



STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
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December 23, 2013

Mr. John Buyce
Audit Director
New York State Office of the State Comptroller
Division of State Government Accountability
110 State Street
11th Floor
Albany, NY 12236

**Re: Response to Office of State Comptroller's Audit Report
Uncollected Penalties (2012-S-69)**

Dear Mr. Buyce:

I am writing to provide an update on the progress of the Department's efforts to implement the recommendations contained in the Audit Report 2012-S-69.

Recommendation 1: Revise collection processes to eliminate extended periods of inactivity and provide for more periodic and progressive attempts to secure payment.

The Department, with additional staff, now commences suit against establishments that fail to pay penalties within 120 days of their assessment, unless a payment schedule has been agreed to or an appeal of the assessment has been timely filed. Moreover, for those penalties assessed under the older protocol, with the adoption of labor saving practices and the commitment of additional resources¹, the Penalty Unit has reduced the time it takes for the commencement of suit from three years to two years. With our newly adopted protocols coupled with our efforts to reduce the time to bring suit on penalties assessed under the old protocol, the Department anticipates that, absent good cause, all penalties for which payment or payment plans have not been made will result in suits to enforce the assessed penalties within four months of the penalty's assessment.

¹ For example, the Penalty Unit now sends demand letters before commencing suit on its penalties that have been dormant. This additional contact has prompted payments and reduced the number of suits that must be commenced. In addition, the Department is beginning to track those establishments with penalties whose licenses are coming up for renewal and will communicate with those establishments, reminding them of their outstanding obligations.

Counsel's Office, working with the Food Safety Division (which generates approximately 90 percent of the assessed penalties), has documented and formalized penalty reduction protocols for qualifying businesses that correct their problems and return to compliance. The protocols, which require prompt action, have increased the number of establishments seeking reductions and have also resulted in a higher percentage of establishments more quickly addressing and paying the assessed penalties.

Recommendation 2: Distribute incompatible tasks and functions among various employees. Where this segregation is not possible, increase management oversight to reduce the risk that errors, omissions or irregularities could occur and not be detected.

The Department has transferred the responsibility of the receipt of the collection of penalties and settlement payments from the Penalty Unit to the Division of Fiscal Management.

Two additional positions in the Penalty Unit have been filled, and the tasks among the Penalty Unit's employees have been segregated and documented.

Deputy Counsel now works closely with the Penalty Unit to develop practices and procedures that are designed to minimize errors and omissions and improve reporting and tracking of matters to enhance the Penalty Unit's collections and prevent irregularities.

Recommendations 3 and 6:

Develop performance measurement tools, such as periodic reports and analytics, to enhance management oversight and monitoring of penalty and collection activities.

Improve the accuracy and completeness of information in the penalty database to enable reliable reporting and thereby eliminate other redundant systems and manual processes.

Under Management's direction, the Penalty Unit has begun to use the systems currently available to generate more useful reports and has eliminated the Penalty Unit's time consuming manual preparation of quarterly reports by generating standardized communications directly from the existing Penalty Review System.

The Penalty Unit has been searching its database to identify entities that have gone out of business and present no likelihood of recovery. These files are being closed and the Penalty Unit is taking steps to write off those uncollectable penalties or judgments.

The Department is in the process of introducing the Acella system, which will provide a far more robust and flexible reporting system. To that end, the Department has analyzed current business processes and has streamlined business processes that will feed directly into the reporting processes in the new system.

Until the system becomes operational, the Department is continuing to work towards the development of better reporting and tracking of penalty assessments, penalty collection, litigation status and collections. Counsel's Office is working with Information Technology to develop monthly reports showing each Division's penalties, the penalized establishments, the amounts of the assessed penalties, the history/milestones for each penalty, the amount of time it is taking to obtain payment or settlement and the status/stage of each uncollected penalty. With the collection of this data, the Department will develop performance measurements and focus the Penalty Unit's efforts in areas where the data indicates such a focus would be most effective. Further, better reporting and tracking should help management minimize errors and avoid potential irregularities.

Recommendation 4: Improve communications and information sharing between and among operating divisions, especially as it relates to penalty history.

Deputy Counsel is working with each of the Divisions to improve communications with Counsel's office, and where appropriate, among divisions.

Recommendation 5: Take steps to withhold licensing or re-licensing of persons or entities with unpaid penalty obligations.

To the extent it is authorized by statute, the Department withholds the re-licensing of entities with unpaid penalty obligations, which has proved effective. However, that authority does not extend to all of the Department's Divisions. The Department is seeking authority to withhold licenses from those food processing establishments with \$2,400 or more in outstanding penalties.

Recommendation 7: Utilize the State-Wide Offset Program, as well as the planned statewide e-licensing system, as a means to collect outstanding debts.

The Department previously looked at the possibility of utilizing the State-Wide Offset Program ("SWOP") and found that the Penalty Unit maintained its data in such a way that would require a large commitment of resources which could be more effectively deployed elsewhere. However, Counsel's Office is working with Information Technology to collect the data required for SWOP on a going forward basis and, in connection with the review of its outstanding penalties and judgments, will identify other establishments with penalties that appear to be good candidates for SWOP participation and commit resources to assemble the required information, where appropriate.

The Penalty Unit is currently (1) reviewing its databases, including information from the current licensing system, for information that will lead to the identification of assets subject to reach under the Civil Practice Law and Rules concerning the enforcement of money judgments; and (2) working with the Department's Divisions to collect other information that will assist the Penalty Unit to enforce judgments obtained.

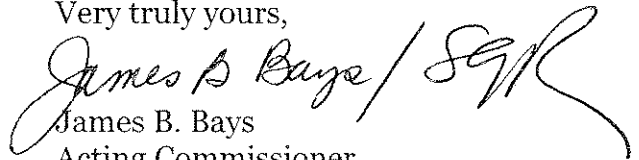
Recommendation 8: Update and formalize written procedures governing the assessment and collection of penalties.

Counsel's Office, together with the Department's Internal Control Officer, is in the process of reviewing, updating and documenting the Penalty Unit's processes and procedures both in Counsel's Office and at the division level. To date, the Penalty Unit has revised and documented new protocols for the Food Division and its Kosher Division.

With these new practices and protocols, and greater management oversight and focus on obtaining better data through more robust and reliable reporting, the Department is confident that we have enhanced the integrity and effectiveness of our penalty collection practices.

Should you require any further information, please do not hesitate to contact me.

Very truly yours,


James B. Bays
Acting Commissioner

cc: Honorable Andrew M. Cuomo
Honorable Dean Skelos
Honorable Jeffrey Klein
Honorable Andrea Stewart-Cousins
Honorable Sheldon Silver
Honorable Joseph Morelle
Honorable Brian Kolb
Honorable Jonathon A. DeFrancisco
Honorable Liz Krueger
Honorable Herman Farrell, Jr.
Honorable Robert Oaks