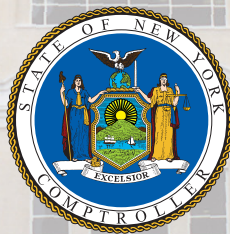




Department of Environmental Conservation Environmental Protection Fund

Report 2008-S-121



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

March 22, 2010

Mr. Alexander Grannis
Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Dear Commissioner Grannis:

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 selected practices of the Department of Environmental Conservation relating to the *Environmental Protection Fund*. 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

Our objectives were to determine whether activities supported by the Environmental Protection Fund are funded in a timely manner, and there is reasonable assurance that the funds are used for their intended purposes and projects supported by the funds are completed as planned.

Audit Results - Summary

The Environmental Protection Fund (Fund) is a trust fund that was created in 1993 by State law. The money in the Fund is to be used for various environmental purposes that are specified by the State Legislature. These purposes include open space land conservation, landfill closures, recycling programs, the development and maintenance of parks, and others. The money in the Fund is derived primarily from a dedicated portion of the State's real estate transfer tax.

Each year, the Legislature appropriates certain amounts from the Fund for various environmental programs. The Department of Environmental Conservation (Department) is responsible for ensuring that the appropriated amounts are correctly transferred from the Fund to the agencies that are responsible for those programs. We examined whether these transfers were made in accordance with legislative instructions, and found that they were.

We also examined whether the transfers were completed in a timely manner. According to Department officials, the funds are not transferred until they are requested by the responsible agencies. However, we found that appropriated amounts sometimes remained in the Fund for several months, and even years, before they were transferred. To help minimize such funding delays and ensure that Fund monies are used as intended, we recommend the Department follow up with the responsible agencies if they do not request their appropriated funds within certain time frames, and after a certain point, report all such idle funds to the Legislature for possible re-appropriation to other environmental programs.

The Department receives annual allocations from the Fund for certain of its environmental programs. It uses these allocations to award grants to localities and not-for-profit entities for environmental projects and to fund such projects itself (non-grant projects). We examined whether the Department was using its allocations for the purposes intended by the Legislature, and found that it generally was. However, in one of the 50 projects in our sample, the Department used Fund monies for administrative purposes rather than only for direct program purposes. We recommend

the Department review its other Fund-supported projects to ensure that Fund monies are not being used for administrative purposes on those projects.

We also examined whether the Department's grant and non-grant projects are funded in a timely manner. We identified long delays in the funding process, as measuring from the date the funds are allocated to the programs, it typically takes more than a year, and sometimes more than two years, for projects to be funded. When it takes this long to get funding to grant recipients and Department contractors, important environmental programs may be delayed. We recommend the Department expedite the funding process.

The Department is supposed to monitor its grant recipients to ensure that they use their funding for the purposes specified in their grant contracts and complete their projects as expected. We examined the Department's monitoring practices and found that improvements are needed. For example, in 15 of the 40 grants in our sample, the Department did not follow up with the recipients when they failed to submit required progress reports. In the absence of adequate Department monitoring, there is no assurance grant funds are being used for their intended purposes and environmental projects are being completed on schedule. We also found that the Department was not adequately monitoring one of the ten non-grant projects in our sample. We recommend the Department improve its monitoring practices.

Our report contains ten recommendations. Department officials agree with certain of our recommendations and disagree with others. Department officials explain that they understand the concerns addressed in the audit, but they also point out that the Division of the Budget is implementing the Environmental Protection Fund on a cash basis and the Department does not have access to all appropriations made by the Legislature. Consequently, Department officials point out that implementing many of the audit report recommendations may not be practical at this time.

Auditor's Comments: We acknowledge that fiscal realities and resultant directives need to be understood when assessing the timing and practicality of implementing recommendations in this audit report.

This report, dated March 22, 2010, is available on our web site 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

Introduction

Background

The New York State Environmental Protection Fund (Fund) is a trust fund that was created in 1993 by the State's Environmental Protection Act. The money in the Fund is to be used for various environmental purposes, such as open space land conservation, landfill closures, recycling programs, and the development and maintenance of State and local parks. The various purposes are specified by the Legislature in State law and in the language accompanying its annual appropriations from the Fund.

The amount of money that is to be deposited into the Fund each year is set by State law. In the 2008-09 fiscal year, this amount was \$205 million. This money is derived primarily from a dedicated portion of the State's real estate transfer tax.

The money is to be used for the purposes (programs) specified by the Legislature in its annual appropriations from the Fund. Certain amounts are appropriated for each program and allocated to the State agencies that are responsible for those programs. The Department of Environmental Conservation (Department) is responsible for ensuring that the appropriated amounts are correctly transferred from the Fund to the responsible agencies.

Generally, most of the money in the Fund is allocated to the Department and three other State agencies: the Office of Parks, Recreation and Historic Preservation; the Department of State; and the Department of Agriculture and Markets (we address the three other agencies' use of Fund monies in audit reports 2008-S-148, 2008-S-149 and 2008-S-150). State agencies may use the funding themselves to accomplish the program purposes or they may award Fund grants to other entities, and these entities accomplish the program purposes (e.g., close a landfill). The grant recipients are often municipalities and not-for-profit organizations.

In the four State fiscal years ended March 31, 2009, the Legislature appropriated a total of \$830 million from the Fund, of which \$330.7 million was allocated to the Department and \$499.3 million was allocated to other State agencies. As of December 30, 2008, a total of \$723.3 million of this amount had been transferred to the responsible agencies (\$294.9 million to the Department and \$428.4 million to the other agencies); the remaining \$106.7 million (12.8 percent) had not been transferred, mainly because a significant portion of the appropriation for the 2008-09 fiscal year (\$86.3 million) was being withheld by the State Division of the Budget to address the State's fiscal problems.

During this four-year period, the largest Fund-supported program administered by the Department (acquiring land for conservation purposes) accounted for \$116.4 million of the Department's \$330.7 million in Fund allocations. Other Fund-supported Department programs involved such activities as closing landfills, establishing recycling facilities, collecting household hazardous waste, preserving aquatic ecosystems, encouraging tree growth in urban areas, controlling water pollution from storm run-off, building wastewater treatment facilities, promoting the use and enjoyment of the Hudson River, and repairing fishing, boating and other recreational facilities in the Adirondack and Catskill Parks.

In many of these programs, the Department relies on grant recipients to perform the actual program activities, and has awarded hundreds of grants for these purposes. For example, during our four-year audit period, the Department awarded a total of 161 grants in its Municipal Waste Reduction and Recycling Program, 122 grants in its Hudson River Estuary Program, and 90 grants in its Nonpoint Source Program for controlling water pollution from sources such as storm run-off.

Prospective grant recipients are to submit applications for funding, and the Department is to award the grants on the basis of criteria that are specified for each program. Before any funding can be provided to a recipient, a contract must be signed and approved. The recipients may also receive other funding from other sources for the activities covered by the grants.

Many of the Department's Fund-supported programs are also supported by other State funding sources. Also, the Department has many other program responsibilities in addition to those that are supported by the Fund.

Audit Scope and Methodology

We audited selected Department practices relating to the Environmental Protection Fund for the period April 1, 2005 through March 31, 2009. Specifically, we examined whether the Department transferred money from the Fund to the responsible agencies in accordance with legislative instructions, and whether the transfers were completed in a timely manner. We also examined the Department's management of its allocations from the Fund, determining whether the Department:

- awarded Fund grants, and otherwise used the funding, in accordance with established program criteria;
- awarded grants, and initiated non-grant projects, in a timely manner;
- adequately monitored the grant recipients' use of their funds; and
- accomplished program objectives on non-grant projects.

We did not examine whether program objectives were accomplished on grant projects, because this issue is being addressed in a separate series of audits by our Division of Local Government and School Accountability.

To accomplish our objectives, we interviewed Department officials and reviewed Department documents and records. We reviewed New York State Central Accounting System reports and budget certificates relating to appropriations and other transactions involving money in the Environmental Protection Fund. We also reviewed relevant laws, rules and regulations. To evaluate the Department's management of its allocations from the Fund, we reviewed a judgmental sample of 40 grant awards and 10 non-grant projects. We selected the 50 grants/projects from the following nine Department environmental programs:

- Land Acquisition
- Stewardship (fish hatcheries and other facilities in the Adirondack and Catskill Parks)
- Ocean and Great Lakes (preserving aquatic ecosystems)
- Biodiversity Stewardship (researching living organisms and their ecosystems)
- Landfill Closure
- Municipal Waste Reduction and Recycling
- Hudson River Estuary
- Water Quality Improvement (infrastructure projects such as sewage treatment plants)
- Nonpoint Source (controlling water pollution from sources such as storm run-off)

We judgmentally selected the nine programs from a total of 19 Department programs that received allocations from the Fund during our audit period. We selected six of the programs because they received relatively large allocations from the Fund. We selected three programs because they were administered directly by the Department. The nine programs selected had a population of 755 projects totaling \$152.2 million. We judgmentally selected the 40 grant awards from 654 grant awards totaling \$53.3 million, and we judgmentally selected the ten non-grant projects from 101 such projects totaling \$98.9 million.

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 draft copy of this report was provided to Department officials for their review and comment. Their comments were considered in preparing this final report, and are included as Agency Comments. Department officials agree with certain of our recommendations and they disagree with others. Our rejoinders to the Department's comments are presented as "Auditor's Comments" inserted in the body of the report and as State Comptroller's Comments at the end of the 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 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 therefor.

**Contributors
to the Report**

Major contributors to this report include Carmen Maldonado, Gerald Tysiak, Joel Biederman, Deb Spaulding, Robert Horn, Anne Marie Miller, Andre Spar, Nicole Van Hoesen, and Dana Newhouse.

Audit Findings and Recommendations

Transfer of Appropriated Amounts from the Fund to the Responsible Agencies

Each year, the State Legislature appropriates certain amounts from the Fund for various environmental programs. The Department is responsible for ensuring that the appropriated amounts are correctly transferred from the Fund to the State agencies that are responsible for those programs. The Department does not actually transfer the funds itself; rather, it issues instructions to the account custodians (the Department of Taxation and Finance and the Office of the State Comptroller), and the account custodians make the transfers.

In the four State fiscal years ended March 31, 2009, the Legislature appropriated a total of \$830 million from the Fund. As of December 30, 2008, a total of \$723.3 million of this amount had been transferred to the responsible agencies. We examined whether these transfers were made in accordance with legislative instructions and found that all the transfers were made in accordance with the instructions.

We also examined whether the transfers were completed in a timely manner. According to Department officials, the funds are not transferred until they are requested by the responsible agencies. However, when we analyzed the timeliness of the transfers, we found that appropriated amounts sometimes remained in the Fund for several months, and even years, before they were transferred.

For example, our analysis showed that only \$218.2 of the total \$723.3 million in funding was transferred to the responsible agencies within three months of the dates the funds were appropriated. The delays were particularly long in a program that is supposed to help develop markets for the use of recycled materials (the Secondary Marketing Materials Assistance Program, which is administered by the Department of Economic Development). The 2005-06 appropriations for this program (about \$7 million) remained in the Fund for more than three years before they were finally transferred to the responsible agency in 2008, and as of March 31, 2009, the appropriations for 2006-2007, 2007-2008 and 2008-2009 (about \$20 million in total) had yet to be transferred.

When appropriated amounts are not transferred in a timely manner, environmental programs authorized by the Legislature may be delayed. To help minimize such funding delays and ensure that Fund monies are used as intended, we recommend the Department follow up with the responsible agencies if they do not request their appropriated funds within certain time

frames, and after a certain point, report all such idle funds to the Legislature for possible re-appropriation to other environmental programs.

Department officials agreed that time frames for the transfers could be useful, but they believe such timeframes should relate to the responsible agencies' need for the funds. They noted that they generally transfer funds to the agencies when they are requested by the agencies to do so, and these requests are generally made when the funds are needed (e.g., when grants have been awarded, contracts have been developed or spending plans have been approved). At the closing conference, Department officials stated that the State's current fiscal condition has made it difficult to transfer funds because money is currently not available for the Fund.

As previously noted, appropriated amounts can remain in the Fund, sitting idle, for extended periods when the agencies are slow to award grants or develop spending plans. If these idle funds were re-directed to other, more active programs (such as the Department's program for municipal recycling projects, which had a waiting list of more than 100 eligible projects waiting funding), the State's overall environmental interests might be better served.

Recommendation

1. Establish timeframes for the transfer of appropriated funds to the responsible agencies, and follow up with the agencies if they do not request their funds within these timeframes. After a certain established interval, report all such idle funds to the Legislature for possible re-appropriation to other environmental programs.

(Department officials disagree with our recommendation and state that strict timeframes will not result in more timely achievement of program objectives. They add that the Department and other agencies need flexibility in administering Environmental Protection Fund.)

Auditor's Comments: We acknowledge that successful program objectives can be attained irrespective of time taken. However, attaining successful program objectives sooner rather than later certainly ought to be the goal. Therefore, it behooves the Department to stay attuned to timeliness through accurate performance measurement. This can help the Department to be mindful to take corrective action to avoid any undue delay and to minimize the risk that unallocated funds will be swept.

**Department
Grants and
Projects**

For the four years ended March 31, 2009, the Department was allocated a total of \$330.7 million in appropriations from the Fund. As of December 30, 2008, the Department had received \$294.9 million of this amount. The Department was to use this funding either to award grants for environmental projects or to administer such projects itself. To evaluate the Department's

management of this funding, we reviewed a sample of grants and non-grant projects.

We found that improvements are needed in the Department's management practices if grants and non-grant projects are to be funded without long delays. We also found that improvements are needed if the Department is to have reasonable assurance the funds are being used for their intended purposes and the environmental projects supported by the funds are being completed as expected.

Compliance with Program Criteria

Each year, the Department receives allocations from the Fund for various environmental programs. For example, in the 2007-08 fiscal year, the Department received an allocation of \$10 million for its Water Quality Improvement Program, \$9.8 million for its Municipal Waste Reduction and Recycling Program, and \$79.5 million for various other programs. The Department is expected to use these allocations in accordance with the criteria that have been established for the programs.

For example, the Department regularly receives allocations for the Hudson River Estuary Program, which was created in 1979 to promote the conservation of the Hudson River Estuary (the tidal portion of the river from the Troy Dam south to the Verrazano Narrows) and its assorted shore lands. With its Fund allocations, the Department awards grants to municipalities and not-for-profit organizations. The grant recipients are to undertake projects that conserve natural resources, promote the use and enjoyment of the Hudson River, clean up pollution, or meet other specified program criteria.

We selected a judgmental sample of 40 grants and 10 non-grant projects from nine of the Department's Fund-supported environmental programs to determine whether the Department was complying with such criteria when it awarded grants and funded non-grant projects. The nine programs accounted for \$233.9 of the \$294.9 million in Fund appropriations that were received by the Department during our four-year audit period, and the 50 grants/projects in our sample accounted for \$16.9 of this \$233.9 million.

We found that the Department awarded all 40 grants in accordance with program criteria, and funded 9 of the 10 non-grant projects in accordance with the criteria. It thus appears that most of the Fund monies in our sample were committed to appropriate types of environmental projects.

However, on one of the non-grant projects, the Department used Fund monies for administrative purposes. While this is not explicitly prohibited,

it is contrary to expectations. According to Department officials, when the Fund was created, it was agreed that its monies would not be used to fund positions at the Department (or the other responsible agencies) for administering the monies. Rather, the monies were to be used for direct program purposes. However, on this project, a certain portion of the Fund monies dedicated to the project was dedicated to administrative activities rather than program activities.

In the project, the Department provided funding to the Biodiversity Research Institute, which is operated by the State Museum (the Museum is operated by the State Education Department). The Institute was to conduct or oversee research into a variety of living organisms and the natural processes that support these organisms as part of the Department's Biodiversity Stewardship Program.

The Department directly administered the other nine non-grant projects in our sample. However, it contracted out the administration of this project to the Nature Conservancy. The contract, covered six years (initial five years ended September 20, 2007 and a one-year extension to September 30, 2008) and was awarded as a single source contract. The Nature Conservancy was paid about \$944,000 to distribute funding for individual research projects. The Nature Conservancy evaluated and approved the projects for funding, monitored the projects, and reported back to the Department on the results of the projects. The payments made under the contract were supported solely by the Fund.

The Nature Conservancy was performing the same types of administrative duties that the Department normally performs on such projects. Accordingly, Fund monies should not have been used to pay the Nature Conservancy for these duties. On October 1, 2008, when the contract ended, the State Education Department assumed responsibility for these duties, at no charge. Since the Biodiversity Research Institute was created within the State Education Department, we question why the State Education Department was not performing these duties all along. If this had been the case, an additional \$944,000 in Fund monies would have been available for environmental programs.

We recommend the Department review its other Fund-supported projects to ensure that none of the Fund monies dedicated to those projects are being used for administrative purposes.

Timeliness of Grant Awards and Project Initiation

The Department receives annual allocations from the Fund. It uses these allocations to award grants for environmental projects and to administer

such projects itself. We examined whether the Department was awarding these grants and initiating these projects in a timely manner.

We divided the grant award process into two parts for measurement purposes. The first part begins when the Department receives its annual allocation for a program and ends when it actually awards a grant. During this part of the process, the prospective grant recipients submit applications for funding and the Department evaluates the applications. The Department then awards grants on the basis of the program's criteria and notifies the grant recipients of their awards.

The second part of the process begins when the recipient is notified of its award and ends when the contract with the recipient has been signed and approved. No funding can be provided to a recipient until its contract is approved.

We determined that, for the 40 grants in our sample, the first part of the grant award process (from the receipt of the funds to the award of the grant) took an average of about eight months to complete, and the second part of the process (from the award of the grant to the finalization of the contract) took an average of about ten months to complete. Altogether, the entire process took an average of about 17 months to complete, and in two cases, exceeded 30 months.

We question whether such time frames should be considered acceptable. When it takes this long to get the actual funding into the hands of the grant recipients, important environmental programs may be delayed.

We identified similar funding delays in the Department's non-grant projects. In all ten of the non-grant projects in our sample, the program activities were performed by contractors (e.g., repairing a boat launch, improving a fish hatchery, or identifying a work plan for specific aquatic ecosystem projects). We determined that it took an average of nearly 14 months for the ten contracts to be approved, measuring from the dates the funds were allocated to the programs. As a result, in these instances, there was an average wait of nearly 14 months before program activities could begin.

We identified three main reasons for the funding delays in our sample. First, the grant applicants/recipients were often slow to provide information that was needed to complete their grant applications or contracts. Second, the Department did not closely monitor either the status of these incomplete documents or the timeliness of the entire funding process, because there are no expected time frames for the process. Third, according to Department officials, the Department cannot always closely monitor Fund-supported activities, because it has no designated administrative staff for these

activities. Since Fund monies cannot be used for administrative positions, the administrative responsibilities for Fund-supported activities must be added to the existing workloads of program staff, and these staff may have competing priorities.

To reduce the funding delays in Fund-supported activities, we recommend the Department establish expected time frames for the funding of both grants and non-grant projects, monitor the actual funding activities (e.g., selection of grant recipient, finalization of grant contract, and awarding of non-grant project contract) against the expected time frames, and take corrective action when the monitored activities are not completed within the expected time frames.

We also recommend that the Department work with the grant recipients to identify the common reasons for their delays in providing needed information, and develop information-gathering processes (e.g., on-line processes) to eliminate such delays. We further recommend that the Department rescind grant awards when the recipients fail to meet certain deadlines for providing needed information. In such instances, grant funding can be tied up indefinitely and other eligible applicants may have to wait for new funding to become available. We identified one grant contract that was delayed for nearly three years because of such delays.

The Department finally rescinded the award, but the funding would have been available sooner if the Department had acted sooner.

We also recommend that the Department formally assess the work assignments of its program staff, and modify the assignments if necessary, to ensure that Fund-supported activities are adequately monitored by program staff.

Monitoring Grant Recipients' Use of Funds

Grant recipients are supposed to use their funding for the purposes specified in the contract. The Department is supposed to monitor the recipients to ensure that they use their funding for these purposes and complete their projects as expected. We examined whether the Department was adequately monitoring the 40 grant recipients in our sample. We found that, in 17 of the 40 grants, the Department was not adequately monitoring whether the recipients were using their funding and completing their projects as expected.

In 15 of these 17 grants, the Department did not follow up with the recipients when they failed to submit required progress reports. For example, in the grants awarded for the Hudson River Estuary Program, the Department

is supposed to receive biennial progress reports from the grant recipients. Such reports should have been submitted by six of the grant recipients in our sample. However, only one of the six recipients submitted all the required progress reports (a total of 11 required progress reports were not submitted by the other five recipients). According to the project work plans, at the time of our review, five of the six projects should have been completed. However, the Department's files contained no indication of these projects' actual status and no indication the Department had attempted to determine that status.

The other two grants that were not adequately monitored were awarded under the Conservation Partnership Program (a component of the Land Acquisition Program), in which communities receive funding to conserve and steward environmentally significant land. The Department is directed by the Legislature to contract with a not-for-profit organization, the Land Trust Alliance, for the administration of this program. Each year, the Land Trust Alliance is to receive the entire appropriation for the program, award program grants to eligible communities, provide technical assistance to the communities, and monitor the communities' use of the grant funding.

A representative of the Department is present when the Land Trust Alliance committee evaluates grant applications and selects applicants for funding. While Department officials advised us they monitor the actions of the Land Trust Alliance after the grants are awarded, they could not provide documentation to support that monitoring occurs. Such documentation of monitoring is necessary for the Department to provide adequate assurance that grant recipients are using their funding for the intended purposes.

We recommend the Department formalize its process for monitoring the Land Trust Alliance's oversight of the grant recipients (e.g., periodic audits of these oversight activities) or determine whether the contract with the Land Trust Alliance should be amended to transfer all administrative and oversight responsibilities to the Department (leaving the Land Trust Alliance responsible for technical assistance only).

In addition, our review of the progress reports from the grant recipients in our sample identified a weakness in the Department's controls over its payments to the recipients. These payments are approved by the Department's Central Office and, generally, certain interim payments should not be approved unless the required progress reports have been received. However, in one of the grants in our sample (awarded under the Landfill Closure Program), the Central Office approved these interim payments, but the Central Office files did not contain the required progress reports or a record of the receipt of the proper reports at the regional office level.

We determined the required progress reports were submitted to the appropriate regional offices. However, to provide assurance payments to grant recipients are, in fact, appropriate, the receipt of such reports should be documented in the Central Office files.

Project Accomplishments

In some programs, the Department uses the allocations for projects that it administers directly. Such projects should accomplish certain stated environmental objectives. We examined whether these objectives were accomplished in the ten non-grant projects in our sample.

We found that, in nine of the ten projects, the stated objectives either were accomplished or, if the project was not yet complete, were in the process of being accomplished. For example, in three of the projects, the Department acquired land parcels for conservation purposes, and we determined that the acquisitions met the objectives stated in the New York State Open Space Conservation Plan. Similarly, five of the projects were repairs or improvements made by contractors in the Stewardship Program, and we determined that the repairs and improvements were generally made in accordance with contract requirements. Also, we determined that the project for marine research under the Ocean and Great Lakes Program performed in accordance with contract requirements.

The tenth project was the Department's contract with the Nature Conservancy (\$5,287,701 from October 1, 2002 through September 30, 2007) to administer and provide funding for the Biodiversity Research Institute's research projects. At the time of our audit, the Nature Conservancy reported that 102 research projects had been funded through the Institute. However, we found that the Department was not actively monitoring how these funds were being used or whether the projects were accomplishing their stated objectives.

The Nature Conservancy submitted annual work plans, annual reports and reimbursement vouchers, as required by its contract. However, the contract did not require that the Nature Conservancy's work plans and status reports describe the projects' time frames and accomplishments, or reasons for delays, if any, in the completion of projects. The annual work plans did not include individual project budgets or time frames for completion, and the vouchers submitted to the Department for payment only included a summary of expenditures by project; they did not include invoices to support the expenditures.

In the absence of such information, the Department has no assurance the funds are being used for appropriate purposes and the projects are

accomplishing their objectives. We recommend the Department actively monitor the projects funded through the Biodiversity Research Institute to obtain such assurance. Department officials agreed that they need to know the status of these projects and indicated they will work with the Nature Conservancy's replacement (the State Education Department) to obtain this information.

- Recommendations**
2. Periodically review the Department's Fund-supported projects to determine whether any of the Fund monies dedicated to those projects are being used for administrative purposes, without the explicit authorization of State law. If any such monies are identified, redirect the monies to program purposes.

(Department officials replied to our draft report that the Fund does not support agency staff costs for administration or program management. As a result, they have to evaluate their ability to implement programs and must procure contractual services when necessary. The Department assesses the reasonableness of the costs associated with the tasks.)

Auditor's Comments: Department officials did not address how they will ensure that Fund-monies are not used for administrative purposes. We urge them to revisit their position.

3. Establish expected time frames for the funding of grants and non-grant projects, monitor the actual funding activities against the expected time frames, and take corrective action when the monitored activities are not completed within the expected time frames.

(Department officials disagree with the recommendation because there are variables which are beyond their controls which can impact the awarding of funds and completing projects. They added that neither the appropriation language nor the Environmental Conservation Law or Environmental Protection Fund impose time frames.)

Auditor's Comments: The fact that time frames are not spelled out in the appropriation, Environmental Conservation Law or the Fund should not deter Department officials from implementing such standards as a management tool.

4. Work with the grant recipients to identify the common reasons for their delays in providing information for grant applications and contracts, and develop information-gathering processes to eliminate such delays.

(Department officials replied to our draft report that they agree providing education and information to grantees will help reduce some delays.)

5. Rescind grant awards when the recipients fail to meet certain deadlines for completing their grant applications and contracts.

(Department officials stated that rescinding grants could have a negative impact on the recipients' abilities to improve the environmental circumstances the grants were awarded to address.)

Auditor's Comments: Our audit found that it took an average of 17 months to process grant applications and 14 months to process non-grant projects. In addition, the award process in one grant contract was delayed nearly three years and was finally rescinded by the Department. Accordingly, by its own actions, the Department has acknowledged that rescinding awards is sometimes the best course of action to take.

6. Formally assess the work assignments of program staff, and modify the assignments if necessary, to ensure that Fund-supported activities are adequately monitored by program staff.

(Department officials replied to our draft report that they continually assess staff workload to ensure that staff resources and assignments are appropriate. However, officials added that it is not likely the Department will perform this assessment while spending controls instituted by the Division of the Budget are in effect.)

7. Promptly follow up with grant recipients that do not submit required progress reports on time, and apply the penalties and sanctions authorized by the grant contract if a recipient repeatedly fails to meet such reporting requirements. Document all follow-up and enforcement actions.

(Department officials replied to our draft report that they agree reporting requirements are critical to ensure EPF funds are properly spent. They believe that adequate controls are in place for monitoring contracts.)

8. Formalize the monitoring of the Land Trust Alliance's oversight of the grant recipients in the Conservation Partnership Program or determine whether the contract with the Land Trust Alliance should be amended to transfer all its administrative and oversight responsibilities to the Department.

(Department officials replied to our draft report that they agree with the recommendation and will take action to implement it.)

9. Ensure that the receipt of all required progress reports is documented in the Central Office files before the related payments to the grant recipients are approved.

(Department officials replied to our draft report that they will continue to document when progress reports are received in Central Office before

related payments are approved. Such documentation will be done in compliance with Executive Order 4 which promotes reduction in packaging and paper use throughout the state.)

10. Monitor the projects funded through the Biodiversity Research Institute to determine whether the funds are being used for their intended purposes, the projects are accomplishing their objectives, and the projects are being completed in a timely manner.

(Department officials replied to our draft report that these projects were moved to the State Education Department.)

Agency Comments



DAVID A. PATERSON
GOVERNOR

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

ALEXANDER B. GRANNIS
COMMISSIONER

DEC 21 2009

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division State Services
State Audit Bureau
123 Williams Street, 21st Floor
New York, New York 10038

Dear Ms. Maldonado:

DEC has reviewed the Office of the State Comptroller's draft report 2008-S-121 entitled "Environmental Protection Fund" dated November 6, 2009. Enclosed please find DEC's response to the draft report.

Thank you for the opportunity to respond to the draft report. If you have any questions regarding DEC's response, please contact Tom Kulzer in DEC's Office of Internal Audit and Investigation at (518) 402-9147.

Sincerely,

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

Alexander B. Grannis

Enclosure

c: T. Lukacs, DOB
T. Kulzer

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**Response to the Office of the State Comptroller's
Draft Audit Report 2008-S-121**

Environmental Protection Fund

The New York State Department of Environmental Conservation (DEC) has reviewed the findings and recommendations contained in the draft audit report submitted to DEC by the Office of the State Comptroller (OSC) on November 5, 2009 entitled Environmental Protection Fund (EPF). DEC's response is presented below and contains three sections as follows:

- General Comments
- Comments on Described Conditions
- Response to Recommendations

General Comments

This audit proceeded in a professional, cooperative, and timely manner with no undue interruption in program continuity. DEC understands the concerns addressed in the audit. The current status of the EPF is that the Division of Budget (DOB) is implementing the EPF on a "cash-basis." DEC does not have access to all appropriations made by the Legislature. Even when cash is made available within the EPF, DEC must abide by DOB's Bulletin B-1184 which requires additional approvals by DOB and the Office of the Director of State Operations for procurements exceeding \$500. As a result, many of the recommendations such as the issue of establishing timeframes may not be practical at this time.

While DEC agrees in principle with and understands the rationale of OSC's audit recommendations, there are conclusions reached in this report which are not accurate and are specifically noted in the sections below. DEC has implemented reasonable and responsible measures given its limited staffing, competing mandated priorities and the reality of the state's fiscal crisis.

Comments on Described Conditions

The following are specific comments DEC has regarding selected wording contained in the draft report.

Audit Findings and Recommendations:

Page 13, 4th Paragraph, 1st Sentence: “For example, our analysis showed that only \$218.2 of the total \$723.3 million in funding was transferred to the responsible agencies within three months of the dates the funds were appropriated.”

Department Response: While a three-month period provides a means for measuring the timing of allocations, it does not measure the effectiveness of implementing those allocations.

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Comment
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Page 13, 5th Paragraph, 1st Sentence: “When appropriated amounts are not transferred in a timely manner, environmental programs authorized by the Legislature may be delayed.”

Department Response: The timing of suballocations to other agencies has very little effect on the implementation of programs, as long as allocations are available well in advance of the need to encumber or spend funds.

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Comment
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Page 16, 2nd Paragraph, 2nd Sentence: “Accordingly, Fund monies should not have been used to pay the Nature Conservancy for these duties.”

Department Response: See DEC’s response to Recommendation #10.

Pages 16-17, 6th Paragraph: “The second part of the process begins when the recipient is notified of its award and ends when the contract with the recipient has been signed and approved. No funding can be provided to a recipient until its contract is approved.” And **Page 17, 3rd Paragraph:** “We question whether such timeframes should be considered acceptable. When it takes this long to get the actual funding into the hands of the grant recipients, important environmental programs may be delayed.”

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Comment
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Department Response: The grant award process and the contracting process both take time to ensure that funding is provided in a competitive and equitable manner, consistent with all Comptroller rules, regulations, State Finance Law, etc.

Page 19, 2nd Paragraph, 3rd Sentence: “In addition, LTA was required to submit interim and final reports for multiple year grants. When we inquired about these reports, we were told they were not received. We believe this is partially due to the fact that the Department does not have the staff to assign to monitoring the LTA. As a result, the Department has no assurance the grant recipients are using their funding for the intended purposes.”

Department Response: The first sentence is inaccurate. The LTA is not required to submit interim and final reports to DEC for multiple year grants. The grantees are required by their contract with the LTA to submit interim and/or final reports, as determined by the grant category, to the LTA. If this is what OSC is referring to, DEC is

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Comment
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*See State Comptroller’s Comments, page 33.

unaware of the inquiry where OSC was told the reports "were not received." The last sentence is an assumption based on an inaccurate statement.

Page 19, 4th Paragraph, 3rd Sentence: "However, in one of the grants in our sample (awarded under the Landfill Closure Program), the Central Office approved these interim payments, even though its files contained no documentation indicating that the required progress reports were received."

Department Response: DEC believes this is an inaccurate statement. The next paragraph states that DEC did in fact have the progress reports. They were located in the Regional Office, and the Central Office had email records in the Central Office file stating that the Regional Office had the reports.

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Comments
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Page 19, 5th Paragraph, 2nd Sentence: "However, to provide assurance payments to grant recipients are, in fact, appropriate, the receipt of such reports should be documented in the Central Office files."

Department Response: See response to Recommendation #9.

Response to Recommendations

The following presents DEC's response to each recommendation contained in the draft audit report.

Recommendation #1 - Establish timeframes for the transfer of appropriated funds to the responsible agencies, and follow up with the agencies if they do not request their funds within these timeframes. After a certain established interval, report all such idle funds to the Legislature for possible re-appropriation to other environmental programs.

Response to Recommendation #1 - DEC disagrees with this recommendation. Strict timeframes for allocating funds to programs and suballocating appropriations to other agencies will not result in the more timely achievement of program objectives. DEC and the other agencies administering EPF funding need flexibility to adjust workload and address conflicting priorities, even within the EPF itself. The process for allocating funds, as it currently stands, allows DEC to maintain some control over the use of funds and ensure that funds are used appropriately. While we agree that timeframes for allocating/suballocating funds could be beneficial, these timeframes should relate to the actual need for the funds (e.g., grant funding should be allocated upon grant award, which would still allow plenty of time to encumber and execute grant contracts).

Recommendation #2 - Periodically review the Department's Fund-supported projects to determine whether any of the Fund monies dedicated to those projects are being used for administrative purposes, without the explicit authorization of State law. If any such monies are identified, redirect the monies to program purposes.

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*See State Comptroller's Comments, page 33.

Response to Recommendation #2 – Since the EPF does not support agency staff costs for administration or program management, DEC must continually evaluate its ability to implement programs and must procure contractual services when necessary. DEC assesses the reasonableness of costs associated with these tasks, which are subsequently reviewed and approved by the Office of the State Comptroller, Bureau of Contracts.

Recommendation #3 - Establish expected timeframes for the funding of grants and non-grant projects, monitor the actual funding activities against the expected timeframes, and take corrective action when the monitored activities are not completed within the expected timeframes.

Response to Recommendation #3 – DEC disagrees with this recommendation. The EPF is just one of many DEC funding sources; DEC-administered EPF projects compete with other DEC projects for limited staff resources and may also be limited by seasonal workload and construction schedules. Timeframes could be established for awarding funds and completing projects; however, there are many variables associated with the implementation of these projects that may be beyond DEC's control, particularly when services must be procured.

DEC believes that establishing strict timeframes could result in environmentally beneficial projects not being done. DEC notes that the appropriation language does not impose timeframes nor does the Environmental Conservation Law or the Environmental Protection Fund.

Several DEC grant programs use Request for Applications or Request for Proposals. The process is multi-stepped to ensure a fair and competitive process and takes a period of time to complete properly. Unpredictable circumstances, for example, the state's funding constraints, may contribute to delays.

Recommendation #4 - Work with the grant recipients to identify the common reasons for their delays in providing information for grant applications and contracts, and develop information-gathering processes to eliminate such delays.

Response to Recommendation #4 – DEC agrees that providing education and information to our grantees will help reduce some delays. Many programs run workshops for potential grantees to help them address issues of concern. An information gathering process could eliminate some of those delays; as such, DOB and OSC are currently creating the New York Financial Management System, the goal of which is to "improve government performance, integrity and accountability through the design, purchase and deployment of a single statewide financial management system to meet the business and information needs of New York State." This new system could allow grantees to "to apply, manage, and report on the progress of their award through an online statewide

grants clearinghouse." All state agencies using the Central Accounting System are expected to transition to this new interface, including DEC.

Recommendation #5 - Rescind grant awards when the recipients fail to meet certain deadlines for completing their grant applications and contracts.

Response to Recommendation #5 – DEC does not award grants to applicants if they have not first completed the grant application process. Rescinding grant awards may have a deleterious effect on the recipients' abilities to improve the environmental circumstances that these grants were awarded to address.

Recommendation #6 - Formally assess the work assignments of program staff, and modify the assignments if necessary, to ensure that Fund-supported activities are adequately monitored by program staff.

Response to Recommendation #6 – DEC continually assesses staff resources in relation to its responsibilities to ensure that programs are consistent with established goals and priorities. Timeframes for all DEC projects, regardless of funding source, are considered in relation to staffing levels and overall workload. DEC procures services to implement EPF projects when necessary. Assessing staff resources and assignments to ensure that responsibilities associated with administering the EPF are clearly delineated and understood may increase efficiency and result in more timely actions; however, DEC is unlikely to perform this assessment while spending controls instituted by the Division of the Budget are in effect.

Recommendation #7 - Promptly follow up with grant recipients that do not submit required progress reports on time, and apply the penalties and sanctions authorized by the grant contract if a recipient repeatedly fails to meet such reporting requirements. Document all follow-up and enforcement actions.

Response to Recommendation #7 – DEC agrees that reporting requirements are critical to ensure that EPF funds are properly spent and believes that adequate controls are in place for monitoring contracts. Many of the grant programs DEC administers require progress reports as part of their supporting documentation when a grantee requests reimbursement payments. DEC does not submit the payment for process unless the supporting documentation that may include progress reports has been submitted to DEC. In addition, various grant programs require progress reports based on deadlines throughout the grantee's contract. These reports may not be based on when a grantee submits a payment request; rather the grantee submits a general status report. In both cases DEC agrees that each program will monitor and regularly review the status of those reports.

For example, in early 2009 the Estuary Program hired a grants manager to support the administrative side of grants management such as to track and request progress reports. A system has been instituted to notify applicants when paperwork is due and to issue follow-up notifications when deadlines are missed.

Recommendation #8 - Formalize the monitoring of the Land Trust Alliance's oversight of the grant recipients in the Conservation Partnership Program or determine whether the contract with the Land Trust Alliance should be amended to transfer all its administrative and oversight responsibilities to the Department.

Response to Recommendation #8 – DEC staff has developed an audit program for use in monitoring the Land Trust Alliance's (LTA) oversight of grant recipients in the Conservation Partnership Program. Using this audit program, DEC will audit the LTA's files annually to determine whether funds are spent appropriately, grants are awarded impartially, fund disbursements are timely, and grant recipients successfully implemented grant requirements.

Recommendation #9 - Ensure that the receipt of all required progress reports is documented in the Central Office files before the related payments to the grant recipients are approved.

Response to Recommendation #9 – DEC will continue to document when progress reports are received in the Central Office before related payments are approved. Executive Order #4 promotes the reduction in packaging and paper use throughout the state. Following this Executive Order, the Central Office files will document report receipt by including a one page letter in the file or an email stating the receipt of the report from the Regional Office if that is the location of the physical report. Otherwise the Central Office files will contain physical copies of all reports.

Recommendation #10 - Monitor the projects funded through the Biodiversity Research Institute to determine whether the funds are being used for their intended purposes, the projects are accomplishing their objectives, and the projects are being completed in a timely manner.

Response to Recommendation #10 – DEC's contract with The Nature Conservancy for Biodiversity Research Institute (BRI) administration ended on March 31, 2009. Since the BRI program is established in Education Law, the State Education Department (SED) has agreed to take on this responsibility, including administration and project management. It will be incumbent upon SED to determine how best to implement the program going forward.

State Comptroller's Comments

1. We did not state that the three month period measured the effectiveness of program implementation. We used the three month period only to illustrate how much funding was transferred to responsible agencies in a relatively timely manner versus how much funding was taking years to transfer.
2. We understand that effective program results can occur even when appropriated amounts are not transferred in a timely manner. However, the objective should be to obtain effective program results as expediently as possible with taxpayer funds. The timeliness of effective outcomes is not unimportant.
3. The report has been revised to reflect comments provided by the Department in their response to the draft audit report.
4. As our report states, the receipt of the reports by the regional offices should have been documented in Central Office files.