

## **Memorandum re Budget Cuts – Staffing at the New York State Department of Environmental Conservation**

### **ENVIRONMENTAL LAW SECTION**

November 12, 2010

The Environmental Law Section (“Section”) is composed of attorneys in the private, public and non-governmental organization fields who are active and interested in the field of environmental law.<sup>1</sup> The Section is submitting this memorandum because it is very concerned over the serious adverse effects of any further staff reductions at the New York State Department of Environmental Conservation (“DEC”) on environmental protection, and as importantly, on the economic recovery in the State. At the same time, we would also like to offer the Section as a resource to DEC and the State with respect to possible ways in which DEC’s mission can be supported during the current fiscal climate.

We understand that 260 DEC employees took early retirement in September. We further understand that the Executive Chamber is now considering the elimination of an additional 150 jobs at DEC. The Section is concerned that any additional reductions in work force at DEC will severely compromise DEC’s ability to carry out its mission of environmental protection.

We recognize the fiscal difficulties faced by the State, and the need to bring the State budget into balance. Nevertheless, it is important to maintain a climate in New York State where the environmental regulations necessary for the public’s health and welfare are administered fairly and efficiently.

In addition to environmental protection, adequate staff is essential at a regulatory body such as DEC in order to service the regulated community. Without the availability of trained staff, those applying for permits to locate or expand businesses in New York, seeking to develop contaminated property or attempting to comply with other regulatory requirements may be subjected to costly delays and lost economic opportunity. With the recent retirements, DEC is already facing significant administrative challenges in addressing the loss of institutional knowledge. The prospect of additional cuts is very unsettling.

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<sup>1</sup> The Section’s Executive Committee, like the Section’s membership, includes representatives of the public sector. At its most recent meeting where approval to submit this memorandum was obtained, those Executive Committee members who are State employees abstained from voting on this matter. As a general proposition, it should be understood that no State employee who is a member of the Section is taking a position on the instant matter.

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Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

We do not know what may be considered the minimal level of staffing required for DEC to conduct its work. All we know is that the level of staffing is shrinking to levels not seen for many years and that the scope of responsibility given to DEC has expanded exponentially over time. Furthermore, there is a pending matter that raises significant environmental issues, drilling in the Marcellus Shale, which at the end of the pending Supplemental GEIS process, may require a significant increase in DEC staff to handle permit applications and then to monitor drilling sites to ensure compliance with permit conditions.

New Yorkers face a unique set of economic challenges; however, we are convinced that the State's efforts at economic development cannot be achieved unless they are coupled with efforts to ensure strong environmental protection. Development requires permitting and then monitoring (and as necessary, enforcement) of compliance with permit terms. The result is a business and a natural environment that attracts business owners and allows them to attract and retain employees.

The passion in this debate has been significantly heightened by the recent firing of the DEC Commissioner. We do not wish to be drawn into the details of this development. However, we do want to make clear that the concern over adverse impact on the DEC's mission from further work force reductions is a concern that we share from our perspective in the regulated community outside of the DEC's offices at 625 Broadway.

Mindful of the fiscal challenges and sensitive to the environmental and economic consequences of budget actions, the Section would like to offer its collective expertise in helping DEC fulfill its mission within the fiscally challenged climate that is likely to persist for some time. For instance, there may be programmatic changes or increased reliance on private sector resources that could help DEC to focus its energies on the most critical areas.

We look forward to working with DEC and the staff of both the current Governor and the Governor-Elect in this regard.

Section Chair: Barry R. Kogut, Esq.