

Mario J. Musolino
Acting Commissioner

Department of Labor

W. Averell Harriman State Office Campus
Building 12, Room 590, Albany, NY 12240
www.labor.ny.gov

March 6, 2015

Mr. Donald D. Geary
Audit Manager
Office of State Comptroller
Division of State Government Accountability
110 State Street-11th Floor
Albany, New York 12236-0001

Re: 2014-F-19 Assessment and Collection of Selected Fees and Penalties

Dear Mr. Geary,

Enclosed please find the New York State Department of Labor's (the Department) response to Office of State Comptroller ("OSC") final report 2014-F-19 regarding the Assessment and Collection of Selected Fees and Penalties.

If you have any questions regarding this response, please contact Rajni Chawla, Audit Director at 518-457-9076

Sincerely,



Mario J. Musolino

CC: Rajni Chawla
James Rogers

Boiler Inspection Fee and Penalties

Agency Action - The Department partially implemented the recommendation as it relates to boiler inspection fees. Officials finalized their work in re-creating their boiler database, and in February 2013 issued a letter to all local code enforcement officers asking them to identify all boilers that should be included in the Department's inventory of boilers that are subject to inspection. The process resulted in the identification of additional boilers and allowed the Department to update their boiler inventory. However, additional effort needs to be made in the collection of boiler fees.

The Department developed and implemented guidelines in 2012 on how and when it may waive penalties assessed for the failure to pay timely boiler inspection fees. The decision to waive the penalty is made by the Chief Boiler Inspector or the Director of Safety and Health. Documentation received to support the decision to waive the penalty is now maintained on file. We examined a sample of 30 penalties waived, 20 selected at random and 10 judgmentally, for the July 15, 2013 through December 1, 2014 period and found required supporting documentation on file for all 30 penalties waived as well as appropriate authorization.

The Department's system now automatically applies a late payment penalty if inspection fees are not paid on time and new invoices are mailed out. The Department modified their invoices to reflect a legislative change allowing for overdue notices to be sent at 45-, 60- and 180-day intervals. Each interval increases the penalty by \$75 instead of the triple penalty for late payment that was in place during our original audit. This change will allow property owners more time to make the inspection payments, reducing the number of penalties assessed and the number of final collection efforts carried out during in-person compliance conferences.

The Department still has uncollected boiler inspection and late penalty fees dating back to 2002 totaling approximately \$1.4 million. Department officials stated that in the past they had made little effort to collect past due accounts, but they are reviewing all past due penalties and fees and evaluating the current condition and ownership of the properties. Going forward, they plan to concentrate their collection efforts on items less than three years old and initiating compliance conferences in an effort to reach a settlement agreement for any outstanding penalties or fees. In addition, the Department will refer all uncollected inspection fees and penalties, where a settlement could not be reached at the compliance conferences, to the State Attorney General's Office for collection.

Department Comments

The Department will concentrate their collection efforts on items less than three years old. We are initiating compliance conferences as of March 2015, in an effort to reach a settlement agreement for outstanding penalties or fees. The Department will refer all uncollected inspection fees and penalties, where a settlement could not be reached at the compliance conferences, to the State Attorney General's Office for collection.

Public Work Enforcement Fund

Agency Action - The Department partially implemented the recommendation as it relates to the PWEF. The Department has improved its method to identify authorities that have assessable public work contracts and to ensure that these authorities remit proper payments to the PWEF.

Department officials continue to use a contract report generated by the Office of the State Comptroller (OSC) for billing agencies and public authorities for their share of the PWEF. Since our original audit, OSC has improved its capability and captures more construction contract information, which is shared with the Department. Further, the Department has collaborated with the Authorities Budget Office (ABO) to try to identify contracts not included in the OSC reports. However, the ABO does not have the ability to readily identify contracts subject to the PWEF assessment. The result of these efforts has been that the Department collected \$5,512,909 for SFY 2013-2014 compared to \$3,981,305 in SFY 2012-2013.

In May 2011, the Department sent a letter to all State agencies and public benefit corporations to remind them of their responsibilities to contribute to the PWEF. The Department also drafted a new letter and notification form which outlines the responsibilities of State agencies and public benefit corporations to contribute to the PWEF. The new form, anticipated to be issued early in 2015, requires a signed affirmation by State agencies and public benefit corporations, acknowledging their PWEF responsibilities.

Department Comments

The new letters and notification forms were sent out in the beginning of February 2015. A total of 194 letters were sent to NYS agencies, public authorities, and colleges. Once the signed notices are returned, they will be maintained in our Central Office. The Public Works Unit will share the contact information with the Department's Finance Unit. This will be a yearly process.

The Bureau of Public Work has been in touch with the Contract Unit of OSC, discussing those who do not return the signed affirmation notice.

Asbestos Project Notification Fee

Agency Action - The Department fully implemented the recommendation as it relates to asbestos project notification fees. Officials have developed a method to improve their ability to identify those required to pay an asbestos project notification fee. The Department's Asbestos Monitoring Unit (Unit) ensures contractors are following asbestos removal regulations. The Department has worked in combination with other State agencies to pursue asbestos abatement regulations through the examination of air monitoring reports, demolition permits, surveys used to support the air monitoring and demolition inspections, and analysis of waste manifest data. Each of these methods identifies contractors who have abated asbestos. These

lists are then compared to the list of contractors and projects where a fee has been paid, thereby allowing the Unit to follow up with contractors who abated asbestos, but have not remitted the required fee. Since our initial audit, the Unit used air monitoring reports to identify 18 companies that had not paid the required fee and to issue 136 violation notices, including one contractor who was issued 80 violation notices, resulting in the additional assessment of \$15,900. Another contractor was assessed an additional \$25,200 in notification fees. The Unit also reconciled demolition permits, and identified 10 contractors and issued 28 new violation notices. Starting in 2012, waste manifest data has been collected statewide, with several landfills submitting waste manifests monthly. The Department also has been examining the records of out-of-state landfills to identify if any asbestos is being disposed of elsewhere.

The Department has not formally supported, opposed or recommended the bill submitted for a legislative change of the asbestos abatement fee structure. The Department's analysis of the modified fee structure in the bill shows a negative financial impact on the Department's Division of Safety and Health (DOSH). Notably, the change in categories for non-friable asbestos would have had a potential loss of over \$7.5 million for 2013. Although there would be economic benefits to contractors for smaller projects, such as one- and two-family home asbestos removal, DOSH would have suffered an additional estimated loss of \$345,600 in 2013.

Department Comments

The Department's comments on the bill A-3675 reflect the routine legislative process which requires the Department to comment on any legislative proposal having an impact on Department's operations. The Department's role in legislative process has no relation to OSC's recommendation.