

H. CARL McCALL  
STATE COMPTROLLER



A.E. SMITH STATE OFFICE BUILDING  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE  
COMPTROLLER

November 12, 1998

Mr. James J. McGowan  
Commissioner  
Department of Labor  
Building 12, State Office Campus  
Albany, NY 12240

Re: Report 98-F-48

Dear Mr. McGowan:

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 reviewed the actions taken by officials of the New York State Department of Labor (Department) as of September 18, 1998, to implement the recommendations included in our prior audit "*Assessment and Collection of PESH Penalties*" (Report 96-S-78, issued March 6, 1997).

**Background**

New York State's Public Employee Safety and Health Act of 1980 (Act), Section 27(a) of the New York State Labor Law, provides for all nonfederal public employees in the State to be protected by safety and health standards in the workplace that are the same as the Occupational Safety and Health Administration standards that apply in the private sector. The Public Employee Safety and Health (PESH) unit, a unit of the Department's Safety and Health Division, is responsible for overseeing the workplace protection of public employees.

The PESH unit consists of a Program Management office and nine district offices. Each district office has a supervisor, safety and health inspectors, industrial hygienists and support staff. There are currently about 83 PESH employees, including 34 safety and health inspectors and 28 industrial hygienists. Unit staff investigate workplaces, inspect equipment, and review work practices and procedures. The unit's total operating budget for fiscal year 1998 was approximately \$6 million.

**Summary Conclusions**

In our prior audit, we found that the Department's Counsel's Office did not have written policies and procedures to guide and document penalty reduction decisions. In addition, the Department did not collect penalties from all violators, which may reduce a public employer's financial incentive to correct violations. Finally, we found that the Department needed to improve its management information systems to obtain accurate and reliable data.

In our follow-up review, we found that the Department has established written procedures to help guide penalty reduction decisions. However, Counsel's Office still does not document the reasons for reducing penalties and the Department has not sought additional authority to enforce penalty collections. Finally, while the Department did not develop an improved management information system, it did make a programming change to modify the current system.

### **Summary of Status of Prior Audit Recommendations**

Of the four prior audit recommendations, Department officials have implemented one recommendation, partially implemented another recommendation and did not implement two recommendations.

### **Follow-up Observations**

#### **Recommendation 1**

*Prepare and implement written policies and procedures governing the reduction of PESH penalties.*

#### **Status - Implemented**

Agency Action - The Department's Counsel's Office has established written policies and procedures for determining the reduction of amounts to be collected for PESH penalties. These policies and procedures include a listing of the various factors to be considered which may warrant a reduction in penalties. Counsel's Office has provided these policies and procedures to all attorneys who are involved with PESH penalty reduction.

#### **Recommendation 2**

*Document reasons for penalty reductions to protect the integrity, accuracy, equity and effectiveness of penalty assessments and collections.*

#### **Status - Not Implemented**

Agency Action - Department managers did not implement this recommendation because they believe it would require a significant amount of time for attorneys to document the reasons for reducing penalties, thus reducing the number of PESH penalty reduction cases the attorneys can handle. Department managers noted that their reporting system allows them to monitor penalty reduction amounts.

Auditors' Comments - Not documenting the reasons for penalty reductions may prevent Department managers from adequately overseeing this process. Department managers need this documentation to determine whether penalty reductions are reasonable and justified, and

comply with Department policies and procedures. We continue to recommend that the Department document the reasons for penalty reductions.

### **Recommendation 3**

*Seek additional authority to enforce penalty collection from all violators.*

#### **Status - Not Implemented**

Agency Action - The Department has not sought additional authority to enforce penalty collection from violators because it has had problems collecting fines from only one agency, the Department of Corrections (DOCS). Since our prior audit, the Department and DOCS have reached a settlement for the outstanding penalties owed.

Auditors' Comments - While we commend the Department for making a settlement on penalties owed by DOCS, the lack of authority to enforce penalty collections could result in other government agencies refusing to pay PESH penalties in the future. We continue to recommend that the Department seek additional authority to enforce penalties from all violators.

### **Recommendation 4**

*Implement a management information system that provides information which is accurate and reliable and meets the needs of the users.*

#### **Status - Partially Implemented**

Agency Action - The Department has not developed an improved management information system. However, to improve data accuracy and reliability, a programming change was made to the Tracking System used by the Counsel's Office. This change enables the Counsel's Office to reconcile its data with that compiled by the PESH unit. Department officials told us that they could not make major computer system changes because their computer programming staff have been working full time to ensure the Department's computers are Year 2000 compliant.

Auditors' Comments - The Department needs to take additional steps to implement this recommendation. We urge the Department to devote the resources, when available, to develop a single, integrated PESH management information system that would more fully ensure the timeliness, reliability, accuracy and usefulness of PESH information.

Major contributors to this report were Richard Sturm, Jack Dougherty, and Michael Cantwell.

We would appreciate your written response to this report within 30 days, indicating any additional action you have planned or have taken to address the unresolved matters discussed in this report. We also thank Department management and staff for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

..

William Chalice  
Audit Director

cc: Robert L. King, DOB  
Karen Stackrow, DOL