Department of Environmental Conservation

Report of Title V Operating Permit Program Revenues, Expenditures, and Changes in Fund Balance for the Eight Fiscal Years Ended March 31, 2017

Report 2017-S-81 | August 2019

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller
Division of State Government Accountability

Audit Highlights

Objectives

To determine whether the Department of Environmental Conservation (Department) has adequate procedures in place to accurately capture the Title V Operating Permit Program's (Program) revenues, expenditures, and changes in fund balance. We also sought to determine whether Department officials have made reasonable estimates of anticipated Program expenses for the current year and the immediately upcoming year and whether Program fee revenues collected pursuant to administration of Article 72, Title 3 of the Environmental Conservation Law (Law) were adequate to cover Program expenses. We performed our audit pursuant to the legislative mandate included in Section 72-0303(6) of this Law. Our audit covered the period April 1, 2009 through March 31, 2017.

About the Program

The U.S. Environmental Protection Agency established the Program under Title V of the federal Clean Air Act Amendments of 1990 (Act). The purpose of the Program is to help control excessive industrial pollution by requiring states to monitor pollutant output and to take action to remedy violators that produce pollutant quantities in excess of established limits. Pursuant to New York's Clean Air Compliance Act of 1993 (CACA), the Department is responsible for developing and administering this Program.

Air pollution sources subject to the Program must obtain an operating permit and pay annual fees established by the Act. The Department assesses the fees on Title V facilities based on their self-reported emissions from the previous calendar year and bills them annually. The Act mandates that the Program's permit fee revenues be sufficient to cover all reasonable direct and indirect costs necessary for the Department to develop, administer, and enforce the Program.

The Department is required to report annually to the Governor, the Legislature, and the State Comptroller's Office on Program progress, costs, and revenues. The Department's reports of the Program Fund revenues, expenditures, and balances are shown in Exhibits A through H. The State Comptroller's Office is required to perform a biennial audit of the Program.

Key Findings

- The Department generally has adequate procedures in place to capture the Program's revenues, expenditures, and changes in fund balance transaction data. However, we identified errors in the permit fee billing process and in the allocation of expenses to the Program. Our review of 32 invoices totaling $8,328,281 billed to Title V facilities found 7 (22 percent) totaling $3,214,420 were billed incorrectly by $352,418 (11 percent). We also found that $142,932 in direct non-personal service expenses for the Department was overcharged to the Program Fund.
- During our audit period, Program revenues were insufficient to cover Program expenses, as required by the Act and CACA. Program revenues decreased 38.8 percent during the

period, while Program expenses decreased 10.8 percent, resulting in a trend of increasing annual deficits. The revenue decline is due largely to a 54.4 percent decrease in facility-reported and/or Department-estimated billable emissions during the period. As of March 31, 2017, the Department reported a Program Fund deficit of more than $20.3 million. The Department funds the deficit by borrowing from the State's short-term investment pool, which contains cash balances in the State Treasury not required for immediate use. However, the reported deficit did not include almost $50.4 million in Program expenses that the Department paid primarily from its General Fund appropriations. Considering the expenses paid with non-Program funds, the Program's effective operating deficit would be $70.7 million as of March 31, 2017.

Key Recommendations

- Take steps to improve monitoring systems to ensure expenses are appropriately charged to the Program.
- Work with relevant stakeholders to develop a strategy to bring the Program into self-sufficiency, in compliance with the federal Clean Air Act.

Office of the New York State Comptroller
Division of State Government Accountability

August 12, 2019

Mr. Basil Seggos
Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12233-0001

Dear Mr. Seggos:

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 Environmental Conservation entitled *Report of Title V Operating Permit Program Revenues, Expenditures, and Changes in Fund Balance for the Eight Fiscal Years Ended March 31, 2017*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and the legislative mandate included in Section 72-0303(6) of the Environmental Conservation 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,

Division of State Government Accountability

Contents

Glossary of Terms

Abbreviation	Description	Identifier
Act	Title V of the federal Clean Air Act Amendments of 1990	*Law*
AFS	Air Facility System	*System*
Air Quality Surveillance	Bureau of Air Quality Surveillance	*Bureau*
Annual Report	Operating Permit Program Annual Report	*Key Term*
CACA	Clean Air Compliance Act of 1993	*Law*
DAR	Division of Air Resources	*Division*
Department	Department of Environmental Conservation	*Auditee*
DOH	Department of Health	*Agency*
EFC	Environmental Facilities Corporation	*Agency*
EPA	U.S. Environmental Protection Agency	*Agency*
EPA OIG	U.S. EPA Office of Inspector General	*Agency*
ESDC	Empire State Development Corporation	*Agency*
FMIS	Financial Management Information System	*System*
Law	Environmental Conservation Law	*Law*
Program	Title V Operating Permit Program	*Program*
STIP	Short-term investment pool	*Key Term*

Background

The U.S. Environmental Protection Agency (EPA) established an operating permit program (Program) under Title V of the federal Clean Air Act Amendments of 1990 (Act). The purpose of the Program is to ensure compliance with all applicable requirements of the Act and to enhance the EPA's ability to enforce the Act. The legislation is intended to help control excessive industrial pollution by requiring states to monitor pollutant output. The Act requires each state to adopt a Program to regulate "major" and certain other sources of air pollutants. Pursuant to New York's Clean Air Compliance Act of 1993 (CACA), the Department of Environmental Conservation (Department) is responsible for developing and administering this Program.

Air pollution sources subject to the Program must obtain an operating permit and pay annual fees established by the Act. The Department assesses the annual fees on Title V facilities based on their self-reported emissions from the previous calendar year. The fee is calculated by assessing each facility's emissions based on a fee schedule established by the Environmental Conservation Law (Law). If the facility does not have a permit and does not submit an emissions statement, the Department will bill the facility based on its potential to emit. The Act mandates that permit fee revenues be sufficient to cover all reasonable direct and indirect costs necessary for the Department to develop, administer, and enforce the Program.

According to the Law, the Department is required to report to the Governor, the Legislature, and the State Comptroller's Office before September 30 of each year on Program progress, costs, and revenues, including: the actual costs incurred and revenues received during the previous fiscal year; the estimated costs that will be incurred and the anticipated tonnage of emissions and revenues during the current fiscal year; and an estimate of the costs that will be incurred during the subsequent fiscal year. The Law requires the State Comptroller's Office to perform a biennial audit of the fiscal status of the Department's Title V Program.

The direct cash disbursements and cash receipts figures used to compile the Program's Consolidated Statements are based on the financial records maintained by the Department, the Department of Health (DOH), the Environmental Facilities Corporation (EFC), and Empire State Development Corporation (ESDC), and are in agreement with those maintained by the State Comptroller's Office. DOH, EFC, and ESDC, which account for an average of approximately 7 percent of total Program disbursements, each maintain their own accounting system and financial reporting mechanisms, which are not subject to Department oversight. The Department does not take responsibility for the accuracy of the data reported by these affiliated agencies. However, each of these agencies is required to comply with established accounting and control procedures as promulgated by New York State. Our audit objectives were limited to the Department’s controls over the Program and, therefore, we did not perform testing of these other agencies.

Audit Findings and Recommendations

The Department generally has adequate procedures in place to capture the Program's revenues, expenditures, and changes in fund balance transaction data. However, we identified errors in the permit fee billing process and in the allocation of expenses to the Program. We reviewed 32 invoices totaling $8,328,281 billed to Title V facilities and found 7 (22 percent) totaling $3,214,420 were billed incorrectly by $352,418 (11 percent). We also found that $142,932 in direct non-personal service expenses for the Department was overcharged to the Program Fund.

We were precluded from assessing the reasonableness of the Department's estimates of anticipated Program expenses for the years during our audit period because the Department did not provide the Operating Permit Program Annual Reports (Annual Reports) on time. Program revenues were insufficient to cover Program expenses during our eight-year audit period, as required by the Act.

Program revenues declined 38.8 percent during the audit period while expenses decreased 10.8 percent during the same period, which results in increasing annual Program deficits. Revenue decreases are due to decreases in the number of regulated facilities and in the amount of self-reported and/or Department-estimated billable emissions. As of March 31, 2017, the Department reported a Program Fund deficit of more than $20.3 million. The Department funds the deficit with borrowing from the short-term investment pool (STIP). However, the reported deficit did not include almost $50.4 million in Program expenses that the Department paid primarily from its General Fund appropriations. Considering the expenses paid with non-Program funds, the Program's effective operating deficit would be about $70.7 million as of March 31, 2017.

Revenues

Each year, the Department collects emissions statements from Title V facilities to calculate their annual fees based on tons of emissions. Department engineers in the Bureau of Air Quality Planning collect and review facility emissions statements and enter the data in the Air Facility System (AFS) Emissions Inventory Module, which is an inventory of each facility's emissions by pollutant for the year. The Department also reports this data electronically to the EPA, which monitors whether states are meeting National Ambient Air Quality Standards. To bill Title V facilities, the Department uses three separate systems: the AFS Emissions Inventory Module, the AFS Fee Billing Module, and the Financial Management Information System (FMIS).

To determine if the Department is adequately capturing Program fee revenues, we judgmentally selected 32 Program invoices totaling $8,328,281, consisting of 4 invoices from each of the eight years in our audit period. We reviewed relevant supporting documentation in the three systems, emails, and other documents such as engineer reviews. We determined that 15 of the 32 invoices were not accurately documented in at least one of the systems, of which 5 were not accurately documented in at least two of the systems.

The inaccuracies led to seven invoices (22 percent) totaling $3,214,420 being billed incorrectly by a total of $352,418 (11 percent). Of the seven invoices, three were overbilled by $198,494 and four were underbilled by $153,924. For example, one facility submitted an updated emissions statement. Although the AFS Emissions Inventory Module was updated, the AFS Fee Billing Module and FMIS were not automatically updated because the three systems do not communicate with each other. Therefore, staff must transfer any updates across all three systems. However, because the billing system was not updated in this case, an updated invoice was not sent, resulting in the facility being underbilled $4,201. Transferring the updates to the three systems can be inefficient, and can result in an increased risk of billing errors and possibly lead to inaccurate reporting of emissions data to the EPA.

As a result of our review, Department officials told us they refunded one facility the amount they overbilled, two facilities are no longer in business, two exceeded the statute of limitations for collection, and the remaining two had not yet been rebilled.

Expenses

Personal Service

The personal service level of effort for the Program is determined based on an analysis of Division of Air Resources' (DAR) time distribution costs in the Department's Leave and Accrual Tracking System. The Division of Management and Budget applies the Program's level of effort percentage to DAR total salaries for each fiscal year to calculate the amount of personal service cost for the Annual Reports.

We compared the personal service costs in the Department's Annual Reports to the personal service costs charged to the Program Fund in the State Financial System. During our audit period, the Department reported a total of $59,699,000 for personal service in the Annual Reports, but only charged $40,309,911 to the Program Fund, thereby overstating the Program Fund balance by $19,389,089. Department officials told us they did not charge the $19,389,089 in personal service expenses to the Program Fund because the amount it is authorized by the Legislature to charge to the fund cannot exceed the Title V appropriations.

Non-Personal Service

The Department's non-personal service expenditures include contractual services, equipment purchases, travel expenditures, training, postage, and sundry items. Some expenses are incurred by the Bureau of Air Quality Surveillance (Air Quality Surveillance), and any others are non-Air Quality Surveillance expenses. The Department recognizes expenditures when they are incurred and tracks them in FMIS. For the eight fiscal years in our audit period, Department records were available in electronic format for only the last five years ended March 31, 2017. We limited our analysis and testing to the electronic records.

Air Quality Surveillance Expenses

DAR non-personal service expenses are allocated to its three funding sources (Title V, Non-Title V, and Mobile Sources) using the same percentages it uses to allocate personal service expenses. For the five fiscal years we reviewed, the percentages ranged between 35 and 39 percent.

We analyzed all Air Quality Surveillance transactions totaling $2,089,330 for the five-year period ended March 31, 2017 to determine whether the Department followed its methodology. We found the Department incorrectly charged $917,368 to the Program instead of $774,436 based on its methodology. As a result, the Program Fund was overcharged $142,932.

Non-Air Quality Surveillance Expenses

We selected a random sample of 25 non-Air Quality Surveillance transactions totaling $4,455. Our review of supporting documentation showed that 8 (32 percent) transactions totaling $2,362 were insufficiently supported, including 5 totaling $2,188 for which there was no documentation and 3 totaling $174 for which the documentation did not demonstrate the expense was Program related. Department officials stated some records were not available for our review because they were older than the State's minimum retention period of three years. However, agencies must keep records being used for audits until the audit is satisfied, even if their minimum retention period has passed.

Estimates

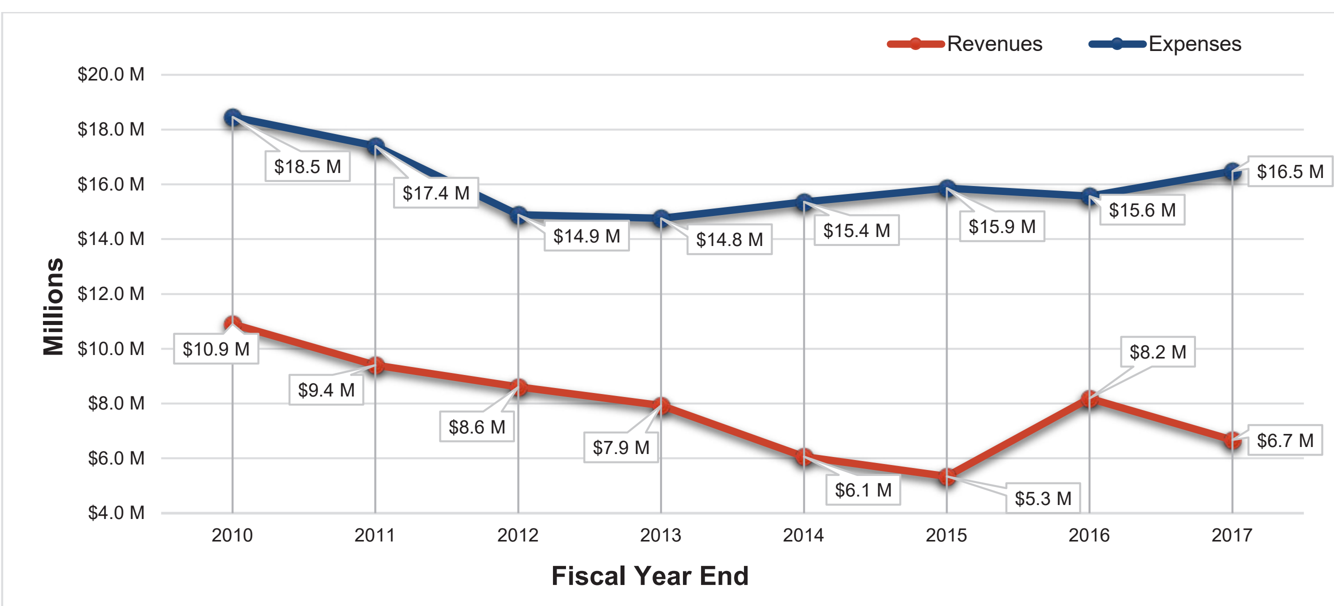
The State Comptroller is required to audit the fiscal status of the Program, including the estimated costs that will be incurred and the anticipated revenues during the current fiscal year and an estimate of the costs that will be incurred during the subsequent fiscal year. The Department is required to provide certain information, including these estimates, in a report to the Governor, the Legislature, and the State Comptroller before September 30 of each year.

We were precluded from fulfilling our responsibility to attest to the reasonableness of the Department's estimates for our eight-fiscal-year audit period because the Department did not submit its Annual Reports to us in a timely manner. The Annual Reports for Fiscal Years 2009-10 through 2014-15 were not submitted to us until November 27, 2017, and the Annual Reports for Fiscal Years 2015-16 and 2016-17 were not submitted until April 30, 2018. Additionally, the Annual Report for Fiscal Year 2016-17 was received after the beginning of the 2018-19 fiscal year. Audit standards of the American Institute of Certified Public Accountants prohibit auditors from assessing estimates on financial information for a fiscal period that has already passed.

Program Self-Sufficiency

The Act requires that permit fee revenues be sufficient to cover all reasonable direct and indirect costs necessary to develop, administer, and enforce the Program. To assess the self-sufficiency of the Program, we analyzed the revenues, expenses, and fund balances reported by the Department, as shown in Exhibits A through H. The Department's reports show that Program expenses exceeded permit fee revenues during each of the eight fiscal years of our audit period, as illustrated in the graph below.

Operating Permit Program – Revenue and Expense Trends



As of March 31, 2017, the Department reported the Program Fund had a deficit of over $20.3 million. Each year, the deficit is funded with monies borrowed from the STIP or primarily from the Department's General Fund appropriation. STIP funds come from cash balances in the State Treasury not required for immediate use. Specifically, STIP funds are used to pay the portion of Program expenses that exceed Title V revenues up to the Title V appropriation. We found the deficit reported by the Department understates the Program Fund deficit as defined by the Act and Law by a total of approximately $50.4 million, as shown in Table 1.

Table 1
Reported Fund Balances and Expenses Paid With Non-Title V Funds, Fiscal Years 2009-10 Through 2016-17

Fiscal Year End	Department Reported Fund Balance[1]	Title V Expenses Paid With Other Funds[2]		Program Operating Deficit Including Other Funds
		Annual	Cumulative	
2010	($5,924,270)	$1,367,583	$6,691,918[3]	($12,616,188)
2011	($12,173,621)	$1,751,168	$8,443,086	($20,616,707)
2012	($15,397,188)	$3,064,116	$11,507,202	($26,904,390)
2013	($15,184,879)	$7,043,975	$18,551,177	($33,736,056)
2014	($17,084,690)	$7,398,975	$25,950,152	($43,034,842)
2015	($19,996,630)	$7,609,886	$33,560,038	($53,556,668)
2016	($19,199,593)	$8,175,491	$41,735,529	($60,935,122)
2017	($20,347,827)	$8,658,619	$50,394,148	($70,741,975)

[1] Borrowed from STIP.
[2] Primarily Department General Fund monies.
[3] Includes $5,324,335 from 2008-09.

These differences occur because the portion of Title V expenses that exceeds the Title V appropriation is paid primarily with Department General Fund monies, which are not reflected in the fund balance calculation. If the expenses paid with non-Program funds are included, the Program's effective operating deficit is $70.7 million as of March 31, 2017.

To address recurring deficits, the Department made recommendations to the Legislature during the years 2010 to 2014 to increase the permit fees. The Legislature approved a fee increase, effective January 1, 2015, that established a flat fee of $2,500 for each facility in addition to fees based on the amount of emissions, as shown in Table 2.

Table 2
Title V – Permit Fees

Tons of Emissions	Fee per Ton	
	Up to January 1, 2015	January 1, 2015 On
Less than 1,000	$45	$60
1,000–1,999	$50	$70
2,000–4,999	$55	$80
5,000 or more	$65	$90

As a result of the fee increase, Program revenues, which had steadily declined from $10.9 million in 2010 to $5.3 million in 2015, jumped to nearly $8.2 million in 2016. However, they subsequently dropped to $6.7 million in 2017. Overall, the revenues dropped 38.8 percent during the eight-year period.

Our analysis shows the overall general decline in revenues is primarily due to decreases in both the number of regulated facilities and the level of self-reported and/or Department-estimated billable emissions. As shown in Table 3, emissions for the eight fiscal years 2009-10 through 2016-17 decreased from 197,603 to 90,096 tons (54.4 percent), while the number of facilities declined from 468 to 380 (18.8 percent). These decreases have, in turn, resulted in the average billable tons per facility declining by 43.8 percent, from 422 to 237.

Table 3
Trends of Title V Billable Emissions and Facilities, 2009-10 Through 2016-17

Fiscal Year	Tons of Billable Emissions	Number of Facilities	Average Billable Tons per Facility
2009-10	197,603	468	422
2010-11	164,023	466	352
2011-12	162,032	443	366
2012-13	159,000	440	361
2013-14	108,977	421	259
2014-15	116,243	409	284
2015-16	128,689	413	312
2016-17	90,096	380	237

During the same eight-year period, Program expenses decreased nearly $2 million, from $18,466,000 to $16,480,000 (10.8 percent) – a much slower pace of decline than the 38.8 percent decline in revenues, resulting in a continuing trend of increasing annual deficits.

We reported on this condition in two prior audit reports (Reports 2008-S-94 and 2010-S-61), which covered the four fiscal years ended March 31, 2009. Additionally, the U.S. EPA Office of Inspector General's (EPA OIG) report entitled "Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues" reveals this issue affects other states as well. According to the October 2014 report, the EPA OIG surveyed nine of the nation's largest permitting authorities, including New York, during the five-year period from 2012 through 2018. The EPA OIG found annual Program revenues were not sufficient to cover annual Program expenses 62 percent of the time, totaling a $69 million shortfall out of $672 million in expenses incurred. Each of the nine permitting authorities ran a deficit in at least one year, and New York, Louisiana, and Illinois ran deficits in each of the five years.

Recommendations

1. Take steps to ensure that changes affecting the three systems used for permit fee billing are made to all of these systems.
2. Take steps to improve monitoring systems to ensure costs are appropriately charged to the Program.
3. Comply with New York State's retention policy that requires agencies to keep records being used for audits until the audit is satisfied.
4. Ensure that Title V reports are submitted to all required recipients by the September 30 deadline as mandated by Law.
5. Work with relevant stakeholders to develop a strategy to bring the Program into self-sufficiency, in compliance with the federal Clean Air Act.

Audit Scope, Objectives, and Methodology

The objectives of our audit were to determine whether the Department has adequate procedures in place to accurately capture the Title V Operating Permit Program's revenues, expenditures, and changes in fund balance; whether Department officials made reasonable estimates of anticipated Program expenses for the current year and immediately upcoming year; and whether Program fee revenues collected pursuant to administration of Article 72, Title 3 of the Law were adequate to cover Program expenses. Our audit covered the period April 1, 2009 to March 31, 2017.

To accomplish our audit objectives and assess relevant internal controls, we reviewed applicable sections of federal and State laws and regulations, reviewed Department policies and procedures, and interviewed Department officials. We also assessed the adequacy of the Department's internal controls as they related to our objectives. To determine if revenues and expenses were accurately captured in the Program Fund balance, we reconciled the Department's annual statements to the State's Central Accounting System (three fiscal years ended March 31, 2012) and the Statewide Financial System (five fiscal years ended March 31, 2017). To substantiate whether the revenues and expenditures presented in these statements were accurate, we traced them to financial records maintained by the Department.

To determine if the Department is adequately capturing Program fee revenues, we selected a judgmental sample of 32 invoices, 4 from each of the eight years in our audit period. We selected the invoices based on the highest exception rate of the 2 highest overbilled and 2 highest underbilled invoices based on our calculation of web-based emissions statements. We reviewed supporting documentation including chemical family reports in the AFS Emissions Inventory Module, engineering reviews, notes in the AFS Fee Billing Module, invoices in FMIS, and related emails. Our sample was not designed to be projected to the population as a whole.

To determine the appropriateness of expenses charged to the Program, we compared personal service costs the Department reported in the Annual Reports to the personal service costs charged to the Program Fund. Department records for non-personal service costs were only available in electronic format for fiscal years beginning April 1, 2012. Consequently, we could not analyze electronic data for non-personal service costs to draw our sample for years prior to April 1, 2012. Therefore, we modified our scope for non-personal service costs to include only the five-fiscal-year period ended March 31, 2017. We selected a random sample of 25 non-personal service expense transactions for non-Air Quality Surveillance totaling $4,455. In addition, we analyzed this data to determine the percentage of expenses allocated to the Program. We also analyzed all Air Quality Surveillance non-personal service transactions totaling $2,089,330 for the five-year period ended March 31, 2017 to determine whether the Department followed its methodology to allocate the expenses to the Program. Our sample was not designed to be projected to the population as a whole.

The Law requires the State Comptroller's Office to audit the fiscal status of the Program biennially. Records to meet the requirements of this legislation have not always been made available.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and the legislative mandate included in Section 72-0303(6) of the Environmental Conservation Law.

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.

Reporting Requirements

We provided Department officials with a draft copy of this report for their review and comment. We considered their comments in preparing this final report, and they are attached to the end of it. The Department generally agrees with our recommendations, but disagrees that some expenses were overcharged to the Fund. Our responses to certain Department comments are included in the report's State Comptroller's Comments, which are embedded in the Department's response.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Environmental Conservation 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 why.

Exhibit A

Department of Environmental Conservation
Title V Operating Permit Program
Consolidated Schedule of Revenues, Expenditures, and Change in Fund Balance
for Fiscal Year Ending March 31, 2017
(Not Including General Fund Monies)

Beginning Fund Balance	$(19,199,593)
Revenues	
Operating Permit Fees	$ 6,749,640
Fines and Penalties	28,700
Interest	(105,193)
Total Revenues	$ 6,673,147
Expenditures	
Department of Environmental Conservation[1]	$ 15,435,000
Environmental Facilities Corporation	131,000
Department of Health	750,000
Empire State Development Corporation	164,000
Total Expenditures	$ 16,480,000
Ending Fund Balance	$(20,347,827)

[1] Ending Fund Balance does not foot (is not mathematically accurate) because only $6,776,381 of the $15,435,000 in expenditures was charged to the fund. The remaining $8,658,619 was primarily paid with Department General Fund monies, which were not recognized as revenues to the Program.

Exhibit B

Department of Environmental Conservation
Title V Operating Permit Program
Consolidated Schedule of Revenues, Expenditures, and Change in Fund Balance for Fiscal Year Ending March 31, 2016
(Not Including General Fund Monies)

Beginning Fund Balance	$(19,996,630)
Revenues	
Operating Permit Fees	$ 7,989,988
Fines and Penalties	242,200
Interest	(38,642)
Total Revenues	$ 8,193,546
Expenditures	
Department of Environmental Conservation[1]	$ 14,590,000
Environmental Facilities Corporation	234,000
Department of Health	600,000
Empire State Development Corporation	148,000
Total Expenditures	$ 15,572,000
Ending Fund Balance	$(19,199,593)

[1] Ending Fund Balance does not foot (is not mathematically accurate) because only $6,414,509 of the $14,590,000 in expenditures was charged to the fund. The remaining $8,175,491 was primarily paid with Department General Fund monies, which were not recognized as revenues to the Program.

Exhibit C

Department of Environmental Conservation
Title V Operating Permit Program
Consolidated Schedule of Revenues, Expenditures, and Change in Fund Balance for Fiscal Year Ending March 31, 2015 (Not Including General Fund Monies)

Beginning Fund Balance	$(17,084,690)
Revenues	
Operating Permit Fees	$ 5,341,607
Fines and Penalties	23,700
Interest	(21,133)
Total Revenues	$ 5,344,174
Expenditures	
Department of Environmental Conservation[1]	$ 14,424,000
Environmental Facilities Corporation	574,000
Department of Health	622,000
Empire State Development Corporation	246,000
Total Expenditures	$ 15,866,000
Ending Fund Balance	$(19,996,630)

[1] Ending Fund Balance does not foot (is not mathematically accurate) because only $6,814,114 of the $14,424,000 in expenditures was charged to the fund. The remaining $7,609,886 was primarily paid with Department General Fund monies, which were not recognized as revenues to the Program.

Exhibit D

Department of Environmental Conservation
Title V Operating Permit Program
Consolidated Schedule of Revenues, Expenditures, and Change in Fund Balance for Fiscal Year Ending March 31, 2014
(Not Including General Fund Monies)

Beginning Fund Balance	$(15,184,879)
Revenues	
Operating Permit Fees	$ 6,079,140
Fines and Penalties	14,450
Interest	(26,376)
Total Revenues	$ 6,067,214
Expenditures	
Department of Environmental Conservation[1]	$ 14,329,000
Environmental Facilities Corporation	83,000
Department of Health	710,000
Empire State Development Corporation	244,000
Total Expenditures	$ 15,366,000
Ending Fund Balance	$(17,084,690)

[1] Ending Fund Balance does not foot (is not mathematically accurate) because only $6,930,025 of the $14,329,000 in expenditures was charged to the fund. The remaining $7,398,975 was primarily paid with Department General Fund monies, which were not recognized as revenues to the Program.

Exhibit E

Department of Environmental Conservation
Title V Operating Permit Program
Consolidated Schedule of Revenues, Expenditures, and Change in Fund Balance for Fiscal Year Ending March 31, 2013
(Not Including General Fund Monies)

Beginning Fund Balance	$(15,397,188)
Revenues	
Operating Permit Fees	$ 7,919,616
Fines and Penalties	38,700
Interest	(26,982)
Total Revenues	$ 7,931,334
Expenditures	
Department of Environmental Conservation[1]	$ 13,796,000
Environmental Facilities Corporation	205,000
Department of Health	553,000
Empire State Development Corporation	209,000
Total Expenditures	$ 14,763,000
Ending Fund Balance	$(15,184,879)

[1] Ending Fund Balance does not foot (is not mathematically accurate) because only $6,752,025 of the $13,796,000 in expenditures was charged to the fund. The remaining $7,043,975 was primarily paid with Department General Fund monies, which were not recognized as revenues to the Program.

Exhibit F

Department of Environmental Conservation
Title V Operating Permit Program
Consolidated Schedule of Revenues, Expenditures, and Change in Fund Balance for Fiscal Year Ending March 31, 2012 (Not Including General Fund Monies)

Beginning Fund Balance	$(12,173,621)
Revenues	
Operating Permit Fees	$ 8,589,072
Fines and Penalties	38,985
Interest	(21,740)
Total Revenues	$ 8,606,317
Expenditures	
Department of Environmental Conservation [1]	$ 13,715,000
Environmental Facilities Corporation	208,000
Department of Health	711,000
Empire State Development Corporation	260,000
Total Expenditures	$ 14,894,000
Ending Fund Balance	$(15,397,188)

[1] Ending Fund Balance does not foot (is not mathematically accurate) because only $10,650,884 of the $13,715,000 in expenditures was charged to the fund. The remaining $3,064,116 was primarily paid with Department General Fund monies, which were not recognized as revenues to the Program.

Exhibit G

Department of Environmental Conservation
Title V Operating Permit Program
Consolidated Schedule of Revenues, Expenditures, and Change in Fund Balance for Fiscal Year Ending March 31, 2011 (Not Including General Fund Monies)

Beginning Fund Balance	$ (5,924,270)
Revenues	
Operating Permit Fees	$ 9,376,422
Fines and Penalties	52,150
Interest	(24,091)
Total Revenues	$ 9,404,481
Expenditures	
Department of Environmental Conservation[1]	$ 15,989,000
Environmental Facilities Corporation	503,000
Department of Health	621,000
Empire State Development Corporation	292,000
Total Expenditures	$ 17,405,000
Ending Fund Balance	$(12,173,621)

[1] Ending Fund Balance does not foot (is not mathematically accurate) because only $14,237,832 of the $15,989,000 in expenditures was charged to the fund. The remaining $1,751,168 was primarily paid with Department General Fund monies, which were not recognized as revenues to the Program.

Exhibit H

Department of Environmental Conservation
Title V Operating Permit Program
Consolidated Schedule of Revenues, Expenditures, and Change in Fund Balance for Fiscal Year Ending March 31, 2010 (Not Including General Fund Monies)

Beginning Fund Balance[1]	$ 270,949
Revenues	
Operating Permit Fees	$10,729,341
Fines and Penalties	186,550
Interest	(12,693)
Total Revenues	$10,903,198
Expenditures	
Department of Environmental Conservation[2]	$16,890,000
Environmental Facilities Corporation	728,000
Department of Health	597,000
Empire State Development Corporation	251,000
Total Expenditures	$18,466,000
Ending Fund Balance	$(5,924,270)

[1] Fund Balance reflects the use of non-Program funds to pay Title V expenses in prior years.

[2] Ending Fund Balance does not foot (is not mathematically accurate) because only $15,522,417 of the $16,890,000 was charged to the fund. The remaining $1,367,583 was primarily paid with Department General Fund monies, which were not recognized as revenues to the Program.

OFFICE OF THE COMMISSIONER

New York State Department of Environmental Conservation
625 Broadway, 14th Floor, Albany, New York 12233-1010
P: (518) 402-8545 I F: (518) 402-8541
www.dec.ny.gov

JUL 15 2019

Mr. Thomas P. DiNapoli
Comptroller
New York State Office of the State Comptroller
State Street
Albany, New York

Dear Comptroller DiNapoli:

The Department of Environmental Conservation (DEC) has reviewed your Draft Report entitled *Report of Title V Operating Permit Program Revenues, Expenditures, and Changes in Fund Balance for Eight Fiscal Years Ended March 31, 2017*. DEC's comments with respect to this audit are contained in the enclosed document.

Please contact Ann Lapinski, Director of Audit and Investigation at (518) 402-9218 if you have any questions. Thank you.

Sincerely,

Basil Seggos
Commissioner

NEW YORK STATE OF OPPORTUNITY | Department of Environmental Conservation

Department of Environmental Conservation

Report of Title V Operating Permit Program Revenues, Expenditures and Changes in Fund Balance for the Eight Fiscal Years Ended March 31, 2017
2017-S-81
Response to OSC Draft Report

The Department of Environmental Conservation (DEC) has reviewed Draft Report 2017-S-81, dated May 2019, containing the findings and recommendations of the Office of the State Comptroller (OSC) in connection with OSC's audit of DEC's Title V Operation Permit Program revenues and expenditures. Generally, OSC's audit of eight years of DEC's accounting related to the Title V program found the Department had adequate procedures in place to track revenues, expenditures and changes in the Program Fund balance. Of course, the Draft Report contained findings related to the billing practices of the Department and recommendations on how the Department might address OSC's findings. Please find below the Department's comments on the Draft Report, provided to both address certain factual inaccuracies in the Draft Report's findings and to respond to OSC's recommendations.

Draft Findings

The two key findings in the OSC's Draft Report -- that there were some discrepancies in billing to Title V facilities and that there was an overcharge of non-personal services (NPS) expenses charged to the Fund – should be modified and corrected to reflect the following:

First, the Draft Report notes that DEC uses three separate IT systems to track facility emissions, on which billing is based, the generation of invoices and the receipt of revenues. Since DEC staff must rely on data entry to update all three systems, the Draft Report noted a potential for errors in billing and documenting revenue receipts and the Draft Report documents seven invoices that either underbilled or overbilled permittees. As to how those seven invoices were addressed, the draft indicates, on page 9, that: ". . . Department officials told us they refunded one facility the amount they overbilled, two facilities are no longer in business, one exceeded the statute of limitations for collection and the remaining three had not yet been rebilled." This is not accurate. Instead the draft summary should indicate that two invoices exceeded the statute of limitations and that only two invoices remain unresolved at this time. The two unresolved invoices are the 2010 and 2015 invoices for DECID 4-0124-00001 LaFarge Ravena Plant. Action on these two invoices is pending a review of all LaFarge emission statement submissions.

State Comptroller's Comment - Our draft report accurately cited the status of the 7 invoices the Department provided to us. Apparently, the Department has since concluded that another invoice passed the statute of limitations. As such, we modified the final report to reflect the Department's latest update.

As to the draft finding that the Program Fund was overcharged $142,932 in NPS expenses, this finding is misleading. Nevertheless, to say that the Fund was overcharged is belied by the fact that we paid $50.4 million in Program expenses with non-program funds.

State Comptroller's Comment - We recognize that the $142,932 could be applied to other Program expenses.

The OSC should modify and correct its Draft Report to address these misleading and inaccurate statements.

<u>Other findings</u>

DEC further provides other needed corrections as follows:

a. In the background section on page 6 (3rd paragraph), the draft report states that the Department is required to report on the estimated costs that will be incurred in the subsequent year but neglects to mention that the Department must also report on the anticipated tonnage of pollutants subject to fees (estimated revenue).

State Comptroller's Comment - We amended the report to add anticipated tonnage to the Department's reporting requirement.

b. In Program Self-Sufficiency on page 11, DEC suggests labeling the trendlines in the graph: "Operating Permit Program-Revenue and Expense Trends".

State Comptroller's Comment - The legend is already color coded to differentiate revenues from expenses.

c. In the first paragraph on pg. 12, it states "Each year, the Department funds the deficit with monies borrowed from the STIP or from the Department's General Fund appropriation." This is not entirely accurate, since the Department does not fund any deficits. *Should be*: "Each year, the state comptroller is reauthorized to fund the deficit with monies borrowed from the STIP …" This is in accordance with Article 2, section 4 subdivision 5 of State Finance Law.

d. To be more accurate, instead of stating expenses are paid with "Department General Fund monies", this should be replaced with "Primarily from the General Fund", because it cannot be confirmed that all the expenses were paid exclusively from the General Fund. This statement is found and should be changed on the following pages of the report:

State Comptroller's Comment - Our draft report used wording the Department recommended in its response to our preliminary findings. Nonetheless, we added "primarily" to the final report based on the Department's latest recommendation.

- Second paragraph on pg. 2 under key Findings, "However, the reported deficit did not include almost $50.4 million in Program expense that the Department paid from its General Fund appropriations." ***Should be:*** "However, the reported deficit did not include almost $50.4 million in Program expense that the Department paid "Primarily from the General Fund." –
- Program Self-Sufficiency on page 11, Table 1 "Reported Fund Balances and Expenses Paid with Non-Title V Funds, Fiscal Years 2009-10 Through 2016-17", footnote 2 "Department General Fund monies." ***Should be:*** "Primarily from the General Fund."
- Third Paragraph on pg. 8 second to last sentence, "However, the reported deficit did not include almost $50.4 million in Program expense that the Department paid from its General Fund appropriations." ***Should be:*** "However, the reported deficit did not include almost $50.4 million in Program expense that the Department paid "Primarily from the General Fund."
- First paragraph on pg. 12, "Each year, the Department funds the deficit with monies borrowed from the STIP or from the Department's General Fund appropriation." ***Should be***: "Each year, the Department funds the deficit with monies borrowed from the STIP or "Primarily from the General Fund."
- Second paragraph on pg. 12, "These differences occur because the portion of Title V expenses that exceed the Title V appropriation are paid with Department General Fund monies. However, the General Fund monies spent on Title V expenses are not reflected in the fund balance calculation." ***Should be:*** "These differences occur because the portion of Title V expenses that exceed the Title V appropriation are paid "Primarily from the General Fund." However, what was spent on Title V expenses from Other Department Funds, are not reflected in the fund balance calculation."

Recommendations

The Draft Report had two key recommendations, numbered 1 and 5, below. Both of these items have already been addressed by the Department. Nevertheless, the following is DEC's response to the five recommendations provided in the draft report:

Recommendation 1 – Take steps to ensure that changes affecting the three systems used for permit fee billing are made to all these systems.

Department Response – DEC acknowledges that the use of manual data entry across three different databases has the potential to result in human error and DEC has already taken steps to address this recommendation. In January of 2017, prior to the commencement of the audit, DEC conducted an Air Emissions Inventory Lean Project that made the same recommendation. DEC may suggest that as part of the redesign of the Air Facilities System (AFS), this communication capability should be built-in. DEC is currently seeking a way to procure a vendor that will perform an analysis of the AFS legacy system. Once completed, DEC will determine how to move forward with the system. Until the analysis of the legacy system is completed, it would be an inefficient use of limited resources to spend time trying to improve electronic communication channels with the systems currently in place - especially as the number of errors found in this audit -- seven out of approximately 3,000 invoices -- do not appear to be material.

DEC's current business practice is to correct all three systems and to use email as a written record of any changes. These emails are copied by DAR staff into the AFS Fee Billing comments field of each invoice. The Division of Management and Budget Services also has a "notes" field in Fiscal Management Information System for each invoice and their staff routinely enters communication notes there as well.

Recommendation 2 – Take steps to improve monitoring systems to ensure costs are appropriately charged to the Program.

Department Response – DEC does not agree that NPS services were overcharged to the Program Fund. However, the Department notes that there is currently in place a system to assign Time Distribution System hours to specific monitoring codes. In addition, DEC previously submitted to the U.S. Environmental Protection Agency (EPA) a 2007 "Allocation of Air Monitoring Time Distribution System Costs to Title V, Mobile Sources or State Funding Revenues" plan that ensures costs are appropriately charged to the Programs. Moreover, DEC is developing an update of this plan to be presented to EPA and will continue to monitor BAQS costs within the constraints of the State's procurement and expenditure process.

State Comptroller's Comment - We recognize that the $142,932 could be applied to other Program expenses.

Recommendation 3 – Comply with New York State's retention policy that requires agencies to keep records being used for audits until the audit is satisfied.

Department Response – DEC agrees with this recommendation and already has a new policy in place regarding storage of supporting documents which started in state fiscal year 2017/18 that addresses the recommendation This new method now requires supporting documents to be scanned into the Financial Management Information System starting with discretionary (F vouchers) and travel payments on 4/1/17 and all other vouchers 4/1/18. Going forward, this should eliminate further issues with retention of documents.

Recommendation 4 – Ensure that Title V reports are submitted to all required recipients by the September 30 deadline as mandated by Law.

> ***Department Response –*** DEC agrees that reports should be submitted on time and will continue to strive to prepare reports with sufficient lead time to allow reports to be submitted by the deadline.

Recommendation 5 – Work with relevant stakeholders to develop a strategy to bring the Program into self-sufficiency, in compliance with the federal Clean Air Act.

> ***Department Response –*** While DEC agrees that the intent of the Clean Air Act is for Title V programs to be self-sufficient, the recommendation to "work with relevant stakeholders" is not sufficiently described and it is unclear to which stakeholders OSC is referring. The fees collected by the Title V program are set by legislation. Over the years, the Program has been very successful in reducing emissions from Title V sources. This emission reduction a major success in air pollution control but has resulted in an overall reduction of Title V revenues. All the while, the Program workload remains steady. Though the Draft Report reflects 2014 fee increase, those fees remain insufficient to cover all Program costs.
>
> Program costs do not decrease as pollution decreases because additional regulatory complexity requires more oversight of the Title V facilities. For this reason, significant reductions in Program costs are difficult to attain. DEC has implemented various changes to enhance the efficiency of the Program and will continue to explore whether additional efficiencies exist. DEC will also continue to propose modifications to the fee structure in hopes of covering Program costs for a self-sufficient Program. At some point however, emissions will decline to a point where it is unrealistic and impractical for emissions fees to cover the full program cost. As the Draft Report noted, this is a not a situation unique to New York.

Contributors to Report

Executive Team

Andrew A. SanFilippo - *Executive Deputy Comptroller*

Tina Kim - *Deputy Comptroller*

Ken Shulman - *Assistant Comptroller*

Audit Team

Stephen Goss, CIA, CGFM **-** *Audit Director*

Walter Irving - *Audit Manager*

Jessica Kirk, CGAP **-** *Examiner-in-Charge*

Jarrod Weir - *Senior Examiner*

Caitlin Colacino - *Senior Examiner*

Contact Information
(518) 474-3271
StateGovernmentAccountability@osc.ny.gov
Office of the New York State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Like us on Facebook at facebook.com/nyscomptroller
Follow us on Twitter @nyscomptroller
For more audits or information, please visit: www.osc.state.ny.us/audits/index.htm