



John L. Buono  
Chairman

**New York State Thruway Authority**  
**New York State Canal Corporation**

200 Southern Blvd., P.O. Box 189, Albany, NY 12201-0189

[www.nysthruway.gov](http://www.nysthruway.gov)



Michael R. Fleischer  
Executive Director  
TDD/TTY 1-800-253-6244

August 2, 2010

Ms. Carmen Maldonado  
Audit Director  
Division of Governmental Accountability  
Office of the State Comptroller  
123 William Street, 21<sup>st</sup> Floor  
New York, NY 10038-3804

Dear Ms. Maldonado:

On behalf of Chairman Buono, the New York State Thruway Authority (Authority) submits the following response with respect to the Office of the State Comptroller's (OSC) follow-up report 2010-F-24 on actions taken to implement the recommendations in the audit, *Gas Prices at Thruway Travel Plazas* 2008-S-159.

The Authority prides itself on providing the best possible service to its customers and recognizes the importance of accurate fuel pricing. Accordingly, the Authority has instituted procedures to ensure that the prices charged conform to its contracts with the fuel station operators.

OSC's follow-up audit confirms that the Authority acted swiftly to address contract violations. A gas holiday was agreed upon with the concessionaire as an appropriate method to compensate or reimburse patrons that were overcharged by an operator. While any overcharge concerns the Authority, it must be noted that fuel sales at the audited facilities during the same period totaled \$35,039,932.54, which reflects that the total sales amount charged to customers was 99.99% accurate. The Authority will continue to work to improve upon this success rate.

The Authority has reviewed the status of OSC's recommendations in the follow-up audit report and offers the following responses to the "unresolved issues":

**Recommendation #1 – Amend the fueling station concession contracts to include a schedule of monetary damages for pricing violations, and apply them for repeated or significant violations.**

**Status per OSC: Partially implemented**

In accord with the "Right to Cure" provision in the existing agreements (Section 20.01 Sunoco & Lehigh), the Authority prepared a schedule of minimum costs incurred by the

Authority each time there is a pricing violation and has advised both fuel Operators of same. These charges will be imposed upon Operators when pricing violations occur, in addition to any other costs the Authority may incur when there is a pricing infraction.

Under the existing agreements, the Authority also has the right to terminate the contracts if a violation is not rectified.

**The Authority will continue to pursue contract amendments to include liquidated damages for repeated and significant violations.**

**Recommendation #5 – Monitor concessionaire compliance with the survey requirements; note any non-compliance; and instruct the Service Area Representative to validate information on all surveys submitted by the stations.**  
**Status per OSC: Partially implemented**

As noted in the audit, **the Authority does not believe it is cost effective to have its SARs validate information on all surveys submitted.** However, the Authority will continue to monitor concessionaire compliance with contractual survey requirements by conducting random checks on survey prices submitted by the fuel operators and by investigating and following up on any price discrepancies noted.

**Recommendation #6 – Instruct station operators who request additional pricing surveys during periods of rising fuel prices that they have to conduct a comparable number of surveys during periods of falling fuel prices.**  
**Status per OSC: Partially implemented**

The Authority controls the number of surveys to be performed per the concessions contracts. The concessionaires were instructed in writing as to the expected frequency of surveys under "normal" market conditions. Any requests for additional surveys during a period of rising fuel prices would need to be approved by the Authority, and the expectation that a similar number of surveys would be performed when prices begin to fall was communicated verbally to the concessionaires. Again, no formal writing is necessary as the Authority directs the frequency of surveys under the contracts. The Authority considers this recommendation to be implemented.

**Recommendation #7 – Replace stations on the survey list in a timely manner, formally revise the concession contracts to reflect the changes, and document the reasons for the changes.**

**Status per OSC: Partially Implemented**

Lists of current survey locations (stations) are mutually agreed upon. The locations change frequently for various reasons which are documented. Therefore, **it is not practical to continually revise the contracts as recommended.** The one location noted by the auditors that was not immediately replaced was initially thought to be a temporary closure.

**Recommendation #9 – Ensure that all test-surveys include all the stations that are surveyed by the concessionaires.**

**Status: Not implemented**

As noted in recommendation #5, it is not cost-effective to have SARs shadow Operators while they perform off-road surveys in order to verify every price for every off-road fuel survey location. Random SAR spot checks of off-road survey locations; scrutiny of concessionaire surveys; and periodic Authority audits are the best, most appropriate and cost-effective way to monitor and address fuel prices.

**Recommendation #12 – Amend the fueling station concession contracts to include:**

- **detailed procedures for calculating the price of 91 octane gasoline**

**Status per OSC: Partially implemented**

The Authority is pursuing an amendment to its agreement with Sunoco to set the price for 91 octane at 2 cents less than the price for 93 octane.

- **procedures on the use of cash or credit pricing when the surveyed stations have different fuel prices for cash and credit sales**

**Status per OSC: Partially implemented**

The current contracts require the fuel Operators to offer payment options of cash, credit and pay at the pump, but do not require a cash-only dispenser or an alternative "cash-only" price. Therefore, the Authority will continue to allow the Operators to survey credit prices only at off-road locations that offer both a cash and credit price.

- **the time when price changes must be implemented**

**Status per OSC: Partially implemented**

The Authority clarified this matter through letter agreements effectuating the intent of the contracts that regional pricing be implemented, and that accordingly, the time frame for taking surveys and for implementing price changes must be consistent. **The Authority will also include set time frames in the contract amendments being pursued with the Operators.**

The Authority has sought to address the opportunities for improvement noted in the draft audit report. If you need additional information, please contact Mr. Marc Hannibal, Director of Audit and Management Services at (518) 471-5853.

Sincerely,



Michael R. Fleischer  
Executive Director

cc: John Buono, Chairman

Donald Bell, Director of Maintenance and Operations

John Bryan, CFO

J. Marc Hannibal, Director of Audit and Management Services