



Department of State

Environmental Protection Fund

Report 2008-S-149



Thomas P. DiNapoli

Table of Contents

	Page
Authority Letter	5
Executive Summary	7
Introduction	9
Background	9
Audit Scope and Methodology	10
Authority	10
Reporting Requirements	10
Contributors to the Report	11
Audit Findings and Recommendations	13
Grant Eligibility and Award Criteria	13
Timeliness of the Award Process	13
Recommendations	14
Recommendation	16
Recommendation	17
Agency Comments	19

State of New York Office of the State Comptroller

Division of State Government Accountability

December 17, 2009

Lorraine A. Cortés-Vázquez
Secretary of State
Department of State
One Commerce Plaza
Albany, NY 12231

Dear Ms. Cortés-Vázquez:

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 of the Department of State's controls over the awarding of Environmental Protection Fund grants. 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



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objectives

The objectives of our performance audit were to determine if the Department of State (Department) awards Environmental Protection Fund (EPF) grants timely and based on valid, objective criteria.

Audit Results - Summary

During the three fiscal years ended March 31, 2008, nearly \$72 million of EPF monies funded four major programs at the Department: the Local Waterfront Revitalization Program (LWRP); the Quality Communities Program (QC); the New York State Ocean and Great Lakes Initiative (OGL); and the Long Island South Shore Estuary Reserve (LISS). LWRP received the largest share of these funds, representing 84 percent of the Department's allocation. We found the Department has adequate controls in place to award funds to eligible grant applicants based on valid, objective criteria that are consistently applied. However, we identified several areas where the Department could improve timeliness for all four of its EPF programs.

The EPF award process relies on the timeliness of many events, beginning with the appropriation and allocation of funds and continuing through efforts to solicit and evaluate proposals, award funds, and develop and execute contracts. In several instances, we found inordinate delays in the Department's efforts to deliver EPF funding timely. For example, the Department did not request its 2007-08 allocation of \$900,000 for the LISS program from the Division of Budget until almost 18 months after the funds were appropriated. The Department also did not award 2005-06 and 2007-08 fiscal year LWRP grants until after the years had ended. The timing of any of these events can affect how well the Department meets EPF objectives.

We found the Department can also make improvements to execute contracts more quickly. Over the three-year period that we examined, the Department awarded 270 LWRP grants totaling \$62.3 million. As of December 2008, almost half of these awards (47 percent) did not have executed contracts in place, including 8 awards from 2005-06, 21 from 2006-07, and all 98 awards from 2007-08. Since grantees cannot utilize funds until contracts are in place, these delays hinder the Department's ability to advance EPF objectives.

Our audit report contains four recommendations directed toward improving the Department's timely administration of EPF funds. Department officials agreed with our recommendations and indicated they have taken steps to implement them.

This report, dated December 17; 2009, is available on our website at: <http://www.osc.state.ny.us>.
Add or update your mailing list address by contacting us at: (518) 474-3271 or
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Division of State Government Accountability
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Introduction

Background

The Environmental Protection Fund (EPF) was created by Chapters 610 and 611 of the Laws of 1993 to provide funding for: State land acquisition; development and maintenance of State parks; local parks programs; local recycling programs; and other environmentally-related programs and initiatives. Major funding for EPF comes from a dedicated portion of real estate transfer tax revenues. Four main agencies administer EPF: the Department of State (Department); the Department of Environmental Conservation (DEC); the Office of Parks, Recreation and Historic Preservation; and the Department of Agriculture and Markets. Annual State EPF funding in recent years has totaled about \$250 million.

All EPF funds are first appropriated to DEC. The Department's portion is then suballocated at DEC's initiation or upon the Department's request. The Department must then request the Division of Budget (DOB) to make its funds available for spending. During our audit period, the Department used its EPF funds for four programs: Local Waterfront Revitalization Program (LWRP); Quality Communities (QC); New York State Ocean and Great Lakes Initiative (OGL); and Long Island South Shore Estuary Reserve (LISS).

For the three fiscal years ended March 31, 2008, nearly \$72 million was allocated to the Department to further the objectives of these four programs. Of that amount, over \$60 million (84 percent) was allocated to LWRP for waterfront projects; QC received \$6 million in support of municipal planning efforts; OGL received \$3.3 million for coastal ecosystem projects; and LISS received \$2.4 million.

Both LWRP and QC are competitive grant programs in which municipalities respond to an annual Request for Applications (RFA) by submitting project applications that meet a given year's funding priorities and criteria. For LWRP, the Department solicits grant applications from local governments for waterfront projects. These awards are for a maximum of 50 percent of eligible project costs. Similarly, the Department issued RFAs for its QC program during 2005-06 and 2006-07 to fund 80 percent of eligible costs for municipal planning (QC was only funded through the 2006-07 fiscal year).

In contrast, the Department awards OGL and LISS contracts to vendors using Requests for Proposals (RFPs) or similar agreements in which the amount paid to the recipient is based upon what the Department and the

entity agree upon for specific project-related work. Both OGL and LISS have a related oversight council that identifies priorities and the projects that will address them. Once funding levels and specific projects are determined, each program uses an RFP or Memorandum of Understanding (MOU) process to select recipients and enter into agreements.

Audit Scope and Methodology

We audited to determine if the Department awards EPF grants timely and based on valid, objective criteria. Our scope period was from April 1, 2005 through June 15, 2009. To accomplish our objectives, we reviewed relevant State and local laws and regulations, as well as RFAs, scoring methodologies, grant proposals, contracts and correspondence. We also analyzed financial data related to EPF spending, and met with Department officials to confirm and enhance our understanding of the Department's EPF programs.

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

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.

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. Their comments were considered in preparing this report and are included in their entirety at the end of this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Secretary of State 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 therefor.

**Contributors to
the Report**

Major contributors to this report were Frank Houston, John Buyce, Bob Mainello, Sharon Salembier, Rick Podagrosi and Matt Luther.

Audit Findings and Recommendations

Grant Eligibility and Award Criteria

The Department uses a competitive process to solicit funding applications and award grants to municipalities for two of its four EPF programs. These two programs (LWRP and QC) account for the majority (92 percent) of the Department's EPF funds. LWRP funding assists waterfront municipalities in planning for the future of their waterfronts and embarking on improvement projects to implement their plans. QC funds municipal planning efforts that link environmental protection, economic development, and community livability.

The Department has established grant selection criteria for both programs and scores applications based on the extent that they meet program requirements and address priority funding areas. Department staff conduct an initial review and scoring for each application, after which a committee reviews the scoring and arrives at a final score. Projects with the highest scores are selected for funding. In fiscal year 2007-08, 98 of 155 applications were selected for funding.

To assess whether the Department awarded EPF grants to eligible applicants by consistently applying valid, objective criteria, we selected a sample of LWRP applications and verified that each project met eligibility requirements and was scored accurately and fairly. We focused our examination on the five lowest-scored projects that received awards and the five highest-scored projects that did not receive awards. We found the funded projects met the grant eligibility requirements and the scoring records supported the Department's assessments and reflected consistency in scoring.

Timeliness of the Award Process

Timeliness in Requesting Funding Allocations

The State Legislature adopted the Long Island South Shore Estuary Reserve Act in 1993 to protect and manage this area as a single integrated estuary and to preserve its strong role in the local economy. The law required the establishment of a Long Island South Shore Estuary Reserve Council, of which the Secretary of State serves as the chair. In this role, the Department provides input in determining which projects receive LISS funds, which are initially appropriated to DEC and then allocated to the Department. Because timely awards are critical to ensuring that EPF funds are available to meet intended objectives, the Department needs to be prompt in its actions to request the allocation and release of funding from DEC and DOB.

We found that the Department did not act timely to make \$900,000 in fiscal year 2007-08 LISS funds available for projects. In January 2008, ten months

into the fiscal year, DEC requested that DOB suballocate the LISS funds to the Department. The Department then did not ask DOB to make these funds available for spending until late in September 2008; nearly 18 months after the funds were appropriated. By the time this request was made, DOB was dealing with statewide budgetary constraints caused by a worsening economy. As a result, the Department did not receive DOB approval to release the funding until May 2009; more than two years after it was first appropriated. More timely action by the Department could have made these funds available much sooner. Department officials indicate they now plan to routinely request the suballocation from DEC as early as possible during each fiscal year and have done so for 2009-10 funds.

- Recommendations**
1. Improve communication with all entities involved in the fund allocation process to facilitate timely availability of EPF funds and increase the likelihood that other events in the award process occur timely.
 2. Monitor the status of funding requests and follow up as needed to help advance the process.

Timeliness in Soliciting Applications and Awarding Funds

Delays in awarding allocated funds hinder the Department's ability to advance EPF objectives. We found delays in awarding funds for three of the four programs managed by the Department.

LWRP Funding

We found that for two of three fiscal years we examined, the Department did not announce and award LWRP grants until after the related fiscal year had already ended. The first awards for 2005-06 were not announced until after the next (2006-07) year had begun in April 2006, while the 2007-08 awards were not made until June 2008. For both years, we found delays in key events that contributed to the late awards.

Department officials stated they typically start soliciting LWRP applications from potential grant recipients in April of each year. However, we found that although the 2007-08 funding was appropriated timely, the Department didn't begin soliciting LWRP grant applications until five months later, in late September 2007. We also found that in 2005-06, the Department finalized application scores by early October 2005, but didn't forward recommendations to the Governor's Office until mid-January 2006; more than three months later. These same two steps took less than seven weeks during 2006-07 and less than two weeks during 2007-08. Despite the absence of explicitly required time frames for the grant award process, good

business practices indicate these events should happen in a reasonable time frame.

OGL Funding

In 2006, the Legislature adopted the New York State Ocean and Great Lakes Ecosystem Conservation Act, which calls for implementing policies that will effectively conserve, maintain and restore coastal ecosystems and thereby sustain the human and wildlife populations dependent on these resources. The Act also created the nine-agency New York Ocean and Great Lakes Ecosystem Conservation Council (OGL Council) to implement ecosystem-based management and provide for better coordination among the agencies.

DEC, as the lead EPF agency, suballocates OGL funding to other participating agencies. After the projects and funds are determined, the Department procures vendors for its projects either through requests for proposals (RFPs) or as single source service providers. OGL's first funding year was 2006-07, with a Department allocation of \$2.58 million. An allocation of \$752,500 followed for 2007-08. The Department uses OGL funds for about seven to eight projects each year. As with all EPF programs, timely awards are a critical part of assuring that funds are utilized in pursuit of program objectives. However, we found inordinate delays in the Department's efforts to award OGL funds.

As of March 2009, the Department had not yet awarded more than \$540,000 (21 percent) of the nearly \$2.6 million allocation from 2006-07 and had not awarded any of its 2007-08 allocation of \$752,500. This occurred even though the OGL Council had already decided on the Department's share of funds based on proposed projects. Department officials cited the newness of the OGL program and the need for prolonged interagency negotiations about funding as factors contributing to the delay in awarding OGL funds.

As a result of these delays, OGL funds are not being used efficiently. Department officials acknowledged the problem and stated they have already taken steps to speed up the award process, primarily by reaching an agreement with DEC that better describes how the funds will be divided among the participating agencies. Also, Department officials stated that, now that the Council structure is firmly in place, it is developing multi-year workplans and budgets for the funds.

LISS Funding

Appropriations for the LISS program totaled \$2.4 million for the three fiscal years ended March 31, 2008. However, as of May 2009, we found only about \$1.7 million had been awarded to vendors to provide services related

to the program. About \$700,000, or 29 percent of the funding, had yet to be awarded. According to Department officials, because LISS is not a competitive grant program with clear annual funding cycles and awards like LWRP and QC, there is a less defined timeline for when awards will be determined. This, combined with the cumulative effect of not having utilized all funds available from prior years, has resulted in the significant balance of uncommitted funds.

- Recommendation** 3. Improve communication with all entities involved in the EPF award process to increase the likelihood that key events occur timely.

Timeliness in Developing Contracts

After the LWRP and QC grant awards are approved and announced, Department staff begin working with grant recipients to develop contracts for the projects. Recipients develop a workplan that identifies the tasks needed to complete the grant project and the budgeted costs for these tasks. The Department reviews the workplan to ensure that it is related to the initial grant proposal and detailed enough to support project completion. Department officials indicate that it normally takes at least six to eight weeks to develop the grant contracts and send them to the grant recipients. The Department then must also send the resulting contracts to both the Comptroller and the Attorney General for approval. We found the Department can take actions to improve the timeliness of developing the contracts under both programs.

LWRP Contracts

We found that although the Department is monitoring the contract development of LWRP awards, it can make improvements to more quickly move grant awards to completed contracts. The Department awarded 270 LWRP grants totaling \$62.3 million during the three fiscal years ended March 31, 2008. As of December 2008, 127 of these grants totaling more than \$31 million had still not progressed to contract execution. This includes 8 awards from 2005-06, 21 from 2006-07, and all 98 awards made during 2007-08, which represented nearly \$26 million of total.

We reviewed 10 of the 127 outstanding grants to assess whether they were adequately progressing toward contract completion and to determine what efforts the Department was making to move them toward completion. We focused our examination on the highest dollar-value grants outstanding for each year. We found the Department was slow to send contracts to two of the selected grant recipients. In one case, the procurement record was completed during January 2007, but the contract wasn't sent to the recipient until October 2008, over 21 months later. In the other case, the procurement record was completed during 2007, yet the Department didn't

send the contract out until over 20 weeks later, in September 2007. We concluded the Department had not made adequate efforts to move these grants forward.

We followed up on the status of these 127 contracts in March 2009 and found that only one grant had progressed to contract, while four other awards had been rescinded by the Department. The remaining 122 projects, four of which were from 2005-06, were still in various stages of contract development. Department officials told us they are continuing to make improvements to the contract development process, including standardizing contract language to speed up reviews.

QC Contracts

Under the QC program, for which EPF funding was not continued after the 2006-07 fiscal year, the Department awarded 105 grants totaling \$6 million: 54 grants for 2005-06 and 51 grants for 2006-07. The original contract terms for the 2005-06 QC grants encompassed the two years ending on March 31, 2007. The Department issued automatic extensions until March 31, 2008 and also authorized a second one-year extension to 2009 based upon individual grantee requests. Similarly, grants for 2006-07 also included a project completion deadline of March 31, 2009, for which Department staff told us extensions were not available. In fact, the Department informed grantees that projects not completed by March 31, 2009 might not be eligible for reimbursement.

At the time of our audit, more than two years after the last QC program funding was appropriated, the Department had not yet completed contracts for 13 (25 percent) of the 51 grants awarded from 2006-07 funds. We reviewed five of these grants to determine why completed contracts were not in place. Two of these contracts progressed to completion during the course of our testing, but the other three had still not progressed to contract execution by January 2009. For two of these projects, the Department was able to demonstrate recent ongoing communications with the grantees discussing progress in executing contracts and filing reimbursement requests. However, in the last case, the only documented communication between the Department and the grantee was an October 2008 letter indicating that the grantee would be submitting requested information. According to Department staff, the grantee submitted a workplan that was rejected, thereby preventing the contract from being finalized.

- Recommendation**
4. Monitor the contract process for grant awards so that contracts are developed and finalized promptly.

Agency Comments



STATE OF NEW YORK DEPARTMENT OF STATE

DAVID A. PATERSON
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

November 19, 2009

Mr. Frank J. Houston
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, NY 10038

Dear Mr. Houston:

We reviewed the Office of the State Comptroller's audit report (2008-S-149) addressing whether the Department of State awards Environmental Protection Fund (EPF) grants timely and based on valid, objective criteria.

We are pleased you "found the Department has adequate controls in place to award funds to eligible grant applicants based on valid, objective criteria that are consistently applied". We continually work to improve our processes and welcome your recommendations toward that effort.

Our comments and responses to the four recommendations made in your report follow below. We understand our response will be included as part of your final report.

Recommendation #1

Improve communication with all entities involved in the fund allocation process to facilitate timely availability of EPF funds and increase the likelihood that other events in the award process occur timely.

Recommendation #2

Monitor the status of funding requests and follow up as needed to help advance the process.

Agree (Recommendations 1 & 2) – Department of State (DOS) now routinely requests sub allocation of the EPF SSER funds from the Department of Environmental Conservation (DEC) as soon as possible following the beginning of each new state fiscal year. Additionally, the DOS Fiscal Office will continually monitor the Office of the State Comptroller's Journal 020 report for notification of sub allocations to DOS.

Recommendation #3

Improve communication with all entities involved in the EPF award process to increase the likelihood that key events occur timely.

Agree – We have been aware of this problem and several months ago gained an agreement with DEC that provides a set percentage of each fiscal year's appropriations for OGL EPF to remain with DEC. We are confident this will ensure more timely contracting and expenditures in future fiscal years. We acknowledge that the 2005-2006 EPF LWRP award recommendations did not follow the timely submission to the Governor's Office, as was typical past practice for the Department. We will ensure that future recommendations are transmitted in a timely manner. We have instituted a multi-year project budget and spending plan for the LISS which will result in more timely use of available funds.

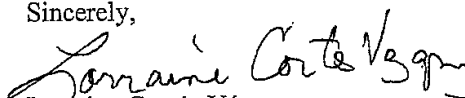
Recommendation #4

Monitor the contract process for grant awards so that contracts are developed and finalized promptly.

Agree – Over the past year, we increased QC staff time from 35% of one full time equivalent (FTE) to 100% of one FTE. We have also made improvements to the EPF LWRP contract development process, including standardized contract language, which will reduce the time needed to prepare contract work plans.

Thank you for the opportunity to respond to your audit. We will continue our efforts to identify improvements to the EPF grant process at the Department of State.

Sincerely,


Lorraine Cortés-Vázquez
Secretary of State