



Metropolitan Transportation Authority

State of New York

January 9, 2009

Honorable David A. Paterson
Governor of New York
Executive Chamber
State Capitol
Albany, NY 12224

RECEIVED
EXECUTIVE CORRESPONDENCE
JAN 20 2009
OFFICE OF THE STATE COMPTROLLER
THOMAS P. DIAMANTIS
COMPTROLLER

Re: 90-Day Response to Report No. 2008-S-26 -- MTA New York City Transit's Compliance with Executive Order 134 – Environmental Impact of Cleaning Facilities

Dear Governor Paterson:

On September 30, 2008, the State Comptroller issued the above-referenced final audit report.

As provided by Section 170 of the Executive Law, I am furnishing you with the attached response which addresses each recommendation contained in the audit report.

For your convenience, I have attached a copy of the final audit report.


Sincerely,

Attachment

Memorandum



New York City Transit

Date December 24, 2008
To H. Dale Hemmerdinger, Chairman
From Howard H. Roberts, Jr., President, NYCT 
Re **MTA's New York City Transit's Compliance with Executive Order 134 -- Environmental Impact of Cleaning Facilities (2008-S-26)**

As required by Section 170 of the Executive Law, this memorandum details the actions taken by NYCT to implement the EO 134 compliance recommendations contained in the Comptroller's final audit report. Of the eight recommendations set forth in the report, NYCT agrees with six and partially agrees with two. In general, NYCT's disagreements have nothing to do with the letter and spirit of EO 134, which we strongly support, but rather with the audit's interpretation of EO 134 compliance.

NYCT believes the audit report departs from the OGS' carefully crafted definition of "Environmentally Preferred Cleaning Products"¹ and, instead, substitutes OGS' current and partial list of approved cleaning products as the *de facto* definition of "Environmentally Preferred Cleaning Products." Further, OGS recognizes in its own Q&A and Guideline documents that the current list of approved products is anything but a universal list of "Environmentally Preferred Cleaning Products."²

NYCT will continue to make every effort to use cleaning products already on the certified list of OGS-approved cleaning products. For those NYCT internally approved cleaning products that have yet to be considered by OGS, Green Seal, and Environmental Choice for EO 134 certification, there is no basis to conclude that such products are outside OGS' definition of "Environmentally Preferred Cleaning Products."

NYCT's specific responses to the eight recommendations follow:

¹ "Environmentally preferred cleaning products are cleaning products having properties that minimize potential impacts to human health and the environment consistent with maintenance of the effectiveness of these products for the protection of public health and safety without sacrificing product effectiveness." Cite taken from OGS' Questions and Answers website.

² "The marketplace is expected to adapt over time as knowledge improves, new or modified products become available and product applications are better understood through research, usage and observation." (Guidelines document; p. 4). "Other products, such as metal cleaners, drain cleaners, mineral removers ..., oven cleaners, graffiti removers ... and other cleaning and maintenance products will be considered for addition to these Guidelines in the future." (Guidelines document; p. 25).

Recommendation 1.

Delegate an individual to oversee implementation of the Order.

Response to Recommendation No. 1.

Agree. Currently the Assistant Chief Operations Officer, Vendor Relations, who is the Chair of the Qualified Products List (QPL) Committee,³ is the designated individual to oversee NYCT's compliance with EO 134. This individual will be provided manpower as needed to assess NYCT's facilities in coordination with the Office of System Safety (OSS) and NYCT user groups. Each user department has a designated chemical representative who works with the QPL Committee and OSS to ensure EO 134 compliance.

Recommendation 2.

Conduct assessments for all buildings used by Transit, whether owned or leased, and review and update this assessment biennially, as required by the Order.

Response to Recommendation No. 2.

Agree. Notwithstanding the NYCT's enormous size, the OSS, the QPL Committee, and various user departments have already conducted an initial assessment. This coordinated effort generated a list of facility and custodial cleaning supplies currently in use. Due to the large number of facilities and infrastructures at NYCT, the assessment process will be ongoing throughout 2009.

Page 2 of the audit report states that NYCT "... leases did not include language that would allow Transit to require the landlord to comply with the Order." EO 134 directs NYCT to "encourage [not require] lessors and building managers who provide leased space to State Agencies to select and procure such products." MTA Real Estate has been, and will continue, to encourage such cooperation with EO 134.

Recommendation 3.

Establish a procedure for making the assessment and the updates available to employees and the general public. Explore using the MTA website to allow the assessment to be viewed by employees and the general public.

Response to Recommendation No. 3.

Agree. NYCT will develop a database that lists those (1) cleaning products certified by OGS to be environmentally preferred products; (2) internally approved cleaning products that have yet to be considered by OGS, Green Seal, and Environmental Choice for EO 134 certification; and (3) cleaning products determined by OGS,

³. The QPL Committee consists of representatives from every NYCT operating department whose purpose is to ensure compliance with the NYS Public Authorities Law, Section 1209 and the Board's All Agency Procurement Guidelines, which allows NYCT to pre-qualify certain brands of materials prior to receipt of bids; and to make awards only to firms who provide those brands.

Green Seal, or Environmental Choice to be non-environmentally preferred cleaning products. Finally, if NYCT is using any non-environmentally preferred products, it will, as required by EO 134, document the reasons for selecting such alternative products.

Recommendation 4.

Issue a policy requiring the use of environmentally-preferred cleaning products at Transit facilities.

Response to Recommendation No. 4.

Agree. NYCT has updated its Departmental Procedures Manual to require adherence to EO 134. The QPL Committee has also updated its policy and procedures to require the use of environmentally preferred products wherever possible.

Recommendation 5.

Use only products that are on the OGS-preferred list (or are certified by either Green Seal or Environmental Choice), or document the reasons for purchasing and/or using non-environmentally-preferred products.

Response to Recommendation No. 5.

Partially agree. NYCT will continue to use the products on the current list of OGS approved cleaning products, as well as the Green Seal and Environmental Choice preferred lists, as much as possible. In fact, NYCT has already begun to replace most of its facility and janitorial cleaning products with products from the OGS preferred lists. Consistent with EO 134, NYCT will exhaust the inventory of cleaning products targeted for replacement. As noted in our response to the draft audit, however, there are some products listed on the current OGS-approved product lists that have already been considered by OSS and rejected for use at NYCT because they do not comply with the New York City Department of Environmental Protection's Sewer Discharge Standard for pH, which states that the pH can not be outside of the 5-11 range.

NYCT also agrees to document all of the internally approved (by OSS) cleaning products used by NYCT that are not currently on any of the preferred lists. NYCT, however, disagrees with the audit's interpretation of EO 134, namely, that if a product is not already included on a preferred list, it is, by definition, "non-environmentally preferred." There is no dispute about the fact that OGS, Green Seal and Environmental Choice have yet to issue approved product lists for all the cleaning product categories used within NYCT.

Since the 1980s, NYCT's procurement policies and procedures for cleaning products have stressed chemical safety and effectiveness. NYCT has performed toxicological evaluations, as well as laboratory analyses, on all chemical products, inclusive of facility cleaning products, purchased for use on NYCT property. These evaluations consider the action and properties of the substances contained within the products, as well as the conditions produced by them. The objective is minimization of

detrimental health affects to NYCT personnel and the environment during the course of using and handling chemical products within the workplace. NYCT's specification on the procurement of chemical products (developed since 1995) prohibits targeted substances such as carcinogens, mutagens, teratogens, heavy metals, chlorinated solvents, phosphorus, nitrilotriacetic acid and volatile organic compounds in products destined for NYCT utilization. In some areas, NYCT's standards are more stringent than OGS' guidelines.

In summary, because of the rigorous and highly coordinated efforts of OSS, the QPL Committee, and various user groups, NYCT has long been procuring a wide variety of cleaning products deemed to minimize detrimental health affects to NYCT personnel, as well as detrimental affects on the environment. Notwithstanding, NYCT recognizes the importance of, and the requirement for, OGS, Green Seal, or Environmental Choice certification under EO 134.

Going forward, NYCT will continue with its internal review and approval process and make cleaning product procurement decisions which it deems to be consistent with OGS' environmentally preferred definition -- even if those products have yet to be considered by OGS, Green Seal and Environmental Choice and are not currently on any of the preferred lists. Finally, NYCT will bring together OGS, Green Seal, Environmental Choice, internal user groups, and vendors in order to facilitate OGS, Green Seal and Environmental Choice third party certification reviews for cleaning products not yet addressed by the certification process.

Recommendation 6.

Monitor and verify compliance by regularly checking cleaning purchases.

Response to Recommendation No. 6.

Agree. All chemicals procured by NYCT are received at a Transit storeroom. To the extent possible, NYCT will procure facility-cleaning products already on the OGS-approved product lists. When a determination is made that NYCT is using an environmentally non-compliant product, the Division of Materiel will be directed to procure environmentally friendly cleaning products and directives will be issued to user groups to exhaust existing stock. NYCT, through the coordinated efforts of OSS and the QPL Committee, will enforce the provisions of EO 134 and maximize the use of "Environmentally Preferred Cleaning Products."

Recommendation 7.

Examine all the cleaning and maintenance products that have been approved for use by Transit to determine which items should be substituted with environmentally-preferred equivalents.

Response to Recommendation No.7.

Agree. We have identified the facility and custodial cleaners that need to be examined in connection with EO 134 compliance. NYCT is currently testing some

products to ensure compliance with other NYCT requirements. As discussed above, NYCT also uses cleaning products not yet included on OGS-identified categories of cleaning products. We expect that, over time, OGS will establish approved product lists for all remaining cleaning product categories.

Recommendation 8.

Phase out the use of non-environmentally-preferred cleaning products in a timely manner, as required by the Order, and dispose of those that are no longer being used.

Response to Recommendation No. 8.

Partially agree. NYCT will comply with all of the requirements in EO 134. As discussed above, however, NYCT does not agree with the audit's interpretation of EO 134, whereby it concludes that any cleaning product not on an OGS' approved list at this time is either non-compliant or deemed to fall outside the ambit of OGS' definition of "Environmentally Preferred Cleaning Products." Consistent with EO 134, NYCT will exhaust the inventory of cleaning products targeted for replacement.

SUMMARY

In summary, NYCT strongly supports the goals and requirements set forth in EO 134 and will continue to work with OGS in order to come into full compliance with the Order.

Copy: Michael Chubak
Cheryl Kennedy
Stanley Grill
Michael Fucilli
Frank Payton
Kennith Norman