DEC STAFF	
April, 2008 (actual)	3775 FTEs
December 2010 (target)	2926 FTEs
	-849 FTEs
DEC NPS	
FY 2007-08	$127 million
FY 2010-11	$63 million
	-$64 million

Staff reduction plan

DEC has been instructed by DOB to reduce its staff by an additional 209 people in order to achieve a fill level of 2,926 by December 31, 2010. Based on the Department's significant level of participation in the recent retirement incentive program, we do not expect a high level of attrition during the next six pay periods, and therefore, this directive will essentially result in 209 layoffs at DEC. This memorandum outlines the general approach DEC intends to take to achieve that workforce reduction goal. As instructed, this document sets forth a "high level" strategic plan. Because we realize that further staff reductions may result in potential serious risks to human health and safety and environmental quality, and could seriously limit or eliminate the public's use of state assets, producing a more specific plan will take additional time and analysis.

Context for decision-making

The state's fiscal crisis has hit DEC particularly, and disproportionately, hard. DEC accounts for approximately 2.5% of the New York State workforce subject to Executive control, yet DEC's layoffs will comprise more than 10% of the 2,000 positions that the Governor plans to eliminate. Although DEC's total State Operations budget is in excess of $500 million, three quarters of these funds are provided by the federal government and 'special revenue, other' (SRO) accounts. For example, the federal government covers most of the cost of DEC's implementation of Clean Air Act and Clean Water Act requirements. The SROs are statutorily created and provide a dedicated means of financing discrete activities. For example, the Conservation Fund is funded by the sale of fishing, hunting, and trapping licenses, and it pays for DEC's efforts in those areas (including the fish hatcheries, pheasant farm, law enforcement, hunter education, wildlife and fishery biologists, etc.). Expenditures from the SROs are legally restricted to the purposes for which they were created. Other State Agencies that are 100% federally funded or 100% SRO funded have been exempted from the Governor's proposed layoffs, yet DEC, with 75% of its funding coming from federal funds and SROs, is not only being asked to participate, but is being asked to carrying a disproportionately large percentage of the layoffs.

When Governor Spitzer was elected, the administration recognized that DEC's workforce had been significantly reduced over the prior decade – approximately 800 jobs had been lost, while DEC's regulatory and programmatic responsibilities increased. These staff losses left DEC seriously shorthanded in many key areas, and the administration determined that among its priorities was rebuilding the agency. Accordingly, the 2007-2008 budget added 108 critically needed positions as a first step in bringing the Department back to its appropriate staffing level. Under significant pressure from the Governor's Office, DEC succeeded in filling all of the new positions, as well as backfilling vacancies created through retirements or attrition, in order to achieve the administration's policy goal of restoring adequate staffing of core environmental programs.

Then the fiscal crunch hit. In April, 2008, DEC employed 3,775 staff. Since that time, in just the past 2.5 years, DEC has lost 595 employees, or 16% of its workforce. These losses resulted from three discrete efforts: (i) attrition combined with a hiring freeze, (ii) the severance program, and (iii) the early retirement incentive program (ERI). With respect to attrition, DEC set a goal with DOB to lose 241 staff during the 18-month period from October 2008 through March 2010, and until the announcement of the severance program, was on track to meet that target. Once the severance initiative was announced, however, as a practical matter the attrition goal was superseded, and our attention turned to maximizing participation in the severance program. That program hit its target at DEC, and our participation (135 staff) was among the highest of all state agencies.

Unfortunately, the fiscal problems continued, and like all agencies, DEC was called upon to produce further workforce reductions, this time through the ERI. Once again, DEC's participation surpassed many other state agencies both in numbers and in percentage of its workforce. Through a comprehensive planning process, and with the cooperation and support of the Division of Budget, DEC presented a plan that would both maximize the workforce savings and provide a structure to continue to deliver programs, although at a drastically reduced level.[1]

By this point, DEC had gone well-beyond the original attrition goal (in fact, we more than doubled the original workforce reduction), and at the same time we absorbed enormous, and again disproportionate, cuts in non-personal services (NPS) spending. On a percentage basis, DEC's NPS budget has been reduced by more than 40% since FY 2009-2010, which has had a radical impact on agency operations. The impact of the NPS cuts, which have now been fully implemented, was described in a March 2010 submission to DOB, a copy of which is attached for reference.

As noted earlier, by the end of September, 2010, DEC's workforce, which only accounts for 2.6% of the state workforce, had been reduced by almost 16%. DEC's general fund budget, which accounts for only .2% of general fund spending, has been reduced by 13%. With the additional 209 jobs we are being called on to eliminate now, DEC's total job loss will be 804, 21% of the agency's workforce, since April, 2008.

As we experienced these extreme reductions, the Department's federal and state legislative mandates have continued to grow. This combination of severe resource limitations and increased responsibilities has had a dramatic impact – fundamentally compromising the Department's responsibilities to preserve the state's environment, protect human health and meet its obligations to the public. In every quarter, we have had to reduce essential services provided by DEC. We are now responding to and cleaning-up fewer petroleum spills. Our inspections and enforcement activities in all programs have dwindled - e.g. hazardous waste, air emissions, wastewater discharges, dam safety, mining and drilling safety, wetlands development, shellfish safety, and enforcing hunting/fishing regulations. DEC's review of the environmental impacts of industrial activities and issuance of permits now take longer. Stewardship of the Department's extensive land holdings and facilities has declined. There is less oversight of mine safety and oil and gas drilling, and efforts to plug leaking abandoned wells have been cut. Backcountry patrols by our Rangers and

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[1] Another factor that chilled attrition was the hiring freeze -- historically, workers would leave DEC to work at other state agencies, but with the hiring freeze that stopped happening.

Conservation Officers have been significantly reduced. Many functions formerly performed by a section of staff people are being performed by one individual, if at all.

Ironically, these cuts have come in the midst of increasing recognition of the DEC's importance to economic development. Our facilities - state lands, campgrounds, environmental centers, hiking and snowmobile trails, hunting and fishing access points - are vital economic drivers in communities across New York, contributing billions of dollars to tourism and local business development, often in areas where these activities represent the only opportunity to stabilize or bolster local economies. No significant economic development project of any kind can occur without DEC review or permitting. This is true for general construction, mining, oil and gas drilling, energy generation, water-dependent activities, certain development on contaminated land, waste transportation, commercial fishing and shellfishing, and most manufacturing. It is also true for a range of activities conducted by municipal governments and other state agencies, such as sewage treatment, water withdrawals for public water supply stormwater management, transportation projects, recycling, and waste management. The work we do is directed by a complex body of State and Federal law and regulations, and as we head into this new round of reductions (6.6% of our remaining workforce), we are already operating under serious constraints.

The new fill level

Before getting to the strategic plan, it's important to recognize that the newest workforce reduction target for DEC is disproportionately higher than for other agencies because it includes reducing an arbitrary and anomalous "surplus" in DEC staffing. The concept that DEC is "over" its fill level is a legacy of the superseded attrition goal from 2008, and it fails to recognize the extent to which DEC staff is funded by federal dollars, SROs and private sources.

As a result of the pressure to quickly hire new staff under the Spitzer administration, from time-to-time we would be above our targeted fill level. This was largely a result of managing the "float" – i.e., hiring new people at the same time that there would be separations through attrition and retirements. We recognized that this needed to be addressed once the fiscal crisis began, so eliminating the problem was included when we established the attrition goal of 241 separations. If the severance and ERI programs had not intervened, once we achieved that goal we would have been at the agency's targeted fill level.

The severance and ERI programs did intervene, however, and instead of losing 241 people, our workforce was in fact reduced by almost 600 people. As those programs were being implemented, however, the question of how to adjust for the "over fill" problem was never addressed. Given that we had achieved reductions well in excess of the attrition goal, our "over fill" status needed to be adjusted so that it would not someday come back to haunt us. While we raised this anomaly to DOB and State Operations on several occasions, it was acknowledged but never resolved. Instead, the focus was strictly on how many reductions we could achieve, and the superseded, legacy targets were never dealt with.

Our understanding now is that when the new target was determined, a decision was made to compel DEC to eliminate the positions that are lingering on the books as "over fill" notwithstanding that events made that issue both irrelevant and impossible to deal with. The "over fill" number is fundamentally arbitrary, and is a holdover from when both DEC and DOB believed that attritions could be used to get to the fill target. That number should have been adjusted as we participated in the severance and ERI programs.

Now we are being told that it is part of the calculation of the new fill level. This is inherently unfair and inappropriate, and penalizes DEC for being a high-level participant in the severance and ERI programs.

On a similar note, in determining DEC's fill level, there should be a deduction for items that are fully funded by non-state sources as has been done with several other agencies. There are a number of categories of agency staff that have absolutely no call on state resources. These include positions fully or primarily funded by the federal government; "environmental monitor" positions paid for by regulated entities as permit conditions or pursuant to consent orders; and staff funded by SROs such as the Conservation Fund. If those items were not included in determining the fill level, DEC would in fact be well below target. Ironically, we could go out today and employ people using federal funds, private funds, and SRO money that could produce jobs and put people to work with no impact on the state's fisc. Under the current thinking, however, we cannot do so because of the way in which our fill target is assessed. Our arbitrary fill target also limits our ability to leverage federal funds to create jobs at little or no cost to the state.

As a new target is being set, there is an opportunity to correct the aberrations which artificially limit employment opportunities and gratuitously make it more difficult for DEC to achieve its mission. We have consistently tried to suggest that DOB should be encouraging agencies to look for alternative means of paying for state employees – now more than ever that should be an over-arching policy directive. Instead, as a practical matter, we are discouraged from looking for those opportunities because of the way in which the fill levels are calculated.

DEC's strategic plan

Up until now, we have faced two discrete management challenges. First, with respect to staff cuts, we have had to address the inherently random impacts of attrition, severance and the ERI. Second, with respect to the NPS cuts, we have had to determine where to reduce allocations to programs. Severance and retirement cannot be planned, but as we became aware of who was participating, we have shifted people around, worked out the critically important backfill plan with DOB and taken other internal steps to mitigate the impacts. As to NPS, we took an "incremental reduction" approach. The management theory was that we should maintain as many of our core activities as possible, even at a reduced level of effort. In our judgment, while the cuts have draconian impacts and create severe challenges in every program, spreading the pain was both possible and fair given the relatively equal importance of our many activities. In the course of applying those reductions, we carefully inventoried all programs and activities, and while we made some adjustments, for the most part the cuts were spread among every program.

We are facing a far different challenge at this time, as we are being asked to target 209 additional items for elimination on the heels of the departure last week of 260 through the ERI. First, as discussed above, DEC is in the weakest position that it has been in since it was created 40 years ago. The staffing and funding losses over the past 2.5 years, combined with increased legislative mandates from the federal government and State Legislature, have created the perfect management storm. Many of our programs are hanging by a thread. The public would be shocked to learn how thin we are in many areas – in many instances, we have offices or sections responsible for important permitting and monitoring functions staffed by only one or two people. Some regional offices have no capacity in certain areas because key items are unoccupied and can't be filled. As a result, we are unable to meet the expectations of both the regulated community and the public with respect to countless activities. In contrast to the past, we no longer have a general capacity for incremental reductions. All the meat has been stripped from the bones, and some of the bones have disappeared. We are at a point where further reductions will necessarily result in programmatic losses. Accordingly, we need to determine which program areas can be discontinued. Thus, our first guiding principle in determining layoffs will be:

- DEC will not utilize an across-the-board reduction of 6.6% and apply this reduction to each division as this will result in debilitation of a number of core programs to the point where they will no longer be viable. Instead, we will identify those discreet programs and services that can no longer be provided to New Yorkers, and seek to target layoffs to those areas to try to salvage the viability of remaining programs.

In targeting the layoffs, we will necessarily need to prioritize programs. Unlike many other agencies, DEC by design has a multi-faceted mission and our core activities accordingly encompass a wide variety of areas. For example, we are responsible for ensuring environmental quality through the implementation of regulatory programs aimed at protecting air quality, water quality, managing hazardous and non-hazardous waste and cleaning up dangerously contaminated sites. We have statutory responsibility for the state's invaluable natural resources, including all state lands, fish and wildlife populations waterbodies such as the Hudson River, the Great Lakes and Lake Champlain, and our vast coastline. As a core element of our mission, we also provide recreational opportunities for the public, many of which are paid for directly by user fees and include heavily relied upon programs for sportsmen and sportswomen, as well as camping and hiking in New York's constitutionally protected forest preserve. Each of our programs has a daily impact on people's lives and the health and economic well-being of the state. While each program has a vocal, politically active constituency, for purposes of this exercise we cannot treat all of them equally and still be able to operate.

Accordingly, the next principle we will apply in determining the layoffs will be:

- In selecting programs for elimination, DEC will attempt to avoid cutting, to the extent practicable, those programs that (i) directly address risks to human health, and (ii) prevent immediate environmental degradation. While the risks to human health have already increased due to cuts to certain environmental quality programs, and especially to enforcement activities related to pollution sources, further cuts would result in unacceptable risks to New Yorkers and unacceptable liability for New York State government. This criterion, *prima facie*, points to those components of our core mission that are focused on outdoor recreation and sports, including skiing, fishing, hunting, camping, hiking, etc. While this focus will mean that DEC will not be able to meet the public's expectations and demand for these opportunities, the alternative is an unacceptable increased risk to human health and potentially irreversible damage to the environment.

While we are hopeful that further analysis and discussion will result in reducing the number of people that DEC will be required to eliminate, there are steps that we can take to ensure that the cuts will be distributed as best as possible within the administrative and management structure of the Department. The demands on each region are different (for example, cleanup of contaminated sites may be more important in the Buffalo area than in the Adirondacks). Within DEC's Divisions, staff has already been reallocated based upon the severance and ERI programs, and further changes will need to be made as the workforce is further diminished. The matrix management structure that divides supervisory and programmatic responsibility between the central office and the regions also requires review to ensure that any "holes" in management are appropriately addressed. Thus, our next guiding principle is:

- Every category of employee will be considered for layoffs, including executive and other exempt positions.

DEC implements a series of federal laws in New York State pursuant to formal delegations, federal statutory requirements and other types of agreements. In addition, DEC works with municipalities to provide support for local programs, and in some instances delegates programmatic responsibilities to local governments. While there are fiscal and policy implications to surrendering programs to the federal government in lieu of maintaining state control (e.g., the regulated community will need to deal directly with the EPA instead of DEC), there may be opportunities to eliminate programs and have either federal or local authorities maintain them in our stead. By targeting layoffs in areas where programs may be delivered by other sources, we can potentially maximize the opportunity to continue to deliver other equally significant programs and mitigate the impact of the layoffs. Similarly, there may be program overlaps with other state agencies that can mitigate the impact of the layoffs. Accordingly, our next guiding principal will be:

- DEC will examine opportunities to return delegated programs to the federal government or cede control of certain programs as allowed under law to local governments. We will also review those areas where there is programmatic similarity with other state agencies.

We have identified a number of other criteria that we will apply in targeting layoffs – for example, suspending or eliminating activities that by virtue of the cuts already implemented are not operating well enough to continue. As a next step we will apply the criteria set forth above to our entire range of programs to create a list of layoff candidates.

Conclusion – Risks to New York

To achieve 209 layoffs by the end of the year, DEC will need to make some very tough decisions about which programs to eliminate or greatly curtail. These decisions will have clear and immediate consequences for New Yorkers and for state government. For example, if DEC's fish hatcheries are closed, we can expect a reduction in economic activity supported and induced by fish stocking. A reduction in our forestry ranks will seriously endanger our ability to maintain the "green" certification of our state forests (certifications from the Forest Stewardship Council and the Sustainable Forestry Initiative) which will reduce the market price we can obtain for our cut timber. Cuts to our Minerals Division will mean fewer staff available to review applications and oversee activities related to natural gas drilling in Marcellus Shale. If we eliminate our voluntary brownfields programs and instead focus remediation only on State Superfund sites because they are the most significant public health threats, it will noticeably slow the clean-up and redevelopment of contaminated lands. Further reductions to permitting staff, especially in regional offices, will slow reviews and approvals of industrial, commercial, and residential development projects. In addition, priority infrastructure initiatives such as a replacement for the Tappan Zee Bridge, a second Peace Bridge in buffalo, high speed rail corridors and major renewable energy projects will be adversely affected by reductions in permitting staff.

We strongly recommend that given the context and consequences, DEC's workforce reduction target be reconsidered. In the meantime, we intend to proceed to develop a plan consistent with the strategic principles set forth above, as instructed.