



OFFICE OF THE STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Green Procurement: An Overview of Compliance with Environmentally Preferred Purchasing Requirements and Recommendations for Improving Green Practices

August 2009

Introduction

In September 2007, Comptroller DiNapoli signed an Executive Order on Energy and the Environment directing the formation of a Sustainability Team comprising the heads of all the offices and divisions within the Office of the State Comptroller (OSC). To achieve sustainability, the agency is directed to conserve natural resources through efficient use, reduce harmful emissions to the environment, purchase products and services that conserve natural resources and reduce harmful emissions, and create a safe and healthy workplace. The Comptroller charged the Sustainability Team with making OSC a model of sustainability, while OSC's Office of State and Local Government Accountability was tasked with assisting other State agencies and municipal governments in developing more sustainable operations. Accordingly, OSC has conducted performance audits on State agency, public authority and school district compliance with mandated sustainability initiatives including purchase and use of green or environmentally preferred products.

Environmentally preferred products typically contain reduced levels of toxic substances or none at all, are efficient in their use of energy, contain recycled content, are recyclable and/or are durable. Use of such products can reduce emissions of toxic substances to the environment in the manufacturing process. Since these products contain reduced levels of toxic substances, they also limit toxic exposures from product use. Because they are efficient, they reduce harmful emissions from generation of electricity or combustion of fuel in vehicles. Durable products have a longer useful life and so contribute to the reduction of solid waste.

New York State government is a major consumer of materials and energy. By establishing a preference for purchasing products and services that reduce adverse environmental and public health impacts throughout the cycle of production, use and development, New York State can benefit public health and the environment. In its role as consumer, the State can help create markets for products and services. Purchase of environmentally preferred products can also benefit the State financially as these products are more durable or by using less energy or other resources in their operation.

The Office of the State Comptroller (OSC) has conducted environmentally-oriented performance audits on topics ranging from energy efficiency and timber management to oil spill and brownfield remediation. Most recently, these audits have addressed State agency, public authority and school district compliance with requirements for the purchase of energy efficient office equipment, environmentally preferred cleaning and maintenance products, and alternative-fuel vehicles.¹

Our recent audit findings and OSC's experience in implementing its own sustainability efforts point to key management actions that can increase the effectiveness of initiatives to improve the sustainability of government operations. This report summarizes findings and outlines specific recommendations for future initiatives, including: strong executive commitment, clear communication, the development of measures to implement and evaluate programs, appropriate technical resources and training, and appropriate accountability for oversight and program success.

Environmentally Preferred Purchasing Programs

Environmentally preferred purchasing (EPP) programs have been established through State law and executive order.

Green Cleaning Products

Chapter 584 of the Laws of 2005 established the school environmentally sensitive cleaning product program. This law required New York State public and private elementary and secondary schools by September 1, 2006 to use cleaning products that have been identified by the New York State Office of General Services (OGS) as environmentally sensitive. Schools were allowed to exhaust any existing stocks of nongreen cleaning products purchased prior to that date. The law also directs OGS to develop and publish lists of products that conform to the new requirements. OGS has developed criteria by which to assess products and lists of products for school districts to use.²

In addition, the Governor's Executive Order 134 (EO 134), issued January 5, 2005, directs State agencies and certain public authorities to purchase environmentally preferred cleaning products. The order applies to all State agencies and many public authorities; and the entities were given six months from the date of issuance to transition to conforming cleaning products.

Each State agency and public authority was required to report on its compliance within one year of the order (January 2006), and to update the report every two years. Requirements apply to all the facilities, including leased facilities and facilities cleaned by contractors.

¹ See Exhibit A for a detailed list of OSC's recent environmental audits.

² Product criteria and lists of environmentally sensitive cleaning products can be found at www.ogs.state.ny.us/bldgadmin/environmental/ProductLists.html.

Landlords and cleaning contractors are to be encouraged to comply with the green cleaning requirements, and their cleaning practices are to be monitored. If nonconforming products are used at any facilities, the reasons for noncompliance are to be documented in the biennial report. In addition, agencies and authorities must designate an employee responsible for ensuring compliance. OGS is to provide guidance to agencies and authorities and publish lists of products that conform to the new requirements.³

Energy Efficiency and Use of Green Energy

The Governor's Executive Order 111 (EO 111), issued in June 2001, requires State agencies to increase energy efficiency and purchase renewable forms of energy through:

- Purchase of electric equipment that is rated as efficient by the US EPA Energy Star Program, such as office equipment, lighting, appliances, and heating and cooling equipment;
- Purchase of alternative—fuel—powered –vehicles;
- Purchase of electricity from renewable forms of electric generation on an increasing scale, up to 20 percent by 2010; and
- Adoption of plans to meet a portion of electric demand through efficiency.

The New York State Energy Research and Development Authority (NYSERDA) is to develop applicable energy efficiency guidelines and help agencies implement the order, and OGS is to incorporate requirements of the order into its statewide procurement contracts.⁴

New EPP Initiatives

Executive Order 4 (EO 4), signed on April 25, 2008, establishes a State green procurement and agency sustainability program. The newest Executive Order creates a comprehensive program to identify and procure environmentally preferred products, requires State agencies and public authorities to create individual sustainability programs to reduce the environmental and public health impacts of agency operations, and establishes an Interagency Committee on Sustainability and Green Procurement to identify environmentally preferred products as well as strategies for agencies to employ in developing and implementing sustainability plans. As agencies move forward in implementing this order, successful strategies identified through the OSC evaluation of recent State green purchasing initiatives should be incorporated.

Audit Results

The OSC audits found that some of the green purchasing initiatives have been more successful than others. The successful programs demonstrated clear communication and

³ Product criteria and lists of environmentally sensitive cleaning products can be found at www.ogs.state.ny.us/bldgadmin/environmental/ProductLists.html

⁴ NYSERDA guidelines can be found at www.nysesda.org/programs/state.asp

accountability for results, while the programs that have been less successful lacked strong central leadership and guidance.

School District Purchase and Use of Green Cleaning Products

As of September 2006, all school districts in the State were required by law to use green cleaning products in their buildings and other facilities. Two audits of school district compliance with the green cleaning requirements were conducted. In each audit, OSC found that while some of the districts were late in meeting deadlines, all districts were in substantial compliance with the requirements at the time of the audits.

The first audit covered nine school districts and one Board of Cooperative Educational Services (BOCES) in various areas outside of New York City. At each entity, OSC reviewed a sample of cleaning product purchases. At three of the entities, all the products purchased were environmentally preferred (i.e., they were on OGS lists of approved green products). At the other seven entities, most of the products were green-approved, but some non-approved products have been purchased.

The second audit covered selected schools in New York City. That audit found that New York City schools, as a group, were a year late in complying with the law. The New York City Department of Education did not begin working with its cleaning products supplier to acquire green cleaning products until November 2006, two months after the schools were required to be in full compliance with the law. Nonetheless, when a sample of schools was visited between November 2007 and February 2008, most of the schools were found to be in substantial compliance with the green cleaning requirements.

State Agency and Public Authority Use of Green Cleaning Products

As of July 2005, all State agencies and most public authorities were required to use green cleaning products in their buildings and other facilities (EO 134). In early 2008, 15 audits (eight State agencies and seven public authorities) evaluating compliance with this order were conducted.

The audits found widespread noncompliance with the order. Six of the eight State agencies and six of the seven public authorities sampled were not in compliance. Officials at all the noncompliant entities immediately took steps toward compliance after the audits were initiated.

Of the two compliant State agencies, one, the Office of Mental Health, had achieved very limited compliance. Only one State agency (OGS) and one public authority (Battery Park City Authority) achieved substantial compliance. Notably, the Authority was not aware of the Executive Order and had decided independently to purchase green cleaning products.

As discussed later in this report, special circumstances may have contributed to the noncompliance in certain cases. However, at most of the noncompliant entities, the failure of timely, clear communication of EO 134 requirements and/or a lack of commitment by management to the order contributed significantly to the noncompliance discovered in the audits.

Purchase of Energy Efficient Equipment

Under EO 111, NYSERDA and OGS are to help facilitate the purchase of energy efficient equipment by State and local government entities. The OSC audit found that NYSERDA and OGS effectively fulfilled their responsibilities. NYSERDA developed the energy efficiency guidelines that were required by the order, and OGS incorporated the guidelines into several statewide procurement contracts.

The audit also examined whether State agencies complied with EO 111 when purchasing equipment. The audit selected samples of purchases at the seven agencies that purchased the most equipment subject to the order during the two-year period audited. Only 2 of the 234 purchases in the sample failed to meet EO 111's standards for energy efficiency. It was, therefore, concluded that State agencies were generally complying with the order's requirements related to the purchase of energy efficient equipment.

Purchase of Alternative-Fuel Vehicles

Under EO 111, an increasing percentage of the new light-duty vehicles purchased by State agencies and public authorities were to be powered by alternative fuels. By 2005, at least half of these vehicles were to use alternative fuels, with a goal of 100 percent by 2010. The audit examined six public authorities' compliance with this requirement as part of larger audits of their overall vehicle acquisition, use and disposition practices.

The audit found that three of the six public authorities achieved full to partial compliance, as many of the light-duty vehicles purchased by these entities between 2002 and 2005 used alternative fuels. In total, the three public authorities purchased 622 light-duty vehicles between 2002 and 2005, of which 281 (45.2 percent) used alternative fuels. The other three public authorities did not comply with the requirement. In fact, none of the ten light-duty vehicles purchased by these entities between 2002 and 2005 used alternative fuels.

Lessons for Future EPP Programs: Leadership, Communication and Accountability

OSC audits found full compliance with EO 111 requirements for the purchase of energy efficient equipment, substantial compliance with the requirements of Chapter 584 of the Laws of 2005 for school district purchase and use of green cleaning products, and partial compliance with EO 111 requirements for the purchase of alternative-fuel vehicles.

However, the EPP audits found substantial noncompliance with EO 134 requirements for State agency and public authority purchase and use of green cleaning products. The most commonly stated reasons for agency failure to comply with the requirements of EO 134 include: agencies were unaware of the order, did not understand requirements of the order, or did not believe that the order applied to them. Based on this finding, it is clear

that the requirements contained in EO 134 were not effectively communicated to the covered entities.

OGS is responsible for providing guidance to the affected entities and helping them achieve compliance, but the lack of centralized communication and direction hindered the success of EO 134. OGS officials stated that their priority in this area was helping school districts achieve compliance with the new green cleaning requirements pursuant to Chapter 584 of the Laws of 2005. However, OGS likely could have achieved a similar level of success with State agencies and public authorities by providing the same level of guidance. Materials already developed for school EPP programs could have been amended for State use and provided to affected agencies and authorities.

Some agencies were aware of the Order but took little or no action to achieve compliance. While EO 134 provides for reporting by agencies on their progress in compliance with the order's requirements, few agencies met the reporting requirement and fewer still were held accountable for failure to report. The value of establishing accountability is demonstrated by the progress made by agencies after OSC auditors began their work.

Many of the facilities covered by the order are not cleaned by the responsible State agency or public authority. Rather, these facilities are either cleaned by contractors, or are leased and cleaned by the landlords. As a result, State officials did not feel as responsible for the cleaning of these facilities as they did for agency-owned and agency-cleaned facilities. It is possible, however, for agencies to direct that landlords or contract cleaning services use products that meet the requirements of EO 134. In this case, better guidance on how to address cleaning by contractors and establishing accountability for ensuring contractor compliance could have improved performance.

Two State agencies faced unique obstacles that contributed to the agencies' noncompliance with the green cleaning requirements in EO 134. Security concerns at the Department of Correctional Services (DOCS) made it more difficult to implement a green cleaning program fully.⁵ At the Office of Mental Health (OMH), many psychiatric centers were not using green cleaning products. OMH Infection Control Department found that the OGS-approved products did not meet its standards for infection control. The OMH was evaluating the suitability of certain other green cleaning products, which were recommended by health care organizations; however, guidance for schools on the OGS website includes products certified by Canada's Envirocare program. This program has certified several products for disinfection in health care settings. Again, better guidance for State agencies may have enabled OMH to comply more fully with the order.

It is likely that the failures documented in implementation of EO 134 could have been avoided or significantly mitigated through the application of appropriate management principles:

⁵ Audit 2008-S-16. Corrections facilities were cleaned by prisoners. DOCS' policy is to distribute cleaning products in small packages to control their circulation in corrections facilities. At the time of the audit, DOCS personnel were reviewing EO 134—compliant products that could be distributed in small quantities.

- Communicate strong leadership commitment and support to affected entities;
- Establish formal communications procedures to ensure requirements, updates and performance assessments are understood by all affected entities;
- Develop and distribute clear implementation procedures, including measurement tools to evaluate success and reporting mechanisms for instances when green products do not meet an agency's special needs;
- Establish appropriate management oversight to ensure compliance, and recognize and reward agencies that successfully meet goals; and
- Provide technical experts and reference materials to assist agencies in compliance.

Management Leadership and Structures to Foster Communication and Accountability

Some of the most significant obstacles to the successful implementation of EO 134 relate to the communication of requirements and assessment of agency performance. Basic management structures to guide communication and oversight could have helped mitigate these issues.

Specifically, regular meetings between OGS officials charged with implementing EO 134 and affected agencies could have helped identify and prevent failures documented in the OSC audits. Such meetings would have provided opportunities to assess performance, reward success and solve problems when implementation efforts encountered obstacles. Basic communication strategies include developing a list of agencies responsible for implementing the order, designating contact people within the agencies responsible for disseminating information, establishing a routine schedule for follow-up with agency contacts, and requiring responsible agencies to acknowledge receipt of information.

The OSC Sustainability Team created to implement Comptroller DiNapoli's Executive Order on Energy and the Environment provides an example of this kind of leadership and structure. The Sustainability Team has assisted in communicating the goals of the Comptroller's Executive Order on Energy and the Environment, and provided a management structure which communicates leadership support for these goals and their implementation. The Sustainability Team also provides a process, through regular meetings and management updates, for accountability and recognition in which the efforts of divisions within OSC to accomplish the goals of the Comptroller's Order can be evaluated.

Clear Procedures

Distribution of clear procedures for implementing EO 134 and for considering exceptions to the purchase of environmentally preferred products could have considerably reduced noncompliance. EO 134 provided a set of milestones and target dates for achieving compliance. OGS maintains a website with a list of green cleaning products, but no instruction was provided to assist agencies in implementing the Order or to overcome obstacles such as those encountered by DOCS and OMH.

An example of this practice is found in the United States Department of Justice (DOJ) implementation of Executive Order 13423 – Strengthening Federal Environmental, Energy, and Transportation Management, which included a green procurement specification. DOJ established a formal policy for response to this component of the order and sent formal notifications via memoranda to all department heads by December of that year.

DOJ also created a 21-page handbook that was distributed with the memo.⁶ The handbook explained the policy requirements and offered implementation suggestions. The memo also included contact information for two individuals, one for questions pertaining to environmental issues and the other for procurement-related inquiries. DOJ subsequently posted the handbook on its website for reference.

Provision of Technical Support for Agency Implementation

Technical support for agency implementation of EO 134 could also have helped promote better performance on the Order. The actions of OGS in supporting school district implementation of the requirements of Chapter 584 of the Laws of 2005 provide an example of this practice. OGS provided critical guidance to assist school districts in their compliance efforts. In particular, OGS developed and published extensive lists of green-approved cleaning products. Since this information also applies directly to implementation of EO 134, such information could also have been distributed to State agencies to assist in their compliance.

Implementation of Executive Order 4

The Governor's Executive Order 4 establishes an aggressive agenda for greening New York State government. It can have a significant positive impact on environmental quality and the health and welfare of New York State citizens and employees if fully and successfully implemented. Lessons from the State's past and from ongoing efforts to implement green purchasing practices can assist in the development and implementation of programs under EO 4.

The Order establishes clear leadership and points of accountability for the implementation of requirements. It also establishes clear timelines and expectations for the development of programs statewide and within each agency and covered public authority. Reporting is required annually to the Governor.

Initial communications to agencies and authorities already demonstrate clear improvements on the process by which EO 134 was implemented, but there are important measures that should be taken to prevent failures similar to those in the implementation of EO 134. A publicly available list of agencies and authorities covered by EO 4 would help ensure that covered entities are aware of the new requirements. It would also ensure that no entity is overlooked in future communications. Both of these problems contributed to the low rate of compliance with EO 134, but are easily rectified.

⁶ www.usdoj.gov/jmd/ep/docs/gpp-with-memo-dec-2007.pdf.

Initial outreach included clear milestones as called for in EO 4. Subsequent training programs and materials for Sustainability and Green Procurement Coordinators (Coordinators) provide an overview of planning for implementing sustainability programs within agencies. Coordinators are also provided with the OGS Sustainability Plan to use as a template. In addition, Coordinators are provided with contact people in agencies tasked with providing technical assistance.

Specific Recommendations for EO 4 Implementation

Coordinators: State agencies have been directed to assign an employee to serve as a Sustainability and Green Procurement Coordinator, to give that person full management support, and to provide the necessary resources to develop and implement a Sustainability and Environmental Stewardship Program to comply with EO 4.

Recommendation:

Agency leaders are given no guidance by which to judge the experience and skills necessary to fulfill the job requirements of the Coordinator. In order to ensure success of the Coordinator, the position should be of appropriate management status with full support of the agency head or chief executive officer. Ideally, additional support would include a team of officials with decision-making authority from all subdivisions of the agency or authority. The lack of high-level support and oversight was a common problem in the implementation of EO 134.

Training materials place much of the responsibility for ensuring that an agency is in compliance with EO 4 on the Coordinator. For example, the Coordinator is directed to seek input and approvals from all agency divisions and from the agency's senior management. While this is an appropriate step, it does not guarantee that input or approval will be forthcoming. Since full compliance with EO 4 will require changes in practices by all agency staff, strong and committed leadership support will almost certainly be required to ensure compliance. In addition to providing training and guidance to Coordinators, executive level management should be trained. Ideally, executive management should retain responsibility for compliance.

Development and Implementation of Sustainability Programs: Agencies and authorities are directed to develop and implement sustainability and environmental stewardship programs to comply with the requirements of EO 4, and to reduce the adverse public health and environmental impacts of their activities and operations, including but not limited to: reducing waste and source separating recyclable materials; using locally available compost, mulch and soil amendments produced from secondary materials; and utilizing secondary materials in construction.

Recommendation

The guidance to Coordinators includes a general list of activities to incorporate in sustainability and environmental stewardship programs, and is a good start. To the extent possible, it would be helpful to provide this information for specific types of

facilities. Coordinators would benefit from information identifying sustainability practices in office settings, auto maintenance garages and the range of other work settings commonly encountered in State government.

Assistance to State Agencies and Authorities: OGS, the Department of Environmental Conservation, the Environmental Facilities Corporation, and NYSERDA are authorized to assist agencies and authorities in complying with EO 4.

Recommendation

Training materials provided for Coordinators include contacts for the core components of agency plans to implement EO 4. This information will be helpful to Coordinators and should contribute to the success of the program. In addition, the training materials provide for follow up communication with Agency Coordinators to help identify any further required assistance. To assist agency leaders in selecting appropriately qualified staff to implement the program, the handbook should also contain a job description and explain the experience required for the Sustainability and Green Procurement Coordinator.

Conclusion

The importance of developing a culture of sustainability and environmental responsibility in every public agency and authority cannot be overstated. Executive orders and statutes to address green procurement, energy efficiency and overall sustainability of operations will help preserve our resources, reduce operating costs and improve the health of our citizens and our environment.

Audits of EPP programs conducted by the Office of the State Comptroller help provide a roadmap of best practices and information to ensure the greatest success in current and future efforts. The application of sound management principles will help promote the success of these important programs. Findings from audits of the State's green procurement programs conducted under Comptroller DiNapoli's Green Initiative help underscore the need to secure strong leadership, clear guidance and designated accountability within each agency and authority in order to achieve results that are good for our environment and our economy.

Exhibit A

**OSC Audits Addressing State Agency, Public Authority and School District
Compliance with Environmentally Preferred Purchasing Requirements**

Items Subject to Purchasing Requirements	Entities Audited	Audit Report Number	Date Report Issued	Compliance
Cleaning & Maintenance Products	Department of Correctional Services	2008-S-16	9/30/08	No
Cleaning & Maintenance Products	Department of Health	2008-S-23	9/30/08	No
Cleaning & Maintenance Products	Office of Mental Health	2008-S-21	9/30/08	Partial
Cleaning & Maintenance Products	Office of Mental Retardation & Developmental Disabilities	2008-S-24	9/30/08	No
Cleaning & Maintenance Products	SUNY College at Purchase	2008-S-19	9/30/08	No
Cleaning & Maintenance Products	Office of Children & Family Services	2008-S-22	9/30/08	No
Cleaning & Maintenance Products	Department of Motor Vehicles	2008-S-25	9/30/08	No
Cleaning & Maintenance Products	Office of General Services	2008-S-12	9/30/08	Substantial/ Partial*
Cleaning & Maintenance Products	Battery Park City Authority	2008-S-13	9/30/08	Substantial
Cleaning & Maintenance Products	State Insurance Fund	2008-S-14	9/30/08	No
Cleaning & Maintenance Products	NYC Convention Center Operating Corporation	2008-S-15	9/30/08	No
Cleaning & Maintenance Products	Central NY Regional Transportation Authority	2008-S-17	9/30/08	No
Cleaning & Maintenance Products	MTA - NYC Transit	2008-S-26	9/30/08	No
Cleaning & Maintenance Products	MTA - Long Island Rail Road	2008-S-27	9/30/08	No
Cleaning & Maintenance Products	NYS Bridge Authority	2008-S-18	6/5/08	No
Cleaning & Maintenance Products	NYC Department of Education	2007-N-21	11/07/08	Substantial
Cleaning & Maintenance Products	School Districts (9); BOCES (1)	2008-MS-2	5/08	Substantial
Energy-Using Equipment	Various **	2006-S-24	11/9/06	Full
Alternative-Fuel Vehicles	NYS Thruway Authority	2006-S-119	11/6/07	Partial
Alternative-Fuel Vehicles	New York Power Authority	2006-S-116	9/27/07	Full
Alternative-Fuel Vehicles	NYC Convention Center Operating Corporation	2007-S-36	9/27/07	No
Alternative-Fuel Vehicles	Long Island Power Authority	2006-S-114	6/26/07	Substantial
Alternative-Fuel Vehicles	Ogdensburg Bridge and Port Authority	2006-S-113	6/5/07	No
Alternative-Fuel Vehicles	Albany Port District Commission	2005-S-35	6/5/07	No
Electric Vehicles	Clean-Fueled Vehicle Council	2000-D-2	5/31/01	Partial

* OGS was in substantial compliance with the requirements for using green cleaning products in its own facilities, but was only in partial compliance with the requirements directing it to provide guidance to other State agencies and public authorities in the use of such products.

** Entities addressed by the audit: Office of General Services; Department of Health; Department of Transportation; Office of Parks, Recreation and Historic Preservation; Office of Temporary and Disability Assistance; Office of Mental Health; Office Mental Retardation and Developmental Disabilities; and the New York State Energy Research and Development Authority.

In an effort to reduce the costs of printing, please notify the Office of Budget and Policy Analysis at (518) 473-4333 if you wish your name to be deleted from the mailing list or if your address has changed.