



PEF/encon



## Comments by Wayne Bayer for the January 29, 2014 DEC Joint Fiscal Committees Budget Hearing

Good Afternoon Everyone! I am speaking in my role as a representative of Division 169 (PEF/encon) of the NYS Public Employees Federation, AFL/CIO steward council, representing the Professional, Scientific and Technical Staff at DEC—which includes approximately 1800 of the remaining 2917 employees at DEC. (PEF President Susan Kent will be appearing before other budget committees addressing state work force and specific agency issues). DEC has 539 fewer positions than it did in the 3-31-10 in the Joint Fiscal Committee's Staff Analysis of the Executive Budget. It has over a thousand employees fewer from its high point in the early 1990's. As other presenters may indicate later, DEC is cut to the bone and a shadow of what we once were, doing far more with far less.

Preparing for today's presentation, I was struck by how relevant the presentation I made on behalf of our Steward Council to this committee in 2011 -this testimony, by the way, can be found on the [http://www.pefencon.info/State\\_Budget/Statement\\_on\\_Proposed\\_DEC\\_Budget-Jan\\_29\\_2014.htm](http://www.pefencon.info/State_Budget/Statement_on_Proposed_DEC_Budget-Jan_29_2014.htm) web site in its entirety.

A few examples of its relevance:

- DEC is still not the agency that it was when established in 1970 and intended to be under Governor Rockefeller and the legislature;
- our staffing level as we indicated earlier is ¼ to 1/3 less than it was in the early 1990's;
- we are still contracting out work that DEC staff use to do and could do with the citizens of the state of New York than having the confidence that most DEC staff were competitively hired under the all-but forgotten, and increasingly marginalized, NYS Civil Service System. Equally

important, NYS Citizens should know that civil service employees are covered by the public officer's law and are not potentially beholden to a contractor's management for a possible end of year bonus.

PEF/encon has previously reported that in every year since DEC was created there have been new regulatory and statutory responsibilities established, by either NYS or the federal government. DEC, to the best of my recall, hasn't had more than one statute or regulation eliminated! Like most other state agencies, NYS programs and services in local government are underfunded and potentially getting worse with the Governor proposing more tax cuts. I hasten to add, that this proposed reduction is coinciding with the growing inequality in income between the top 5% and everyone else in NYS. NYS (as most folks know) has the worst documented income inequality of any state in the country. This contributes directly to cuts in state programs and services. This has been fueled by federal tax cuts and politically conscious decisions not to provide the financial assistance the federal government formerly provided under federal revenue sharing programs. This politically popular tax cut fever is somewhat due to too little historical knowledge and recognition of how much federal taxes have been cut since the 1950's. For example, under Republican President Eisenhower- with a Republican Senate, and a Republican House of Representatives - the top individual income tax rate was 92% --and the top capital gains rate was also 92%!

One of the very few positive things proposed in the DEC budget, is the second or third attempt to try and make the State brown fields program less of a corporate welfare boondoggle than the infamous IDA programs! The brown-field, tax credits, for example, goes not only for investigation and remediation costs but also for developer's development costs. (As an added comment during the Q & A-- I suggested that the committee should follow up on Senator Kruger's question regarding the total \$ value of tax credits by DEC to provide what the subset of the total tax credits were just for investigation and remediation costs.

PEF/encon has mentioned in previous testimony that most of the early Brown Field approved applications were located in prime geographical locations that would probably have been developed anyway because of the potential of substantial returns on a developers' investment. Preferential treatment for implementing the Brown Fields program detracts remediation staff from proactive investigation of suspected hazardous waste sites- including the long neglected recommendation for statistically relevant research and sampling of abandoned dry cleaning sites.

In previous years, testimony, PEF/encon warned the legislature about staffing shortages in the Dam Safety Program and in the oversight of concentrated area feed lots. Shortly after sounding these alerts in budget and/or oversight hearings. Before staffing could be added, NYS had major contaminations of the Black River and Beaver Creek by storm run-off of fertilizers and, other harmful contaminants leading to enormous fish kills. Experienced staffing shortages in the dam safety unit contributed to the Hadlock dam collapse causing major damage and controversy.

We also warned about DEC being very far behind in developing Unit Management Plans for surveying and preparing for public utilization the multiple thousands of green acres purchased in the Adirondacks and elsewhere. At the same time, we also alerted you to NYS losing income revenue because DEC is not able to fully monitor and survey all the lumber-harvesting producing areas under DEC control. We alerted you to the very serious USFDA warning that the DEC delegated responsibility for monitoring and inspecting shell-fishing producing areas off shore in Long Island was in jeopardy because of staffing shortages in PS & T staff and in ECO's charged with inspections and monitoring. Up-staters should not be complacent, because there also are not enough staff to adequately monitor the major seafood distribution centers upstate. (Think about that the next time you order seafood).

While those staffing problems continue to exist in those programs, we would like to call attention to 2 other environmental problems that are becoming increasingly important for the legislature and public. I am referring to major shortages in the invasive species program and in the emergency spills response unit. The latter is especially worrisome with the major increases in rail transportation throughout NYS populated areas carrying Bakken crude oil shipments and, if permits and approvals are forthcoming--tar sands oil. Tar sands oil is very difficult and costly to fully clean up and very bad for surface waters because it is heavier than water and sinks. . The people of Albany are increasingly concerned about this in light of the plans for the heating of up to 7 proposed tank-car boilers to make off- loading of the thick tar sands oil in the Port of Albany to coastal ship freighters possible. (Please see the very informative recent series of articles (and an editorial) in the Albany Times Union. . .

The legislature and public should be quite concerned, that the average number of experienced spill responders in many DEC regional and sub-offices is about 2 on weekends. Why?

Authorized back-filling of vacant positions because of retirements, transfers and promotions (as rare as these opportunities currently are in the new DEC) are extremely difficult if not impossible. This promises to get worse with baby boomer demographics with experience staff retiring. In particular, the technical staff in the lower salary grades that do much of the actual containment and remedial work are very hard to backfill leading to regional shortages. The Spills unit in DEC, like so many programs in DEC, **is** under micro-management for back-filling positions by the Division of the Budget and, by common belief, the 2<sup>nd</sup> floor of the capitol building. It is also a common belief that the DEC Commissioner and management appointees- despite their beliefs, opinions and recommendations, are given a maximum targeted budget figure that DEC has to meet, regardless of, agency responsibilities for addressing statutory and regulatory requirements and the agency's published mission.

As good as Commissioner Martens is (and I have had and still have tremendous respect for him since the time long ago in the mid-1980's when he worked on the Ways and Means Committee staff and wrote

an important analysis and history of DEC), he would be somewhat careless to not be very mindful of what happened to one of his predecessors- Pete Grannis- who courageously challenged DEC's short-staffing.

Turning briefly to the growing, and very costly problem of invasive species-- it's mystifying why DEC staff charged with administering this program are so understaffed, in spite of inter-agency task forces that include participants and partners from academic institutions and the regulated community... The veterans on this committee remember that in 2003, Governor Pataki signed legislation sponsored by Senator Marcellino and Assemblyman DiNapoli (Chapter 324 of the Laws of New York). This legislation called for an Invasive Species Task Force to:

1. explore the growing invasive species issue (SEE NOTE 1 AT END OF THESE COMMENTS FOR SOME HISTORY OF INVASIVE SPECIES AND SEE THE LINKS IN THE FOLLOWING PARAPHS);and
2. To provide recommendations to the Governor and the Legislature by November 2005. Those reports were done and Task Forces created with many of their recommendations implemented except for one of the most critical—increased staffing for DEC to provide assistance for developing contracts to support task force recommendations and to provide technical support for the TASK Forces responsibilities). In fact, almost every report (see the NYS Council Report, the NY Invasive Species Management Strategy report and the Invasive Species Task Force Report that called for 8 or more full time staff.

For more information, here are the previously mentioned links:

[http://www.dec.ny.gov/docs/lands\\_forests\\_pdf/ismgmtstrategy.pdf](http://www.dec.ny.gov/docs/lands_forests_pdf/ismgmtstrategy.pdf)

I refer you specifically to pages 15 - 16 where they recommend 2 additional staff for DEC (beyond the 4 the unit had at the time) and 4 more staff in the Dept of Ag and Markets so they could move forward with regulating and prohibiting invasive species. From being introduced in NYS

Also see: [http://www.dec.ny.gov/docs/wildlife\\_pdf/istfreport1105pdf](http://www.dec.ny.gov/docs/wildlife_pdf/istfreport1105pdf)

You should especially note page 100 that states this about staffing:

" Staff are needed to implement many of the Recommendations. Estimates range from five to eight permanent staff, with numerous opportunities to use interns as well. Annual costs for personal service and related expenses such as travel, supplies and equipment are estimated between \$450,000 and \$800,000."

DEC today has only two very overworked staff for the whole invasive species unit, unexplainly, down from the 4 it had before the increased responsibilities established by task force recommendations. See page 15 – 16 in: -

[http://www.dec.ny.gov/docs/lands\\_forests\\_pdf/ismgmtstrategy.pdf](http://www.dec.ny.gov/docs/lands_forests_pdf/ismgmtstrategy.pdf).

In closing, I would be remiss in not mentioning two things of great concern to the PEF/encon steward council involving DEC Management (perhaps under orders from the Governor's Office of Employee Relations, the Division of the Budget, or, less likely, the understaffed and neutered Civil Service Department):

The first concern involves managerial opposition to implementing a successfully developed and modeled, joint DEC labor management recommendation for telecommuting and compressed pay period programs.

Both of these commuter options would:

- be very good for agency morale (not insignificant with dwindling promotional opportunities, increased workloads and 3 years of pay freezes)
- help enormously with recruitment and retention of agency staff that have second jobs, child care and/or elder care responsibilities
- reduce air pollution, energy use (oil and gas consumption), while also reducing traffic congestion, wear and tear and maintenance of roads, parking lots and garages.

The opposition and reluctance to proceed with this is incomprehensible to the staff of an agency charged with reducing air pollution and fossil fuel usage. Successful implementation could make

DEC a role model for other state agencies, public authorities, local governments and eventually the private sector.

Even President George Bush successfully directed many federal agencies to proceed with implementing BOTH telecommuting and compressed pay period programs. Would Governor Cuomo like to be perceived as less of an environmentalist than President Bush?

The second concern is the increased meddling of agency management with shop stewards access to their membership and ability to adequately and professionally implement the PEF collective bargaining agreement with NYS. For example, stewards are increasingly harassed and restricted in their ability to attend agency Labor-Management meetings and to prepare and work on their health and safety responsibilities/obligations to protect agency staff.

PEF/encon has long contended that the past cooperation with DEC agency management has saved NY from worker fatalities, significant sick leave use and absences-- as well as workers compensation claims. Can you think of another state agency with a greater diversity of job titles and hazardous job duties? DEC staff, for example, are charged with doing significant work in very isolated and remote parts off NYS in wilderness and isolated areas... Think of the successful reintroduction of the bald eagle and protecting endangered species. DEC staff work in suspected and actual drug labs, in congested urban areas (sometimes in high crime areas) in confined spaces and often close to rail lines and very high-trafficked roads. These latter assignments often include hazardous environmental sampling on defined or suspected hazardous waste sites, DEC staff use air transportation to restock lakes and streams in remote wilderness areas, engage in search and rescue missions (sometimes on mountains at night in isolated wilderness areas. They also climb smoke stacks for air monitoring and get caught in storms sampling lakes, streams and rivers, often with very dangerous currents...

PEF/encon contends that prior managerial cooperation to health and safety has been enormously successful. We are quite aggravated with new managerial staff, likely under

pressure from GOER or second floor appointees in the capitol building, that hinder this past success. in labor relations.

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.

Submitted by Wayne Bayer on behalf of the PEF/encon Division 169 Steward Council.

(Currently PEF Vice President on leave from DEC and former Executive Board Representative for the DEC HQ PS & T membership. Titles for identification purposes only)..

1. “Early in the twentieth century, Chestnut Blight arrived in North America and, Within a couple of decades, it killed virtually all American chestnut trees- one of the most valuable trees in the forests of NY. Zebra Mussels arrived here from their Native Caspian Sea in the late twentieth century. Since then, they have altered ecosystems, clogged pipes, and ruined bathing beaches in some of our largest waters. Near the start of the present century, West Nile Virus came here from Africa and has sickened and even killed both birds and humans. The Asian Long-horned Beetle arrived within the lumber used for packing crates and has forced us to cut down Thousands of prized shade trees in our cities and suburbs - in the hope that it does Not spread to our forests. Swede Midge, discovered in recent surveys, could decimate our broccoli and cabbage crops. Chronic Wasting Disease has been moving eastward from its origins in Rocky Mountain elk and mule deerIt could harm our white-tailed deer now that it has entered New York. Eurasian Watermilfoil and Water Chestnut choke many of our waters, impeding boating and swimming and crowding out our native species. On land, two invasive milkweeds - both Black Swallowwort and Pale Swallowwort - are smothering plant communities. Although numerous agencies and organizations across New York are combating the threats posed by these invasive species, our State does not yet have a fully coordinated or comprehensive defense against them.”

Those not yet aware should note the huge danger from the Asian Carp, if it gets into the Great Lakes, Canals and NYS waterways). What it could do to the NYS Fishing Industry and the revenues it generates from the tourist industry could be very significant. Also alarming is the growing threat from the rapidly spreading quillea weed that hampers/restricts boating, fishing and water intake and outflow pipes in rivers, streams and lakes. A recent national estimate of the costs to the United States of damages and attempts at control and eradication was, I believe close to \$ 1 Billion.