



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Registration and Enforcement of Automotive Services, Sales, and Salvage Facilities

Department of Motor Vehicles



Report 2016-S-71

August 2017

Executive Summary

Purpose

To determine if the Department of Motor Vehicles (Department) adequately ensures automotive service, sales, and salvage facilities are registered, and follows up on consumer complaints and takes enforcement action as necessary for violations. The audit covers the period January 1, 2014 through April 21, 2017.

Background

The Department is responsible for administering motor vehicle laws to promote highway safety, promote proper repairs, and protect consumers of motor vehicle repairs. The Vehicle and Traffic Law outlines the Department's responsibilities for administering the registration and licensing for certain types of automotive businesses, including registration of repair shops, dealers, dismantlers, and junk and salvage facilities and licensing of inspection stations. The Department is also responsible for issuing and enforcing regulations of these automotive businesses. Automotive facilities may be registered or licensed as multiple businesses. For example, many registered repair shops are also licensed as inspection stations. As of September 30, 2016, there were about 40,000 active automotive businesses with almost 24,000 unique facilities, because some are registered or licensed to perform multiple functions. Another 23,600 businesses registered or licensed within the past six years had expired registrations or licenses as of September 2016.

The Department is also responsible for receiving, investigating, and responding to complaints received from the public relating to the types of automotive businesses it regulates. Between January 1, 2014 and December 16, 2016, the Department received or currently had active approximately 6,900 complaints relating to automotive facilities. The Department is responsible for taking necessary actions against facilities with violations, which may include issuing penalties, suspending or revoking registrations/licenses to operate, or referring the operator or facility for criminal prosecution.

Key Findings

- Our analysis of Department facility data and publicly available property records identified many automotive facility locations where businesses could potentially be operating without a valid Department registration. We performed site observations at 241 of these facilities, and found indications that 60 may have been operating as a public business but were unregistered. Our review of public classified advertisements identified an additional 95 unregistered facilities advertising auto repair services. Additionally, we identified 21 vehicle dismantlers that report to the Department of Environmental Conservation (DEC) but were not registered with the Department.
- We also identified delays in the Department's process for handling consumer complaints. We assessed the time it takes to complete investigations, the time it takes to commence a hearing after the investigation is completed, and the time it takes to impose penalties once the hearing is completed. We identified lengthy delays between the completion of the investigation and the commencement of a hearing. Of 1,127 complaints that required a hearing, more than half (583) did not receive a hearing within 12 months from the date the complaint was received, as

called for in the regulations. Factors that could contribute to the delays include the complexity of the cases and the fact that complaint case hearings are a lower priority than hearings for public safety cases.

Key Recommendations

- Take steps to improve the identification of potentially unregistered facilities and determine whether they continue to operate, including (but not limited to) periodic analysis of publicly available information, such as property records and advertisements for repair services.
- Examine the underlying causes of the delays and explore options for improving the ability to promptly address and resolve consumer complaint cases.

Other Related Audit/Report of Interest

[Department of Motor Vehicles: Accountability for Traffic Ticket Surcharges \(2014-S-26\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

August 15, 2017

Ms. Theresa L. Egan
Executive Deputy Commissioner
Department of Motor Vehicles
6 Empire Plaza
Albany, NY 12228

Dear Executive Deputy Commissioner Egan:

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 entitled *Registration and Enforcement of Automotive Services, Sales, and Salvage Facilities*. 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

Table of Contents

Background	5
Audit Findings and Recommendations	7
Oversight of Regulated Automotive Businesses	7
Consumer Complaints	11
Recommendations	14
Audit Objective, Scope, and Methodology	15
Authority	16
Reporting Requirements	16
Contributors to This Report	17
Exhibit A	18
Exhibit B	19
Exhibit C	21
Agency Comments	22
State Comptroller's Comments	26

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Background

The Department of Motor Vehicles (Department) is responsible for administering motor vehicle laws to promote highway safety, promote proper repairs to vehicles, and protect consumers of motor vehicle repairs. The Vehicle and Traffic Law (Law) outlines the Department's responsibilities for administering the registration and licensing for certain types of automotive businesses, including registration of repair shops, dealers, dismantlers, and junk and salvage facilities and licensing of inspection stations. The Department is also responsible for issuing and enforcing regulations of these automotive businesses. Automotive facilities may be registered or licensed as multiple businesses. For example, many registered repair shops are also licensed as inspection stations.

The Department requires dealerships that sell five or more vehicles per year to be registered. Additional requirements for registration vary slightly depending on the type of vehicles the dealer sells and whether they sell at the retail or wholesale level.

The Department defines a repair shop as a person or business that, for compensation, wholly or partly engages in the business of repairing or diagnosing motor vehicle malfunctions or repairing motor vehicle bodies or components damaged by accident or otherwise. However, the Department excludes:

- Employees of motor vehicle repair shops who repair the motor vehicles;
- Persons or businesses repairing the vehicles of a single commercial establishment or a government agency;
- Persons or businesses repairing farm or road-building machines or other utility vehicles; and
- Persons or businesses whose only activities are minor repairs or services such as fueling; changing oil, water, batteries, or tires; and replacing fan belts, air filters, wiper blades, and lightbulbs.

A dismantler is any person or entity that engages in the business of dismantling motor vehicles or trailers for the purpose of obtaining parts or reselling such vehicles as scrap. The disposal of potentially toxic vehicle components can have environmental consequences if not performed properly. Article 27 of the State Environmental Conservation Law requires dismantlers that receive more than 25 vehicles per year and/or store more than 50 vehicles at any time to report to the Department of Environmental Conservation (DEC).

As part of the licensing or registration process, applicants are required to disclose if any person named on the application has been convicted of a criminal offense and to provide evidence of compliance with local zoning requirements for the facility location. The Department can refuse to issue or renew a registration if it finds the applicant has a history of noncompliance with the applicable laws or Department regulations, such as convictions for fraudulent or deceptive practices in the automotive industry, or if the facility does not meet local zoning requirements. License or registration periods range from one to two years and the fees range from \$160 to \$488, each depending on the type of business.

The Department is also responsible for receiving, investigating, and responding to complaints from the public about the types of automotive businesses it regulates. Complaints are initially reviewed at the Department's central office. If the complaint falls under the Department's jurisdiction, the central office first attempts to mediate a solution between the two parties involved in the complaint. If a solution cannot be reached, the complaint is assigned to one of the Department's six regional offices (see Exhibit A).

Regional automobile facility investigators are responsible for investigating complaints and producing an Investigation Report (Report) of the results. The Report results in one of three recommendations:

- No action if it is found there was no violation of the law;
- Notice of investigation where the facility is issued a warning if the violation does not rise to the level necessary for a hearing or penalty; or
- A hearing for a more serious violation of the law.

According to Part 127.2 of Title 15 of the New York Codes, Rules and Regulations (Regulations), if a hearing is recommended, the Department is to start it within 12 months from the filing of the complaint, unless there are reasonable grounds for postponing it. The Regulations also state that once a hearing is held, a Department Administrative Law Judge (ALJ) is to render a decision within 45 days from the conclusion of the hearing. If a decision is not made within 45 days, the facility may serve a demand for a decision on the hearing officer, who must then render a decision within the following 45 days.

Hearings may result in a civil penalty or restitution and/or sanctions, such as a suspension or revocation of the facility's license or registration, or a dismissal of the case. The ALJ is to establish the effective date of the penalty or sanction to be no more than 60 days from the date of the determination. Department officials told us the complaint process can take several weeks or months to resolve, and if the complaint results in a hearing, it can take up to a year.

As of September 30, 2016, there were about 40,000 active automotive businesses with almost 24,000 unique facilities, because some are registered or licensed to perform multiple functions. Of the 40,000 automotive businesses, nearly 80 percent (31,600) are repair shops, used car dealerships, or inspection stations. Another 23,600 businesses registered or licensed within the past six years were considered inactive because they had expired registrations or licenses as of September 2016. Used car dealerships and repair shops made up 60 percent of the active facilities and 64 percent of the inactive facilities.

According to Department records, between January 1, 2014 and December 16, 2016, it received or had active approximately 6,900 complaints relating to automotive facilities. Of those, about 5,100 were directed to field offices for investigation. About 1,100 of the 5,100 complaints were found to have severe enough violations to warrant a hearing. Civil penalties of \$905,887 were imposed in 299 cases. Among these, the Department collected \$183,769 for 136 cases and applied liens of \$671,485 for 143 cases; \$50,633 was outstanding for the remaining 20 cases.

Audit Findings and Recommendations

Our analysis of Department facility data and publicly available property records identified many automotive facility locations where businesses could potentially be operating without a valid Department registration. We performed site observations at 241 of these facilities, and found indications that 60 were unregistered and may have been operating as a public business. Our review of public classified advertisements identified an additional 95 facilities advertising auto repair services that were not registered. Additionally, we identified 21 dismantlers that report to the DEC, but were not registered with the Department. The Department's efforts to identify unregistered facilities are largely reactive, relying almost exclusively on complaints to identify unregistered repair shops, at which point a consumer may have already been harmed.

We also identified delays in the Department's process for handling consumer complaints. We assessed the time it takes to complete investigations, the time it takes to commence a hearing after the investigation is completed, and the time it takes to impose penalties once the hearing is completed. We identified lengthy delays between the completion of the investigation and the commencement of a hearing. Factors that could contribute to the delays include the complexity of the cases and the fact that complaint case hearings are a lower priority than hearings for public safety cases.

Oversight of Regulated Automotive Businesses

Repair Shops, Inspection Stations, and Dealerships

We found that the Department's controls over the issuance and renewal of registrations for repair shops and inspection stations provide reasonable assurance that the business owners do not have a history of either criminal activity or operating an auto business engaged in deceptive or fraudulent practices, and that the facility locations comply with local zoning requirements. Additionally, the Department has implemented controls over inspection stations and dealers to prevent the operation of unregistered facilities. For example, inspection stations are required to have a licensed automobile inspector for each station and must have inspections performed annually by the Department to assess compliance. Similarly, the Department controls the issuance of Bill of Sale forms (MV-50) to dealers, which are needed to transfer title of a vehicle to the buyer. If a dealer fails to renew its registration, the Department collects any outstanding MV-50 forms and prevents the dealer from ordering additional forms.

In contrast, the Department has established little in the way of controls to restrict unregistered repair shops from operating. The Department relies almost exclusively on complaints to identify unregistered repair shops, at which point a consumer may have already been harmed. For example, the Department's only involvement with registered repair shops is to send registration reminders when the date of registration expiration is approaching. If a facility does not renew its registration, the Department typically does not follow up to determine if the business is still operating.

To identify facilities that may be operating without a proper license or registration, we analyzed Department facility data and identified approximately 23,600 automotive businesses with expired licenses or registrations. Of the 23,600, we observed 170 used car dealerships and repair shops and found 38 (22 percent) showed strong indications of operation, such as multiple cars being worked on, signage advertising services requiring registration, and dealerships with multiple cars being advertised for sale. Of these 38:

- 21 were operating with the same automotive business names and registration numbers as the expired businesses; and
- 11 were operating with a different business name, but at the same location of a previously registered business without a new registration.

Examples of our observations are presented in the following photographs.



This facility, visited on December 6, 2016, was improperly operating with a registration that expired in June 2015. The facility did not remove its Department registration sign and advertised repair shop services.



During our visit on October 21, 2016, this repair shop was operating at the address of a business whose repair shop registration expired in July 2015. The current business did not have a valid repair shop registration. Multiple cars were being worked on, and signage advertised repair shop services.

Six other facilities were not open at the time of our visit, but did not appear to be permanently closed. Each displayed one or more normal characteristics of an operating business, including Department registration information posted on the buildings, advertising signage, and an overall good state of condition of the facilities.

We provided information on these facilities to Department officials for review and follow-up. Officials told us two of the facilities were under investigation by the Department due to consumer complaints. In one instance, a consumer had filed a complaint in March 2016, more than seven months after the facility's registration had expired. In the other case, the Department began its investigation after our site visit. Had the Department used the analytical techniques that we employed, it may have identified the facilities prior to consumers being potentially harmed.

We also analyzed publicly available property records for 54 counties, with the aid of Geographic Information System (GIS) software, and found an additional 266 potential automotive business locations that were not registered with the Department. Our visits to 65 of these locations identified another 12 (18 percent) that also appeared to be actively operating, but unregistered, auto businesses. Again, we observed work being performed on multiple cars, advertising signage for repairs, and/or dealerships with multiple cars advertised for sale. An example of our observations is shown in the following photograph.



Repair shop visited on October 31, 2016 with a Department registration sign. The registration number on the sign was not found in the Department's database. Department officials stated they would further investigate this facility.

Another four facilities were not open during our visit, but again the overall appearance was consistent with an operating shop. Department officials told us that one facility was in the process of changing its address to the location we visited and that it would investigate two of the other cases. Three of the properties did have a valid registration and the remaining 46 properties we visited appeared to be permanently closed or did not appear to be automotive in nature.

During the course of our scheduled observations at the sampled locations, we also identified six other automotive-related facilities that appeared to be operating at locations that were not registered with Department. In one case, Department officials stated there was a business registered at the location. However, in addition to the registered repair shop, we also found a used car dealership on the same premises that was unregistered. In most of the remaining five cases, Department officials indicated our observations did not provide enough definitive evidence to prove that registration was required. We recognize that our limited observations did not provide definitive proof that the facilities were improperly operating. In particular, we did not obtain evidence that compensation was exchanged for any automotive services or that the specific services performed required a Department registration. However, our observations do demonstrate an increased risk that unregistered facilities may be operating at these locations and, as such, warrant additional investigation by Department staff.

Finally, to identify other potentially unregistered automotive businesses, we also reviewed publicly available online classified advertisements. We identified 95 facilities advertising auto repair services for compensation that we either: could not find in the Department's database; or found in the database, but with expired registrations. Many of these advertisements included the company names and/or addresses and listed types of work that would require a registration.

Furthermore, many of these advertisements included other details suggesting the business was unregistered, such as stating that the work is performed on the side, at residential locations, or off the books. We provided information on the 95 cases to the Department for follow-up as well. Periodically reviewing such advertisements is a method the Department could use to identify potentially unregistered repair shops (some of which could provide substandard service). Department officials told us that effective April 2017, Department staff were directed to periodically review online postings within their regions for the purpose of preliminarily identifying potential facilities that may be operating without registration for follow-up with appropriate actions.

Dismantlers

We compared the list of dismantlers registered with DEC as of January 2017 to those registered with the Department. We initially identified 124 active dismantlers that report to DEC, but were not registered with the Department. According to Department officials, 103 of these 124 were registered with the Department as either a scrap processor or another business type. However, it is possible that the remaining 21 are not properly registered. The two agencies do not have a structured process to periodically communicate information regarding dismantlers, especially any changes in facility registration or reporting, to help ensure all businesses are properly registered and report as required. Department officials stated they plan to meet with DEC officials to implement a methodology to coordinate and ensure facilities are properly registered.

Consumer Complaints

When complaints are initially received, Department Central Office staff attempt to resolve them. We found that Central Office staff generally address complaints promptly, and those they cannot quickly resolve are forwarded to a regional field office for investigation within 11 days. Some investigations result in formal charges, in which case a hearing needs to be scheduled and held. Hearings may result in judgments being rendered, and penalties and sanctions may be imposed. Our analysis showed the longest delay in the process was the time it took to schedule and hold a hearing after completion of an investigation.

Of the 6,890 consumer complaints that were open or filed between January 1, 2014 and December 16, 2016, 1,782 complaints were either resolved, determined to be non-jurisdictional, or determined by the regional office to warrant no action. For the remaining 5,108 complaints, we found that one or more violations occurred warranting an investigation. Of these, 1,127 (22 percent) resulted in 1,534 fraud or other severe violations (see Exhibits B and C).

Timeliness to Complete Investigations

We were able to analyze complaint data for 4,779 of the 5,108 complaints that Central Office staff directed to regional investigators. The other 329 complaints contained errors in key fields and were therefore removed from our analysis. Table 1 shows the complaints by region, along with the portion with severe violations, and the average number of days it took to complete an investigation and issue a report.

Table 1
Average Days to Complete an Investigation
by Region, January 1, 2014 Through December 16, 2016

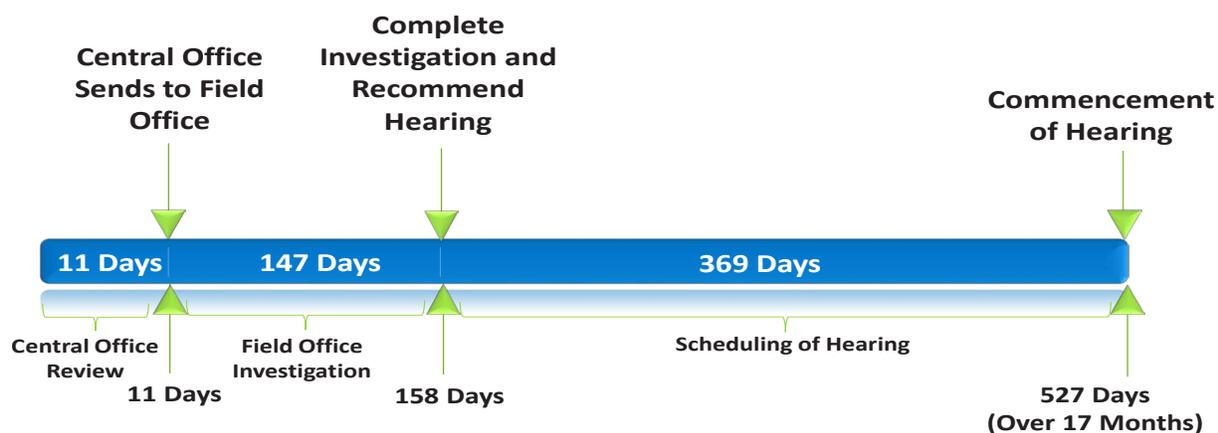
Region	Number of Complaints	Complaints With Fraud and Severe Violations		Average Number of Days	Investigations Over 1 Year
		Number	Percent		
1	781	91	11.7%	97	5
2	712	110	15.4%	110	8
3	699	173	24.7%	169	16
4	765	268	35.0%	120	4
5	875	342	39.1%	85	2
6	947	143	15.1%	147	21
Total	4,779	1,127	23.6%	121	56

Table 1 shows that the average time to complete investigations is generally reasonable. There are relatively few outlier investigations that exceed one year for completion. However, two-thirds of the outlier cases occur in only two regions (3 and 6), which had the highest average time to complete investigations. Department officials explained that Region 3 experienced a large loss of investigators due to retirements during our period of review. Other factors they cited as impacting the timeliness of investigations included the complexity of the case and the many steps involved, the distance between the facilities being investigated, and the efforts of facilities to delay the investigations in general.

Timeliness to Hold Hearings

Of 1,127 complaints that required a hearing, more than half (583) did not receive a hearing within 12 months from the date the complaint was received, as called for in the Regulations. Our analysis of 489 of these 583 shows that, on average, it took an additional 12 months after the investigations were completed to schedule and hold a hearing, as shown in the following figure.

Timeline for 489 Complaints, by Period



Department officials told us there are several reasons why hearings may not be held within the 12-month period. The priority of a case appears to have the most significant effect on how promptly a hearing is scheduled. According to Department officials, the highest scheduling priority is for chemical test refusal and fatal accident cases, which are the majority of hearings. Facility complaint hearings, which are a lower priority, are scheduled around the highest-priority cases. Additionally, some facility complaint cases are complex and therefore require longer hearings and a greater time commitment from the ALJ. As a result, they are more difficult to schedule in a timely fashion. In many cases, the facilities request and are granted an adjournment for their hearing, which can further add to hearing delays.

We selected a sample of 10 complaint cases that took over a year for a hearing to commence to determine if there was evidence of reasonable grounds for postponing the hearing. We found the following:

- Four cases had no evidence to support postponement of the hearing. In one case, the original complaint was filed in December 2011 and the hearing wasn't held until March 2016.
- Six cases had some support for postponement. However, three hearings had already been delayed more than 12 months before the postponements were requested by automotive facilities. For the remaining three, the hearings were not held for at least an additional 14 months from the dates the postponements were requested.

Officials told us that, in some of these instances, there were extenuating circumstances, such as the retirement or death of an ALJ.

Currently, there are 18 ALJs, ranging from three to five in each region, to handle the 12,000 to 13,000 hearings annually. About 10,000 of these hearings are for the highest-priority chemical test refusal and fatal accident cases. Given the level of demand for hearings, the significance of the issues they address, and the extensive delays involved with scheduling many of the complaint hearings, the Department should examine the underlying causes of delays and explore options to improve its ability to promptly address and resolve consumer complaint cases.

Timeliness to Implement Penalties and Sanctions

The final stage in fully addressing consumer complaints is the issuance of penalties and sanctions to the violators. We reviewed the Department's data to determine if penalties and sanctions were issued within the 105-day time frame (about 3½ months) allowed to render a decision and set an effective date of the resulting penalty or sanction. The effective date of penalties and sanctions is indicated in the ALJ's decision notice, which is sent to the respondent. For example, the respondent may have to pay a specified penalty by a certain date, or the respondent's registration may be suspended for a period of time. We reviewed 2,202 hearing outcomes with various types of penalties and sanctions. We focused on those complaints with effective dates that were more than 105 days after the date of the hearing. For approximately 30 percent of these hearing outcomes (651), the Department did not impose the penalty or sanction within the 105-day time frame, as shown in Table 2.

Table 2
Timeliness of Hearing Outcomes With Penalties

Type of Penalty	Total Number of Complaints	Complaints With Outcomes Over 105 Days	Percent of Total
Civil Penalty	1,324	299	23%
Restitution	276	144	52%
Suspension	91	16	18%
Revocation	511	192	38%
Total	2,202	651	30%

We selected a sample of 25 of the 651 for further review. In 23 of these cases, we found the ALJ issued his or her determination within 45 days of the hearing, but the effective date of the penalty and/or sanction was more than 60 days after that determination. In 11 of the 25 cases, it took over 100 days to inform the facility from the date of the ALJ determination. The delays were generally due to the processing time required for the regional ALJs and two Central Office units to data enter the ALJ's determination, draft the decision notice, perform supervisory review of the accuracy of the notice and make any needed corrections, perform final data entry into a case management system, and then return the amended notice to the ALJ for review and approval of any changes. Many of these steps are generally done via mailing hard copy records between the respective regional office and the Central Office units. Once the ALJ approves the notice, it is returned to Central Office and sent to the respondent. While such steps are necessary, the Department should consider implementing other methods to streamline this process and shorten the time needed to issue the final notice. Such procedural improvements could include using email or reviewing and amending electronic documents that could be located on a secure shared drive.

Recommendations

1. Take steps to improve the identification of potentially unregistered facilities and determine whether they continue to operate, including (but not limited to) periodic analysis of publicly available information, such as property records and advertisements for repair services.
2. Develop a structured process for periodic coordination with DEC to compare its listing of dismantlers with dismantlers registered with the Department to identify facilities that may be unregistered, improperly registered, or not reporting as required.
3. Examine the underlying causes of the delays and explore options for improving the ability to promptly address and resolve consumer complaint cases.

Audit Objective, Scope, and Methodology

The objective of our audit was to determine if the Department adequately ensured automotive service, sales, and salvage facilities were registered, followed up on consumer complaints, and took enforcement action as necessary for violations. The audit covers the period January 1, 2014 through April 21, 2017.

To accomplish our objective, we obtained and reviewed the Department's data for regulated facilities, which included facilities that were registered and/or licensed with the Department at any point within the last six years. We performed data reliability testing on the Department's data and found it to be sufficiently reliable for the purposes of our audit. We selected a judgmental sample of 170 facilities with licenses or registrations that had expired prior to 2016 for observation. Our selection of these 170 facilities was based on certain risks identified during the audit indicating the facilities might be still operating without a valid license or registration.

We also used parcel/property information to identify other possible unregistered automotive facilities operating. The New York State GIS Program Office has made available to State agencies, upon request, New York State statewide parcel data for 59 of 62 counties. Of these, 54 included 10,929 properties classified as Motor Vehicle Services (code 430), Auto Dealer (code 431), or Auto Body (code 433). The remaining 5 of the 59 counties constitute the New York City counties, which use a different property classification system. We selected 16 of the 54 counties based on the availability of the data and the number of registered automotive businesses in these counties. These 16 counties included 6,795 of these types of properties. We used GIS software to identify properties that were not within a quarter mile of a facility listed in the Department's database. For the 16 counties, we identified 266 properties that met this criteria. For the remaining 6,529 properties, we were able to match a facility address to an automotive classified property in the parcel data. Of the 266, we selected a judgmental sample of 65 properties and performed observations. Our selection of the 65 was also based on the risks we identified during the audit indicating the facilities might still be operating without a valid license or registration.

We also obtained and reviewed data collected and made available by DEC relating to active vehicle-dismantling facilities, and compared it with the Department's dismantling facility data. To further accomplish our objective, we obtained and reviewed the Department's data on 6,890 consumer complaint cases open or filed between January 1, 2014 and December 16, 2016. We performed a series of analyses on that data to complete our testing. Of the 583 cases that did not meet the 12-month hearing time frame directive, we were only able to analyze 489. We also performed data reliability testing on the fields used and found them to be sufficiently reliable.

We examined the Department's internal controls and assessed their adequacy as they related to our objective. We reviewed applicable policies, procedures, laws, and regulations, and interviewed Department staff responsible for registering, licensing, and regulating automotive businesses and for handling consumer complaints.

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 objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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 threats to 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

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.

Reporting Requirements

A draft copy of the report was provided to Department officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end, along with our own State Comptroller's Comments that address some of the Department's specific statements. While the Department took exception with some of our findings and conclusions, officials generally indicated that they have already begun or intend to implement our recommendations.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Executive Deputy Commissioner of the Department of Motor Vehicles 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.

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

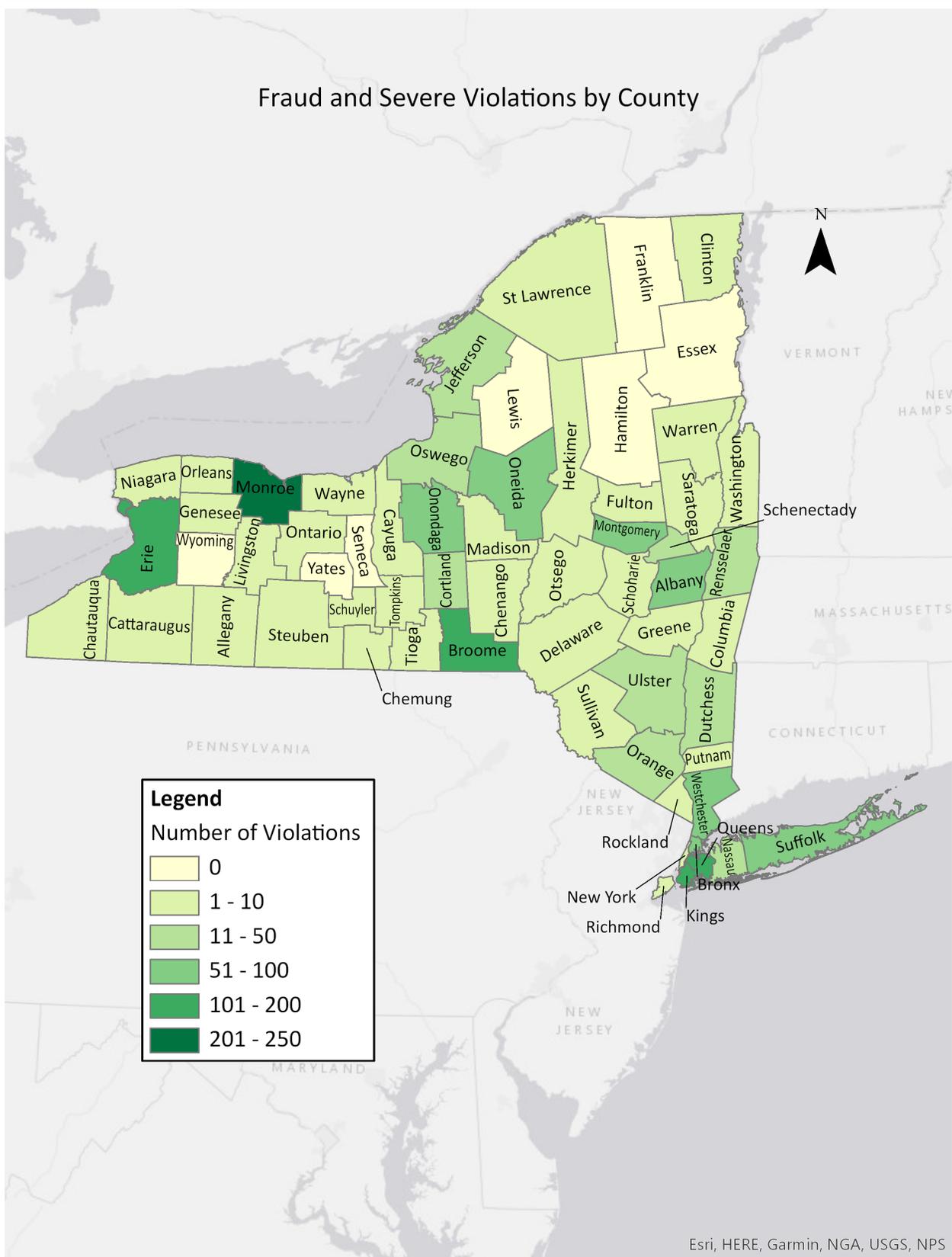
Exhibit B

Fraud and Other Severe Violations Descriptions

Category	Section of Vehicle and Traffic Law	Violation Description	Quantity
Fraud Violation	V&T 415-(9)(c)	Committed a fraud or fraudulent practice, or has practiced dishonest or misleading advertising.	694
Fraud Violation	V&T 398-e(1)(g)	Committed fraud or a fraudulent or deceptive practice.	104
Fraud Violation	V&T 303(e)3	Committing fraud, deceit or misrepresentation in securing the license or a certificate to inspect vehicles or in the conduct of licensed or certified activity.	38
Fraud Violation	V&T 415-(9)(c)	Committed a fraud or fraudulent practice, or has practiced dishonest or misleading advertising.	6
Fraud Violation	V&T 2257-a(c)	Has been guilty of fraud or fraudulent or deceptive practice, or has practiced dishonest or misleading advertising (waiverable version of 249).	3
Fraud Violation	V&T 429-(1)(d)	Any person who knowingly and willfully, and with intent to defraud a subsequent purchaser as to the applicable status of a motor vehicle, makes a false statement on an application for title or duplicate title for a motor vehicle pursuant to this section or fails to submit the statement of acquisition or supporting documentation to the commissioner within the time specified by regulations shall be subject to a civil penalty of up to two thousand dollars for each offense found to have been committed.	1
Other Severe Violation	V&T 417	Falsely certifying that the motor vehicle is in condition and repair to render, under normal use, satisfactory and adequate service upon the public highway at the time of delivery.	616

Category	Section of Vehicle and Traffic Law	Violation Description	Quantity
Other Severe Violation	V&T 398-e(2)(a)(ii)	Has grossly overcharged for a repair or adjustment.	36
Other Severe Violation	V&T 398-e(1)(j)	Has knowingly issued a false or misleading estimate.	13
Other Severe Violation	V&T 398-e(2)(a)(i)	Has been grossly negligent in the performance of a repair or adjustment.	10
Other Severe Violation	V&T 415-(9)(a)	Has made a material false statement on the application.	7
Other Severe Violation	V&T 398-e(1)(a)	Made a material false statement or concealed a material fact in connection with an application.	5
Other Severe Violation	V&T 398-e(1)(h)	Has grossly overcharged on two or more occasions within a period of two years.	1
Total Violations			1,534

Exhibit C



Agency Comments

THERESA L. EGAN
 Executive Deputy Commissioner



(518) 402-4860

July 7, 2017

Mr. Steve Goss
 Audit Director
 New York State Office of the State Comptroller
 110 State Street, 11th Floor
 Albany, NY 12236

Re: Draft Audit Report 2016-S-71

Dear Mr. Goss:

We have reviewed the draft audit findings and recommendations regarding your audit of Registration and Enforcement of Automotive Services, Sales and Salvage Facilities at the Department of Motor Vehicles (Department). The Department's response is set forth below.

A. Oversight of Regulated Automotive Businesses

Presently there are nearly 45,000 facilities in NYS that are registered by DMV to engage in some type of automotive service-related business. There are approximately 11,000 inspection stations (staffed by about 58,000 certified inspectors), 11,000 new and used car dealers, over 17,000 repair shops and over 800 dismantlers/scrap processors.

The Department has an exceptionally robust program for licensing and monitoring all automotive service facilities operating in the state. The Department's facility oversight program keeps our roads safe, our environment healthy and consumers less vulnerable to fraud. Specifically, the Department reviews in excess of over 12,000 business applications and renewals each year. The Department receives about 3,200 customer complaints per year and our facility inspectors conduct roughly 1,800 customer-based investigations annually – including nearly 200 allegations of unregistered operation. Finally, facility inspectors file formal charges against a facility about 1,100 times per year.

• **Audit Findings:**

1. OSC observed 170 used car dealerships and repair shops whose licenses or registrations to perform automotive services had expired and found 38 (22%) as being in "operation".

The Department disagrees with OSC's finding. Observations alone are insufficient to support OSC's conclusion. Determining whether a facility is one that ought to be registered requires more than a cursory observation from the curb. Any of the facilities in OSC's sample set could

* Comment 1

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*See State Comptroller's Comments, Page 26.

be performing oil changes, tire changes, installing aftermarket equipment and or modifications such as stereos, plows, performance parts, etc., -- none of which require the owner to register with DMV. The facility could also be doing work for one commercial proprietor or not for pay -- if so, they do not have to register. Similarly, a cursory observation cannot determine that an entity is a dealer. For example, at least three vehicles must be displayed for sale in a month or five are sold in a year for registration with DMV to be required. DMV receives about 250-300 customer complaints each year alleging that a facility is unlicensed. In 2016, approximately 100 of these cases resulted in a finding that the facility was unlicensed. In those instances, the Department takes administrative action intended to encourage such facilities to register with the Department.

2. OSC found, using geographic information software, that their "observations" of automotive business locations supports a conclusion that 18% are actively operating, but unregistered.

The Department disagrees with OSC's conclusion. Again, observations and/or use of property records are insufficient to support a conclusion that a location is operating as an unregistered dealership or repair shop (see above).

*
Comment
1

3. OSC identified 95 facilities advertising online for automotive services that were either not in the Department's database or were in the database but whose license had expired.

When the Department searched for the 95 advertisements, the majority were expired and no longer available online. Among the available postings, one (1) was already under investigation by the Department for unlicensed operation and 23 were postings associated to registered facilities.

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Comment
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4. OSC identified possibly 21 automotive dismantlers registered with DEC but were not registered with DMV.

The Department disagrees with OSC's finding. Based on the Department's conversations with DEC, it appears that many of the 21 facilities are no longer in business but are still required to file a certification with DEC. This most likely explains the discrepancy between the registration lists.

*
Comment
3

- A number of steps have been taken by the Department to further identify unregistered facilities, including:

1. Department staff has, and will continue to periodically review online postings to identify potential facilities that may be operating without a license. At the Department's discretion, online postings suggesting unlicensed operation of a DMV-regulated activity will cause the Department to take appropriate investigative action.
2. DMV's public website already provides an online service enabling users to confirm that a repair shop, dealership, etc., is licensed by DMV. DMV is analyzing methods to increase awareness of this service.
3. Department staff have discussed with DEC the concern regarding inconsistent dismantler databases and will work with DEC to develop a methodology to ensure that all facilities are properly registered with each agency.

*
Comment
2

B. Consumer Complaints

As noted above, the Department receives approximately 3,200 customer complaints per year. It conducts roughly 1,800 investigations of these complaints, of which 1,100 result in formal charges. Formal charges are assigned to an Administrative Law Judge (ALJ) for hearing.

ALJs hold between 12,000 and 13,000 hearings annually. The majority of these (about 10,000) are chemical test refusal and fatal accidents cases. Because these matters involve respondents who may pose a highway safety threat to the general motoring public, these types of hearings are given the highest priority. Facility based consumer complaint hearings are then scheduled around these higher priority matters.

This process results in the successful return of approximately \$1M in value to consumers annually and the collection of about \$1.2M in civil penalties from facilities each year.

- Audit Findings:

1. OSC found that “the average time to complete investigations is generally reasonable”.

The Department agrees with OSC’s finding. Department facility inspectors are trained to conduct thorough investigations and to complete each in as timely a manner as possible given each cases unique circumstances. Investigations involve a combination of document reviews, interviews of complainants, on-site visits to the facility, independent third-party review of vehicles and vehicle repairs, interviews of facility operators/staff and/or vehicle inspections. The geographic distance between the facility inspector and the conduct of these investigative steps can impact the amount of time it takes to complete an investigation and vary with each case. Further compounding efforts to complete an investigation is that facilities are often uncooperative and seek to delay the Department’s efforts to investigate complaints.

2. OSC stated that, of 10 sample complaint cases that took more than a year for a hearing to commence, 4 exhibited no evidence to support a postponement and 6 were postponed at the request of the automotive facility.

The Department acknowledges OSC’s findings, but disagrees with OSC’s conclusion. DMV takes all necessary steps to complete investigations in a timely manner. However, it is important to recognize that facility based hearings take time. They generally involve multiple witnesses and are aggressively contested by facilities. Further, facilities often request adjournments because any delay in holding a hearing serves to delay the imposition of penalties or sanctions by the ALJ. It is in the best interests of public safety and the impacted customers to resolve facility based hearings as expeditiously as possible.

* Comment 4

3. OSC stated that ALJ decisions are not timely conveyed to facilities due to DMV processing time, citing that in 11 of 25 sample cases it took over 100 days to inform the facility of the ALJ’s determination.

The Department acknowledges OSC’s findings, but disagrees with OSC’s conclusion. The Department strives to issue final ALJ decisions that are accurate, complete and timely. Although decisions are typically written and issued within 45 days of the hearing, internal Department review among Safety Hearings Bureau, Vehicle Safety Office and the ALJ can, on occasion,

* Comment 5

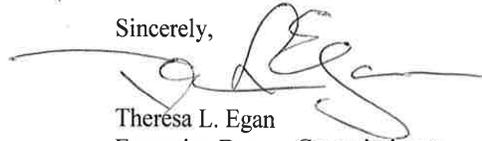
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cause the issuance of some decisions to be delayed. The Department informs the facility of the final decision in as timely a manner as practicable.

- In order to expand upon the Department's continuous efforts to improve complaint processing, the Department has scheduled a LEAN process improvement review that will evaluate our current case decision issuance process and identify additional areas for efficiency and expediency. The LEAN review will commence in July 2017.

If you have any questions or concerns relative to this response, please contact Thomas P. Higgins Deputy Commissioner for Compliance at (518) 474-0846.

Sincerely,



Theresa L. Egan
Executive Deputy Commissioner
NYS Department of Motor Vehicles

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State Comptroller's Comments

1. The Department misstates two of our findings related to our observations of automotive facilities and then disagrees with them. In the first case, the Department states that we found 38 dealerships and repair shops whose licenses or registrations were expired were in "operation." In fact, on page 8 of our report, we actually state that 38 shops showed *strong indications* of operation. In the second case, the Department states that we found 18 percent of automotive business locations we observed were actively operating, but unregistered. In fact, on page 9 of our report, we actually state that 12 (18 percent) locations *appeared to be* actively operating. These are subtle, yet very important distinctions, and we continue to stand by our statements based on the audit evidence we documented. The Department also goes on to state that observations alone are insufficient to support our conclusions. We agree and recognize this on page 10 of our report, where we state "We recognize that our limited observations did not provide definitive proof that the facilities were improperly operating." The Department also gives several hypothetical reasons why the facilities we identified might not require registration with the Department. That we could neither rule in nor rule out scenarios such as these is why we state, on page 10, that the locations we observed warrant additional investigation by Department staff.
2. We are pleased the Department followed up on the advertisements and will continue to review online postings periodically.
3. Although the Department disagrees with our finding, it was unaware of the 21 dismantlers reporting to DEC but not registered with the Department until we identified them. We are pleased that the Department states it will work with DEC to implement our recommendation.
4. The Department disagrees with our conclusion and restates various factors affecting the timeliness of hearings. We recognize the complexities surrounding scheduling and conducting hearings, which are noted on page 13 of our report. However, given the length of time this portion of the process contributes to the overall delays, we continue to believe the Department should address the underlying causes of the delays to better serve the complainants. Otherwise, lengthy delays will most likely continue.
5. The Department disagrees with our conclusions but states it has scheduled a project to improve the case decision issuance process, which may address our recommendation.