



PEF/encon

**COMMENTS AS DELIVERED BY WAYNE BAYER FOR
NYSDEC BUDGET HEARING JANUARY 26, 2010**

Chairmen Farrell, Sweeney, Senator Krueger and Honorable Members of the Joint Fiscal and Environmental Committees that are still here, I am speaking on behalf of myself and the PEF/encon steward council that represents the 2000 Public Employees Federation members working in the professional, scientific and technical job titles for the NYS Department of Environmental Conservation.

Considering the relatively late hour this afternoon, I would like to begin today by suggesting a rhetorical argument that if the Legislature approves a budget for NYSDEC that does not have substantial increases in funds for programs, services and staffing, then it could be plausibly argued that the Legislature is acting like unindicted co-conspirators -- co-conspirators, working in concert with the Governor, his staff and DEC management to jointly perpetuate a public fraud or misconception that DEC is adequately funded enough to enable it to continue its historic missions and to responsibly fulfill its many state and federal statutory and regulatory responsibilities. Present company excluded, of course.

I will repeat once again what PEF/encon has stated in this budgetary forum on more than one occasion in recent years--the staffing and budget cuts made over the last 20 years and proposed again this year, make DEC a shadow of what it once was and what it was envisioned to be 40 years ago at its conception. As we indicated in our 2007 testimony, DEC was then and is now still operating with a triage management philosophy and doing superficial drive-by regulatory inspections and oversight.

**Expansion of Natural Gas Drilling in the Marcellus and Utica Shale
Formations Will Only Make the Staffing Situation Worse**

PEF/encon, joined with many other organizations and individuals in requesting an extension of the public comment period on the Draft Supplemental Environmental Impact Statement. We did so for of a number of environmental and administrative reasons that you have heard others articulate earlier today. However, as a labor

organization we also had strong and legitimate concerns about the staffing shortages at DEC that would impose an additional impossible burden on the agency's ability to fulfill its core missions and to meet its' regulatory and statutory responsibilities. The paltry number of new positions requested by the Governor for the gas drilling mission is far from adequate and is more than offset by a reduction in another 54 positions elsewhere in the budget and the continuing budget freeze on hiring. We are fearful that existing staff would have many of their existing responsibilities shifted to support permitting, oversight and enforcement of gas drilling activities. We strongly believe that drilling should not proceed until an adequate severance tax on the gas producers is identified and implemented to fund oversight and enforcement positions. DEC should not proceed with drilling until a more adequate staffing analysis has been done as to how many ADDITIONAL{emphasis intentional}staff are needed.

NYS's manufacturing and environmental history is full of examples where industrial practices (some innocently undertaken in an earlier era) and some done intentionally or accidentally have caused NYS tax payers to finance billion dollar bond acts and the creation of costly state funded programs to investigate and remediate their mistakes. No foreign intruder is threatening to enter NYS to steal this natural resource that has been where it is for millions of years. It's not going away! Delays that ensure that "hydrofracking" to recover this resource is done in a fiscally prudent and environmentally responsible manner is the right thing to do.

Costly Consultants Still a Problem and DEC Still Under-Reporting Consultant Contracts

Our presentation last year reported that DEC was continuing to rely on costly consultants to perform work that could be done by in-house staff. We stated that DEC was expecting to employ 175 consultant employees, an increase of 14 from the previous fiscal year at an average cost of \$198,800 per consultant. We specifically asked members of this committee and the legislature to question DEC management to justify why they were: a) hiring these contractors; and b) why were they substantially under-reporting the contract funding at DEC in apparent violation of the Procurement Stewardship Act of 2006. Last year, the public record said that DEC had close to \$71 million dollars in previously unreported contract funding. We would like to know if any members of the NYS Legislature received an explanation from DEC as to why this happened and if not, why not?

Things are not getting better. Two weeks ago, PEF's research staff issued its latest consultant services contracts report "The Tip of the Iceberg"—see the link to report on first page of PEF's web site www.pef.org . In this report PEF said that DEC has neglected to report over \$ 97 million worth of contracts to the

Comptroller's office on Division of Budget Form B. We strongly urge the Legislature to pursue an explanation for this discrepancy?

Pheasant Farm and Tree Nursery Saved but DEC Campgrounds in Possible Jeopardy

At this time last year, PEF/encon, along with numerous other organizations in the sporting community, raised objections to DEC's plans for the closing of the state's only pheasant farm. DEC eventually backed off that proposal and we thank the legislature for its role in that decision. Last spring, DEC floated the idea and had some preliminary plans to close its last tree nursery. Opposition from PEF/encon, the public and some legislators stopped that misguided notion. This is ironic considering the Commissioner's testimony this AM where he sang the praises of green roofs, green infrastructure, urban reforestation and flood plain control. PEF/encon thanks any of you who had a role in that decision and for remembering the commitment made to New Yorkers back in 1970 when the old Conservation Department was merged with some state health department programs to create the NYS Department of Environmental Conservation. This was the commitment to continue NYS's support of traditional wildlife and conservation programs. We ask you to stay vigilant so that DEC does not try to revisit closure of these facilities and to watch closely for new plans to close DEC campgrounds and fish hatcheries.

Brownfield Tax Credits Still Too High and Bunker Fuel Tax Exemption Should Be Eliminated

Last year and the year before we raised questions about the viability of the state's Brownfield program and the uncapped tax credits drain on the state treasury. PEF/encon urged the legislature to reexamine this program and limit the tax credits because of the possibility of abuse and unlimited tax credits. There were some revisions made in the Brownfield program two years ago, but this was done with substantial contributions from too many of the architects involved in developing the original program that didn't "cross the t's and dot the i's" on the original bill. It looks like history has again repeated itself because the credits are still too exorbitant and not for the best environmental necessary redevelopment projects. If the legislature revisits these tax credits again we hope you utilize more objective personnel in crafting the legislation. We continue to believe that the tax credits are still too high and the vagueness of language in the legislation and eligibility criteria has caused delays in Brownfield program applications, investigations and remediations. It has also led to considerable litigation stretching the limits of our legal staff.

We join with the Environmental Advocates of New York State in urging an elimination of the Bunker Fuel Tax Exemption for dirty fuel that is used by ocean-

going cargo ships and other marine vessels in NYS's harbors and ports that cost NYS Tax Payers around \$35 million per year and contribute to air pollution.

I must ad lib on two points mentioned by the Commissioner this morning: The first is in regards to his praise of President Obama's new Great Lakes Restoration Initiative. As I was leaving for today's hearing I received a disturbing report from a regional office member saying that DEC is in jeopardy of losing \$60 million in grants for Fish and Wildlife because they didn't have the staff resources to complete grant applications in a timely fashion. This needs to be verified because it is a troubling report, if true.

The second thing is to follow-up on the Commissioner's remarks that he and DEC staff have been working with NYS's Congressional delegation in trying to get as many federal stimulus and other dollars as possible. PEF/encon urges him and any of the legislators with contacts with our Congressional Representatives to redirect USEPA funds that used to come directly to NYS's Clean Air and Clean Water programs that are now funneled thru quasi public shadow agencies and academic research foundations to fund outside contractors that take away career civil service jobs at DEC, should come back to DEC.

Thank you for the opportunity to provide this brief and hurried presentation. I will be happy to attempt to respond to any questions you may have now or in the future as will my colleagues at PEF/encon.

Submitted by Wayne Bayer
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