



Department of Agriculture and Markets

Environmental Protection Fund

Report 2008-S-150



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

July 30, 2009

Patrick Hooker
Commissioner
Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Dear Mr. Hooker:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Department of Agriculture and Markets' controls over the awarding of Environmental Protection Fund grants. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objectives

The objectives of our performance audit were to determine if the Department of Agriculture and Markets (Department) awards Environmental Protection Fund (EPF) grants timely and based on valid, objective criteria.

Audit Results - Summary

EPF monies fund three major programs at the Department: the Non-Point Source Abatement and Control (Non-Point Source) Program; the Agriculture and Farmland Protection (Farmland Protection) Program; and the Soil and Water Conservation District (Soil and Water) Program. We found the Department has adequate controls in place to award EPF grants timely and generally makes the awards based on valid, objective criteria.

Though we generally found that EPF grants were awarded timely, we identified one area where the Department could make improvements. Grantees sometimes withdraw projects after EPF funds have been awarded, and return the unspent funds. We found the Department could improve the timeliness of re-awarding these returned funds, particularly for the Non-Point Source Program. We found that in 2006 the Department re-awarded more than \$3 million in returned funds for this program that had accumulated between 1996 and 2004.

In most cases, we found grants were awarded based on valid and objective criteria. However, in our analysis of a portion of the Soil and Water Program funding, we found gaps in documentation which limited our assurance that all districts were afforded an equal opportunity to receive this funding. For example, we reviewed 31 applications that were initially denied due to the absence of proper information. Department officials provided us with documentation showing they subsequently contacted 25 of the applicants and allowed them to amend their information. Sixteen of these 25 applicants received monies after amending their information. Department officials, however, were unable to explain why the remaining six districts were considered ineligible and thus disqualified from consideration without affording them an opportunity for further clarification. As a result, we cannot be assured that all applicants were afforded the same opportunities to receive funding.

Our audit report contains three recommendations directed toward improving the Department's controls over the awarding of EPF grants.

This report, dated July 30, 2009, is available on our website at: <http://www.osc.state.ny.us>.
Add or update your mailing list by contacting us at (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
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INTRODUCTION

Background

The Environmental Protection Fund (EPF) was created by Chapters 610 and 611 of the Laws of 1993 to provide funding for: State land acquisition; development and maintenance of State parks; local parks programs; local recycling programs; and other environmentally-related programs and initiatives. Major funding for EPF comes from a dedicated portion of real estate transfer tax revenues. Annual State EPF funding currently totals \$250 million, a portion of which is appropriated to the Department. For the three fiscal years ended March 31, 2008, over \$95 million was appropriated and allocated to the Department to fund three major EPF programs: Non-Point Source; Farmland Protection; and Soil and Water. The Department does not award EPF grants to individual farmers or private entities. Rather, it awards funding to local government units which, in turn, administer individual projects.

EPF monies are intended to be used to achieve specific program objectives. The Non-Point Source Program assists farmers in preventing water pollution resulting from agricultural activities by providing technical assistance and financial incentives. As part of this program, the Department awards both implementation and planning grants. For the three fiscal years March 31, 2008, over \$30 million was appropriated to this program.

Under the Farmland Protection Program, the Department administers two matching grant programs. One assists county and municipal governments in developing agricultural and farmland protection plans to maintain the economic viability of the State's agricultural industry and its supporting land base (planning grants). The other assists eligible local governments in implementing their farmland protection plans and has focused on preserving the land base by purchasing the development rights to farms through the use of conservation easements. For the three fiscal years ended March 31, 2008, \$57 million was appropriated to this program.

The third program, Soil and Water, provides funding to help develop and oversee implementation of an effective soil and water conservation and agricultural non-point source water quality program for the State, which is implemented primarily through county districts. Almost \$8 million was allocated to the Soil and Water Program for the three fiscal years ended March 31, 2008. The program allows individual districts to apply for funding under three specific areas - Part A, B and C.

- Part A funding is provided to reimburse districts for half of up to \$30,000 in expenditures for conservation field technicians or district managers,

related supplies and equipment, and other costs related to establishing and implementing soil and water conservation practices undertaken by the district. For the three fiscal years ended March 31, 2008, Part A funding totaled almost \$5.9 million.

- Part B funding provides each district with up to \$6,000 to carry out projects that conserve, restore and enhance soil and water resources. Part B funding is relatively new; monies were first allocated to this effort in 2006-07 and totaled almost \$700,000 for the fiscal years 2006-07 and 2007-08.
- Part C funding is awarded to carry out projects related to the conservation, development and utilization, or preservation of the soil and water resources. Funding is linked to specific activities each district performed during the year as established by the Department Commissioner and the State's Soil and Water Conservation Committee (SWCC). Monies were first allocated for Part C funding during 2006-07 and totaled almost \$1.6 million for the two-year period ended March 31, 2008.

Audit Scope and Methodology

We audited to determine if the Department awards EPF grants timely and based on valid, objective criteria. Our scope period was from April 1, 2005 to January, 7, 2009. To accomplish our objectives, we reviewed relevant State and local laws, and analyzed grant proposals, award scoring methodologies, and related financial data. We also met with Department officials to confirm and enhance our understanding of the EPF program.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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 The audit was performed 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.

Reporting Requirements A preliminary copy of this report was provided to Department officials for their review and comment. Their comments were considered in preparing this draft report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Agriculture and Markets 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 were Frank Houston, John Buyce, Greg Petschke, Heather Pratt, W Sage Hopmeier, and Raymond Barnes.

Audit Findings and Recommendations

Timeliness of Awards

We found the Department generally made EPF grant awards timely. For example, during each of the three fiscal years ended March 31, 2008, the Department awarded Farmland Protection implementation grants within three to four months of the date proposals were due. Once the grants are awarded, local governments must enter into formal contracts to encumber, and then ultimately expend, the allocated funds. As of August 31, 2008, 91 percent of the 2007-08 appropriation for this program was encumbered or expended, as was 71 percent of the 2006-07 appropriation, and 78 percent of the 2005-06 funding. The Department should be alert to situations where grants are awarded, but monies are not encumbered or spent for prolonged periods.

For the Non-Point Source Program, we found implementation grants were initially awarded timely - generally within three to five months after proposals were due. We found all but \$190,268 of the \$6.7 million in program funding was awarded before the end of 2005-06; all but \$17,000 of \$11 million before the end of 2006-07; and the entire \$12.8 million by the end of 2007-08.

Most Soil and Water Program funding is not awarded on a competitive basis, but represents reimbursement made each Spring for a share of prior calendar year costs. Certain small grants (up to \$6,000) are also awarded each Fall to fund specific projects. Specific dates for application and voucher submissions are usually specified by regulation. We found the districts received payments within two months after desk review at the Department's program level and audit by its Finance Office staff.

We did find, however, that funds returned from canceled Non-Point Source projects are not re-awarded as timely. For various reasons, some farmers withdraw from certain Non-Point Source projects after their corresponding local governments have received an award intended for them. At this point, grant funds are to be returned to the Department by the local government and made available for other project applicants that did not initially receive funding due to resource limitations. We found, however, that the Department did not establish a mechanism to monitor the status of projects and periodically free up money that was not going to be used to be re-awarded for new projects. As a result, funds accumulated for years that had been awarded to projects, but never encumbered or expended, because the projects were not moving forward. In March 2006, we found the Department used almost \$750,000 accumulated from returned funding from the 1996 through 1999 fiscal years to fund Non-Point Source planning grants. In

November 2006, the Department used over \$1.3 million in returned funding accumulated from 1995 through 2004 to fund implementation grants, along with another \$1 million accumulated from 1999, 2000 and 2003 to fund planning grants.

When projects are withdrawn and the monies are not re-awarded timely, applicants, who may not have initially received awards due to funding limitations, are disadvantaged. It is neither efficient nor equitable to allow funds to accumulate when they could be used to assist farmers in preventing water pollution. Department officials agree that such funds should be re-awarded more timely and are currently working to re-award funds sooner.

Award Criteria

Overall, we found that the criteria established and used to award implementation grants for both the Farmland Protection and Non-Point Source programs were valid and consistent. We reviewed all of the applications (45 Farmland Protection and 85 Non-Point Source) submitted for implementation grants for these programs for the 2007-08 fiscal year. We found no significant inconsistencies in the Department's scoring of proposals and we found the Department applied criteria clearly and objectively when awarding these grants.

For the Soil and Water Program, we found both the reimbursements under Part A (about \$5.7 million) and the financial assistance provided under Part B (almost \$700,000) were consistently awarded by the Department using valid and objective criteria. However, our analysis of Part C funding (about \$1.6 million) found the Department did not always apply criteria consistently when evaluating the proposals and, as a result, not all districts had an equal opportunity to receive this funding.

To be considered for Part C funding, which is linked to specific activities a district performed during the year, a district must submit a Performance Measure Evaluation Summary (Summary). Department officials indicated that some district officials were unsure of the information they were required to include in their Summary. As a result, the information they provided was inconsistent, inaccurate, or fell outside designated reporting periods. When this happened, Department officials stated they contacted some districts and allowed them to clarify the information contained in their Summary. However, Department officials also told us that, in certain cases, it was clear from the information provided that some districts were not eligible to receive Part C funding and these districts were not contacted to amend or clarify their Summary.

We attempted to verify the Department's claims by reviewing 31 Part C applications from the 2007-08 year where district officials initially provided Summary information which was not sufficient for them to be considered

for funding. Department officials provided us with documentation that they contacted 25 of these districts and allowed them to clarify their reports. Subsequently, 16 of the 25 districts provided additional information to the Department and received funding. However, Department officials were unable to explain why the remaining six districts were apparently considered clearly ineligible and thus disqualified from consideration without affording them an opportunity for further clarification. As a result, we cannot be assured that these six districts were afforded the same opportunity as the others.

To receive a portion of the Part C funding, a district must submit an Annual Plan of Work (Plan) to the SWCC and have it approved by April 1st of each year. We identified eight districts that were initially denied this funding, because the Department did not have an approved Plan on file for them. However, we found records indicating that the Department had subsequently reached out to six of the districts and afforded them the opportunity to resubmit documentation or explain why it was missing. Subsequently, three of these districts received the funding. As with the Summary, Department officials provided no documentation that they had contacted the other two districts to seek further clarification or to allow them to resubmit their Plans.

Recommendations

1. Monitor project status to ensure grant awards are expended timely, as well as to enable prompt recovery of funds whenever projects are cancelled and ensure that these funds are re-awarded as part of each annual funding cycle.
2. Clarify the instructions for completing and submitting the Performance Measure Evaluation Summary and Annual Plan of Work and instruct districts in completing these forms properly and timely where necessary.
3. For Part C funding, provide and document communications to districts which are afforded opportunities to clarify or resubmit required information. In addition, document the reasons when districts are denied the opportunity to clarify their submissions.

AGENCY COMMENTS



STATE OF NEW YORK
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Office of the Commissioner

July 15, 2009

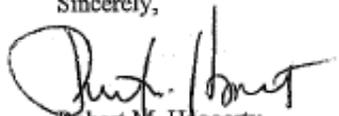
Mr. Frank Houston
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, New York 12236

Dear Mr. Houston:

The Department is in receipt of the Draft Audit Report 2008-S-150 regarding the Department's administration of Environmental Protection Fund Grants. As the audit verified, EPF grants are awarded timely and those awards are generally based on valid, objective criteria. However, as with any program, there are always opportunities for improvement. The Department accepts the recommendations offered in the report and is currently addressing their implementation.

We anticipate the issuance of a final report that is materially the same as the draft referenced above. At that time, a formal response will be issued by the Department detailing the implementation of the recommendations made in Report 2008-S-150. If you should have any questions or concerns in the meantime, please contact the Department's Internal Audit Director, Ms. Tracy Robbins at 518.485.7728.

Sincerely,


Robert M. Haggerty
First Deputy Commissioner