



Effective Management of the Environmental Protection Fund

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Executive Summary

In 2009, the Division of State and Local Government Accountability in the Office of the State Comptroller audited State agency and municipal government implementation of programs funded by the Environmental Protection Fund (EPF or Fund), a dedicated fund that provides support for State and municipal parks, municipal recycling programs and control of water pollution, as well as the majority of State support for conservation of open space and other important environmental programs. Many of these programs offset municipal expenditures for State-mandated environmental programs and have both direct and indirect economic benefits.

Since the EPF was established in 1993, more than \$2.2 billion has been appropriated to the Fund in support of environmental programs. Delays in the expenditure of these funds led to accumulation of cash in EPF accounts. This cash has frequently been swept to fill General Fund deficits caused by unsustainable State budget practices where recurring spending exceeds recurring revenue. A total of \$854 million—39 percent of EPF appropriations—has been swept to the General Fund. Of this amount, \$347 million has been replaced with revenues from bonds issued by State public authorities. The delays in spending decrease the benefits provided by EPF programs.

Audits at the New York State Department of Environmental Conservation, the Office of Parks, Recreation and Historic Preservation, the Department of State, the Department of Agriculture and Markets, and 10 municipal governments were conducted. Auditors examined if agencies employed clear criteria in awarding EPF funds to eligible projects, evaluated the timeliness of agency awards and assessed the agencies' monitoring of project sponsors.

Auditors found that, with few exceptions, funding was awarded through the uniform application of clear criteria and Fund expenditures were consistent with legal requirements and the goals specified for EPF programs. Auditors did identify weaknesses in agency monitoring of progress toward completion of projects funded by the EPF. As a result, funds awarded to these projects sat idle, in some cases for several years, while qualified project applicants were denied funding. Auditors also found significant delays in the implementation of procedures to award and disburse EPF funds.

The Office of the State Comptroller recommends the following measures to improve implementation of EPF programs, maximize efficiencies and reduce unnecessary delays in award and expenditure of EPF funds:

- EPF program administering agencies should:
 - Establish formal timeframes to meet expedited grant award process milestones, and establish and maintain scored lists of qualified projects;
 - Standardize contracts to facilitate compliance with prompt contracting requirements and establish clear guidelines to govern each step in the funding process; and
 - Improve communication mechanisms and administrative efficiencies.
- The New York State Division of the Budget should report annually on the implementation of EPF programs.

Introduction

The Environmental Protection Fund (EPF) was created by Chapters 610 and 611 of the Laws of 1993 as an ongoing source of funding to support State and local environmental programs. Since that time, the EPF has provided support to municipal environmental programs required by State and federal law, as well as to municipal parks and recreation programs. In addition, the EPF has been the principal source of funds to conserve open space in New York State.

The Office of the State Comptroller has conducted a series of audits of the State agencies responsible for implementing EPF programs. Auditors examined if agencies employed clear criteria in awarding EPF funds to eligible project sponsors, evaluated the timeliness of agency awards and assessed the agencies' monitoring of project sponsors.

Agency disbursement of EPF funds is a question of concern due to the Fund's chronic accumulation of large cash balances. This accumulation has made the EPF a target of periodic cash sweeps, which total 39 percent of its appropriated funds. Fund sweeps for budget relief have reduced the environmental and economic benefits of EPF programs. Instead, these funds were used to fill the State's General Fund budget gap. This report surveys the audits and makes recommendations for improving administration of the EPF.

EPF Overview

Environmental legislation enacted in the 1980s imposed new costs on the State and its local governments. New programs to clean up toxic waste, recycle waste, more strictly regulate solid waste facilities and improve water treatment infrastructure all required funding. To assist local governments in absorbing these new costs and address State spending needs, New York State responded with a series of General Obligation bond acts. An environmental bond act providing \$1.45 billion to finance the State's program to clean up abandoned toxic waste sites, safely close municipal landfills, acquire open space, fund historic preservation projects and assist municipal parks projects was approved by the voters in 1986.

In 1990, Governor Mario Cuomo proposed a \$1.975 billion bond act to meet a wide range of environmental needs. The bond act would have made available \$800 million for the acquisition of open space, as well as lesser amounts for purposes such as recycling, parks and wastewater treatment. The proposal was defeated by a vote of 51 percent to 49 percent. This was the only environmental bond act ever to be rejected by the New York State electorate.

The defeat led State and municipal officials and other advocates to seek alternative mechanisms for funding. Three years later, the State enacted the Environmental Protection Act in Chapter 610 of the Laws of 1993. Chapter 610 established the EPF as a pay-as-you-go source of funding for a set of programs similar to those proposed for funding in the 1990 Act.

EPF programs originally included the following:

- Open space conservation projects,
- Nonhazardous landfill closure projects,
- Municipal waste reduction or recycling projects and projects to create markets for recycled materials,
- Park, recreation and historic preservation projects,
- Local waterfront revitalization and coastal rehabilitation projects, and
- Long Island Central Pine Barrens area planning.

More programs have been added since the EPF's inception. Significant new programs include:

- Breast cancer research,
- Storm and wastewater treatment and aquatic habitat restoration,
- Ecosystem-based management programs in New York's ocean and Great Lakes watersheds,
- Agricultural nonpoint source pollution control, and
- Farmland protection.

In the EPF's first year, \$31.5 million was appropriated to fund eligible projects. For funding in future years, the Environmental Protection Act set aside three sources of revenue: proceeds from the sale, lease or permitting of underwater State lands; revenues generated by the issuance of conservation vehicle license plates; and revenues generated by the

Real Estate Transfer Tax (RETT). Of these revenue sources, the RETT provides the largest share of funding. Historically, the RETT has provided 92 percent of the total funds appropriated to the EPF.

Prior to the creation of the EPF, land acquisition, park facilities development and other environmental projects undertaken by State and local governments were paid for primarily with bonded funds. Voters approved 10 of the 11 environmental bond acts proposed by the State Legislature since 1910, authorizing \$5.7 billion for open space conservation, park improvements, sewage treatment and other programs. Since 1993, more than \$2.2 billion has been appropriated through the EPF in support of many of these program areas, supporting State and municipal environmental programs without incurring any of the long-term interest costs associated with bonding.

Administrative Costs

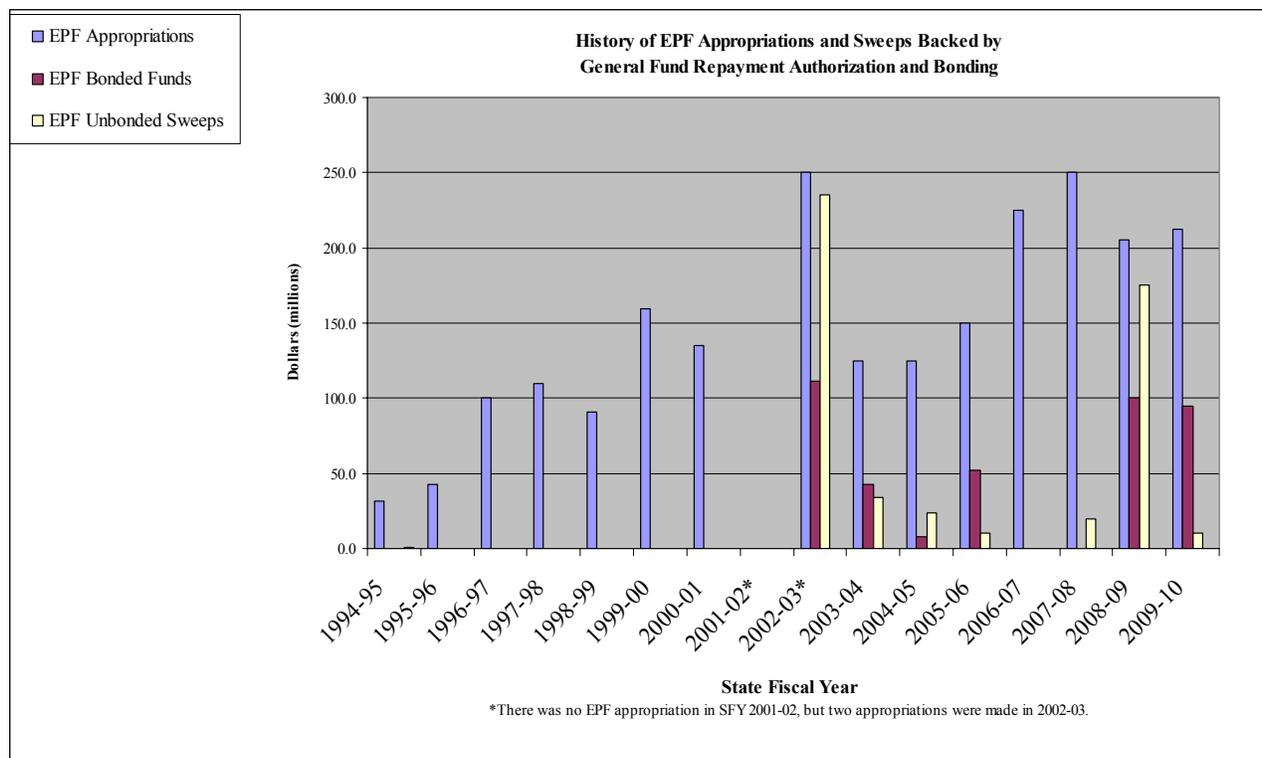
A significant policy debate has developed over proposals to use EPF appropriations to pay for State administrative costs. Opponents are concerned that this approach would siphon off funds that would otherwise be spent on parks, municipal recycling programs, preventing water pollution or purchasing open space. Proponents argue that paying for administrative costs is a legitimate use of EPF funds. To date, the Legislature has not authorized the use of the EPF for State administrative costs.

Sweeps and Bonding

The pay-as-you-go spending from the EPF provides significant funding for environmental programs with current State resources. However, EPF funds have been subject to sweeps for budget relief. In addition, \$347 million in public authority bonds have been issued to offset the impact of a portion of these sweeps, creating a debt service cost for repayment of principal and interest where one had not previously been envisioned. In contrast, revenues from bonds authorized through the General Obligation debt process can only be spent for the purpose presented to the voters on the ballot, and cannot be swept for other purposes.

Seven of the eight most recently enacted State budgets have transferred money from the EPF to backfill budget holes. In total, \$854 million in cash (or 39 percent of total EPF appropriations) has been transferred in this way. To date, \$347 million (or 16 percent of total appropriations) has been replaced with revenues from public authority-issued bonds. These bonds do not require voter approval, but do obligate the State to repay the bonds with debt service. A total of \$507 million (23 percent of total appropriations) has been swept from the EPF without being replaced by bonded funds, although DOB is authorized to repay up to \$447.1 million of these funds if needed to meet the obligations of EPF programs.¹

¹ Cash sweeps as of March 31, 2010 total \$507 million.



To date, the EPF has not been targeted to pay the debt service accruing to bonds issued to replace cash sweeps. However, another State dedicated fund, the Dedicated Highway and Bridge Trust Fund, has been used to pay debt service for bonds issued to replace cash sweeps. According to the Division of the Budget (DOB), debt service will reach approximately 72 percent of the Highway Fund by State Fiscal Year (SFY) 2013-14.² The Highway Fund now relies on a General Fund subsidy to meet its expenses.

The historic accrual of large cash balances in the EPF continues to make it a target for cash sweeps for General Fund relief. This threatens the long-term viability of the Fund and the important programs it was created to support.

Demand for Funding

The large cash surpluses that historically accumulated in the EPF do not indicate that appropriations exceed demand for project funding. In fact, most EPF programs that issue annual requests for proposals receive qualified application proposals in excess of the funds allocated. In addition, programs that continually accept applications, such as the Department of Environmental Conservation’s (DEC’s) municipal waste reduction and recycling grant program, maintain long waiting lists of municipalities seeking funding. Furthermore, between 1996 and 2008, farmland protection projects totaling \$556 million were turned away due to insufficient funding.³

² Office of the State Comptroller. *The Dedicated Highway and Bridge Trust Fund: Where Did the Money Go?* October 2009. www.osc.state.ny.us/reports/trans/dhbtbf102809.pdf.

³ New York State Department of Environmental Conservation and the Office of Parks, Recreation and Historic Preservation. *2009 Open Space Conservation Plan*. June 2009. www.dec.ny.gov/lands/47990.html.

The consistently strong demand for EPF funding has led to passage of legislation significantly increasing the levels of funding in recent years. In 2007, legislation increased EPF funding to \$250 million for SFY 2008-09 and \$300 million in succeeding years. The SFY 2008-09 Budget appropriated \$255 million to the EPF. However, declining revenues later in the year required deficit reduction actions that reduced EPF appropriations to \$205 million. After deficit reduction actions in SFY 2009-10, EPF appropriation levels stood at \$212 million.

Another indication of the strong demand and support for environmental programs was the enactment by the Legislature and the approval by the voters of the Clean Water/Clean Air Bond Act of 1996, which provided funding for environmental programs. This Bond Act allocated \$1.75 billion in bonding authority, including:

- \$790 million for clean water infrastructure, dam safety, open space conservation and parks projects,
- \$355 million for drinking water infrastructure,
- \$230 million for projects to improve State air quality,
- \$200 million for clean up of municipally owned brownfield sites, and
- \$175 million for municipal recycling and landfill closure projects.

As of March 31, 2010, 98 percent of this funding had been obligated for projects.

Demand for funding in EPF supported programs exceeds appropriations to the Fund. One factor that may be responsible for the accumulation of cash in the EPF account is inefficient administration of programs to award and disburse funds by State agencies. Spending delays caused by project sponsors failing to make reasonable progress toward project goals may also contribute to higher balances in the Fund.

Impact of Current Management Practices

Cash sweeps and delays in spending EPF funds decrease the environmental and financial benefits that these programs provide to the State and local governments. As noted, EPF spending offsets the municipal costs of meeting environmental regulations. Moreover, the EPF provides benefits such as reducing pollution, funding breast cancer research, conserving open space and creating or improving parks.

In addition to these direct benefits, the EPF supports municipalities, New York residents and the economy indirectly. A significant portion of EPF spending goes to protect water quality through programs to control nonpoint source pollution and support wastewater treatment, as well as fund open space protection, local parks and farmland protection. This, in turn, may benefit public and private drinking water systems by reducing treatment costs. Such cost savings can be significant, because systems served by surface water provide the water for the majority of New Yorkers. In addition, water-related EPF programs help keep New York waters off the “impaired waters list” required by the Clean Water Act, avoiding the need for DEC restrictions that would add expenses to industries, municipalities, farms and other parties.

EPF programs can also assist in improving public health. Studies evaluating the effect of proximity to parks on rates of physical exercise show a strong, direct relationship. These studies found that access to parks and similar facilities contributes to increases of 26 to 48 percent in physical activity. Increased levels of exercise are strongly linked to lower rates of mortality and lower incidence of serious diseases.⁴ Parks and recreation facilities can, therefore, be expected to contribute to improved levels of public health and reduced demand for expenditures on treatment of disease.

The State’s economy also benefits from EPF programs. Some EPF programs directly promote economic growth that is sustainable and environmentally sound. Examples include programs for the preservation of farmland, the creation of secondary markets for recycled materials, planning and implementation of waterfront revitalization, and the development and implementation of smart growth plans. Other programs support important State industries by assisting with funding for pollution control. EPF programs to support soil and conservation districts and agricultural nonpoint pollution control help farms comply with State and federal regulations.

Finally, programs supporting park development and open space conservation support the State’s tourism and outdoor recreation industries. Agriculture is a \$35.7 billion a year industry, while tourism and outdoor recreation generate \$43 billion and \$11 billion respectively.⁵ A recent study estimates that \$1.9 billion in economic activity is generated by the 55.7 million annual visitors to the New York State Park System.⁶

⁴ *Physical Activity and Health: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, 1996.

⁵ Office of the State Comptroller. *Economic Benefits of Open Space Preservation*. March 2010. www.osc.state.ny.us/reports/environmental/openspacepreserv10.pdf.

⁶ Heintz, James, Robert Pollin and Heidi Garret-Peltier. *The New York State Park System: An Economic Asset to the Empire State*. March 2009. Published by Parks and Trails New York. www.ptny.org/pdfs/advocacyperi_full_report.pdf.

Since EPF-funded projects provide broad and significant benefits, the accumulation of cash in the Fund represents lost opportunities to realize these benefits. Moreover, since accumulated funds have often been swept, there is a very real potential that these opportunities will be lost permanently.

Audits

In 2008, the Office of the State Comptroller initiated audits to determine whether:

- EPF funds were being administered and spent in a timely way.
- Grant programs were awarding funding based on valid and objective criteria through a transparent and consistent process.
- State agencies were maintaining appropriate controls and monitoring to ensure funds were spent in keeping with program guidance and regulation.

The Division of State Government Accountability (SGA) in the Office of the State Comptroller evaluated the processes associated with awarding funds, executing contracts and monitoring expenditures of EPF funds in the DEC, the Office of Parks, Recreation and Historic Preservation (Parks), the Department of State (DOS) and the Department of Agriculture and Markets (Ag & Markets). SGA evaluated agency performance from SFY 2005-06 through SFY 2008-09.

Parks, Recreation and Historic Preservation

Summary of Audit Findings

Audit findings showed that in the majority of cases, Parks administered, awarded and disbursed EPF funds in a timely manner. Parks also employed clear criteria for awarding grants and consistently applied these criteria. However, administrative weaknesses were identified in the programs.

The audit raised questions about the relationship between Parks and the Natural Heritage Trust (NHT), a public benefit corporation established to assist in the preservation of historic and natural resources. Parks contracts with NHT to administer the Historic Barns Program. NHT hired several staff members who perform many of the same functions as Parks staff implementing other EPF programs. In this way, Parks appears to have improperly used EPF funds to pay for State administrative costs.

An unexpended balance of \$878,083 remained for 280 projects that had been completed and would not require additional funds. Auditors also identified \$383,000 in funding that was not likely to be required to complete projects classified as active by Parks. With improved oversight, these funds could have been more effectively utilized. Instead, these funds remained idle, earning interest for NHT.⁷ Auditors recommended that \$1.1 million in unexpended funds should be returned to the EPF.

In addition, auditors found problems with the scoring system for the Municipal Grants program that could potentially undermine the fairness and integrity of the award process. While no evidence of impropriety was detected, the system was found to be vulnerable to manipulation.

⁷ Contract terms between the Office of Parks, Recreation and Historic Preservation and the Natural Heritage Trust (NHT) do not require interest earnings on EPF funds held by NHT to be spent on EPF projects.

Parks Programs Audited⁸

Open Space—The purpose of the Open Space program is to acquire land to expand existing park areas or build new ones.⁹ The audits examined the three fiscal years ending March 31, 2008.

Municipal Grants—The Municipal Grants program provides funding to municipalities and nonprofit groups in support of parks, recreation and historic preservation and heritage area programs.

Stewardship—The Stewardship program provides funding to upgrade and maintain State Park infrastructure, including trail construction and maintenance, access for people with disabilities and campgrounds.

Zoos, Botanical Gardens and Aquariums—The Zoos, Botanical Gardens and Aquariums program supports educational, cultural and recreational programs at qualifying institutions in New York.

Historic Barns—The Historic Barns program supports restoration and preservation of privately owned historic barns.

Biodiversity—The Biodiversity program supports initiatives by local governments and Parks to protect biodiversity.

Department of State

Summary of Audit Findings

Audit findings show that adequate controls were in place at DOS to award funds to eligible grant applicants based on valid, objective criteria that were consistently applied. However, auditors identified significant delays in the award and delivery of funds to successful applicants. In several instances, key steps in the award and disbursement process were not completed within the fiscal year funded.

Grants for both SFY 2005-06 and SFY 2007-08 in the Local Waterfront Revitalization Program (LWRP) were not awarded until after the fiscal year had ended. In SFY 2007-08, DOS did not request the transfer of \$900,000 in funds allocated until 18 months after the funds were appropriated. Auditors also identified delays of up to three months in the delivery of project award recommendations for the LWRP to the Governor's Office. Additionally, only 53 percent of grants awarded during the audit period were under contract by the time of the audit.

⁸ The full list of audited programs is in Appendix A.

⁹ DEC and Parks, Recreation each operate a program to acquire new land. The two departments coordinate to share an EPF appropriation for land acquisition.

Delays as significant as these contribute to the accumulation of fund balances in the EPF. These projects are specifically designed to impact sectors of the economy that rely on environmental quality. Delays in providing these benefits represent lost opportunities to generate revenue for municipalities, create jobs and build the State economy. Moreover, since EPF fund balances have been repeatedly swept to provide General Fund relief, it is possible that opportunities to provide these benefits have been permanently lost.

DOS Programs Audited¹⁰

Local Waterfront Revitalization—The LWRP provides grants to assist municipalities located on New York’s coastal waters or on designated inland waterways with projects to improve water quality, redevelop waterfront businesses and provide public access to the waterfront. In SFY 2009-10, this program provided grants in categories including: local or regional waterfront revitalization programs, watershed management plans, climate change adaptation and the creation of a blueway trail.

The LWRP has contributed to the improvement of waterfront access and water-based recreation in all regions of the State, particularly in low-income communities with insufficient open space. This unique program has the potential to provide improved environmental protection, outdoor recreation and economic development. Delays in delivering the benefits of this program to New York’s municipalities result in corresponding delays in realizing these benefits.

Quality Communities—The Quality Communities program supports planning and capacity-building efforts by municipalities, public authorities, public benefit corporations, not-for-profit corporations and Indian Tribes or Nations. The program’s guiding principles include: minimizing public costs of new development; promoting redevelopment of existing community centers; protecting and restoring the State’s natural and cultural resources; building diverse communities that provide a broad range of needs and amenities; and advancing sustainability.

South Shore Estuary—The South Shore Estuary Reserve program was created to provide a comprehensive plan to protect and manage Long Island’s South Shore bays and their adjacent upland watershed. Program goals include:

- Reducing pollution,
- Increasing harvests of hard clams and other shellfish species,
- Protecting and restoring coastal habitats,
- Preserving open space,
- Improving management of estuary ecosystems,
- Sustaining water dependent businesses, and
- Promoting thriving maritime centers.

Most of the funds appropriated for the South Shore Estuary Reserve Program are expended in accordance with these goals.

¹⁰ The full list of audited programs is in Appendix A.

Department of Environmental Conservation

Summary of Audit Findings

Administration of Transfer of EPF Funds—DEC plays a central administrative role in the implementation of EPF programs. In addition to handling DEC-administered programs, DEC is responsible for ensuring that the funds appropriated for programs under other agencies are correctly transferred. DEC does not actually transfer funds, but issues directions to the account custodians—the Department of Tax and Finance and the Office of the State Comptroller. The Office of the State Comptroller’s auditors evaluated DEC’s performance of its central administrative role and its implementation of the programs for which it is directly responsible.

A large majority of funds appropriated to the EPF during the audit period had been transferred to implementing agencies by the time the audits were completed; however, delays in the transfer of funds were routine. Current practice indicates that DEC transfers funds upon the implementing agency’s request. This typically occurs after the agencies have awarded grants, contracts have been developed or spending plans have been approved. While DEC’s process for fund transfers may not contribute to delays in spending, the delays in requesting transfers are indicative of delays in disbursing EPF funds by implementing agencies.

During the audit period, a total of \$830 million was appropriated to the EPF. As of December 30, 2008, 87 percent of these funds had been transferred at DEC’s direction to agencies responsible for implementing programs. Only 30 percent of funds were transferred to implementing agencies within three months of being appropriated. This indicates that few agencies are able to complete procedures to disburse funds early in the fiscal year.

In some cases, funding was not transferred in the year that it was appropriated. In one notable example, SFY 2005-06 funds appropriated for the Secondary Marketing Materials Assistance Program were not transferred for more than three years. Delays in the transfer of funds have also occurred due to actions taken by the State to address declining revenues associated with the current recession. When the audit period ended in December 2008, a significant portion of the SFY 2008-09 appropriation, \$86 million, was being held by DOB to address State fiscal problems.

Appropriated funds that sit idle, whether for three years or three months, delay the environmental, economic and mandate relief benefits of EPF-funded programs. A set of central guidelines that delineate timeframes for completing steps in the award and disbursement of EPF funds would help ensure that program benefits are delivered to New York residents in a more timely manner.

Implementation of EPF Programs—Auditors found that DEC had clear criteria for awarding grants, applied these criteria consistently and funded appropriate projects with EPF funds.

Auditors found weaknesses, however, in DEC's monitoring of the use of funds by grant recipients. In 17 of 40 grants evaluated, DEC did not adequately monitor whether recipients were using their funds and completing their projects as expected. In 15 of these 17 cases, DEC failed to follow up with grant recipients who did not submit reports as required. In one program, only one in six recipients completed required reports. Based on timelines in the project contracts, five out of six projects should have been completed, but DEC had no records to indicate whether or not the projects were completed. To ensure that funding provides the benefits intended by the Legislature, better monitoring and record keeping by the agency is needed.

Auditors found it took DEC an average of 14 months from the date of funding to have contracts in place for programs implemented directly by the agency. It took DEC an average of 17 months from the date of funding appropriation to enter into contracts with successful grant applicants. Since many programs only reimburse grant recipients for expenditures already made, it is likely that the first payments to successful grant applicants would not be made until well into the third or even the fourth quarter of the next State fiscal year.

Auditors broke the grant award process into two steps to assess timeliness. The first step, from receipt of funding transferred from the EPF to the award of the grant, took an average of eight months. The second step, from the award of the grant to the finalization of the contract, took ten months on average.

Auditors found three contributing factors in the disbursement process delays:

- The process lacked explicit timeframes,
- Grant applicants often did not provide information needed to complete applications or contracts in a timely way, and
- The agency had no designated staff to administer the process.

Establishing timeframes that provide goals for completing required steps is one of the most basic elements of planning. A timeframe provides criteria to judge when required steps must be completed to achieve a program's ultimate goal. Without a timeframe providing guidance, elements of the process are more likely to take a longer period of time than necessary, or may never be completed. As noted above, one grant contract was delayed for three years because grant recipients did not provide required information. Given that no timeframe governed this process, long delays and an associated accumulation of a cash balance in the EPF are not surprising.

If a basic criterion to measure success for EPF-funded programs had been the expenditure of appropriated funds within a State fiscal year, these programs would have failed. These delays constitute one of the most important factors contributing to the recurrent sweeps of EPF funds.

DEC Programs Audited¹¹

Land Acquisition—The Land Acquisition program provides funding for State purchases of land or rights in land for conservation purposes. Land Acquisition is the largest of DEC's programs funded by the EPF and included 135 projects in 2009, ranging in size from the 141,000 acre Finch Woodlands project to one or two acre purchases.

Stewardship—The Stewardship program provides funding for maintenance and improvements on lands and facilities under the jurisdiction of DEC. Projects include trails, recreational facilities, achieving compliance with the Americans with Disabilities Act and environmental codes, and development of management plans for State land units.

Landfill Closure—The Landfill Closure program provides assistance and loans to eligible municipalities to help pay for closure of landfills that are not listed as class 1 or 2 sites on the State's registry of inactive hazardous waste disposal sites. Municipalities are also eligible for interest-free loans for the unfunded portion of project costs.

Municipal Waste Reduction and Recycling—The Municipal Waste program provides significant funding to municipal waste reduction and recycling programs. The program has three components: capital projects, coordination and education projects, and household hazardous waste collection and disposal projects.

Water Quality Improvement—The Water Quality program provides funds to projects conducted to improve water quality. Programs eligible for funding include: municipal wastewater treatment improvement for cities and hardship communities, and for sewer overflow issues; abatement and control of nonpoint source pollution; municipal separate storm sewer systems; water quality management; and aquatic habitat restoration.

Hudson River Estuary—The Hudson River program provides support to projects by municipalities and not-for-profit corporations that are consistent with DEC's Action Agenda for the Hudson River Estuary, which seeks to improve water quality, wildlife habitat and public access, and to promote recreational opportunities in the tidal portion of the Hudson River.

Department of Agriculture & Markets

Summary of Audit Findings

Ag & Markets administers three EPF programs. The Office of the State Comptroller's auditors evaluated the Department's implementation of these programs.

Auditors found that the majority of funds appropriated to the Farmland Protection program during the audit period had been either encumbered or expended. However, a portion of funds from each of the three State fiscal years in the audit period remained unencumbered and unexpended at the end of the period, as follows:

¹¹ The full list of audited programs is in Appendix A.

- 9 percent of funds appropriated in SFY 2007-08 had yet to be encumbered or expended,
- 29 percent of funds appropriated in SFY 2006-07 had yet to be encumbered or expended, and
- 22 percent of funds appropriated in SFY 2005-06 had yet to be encumbered or expended.

When a project is under contract, the necessary amount is encumbered. The presence of unencumbered funds could be attributed to delays in the award and disbursement process. This is particularly problematic since significant numbers of qualified applicants have been turned away.¹²

A great majority of funding appropriated to the Nonpoint Source program was awarded during the State fiscal year in which the appropriation was made:

- 97 percent of funds appropriated in SFY 2005-06 had been awarded by the end of the fiscal year,
- 99.8 percent of funds appropriated in SFY 2006-07 had been awarded by the end of the fiscal year, and
- 100 percent of funds appropriated in SFY 2007-08 had been awarded by the end of the fiscal year.

Ag & Markets awarded the Nonpoint Source program funds in a timely manner. However, funding from cancelled projects was not re-granted in a timely way. In some instances, ten years elapsed before funding from cancelled or languishing projects was made available for new grants. In the case of the Nonpoint Source program, delays in redeploying funds may have resulted in delays in the abatement of water pollution.

Auditors found that the Soil and Water program was implemented on a timely basis with consistent application of clear criteria. Auditors identified one inconsistency in the implementation of this program in SFY 2007-08. In that year, the agency contacted 25 soil and water conservation districts, identified the defects in their applications and allowed them to resubmit. Six other districts were not given this opportunity. Ag & Markets could not provide a reason for this apparently disparate treatment. Auditors recommended that Ag & Markets document its communications with districts applying for funds, and explain why districts are either given or not given opportunities to cure defects in their applications.

Ag & Markets Programs Audited

Farmland Protection—The Farmland Protection program supports the purchase of conservation easements on working farms. These easements extinguish property owners' non-agricultural development rights, but allow development related to agricultural uses of the property, rural enterprises, timber harvesting and alternative energy development, and permit the lease and development of mineral rights consistent with the purpose of the

¹² New York State Department of Environmental Conservation and the Office of Parks, Recreation and Historic Preservation. *2009 Open Space Conservation Plan*. June 2009. www.dec.ny.gov/lands/47990.html.

easement. Studies of such programs in other states have found that they promote agricultural economic development.¹³

Nonpoint Source Pollution Control—The Nonpoint Source program funds projects by soil and water conservation districts to abate, control and prevent nonpoint source pollution on farms. Such projects may include measures to control run-off from farm roads and barnyard areas, institute minimal or no-till cultivation and improve processing of animal manure.

Soil and Water—The Soil and Water program provides operating funds and funding for small projects for soil and water conservation districts. These funds may be used to pay conservation field technicians and administrative support staff, and to carry out projects that conserve, restore and enhance, or develop and utilize soil and water resources.

All of these programs benefit farmers and New York State’s agricultural industry. The Farmland Protection program provides a direct infusion of capital that farmers can reinvest to make their farms more profitable through expanding operations, improving product quality or exploiting new markets. The Nonpoint Source program provides assistance to farms to meet regulatory requirements and/or adopt best management practices, and to free capital for investments to improve the financial health of the farm. The Soil and Water program helps farms sustain operations by conserving the productivity of soil and water quality.

Local Governments

The Division of Local Government and School Accountability (LGSA) in the Office of the State Comptroller audited the implementation of 65 EPF-funded projects by 10 municipalities. These audits found that funds were used appropriately according to criteria established in EPF programs. The audits also indicated additional sources of delay in the expenditure of funds.

On average, it took 19 months from the date of application to the time that municipalities received final notice of an award. Once the project was under contract—which can also be a lengthy procedure—it took an average of 17 months before municipalities submitted their first voucher for reimbursement.¹⁴ On average, it took five months for municipalities to receive payment after submitting a voucher. In some instances, however, project sponsors did not submit vouchers for as long as eight years after completing projects.

Auditors found that 55 percent of project sponsors did not meet timelines specified in application materials, and that most requested and received extensions. Factors that led to delays included:

¹³ Furgeson, Kirsten and Jeremiah Cosgrove. *From the Field: What Farmers Have to Say About Vermont’s Farmland Conservancy Program*. Northeast Field Office, Saratoga Springs, New York: American Farmland Trust. 2000. www.farmlandinfo.org/documents/29389/From_The_Field.pdf.

¹⁴ EPF grant programs reimburse project sponsors for funds spent, rather than providing funds upfront for expenditure on project goals.

- Interrelationships—some projects involved multiple State agencies, private entities and matching funds. Problems in coordination among entities sometimes led to delays.
- Environmental factors—projects encountered unexpected toxic contamination or other conditions that required additional study.
- Land acquisition and legal issues—unforeseen difficulties in acquiring land and lawsuits led to delays in some projects.
- Permits—lengthy review processes for project actions requiring permits delayed some projects.

Municipal officials reported that the EPF programs helped fund valuable projects, but that information on the full range of programs and assistance was difficult to find. While the agencies responsible for administering EPF-funded programs each have websites with information on their specific programs, there is no single source of information. The development of a single website with information on all EPF programs would assist municipalities in learning about available support. In addition, officials reported that application paperwork and follow-up reporting requirements were burdensome, and that requirements for matching local funds were a constraint to participation in the program.

LGSA auditors recommended that municipalities respond to requests for information by State agencies on a timely basis, and that municipalities communicate their concerns about complexities in the application process to agency officials.

Conclusion

EPF programs provide significant and diverse benefits to New York State residents. They also help to ensure clean air, clean water, wilderness experiences and recreational opportunities for future generations of New Yorkers. These programs support important sectors of the economy, and create jobs and tax revenues that support municipal and State government.

Many of these programs also relieve municipalities of a portion of the cost of meeting State and federal environmental mandates, such as treating wastewater, controlling stormwater and providing curbside recycling services. Sound administration of the EPF, therefore, is critical to the health of the State's residents, municipalities, economy and environment.

The Comptroller's audits indicate a high demand for EPF programs. Audits did identify significant delays in the funding process, which explains, in part, the accumulation of large fund balances in the EPF that have been repeatedly swept to the General Fund for budget relief. Some of these problems stem from a failure of State agencies to adopt basic principles of planning, such as establishing timelines for the completion of essential tasks.

The delays in funding EPF programs and the sweeps of EPF cash balances represent lost opportunities to benefit State residents, municipalities and the economy. Both the delays and the sweeps were preventable. The Comptroller's audits recommend measures that, if adopted by State agencies, should substantially improve the administration and success of EPF programs.

Recommendations

- 1. Report annually on EPF implementation to facilitate efficient and effective use of the Fund.** The DOB should produce an annual report that addresses:
 - Progress on expenditure of funds appropriated to each EPF program.
 - Timeframes for achieving key stages of the expenditure process, by agency and by program.
 - Instances of significant delays in the expenditure of funds, with recommendations for addressing delays.
 - Numbers of qualified applications received for each program and numbers of successful applications.
 - Recommendations for funding levels for EPF programs.
 - A discussion of quantifiable benefits of each program and an environmental justice analysis.
 - Feedback from program participants on implementation problems and suggestions for improving implementation.

- 2. Request funds, solicit proposals, score proposals, announce awards and execute contracts in a more timely manner.** Agencies could accomplish these objectives through the following actions:

- Transfer funds from DEC to implementing agencies immediately upon budget enactment.
 - Establish formal, regular timeframes for accomplishing milestones in the process.
 - Begin planning early for the award process.
 - Publish solicitations for proposals shortly after the State budget is finalized.
 - For programs that are consistently funded without significant modification on an ongoing basis, consider standardizing solicitations.
 - Standardize timeframes and establish deadline controls.
 - For EPF programs that are funded annually, establish and maintain scored lists of qualified projects.
 - Article 54 of the New York State Environmental Conservation Law establishes broad EPF program categories.
 - There is a reasonable expectation that these programs will continue to be funded in future State fiscal years. Accordingly, lists of projects that qualify for funding should be maintained to expedite processing when those funds become available.
 - Funds in subsequent fiscal years would be applied to the eligible project list. DEC's Municipal Waste Reduction and Recycling Program operates this way.
 - For agencies with EPF implementation responsibilities, execute contracts promptly.
 - Comptroller DiNapoli has issued recommendations to State agencies to assist them in complying with the Prompt Contracting Law.¹⁵
 - These recommendations include using standard boilerplate contract language, training contract management staff and starting the grant-making process early.
- 3. Minimize project spending delays.** Agencies should work with award recipients to identify reasons for delays in spending, and institute reforms to address these delays.
- Establish project timelines. Agencies should monitor project status to ensure grant awards are expended timely and enable prompt recovery of funds whenever projects are cancelled.
- 4. Develop and use a rational and fair process.** Agencies should establish clear guidelines governing all steps in the funding process.
- If the administering agency allows projects receiving lower scores to be funded, the circumstances under which this occurs should be clearly defined and documented.
 - Criteria defining circumstances under which parties are allowed to clarify or resubmit information should be developed and documented. Criteria should be

¹⁵ Prompt Contracting Annual Report, Calendar Year 2008. www.osc.state.ny.us/reports/fiscal/contract_annualreport.pdf.

applied uniformly to all parties, documenting any communications with parties regarding resubmission.

- 5. Improve communication with and reduce administrative burdens on project sponsors.** Agencies should consider collaborating to provide a coordinated, single source of information for municipalities. Other resource and referral tools should be developed to facilitate dissemination of information on EPF programs.
 - Agencies should explore mechanisms to standardize, streamline and simplify application and reporting requirements, consistent with maintaining a high standard of accountability for EPF funds.

Appendices

Appendix A: Audited Agency Programs

Department of State

Local Waterfront Revitalization
Quality Communities
Ocean and Great Lakes
Long Island South Shore Estuary Reserve

Department of Agriculture and Markets

Nonpoint Source Abatement and Control
Agricultural and Farmland Protection
Soil and Water Conservation Districts

Office of Parks, Recreation and Historic Preservation

Open Space
Municipal Grants
Stewardship
Zoos, Botanical Gardens and Aquariums
Historic Barns Restoration and Preservation
Ocean and Great Lakes
Biodiversity

Department of Environmental Conservation

Land Acquisition
Stewardship
Ocean and Great Lakes
Biodiversity Stewardship
Landfill Closure
Municipal Waste Reduction and Recycling
Hudson River Estuary
Water Quality Improvement
Nonpoint Source

Appendix B: History of EPF Appropriations and Expenditures

| | Current Appropriation Authority | Disbursement Year-to-Date | Disbursement* Life-to-Date | Outstanding Encumbrance | Amount Available for Future Obligations | Percentage of Available Appropriation |
|------------------------------------------|---------------------------------------|------------------------------|-------------------------------|----------------------------|--------------------------------------------------|------------------------------------------------|
| 1994 - 2009 Appropriation Summary | | | | | | |
| I. Solid Waste | \$320,267,587 | \$18,290,600 | \$241,973,273 | \$18,406,523 | \$59,887,791 | 18.70% |
| II. Parks, Rec. & Hist. Pres. | 730,743,000 | 60,286,117 | 455,393,624 | 120,712,655 | 154,636,721 | 21.16% |
| III. Open Space | 1,159,989,413 | 60,841,352 | 798,497,126 | 141,007,341 | 220,484,946 | 19.01% |
| TOTAL | 2,211,000,000 | 139,418,069 | 1,495,864,024 | 280,126,518 | 435,009,458 | 19.67% |
| Annual Appropriations: | | | | | | |
| 2009 Appropriation | | | | | | |
| I. Solid Waste | 15,840,000 | 0 | 0 | 336,000 | 15,504,000 | 97.88% |
| II. Parks, Rec. & Hist. Pres. | 65,284,000 | 2,848,789 | 2,848,789 | 2,069,898 | 60,365,313 | 92.47% |
| III. Open Space | 130,876,000 | 3,767,728 | 3,767,728 | 33,183,792 | 93,924,480 | 71.77% |
| TOTAL | 212,000,000 | 6,616,517 | 6,616,517 | 35,589,690 | 169,793,793 | 80.09% |
| 2008 Appropriation | | | | | | |
| I. Solid Waste | 13,775,000 | 861,752 | 975,542 | 1,832,995 | 10,966,463 | 79.61% |
| II. Parks, Rec. & Hist. Pres. | 61,600,000 | 11,160,239 | 13,918,491 | 8,571,426 | 39,110,083 | 63.49% |
| III. Open Space | 129,625,000 | 15,444,906 | 40,641,694 | 26,171,042 | 62,812,264 | 48.46% |
| TOTAL | 205,000,000 | 27,466,897 | 55,535,727 | 36,575,463 | 112,888,810 | 55.07% |
| 2007 Appropriation | | | | | | |
| I. Solid Waste | 27,350,000 | 6,230,827 | 10,766,323 | 2,772,916 | 13,810,761 | 50.50% |
| II. Parks, Rec. & Hist. Pres. | 83,100,000 | 13,442,055 | 34,831,156 | 29,137,947 | 19,130,897 | 23.02% |
| III. Open Space | 139,550,000 | 12,660,396 | 76,635,225 | 32,844,928 | 30,069,847 | 21.55% |
| TOTAL | 250,000,000 | 32,333,278 | 122,232,704 | 64,755,791 | 63,011,506 | 25.20% |
| 2006 Appropriation | | | | | | |
| I. Solid Waste | 23,770,500 | 2,948,676 | 5,738,287 | 2,930,153 | 15,102,061 | 63.53% |
| II. Parks, Rec. & Hist. Pres. | 79,970,000 | 12,146,181 | 41,421,571 | 27,531,908 | 11,016,521 | 13.78% |
| III. Open Space | 121,259,500 | 11,368,453 | 83,058,733 | 23,908,175 | 14,292,591 | 11.79% |
| TOTAL | 225,000,000 | 26,463,310 | 130,218,591 | 54,370,236 | 40,411,173 | 17.96% |
| 2005 Appropriation | | | | | | |
| I. Solid Waste | 18,750,000 | 4,466,115 | 13,686,494 | 2,668,498 | 2,395,008 | 12.77% |
| II. Parks, Rec. & Hist. Pres. | 46,815,000 | 5,444,897 | 28,441,748 | 13,377,963 | 4,995,289 | 10.67% |
| III. Open Space | 84,435,000 | 7,603,115 | 65,838,812 | 13,888,011 | 4,708,176 | 5.58% |
| TOTAL | 150,000,000 | 17,514,128 | 107,967,054 | 29,934,472 | 12,098,474 | 8.07% |
| 2004 Appropriation | | | | | | |
| I. Solid Waste | 16,775,000 | 1,541,835 | 15,604,761 | 1,047,561 | 122,678 | 0.73% |
| II. Parks, Rec. & Hist. Pres. | 41,565,000 | 4,087,776 | 27,773,558 | 11,893,578 | 1,897,863 | 4.57% |
| III. Open Space | 66,660,000 | 5,362,131 | 56,709,565 | 3,928,824 | 6,021,611 | 9.03% |
| TOTAL | 125,000,000 | 10,991,742 | 100,087,885 | 16,869,963 | 8,042,152 | 6.43% |
| 2003 Appropriation | | | | | | |
| I. Solid Waste | 16,925,000 | 398,530 | 15,355,955 | 286,387 | 1,282,657 | 7.58% |
| II. Parks, Rec. & Hist. Pres. | 45,665,000 | 4,721,308 | 35,534,878 | 8,344,298 | 1,785,824 | 3.91% |
| III. Open Space | 62,410,000 | 1,218,749 | 56,223,405 | 3,317,971 | 2,868,625 | 4.60% |
| TOTAL | 125,000,000 | 6,338,587 | 107,114,238 | 11,948,656 | 5,937,106 | 4.75% |
| 2002 Appropriation ** | | | | | | |
| I. Solid Waste | 28,355,000 | 392,712 | 27,730,191 | 0 | 624,809 | 2.20% |
| II. Parks, Rec. & Hist. Pres. | 95,685,000 | 2,847,183 | 85,690,068 | 8,040,760 | 1,954,172 | 2.04% |
| III. Open Space | 125,960,000 | 2,837,240 | 118,559,734 | 3,378,682 | 4,021,584 | 3.19% |
| TOTAL | \$250,000,000 | \$6,077,135 | \$231,979,992 | \$11,419,442 | \$6,600,566 | 2.64% |

* Life-to-Date disbursements do not include statutory transfers to the General Fund.

** There was no EPF appropriation in SFY 2001; there were two appropriations in SFY 2002.

| | Current Appropriation Authority | Disbursement Year-to-Date | Disbursement Life-to-Date | Outstanding Encumbrance | Amount Available for Future Obligations | Percentage of Available Appropriation |
|-------------------------------|---------------------------------------|------------------------------|------------------------------|----------------------------|--------------------------------------------------|------------------------------------------------|
| 2000 Appropriation | | | | | | |
| I. Solid Waste | \$22,025,000 | \$251,241 | \$19,151,484 | \$2,854,240 | \$19,276 | 0.09% |
| II. Parks, Rec. & Hist. Pres. | 56,550,000 | 1,409,275 | 52,370,636 | 2,900,438 | 1,278,926 | 2.26% |
| III. Open Space | 56,425,000 | 496,985 | 55,970,738 | 261,780 | 192,482 | 0.34% |
| TOTAL | 135,000,000 | 2,157,502 | 127,492,858 | 6,016,457 | 1,490,685 | 1.10% |
| 1999 Appropriation | | | | | | |
| I. Solid Waste | 25,333,319 | 56,079 | 24,661,228 | 612,013 | 60,078 | 0.24% |
| II. Parks, Rec. & Hist. Pres. | 71,500,000 | 673,934 | 66,156,167 | 4,702,582 | 641,251 | 0.90% |
| III. Open Space | 62,641,681 | 10,350 | 61,588,321 | 34,500 | 1,018,860 | 1.63% |
| TOTAL | 159,475,000 | 740,363 | 152,405,716 | 5,349,095 | 1,720,189 | 1.08% |
| 1998 Appropriation | | | | | | |
| I. Solid Waste | 26,100,000 | 118,256 | 24,776,852 | 1,323,148 | 0 | 0.00% |
| II. Parks, Rec. & Hist. Pres. | 19,700,000 | 603,146 | 16,324,603 | 1,908,070 | 1,467,327 | 7.45% |
| III. Open Space | 44,725,000 | 13,168 | 44,538,179 | 59,709 | 127,112 | 0.28% |
| TOTAL | 90,525,000 | 734,570 | 85,639,634 | 3,290,928 | 1,594,439 | 1.76% |
| 1997 Appropriation | | | | | | |
| I. Solid Waste | 29,110,000 | 241,575 | 27,872,537 | 1,237,463 | 0 | 0.00% |
| II. Parks, Rec. & Hist. Pres. | 33,800,000 | 478,698 | 22,425,106 | 1,152,564 | 10,222,330 | 30.24% |
| III. Open Space | 47,090,000 | 0 | 46,961,734 | 24,176 | 104,090 | 0.22% |
| TOTAL | 110,000,000 | 720,272 | 97,259,376 | 2,414,203 | 10,326,420 | 9.39% |
| 1996 Appropriation | | | | | | |
| I. Solid Waste | 28,655,000 | 276,047 | 28,403,183 | 251,817 | 0 | 0.00% |
| II. Parks, Rec. & Hist. Pres. | 21,624,000 | 403,764 | 20,242,011 | 734,664 | 647,325 | 2.99% |
| III. Open Space | 49,721,000 | 44,963 | 49,433,716 | 0 | 287,284 | 0.58% |
| TOTAL | 100,000,000 | 724,774 | 98,078,909 | 986,481 | 934,610 | 0.93% |
| 1995 Appropriation | | | | | | |
| I. Solid Waste | 15,103,768 | 419,444 | 14,915,955 | 187,813 | 0 | 0.00% |
| II. Parks, Rec. & Hist. Pres. | 6,340,000 | 18,871 | 5,870,423 | 346,559 | 123,018 | 1.94% |
| III. Open Space | 21,056,232 | 0 | 21,014,543 | 5,751 | 35,938 | 0.17% |
| TOTAL | 42,500,000 | 438,315 | 41,800,920 | 540,123 | 158,956 | 0.37% |
| 1994 Appropriation | | | | | | |
| I. Solid Waste | 12,400,000 | 87,512 | 12,334,482 | 65,518 | 0 | 0.00% |
| II. Parks, Rec. & Hist. Pres. | 1,545,000 | 0 | 1,544,420 | 0 | 580 | 0.04% |
| III. Open Space | 17,555,000 | 13,166 | 17,555,000 | 0 | 0 | 0.00% |
| TOTAL | \$31,500,000 | \$100,678 | \$31,433,902 | \$65,518 | \$580 | 0.00% |

As of March 31, 2010

Statutory Transfers to the General Fund

(amounts in millions)

| | Fund Sweep | EFC Bond Proceeds | Totals |
|---------------------------|------------------|----------------------|------------------|
| L.2002, Ch 81 | \$235.000 | \$111.000 | \$346.000 |
| L.2003, Ch 62 | 33.571 | 43.000 | 76.571 |
| L.2004, Ch 59 | 23.600 | 7.556 | 31.156 |
| L.2005, Ch 63 | 10.000 | 52.000 | 62.000 |
| L.2007, Ch 57 | 20.000 | -0.556 | 19.444 |
| L.2008, Ch 57, as amended | | | 0.000 |
| by L. of 2009, Ch. 2 | 175.000 | 100.000 | 275.000 |
| L.2009, Ch 56 | | 34.106 | 34.106 |
| L.2009, Ch 503 (DRP) | 10.000 | | 10.000 |
| | \$507.171 | \$347.106 | \$854.277 |

Pursuant to State Finance Law Section 92-s(9), the Comptroller is authorized at the direction of the Budget Director to return monies to the Environmental Protection Fund (from the General Fund) for the purpose of meeting actual and anticipated (appropriated) disbursements from the EPF.

Pursuant to State Finance Law Section 92-s (9), as of April 1, 2008, the amount subject to return is limited to \$447.171 million.

Year-to-Date disbursements are 'net' of adjustments that transfer prior years reported spending to other financing sources. Such adjustments transfer expenditures out of the EPF to other State or federal funds.

Appendix C: Audit Reports

Department of Environmental Conservation: Environmental Protection Fund
Report 2008-S-121

<http://osc.state.ny.us/audits/allaudits/093010/08s121.htm>

Department of State: Environmental Protection Fund
Report 2008-S-149

<http://osc.state.ny.us/audits/allaudits/093010/08s149.htm>

Office of Parks, Recreation and Historic Preservation: Environmental Protection Fund
Report 2008-S-148

<http://osc.state.ny.us/audits/allaudits/093010/08s148.htm>

Department of Agriculture and Markets: Environmental Protection Fund
Report 2008-S-150

<http://osc.state.ny.us/audits/allaudits/093009/08s150.htm>

Environmental Protection Fund Projects: Are Local Governments Completing Them
Timely?

Report 2009-MS-8

<http://osc.state.ny.us/localgov/audits/swr/2010/EPF/EPFGlobal.pdf>