



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

Division of State Government Accountability

Collection of Electronic Waste Fees

Department of Environmental Conservation



Report 2015-S-18

September 2015

Executive Summary

Purpose

To determine whether the Department of Environmental Conservation (Department) properly collects all fees and surcharges due to the Environmental Protection Fund (Fund) in compliance with the New York State Electronic Equipment Recycling and Reuse Act (Act). This audit covers the period January 1, 2013 through July 7, 2015.

Background

The Department's Division of Materials Management (Division) is responsible for administering the Act, which was signed into law on May 28, 2010. The Act is intended to divert electronic waste (e-waste) from landfills and waste combustion facilities and keep toxins such as lead, mercury, and other hazardous materials from potentially contaminating the environment. Covered electronic equipment includes computers, computer peripherals, televisions, small-scale servers, and small electronic equipment.

The Act requires manufacturers of covered electronic equipment to set up and fund programs for the collection and recycling of e-waste in the State. The Act also requires manufacturers that sell more than 1,000 units of covered electronic equipment to register with the Department, pay a one-time registration fee of \$5,000, and then annually submit a report of their statewide sales and recycling data and pay an annual \$3,000 fee. Sales data is used to calculate a recycling acceptance standard for each manufacturer. If actual recycling falls below this standard, surcharges apply.

Manufacturers may choose to participate in a collective e-waste acceptance program with other manufacturers. Each collective must pay a \$10,000 registration fee. The Department is required to deposit all fees and surcharges into the Fund. The Department collected a total of \$371,000 in registration fees from 116 manufacturers, eight collectives, and 84 recyclers, as well as \$750,000 in annual reporting fees from manufacturers and collectives for the three reporting years ended December 31, 2013 (the fees for each reporting year are due the following year). During the year ended December 31, 2014, the Department also collected \$176,000 in surcharges for the 2013 reporting year.

Key Finding

- We found the Department properly collected, recorded, and deposited fees and surcharges due the Fund. However, the Division did not segregate the responsibilities for collecting and recording cash receipts of the fees and surcharges. Also, supervisory review of revenue and deposit activities was not documented.

Key Recommendation

- Improve controls over the collection and reporting of fees by: separating the handling and recording of cash receipts to the degree feasible; and documenting the results of supervisory reviews of the cash collection process.

Other Related Audit/Report of Interest

[Department of Environmental Conservation: Selected Aspects of Inactive Hazardous Waste Site Remediation Cost Recovery \(2014-S-14\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

September 2, 2015

Mr. Marc Gerstman
Acting Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011

Dear Acting Commissioner Gerstman:

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 *Collection of Electronic Waste Fees*. 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

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This report is also available on our website at: www.osc.state.ny.us

Background

The Department of Environmental Conservation's (Department) Division of Materials Management (Division) is responsible for administering the New York State Electronic Equipment Recycling and Reuse Act (Act), which was signed into law on May 28, 2010. The Act requires manufacturers of covered electronic equipment to set up and fund programs for the collection and recycling of electronic waste (e-waste) in New York State. The Act is intended to divert e-waste from landfills and waste combustion facilities and keep toxins such as lead, mercury, and other hazardous materials from potentially contaminating the environment. The Act imposes different requirements for manufacturers, retailers, and collection, consolidation, and recycling facilities.

Manufacturers are defined as anyone who assembles (or substantially assembles), manufactures, imports, and/or owns a brand name of covered electronic equipment that is offered for sale in New York State. Covered electronic equipment includes computers, computer peripherals, televisions, small-scale servers, and small electronic equipment. The Department is required to maintain and post on its website a list of registered manufacturers as well as the manufacturers' covered brand names.

A manufacturer cannot sell electronic equipment in the State unless it has registered with the Department and maintains an e-waste acceptance program. Manufacturers that sell less than 1,000 units annually do not have to register with the Department. To register, a manufacturer must submit a registration form and pay the Department a one-time fee of \$5,000. Annually, the manufacturer must submit a report of its statewide sales and recycling data and pay a \$3,000 fee. Manufacturers may choose to participate in a collective e-waste acceptance program with other manufacturers. Each collective must pay a \$10,000 registration fee.

The Division uses the statewide sales data in each manufacturer's annual report to calculate the amount of e-waste each manufacturer is required to accept for a given year, known as the manufacturer's acceptance standard. Any manufacturer that fails to meet its acceptance standard for the previous calendar year is subject to a recycling surcharge. The surcharge is based on the percentage of the acceptance standard of e-waste that the manufacturer actually collected.

The Act allows the Department to collect a civil penalty up to \$1,000 per day that a manufacturer does not submit any report, registration, fee, or surcharge to the Department. The Division tracks manufacturers that are filing their annual reports late and makes attempts to reach them via e-mail, certified letter, and phone calls.

All fees and surcharges received by the Department are required to be deposited into the Environmental Protection Fund (Fund). The Department collected a total of \$371,000 in registration fees from 116 manufacturers, eight collectives, and 84 recyclers, as well as \$750,000 in annual reporting fees from manufacturers and collectives for the three reporting years ended December 31, 2013 (the fees for each reporting year are due the following year). The Department also collected \$176,000 in surcharges for the reporting year ended December 31, 2013.

Audit Findings and Recommendations

We found the Division generally collected all registration and annual reporting fees due from manufacturers during our audit period. The Division also properly calculated and collected all appropriate surcharge fees. Additionally, all program fees received were properly recorded and deposited into the Fund as required. We did identify several areas where the Division could improve its internal controls over its cash receipts process. We also found that the Department has only recently begun to fully use enforcement mechanisms when reports and fees are not submitted on time.

Collection and Recording of Fees and Surcharges

Our testing showed the Department generally collected, recorded, and transferred to the Fund all the registration and annual reporting fees due. Over the life of the program, the Department collected \$371,000 in registration fees from manufacturers, collectives, and recyclers. Additionally, for the three years ended December 31, 2013, the Department collected \$750,000 in annual reporting fees. Only one manufacturer failed to submit its annual reporting fee, for one year, over the three-year period. Additionally, we determined the Division properly calculated and collected surcharges totaling over \$176,000 for nine manufacturers that did not meet their acceptance standard in 2013. The surcharges were transferred to the Fund as required.

Our review of the internal controls over the collection of funds showed that one of the five program staff receives and initially records all e-waste cash receipts. Responsibilities for these two tasks should generally be split among different employees whenever possible to minimize the risk of errors or impropriety. The program supervisor told us that he checks the work of the employee. However, while supervisory reviews are a good control, the reviews were not documented. Department officials told us they are taking steps to improve the controls over the cash receipts process.

Enforcement Efforts

Division officials told us that, during the initial years of program implementation, they focused on educating and registering manufacturers and on promoting program participation and compliance. Therefore, they did not begin to fully utilize available enforcement tools until 2015 and had yet to impose any monetary penalties for noncompliance at the time we concluded our audit fieldwork.

In April 2015, the Division sent Notices of Violation via certified mail to 21 manufacturers that had yet to submit their 2014 annual report and fee, which was due on March 1, 2015. The notices gave the manufacturers an additional 14 days to comply. At the time of our review, 9 (of the 21) manufacturers submitted their annual reports and fee payments. As of May 19, 2015, the Division had referred the remaining 12 manufacturers to Department legal counsel for further action.

Recommendations

1. Improve internal controls over the collection and reporting of fees by:
 - Separating the handling and recording of cash receipts to the degree feasible; and
 - Documenting the results of supervisory reviews of the cash collection process.
2. Use enforcement efforts to the extent necessary to achieve compliance with program requirements.

Audit Scope and Methodology

The objective of our audit was to determine whether the Department properly collects all fees and surcharges due the Environmental Protection Fund in compliance with the New York State Electronic Equipment Recycling and Reuse Act. This audit covers the period January 1, 2013 through July 7, 2015.

To accomplish our objective, we interviewed Department officials and reviewed Department documents and records. We also reviewed relevant laws, regulations, policies, and procedures. We analyzed manufacturer, collective, and recycler registrations and fees received by the Department from the commencement of the program, as well as manufacturer annual reports and fees for the reporting years 2011, 2012, and 2013. Additionally, we tested the accuracy of the Department's calculation of the 2013 Acceptance Standard and 2013 Recycling Surcharge calculation based on the annual report data. We reviewed data from the Department's Revenue Unit to determine if all program fees were accurately deposited into the Environmental Protection Fund. Finally, we familiarized ourselves with the internal controls related to the e-waste program and assessed their adequacy related to our audit objective.

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 (some of whom have minority voting rights) to certain boards, commissions, and public authorities. 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. We considered their comments in preparing this final report and have attached them in their entirety at the end of it. The Department agrees with our findings and indicates steps it will take to implement our recommendations.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner 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 why.

Contributors to This Report

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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.

Agency Comments

OFFICE OF THE COMMISSIONER

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AUG 24 2015

Mr. John Buyce
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236-0001

Dear Mr. Buyce:

The New York State Department of Environmental Conservation (DEC) has reviewed the Office of the State Comptroller's (OSC) draft audit report 2015-S-18 on the Collection of Electronic Waste Fees. Attached is a pdf copy of DEC's response to the draft audit report. The signed hard copy of this letter will be mailed to you for your records.

Thank you for the opportunity to respond to OSC's draft report. If you need to discuss any of this response, please contact Ann Lapinski at (518) 402-9147.

Sincerely,



Marc Gerstman
Acting Commissioner

Attachment

c: A. Lapinski



Department of Environmental Conservation
Collection of Electronic Waste Fees
2015-S-18
Response to Draft Report
Not for External Release

The Department of Environmental Conservation (DEC or Department) has reviewed the draft report dated July 24, 2015 containing the findings and recommendations of the Office of the State Comptroller (OSC) in connection with OSC's audit of the Collection of Electronic Waste Fees. DEC's response contains two sections. The first section provides DEC's general comments regarding this report. The second section is DEC's specific comments on report recommendations.

1) General Comments

The OSC audit examined whether the Department properly collected all fees and surcharges to be deposited into the Environmental Protection Fund pursuant to the New York State Electronic Equipment Recycling and Reuse Act (Act), signed into law on May 28th, 2010. The Department has reviewed the audit report and believes it is an accurate representation of the Department's processes for the collection, recording and depositing of fees and surcharges in accordance with the requirements of the Act. We are pleased that OSC's audit found that the Department properly collected, recorded and deposited fees and surcharges due the State. Program staff has spent considerable time developing and implementing this very new program and are proud to have accomplished so much in such a short time.

In an effort to enhance DEC's E-waste program, the Department will be implementing OSC's recommendations and will continue to make other required program adjustments. The audit coincided with the Department responsibilities to receive and review hundreds of annual reports, determine reporting violations, calculate surcharge amounts for manufacturers, complete a report to the Governor and determine the 2015 Manufacturers' Acceptance Standards. Throughout the entire audit process, OSC audit staff were accommodating and considerate of these time sensitive responsibilities and program staff indicated that the working relationship was both respectful and courteous.

2) Comments on Recommendations

The following are DEC's responses to recommendations provided in the draft report:

Recommendation 1 – Improve internal controls over the collection and reporting of fees by:

- Separating the handling and recording of cash receipts to the degree feasible; and
- Documenting the results of supervisory reviews of the cash collection process

Department Response – DEC agrees with this recommendation. In response to this same recommendation in OSC's preliminary audit report in early June, DEC immediately modified its

procedures for revenue collection to improve the overall internal controls for this program. These new procedures include, separation of duties and additional documentation of supervisory reviews.

Recommendation 2 – Use enforcement efforts to the extent necessary to achieve compliance with program requirements.

Department Response – *DEC agrees with the recommendation and will continue to implement our enforcement policy when it is determined to be appropriate and necessary to achieve compliance with the Electronic Equipment Recycling and Reuse Act. In the first few years of this new law, the DEC focused on educating consumers and the regulated community; registering manufacturers, collection sites, consolidation/recycling facilities; promoting program participation and providing technical assistance and continued outreach to all stakeholders to assure compliance. After extensive outreach to the regulated community and consumers, DEC began to increase compliance assurance efforts. Beginning in 2014, the DEC phased in the next steps in program implementation through Notices of Violation (NOV's) to those electronic equipment manufacturers who had not submitted their annual reports. In 2015 the DEC will continue phased program implementation by increasing its enforcement efforts further to bring both manufacturers and recyclers into better overall compliance with the requirements of the Act, by issuing NOV's followed by filing Notices of Hearing and Complaints with the Office of Hearings and Mediation and assessing penalties when necessary. Going forward, the DEC will continue to educate the regulated community and use all the enforcement tools available to achieve compliance with the Act.*