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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 4, 2013

Mr. Joseph Martens
Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011

Re: Selected Aspects of the Dam Safety
Program
Report 2013-F-4

Dear Commissioner Martens:

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 Department of Environmental Conservation (Department) officials took to implement the recommendations contained in our audit report, *Selected Aspects of the Dam Safety Program* (Report 2006-S-61).

Background, Scope and Objective

Department regulations (Regulations) define a dam as any artificial barrier which impounds (holds back), or will impound, water. The Environmental Conservation Law (Law) requires owners of dams and other structures that impound water to operate and maintain them in a safe condition. Some requirements apply to dams that meet certain criteria such as height, maximum impoundment capacity, or pose certain threats upon failure such as personal injury.

Neither the Law nor the regulations require the Department to inspect dams. However, the Department's Dam Safety unit's practice is to conduct dam safety inspections to determine a dam's condition and deficiencies. Officials also conduct technical reviews of proposed dam construction or modification, monitor remedial work for compliance with dam safety criteria, and oversee emergency preparedness.

The Law requires the Department to investigate dams if judged necessary for public safety reasons. When a Department investigation classifies a dam's condition as "unsafe" or "unsound," the Department is required to issue a notice containing recommended corrective actions and a repair schedule. The Law provides the Department with various enforcement powers if the

owner of such a dam does not respond to the Department notice. For example, the Department has the power to hold hearings and issue an order requiring the owner to remove or repair the dam within a reasonable time period. The Law also authorizes the Department to remove or repair the dam.

The initial audit report, issued on March 11, 2008, examined the actions Dam Safety took to correct conditions at deficient dams. We found Officials were slow to compel dam owners to correct identified deficiencies and its internal policy for inspection frequencies was not consistent with its actual practice at that time. In addition, Officials neither ensured all staff received sufficient training on the proper use of their dam inventory database nor ensured the database was accurate or complete. Dam Safety officials also did not require dam owners to submit an emergency action plan (EAP) to prevent or mitigate the adverse consequences of a dam failure.

The objective of our follow-up was to assess the extent of implementation of the nine recommendations in our initial report as of May 20, 2013.

Summary Conclusions and Status of Audit Recommendations

We found Department officials have made substantial progress in correcting the problems we identified. However, additional improvements are needed. Of the nine prior audit recommendations, six were implemented, and three were partially implemented.

Follow-up Observations

Recommendation 1

Establish written procedures containing specific time frames for progressing from voluntary compliance to Department enforcement.

Status – Partially Implemented

Agency Action – Dam Safety Officials have not established specific time frames for progressing to enforcement. Instead, officials developed written guidelines that prioritize certain high- and intermediate-hazard dams for referral to the Department’s legal unit for enforcement. Staff follow these guidelines, but also use judgment to consider factors such as the severity of consequences of deficiencies, progress made by the dam owner in addressing the deficiencies, and the availability of staff resources. Dam Safety officials told us that it is in the Department’s best interest to work with dam owners to develop schedules for dam repairs, because each dam is unique and because formal enforcement is often a staff intensive and prolonged process. We reviewed records for five deficient dams; three of which met the enforcement criteria in the guidelines and eventually progressed to enforcement. For two of these three, remedial work has either been completed or substantially completed. The remaining two dams did not fit the criteria in the guidelines.

Recommendation 2

Seek sufficient funding and staff to enforce the timely correction of deficient dams.

Status – Implemented

Agency Action – Dam Safety sought additional funding and staff. In addition, Dam Safety increased from 5.3 full time equivalent staff to approximately 9 during the three years ended March 2013.

Recommendation 3

Develop a methodology to track when requested materials and responses are due from owners, and when follow-up actions should be taken.

Status – Partially Implemented

Agency Action – Dam Safety staff still manually track the dams assigned to them and there is no formal tracking system to prompt staff to follow up on requested materials and responses. Instead, Dam Safety staff follow-up on items based on the prioritization schedule and minimum inspection frequencies noted in Recommendation 4. Dam Safety officials told us staff still cannot always address delinquencies immediately due to higher priorities and available resources.

Recommendation 4

Make the Policy Guidelines and the work plan consistent in stating the desired goal for inspection frequency.

Status – Implemented

Agency Action – Dam Safety Officials do not have a written directive specifying dam inspection frequencies. Nonetheless, we found staff are aware of the goal to inspect high hazard dams every two years, intermediate dams every four years, and low hazard dams as needed. Dam Safety's work plan goal is 450 inspections per year, which is above the number of inspections needed to inspect each of the 394 high-hazard and 705 intermediate-hazard dams on two- and four-year cycles, respectively.

Recommendation 5

Devote sufficient staff to accomplish the work plan goal for dam inspections. Maintain records to show accomplishment of the work plan goal and to explain any variation from the goal.

Status – Implemented

Agency Action – Reports show the Dam Safety unit exceeded its target of 450 dam inspections during each of the past two years. The unit completed 616 and 528 inspections during the State fiscal years ended March 2012 and 2013, respectively.

Recommendation 6

Develop procedures related to database maintenance including the periodic testing on a sample basis of data entry completeness and accuracy.

Status – Partially Implemented

Agency Action – The Dam Safety unit does not have written procedures for the maintenance of its new database. However, staff perform database maintenance and development activities. In addition, they also informally verify data entry completeness and accuracy on a periodic basis. We tested 29 items and found all information was accurate in the database, although one inspection had not been input timely. Staff told us there is a time lag in updating the database due to other priorities.

Recommendation 7

Train staff on database procedures.

Status – Implemented

Agency Action – Staff received training from the database vendor in August 2009 as well as internal training in March 2012. According to Dam Safety staff, new hires are trained on database procedures and additional staff are trained as needed. We met with one database user who demonstrated knowledge of its operation.

Recommendation 8

Notify the Corps of Engineers of corrections to be made to NID.

Status – Implemented

Agency Action – We found the Dam Safety unit coordinates with the Corps of Engineers (Corps) before the National Inventory of Dams (NID) data is published to correct any anomalies. Neither Dam Safety officials, nor the Corps is aware of any errors in current data.

Recommendation 9

Expedite the development of regulations that will require dam owners to file EAPs.

Status – Implemented

Agency Action – The Department implemented section 673.7 of its Dam Safety Regulations effective August 19, 2009, which requires dam owners to file Emergency Action Plans for dams with a Hazard Class of B or C.

Major contributors to this report were Stephen Goss, Deb Spaulding, Heidi Nark, and Cheryl Glenn.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. In addition, please extend our thanks to your management and staff for the courtesies and cooperation they extended to our auditors during this review.

Very truly yours,

John F. Buyce, CPA
Audit Director

cc: Ann Lapinski, Director of Internal Audit
Thomas Lukacs, Division of the Budget