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October 28, 2004

Mr. Henry Hamilton
NYS DEC
Office of Environmental Monitors
625 Broadway
12th Floor
Albany, N.Y. 12233-1510

Dear Mr. Hamilton:

The purpose of this letter is to provide our comment on the draft On-site Environmental Monitoring policy proposal. We are gravely concerned because we believe that the draft proposal is a major policy change that makes significant and harmful changes to existing policy regarding Environmental Monitors. The draft policy is a significant step backward for New York State because it is less protective of the environment and less protective of public health and safety than the policy it proposes to replace. Therefore, we request that the draft proposal be denied and the existing policy regarding On-site Environmental Monitors (Organization and Delegation Memo #92-10) remain in full force and effect.

Our concerns with the draft proposal are related to cost, objectivity, accountability, and transparency. Specifically, it is important to understand that the present Environmental Monitoring program doesn't cost the State a dime and is in fact bringing revenues into DEC. This is because the monitored entities are required to provide all the funding necessary to support the Environmental Monitors.

Moreover, the draft policy suggests a shift to "Independent Environmental Monitors" (IEMs), rather than "On-site Environmental Monitors" (OEMs). The distinction between these monitors is significant because the OEMs are employees of the Department of Environmental Conservation (DEC) and dedicated civil servants, while the IEMs are private contractors employed by the polluting entity.

We believe that it is an obvious conflict of interest to have the IEMs responsible for monitoring the business or municipality that is paying their salary. While the IEMs are titled "Independent", it strains credulity to believe that a monitor *paid by the violator* would be as objective and or as vigilant as an employee of DEC. In fact, it is the qualified DEC employee with Civil Service Law protection that is truly independent, not the IEM that is beholden to his employer. Unfortunately, the

draft policy increases the potential for privatization of this important oversight function and raises the possibility of a less vigilant, more conflicted monitor, thus placing the environment and public health at risk.

In addition, we are concerned because the draft policy not only eliminates the clear criteria for requiring monitors, but it also reduces the number of types of facilities required to pay for on-site DEC staff monitoring. For example, the current policy (Organization and Delegation Memo #92-10) states that Environmental Monitors **will be required** at the following facilities:

1. Commercial secure hazardous waste landfills;
2. Commercial hazardous waste process incinerators;
3. Commercial processing/treatment facilities or sites which handle hazardous waste;
4. Inactive hazardous waste sites undergoing cleanup or remediation by a private party, pursuant to a permit or an order of the DEC or a court;
5. Facilities having a compliance history which demonstrates that a more active DEC role is appropriate.

The current policy also states that due to the type of activity, and the factors above, Environmental Monitors should be sought for the following facilities:

1. Landfills that accept significant quantities of industrial waste;
2. Waste management facilities which accept hazardous waste generated at the site of treatment or disposal; facilities receiving more than one million gallons per year;
3. Waste land spreading facilities; and
4. Solid waste transfer stations and processing facilities;
5. Facilities which meet one or more of the criteria set forth in Section III of O & D Memo 92-10.

Nine of these ten facility types as well as clear criteria detailing when an onsite monitor is required have been eliminated from the new draft policy. In fact, according to the draft policy, commercial hazardous waste landfills are the only remaining type of facility requiring an On-site Environmental Monitor (DEC employee).

The elimination of clear criteria regarding on-site monitoring substantially weakens the current policy. Unfortunately, the draft policy not only weakens the current policy, but also introduces language and procedures that would appear to politicize the decision making process for determining when an on-site monitor is selected. For example, in the absence of clear criteria, the decision whether to impose monitoring and whether or not the monitoring will be performed by an OEM (DEC staff) or an IEM (private contractor) is to be made at the DEC's executive level. Clearly, the draft policy exposes important environmental decisions to

political pressure and increases the possibility that monitoring is performed by conflicted private contractors.

Finally, it is disturbing to note that DEC has proposed such radical changes to an environmental policy without fully engaging the public and the communities that are likely to be directly affected by such changes. While the proposed policy is posted on the DEC website in the Environmental Notice Bulletin, the existing policy is not, making it impossible for people to see the enormous rollback of environmental protection and oversight this policy change would constitute. Such lack of publicity and transparency regarding this important policy change should not be permitted and reflects a disregard for the public.

In conclusion, the draft policy significantly alters the current policy and weakens the Department's ability to monitor proven environmental hazards. The draft policy removes clear criteria in favor of subjective political decision making and increases the likelihood, that to the extent that monitoring occurs, it is performed by private conflicted monitors, rather than qualified and truly independent civil servants. Moreover, the draft policy reflects a substantial weakening of environmental protections without fully engaging the public in discussions regarding the impact of these changes on their communities. For these reasons, the draft policy should not be approved and the current policy (Organization and Delegation Memo 92-10) should remain in full force and effect.

Thank you for your consideration of this comment.

Sincerely,

A handwritten signature in black ink, appearing to read "S.T. Connolly", with a large, stylized flourish at the end.

Stephen T. Connolly
Research Department