
**Thomas P. DiNapoli
COMPTROLLER**



Audit Objective..... 2

Audit Results - Summary 2

Background..... 2

**Audit Findings and
Recommendations..... 3**

Compliance with Order 3
Recommendations..... 4

Audit Scope and Methodology..... 4

Authority 5

Reporting Requirements..... 5

Contributors to the Report 5

Appendix A - Auditee Response 6

**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**DEPARTMENT OF
ENVIRONMENTAL
CONSERVATION**

**COMPLIANCE WITH
EXECUTIVE ORDER 111
REQUIREMENTS TO
PURCHASE POWER FROM
RENEWABLE SOURCES**

Report 2008-S-81

AUDIT OBJECTIVE

The objective of this audit was to determine whether the Department of Environmental Conservation (Department) is meeting the current 10 percent target for purchasing power from renewable sources, increasing to a 20 percent target level by 2010 as specified in Executive Order 111.

AUDIT RESULTS - SUMMARY

Executive Order 111 (Order) was issued in June 2001 and requires that by 2005 all State agencies and certain public authorities seek to purchase sufficient quantities of electricity produced by certain specified renewable technologies so that 10 percent of the overall annual electric energy consumption of the buildings they own, operate or lease would come from renewable sources. The target percentage increases to 20 percent by 2010. The agencies can acquire qualifying electric energy by generating it themselves, or by purchasing it either through their electrical supplier or through a third party provider in the form of a Renewable Energy Certificate.

We found the Department is in compliance with the Order. For fiscal year 2005 the Department purchased 17 percent of its total reported electrical consumption from renewable power sources. We also found that the Department is already exceeding the 2010 target level of purchasing 20 percent of total electrical consumption from renewable power sources. The Department purchased 44 percent of its overall annual electric energy consumption in fiscal year 2007 from renewable sources and has effective plans in place to further increase its purchasing of renewable power through 2010. In addition, we found the Department has submitted all the required Annual Energy Reports for fiscal years 2006 and 2007.

Our audit report contains two recommendations. Department officials agreed with our recommendations.

This report, dated January 16, 2009, 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
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Albany, NY 12236

BACKGROUND

Executive Order 111 (Order), issued by the Governor on June 10, 2001, sets out a broad initiative that directs State agencies and certain public authorities to be more energy efficient and environmentally proactive. The Order is divided into individual sections, each addressing a specific energy-related or environmental initiative ranging from establishing broad energy efficiency goals to instituting energy efficient and environmentally sensitive practices. We have previously audited various agencies' efforts to implement certain sections of the Order, including the procurement of clean fuel vehicles and the purchase of energy efficient products. This audit addresses implementation of the section of the Order that requires agencies to purchase power from renewable sources.

Specifically, Section IV of the Order requires that by 2005 each covered agency should have sought to purchase sufficient quantities of energy from certain specified renewable technologies so that 10 percent of its overall annual electric energy consumption of the buildings it owns, operates or leases would come from renewable sources. The target percentage increases to 20 percent by 2010. Guidelines issued by NYSERDA in

December 2004 generally require covered agencies to apply these percentages against all facilities where their power is separately metered and billed, regardless of whether they own or lease the property. Eligible renewable technologies specified in the Order include power generated from wind, solar thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste and fuel cells.

The Order designates the New York State Energy Research and Development Authority (NYSERDA) as the lead agency responsible for coordinating implementation and assisting other agencies to fulfill their responsibilities. To assist NYSERDA in this role, the Order also created the State Energy Efficiency Advisory Council (Advisory Council), headed by the President of NYSERDA and composed of the heads of 12 other agencies and authorities. NYSERDA and the Advisory Council have developed guidelines that, among other things, interpret the requirements of the Order and specify criteria for periodic reporting and possible exemption of certain facilities or operations. In general, the guidelines allow agencies to acquire qualifying energy by generating it themselves or by purchasing it, either through their electrical supplier or through a third party provider in the form of certificates referred to as Renewable Energy Credits.

The Department of Environmental Conservation (Department) was created on July 1, 1970 to bring together in a single agency all State programs directed toward protecting and enhancing the environment. The Department is responsible for conserving, improving and protecting the State's natural resources and environment. The Department also works to control water, land and air pollution in order to enhance the health, safety and welfare of all New Yorkers. In addition, the Department plays a major role in

implementing the State's dedicated Environmental Protection Fund. The Department has about 3,200 employees including those who work from regional offices across the state and those who work in the central office in downtown Albany. The Department consumed an average of 10,906 MWh of electricity during State fiscal years 2005 through 2007.

AUDIT FINDINGS AND RECOMMENDATIONS

Compliance with Order

Procurement of Renewable Energy

The Order requires State agencies and other affected entities to seek to procure 10 percent of their total electrical energy requirements by 2005 from renewable sources and 20 percent from those renewable sources by 2010.

The Order specifies wind, solar thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste, and fuel cells to be qualifying renewable sources. State agencies and other affected entities can purchase any combination of the qualifying renewable sources to meet the goals of the Order.

According to NYSERDA's guidelines, State entities can fulfill their renewable-power procurement obligations in the following ways:

- On-site generation of all renewable power requirements,
- A mix of on-site generation and open-market electricity, and

- Purchasing all renewable-power requirements from the open market.

We found the Department met the 10 percent goal in 2005 by purchasing 17 percent of its electric energy consumption from eligible biomass energy through a utility company's renewable energy program, and generating .09 percent of its energy from photovoltaic energy on-site at its central office. The Department also has adequate plans in place to meet and exceed the 20 percent goal for 2010. In reports filed with NYSERDA for State fiscal year 2007, the Department reported and we confirmed that 10,851.5 Mega Watts (MWh) of electrical energy was consumed, 44 percent of which came from biomass or photovoltaics. This current percentage of renewable power is over twice the 2010 target of 20 percent. In addition, in January 2008 the Department started purchasing renewable energy through an Office of General Services' (OGS) contract which will amount to an additional 3,000 MWh per year from fiscal years 2009 through 2011.

Reporting Requirements

The NYSERDA's guidelines require every state agency and other affected entities to submit an Annual Energy Report to NYSERDA by December 1st following the close of each fiscal year. The first Annual Energy Report was due December 1, 2002 for the period April 1, 2001 through March 31, 2002.

The purpose of the Annual Energy Report is for the agencies to demonstrate progress toward achieving the goals of the Order. State agencies and other affected entities are to report their total energy usage, electrical demand, and the amount of renewable power they purchase and generate on site. They are

also required to report how much renewable energy they will need to purchase to meet the 20 percent renewable energy goal in 2010, as well as if they met the previous goal of 10 percent in 2005.

We found the Department timely filed the required Annual Energy Reports with NYSERDA for fiscal years 2006 and 2007. NYSERDA's guidelines require that all agency buildings, except those meeting exemption criteria, be included in the annual energy consumption numbers reported to NYSERDA. After submitting its Annual Energy Report for 2006-07 the Department determined that it had exempted 18 buildings that do not meet the exemption criteria. The Department's current energy manager is reviewing the status of the 18 facilities to determine if any or all should be reported on in the future. These 18 facilities consumed 1,431 MWh of electrical energy in fiscal year 2007. We note that if the energy used by these 18 facilities was included, the percentage of energy purchased or generated from renewable sources would still be well over the 20 percent goal for 2010.

Recommendations

1. Continue to comply with the requirement in the Order to procure renewable energy.
2. Comply with Annual Energy Reporting requirements.

AUDIT SCOPE AND METHODOLOGY

Our audit determined if the Department of Environmental Conservation was in compliance with Section IV of Executive Order 111 by reporting their annual electrical energy consumption to NYSERDA, and procuring at least 10 percent of their power from renewable sources by 2005, and increasing to 20 percent in 2010. Our audit

period was from January 1, 2005 through April 2008.

To accomplish our audit objectives, we interviewed Department officials to determine what steps were taken to comply with the Order and what plans were made to meet 2010 requirements. We compared reported renewable energy amounts for State fiscal years 2006 and 2007 to the Department's utility bills to determine the accuracy of reported renewable energy amounts. In addition, we obtained data for the Department's Photovoltaic System to determine the amount of output produced by the system and compared that to what the Department reported for fiscal years 2006 and 2007.

We conducted our 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

We performed this audit 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

We provided a draft copy of this report to Department officials for their review and comments. Department officials agreed with our recommendations. Their comments were considered in preparing this report and are attached in their entirety as Appendix A.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department 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 William Challice, Frank Patone, Mike Solomon, Todd Seeberger, Scott Heid, Jennifer Bachinsky, and Melissa Landrio.

APPENDIX A - AUDITEE RESPONSE



DAVID A. PATERSON
GOVERNOR

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

ALEXANDER B. GRANNIS
COMMISSIONER

NOV 21 2008

Mr. Michael Soloman
Audit Manager
Office of the State Comptroller
Division of State Government Accountability
123 William Street, 21st Floor
New York, New York 10038

Dear Mr. Soloman:

On November 5, 2008, the New York State Department of Environmental Conservation (DEC) received the Office of the State Comptroller's (OSC) draft audit report 2008-S-81, entitled "Compliance with Executive Order 111 – Requirements to Purchase Power From Renewable Sources" dated August 20, 2008. The enclosed page contains DEC's response to the draft report.

Thank you for the opportunity to respond to the draft report. If you need to discuss any of this response, please contact Tom Kulzer at (518) 402-9147.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexander B. Grannis".

Alexander B. Grannis

Enclosure

c: T. Seeberger, OSC

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Response to the Office of the State Comptroller's
Draft Audit Report 2008-S-81

Compliance with Executive Order 111
Requirements To Purchase Power From Renewable Sources

DEC's response to the recommendations contained in OSC's draft report entitled "Compliance with Executive Order 111, Requirements to Purchase Power From Renewable Sources" report number 2008-S-81 received by the DEC on November 3, 2008, is presented below.

Response to Recommendations

Recommendation 1: Continue to comply with the requirement in the Order to procure renewable energy.

Response to Recommendations 1: DEC agrees to continue compliance with the Order to the maximum extent practicable.

Recommendation 2: Comply with the Annual Energy Reporting requirements.

Response to Recommendations 2: DEC agrees to continue compliance with the Annual Energy Reporting requirements.