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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 17, 2015

Mr. Richard A. Ball
Commissioner
Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Re: Uncollected Penalties
Report 2015-F-8

Dear Mr. Ball:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Agriculture and Markets (Department) to implement the recommendations contained in our audit report, *Uncollected Penalties* (2012-S-69).

Background, Scope, and Objective

In order to fulfill its mission of fostering a competitive food and agriculture industry that benefits producers and consumers alike, the Department has six divisions that perform inspections to ensure establishments under its jurisdiction remain in compliance with the Agriculture and Markets Law. Inspections occur across various areas such as the plant and animal industries, milk and dairy services, weights and measures, food safety, and agriculture development. The Department performs these inspections to further its goal of protecting the health and safety of the public.

When an establishment is found to have violated the law, the division performing the inspection sends a warning letter seeking compliance. If the infraction is not corrected, the division refers the entity to the Department's Penalty and Litigation Unit (Penalty Unit), a unit of its Counsel's Office which is responsible for assessing and accounting for all monetary penalties. For most State agencies, when normal collection efforts are unsuccessful, the Attorney General has the sole authority to commence and prosecute legal actions to recover civil penalty assessments through judgment by a court. However, the Attorney General's Office has granted the Department authority to pursue recovery of penalties arising from violations of the Agriculture and Markets Law. In general, such actions must be pursued within three years of the date the penalty is assessed. A successful court judgment then allows the agency up to 20 years to collect the debt.

Between August 1, 2013 and April 30, 2015, the Department assessed 7,638 penalties totaling more than \$5.5 million. Of those assessed, the Department waived or reduced penalties totaling \$587,570 and collected payments totaling approximately \$3 million. The Department also had \$1.9 million in outstanding penalties, including penalties assessed within the past 30 days that have not passed their due date.

Our initial report was issued on July 31, 2013 and covered the period of April 1, 2007 to February 1, 2013. The objective was to determine whether the Department effectively pursues and collects outstanding penalties. During the initial audit, we found that outstanding accounts routinely had no collection activity for two years or more and were often deemed uncollectible. This audit also found that there was a lack of a separation of duties associated with the collection of payments. Finally, the initial audit found that the system used to track outstanding penalties was incomplete and often inaccurate, and that there was a lack of communication and information flow between the Penalty Unit and divisions.

The objective of our follow-up was to assess the extent of implementation, as of April 30, 2015, of the eight recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials have made progress in addressing the problems we identified in the initial audit. Of the eight prior audit recommendations, six were implemented and two were not implemented.

Follow-Up Observations

Recommendation 1

Revise collection processes to eliminate extended periods of inactivity and provide for more periodic and progressive attempts to secure payment.

Status - Implemented

Agency Action - The Department has revised the collection process policies and procedures to eliminate extended periods of inactivity. The policies now require a notification letter to be sent as soon as it is determined that a penalty is warranted and an establishment has 30 days to respond. If there is no response, a second letter is sent 30 days after the first letter. If the establishment does not respond to the second letter, an attorney will begin taking legal action within 90 days of the response due date for the second letter. Further, upon appeal or request, the procedures provide that the Department may also grant a penalty reduction or arrange partial payments.

Recommendation 2

Distribute incompatible tasks and functions among various employees. Where this segregation

is not possible, increase management oversight to reduce the risk that errors, omissions, or irregularities could occur and not be detected.

Status - Implemented

Agency Action - The Department has incorporated the Division of Fiscal Management into the process of penalty collection, and the Penalty Unit now consists of four employees with segregated and documented responsibilities. The duties have been separated so that different people are responsible for creating and mailing penalty letters and judgment letters and for data entry of payments.

Recommendation 3

Develop performance measurement tools, such as periodic reports and analytics, to enhance management oversight and monitoring of penalty and collection activities.

Status - Implemented

Agency Action - The Penalty Unit now has the ability to generate monthly, quarterly, and yearly reports on the number of penalties, total dollar amounts of penalty payments collected, number of penalties issued for complaints, and the number of penalties issued for which judgments are filed. The Penalty Unit is also working with the Office of Information Technology Services to develop a report that will show the number of days between events in the database, such as how long an establishment took to pay and whether full or partial payments have been made. These new reports are expected to be available for use in the near future.

Recommendation 4

Improve communications and information sharing between and among operating divisions, especially as it relates to penalty history.

Status - Not Implemented

Agency Action - In its 90-day response to the original audit, the Department reported that its Deputy Counsel was working with each of the divisions to improve their communication with Counsel's Office and, where appropriate, among the divisions themselves. However, officials generally do not agree that improvements in inter-divisional cooperation are needed. As a result, the Department has not taken direct steps to improve communication and information sharing among the divisions, particularly as it relates to penalty histories. During our current review, Department officials stated that divisions still rarely inquire about penalties and there is still no easy way to determine which establishments are licensed by multiple divisions.

Recommendation 5

Take steps to withhold licensing or re-licensing of persons or entities with unpaid penalty obligations.

Status - Implemented

Agency Action - One division, Animal Industry, has the authority to withhold licenses from establishments that have outstanding penalties. The Department has proposed legislation that would allow all its divisions to withhold licenses; however, it has not been approved by the Legislature for the past two years. Department officials indicated they are currently working with the Attorney General's Office to examine options for administrative procedures that would allow the agency to deny the renewal of a license when an applicant owes money to the State.

Recommendation 6

Improve the accuracy and completeness of information in the penalty database to enable reliable reporting and thereby eliminate other redundant systems and manual processes.

Status - Implemented

Agency Action - The Department has made improvements in the database and is now able to generate quarterly accounts receivable reports rather than calculating the figures manually. In addition, approximately a year ago, the Department began to record court costs and any prejudgment interest associated with penalties in the database.

Recommendation 7

Utilize the State-Wide Offset Program, as well as the planned statewide e-licensing system, as a means to collect outstanding debts.

Status - Not Implemented

Agency Action - The Department is still not able to take advantage of the State-Wide Offset Program administered by the Department of Taxation and Finance due to system incompatibility. Department officials noted the project to address system compatibility is currently only in the test phase.

Recommendation 8

Update and formalize written procedures governing the assessment and collection of penalties.

Status - Implemented

Agency Action - The Department now has formalized written procedures governing the assessment and collection of penalties. The Department also has documented procedures concerning its Litigation Policy and the Lockbox Business Rules.

Major contributors to this report were Walter Irving, Nadine Morrell, Holly Thornton, Patrick Lance, and Nicole Tommasone.

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

Sincerely,

John F. Buyce, CPA, CIA, CFE, CGFM
Audit Director

cc: Scott Wyner, Department of Agriculture and Markets