

**Citizens Campaign for the Environment • Common Cause/NY •
Environmental Advocates of New York • Food & Water Watch •
Hudson River Fisherman's Association • New York Public Interest
Research Group • Reinvent Albany • Riverkeeper • Save the Sound •
Sierra Club Atlantic Chapter • Soundkeeper •
Tri-State Transportation Campaign**

VIA EMAIL & EXPRESS MAIL

July 16, 2014

David Kidera
Director
State of New York
Authorities Budget Office
PO Box 2076
Albany, New York 12220-0076

Dear Mr. Kidera:

Please accept this letter as a formal complaint and request that the Independent Authorities Budget Office (“ABO”) launch an investigation of the State Environmental Facilities Corporation (“EFC”) for potential violations of the provisions of the Public Authorities Reform Act (“PARA”, Chapter 506 of the Laws of 2009¹) and such other laws and standards of conduct as may apply.

The undersigned organizations believe that EFC Board members may have failed to exercise the level of care required of fiduciaries, in particular that they may not have acted with the degree of diligence, care and skill necessary to exercise independent judgment with respect to the recent consideration of a loan to the New York State Thruway Authority.² We believe this raises critically important issues of public accountability that go to the heart of public authority integrity in New York.

Under the law the ABO is authorized to:

“. . . receive and act upon complaints or recommendations from the public or other persons or entities regarding any authority covered by this title; initiate formal investigations in response to complaints

¹ These reforms primarily are consolidated in Public Authorities Law Title 2, “Authorities Budget Office,” which includes establishment of the independent authorities budget office.

² The undersigned make these allegations based upon information and belief formed by reviewing the reports of reputable news gathering organizations and through observation of the EFC’s June 26, 2014 Board of Directors meeting, the subject of this letter.

or appearances of non-compliance by an authority; issue subpoenas pertaining to investigations which such office is authorized to conduct under this title, for the purposes of effectuating the powers and duties of this title; [and] compel any authority which is deemed to be in non-compliance with this title and title one of this article or article nine of this chapter to submit to the authorities budget office a detailed explanation of such failure to comply.”³

We draw your attention to actions taken by EFC and its Board members with respect to approval to provide a loan to the New York State Thruway Authority for up to \$ 511 million for purposes of construction of the New NY Bridge Project to replace the Tappan Zee Bridge.

We believe this action may have been taken in violation of the statutory duties and responsibilities imposed upon EFC Board members, and the oath required by the statute. ⁴ These are described as the legal duty to:

“ ...perform each of their duties as board members, including but not limited to those imposed by this section, in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances, and may take into consideration the views and policies of any elected official or body, or other person and ultimately apply independent judgment in the best interest of the authority, its mission and the public. . . .”⁵

We refer to these obligations, as do the statutes themselves, as the “fiduciary duty” of Board members.⁶ ABO guidance documents for public authorities underscore the responsibilities of board members:

Fiduciary Duty

- The Board of Directors should be empowered to exercise its fiduciary duties of loyalty and care. Directors should always act in good faith and in the best interests of the public authority. . . .
- The Board of Directors should be responsible for protecting the assets of the authority and the interest of bond holders and the public.⁷

³ PARA, Section 6 (2), (c), (d), (e) and (i)

⁴ We are acting upon the belief that each EFC board member did, in fact, receive and sign the required oath. Irrespective of whether such oath was actually signed by board members, we believe the statutory and any common law obligations apply.

⁵ PARA, Sections 10 (1)(g) and (h).

⁶ Section 11 A of PARA in describing actions which render Board members liable to removal states” “...removable by the public officer or public body which is empowered by this chapter to appoint such authority or commission member, for inefficiency, breach of fiduciary duty,...” (emphasis added)

The actions and omissions by EFC Board members, which we believe may constitute a breach of their fiduciary duty, include but are not limited to how this loan was applied for and subsequently approved by the EFC board. Specifically we find:

1. The initial application for the loan was made months after the established deadline, board approval was scheduled just a few weeks after initial application materials were filed, and the loan did not go through the normal public notice and public comment procedures.
2. The Governor issued a news release to announce that “the New York State Environmental Facilities Corporation will make up to \$511.45 million in low-cost loans to the New York State Thruway Authority.”⁸ This announcement was made ten days prior to when the EFC Board met to act on the motion to approve the loan and three days before the EFC Board received the meeting materials.⁹
3. The initial application for the loans was not made until May 30, 2014, in the form of New York State Thruway Authority’s submittal of a project listing form. By EFC’s stated procedures, project listing forms and all requisite application materials are supposed to be in EFC’s possession by February 3, 2014.¹⁰

It is, therefore unclear whether the EFC Board members reviewed a complete loan application from the New York State Thruway Authority, or whether a complete loan application even existed at the time of the EFC board’s vote on June 26, 2014.

We believe the ABO must undertake this review to ensure conformance with the basic principles of corporate governance embedded in PARA. We do not, however, seek an ABO investigation into or review of the wisdom or legal propriety of the EFC proposal to use Clean Water State Revolving Funds to support construction of the new New York Bridge. Those concerns will be raised in other appropriate forums. After careful examination of the evidence and the law we believe it will become clear that the specific provisions of PARA creating the statutory fiduciary obligation have been violated. That alone is the purpose for which we seek an ABO investigation and appropriate ABO action to remedy any violations.

We ask for an opportunity to meet with the ABO to present in greater detail the circumstances surrounding what we believe has been a clear breach of fiduciary duty and the areas for further and deeper investigation by the ABO.

If you have any questions about the information contained in this letter or to set up a meeting please contact Peter Iwanowicz of Environmental Advocates of New York (518) 462-5526.

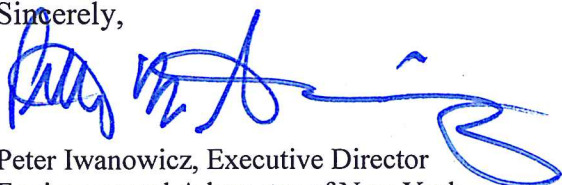
⁷ Authority Budget Office Policy Guidance, No. 06-02, Issued October 1, 2006, *Understanding Corporate Governance Concepts*. Accessed at www.abo.ny.gov/policyguidance/06-02UnderstandingCorporateGovernanceConcepts.pdf.

⁸ See www.governor.ny.gov/press/06162014-efc-loans-new-ny. Accessed July 9, 2014.

⁹ Personal communication via email and telephone between Peter Iwanowicz and EFC President and CEO Matthew J. Driscoll.

¹⁰ See www.efc.ny.gov/Default.aspx?tabid=112. Accessed July 10, 2014.

Sincerely,



Peter Iwanowicz, Executive Director
Environmental Advocates of New York

For:

Brian Smith, Associate Executive Director
Citizens Campaign for the Environment

Susan Lerner, Executive Director
Common Cause/NY

Alex Beauchamp, Northeast Region Director
Food & Water Watch

Gil Hawkins, President
Hudson River Fisherman's Association

Laura Haight, Senior Environmental Associate
New York Public Interest Research Group

John Kaehny, Executive Director
Reinvent Albany

Paul Gallay, Executive Director
Riverkeeper

Curt Johnson, Executive Director
Save the Sound

Roger Downs, Conservation Director
Sierra Club Atlantic Chapter

Terry Backer, Executive Director
Soundkeeper

Veronica Vanterpool, Executive Director
Tri-State Transportation Campaign