
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**DEPARTMENT OF
ECONOMIC
DEVELOPMENT**

RECYCLING PROGRAM

Report 2008-S-168

AUDIT OBJECTIVES

The objectives of our performance audit were to determine whether the Department of Economic Development (Department) operates a recycling program that is in compliance with applicable State laws and Executive Orders and whether the Department had taken the appropriate action to assist State agencies and the private sector as required by Executive Order 142.

AUDIT RESULTS - SUMMARY

The Department is responsible for establishing a recycling program as outlined in the Solid Waste Management Act of 1988 (Act) and Executive Order 142 (EO 142) issued in January 1991 and Executive Order 4 (EO 4) issued in April 2008. Although Department headquarters (located in Albany) has a program to recycle mixed paper and computers, we found the Department does not recycle other wastes, such as glass, metal, corrugated cardboard and plastic. We note that the City of Albany does not require commercial establishments, such as the Department headquarters, to recycle glass, plastic and metal containers. While most regional offices recycled paper and computers, at least one (located in Syracuse) was not in full compliance with the county's recycling law. The Syracuse office recycles mixed paper and computers; however, Onondaga County law designates corrugated cardboard, glass, metal, plastic, newspaper and other types of paper products as recyclable materials. Department officials informed us, prior to the revocation of EO 142, they had not provided education to regional office employees on recycling. Additionally, during our audit, the Department was in the process of developing a recycling program to comply with applicable governance.

Under EO 142, the Department was required to submit annual reports to the Office of General Services (OGS) with a copy to the Department of Environmental Conservation (DEC). The report should contain a comprehensive collection of data reflecting the Department's source reduction and recycling activities, as well as recycled product procurement initiatives. The report should also include information on the Department's current recycling efforts, in particular the amount and type of materials recycled annually. We found the Department did not submit annual reports as required, but officials were able to provide the auditors with a summary document that contained much of the required information, for its headquarters, for the 2007 - 08 annual report.

Additionally, under EO 142, the Department was required to provide assistance to State agencies and the private sector in identifying and establishing markets for recyclable materials collected through their recycling programs. In cooperation with DEC and OGS, the Department was also required to compile and maintain a list and related information on products that contain secondary materials and provide such information to State agencies. We found the Department complied with these requirements by providing information about recycling markets and secondary materials on their website.

Under EO 4, the Department is required to develop a Sustainability and Environmental Stewardship Program (Program) and assign an employee to serve as the Sustainability and Green Procurement Coordinator (Coordinator). The Coordinator is responsible for providing Program training to Department staff, vendors and contractors. We found the Department has assigned a Coordinator and is waiting for the final guidance from the Interagency Committee on

Sustainability and Green Procurement (Committee) before developing a formal written training program.

Additionally, under EO 4, the Commissioner (or designated executive staff) is required to participate on the Committee with other State officials. We found the Department has designated an employee to serve on the Committee.

Our audit report contains five recommendations directed toward improving the Department's compliance with applicable governance.

This report, dated February 27, 2009, is available on our website at <http://www.osc.state.ny.us>.

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Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

New York State has a long history of encouraging the reduction and recycling of solid waste materials. Two decades ago, in 1988, the State enacted the Solid Waste Management Act (Act), which laid out the four key priorities of the State's solid waste management policy:

- Reducing the amount of waste generated in the first place;
- Maximizing the amount of waste that is reused or recycled;
- Recovering as much energy as possible from what cannot be reused or recycled; and
- Appropriately disposing of the remaining solid waste.

The Act required most State agencies and public authorities to source separate their solid waste (i.e., to separate waste at the point it is discarded, by putting recyclable paper, glass, metal and plastics, into one container, and other non-recyclable items such as food, and soiled items, into another container). In addition, municipalities throughout the State were required to enact their own local ordinances or legislation requiring source separation of solid waste. State agencies located within these municipalities are required to comply with local recycling laws.

In January 1991, the Governor issued Executive Order 142 (NYCRR 4.142) (EO 142) on *Establishing New Waste Reduction and Recycling Initiatives for State Agencies*, thereby reaffirming the State's commitment to reduce and recycle waste. Under EO 142, State agencies were required to source separate paper and other products from their waste stream. Source separation programs were to be enhanced, through employee education and installation of equipment, such as recycling bins. EO 142 also required State agencies to submit an annual report to the Office of General Services (OGS) in August of each year detailing their waste reduction and recycling activities and any recommendations for additional measures that needed to be taken. EO 142 also directed the Department, OGS and the Departments of Environmental Conservation (DEC) and Transportation (DOT) to provide State agencies with technical assistance in developing and implementing their source separation programs.

In April 2008, the Governor issued Executive Order 4 (9 NYCRR 7.4) (EO 4) on *Establishing a State Green Procurement and Agency Sustainability Program*. EO 4 created the Interagency Committee on Sustainability and Green Procurement (Committee) comprised of the heads of 12 State agencies

and public authorities, including the Department. EO 4 requires each State agency and public authority to designate a Sustainability and Green Procurement Coordinator and develop a comprehensive Sustainability and Environmental Stewardship Program (Program). EO 4 builds upon the requirements of EO 142 (which it superseded) in that each agency's Program must provide for source separation of its waste to maximize the amount of paper, metal, glass and plastic that is recycled. Technical assistance for State agencies continues to be available from OGS and DEC, as well as the Environmental Facilities Corporation and the New York State Energy Research and Development Authority. Beginning March 1, 2009, State agencies and public authorities are required to submit an annual report to the Committee that will, in turn, provide a summary report to the Governor.

The Department, in conjunction with their umbrella entity the Empire State Development Corporation (Empire), provides assistance and service to businesses in order to encourage economic investment and prosperity in New York State. The Department, with its headquarters in Albany, employs about 192 employees and has nine regional offices, three of which are located within buildings operated by OGS. OGS is responsible for the recycling programs at the three buildings they operate. The majority of Department employees, about 126, are stationed at headquarters. The remaining employees work in various regional or shared office spaces throughout the State. The Department is responsible for recycling at the other offices.

AUDIT FINDINGS AND RECOMMENDATIONS

Recycling Program

The Department is responsible for establishing a recycling program as outlined in the Act and EOs 4 and 142. Although Department has a program to recycle mixed paper and computers in its headquarters, we found the Department does not recycle glass, metal, corrugated cardboard and plastic. The City of Albany requires commercial, industrial and institutional establishments to recycle only newspaper, high-grade paper and corrugated cardboard. Commercial establishments, such as department headquarters are not required to recycle glass, plastic and metal containers.

We found most regional offices recycled paper and computers, but at least one (located in Syracuse) was not in full compliance with the county recycling law. The Syracuse office recycles mixed paper and computers; however, Onondaga County law designates corrugated cardboard, glass, metal, plastic, newspaper and other types of paper products as recyclable materials. While the Department has provided educational materials, consistent with EO 142, to employees stationed in its headquarters, officials informed us they have not provided such education on recycling to regional office employees. Additionally, the Department must update the recycling educational information previously provided to its headquarters employees to reflect the new requirements under EO 4, and provide the updated information to employees located at its headquarters and regional offices.

Under EO 4, the Department is required to assign an employee to serve as the Sustainability and Green Procurement Coordinator (Coordinator) by September 1,

2008. The Coordinator is responsible for providing Program training to Department staff, vendors and contractors. We found the Department has assigned a Coordinator and is waiting for the final guidance from the Committee before developing a formal written training Program. Additionally, during our audit, the Department was in the process of developing a recycling program to comply with applicable governance.

Recommendations

1. Revise the recycling program to comply with applicable governance at all Department office locations.
2. Provide employees with information and training on recycling program requirements.
3. Monitor recycling program for assurance they are working effectively.

Reporting

EO 142 required State agencies to submit annual reports to OGS, with copies to DEC and the Department, by August 1st of each year. These reports were to contain a comprehensive collection of data, reflecting the source reduction, recycling, and procurement initiatives taken. We found the Department did not submit annual reports as required, but officials were able to provide the auditors with a summary document that contained much of the required information, for its headquarters, for the 2007 - 08 annual report.

EO 4 requires the Department to continue to report on its recycling efforts by March 1, 2009. Under EO 4, the Committee had until December 1, 2008 to develop the report format. While the Department has until

March 2009 to submit the first annual report, officials have already begun to compile data on the amount of mixed paper recycled and recycled product procurements for its Albany office.

Data collection can help monitor the success of waste prevention and recycling efforts as well as identify areas for improvement, while fulfilling annual reporting obligations. However, as with any data collection activities, the Department must develop effective controls and monitoring activities to ensure the data being collected is comprehensive and complete. In addition, the data collected and reported should cover all ten Department office locations.

Recommendations

4. Submit future annual reports, containing data from all Department offices, in accordance with applicable governance.
5. Implement internal control activities to assure the accuracy of data reported on future annual reports.

Assistance Provided to Other State Agencies

EO 142 required the Department to provide assistance to State agencies and the private sector in identifying and establishing markets for recyclable materials collected through their recycling programs. The Department, in cooperation with DEC and OGS, is also required to compile and maintain a list and related information on products that contain secondary materials and provide such information to State agencies. While the Department is no longer required to provide such information under EO 4, we found the Department has continued to perform this

service by providing information about recycling markets and secondary materials on its website.

Under EO 4, the Department Commissioner (or designated executive staff) is required to participate on the Interagency Committee on Sustainability and Green Procurement (Committee) with other mandated State officials. The Committee is responsible to design and implement training and outreach programs for Coordinators, create the format for future annual reports and develop green procurement lists and specifications. We found the Department has designated an employee to serve on the Committee.

AUDIT SCOPE AND METHODOLOGY

We audited Department's recycling program from April 1, 2006 through October 31, 2008 to determine whether it is in compliance with applicable State and local laws, as well as Executive Orders. To accomplish our objectives, we reviewed the Act, EOs 4 and 142, and laws for the City of Albany and Onondaga County. We met with Department officials and reviewed supporting documentation to obtain an understanding the Department's recycling program. We inspected the headquarter office location to assess the equipment utilized in their recycling efforts. In addition, we called Department officials at select regional offices to determine whether recycling activities were occurring at those locations.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our

findings and conclusions based on our audit objectives.

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 who 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 management functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The 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 of this report was provided to Department officials for their review and comment. Their comments have been considered in the preparation of this report and are included as Appendix A. Department officials stated that they generally agree with all five recommendations and have taken, or will take, action to address them.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Empire Development Corporation 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 were Ken Shulman, William Clynes, Danielle Rancy, Dave Pleeter, Sally Perry and Robert Horn.

APPENDIX A - AUDITEE RESPONSE



February 12, 2009

Steven E. Sossei
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State St., 11th Floor
Albany, NY 12236

Re: Audit 2008-S-168 Recycling Program

Dear Mr. Sossei:

Enclosed is the New York State Department of Economic Development's response to the draft audit report on the Recycling Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan P. Lebowitz".

Alan P. Lebowitz
General Counsel

Enclosure

cc: Marisa Lago

New York State Department of Economic Development
30 South Pearl Street Albany New York 12245 Tel 518 292 5100
Website www.empire.state.ny.us

**RESPONSE TO COMPTROLLER'S DRAFT
AUDIT 2008-S-168**

INTRODUCTION

The draft audit report prepared by the Comptroller's Office on the New York State Department of Economic Development's ("DED") Recycling Program is generally accurate, and DED agrees with most of the audit's findings and recommendations. In particular, we note that the draft audit report reflects that DED's office locations are substantially in compliance with applicable governance.

The draft audit report acknowledges that DED complied with EO 142 requirements to (i) provide assistance to State agencies and the private sector in identifying and establishing markets for recyclable materials collected through their recycling program, and (ii) compile and maintain a list and related information on products that contain secondary materials and provide such information to State agencies. The draft audit report noted that DED has complied with this requirement by providing information about recycling markets and secondary materials on our website.

The draft audit also confirms that DED has assigned a Sustainability and Green Procurement Coordinator ("Coordinator") and that DED is awaiting the final guidance document from the Interagency Committee on Sustainability and Green Procurement ("Committee") before developing a final written training program. Additionally, the draft audit report noted that DED has designated an employee to serve on the Committee.

RECOMMENDATIONS

1. *Revise the recycling program to comply with applicable governance at all Department office locations.*

To the extent practicable and necessary, DED will revise its recycling program to be in full compliance with applicable governance.

2. *Provide employees with information and training on recycling program requirements.*

In the past, DED has provided information and training about recycling to many of its employees, and will insure going forward that such information and training be provided to employees in its regional offices.

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3. *Monitor recycling program for assurance they are working effectively.*

DED agrees with this recommendation and will implement it to the extent feasible based upon available resources.

4. *Submit future annual reports, containing data from all Department offices, in accordance with applicable governance.*

DED agrees to file future annual reports containing reasonably available data in accordance with Executive Order #4.

5. *Implement internal control activities to assure the accuracy of data reported on future annual reports.*

DED shall take appropriate steps to provide reasonable assurance that the data reported in its future annual recycling program reports are accurate.