
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**METROPOLITAN
TRANSPORTATION
AUTHORITY - NEW YORK
CITY TRANSIT**

**COMPLIANCE WITH
EXECUTIVE ORDER 134 -
ENVIRONMENTAL IMPACT
OF CLEANING FACILITIES**

Report 2008-S-26

AUDIT OBJECTIVE

The objective of our audit was to determine whether the Metropolitan Transportation Authority-New York City Transit (Transit). is in compliance with Executive Order 134 requirements, including purchasing and using green cleaning products.

AUDIT RESULTS - SUMMARY

Executive Order 134 (Order) was issued on January 5, 2005, to reduce the environmental impact of cleaning State facilities. The Order requires all State agencies and certain public authorities, to procure and use cleaning products with properties that minimize the potential impacts on human health and the environment. When first issued, the Order also stated that cleaning products can present environmental concerns because they may contain chemicals associated with eye, skin, or respiratory irritation and other health issues. The Order provides the agencies six months from the date of the Order to transition to conforming products, and requires State agencies to assign an individual to oversee the implementation of the Order and to conduct an assessment.

We found that Transit had neither designated an individual with responsibilities listed in the Order; nor conducted the required assessment. Also, Transit's Materiel Division was aware of the requirements of the Order but did not take any action to ensure that cleaning products being purchased met the requirements of the Order. While the Order required documentation of the reasons for selecting products not conforming with the Order, Transit had not prepared such documentation.

We further found that Transit did not always encourage the landlords of the facilities it leases to use environmentally-preferred

products. We reviewed a judgmental sample of six leases for facilities used by Transit and found that, generally, the leases did not include language that would allow Transit to require the landlord to comply with the Order. We visited three of Transit's leased facilities and met with representatives of the landlords and the cleaning contractors; just one had been asked to modify their cleaning products. We called the landlords for the remaining three leases and they indicated that they had neither been advised of the Order by Transit nor asked to comply.

Our report contains eight recommendations for complying with the Order. Transit officials agreed with most of our recommendations. They indicated that they will continue to work with the New York State Office of General Services (OGS) to fully comply with the Order. However, they also maintain that OGS had not communicated guidance about the Order in a timely manner. In addition, they indicated that their existing product evaluation procedures ensure that products meet the OGS definition of "Environmentally Preferred Cleaning Products." Their full response is included as Appendix A of this report and our rejoinders to the response are included as Appendix B.

This report dated September 30, 2008, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

Executive Order 134 (Order) was issued on January 5, 2005, to reduce the environmental impact of cleaning State facilities. The Order requires all State agencies and certain public authorities to procure and use cleaning products with properties that minimize the potential impacts on human health and the environment. The Order also required each State agency to conduct an assessment and issue a report within one year of the effective date of the Order, describing the efforts undertaken to comply with the Order. The assessment report must document the reasons for selecting products that do not conform to the Order and it must be retained and be available to employees and the general public. Agencies are required to update their assessment biennially.

The Order also directed the Office of General Services (OGS) to guide State agencies with selecting and procuring environmentally-safe cleaning products. OGS has compiled a list of more than 700 environmentally preferred cleaning products, including floor finishing and stripping products. Most products are certified by either Green Seal (through its GS-37 certification) or by Environmental Choice. Green Seal and Environmental Choice are recognized authorities in the field of environmentally-safe cleaning products.

New York City Transit (Transit) is a constituent agency of the Metropolitan Transportation Authority (MTA). Transit is responsible for the operation of the New York City subway system, the New York City bus system, and the Staten Island railway. Transit is responsible for 570 locations, including 468 subway stations, 18 bus depots, and 21 rail yards. Of these locations, 20 are leased by Transit, including its headquarters at 2 Broadway in Manhattan.

A February 2007 organization chart indicates Transit had about 48,000 employees in a number of Departments. The largest of these include the Department of Subways, with nearly 30,000 employees, which includes all the facilities and personnel related to the operation and maintenance of the subway system; and the Department of Buses, with over 14,500 employees, which includes all the facilities and personnel related to the operation and maintenance of the bus system.

During 2006, the subway system had ridership of approximately 1.5 billion. There were 4,518 buses in operation, with a ridership of 741 million, servicing 207 local and 36 express routes.

All cleaning products used by Transit are procured through a central purchasing system, received at Transit's Central Warehouse, and distributed to the user departments through satellite storerooms located at various facilities. No facility is allowed to purchase products on its own and all products used in Transit facilities must be approved by Transit. An approved product is one that has been evaluated and approved by Transit's Office of System Safety. Certain chemical products also have to be approved by Transit's Qualified Products List Advisory Committee.

We received a procurement report from Transit for the period July 2007 through December 2007, detailing chemical product purchases. Using this report, we calculated that Transit spent about \$2.365 million on all chemical products. Of this, about \$1.175 million was spent on cleaning products. This would place Transit's annual cost of procuring cleaning products at about \$2.350 million. We also reviewed a 2004 "*Usage of Cleaning Items*" report generated by Transit, and calculated an amount of about \$2.722 million from the information presented in the report.

AUDIT FINDINGS AND RECOMMENDATIONS

Compliance with Order

The Order requires State agencies to:

- procure products and use practices that reduce or minimize the risks of harmful effects on employees, custodial workers, visitors, and other building occupants, as well as the environment;
- encourage contractors supplying goods and services to select and procure such products; and
- encourage lessors and building managers to select and procure such products.

The Order provided State agencies six months from the date of the Order to transition to conforming products. This enabled agencies to conform in a manner that avoided waste of existing inventories, accommodated the establishment of supply chains for new products, enabled the training of personnel in appropriate work practices, and allowed the phase out of products and practices that did not conform to the Order. We found that Transit did not transition to conforming products within the six months. In addition, Transit has not required its facilities or offices to use environmentally preferred cleaning products. We found that Transit did not encourage all of the landlords of its leased facilities to use these products.

We note that Transit did speak to one of the six landlords we sampled about using environmentally-preferred products at one leased facility and we found that an attempt to comply is being made at that facility. Although not encouraged by Transit, two other leased facilities are seeking to obtain LEED (Leadership in Energy and

Environmental Design) certification and have made an attempt to use environmentally-preferred products. We also acknowledge that Transit has a system for evaluating and approving chemical products in use at its owned facilities. The system is comprehensive and includes evaluating environmental aspects of chemicals. However, this evaluation does not specifically focus on the use of environmentally-preferred cleaning products as defined by OGS in accordance with its responsibility under the Order.

Assessment

The Order requires each State agency to assign an individual who shall be responsible for:

- assessing current facility management practices and use of cleaning products;
- evaluating whether these products conform to the Order;
- identifying and procuring conforming cleaning products; and
- documenting the reasons for selecting products that do not conform to the Order and including these reasons in the report required by the Order.

Transit has not assigned these responsibilities to an individual. However, Transit officials shared an e-mail dated March 3, 2008, that contains recent correspondence from OGS regarding a new format for the assessment report. The e-mail also indicates that Transit will prepare an assessment report.

Transit officials stated that they did not comply with the Order because they felt that they had not received sufficient guidance from OGS. However, this does not explain why elements of the Order that did not require

guidance, such as the delegation of someone to oversee the implementation of the Order or the preparation of the assessment, were not done. Without the required assessments being conducted, employees and the general public do not have the necessary information regarding efforts that have been undertaken by Transit to comply with the Order and they are not aware of the reasons for purchasing products that do not comply with the requirements of the Order.

Recommendations

1. Delegate an individual to oversee implementation of the Order.
2. Conduct an assessment for all buildings used by Transit, whether owned or leased, and review and update this assessment biennially, as required by the Order.
3. Establish a procedure for making the assessment and the updates available to employees and the general public. Explore using the MTA website to allow the assessment to be viewed by employees and the general public.

(MTA officials replied to our draft audit report that they agree with recommendations 1, 2, and 3 and that they have taken action to implement them.)

Procurement of Environmentally-Preferred Products

The Order requires Transit to procure and use specific cleaning products having properties that minimize potential impacts on human health and the environment consistent with the maintenance of the effectiveness of these products for the protection of public health and safety. All cleaning products in use at Transit are procured by the Materiel Division,

received by their Central warehouse, and distributed to user departments through satellite storerooms located at these facilities.

To determine whether the cleaning products listed in the CMS - July 2007 Material Standards Order History and products found at the facilities were environmentally-preferred, we compared the cleaning products with items on the OGS, Green Seal, and Environmental Choice websites. In addition, we interviewed Transit officials and visited staff at Transit locations.

We determined that 2 of the 145 cleaning products checked, (1.38 percent) were environmentally-preferred, 77 (53.10 percent) did not have final determination in OGS guidelines or were not covered by the guidelines, and the remaining 66 (45.52 percent) were not found on any of the 3 previously mentioned websites.

To realize the full benefits of the Order, further efforts are needed.

Recommendations

4. Issue a policy requiring the use of environmentally-preferred cleaning products at Transit facilities.

(MTA officials replied to our draft audit report that they agree with this recommendation and that they have taken action to implement it.)

5. Use only products that are on the OGS-preferred list (or are certified by either Green Seal or Environmental Choice), or document the reasons for purchasing and/or using non-environmentally-preferred products.

(MTA officials replied to our draft audit report that they disagree and will not

implement the recommendation because Transit believes it can determine what is an “environmentally preferred product.” They also provided examples of products which are approved by OGS and Green Seal which OSS has rejected for use at Transit.)

Auditors’ Comments: OGS’ current guidance does not provide for a State agency to develop its own list of environmentally preferred products and then conclude that it is in compliance with the Order. In order to be in compliance, for the covered categories of cleaning products, the products have to be certified as meeting standards by Green Seal (US) or the Environmental Choice program (Canada). Currently no other products are acceptable under the OGS guidance. We also note that the Order provides that a State agency can choose to use an alternative product and document the reasons why. The MTA has indicated that Transit will prepare the assessment report required by the Order and we encourage them to include information in the assessment report regarding the products it is using and the reasons for using products that do not conform to the Order. In addition, if MTA has issues with the guidance provided by OGS, MTA should directly address those points with OGS.

*Use of Environmentally-Preferred
Cleaning Products*

We visited three bus depots, two subway stations, one rail yard, and three leased buildings. We examined the products present on cleaner’s carts and in storage areas as well as the products available in the satellite storerooms at the facilities. During the site visits to Transit facilities, we determined that approved products evaluated by the Office of

System Safety and the Qualified Products List Advisory Committee were used, but they generally were not environmentally-preferred.

At the Transit facilities, we also asked if there was any Transit policy that prohibits employees from bringing cleaning products in from home. We were told that there is no such policy, but Transit does have a policy that only products it has approved may be used to clean Transit facilities.

We checked cleaning products being used at leased facilities. A representative of the building management company for 2 Broadway, told us that Transit had never spoken to the company about using environmentally-preferred products. The same person told us that the company was attempting to gain LEED certification for 2 Broadway and provided us with a list of cleaning products the cleaning contractor was supposed to be using. We looked up those products in the OGS website and found that they were environmentally-preferred. However, the items actually on the cleaner’s carts were not on the list; nor were they environmentally-preferred.

At 33-00 Northern Boulevard, the management company representative told us that, when the lease was signed, Transit officials mentioned environmentally-preferred products. This concern was passed on to the cleaning contractor, who stated that he responded by purchasing and using conforming products. We checked the products in use at the facility and found that just three of the six products were listed on the OGS website and complied with the Order.

A representative of the cleaning contractor at 60 Bay Street on Staten Island showed us the storeroom used for cleaning products. We found that two of the three products used

were environmentally-preferred. The contractor's representative said that they had been using these products for about a year. However, he was not aware of anyone from Transit requesting the use of environmentally-preferred products.

Recommendations

6. Monitor and verify compliance by regularly checking cleaning purchases.

(MTA officials replied to our draft audit report that they agree with this recommendation and have taken action to implement it.)

7. Examine all the cleaning and maintenance products that have been approved for use by Transit to determine which items should be substituted with environmentally-preferred equivalents.

(MTA officials partially agree with this recommendation.)

8. Phase out the use of non-environmentally-preferred cleaning products in a timely manner, as required by the Order, and dispose of those that are no longer being used.

(In replying to our draft audit report MTA officials state that they agree to comply with the requirements of the Order. However, they do not agree that they are using "non-environmentally preferred products." They indicate that the auditors have not properly concluded that they are using non-compliant cleaning products and if in the future they determine that they are using a non-compliant product, they will fully comply with this recommendation.)

Auditors' Comments: The responsibility for determining what is an "environmentally preferred product" was delegated in the Governor's Executive Order to OGS. OGS has carried out its responsibilities by providing guidance to schools and State facilities with regard to green cleaning products and practices. As indicated in the auditors' comment to Recommendation 5, the guidance does not provide for agencies to certify their own products. As a result, Transit is using non-environmentally preferred products as defined by OGS.

AUDIT SCOPE AND METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. We audited Transit's procurement and use of environmentally-preferred cleaning products, as required by the Order. Our audit covered the period January 5, 2005, through February 15, 2008.

To accomplish our objective, we interviewed officials from Transit's Office of System Safety and Vendor Relations, as well as officials at the MTA. We also interviewed officials at the Department of Buses, the Department of Subways, bus depots, subway stations, a rail yard, and representatives for three of the landlords Transit leases office space from. We obtained an understanding of the procurement and receiving process and reviewed the provisions of the Order and related guidance available on OGS' Internet site. We also reviewed Transit directives related to housekeeping and hazardous materials.

We selected a judgmental sample of six facilities (three bus depots, two subway stations, and one rail yard) that were located throughout the City. At each facility, we reviewed how purchases of cleaning products

were made and examined cleaning product inventories to determine the types of cleaning products purchased and in use. We also reviewed cleaning practices at three leased office locations where the landlords are responsible for the cleaning of the offices.

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. 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 functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

We performed this audit pursuant to the State Comptroller's authority as set forth in Article X, Section 5, of the State Constitution and Section 2803 of Public Authorities Law.

REPORTING REQUIREMENTS

A draft copy of this report was provided to Metropolitan Transportation Authority for their review and comment. Their comments were considered in preparing this final report, and are included as Appendix A. Appendix B contains State Comptroller's Comments that address selected matters contained in the MTA's response. Appendix C is a memorandum prepared by MTA - NYCT regarding Executive Order 134.

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

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Carmen Maldonado, Robert Mehrhoff, Erica Zawrotniak, Richard Moriarty, Dana Bitterman, David Schaeffer, and Sue Gold.

APPENDIX A - AUDITEE RESPONSE

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H. Dale Hemmerdinger
Chairman



Metropolitan Transportation Authority

State of New York

August 18, 2008

Ms. Carmen Maldonado
Audit Director
The Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, New York 10038

Re: Report #2008-S-26 (MTA New York City Transit Compliance with Executive Order 134 – Environmental Impact of Cleaning Facilities)

Dear Ms. Maldonado:

This is in reply to your letter requesting a response to the above-reference draft audit report.

I have attached for your information the comments of Mr. Howard H. Roberts, Jr., President, MTA New York City Transit, which address this report.

Sincerely,

A handwritten signature in black ink, appearing to be "H. Dale Hemmerdinger". The signature is written in a cursive style with a long horizontal stroke at the end.

Attachment

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Long Island Bus
MTA Metro-North Railroad

MTA Bridges and Tunnels
MTA Capital Construction

MTA Bus Company

Memorandum



Date August 13, 2008
To H. Dale Hemmerdinger, Chairman
From Howard H. Roberts, Jr., President, MTA New York City Transit *HR*
Re **MTA's New York City Transit's Compliance with Executive Order 134 -- Environmental Impact of Cleaning Facilities (2008-S-26)**

Attached please find NYCT's response to the final draft audit report prepared by the Office of the State Comptroller regarding NYCT's compliance with Executive Order 134 (EO 134). Briefly, EO 134 directs all State Agencies to "... procure and use cleaning products having properties that minimize potential impacts to human health and the environment consistent with maintenance of the effectiveness of these products for the protection of public health and safety ...". EO 134 also directs New York State Office of General Services (OGS) to provide the requisite "consultation and guidance" to State Agencies, which it finally provided on February 21, 2008, more than two weeks after OGS' entrance conference with NYCT for this audit.

*
Comments
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In the absence of the requisite "consultation and guidance" from 2005 through February 21, 2008, NYCT maintains that it has demonstrated a good faith effort to comply with the requirements of EO 134. Moreover, upon review of OGS' criteria on the health and environmental characteristics of green cleaning products, it was determined that the majority of OGS' chemical characteristics of green cleaning products are already reflected within NYCT's procurement specification.

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Comments
3,4

In summary, NYCT strongly supports the goals and requirements set forth in EO 134 and will continue to work with OGS in order to come into full compliance with the Order. As discussed in our reply, however, the draft audit report contains several incorrect conclusions and misleading recommendations, all of which should be corrected prior to issuance of the final report. Further, the draft audit report substantially misrepresents and undervalues the long standing and rigorous efforts of NYCT's Office of System Safety (OSS), Qualified Products List (QPL) Committee, and user groups to procure environmentally preferred cleaning products.

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Comments
5,6

We look forward to working with the auditors and OGS to make the necessary corrections.

Attachment

55-98-6000 12/07

* See State Comptroller's Comments, pages 18 and 19

**MTA's New York City Transit's Response
to the Draft Audit Report on Compliance With Executive Order 134 –
Environmental Impact of Cleaning Facilities (2008-S-26)**

EXECUTIVE SUMMARY

MTA New York City Transit (NYCT) strongly supports the goals and requirements set forth in Executive Order 134 (EO 134 or the Order), issued in 2005, and will continue to work with the Office of General Services (OGS) in order to come into full compliance with the Order. Notwithstanding, the subject draft audit report issued by the Office of the Comptroller:

- (1) Contains several adverse findings not supported by (a) the specific provisions of EO 134; (b) numerous EO 134 descriptive documents found on the OGS website; and (c) OGS' published definition of "Environmentally Preferred Cleaning Products."
- (2) Fails to take into adequate consideration the fact that the requisite OGS "consultation and guidance" was not issued until February 21, 2008, more than two weeks after OGS' entrance conference with NYCT for this audit.
- (3) Substantially misrepresents and undervalues the long standing and rigorous efforts of NYCT's Office of System Safety (OSS), Qualified Products List (QPL) Committee, and user groups to procure environmentally preferred cleaning products.

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Comments
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Comment
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As a result of the above referenced material misunderstandings and omissions, the draft audit report contains several incorrect conclusions and misleading recommendations, all of which should be corrected prior to issuance of the final report. The draft audit's principal flaw is that it ignores OGS' carefully crafted definition of "Environmentally Preferred Cleaning Products" and, instead, substitutes OGS' current and partial list of approved cleaning products as the *de facto* definition of "Environmentally Preferred Cleaning Products." After a brief statement of key facts, NYCT's response to the draft audit recommendations is presented.

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Comment
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STATEMENT OF KEY FACTS

- **EO 134 Directives:** EO 134 directs all State Agencies to "... procure and use cleaning products having properties that minimize potential impacts to human health and the environment consistent with maintenance of the effectiveness of these products for the protection of public health and safety" EO 134 also directs OGS to "provide consultation and guidance to State Agencies to: (i) select and procure products and use practices that reduce or minimize the risks of harmful effects to employees, custodial workers, visitors and other building occupants and to the environment; ... (iv) encourage contractors supplying goods and services to State Agencies to select and procure such products; and (v) encourage lessors and building managers who provide leased space to State Agencies to select and procure such products."

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Comment
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* See State Comptroller's Comments, pages 18 and 19

- **EO 134 Procurement Decisions:** With respect to cleaning product procurement decisions, EO 134 requires State Agencies to buy “environmentally preferred products” or “document the reason for selecting alternative products.”

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Comment
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- **“Environmentally Preferred Cleaning Products:”** The definition for this critical EO 134 term, as set forth on OGS’ Questions and Answers website is as follows:

“Environmentally preferred cleaning products are cleaning products having properties that minimize potential impacts to human health and the environment consistent with maintenance of the effectiveness of these products for the protection of public health and safety without sacrificing product effectiveness.”

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Comment
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- **NYCT’s Procurement Practices for Cleaning Products:** Since the 1980s, NYCT’s procurement policies and procedures for cleaning products have stressed chemical safety and effectiveness. Through its Office of Systems Safety, NYCT has performed toxicological evaluations, as well as laboratory analyses, on all chemical products, inclusive of facility cleaning products, purchased for use on NYCT property. These evaluations consider the action and properties of the substances contained within the products, as well as the conditions produced by them. The objective is minimization of detrimental health affects to NYCT personnel and the environment during the course of using and handling chemical products within the workplace. NYCT’s specification on the procurement of chemical products (developed since 1995) prohibits targeted substances such as carcinogens, mutagens, teratogens, heavy metals, chlorinated solvents, phosphorus, nitrilotriacetic acid and volatile organic compounds in products destined for NYCT utilization. In some areas, NYCT’s standards are more stringent than OGS’ guidelines. In short, NYCT, through the coordinated efforts of OSS, the QPL Committee, and various user groups, has been purchasing environmentally preferred cleaning products for decades, a fact completely misrepresented in the draft audit.

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Comment
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- **OGS Guidance and Approved Products List Issued in 2008:** On February 21, 2008, OGS’ Commissioner issued a memorandum to all State Agency Heads regarding EO 134, which states in part:

“OGS has been designated to provide ‘consultation and guidance to State Agencies’ ... to implement [EO 134]. As such, please see the following guidelines and list of approved cleaning products. These were developed for the legislation requiring that all schools use environmentally sensitive or green cleaning products, but would also be applicable to selection and use of cleaning products for state agencies under EO 134.”

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Comment
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Comment
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The list of about 700 approved cleaning products does not address all of the cleaning product categories used by NYCT. In fact, the list only addresses the following product categories: General Purpose Cleaners; Bathroom Cleaners; Carpet Cleaners; Glass, Window, and Mirror Cleaners; Vacuum Cleaners; hand Cleaners/Hand Soaps; Floor Finishes; and Floor Finish Strippers. In its own Q&A

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Comment
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* See State Comptroller's Comments, page 19

and Guidelines documents, OGS recognizes that the current list of approved products is anything but a stagnant and universal list of “Environmentally Preferred Cleaning Products.” A few examples:

- (1) “OGS anticipates this list will be supplemented periodically ...” (Q&A document; p.4; issued on 6/10/08).
- (2) “The marketplace is expected to adapt over time as knowledge improves, new or modified products become available and product applications are better understood through research, usage and observation.” (Guidelines document; p. 4).
- (3) “Other products, such as metal cleaners, drain cleaners, mineral removers ..., oven cleaners, graffiti removers ... and other cleaning and maintenance products will be considered for addition to these Guidelines in the future.” (Guidelines document; p. 25).

RESPONSE TO DRAFT AUDIT RECOMMENDATIONS

Before specifically addressing the draft audit’s eight recommendations, a brief discussion of two of the more egregious finding errors is necessary. Note that there are many more examples where the audit confuses the list of approved products with the actual definition of Environmentally Preferred Cleaning Products.

- “We also acknowledge that Transit has a system for evaluating and approving chemical products in use at its owned facilities. The system is comprehensive and includes evaluating environmental aspects of chemicals. However, this evaluation does not specifically focus on the use of environmentally-preferred cleaning products.” (p.4).

Response: This finding is not supported by the facts. See NYCT’s Procurement Practices for Cleaning Products and OGS’ definition for Environmentally Preferred Cleaning Products above.

- “As a result of using non-compliant products, Transit has not yet realized the benefits to the environment and the health and safety occupants of Transit facilities that could be derived from implementation of the Order.”

Response: This finding is wrong on all counts. The draft audit reported that only 2 of the 145 cleaning products checked were on OGS’ currently approved list. Just because NYCT is using numerous internally approved cleaning products not yet on the OGS approved product list does not mean that that these products are, by definition, “non-compliant products.” See NYCT’s Procurement Practices for Cleaning Products, OGS’ definition for Environmentally Preferred Cleaning Products, and the section on OGS Guidance and Approved Products List above.

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Comment
4

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Comments
8,10

The draft audit’s eight recommendations are addressed below:

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* See State Comptroller's Comments, pages 18 and 19

Recommendation 1. Delegate an individual to oversee implementation of the Order.

Management Comment.

Agree. Currently the Assistant Chief Officer, Vendor Relations, who is the Chair of the QPL Committee, is coordinating with OSS and others in the implementation of EO 134. In addition, each user department has a designated chemical representative who works with the QPL Committee and OSS to ensure EO 134 compliance.

Because OGS did not provide the requisite "consultation and guidance" until it issued the memorandum dated February 21, 2008, there was little NYCT could do in effectively implementing all the components of EO 134 prior to that time. Selecting an overseer, for example, without having received the requisite "consultation and guidance" would be putting the cart before the horse. In 2005, in fact, the MTA General Counsel advised NYCT to take no action due to the absence of guidance and consultation as mandated by EO 134. After receiving OGS' guidance in late February 2008, NYCT has been taking appropriate follow-up action.

Notwithstanding the enormous size of NYCT, the Office of System safety, the QPL Committee, and various user departments have already conducted an initial assessment. This coordinated effort generated a list of facility and custodial cleaning supplies currently in use. In the near term, NYCT will formally assign a dedicated EO 134 overseer who will be responsible for coordinating NYCT's on-going compliance with EO 134.

Recommendation 2. Conduct assessments for all buildings used by Transit, whether owned or leased, and review and update this assessment biennially, as required by the Order.

Management Comment.

Agree. We began the assessment process and identified the related products. Due to the large number of facilities and infrastructures at NYCT, the assessment will be ongoing throughout the year. Page 2 of the draft audit report states that NYCT "...leases did not include language that would allow Transit to require the landlord to comply with the Order." As cited above, EO 134 directs NYCT to "encourage [not require] lessors and building managers who provide leased space to State Agencies to select and procure such products." MTA Real Estate has been, and will continue, to encourage such cooperation with EO 134.

Recommendation 3. Establish a procedure for making the assessment and the updates available to employees and the general public. Explore using the MTA website to allow the assessment to be viewed by employees and the general public.

Management Comment.

Agree. NYCT will develop a database that lists those (1) cleaning products certified by OGS to be environmentally preferred products; (2) cleaning products not yet certified by OGS, but deemed to be environmentally preferred products based on NYCT's

internal OSS and QPL assessment; and (3) cleaning products determined by OGS to be non- environmentally preferred products. If NYCT is using any non- environmentally preferred products, it will, as required by EO 134, document the reasons for selecting such alternative products.

Recommendation 4. Issue a policy requiring the use of environmentally-preferred cleaning products at Transit facilities.

Management Comment.

Agree. NYCT will develop a policy statement in connection with its compliance with EO 134.

Recommendation 5. Use only products that are on the OGS-preferred list (or are certified by either Green Seal or Environmental Choice), or document the reasons for purchasing and/or using non-environmentally-preferred products.

Management Comment.

Disagree. For the reasons set forth above, the audit incorrectly concludes that if a product is not on the current approved list, then it must, by definition, be considered as “non-environmentally preferred.” NYCT will use the products on the current list of OGS approved cleaning products, as well as the Green Seal and Environmental Choice preferred lists wherever possible. In fact, NYCT has already begun to replace some of its cleaning products with products from the OGS approved lists. Consistent with EO 134, NYCT will exhaust the inventory of cleaning products targeted for replacement.

With respect to those cleaning products used by NYCT that are not addressed by OGS’ current “consultation and guidance,” NYCT will work, as appropriate, with OGS, the designated certification companies, OSS, the QPL Committee, and manufacturers to have these products analyzed for compliance. Going forward, NYCT expects that many of these products will eventually be certified as “Environmentally Preferred Cleaning Products.”

Further, several products listed on the current approved OGS and Green Seal product lists have already been considered by OSS and rejected for use at NYCT. For example, the OGS approved products listed below are not suitable for NYCT because they do not comply with the New York City Department of Environmental Protection’s (DEP) Sewer Discharge Standard for pH, which states that the pH can not be outside of the 5-11 range:

- State Industrial Products’ Ecolution Pro (Bathroom & Bowl Cleaner); pH <1; on the OGS list
- Ecolab’s Pinnacle Intensive Cleaner (910969-02); pH = 13.5; on the Green Seal list
- Ecolab’s Quik-Pak Premeasured Toilet Bowl Cleaner; pH = 2.2; on the Green Seal list
- Ecolab’s Lemon Lift w/ bleach; pH = 12.8; on the Green Seal list

- Ecolab's Lemon-eze; pH = 1.4 – 2; on the Green Seal list
- Ecolab's Proforce Triphase; pH = 13.6; on the Green Seal list

Recommendation 6. Monitor and verify compliance by regularly checking cleaning purchases.

Management Comment.

Agree. When a determination is made that NYCT is using an environmentally non-compliant product, the Division of Materiel will be directed to procure environmentally friendly cleaning products and directives will be issued to user groups to exhaust existing stock. NYCT, through the coordinating efforts of OSS and the QPL Committee, will enforce the provisions of EO 134 and maximize the use of environmentally preferred products.

Recommendation 7. Examine all the cleaning and maintenance products that have been approved for use by Transit to determine which items should be substituted with environmentally-preferred equivalents.

Management Comment.

Partially agree. See response to recommendation 5 above. We have identified the facility and custodial cleaners that need to be examined in connection with EO 134 compliance. However, examining all cleaning and maintenance products in use by NYCT is well beyond the requirements of this Executive Order.

Recommendation 8. Phase out the use of non-environmentally-preferred cleaning products in a timely manner, as required by the Order, and dispose of those that are no longer being used.

Management Comment.

Partially agree. NYCT agrees to comply with all of the requirements in EO 134. NYCT does not agree with the draft audit's conclusion that it is using any "non-environmentally-preferred" products. As discussed earlier, the auditors have no basis to conclude that NYCT is currently using any non-compliant cleaning products. Going forward, if any NYCT cleaning product is properly determined to be non-compliant, then NYCT will fully comply with this recommendation.

SUMMARY

In the absence of the requisite "consultation and guidance" from OGS until February 21, 2008, NYCT maintains that it has demonstrated a good faith effort to comply with the requirements of EO 134. Moreover, upon review of OGS' criteria on the health and environmental characteristics of green cleaning products, it was determined that the majority of OGS' chemical characteristics of green cleaning products are already reflected within NYCT's procurement specification.

In summary, NYCT strongly supports the goals and requirements set forth in Executive Order 134 (EO 134 or the Order), issued in 2005, and will continue to work with OGS in order to come into full compliance with the Order. Notwithstanding, the draft audit report contains several incorrect conclusions and misleading recommendations, all of which should be corrected prior to issuance of the final report.

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