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YOUR GOVERNMENT WATCHDOG

**Testimony Regarding the Environmental Provisions of
Governor Cuomo's Executive Budget Proposal**
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Good Afternoon. My name is Joseph Stelling, and I am the fiscal policy associate for Environmental Advocates of New York. Thank you for the opportunity to testify today.

Governor Cuomo's 2015-2016 Executive Budget Proposal includes some positive policy proposals that would help to protect our environment and public health here in New York State. However, there are also aspects of the proposal that would take New York in the wrong direction by making it harder to fight the impacts of climate change and ensuring lasting progress towards a healthier New York.

It is imperative that the Legislature build on and improve the executive proposal to enact a budget that is truly in the best interests of all New Yorkers and our environment.

Brownfield Cleanup Program

Tens of thousands of toxic sites blight our neighborhoods statewide – they can be found in nearly every county and municipality, and every legislator here today has dangerous brownfields within the bounds of your district. Brownfields create an unsafe environment, hinder our ability to attract new industry, and reduce property values. We support many of Governor Cuomo's brownfields reforms and urge the Legislature to finally pass a reform package that will ensure that the spirit of the law that you passed is properly implemented by directing tax credits to clean up those toxic waste sites most in need of redevelopment incentives while revitalizing our communities.

The state's Brownfields Cleanup Program was designed to clean up these sites while directing development away from 'green fields' and investing in communities. Unfortunately, it has not produced results for areas most in need of public funding – particularly Upstate, communities of color, and those with high unemployment and poverty rates. In fact, through 2013 New York State had paid out \$1.24 billion in remediation and redevelopment credits to clean up just 153 sites, for an average of over \$8 million per cleanup. Cleanups have been disproportionately located in wealthy areas with robust building markets, and many of these projects would have occurred based on the site's attractive real estate value, regardless of the existence of the brownfields tax credit.

With the program set to expire at the end of 2015, Governor Cuomo has proposed meaningful reforms that will help guide redevelopment, and ensure that taxpayer money is used to its greatest benefit. The Executive proposal wisely separates redevelopment credits from credits awarded for cost of cleanup itself, and limits eligibility for redevelopment credits to three basic areas; high-poverty, high unemployment areas (En-Zones), sites where the property is upside down (the cost of the cleanup exceeds the estimated value of the property after cleanup), and sites that will provide affordable housing.

Additionally the proposal will force projects accepted into the program under previous tax credit structures to either receive a certificate of completion by the end of 2017, or reapply under the new system. This will make projects that have lingered for years while imposing significant tax liability on the state either complete their work quickly or be subject to the rules of the much improved and more targeted tax incentive program.

But while the Governor has advanced a robust reform package, some elements of his proposal need additional attention.

First, the program would allow for less stringent track 1 cleanups (the highest level of cleanup, intended for unrestricted future use of the property) and remove any tax credit incentives for developers to carry out a track 1 cleanup. This move away from encouraging the most stringent cleanups possible is clearly troubling.

Second, the plan establishes an 'EZ' program to fast track projects looking to redevelop brownfields without applying for tax credits. Unfortunately the program sets lower cleanup standards. – to avoid ongoing public risk, all brownfields should be remediated to the same high standards, regardless of whether or not developers intend to take advantage of tax credits.

Finally, the Legislature should restore funding to the state's Brownfield Opportunity Area (BOA) program. Under the Brownfield Opportunity Areas (BOA) Program, state funding is used to complete revitalization plans and implementation strategies for areas affected by brownfield sites. In the Governor's reform package, the BOA program's importance is recognized by awarding additional credits to projects redeveloped consistent with BOA plans, and the proposal even offers some ways in which designation of these areas would become easier. However, absent funding to support the plans' creation and implementation, these efforts fall short.

Building on the EPF's Community Benefits

The Environmental Protection Fund (EPF) is the state's hallmark program for funding environmental initiatives and we were happy to see the Governor propose increasing the EPF to \$172 million, up \$10 million from last year. This represents progress toward our short-term goal of bringing the fund back up to \$200 million, and our long-term goal of a fully-funded \$300 million EPF.

The EPF is critical, as it invests in outdoor tourism, supports recycling programs, conserves farmland, and protects drinking water for millions of New Yorkers. It creates jobs and makes communities more attractive to tourists, businesses and residents. Every single county in New

York State has benefited from millions of dollars in local investment since the Fund's 1993 launch.

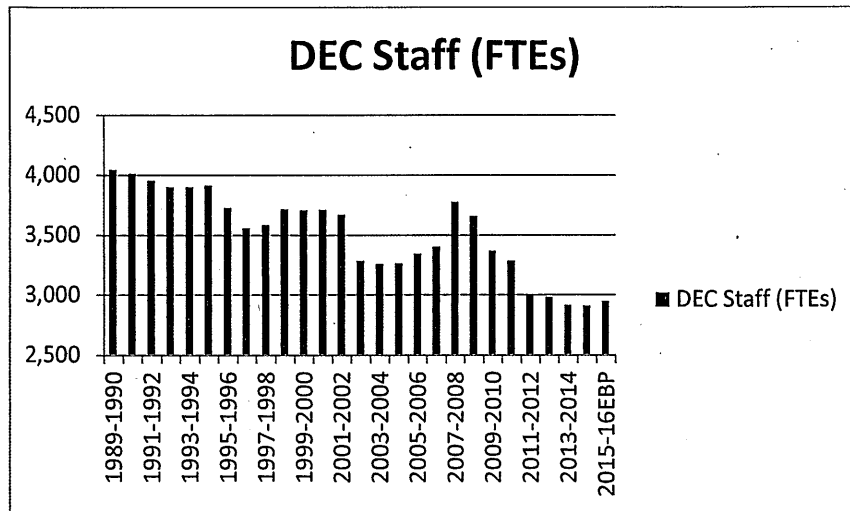
While we strongly encourage the Legislature to fund the program at least at the level proposed by the Executive, the mechanism through which Governor Cuomo has proposed this increase is unacceptable and simply raids one environmental fund to increase another. The Governor has proposed directing NYSEDA to transfer proceeds from the Regional Greenhouse Gas Initiative (RGGI) carbon allowance auctions to the General Fund. According to a briefing document released in conjunction with the Executive Budget, a portion of the \$36 million proposed to be swept from RGGI accounts would be dedicated to the EPF. We oppose using RGGI as a source of funding for the EPF. RGGI works; statewide, there are thousands of clean energy and energy efficiency projects which are saving consumers, putting New Yorkers back to work, and helping to fight climate-altering carbon pollution.

As budget negotiations continue, the Legislature should ensure the enacted \$172M EPF is funded in such a way that it does not reduce funding from other environmental or clean energy programs. Such a maneuver will decrease funding for clean energy projects. Given the magnitude of the carbon pollution reductions we have to achieve to address the impacts of climate change, we cannot afford to divert the resource from its intended use. With the Real Estate Transfer Tax (RETT) – the EPF's historic source of funding – on pace to hit an all-time high this year, there is no reason to take funds from other environmental programs to make this increase happen.

Properly Staffing DEC to Hold Polluters Accountable

The FY2015-16 budget should restore Department of Environmental Conservation (DEC) staff levels to address the losses sustained at the agency in order to ensure the state's laws and protections can be fully enforced. Too many laws passed by, and with the support of, legislators in this room are being inadequately implemented and enforced for one simple reason: there aren't enough cops on the beat.

DEC staff members do the best they can with the resources they have. But since 2008, DEC has lost 865 staff, forcing the agency to choose between increasingly poor options as it struggles to carry out its mission to protect our health and the environment leaving New Yorkers vulnerable to harmful pollution.



An Environmental Advocates' September 2013 report demonstrated how Governor Cuomo's DEC has become increasingly reliant on polluter-produced self-monitoring reports to determine compliance with environmental permit conditions – including the federal Clean Air and Clean Water Acts. Across-the-board cuts include:

- Cutting pollution inspections by 35%;
- Slashing water pollution inspections by 74%;
- Reducing enforcement actions against polluters by 24%; and
- Eliminating effluent tests for water pollution and chopping “stack” tests for climate-altering pollution by 44%.

Governor Cuomo's administration has rationalized these cuts as “doing more with less.” *No – agency staff are being forced to do less with less.* Protecting public health and holding polluters accountable needs real people on the ground.

Comptroller DiNapoli's December 2014 report on environmental funding showed a similar pattern of staffing corresponding with lower inspection and enforcement actions. Unfortunately, despite the documented public health concerns that stem from an understaffed environmental watchdog, DEC is below its allowable target staffing level now and this year's budget proposal would offer only a modest increase, with fewer enforcement staff.

This problem will only worsen in the out-years under Governor Cuomo's proposal. Inflation is projected to increase by 2%, negotiated contracts include salary increases this year with new rounds of negotiation beginning for some units, and pension costs are likely to rise as an aging state workforce retires. By calling for relatively flat agency budgets and staffing, Governor Cuomo is locking in de facto budget cuts.

Oil Spill Fund

The Executive Budget proposal included significant changes to the Oil Spill Fund, including an increase in the fund cap from \$25 million to \$40 million that would be supported by increased taxes on oil shipped into, and trans-shipped through New York. The Governor's plan would also move the fund from the Office of the State Comptroller (where it has worked exceptionally well,

with full staffing, and without interference) to the DEC, which lacks the fiduciary technical skills.

The Governor's proposal would also increase the fund's purview to include responsibilities far beyond cleanup costs. The fund would be expanded to include items like testing, containment, research and deployment of new technologies, spill prevention and response equipment, and mapping and planning efforts.

With dramatic increases in oil train traffic on New York's railways, more oil barges on the Hudson River, and a multitude of disastrous spills occurring across the country and continent as oil production increases, it is not only appropriate, but imperative, for the state to take action. Increased fees to support a larger spill fund is sound policy, and we also recommend that parties who bring oil in and through New York State be required to provide financial security in the form of insurance, credit or bond at a level sufficient to cover all cleanup and decontamination costs associated with any spill or accident.

However, in order to protect the integrity of the fund, the Oil Spill Fund should first remain within the oversight of the Office of the State Comptroller, as is currently required by law. Second, the nominal funding increase is *hundreds of millions less* than it could be, given the tremendous increase in oil and hazards that our communities now face and statutory authority. Third, the emergency preparedness and response measures proposed by the Governor are important and should absolutely be undertaken, but not within the purview of the Oil Spill Fund where they will draw down funds meant to aid remediation following a disaster. Instead, we recommend that these actions be funded through additional levies on oil shipments, and be housed within the state agency best suited for emergency training, planning, and response: the New York State Division of Homeland Security and Emergency Services. Preparedness funds should also be allocated to DEC so that they can adequately map and protect sensitive ecosystems, drinking water sources and public health infrastructure.

Restorations and Rollbacks

Superfund: Governor Cuomo has proposed a one-time \$100 million investment in the state's Superfund program which funds cleanups for the state's most toxic sites. The Governor's investment is an important acknowledgement of an area in serious need because the remainder of the bonding authority granted by the 2003 refinancing will run out later this year, but the Governor's proposal is not nearly enough. The Governor's proposal would also make municipally-owned sites from the Environmental Restoration Program (ERP) eligible for Superfund financing, meaning that the allocated money would be stretched even tighter. Superfund cleanups are multi-year endeavors requiring multi-year funding commitments. The Legislature should fully refinance the program at a minimum of \$120 annually for another decade rather than addressing the need through year-to-year appropriations.

No More DERA Delays: The executive proposed budget does not include any further delay of implementing the Diesel Emissions Reduction Act of 2006, legislation supported by many of the individuals in this room, and the Legislature should reject any notion of further delaying the law through this year's budget process. Emissions from aging, dirty heavy-duty diesel engines are incredibly harmful, causing heart and asthma attacks, leading to premature deaths, and according

to the Clean Air Task Force, cost New Yorkers over \$12 billion annually in monetized health impacts. DERA was roundly praised as a tool in New York's fight against air pollution and a boon to the Upstate manufacturing industry, yet the enacted state budget has delayed its implementation for the past four years. Further delays put the public in harm's way and are unacceptable. Let the law you passed be fully implemented this year.

Centers of Excellence in Children's Environmental Health: Children's health has changed for the better. Thanks to public health innovations, infectious diseases are no longer the primary cause of morbidity and mortality. But, today's children are afflicted with chronic diseases that start in childhood (and often evolve into adulthood) with debilitating effects on not just the children themselves, but their families and communities. Environmental factors play a dominant role. The cost of environmental disease in New York State is over \$6 billion per year. The Centers of Excellence in Children's Environmental Health are a statewide network of health professionals and institutions whose mission is to provide cost effective interventions to children, families and communities, and offer much-needed expertise on environmental illnesses to physicians across the state who are largely untrained in this area. This network is an important and invaluable resource for New York, but the Governor did not include funding for these centers in his proposal. Last year, the Legislature funded this program in the final budget. We urge the legislature to restore funding and keep these centers open.

New York Works

The budget includes \$40 million from the "New York Works" program for funding some DEC capital projects which Environmental Advocates fully supports. We are concerned, however, that capital funds are being used to cover items that should be considered basic agency operations.

According to the Governor's briefing book, some of the New York Works funds are earmarked for air pollution monitoring equipment; while this equipment is sorely needed to provide the critical information about the health and safety of our air that people with asthma, respiratory illnesses, and advanced age rely on for day-to-day planning, *air quality monitoring should fall under the basic operations of the DEC, and not come out of bonded capital spending.*

The state should not be bonding for basic equipment that is unlikely to outlive the bond terms. Governor Cuomo should appropriate operating funds to support operating expenses like deployment and maintenance of air pollution monitors.

RGGI Raid

The Executive Budget proposal sweeps \$36 million in funding from the New York State Research and Development Authority that is generated from RGGI carbon allowance auctions into the General Fund. The briefing book released concurrently with the actual budget legislation suggests that these monies will be used to support the EPF and clean energy tax credits. While we strongly support both increased funding for the EPF and incentivizing clean energy deployment in New York, removing RGGI funds from the intended destination would set a dangerous precedent, and runs contrary to state regulations directing RGGI proceeds toward clean energy and carbon abatement programs. This is also a disingenuous way of talking about environmental funding increases. Taking funds from one program to support another is simply robbing Peter to pay Paul, and certainly not a true increase in support for environmental efforts.

Wastewater Infrastructure Investment

One item conspicuously missing from the budget was any new significant investment in wastewater infrastructure. Aging, crumbling wastewater infrastructure is a pervasive problem in New York. DEC has reported that, statewide, there is a wastewater infrastructure investment need over the next 20 years of at least \$36 billion. These resources support vital multi-million dollar fishing and tourism industries, serve as a means of conveying goods across the state and the country, provide millions of New Yorkers with clean, fresh, drinking water, and provide opportunities to swim, play, and relax.

Without properly investing in wastewater infrastructure, our clean water is at risk. Unfortunately, the only real new funding opportunity on this front we saw in the Governor's budget presentation was in the form of possible eligibility for funding through the Upstate New York Economic Revitalization Competition. It's great that water projects could be eligible for some funding, but that competition comes with the caveat that water money would be tied to growth – excluding much of what is needed simply to maintain the status quo – and much of the state will by definition be excluded from awards doled out through that program. New York urgently needs to make substantial investments in water infrastructure across the state, and we urge the legislature to make that a priority in the 2015-2016 budget.

Child Safe Products Act

While not specifically a budget item in the Executive Budget Proposal, the Governor's briefing book includes his support for this important legislation.

Shockingly, there are thousands of harmful chemicals found in everyday products and toys designed specifically for children. Yet, there are no regulations in place to ensure the recognition and removal of these toxins. Parents cannot properly safeguard their children from chemicals like mercury, benzene, and arsenic because they are commonly found in frequently used products. The Child Safe Products Act provides a clear channel between producers and consumers about what chemicals are harmful. Consumers shouldn't have to worry about ingredients in toys made for toddlers.

In 2013 and 2014, this legislation passed the Assembly with overwhelming support; it also enjoyed broad bipartisan support in the Senate, with more members cosponsoring the legislation than votes needed for passage. Nonetheless, Senate leadership refused to allow a vote. Environmental Advocates of New York urges Governor Cuomo and legislators to include this common-sense children's health legislation in this year's enacted budget. The bill has the votes. For the sake of our children, let's enact a law to protect them before April 1, 2015.

Thank you for the opportunity to testify today. We look forward to working with the legislature to advance a budget that is protective of New Yorkers health and the Environment.

Environmental Advocates' mission is to protect our air, land, water, wildlife, and the health of all New Yorkers. Based in Albany, we monitor state government, evaluate proposed laws, and champion policies and practices that will ensure the responsible stewardship of our shared environment. We support and strengthen the efforts of New York's environmental community and work collaboratively to make our state a national environmental leader.

