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State Comptroller

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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 12233-0001

Re: Title V Operating Permit Program Revenues, Expenditures, and Changes in Fund Balance for the Eight Fiscal Years Ended March 31, 2017
Report 2020-F-13

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 to implement the recommendations contained in our audit report *Title V Operating Permit Program Revenues, Expenditures, and Changes in Fund Balance for the Eight Fiscal Years Ended March 31, 2017* (Report 2017-S-81), issued August 12, 2019.

Background, Scope, and Objective

The U.S. Environmental Protection Agency (EPA) established an Operating Permit Program (Program) under Title V of the federal Clean Air Act Amendments of 1990 (Act). The purpose of the Program is to help control excessive industrial pollution by requiring states to monitor pollutant output and to take action to remedy violators that produce pollutant quantities in excess of established limits. The Act requires each state to adopt a Program to regulate "major" and certain other sources of air pollutants. Pursuant to New York's Clean Air Compliance Act of 1993 (CACA), the Department of Environmental Conservation (Department) is responsible for developing and administering this Program.

Air pollution sources subject to the Program must obtain an operating permit and pay annual fees established by the Act. The Department assesses the annual fees on Title V facilities based on their self-reported emissions from the previous calendar year. The fee is calculated by assessing each facility's emissions based on a fee schedule established by the Environmental Conservation Law (Law). If the facility does not have a permit and does not submit an emissions statement, the Department will bill the facility based on its potential to emit. The Act mandates that permit fee revenues be sufficient to cover all reasonable direct and indirect costs necessary for the Department to develop, administer, and enforce the Program.

According to the Law, the Department is required to report to the Executive, the Legislature, and the State Comptroller's Office before September 30 of each year on the Program's progress, costs, and revenues, including: the actual costs incurred and revenues received during the previous fiscal year; the estimated costs that will be incurred and the anticipated tonnage of emissions and revenues during the current fiscal year; and an estimate of the costs that will be incurred during the subsequent fiscal year. The Law requires the State Comptroller's Office to perform a biennial audit of the fiscal status of the Department's Title V Program.

The direct cash disbursements and cash receipts figures used to compile the Program's Consolidated Statements are based on the financial records maintained by the Department, the Department of Health (DOH), the Environmental Facilities Corporation (EFC), and the Empire State Development Corporation (ESDC), and are in agreement with those maintained by the State Comptroller's Office. DOH, EFC, and ESDC each maintain their own accounting system and financial reporting mechanisms, which are not subject to Department oversight. The Department does not take responsibility for the accuracy of the data reported by these affiliated agencies; however, each of these agencies is required to comply with established accounting and control procedures as promulgated by New York State. Our audit objectives were limited to the Department's controls over the Program and, therefore, we did not perform testing of these other agencies.

Our initial report, covering the period April 1, 2009 to March 31, 2017, examined whether the Department had adequate procedures in place to accurately capture Program revenues, expenditures, and changes in fund balance; whether Department officials made reasonable estimates of anticipated Program expenses for the current year and immediately upcoming year; and whether Program fee revenues collected pursuant to administration of Article 72, Title 3 of the Law were adequate to cover Program expenses. Our audit found the Department generally has adequate procedures in place to capture the Program's revenues, expenditures, and changes in fund balance transaction data. However, we identified errors in the permit fee billing process and in the allocation of expenses to the Program. We reviewed 32 invoices totaling $8,328,281 billed to Title V facilities and found 7 (22 percent) totaling $3,214,420 were billed incorrectly by $352,418 (11 percent). We also found that $142,932 in direct non-personal service expenses for the Department was overcharged to the Program Fund.

During our audit period, Program revenues were insufficient to cover Program expenses, as required by the Act and CACA. Program revenues decreased 38.8 percent during the period, while Program expenses decreased 10.8 percent, resulting in a trend of increasing annual deficits. The revenue decline is due largely to a 54.4 percent decrease in facility-reported and/or Department-estimated billable emissions during the period. As of March 31, 2017, the Department reported a Program Fund deficit of more than $20.3 million. The Department funds the deficit by borrowing from the State's short-term investment pool, which contains cash balances in the State Treasury not required for immediate use. However, the reported deficit did not include almost $50.4 million in Program expenses that the Department paid primarily from its General Fund appropriations. Considering the expenses paid with non-Program funds, the Program's effective operating deficit would be $70.7 million as of March 31, 2017.

The objective of our follow-up was to assess the extent of implementation of the five recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials have made significant progress in addressing the problems we identified in the initial audit. Of the five prior audit recommendations, four have been implemented and one has not been implemented.

Follow-Up Observations

Recommendation 1

Take steps to ensure that changes affecting the three systems used for permit fee billing are made to all of these systems.

Status – Implemented

Agency Action – The Department conducted a competitive mini-bid to redesign the Air Facility System (AFS), one of the three systems used for permit fee billing. The project objective is to review the current AFS system capabilities and business processes; work with Department staff to document the business requirements of a modernized system; and make recommendations regarding potential technical solutions based on the new business requirements, including a high-level cost-benefit analysis for each potential solution. The Department has obtained approval from the Division of the Budget to award the contract, and the mini-bid is currently in the solicitation process. The Department also implemented a "notes" tab in the Financial Management Information System (FMIS), another of the three systems used for permit fee billing. This change provides a detailed history of comments related to each permit, captured in one location.

Recommendation 2

Take steps to improve monitoring systems to ensure costs are appropriately charged to the Program.

Status – Implemented

Agency Action – The Department has updated the allocation of air monitoring time distribution costs to the Program. On June 6, 2019, the Department submitted an updated plan to the EPA for approval, and it was implemented beginning on October 1, 2019. The update uses the most recent comprehensive inventory available for New York State, the 2014 National Emissions Inventory. Department officials stated they use the updated time distribution percentages to calculate costs charged to the Program, which provides a greater level of assurance that costs are equitably charged.

Recommendation 3

Comply with New York State's retention policy that requires agencies to keep records being used for audits until the audit is satisfied.

Status – Implemented

Agency Action – To satisfy this recommendation, the Department implemented a financial document storage policy in Fiscal Year 2017-18, which required the scanning of discretionary (F vouchers) and travel payments beginning April 1, 2017 and all other vouchers April 1, 2018. The Department's financial documentation protocols require scanning payment documentation into the FMIS. The protocols help to ensure compliance with State retention policy requirements and the provision of supporting documentation for financial transactions. Department staff were notified of this change, and the information was also made available on the agency's homepage.

Recommendation 4

Ensure that Title V reports are submitted to all required recipients by the September 30 deadline as mandated by Law.

Status – Not Implemented

Agency Action – The Department requested information needed from both DOH and ESDC in May 2020 to ensure submission of the 2020 Program report by the upcoming September 30 deadline. However, the Department could not provide the Program reports due since the original audit for 2018 and 2019. Therefore, the audit team could not determine if the Department is submitting Program reports to required recipients by the mandated deadline.

Recommendation 5

Work with relevant stakeholders to develop a strategy to bring the Program into self-sufficiency, in compliance with the federal Clean Air Act.

Status – Implemented

Agency Action – According to the Act, permit fee revenues must be sufficient to cover all reasonable direct and indirect costs necessary to develop, administer, and enforce the Program. The Department is actively attempting to bring the Program into self-sufficiency and has worked with relevant stakeholders on proposed legislation.

Major contributors to this report were Jessica Kirk, Melissa Davie, Molly Kramm, and Brendan Reilly.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issue discussed in this report. We thank the management and staff of the Department of Environmental Conservation for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Heather Pratt
Audit Manager

cc: Andrew Fischler, Director of Internal Audit