

# CP-67 – New York Environmental Leaders

New York State Department of Environmental Conservation

## DEC POLICY

**Issuing Authority:** Commissioner Seggos

**Date Issued:** JUN 14 2017

**Latest Date Revised:**

### I. Summary:

This policy sets forth the details of the New York Environmental Leaders (NYEL) program, including the program entrance requirements, benefits to participating organizations and the responsibilities of the New York State Department of Environmental Conservation (Department) in implementing this program.

### II. Policy:

The Department is implementing the NYEL program to provide recognition and incentives to organizations that demonstrate their environmental leadership through the use of pollution prevention practices, measures that go beyond compliance, and environmental management systems. Granting incentives to high performing organizations complements the Department's traditional approach of sanctioning those that fail to meet minimum compliance levels. The traditional approach used alone is typically unable to provide sufficient means to motivate performance beyond minimum compliance levels or to motivate improvements in areas that are not regulated. The NYEL program will create incentives to help the regulated community recognize the value in performance that exceeds minimum compliance requirements.

### III. Purpose and Background:

Article 28 of the Environmental Conservation Law (ECL) establishes the promotion of pollution prevention as a policy of the State. The statute empowers the Department to develop and implement programs to facilitate, support and encourage efforts to achieve pollution prevention and continually improve environmental and economic performance by a wide range of businesses and organizations, including permit applicants and owners and operators of facilities subject to Departmental regulation. The creation of the NYEL program will achieve this by providing an incentive for businesses and other entities to adopt pollution prevention practices.

The NYEL program will also work in collaboration with other pollution prevention programs that the Department administers, including Commissioner's Policy 59: Environmental Audit Incentive Policy (CP-59), by offering the ability for entities who have entered into an audit agreement with the Department and are taking steps to implement pollution prevention practices the opportunity to participate in NYEL.

### *Definitions*

The following definitions apply to this document:

**Compliance and Technical Assistance Visits** - "Compliance Assistance Visits" are those visits where a regulated entity agrees to allow the Department access to its facility for the purpose of helping them improve compliance with environmental requirements. "Technical Assistance Visits" are those visits where a regulated entity agrees to allow the Department access to their facility for the purpose of helping it improve general environmental performance.

**Compliance Screen** - A "Compliance Screen" is the Department's assessment of an applicant's, or a renewing member's, commitment to compliance. To conduct this compliance screen the Department will assess existing sources of compliance data and relevant information that is submitted by applicants.

**DEC Program/Regional Representative** - A "DEC Program/Regional Representative" will be a staff person appointed by each regional office, environmental quality division, and the Office of General Counsel to work closely with the Pollution Prevention Unit in the implementation of NYEL.

**External Environmental Programs** - "External Environmental Programs" are environmental programs that include, but are not limited to, independent third party environmental certification programs that verify that an entity has achieved a specified level of environmental performance.

**NYEL Application** - "NYEL Application" is the document that outlines the commitments a member of NYEL is committing to accomplish during its participation in the program.

**NYEL Annual Performance Report** - The "NYEL Annual Performance Report" is a report that NYEL members will submit to the Pollution Prevention Unit describing its environmental performance for the year.

**NYEL Coordinator** - The "NYEL Coordinator" within the Department will serve as the Department's primary representative for the NYEL program.

**NYEL Point of Contact** - A "NYEL Point of Contact" will be a Department staff person made available to NYEL members. The NYEL Point of Contact will serve as a convenient point of communication between members and the Department.

**NYEL Site Visits** - "NYEL Site Visits" are visits to a NYEL member facility by the Department, or an independent party, that are used to assess whether a member is meeting the requirements of NYEL at that facility.

**Routine Inspections** - "Routine Inspections" are those inspections that the Department normally conducts to assess compliance with environmental requirements.

**Senior Manager** - A “Senior Manager” is an individual from the NYEL member facility who has a sufficient amount of control over the operation of the facility to ensure that training and resources are available to fully implement the facility’s NYEL commitments and maintain membership in the program.

#### **IV. Responsibilities:**

The Department’s Pollution Prevention Unit shall be responsible for the overall implementation of this policy. The Pollution Prevention Unit will be responsible for periodically reviewing the effectiveness of this policy and initiating changes as needed. Also, the Pollution Prevention Unit is responsible for developing, and periodically updating as needed, guidance material that aligns with the provisions of this policy.

The Department’s regional offices, environmental quality divisions and Office of General Counsel will assist the Pollution Prevention Unit in the implementation of this policy. Each environmental quality division, as well as the Office of General Counsel, will be responsible for appointing a DEC Program Representative and each regional office will be responsible for appointing a DEC Regional Representative to work with the Pollution Prevention Unit on relevant NYEL matters.

In addition, the Division of Materials Management will appoint a single NYEL Point of Contact to serve as a point of communication for all NYEL members. Further, the Department’s Director of Materials Management, or his/her designee, will serve in the capacity of NYEL Coordinator.

Specific areas of responsibility are outlined below:

##### *A. NYEL Membership Requirements*

The Pollution Prevention Unit shall be responsible for creating, maintaining, and periodically updating guidance on the membership requirements for applicants seeking to join the NYEL program. This will include developing specific entrance requirements for sectors where appropriate and identifying external environmental programs that are determined to meet the requirements of this policy.

##### *B. Open Enrollment Periods*

The Pollution Prevention Unit shall be responsible for administering open enrollment periods. This includes setting the times and dates of when applications will be accepted, creation of the application documents and materials that applicants must submit, and the marketing and promotion of the open enrollment periods.

##### *C. Applicant Compliance Screens*

The Pollution Prevention Unit shall be responsible for communicating the need to conduct a compliance screen for a particular entity to the appropriate DEC Program/Regional Representatives. The DEC Program/Regional Representatives shall be responsible for gathering applicable compliance information from staff in the appropriate regions/programs and providing this information to the Pollution Prevention Unit. The Pollution Prevention Unit, in consultation with the Office of General Counsel, will create, and periodically review and update, a compliance standard that must be met in order to be admitted to the NYEL program.

#### *D. Application Review*

The Pollution Prevention Unit shall be responsible for reviewing applications and recommending whether or not an applicant should be offered membership in the NYEL program. The DEC Program/Regional Representatives will be given an opportunity to offer a position on an application. The Director of the Division of Materials Management shall be responsible for making a final decision on the applications presented.

#### *E. Incentives*

The Pollution Prevention Unit shall be responsible for maintaining a list of incentives available to NYEL members. All Department programs are responsible for considering incentives they can offer NYEL members and providing these ideas to the Pollution Prevention Unit.

#### *F. NYEL Site Visits*

The Pollution Prevention Unit shall be responsible for scheduling and leading site visits of NYEL member facilities.

#### *G. Annual Performance Reports*

The Pollution Prevention Unit shall be responsible for determining what information must be included in the annual performance report, reviewing the annual performance reports, consulting with the appropriate Department programs and resolving any issues with the member.

#### *H. Termination from NYEL*

The Pollution Prevention Unit, in consultation with the appropriate DEC regional office, shall be responsible for ensuring that members of NYEL remain in good standing and for terminating NYEL membership for any entity that fails to meet NYEL membership requirements.

### **V. Eligibility Requirements and Procedure:**

Membership in NYEL is limited to applicants that the Department determines meet, and maintain, the membership requirements specified in this policy. Decisions to accept organizations into NYEL are at the sole discretion of the Department and not subject to appeals by the applicant. This section discusses the procedures for NYEL applicants to enter and remain in the NYEL program. It also presents procedures that the Department will follow regarding NYEL applicants and members.

#### *A. The Application Process*

1. The Pollution Prevention Unit will announce an Open Enrollment Period, at least once annually, whereby applications for membership to the NYEL program will be accepted. Potential applicants will submit their applications to the Pollution Prevention Unit during the Open Enrollment Period. Applications must be endorsed by a Senior Manager authorized to represent the applicant.
2. The Pollution Prevention Unit will notify the NYEL Program/Regional Representatives of applications received and work with them to complete a compliance screen on all applicants. NYEL Program/Regional Representatives will be offered the opportunity to offer input on the material in the NYEL applications and to offer a position on whether

the applicant should be granted membership.

3. Once the Pollution Prevention Unit has received compliance screens, and any application comments, from NYEL Program/Regional Representatives, the Pollution Prevention Unit will determine if the applicants meet the criteria for NYEL membership. The Pollution Prevention Unit will then send its recommendations, along with the positions offered by DEC Program/Regional Representatives, to the Director of the Division of Materials Management. The Director of the Division of Materials Management will consult with Division and Regional Directors, as appropriate, and make a final decision on each application.
4. The Division of Materials Management will then notify the applicant of its decision.
5. Following the acceptance of new members into the NYEL program, the Pollution Prevention Unit will distribute a list of current NYEL members in good standing to regional and program representatives for circulation within their region or division.

#### *B. Membership Requirements*

1. *Commitment to Compliance* - The Department will consider an applicant's record of compliance with environmental laws and regulations in reaching a decision on NYEL membership. Guidance will be developed on which compliance records will exclude an entity from participating in NYEL. This guidance will be sufficiently flexible to account for the varying nature of current compliance obligations being undertaken by the applicants. Formal compliance screening will be conducted for new applicants and renewing members. These compliance screens will utilize information from existing records. In the event that the Department does not have enough data to assess the applicant's record of compliance, or has questions regarding the applicant's record, an on-site compliance assistance visit may be conducted to better determine the applicant's record of compliance. Violations discovered during these compliance assistance visits will be managed under the terms set forth in CP-59. The Department will deny an application for membership based upon a compliance record that fails to demonstrate a sufficient commitment to compliance. In addition, compliance issues that arise during the course of an entity's participation in NYEL will be evaluated to determine whether the entity continues to have a sufficient commitment to compliance.
2. *Environmental Management Systems (EMS)* – While participation in NYEL will not require an EMS, the Department recognizes value in the implementation of EMSs and will streamline the application process for those NYEL applicants that have an EMS certified by a third party to meet the ISO 14001, or equivalent, standard. In evaluating NYEL applicants with a third party certified EMS, the Department will verify that the entity's EMS is ensuring compliance with legal requirements and producing results that go beyond compliance. As such, the NYEL application for entities with a third party certified EMS will focus on ensuring future maintenance of the EMS and documenting the EMS commitments that demonstrate performance beyond legal requirements. NYEL

applications with a third party certified EMS will not be required to present information in their application on public and internal outreach requirements outlined in V.B.4 of this policy and will be deemed to automatically meet these requirements provided their approved NYEL application and corresponding annual reports are made available to the public and member's employees.

3. *Performance Commitments* - Each applicant must include future commitments to improved environmental performance in order to be offered membership. Commitments must exceed baseline requirements established by law, regulation or permit. Guidance material will be developed to adequately explain the commitment requirements for facilities of varying sizes, as well as applicants within various sectors. The guidance material will incorporate the following commitment options:
  - a. actions that measurably improve the applicant's environmental performance, for example: reductions in energy use, reductions in the use of toxic materials, or greater use of local materials.
  - b. actions that improve the applicant's understanding of its impact on the environment and opportunities for improvement, for example, implementation of an Environmental Management System, undertaking a project with one of the State's technical assistance providers, participating in an external environmental program, or conducting an assessment of environmental benefits associated with the use of alternative materials.
  - c. actions that sustain past measurable improvements, for example: sustaining reductions in the use of pesticides, sustaining investment in renewable energy credits, or sustaining the purchase of material with a high content of recycled material.

These are just a few of possible commitments in each category. The Department will develop guidance that comprehensively explains the commitment options an applicant can choose from. The guidance will allow applicants flexibility in selecting commitments that are most advantageous to their organization's pursuit of improved environmental performance. The number of commitments required from each NYEL member may vary depending on the facility size and its magnitude of environmental impact. Specific requirements may also be developed for sectors that the Department determines are unique enough to necessitate unique entry requirements.

In situations where a commitment to implement an EMS is offered, the Department will look to EMS guidance included in Commissioner Policy 34 to ensure that the EMS is modeled after a standard appropriate to the entity. The EMS implementation may be verified by the Department or an independent party.

Commitments to participate in external environmental programs will be limited to those programs that the Department determines are appropriate for the NYEL program. In making these determinations, the Department will consider:

- the elements of the program and how they advance improved

environmental performance;

- the method used to verify participant compliance with program elements;
- the level of transparency associated with program requirements;
- the variety of stakeholders involved in the development of the program; and
- the cost of participation

4. *Public and Internal Outreach* - All NYEL members must commit to make their approved NYEL application and corresponding annual performance reports available to the public and to their employees. Also, the Department will consider the mechanisms each applicant has available for the public to provide feedback on environmental performance and concerns. Finally, the Department will consider the mechanisms each applicant has available to communicate environmental performance to employees and gather employee feedback on potential improvements.

5. *Incentives* - Incentives available to NYEL members include, but are not limited to, the following:

- **Recognition** – All members will be recognized on the Department’s website and through other means, as determined by the Department. In addition, when requested by the member, the Department will participate in a minimum of one member sponsored, or organized, recognition event per three year participation period.
- **Assistance** – Members of NYEL will be a priority for relevant assistance provided by the Department. Further, the Department will work with members to increase awareness of assistance available through other state agencies, corporations, authorities, or other organizations.
- **Use of NYEL Logo** – Active members will be able to use the NYEL logo in order to promote their participation in the program.
- **NYEL Point of Contact** – The Department will make a point of contact available to NYEL members. This point of contact will assist members in dealing with any issues that they encounter when dealing with the Department.
- **Coordinate Schedule of Routine Inspections** – Upon the request of a member, the Department will schedule routine regulatory inspections in a manner that avoids inspections during time periods when the member is being audited, or inspected, by other entities, or periods when key staff are not available. The outcome of this process will still allow the Department the ability to conduct unannounced inspections and to conduct inspections necessitated by situations that require immediate action. If a member requests coordinated scheduling of routine inspections the Pollution Prevention Unit can convene the relevant program representatives to determine the extent that inspections can be coordinated.
- **Routine Inspections** – Routine inspections of NYEL members will be conducted at the lowest frequency allowed by law, regulation, DEC policy, or USEPA work plan. Also, to the extent that laws, regulations, DEC policy, and USEPA work plans allow, routine inspections of NYEL members will be considered

compliance assistance visits and any violations discovered during these visits will be managed under the terms set forth in CP-59.

6. *Duration of Participation and Renewals* – Admission in NYEL will be for a three year period. Upon the conclusion of the three year participation period, the member will have an opportunity to renew their membership. A member renewing its membership must demonstrate continued eligibility under the program's admission requirements. This includes documenting improvements associated with its commitments from the previous membership period, continuing to demonstrate a commitment to compliance, and making new commitments for the next three year participation period.
7. *Site Visits* - Site visits will be conducted to assess each member's progress toward its performance commitments and its public outreach program. The Department will also use site visits as an opportunity to offer recommendations for improvement and make referrals to other State assistance providers. The Pollution Prevention Unit will schedule Site Visits with members and offer the program and regional representatives the opportunity to participate in relevant site visits. Site visits are beyond routine regulatory inspections conducted by the Department and will be considered compliance and/or technical assistance visits. Any violations discovered during such a site visit will be addressed through CP-59. As resources allow, the Department will strive to conduct a site visit during each member's three year participation period. In situations where a sector has numerous members in NYEL, the Department may consider the use of external partnerships to satisfy the verification elements embodied in these site visits. In addition, NYEL members with a third party certified EMS will be the lowest priority for a NYEL site visit.
8. *Enforcement Against NYEL Members* – The Department will ensure that the greater transparency and scrutiny to which NYEL applicants and members are subject does not inevitably lead to increased targeting for enforcement. When violations of environmental laws and regulations are discovered, the Department will consider the circumstances under which the Department became aware of the violation, as well as the member's efforts under NYEL. To the maximum extent practicable the Department will utilize the provisions of CP-59 to correct the violation as appropriate. When CP-59 is not applicable, the Department will consider utilizing the discretion available under applicable enforcement policies to correct the violations in a manner that gives consideration to the member's efforts under NYEL. There may still be situations that require the Department to initiate, or take, a formal enforcement action against a NYEL member or applicant. For all violations involving applicants or members of NYEL, the lead attorney or program involved in the enforcement matter will communicate with the NYEL Coordinator prior to resolution of the enforcement matter.
9. *Membership Termination* - Members will be allowed to remain in the program as long as they continue to meet the requirements of the program. Identified violations, lack of progress in performance commitments, false information submitted in the application or annual performance report, and/or other deficiencies will impact the member's ability to remain in the program. In the event that the identified deficiencies are able to be

corrected, the member will be requested to submit a proposal to the Department that outlines how such deficiencies will be corrected. If the deficiencies cannot be resolved to the Department's satisfaction, the member will be asked to voluntarily withdraw from the program or its membership in the program will be terminated at the discretion of the Department.

**VI. Related References:**

CP-34 Using EMS and Other Environmental Performance Improvement Tools in Department Programs

CP-59 Environmental Audit Incentive Policy

DEC Civil Penalty Policy

NYEL Guidance

New York Environmental Conservation Law - Article 28 – Pollution Prevention

