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STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**

November 18, 2004

Mr. Randy Daniels  
Secretary of State  
Department of State  
41 State Street  
Albany, New York 12231

Re: Cemetery Maintenance Fund  
Report 2003-S-57

Dear Mr. Daniels:

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 audited selected financial management and operating practices of the Department of State's (Department) Cemetery Maintenance Fund for the period April 1, 2000 through February 1, 2004.

**A. Background**

In 1988, State Finance Law 97-R (Law) established the Cemetery Maintenance Fund (CMF), which is administered by the Department's Cemetery Division (Division). The CMF, which was created primarily in response to anti-Semitic vandalism in Jewish cemeteries, covers various cemetery repair costs, including those related to fixing vandalism damages, repairing old stones and monuments, and cleaning up abandoned cemeteries. The Department uses CMF funds, which are derived from fees paid by State-regulated cemeteries, to pay claims submitted by those cemeteries and by local governments that take over cemeteries. The CMF is one of numerous sub-funds of the Business Licensing Fund (Licensing Fund).

A three-person Cemetery Board (Board), comprising the Secretary of State, the Attorney General, and the Commissioner of Health (or their designees), oversees the CMF. The Board is required to meet monthly, at which time it approves charters for new cemeteries, approves or denies CMF claims and records the claim amounts in meeting minutes. The Board is not formally made aware of the CMF funds available to pay claims. The Board is assisted by the State Cemetery Board Citizen Advisory Council (Council), which includes members designated by the Secretary of State, the Attorney General, the Commissioner of Health, the State Comptroller, and the Commissioner of Taxation and Finance. This Council monitors the CMF and makes recommendations related to its operation.

Of the approximately 6,000 cemeteries in New York State, 1,900 cemeteries are regulated by the State. Regulated cemeteries pay CMF fees and qualify for CMF benefits; the remaining 4,100 cemeteries are not State-regulated and do not pay CMF fees or qualify for benefits. Each regulated cemetery generally pays a CMF fee of \$8 per interment (i.e. inurnment, entombment or ground burial) with all deposits made to the Licensing Fund. By statute, \$5 of this amount goes to pay CMF claims, and \$3 goes to the Department to offset CMF administrative costs. However, there are some circumstances where the \$3 fee is not applicable. Cemeteries are only required to pay the \$3 fee per interment where they have in excess of 15 interments for the preceding calendar year. The Law states that regulated cemeteries must pay the Department all the CMF fees they owe during any calendar year by March 15 of the following calendar year.

The Department pays repair claims submitted by regulated cemeteries. Before the Board authorizes payment, the Department requires that the cemetery determine a fair and reasonable cost for fixing the damage; attempt to obtain the costs of repair from descendants of the deceased; and show that it does not have funds available to pay for repairs. Claims must be accompanied by two bids for the work needed to make the repair. Cemeteries submitting vandalism claims must also show they have filed a written report of the vandalism with the local police department, except if the cemetery, with the consent of the Division, determines not to file a report because the publicity generated by such a report would have adverse consequences to the cemetery. There is no specific dollar limit for individual claims. The Department often advances cemeteries the amounts of their approved claims.

The Department also pays claims for clean-up costs submitted by towns and municipalities that assume responsibility for abandoned cemeteries. The Department reports that such take-over actions occur 10-15 times per year. For example, the Department will pay the Town of Queensbury, which assumed responsibility for an abandoned cemetery, up to one year's rental costs for clean-up equipment.

The Department has assigned a Director and an Assistant Director to manage the Division. In addition, they have 12 full-time equivalent positions including accountants, investigators, and support staff to carry out CMF business. (Department officials stated that, because the \$3 portion of CMF fees they receive to administer the program offsets just a small percentage of their cost, they do not track the use of these monies or apportion staff time between CMF and other Division of Cemetery duties.) Investigators work in geographic regions throughout the State and visit regulated cemeteries in their respective regions to review project work at cemeteries with claims. The Board may reduce or deny claims if an investigator finds that a cemetery did not meet CMF requirements, or that repair costs were excessive. Investigators can also identify repairs that may be eligible for funding, and help cemeteries prepare CMF claims to obtain funds. Department accountants do scheduled audits of State-regulated cemeteries, during which they examine the cemetery's finances, including funds available for maintenance and overall financial viability.

In each of the three fiscal years ended March 31, 2004, the Department received a Special Revenue Appropriation of \$300,000 to pay CMF cemetery claims. In other words, the Department received authorization each year to access up to \$300,000 of Licensing Fund fee revenues to pay cemetery claims, regardless of the amount actually collected through cemetery fees (the \$5 portion), or the total amount of claims the Department received. Once a year, OSC is required to transfer

monies from the Licensing Fund, including CMF funds that are not specifically committed to pay cemetery claims. Thus, fee revenue collections greater than \$300,000, as well as unspent/uncommitted funds up to the \$300,000 payment allowance, have been annually swept into the State's General Fund for any governmental use. For State fiscal year 2004-05 this appropriation has been increased to \$475,000.

Over the 43-month period ended October 31, 2003, the Department collected CMF fees totaling \$966,675 and paid CMF claims totaling \$502,212, as shown in Table 1. Department officials stated that, historically, they have paid claims totaling one-third to one-half the total amount collected by the CMF each year. However, our review of CMF fee collections and CMF claim expenses since the fund's inception in 1988 show that total claims of \$1,780,152 account for only about 27 percent of the \$6,547,274 collected during this period. The Department has not done formal annual forecasts of expected claims to determine if CMF funds will be available to cover them. However, Department officials said they have always been able to pay all CMF claims.

<b><u>State Fiscal Year</u></b>	<b><u>Fee Revenue</u></b>	<b><u>Expenses</u></b>	<b><u>Surplus (Deficit)</u></b>
2001-02	\$ 407,681	\$ 217,440	\$ 190,241
2002-03	487,171	67,432	419,739
2003-04 <sup>1</sup>	<u>71,823</u>	<u>217,340</u>	<u>(145,517)</u>
Totals	\$ 966,675	\$ 502,212	\$ 464,463

<sup>1</sup> Total revenue and expense figures for 2003-04 are for the period 4/1/03 through 10/31/03.

## **B. Audit Scope, Objectives and Methodology**

We audited selected Department financial management and operating practices for the CMF for the period April 1, 2000 through February 1, 2004. During this period, we examined CMF claims the Department received from April 1, 2000 through October 31, 2003, and Board minutes and related actions through February 1, 2004. The objectives of our performance audit were to determine whether the Department has established controls that provide reasonable assurances that CMF collections are properly accounted for and to determine whether the Department has used CMF fee collections for their intended purposes.

To accomplish our objectives, we interviewed Department managers and staff, Office of the State Comptroller (OSC) officials, and a cemetery administrator. We also reviewed and analyzed Department records and documentation, and reviewed Board minutes and Board actions related to approving claims. To check CMF claim payments, we compared Department payment data to data on the OSC Central Accounting System.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Such standards require that we plan and perform our audit to adequately assess those Department operations that are within our audit scope. Further, these standards require that we understand the Department's internal control structure, and its compliance with those laws, rules and regulations that are relevant to our audit scope. An audit includes examining, on a test basis,

evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

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

### **C. Results of Audit**

We determined that all 44 CMF claims, totaling \$502,212, which the Department paid between April 1, 2000 and October 31, 2003, corresponded to payments recorded on OSC's Central Accounting System. We also found that, for the 44 claims, CMF funds were used appropriately to pay for cemetery repairs. However, our audit also found that Department controls over fee collections are weak, and do not provide adequate accountability for CMF funds. Specifically, the Department does not ensure cemeteries pay appropriate fee amounts; identify the years to which cemetery payments apply; impose fines for late payment; or properly record award reimbursements or restitutions it receives. Department officials stated that it is the Board's practice not to impose fines on the cemeteries. They view the fines as impractical and counter-productive. We also found the Department does not have systems to accurately track expenses or to find out when cemetery vandals have been caught by police. Department officials stated that they believe it is the duty of the cemeteries to follow up on the vandalism reports to see if the vandals were caught and if restitution should be received. We believe the Department is responsible for ensuring that it has established a process that ensures any monies collected by the cemeteries are forwarded to the Department. The cemeteries have already received the money to complete the repairs and are not generally motivated to seek restitution for the Department. To improve accountability for CMF funds, the Department should strengthen controls over revenue and expenses, and finalize and regularly update a risk assessment for the CMF. We noted that the CMF has been collecting significantly more revenue than it pays out in claims. Currently, CMF surpluses are "swept" into the General Fund every year. As the administrator of these funds, the Board should consider the best way to bring this situation to the attention of the Legislature.

#### **1. Revenue**

The Department should make sure regulated cemeteries pay the CMF fees required by law. However, we found the Department does not ensure cemeteries pay the fees they owe. Each regulated cemetery provides its own accounting of the CMF fees due by reporting the number of interments and cremations performed, and then paying the related fees. Department employees record the revenue received and document the cemetery's payment. They then compare the amount

paid to the number of interments reported in the cemeteries' annual reports, as provided to the Department. However, Department staff do not follow through to independently validate payment accuracy. Department officials acknowledged that comparing the number of interments reported in the annual report to the fees paid is not an effective means of determining if the cemetery has paid the appropriate amount. Officials told us that Department audits of individual cemeteries, which are conducted every three to five years, check the number of interments and cremations performed. However, our review of issued audit reports found no indication that audit tests included comparing CMF fee remittances to the number of interments and cremations that occurred. This reconciliation would confirm the accuracy of each cemetery's payment, provide the Board with reliable information about total fee collections to date, and indicate the CMF money available to pay claims.

To improve control over CMF fee revenues, the Department should require that reconciliation of interments/cremations to fees paid be a standard disclosure in the periodic audit reports prepared by Department staff and that summary information be formally shared with the Board. Since the dollar impact of inaccurate payment is greatest at the largest cemeteries, the Department should reconcile fees to activities for large-volume cemeteries on an annual basis.

We also found that the Department does not ensure cemeteries make accurate and timely payments. Although the Law requires that calendar year CMF fees be paid by March 15 of the following calendar year, we noted that cemeteries make payments throughout the calendar year. In reviewing collection records, however, we could not identify whether the revenues deposited were fees due for the previous calendar year, or fees paid early for the current calendar year. Department records do not identify the year to which payments apply. Further, the Board does not identify, or impose a fine for, late payments. Department officials told us it is the practice of the Board not to impose fines for late payments because it is impractical and counter-productive. These late payment fines would only intensify the problems of already struggling not-for-profit entities. Under this current practice, cemetery owners can delay paying CMF fees without any real consequences. Further, because it does not properly track and identify payments, the Department has little assurance that CMF fee receipts are complete or correct. The Board should develop a written policy on late payment. Whether or not a fine is levied for late payments, Department officials should establish a recordkeeping system that tracks cemeteries' payments, including the calendar year to which payments apply.

The \$8 of fees cemeteries pay per interment or cremation is the only source of CMF revenue. However, we found the Department had also recorded reimbursements as revenue, overstating both CMF revenues and CMF expenses. The monies incorrectly recorded as revenue included cemetery returns of unused awards, and cemetery remittances of restitution paid by vandals. Neither of these items should be recorded as revenue. According to operating procedures approved for the CMF, returned award funds are reimbursements of CMF expenditures, and can be used to pay other claims; restitution received is not a refund to the \$300,000 appropriation authorized to pay claims, and is not available to pay other claims. Department officials told us they corrected this problem after it was brought to their attention by our audit staff.

## **2. Expenses**

We reviewed all 44 claims paid by the CMF for the period April 1, 2000 through October 31, 2003, and compared Department records of CMF expenses to OSC records on the Central Accounting System. We found all 44 claims matched the expenses paid through OSC.

However, we also found the Department does not have a system to accurately track CMF claim expenses, or that reports the status of pending/awarded claims - particularly awards paid out over a number of years. For example, a municipality was awarded over \$65,000 to be paid out over three years at approximately \$21,800 per year. The Department's current tracking system would record the first \$21,800 paid as a CMF expense, but it would not record the \$43,600 balance of the award as an expense. Department officials told us that such multi-year awards are uncommon. However, they do occur (1 of the 44 approved claims was a multi-year award), and should be properly accounted for. Officials also explained that their system was not meant to track all expenses. We contend the Department should have a system that is designed to perform this function. Currently, the Department relies almost completely on OSC for CMF expense data. Department officials stated there are several tracking systems at DOS that provide information on the expenses of the CMF. However, no one tracking system provides a means to track all expenses. We conclude that DOS does not accurately track claim expenses in-house. By accurately tracking expenses in-house, the Department can inform the Board about total expenses in the current year, as well as award commitments in future years. The Board can then use this information in deciding the amount of appropriation to request to satisfy claims in the next fiscal year. We recommend that DOS establish an integrated system to track all claim expenses.

In addition, we found the Department does not track police reports of vandalism cases, or formally follow up on such cases to identify instances in which they could collect restitution from persons convicted of cemetery vandalism. If the Department does formally follow up, it would be more likely to find out when vandals are caught and prosecuted, and whether cemeteries received (but did not remit) restitution to make repairs that were paid for by CMF funds. Department officials stated that they believe it is the duty of the cemeteries to follow-up on the vandalism reports to see if the vandals were caught and if restitution should be received. In this regard we note that the cemeteries have already received the money to complete the repairs and are not generally motivated to seek restitution for the Department. In discussion, Department officials stated that the vandalism is often perpetrated by juveniles who are not able to pay restitution.

## **3. CMF Fund Surplus**

As shown in Table 1, the Department collected significantly more fee revenue than it paid out in expenses in both the 2000-01 and 2001-02 fiscal years. Interviews with Department and OSC officials and a review of State laws confirmed that any surplus in the Licensing Fund, including CMF funds that are not committed to pay claims, is "swept" out of the account every year and added to the General Fund. OSC is required to perform this sweep of funds annually, in accordance with the Enacted Budget. Once the funds are swept from the CMF into the General Fund, they can be used to pay for any costs of government.

The CMF was established for the express purpose of repairing cemeteries, and regulated cemeteries pay CMF fees to support this effort. The need for cemetery repair work was acknowledged by the Legislature when it established the CMF. Therefore, sweeping CMF surpluses into the General Fund every year may not be the best use of these funds, which are intended to meet a very specific need. Alternately, the existence of CMF surpluses on a regular basis may indicate that the CMF fees now imposed could be reduced to minimize their economic impact on the not-for-profit cemeteries that must pay them. We recommend that the Department evaluate the fee amounts for the CMF and the expenses based on actual experience and anticipated future use. The Department should present these results to the Board so it can decide whether a proposal should be made to the Legislature to adjust the fee amounts.

#### **4. Risk Assessment**

A risk assessment (RA) comprises an entity's system for identifying and analyzing the relevant risks to achieving objectives, and for determining how to manage those risks. For each identified risk, the RA process evaluates both potential impact and likelihood of occurrence, so management can decide how much risk to accept and how to set control policies accordingly.

The Internal Control Act of 1999 requires State agencies and authorities to prepare RAs for their respective functions. Although Department officials agreed to provide us with an RA for the CMF, they had not produced this document as of February 2004. According to the Director of Internal Audit, Department managers had not yet approved the RA. The Director stated that the main issue in the RA was the need to hire an Assistant Director of the Cemetery Division, since this position had been vacant for several months. The Director also acknowledged that the RA would need to be updated to identify current risks facing the Cemetery Division.

#### **Recommendations**

1. *Make fee reconciliation a standard disclosure in the audits of cemeteries conducted every three to five years. For larger cemeteries, reconcile the number of interments and cremations performed with the fees remitted on an annual basis.*
2. *Establish a recordkeeping system that will enable the Department to identify the calendar year for which fees are collected.*
3. *Create an integrated system to accurately track all expenses and report on claims' status.*
4. *Create a system to track actions taken to ensure the Department receives monies the cemeteries collected for vandalism cases.*
5. *Finalize the Risk Assessment of the Cemeteries Division, and update it to identify changes in the risks facing the Division.*
6. *Change the process for recording reimbursement of unused claim funds and restitution received so these funds are not incorrectly counted as revenue.*

7. *Develop a written policy that addresses the late payment of CMF fees and present it to the Board for approval.*
8. *Evaluate the fee amounts for the CMF and the expenses eligible for claim recovery based on actual experience and anticipated future use. Present these results to the Board so it can decide whether a proposal should be made to the Legislature to adjust the fee amounts.*

A draft copy of this report was provided to Department officials for their review and comment. Their comments have been considered in preparing this final report, and are included as Appendix A.

Department officials agreed with most of our recommendations and noted efforts they have taken to implement them. Department officials did not agree with our draft audit report recommendation number 4 that the Department “Create a system to track police reports for vandalism cases.” They noted that expenditure of time needed to create such a system was not justified because cemetery vandals are often not apprehended, apprehended vandals are typically unable to make restitution and perpetrators and the courts that sentence them are not within the jurisdiction of the Cemetery Board. However, they did agree that a cemetery should have an incentive to seek restitution for vandalism cases. They indicated that the Board will consider amending its regulations to clarify the responsibility of the cemetery to seek restitution and to require that any monies received via restitution or from any other source be used in lieu of fund monies. Based on this reply from Department officials, we revised recommendation number 4 to state that the Department should “Create a system to track actions taken to ensure the Department receives monies the cemeteries collected for vandalism cases.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Secretary of the Department of State shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report were Gerald Tysiak, Brandon Ogden and Nancy Varley.

We wish to thank the management and staff of the Department of State for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

Carmen Maldonado  
Audit Director

cc: Robert Barnes, Division of the Budget