

OFFICE OF THE COMMISSIONER

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MEMORANDUM

TO: THE GOVERNOR

Honorable John J. Flanagan
Senate Majority Leader

Honorable John A. DeFrancisco
Senate Deputy Majority Leader
Senate Finance Committee Chair

Honorable Jeffrey D. Klein
Senate Coalition Leader
Senate Independent Democratic Conference Leader

Honorable Carl E. Heastie
Speaker of the Assembly

Honorable Joseph D. Morelle
Assembly Majority Leader

Honorable Andrea Stewart-Cousins
Senate Minority Leader

Honorable Brian M. Kolb
Assembly Minority Leader

Thomas P. DiNapoli
State Comptroller

FROM: Basil Seggos, Acting Commissioner *BS*

RE: Response to the Office of the State Comptroller Audit (2014-S-59)

The Department of Environmental Conservation (DEC) has reviewed the Office of the State Comptroller's Audit Report 2014-S-59 entitled "Collection and Use of Oil Spill Funds" dated August 13, 2015. In accordance with Section 170 of the Executive Law, DEC's response to this audit is attached.



Department of
Environmental
Conservation

As always, DEC views the audit process as a means to further improve program operations and the delivery of services to the public. DEC would like to acknowledge the time and effort of all employees who were involved with this audit and their desire to improve DEC's operations.

Attachment

- c: Honorable Herman D. Farrell Jr., Assembly Ways & Means Committee Chair
Honorable Bob Oaks, Assembly Ways & Means Committee Ranking Member
Honorable Liz Krueger, Senate Finance Committee Ranking Member
Honorable Thomas F. O'Mara, Senate Environmental Conservation Committee
Chair
Honorable Steve Englebright, Assembly Environmental Conservation Committee
Chair
Honorable Ellen Jaffee, Assembly Oversight, Analysis, & Invest. Committee
Chair

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**Response to the Office of the State Comptroller's
Audit Report 2014-S-59**

Collection and Use of Oil Spill Funds

The Department of Environmental Conservation (DEC or Department) has reviewed the Office of the State Comptroller's (OSC's) comments concerning DEC's response to the draft audit report. OSC's report risks misstating the potential for additional Oil Spill Fund recovery by extrapolating from a sample of MOSFs that is not representative of all state MOSFs. By implication, OSC overstates the risk of under-collection of fees and surcharges from misreporting of the number of barrels of petroleum or of credits from the transshipment of petroleum.

Specifically, the Department believes that the report overstates findings and observations relating to the overall accuracy of facility data maintained by the Department, reporting by facilities, and the potential for increased Fund revenue. This is primarily due to the fact that OSC's sample was a targeted sample of high risk facilities based on specific risk factors, not a random sample. A targeted sample is unlikely to yield consistent results across an entire audit population; therefore, findings resulting from such sample cannot be fairly and/or reliably applied to all MOSF and Petroleum Bulk Storage (PBS) facilities. This, coupled with the fact that the audit sample sizes were a very small percentage of the total MOSF and PBS facility populations, underscores DEC's concern. Consequently, DEC disagrees, in part, with OSC comments 1 and 2 on page 21 of the report. Regarding Comment 1, OSC indicates that its intent was not to determine the overall error rates in the facility population and that the report makes no such estimate. Although the report does not directly state that the findings relating to OSC's targeted samples of Major Oil Storage Facilities (MOSFs) and Petroleum Bulk Storage (PBS) facilities would yield similar results across their respective audit populations, the report implies this.

For example, on page 7 of the report OSC states that the overall potential for inaccurate reporting is much higher since the 11 MOSFs sampled only accounted for about 15 percent of the total barrels reported by all MOSFs. In reviewing this statement, the Department realizes that OSC is not making a definitive determination about the reporting accuracy of all MOSFs. However, as written, this infers that similar error rates would result if reporting was examined for the remainder of MOSFs. In addition, on page 7, OSC identifies the percentage (73 percent) of MOSFs that inaccurately reported the number of barrels of petroleum products received, subject to fees and surcharges, and/or transshipped. This implies that a majority of MOSFs are reporting inaccurately which is unsubstantiated. OSC's sample constituted less than 4 percent of all

MOSFs and was a targeted sample of high risk facilities based on specific risk factors. Therefore, the sample selected is not a reliable indicator for potential instances of misreporting by all MOSFs.

Regarding Comment 2, OSC indicates that the report does not state that "No efforts have been made to verify capacities." This remark is clearly inaccurate based on page 9 of the report which states, "To date, no efforts have been made to include verification of any capacity or reporting issues which could impact the number of barrels subject to fees and surcharges." In DEC's response to the draft report, we stated that DEC inspection forms explicitly include the verification of registration data, including tank capacities, thereby proving OSC's statement to be incorrect. The Department did not, nor would it, interpret OSC's statement to mean something different. If OSC acknowledges that the Department does verify tank capacities through inspections, etc., then OSC should have omitted and/or revised this statement to avoid report inaccuracies and to ensure audit findings are supported.

Response to Recommendations

In accordance with Section 170 of the Executive Law, the following presents the Department's response to each of the recommendations contained in the final report.

OSC Recommendation 1: Implement formal procedures to monitor the accuracy of reported petroleum activity, fee collection, and general facility information. Such activities may include, but not be limited to, periodic analyses to identify indications of inaccurate reporting or operations.

***Department Response:** As part of DEC's fee collection process and prior to the commencement of the audit, DEC was already instituting monitoring activities that include periodic site inspections and the review of key data in applications. Beyond these activities, DEC has begun using readily available data analysis tools to identify facilities more at risk for being improperly registered (i.e., PBS facilities with a total storage capacity slightly below 400,000 gallons, etc.). The results of DEC's analysis determine if additional site inspections are needed to substantiate facility registration or license issues.*

Starting with the Sept 2015 Monthly Petroleum License Fee Report (MPLFR) filings, Revenue Accounting in our Division of Management and Budget Services requires that MOSFs include copies of Secondary Transfer Certificates with their MPLFR filings to substantiate amounts reported as exempt from fees and surcharges. Revenue Accounting verifies that the amounts reported as exempt on MPLFRs match the

amounts on Secondary Transfer Certificates. To verify the accuracy of barrels of petroleum and license fees and surcharges reported on MPLFRs, DEC is requesting documentation from MOSFs on a sample basis. Revenue Accounting is handling all requests for supporting documentation and corresponding reviews to help ensure verifications are performed timely and that facilities are consistently notified of these verifications. Revenue Accounting will work with DEC's Division of Environmental Remediation (DER) to obtain any additional information needed to confirm reported amounts. DEC monitoring activities will be performed to the extent available resources allow.

OSC Recommendation 2: Follow-up on the licensing status of the PBS facilities we identified as potentially misclassified.

Department Response: DEC was already evaluating these facilities prior to the commencement of the audit. Based on that evaluation, DEC, through the Office of General Counsel (OGC), is addressing these facilities with the owners/operators.

Regarding this particular matter, the facilities in question are contiguous to one another and have complex interrelated ownership issues. This leads to uncertainty as to whether the facilities should be combined for capacity purposes. For complicated ownership issues such as this and other legal matters that are unclear, DER consults with OGC to determine facility status. If a legal review by OGC concludes that a facility is improperly registered, a facility will be reclassified and, if appropriate, assessed penalties and fines.

OSC Recommendation 3: Provide guidance to licensees and registrants to clarify how to correctly report petroleum activities and revenues due to the Fund.

Department Response: Guidance on how to properly complete the MPLFR is already provided directly to MOSFs. This guidance is located on the reverse side of the MPLFR and identifies the information that is to be included on each line of the report, the calculations that need to be performed, and the columns where the amounts should be reported. PBS facilities pay registration fees on a 5-year renewal cycle and, unlike MOSFs, are not subject to license fees and surcharges based on the amounts first transferred (imported) into a facility from out-of-state. Additional guidance has been posted on DEC's public website to help ensure MOSF petroleum amounts and license fees and surcharges are correctly reported.

OSC Recommendation 4: Implement formal steps to share petroleum facility information among staff responsible for monitoring petroleum storage facilities and collecting revenues due to the Fund.

Department Response: DEC has taken actions to ensure information is shared among staff responsible for monitoring storage facilities and collecting revenues due to the Fund. Such actions included: 1) providing Revenue Accounting greater access to DEC's Unified Information System (UIS) to obtain real-time updates of facility information; and 2) requiring MOSF inspectors to report matters to DER's Registration and Permits Section that could have a potential fee implication. Additional actions to be taken by DEC include: 1) developing procedures so that if Revenue Accounting receives reports of license fees being paid by facilities that are listed in the database as closed/inactive, a request to perform a follow-up field inspection will be sent to DER; and 2) requesting that the Office of Information Technology Services develop UIS reports that will assist Revenue Accounting in identifying active and inactive MOSFs required to report monthly.