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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 11, 2018

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

Re: Registration and Enforcement of
Automotive Services, Sales, and Salvage
Facilities
Report 2018-F-25

Dear Ms. Egan:

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, we have followed up on the actions taken by officials of the Department of Motor Vehicles (Department) to implement the recommendations contained in our audit report, *Registration and Enforcement of Automotive Services, Sales, and Salvage Facilities* (Report 2016-S-71) issued on August 15, 2017.

Background, Scope, and Objectives

The 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. As of September 2018, there were about 44,900 active automotive businesses with about 26,600 unique facilities, because some are registered or licensed to perform multiple functions. Another 16,400 businesses registered or licensed within the past six years were considered inactive because they had expired registrations or licenses as of September 2018.

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. Where facilities are found to be in violation of laws, rules, or regulations, the Department must

take necessary actions against them, which may include issuing penalties, suspending or revoking registrations/licenses to operate, or referring the operator or facility for criminal prosecution. According to Title 15, Part 127 of the New York Codes, Rules and Regulations (Regulations), if a hearing is recommended, the Department is to start it within 12 months from when the complaint was filed, unless there are reasonable grounds for postponing it. The Regulations also state that, once a hearing is held, a Department Administrative Law Judge (ALJ) must render a decision within 45 days of the conclusion of the hearing. 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.

Our initial audit report, covering the period January 1, 2014 through April 21, 2017, sought to determine whether the Department: adequately ensured automotive services, sales, and salvage facilities were registered; followed up on consumer complaints; and took enforcement action as necessary for violations. Our audit found automotive facilities where businesses could potentially be operating without a license. We identified 60 facilities based on publicly available property records, and 95 facilities based on public classified advertisements, that may have been operating as a public business but were unregistered. We also identified 21 vehicle dismantlers that report to the Department of Environmental Conservation (DEC) but were not registered with the Department. Finally, we identified delays in the Department's process for handling consumer complaints, particularly in the time between completion of investigations and commencement of 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 filed, as called for in the Regulations. The objective of our follow-up was to assess the extent of implementation, as of October 30, 2018, of the three recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

We found that Department officials have made significant progress in addressing the problems we identified in the initial audit. Of the three prior audit recommendations, two were implemented and one was partially implemented.

Follow-Up Observations

Recommendation 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.

Status - Partially Implemented

Agency Action - While the Department has taken steps to improve its identification of potentially unregistered facilities and determine whether they continue to operate, it has not yet established a periodic analysis of publicly available information. The Department's

Central Office reviewed publicly available online classified advertisements posted on one website, Craigslist, between July 2017 and September 2017. According to Department officials, after determining the advertisements did not contain enough information to allow the Department to proceed with a case, it discontinued the searches at the Central Office and established a pilot program at one regional office. Between February 2018 and May 2018, the regional office performed Craigslist advertisement searches, which resulted in two cases against unregistered facilities. However, because the searches were not very successful, the Department plans to reconfigure and conduct these searches from the Central Office going forward. The Department does not have plans to search any other publicly available advertisements or use property records to identify potentially unregistered facilities.

Recommendation 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.

Status - Implemented

Agency Action - The Department established a structured process for periodic coordination with DEC to compare dismantler listings, and now cross-references its records with DEC annually. So far, the Department has performed these comparisons in 2017 and 2018. As a result of the 2017 comparison, the Department made three referrals to its Division of Field Investigation for possible unregistered dismantling facilities. The 2018 comparison is still in progress.

Further, in November 2017, regulatory changes took effect requiring all dismantlers to register with DEC. DEC had previously required dismantlers to report to it, but it excluded dismantlers that received no more than 25 end-of-life vehicles per year and stored fewer than 50 end-of-life vehicles on site at any one time. DEC has set up a query database, which can produce an updated list for the Department on demand. As DEC populates this database, the Department expects its cross-referencing efforts to become more effective and expedient.

Recommendation 3

Examine the underlying causes of the delays and explore options for improving the ability to promptly address and resolve consumer complaint cases.

Status - Implemented

Agency Action - In August 2017, the Department undertook a Lean Process Improvement review of the safety hearing process to identify opportunities for reducing delays in the handling of consumer complaints. The Department implemented a number of changes as a result,

among them: ALJs now send hearing decisions electronically instead of via conventional postal mail; complainants receive instruction on restitution preemptively to eliminate time-consuming inquiries; staff are trained to ensure consistency in writing charges; new waiver options have been added to reduce the number of cases requiring a hearing; and certain responsibilities, such as identification of cases eligible for waivers, have been shifted to regional offices in order to reduce the workload of Central Office staff.

The Department also created new metrics to evaluate the average cycle time from completed investigation to first hearing and from completed hearing to first imposed sanction. According to the data provided by the Department, the average cycle time for completed investigation to first hearing decreased from 320 days in 2017 to 273 days as of August 2018. Also, the average cycle time for completed hearing to first sanction imposed decreased from 70 days to 45 days for the same period.

Major contributors to this report were Heather Pratt, Andrea LaBarge, Thomas Sunkel, Christian Butler, and Emily Vandenburg.

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

Very truly yours,

Brian Reilly, CFE, CGFM
Audit Director

cc: Division of the Budget
Kelly Gardineer, Department of Motor Vehicles