



Department of Environmental Conservation

Collection of Petroleum Bulk Storage Fees

Report 2009-S-69



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

July 6, 2010

Mr. Alexander B. Grannis
Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Dear Commissioner Grannis:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Department of Environmental Conservation's Collection of Petroleum Bulk Storage Fees. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objectives

Our objectives were to determine whether the Department of Environmental Conservation (Department) is collecting all the registration fees due from facilities with petroleum bulk storage tanks and remitting those fees in a timely manner to the State's Oil Spill Fund.

Audit Results - Summary

Facilities with petroleum bulk storage tanks, such as certain businesses and apartment buildings, must comply with Department regulations that are intended to protect against environmental contamination from leaking or spilled petroleum. Most of these facilities must register with the Department every five years and pay a registration fee. The Department is to remit these fees to the State's Oil Spill Fund, which pays for the cleanup of oil spills when the responsible party fails to do so. The fund balance in the Oil Spill Fund was \$3.68 million as of March 31, 2009.

In the fiscal year ended March 31, 2009, the Department reported that it collected \$2.4 million in petroleum bulk storage registration fees. We found that these fees were remitted in a timely manner to the State Oil Spill Fund. However, we determined that the Department is not collecting all registration fees from facilities with petroleum bulk storage tanks. In fact, based on information in the Department's database, as well as information provided to us from the Fire Department of the City of New York, we estimate that as much as \$3.4 million of registration fees may be due for more than 5,530 facilities.

We also determined that the Department is supposed to take certain actions when facilities fail to renew their registrations, such as sending the facilities legal notices, scheduling hearings, and referring noncompliant facilities to the State Attorney General's Office for enforcement. However, we found that the Department generally was not taking these actions. For example, in a random sample of 50 facilities with expired registrations, the Department took none of these actions for 33 facilities, and began but did not follow through with the actions for 16 facilities (the remaining facility renewed its registration on its own).

We further concluded that the Department should make more effective use of the civil penalty that may be assessed on facilities that fail to comply with the registration requirement. We question whether the Department is effectively deterring noncompliance when it assesses no penalty in such circumstances. When we examined 20 facilities that had operated for at least three years

without a current registration, we found no penalties were assessed against 11 of them. For two other facilities, the Department assessed a \$1,000 penalty for each. The remaining seven facilities (owned by the same entity) were assessed a total penalty of \$19,000 for various violations including failure to register. We recommend that the Department consistently assess penalties on all facilities with expired registrations and evaluate the feasibility of using escalating penalties when facilities are not compliant for more than one year. If the Department pursued the estimated 5,530 facilities that are lacking a current registration and confirmed them to be active, and levied and collected just the \$1,000 penalty, the Department could potentially generate about \$5.5 million for the State's General Fund.

Our report contains five recommendations for improving the Department's collection of registration fees. Department officials generally agreed with our recommendations.

This report, dated July 6, 2010, is available on our website at: <http://www.osc.state.ny.us>.

Add or update your mailing list address by contacting us at: (518) 474-3271 or

Office of the State Comptroller

Division of State Government Accountability

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Introduction

Background

The Department of Environmental Conservation (Department) is responsible for conserving, improving and protecting the State's natural resources and environment. A total of approximately 3,500 employees work in either the Department's Central Office in Albany or one of nine Regional Offices located throughout the State.

In accordance with Article 17, Title 10 of the New York State Environmental Conservation Law, the Department registers, and assesses a registration fee on, facilities with petroleum bulk storage tanks (i.e., tanks holding between 110 and 400,000 gallons of petroleum). Generally, facilities with such storage tanks are apartment buildings, schools, government entities, and private businesses. Petroleum storage tanks with larger capacities are covered by another Department program.

The Department registers facilities with petroleum bulk storage tanks and collects the related fee in 57 of the State's 62 counties. The Department delegates these activities to Nassau, Suffolk, Cortland, Rockland, and Westchester counties. The activities of these five counties are not addressed by our audit.

According to the Department's records, it is responsible for collecting petroleum bulk storage registration fees from more than 39,000 facilities in 57 counties. The registration fee, which is based on the total storage capacity of a facility's tanks, ranges between \$0 and \$500 per facility and is to be paid at the time of registration or registration renewal. Registrations must be renewed every five years or when a facility's ownership is transferred, whichever comes first. In the fiscal year ended March 31, 2009, the Department reported that it collected a total of approximately \$2.4 million in such fees. If a facility does not register with the Department and pay the required registration fee, the Department's legal staff are responsible for pursuing the matter with the facility. The Department may also assess a penalty of up to \$37,500 per day on a facility for failing to register. By law, such penalties must be deposited in the State's General Fund.

All registration fees collected by the Department are to be deposited in the New York State Environmental Protection and Spill Compensation Fund (Oil Spill Fund), which is used to pay for the cleanup of oil spills when the responsible party is unknown, or unwilling or unable to handle a cleanup. The Oil Spill Fund is also financed by license fees imposed on barrels of petroleum imported for use in the State and by damage claim payments and cleanup cost reimbursements from responsible parties. For the fiscal year

ended March 31, 2009, petroleum bulk storage registration fees accounted for about 5 percent of all Oil Spill Fund revenues. The Oil Spill Fund is administered by the Office of the State Comptroller (OSC). The Oil Spill Fund had a balance of \$3.68 million as of March 31, 2009.

Audit Scope and Methodology

We audited the Department's collection of petroleum bulk storage registration fees, and its remittance of the fees to the Oil Spill Fund, for the period April 1, 2007 through November 30, 2009. To accomplish our audit objectives, we interviewed officials from the Department's Division of Environmental Remediation, its Remediation and Revitalization Bureau within its Office of General Counsel, and its Regional Offices. We also reviewed the Environmental Conservation Law and the Department's established regulations. In addition, we examined collection and registration data provided to us by the Department.

We also reviewed Oil Spill Fund records maintained by OSC, and obtained information about facilities with petroleum bulk storage tanks from the Fire Department of New York City (FDNY). We also conducted site visits to numerous facility locations within Region 2 (New York City). We did not audit the collection and remittance activities of Nassau, Suffolk, Cortland, Rockland and Westchester Counties, because the five counties perform these activities independently of the Department.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority	We performed this audit pursuant to the State Comptroller’s authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.
Reporting Requirements	<p>A draft copy of this report was provided to Department officials for their review and comment. Their comments were considered in preparing this report. Their comments, along with rejoining State Comptroller’s Comments, are included at the end of this report.</p> <p>Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Environmental Conservation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.</p>
Contributors to the Report	Major contributors to this report were Frank Houston, Cindi Frieder, Myron Goldmeer, Daniel Raczynski, Nick Angel, Legendre Ambrose, and Dana Newhouse.

Audit Findings and Recommendations

Registration Fees

Facilities with petroleum bulk storage tanks must renew their registrations every five years, as well as register whenever there is a change in ownership. They must also remit registration fees to the Department for deposit into the Oil Spill Fund. To make sure these requirements are met, the Department must have an accurate and complete identification of all facilities with petroleum bulk storage tanks and it must have adequate controls to pursue and obtain registration fees. The Department has a computerized database (database) to help accomplish these objectives. As of November 3, 2009, the Department's database identified 39,630 active facilities with petroleum bulk storage tanks.

The database shows that 4,983 facilities (13 percent) had not renewed their registrations and remitted the related fees. Many of these had been expired for several years, including 111 registrations that had not been renewed since 1992, and seven that had not been renewed since 1991.

According to the database, the loss of revenue to the Oil Spill Fund from overdue, unpaid registration fees for the 4,983 facilities totals about \$2.3 million, as shown below

Region	Total Facilities	Expired & Unpaid Registrations	Revenue Loss
2	26,272	4,068	\$1,747,300
3	2,291	433	247,600
4	1,913	34	19,800
5	1,469	73	34,700
6	1,378	89	66,600
7	1,862	102	44,700
8	2,341	107	54,000
9	2,104	77	40,400
Totals	39,630	4,983	\$2,255,100

To test the reliability of this database, we randomly selected 50 of the 4,068 facilities in Region 2 that reportedly had expired and unpaid registrations. We were unable to determine whether an oil tank was present for four facilities; and determined that the oil tank for one facility had been removed. However, of the remaining 45 facilities, we confirmed that 41 had oil tanks registered with FDNY; representatives for two facilities confirmed that tanks were present, and we observed the tanks at the other two facilities.

Department officials stated that it is difficult to pursue overdue registrations and fees because there are limited staff resources available to do the work and because frequent changes in facility ownership, particularly in New York City, make it difficult to determine who is responsible for the facility registration. However, the Department did not have any documented analysis to support these assertions.

To assess whether the Department's database fully accounted for all New York City facilities, we compared database facility address records to facility address records registered with FDNY. The comparison indicated that the Department's database may be incomplete. In particular, using computer software and other audit techniques, we identified that the FDNY listing contained 4,980 facilities that were not included on the Department's database.

We selected a random sample of 50 of the 4,980 facilities for an in-depth review and found that 40 of them were, in fact, included in DEC's database, often registered at a different address. Visits to the ten remaining sampled facilities confirmed that petroleum bulk storage tanks were on site at five and should be registered with DEC. We were unable to gain access to determine the status of the other five facilities. If these findings hold true for the total population of 4,980, we estimate that 553 facilities have not been registered with DEC, resulting in a loss of registration and renewal revenue to the Oil Spill Fund of \$1.1 million. In addition, when facilities are unknown to the Department because they are not recorded on the Department database, the Department is unable to ensure that the facilities are in compliance with regulations and thus pose a greater risk to the environment should a spill occur. In this regard, we note that the five unregistered facilities had tanks with capacities that ranged from 1,500 gallons to 12,500 gallons.

Department officials told us that in 1999 they compared the FDNY records to the Department's records. Department officials indicated that as a result of the comparison they ultimately registered about 3,000 facilities. Department officials also stated that they have not repeated this effort since 1999, because it was time consuming and requires considerable staff resources.

We recommend the Department follow up on the exceptions and potential omissions we identified and take appropriate actions to update the database to accurately and completely reflect facilities with petroleum bulk storage tanks and to help ensure the collection of all registration fees that are owed. We further recommend that the Department periodically perform the comparison between its database and the FDNY listing. We also note that the New York City Department of Finance maintains a website that provides access to current ownership information for the facilities located

in New York City. This information source could also help the Department keep its database accurate and complete.

Department officials indicated that they recognize the importance of ensuring that the New York City facilities are reflected accurately and completely in the database. They indicate that they have begun to follow up on the 4,980 facilities listed by the FDNY and will continue to perform comparisons in the future to the extent possible with existing resources.

Recommendations

1. Follow up on the active facilities discussed in this report where no registrations had taken place for five or more years and update the database accordingly. Where appropriate, take action to collect registration fees.

(Department officials responded that they have and will continue to streamline processes to accomplish the recommendation and maximize registration fees in the context of the overall program.)

2. Compare the Department's database of facilities periodically with the listing maintained by the FDNY and update the database as appropriate.

(Department officials responded that they will seek to have FDNY periodically provide them with a list of tanks added to the FDNY database which may need to be registered with the Department. The Department will also evaluate methods to cross-check facility addresses to confirm whether or not the facility addresses provided by FDNY are new facilities or already in the Department's database. Department officials also indicated steps they have taken to enforce compliance at facilities listed by the FDNY which do not appear to be registered on the DEC's database.)

Violations and Penalties

When a facility with a petroleum bulk storage tank does not register with the Department or does not renew its registration on time, the facility violates State law and is subject to civil penalties of up to \$37,500 per day of noncompliance. In such instances, the Department's legal staff is to contact the facility and arrange for facility compliance. The penalties that are collected become revenue to the State's General Fund.

According to Department officials, approximately 90 days after a facility is overdue on its registration, the Department's legal staff is to send an Order on Consent letter to the facility. The letter informs the facility that it is in violation of the law and is subject to a civil penalty. If the facility still does not register and pay its fee after receiving the Consent letter, the Department's legal staff is to send another Consent letter (providing the facility an additional opportunity to register and pay its fee), as well as a Complaint letter and Notice of Hearing letter. The Complaint letter presents

formal charges against the facility. The Notice of Hearing letter informs the facility of a scheduled date for a pre-trial conference and indicates that an actual hearing date will be set.

We selected a random sample of 50 of the previously-discussed 4,983 facilities that were on the Department's database as active with expired registration renewals. We requested that Department officials provide us with information and records demonstrating that Department staff followed the established procedures regarding late registrations. We found that the Department was often not following these procedures and, therefore, was not adequately pursuing registrations and related fees. The following summarizes the results from the sample of 50:

- For 33 of the facilities, we found no support that any of the required follow-up steps had been taken including Order on Consent letters, Notice of Hearing letters, Complaint letters, or scheduled hearings. Ten of these facilities had been without a current registration for at least five years.
- For 16 of the facilities, the Department sent Order on Consent letters, but only seven facilities were subsequently sent Notice of Hearing and Complaint letters. No further action, such as a scheduled hearing or a referral to the OAG, took place for the seven facilities.
- One of the facilities registered before the Department took follow-up steps.

We noted that a disproportionate number of facilities with expired registrations are located in New York City (Region 2) and the lower Hudson Valley (Region 3). These two regions include 72 percent of all facilities (28,563 of 39,630) and 90 percent of the facilities with expired registrations (4,501 of 4,983). The Department's Bureau of Remediation and Revitalization (Bureau) is responsible for working with facilities in these two regions, and Bureau staff told us that the Bureau does not pursue delinquent facilities to the final step of referral to the OAG, because they do not believe that such efforts will be productive.

However, we recommend that the Department follow all specified administrative steps for enforcing compliance with facility registration requirements and ensure that all delinquent facilities are referred to the OAG for enforcement actions after all administrative steps have been exhausted. In response, Department officials indicated that they will adhere to these steps.

To assess how the Department was administering penalties for registration violations, we examined Department practices with respect to all facilities that registered in November 2009 after having operated without a current registration for at least three prior years. In total, we identified 20 such facilities. Department officials told us that, on average, penalties of \$1,000 are levied on facilities with expired registrations. However, we found the Department's actual practice to be inconsistent. We found that the Department assessed no penalties for 11 of the facilities in our sample. For each of two other facilities, the Department did assess a penalty of \$1,000. The remaining seven facilities (owned by same entity) were assessed a total penalty of \$19,000 for various violations including failure to register.

We find it concerning that the Department issued no penalties in some instances, while in other instances inconsistent penalty amounts were imposed. In addition, we question whether the relatively-minor amounts of penalty that the Department assessed on these long-delinquent facilities serves as an effective deterrent, especially considering that fines of up to \$37,500 per day are permissible. Moreover, if the Department pursued the 4,983 facilities that are lacking a current registration and confirmed them to be active, and levied and collected just the \$1,000 penalty, the Department could potentially generate about \$5 million for the State's General Fund. Similarly, if the 553 facilities that we estimated as listed by the FDNY, but not shown in the Department's database, were assessed the \$1,000 penalty, the Department could generate approximately \$553,000 for the State's General Fund.

We recommend that the Department consistently assess penalties on all facilities with expired registrations and evaluate the feasibility of using escalating penalties when facilities are noncompliant for more than one year. Department officials agreed with these recommendations and indicated that they will work towards implementing them. We further recommend that, when penalties are not used or when they vary from prescribed amounts, the Department maintain documentation explaining and authorizing such exceptions.

- Recommendations**
3. Follow all established administrative steps for enforcing compliance with facility registration requirements and refer all noncompliant facilities to the OAG for enforcement when administrative steps have been exhausted.

(Department officials responded that they will refer noncompliant facilities to the OAG following exhaustion of administrative remedies.)

4. Evaluate the feasibility of using escalating penalties on all facilities with expired registrations that exceed one year or more.

(Department officials agreed to evaluate the feasibility of using escalating penalties on all facilities with expired registrations that exceed one year or more.)

5. Apply penalties consistently to facilities that fail to register, including those identified in Recommendation 1, and document the reasons and authorizations for any inconsistent application of penalties.

(Department officials agreed to review the enforcement policy in conjunction with a longer term initiative to evaluate the entire penalty policy.)

Remittance of Fees to Oil Spill Fund

The registration fees are collected by either the Department's Central Office or its Regional Offices, and the Regional Offices forward their collections to the Central Office. The amounts collected are recorded on the Department's Financial Management Information System (FMIS), while the actual collections are deposited in a Department bank account before being remitted by the Central Office to OSC. OSC then credits the remittances to the Oil Spill Fund.

To determine whether the registration fees collected by the Department were remitted to the Oil Spill Fund, as intended, we compared the fee collection information recorded on the FMIS to OSC's records for the Oil Spill Fund for the period April 1, 2007 through September 30, 2009. We found that the total amount of fees collected agreed with the amount credited to the Oil Spill Fund. We verified this by reviewing another Department record, which accounted for the Department's various revenue collections by type, and indicated how much of each type of revenue was to be credited to various State accounts.

When the Department remits the registration fees to OSC, they are initially placed in a general OSC account containing the various types of revenue collected by the Department. The Department then communicates with OSC weekly indicating how much of the revenue is to be credited to the Oil Spill Fund and to other specific State funds and accounts.

To determine whether the registration fees were being remitted to the Oil Spill Fund in a timely manner by the Central Office, we judgmentally selected five dates between May 1, 2009 and September 30, 2009 and verified that the fees sent to the Central Office on those five days were credited to the Oil Spill Fund within two weeks. We found that, on all five days in our sample, the fees received by the Central Office were credited to the Oil Spill Fund within two weeks of receipt. We, therefore, conclude that the Central Office appears to be remitting petroleum bulk storage registration fees to the Oil Spill Fund in a timely manner.

Agency Comments

DAVID A. PATERSON
GOVERNOR



STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

ALEXANDER B. GRANNIS
COMMISSIONER

MAY 04 2010

Mr. Frank J. Houston
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 Williams Street – 21st Floor
New York, NY 10038

Dear Mr. Houston:

The New York State Department of Environmental Conservation (DEC) has reviewed the Office of the State Comptroller's (OSC) draft audit report 2009-S-69, entitled "Collection of Petroleum Bulk Storage Fees." The enclosed pages contain DEC's response to the draft report.

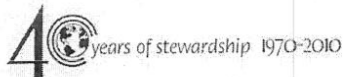
Thank you for the opportunity to respond to OSC's draft audit report. If you need to discuss any of this response, please contact Ron Lassonde at (518) 402-9147.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alex Grannis".

Alexander B. Grannis

Enclosure



The New York State Department of Environmental Conservation's (DEC) response to the Office of the State Comptroller's (OSC) draft audit report 2009-S-69, "*Collection of Petroleum Bulk Storage Fees*," dated April 6, 2010, is presented below and broken into three sections.

- General Program Comments
- Specific Comments
- Response to Recommendations

General Program Comments

The objectives of the audit were to determine whether DEC is 1) collecting all the registration fees due from facilities with petroleum bulk storage tanks and 2) remitting these fees in a timely manner to the State's Oil Spill Fund.

The results of the audit confirmed that DEC was remitting all registration fees collected in a timely manner to the Oil Spill Fund. However, it did reach the conclusion that not all facilities may be in the DEC's database and that not all facilities in the DEC database have up to date registrations.

DEC agrees that facility registration is an important component of the Bulk Storage Program. Accordingly, it receives significant attention. It represents one aspect of meeting our overall mission of protecting public health and the environment by preventing releases from tank systems. The primary components of the DEC's compliance strategy include drafting and updating the underlying laws/regulations, outreach to help the regulated community understand how to comply, inspections to determine actual compliance, enforcement to compel compliance and deter violations, and using IT tools to help make the process as efficient as possible. DEC is constantly seeking to maximize the collection of registration fees, but must do so in the context of the overall program goal, compliance strategy and resources. If emphasis is taken away from the other components of the compliance strategy (e.g., inspections, enforcement, and outreach), the result will be more releases resulting in remedial costs that impact the Oil Spill Fund (OSF) at levels much greater than the loss of some registration fees. DEC's approach has been and will be to look for ways to continuously improve the registration process, including how to address delinquent registrations, that will not result in a lessening of DEC's overall effectiveness.

Further, Divisions in DEC annually review their workload and staffing resources and prepare annual work plans that prioritize workload and assign staffing resources accordingly. Registrations and enforcement are important components of the Petroleum Bulk Storage (PBS) Program along with revising laws and regulations, outreach and inspections. DEC therefore believes it has a process in place to ensure an efficient and cost effective approach to managing workload and resources which includes the PBS Program. As with all program areas, additional staff would allow additional emphasis to be placed in one area or another. In the present case, additional staff to provide further support for facility registrations would be, at a minimum, budget neutral given the anticipated revenues.

Over the last decade, DEC has continually improved the facility registration process and additional steps were underway when the present audit was commenced. Some examples include:

- DEC has undertaken an aggressive approach to address overdue registrations through enforcement. Since 1997 the number of facilities overdue for registration decreased from approximately 8,000 to less than 5,000. Annually, over the past 12 years, DEC has averaged over 750 consent orders for overdue registrations. To address the overdue registrations in Region 3 alone, DEC has issued 250 Orders on Consent, beginning in November 2009. The remaining overdue registrations in Region 3 will be pursued by a continuation of the Order on Consent initiative and DEC inspections.
- In February of 2010, DEC launched an expedited enforcement process against owners of delinquent registrations. Delinquent facility owners are sent a Notice of Hearing and Complaint (NOHC) with a hearing date with an Administrative Law Judge set in place. The NOHC includes an attached Order on Consent giving the option to settle the violation without a hearing. If the facility owner does not settle the case or show up to the hearing, a default order against the facility owner is issued. The default order is then referred to the Office of the Attorney General (OAG) for enforcement. Also, multiple hearings will be scheduled on the same day. These changes will result in a more efficient and cost effective process.
- DEC recently added functionality to its bulk storage database to better track cases, avoid duplicative efforts, and further automate responses.
- DEC is developing an on-line registration process for PBS registrations. An on-line registration system will be more efficient and cost effective by reducing errors in information reported and fees paid through built in edits, and expediting the payment of fees and penalties. It will also provide updated email addresses for the registrants, which will enable DEC to enhance the level of communication with the owners for outreach purposes, including registration.

Other areas of concern, such as overstatement of lost revenue from registrations and penalties, have been addressed by DEC under Specific Comments.

Specific Comments

The following are specific comments DEC has regarding selected wording contained in the draft report.

Page 7, paragraph 2 - "The fund balance in the Oil Spill Fund was \$3.68 million as of March 31, 2008 and \$3.68 million as of March 31, 2009."

*
Comment
1

*
Comment
2

* See State Comptroller's Comments, page 25

2

Department Response: The sentence should read, "The fund balance in the Oil Spill Fund was negative \$3.23 million as of March 31, 2008 and positive \$3.68 million as of March 31, 2009."

Page 7, paragraph 3, last line - "... we estimate \$3.4 million of registration fees may be due for more than 5,530 facilities."

Department Response: By itself, this statement is misleading because we know the actual value will be much less. Since there is not an adequate basis for developing a more realistic value, this should be revised to say, "... we estimate that up to a theoretical maximum of \$3.4 million of registration fees may be due for up to 5,530 facilities."

Page 8, paragraph 2, line 2 - "Department officials generally agreed with our findings and recommendations."

This statement is too general and should be deleted. DEC's position on the findings and recommendations is included in its response.

Page 9, paragraph 2, line 3 - "(i.e., tanks holding between 1,100 and 400,000 gallons of petroleum)."

Department Response: This should read, "(i.e., facility capacity between 110 and 400,000 gallons of petroleum)."

Page 9, paragraph 3, line 2 and paragraph 4, line 3 - "The Department registers facilities with petroleum bulk storage tanks and collects the related fee in 58 of the State's 63 counties."

Department Response: There are only 62 counties in NYS and DEC collects fees in 57 of those counties. Appropriate revisions should be made in paragraphs 3 and 4.

Page 9, paragraph 4, line 4 - "The registration fee, ... ranges between \$100 and \$500 per facility."

Department Response: The registration fee ranges between \$0 and \$500 per facility.

Page 13, paragraph 3 - "According to the database, the loss of revenue to the Oil Spill Fund from overdue, unpaid registration fees for the 4,983 facilities totals about \$2.3 million, as shown below."

Department Response: The audit should state the assumptions and limitations of this conclusion and of the data in the following table. As written, the reader is lead to an incorrect conclusion about the certainty of the revenue loss. The main assumptions include that the revenue projection is based upon knowing that the facilities in fact are overdue and that for those that are delinquent, the revenues are recoverable. In many cases, this proves to be incorrect (e.g., tanks removed, added or facility no longer in operation).

Suggest paragraph following chart be deleted. DEC's position on workload and allocation of staff resources are addressed in General Program Comments. Frequent ownership changes would be documented in the PBS database.

Page 15, paragraph 4, lines 2-3 and 5-6 – "...the Department's legal staff is to send an Order on Consent letter to the facility...the Department's legal staff is to send another Consent letter...."

Department Response: The description of this internal referral system shall not create any right in any respondent, and DEC reserves the right to use its prosecutorial discretion to pursue enforcement as DEC deems appropriate.

Response to Recommendations

In addition to DEC's General Program Comments and Specific Comments, DEC's response to each recommendation contained in the draft report is provided below.

Recommendation 1: Follow up on the active facilities discussed in this report where no registrations had taken place for five or more years and update the database accordingly. Where appropriate, take action to collect registration fees.

Response to Recommendation 1: DEC has and will continue to streamline processes to accomplish the recommendations and maximize registration fees in the context of the overall program. For example, DEC will:

- Continue to send registration reminder letters to current registrants approximately 90 days prior to expiration. DEC is developing an on-line registration process for PBS registrations, as discussed in the General Program Comments.
- On a quarterly basis, generate a list of registrations that are more than 90 days overdue and take appropriate enforcement action. This is more aggressive than the 5 years in the recommendation.
- Conduct an expedited enforcement process as discussed in the General Program Comments.
- Continue to update the State's database, as appropriate.

Recommendation 2: Compare the Department's database of facilities periodically with the listing maintained by the FDNY and update the database as appropriate.

Response to Recommendation 2: DEC will seek to have FDNY periodically provide DEC a list of tanks added to the FDNY database that may need to be registered with DEC. DEC will also evaluate methods to cross-check facility addresses to confirm whether or not the facility addresses provided by FDNY are new facilities or already in DEC's database.

In an effort to enforce compliance at facilities listed by the FDNY that do not appear to be registered on the DEC's database, DEC's Office of General Counsel mailed out 320 Notices of Violations with Orders on Consent. Of this number, 90 facilities already had valid registrations with DEC (usually registered under different addresses) and 8 facilities were

unregulated. To date, 20 Orders have been received, resulting in \$30,000 in penalties for the General Fund. DEC will send letters to all the remaining facilities on the FDNY list and ask them to document their registration status. If they are unregistered, they will be given an opportunity to pay a penalty and register. If they do not register or respond, DEC will proceed with appropriate enforcement.

Recommendation 3: Follow all established administrative steps for enforcing compliance with facility registration requirements and refer all noncompliant facilities to the OAG for enforcement when administrative steps have been exhausted.

Response to Recommendation 3: DEC will refer noncompliant facilities to the OAG following exhaustion of administrative remedies as indicated in its expedited enforcement process.

Recommendation 4: Evaluate the feasibility of using escalating penalties on all facilities with expired registrations that exceed one year or more.

Response to Recommendation 4: DEC agrees to evaluate the feasibility of using escalating penalties on all facilities with expired registrations that exceed one year or more.

Recommendation 5: Apply penalties consistently to facilities that fail to register, including those identified in Recommendation 1, and document the reasons and authorizations for any inconsistent application of penalties.

Response to Recommendation 5: DEC has an enforcement policy and will review that policy in conjunction with Recommendations 4 and 5, as part of a longer term initiative to evaluate the DEC PBS penalty policy (DEE-22).

State Comptroller's Comments

1. Our audit began on September 21, 2009 and concluded on February 8, 2010. Actions the Department took after September 21, 2009 occurred after the audit commenced.
2. We have revised our report to reflect the comments of Department officials.