
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**EMPIRE STATE
DEVELOPMENT
CORPORATION**

RECYCLING PROGRAM

Report 2008-S-137

AUDIT OBJECTIVE

The objective of our performance audit was to determine whether the Empire State Development Corporation (Corporation) has a recycling program that is in compliance with applicable State and local laws and Executive Orders.

AUDIT RESULTS - SUMMARY

The Corporation is responsible for establishing a recycling program as outlined in section 2878-b of the Public Authorities Law as amended by the Solid Waste Management Act of 1988 (Act) and Executive Order 4 (EO 4) issued April 2008. Additionally, the Corporation was urged to undertake waste reduction and recycling efforts by Executive Order 142 (EO 142) issued January 1991. We found the Corporation has implemented a recycling program that is substantively in compliance with applicable governance. The Corporation has instituted a program to recycle paper, metal, plastic, computers and recently added cardboard; however, the Corporation does not recycle glass generated within its offices. Corporation officials informed us, they had provided education consistent with EO 142 to employees stationed in its offices. However, the Corporation must update the recycling training information previously provided to their employees to reflect the new requirements under EO 4.

Under EO 4, the Corporation is required to develop a Sustainability and Environmental Stewardship Program (Program) and assign an employee to serve as the Sustainability and Green Procurement Coordinator (Coordinator). The Program must include specific projects, programs and policies designed to reduce the generation of waste and source separate recyclable materials, including paper, metal glass and plastic. The

Coordinator is responsible for providing Program training to Corporation staff, vendors and contractors. We found the Corporation has assigned a Coordinator and is waiting for the final guidance from the Interagency Committee on Sustainability and Green Procurement (Committee) before developing a formal written Program.

Our audit report contains three recommendations directed toward improving the Corporation's compliance with applicable governance.

This report, dated February 27, 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
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

New York State has a long history of encouraging the reduction and recycling of solid waste materials. Two decades ago, in 1988, the State enacted the Solid Waste Management Act (Act), which laid out the four key priorities of the State's solid waste management policy:

- Reducing the amount of waste generated in the first place;
- Maximizing the amount of waste that is reused or recycled;
- Recovering as much energy as possible from what cannot be reused or recycled; and

- Appropriately disposing of the remaining solid waste.

The Act required most State agencies, public authorities, corporations and commissions to source separate their solid waste (i.e., to separate waste at the point it is discarded by putting recyclable paper, metal, glass and plastics into one container and non-recyclable items such as food and soiled items into another container). In addition, municipalities throughout the State were required to pass their own local ordinances or legislation requiring separation of solid waste, whether left out for collection or delivered to a solid waste facility. Consequently, public benefit corporations located within these municipalities are required to comply with their recycling laws.

In January 1991, the Governor issued Executive Order 142 (NYCRR 4.142) (EO 142) on *Establishing New Waste Reduction and Recycling Initiatives for State Agencies*, thereby reaffirming the State's commitment to reduce and recycle waste. Under EO 142, State agencies were required to source separate paper and other products from their waste stream. (State public benefit corporations and authorities were "urged" to undertake programs consistent with the Order.) Source separation programs were to be enhanced, through employee education and installation of equipment, such as recycling bins. EO 142 also required State agencies to submit an annual report to the New York State Office of General Services (OGS) in August of each year detailing their waste reduction and recycling activities and any recommendations for additional measures that needed to be taken. Specifically EO 142 also directed OGS and the Departments of Environmental Conservation (DEC), Transportation (DOT) and Economic Development (DED) to provide State agencies with technical assistance in

developing and implementing their source separation programs. (However, EO 142 did not require public benefit corporations such as the Corporation to comply with the annual reporting requirement.)

In April 2008, the Governor issued Executive Order 4 (EO 4) (9 NYCRR 7.4) on *Establishing a State Green Procurement and Agency Sustainability Program*. EO 4 created the Interagency Committee on Sustainability and Green Procurement (Committee) comprised of the heads 12 State agencies and public authorities. EO 4 requires each State agency, public benefit corporation, such as the Corporation, and authority to designate a Sustainability and Green Procurement Coordinator and develop a comprehensive Sustainability and Environmental Stewardship Program (Program). EO 4 builds upon the requirements of EO 142 (which it superseded) in that each public corporation's Program must provide for source separation of its waste to maximize the amount of paper, metal, glass and plastic that is recycled. Technical assistance for agencies continues to be available from OGS and DEC, as well as the Environmental Facilities Corporation, and the New York State Energy Research and Development Authority. Beginning March 1, 2009, State agencies, public benefit corporations and authorities are required to submit an annual report to the Committee that will, in turn, provide a summary report to the Governor.

The Corporation, with its co-headquarters in New York City (NYC) and Buffalo, employs about 378 employees and has five regional offices, three of which are located within buildings operated by OGS. The majority of Corporation employees, about 333, are stationed at both headquarters. The remaining employees work in various regional or shared office spaces throughout the State. OGS is

responsible for the recycling programs at the buildings they operate.

AUDIT FINDINGS AND RECOMMENDATIONS

Recycling Program

The Corporation is responsible for establishing a recycling program as outlined in section 2878-b of the Public Authorities Law as amended by the Act and EO 4. Additionally, the Corporation was urged to undertake waste reduction and recycling efforts by EO 142. We found the Corporation has implemented a recycling program that is substantively in compliance with applicable requirements. The Corporation has instituted a program to recycle paper, metal, plastic, computers and recently added cardboard; however, the Corporation does not recycle glass, generated within its offices.

We reviewed the recycling laws for NYC and Buffalo, which are the locations of the Corporation headquarters and nearly all of Corporation's employees. NYC requires commercial businesses to recycle office paper, magazines, catalogs, phone books, newspaper and corrugated cardboard, while food and beverage service establishments must recycle glass, plastic, metal and corrugated cardboard. In addition, commercial business tenants are required to prominently post signs notifying employees about how and what to recycle and to provide labeled recycling containers in designated areas for the source separation of recyclables. The City of Buffalo requires commercial businesses to source separate newsprint, paper, magazines, cardboard and wood waste.

We note that the Corporation has provided education, consistent with EO 142, to employees stationed in its offices. However,

the Corporation must update the recycling training information previously provided to their employees to reflect the new requirements under EO 4.

Under EO 4, the Corporation is required to assign an employee to serve as the Sustainability and Green Procurement Coordinator (Coordinator) by September 1, 2008. The Coordinator is responsible for providing Program training to Corporation staff, vendors and contractors. We found the Corporation has assigned a Coordinator and is waiting for the final guidance from the Committee before developing a formal written Program.

Recommendations

1. Revise the recycling program to ensure offices are recycling glass.
2. Retrain employees on the established recycling program in accordance with EO 4.

Reporting

EO 142 did not require public benefit corporations, such as the Corporation, to submit annual reports. However, EO 4 requires the Corporation to begin submitting annual reports on its recycling efforts starting on March 1, 2009. Data collection can help monitor the success of waste prevention and recycling efforts as well as identify areas for improvement, while fulfilling annual reporting obligations. However, as with any data collection activities, the Corporation must develop effective controls and monitoring activities to ensure the data being collected is comprehensive and complete. In addition, the data collected and reported should cover all Corporation office locations.

Recommendation

3. Implement internal control activities to assure the accuracy of data reported on future annual reports.

AUDIT SCOPE AND METHODOLOGY

We audited the Corporation's recycling program from April 1, 2006 through October 31, 2008 to determine whether it is in compliance with applicable state and local laws, as well as Executive Orders. To accomplish our objectives, we reviewed relevant State and local laws and Executive Orders 4 and 142. We met with Corporation officials and reviewed supporting documentation to obtain an understanding of the Corporation's recycling program. We reviewed the recycling efforts at the Corporation's NYC headquarters and contacted officials at the Buffalo headquarters concerning their recycling activities.

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 who 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 management 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 X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

REPORTING REQUIREMENTS

A draft of this report was provided to Corporation officials for their review and comment. Their comments have been considered in the preparation of this report and are included as Appendix A. Corporation officials stated that they generally agree with all three recommendations and have taken, or will take, action to address them.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Empire Development Corporation 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 Ken Shulman, William Clynes, Danielle Rancy, Dave Pleeter, Sally Perry and Robert Horn.

APPENDIX A – AUDITEE RESPONSE



Anita W. Laremont

Senior Vice President - Legal
and General Counsel
Legal Department

February 8, 2009

Steven E. Sossei
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State St., 11th Floor
Albany, NY 12236

Re: Audit 2008-S-137 Recycling Program

Dear Mr. Sossei:

Enclosed is Empire State Development Corporation's response to the draft audit report on the Recycling Program.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Anita W. Laremont".

Enclosure

cc: Marisa Lago

Empire State Development Corporation

633 Third Avenue New York, New York 10017 Tel 212 803 3750 Fax 212 803 3775

RESPONSE TO COMPTROLLER'S DRAFT AUDIT 2008-S-137

INTRODUCTION

The draft audit report prepared by the Comptroller's Office on the Corporation's Recycling Program is generally accurate and fair, and the New York State Urban Development Corporation, doing business as Empire State Development Corporation ("ESDC" or "Corporation") agrees with virtually all of the audit's findings and recommendations. In particular, we note your finding that the Corporation has established a source separation program and recycling program for waste paper, cardboard, plastic, computers and metal, as provided in Executive Order ("EO") 4 and Public Authorities Law s. 2878-b, as amended. In fact, we also note that the Corporation implemented its current program to recycle paper, metal, plastic and computers even though not required to do so under the original EO 142. Further, we note your finding that the Corporation has provided education consistent with EO 142 (now superseded by EO 4).

The draft audit report also confirms the fact that the Corporation has assigned a Sustainability and Green Procurement Coordinator ("Coordinator"), and that ESDC is awaiting the final guidance document from the Interagency Committee on Sustainability and Green Procurement before developing a formal written Stewardship Program. ESDC's Coordinator will follow-up with the Interagency Committee in this regard. Additionally, the draft report correctly concludes that, as a public benefit corporation, ESDC was not required to submit annual recycling reports under EO 142. ESDC will certainly comply with any and all applicable reporting requirements established in connection with EO 4. Towards that end, ESDC's Coordinator has already implemented steps to assure the accuracy of data to be reported on such future reports, as recommended in this draft audit report.

RECOMMENDATIONS

1. *Revise the recycling program to ensure offices are recycling glass.*

As ESDC previously indicated to audit staff, the Corporation, along with the Governor's Office and the State Comptroller, leases its space at 633 Third Avenue, New York, New York from the condominium owner. The condominium building management has implemented a source separation and recycling program for all occupants that covers metal and plastic containers, as well as cardboard and glass (paper is separately collected and recycled). Unfortunately, the small amount of glass generated by the Corporation – almost all soda bottles – is, while separated from recyclables by the waste disposal company, disposed of as trash because of the current absence of a viable market for recycled glass in New York City.

Accordingly, while we will make every effort to find a means of recycling the small amount of glass generated, our efforts to meet this recommendation of the draft report have to date been unavailing. Please note, however, that all recyclables, including glass, covered in EO 4 are collected, separated and recycled by building management at our new offices in Buffalo (the Corporation's second-largest facility).

2. *Retrain employees on the established recycling program in accordance with EO4.*

ESDC will update the recycling training information on a timely basis to ensure that it meets all of the requirements of EO 4. Indeed, such updated training is already planned.

3. *Implement internal control activities to assure the accuracy of data reported on future annual reports.*

ESDC's Sustainability and Green Procurement Coordinator will work with ESDC's Internal Control Officer to determine what internal control activities should be undertaken to assure the accuracy of data reported on future annual reports.