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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 5, 2015

Mr. Mario J. Musolino
Acting Commissioner
Department of Labor
Building 12, State Office Campus
Albany, NY 12240

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

Dear Mr. Musolino:

According 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, we have followed up on the actions taken by the officials of the Department of Labor (Department) to implement the recommendations contained in our audit report, *Assessment and Collection of Selected Fees and Penalties* (Report 2010-S-70) issued on May 31, 2013.

Background, Scope and Objective

The Department collected, for the period April 1, 2013 through July 31, 2014, total fees and penalties of approximately \$6.5 million for the Public Work Enforcement Fund (PWEF), \$5.4 million for the boiler inspection program and \$20 million for the asbestos abatement program.

The Department assesses and collects a wide range of fees for various licenses/certificates issued and services rendered. Services provided include inspecting boilers and asbestos abatement projects. Fines are levied on employers who fail to pay fees timely or who do not comply with workplace safety rules. We reviewed the three fee categories that generated the greatest amount of revenue: boiler inspections, public work enforcement and asbestos abatement.

Our initial audit examined whether the Department assessed and collected all required fees and penalties for selected programs. We found the Department did not collect about \$3.8 million, including associated penalties, for the three fee categories we reviewed. Further, we found the Department does not have accurate records to show who is required to pay boiler inspection and asbestos-related project fees. As a result, the health and safety of New York residents may be at risk and potential revenue was not realized. The objective of our follow-up was to assess the extent of implementation, as of December 23, 2014, of the recommendation included in our initial report.

Summary Conclusion and Status of Audit Recommendation

We found that Department officials have made significant progress in addressing the issues identified in our initial report. The core components of the prior audit recommendation have been substantially implemented.

Follow-Up Observations

Recommendation 1

Increase oversight of the assessment and collection of fees and penalties identified in this report. The Department should at a minimum perform the following steps:

- *Assess late payment penalties on all late boiler inspection fees payments.*
- *Collect all boiler inspection revenues due.*
- *Stop waiving boiler inspection late penalties without adequate justification and document the reason(s) for waiving penalties.*
- *Update and maintain a current inventory of all boilers that should be inspected.*
- *Work with the Department of State and code enforcement officials to identify boilers that should be inspected.*
- *Develop a method to identify public authorities that have assessable public work contracts and ensure that these authorities remit proper payments to the Fund. Consider using the information available on construction contracts at the Authorities Budget Office to identify these public authorities.*
- *Develop a method to identify those required to pay an asbestos project notification fee and follow-up with these contractors to ensure payment. Consider periodically obtaining manifests from landfills to verify that contractors are paying the project notification fee.*
- *Review the asbestos fee structure to determine whether a more equitable fee structure could be created based on the size of a project to possibly increase revenue.*

Status - Partially Implemented

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.

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.

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.

Major contributors to this report were Todd Seeberger, Dick Gerard and Sally Perry.

We would appreciate your response to this report within 30 days indicating actions planned to address the unresolved issues discussed in this report. We thank Department management and staff for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Donald D. Geary
Audit Manager

cc: Rajni Chawla, Audit Liaison
Division of the Budget