

A REPORT BY THE NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

**Alan G. Hevesi
COMPTROLLER**



***DEPARTMENT OF ENVIRONMENTAL
CONSERVATION***

CLEAN WATER PERMIT PROCESS

2001-S-18

DIVISION OF STATE SERVICES

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Report 2001-S-18

Ms. Erin M. Crotty
Commissioner
New York State Department of Environmental
Conservation
625 Broadway
Albany, NY 12233-4750

Dear Ms. Crotty:

The following is our report addressing the Department of Environmental Conservation's clean water permit process in the State Pollutant Discharge Elimination System (SPDES) program.

This audit was performed 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 list major contributors to this report in Appendix A.

Office of the State Comptroller
Division of State Services

March 13, 2003

EXECUTIVE SUMMARY

DEPARTMENT OF ENVIRONMENTAL CONSERVATION CLEAN WATER PERMIT PROCESS

SCOPE OF AUDIT

To protect New York State's waterways against unhealthy contamination and environmental damage, sewage treatment plants, factories and people engaged in certain other activities may not lawfully discharge wastewater or stormwater (the run-off from rain or melting snow) into surface or underground waterways without a permit from the New York State Department of Environmental Conservation (DEC). Moreover, all such discharges must comply with the terms of the permit, under which both the amount and the contents of the wastewater or stormwater are strictly regulated. According to State law, permits governing discharges into surface water may be valid for up to five years, while permits governing discharges into groundwater may be valid for up to ten years. However, a permit may be modified before the end of its term in response to changing conditions. According to DEC records, as of January 2002, a total of nearly 10,000 clean water permits had been issued by DEC.

Our audit addressed the following question about DEC's issuance of these permits for the period January 1, 2000 through June 6, 2002:

- Were the permits issued in accordance with DEC requirements?

AUDIT OBSERVATIONS AND CONCLUSIONS

We found that many permits classified as low-risk by DEC were renewed in a manner contrary to State law, because they were extended indefinitely without a review of the circumstances relating to the permit. We also found that many high-risk permits were not reviewed as frequently as intended by DEC to determine whether modifications were needed in the permits as a result of changing conditions. We further found that the permit issuance and monitoring processes could be improved if better use were made of available electronic data processing technologies.

Most of the clean water permits issued by DEC are tailored to a specific location or facility. In these permits, wastewater or stormwater discharges are regulated in accordance with specific conditions at the facility. If these conditions change,

but the permit is not adjusted in response to the changes, discharges that had been safe may become harmful. To help ensure that permits are adjusted as necessary, permit holders seeking to renew a permit are required by law to submit a new application for DEC's review. If DEC finds during its review that conditions have changed, the permit can be adjusted accordingly.

However, we found that, beginning in the early 1980s and continuing through the early 1990s, DEC indefinitely extended thousands of permits without any review of the circumstances surrounding the permits. As of June 2002, the extension of 3,901 of these permits had yet to be reviewed. While all of these permits were classified as low-risk by DEC when they were issued, there is no assurance that the conditions relevant to the permits have not changed significantly since the permits were issued, which in six cases was more than 20 years ago. DEC officials stated that low-risk permits were extended without review because the agency lacked the staffing resources to process its large volume of renewal applications, and sought to dedicate these resources to the review of high-risk permits. (See pp. 5-7)

According to DEC policy, each year all clean water permits are to be assigned a priority ranking on the basis of their potential to cause environmental harm, and the permits in the top 10 percent of the rankings are to receive a thorough review to determine whether they need to be adjusted to provide adequate protection against such harm. We found that the number of high-risk permits receiving this review is far fewer than intended. For example, only 74 of the 212 high-risk permits (35 percent) that were targeted in April 2001 had been reviewed by May 2002. DEC officials state they lack the staffing resources needed to review all the targeted permits.

We therefore conclude that neither low-risk permits nor high-risk permits are adequately monitored by DEC. According to State law, all clean water permits must be reviewed by DEC at least once every five years. However, many low-risk permits go more than five years without any review, and many high-risk permits do not receive the annual review intended by DEC. In the absence of DEC reviews, some permits may not receive needed adjustments, and as a result, may no longer provide the level of protection intended by DEC. To increase the likelihood that clean water permits do provide the level of protection intended by DEC, changes are needed in the processes used by DEC to review and renew the permits. (See pp. 8-9)

We also examined the record keeping systems used by DEC to support the permit issuance and monitoring processes. We found that some of the records are not automated, and as a result, the information in the records is difficult to access. Other records are automated, but are maintained on two separate information systems that are difficult to coordinate with one another. We also determined that some critical records may not have been retained, and records used to bill permit holders the annual permit fee are not always accurate. As a result of the weaknesses in the record keeping systems, DEC officials cannot be

reasonably assured that all active permit holders are identified for monitoring purposes and are billed correctly for their annual permit fee. We recommend that DEC explore the possibility of developing a single comprehensive automated system for all records relating to clean water permits. (See pp. 13-19)

COMMENTS OF DEC OFFICIALS

A draft copy of this report was provided to DEC officials for their review and comment. Their comments have been considered in preparing this final report, and are included as Appendix B. In addition, the State Comptroller's Notes to DEC's response are included as Appendix C.

DEC officials replied that they agree with nine of the 12 recommendations in the report; however, they view four of them as a continuation of a practice already in place. They did not agree with the conclusions or recommendations related to their automated information systems for billing and permit issuances. We believe DEC officials need to reconsider their position that the audit did not disclose billing errors and other discrepancies in DEC's records.

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INTRODUCTION

Background

Bodies of water such as rivers, lakes and reservoirs may be polluted by wastewater (i.e., sewage or water used in manufacturing processes) and stormwater (water from rain or melting snow that does not soak into the ground, but flows along various surfaces collecting various pollutants as it runs into waterways). To prevent such pollution from reaching levels damaging to the environment and human health, Congress enacted the 1972 Federal Clean Water Act, the first comprehensive national clean water legislation. According to this legislation, people performing certain activities cannot lawfully discharge wastewater or stormwater into waterways without authorization. Moreover, the authorized discharge must meet certain standards governing the amount and toxicity of the pollutants contained in the discharge. The authorization to discharge wastewater or stormwater into waterways is generally obtained through a permit, which contains the provisions under which the discharge is allowed to occur.

To comply with the new Federal requirements, the State Legislature established the State Pollutant Discharge Elimination System (SPDES) program in 1973. In addition to meeting the national standards, which relate to the pollution of surface water, the SPDES program includes standards that relate to the pollution of groundwater (aquifers). In 1975, the SPDES program was approved by the U.S. Environmental Protection Agency (EPA). In approving the program, the EPA delegated certain responsibilities under the Federal Clean Water Act to New York State, and designated the Department of Environmental Conservation (DEC) as the responsible State agency.

The SPDES program is administered through the issuance of wastewater and stormwater discharge permits. Most of these permits are tailored to a specific location or facility, and limit both the total amount of discharge and the amount of specific pollutants in the discharge. These individual permits often require the permit holder to analyze the composition of the discharge and submit the results of the analysis to DEC on a monthly basis. Individual permits are issued to municipal

sewage and wastewater treatment plants, factories and other industrial enterprises, residential septic systems, and other types of smaller facilities. According to DEC records, as of December 2001, a total of 9,220 individual permits had been issued by DEC, 8,404 of which were active and 816 of which were inactive. About 42 percent of the active permits governed discharges into surface water, while 58 percent governed discharges into groundwater.

Permits that are not tailored to a specific location or facility are termed general permits. General permits are issued for the four following types of activities: (1) stormwater discharges associated with industrial activity, (2) stormwater discharges associated with construction, (3) discharges from concentrated animal feeding operations, and (4) small sanitary discharges to groundwater. Each type of activity must comply with the provisions of that type of general permit, and the permit holder may be required to implement a pollution prevention plan that is tailored to the specific site. General permits were first issued in 1992, and DEC officials are considering the possibility of issuing additional types of general permits in the future. According to DEC records, as of January 2002, a total of 736 general permits had been issued.

As is shown in the following table, individual permits are classified by DEC as either Major (discharge to surface water that is relatively large in volume and/or has “toxicity potential”), Significant Minor (discharge that has the potential to contain toxins or requires routine inspection), Non-Significant Minor (discharge that poses minimal water quality risk), and Petroleum Remediation (oil and gasoline spills):

Classification	Number of Permits	Percentage of Total
Major	365	4
Significant Minor	1,279	15
Non-Significant Minor	6,707	80
Petroleum Remediation	53	1
Total Active Individual Permits	8,404	100

General permits are not classified in this manner, and are generally considered by DEC to pose a minimal risk to water quality. Holders of both individual and general permits are required to pay DEC an annual permit fee, which varies according to the amount and composition of the discharge allowed by the permit. During the year ended March 31, 2001, permit holders paid DEC a total of \$9.5 million in annual fees.

According to State law, permits governing discharges into surface water may be valid for up to five years, while permits governing discharges into groundwater may be valid for up to ten years.

The SPDES program is administered by DEC's Division of Water, Bureau of Water Permits. According to Division officials, program activities are conducted by approximately 42 full-time equivalent staff in the DEC Central Office and nine Regional Offices. Since many Division staff are responsible for activities relating to more than one program, only a portion of their time is allocated to the SPDES program. (DEC replied to our draft report that in addition to these resources, approximately 65 regional and central office staff of DEC's Division of Environmental Permits are responsible for portions of the SPDES program.)

Audit Scope, Objective and Methodology

We audited DEC's administration of the SPDES program for the period January 1, 2000 through June 6, 2002. The objective of our performance audit was to determine whether SPDES permits were issued in accordance with DEC requirements. To accomplish our objective, we interviewed officials in the DEC Central Office and all nine Regional Offices. We used computer assisted audit techniques to analyze and review the databases used by DEC in issuing and tracking SPDES permits. We also selected a random statistical sample of 137 permits and reviewed documentation relating to these permits. This documentation was maintained in files at DEC's Central Office and Regional Offices.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess the operations of DEC that are included within our audit scope. Further, these standards require that we understand DEC's internal control structures and compliance with those laws, rules and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe that our audit

provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach to select activities for audit. We therefore focus our audit efforts on activities we have identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, we use finite audit resources to identify where and how improvements can be made. We devote little audit effort to reviewing operations that may be relatively efficient or effective. As a result, we prepare our audit reports on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

Response of DEC Officials to Audit

A draft copy of this report was provided to DEC officials for their review and comment. Their comments were considered in preparing this final report, and are included as Appendix B. In addition, the State Comptroller's Notes to DEC's response are included as Appendix C.

DEC officials agreed with most of our findings and recommendations (9 of the 12); however, they indicated that four of the nine recommendations addressed practices that were already in place at DEC. They added that they are in the process of implementing recommendations that will expedite permit reviews, remind employees of the record retention policy, and convert from manual to automated files.

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.

PERMIT REVIEW AND RENEWAL

SPDES permits protect New York State's surface and ground waters against unhealthy contamination and environmental damage by regulating the discharge of wastewater and stormwater into surface and ground waters. Since the composition of wastewater and stormwater discharges may change over time, permits may have to be adjusted in response to these and other changes in the circumstances relating to the discharges. If permits are not adjusted, discharges that had been safe may become harmful. However, we found that many SPDES permits are not reviewed by DEC as frequently as required by law, and many high-risk permits are not reviewed as frequently as intended by DEC policy. As a result, some permits may not be adjusted to account for changes in conditions, and may no longer provide the level of protection intended by DEC.

SPDES permits generally last five years (surface water) or ten years (groundwater). A permit may be modified before the end of its term in response to changing conditions, such as changes in the amount of wastewater or stormwater discharged, changes in the composition of the discharge, changes in the body of water receiving the discharge, changes in water filtration technologies, or changes in water quality standards. Such modifications may be initiated by DEC or the permit holder. A permit also may be renewed at the end of its term. However, according to the State Environmental Conservation Law, a SPDES permit cannot be renewed unless the permit holder submits a new permit application. Further, permit holders are required by the New York Code of Rules and Regulations [Chapter VI, Part 621.13(a)] to submit their application for renewal at least 180 days prior to the date of expiration.

Despite these requirements, in the 1980s and 1990s, DEC informed more than 6,000 permit holders that the agency would not process renewal applications for their permits. Instead, DEC authorized these permit holders to continue discharging wastewater or stormwater in accordance with the terms of their existing permits for an indefinite period of time. We determined that many of these permit holders never even submitted a renewal application and 21 permits had expired when they were

indefinitely extended. DEC eventually reissued permits to more than 1,000 of the indefinitely extended permit holders, but as of June 6, 2002, a total of 3,901 permits remained indefinitely extended (587 of these permits governed discharges into surface water, while 3,314 governed discharges into groundwater).

DEC officials told us that only low-risk permits were extended indefinitely, and this was done because the agency lacked the staffing resources to process its large volume of renewal applications in a timely manner. For example, according to the officials, in the early 1980s, there was a backlog of more than 6,000 permit applications.

While all 3,901 of the indefinitely extended permits are classified as Non-Significant Minor by DEC, and are therefore believed by DEC to pose a minimal risk to water quality, six permits were classified more than 20 years ago. It is therefore possible that some of these discharges, or the environmental conditions surrounding some of the discharges, have changed significantly since the permits were last reviewed by DEC. In addition, while most of the discharges may continue to pose only a minimal risk to water quality, the risk of contamination is still present. We therefore recommend that DEC comply with the law, and require these permit holders to submit applications for permit renewal. To minimize delays in the review of these applications, we recommend that DEC develop a plan for expediting the renewal process for these permits.

For example, some of the indefinitely extended permits may relate to septic systems. Local governments regulate these systems and the permits governing them could be referred to the appropriate local government. It is also possible that some of the indefinitely extended permits relate to activities that are now covered by general permits. Since the renewal process for general permits is simpler than the renewal process for individual permits (e.g., DEC is not required to solicit public comments for general permits), converting these individual permits to general permits, where appropriate, would expedite their renewal. Similarly, if general permits were developed for other activities now covered by individual permits, the renewal of these permits would also be expedited. In response to our preliminary findings, DEC officials indicated that they have developed plans for re-introducing the indefinitely extended permits into the renewal process.

To make the best use of its limited staffing resources, in the early 1990s, DEC developed a new approach to permit review and renewal. In this approach (which is termed the Environmental Benefit Permit Strategy), all individual permits are prioritized on the basis of their potential for causing environmental harm. The permits with the greatest potential for harm are assigned the highest priority rankings. These permits are to be reviewed by DEC in a process known as a technical review, and are to be modified, if necessary, in response to changing conditions.

In the Environmental Benefit Permit Strategy, permits may be renewed without a substantive review of the renewal application (in this type of renewal, which is termed administrative renewal, the application form is reviewed only for accuracy and completeness). Accordingly, in the absence of complaints about the discharge governed by a permit or a request by a permit holder to modify the terms of a permit, the permit itself need be reviewed only if it is assigned a high priority ranking by DEC. Thus, permits can be reviewed on the basis of their environmental significance rather than in chronological order by renewal date. In August 1994, the Environmental Benefit Permit Strategy was included in an amendment to the State Environmental Conservation Law. The Environmental Benefit Permit Strategy was also submitted to the EPA for its review and approval. When we contacted the EPA in February 2002, to determine the status of this review, we were told that the EPA is still in the process of reviewing the Strategy.

We acknowledge the need for DEC to make the best use of limited staffing resources, and agree that permits with the greatest potential for environmental harm should receive the most attention from SPDES program staff. However, lower-risk permits also require some attention from SPDES program staff. Moreover, DEC is required by the State Environmental Conservation Law to review all permits, including ten-year permits governing discharges into groundwater, "at least once every five years... for conformance with new federal treatment technology, new state water quality classifications and water quality standards." Despite this requirement and despite the need for lower-risk permits to receive some monitoring from DEC, under the Environmental Benefit Permit Strategy, lower-risk permits may receive no substantive review. Rather, they may receive only a cursory review every five or ten years when they are administratively renewed.

We selected a random statistical sample of 137 of the 14,575 individual SPDES permits that had been issued as of December 4, 2001. We determined that 74 of these 137 permits were classified by DEC as Non-Significant, and that 61 of these 74 lower-risk permits (82 percent) had received little, if any, monitoring attention from DEC as the permits had neither been reviewed nor inspected by DEC for a period of at least five years. DEC officials told us that they do review all permits every five years, as required by the Environmental Conservation Law, for conformance with new Federal treatment technology, new State water quality classifications, and new water quality standards. However, the officials provided us with no documentation of these reviews. As a result, there is less assurance that such reviews are performed for all permits, or are performed in an adequate manner.

In response to our preliminary findings, DEC officials stated that, “the likelihood that not reviewing permits could have profound or large effects or environmental impact should not be overstated. Permits in the system have all received comprehensive review at one time or another. Many have received as many as three comprehensive reviews. If major changes have taken place at a facility since the last full review, the Department is notified of such by the permittee (who may otherwise be liable for as much as \$25,000 per day per violation plus criminal penalties).”

We agree that the existing permits, even those that have not been reviewed for more than 20 years, provide some degree of protection against dangerous contamination. We also acknowledge that DEC’s regulatory activities are limited to some extent by its staffing resources. However, if adjustments are not made to the approach used by DEC in reviewing and renewing SPDES permits, too many permits will receive too little attention for too long a time. We therefore recommend that DEC develop a plan for providing additional monitoring to lower-risk permits. In addition, to avoid possible litigation or a loss of Federal funding, we recommend that DEC be more active in seeking the EPA’s formal approval for the Environmental Benefit Permit Strategy. This approval has not been obtained, even though the Strategy has been in effect since 1994. (DEC replied to our draft report that the EPA has been an “enthusiastic supporter” of the EBPS concept and has held it out as a model to other states.

Auditor's Comment: When we met with EPA officials in February 2002, the EBPS was still being reviewed. We did not question whether EPA supported the Strategy.)

DEC implemented the Environmental Benefit Permit Strategy so that high-risk permits could receive adequate attention from SPDES program staff. It is DEC's goal that, each year, the permits in the top 10 percent of the priority rankings will receive a thorough technical review. On the basis of this review, the permits may be modified to provide better protection against contamination. However, we found that many of the permits in the top 10 percent of the priority rankings do not receive a technical review each year. For example, 212 permits were included in the top 10 percent of the rankings published in April 2001. However, as of May 2002 (more than one year later), a technical review had not been initiated for 138 of the 212 permits (65 percent).

DEC officials told us that all the permits in the top 10 percent of the priority rankings cannot be reviewed each year because staff resources are limited. We therefore conclude that it will not be implemented as designed. As a result, some of the facilities with the potential to discharge toxins into the environment may not be monitored as closely as they should be.

We also identified an inconsistency between the law and the regulations governing SPDES permits. According to the New York State Environmental Conservation Law [Article 17, Title 8, Section 17~0817(1)], permits governing discharges into groundwater may be valid for as long as ten years. However, according to DEC's regulations [6NYCRR {Chapter 10, Article 3} 755.1], "SPDES permits shall be issued with appropriate time limitations... and shall be issued for a specified term not to exceed five years." The law specifies the duration of SPDES permits, and, as such, there is no apparent need for the duration to be specified in DEC's regulations. However, the inconsistency in the regulations could be interpreted in a way that is contrary to the law. DEC officials told us they are taking steps to change the regulations so that they conform to the law.

Recommendations

1. Require the holders of the indefinitely extended permits to submit renewal applications if they wish to retain their permits, and develop a plan for expediting the review of the renewal applications.

(DEC officials replied to our draft report that they agree with the recommendation and have developed plans to review and to reissue these permits)

2. Develop a plan for providing additional monitoring to lower-risk permits.

(In response to our draft report, DEC officials agreed with the recommendation and will be exploring ways to accomplish the task.)

3. Document all reviews performed to determine whether permits conform with new Federal treatment technology, new State water quality classifications and water quality standards, and perform such reviews at least once every five years for each permit, as required by law.

(In response to our draft report, DEC officials agreed to re-examine this issue.)

4. Develop methods for increasing the number of high-risk permits that are reviewed annually, such as obtaining assistance from EPA staff in performing technical reviews or contracting for services.

(DEC officials agreed to consider alternatives to facilitate the technical reviews of the high-risk permits, but they indicated that it can not be easily contracted-out or delegated.

Auditor's Comment: We believe this is a step in the right direction, but DEC should state the specific alternatives being considered and a target date for their implementation or rejection.)

Recommendations (Cont'd)

5. Request the EPA to expedite its review of the Environmental Benefit Permit Strategy.

(DEC officials concur with this recommendation.)

6. Make the regulations governing SPDES permits consistent with the Environmental Conservation Law.

(DEC officials concur with this recommendation.)

RECORD KEEPING SYSTEMS

We found that improvements are needed in the record keeping systems used by DEC to support the SPDES program. Some of the records are not automated, which makes the information in these records difficult to access. Other records are automated, but are maintained on two separate information systems that are difficult to coordinate with one another. We also determined that critical records relating to some SPDES permits may not have been retained. As a result of these various weaknesses, DEC officials cannot be reasonably assured that all active SPDES permit holders are identified or are billed for their annual permit fee. We recommend that DEC explore the possibility of developing a single comprehensive automated system for obtaining and maintaining records relating to the SPDES program.

Automated Systems

Records relating to the SPDES program are maintained on two automated information systems: the Department Application Review Tracking (DART) System and the Fee System. The DART System is used to track applications for all SPDES permits (both individual and general permits), and to provide the data that is used to send out annual fee bills for general permits. The Fee System is used to track individual permits after they are issued, and to provide the data that is used to send out annual fee bills for individual permits. In tracking individual permits, the Fee System contains the discharge information reported by the permit holder. The billing data provided by both systems is sent out to a contractor, and the contractor prepares the actual bills.

Both the Dart System and the Fee System contain information about individual permits: the DART System tracks applications for these permits, while the Fee System contains information relevant to an individual permit after it has been issued. If a permit is recorded on the Fee System, it should also be recorded on the DART System. Similarly, if an application for an individual permit is recorded on the DART System and the permit has been issued, the permit should also be recorded on the Fee System. However, when we compared the information

on the two system as of December 5, 2001, we identified the following discrepancies:

- 3,027 of the 9,264 individual permits recorded on the Fee System were not recorded on the DART System (34 of these 3,027 permits were classified by DEC as either Major or Significant Minor), and
- 126 of the 7,722 individual permits recorded on the DART System were not recorded on the Fee System, even though all 126 permits had been issued.

If an individual permit is issued but is not recorded on the Fee System, it is less likely to be monitored as closely as it should be by DEC. For example, it will not be included in the priority rankings used by DEC to select permits for technical review, and the holder of the permit will not be billed for the annual permit fee. If an individual permit is not recorded on the DART System, its renewal may not be monitored closely, and as a result, the permit may be extended beyond its legal limit of five or ten years.

We identified a number of possible reasons for the discrepancies between the two systems. Most importantly, the way information is maintained by the two systems makes it difficult for DEC to ensure that all active permits are accounted for by the two systems. For example, even though the two systems collect similar data, the data cannot be merged and reconciled without the use specialized software, because the two system structures are not comparable. DEC officials said the different systems are not reconciled to each other but they attempted to reconcile the two systems five years ago. We were able to use Audit Command Language (ACL) one of several specialized software available to perform our comparison of information on the two systems. As a result of our use of ACL, our comparison was the first done on the two systems.

We also noted that the Regional Offices do not have access to the Fee System. Consequently, they must send information about individual permits to the Central Office, and the Central Office must enter the information on the Fee System. This process increases the potential that information may be lost or entered erroneously. Furthermore, we found that certain types of permits routinely are not entered on the DART System. These permits, which generally relate to septic systems in

Suffolk County, are issued by Suffolk County under a special agreement between the County and DEC.

In response to our preliminary findings, DEC officials told us that many of the 3,027 individual permits not recorded on the DART System were not recorded because the permits were indefinitely extended. The officials also noted that some individual permits may have different identification numbers on each system, and 46 of the 126 permits not recorded on the Fee System should not have been recorded on that system because they were general permits rather than individual permits. We did not correctly identify these 46 permits when we performed our comparison, because general permits are not always clearly distinguished from individual permits on the DART System.

To provide assurance that all active permits are accounted for, we recommend that DEC either use specialized software to reconcile the information on the two systems, or develop a single automated system for maintaining records relating to the SPDES program.

Holders of individual permits are billed their annual fee on the basis of information obtained from the Fee System. To determine whether this billing information is accurate, we tested the accuracy of 87 bills for the 2001 calendar year. These bills related to the active, billable permits in our random statistical sample of 137 of the 14,575 individual permits that had been issued as of December 4, 2001. To test the accuracy of the 87 bills, which totaled \$138,400, we compared the bills to information on the Fee System and information contained in the permit files maintained in the Regional Offices.

We found that 7 of the 87 bills were not accurate, because the information obtained from the Fee System was not accurate. Three of the bills were understated by a total of \$3,575, and four of the bills were overstated by a total of \$1,825. For example:

- A permit holder was incorrectly billed \$1,250 for a permit that was discontinued as of April 17, 1998.
- An industrial permit holder was billed only \$375, when information in the permit file indicated that the bill should have totaled \$3,750.

We recommend that these seven errors be corrected and procedures be developed to prevent such errors in the future.

We also recommend that DEC extend our sample and test the accuracy of other bills.

Manual Systems

A SPDES permit file contains all the permit applications, permits, results of DEC inspections, discharge analyses, and correspondence between the permit holder and DEC. According to DEC's record retention policy, this material must be retained for 20 years after a file closes. The material is retained so that it can be available to legal staff in the event of litigation, and to provide a basis for enforcement action when permits are violated. In addition, if certain actions are not documented, such as technical reviews or discharge analyses, there is no assurance that they were performed as required or performed at all.

To determine whether SPDES files are maintained as required by DEC's record retention policy, we selected a random statistical sample of 137 of the 14,575 individual permits that had been issued as of December 4, 2001, and reviewed the files for these permits. These files, which are maintained in a manual paper-based system, are kept at DEC's nine Regional Offices (basic information on all permits is also kept at DEC's Central Office).

We found that 43 of the 137 files did not contain information required by DEC's record retention policy, as follows:

- 29 of the files were missing required documentation, such as prior permits. Prior permits are useful in determining whether pollutants are being reduced, as was intended by the Federal Clean Water Act.
- 14 files could not be located at all. While all 14 permits had been discontinued, a new permit could be issued at the same location, or environmental damage could be detected near that location. In the absence of information relating to the prior permit, it might be more difficult than it would have been to establish discharge limits for a new permit or to determine the cause of the environmental damage.

Based on the results of our statistical sample and 43 errors, we estimate that the files for between 24 percent and 39 percent of

all 14,575 individual permits (between 3,447 and 5,701 permits) were missing information required by DEC's record retention policy. As a result of this missing documentation, DEC may be less effective in certain aspects of its administration and enforcement of SPDES program requirements.

We identified a number of reasons for the incomplete files. In our visits to the Regional Offices, we noted that many officials were not aware that SPDES permit documentation had to be maintained for 20 years. Moreover, DEC officials acknowledged in their response to our preliminary findings that "prior permits may or may not be pertinent [and] are frequently culled from our files." We also believe that records are more likely to be lost, misplaced or discarded in manual paper-based systems. For this and other reasons such as facilitating record retrieval and reducing the amount of space devoted to record storage, a number of State agencies are scanning records and maintaining them electronically. We recommend that DEC consider automating as many SPDES records as possible.

For example, many permit holders are required to submit monitoring results to DEC, usually on a monthly basis. Such Discharge Monitoring Reports (DMRs) summarize the results of the discharge analyses performed by the permit holder and verify compliance with the terms of the permit. About 1,800 municipal and industrial facilities submit 4,000 to 5,000 paper pages of DMR reports each month. Although the typical report is two to three pages long, reports for some facilities run up to 25 pages. DEC receives the DMRs from the facilities in hard copy format and then sends the reports to a contractor, who converts the hard copy to electronic format. According to staff in the Regional Offices, the time needed to convert the hard copy to electronic format creates a delay, as the staff must wait for the conversion to be completed before they can review the data and identify violations for follow-up action. In addition, the monthly reports add considerably to the space taken up by the permit files.

If permit holders submitted the DMRs in an electronic format, they would not have to be converted and the information could be reviewed as soon as it was submitted. In response to our preliminary findings, DEC officials stated that the delay caused by the conversion process is not significant, as the process "typically takes less than 17 days from date of receipt in the central office." They also note that DEC tried a pilot program in electronic DMR submission in 1998 that demonstrated some

important limitations in the ability to collect DMRs electronically because some of the permit holders had difficulty with the technological requirements placed on them. As a result, the pilot program was cancelled. Nonetheless, the officials stated that DEC “remains very interested in electronic submission of DMRs. While the previous pilot... did not result in full-scale implementation, the Department subsequently completed a pilot with EPA for completing and filing DMRs via the web. This effort continues to show promise as about 60 percent of our regulated facilities have expressed some level of interest in this straightforward means of electronic filing. Finite resource are the limiting factor in these efforts.”

Records of DEC inspections could also be automated. The inspections could be documented electronically at the time of inspection, and maintained in electronic format. No paper would have to be filed and stored. If staff spends less time on filing paperwork, the time saved can be used to complete other tasks, such as technical reviews.

We conclude that the use of computer technology can help DEC better manage SPDES program activities. In addition, state-of-the-art technologies may enable the development of a single comprehensive record keeping system that can be accessed by all the Regional Offices. We encourage DEC to pursue the development of such a system for the SPDES program.

In our prior audits, we also identified the need for DEC to automate more of its processes. For example, in Report 98-S-67 (issued in April 2000), which addressed DEC’s controls over revenue, we noted that DEC’s revenue collection systems were outdated, paper-driven and labor-intensive, and could be significantly improved through the implementation of new technologies. In this audit, we once again urge DEC officials to realize the benefits available from automation.

Recommendations

7. Either periodically reconcile the information on the DART System and Fee System to ensure that it is accurate and complete, or develop a single automated system for maintaining records relating to the SPDES program.

(DEC officials concur with this recommendation.)

8. Review the DART System to make sure the proper coding is used to distinguish individual permits from general permits.

(In response to the draft report, DEC officials stated that they were unable to address the recommendation because there was no reference to the issue in the draft report.

Auditor's Comment: We disagree because the issue is in the draft report on page 15 in the second paragraph. The report states that we could not correctly identify 46 permits because general permits are not always clearly distinguished from individual permits on the DART system. In addition, it was DEC that incorrectly identified these as individual permits and only after we questioned them that DEC officials informed us that they were general permits. We concluded that their error was caused by incorrectly coding such permits in their system.)

9. Establish a process for providing assurance that all issued permits are accounted for by the DART System and the Fee System.

(The recommendation has been corrected to read "and" instead of "and/or." DEC officials agree with this recommendation.)

10. Correct the billing errors identified by our audit and develop procedures for preventing such errors in the future. Test the accuracy of other bills and take corrective action as needed.

Recommendations (Cont'd)

(DEC officials responded to the draft report that “the alleged billing errors do not exist.”)

Auditor’s Comment: We disagree with DEC’s response. We have copies of documents obtained from DEC’s files to support our findings and conclusions regarding the permits reviewed. However, we were not provided any documents to support DEC’s statements in response to our draft report.)

11. Communicate the record retention policy to the Regional Offices.

(DEC officials replied that they concur with the recommendation.)

12. Explore state-of-the-art technologies to determine whether: all existing paper records in the permit files can be converted to electronic format; new permit file records can be obtained and maintained electronically; and all records relating to the SPDES program can be maintained on a single comprehensive system that is accessible from every Regional Office.

(DEC officials agreed with the recommendation and have taken steps to move in this direction by utilizing DEC’s Facility Information System.)

MAJOR CONTRIBUTORS TO THIS REPORT

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ERIN M. CROTTY
COMMISSIONER

JAN 15 2003

Ms. Carmen Maldonado, Audit Director
Office of the State Comptroller
Division of Management Audit & State Financial Services
123 William Street, 21st Floor
New York, New York 10038

Dear Ms. Maldonado:

Enclosed is the New York State Department of Environmental Conservation's response to the Office of the State Comptroller's draft audit report 2001-S-18 entitled Clean Water Permit Process.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Erin M. Crotty", written over a horizontal line.

Erin M. Crotty

Enclosure

**Department of Environmental Conservation
Response to Comptroller's Draft Audit Report 2001-S-18
Clean Water Permit Process**

We have reviewed the Draft Audit Report (the Report) in the above matter and here comment on its findings and recommendations.

The INTRODUCTION/ BACKGROUND section of the Report states that the SPDES program is administered by the Department's Division of Water, Bureau of Water Permits and that program activities are conducted by approximately 42 full-time equivalent staff in the Department's central and regional offices. In addition to these resources, approximately 65 regional and central office staff of the Department's Division of Environmental Permits are responsible for portions of the SPDES program, including the review and screening of applications, preparation and distribution of notices of complete or incomplete application, undertaking and documenting State Environmental Quality Review (SEQR) determinations, collecting and responding to public comments, and issuance of final permits. SPDES permit renewals are administered in the central office and require two full years of effort to accomplish the permit renewals of the full complement of facilities across the State.

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Under the PERMIT REVIEW & RENEWAL section, the Report states:

Despite ... requirements, in the 1980s and 1990s, DEC informed more than 6,000 permit holders that the agency would not process renewal applications for their permits. Instead, DEC authorized these permit holders to continue discharging wastewater or stormwater in accordance with the terms of their existing permits for an indefinite period of time. We determined that many of these permit holders never even submitted a renewal application and 21 permits had expired when they were indefinitely extended.

These "indefinite extensions" took place prior to 1995, during a previous administration. When Governor Pataki's administration took office and discovered this situation, the practice was brought to a halt. As the Report correctly point out, more than 1,000 of the "indefinitely extended" permits have now been reissued and the process of reintroducing the remaining "extended" permits into the renewal process is continuing.

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* See State Comptroller's Notes, Appendix C

The same section of the Report discusses the Department's Environmental Benefit Permit Strategy (EBPS). Under the statutorily authorized EBPS, the Department prioritizes permits by the significance of their impact on the environment. In this way, higher priority permits appropriately receive more staff attention and in-depth review than permits that pose minimal public health or environmental risk.

In 1994, as the Report points out, EBPS was incorporated into the Environmental Conservation Law. Department officials met several times with staff of the U.S. Environmental Protection Agency (EPA) to discuss EBPS. The EPA has become an enthusiastic supporter of the EBPS concept and has held it out as a model to other States. The Report's statement that EPA's approval of EBPS "has not been obtained, even though the Strategy has been in effect since 1994" grossly distorts the situation. The fact is that EPA has stated in writing that:

The U.S. Environmental Protection Agency continues to support the EBPS.We fully support the effort to targeting resources to real environmental needs ... (EPA Region II Water Management Director Richard L. Caspe, 1994)

The same section of the Comptroller's Report also correctly points out that Section 17-0817 (3) of the Environmental Conservation Law requires the Department to "review at least once every five years all existing permits for conformance with new federal treatment technology, new state water quality classifications and water quality standards." However, the Report then incorrectly states that "despite this requirement lower-risk permits receive no substantive review. Rather, they may receive only a cursory review every five or ten years when they are administratively renewed," the allegation being that (whether "substantive" or "cursory") the required review does not take place. In fact, the required review takes place more frequently than the statute requires. When "new federal treatment technology, new state water quality classifications and water quality standards" are established, Department staff know immediately which and what types of permit holders will be impacted and adjust appropriate reviews accordingly. Because water quality classifications and standards and federal treatment technology do not change very frequently, incorporating these requirements into the five year review of permits is not a difficult item to accomplish.

The Report points out that the Department has set a goal for itself of reviewing those permits comprising the top 10% of the priority rankings each year. The Report states that, during the period April 2001 to May 2002, the Department did

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* See State Comptroller's Notes, Appendix C

not reach that goal. The “goal” of 10% is an internal performance measure which the Department had set for itself. The fact that the Department did not reach the goal in a year when many of the SPDES staff were engaged in responding to the tragic events of September 11, 2001, is not troubling. The important point is that the State’s water quality was not negatively impacted. The EBPS, as mandated in the Environmental Conservation Law, requires “the complete evaluation of all elements of the permit associated with the ranking system’s priority ranking factors, ... substantive issues identified ... during the public comment period, ... the verification of the accuracy and appropriateness of all other information contained in the permit... (and) compliance with current effluent standards and limitations and water quality standards.” The Department, during the time periods encompassed by the audit, was in compliance with the law and its requirements.

The AUTOMATED SYSTEMS portion of the Report tries to make the point that there are discrepancies between the information appearing on the Department’s Fee System and the Department Application Review Tracking (DART) System. The Report recommends that the two systems be periodically reconciled or that the two systems be replaced by a single automated system.

We agree with this recommendation. The Department recognizes the need to integrate information stored in various databases and computer systems on a facility basis. Steps have already been taken to move in this direction utilizing the Facility Information System (FIS). The FIS is shared by several computer systems maintained by the Department and is envisioned to be utilized by all Department computer systems in the future. Efforts are underway to place all SPDES related facilities into FIS. However, because this integration of information requires much computer development and additional resources that the Department does not have available all at one time, such efforts can not be completed overnight.

The Report states that the Comptroller’s auditors were able to compare information from the two systems using ACL (Audit Command Language) software and that the Department “was not aware of the ACL software ...” In fact, the Department is familiar with ACL software, possesses ACL software and has been using it for a number of years. ACL is very expensive and the Department has a very limited number of copies of the software under its license agreement. It is not a product that would be routinely used in the application that the Report here suggests.

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* See State Comptroller's Notes, Appendix C

In addition, what the Report describes as discrepancies between the two systems tend to disappear under close examination. It must be remembered that the two systems were developed separately and for separate purposes. The Report states that 3,027 permits recorded on the Fee System were not recorded on the DART System. Most of these are the indefinitely extended permits discussed above and will come on to the system as the Department continues the renewal and reissuance process. Similarly, the Report cites a total of 126 permits that were found in the DART system but not in the Fee System. However, the Report then appears to admit that many of these permits should not be expected to be found in the Fee System in the first place.

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More importantly, the Report goes on to state that 7 of the 87 billings that the auditors examined were inaccurate because the information in the Fee System was inaccurate. Of the 7 billings cited in the Report:

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- a. One facility was billed \$375.00. The Comptroller's auditors claim that the billing should have been \$3,750.00. Examination of the Department's records indicates that the facility had successfully challenged the \$3,750.00 bill. The resulting \$375.00 billing was, in fact, correct.
- b. Two facilities were billed \$0.00. The Comptroller's auditors claimed that the billings should have been \$100.00. Examination of the Department's records indicates that the facilities were correctly billed in the amount of \$0.00 because the facilities are not operating and the entities that held the permit no longer exist.
- c. One facility was billed \$1,250.00. The auditors stated that this was an overbilling because the permit folder showed this permit to have been discontinued since April 17, 1998. In fact, examination of the Department's records revealed nothing to indicate that this permit was discontinued and nothing was found in any of the permit files to indicate otherwise.
- d. The auditors found three instances where facilities were billed even though the permits had been discontinued. Examination of the Department's records indicates that, in two of these instances, the billing information had been taken from the Fee System and the bills had been prepared and submitted before the discontinuance was filed. Only in the third instance was the Department's information found to be incorrect.

As a result, the Report's statement that "7 of the 87 bills were not accurate ..." is,

* See State Comptroller's Notes, Appendix C

itself, not accurate. During the course of the audit, the Comptroller's auditors presented us with this "7 out of 87" finding as part of their preliminary (proposed) findings. The purpose of preliminary findings is to afford us the opportunity to bring additional information to the attention of the auditors and explain to them where their preliminary findings may be in error. We examined each of the seven alleged inaccurate billings and the related permit files and shared the above results with the auditors at a meeting specifically arranged for this purpose.

At the audit's closing conference with the Comptroller's staff, we found that this mistaken "7 out of 87" finding was still a part of the Comptroller's proposed findings. Over three months had elapsed since this issue was last discussed and the Comptroller apparently had not documented (or had not preserved the documentation of) our previous meeting or the information and evidence which had been provided. (In addition, the Comptroller's auditor who had worked this issue did not attend the closing conference.) At the closing conference, we again pointed out that this finding was in error and that we had already dealt with this matter. Now, we find this inaccuracy appearing again in the Draft Audit Report and being offered as evidence of problems in our database systems. The evidence is not there and the alleged problem does not exist.

The MANUAL SYSTEMS portion of the Report recommends that the Department "consider automating as many SPDES records as possible." The Report states that "a number of State agencies are scanning records and maintaining them electronically." The Department agrees that automation can be extremely beneficial and is continuously undertaking initiatives to introduce new, or upgrade existing, systems. In the 1990's, the Department was among the first to begin using scanning technologies with its Electronic Document Management System (EDMS). EDMS has many advantages, but is also very expensive to put in place and very expensive to support and maintain. The Department has not yet been able to expand its use into all programs, including SPDES.

Nevertheless, the Department has repeatedly taken the lead in automating systems wherever possible and the SPDES program is no exception. In the late 1990's, the Department began a pilot program involving the electronic submission of Discharge Monitoring Reports (DMRs). EPA and other States watched the development of this system with interest. The pilot worked well but demonstrated some important limitations in the ability to collect DMRs electronically. An important limitation was that many facilities had no personal computers (PC's) or terminals with which to electronically submit their DMRs. (As the Comptroller's

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* See State Comptroller's Notes, Appendix C

Report puts it: “some of the permit holders had difficulty with the technological requirements placed on them.”) The report states that the pilot project “was not as effective as intended ...” This is an inaccurate statement. The pilot was very effective and accomplished its intent, which was to determine whether or not the electronic submission of DMRs was feasible at that time.

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In the meantime, the Department remains very interested in electronic submission of DMRs. While the previous pilot did not result in full scale implementation, the Department subsequently completed a pilot with EPA for completing and filing DMRs via the web. This effort continues to show promise as about 60 percent of regulated facilities have expressed some level of interest in this straightforward means of electronic filing.

The Department agrees with nine of the twelve recommendations contained in the Report. Of the nine with which we agree, four of these simply recommend that the Department continue to do that which it is already doing. In response to each specific recommendation, we offer the following:

Recommendation 1:

Require the holders of the indefinitely extended permits to submit renewal applications if they wish to retain their permits, and develop a plan for expediting the review of the renewal applications.

Department Response:

We agree with this recommendation. Under the State’s current administration, this practice of extending permits was discontinued. As mentioned above and in the Draft Audit Report, we have developed plans to renew and reissue these permits.

Recommendation 2:

Develop a plan for providing additional monitoring to lower-risk permits.

Department Response:

We agree with this recommendation and will be exploring ways in which this might be accomplished.

* See State Comptroller's Notes, Appendix C

Recommendation 3:

Document all reviews performed to determine whether permits conform with new Federal treatment technology, new State water quality classifications and water quality standards, and perform such reviews at least once every five years for each permit, as required by law.

Department Response:

We agree with this recommendation. As discussed above, we believe that such reviews are already documented, but we will re-examine this issue.

Recommendation 4:

Develop methods for increasing the number of high-risk permits that are reviewed annually, such as obtaining assistance from EPA staff in performing technical reviews or contracting for services.

Department Response:

The Department is already considering alternatives to facilitate technical reviews. However, this is not a process that can easily be contracted out or delegated.

Recommendation 5:

Request the EPA to expedite its review of the Environmental Benefit Permit Strategy.

Department Response:

We agree with this recommendation. For years, we have been trying to get EPA to complete its review and we will continue to encourage them to do so.

Recommendation 6:

Make the regulations governing SPDES permits consistent with the Environmental Conservation Law.

Department Response:

We agree with this recommendation and are in the process of making the required changes. During the course of this audit, we discussed with the auditors the fact that the time period for groundwater permits had been changed in the Environmental Conservation Law since the time that the regulations had been issued. We explained that we were in the process of changing the regulation to once again make it

consistent with the statute.

Recommendation 7:

Either periodically reconcile the information on the DART System and Fee System to ensure that it is accurate and complete, or develop a single automated system for maintaining records relating to the SPDES program.

Department Response:

We agree with this recommendation.

Recommendation 8:

Review the DART System to make sure the proper coding is used to distinguish individual permits from general permits.

Department Response:

We see no reference to this in the body of this report and are unable to respond.

Recommendation 9:

Establish a process for providing assurance that all issued permits are accounted for by the DART System and/or the Fee System.

Department Response:

All issued permits are accounted for by the DART System and/or the Fee System. The fact that no permit can be issued or renewed without being on one or both systems provides assurance of this.

Recommendation 10:

Correct the billing errors identified by our audit and develop procedures for preventing such errors in the future. Test the accuracy of other bills and take corrective action as needed.

Department Response:

As discussed above, the alleged billing errors do not exist.

Recommendation 11:

Communicate the record retention policy to the Regional Offices.

Department Response:

We agree with this recommendation and will be reminding the regional offices of the record retention policy.

Recommendation 12:

Explore state-of-the-art technologies to determine whether: all existing paper records in the permit files can be converted to electronic format, new permit file records can be obtained and maintained electronically, and all records relating to the SPDES program can be maintained on a single comprehensive system that is accessible from every Regional Office.

Department Response:

We agree with this recommendation. The Department recognizes the need to integrate information stored in various databases and computer systems on a facility basis. Steps have already been taken to move in this direction utilizing the Facility Information System (FIS). The FIS is shared by several computer systems maintained by the Department and is envisioned to be utilized by all Department computer systems in the future. Efforts are underway to place all SPDES related facilities into FIS. This integration of information requires additional computer development.

State Comptroller's Notes

1. This report has been revised to reflect additional information provided in the agency's response.
2. Our sample of permits show that the letters continuing permits for an "indefinite period" were also issued in calendar years 1996 and 1997.
3. The report does not "grossly distort" the situation regarding EPA's approval of the Environmental Benefit Permit Strategy (EBPS). We state that EBPS was started in 1994 and has not been approved by the EPA as of February 2002. EPA officials told us that they were still evaluating the Strategy.
4. DEC's comments do not address the permit reviews, but just state that when new requirements and classifications are issued they know who is affected and adjust the reviews for those permits. They do not address the fact that the insignificant minor permits are not reviewed every five years in the substantive manner required by law.

As our report points out, DEC officials provide no documentation that many of the low-risk periods in our sample had been reviewed or inspected for at least five years.

5. The use of ACL as suggested by the report is not "very expensive." We base our conclusion on our cost for a copy of ACL of about \$2,000 and the fact that each copy can be used for different audits by transferring the key to the audit team using ACL. In addition, we have used employees trained in ACL to process data for more than one audit. Thus, the cost is spread among several users. In addition, if ACL is not available to DEC due to the cost, we suggest that DEC explore the use of ACCESS. We see no reason why ACL could not be used routinely to help reconcile data discrepancies between the two systems.
6. The report does not admit that many of the permits should not have been found on the Fee System as indicated in DEC's general comments in response to the draft report. The audit states that 46 of the permits that were in DEC's system as individual permits should have been labeled as general permits.
7. Based on documents obtained from DEC files, we continue to disagree with DEC's position that there were no billing errors. Our comments are in the same order as DEC's response to the draft report.
 - The amount of discharge by the permittee was 290,000 gallons, for which the regulations require a fee of \$3,750.

- DEC's claim that two permits no longer exist is not supported by the documents on file. We received no documents to show these permits no longer exist.
- A letter dated April 17, 1998, from DEC's files states that the "existing permit is hereby discontinued." We have not received any supporting documentation, and we question the \$1,250 billed on March 14, 2002.
- We conclude that the two permits that were discontinued and the invoices that were sent after the date of the discontinuance constitute an overbilling. For the final item, DEC accepts that its information is incorrect.

We previously shared this information with DEC officials and have not received any additional documentation to support their statements.

8. The fact that the auditor who worked on this section did not attend the closing conference is irrelevant. Our auditors are reassigned at various stages of an audit and do not have to attend the closing conference. We did discuss these issues with the auditor and reviewed the documents.