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October 28, 2004

Henry L. Hamilton
Office of Environmental Monitors
NYS Department of Environmental Conservation
625 Broadway, 12th floor
Albany, New York 12242-1510

Re: Proposed Department of Environmental Conservation Policy regarding On-site
Environmental Monitoring

Dear Mr. Hamilton;

Please allow this letter to serve as my comments regarding the above captioned proposal. As previously stated in an April 25, 2003 letter to the Commissioner, I am concerned with the privatization of on-site environmental monitors as the proposed policy would allow.

On-site environmental monitors, "whose function shall be to monitor compliance with permit conditions" (see paragraph (a) of subdivision 4. of section 27-0917 of the ECL), provide independent oversight which is accountable to the public as well as the Department. There have been numerous instances throughout the history of the program where DEC monitors have identified violations at subject facilities which have led not only to enforcement actions, but more importantly improved operation of those facilities thereby mitigating environmental and public health impacts.

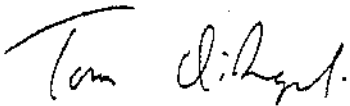
Under the proposed policy I believe that DEC's regulatory oversight will be severely compromised. With the replacement of the DEC staff with private contractors (independent environmental monitors or IEMs), the initiation of enforcement actions could become more difficult. Unlike the experienced state employees who serve as monitors and who answer to the public, the private consultants, whose clients often include the very entities that they will be expected to monitor, will be conflicted. There is no assurance that they will report environmental violations in a timely manner.

In addition, the proposed policy provides no fiscal benefit to the state. The present system requires strict accounting and reporting in which the monitoring expense is charged to the regulated party with no cost to the state. In fact, private sector consultants would include a profit margin in their contracts thereby increasing the cost to the regulated community.

I am also concerned with the wording of the proposed policy in several instances. The existing policy (O&D Memo #92-10) not only specifies the circumstances in which an environmental monitor should be utilized, but also details the Department's administrative and programmatic responsibilities. Most of these specifics are lost in the proposed policy which does not even appear to be an O&D Memo. Finally, the proposed policy appears to limit the use of environmental monitors by shifting the decision away from those in the field who are best equipped to make the determination to senior central staff.

For the above stated reasons and in the interest of the public health and the environment of New York's residents, I urge the Department to reconsider the proposed policy. Furthermore, because of the substantial public interest in this proposal, I request that the comment period be extended with sufficient time for the Department to hold hearings in each of its administrative regions.

Sincerely,



Thomas P. DiNapoli
Chair, Environmental Conservation Committee
New York State Assembly

cc: Commissioner Crotty