



PEF/encon

April 14, 2014

Mr. Michael McTague
NYS DEC – Division of Materials Management
625 Broadway
Albany, New York 12233

RE: Proposed Environmental Monitoring Services Policy

Dear Mr. McTague:

The Public Employees Federation of the Department of Environmental Conservation (PEF/encon) has reviewed the draft Environmental Monitor Policy and strongly opposes the proposed policy. Our principal objection is that the policy allows DEC to use private contractors as monitors for jobs that are regulatory in nature. As detailed below, PEF/encon believes that implementation of this policy will fail to protect human health and the environment and will lead to higher monitoring costs.

PEF/encon believes that the most damaging aspect of this policy is allowing polluters to hire their own monitors. Included in this category are monitors hired by polluting municipalities. As you are aware, a monitor inspects a facility's operations to ensure that the facility complies with laws and regulations. PEF/encon does not believe that a monitor who is paid by the monitored facility can objectively regulate that facility. This clear conflict of interest will almost certainly result in lax enforcement, environmental damage, and threats to human health. Meanwhile, DEC will have to incur unreimbursed costs to oversee the work of these monitors.

Nearly as damaging is the provision allowing the DEC to hire contractors as monitors. State employees are bound by the Public Officers Law, including a lifetime ban on projects that they worked on as State employees. In contrast, contract employees do not have to comply with the strict ethical requirements of the Public Officers Law and are not under the State's control once they leave their firm. The State's lack of control over the contract employees can lead to lax enforcement and co-opting of the contractor by the regulated facility.

Contractors are also more expensive than DEC employees. For example, DEC engineering contractors bill at about three times employee salaries, while DEC bills regulated

parties at less than two times staff salaries. With out-of-state contractors, much of their revenue from DEC goes to fund jobs in other states. As a contractor's primary motive is profit, contractors will frequently be looking for ways to increase their budgets and bill more time at their inflated rates. As the regulated facilities pay for the monitors in all cases, the higher costs for consultants will be passed on to the regulated facilities, making it more difficult for the regulated parties to do business in New York. In contrast, a DEC employee will be less expensive for the regulated facility and, unlike a contractor, will be able to make authoritative regulatory decisions at the site.

Finally, PEF/encon is concerned that the DEC did not meet the requirements of the State Environmental Quality Review Act (SEQRA). Under the SEQRA definitions, actions include agency planning and policy making that may affect the environment and commit the agency to definite course of future decisions. Actions also include adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment. Proposing this new policy is clearly an action under SEQRA. Therefore, DEC must make a significance determination. Further, the action has such a significant potential to negatively impact the environment that it can only be considered for implementation after public hearing and the preparation of an Environmental Impact Statement. To our knowledge, DEC has taken no steps to comply with SEQRA before proposing this policy.

For all of these reasons, we strongly recommend that DEC retract the proposed draft policy or make changes to the policy to limit monitors to qualified civil servants. As shown above, our recommendation would ensure protection of human health and the environment and control monitoring costs. DEC should work with the legislature to raise the agency's fill level when more monitors are needed. As the regulated facilities fund the monitors, these fill level increases would not require increases in DEC's budget. DEC should also work with the Division of Budget to obtain timely approval to hire these critical employees.

PEF/encon would be pleased to meet with DEC management to discuss our recommendations. If DEC is amenable to incorporating our recommendations or other alternatives that we can support, we can also discuss how PEF/encon can support the revised policy. You may reach our contact, Jeffrey Dyber, at DEC or at (518) 225-1381.

Sincerely,



Rob McDonough
Labor/Management Co-Chair

Sincerely,



Jeffrey Dyber
Labor/Management Co-Chair

cc: Honorable Robert Sweeney, New York State Assembly
Honorable Mark Grisanti, New York State Senate
Wayne Bayer, PEF