
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**NEW YORK STATE
DEPARTMENT OF
TRANSPORTATION**

RECYCLING PROGRAM

Report 2008-S-138

AUDIT OBJECTIVE

The objective of this audit was to determine whether the Department of Transportation (Department) operates a recycling program in compliance with applicable State laws and Executive Orders.

AUDIT RESULTS - SUMMARY

The Department of Transportation (Department) is responsible for building, maintaining and keeping safe, the State's vast roadway transportation system. The Department is organized into 11 regions. Within these regions there are 33 administrative offices, 65 geographic residences, and 288 facilities.

The Department is responsible for establishing a recycling program for its facilities as outlined in the Solid Waste Management Act of 1988 (Act), and Executive Orders (EO) 4 and 142. The Program requires each agency or facility to source-separate their paper, cardboard, glass, metal and plastic waste for recycling. The Department also has unique responsibilities in the area of recycling old tires and other discarded materials found along the State's roadways. The EOs also require each agency to appoint a Sustainability and Green Procurement Coordinator (Coordinator) to educate staff on EO requirements and the agency's associated procedures; and foster agency and staff compliance with the EOs and other "green" initiatives.

We found that the Department had recently appointed a Coordinator as required, but Department officials had not established an agency-wide Program in compliance with the Act and EOs. Instead, they have delegated this responsibility to each of their individual facilities.

We visited 6 of the Department's 288 facilities and found that not all were in full compliance with Program requirements. For example, 2 of the 6 facilities have been source-separating their paper, cardboard, glass, metal and plastic waste, while three of the other facilities visited source-separated some - but not all - of these items. The remaining facility we visited did not source-separate any of the above.

EOs 4 and 142 also require each agency to prepare and submit an annual report to the New York State Office of General Services (OGS) and certain other agencies summarizing their recycling efforts (including the total amount of waste recycled). We found that the Department has not submitted the required reports. As such, State decision makers are not receiving the information necessary to assess Department compliance and Program-related achievements.

Our audit report contains three recommendations addressing Department compliance with the State's recycling program.

This report, dated July 2, 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, the State enacted the Solid Waste Management Act of 1988 (L 1998, ch 70) (Act), which laid out the priorities of the State's solid waste management policy:

- Reducing the amount of waste generated;
- Maximizing the amount of waste that is reused or recycled;
- Recovering as much energy as possible from what cannot be reused or recycled; and
- Disposing of the remaining solid waste appropriately.

The Act required most State agencies and public authorities to source-separate their solid waste, putting recyclable items such as paper, metal, glass, and plastic, into one container, and non-recyclable items such as food and soiled items, into a separate container. In addition, municipalities throughout the State were required to pass their own local ordinances or legislation requiring separation of solid waste, whether it is left out for collection or delivered to a solid waste management facility.

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. Source separation programs were to be enhanced through a combination of employee education and installation of equipment. EO 142 also required State agencies to submit an annual report to the Office of General Services (OGS) in August of each year detailing their waste reduction and recycling activities and any recommendations for additional measures that need to be taken. 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.

In April 2008, the Governor issued Executive Order 4 (9 NYCRR 7.4) (EO 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 of 12 Agencies and public authorities. EO4 requires each State agency and public 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 agency'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 (EFC), and the New York State Energy Research and Development Authority (NYSERDA). Beginning March 1, 2009, State agencies and public authorities are required to submit an annual report to the Committee that will, in turn, provide a summary report to the Governor.

The Department's mission is to ensure that those who live, work, and travel in New York State, have a safe, efficient, balanced, and environmentally sound roadway transportation system. The Department, which employs approximately 10,100 employees, is organized into 11 regions and 33 administrative offices. In addition to the Central Office located in Albany, each region has a regional headquarters and, with the exception of Region 11 which comprises the five boroughs of New York City, is made up of residencies. A residency is approximately

the geographic size of a county, and the work crews within each residency are responsible for the day-to-day maintenance and operation of the State roadways within their respective jurisdictions.

The roadways within Region 11 are maintained by the New York City Department of Transportation. The remaining ten regions are made up of 60 residencies and have 288 facilities, including a fleet maintenance facility in each region. All of the Department's facilities are either owned by the State or leased from private entities that are responsible for the recycling programs at these locations.

AUDIT FINDINGS AND RECOMMENDATIONS

Recycling Program

The Department is responsible for establishing a recycling program as outlined in the Act and EOs 4 and 142 for all its locations. We found that Department officials had not established an agency-wide Program in compliance with the governing Act and EOs. Instead, the responsibility for Program implementation was delegated to each Department facility. Our site-visits to sampled facilities found that they are not all fully complying with Program requirements.

We judgmentally selected six Department facilities, (the Central Office in Albany, the Region 11 headquarters in New York City, one facility in the Saratoga residency, one facility in the Schenectady residency, and the Utica and Waterford fleet maintenance facilities) to determine whether they implemented Program requirements in compliance with the Act and EOs.

We found that two of the six facilities we visited (the Albany Central Office and the

Waterford Fleet Maintenance Facility) were in full compliance with the Act and EOs. The Albany and Waterford facilities source separate their paper, cardboard, glass, plastics and metals from all of their other waste. Although not required, the Central Office also source-separates furniture, computers, cell phones, batteries, florescent light bulbs, light ballasts, and copper wire for recycling. The Central Office's carter reported that during the period January 1, 2008 through August 31, 2008, the Central Office recycled a total of 61 tons of paper and cardboard and 1.38 tons of glass, plastic, and bottles.

We found three of the other facilities we visited (Region 11 Head Quarters, the Saratoga residency facility, and Utica fleet maintenance facility) were each in partial compliance. Region 11 and the Utica fleet maintenance facility source separated their paper and cardboard waste, but not their glass, plastics and metals. The Saratoga residency facility source separated its cardboard, glass, plastics and metals, but not its paper waste.

The Schenectady fleet maintenance facility did not source-separate any of the above-noted materials. However, we were informed that as a practice, all of DOT's residencies and fleet maintenance facilities do recycle their auto related waste such as tires, batteries and fuel oil.

EO 142 required agencies to submit annual reports to OGS, with copies to DEC and DED, by August 1st of each year. These reports were to contain a comprehensive collection of data, reflecting the source reduction, recycling and (green) procurement initiatives taken by agency facilities. We found that the Department has not submitted the required annual reports. As such, the information deemed necessary by decision makers to monitor and assess Program

compliance and achievements was not available to them.

EO 4 requires the Department to begin reporting its recycling efforts again by March 1, 2009. The Committee has extended this reporting deadline to August 1, 2009. It is therefore important for Department officials to ensure they have a system and controls in place to capture the necessary data for reporting purposes. Department officials indicated that they plan to comply with the new reporting requirements under EO 4.

Recommendations

1. Implement a comprehensive Agency-wide recycling program in compliance with the Act and governing EOs.
2. Periodically monitor facility compliance and take action as appropriate.
3. Prepare and submit annual reports in compliance with EO 4.

DOT Specific Requirements

Under EO 142 the Department was to work with DED and DEC to research the use of glass, rubber and other materials found on the road as paving material, and to identify steps to overcome any technical and economic hindrance in doing so. Department officials were also to provide technical assistance and guidance to agencies on the use of recovered glass, rubber and other materials for road construction. We found that the Department has entered into a Memorandum of Understanding with DEC to recycle 35 million tires for use in road construction projects. Since EO 142's inception 52,000 metric tons, or approximately 5.6 million tires, have been used in road construction projects. In addition, the Department has been

working with DED to help find markets to recycle used and discarded tires.

AUDIT SCOPE AND METHODOLOGY

We audited the Department's recycling program for the period April 1, 2005 through October 27, 2008 to determine whether it is in compliance with applicable State laws and Executive Orders. To accomplish our objectives, we reviewed the governing Act and EOs, met with Department and selected facility officials to confirm and enhance our understanding of the Department's Program-related activities. We observed recycling efforts at six Department's facilities which were judgmentally selected to include administrative facilities, fleet maintenance facilities, and residency facilities. Specifically, we visited the Department's Central Office in Albany, the Region 11 headquarters in New York City, the Saratoga and Schenectady residencies, and the Utica and Waterford fleet maintenance facilities.

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 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 final report and are attached

in their entirety as Appendix A. Our rejoinders to Department's comments are presented in Appendix B, State Comptroller's Comments.

Within 90 days of the issuance of this report, in accordance with Section 170 of the Executive Law, the Commissioner of the Department of Transportation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, indicating the steps taken by Department officials to implement our report recommendations, and where they have not been implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report were Frank Patone, Michael Solomon, Ed Durocher, Jessica Turner, Anthony Calabrese, Joseph Robilotto and Carmine Berghela.

APPENDIX A - AUDITEE RESPONSE



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232
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STANLEY GEE
ACTING COMMISSIONER

DAVID A. PATERSON
GOVERNOR

May 15, 2009

Mr. Michael Solomon, Audit Manager
Office of the State Comptroller
Division of State Government Accountability
123 William Street - 21st Floor
New York, New York 10038

Re: Draft Report 2008-S-138
New York State Department of
Transportation Recycling Program

Dear Mr. Solomon:

Thank you for the opportunity to review and comment on the subject report. The New York State Department of Transportation (NYSDOT) has a long successful record of advancing the use of green and recycled material and products in our work. One significant example of this commitment is the use of tire shreds as embankment fill. Between 2003 and 2008, working with the Department of Environmental Conservation, the NYSDOT has recycled more than 5.6 million tires from the waste stream and has used them as embankment fill. In addition, our Fleet Management and Maintenance facilities have a long history of recycling items such as motor oil, antifreeze, and steel. NYSDOT, has been and continues to be committed to instituting policies and procedures that will protect the environment.

Overall we agree with the audit findings and recommendations; however, as noted in the report comments section below, there is an error in the report which affects the conclusion regarding the NYSDOT's level of compliance with Executive Order 4 (EO 4).

Report Comments

The report concludes that three of the six NYSDOT facilities that were visited were in partial, but not full, compliance with the Solid Waste Management Act of 1988, Executive Orders 4, and 142 because these facilities did not source-separate paper, cardboard, glass, plastics, and metals from other waste material. The report specifies that one of the three

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facilities, the Region 11 headquarters, source-separated their paper and cardboard but not their glass, plastic, or metals.

We disagree with this conclusion. During an interview with two of your auditors, the Region 11 Administrative Officer, a representative of the building's landlord, and a manager of Five Star Carting Inc. (Five Star) explained the Region's waste disposal process, noting that there are two waste containers, one for paper/cardboard and one for all other waste. The manager from Five Star explained that they are a recycling facility and that the carter source-separates glass, plastics and metals, as well as other recyclable materials at the carter's facility. An invitation to visit the facility was extended to your auditors, who ultimately did visit the facility.

*

Comment

After the NYSDOT learned of the conclusion noted in the draft report, we forwarded to your office monthly reports generated by Five Star for January thru March 2009. These reports, similar to reports that your auditors reviewed for the NYSDOT's main office, indicated categories of materials which were recycled and their respective percentage of overall waste material collected. These reports indicate a recycle rate of more than 70 percent of material collected. Included in the recycled items were glass, plastics, and metals. We understand Five Star has generated these reports since 2007.

Recommendation 1: Implement a comprehensive Agency-wide recycling program in compliance with the Act and governing EOs.

Response: As part of EO 4, *Establishing a State Green Procurement and Agency Sustainability Program*, a comprehensive Department-wide program will be developed. While EO 4 does not include a specific date for state agencies to have programs in place, the NYSDOT anticipates a December 2009 completion date. The Administrative Services Division will coordinate with representatives from the Operations, Engineering, and Delivery Divisions in the development of the policy and program. The policy will include the NYSDOT's current recycling efforts and plans to expand on these efforts. EO 4 also instructs the Interagency Committee on Sustainability and Green Procurement to develop "green procurement lists and specifications" for use by state agencies when purchasing products. As such, the program will include a list of EO 4 products, as identified by the EO 4 Interagency Committee. To track the NYSDOT's procurement of the items, a specific purchasing code will be developed. This required code will be used when purchasing products and will assist with streamlining the annual reporting of items purchased as required by EO 4.

Recommendation 2: Periodically monitor facility compliance and take action as appropriate.

Response: As part of the NYSDOT wide recycling program, Regions will be required to provide the Sustainability and Green Procurement Coordinator with annual reports. The

* See State Comptroller's Comment, page 10

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reports will include the number of EO 4 products purchased, and will provide a breakdown of the amount of paper, cardboard, and commingled materials (metal, glass, and plastic) collected. Annual reports will be used as a tool to monitor facility compliance by following-up with variances in reported amounts and by tracking and comparing the data over time.

Recommendation 3: Prepare and submit annual reports in compliance with EO 4 as required by the Executive Order.

Response: The NYSDOT will submit its annual report by the August 1, 2009 deadline and annually thereafter as required by EO 4.

Thank you for the opportunity to review and respond to the subject report. Should you need further information, please contact Mark Reuss, the Department's Sustainability and Green Procurement Coordinator at (518) 457-1587.

Sincerely,



Stanley Gee
Acting Commissioner

APPENDIX B - STATE COMPTROLLER COMMENTS ON AUDITEE RESPONSE

Department officials disagree with our assessment of the Region 11 facility because its private carter was separating these recyclable items post-collection. Although post-collection separation is certainly preferred over not recycling, it does not meet the requirements of EO4 which stipulates source-separation at the point of discard.
