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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

September 15, 2020

Mr. Basil Seggos  
Commissioner  
Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233

Re: Oversight of Waste Tire Cleanup  
and Use of Waste Tire Fees  
Report 2020-F-12

Dear Commissioner Seggos:

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, we have followed up on the actions taken by officials of the Department of Environmental Conservation (DEC) to implement the recommendations contained in our audit report *Oversight of Waste Tire Cleanup and Use of Waste Tire Fees* (Report [2018-S-43](#)).

**Background, Scope, and Objective**

Waste tires can pose serious risks to public health, safety, and the environment. They provide an ideal breeding ground for mosquitoes and other disease-carrying pests and are a fire hazard with the potential for devastating consequences. In 2003, the Waste Tire Management and Recycling Act (Act) was enacted to ensure the proper management of waste tires in the State. The Act established priorities including the reduction of the number of waste tires generated and the remediation of non-compliant waste tire sites. DEC, through its Division of Materials Management, is responsible for enforcement and abatement (cleanup) of waste tire sites.

Consistent with the requirements of the Act, DEC inventoried and assessed known non-compliant waste tire sites by July 2004 with the goal of abating all non-compliant sites in the State by December 31, 2010. The initial assessment conducted under the Act identified approximately 95 sites with non-compliant stockpiles containing an estimated 29 million tires. According to DEC records, as of February 2019, the number of non-compliant sites discovered increased to 187 with an estimated total of 44 million waste tires.

To fund waste tire management and recycling efforts, Environmental Conservation Law Article 27 (Law) established a waste tire management and recycling fee of \$2.50 for each new tire sold, including tires on new motor vehicles. All fees are deposited into the Waste Management and Cleanup Fund (Fund) for use in administering provisions of the Act. The waste tire management and recycling fee has been extended several times and is currently due to expire on December 31, 2022. A 2010 amendment to the Law broadened the use of Fund monies to include costs associated with the administration and enforcement of all requirements

of the Law, *Collection, Treatment and Disposal of Refuse and Other Solid Waste* (excluding titles related to inactive hazardous waste disposal sites and the Brownfield cleanup program). Prior to the 2010 amendment, the use was strictly for purposes under *Waste Tire Management and Recycling*.

Between April 1, 2013 and March 31, 2020, DEC received approximately \$192 million in fees. DEC uses program cost centers to track expenses charged to the Fund to specific programs, including those related to waste tires and the collection, treatment, and disposal of refuse and other solid waste. Disbursements from the Fund for personal services, non-personal services, and fringe benefit costs totaled about \$158 million between April 1, 2013 and March 31, 2020.

We issued our initial audit report on August 29, 2019. The audit objectives were to determine if DEC is adequately monitoring and timely abating waste tire sites and whether waste tire fee collections are being used consistent with the purposes defined in the Law. We found DEC had made significant progress abating identified waste tire sites. Of the 187 non-compliant waste tire sites identified by DEC, nearly 44 million tires (99 percent) were abated at 160 sites (86 percent) as of October 2018. Most of the remaining 27 non-compliant sites contained relatively few waste tires. However, we identified delays establishing a new abatement contract through the Office of General Services (OGS) after the prior contract expired on October 30, 2016. The lack of a contract delayed initiating abatement at additional sites. We also found delays with certain enforcement steps typically taken prior to initiating the abatement process for some of the remaining 27 sites. Delays taking these steps may, in turn, further hinder timely abatement of the sites.

Further, we identified some expenses charged to the Fund that did not appear to be related to waste tire abatement or other waste management activities allowable under the Law. Officials told us they developed a process in 2010 that allows divisions with mandated responsibilities that include, but are not limited to, activities covered under the Law to charge certain amounts to the Fund. However, the methodology was neither retained nor provided for our review. While we agree some amount should be charged to the Fund for such divisions, we could not determine the reasonableness of the methodology used or the amounts established.

The objective of our follow-up was to assess the extent of implementation, as of August 28, 2020, of the three recommendations included in our initial audit report.

### **Summary Conclusions and Status of Audit Recommendations**

We found that DEC has fully implemented all the recommendations from our initial audit report.

### **Follow-Up Observations**

#### **Recommendation 1**

*Collaborate with OGS in the future to renew or establish new abatement contracts in a timely manner.*

Status – Implemented

Agency Action – DEC has quarterly meetings with OGS, during which officials discuss the status of abatement projects and activities as well as cost projections, site abatement plans, and the creation and prioritization of future abatement contracts. While the

current abatement contract does not expire until August 2021, DEC has already begun discussions internally regarding the creation of a new framework for the 2021 contract and anticipates meeting with OGS personnel in January to discuss the future contract.

**Recommendation 2**

*Take steps to initiate enforcement actions as promptly as possible for non-compliant sites, especially for those sites that demonstrate a lengthy period of non-compliance and where the owner has not agreed to or begun voluntary abatement activities.*

Status – Implemented

Agency Action – In the initial audit, we reported that 27 sites containing approximately 377,500 waste tires remained non-compliant as of October 2018. Since then, seven of those non-compliant sites have been abated. Abatement at one site remains postponed due to the presence of hazardous materials. DEC has taken actions to facilitate the abatement of the remaining 19 non-compliant sites, although no estimated completion dates were provided.

**Recommendation 3**

*Establish and document a methodology to estimate the portion of expenses to be charged to the Fund consistent with the authorized purposes under the Law, especially for those divisions that carry out multiple mandates.*

Status – Implemented

Agency Action – DEC has established and documented a methodology to ensure that expenses charged to the Fund are consistent with the Law. DEC's Division of Law Enforcement (DLE) will use its non-personal service allocation from the Fund to pay for Law-related vehicle chargebacks. Expenses are estimated based on the percentage of work performed by DLE investigators and officers for Law-related activities and are applied to mileage and maintenance on assigned vehicles. Personal service will be similarly allocated to ensure disbursements are consistent with the portion of time employees spend performing activities authorized under the Law. We tested DEC's calculations for State fiscal year 2019-20 and found no errors or miscalculations.

Major contributors to this report were Andrea LaBarge, Richard Podagrosi, Jeffrey Dormond, and Adriane Inman.

We thank the management and staff of the DEC for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Heather Pratt, CFE  
Audit Manager

cc: Andrew Fischler, Director of Internal Audit