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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 7, 2017

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

Re: Collection and Use of Oil Spill Funds
Report 2017-F-13

Dear Commissioner Seggos:

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 Environmental Conservation to implement the recommendations contained in our audit report, *Collection and Use of Oil Spill Funds* (2014-S-59).

Background, Scope, and Objectives

Chapter 845 of the Laws of 1977 established the New York Environmental Protection and Spill Compensation Fund (Oil Spill Fund or Fund) to pay for the cleanup and removal of petroleum spills. The statute assigns the State Comptroller administrative and operational responsibility for the Fund. The Department of Environmental Conservation (Department) is charged with implementing the program by providing technical assistance and oversight for cleanup and removal activities and ensuring that only allowable costs are charged to the Fund.

The major source of revenue into the Fund is derived from fees and charges levied on oil storage facilities licensed and registered by the Department, which fall into two categories based primarily on their overall capacity. Smaller operations with a storage capacity less than 400,000 gallons are classified as Petroleum Bulk Storage (PBS) facilities. Major Oil Storage Facilities (MOSFs) are larger and have storage capacities of 400,000 gallons or more. As of August 2017, there were approximately 339 MOSFs with active licenses in the State and approximately 36,700 PBS facilities with active registrations.

Generally, the smaller PBS facilities simply pay a recurring registration fee of \$500 or less once every five years. In contrast, the larger MOSFs must pay license fees and surcharges based on the volume of petroleum products they import. MOSFs are therefore subject to significantly greater record-keeping and reporting requirements. Most MOSFs are required to submit a

monthly Major Petroleum License Fee Report (MPLFR) to the Department, although some are allowed to report annually. Monthly MPLFRs must include the number of barrels received at the facility, the number of barrels subject to the license fees and surcharges, and the total amount to be paid to the Department.

As of July 6, 2017, Article 12 of the Navigation Law imposed the following fees and surcharges on MOSFs:

- A 9.5 cent per barrel license fee on any petroleum product used in the State, upon first transfer into the State;
- A 4.25 cent per barrel surcharge on petroleum used in the State; and
- A 13.75 cent per barrel surcharge on petroleum subsequently transferred out of the State.

Of the 13.75 cent per barrel surcharge, 12.25 cents remains in the Fund to be used on cleanup and removal of petroleum spills, while the remaining 1.50 cents is transferred to the Hazardous Waste Remedial Fund. The 4.25 cent per barrel in-State surcharge collections are also transferred to the Remedial Fund.

During the two fiscal years ended March 31, 2017, the Fund collected about \$111 million, including about \$48 million in license fees and \$31 million in surcharges from MOSFs; \$5 million in registration fees from the smaller PBS facilities; and over \$28 million in cost reimbursements, interest, and penalties assessed against those responsible for spills. For the same period, the Department spent about \$62 million from the Fund, including \$23 million for spill-related expenses, \$38 million in administrative costs, and \$1 million in oil spill prevention and training costs. In addition, the Department transferred about \$32 million from the Fund to the Hazardous Waste Remedial Fund and the ENCON Special Revenue Fund. As of March 31, 2017, the Fund's balance was approximately \$39 million.

Our initial audit examined whether the Department collected all fees due the Oil Spill Fund in compliance with applicable laws and whether Department expenditures from the Fund were reasonable, appropriate, and associated with spill remediation projects. The objective of our follow-up was to assess the extent of implementation, as of November 14, 2017, of the four recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

Department officials have made significant progress in correcting the problems we identified in the initial report. We found the initial report's four recommendations were implemented.

Follow-Up Observations

Recommendation 1

Implement formal procedures to monitor the accuracy of reported petroleum activity, fee collection, and general facility information. Such activities may include, but not be limited to, periodic analyses to identify indications of inaccurate reporting or operations.

Status – Implemented

Agency Action – The Department’s formal procedures regarding PBS inspections direct its inspectors to make sure that information, such as accuracy of ownership, contact information, tank system information, and operator details, is accurate. Implicit in these procedures is the monitoring of total capacity at each facility with respect to the facility’s registered total capacity, which helps to ensure that the facility’s fees and registration are appropriate. Further, the inspection processes subsequent to the original audit identified three PBS facilities that should be registered as MOSF facilities. In fact, the Department found that one facility’s tank capacity exceeded the 400,000-gallon threshold for MOSF status, because it had added five unregistered tanks, and failed to apply proper overfill safeguards and corrosion prevention, which led to leaks.

The Department’s Bureau of Revenue Accounting (Revenue Accounting) performs data analysis on the monthly reports, delivery schedules reports, secondary transfer certificates, and due dates to identify patterns and inconsistencies in reporting, such as a land-based facility reporting as a vessel facility. It also identifies facilities with expired registrations still submitting reports, and conducts other such analyses to identify potential misreporting. Once Revenue Accounting’s analysis has identified potential misreporting, it performs an audit of the facility to verify the information reported. Revenue Accounting has conducted 78 facility audits since our original audit. Our review of 10 of the audits showed Revenue Accounting identified misreporting, including inaccuracies in transmissions.

Recommendation 2

Follow up on the licensing status of the PBS facilities we identified as potentially misclassified.

Status – Implemented

Agency Action – The Department followed up on the licensing status of the four PBS facilities identified in the original audit as potentially misclassified, and issued Consent Orders to the two owners of the four PBS facilities that should have been registered as two MOSF facilities. The Consent Orders required the entities to: (1) provide documentation that the facilities are in full compliance with the requirements of MOSFs; (2) submit a completed application to the Department to license each facility as a MOSF; and (3) pay retroactive fees from February 2013 through the date the orders were signed (March and May 2016, respectively) and penalties. The Department received penalties of \$65,000 for the PBS facilities involved and retroactive fees of \$15,534.

Recommendation 3

Provide guidance to licensees and registrants to clarify how to correctly report petroleum activities and revenues due the Fund.

Status – Implemented

Agency Action – The Department provided guidance to licensees and registrants to properly complete the MPLFR directly to MOSFs. The guidance was added to the reverse side of the MPLFR, and specifies the information that is required on each line of the report, the calculations that need to be performed, and the columns where the amounts should be reported.

The Department also posted additional guidance on its public website to help ensure MOSF petroleum amounts and license fees are reported correctly. MOSF facilities are notified of any important changes to the law, or filing procedures, through an insert included with their monthly report. The Department has also provided guidance to PBS facilities that, unlike MOSFs, pay registration fees on a five-year renewal cycle and are not subject to monthly licensing fees based on the amounts transferred from out of state.

Recommendation 4

Implement formal steps to share petroleum facility information among staff responsible for monitoring petroleum storage facilities and collecting revenues due the Fund.

Status – Implemented

Agency Action – The Department has implemented formal procedures to share petroleum information among staff responsible for monitoring petroleum storage facilities and collecting revenues due the Fund. The Department has greatly improved Revenue Accounting’s ability to access and utilize reporting information from the Unified Information System. This access allows Revenue Accounting to obtain real-time updates of facility information. In addition, Revenue Accounting’s facility listing and facility update data now includes the facility permit expiration date, allowing Revenue Accounting to identify potential issues and to alert the Division of Environmental Remediation.

In addition to the methods mentioned above, the Department, in conjunction with the Office of Information Technology Services, expanded the Department’s database as of November 8, 2017 to include:

- A designated billing contact for all MOSF facilities;
- The most up-to-date MOSF facility status and expiration date; and
- The fees collected and other details regarding MOSF facilities.

Major contributors to this report were Donald Geary, Deb Spaulding, Ray Barnes, Gayle Clas, and Anne Marie Miller.

We thank the Department's management and staff for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Stephen J. Goss, CIA, CGFM
Audit Director

cc: Ms. Ann Lapinski, Department of Environmental Conservation
Division of the Budget