



**PEF/encon**



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**Comments Prepared by Wayne Bayer for the 11-18-2010 Assembly Environmental Conservation Committee Hearing on Oversight of the NYSDEC Budget**

Good Afternoon! I am speaking in my role as an Executive Board Representative of Division 169 (PEF/encon) of the NYS Public Employees Federation, AFL/CIO, representing the Professional, Scientific and Technical Staff at DEC—which until recently represented 1850 of the 3200 employees at DEC.

Two years ago, NYS was tied for 48th with Ohio in the number of publicly funded workers dedicated to environmental programs per capita. If you just counted state employees, NYS was 40<sup>th</sup> in the country. \*

Earlier today you had the privilege of hearing from former Commissioner Grannis describing the critical staffing and funding shortages that have crippled DEC's ability to fulfill its statutory and regulatory responsibilities. His remarks, and the now famous October leaked memo that led to his dismissal, were attempts to educate the Governor and the Division of the Budget on the folly of the demand for DEC to take still more reductions in staffing at a level highly disproportionate to other state agencies. That memo superbly articulated concerns shared by PEF/encon and reflect some of the issues we have previously shared with this committee and the fiscal committees of the legislature.

I am referring to PEF/encon testimony that warned about not enough staff to do dam safety inspections prior to the Hadlock Dam failure and to our concerns about not enough staff to inspect Concentrated Animal Feedlot Operations (CAFO's) before the Mark's Dairy Farm failure that contaminated a 20 mile stretch of the Black River killing over 375,000 fish. We have also warned about shortages in foresters and forest rangers dramatically reducing NYS's revenues from lumber harvesting and jeopardizing rescue operations for lost hikers, hunters, skiers, snowmobilers and victims of plane crashes in remote areas of the Adirondacks and elsewhere. Shortages in foresters and land surveyors also contribute to the perception that NYS is committing fraud by representing to taxpayers that NYS is capable of being good stewards of large tracts of wilderness areas or open space purchased or donated to NYS. The previous owners of these properties would be shocked at how inadequately DEC is preserving and protecting these valuable resources. Shortages in foresters, biologists, and entomologists are leaving NYS nearly defenseless in protecting against invasive species. We have also warned about the uncapped tax credits from the Brownfields program contributing to NYS's budget deficits

Today, I will be focusing my remarks on three programs: Shell fishing off of Long Island, the Chemical and Petroleum Bulk Storage Programs and natural gas exploration using hydro-fracking.

## **Shellfishing and Marine Resources**

Marine Resources is a non-regionalized program that has little "visibility" in DEC's Central Office and usually gets overlooked by the Legislature and "up-staters" because it is out of sight and out of mind with all employees located in the 3 DEC down state regions.

Shellfisheries staff do year-round water sampling, data analysis and report preparations work. Sometime this work results in a determination that water quality in certain areas no longer meets the stringent bacteriological standards for the safe harvest of shellfish for human consumption and the need to prepare a regulatory amendments package to change the classifications of those areas to protect public health. One of the most recent of these actions occurred September 30<sup>th</sup> when 2200 acres were closed to recreational and commercial fishermen.

Staffing shortages in these jobs will leave DEC inadequately prepared to maintain sanitary surveys of shellfishing areas to national standards. This could result in closing more areas with adverse effects on the small businesses that comprise the struggling shellfish industry on Long Island

Severe cuts in Non Personnel Services budgets with bans on overtime have left Marine Fisheries unable to run its fisheries lab on Saturdays as they have done for the previous 25 years. That cuts back sampling opportunities by 20 to 40% because staff can't sample on all Fridays (20% cut) because the testing protocols have a 24 hours time period.

With 20 to 40% cutbacks in sample collections DEC will not be able to collect the minimum number of samples specified by the national shellfish sanitation program for most areas that require monthly sampling during the upcoming December - April period. DEC may have to close those areas totaling as high as 56,000 acres (as they did in 1990) to shellfish harvesting. This will have adverse effects on the shellfish diggers and shellfish buyers/processors as well as restaurants, motels, and related fisheries supply stores because they are not adequately sampled to meet required federal standards under the Federal Food and Drug Administration (FDA). The other substantial risk is to have the FDA take New York State off the interstate shellfish shippers list because our program does not comply with national requirements. That would have a devastating impact on the 200+ small businesses on that list: <https://info1.cfsan.fda.gov/shellfish/sh/shellfis.cfm#NY>

An FDA Specialist visited DEC's office in September and is fully aware of the precarious situation and he plans to keep a close eye on our program and is prepared to issue violation notices and restrictions on harvesting.

## **Chemical and Petroleum Bulk Storage Programs**

New York has over 41, 000 chemical and petroleum bulk storage facilities subject to regulation and oversight plus many more that don't meet the minimum criteria for regulation (but still pose a risk to the environment and public health). Over 1507 of these are chemical bulk storage facilities. Members of this committee know the risk to their communities and constituents of these facilities, but can you say that for your colleagues and the Governor or Governor-elect? Do they know how many are in a 50 mile radius of their homes in upper Manhattan and Mt. Kisco? Do they know how many tanks store

ammonia, chlorine or methyl ethyl “bad stuff” and other hazardous chemicals? Because of new homeland security restrictions most New Yorkers do not know where these facilities are or what hazardous chemicals are being transported by tanker truck or railroad tanker car through suburban and urban areas. They are dependent on homeland security staff, the law enforcement community, and NYS DoT and DEC employees to protect them. Unfortunately, there are some growing loopholes (some of Grand Canyon size proportions) in the state’s ability to provide adequate protection and safeguards. The shortage in inspectors means some regulated petroleum bulk storage facilities haven’t been inspected in over 5 years. Others may not be as adequately and thoroughly inspected as they should be because of impossible workloads and access problems requiring police backup. New Yorkers place confidence in a belief that the regulated community for uninspected facilities and tanks are truthfully self-reporting leaks, spills, maintenance problems even though there are no compelling economic incentives to report. New York State has another problem that should have considerable interest and concern from this committee—NYS has not revised and expanded its list of Hazardous Substances regulated under 6 NYCRR Part 597 in more than 20 years (??). Many chemicals and substances have been proven to be of considerable risk to public health, safety and the environment but are escaping regulation and oversight.

### **Natural Gas Exploration and Hydro-Fracking Drilling In NYS**

Last year PEF/encon joined with many other organizations and individuals throughout NYS in requesting at least a one year moratorium on drilling because we were concerned that Congressional and USEPA studies had not been done and that NYS had not put in place the regulatory revisions and infrastructure requirements for treating and disposing of millions of gallons of contaminated back flow water. We were also concerned that the severance tax on the recovery and use of natural gas was way below what is the practice in other states. With our budgetary problems promising to continue far into the future, the legislature should significantly increase this severance tax and have a considerable part of it dedicated to providing funding for DEC to provide adequate oversight on drilling operations. Last year NYSDEC did not have the staff adequate to do oversight on hundreds to thousands of new drilling locations. We sure as blazes don’t have the staff now and won’t in the foreseeable future. Anyone who tries to tell you otherwise has a severe problem with the truth /or lacks common sense.

### **Layoffs Going on at DEC Right Now**

DEC has been in turmoil this past year as the agency has gone through the loss of colleagues and friends to the severance program and the ERI program while also dealing with threats of furloughs. The state Department of Environmental Conservation (DEC) has lost 713 positions since 2008 and another 140 have been targeted to be laid off before January 1. That is a 22 percent work force reduction. Most other agencies have been reduced by an average of 10% to 13%; some have not been reduced at all.

This week a bad situation became worse—when DEC management initiated the process to lay off 140 more of our fellow workers. This is disheartening not only because these are our colleagues and friends but because these are talented and dedicated people doing important work that is going to go undone and be thrown on the backs of the remaining staff that are increasingly overworked and stressed out over the workloads. They are stressed, not only because of the physical demands and emotional

stress of doing less with less but also because they take their jobs seriously and have a commitment to protecting NYS's environmental and natural resources and public health and safety.

PEF/encon stewards and PEF's full time staff at our Latham Headquarters are still gathering information on the negative impact these latest layoffs will have. We do know that DEC is once again closing another laboratory—last year it was the Environmental Remediation Lab and this year it is the Pesticides Lab. We believe this is a reflection of the Governor's office being out of touch with reality and not being concerned with fully protecting public health and safety. NYS employees in the Pesticides lab, just as employees in the DER lab closed earlier this year, are doing lab analysis that is faster, cheaper and more productive than can be done elsewhere. NYS also looks foolish closing a lab just after purchasing millions of dollars of new equipment. We will have more commentary on this in the next few weeks.

PEF/encon thanks you for the opportunity to present these comments and observations. 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.

- See Attached Table compiled by PEF member using census data

Submitted by Wayne Bayer  
PEF Executive Board Representative for DEC Central Office

See Next Page for some ad libbed comments at hearing

Ad Libbed comments during hearing

{At these hearings you are only given about 10 minutes. Only parts of the prepared remarks were verbalized during my time period.}

In response to earlier presenters I mentioned:

NYS and NPL Superfund Sites are complex in that both agencies could be working on a site with EPA contractors doing work on part of a site and NYS Staff and Contractors on another part of a site, particularly on sites that have more than 1 operable unit.

The 140 layoffs at DEC disproportionately represent 15 % of all state agency layoffs.

Mentioned that DEC staff are concerned about the fact that contract employees have not been reduced, cut or laid off.

WB

State	Population		Env Related Employees	Tot Gov't Employees	Env Empl's / 1000 pop	State Empls/1000 pop
Alabama	4,628	4,627,851	2,864	88,617	0.62	19.15
Alaska	683	683,478	2,481	25,653	3.63	37.53
Arizona	6,339	6,338,755	3,403	68,224	0.54	10.76
Arkansas	2,835	2,834,797	2,618	59,386	0.92	20.95
California	36,553	36,553,215	17,789	387,168	0.49	10.59
Colorado	4,862	4,861,515	1,760	67,784	0.36	13.94
Connecticut	3,502	3,502,309	1,097	61,823	0.31	17.65
Delaware	865	864,764	998	26,148	1.15	30.24
Florida	18,251	18,251,243	11,253	188,772	0.62	10.34
Georgia	9,545	9,544,750	7,074	126,420	0.74	13.24
Hawaii	1,283	1,283,388	1,321	57,210	1.03	44.58
Idaho	1,499	1,499,402	2,319	22,190	1.55	14.80
Illinois	12,853	12,852,548	4,139	125,015	0.32	9.73
Indiana	6,345	6,345,289	2,925	89,558	0.46	14.11
Iowa	2,988	2,988,046	2,043	53,427	0.68	17.88
Kansas	2,776	2,775,997	1,419	45,098	0.51	16.25
Kentucky	4,241	4,241,474	5,459	80,307	1.29	18.93
Louisiana	4,293	4,293,204	5,547	84,593	1.29	19.70
Maine	1,317	1,317,207	1,303	22,870	0.99	17.36
Maryland	5,618	5,618,344	2,210	90,333	0.39	16.08
Massachusetts	6,450	6,449,755	3,314	96,109	0.51	14.90
Michigan	10,072	10,071,822	4,828	144,807	0.48	14.38
Minnesota	5,198	5,197,621	4,291	78,266	0.83	15.06
Mississippi	2,919	2,918,785	3,689	55,824	1.26	19.13
Missouri	5,878	5,878,415	3,179	89,532	0.54	15.23
Montana	958	957,861	1,562	20,017	1.63	20.90
Nebraska	1,775	1,774,571	2,501	32,465	1.41	18.29
Nevada	2,565	2,565,382	1,197	28,506	0.47	11.11
New Hampshire	1,316	1,315,828	613	19,588	0.47	14.89
New Jersey	8,686	8,685,920	5,349	155,685	0.62	17.92
New Mexico	1,970	1,969,915	1,984	52,255	1.01	26.53
<b>New York</b>	<b>19,298</b>	<b>19,297,729</b>	<b>6,126</b>	<b>253,354</b>	<b>0.32</b>	<b>13.13</b>
North Carolina	9,061	9,061,032	5,423	142,985	0.60	15.78
North Dakota	640	639,715	1,806	17,918	2.82	28.01
Ohio	11,467	11,466,917	3,605	143,206	0.31	12.49
Oklahoma	3,617	3,617,316	2,982	69,961	0.82	19.34
Oregon	3,747	3,747,455	3,191	59,619	0.85	15.91
Pennsylvania	12,433	12,432,792	7,724	160,177	0.62	12.88
Rhode Island	1,058	1,057,832	927	20,435	0.88	19.32
South Carolina	4,408	4,407,709	2,692	76,213	0.61	17.29
South Dakota	796	796,214	995	13,897	1.25	17.45
Tennessee	6,157	6,156,719	5,270	84,875	0.86	13.79
Texas	23,904	23,904,380	11,571	290,451	0.48	12.15
Utah	2,645	2,645,330	1,582	51,001	0.60	19.28
Vermont	621	621,254	761	14,759	1.22	23.76
Virginia	7,712	7,712,091	3,951	124,536	0.51	16.15
Washington	6,468	6,468,424	6,175	119,970	0.95	18.55
West Virginia	1,812	1,812,035	2,910	38,060	1.61	21.00
Wisconsin	5,602	5,601,640	2,670	68,714	0.48	12.27
Wyoming	523	522,830	1,054	12,842	2.02	24.56
<b>Total</b>	<b>301,033</b>	<b>301,032,865</b>	<b>183,944</b>	<b>4,306,623</b>	<b>0.61</b>	<b>14.31</b>

January 2009 data from 2007 U.S. Census of Government Employment, updated.

Employees are full time equivalents.

Env related includes categories for natural resources, solid waste, water supply, parks and recreation, and sewerage.