April 22, 2013

VIA EMAIL

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Office of General Counsel
625 Broadway
Albany, NY 12233-1500

Re: Comments on NYSDEC's Proposed Environmental Audit Incentive Policy

Riverkeeper, Inc. (Riverkeeper) submits the following comments on the New York State Department of Environmental Conservation's (NYSDEC) proposed commissioner policy, Environmental Audit Incentive Policy (Proposed Policy), which was made available for public review on February 20, 2013. To the extent that our comments address specific provisions of the Proposed Policy, the relevant section number is noted.

Riverkeeper is a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries and protecting the drinking water supply of nine million New York City and Hudson Valley residents. For more than 44 years Riverkeeper has been New York's clean water advocate. We have helped to establish globally recognized standards for waterway and watershed protection and serve as the model and mentor for the growing Waterkeeper movement that includes nearly 200 Keeper programs across the country and around the globe.

While Riverkeeper has significant concerns with several aspects of the Proposed Policy, which we discuss in detail below, our primary concern is that the Proposed Policy is overly broad and carries the potential to hinder, rather than enhance, enforcement. The Proposed Policy appears to be significantly broader than NYSDEC's current Small Business Self-Disclosure Policy (Small Business Policy),[1] which it supersedes. Given that the Proposed Policy will apply to a much broader universe of regulated entities than the Small Business Policy, many of which will be large facilities capable of releasing considerable amounts of pollution, its provisions should be more narrowly applied. A number of provisions in the Proposed Policy are also

[1] N.Y. State Dep't of Envtl. Conservation, Commissioner Policy 19: Small Business Self-Disclosure Policy (Aug. 12, 1999) [hereinafter NYSDEC Small Business Policy].

broader than the federal Environmental Protection Agency's (EPA) Incentives for Self-Policing (EPA Audit Policy),[2] as well as those of neighboring states.

A narrower, more structured policy is also a better use of limited agency resources. Riverkeeper recognizes the severe constraints under which NYSDEC is currently operating, and continues to support increases in operational funding. We cannot, however, support the extent to which the Proposed Policy would hand enforcement and compliance oversight to regulated entities. This will only serve to increase violations and further stretch agency resources, risking the health and safety of New Yorkers and their environment. By narrowing the Proposed Policy to ensure that it only rewards and incentivizes continued regulatory compliance on the part of covered entities, it will better function as a complement, rather than a replacement, to NYSDEC regulation and oversight.

Riverkeeper urges NYSDEC to address the following flaws in the Proposed Policy before moving forward. Overall, the Proposed Policy should be narrowed and focused on promoting and rewarding long-term cooperation and compliance. Before finalizing and implementing the Proposed Policy, NYSDEC must correct the issues identified below and re-release it for public review and comment.

I. Regulated Entities with a History of Noncompliance (Section V.A)

The Proposed Policy excludes from eligibility regulated entities with a "history of non-compliance," which, as defined, would include any entity that has received an Environmental Conservation Appearance Ticket, Notice of Hearing and Complaint, or administrative or judicial order and was "uncooperative in remedying past violations" within the past 5 years. Riverkeeper supports the exclusion of regulating entities with a history of non-compliance from taking advantage of the Proposed Policy, as allowing them to do so would serve to reward unlawful conduct. We also support the use of a 5-year timeframe, which will help to encourage continued compliance and cooperation over a multi-year period.

However, Riverkeeper urges NYSDEC to expand the exclusion to include any entity that has received more than one Environmental Conservation Appearance Ticket, Notice of Hearing and Complaint, or administrative or judicial order or was uncooperative in remedying past violations within the past 5 years. As written, the Proposed Policy would allow regulated entities with a history of multiple violations to take advantage of the policy as long as they had been cooperative in remedying those violations in the past. While entities should certainly be expected to cooperatively remedy violations, they should not be rewarded for multiple violations. Expanding the exclusion to include both entities with a history of multiple violations and those that have been uncooperative in remedying them will serve to encourage regulatory compliance and reward those facilities with a history of compliance and cooperation.

[2] Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19,618, 19,620 (Apr. 11, 2000) [hereinafter EPA Audit Policy].

II. Eligible Violations (Section V.B)

Riverkeeper supports the inclusion of a specific list of violations that are ineligible under the Proposed Policy, as well as the exclusion of violations of the same requirement for which an entity has received a notice of violation, et cetera, and violations of the same requirement for which an entity has already received a penalty waiver. We also appreciate that both of these exclusions apply to a 5-year time period, which will help encourage continued compliance. Furthermore, Riverkeeper is pleased that NYSDEC has excluded from eligibility violations of a consent order and violations that involve alleged criminal conduct, neither of which is appropriate for penalty mitigation.

Several other aspects of the section describing eligible violations, however, are unclear or overly broad. Riverkeeper suggests the following changes, which will serve to clarify and narrow application of the Proposed Policy and close several potential loopholes.

A. Definition of environmental audit

The Proposed Policy should include a clear definition of "environmental audit." As currently written, an environmental audit includes formal, third-party audits and "informal, internal reviews of a regulated entity's operations and processes." Allowing entities to take advantage of the Proposed Policy based on informal reviews does nothing to incentivize systematic environmental auditing and should not be the basis for granting penalty mitigation.

Instead, NYSDEC should use the definition provided in the EPA Audit Policy, in which an environmental audit is "a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements."[3] Similar definitions of environmental audit have also been adopted by the Connecticut Department of Energy and Environmental Protection (CTDEEP), the Massachusetts Department of Environmental Protection (MADEP), and the Vermont Agency of Natural Resources (VTANR) in their audit policies.[4] NYSDEC similarly defined environmental audit, citing the EPA Audit Policy, in the Small Business Policy,[5] and should continue to do so in the Proposed Policy.

B. Definitions of "serious actual harm" and "imminent and substantial endangerment"

Although the Proposed Policy excludes from eligibility violations that result in "serious actual harm" or those that may have presented an "imminent and substantial endangerment to human health or the environment," it fails to define either term. This must be corrected.

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[3] *Id.* Section II.B at 19,625.

[4] Conn. Dep't of Energy & Envtl. Prot., Policy on Incentives for Self-Policing, Section A at 1 (July 12, 2004), *available at* http://www.ct.gov/deep/lib/deep/enforcement/policies/incentivesforselfpolicingpolicy.pdf [hereinafter CTDEEP Audit Policy]; Mass. Dep't of Envtl. Prot., Policy ENF-07.002, Policy on Incentives for Self-Policing: Environmental Audit Policy, Section II (May 1, 2007), *available at* http://www.mass.gov/dep/service/enf07002.pdf [hereinafter MADEP Audit Policy]; Vt. Agency of Natural Res., Policy: Incentives for Self-Audits and Environmental Compliance, Section A at 1 (Apr. 14, 2003), *available at* www.eaovt.org/sbcap/pdf/self audit policy.pdf [hereinafter VTANR Audit Policy].

[5] NYSDEC Small Business Policy, *supra* note 1, Section III.2.1.1.

NYSDEC should look to its current Small Business Policy, which includes examples of violations that would be considered serious harm or a significant threat.[6] While not comprehensive, the examples provide a good starting point and include exceedances of air or water quality standards and abandoning an oil or gas well without properly plugging it. Without definitions of serious actual harm and imminent and substantial endangerment the scope of the Proposed Policy is unclear at best, and, at worst, dangerously broad. The Proposed Policy should not be finalized until these definitions are included and reviewed by the public.

C. SNC and HPV violations

Violations categorized as significant non-compliance (SNC) under the Clean Water Act or Resource Conservation and Recovery Act, as well as those classified as a high priority violations (HPV) under the Clean Air Act, should be excluded from the Proposed Policy. As currently written, the Proposed Policy provides that SNC and HPV violations may be excluded for current owners and will not be excluded for new owners. This conflicts with the previous paragraph of the Proposed Policy, which excludes violations that cause serious actual harm. SNC and HPV violations are by definition serious violations and should be automatically excluded for both new and current owners.[7]

D. Multiple facilities

The Proposed Policy should clearly state that entities that own or operate multiple facilities will not be eligible for penalty mitigation under the policy at one facility if other facilities owned by the entity are currently the subject of an investigation, inspection, information request, third-party complaint, or ticket. Crafting the Proposed Policy so that owners of multiple facilities must ensure that each facility is free from violations will encourage the practice of due diligence at the highest levels and ensure that owners of multiple facilities do not benefit from having multiple violating facilities.

III. Disclosure Period (Section V.C)

The Proposed Policy stipulates that regulated entities must disclose violations consistent with applicable legal timeframes, or within 30 calendar days of discovery if no timeframe is specified. Riverkeeper recommends that NYSDEC shorten the default timeframe to 10 days from discovery of the violation. This incentivizes facilities to expeditiously process suspected violations, and to set up environmental management systems or other systematic processes and practices for identifying and controlling violations.

The EPA Audit Policy, as well as those of neighboring states, specify default timeframes shorter than 30 days. For example, the VTANR Incentives for Self-Audits and Environmental Compliance (VTANR Audit Policy) requires violations to be reported in accordance with

[6] *Id.* Section III.2.4.

[7] *See Enforcement & Compliance History Online (ECHO): Frequently Asked Questions*, U.S. ENVTL. PROT. AGENCY, http://www.epa-echo.gov/echo/faq.html#in_snc (last updated Feb. 6, 2013) (noting that SNC and HPV are among the most serious level of violation noted in the EPA database).

applicable legal timeframes or within 10 days of discovery.[8] The EPA Audit Policy requires reporting of violations in accordance with applicable legal timeframes or within 21 days of discovery,[9] as does the MADEP Policy on Incentives for Self-Policing Environmental Audit Policy (MADEP Audit Policy).[10] NYSDEC should look to these policies in developing the disclosure period for the Proposed Policy and should ensure that timeframes included in environmental audit agreements are no longer than those included in the final policy.

The Proposed Policy should also enumerate the circumstances under which NYSDEC will extend the timeframe for disclosure. Under provisions describing the disclosure period, the Proposed Policy provides only that the timeframe for reporting may be extended "as necessary, pursuant to the discretion of the Department." Given the significant benefits an entity is likely to receive under the Proposed Policy, and NYSDEC's stated goal of encouraging environmental compliance, the burden should be on entities to report violations as soon as possible. The timeframes should only be extended in extraordinary circumstances, and those circumstances should be enumerated in the Proposed Policy.

IV. Scope and Manner of Disclosure (Sections V.D and V.G)

Riverkeeper urges NYSDEC to mandate that entities be required to report any violations in writing, in order to ensure a complete and adequate record of facility compliance. This is consistent with the provisions of the current Small Business Policy, which requires entities to disclose any violations to NYSDEC in writing.[11] The CTDEEP Policy on Incentives for Self-Policing (CTDEEP Audit Policy) and the VTANR Audit Policy also require disclosure in writing.[12] While MADEP allows initial disclosure over the phone, an entity must then confirm the reported violation in writing within 5 days.[13] NYSDEC should follow these examples and require written disclosure of violations.

We also recommend that NYSDEC clarify that entities must report all violations at a facility, including those that may not qualify for penalty mitigation. As currently written, the Proposed Policy provides that regulated entities "may identify the scope of their disclosure," which would seem to allow an entity to benefit from reporting a single violation eligible for penalty mitigation while keeping silent with regard to other violations that may be more serious. Given the benefits that a facility is eligible to receive under the Proposed Policy for reporting an eligible violation, including not being prioritized for inspection, it is imperative that the facility be required to report <u>all</u> violations. To allow otherwise creates a potentially broad loophole that will serve to encourage regulated entities to selectively report rather than systematically reporting violations, thereby undermining the intent of the policy and weakening environmental protections.

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[8] VTANR Audit Policy, *supra* note 4, Section D.2 at 3.
[9] EPA Audit Policy, *supra* note 2, at 19,626.
[10] MADEP Audit Policy, *supra* note 4, Section III.B.3.
[11] NYSDEC Small Business Policy, *supra* note 1, Section III.2.3.
[12] CTDEEP Audit Policy, *supra* note 4, Section C.3 at 4; VTANR Audit Policy, *supra* note 4, Section D.2 at 3.
[13] MADEP Audit Policy, *supra* note 4, Section III.B.3.

NYSDEC recognizes this in the Small Business Policy, which requires good faith efforts from a regulated entity in order to receive penalty mitigation under the policy. This includes a requirement that an entity "promptly disclose and expeditiously correct **all** [*sic*] violations, including violations that may not qualify for penalty mitigation under this Policy."[14] The Small Business Policy then reiterates this point, stating that an entity "must disclose all instances of known or suspected Noncompliance [*sic*], including those that may not warrant any penalty adjustment."[15] This requirement should be extended to the Proposed Policy.

V. Penalty Waiver (Section V.F and V.I)

The provisions governing penalty waiver are overreaching and unclear. Under the Proposed Policy, NYSDEC may waive the economic benefit portion of the penalty under certain conditions. These guidelines, however, misinterpret the purpose of the economic benefit component, which is to ensure that no regulated entity reaps any monetary benefit from violating the law and to level the playing field for entities that are consistently incurring the costs of compliance. As such, regulated entities eligible for penalty mitigation under the Proposed Policy should under no circumstances receive the benefit of any reduction of the economic benefit component, in keeping with NYSDEC's current practice under the Small Business Policy.[16]

This is consistent with the CTDEEP Audit Policy,[17] the MADEP Audit Policy,[18] and EPA's Audit and Small Business Policies,[19] which clearly express each agency's authority to collect economic benefit charges unless it determines the amount to be insignificant. Reserving the broad discretion to recover economic benefit charges is consistent with the purpose of the penalty: (1) to incentivize regulated entities to timely comply, and (2) to protect law-abiding corporations from being undercut by their noncomplying competitors.[20] Although NYSDEC still partially reserves its discretion to collect the economic benefit component,[21] it affirmatively states that it may waive this charge when de minimis or "in other circumstances."

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[14] Small Business Policy, *supra* note 1, Section III.2.1.
[15] *Id*. Section III.2.3.
[16] *Id. S*ection I.
[17] CTDEEP Audit Policy, *supra* note 4, Section D.
[18] MADEP Audit Policy, *supra* note 4, Section III.A.2.
[19] EPA Audit Policy, *supra* note 2, at 19,626; Small Business Compliance Policy, 65 Fed. Reg. 19,630, 19,631-32 (Apr. 11, 2000) [hereinafter EPA Small Business Policy].
[20] EPA Audit Policy, *supra* note 2, at 19,620; *cf.* EPA Small Business Policy, *supra* note 18, at 19,631-32 (expressing EPA's decision to retain discretion as to whether to collect economic benefit penalties after receiving comments that the charge "should be retained to protect law abiding small businesses from being placed at a competitive disadvantage to those which do not comply").
[21] *Compare* EPA Audit Policy, *supra* note 2, at 19,620 ("EPA reserves the right to collect any economic benefit that may have been realized as a result of noncompliance, even when the entity meets all other Policy conditions. Where the Agency determines that the economic benefit is insignificant, the Agency also may waive this component of the penalty."), *and* EPA Small Business Policy, *supra* note 18, at 19,631 ("EPA retains the discretion to consider and collect economic benefit where a significant benefit was gained . . . ."), *with* N.Y. State Dep't of Envtl. Conservation, DEC Policy: Draft Environmental Audit Incentive Policy, Section V.F at 4-5 (Feb. 4, 2013) [hereinafter NYSDEC Proposed Policy] (stating that NYSDEC will *consider* economic benefit penalty reductions, as opposed to its affirmative representation to waive the gravity component should the entity take the appropriate steps to "remedy the violation and prevent its reoccurrence").

NYSDEC should not represent to regulated entities that "the economic benefit component may be waived where de minimis and, in other circumstances, where deemed appropriate by the Department," especially when defining de minimis as equal or less than $5,000.[22] This amount is too high to be considered de minimis and should be substantially lowered. NYSDEC should not allow violating entities to receive this level of economic benefit from illegal activities.

Moreover, NYSDEC should not consider reducing economic benefit penalties that exceed $5,000 by "the amount that the entity commits to invest in pollution prevention not otherwise required by law at the facility," nor should it contemplate, as it does in Section I, waiving the economic benefit charge for entities entering into environmental audit agreements and/or implementing environmental management systems aimed at pollution prevention methods.[23] This policy conflates the purpose of the economic benefit charge with the purpose of pollution prevention plans. As stated above, an economic benefit charge is intended to incentivize compliance and ensure that no entity obtains an illegal competitive advantage; as such, it is aimed at deterrence and mitigation, not at future compliance and prevention.

NYSDEC should remove from the policy any language indicating that it will consider waiving the economic benefit component when de minimis or in other circumstances, or, if exceeding the de minimis amount, when the entity engages in pollution prevention. NYSDEC should instead maintain its current policy providing for mitigation of the gravity component and retaining full discretion, like EPA, CTDEEP, and MADEP, to collect the economic benefit component.

VI. Ensuring Future Compliance (Section V.H)

The Proposed Policy states that entities receiving penalty mitigation "must identify measures to ensure future compliance" with the violated provisions.[24] This is too vague and does not provide regulated entities with enough guidance, nor is it strong enough to ensure future compliance with environmental laws and regulations. Instead, the Proposed Policy should identify specific measures with which violating entities must comply, as well as methods of verification and enforcement by the agency. In particular, NYSDEC should require improvements to the entity's environmental auditing or due diligence efforts, as suggested by EPA, CTDEEP, and MADEP.[25]

In mandating due diligence improvements, NYSDEC should look to the VTANR Audit Policy, which outlines the requirements of adequate due diligence efforts, including but not limited to: (1) compliance policies and standards that identify how employees and agents are to meet the applicable environmental laws, regulations, and permit conditions, and a training program to communicate these policies and standards; (2) assignment of overall and specific responsibility for compliance assurance at each facility; (3) mechanisms for ensuring

[22] NYSDEC Proposed Policy, *supra* note 21, Section V.F at 4.
[23] *Id.* Section V.F at 4-5, Section I.2.b at 6.
[24] *Id.* Section V.H at 5.
[25] EPA Audit Policy, *supra* note 2, at 19,622; CTDEEP, *supra* note 4, Section C.6 at 4; MADEP Audit Policy, *supra* note 4, Section III.B.6.

compliance, such as monitoring and auditing systems designed to detect violations, periodic evaluations of the compliance management system, and a means for employee and agent violation reporting without fear of retaliation; (4) incentives for managers and employees to obey compliance policies and standards and disciplinary mechanisms to punish individual violators; and (5) procedures for the prompt correction and reporting of violations.[26]

In addition, the Proposed Policy only "encourages" regulated entities to implement environmental management systems and pollution prevention methods to ensure future compliance.[27] Any entity receiving the benefit of penalty mitigation should be required to implement these procedures, since they have a record of past violation and are profiting from NYSDEC's environmental audit procedures. There is no reason to trust that these entities will comply with environmental laws and regulations in the future unless they are mandated to implement compliance policies which are verified and enforced by NYSDEC.

VII. New Owners (Section V.J)

The Proposed Policy fails to institute strict guidelines for ensuring new owner compliance. For example, the Proposed Policy currently allows new owners with SNC or HPV violations to qualify for penalty reductions.[28] As stated above,[29] SNC and HPV violations are serious violations that must automatically exclude an entity from receiving such benefits. NYSDEC offers no justification for potentially excluding current owners with SNC and HPV violations from the Proposed Policy, albeit on a discretionary basis, but allowing new owners with the same violations to be eligible for its advantages.

In addition, new owners should not receive penalty mitigation for reporting violations that are by law required to be self-reported.[30] This does not comport with the Proposed Policy's purpose: incentivizing entities to implement new practices to maintain compliance and encouraging the adoption of effective approaches to prevent violations.[31] A new owner should not be rewarded for following the law, which it is required to do like all other entities.

EPA's Interim Approach to Applying the Audit Policy in the New Owners Context (Interim Approach) does not permit penalty reduction for SNC and HPV violations or for complying with preexisting self-reporting requirements required by law.[32] Instead, EPA has outlined a clear penalty reduction scheme for new owners. Under the Interim Approach, EPA can impose on a new owner economic benefit charges associated with avoided operation and maintenance costs from the date of acquisition, so that a violator does not gain the returns on the amount of money that should have been invested in pollution control equipment nor benefit from not having to operate and maintain controls and equipment.[33] In addition, EPA will not collect any penalties for economic benefit or gravity charges for the period before the date of acquisition

[26] VTANR Audit Policy, *supra* note 4, Section B at 1-2.
[27] NYSDEC Proposed Policy, *supra* note 21, Section V.H at 5.
[28] *Id.* Section V.B.2 at 4, Section V.J at 6.
[29] *See supra* Section II.C.
[30] NYSDEC Proposed Policy, *supra* note 21, Section V.J at 6.
[31] *Id.* Section III at 1-2.
[32] Interim Approach to Applying the Audit Policy to New Owners, 73 Fed. Reg. 44,991 (Aug. 1, 2008).
[33] *Id.* at 44,998.

and will not assess economic benefit charges for delayed capital expenditures or with unfair competitive advantage if the violations are corrected in accordance with EPA's Audit Policy within 60 days of the date of discovery or within another reasonable timeframe to which EPA has agreed.[34] Providing this level of certainty is meant to encourage disclosures of significant violations. NYSDEC should adopt a similar incentive policy for new owners instead of allowing penalty reductions for SNC and HPV violations or for complying with existing legal self-reporting requirements.

Finally, NYSDEC could provide more detail on its new owners disclosure policy, as EPA has in its Interim Approach. Although NYSDEC and EPA require new owners to meet similar criteria, NYSDEC should mandate, as EPA does, that for an entity to receive the benefits of the new owner policy, the violation must have originated with the prior owner. [35] EPA also outlines a timeline during which an entity is still considered "new:" up to nine months after the date of the transaction closing.[36] NYSDEC should institute a similar "new owner" expiration date.

VIII. Outreach (Section V.K)

The Proposed Policy's provisions covering public outreach must be significantly strengthened. As drafted, Section K merely "encourages" entities requesting a penalty waiver or mitigation to perform outreach activities in the surrounding community if their violations negatively impact human health or the environment.[37] This provision does not adequately protect the public from the potentially harmful effects of the entity's violation.

NYSDEC should require an entity which takes advantage of the Proposed Policy's benefits to engage in public outreach efforts to inform surrounding communities of its violations, its proposed mitigation measures, and future plans for compliance and pollution prevention, and should open public comment periods on submitted compliance forms. Public notice and comment periods are important for ensuring public participation in environmental decision-making and are essential when this decision-making affects environmental justice (EJ) communities. Although Riverkeeper supports Office of Environmental Justice review of requests for penalty waivers in potential EJ areas,[38] this is not a substitute for involving EJ communities themselves. Public comment periods will not only engage the affected communities but will also allow NYSDEC to gather further information about the violations and will help it to determine whether an entity should be eligible for penalty mitigation. If there is demonstrated public concern over an entity's compliance form, NYSDEC should hold a public hearing on the issue.

In addition, NYSDEC should make information about regulated entities readily available on a publicly accessible website. MADEP, for example, can require as a condition of penalty mitigation that a description of the entity's due diligence efforts be posted on MADEP's website to "allow the public to judge the adequacy of compliance management systems, lead to enhanced

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[34] *Id.*
[35] *Id.* at 44,995.
[36] *Id.* at 44,996.
[37] NYSDEC Proposed Policy, *supra* note 21, Section V.K at 6.
[38] *Id.* Section IV at 2.

compliance, and foster greater public trust in the integrity of compliance management systems."[39] CTDEEP and VTANR both have similar requirements.[40] NYSDEC should likewise require that all information on the compliance efforts of an entity seeking benefits under the Proposed Policy—including a record of past violations—are readily available on its website.

Finally, NYSDEC should publish an annual report assessing the success of the Proposed Policy, including an analysis of the percentage of the regulated community seeking the Policy's benefit; information on the types of entities that self-disclose; the nature of the violations disclosed; and an assessment of whether this approach allows NYSDEC to use its resources more effectively by focusing on other enforcement actions. In addition, this report should review the benefits, pitfalls, and results of environmental audit incentives. Increasing transparency and heightening public involvement will lead to exposure of bad actors and incentivize compliance with environmental laws and regulations. An annual report will also allow NYSDEC and the public to evaluate the effectiveness of the Proposed Policy and to suggest improvements over time.

Thank you for the opportunity to comment on this important issue. Please do not hesitate to contact us if you have any questions or need further information.

Sincerely,

Kate Hudson
Watershed Program Director

Phillip Musegaas
Hudson Program Director

[39] MADEP Audit Policy, *supra* note 4, Section III.B.1.b.
[40] CTDEEP Audit Policy, *supra* note 4, Section C.1.b; VTANR Audit Policy, *supra* note 4, Section D.1.b at 3.