

Department of Environmental Conservation

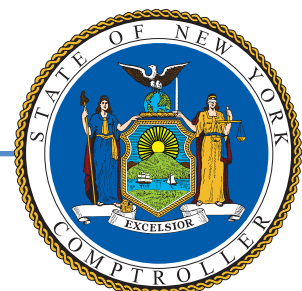
Oversight of Waste Tire Site Cleanup and Use of Waste Tire Fees

Report 2018-S-43 | August 2019

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objectives

To determine if the Department of Environmental Conservation (DEC) is adequately monitoring and timely abating waste tire sites and whether the waste tire fee collections are being used consistent with the purposes defined in the Environmental Conservation Law. The audit covers the period April 1, 2016 through February 6, 2019.

About the Program

Waste tires can pose serious risks to public health, safety, and the environment. They provide an ideal breeding ground for mosquitoes and other disease-carrying pests and are a fire hazard with the potential for devastating consequences. In 2003, the Waste Tire Management and Recycling Act (Act) was enacted to ensure the proper management of waste tires in the State. DEC, through its Division of Materials Management and its regional offices, is responsible for enforcement and abatement (cleanup) of waste tire sites. DEC has established an enforcement policy to ensure timely abatement. The Act established a waste tire management and recycling fee of \$2.50 for each new tire sold, and DEC is authorized to use collected fees for the administration and enforcement of the requirements of the Act as well as the collection, treatment, and disposal of refuse and other solid waste, excluding inactive hazardous waste disposal sites. For the five-year period April 1, 2013 to March 31, 2018, DEC received approximately \$135 million from waste tire management and recycling fees. DEC uses programmatic cost centers to track expenses charged to the Waste Management and Cleanup Fund (Fund). Disbursements from the Fund for personal service, non-personal service, and fringe benefit costs totaled about \$115 million for the five-year period.

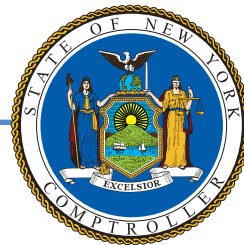
Key Findings

- DEC has made significant progress abating identified waste tire sites. Of the 187 non-compliant waste tire sites identified by DEC, nearly 44 million tires (99 percent) were abated at 160 sites (86 percent) as of October 2018. Most of the remaining 27 non-compliant sites contain relatively few waste tires.
- We identified delays establishing a new abatement contract through the Office of General Services (OGS) after the prior contract expired on October 30, 2016. The new contract was delayed until August 2018, partially because DEC had not promptly obtained consent orders (which allow the contractor access to the sites) for a sufficient number of sites to be included in the contract. The lack of a contract temporarily delayed initiating abatement at additional sites. We also found delays with certain enforcement steps typically taken prior to initiating the abatement process for some of the remaining 27 sites. Delays taking these steps may in turn further hinder timely abatement of the sites.
- We found some expenses charged to the Fund that did not appear to be related to waste tire abatement or other waste management activities allowable under the Law. Officials told us they developed a process in 2010 that allows divisions with mandated

responsibilities that include, but are not limited to, activities covered under the Law, to charge certain amounts to the Fund. However, the methodology was neither retained nor provided for our review. While we agree some amount should be charged to the Fund for such divisions, we could not determine the reasonableness of the methodology used or the amounts established.

Key Recommendations

- Collaborate with OGS in the future to renew or establish new abatement contracts in a timely manner.
- Take steps to initiate enforcement actions as promptly as possible for non-compliant sites, especially for those sites that demonstrate a lengthy period of non-compliance and where the owner has not agreed to or begun voluntary abatement activities.
- Establish and document a methodology to estimate the portion of expenses to be charged to the Fund consistent with the authorized purposes under the Law, especially for those divisions that carry out multiple mandates.



Office of the New York State Comptroller Division of State Government Accountability

August 29, 2019

Mr. Basil Seggos
Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Dear Commissioner Seggos:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides 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 of the Department of Environmental Conservation entitled *Oversight of Waste Tire Site Cleanup and Use of Waste Tire 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 draft report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

Contents

Glossary of Terms	5
Background	6
Audit Findings and Recommendations	9
Abatement and Enforcement of Non-Compliant Waste Tire Sites.....	9
Waste Management and Cleanup Fund Expenditures	11
Recommendations.....	12
Audit Scope, Objectives, and Methodology	13
Statutory Requirements	15
Authority.....	15
Reporting Requirements.....	15
Exhibit	16
Agency Comments	17
State Comptroller’s Comments	21
Contributors to Report	22

Glossary of Terms

Abbreviation	Description	Identifier
Act	Waste Tire Management and Recycling Act	<i>Law</i>
DEC	Department of Environmental Conservation	<i>Auditee</i>
DLE	DEC's Division of Law Enforcement	<i>Division</i>
Fund	Waste Management and Cleanup Fund	<i>Key Term</i>
Law	Environmental Conservation Law Article 27	<i>Law</i>
NOV	Notice of Violation	<i>Key Term</i>
OGS	Office of General Services	<i>Agency</i>
Policy	Solid Waste Enforcement Policy	<i>Policy</i>

Background

Each year, an estimated 18 to 20 million tires are discarded in New York State. Without proper management, waste tires pose serious risks to public health, safety, and the environment. They provide an ideal breeding ground for mosquitoes and other disease-carrying pests. Furthermore, they are a fire hazard with the potential for devastating consequences, including air pollution, toxic emissions, and chemical runoff contaminating soil, surface water, and ground water.

In 2003, the Waste Tire Management and Recycling Act (Act) was enacted to ensure the proper management of waste tires in the State. The Act established priorities including the reduction of the number of waste tires generated and the remediation of non-compliant waste tire sites. The Department of Environmental Conservation (DEC), through its Division of Materials Management, is responsible for enforcement and abatement (clean-up) of waste tire sites.

Consistent with the requirements of the Act, DEC inventoried and assessed known non-compliant waste tire sites by July 2004 with the goal of abating all non-compliant sites in the State by December 31, 2010. The initial assessment conducted under the Act identified approximately 95 sites with non-compliant stockpiles containing an estimated 29 million tires. Since then, according to DEC records, the number of non-compliant waste tire sites increased to 187 with an estimated total of 44 million tires. Although the Department identifies new sites each year, DEC officials stated that they are generally small, containing relatively few waste tires.

Under Environmental Conservation Law Article 27 (Law), a site that stores 1,000 or more waste tires at any one time is generally considered non-compliant unless it is registered with DEC as a waste tire storage/processing facility. Either the site owner or DEC, using Office of General Services (OGS) contractors, may perform waste tire abatement. Generally, the abatement process consists of removing excess waste tires from the site and establishing appropriate safeguards over any remaining tires. DEC encourages site owners to voluntarily bring their sites into compliance. However, if the site owner fails to do so in a timely manner, the Act allows DEC to assume responsibility for the abatement process and to recover costs from the owner.

DEC established a Solid Waste Enforcement Policy (Policy) to ensure sites comply with State statutes, regulations, and permits that regulate solid waste. The Policy includes guidance to address violations and prescribes time frames for enforcement to ensure timely abatement and mitigate the risks to public health, safety, and the environment. According to the Policy, when a non-compliant waste tire site is discovered, DEC should:

-
- Issue a Notice of Violation (NOV) within 15 days of discovering the non-compliant site;
 - Send a referral package to DEC's Office of General Counsel within 30 days of discovering the non-compliant site;
 - Obtain a fully executed consent order (which allows DEC or a contractor access to the site); commence enforcement proceedings; or refer the matter to another party, such as the Environmental Protection Agency or Attorney General within 150 days of discovering a non-compliant site.

To fund waste tire management and recycling efforts, the Law established a waste tire management and recycling fee of \$2.50 for each new tire sold, including tires on new motor vehicles. All fees are deposited into the Waste Management and Cleanup Fund (Fund) for use in administration of provisions of the Act. The waste tire management and recycling fee has been extended several times and is currently due to expire on December 31, 2022.

DEC is authorized to use the Fund to cover costs associated with administering and enforcing the Act, such as inventorying and assessing waste tire sites and abating non-compliant waste tire stockpiles. A 2010 amendment to the Law broadened the use of Fund monies to include costs associated with the administration and enforcement of all requirements of the Law, *Collection, Treatment and Disposal of Refuse and Other Solid Waste*, excluding titles related to inactive hazardous waste disposal sites and the Brownfield cleanup program. Prior to the 2010 amendment, the use was strictly for purposes under *Waste Tire Management and Recycling*.

Between April 1, 2013 and March 31, 2018, DEC received approximately \$135 million in fees. DEC uses program cost centers to track expenses charged to the Fund to specific programs, including those related to waste tires and the collection, treatment, and disposal of refuse and other solid waste. Disbursements from the Fund (for personal services, non-personal services, and fringe benefits) totaled about \$115 million between April 1, 2013 and March 31, 2018 (see table). Non-personal service costs include commodities, contractual services, travel, utilities, and equipment.

Waste Management and Cleanup Fund Collections and Disbursements

	State Fiscal Year				
	2013-14	2014-15	2015-16	2016-17	2017-18
Opening Balance	\$7,553,393	\$8,213,658	\$12,206,107	\$15,194,508	\$19,850,747
Total Collections	\$26,062,940	\$26,588,263	\$27,598,477	\$26,940,488	\$27,537,485
Expenses					
Personal Service Costs	\$11,221,479	\$11,431,977	\$11,045,484	\$12,198,530	\$13,012,715
Non-Personal Service Costs	5,642,127	4,693,293	7,357,069	3,329,454	1,614,821
Fringe Benefits	6,191,905	6,470,544	6,207,523	6,756,265	7,830,973
Total Expenses	\$23,055,511	\$22,595,814	\$24,610,076	\$22,284,249	\$22,458,509
Ending Balance	\$8,213,658*	\$12,206,107	\$15,194,508	\$19,850,747	\$24,929,723

*Reflects other expenditures of \$2,347,164, including a transfer of \$2 million from the Fund to the State's General Fund and \$347,164 in other spending.

Audit Findings and Recommendations

DEC has abated a significant number of the waste tire sites in the State. Of the 187 non-compliant waste tire sites initially identified, DEC had abated approximately 160 sites (86 percent) totaling nearly 44 million tires (99 percent) by October 2018. The remaining 27 sites contain approximately 377,500 waste tires (less than 1 percent) of the total identified.

We identified delays establishing a new abatement contract through OGS, which were partially due to DEC not promptly obtaining consent orders (which allow the contractor access to the site) for a sufficient number of sites to be included in the contract. The lack of a contract temporarily delayed initiating abatement at additional sites. We also identified delays with certain actions usually taken prior to initiating abatement for some of the remaining 27 sites. Although some delays were warranted, others didn't appear to be.

We reviewed \$55.9 million paid from the Fund, including \$44.7 million of personal and non-personal service costs for the period April 1, 2016 through March 31, 2018 and an additional \$11.2 million of personal service costs for the period April 1, 2018 through February 6, 2019. We determined DEC generally expensed Fund money for purposes allowed under the Law. However, we identified some expenses charged to the Fund that did not appear to be related to waste tire abatement or other waste management activities. Officials told us they developed a process in 2010 that allows divisions with mandated responsibilities that include, but are not limited to, activities covered under the Law, to charge certain amounts to the Fund. However, the methodology was neither retained nor provided for our review. While we agree some amount should be charged to the Fund for such divisions, we could not determine the reasonableness of the methodology used or the amounts established.

Abatement and Enforcement of Non-Compliant Waste Tire Sites

Abatement of Waste Tire Sites

Of the 187 non-compliant waste tire sites identified by DEC, approximately 160 sites (86 percent) – including nearly 44 million tires (99 percent) – were abated by October 2018. The remaining 27 sites account for approximately 377,500 waste tires (1 percent), of which 180,000 (about 48 percent) are at 1 site, as shown in the Exhibit at the end of this report. Waste tire abatement at this site has been postponed due to the presence of hazardous materials, and the site has been referred to DEC's Division of Environmental Remediation for hazardous waste cleanup and tire abatement. The other sites contain

relatively few waste tires, with 21 sites containing about 10,000 or fewer tires each.

We found delays in initiating the process to establish a new abatement contract to replace the contract that ended on October 30, 2016. The new contract was not in place until August 2018, partially because DEC had not promptly obtained consent orders (which allow DEC and the contractor access to the site) for a sufficient number of sites to be included in the contract. DEC officials stated the consent orders may not have been in place for various reasons, including pending litigation, lack of resources, and problems with owner cooperation. Such delays could have potentially been mitigated if the contract process and the documents for sites to be included, or alternative sites, had been initiated sufficiently ahead of the prior contract end date.

Enforcement Actions

DEC staff stated that, in many cases, they prefer to work with waste tire site owners to get the sites in compliance before taking enforcement action. We agree that voluntary abatement by the owners is preferable because they can avoid or mitigate undue financial hardship and the cleanup can potentially be done more quickly. However, when owners do not acknowledge that a non-compliant waste tire stockpile exists and/or do not voluntarily begin or agree to abate the site, DEC should begin enforcement action. We identified delays taking certain steps that, although not required, are recommended to be completed before DEC begins to abate a site. One such step is to issue a Notice of Violation (NOV), which is generally a written notification of the nature of the violation and typically directs the owner to discontinue, abate, or alleviate the condition or activity. Of the 17 NOVs DEC issued for 26 sites, only 5 were issued within the recommended 15-day period after the site was discovered. (For 1 site, the date of discovery could not be determined; therefore, we could not calculate how long it took to issue the NOV.) Of the remaining 11 NOVs for which we had relevant information, 5 were issued within two months, 3 were issued in about two to six months, and 3 were issued more than a year after discovery.

If the owner does not voluntarily agree to abate the site, other steps recommended in the Policy are to obtain a consent order, commence an enforcement action, or refer the matter to another entity. DEC records show these steps were not taken for 20 of the sites within 150 days, as the Policy recommends. We recognize that these sites don't need to be abated simultaneously. However, for sites the owner does not plan to abate, taking some of these steps sooner to prepare them may aid future efforts for timely abatement and minimize potential adverse impacts.

Waste Management and Cleanup Fund Expenditures

We reviewed \$55.9 million paid from the Fund, including \$44.7 million of personal and non-personal service costs for the period April 1, 2016 through March 31, 2018 and an additional \$11.2 million of personal service costs for the period April 1, 2018 through February 6, 2019. Of this amount, the majority appears to have been appropriately disbursed for personal and non-personal services for purposes allowed under the Law, including about \$3.3 million related to waste tire abatement. However, we identified about \$5.1 million in expenses charged to the Fund that did not appear to be related to waste tire abatement or other waste management activities allowable under the Law. Of \$36.5 million in personal services for 218 employees paid from the Fund from April 1, 2016 through February 6, 2019, \$4.1 million was charged for 24 employees whose work may not have been entirely related to allowable activities. Most of these charges were for employees in DEC's Office of General Counsel or the Division of Law Enforcement (DLE), which both have some mandates the Law does not authorize to be charged to the Fund. Additionally, we identified personal service costs of \$139,000 for one employee who worked in the executive office that DEC incorrectly charged to the Fund. Once we alerted them to the mistake, DEC officials stated they would promptly correct the funding source for the employee.

For the period April 1, 2016 through March 31, 2018, \$4.9 million in non-personal service costs were charged to the Fund for 1,478 individual expenses. Of the \$4.9 million, about \$1 million (20 percent) was charged to cost centers not directly related to authorized purposes. We reviewed a sample of 105 expenses totaling about \$171,000 and found DEC did not have support that any of the expenses were directly related to waste tire abatement or other general waste management activities. For example, we identified purchases of \$7,506 for a computer encryption package for DLE, \$4,758 in expenses related to the DEC's training academy, \$1,224 for psychological evaluations, and \$587 in home telephone charges, which do not appear to be directly related to authorized purposes.

Officials stated that, after the Act was amended in 2010, expanding the use of the fees to include refuse and other solid waste, they developed a process that allows divisions with mandated responsibilities that include, but are not limited to, activities covered under the Law, to charge certain amounts to the Fund. Officials also said they recently completed a rough analysis that supported that the methodology developed in 2010 was still applicable for allocating charges from DLE to the Fund. Therefore, DEC officials disagreed that individual disbursements from the Fund must be specifically aligned with

purposes authorized under the Law, as long as the total amount charged does not exceed the allocation for the given division. However, the 2010 methodology was neither retained nor provided for our review. While some amount could be charged to the Fund for such divisions, we could not determine the reasonableness of the methodology used or the amounts established. As a result, it is not clear whether the methodology remains appropriate for allocation of such costs to the Fund.

Recommendations

1. Collaborate with OGS in the future to renew or establish new abatement contracts in a timely manner.
2. Take steps to initiate enforcement actions as promptly as possible for non-compliant sites, especially for those sites that demonstrate a lengthy period of non-compliance and where the owner has not agreed to or begun voluntary abatement activities.
3. Establish and document a methodology to estimate the portion of expenses to be charged to the Fund consistent with the authorized purposes under the Law, especially for those divisions that carry out multiple mandates.

Audit Scope, Objectives, and Methodology

The objectives of our audit were to determine if DEC is adequately monitoring and timely abating waste tire sites and whether the waste tire management and recycling fees collected are used consistent with the purposes defined in the Law. The audit covers the period April 1, 2016 to February 6, 2019.

To achieve our audit objectives, we reviewed relevant laws and regulations, DEC policies and procedures, tire abatement contracts, and Fund financial information. We interviewed DEC officials and OGS officials regarding abatement of non-compliant sites, disbursement of Funds, and the contracting process. We became familiar with, and assessed the adequacy of, DEC's internal controls as they related to our audit objectives.

We assessed the reliability of data in the electronic spreadsheets DEC uses to track the status of non-compliant waste tire sites as well as the Fund financial reports. We found instances where information in the tracking spreadsheets could not be relied upon, as it was inaccurate, incomplete, or both. Therefore, we deemed the data to be unreliable and limited our reliance on the data to support our audit findings, using hard copy records wherever possible and qualifying the reliability of the data in the report when it was used. We determined that the data contained in Fund financial reports was sufficiently reliable.

To determine whether DEC is adequately monitoring and timely abating waste tire sites, we judgmentally selected a sample of 31 waste tire sites from the total 187 waste tire sites. We judgmentally selected these 31 sites to include locations that appeared to be unabated according to information on the tracking spreadsheets.

To assess whether waste tire fee collections are being used for purposes authorized under the Law, we used both random and judgmental sampling methodologies to select a sample of 109 transactions totaling \$170,261 of 1,139 questionable non-personal transactions (with cost centers that appeared to be unrelated to purposes authorized by the Law) totaling \$1,027,089 for the period April 1, 2016 through March 31, 2018. Our sample of 109 transactions included 9 transactions judgmentally selected because they had account descriptions that appeared to be unrelated to authorized purposes and 100 other transactions selected at random. Of the 109 transactions we selected, 105 were payments totaling \$170,855 and 4 were credits totaling \$594. Neither the results from our random sampling nor our judgmental sampling can be used to project our conclusions across the population as a whole.

As part of audit procedures, the audit team used Geographic Information Systems (GIS) software for geographic analysis. As part of the geographic

analysis, we developed a visualization (see Exhibit) to improve understanding of our report. To improve ease of use, some minor locational changes were made in this visualization. These changes do not materially affect the accuracy or interpretations of the underlying data or visualization.

Statutory Requirements

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.

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

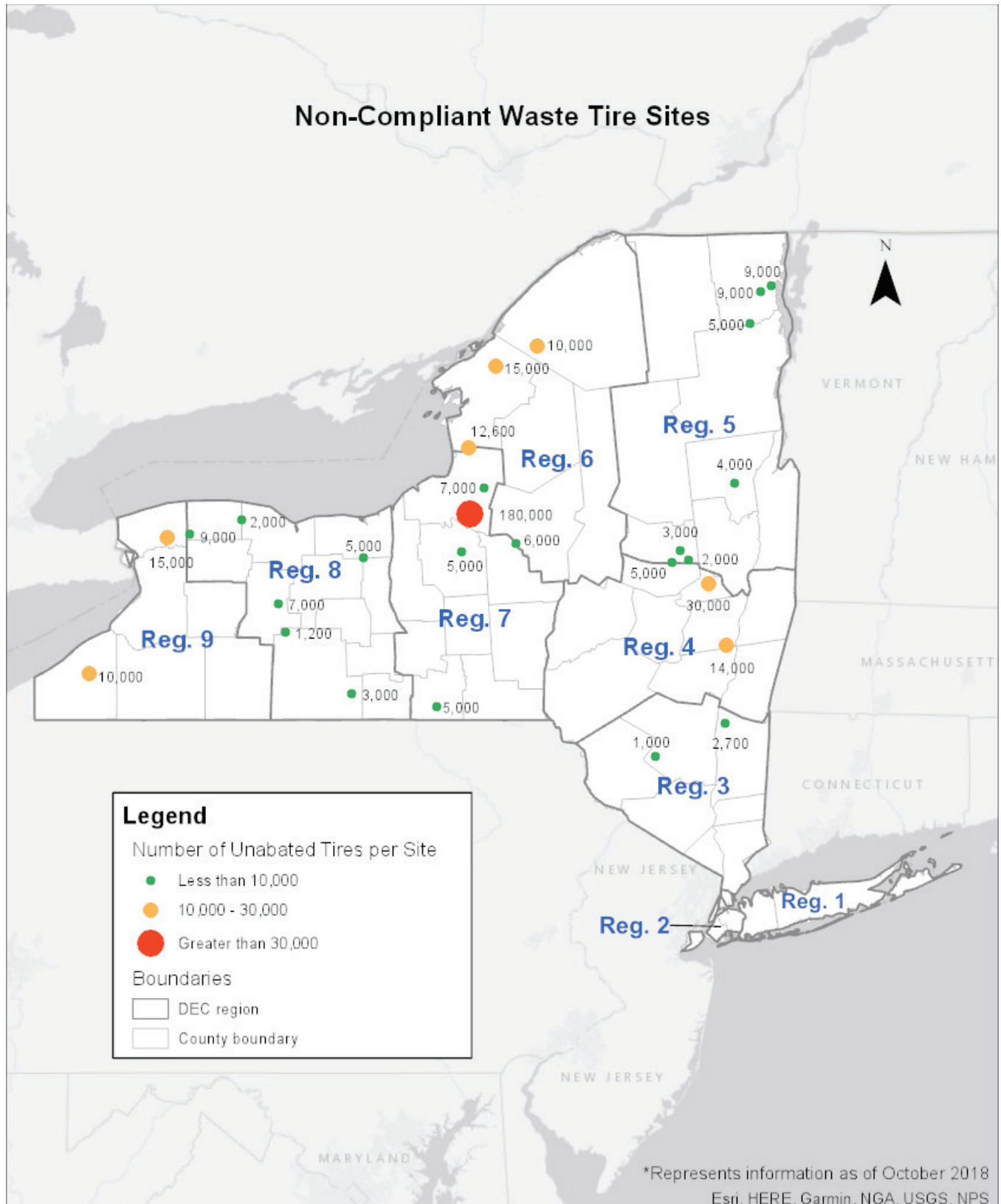
In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, 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 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.

Reporting Requirements

A draft copy of the report was provided to DEC 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. In general, officials agreed with our recommendations.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of DEC shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

Exhibit



Agency Comments

OFFICE OF THE COMMISSIONER

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August 9, 2019

Mr. Thomas P. DiNapoli
Comptroller
New York State Office of the State Comptroller
State Street
Albany, New York

Dear Comptroller DiNapoli:

The Department of Environmental Conservation (DEC) has reviewed your Draft Report entitled *Report of Oversight of Waste Tire Site Cleanup and Use of Waste Tire Fees, for the period April 1, 2016 to February 6, 2019*. DEC's comments with respect to this audit are contained in the enclosed document.

Please contact Ann Lapinski, Director of Audit and Investigation at (518) 402-9218 if you have any questions. Thank you.

Sincerely,



Basil Seggos
Commissioner



**Department of Environmental Conservation
Oversight of Waste Tire Site Cleanup and Use of Waste Tire Fees
2018-S-43
Response to OSC Draft Report**

The Department of Environmental Conservation (DEC) has reviewed the draft report dated July 2, 2019 containing the findings and recommendations of the Office of the State Comptroller (OSC) in connection with OSC's audit of DEC's Waste Tire Program. Overall, DEC has been very successful using the Waste Tire Fund for the clean-up of waste tires. As of October of 2018, DEC had abated 99% of the tires in New York State.

DEC's response is broken into two sections. The first section provides DEC's comments regarding certain factual inaccuracies and areas needing further explanation in the report and the second section is DEC's specific comments on the report's recommendations.

1) Draft Findings

1. Page 1, "About the Program", 7th sentence, Line 11: "*For the five-year period, ... DEC collected ...*" and Page 7, bottom paragraph, first sentence.

The Department of Taxation and Finance is responsible for collecting fees associated with the Waste Tire Management and Recycling Act.

[*Comment 1](#)

2. Objectives under Audit Highlights, pg. 1 states the audit period is April 1, 2016 through February 6, 2019.

The following instances use data that is outside the audit period:

About the Program, under Audit Highlights, pg. 1 "For the five-year period April 1, 2013 to March 31, 2018, DEC collected approximately \$135 million from waste tire management and recycling fees...Disbursements from the Fund for personal service, non-personal service, and fringe benefits costs totaled about \$115 million for the five-year period.

Last paragraph on pg. 7, Between April 1, 2013 and March 31, 2018... \$115 million between April 1, 2013 and March 31, 2018 (see table). Not only is this information outside the targeted time frame of the audit, but it is unclear as to why these years are included in the report.

3. Second paragraph after bullets on pg. 7, states: "A 2010 amendment to the Act allows the fee to be used for costs associated with the collection, treatment, and disposal of refuse and other solid waste, excluding inactive hazardous waste disposal sites"

The 2010 amendment allowed the fees from the Waste Tire fund to be used more broadly than it previously had been, making the above statement inaccurate. NYS Environmental Conservation Law §27-1915(1)(c) was amended to read as follows: "Waste tire management and recycling fees shall be made available for the following purposes:... *administration and enforcement of the*

[*Comment 1](#)

requirements of this article, (emphasis added) exclusive of title thirteen and fourteen.” Prior to the 2010 amendment, the use was strictly for purposes under Title 19. The amendment broadened the use to include all of Article 27 (excluding 13 and 14) and added the activities associated with the enforcement of the Article. The sentence in the report doesn’t clearly communicate these significant changes.

Although outside the audit scope, it should be noted that this Fund has again been amended in SFY 2019-20 to include a market analysis of outlets for waste tire utilization including recycling and energy recovery opportunities, excluding the incineration of waste tires.

5. Page 9, bottom Paragraph, second sentence: “Waste tire abatement at this site has been postponed due to the presence of hazardous materials, and the site has been referred to the DEC’s Division of Environmental Remediation (DER) for hazardous waste cleanup before tire abatement can resume.”

This appears to be a reference to the Fortino site in DEC Region 7. Waste tire abatement and cleanup of this site will not wait for hazardous waste cleanup, but instead will be performed as part of DER’s site cleanup.

[*Comment 2](#)

6. First paragraph on pg. 11 under Waste Management and Cleanup Fund Expenditures. “Of \$36.5 million in personal services for 218 employees paid from the Fund from April 1, 2016 through February 6, 2019, \$4.1 million was charged for 24 employees whose work may not have been entirely related to allowable activities.”

This figure (218 employees) is misleading because this represents unique employee names instead of the number of employees funded on this account at any one time. Although the number of fills funded on this account fluctuated, as is expected with attrition and fills, on average there were approximately 151 employees on this Fund at any one time between April 2016 and February 2019. This number is well below the 218 listed in the report.

[*Comment 3](#)

2) Recommendations

There are three recommendations in the report. One item has already been addressed and for the other two, DEC is prepared to address them as they arise in the waste tire abatement process. Nevertheless, the following is DEC’s response to the three recommendations provided in the draft report:

Recommendation 1 – Collaborate with OGS in the future to renew or establish new abatement contracts in a timely manner.

Department Response – The Department agrees with this recommendation that early collaboration with OGS is important to the speedy establishment of contracts under this program and will continue such cooperation. Prior to the expiration of the previous contract on October 30, 2013, the Department worked with OGS to develop a framework and requirements for a successor contract.

Recommendation 2 – Take steps to initiate enforcement actions as promptly as possible for non-compliant sites, especially for those sites that demonstrate a lengthy period of non-compliance and where the owner has not agreed to or begun voluntary abatement activities.

Department Response – The Department agrees with this recommendation that speedy enforcement actions are important in the cleanup of non-compliant sites and the Department is committed to continuously improving procedures to ensure that enforcement is initiated as early as possible in the process. There are valid reasons when the initiation of an enforcement action does not occur within the timeframes suggested in our guidance. While DEC staff work diligently to pursue cleanup, decisions on enforcement often depend on the level of cooperation from stockpile owners, which itself is influenced by factors such as the owner's health and financial status. In addition, DEC staff must spend time researching title and property boundaries, surviving relatives and the status of a potential estate to locate responsible parties and negotiate both access to the site and abatement of the tire piles. In some cases, DEC staff have worked diligently to convince a reluctant operator to stop taking tires and begin removing the few thousand scattered in piles around a junkyard, only to find that the operator of the business entered bankruptcy proceedings or has abandoned the business. Under these circumstances, DEC staff has to locate the owner of the property and start the process all over again. In still other cases, DEC's commencement of an enforcement action is held up while other enforcement agencies sort out title and liability issues on properties adjacent to, and entangled with, the small noncompliant waste tire stockpile. DEC staff commences timely enforcement actions and removal as soon as its due diligence investigatory efforts has shown that there is no one who will take or has taken responsibility for removing the waste tires.

Recommendation 3 – Establish and document a methodology to estimate the portion of expenses to be charged to the Fund consistent with the authorized purposes under the Law, especially for those divisions that carry out multiple mandates.

Department Response - The Department agrees with this recommendation and notes that starting in FY 2020, the Division of Law Enforcement (DLE) will utilize its non-personal service allocation from the Waste Management & Cleanup Fund to be expended solely toward payment of the Division's vehicle chargebacks. Using a calculation of the percentage of work done by DLE Investigators and Officers with respect to Article 27, DEC will use tracked mileage and maintenance of assigned vehicles for the DLE allocation from the Waste Management and Clean-up Fund. This new methodology will ensure that the Waste Tire Fund is not overcharged.

State Comptroller's Comments

1. We edited the report based on information in DEC's response.
2. We modified the report to reflect DEC's comments.
3. While we recognize that there may have been fewer employees paid from this Fund at any given time during our audit scope, for the period we reviewed, there were 218 distinct employees paid from the Fund.

Contributors to Report

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