
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**OFFICE OF GENERAL
SERVICES**

**COMPLIANCE WITH
EXECUTIVE ORDER 134 -
ENVIRONMENTAL IMPACT
OF CLEANING FACILITIES**

Report 2008-S-12

AUDIT OBJECTIVES

Our objectives were to determine whether the Office of General Services (OGS) has taken appropriate actions to facilitate State agencies' and public authorities' compliance with Executive Order 134 (Order) and to determine whether OGS is in compliance with Order requirements, including purchasing and using green cleaning products.

AUDIT RESULTS – SUMMARY

Executive Order 134 (Order) was issued January 5, 2005 to reduce the environmental impact of cleaning State facilities. The Order requires all State agencies and certain public authorities to procure and use cleaning products having properties that minimize the potential impact on human health and the environment. It also requires OGS to provide guidance and consultation to affected agencies relating to Order compliance.

We found that OGS has taken measures to provide guidance to affected agencies on implementation of the Order. However, the guidance provided was not always timely or clear. Additionally, OGS overlooked some State agencies and authorities when providing such guidance; and agencies were not always told that information relating to the Order was available on OGS' website.

Further, OGS has not encouraged landlords and building managers of facilities that have leases with State agencies to implement the Order. As a result, we found that several leased facilities are not being cleaned in accordance with the Order.

OGS, as a State agency, was required to conduct an assessment of its buildings, as well as procure and use environmentally preferred products. We found that the assessment was conducted and OGS procured

environmentally preferred products, as required. However, we found the assessment did not include OGS' utility plants; and staff at these plants did not always request environmentally preferred cleaning supplies from OGS' central store rooms. As a result, two of its three utility plants were using non-environmentally preferred products when alternative environmentally preferred products were available.

Our audit report contains eight recommendations to improve OGS' compliance with the Order. OGS officials generally agreed with our recommendations and indicated actions being taken to implement them.

This report, dated September 30, 2008, is available on our website at:

<http://www.osc.state.ny.us>.

Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

Executive Order 134 (Order) was issued on January 5, 2005 to reduce the environmental impact of cleaning State facilities. The Order requires all State agencies and certain public authorities to procure and use cleaning products having properties that minimize the potential impact on human health and the environment. Such products shall conform to guidance for environmentally preferred cleaning products that may be provided pursuant to the Order, or shall be products that have been identified by OGS as compliant with the Order and made available through a central purchasing contract.

The Order also required each agency to conduct a formal assessment and prepare a report of its programs to promote environmentally safe cleaning by January 4, 2006 and to retain and make this assessment available to employees and the general public.

The Order further requires agencies to update their assessments biennially.

In addition, the Order directed OGS to provide guidance and consultation to other State agencies to:

- procure products and use practices that reduce or minimize the risk of harmful effects on employees, custodial workers, visitors, and other building occupants, as well as the environment;
- promote adoption of practices endorsed by the Order;
- recognize agencies that adopt and implement environmentally-beneficial facility and workplace management policies and practices;
- encourage contractors supplying goods and services to select and procure such products; and
- encourage lessors and building managers to select and procure green cleaning products.

OGS oversees 41 State-owned buildings with 17.7 million square feet of space and more than 600 State leases totaling 14.1 million square feet of space. It also operates three utility plants in the Albany area. OGS' Real Property Management and Development (RPMD) unit is responsible for ensuring that State-owned and leased buildings are in compliance with applicable laws and lease requirements. It oversees all the Statewide building management activities for OGS, and

services the real estate needs for other State agencies.

In May 2005, OGS created the Environmental Services Unit (ESU) to implement OGS' responsibilities related to both the Order and Chapter 584 of the Laws of 2005 (Chapter 584), also called the Clean and Healthy Schools law. Chapter 584 was enacted shortly after the Order was issued and requires all New York State public and nonpublic elementary and secondary schools to use environmentally sensitive cleaning and maintenance practices.

AUDIT FINDINGS AND RECOMMENDATIONS

Guidance to Affected Agencies

OGS is required to provide guidance and consultation to State agencies and public authorities relating to the Order. This guidance should include identifying environmentally preferred products that agencies should procure and identifying agencies that implement environmentally beneficial cleaning and maintenance practices (i.e., best practices). We found that OGS has taken measures to provide guidance to affected agencies on implementation of the Order. However, the guidance provided was not always timely or clear.

For example, since Chapter 584 is broader and affects more schools than the Order affects agencies, OGS chose to focus its attention on developing Chapter 584 guidelines for the schools. These guidelines were issued in August 2006. However, we found that OGS never issued specific guidelines for the agencies relating to the Order. OGS did post a document to its website five months before the Chapter 584 guidelines were issued, indicating that agencies may find the Chapter 584 guidelines

helpful when they are released. However, agencies were not specifically directed to use the school guidelines until we started our audit in February 2008. Further, once agencies were directed to the school guidelines, OGS did not provide them with any clarifying information to differentiate the requirements for schools and agencies. OGS officials agree that the school guidelines are broader than the specific requirements of the Order, but believe all agencies should adopt them to further their environmental efforts.

We found that OGS was proactive when it created an assessment reporting format agencies could use for the initial assessment report that was due on January 4, 2006, even though OGS was not required to do so. OGS officials followed this up with an updated reporting format for the biennial assessment reports and requested that agencies submit the reports to them. We acknowledge OGS for this effort and agree that a uniform reporting format is good to have so that information is received in a similar manner. Once it receives these reports, OGS could then recognize agencies that have adopted and implemented environmentally beneficial facility and workplace management policies and practices, as required by the Order. The reports could also assist OGS in identifying agencies that have similar issues but have developed different solutions, identifying best practices that can be shared with other agencies. While the Order only requires agencies to make the biennial report available to employees and the general public, we believe they should comply with OGS' request to share their reports to promote transparency and open government.

Identifying Environmentally Preferred Products

The Order directs OGS to guide agencies in the selection and procurement of

environmentally safe cleaning products. To do this, OGS was to identify environmentally preferred products. To establish a uniform criteria for environmentally preferred cleaning products, OGS required most products to be certified by either Green Seal (through its GS-37 certification) or by Environmental Choice. Green Seal and Environmental Choice are recognized authorities in the field of environmentally safe cleaning products and are independent organizations that certify products as environmentally responsible. OGS also includes products that receive certification from other independent organizations.

We found that, while OGS started to identify and compile a list of environmentally preferred cleaning products in February 2006, agencies were not informed of the list until February 2008 when OGS notified agencies it was on their website. Further, OGS provided no direction alerting agencies to the availability of other information on the website relating to Order compliance.

OGS' list of the environmentally preferred cleaning products OGS has identified is broken down into five categories: General Cleaning Products, Floor Finish Products, Floor Stripper Products, Hand Soaps, and Vacuums. OGS uses these five categories to cover those products that are used most frequently. OGS generally considers that products falling outside these five categories are not covered under the Order (e.g., metal polishes, rust or stain removers, and graffiti removers). OGS also notes that disinfecting products may still be used in bathrooms to disinfect toilets, since there are no environmentally preferred disinfectants.

In addition, the Order requires OGS to make products on the list available through a central purchasing contract. However, OGS officials indicated that there was not sufficient demand

for them to do this. Instead, they list preferred sources next to some products on the website.

Communication with Affected Agencies

In July 2005, OGS reached out to 66 agencies (7 of which were public authorities), requesting contact information for future correspondence concerning implementation of the Order. By December 2005, 35 agencies responded. OGS then sent another request for contact information to the 31 agencies that had not yet responded. By the start of our audit in 2008, 60 of the 66 agencies had responded with contact information and received a copy of the biennial reporting format that OGS developed.

At the start of our audit, we questioned the completeness of OGS' list of State agencies affected by the Order and, in particular, the lack of public authority representation. Based on these discussions, OGS officials added another 10 organizations to the mailing list. While we credit OGS for making efforts to contact agencies, we believe that more than 76 agencies and authorities are potentially covered by the Order. We recommend that OGS seek clarification from the Governor's Office to develop a more comprehensive listing of affected State agencies and authorities covered by the Order.

OGS officials informed us that they continue to respond to inquiries from agencies and are providing direction and clarifying information as needed. In addition, OGS staff is in the process of developing web-based training for agencies relating to the Order. In September 2007, OGS also published a newsletter entitled "Delivering the Green," which it distributed to its own staff, as well as other State agencies. As of May 2008, there has been only one issue of this publication. Although it did not mention the Order, this

newsletter could be a good medium for communicating information on the Order and environmentally friendly cleaning.

Recommendations

1. Provide clarification to affected agencies, either written or on the OGS website, of the differences between the Chapter 584 guidelines and the requirements of the Order.

(OGS officials indicated that they have amended their webpage to provide additional clarification.)

2. Establish procedures for recognizing agencies that adopt and implement environmentally beneficial facility and workplace management policies and practices.

(OGS officials responded that they are developing a process to issue an annual award recognizing agency success in implementing green cleaning.)

3. Seek clarification from the Governor's Office to develop a comprehensive listing of affected State agencies and authorities covered under the Order. Provide written correspondence to these entities detailing the information available on the OGS' website and how to locate the information on the website.

(OGS officials indicated that they will reach out to all state agencies and public authorities with information about the Order and the availability of guidance.)

4. Utilize additional mediums to provide timely guidance to affected State agencies and authorities (e.g., newsletter, training).

Encouragement of State Lessors

The Order was written in a manner that took into consideration the ongoing daily operations of State agencies and incorporated reasonableness when directing changes to these operations. For example, the Order took into consideration the requirements of pre-existing contracts and leases and directed State agencies to encourage contractors, lessors, and building managers to purchase and use environmentally preferred cleaning products.

OGS' leasing department, a unit within the RPMD, locates office space for State agencies. We found that in April 2006, the leasing department began incorporating the following clause into the boilerplate language for all new leases: "Landlord acknowledges an understanding of the State policy, EO-134, respecting the utilization of environmentally appropriate cleaning products and pledges to cooperate with the State in the implementation of this policy." This additional language should help ensure landlord compliance for future leases.

At the same time, we found that OGS took no action to encourage existing landlords to implement the environmentally sensitive cleaning practices recommended by the Order. Officials told us the initial correspondence sent to 66 agencies served as indirect encouragement for landlords and building managers to implement the new practices. Officials stressed that the State agency occupying the space is primarily responsible for monitoring lease compliance through the agency's building manager and for initiating the resolution of any issues or discrepancies with the landlords. If a satisfactory agreement cannot be reached, then OGS becomes involved in resolving the differences. Officials further noted that, since they have received no complaints from

tenants, they saw no need to contact landlords directly about compliance with the Order.

Officials further noted that, in their opinion, even if there were complaints from agencies, there was little OGS could have done, because it could not change requirements in pre-existing leases and impose new requirements on a landlord. However, we found that all leases, including those signed prior to the Order, contain language specifically addressing compliance with laws, rules, regulations, and orders. This section of the lease entitled "Compliance with Laws" states: "The Landlord shall, at its own cost and expense, ensure that the Building and Premises comply with all laws, rules, orders, ordinances and regulations at any time issued or in force..." We believe this clause affords OGS ample opportunity to at least encourage existing landlords to clean with environmentally preferred products, which was the intent of the Order.

As the State's leasing agent, OGS is in the best position to encourage landlords and building managers directly to implement changes. As such, more direct encouragement is necessary to achieve full satisfaction of OGS's requirements under the Order. While OGS has yet to send correspondence to existing landlords or tenants regarding the Order, officials have prepared a draft letter highlighting the environmentally preferred cleaning provisions in new leases, which could be distributed broadly to increase awareness.

We also visited six facilities that had leases with State agencies to observe what products were being used to clean the facilities, and interviewed agency staff and cleaning staff, when available. Five of the leases existed prior to the Order's issuance, and one lease was entered into subsequent to the Order. We found that three of the leased facilities, all

with leases that existed prior to the Order, were being cleaned in compliance with the Order. However, use of the products was driven by the landlord's cleaning contractor's own efforts to use environmentally preferred products and not from correspondence or encouragement from OGS or the occupying agency's building manager.

We found varying degrees of compliance at the other three leased facilities, including the facility affected by the new lease provision addressing compliance with the Order. We checked 44 cleaning products that should have been environmentally preferred and in use at these facilities. We found 27 were not environmentally preferred products. In these cases, the non-preferred products could have been substituted with environmentally preferred products, since the cleaning was neither specialized nor required disinfecting. Examples of non-compliant products found on-site included ammonia-based glass cleaners and bleach cleansers not used as a disinfectant.

Recommendation

5. Communicate with landlords and building managers at leased facilities to encourage compliance with the Order and lease provisions.

(OGS officials reported that they have written to agency personnel assigned to monitor each lease and instructed them regarding their role in encouraging landlords to implement green cleaning practices.)

Compliance with the Order

In addition to offering guidance to other State agencies, OGS is an individual agency required to adhere to the Order requirements, as well. For example, the Order requires

State agencies to assign an individual who will be responsible for:

- assessing current facility management practices and use of cleaning products;
- evaluating whether these products conform to the Order;
- identifying and procuring conforming cleaning products; and
- documenting the reasons for selecting products that do not conform to the Order and including these reasons in the report required by the Order.

The Order also provided State agencies six months from the date of the Order to transition to conforming products. This enabled OGS to conform in a manner that avoided waste of existing inventories, accommodated establishment of supply chains for new products, enabled the training of personnel in appropriate cleaning practices, and allowed the phaseout of products and practices that did not conform to the Order.

We found that OGS was in compliance with most of these requirements. OGS assigned an individual to conduct the initial assessment, which was issued by the January 2006 deadline and updated by January 2008. OGS also procured environmentally preferred products. However, we found OGS' utility plants were not included in the assessment and, as a result, two of the three facilities were not using environmentally preferred products.

Procurement of Environmentally Preferred Products

The Order requires OGS to procure and use specific cleaning products having properties that minimize the potential impact on human health and the environment, consistent with

the maintenance of the effectiveness of these products for the protection of public health and safety. Cleaning supplies for all State-owned buildings, which are cleaned by OGS staff, are procured by OGS' central store room. To determine whether OGS has procured environmentally preferred products, we reviewed 42 purchase orders for cleaning supplies for the period September 2007 through February 2008. We found that OGS had purchased environmentally preferred cleaning products. It purchased non-preferred cleaning products only when no approved alternate was available. OGS documented the reasons for these purchases of non-environmentally preferred products, as required by the Order.

*Use of Environmentally Preferred
Cleaning Products*

We reviewed the assessment of cleaning practices OGS has prepared, as required by the Order, and found them to be generally complete and comprehensive. However, we noted that certain special use facilities were not included in the assessment. For example, OGS is responsible for the maintenance and operation of three utility plants in the Albany area. Two are located within other OGS buildings and the other is a separate building. While these plants are primarily industrially-oriented facilities, they contain common spaces (e.g., bathrooms, office spaces, and floor space) that are cleaned in the same manner as the rest of OGS' buildings and should be cleaned with environmentally preferred cleaning products.

We visited nine OGS-operated sites (six buildings and the three utility plants) to confirm that the products being used to clean these facilities were environmentally preferred. The six buildings serve as office space for various State agencies and are

located throughout the State. We observed the cleaning products in closets, on cleaning carts, and in use by staff. We found that environmentally preferred cleaning products were being used at all six buildings, but at only one of the utility plants.

For the other two utility plants, we found that 10 out of the 22 products we observed were not compliant. All 10 non-environmentally preferred products have environmentally preferred equivalent products that should have been substituted. For example, some of the non-conforming products contained bleach and we observed several all-purpose cleaners being used for purposes other than disinfecting (e.g., cleaning floors or glass). Each of these non-conforming products could have been replaced with an environmentally preferred alternative.

We also reviewed the utility plants' requisitions from OGS' central store rooms for 11 products and noted that 2 of the products they ordered were not environmentally preferred (glass cleaner and multipurpose cleaner). Utility staff told us they assumed that, since they were ordering supplies from OGS' central store rooms, the products would be environmentally preferred if they are. However, this is not always the case, because the central store rooms allow units to request products that are not environmentally preferred if they are to be used for specialized purposes, such as disinfecting or stain removal.

Staff at each of the utility plants indicated they were aware of the Order, but had received little training in its requirements, other than brief information provided via a web-based seminar or at the Building Manager's conference. While the information informed employees about the Order, staff indicated it did not provide them with

guidance on how to order or use environmentally preferred products.

Recommendations

6. Conduct an assessment of cleaning practices in the utility plant facilities.
7. Provide information and training to utility plant staff to ensure facilities are cleaned in compliance with the Order.
8. Phase out, on a timely basis, the use of non-environmentally preferred cleaning products that have an environmentally preferred substitute, as required by the Order. Dispose of those products that are no longer being used.

(PGS officials agreed with our recommendations and reported that they have trained the staff in these non-public areas in obtaining and utilizing green cleaning products.)

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited the actions taken by OGS to provide guidance, consultation, and encouragement to affected State agencies, authorities, and landlords to comply with the Order. We also audited OGS' procurement and use of environmentally preferred cleaning products, as required by the Order. Our audit covered the period January 5, 2005 through March 25, 2008.

To accomplish our objectives, we interviewed OGS officials, as well as contractors, staff, tenants, building managers, and landlords at leased and State-owned facilities. We visited

six facilities that had leases with State agencies to observe what products were being used to clean the facilities, and interviewed agency staff and cleaning staff, when available. Four of the facilities were located in the Albany area and two were in New York City. We reviewed OGS' purchases of cleaning products. We reviewed 42 purchase orders from September 2007 through February 2008. We also visited six buildings and three utility plants operated by OGS, selected through a combination of judgmental and random sampling techniques. At these facilities, we reviewed what products the facility had in its closets and what they were using to clean the facility.

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

AUTHORITY

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.

REPORTING REQUIREMENTS

A draft copy of this report was provided to OGS officials for their review and comment. Their comments were considered in preparing this report, and are included as Appendix A. Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of General Services 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.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Frank Houston, John Buyce, Bob Mainello, Heather Pratt, Michele Krill, Sally Perry, Jill Thomas, Slamon Sarwari, and Sue Gold.

APPENDIX A - AUDITEE RESPONSE



DAVID A. PATERSON
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JOHN C. EGAN
COMMISSIONER

July 23, 2008

Via E-mail and Regular Mail

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

Dear Mr. Houston:

This letter responds to your draft audit report entitled, "Compliance with Executive Order 134 - Environmental Impact of Cleaning Facilities 2008-S-12." OGS has made significant contributions to further New York State's efforts to protect the environment by providing guidance to schools and state facilities with regard to green cleaning products and practices. OGS is pleased that the audit did not find fault with the substance of the guidance developed and that it found almost all of the facilities inspected during the audit to be in compliance with the Executive Order. OGS welcomes the observations of the audit team and its recommendations as we strive to advance the practice of environmentally sound cleaning practices in New York State. The remaining response will address the specifics of the points raised in the audit report.

The audit states that the guidance provided to state agencies was not as timely or clear as it could have been. OGS determined that the guidance issued for cleaning schools in an environmentally sound manner was also applicable to the cleaning of state facilities. For this reason, OGS pointed state agencies and public authorities to its website to access the publication, "Green Cleaning Guidelines for Schools." The report suggests that specific guidance should have been provided to agencies, and that information on the OGS website directing state facilities to use the same guidelines issued to schools was insufficient. OGS does not believe that the content or timing of its guidance created any real confusion, but has amended both the OGS/ESU webpage and the Guidelines document to clearly state that the Guidelines and list of approved cleaning products apply to both schools and state agencies. In addition, there is a document on the web page entitled, "FAQ's for Executive Order 134," that addresses any number of potential questions on EO 134 that may be raised by state agencies.

OGS made a good faith effort to reach out to state agencies and public authorities; as defined in the Order, to advise them of the Order's requirements and to notify them that guidance was available on the OGS website and from our Environmental Services Unit. The audit report



states that OGS did not contact all the entities covered by the Order. OGS disagrees inasmuch as we determined that the best approach was to contact the heads of agencies, rather than every sub-unit of an agency. We believe direction from an agency executive is more productive than contact from outside of an agency. For example, the agency contacted the Chancellor of the State University of New York (SUNY) System, rather than each and every SUNY College and University. With regard to authorities, OGS only targeted authorities "the heads of which are appointed by the Governor," and believe this complied with the Order. To address the auditors' concern that we did not contact every agency and authority covered by the Order, OGS will reach out to all state agencies and public authorities with information about the Order and the availability of guidance, with the statement that they should consider whether the order applies to them. The communication will encourage and promote green cleaning practices, even by entities not specifically covered by the Order.

OGS educated its cleaners and those contractors providing cleaning services about green cleaning practices and implemented these practices in the cleaning of OGS-run facilities as well as the lease purchase buildings for which we are responsible. We updated our cleaning contracts to require green cleaning as part of the terms of the contract. The audit found that certain non-public space in two OGS utility plants in Albany were being cleaned with some cleaning products not permitted under the Order. This oversight was caused by the fact that these spaces are not cleaned by our dedicated cleaning crews, who received targeted training pertaining to the Order. This space makes up less than one percent of all space at the plaza and is not accessible by agency personnel or the public. In any event, we agree that this space must be cleaned in accordance with the Order and have educated these work units in obtaining and utilizing green cleaning products and in the reporting requirements contained in the Order.

While the audit praised OGS for its inclusion of green cleaning language in new leases, it criticized the perceived lack of effort to encourage existing landlords to comply with the Order. Because OGS has over 600 leases across the State, OGS staff necessarily relies upon client agency personnel to assist in monitoring a landlord's compliance with lease terms. In this case, where green cleaning is a lease term only in newer leases, the Order requires OGS to "encourage lessors and building managers" to select and procure green cleaning products. OGS has written to the agency personnel assigned to monitor each lease and has instructed them regarding their role in encouraging the landlord to implement green cleaning practices. We believe the Order necessarily gives OGS the discretion to determine the best method by which to encourage landlords to adopt the Order's requirements. It is our position that agency personnel who maintain direct contact with landlords can most effectively promote the use of environmentally safe cleaning products. We will continue to work toward increased awareness among landlords and building managers regarding the benefits of green cleaning.

Executive Order 134 calls on OGS to recognize agencies which have successfully implemented environmentally beneficial cleaning practices at their facilities. OGS agrees with the audit's finding that this recognition procedure is an important component of the Order. We are currently developing an application process for agencies to describe their success in implementing green cleaning and will issue an annual award to a worthy recipient. We are also considering an internal process to introduce friendly competition among the facilities that we operate.

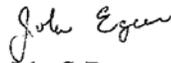
Mr. Frank J. Houston

-3-

July 23, 2008

In closing, OGS believes it has successfully taken steps to both provide guidance on and to implement the Order, and will take the further actions outlined herein and recommended in the audit. In so doing, we will lead the State's efforts to further reduce the environmental impact of cleaning state facilities. We would like to thank the auditors for their efforts. OGS views audit results as tools to help us to continually improve the service we provide.

Sincerely,


John C. Egan

cc: John Buyce (OSC)