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OFFICE OF THE STATE COMPTROLLER

April 29, 2005

Ms. Denise M. Sheehan
Acting Commissioner
New York State Department of Environmental
Conservation
625 Broadway
Albany, NY 12233-4750

Re: Report 2004-F-45

Dear Ms. Sheehan:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Environmental Conservation to implement the recommendations contained in our audit report, *Clean Water Permit Process* (Report 2001-S-18).

Background, Scope and Objectives

To prevent pollution from reaching levels damaging to the environment and human health, Congress enacted the 1972 Federal Clean Water Act, the first comprehensive national clean water legislation. According to this legislation, people performing certain activities cannot lawfully discharge wastewater or stormwater (the run-off from rain or melting snow) into waterways without authorization. Moreover, the authorized discharge must meet certain standards governing the amount and toxicity of the pollutants contained in the discharge. The authorization to discharge wastewater or stormwater into waterways is generally obtained through a permit, which contains the provisions under which the discharge is allowed to occur.

To comply with the new Federal requirements, the State Legislature established the State Pollutant Discharge Elimination System (SPDES) program in 1973. In addition to meeting the national standards, which relate to the pollution of surface water, the SPDES program includes standards that relate to the pollution of groundwater (aquifers). In 1975, the SPDES program was approved by the U.S. Environmental Protection Agency (EPA). In approving the program, the EPA delegated certain responsibilities under the Federal Clean Water Act to New York State, and designated the Department of Environmental Conservation (Department) as the responsible State agency.

The SPDES program is administered through the issuance of wastewater and stormwater discharge permits. Most of these permits are tailored to a specific location or facility, and limit both the total amount of discharge and the amount of specific pollutants in the discharge. These individual permits often require the permit holder to analyze the composition of the discharge and submit the results of the analysis to the Department on a monthly basis. Individual permits are issued to municipal sewage and wastewater treatment plants, factories and other industrial enterprises, residential septic systems, and other types of smaller facilities. Permits that are not tailored to a specific location or facility are termed general permits. General permits are issued for the four following types of activities: (1) stormwater discharges associated with industrial activity, (2) stormwater discharges associated with construction, (3) discharges from concentrated animal feeding operations, and (4) small sanitary discharges to groundwater. Each type of activity must comply with the provisions of that type of general permit, and the permit holder may be required to implement a pollution prevention plan that is tailored to the specific site. General permits were first issued in 1992.

The SPDES program is administered by the Department's Division of Water, Bureau of Water Permits. Division staff are responsible for activities relating to more than one program, including the SPDES program. According to Division officials, about 25 full-time equivalent staff in the Bureau of Water Permits perform SPDES activities. These staff are located in the Department's Central Office and nine Regional Offices. In addition, 60 analysts in the Division of Environmental Permits spend a portion of their time on the SPDES program.

Our initial audit report, which was issued on March 13, 2003, examined whether permits were issued in accordance with Department requirements. To protect New York State's waterways against unhealthy contamination and environmental damage, the requirements provide that sewage treatment plants, factories and people engaged in certain other activities may not lawfully discharge wastewater or storm-water into surface or underground waterways without a permit from the Department. Moreover, all such discharges must comply with the terms of the permit, under which both the amount and the contents of the wastewater or storm-water are strictly regulated. According to State law, permits governing discharges into surface water may be valid for up to five years, while permits governing discharges into groundwater may be valid for up to ten years. However, a permit may be modified before the end of its term in response to changing conditions.

Our report identified several weaknesses. In particular, we found that many permits classified as low-risk by DEC were renewed in a manner contrary to State law, because they were extended indefinitely without a review of the circumstances relating to the permit. We also found that many high-risk permits were not reviewed as frequently as intended by DEC to determine whether modifications were needed in the permits as a result of changing conditions. We further found that the permit issuance and monitoring processes could be improved if better use were made of available electronic data processing technologies. Therefore, we concluded that, because of these and other weaknesses, neither low-risk permits nor high-risk permits were adequately monitored by the Department. The objective of our follow-up, which was conducted in accordance with Government Auditing Standards, was to assess the extent of implementation as of February 2, 2005 of the 12 recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that Department officials have made progress in correcting some of the problems we identified. However, additional improvements are needed. Of the 12 audit recommendations, 7 were implemented, 3 were partially implemented, and 2 were not implemented. Two recommendations were not implemented because the Department disagreed with the recommendations in their response to the original audit and they continue to disagree.

Follow-up Observations

Recommendation 1

Require the holders of the indefinitely extended permits to submit renewal applications if they wish to retain their permits, and develop a plan for expediting the review of the renewal applications.

Status - Partially Implemented

Agency Action - In January 2004, the Department assigned responsibility for addressing low risk (class 02) permits that had been indefinitely extended to one staff. Priority for re-issuance was given to surface water discharges and determinations of surface water versus groundwater discharge were verified. Re-issuance packages and renewal applications are being sent out to permit holders as the Department proceeds through the list of indefinitely extended permits. As of December 2004, 199 permits had been reissued for calendar year 2004, and there were 3,494 indefinitely extended permits to be reviewed to meet the five-year permit term. Department officials stated that they anticipate completing the reviews of all indefinitely extended permits in three to four years.

Recommendation 2

Develop a plan for providing additional monitoring to lower-risk permits.

Status - Implemented

Agency Action - Although the Bureau of Water Permits did not develop a formal written plan, it has taken actions to improve its efficiency in processing and monitoring permits. In September 2003, the Division of Water reorganized and separated responsibility for SPDES permit development into four sections – three sections dealing with individual permits and one section dealing with general permits. In the future each section will become involved in permit development work on a variety of facility types and the section chiefs will not be limited to a few individuals to work on a facility type. This will enable section chiefs to better manage workload. As noted in recommendation one, one staff has been assigned responsibility for renewal of indefinitely extended low-risk permits. The Bureau is also developing a new computer system that will incorporate electronic drafting of permits and the billing function for SPDES permits. The new system will be accessible to all SPDES staff.

Recommendation 3

Document all reviews performed to determine whether permits conform with new Federal treatment technology, new State water quality classifications and water quality standards, and perform such reviews at least once every five years for each permit, as required by law.

Status - Implemented

Agency Action - We randomly selected 15 permits from three regional offices (Region 1 - Stony Brook, Region 3 - New Paltz and Region 7 - Syracuse) to determine whether the Department has documented all reviews performed. We found that 2 of the permits selected were not required to have reviews because one facility had stopped operations and the other had not yet been built. Eleven of the 13 permits (85 percent) had reviews completed within the last five years, as required.

Recommendation 4

Develop methods for increasing the number of high-risk permits that are reviewed annually, such as obtaining assistance from EPA staff in performing technical reviews or contracting for services.

Status - Implemented

Agency Action - The Department reorganized the wastewater permit sections based on geographic area and permit writers are now handling a variety of facility types. In 2003, two additional staff were assigned to work on SPDES permits under an agreement with the New England Interstate Water Pollution Control Commission (NEIWPC). These individuals are supervised by a section chief in the Bureau of Water Permits. Each section chief uses the Environmental Benefit Permit Strategy to manage the work assigned to permit writers and works with the Regional Water Managers to assure that the "high risk" permits are modified as necessary and that the ten percent annual goal is met.

We also noted an improvement in the rate of permit reviews initiated relative to the annual goal. For 2004, the Department's annual goal was to initiate 186 high-risk permits to meet the ten percent annual goal. We analyzed the 186 high-risk permits as of December 9, 2004 and found that 86 (46 percent) were reviewed since April 1, 2004. We estimate that the Department would initiate 129 high-risk permit reviews (69 percent of the annual goal) if it maintained this rate for the year ending March 31, 2005. This represents an increase of 97 percent over the 35 percent of permits initiated during the more than one year period reviewed in our initial audit.

Recommendation 5

Request the EPA to expedite its review of the Environmental Benefit Permit Strategy.

Status - Implemented

Agency Action - On February 10, 2004, the Department requested that the EPA expedite its review of the Environmental Benefit Permit Strategy (EBPS). The Department and the EPA included in its 2004-2005 Performance Partnership Grant an activity specifically related to the EBPS. On July 16, 2004, the Department submitted a plan to review and potentially revise EBPS. The EPA accepted the plan on November 8, 2004 and specified four types of permits that the Department should not administratively renew until the EBPS could be finalized. The expected date for finalizing the EBPS is October 1, 2006.

Recommendation 6

Make the regulations governing SPDES permits consistent with the Environmental Conservation Law.

Status - Implemented

Agency Action - The Department modified the New York Codes, Rules and Regulations [6NYCRR 750-1.15] on May 11, 2003 to make the regulations relating to permits for discharge into ground water valid for terms not to exceed ten years. This is now consistent with Article 17, Title 8, Section 17-0817(1) of the New York State Environmental Conservation Law.

Recommendation 7

Either periodically reconcile the information on the DART System and Fee System to ensure that it is accurate and complete, or develop a single automated system for maintaining records relating to the SPDES program.

Status - Partially Implemented

Agency Action - The Department has implemented a manual control to ensure that the Department Application Review and Tracking (DART) Permits System and Fee System are accurate and complete until the two computer systems can be consolidated into one system. Information in the DART Permits System is given to the Fee System staff as permits are processed. In addition, before the bills are generated in April each year from the Fee System, the permit identification information such as name and address are compared with the DART System. As of January 2005, the DART SPDES permit drafting module is in the testing stage and is expected to be implemented in early 2005. The Fee System information will be replaced by the Water Information System (WIS) that is incorporated into the DART SPDES module. The WIS is in the development stage as of January 2005 and is expected to be completed by December 2005.

Recommendation 8

Review the DART System to make sure the proper coding is used to distinguish individual permits from general permits.

Status - Not Implemented

Agency Action - Department officials disagreed with the recommendation in their response to our original draft report because they found no reference to the issue in the draft report. Department officials continue to hold this position in their 90-day response to our report. Contrary to the Department's responses that our report did not address this issue, we provided specific information in our report. Therefore, the Department should have taken appropriate action.

Recommendation 9

Establish a process for providing assurance that all issued permits are accounted for by the DART System and the Fee System.

Status - Partially Implemented

Agency Action - The Department is developing a new system that will contain information from both the DART and Fee Systems. As indicated for Recommendation 7, these improvements should be completed by December 2005.

Recommendation 10

Correct the billing errors identified by our audit and develop procedures for preventing such errors in the future. Test the accuracy of other bills and take corrective action as needed.

Status - Not Implemented

Agency Action - Department officials disagreed with this recommendation. Officials indicated in their 90-day response that a review by Department staff of the 7 billing errors reported in the audit report were not billing errors. This is the same information that was provided by the Department to the auditors on the original audit and was rebutted in the audit report.

Recommendation 11

Communicate the record retention policy to the Regional Offices.

Status - Implemented

Agency Action - On February 2, 2005, the Director of the Bureau of Water Permits transmitted the SPDES record retention policy to the Regional Water Managers for distribution to staff. The record retention policy transmitted shows that SPDES compliance records are retained for 6 years, and SPDES applications and permits are retained for 20 years.

Recommendation 12

Explore state-of-the-art technologies to determine whether: all existing paper records in the permit files can be converted to electronic format; new permit file records can be obtained and maintained electronically; and all records relating to the SPDES program can be maintained on a single comprehensive system that is accessible from every Regional Office.

Status - Implemented

Agency Action - The Division is developing the SPDES Permit building system as an extension of the DART Permits system, which is a department-wide Permit Builder system that allows any environmental quality permit to be built in the system. Permits will be converted to electronic format when the permit is updated or modified. These permits can then be put on the Department's Website for access by the public and will be available to all Regional Offices electronically. With the integration of the Fee system in the DART SPDES permit module, SPDES related facilities will be incorporated into the Department's Facility Information System. The estimated date of integration of the Fee System is the third quarter of 2006.

Major contributors to this report were Gerald Tysiak, Steve Goss, Deb Spaulding, and Alexander Marshall.

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

Very truly yours,

Carmen Maldonado
Audit Director

cc: Robert Barnes, Division of the Budget
Henry Hamilton, DEC, Internal Audit