between \$79,000 and \$88,000. As it's highest priority, the Department continues to fill all approved items. Contractors are hired on an as-needed basis.

Since June 19, 2007, what are the number of contracts for consulting services, value of contracts, the number of contract employees performing such consulting services, types of services provided by such contract employees, the number of hours they work and their total compensation under the contract, at the Department of Environmental Conservation? Does OSC's summary of responses to the requirements of Chapter 10 of the Laws of 2006 (Consultant Disclosure Legislation) show that personal services contracts with consultants cost more per hour than the cost to use public employees (including benefits)?

Management's response: As it's highest priority, the Department continues to fill all approved items. Contractors are hired on an as-needed basis.

Executive Budget

How are the structural imbalances in the Conservation Fund (\$21m), Environmental Regulatory Account (\$4.5m), Clean Air Fund (\$6m), and Natural Resources Account (\$2.3m) being addressed?

Management's response: These issues are being discussed during Budget negotiations.

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: Executive supported additional staff for a variety of offices. Four items were approved in the Executive Budget. Three were for Invasive Species and one for the Canal Mitigation Task Force.

Bulk Storage

Did Congress and the USEPA decide what funding might be available to the states to carry

out the various requirements of the Federal Energy Act legislation to increase inspections of chemical and petroleum bulk storage facilities Federal law? Is the State willing to assume some or all of EPA's responsibilities through delegation? What is the DEC's analysis of the staffing impact and will increased staff be requested to do this work?

Management's response: Since a Federal budget was not passed, Congress and the USEPA have not made any decisions about what long term funding might be available to the states to carry out the requirements of the Underground Storage Tank Compliance Act portion of the Energy Act. The Department is using available resources to complete inspections at federally regulated bulk storage facilities while also completing inspections at State-regulated facilities. The USEPA recently provided a two year grant to the Department to complete inspections at federally regulated facilities. The Department is continuing to review the resources needed to accept delegation from USEPA.

Contracting Out Computer Services

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

Management's response: Management to follow up. Update: The Personnel Office contacted OFT and requested information on what they are doing. When this information is received, we will evaluate whether it s something DEC could consider.

**Did OSC approval of the five (5) year contract extension of DECALS?
PEF requests an update on the DECALS and Verizon User Acceptance Testing (UAT) of the Sportsman Education Application?**

Management's response: OSC approved the DECALS five (5) year contract extension and the contract was signed in September 2007.

DECALS Update: The System Assessment was signed off by DEC which marks the finalization of the initial system implementation. The contract extension has provisions for upgrading hardware and software to make the system more cost effective and user friendly. Those activities have been initiated and will continue for the next 12 - 18 months. The operational responsibility for the daily maintenance of the servers, back-end hardware and software will remain with the vendor as stated in the contract amendment. The Division of Fish, Wildlife and Marine Resources will continue to provide operational management of the system through the administrative applications developed for the program.

UAT of Sportsman Education Update: The Sportsman Education system has been accepted from Verizon and is currently being rolled out in a production status.

PEF requests a meeting with staff regarding contractor charges prior to the next meeting.

2. Work Schedule Flexibility

On 12/6/06, PEF/encon sent our original email to Jack McKeon forwarding our comments on the draft guidelines and requesting a meeting to discuss. The response from Jack on 12/7/06 said that he would schedule a meeting of the joint committee. But, he never did that.

On 4/20/07, PEF/encon sent an email to Mike Lenane, again forwarding our comments on the draft guidelines and requesting a meeting.

On 8/16/07, PEF/encon I sent an email to Commissioner Grannis that included the 4/20/07 message and stated that we never received a response. Again, we didn't receive a response.

E-mails about CPP are sent to DEC Online Employee Suggestion Box, also asking to be contacted, but no response so far.

As long as the average workweek can be construed to be 37.5 hours for both overtime eligible and overtime ineligible employees, full time status and the concomitant accrual rates would be maintained.

The VRWS Guidelines in the CBA state:

7. Coordination with Alternative Work Schedules: It is possible to coordinate VRWS agreements with Alternative Work Schedule arrangements when desired by the employee and consistent with operating needs.

Please provide analysis and consideration of objections to the proposed changes and alternatives proposed.

One of the benefits of CPP is energy conservation, and other State agencies are already using this program. (Hyland to provide more text.)

Management's response: Program is under review by the Department of Civil Service. It then has to be approved by GOER. After those approvals, plan will be issued.

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.

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?

Management's response: Information has been prepared to upgrade the Natural Resource Supervisor position. It is currently being reviewed by Personnel.

- b. **Did Civil service approve DEC's request that the examination for Biologist 1 be a "Rating of Training & Experience"?**

Management's response: Civil Service did approve the format of T&E for the Biologist 1 but we need to work with them to finalize the rating scale. Test possible in the spring.

5. **Environmental Management Systems**

Tabled

6. **Civil Service**

- a. **How many DEC positions are currently filled? If DOB projects 3,748 positions by 3/31/08, what Programs and Regions are the additional staff to be allocated?**

Management's response: The Department's target for SFY 07/08 is 3,748. The Department currently has 3,739 items filled. When 20 items for the upcoming Police Academy are factored in (thus totaling 3,759 filled items) - the Department is actually 11 over target. Thru Pay Period # 24, there have been 217 separations from the Department - through retirement or for some other reason. The Department has hired 320 staff and has promoted 249 staff and reclassified 23 staff. In addition, 244 long-term seasonals became permanent.

- b. **Did DEC fill all waivers?**

Management's response: The Department makes every attempt to fill every item as it becomes available.

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

Management's response: No, they are still pending at Civil Service.

- 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 (33 to be exact) out of 90 positions.**

Management's response: We would need to provide supporting documentation, and this would need to be provided by the program. This will tie into the upcoming Parity Committee meeting.

- e. **Region One currently has no Foresters in the Bureau of Forestry, and there is no Manager in the Bureau of Wildlife. What is being done to fill these positions?**

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: The Region has attempted to fill the Manager (Biologist 2) position for the Bureau of Wildlife without success. A waiver was recently received for a Forester 2, and the position will be posted next week.

Management did attempt to make a provisional appointment for the Biologist 2 position for Wildlife Manager but was overruled by Civil Service. With regard to the Forestry positions, the appointment of Biologists for these titles would not be appropriate. Examinations for the Forester 1 and Forester 2 titles are scheduled for December 1, 2007. We cannot make provisional appointments when there is a eligible list.

f. When will Walt Linck and/or his item (23734) be returned to DEC from APA?

Management's response: Walt Linck is a DEC exempt employee, assigned to APA.

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 welcome written suggestions from PEF.

PEF expressed their dissatisfaction with the Department concept of reclassifying positions rather than filling positions from eligible lists. (PEF to provide their own statement.)

Management's response: As noted above, over 230 staff have received promotions in SFY 07/08 and 21 items were reclassified. Obviously both promotions and reclassifications are priorities for the Department.

h. Acting Positions

What is the status of these acting positions:

**Bureau Director, Remedial Bureau B
Section Chief D, Remedial Bureau B
Division Planning & Analysis Section Chief, Bureau of Program Management (vacant)
Bureau Director, Hazardous Waste & Radiation Management (vacant)**

Management's response: DER and S&HM do have the ability to make appointments. The Department does not support the continuation of acting positions.

I. Interns

Tabled

7. Laboratory Consolidation

PEF/encon provided 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: As mentioned previously, no determination has been made with regard to location. The report prepared by CUH2A considered only DEC divisions, not other Agencies. Any new location would be appropriately sized.

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?

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.

8. Scheduling of L/M Meetings

PEF/encon proposes the following dates for 2008:

March 13, June 12 (Lake Placid), August 21 and December 4, 2008.

PEF/encon invites the Commissioner to attend the next meeting.

Management's response: Management is in agreement on the dates.

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.

- c. Kodak and the Department entered into a memorandum of understanding (MOU) that**

requires Kodak to fund environmental monitor positions under Kodak's Part 373 permit when it is issued. These positions are currently funded under the MOU itself. Kodak's draft Part 373 permit was public noticed in 2004, yet the permit has not been issued. Kodak and the Department recently agreed to at least temporarily suspend processing of the Permit. What are management's plans for funding these positions?

PEF requests Management to confirm that 2 monitor positions have been moved into the program.

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

Management's response: The Department was allocated a lump sum amount, the balance of which rolls over with each fiscal year. Phase 1 has been completed. 221 units have been purchased and installed. Currently looking at Phase 2 purchasing for secondary facilities and facilities needing additional units. Working with EHS on a training program which will begin in January 2008-80 Central Office responders. New legislation requiring legible signage at all main entrances specifying the locations of all AEDs. Working with OR&L and Operations to implement this.

Management has worked with OR&L and established a dedicated respirator cleaning area on the first floor. Expansion/upgrading will depend upon documented amount of usage.

MRSA fact sheet provided to Management by PEF. It will be included in the next e-News article (H&S Corner).

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

Management's response: The Department's Continuity of Operations Plan under the direction of the Office of Administration has been established to deal with this issue. No updates to provide.

- e. **Right-to-Know (RTK): On December 12, 2003, PEF filed a statewide complaint with the Attorney General. On September 18, 2006 the Office of the Attorney General reminded DEC that "category specific training" is not training on the specific toxic substances to which employees are routinely exposed. DEC has agreed to provide appropriate training material, once the list of toxic substances that employees are routinely exposed to is compiled. Has DEC compiled the list of toxic substances that employees are routinely exposed to provide appropriate training material?**

Management's response: This matter is still under investigation and Management feels it is inappropriate to discuss this subject in this forum.

Management briefly mentioned the Pesticides/Parkinson's Disease issue. A meeting has been scheduled for 12/07/07 to discuss. The Division, Policy Office and PEF will participate.

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:

- 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:

- 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's response:

- 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 hours of 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. **Is construction for the additional 20,000 square feet at the New Paltz office Phase 1 (New Addition) still scheduled for completion in November 2007 with Phase 2 (Renovation of Existing Building) to begin December 2007 and final completion scheduled for April 2008?**

Management's response: As mentioned at previous meetings and, as an update, construction began in January 2007 with Phase 1 (New Addition) and is scheduled for completion in February 2008. Phase 2 (Renovation of Existing Building) is scheduled to begin in February 2008, and a final completion date is scheduled for August 2008.

- 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 to provide ample illumination on all parking areas, pathways, and sidewalks to prevent further injuries to employees and to visitors to the building?**

Management's response: 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

3/13/08

PEF/ENCON

David J. Pansson

3/19/08